



TC07583

Appeal number: TC/2018/05621

PROCEDURE – application for reinstatement – application refused

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

LARISSA HOWELL LIMITED

Appellant

- and -

**THE COMMISSIONERS FOR HER
MAJESTY'S
REVENUE & CUSTOMS**

Respondents

TRIBUNAL: JUDGE ANNE FAIRPO

Sitting in public at London on 7 February 2020

Miss Howell, director for the Appellant

**Miss Tate, Counsel, instructed by the General Counsel and Solicitor to HM
Revenue and Customs, for the Respondents**

DECISION

1. This is an application for reinstatement of an appeal which was struck out on 18 July 2019.

Background

2. This application relates to an appeal made on 28 August 2018, in which the appellant appealed a decision by the respondents (HMRC) to issue a C18 Post Clearance Demand Notice in respect of the import of shoes. Commercial samples relief had been claimed in relation to that import.

3. HMRC granted hardship in respect of the appeal on 15 November 2018 and submitted a Statement of Case to the tribunal and the appellant on 7 January 2019.

4. In an email to the appellant and copied to the Tribunal, dated 29 January 2019, setting out the process which would be followed, HMRC advised the appellant that “it is important that you comply with each direction that the Tribunal sets down, even if you have no further evidence to provide or no dates to avoid you should respond to the Tribunal so that they are aware of this”.

5. The tribunal issued Directions and a guidance note to the appellant on 28 February 2019. These were issued by email. The Directions required (as relevant) that the parties:

- (1) exchange lists of documents by 12 April 2019;
- (2) exchange witness statements by 10 May 2019;
- (3) provide details of listing information by 24 May 2019.

6. The guidance note sent to the appellant states, in a paragraph headed “Witness statements” that “the Tribunal requires both sides to submit in advance written statements from every person (called a witness) they will call upon at the hearing to give evidence about what is happened. The main witness is often the appellant”. The guidance notes also state, in a paragraph headed “Listing information” that “if you do not tell the Tribunal the names of your witnesses, the Judge at the hearing may not allow them to speak”.

7. On 4 April 2019, the appellant emailed the Tribunal with copy documents and a list of dates to avoid. No details of witnesses were provided. HMRC provided their list of documents by email to the Tribunal and the appellant on 8 April 2019.

8. On 9 May 2019, HMRC emailed a witness statement to the appellant and the Tribunal. This was also sent by special delivery to the appellant.

9. On 15 May 2019, HMRC provided listing information by email to the appellant and the Tribunal.

10. On 23 May 2019, the Tribunal wrote to the appellant referring to the Directions and advising the appellant that no witness statement had been received, as required by Direction 2. This letter was sent to the appellant by email. The letter explained the importance of witness statements and advised the appellant that if Direction 2 was not complied with within 14 days, the appeal may be struck out. The letter further advised that a witness statement was required of an appellant who intended to rely on their own evidence. A guidance note on witness statements was attached to the letter. The letter concluded by stating that the appellant should either immediately provide the witness statement or tell the Tribunal if no witnesses were to be called to give evidence.

11. On 3 July 2019, as no response had been received to the letter of 23 May 2019, the Tribunal issued Directions by email to the appellant requiring that the appellant confirm in writing by 5pm on 17 July 2019 that they intended to proceed with the appeal. If no such confirmation was received, the Directions stated that the proceedings would be struck out without further reference to the parties. The Directions also required that the appellant provide a witness statement and request permission to comply out of time by the same date. The Directions stated that failure to do so may result in the proceedings being struck out. The Directions also enclosed a further copy of the guidance note as to witness statements.

12. On 22 July 2019, the appellant emailed the Tribunal asked whether there was anything else that needed to be provided to the Tribunal.

13. On 31 July 2019, HMRC emailed the Tribunal, copied to the appellant to ask whether the appellant had complied with the Directions of 3 July 2019 or, if not, for confirmation that the appeal had been struck out.

14. The appellant emailed HMRC on the same day, to say that they had emailed the Tribunal on 4 April 2019 and did not know whether they were required to provide any further information. HMRC advised the appellant that she had failed to respond to correspondence from the Tribunal. The appellant emailed in response to say that they did not have a witness or any further documentation and had previously asked whether any further information was required.

15. On 27 August 2019, the Tribunal wrote to the appellant by email confirming that the appeal had been automatically struck out on 18 July 2019 as no response had been received from the appellant confirming that they wanted to proceed with the appeal. The letter advised the appellant that they had the right to make an application to reinstate the proceedings and that such application should be made in writing within 28 days of the date of this letter, with an explanation as to why the direction was not complied with.

16. On 24 September 2019, the appellant requested that the proceedings be reinstated and reiterated that they had provided all information that they thought was required within the timelines.

17. On 4 October 2019, HMRC were asked to make representations in respect of the application for reinstatement.

18. On 9 October 2019, HMRC replied with their representations (set out later). A copy of these were sent to the appellant by email on 22 October 2019 and the appellant was asked to provide any representations in response within 14 days. On 6 November 2019, the appellant replied by email to say that they had nothing further to submit. The application was therefore listed for hearing.

Applicant's case

19. Ms Howell, the sole director of the appellant, stated that she had not received the letters of 23 May 2019 and 3 July 2019 as she was having problems with the post. She had had similar problems receiving correspondence from HMRC.

20. The Tribunal advised Ms Howell that the letters of 23 May 2019 and 3 July 2019 had been sent to her by email, at the email address used by her for correspondence with the Tribunal.

21. Ms Howell accepted that, in that case, she would have received the emails from the Tribunal and had overlooked the documents.

HMRC's case

22. HMRC submitted in their representations and in the hearing that, even though the appellant is a litigant in person, they are still bound by directions issued by the Tribunal. By failing to respond, they have failed to comply with those directions.

23. No valid reason had been given by the appellant for the failure to comply with the directions.

24. HMRC had attempted to assist the appellant where possible, including in their email of 29 January 2019 where they explained the tribunal process and advised that it was important to comply with directions and inform the Tribunal even if there was nothing further to provide.

Relevant law

25. The relevant statutory provision concerning strike out is contained in Rule 8(3) Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 ("Tribunal Rules"). This rule provides that the Tribunal may strike out and appeal where "the appellant has failed to comply with a direction which stated that failure by the appellant to comply with the direction could lead to the striking out of the proceedings or part of them". Rule 8(5) and (6) provide for an appellant whose appeal has been struck out to apply for it to be reinstated.

26. The exercise of the Tribunal's discretion in all matters is subject to the overriding objective set out in Rule 2 of the Tribunal Rules. This requires that the Tribunal deal justly and fairly whilst acting proportionately, to make the proceedings accessible, avoiding formality and avoiding delay.

Discussion

27. Neither of the parties provided any details from case law as to the approach to be taken; I have taken into account the factors set out in *Pierhead Purchasing Limited v HMRC* [2014] UKUT 321 where Proudman J. described five factors which the Tribunal should take into account when considering reinstatement:

- (1) The reasons given by the Appellant for the failure to comply (in the case of *Pierhead*, there had been a withdrawal of the appeal. I consider that this factor is looking at the reasons given for the event which gave rise to the strike out and have adapted this factor accordingly to this case);
- (2) Whether HMRC would be prejudiced by reinstatement and, if so, the extent of that prejudice;
- (3) Whether the Appellant would be prejudiced by a refusal to reinstate and, if so, the extent of that prejudice; and
- (4) Whether reinstating this appeal would be prejudicial to the interests of good administration.
- (5) The merits of the proposed appeal so far as they can conveniently and proportionately be ascertained.

Reasons given for failure to comply

28. There is public interest in finality in litigation. By requesting reinstatement, the appellant is applying for relief from sanctions imposed by the Tribunal.

29. The appellant's reasons for failure to comply with the Tribunal directions were that they had overlooked the relevant correspondence from the Tribunal. I do not consider that this is a good reason for reinstatement: parties involved in appeals before this Tribunal are expected to have processes in place for dealing with correspondence from the Tribunal in a timely manner. If reinstatement were allowed for overlooking correspondence, the other party would have no certainty that the litigation had ended when it was struck out.

Prejudice to the parties

30. There is clear prejudice to HMRC in that the appeal had been struck out and reinstatement would put HMRC to the cost of defending it.

31. There is also clear prejudice to the appellant if the appeal is not reinstated, in that the appellant will not have an opportunity to appeal the Demand Notice and will be required to pay the amount of that Demand Notice, £2,691.20.

Prejudice to good administration

32. I have already said that reinstating the appeal is against the public interest in finality in litigation.

Merits of the appeal

33. As a case management decision, a reinstatement application should not involve any extensive consideration of the merits of the appeal. Nevertheless, it could be relevant if there are clear merits which would make it a very strong case or, equally, no real prospect of success. Reviewing the papers provided by the parties, the appellant's case does not appear to be such that it would be strong enough to weigh in favour of reinstatement. Equally, I do not consider it to be so weak that it would have no reasonable prospect of success. Accordingly, I do not consider that the merits of the appeal are relevant to the decision as to whether or not to reinstate the appeal.

Decision

34. I have weighed all of the factors above and conclude that, notwithstanding the prejudice to the appellant, the appeal should not be reinstated. The prejudice to good administration and to HMRC are clearly outweighed by the lack of any good reason for the failure to comply. The appellant accepts that they overlooked correspondence from the Tribunal. There would be no point in having time limits in Directions if the parties could simply fail to follow with them without consequences.

35. The application for reinstatement is refused.

36. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

**ANNE FAIRPO
TRIBUNAL JUDGE**

RELEASE DATE: 14 FEBRUARY 2020