



TC06270

Appeal number: TC/2017/07379

Schedule 36 Notice – penalty – appeal letter requesting review not received by HMRC – copy produced at subsequent meeting – appeal allowed and penalty quashed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

HADEE ENGINEERING CO LTD

Appellant

- and -

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

Respondents

**TRIBUNAL: JUDGE ALASTAIR J RANKIN
MRS RAYNA DEAN**

Sitting in public at Court 12, Leeds Magistrates' Court and Family Hearing Centre, Westgate, Leeds, LS1 3BY on Thursday 30 November 2017 at 14:00 PM

Mr Gary Brothers of Independent Tax for the Appellant

Ms Sophie Rhind, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents

DECISION

1. This is an appeal by Hadee Engineering Co Ltd (the Company) against a penalty notice issued on 16 August 2017 for £300.00 for failure to provide information and produce documents.

Background

2. On 7 May 2010 HMRC issued an opening letter to Mr Lowe, the Company's director, under HMRC's Code of Practice 9 "Civil Investigation into cases of Suspected Serious Fraud" (COP9). There were existing enquiries into the year ending 30 April 2008 for a number of Mr Lowe's companies. An opening meeting was held on 15 June 2010.

3. After much correspondence and several meetings HMRC issued a Penalty notice letter dated 16 August 2017 for £300.00. The penalty was issued for failure to respond to a Schedule 36 Notice issued by HMRC on 12 April 2016.

4. By letter dated 17 August 2016 addressed to Mr Peter Lowe, director of the Company, HMRC gave their view on the response to the Notice and offered a review. The letter continued that the request for a review must be made within 30 days.

5. Mr Brothers claims to have written to HMRC on 7 September 2016 accepting the offer of a review. However HMRC never received this letter and at a meeting with Mr Brothers and Mr Lowe on 15 November 2016, when a copy of the letter was produced, HMRC maintained that their view of the matter had gone unchallenged.

6. By letter dated 9 December 2016 HMRC requested a copy of the letter dated 7 September 2016 but this was never produced. However Mr Brothers did produce a copy of this letter at the hearing and read the contents to the Tribunal. HMRC subsequently wrote to Mr Brothers on 11 January 2017 stating amongst other things that HMRC

"now consider that the appeal against the schedule 36 Notice issued on 13 April 2016 is now determined under S54 TMA 1970 as set out in Mr Reilly's letter of 17 August 2016".

7. The Tribunal presumes the reference to 13 April 2016 is a typing error as the Notice was issued on 12 April 2016.

8. Further correspondence ensued between HMRC and Mr Brothers ending with HMRC issuing the penalty notice under appeal on 16 August 2017 on the basis that HMRC had not received what the Notice dated 12 April 2016 asked for. Mr Brothers wrote to HMRC on 8 September 2017 appealing the penalty notice on the grounds that

“the information notice to which the penalty notice relates, which was dated 12th April 2016, has been appealed and that appeal has not yet been disposed of.

5 Moreover, we submit that the attempt to re-instigate this appealed notice follows the Company’s request to the Tribunal for direction of closure notice in respect of the periods ended 30 April 2009 and 2010.

As such, we submit that this development is unreasonable and abusive and, as we say, little more than an attempt to seek to thwart the closure notice application.”

10 9. HMRC replied by letter dated 27 September 2017 stating that there was no unresolved appeal as no notice had been received by HMRC requesting a review.

15 10. On 3 October 2017 Mr Brothers as agent for the Company issued a Notice of appeal to this Tribunal on similar grounds to those contained in his letter dated 8 September 2017. By direction dated 18 October 2017 this Tribunal directed that the hearing of this appeal should proceed together with the Company’s application for a closure notice and should be heard by the same Tribunal.

11. This Tribunal has heard the Company’s application for a closure notice and has granted the application.

The Company’s arguments

20 12. Mr Brothers put forward three arguments for allowing the appeal. First a formal request for review was submitted by Mr Brothers within the specified time so there should be no penalty. Secondly while HMRC did not receive the letter requesting a review then a late request should be allowed either on the grounds of reasonable excuse or natural justice. Thirdly HMRC did not correctly notify their view in accordance with section 49C(2) Taxes Management Act 1970 which states

25 “When HMRC notify the appellant of the offer, HMRC must also notify the appellant of HMRC’s view of the matter in question.”

30 13. In furtherance of his first argument Mr Brothers submitted that the Notice issued on 12 April 2012 had specified what was needed. His reply dated 6 May 2016 included a formal appeal against the notice on the grounds that either the Company did not have the requested items, that HMRC already has the items requested or the items requested are not reasonably required for the purpose of the check being undertaken as clarified by HMRC.

14. HMRC did not respond until their letter dated 17 August 2016 when they stated

35 “My view of the matter remains as explained in my letters of 12 April 2016 and 14 January 2016 and previously at the meeting of 16 May 2013 with cover letter of 29 May 2013.”

This letter also offered the Company a review or an appeal to an independent tribunal within 30 days.

15. Mr Brothers claims to have written to HMRC on 7 September 2016 requesting a review. This letter was not received by HMRC but was referred to at a meeting
5 between Mr Lowe, Mr Brothers, Mr Reilly and others from HMRC on 15 November 2016. It appears Mr Brothers' letter used HMRC's reference but not the case reference. However on 15 November 2016 HMRC became aware of the request for a review but having asked for a copy of the letter and not being sent a copy decided not to proceed with a review.

10 16. If the Tribunal rejects his first submission Mr Brothers argued that the Tribunal should allow a late appeal under section 118(2) of the Taxes Management Act 1970 on grounds of reasonable excuse or natural justice. His letter dated 8 September 2016 was sent to HMRC but not received. However the existence of the letter was brought
15 to HMRC's attention at the meeting on 15 November 2016. The omission of the case reference was probably the reason why HMRC did not receive it. Mr Brothers had not sent a reminder as another tribunal hearing involving the Company was beginning in October 2016 and his mind was directed towards it.

17. Mr Brother's third argument was that the wording in the letter dated 17 August 2016 quoted in paragraph 14 above was too imprecise. He paraphrased HMRC's view
20 as "it is just as before". The reference to the letter dated 29 May 2013 could not refer to the present notice as the letter preceded the notice by almost three years.

HMRC's argument

18. Ms Rhind argued that there was no provision in section 49C Taxes Management Act to allow a late review. Section 49C(3) states:

25 "If, within the acceptance period, the appellant notifies HMRC of acceptance of the offer, HMRC must review the matter in question in accordance with section 49E."

19. Section 49C(8) states:

30 "In this section "acceptance period" means the period of 30 days beginning with the date of the document by which HMRC notify the appellant of the offer to review the matter in question."

20. Ms Rhind continued by arguing that there was nothing in the legislation to say how HMRC's view should be expressed. It needs to be clear to the Company what is the view of HMRC and in this case HMRC gave a generic view.

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Decision

21. Section 118(2) of the Taxes Management Act 1970 states:

5 For the purposes of this Act, a person shall be deemed not to have failed to do anything required to be done within a limited time if he did it within such further time, if any, as the Board or the Commissioners or officer concerned may have allowed; and where a person had a reasonable excuse for not doing anything required to be done he shall be deemed not to have failed to do it if he did it without unreasonable delay after the excuse had ceased:
10 Provided that this subsection shall not apply for the purposes of section 10(2) or 16(6) of this Act.

22. The Tribunal accepts that Mr Brothers wrote and posted his letter dated 8 September 2016 accepting HMRC's offer of a review. Section 7 of the Interpretation Act 1978 states:

15 "Where an Act authorises or requires any document to be served by post (whether the expression "serve" or the expression "give" or "send" or any other expression is used) then, unless the contrary intention appears, the service is deemed to be effected by properly addressing, pre-paying and posting a letter containing the document and, unless the contrary is proved, to have been
20 effected at the time at which the letter would be delivered in the ordinary course of post."

23. The existence of the letter was brought to the attention of HMRC at the meeting on 15 November 2016.

24. The Tribunal has decided that the request for a review of the notice should now
25 proceed with the result that the penalty of £300.00 is quashed. As the Tribunal has reached this decision by accepting Mr Brother's first two arguments it is not necessary to address his third argument.

25. The appeal is successful and the penalty of £300.00 is quashed.

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ALASTAIR J RANKIN
TRIBUNAL JUDGE

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RELEASE DATE: 15 DECEMBER 2017