# TC07955

*REINSTATEMENT APPLICATION – appellant's actions subsequent to the making of the appeal at variance with the substantive case to its detriment – application dismissed*

**Appeal number: TC/2018/06209**

**FIRST-TIER TRIBUNAL**
**TAX CHAMBER**

**BETWEEN**

**FOOTPRINT ASSOCIATES** **Applicant**

**-and-**

**THE COMMISSIONERS FOR**
**HER MAJESTY'S REVENUE AND CUSTOMS** **Respondents**

**TRIBUNAL: JUDGE HEIDI POON**

**The hearing took place on 2 November 2020.**

With the consent of the parties, the form of the hearing was A (audio) on BT-Meet-ME platform.

**Mr Usman Wahid Hashmi, of Proactive Consultancy Group, and Mr Paul Robertshaw, Director, for the Applicant**

**Mr Dan Hopkins, Litigator of HM Revenue and Customs' Solicitor's Office for the Respondents.**

## DECISION

### INTRODUCTION

1. Footprint Associates Ltd applied to reinstate its appeal within the 28-day period after the written withdrawal notification to the Tribunal. The crux of the matter concerns whether the actions of the applicant subsequent to the lodgement of the appeal, which were at variance with the substantive case sought to be advanced, have undermined the substantive appeal to its detriment as to render its reinstatement invidious. (While the company is an applicant in these proceedings, it is henceforth referred to as 'the appellant' in relation to the withdrawn appeal.)

### WITNESS EVIDENCE

2. Mr Usman Hashmi is the representative, and the witness, for the appellant. Mr Hashmi lodged a witness statement in support of the application, in which he stated that he is 'a senior partner in a VAT consultancy firm (established since 2007) "Proactive Consultancy Group"' ('PCG'). It would appear that PCG is not a partnership firm, but a limited company with Mr Hashmi as the sole director and secretary. The headed notepaper of PCG carries the sub-heading of 'Tax Recovery Specialists' under its logo, and Mr Hashmi acts for the appellant in relation to the withdrawn appeal and the reinstatement application. I do not find Mr Hashmi a reliable witness, and have reproduced his assertions verbatim where appropriate, since I am unable to make findings of fact therefrom which I can be satisfied with their truthfulness, save in those instances where factual details can be corroborated by other sources of evidence.

3. HMRC called the evidence of Officer Elizabeth Curry, who has been a VAT Assurance Higher Officer since 2001 and is the decision maker of the substantive decision that is the subject matter of the withdrawn appeal. I find Officer Curry to be a credible witness, and I accept her evidence as to matters of fact.

### THE FACTS

#### *Background to the appeal*

4. The appellant supplies taxi services via a group of drivers under contract with the appellant. The VAT returns of the business have been prepared by its 'usual' accountants on the basis that the appellant is acting as principal (not agent) in making the supply.

5. An Error Correction for the VAT return periods P01/14 to P10/17 was submitted for the appellant by Mr Hashmi on 22 December 2017 to claim a VAT refund of £579,279.45, on the basis that the appellant was acting as agent (and not as principal) in the supply of taxi services.

6. Officer Curry was responsible for the enquiry into the Error Correction claim and led a visit to the appellant's premises on 7 February 2018 to establish the relevant facts as concerns the operation of the business; e.g. how taxi journeys are booked and how the income is recorded and accounted for. Material to the business operation are two data systems: *iCabbi* and *Xero*.

> (1) iCabbi is the internal booking system capturing the source data for taxi journeys bookings, the allocation of jobs to drivers, and the recording of fare income from completed journeys;
>
> (2) Xero is the accounting package used by the appellant's accountants to maintain the accounting system of the business, including the preparation of the VAT returns.

7. During the visit, it was also established that: (a) PCG is not involved with the accounting and VAT records of the business; (b) the figures used in the Error Correction claim were calculated by obtaining from an electronic export of the income information posted to Xero; and (c) Mr Hashmi confirmed to HMRC that he had not examined the iCabbi system for the purposes of calculating the figures for the Error Correction.

8. The key events that led to the lodgement of the appeal with the Tribunal are as follows.

(1) On 26 June 2018, Officer Curry issued her decision notice, which rejected the Error Correction claim.

(2) The decision held the appellant as principal in relation to the supply of taxi services, and the full sums of turnover are subject to VAT at the standard rate.

(3) On 16 July 2018, the appellant requested an internal review of the decision.

(4) On 4 September 2018 the review conclusion letter upheld the refusal decision.

(5) On 6 October 2018, a notice of appeal against the review conclusion was lodged.

***The input tax adjustment to VAT Return for P10/18***

9. According to Mr Hashmi's witness statement, after the lodgement of the appeal, the following events took place that led to the withdrawal of the appeal.

(1) Mr Robertshaw as the director of the appellant enquired about the timescale of the appeal proceedings, and was advised by Mr Hashmi that even if HMRC's position as regards the appellant acting as principal in the supply of taxi services is correct, the appellant will still be 'entitled to a refund of VAT' that had been declared on the amounts retained as 'commissions' from the drivers.

(2) It was 'verbally approved' by Mr Robertshaw that a claim of the 'overpaid VAT' should be filed in relation to the commissions, 'so that at least the minimum amount that would have been payable to the appellant regardless of the outcome of the appeal at the tribunal can be reclaimed'.

(3) 'The intention to file the claim was purely to ease financial distress of the appellant by claiming the minimum possible amount', which the appellant 'will still be entitled to' even if the appeal is dismissed by the tribunal.

10. On this basis, PCG calculated the sum of 'overdeclared' VAT in relation to commissions to be £196,057. The second claim was not made as an Error Correction but was put through as an adjustment by augmenting the input VAT for the return period P10/18, holding it to be 'an amount that would have been payable to the appellant' even if it were to lose the appeal.

***The withdrawal of the appeal***

11. In the meantime, the appeal that had been lodged had progressed to the stage whereby Mr Hopkins, as the litigator representing HMRC, filed the respondents' Statement of Case on 3 December 2018.

12. On 13 December 2018, Officer Curry commenced a 'Pre-Cred' enquiry into the appellant's P10/18 return by telephoning Mr Robertshaw to ascertain the basis for the adjustment that resulted in the input VAT repayment claim. Officer Curry was informed that after the appellant's accountants had prepared the VAT return for P10/18 as usual, Mr Hashmi had contacted Mr Robertshaw, asking for figures to be sent because he wanted to make an adjustment to the return and that they would 'get the money one way or the other'. Officer Curry advised that she would need to see the VAT Account and details of the adjustment.

13. On 14 December 2018, Mr Hashmi sent an email with the VAT workings showing the adjustment amounting to £196,057 for the input VAT claimed in the period. The email states:

> 'Following your discussions with Mr Robertshaw yesterday, I had a telephone discussion with him in which I reminded him of our discussion in October 2018 to adjust the VAT return for period October 2018 and the logistics behind the same. He naturally recalled our conversation and is very

comfortable with the adjustment we calculated and have put through the October 2018 VAT return.

The adjustments we have done within VAT period October 2018 are entirely separate to the dispute under appeal…. [which] relates to a disagreement with HMRC that Footprints is acting as an agent of drivers for provision of Taxi services whereas HMRC is contesting that Footprints is in fact a principle [sic] therefore correctly declaring VAT on its entire sales and hence rejected the voluntary disclosure.

The adjustment in respect of Period 10/2018 is actually in line with HMRC's position established per your letter from June 2018. Footprints (being the Principal) is already declaring VAT on all of its sales of taxi services and in addition, it is also declaring standard rated VAT on money left with the company after making payments to drivers. … Considering and in line with HMRC's opinion when the company is acting as a principle [sic] in supplying taxi services where all of the sales are VAT able therefore the monies retained by the company after making driver payments are not commissions rather these are profits and hence not subject to VAT @ 20%. All the VAT paid by the company on profits while assuming these are 'Drivers Commission' is over declared output tax and should be refunded.

As HMRC has already stated that the company is acting as a Principle [sic] … monies retained by the company are not commissions rather these are pure profits and hence outside the scope of VAT. …

HMRC should allow this refund as the calculations are based on the position established by HMRC already. VAT periods 04/2014 & 07/2014 have been included here as these were added to the originally filed Voluntary disclosure earlier this year and hence the periods are protected in our opinion.

Mr Robertshaw has indicated that as long as he is treated in a fair manner and gets the overpaid money refunded to him as claimed here, then he will withdraw the current appeal with the tribunal. We reassured him that HMRC is a very professional organization and he can expect to be treated in a fair and reasonable manner.'

14. On 21 December 2018, Officer Curry wrote to Mr Robertshaw in relation to the adjustment made to the P10/18 return as follows.

'Mr Hashmi states that "The adjustment in respect of Period 10/2018 is actually in line with HMRC's position established per your letter from June 2018", namely that the company is acting as Principal. However, the current appeal that is awaiting Tribunal is on the basis that the company are acting as Agent.

Please can you confirm whether you now accept that the company is acting as the Principal. If so, you will need to withdraw your appeal to the Tribunal. If your view is still that the company is acting as an Agent then that case must proceed. It is not possible to make claims for repayments of VAT simultaneously based on opposite arguments as to the nature of the supplies being made by the company, which is what Mr Hashmi's adjustment is seeking to do.

I will not take any action in respect of this Period until I have heard from you.'

15. By email dated 31 December 2018, Mr Hashmi wrote to Officer Curry, with Mr Robertshaw copied in, as follows.

'Please be advised that we have already received the instructions from our client to process the withdrawal of appeal (TC/2018/06209) and will be

> writing shortly to the tribunal as well as Mr Hopkins from HMRC who is dealing with the appeal. [..]
>
> Could you please proceed processing of the existing claim and let me know if you require any further information from our end.'

16. On 3 January 2019, the Tribunal wrote to PCG in relation to the withdrawal of the appeal.

> 'Thank you for notifying the Tribunal of your withdrawal of your appeal in this case, which has been referred to the respondent.
>
> You have the right to apply in writing within 28 days from the date of this letter for reinstatement of your appeal. If the Tribunal hears nothing to the contrary within 28 days, the file will be closed.'

***Correspondence leading to the reinstatement application***

17. After the withdrawal notification, Mr Hashmi emailed Officer Curry on 7, 10 and 14 January 2019 for updates and asked her to 'start processing the claim while [she is] waiting to hear back directly from the tribunal'. In his email of 14 January 2019, Mr Hashmi wrote: 'I will appreciate if you could send me the details of any additional information you wish to review to process the claim.'

18. On 17 January 2019, Officer Curry wrote to Mr Hashmi and Mr Robertshaw to reiterate that she would not be in a position to make a decision on the Pre-Cred enquiry until the 28-day period had elapsed after the withdrawal notification.

19. Agreeing that progress could be made with the Pre-Cred enquiry in the meantime, Officer Curry queried the *method* of the claim by way of an adjustment as additional input VAT due in the return for P10/18. She also advised that the sums for P04/14 and P07/14 would be excluded as being out of time; hence, the VAT adjustment being recorded by HMRC stands at £154,000. Officer Curry requested the following information to progress with her enquiry.

> (a) The basis for the belief that VAT had been declared twice on 'commissions';
>
> (b) The reason for making the adjustment by way of an input VAT claim on P10/18 return rather than by means of a new Error Correction;
>
> (c) The reason the adjustment was made as an addition to the input tax claimed rather than a reduction to the output tax declared, given that the contention is that output tax has been overdeclared, and not that input tax was underclaimed;
>
> (d) The complete audit trail showing how the income details are transferred from iCabbi internal booking system to the Xero accounting package; that this audit trail is to be provided by the business' normal accountants who compile the VAT return figures; and that this audit trail could not be obtained during the original visit as the accountants were not present.

20. On 25 January 2019, Mr Hashmi emailed Officer Curry to advise that the Company would be requesting a reinstatement of the appeal. On 25 January 2019, Mr Hashmi notified the Tribunal as follows.

> 'Please be advised that our client has instructed us to request a reinstatement of appeal … The appeal was withdrawn in anticipation of having some sort of reconciliation with HMRC but at the moment the client feels that HMRC will not treat the case in the matter they should treat this and will prolong things once again.
>
> The client has decided to stop negotiating with HMRC and have the appeal reinstated.'

**APPELLANT'S CASE FOR REINSTATEMENT**

21. The Tribunal asked Mr Robertshaw the reasons for agreeing to withdraw the appeal. In reply, Mr Robertshaw said that the company had lodged the second claim, but HMRC 'refused to entertain' it, which 'forced us to withdraw the appeal' in order for the second claim to be considered; that he had 'no choice but to accept it'.

22. As to Mr Hashmi's submissions, he first wrote to the Tribunal on 12 June 2019 in response to HMRC's objection to the reinstatement application, in which he stated:

> '… [HMRC] are certainly aware deep down that they have no valid grounds to win this appeal should this reinstatement is [sic] allowed and that's why trying to prevent the appellant to get justice. …
>
> The factual position is that it was observed that due to poor bookkeeping practices, the appellant has always paid:
>
> 1. Standard rated VAT on all the taxi fares as well as (Item #1);
> 2. Standard rated VAT on amounts retained after paying drivers share; (Item #2);
>
> Where the appellant is acting as agent of the self-employed taxi drivers, he is supposed to pay only on item #2 as amounts retained are classified as commissions charged to the drivers and where the appellant is acting as a principal of taxi drivers, he is supposed to pay VAT only on Item # 1 (because amounts retained after paying drivers share gets classified as profits).
>
> The fact that appellant has incorrectly paid standard rated VAT on both item # 1 as well as item # 2 so the VAT paid on one of the two items will remain claimable automatically regardless of the outcome of this tribunal appeal.
>
> […]
>
> The appellant has suffered a lot and have made massive overpayments. … The appellant is counting heavily on this appeal to get justice and end his sufferings. It is requested that in the best interest of justice this reinstatement is allowed.'

23. During the hearing, Mr Hashmi gave the grounds for reinstating the appeal as follows.

(1) That there was 'never a dispute about the quantum'; that 'the claim can go through' if the appeal was withdrawn; that 'HMRC had all the details' to process the second claim of £196,000; that the claim related to the same periods covered by the original appeal.

(2) Then HMRC said that the second claim was a fresh claim; and that two VAT periods were time-barred; that Mrs Curry had come back with 'a lot of questions', which made them 'believe that HMRC would reject the second claim as well'; that his 'client has lost all faith in HMRC' that the claim would be 'treated in a fair manner'; that it is therefore 'best and in the interests of justice' to reinstate the appeal with the Tribunal.

(3) 'Clearly HMRC refused to entertain the refund claim despite it was factual and would have been payable even if [the] appellant's tribunal appeal gets dismissed.' Due to the stress, the appellant 'reluctantly decided to withdraw the appeal which if allowed would have refunded almost three times the amount the appellant was seeking through the second claim'.

(4) The reduction by 'almost another 35%' to the second claim by ruling two periods as out of time 'was not acceptable to the appellant who was already at a very disadvantageous position by reluctantly wishing to conclude matters in exchange of significantly lower amount that he was entitled to otherwise.'

(5) The appellant decided to reinstate the appeal within the 28-day time limit.

**HMRC'S GROUNDS OF OBJECTION**

24. The grounds for HMRC's objection to the reinstatement of the appeal are as follows.

(1) Instead of making an Error Correction, the claim by adjustment to the P10/18 return was made by Mr Hashmi on the basis that the business is acting as Principal in the making of supplies of taxi journeys, which is the opposite of the stance taken by the appellant in the withdrawn appeal.

(2) The appeal was withdrawn when the appellant was asked whether the business now agrees that it is acting as Principal; the withdrawal indicated that the business accepts that is the case.

(3) However, having been asked to provide evidence in support of the new claim, the appellant now wishes the Tribunal to reinstate the appeal and to continue two separate and simultaneous claims, one arguing that the business is acting as a principal, and the other as an agent.

(4) HMRC have made the appellant aware that only one argument could be pursued with regard to the supply, either as agent, or as principal.

(5) By the action of withdrawing the original appeal, the appellant had considered the merits of the appeal and agreed with HMRC that they were principal in the supply.

(6) The appellant has requested reinstatement on the basis that HMRC are taking too long to process the new refund claim and have asked for new information.

(7) HMRC have not received the requested information necessary to ascertain the true and correct position to validate the repayment claim.

25. Furthermore, it is HMRC's belief that the actions taken by the appellant are motivated by the desire to recoup some repayments by any means possible, as opposed to a genuine attempt to contend HMRC's decision via just litigation.

26. If the appeal is reinstated, it would be prejudicial to the interest of good administration. HMRC have the right to treat the matter as settled once the appeal was withdrawn. HMRC have already incurred time and resources in responding to the original appeal and are expending further resources in enquiring into the repayment claim made in the P10/18 return.

**DISCUSSION**

***The criteria for considering reinstatement***

27. In *Pierhead Purchasing Ltd* [2014] UKUT 0321 (TCC) ('*Pierhead*'), the Upper Tribunal set out the relevant criteria in considering a reinstatement application at [23]. Those factors were related in *Baljit Singh Rai v HMRC* [2019] UKFTT 687 (TC) ('*Rai*') at [33] to [34]:

> '[33] … These first four factors are:
>
> – The reasons given by the Appellant for the withdrawal and the reasons given for the application for reinstatement;
>
> – Whether HMRC would be prejudiced by reinstatement and, if so, the extent of that prejudice;
>
> – Whether the Appellant would be prejudiced by a refusal to reinstate and, if so, the extent of that prejudice; and
>
> – Whether reinstating this appeal would be prejudicial to the interests of good administration.
>
> [34] The fifth factor mentioned in *Pierhead* is:

– The merits of the proposed appeal so far as they can conveniently and proportionately be ascertained.'

***Reasons for withdrawal***

28. Mr Hashmi's email dated 14 December 2018 gave the reasons at the time for the decision to withdraw the appeal. The key elements in that reasoning are evidenced by the email, namely:

(1) The adjustment in respect of P10/18 'is actually in line with HMRC's position';

(2) The adjustment is 'entirely separate to the dispute under appeal';

(3) 'HMRC should allow this refund as the calculation are based on the position established by HMRC already';

(4) Mr Robertshaw 'will withdraw the current appeal' as long as he 'gets the overpaid money refunded to him as claimed here'.

29. The appellant (as represented by Mr Hashmi's email) asserted that it has made the input VAT adjustment claim on the same footing as HMRC's review conclusion ruling, and therefore HMRC could have no grounds for rejecting the claim. By virtue of those assertions, the appellant had in effect conceded to HMRC's ruling that it was acting as principal in making the supplies of taxi services.

30. From the conclusion in Mr Hashmi's 14 December email, it is plain that the reason for withdrawing the appeal was to effect a trade-off, whereby the appellant would give up pursuing the appeal in relation to its claim of £579,000, in the hope that it would procure speedy repayment of a 'smaller' claim of near £196,000.

***Reasons for applying to reinstate***

31. In the reinstatement application of 25 January 2019, Mr Hashmi referred to the withdrawal decision to be 'in anticipation of having some sort of reconciliation with HMRC', but 'HMRC will prolong things once again', and the client has decided 'to stop negotiating'.

32. The reasons for applying to reinstate, as related by Mr Hashmi at the hearing, are that:

(1) the appellant is 'entitled' to the second claim, since it was made on the same basis as HMRC's review conclusion ruling;

(2) it was 'unacceptable' that HMRC sought to time-bar two VAT periods in the claim;

(3) and HMRC are now refusing to process the second claim by requesting information that they have already been provided.

33. Consequently, the appellant 'has lost all faith in HMRC'; it can no longer trust that it will be fairly treated by HMRC; and hence the only resort to have justice done is to have the appeal heard by the Tribunal by applying for reinstatement.

34. The complete loss of faith in HMRC is a stark contrast to what Mr Hashmi stated in his email of 14 December 2018, wherein Mr Hashmi said he had assured Mr Robertshaw that 'HMRC is a very professional organization and he can expect to be treated in a fair and reasonable manner'. What happened to effect such a sea change in opinion of HMRC, from the estimation as at 14 December 2018 to the apparent desperation that led to the reinstatement application on 25 January 2019?

35. The real reason for the reinstatement application is not due to what had happened, but what had failed to happen as the appellant would have wished: the trade-off did not materialise. Instead of processing the second claim speedily after the withdrawal notification, Officer Curry said she was unable to progress with the Pre-Cred enquiry without: (a) waiting for the

withdrawal cooling off period to expire, and (b) requesting further information to establish that there had indeed been VAT paid twice in relation to the 'commissions' as alleged.

***Prejudice to HMRC***

36. If the appeal is reinstated, it would mean HMRC are required to entertain parallel claims which are staked on opposite premises. The Error Correction claim which is the subject matter of the appeal is staked on the appellant being the *Agent* in supplying taxi services, while the VAT Adjustment claim is staked on the appellant being the *Principal* (and concurring with HMRC's review conclusion). I consider this to be prejudicial to HMRC, not only on the administration level, but by requiring HMRC to defend a position which the appellant had effectively conceded by its very actions and its own admission in relation to the second claim.

***Prejudice to the appellant***

37. The appellant's position is to say that it is 'entitled' to the second claim on conceding to HMRC's position as regards its Error Correction claim. I do not see the logic in this argument.

(1) The two claims were separate and to be considered each on its own terms, and different issues are in dispute.

(2) For the Error Correction claim, the issue in dispute was a decision in principle. HMRC made a ruling that the appellant was not an agent in the supply of taxi services, and on that basis, it was unnecessary to go further in relation to agreeing the quantum. It does not mean that HMRC have accepted the quantum of the first claim.

(3) The second claim was (at one stage) staked on the premise that the appellant was acting as principal (thereby conceding to HMRC's ruling). But the issue in relation to the second claim is not a matter of principle, but a matter of empirical fact.

(4) However, it would seem that the second claim was made as a matter of principle, on the *assumption* (as stated in Mr Hashmi's email of 14 December 2018) that: 'All the VAT paid by the company on profits while *assuming* these are 'Drivers Commission' is over declared output tax and should be refunded' (italics added).

(5) But the second claim cannot be determined as a matter of principle and can only be verified by an empirical fact as concerns whether the output VAT has been paid *once* on the total fares, and *twice* on the 'commissions' retained by the appellant.

(6) The fact in issue for the second claim can only be settled by examining the audit trail between iCabbi and Xero, whereby facts such as how output VAT is accounted for on the taxi fares, and whether VAT is assigned to any apportionments between the retained fares by the appellant can be established.

(7) The VAT returns have been prepared by the usual accountants, who would have interpreted the data captured by iCabbi for input into accounting entries to populate Xero. Mr Hashmi had confirmed that he did not examine the data from iCabbi, and he was not responsible for putting the VAT returns of the past four years together. To that end, the workings of the usual accountants are required to enable HMRC to reach a decision.

38. Without evidential proof for the empirical fact in issue, it is not a foregone conclusion that the appellant is entitled to the second claim, simply by its willingness to concede to the ruling in relation to the rejected first claim. In other words, there is no linkage between the first and the second claims as to create an entitlement as a matter of principle.

39. Mr Hashmi's letter of June 2019 to the Tribunal (at §22) stated that: 'one of the two items will remain claimable *automatically* regardless of the outcome of this tribunal appeal' (italics

added). I am unable to follow the logic that seems so apparent to Mr Hashmi, but what is clear is that the second claim is in no way prejudiced by the refusal of the reinstatement application.

40. Mr Robertshaw seems to be under some misapprehension that there is an 'entitlement' to a VAT repayment created, which the appellant can now access as if by right. It seems that Mr Robertshaw has been given to believe that the appellant had definitely overpaid VAT and would get its VAT back 'one way or the other'. It is primarily for Mr Robertshaw's benefit that I have set out in fuller detail the issues which concern the first and second claims. From the obtainable facts in front of the Tribunal, there is no substantive basis to support the assertion that the appellant had definitely overdeclared output VAT as to create a repayment entitlement.

***In the interests of good administration***

41. In relation to the withdrawn appeal, it will be contrary to the interests of good administration to reinstate it. The appellant has already conceded to HMRC's ruling by making the second claim. It is no longer arguable that there remains any valid ground for the appellant to pursue the appeal. It is injurious to procedural fairness and effective administration of justice to reinstate an appeal that the appellant has, by its subsequent actions, resiled from the fundamental premise upon which the appeal was staked in the first place.

42. As to the second claim, Officer Curry had requested an explanation as to the method used in making the second claim by way of an adjustment to the VAT return for P10/18, instead of by an Error Correction claim. No satisfactory explanation has yet been provided.

43. The Tribunal takes judicial notice that adjustment claims are routinely processed 'automatically' without being intercepted by a Pre-Cred enquiry, which could be a reason for the choice of method in making the second claim. However, I consider that in carrying out the Pre-Cred enquiry, HMRC are fulfilling their responsibility as the public body entrusted with the good administration of the tax revenue. While the automatic processing of the adjustment claim did not happen with the appellant's second claim, it is in the interests of good administration that the Pre-Cred enquiry is being conducted, so that the claim, if merited, is fully substantiated before settlement.

44. Where repayment claims made by adjustments to VAT returns have been processed without any Pre-Cred enquiries, this could lead to litigation upon discovery by HMRC that the claims were made on erroneous or fraudulent bases. Furthermore, HMRC have the statutory powers to assess a claimant to penalties up to 100% of the quantum of such a claim. The legislation to impose such sanctions is, in part, to deter claimants, or serial claimants, from lodging erroneous or fraudulent claims.

45. The Pre-Cred enquiry into the appellant's second claim should therefore be given the full course for its due process. It is not only a matter of good administration for HMRC as the executive public body but is a procedure that will reduce the likelihood of potential litigation or promote the effectiveness in litigation since the relevant evidence adduced by the parties to support their respective positions would have been gathered in the course of the enquiry. For these reasons, the Pre-Cred enquiry concurs with the interests of good administration and cannot be substituted or be supplanted by reinstating the appeal.

***The merits of the appeal***

46. In *Chappell v The Pension Regulator* [2019] UKUT 209, the Upper Tribunal considered the relevance of the merits of the appeal in a reinstatement application by applying the principle enunciated in *Prince Abdulaziz v Apex Global Management Ltd & Anor* (2014) UKSC 64 ('*Global Torch*'). The general principle is that the merits of a party's case are not taken into account when a tribunal or court makes a case management decision, and this is as stated by Lord Neuberger at [29] of *Global Torch*:

> ‘In my view, the strength of a party’s case on the ultimate merits of the proceedings is generally irrelevant when it comes to case management issues of the sort which were the subject … in these proceedings. The one possible exception could be where a party has a case whose strength would entitle him to summary judgment. …’

47. In other words, the exception, as noted by Lord Neuberger, is where a party’s case is so weak that the other party would succeed in summary judgment. In the present case, the appellant’s case, by its own actions subsequent to the lodgement of the appeal, is rendered so weak as to be indefensible, that HMRC would succeed in summary judgment.

48. The detrimental effect in making the second claim by adjustment to the VAT return for P10/18 is two-fold. First, it removes in one stroke the legal basis for reinstating the appeal since the second claim was made by conceding that the appellant was acting as principal in making the supplies. Secondly, the very fact that the appellant was prepared to withdraw the appeal where the quantum in question was £579,279 in the pursuit of a claim for £196,057 would appear to be indicative of the appellant’s own estimation of the strength of its case.

**DISPOSITION**

49. The application to reinstate the appeal is accordingly refused.

**RIGHT TO APPLY FOR PERMISSION TO APPEAL**

50. 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.

**DR HEIDI POON**

**TRIBUNAL JUDGE**

**RELEASE DATE: 27 NOVEMBER 2020**