



TC02889

Appeal number: TC/2012/05544

Default surcharge – late payment – whether reasonable excuse – no – appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

TPS PLANT & GROUNDWORK LTD

Appellant

- and -

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

Respondents

TRIBUNAL: JUDGE DR K KHAN

The Tribunal determined this appeal on 25 July 2013 without a hearing under the provisions of Rule 26 of the Tribunal Procedure (First-tier) Tribunal (Tax Chamber) Rules 2009 (default paper cases) having first read the Appellant's Notice of Appeal dated 19 May 2012 and HMRC's Statement of Case which was undated but was after April 2012.

DECISION

Appeal

- 5 1. This is an appeal against a Default Surcharge for the period 12/11 in the sum of £875.73. The appeal is on the basis that the director made every effort to pay the VAT and made a same day transfer on 7 February 2012 but the bank closed that day at 2.30 so the payment was made the following day.
- 10 2. The appeal was stood over pending the outcome of the Upper Tribunal decision in *Total Technology (Engineering) Limited*.
3. The Default Surcharge for the period 06/12 is also the subject of appeal under reference TC/2012/9438 on the basis that payment was made one day late.

HMRC's case

- 15 4. The due date for payment was 7 February 2012 for the period 12/11. The Appellant paid their VAT via CHAPS on 8 February 2012. The payment was therefore received one day late and attracted a penalty at the rate of 2% in accordance to s.59(4) VATA 1994. Payment having been received after the due date.
- 20 5. HMRC say that the director has ultimate responsibility for the timely submissions of VAT returns payment of any tax due thereon and ensuring that funds are available to pay the debt due.
6. HMRC say that the Appellant had been registered for VAT since February 2008 and it should not be unreasonable to expect them to be aware of the due dates for submission and payment of VAT.
- 25 7. They acknowledged that the Appellant attempted to make payment at the local branch of Royal Bank of Scotland (RBS) on Tuesday 7 February 2012.
8. They say that Public Notice 700/50 dealing with Default Surcharges at para.6.3 is clear in that the Appellant made no effort to make payments at any other branch when there were four other branches of RBS within an 8 mile radius.
9. They ask that the appeal be dismissed.

30 Conclusion

- (1) The Appellant has provided no cogent reasons why the penalty should not apply on grounds of reasonable excuse. The fact that the bank closed early is not a reasonable excuse.
- 35 (2) The Respondents outlined that there several other banks within a small radius of 8 miles which the Appellant could have used to provide the transfer on the day. This was not done.

- (3) Taxpayers must make every effort to pay their taxes on time. Whilst a reasonable excuse is not defined by legislation the words must be taken to have their ordinary meaning which is to say a person acting in a reasonable way and making all efforts to meet the deadline for payment.
- 5 (4) The Appellant has a primary responsibility to ensure that payments are made on time. It would have been reasonable in the circumstances, if the bank had closed early for unknown reasons, to check whether a transfer could have been made through another bank in the area.
- 10 (5) It is possible that the bank closure was due to an exceptional circumstance, for example a fire or a flood which would be events beyond the control of the taxpayer and which would have prevented completion of the transfer of funds. If this was the case, a reasonable excuse would be available but the Tribunal had no evidence of why the early closure took place. The taxpayer appeared not to have explored other options for payment and there is nothing to indicate that he made other attempts to
- 15 make a payment that day.

10. In the circumstances the appeal is dismissed and there is no reasonable excuse.

11. 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.

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DR K KHAN
TRIBUNAL JUDGE

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RELEASE DATE: 14 August 2013