



TC01458

Appeal number: TC/2011/03412

Appeal against three VAT default surcharges- appeal allowed – Appellant had reasonable excuse

FIRST-TIER

TAX TRIBUNAL

BLAZE GROUP HOLDINGS LTD

Appellant

- and -

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

Respondents

**TRIBUNAL: S.M.G.RADFORD (TRIBUNAL JUDGE)
H.FOLORUNSO**

Sitting in public at 45 Bedford Square, London WC1 on 11 August 2011

Mr F Allen for the Appellant

Mrs Ratnett for the Respondents

DECISION

1. This is an appeal against the VAT default surcharge imposed for the VAT periods 06/10; 09/10; and 12/10.

5 2. Mr Fred Allen, managing director of the Appellant gave evidence for the Appellant.

Background and facts

3. Mr Allen was telephoned on 28 February 2011 by Philip Stacey of HMRC and informed that the Appellant had failed to submit VAT returns for the last three VAT
10 quarters.

4. This was the first Mr Allen had heard of this and he immediately arranged for the missing returns and the VAT payment to be submitted on 7 March 2011.

5. Mr Allen had checked with the Appellant's accountant Helen Clark whilst Mr Stacey was on the phone and she had assured him that the returns had been submitted.

15 6. However, on requesting the file which recorded the returns from Ms Clark she stated that the file had been sent to Ramsgate for archiving. Ramsgate however could not find the file.

7. Helen Clark had been discovered misappropriating funds of at least £45,000 two years earlier. Mr Allen had given her another chance as she had worked for him for
20 twenty years. He moved her however to another position where she would have no access to funds. Her new position included the preparation of the VAT returns.

8. In respect of VAT periods from 06/10 onwards HMRC changed the method of submission. These returns now had to be submitted online and the VAT payment made electronically by AUDDIS.

25 9. Before this change, Mr Allen would have been presented with a paper return and cheque to sign for the VAT. He would have been fully aware that the return and payment had been properly sent. Mr Allen confirmed that in twenty-seven years the Appellant had never failed to submit a VAT return.

30 10. Mr Allen was completely unaware of the non-submission of the returns as Helen Clark was able to intercept letters and calls from HMRC. Additionally, she phoned HMRC to agree their assessments and authorised them to take the estimated amounts via the AUDDIS system.

35

Legislation

11. Section 59(1) of the Value Added Tax Act 1994 (“VATA”) states:

5 If by the last day on which a taxable person is required in accordance with regulations under this Act to furnish a return for a prescribed accounting period –

(a) the Commissioners have not received that return, or

(b) the Commissioners have received that return but have not received the amount of VAT shown on the return as payable by him in respect of that period,

10 then that person shall be regarded for the purposes of this section as being in default in respect of that period.

12. Section 71(1)(b) of VATA states:

For the purposes of sections 59 to 70 which refers to a reasonable excuse for any conduct –

15 (b) where reliance is placed on any other person to perform any task, neither the fact of that reliance nor any dilatoriness or inaccuracy on the part of the person relied upon is a reasonable excuse.

Appellant’s submissions

20 13. Mr Allen submitted that in twenty-seven years the Appellant had never failed to submit its VAT return on time.

14. He submitted that it was an exceptional circumstance that Helen Clark who had worked for him for more than twenty years had stolen more than £45,000 between 2004 and 2009.

25 15. He believed that although he had forgiven her, her demotion may have caused her to act maliciously.

16. Mr Allen submitted that had it not been for the change to electronic payment and submission of the returns he would have known right away what was happening.

30 17. As a result of Helen Clark being able to authorise payments being made to HMRC via AUDDIS he was not aware that HMRC had found it necessary to raise estimated amounts.

18. He submitted that as the person ultimately responsible for the VAT returns HMRC ought to have informed him and not Helen Clark. If HMRC had phoned him earlier he would have rectified the situation immediately.

5 19. As soon as he was so informed he ensured that the returns were submitted and the balance of the VAT paid within seven days of Mr Stacey's phone call.

HMRC submissions

10 20. Mrs Ratnett submitted that the submission of the returns was ultimately Mr Allen's responsibility.

21. She submitted that it was clear that no proper system of control was exercised by the Appellant.

15 22. She submitted that Helen Clark had been proved unreliable and allowing her to continue with the responsibility for submission of the VAT returns was not the action of a reasonably responsible businessman.

23. She contended that section 71(1)(b) of VATA confirmed that the late submission of the returns as a result of reliance on another person was not a reasonable excuse.

Findings

20

24. The Tribunal found Mr Allen to be truthful and credible.

25 25. The Tribunal examined the letter from the Appellant's accountants dated 14 March 2011 which confirmed that up to and including the return for the quarter 03/10 Helen Clark had for the last eleven years completed and submitted the group's VAT returns accurately and on time and paid in full.

26. The Tribunal found therefore that there was no reason for Mr Allen to suspect that she would not do so in the future.

27. The Tribunal did not agree with HMRC's submission that no proper system of control was exercised.

30 28. The Tribunal found that if HMRC had telephoned Mr Allen earlier the omission would have been rectified immediately.

29. The Tribunal found that Helen Clark's malicious acts were an exceptional circumstance and a reasonable excuse for the late submission of the returns.

Decision

30. The appeal is allowed and the VAT default surcharges are hereby cancelled.

5 31. 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
10 "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.



MRS.S.M.G.RADFORD
TRIBUNAL JUDGE

15

RELEASE DATE: 7 September 2011