TC03068

Appeal number: TC/2013/00456

FIRST-TIER TRIBUNAL
TAX CHAMBER

Value Added Tax – VATA 1994 (Section 59) Appeal against default surcharge – whether there are grounds for a reasonable excuse – No - Appeal dismissed.

GARY WATSON T/A GWA **Appellant**

- and -

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

TRIBUNAL: JUDGE IAN HUDDLESTON

Sitting in public at Bedford House, Bedford Street, Belfast on 24 April 2013

Sharon Spence, Officer for HMRC, appeared for the Respondents

Mr Watson (the Appellant) appeared in person

DECISION

The Appeal

1. This is an Appeal against a default surcharge (calculated at the 15% rate) in the sum of £1362.46 levied in respect of period 09/12 pursuant to Section 59 of the VAT Act 1994.

2. Sharon Spence, Officer for HMRC, appeared for the Respondents and Mr Watson (the Appellant) appeared in person.

HMRC Case

3. HMRC opened the case and addressed the Tribunal as to a schedule of defaults on the part of the Appellant in terms of the submission and payment of tax. In respect of the first default no surcharge was levied. For the second and third defaults, a default surcharge would have been applicable but as the figures involved were less than £400 then, according to HMRC practice, no demands were made. The fourth default surcharge was levied at a rate of 10% and was not appealed.

The final default surcharge, that which is the subject of the present Appeal, was levied at the rate of 15% in respect of the period 09/12 and was for an amount of £1362.46.

4. The schedule of the surcharges was formally put to the Appellant and he confirmed to the Tribunal that it was factually correct.

5. HMRC then continued on the basis that pursuant to the authority of Grunwick Processing Laboratories Limited v Commissioners of Customs and Excise [1987] STC 635 where MacPherson J found that "*at no time do the Commissioners have any burden to prove anything before the Tribunal…it is throughout…up to the taxpayer"* – that the onus of proof rested on the Appellant.

The Appellant's Case

6. The Appeal Notice itself advanced a number of propositions.

The first of these was that *"no consideration or acknowledgement [had been given] to the fact that he [the Appellant] had put in place a direct debit scheme."* Both in terms of the correspondence passing between the parties and in submissions at the Appeal hearing HMRC discounted this counterclaim on the basis that the action which the Appellant had taken simply ensured that no future defaults would occur and had no bearing upon past defaults.

7. The Appeal Notice secondly, raised the possibility of inadequate funds on the basis that the requirement to *["pay] this amount of money in these austere times is quite simply funds that we can use to sustain and promote the business".* In the evidence provided by the Appellant it was clear that the Appellant's business had suffered considerably during the course of the recession. Evidence was given that the annual turnover of approximately £1million had been declined to a turnover of £367,000. Mr Watson gave evidence that the default surcharge which was levied was roughly equivalent to one months salary (before tax). Nonetheless, however, he did not deduce evidence to the satisfaction of the Tribunal that there was an insufficiency of funds such as made the payment of the default surcharge impossible or that it was either sudden or outwith his control. Rather the Tribunal found that the Appellant's evidence was that it would make matters more difficult financially but there was, we find, an element of choice rather than necessity.

8. The Appeal Notice did not elicit the information but Mr Watson did explain in his evidence to the Tribunal that the impact of the fall off in business had been considerable in

terms of the impact on his own health leading to mild depression. No medical evidence was produced to the Tribunal of the extent to which this prevented the Appellant from running the business or indeed attending to the normal business affairs as they arose. Whilst sympathetic to his position, we do not however conclude that it is sufficient to ground a claim for "reasonable excuse".

Decision

9. We therefore find on balance that the default surcharges were correctly levied – indeed the Appellant accepted the factual basis upon which they had been levied when the schedule was explained to him. That being the case the onus of proof passed to the Appellant to satisfy the Tribunal that there was a "reasonable excuse" for the failure to pay VAT on the dates upon which it was due in line with Section 59 (7) VATA 1994. In essence what the Appellant produced both through his appeal notice and his evidence to the Tribunal we find was more of a plea in mitigation rather than evidence sufficient to discharge the burden of proof upon him. The matters which he raised do not, to this Tribunal's mind, amount to a "reasonable excuse".

10. Therefore whilst we have sympathy with the Appellant in these difficult trading times nonetheless we find that we have concluded that his Appeal should be dismissed.

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.

IAN HUDDLESTON

TRIBUNAL JUDGE

RELEASE DATE: 19 November 2013