CACV 20/2005

IN THE HIGH COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
COURT OF APPEAL

CIVIL APPEAL NO. 20 OF 2005
(ON APPEAL FROM HCIA NO. 5 OF 2004)

BETWEEN

CHOW KWONG FAI, EDWARD Appellant

and

THE COMMISSIONER OF INLAND REVENUE Respondent

Before : Hon Woo VP, Cheung JA and Barma J in Court
Date of Hearing : 29 September 2005
Date of Judgment : 7 October 2005

J U D G M E N T

Hon Woo VP:

Introduction

1. This is an appeal against the judgment of Tang J (now Tang JA) given on 1 December 2004 upon an appeal, by way of case stated, that arose out of the assessment of certain share option benefit under salaries tax for the year of assessment 1996/97.

2. The case stated as well as this appeal, however, have nothing to do with the assessment itself, but solely relate to whether the Inland Revenue Board of Review ("the Board") was correct in law in refusing to grant an extension of time for the appellant to lodge his appeal against the determination of the Commission of Inland Revenue ("the Commissioner") under s 66(1) of the Inland Revenue Ordinance, Cap 112.

Background

3. On 26 July 2002, the Commissioner made a determination following the applicant's notice of objection on 12 October 1999 against the assessment. The determination was transmitted to the applicant on 27 July 2002. Under s 66 of the Ordinance, the applicant may within one month of the transmission of the determination give notice of appeal to the Board. No such notice was given within one month. It was only on 25 November 2002, almost three months after the expiration of the time limit, that the appellant lodged a notice of appeal which sought, *inter alia*, an extension of time under s 66(1A).

4. On 11 February 2003, the appellant and the representative of the Commissioner appeared before the Board. After hearing the parties, the Board refused to grant an extension of time to the appellant. It gave its reasons in writing on 28 March 2003.

5. The appellant then applied to the Board to state a case for consideration by the Court of First Instance pursuant to s 69 of the Ordinance, and when it refused to do so, he challenged that refusal by way of judicial review. On 10 June 2004, Hartmann J in HCAL No 47 of 2004 issued an order of mandamus directing the Board to state a case for the opinion of the Court of First Instance. The case was stated on 31 July 2004.

6. The case stated by the Board ("Case") referred briefly to the facts and set out the questions for the opinion of the Court of First Instance. The relevant part of the Case reads:

> "7. Pursuant to the Order of the Honourable Mr Justice Hartmann dated 10th June, 2004, the Board respectfully places the following questions posed by the Appellant for the opinion of the Court of First Instance:
>
> (a) Whether or not the Board of Review has erred in law in refusing the application by the Taxpayer for extension of time to give notice of appeal under section 66(1A) of the Inland Revenue Ordinance against the Determination of the Acting Deputy Commissioner of Inland Revenue

dated 26 July 2002 in respect of the Salaries Tax Assessment for the Year of Assessment 1996/97.

(b) Whether the Board erred in law in refusing the application having regard to the advice of Ms Pau as referred to in the transcript of evidence and quoted in paragraph 5 above.

(c) Whether the Board erred in law in refusing the application having regard to the alleged misunderstanding of the Appellant caused by the said advice of Ms Pau, namely, that the Board would not consider the application for extension of time for lodging the appeal unless the statement of facts and the statement of grounds of appeal had been lodged with the Board.

(d) Whether the Board's decision was bad in law in view of the Appellant's alleged misunderstanding that he needed to prepare a statement of facts for the purpose of section 66(1) and (1A) of the Inland Revenue Ordinance.

(e) Whether the Board's decision was bad in law in that the Board failed to take into consideration or having taken into consideration failed to reach the correct conclusion, the evidence, which was unchallenged, as to the appellant's alleged understanding that he must produce to the Board all supporting documents and detailed facts to be relied on by the appellant at the time when he lodged the notice of appeal, the statement of facts and the statement of grounds of appeal as required by section66(1) and (1A) of the Inland Revenue Ordinance.

(f) Whether the Board's decision was bad in law as being unreasonable in view of the fact that the Deputy Commissioner of Inland Revenue took more than two and half year from the lodgement of the notice of objection to issue the Determination."

7. On 15 November 2004, during the hearing of the appeal by way of case stated before Tang J ("the judge"), the appellant no longer sought to argue question (f).

8. On 1 December 2004, the judge handed down his judgment, answering questions (a) to (e) in the negative and ordered the dismissal of the appeal.

9. By this appeal before us, the appellant seeks the setting aside of the order made by the judge and the allowance of his appeal by case stated from the Board.

The grounds of appeal

10. Separate grounds are raised to challenge the judge's decision on questions (c), (d) and (e) of the Case. These grounds broadly revolve around the following matters:

(a) the advice given by Miss Pau of the Board to the appellant before the expiration of the appeal period under s 66(1) of the Ordinance, which advice is said to be erroneous, which had misled the appellant that he was required to prepare a statement of facts;

(b) the appellant's misunderstanding that he was required to prepare a statement of facts, regardless of whether the misunderstanding was caused by Miss Pau's advice;

(c) the appellant's understanding that he needed to produce all supporting documents for lodging his appeal against the Commissioner's determination; and

(d) the Board's failure to take the above matters into account, which constituted a serious procedural irregularity, rendering its decision to refuse to grant an extension to be unjust.

The statutory provisions

11. It is convenient to set out the relevant statutory provisions first.

12. The material parts of s 66 of the Ordinance read:

"66. *Right of appeal to the Board of Review*

(1) Any person (hereinafter referred to as the appellant) who has validly objected to an assessment but with whom the Commissioner in considering the objection has failed to agree may **within** –

(a) **1 month** after the transmission to him under section 64(4) of the Commissioner's written **determination** together with the reasons therefor and **the statement of facts**; or

(b) such further period as the Board may allow under subsection (1A),

> either himself or by his authorized representative **give notice of appeal** to the Board; but no such notice shall be entertained unless it is given in writing to the clerk to the Board and is **accompanied by a copy of** the Commissioner's written **determination** together **with a copy of** the reasons therefor and **of the statement of facts** and a statement of the grounds of appeal.
>
> (1A) If the Board is satisfied that an appellant was **prevented** by illness or absence from Hong Kong or **other reasonable cause from giving notice of appeal** in accordance with subsection (1)(a), the Board may extend for such period as it thinks fit the time within which notice of appeal may be given under subsection (1). …"
>
> (Emphasis added)

The advice and misunderstanding

13. The advice of Miss Pau allegedly given to the appellant as well as his misunderstanding or understanding as claimed can found in the transcript of the proceedings before the Board on 11 February 2004. I need cite the relevant passages in full for a close analysis of the allegations. The appellant made the following statements in his reply to the submission Commissioner's representative. The "Mr Lau" referred to in the reply was a member of the Board, whereas "Mr Chow" was the appellant. It should be noted that the section or subsection 1A referred to in the passages is apparently a mistype for subsection (1)(a) of s 66:

> "First, I would like to say that I am not a lawyer and although I am an accountant by profession this is indeed the first time that I have ever been involved in any formal tax appeal. I was mindful of the rights and quote given to me in the commissioner's determination and **I was very mindful of the one month deadline**. **I also read very clearly subsection 1A**, which is reproduced in the revenue's arguments under point 7(b) on page 2 of the document just now. Indeed, **mindful of the time limit and the severity of the language in the ordinance, I did call Miss Pau of this offence to seek advice as to what to do and I was reminded of the section 1A wording**. If I may read:
>
> '… either himself or …. and of the statement of facts and a statement of grounds of appeal.'
>
> Mr Chairman, **this sentence of the ordinance is one continuous sentence**. **I was reminded by Miss Pau of this office within the one month deadline that the statement of facts and the statement of grounds of appeal must be attached to the granting of the extension**. Sir, I am mindful that, as the

commissioner's representative mentioned, one only needs to give notice of appeal together with a copy of the commissioner's determination. Based on the **wording of subsection 1A**, I was not privy to take that short cut, if you like, that indeed the process could be split into two steps; first one gives notice for an extension within the one month with the statement of facts and statement of grounds of appeal plus whatever supporting documents to follow later. I was not advised of this route. **Miss Pau of this office did warn me** that when I did submit the appeal together with the reasons therefor and the statement of facts and the statement of grounds of appeal it would be up to the board to decide whether my explanation for the **extension** of time would be granted.

So, out of being **ignorant** on the one hand, **having read section 1A on the other hand, and having taken advice from this office within the one month, I proceeded to prepare my statement of facts, statement of grounds, as well as to collect supporting documents, part of which now form the basis of this appeal**. I wish to explain this to the board, that **really what caused the delay was the preparation of the statement of facts and the preparation of the statement of ground, which form part of the continuous sentence under subsection 1A**."

(Transcript pp 9(23) – 11(5))

"Mr LAU: One last question. I certainly understand your frustration having to wait for two and a half years. I also understand **you were aware of the deadline but, despite that fact, you actually didn't make any move within that one month statutory period** for lodging the appeal, until a few months later. What was your line of thinking at that time?

MR CHOW: As I explained earlier on, Mr Lau, within the one month I did call this office, Miss Pau, to seek advice, to say that this is how I read subsection 1A. I did not have any illness, so it was pointless contemplating that. **The preparation of the statement of facts and the statement of grounds would require evidence and a lot of thought to put them together**. In other words, when the statement of facts and the statement of grounds are ready the appeal itself would be ready and there was no way that within the remaining one month that I would be able to prepare the statement of facts and the statement of grounds.

I appreciate, chairman and board members, that you are all volunteers and I did not labour on other points and give many, many other reasons. The fact also remains that 26 July is in the middle of the summer holidays. My family and I were not in Hong Kong, we were in England, and I did not return until some two weeks afterwards. I didn't want to make that as an explanation. Even then, a notice for extension

> together with a copy of the commissioner's determination, that would be easy enough, a one line letter requesting extension attaching a copy would be fine. But, to prepare the statement of facts and the statement of grounds is a totally different situation.
>
> Mr Lau, I did take positive action within the one month with the office here. There was no other way and **it was not suggested to me that I could give notice first, because it was explained to me by Miss Pau that the board would only sit when the statement of facts and the statement of grounds are ready, so you may as well do your own thing, take your own risk, and let the board decide when it sits to consider your lateness and also your appeal**."
>
> (Transcript pp 15(14)-16(15))
>
> Mr CHOW: Yes, by telephone. I do have a record though. We did in fact speak twice over the phone within that month. I had been anxious to get things right.
>
> (Transcript p 16(23-24))
>
> (Emphasis added)

Was there reasonable cause?

14. The questions posed in the Case all relate to whether the Board had made an error in law in not granting an extension to the appellant to lodge his appeal against the Commissioner's determination, in view of the alleged advice given by Miss Pau, the misunderstanding on the part of the appellant allegedly caused or not caused by the advice and his understanding of the requirement for him to file with the notice appeal supporting documentation. It all boils down to the question whether there was "reasonable cause" shown by the appellant to satisfy the Board that he was prevented by such cause from giving a notice of appeal in accordance with s 66(1)(a). The judge identified the main issue for his decision in para 10 of his judgment, which reads:

> "10. Mr Ho Chi Ming who appeared for the applicant (sic) accepted that essentially there is one ground for consideration by me, namely, whether the applicant had been prevented by 'other reasonable cause' from giving a notice of appeal. The reasonable cause relied on was the advice allegedly given by Miss Pau and relied on by the applicant. The burden was on the applicant to show that he satisfied the requirement of section 66(1A)."

15. On behalf of the appellant, Mr Chua SC refers us to a number of decisions and authorities as to the interpretation of the word "prevented" in s 66(1A). In *Case No. D140/00*, 16 IRBRD 29, at p 31, the Board said:

"3. In our view the intent of section 66(1) is to allow a taxpayer one clear month to consider his options regarding a possible appeal and to formulate his grounds of appeal, if an appeal is desired."

16. In *Case No. D176/98*, 14 IRBRD 58, at p 60, the Board had the following to say:

"5. The jurisdiction of this Board to extend time for lodging of appeal is closely defined by section 66(1A) of the IRO. This Board must be satisfied that the Taxpayer 'was prevented by illness or absence from Hong Kong or other reasonable cause from giving notice of appeal in accordance with subsection (1)(a)'. In the Chinese version of the IRO, the relevant phrase is '**未能按照第**(1)(a)**款規定發出上訴通知**' which might connote a lighter burden on the Taxpayer. According to *R v Tam Yuk Ha* [1999] 3 HKC 606 both the English language text and the Chinese language text of an IRO are equally authentic. It is necessary for the Court to consider both texts to see if the two could be reconciled and, if so, which interpretation best reconciled the difference in the two texts, having regard to the objects and purposes of the IRO. In the absence of argument on this point, we are of the view that the principle as stated by this Board in *D9/79*, IRBRD, vol 1, 354 remains applicable:

'The word "prevented" … is opposed to a situation when an appellant is able to give notice but failed to do so. In our view, therefore, neither laches nor ignorance of one's right or of the steps to be taken is a ground upon which an extension may be granted.'"

17. Mr Chua further refers to *Lam Ying Bor Investment Co Ltd v CIR* [1979] 1 HKTC 1098, where the court dealt with the meaning of the word "prevented" in s 64(1)(a) of the Ordinance that relates to extension of time for lodging an objection against an assessment, in terms very similar to those in s 66(1A). At p 1101, the Full Bench said:

"They may show that it was sickness which actually caused the failure of the company to object within time. But they do not show that the company 'was prevented'. And that is what the Ordinance requires. It does not provide that the Commissioner shall extend the time if he be satisfied that by reason of absence, etc., the taxpayer 'should be excused' or something else of similar nature. It provides that the Commissioner shall do so if satisfied that the taxpayer was 'prevented'. … We make no attempt at any definition. We merely say that the circumstances of the present case cannot possibly fall within them."

18. When the case reached the Court of Appeal, the court observed, at p 1104:

> "The Full Bench drew a distinction between circumstances which 'prevented' a taxpayer from lodging an objection in time ad circumstances which would excuse him from not lodging an objection in time. Mr Barlow [for the CIR] did argue (though perhaps not very strongly) for this very strict interpretation of the word 'prevent', but I think that the nature of the legislation and the provisions of s. 19 of the Interpretation and General Clauses Ordinance require us to give a more liberal interpretation. However, the question still remains, whether the Commissioner would be acting unreasonably if he were to find that the Company should be excused for not lodging its objection in time. The Full Bench implicitly decided that he would."

19. Mr Paul Leung, for the respondent, draws our attention to *In re Chun Yuet-bun* [1988] 1 HKLR 336, where Sear J, on a judicial review of the Commissioner's refusal to accept an objection to an assessment for its being out of time, did not accept the reasoning of the Court of Appeal in *Lam Ying Bor*, observing that it had been overtaken by a number of important decisions on judicial review in the House of Lords in England. Sear J said at p 339G:

> "… although this is an Ordinance which should be construed liberally, the word 'prevent' is a simple English word and I see no reason for trying to substitute another."

20. In my opinion, while a liberal interpretation must be given to the word "prevented" used in s 66(1A), it should best be understood to bear the meaning of the term "**未能**" in the Chinese language version of the subsection (referred to in *D176/98* cited above). The term means "unable to". The choice of this meaning not only has the advantage of reconciling the versions in the two languages, if any reconciliation is needed, but also provides a less stringent test than the word "prevent". On the other hand, "unable to" imposes a higher threshold than a mere excuse and would appear to give proper effect to the rigour of time limit imposed by a taxation statute. The rationale for the stringent time limit for raising tax objections and appeals was described in *Case U175*, 87 ATC 1007. Tang J had in the judgment under appeal cited quite extensively from that case. I will thus refer only to one short passage:

> "It seems that the need for taxation revenue to flow in predictable amounts according to projections as to cash flow have considered to be such that dispute as to the claims made by the community upon individuals for payment of tax have been treated as quite unlike any other classes of dispute within the community."

21. Mr Chua asks us to give a liberal interpretation to the term "reasonable cause" in s 66(1A) so as to give effect to s 19 of the Interpretation and General Clauses Ordinance, Cap 1, which provides:

> "An Ordinance shall be deemed to be remedial and shall receive such fair, large and liberal construction and interpretation as will best ensure the attainment of the object of the Ordinance according to its true intent, meaning and spirit."

22. When I asked Mr Chua how the term "reasonable cause" would he like to be construed, he said that whether a particular cause was reasonable was to be viewed in the circumstances of each case. However, he readily accepted that "reasonable cause" could not possibly be extended to cover unilateral mistakes made by the taxpayer.

23. Reverting to the term "prevent" in s 66(1A), I consider that the interpretation that I attempted in para 20 above has given full effect to s 19 of the Interpretation and General Clauses Ordinance.

The facts

24. I now turn to the facts upon which the appellant relies. It has to be noted that the appellant did not give evidence before the Board; all the factual grounds he proffered were contained in his reply submissions. Thus, the reference in question (e) of the Case to "the evidence, which was unchallenged, as to the appellant's alleged understanding" does not represent the fact. It may only be said that the appellant had made a statement in his reply submissions, and he was not told that the statement was not accepted. But I do not take this point against the appellant.

25. I have highlighted the important parts of the appellant's statements as recorded in the transcript of the proceedings before the Board, as cited above, for easy reference. The totality of the advice given by Miss Pau can be found in the following four passages, always remembering that references to "1A" were in fact to s 66(1)(a):

> "… mindful of the time limit and the severity of the language in the ordinance, I did call Miss Pau of this offence to seek advice as to what to do and I was reminded of the section 1A wording."

> "I was reminded by Miss Pau of this office within the one month deadline that the statement of facts and the statement of grounds of appeal must be attached to the granting of the extension."

> "Miss Pau of this office did warn me that when I did submit the appeal together with the reasons therefor and the statement of facts and the statement of grounds of appeal it would be up to the board to decide whether my explanation for the extension of time would be granted."

> "… because it was explained to me by Miss Pau that the board would only sit when the statement of facts and the statement of grounds are ready, so you may as well do

> your own thing, take your own risk, and let the board decide when it sits to consider your lateness and also your appeal."

26. Mr Chua relies heavily on the last passage which, he submits, gives rise to a clear implication that the appellant had to prepare the statement of facts himself. I do not agree. What Miss Pau was telling the appellant in that passage was simply that when the statement of facts and the statement of grounds were ready, the board would sit to consider his lateness and his appeal and decide on those two matters. Indeed, in the passage, Miss Pau warned him of the risk involved in a late filing that he had to take.

27. Taking all the above four passages in their entirety, what the appellant was telling the Board was that Miss Pau had talked to him on the telephone twice within the one-month period following his receipt of the Commissioner's determination. Miss Pau reminded him of the time limit and wording of s 66(1)(a). She advised him that the statement of facts and the statement of grounds of appeal must be attached for an application for extension of the time limit, and that the Board would only sit when those were ready and decide when it sat to consider his delay and his appeal. Nowhere was it mentioned by the appellant that Miss Pau advised that the statement of facts was a document to be prepared by him. The only proper inference to be drawn is that if that was the appellant's understanding or misunderstanding, it was not caused by her advice.

28. Indeed, according to the whole tenor of what the appellant told the Board, it was his reading of the continuous sentence of s 66(1)(a) that resulted in his misunderstanding. It is obvious that the appellant was referring to the following wording (as continuous sentence) used to describe the statement of facts which reads:

> "… no such notice shall be entertained unless it is given in writing to the clerk to the Board and is accompanied by a copy of the Commissioner's written determination together with a copy of the reasons therefor and of the statement of facts and a statement of the grounds of appeal."

29. In my judgment, when s 66(1) is read as a whole, where it has earlier referred to "the Commissioner's written determination together with the reasons therefor and the statement of facts", and the passage cited above refers to a copy of the determination "together with a copy of the reasons therefor and *of* the statement of facts", it is abundantly clear that the statement of facts simply means a copy of the statement of facts referred to in the determination, and not one that the taxpayer is required to prepare. To read the provision as requiring the taxpayer to prepare the statement of facts is not only an erroneous reading but also an unreasonable one. But even if the appellant should find it difficult to apprehend the precise meaning of "the statement of facts", had he cared to look at the Chinese language version, which he should if he experienced difficulty, which is "**並附有局長的決定書副本連同決定理由與事實陳述書副本及一份上訴理由陳述書**", literally translated as "also enclosing the copy Commissioner's determination together with the copy

reasons for the determination and the copy statement of facts and a statement of grounds of appeal", there could have been no mistake.

30. It was, therefore, only the appellant's misreading of the provision or his misunderstanding of it that had caused his having to prepare the statement of facts himself, which admittedly was the major delaying factor. All this was not caused by or due to the advice of Miss Pau. *A fortiori*, his attempt to find all supporting documents cannot be said to have been caused by Miss Pau's advice, which did not refer to "supporting documents". Nor can that be caused by his reading of s 66(1) and (1A) since there is simply no mention of "all supporting documents" in those provisions.

31. The appellant seemed to have complained that he was not advised to take the short cut of filing a one-line application for extension or notice of appeal first. I must say that there is no obligation on Miss Pau's part to give him such an advice. Her referring him to the wording of the relevant provision and warning him of the time limit and the risks involved in the delay was correct and proper in the circumstances.

32. The judge in his judgment commented that there was no evidence to show that but for Miss Pau's advice the appellant would have lodged his notice of appeal within the statutory time limit. This must be correct. Indeed, there was no evidence that the appellant's alleged misunderstanding or understanding was consequent on Miss Pau's advice either.

33. The appellant admitted to the Board that he was very mindful of the one month deadline, that he had read very "clearly" subsection 1A [or subsection (1)(a)], and that Miss Pau had warned him of "taking your own risk". The Board also found him to be a "highly intelligent professional accountant with considerable experience", that he was the managing director in the group of companies and was "responsible for the allocation and award of share options in respect of the various divisions of the group", and that he "should be familiar with the essential materials concerning his own share options" and "did not need to be in possession of all the documents or witnesses' statements before he was in a position to formulate his grounds of appeal".

34. In all these circumstances, his alleged misunderstanding that he was required to prepare the statement of facts (in questions (c) and (d)) and his alleged understanding that he was required to produce to the Board all supporting documents and detailed facts to be relied upon when he lodged the notice of appeal (in question (e)), which must have been caused by his own reading of the two subsections and other irrelevant factors, cannot be said to be reasonable. His alleged ignorance (see Transcript p 10(24)), in my view, did not advance his case either. The alleged unreasonable reading of the statutory provisions, his alleged misunderstanding and understanding, together with his alleged ignorance, even if fully accepted to be the true reasons, in my judgment, cannot amount to a reasonable cause under s 66(1A) to make him unable to lodge his notice of appeal within time.

35. The foundations of all the grounds of appeal relating to the three questions therefore fall apart.

36. All the three questions must be answered in the negative. The judge was correct in his negative answers, and the Board did not err in law in any respect when refusing to grant an extension of time to the appellant.

Conclusion

37. For the reasons given above, I would dismiss the appeal and make an order *nisi* that the appellant pay the costs of this appeal to the respondent, to be taxed if not agreed.

Hon Cheung JA:

38. I agree with the judgment of Woo VP. I would add the following observation.

Error of law

39. An appeal from the Board of Review (' the Board') to the High Court must be on the basis that an error of law has been committed by the Board: *Edwards v Bairstow* [1956] AC 14. Lord Millett in the recent case of *Runa Begum v Tower Hamlets LBC* [2003] 2 AC 430 reaffirmed that authority. He further summarised the situations where a decision may be quashed:

1) The decision was based on a finding of fact or inference from the facts which was perverse or irrational.
2) There was no evidence to support the decision.
3) The decision was made by reference to irrelevant factors.
4) The decision was made without regard to relevant factors.

Reasonable cause

40. In this case the appellant said that he had a reasonable cause which prevented him from lodging the notice of appeal within the one month period imposed by section 66(1). Whether there is a reasonable cause will depend on the facts of an individual case. The appellant relied on the misrepresentation by a staff in the office of the Board as providing him with the reasonable cause.

41. If there was indeed a misrepresentation, then clearly it constituted a reasonable cause which was a relevant factor for the Board' s consideration in deciding whether or not extension of time should be granted.

42. Looking at the matter objectively it is fair to say that the Board had not dealt with this aspect of the case. However, whether an appeal should be allowed or not will depend ultimately on whether the appellant has established a reasonable cause by reason of the misrepresentation. If he has not, then, irrespective of whether the Board had dealt with this point or not, it will not assist him at all.

Unilateral mistake

43. In this case based on what the appellant said to be the advice of the staff to him, I do not agree that he had established any misrepresentation by the staff. The staff had told him what were the documents required for the lodging of the appeal. These included the statement of facts. But she never told him that he must prepare this particular document himself.

44. The appellant claimed that he had read section 66(1)(a) 'very clearly' (the reference in the transcript to section 66(1)(A) must in the context be section 66(1)(a) because the appellant had actually read out part of section 66(1)(a)). The earlier part of this subsection expressly refers to the transmission by the Commissioner to the appellant of the 'Commissioner's written determination together with the reasons therefor and the statement of facts'. This clearly shows that the statement of facts is a document provided by the Commissioner and not the appellant.

45. In this case the determination provided by the Commissioner to the appellant consisted of three sections: first, 'Facts upon which the determination was arrived at', second, 'The Determination' and third, 'Reasons therefor'. All this fits the description of the documents required to be supplied by the Commissioner to the appellant under section 66(1)(a). Any misunderstanding on the part of the appellant that he had to prepare a statement of facts which took him beyond the one month limit must be a unilateral mistake on his part. Such a mistake cannot be properly described as a reasonable cause which prevented him from lodging the notice of appeal within time. Hence, despite the fact that the Board had not dealt with this issue, in my view, it had not overlooked any relevant factor which might vitiate the decision.

'Prevent'

46. If there is a reasonable cause and because of that reason an appellant does not file the notice of appeal within time, then he has satisfied the requirement of section 66(1A). It is not necessary to put a gloss on the word 'prevent' in its interpretation. If an appellant does not file the notice of appeal within time because of that reasonable cause, then it must be the reasonable cause which has 'prevented' him from complying with the time requirement.

Hon Barma J:

47. I agree with Woo VP's judgment, and also with Cheung JA's additional observation, and have nothing further to add.

(K H Woo)	(Peter Cheung)	(A Barma)
Vice-President	Justice of Appeal	Judge of Court of First Instance

Mr Paul H M Leung, instructed by the Department of Justice, for the Respondent

Mr Chua Guan-hock SC, instructed by Messrs Lau Wong Chan, for the Appellant