



TC03389

Appeal number: TC/2014/00184

VAT – Default surcharge – reasonable excuse – appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

DISTINCT FLOORING LIMITED

Appellant

- and -

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

TRIBUNAL: JUDGE JENNIFER BLEWITT

Sitting in public at Bradford on 27 February 2014

The Appellant did not attend

Mrs Linda Shepherd, Officer of HM Revenue and Customs, for the Respondents

DECISION

5 1. This is an appeal against a VAT default surcharge in the sum of £919.88 imposed for late payment in the period 08/13.

10 2. Mrs Thompson, the director of the Appellant Company, notified the Tribunal in advance of the hearing that she would not be attending but that no postponement was sought. In those circumstances I proceeded to hear the appeal and took into account all of the written submissions of the Appellant which were contained in a bundle provided to me.

15 3. The Appellant has a history of late payments beginning in period 11/11 when it was issued with a surcharge liability notice. Defaults in periods 02/12 and 05/12 led to the imposition of surcharges at rates of 2% and 5% respectively. Surcharges imposed for periods 08/12 and 11/12 were subsequently removed which resulted in a surcharge imposed in respect of period 02/13 being reduced to a rate of 10%. A further surcharge for 05/13 was also cancelled.

20 4. I should note that the Appellant stated in its Notice of Appeal dated 30 December 2013 that the surcharge imposed for period 02/13 was cancelled however there was no evidence to support this statement; to the contrary, letters to the Appellant from HMRC dated 17 June 2013 and 13 September 2013 indicated that the surcharge remained in place and I therefore proceeded on the basis that the surcharge had not been cancelled.

5. The Appellant's grounds of appeal can be summarised as follows:

25 • Mrs Thompson attempted to call HMRC twice on 10 November 2013 but the line was engaged on both occasions;

• Medical crises arose in respect of Mrs Thompson's parents on 27 August 2013 which caused significant difficulties with time management and Mrs Thompson did not prioritise her work at the Appellant Company as a result;

• The liability for 08/13 was paid off earlier than agreed; and

30 • The rate of 15% at which the surcharge was imposed should be reconsidered.

35 6. In response to the grounds relied upon by the Appellant, Mrs Shepherd noted that the telephone calls made on 10 November 2013 post dated the due date for making payment. HMRC accepted that Mrs Thompson's parents' illnesses might have caused difficulties however they had not prevented the Appellant from filing the return for the relevant period prior to the due date. Mrs Shepherd submitted that had a telephone call be made by the Appellant to HMRC regarding late payment at that point, a surcharge may have been avoided. Telephone records exhibited by HMRC indicated that the Appellant had advised HMRC that its business had reduced and it had suffered bad debts. Mrs Shepherd noted that the legislation applicable to this case

specifically excluded insufficiency of funds as a reasonable excuse. As regards the reference to the Appellant paying its liability earlier than agreed, Mrs Shepherd submitted that as there was no formal time to pay agreement arranged with HMRC for 08/13, this could not constitute a reasonable excuse. It was submitted that HMRC had correctly applied the rate of 15% and that the appeal should be dismissed.

Decision

7. I was sympathetic to the difficulties that Mrs Thompson no doubt experienced as a result of her parents' illnesses but I agreed with HMRC that the fact that the Appellant had found time to submit its VAT return for the relevant period indicated that arrangements could have been made regarding payment of the liability prior to the due date which would have prevented the imposition of a surcharge. The Appellant has been in the surcharge regime for quite some time and must have been aware of the consequences for making late payments. In those circumstances I was not satisfied that there was a reasonable excuse.

8. I considered the telephone records exhibited by HMRC carefully. Although not set out in its grounds of appeal, the Appellant had made reference to a reduction in its business in correspondence to HMRC dated 28 April 2013. No details were provided regarding the bad debts incurred and bearing in mind that the legislation specifically excludes insufficiency of funds, I concluded that the Appellant did not have a reasonable excuse.

9. I was satisfied that the Appellant had no formal agreement in place with HMRC regarding payment of its liability and on the basis of the background as set out at paragraphs 3 and 4 of this Decision I found that HMRC had correctly imposed the surcharge at the rate of 15%. This Tribunal has no jurisdiction to vary the rate of the surcharge, which is set by statute.

10. I concluded that the surcharge was correctly imposed and that the Appellant did not have a reasonable excuse for making the payment for 08/13 late.

11. The appeal is dismissed.

12. 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.

**JENNIFER BLEWITT
TRIBUNAL JUDGE**

RELEASE DATE: 4 March 2014