



TC03827

Appeal number: TC/2014/02616

VAT - default surcharge – penalty – whether properly imposed – whether reasonable excuse

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

HAMPSHIRE DUCTWORK SERVICES LTD

Appellant

- and -

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

Respondents

TRIBUNAL: JUDGE WDF COVERDALE

The Tribunal determined the appeal on 18.07.2014 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 Notice of Appeal dated 06.05.2014 (with enclosures), HMRC's Statement of Case submitted on 06.06.2014 (with enclosures) and the Appellant's Reply dated 02.06.2014.

DECISION

1. The Tribunal decided that the Notice of Assessment to Surcharge dated 15.11.2013 in the sum of £1,576.16 in respect of VAT due for the period 01.07.2013 to 30.09.2013 was properly issued by the Respondents.
2. The appeal is dismissed.
3. The Tribunal found that the VAT Return for the period 01.07.2013 to 30.09.2013 was received by the Respondents on 31.10.2013. The due date for payment by electronic means was 07.11.2013. Payment was received by the Respondents via CHAPS on 11.11.2013 i.e. four days late.
4. The Tribunal further found that there was no reasonable excuse for the late payment of VAT for the above period.
5. The principal ground of appeal appears to be that the Appellant believes it was not in the default surcharge regime at the time the surcharge was issued. It is very clear, however, that the Appellant was indeed subject to the default surcharge regime because payments had been late at the end of the 06.12 period (nearly one month late, by CHAPS) and at the end of the 12.12 period (final payment one day late by Faster Payments Service).
6. The Appellant argues that formal notices of the two previous defaults had not been received from the Respondents but the Respondents maintain that notices were dispatched, with no indication of non-delivery. In any case the Appellant had certainly been aware of liability to a surcharge because of the contents of a telephone conversation on 29.08.2012 in connection with the 06.12 default.
7. The Appellant had been paying electronically for some time and could therefore have reasonably been expected to be aware how the electronic system works. The Respondents' literature, giving details of the Default Surcharge Penalty regime, is widely available to the public.
8. The Tribunal notes the contention that there was adverse weather that delayed the journey to the Appellant's bank on 07.11.2013 in order to effect the CHAPS payment. The Appellant could reasonably have been expected to make allowance for such delay through knowledge of local weather conditions on the day. As mentioned in the Respondents' Statement of Case, if the Appellant had made contact with the Respondents on 07.11.2013 in order to explain the delay in reaching the bank it is likely that the surcharge would have been avoided.
9. The CHAPS payment was eventually made on the following day, 08.11.2013. This was one day late. A subsequent bank error resulting in a further three days' delay is not pertinent to this appeal because the Appellant was already one day late, and thus liable to a penalty, by the time the payment was made on 08.11.2013.

10. Correspondence between the Appellant and its bank in 2012 is of no relevance to the circumstances of the default in this case.

11. The Tribunal notes that the Respondents wrote to the Appellant on 08.08.2012 advising that they were no longer in the surcharge regime. This would have been correct had it not been for a default in respect of the payment of VAT for the period 06.12 which was due from the Appellant on 07.08.2012: payment was made on 04.09.2012 and placed the Appellant in the default surcharge regime from that period onwards.

12. The test applied by the Tribunal in considering the matter of reasonable excuse is whether the exercise of reasonable foresight and of due diligence and a proper regard for the fact that the payment of VAT would become due on a particular date would not have avoided the default. The facts and chronology of events, set out in the Notice of Appeal and the Respondents' Statement of Case, disclose that such foresight and diligence by the Appellant would have avoided the default.

13. In so far as the Appellant may suggest that the imposition of the penalty is disproportionate, unjust or unfair, those arguments have already been disposed of by the Upper Tribunal in *HMRC v Hok* UKUT 363 (TCC) and *HMRC v Total Technology (Engineering) Limited* UKUT 418 (TCC). In the former it was made clear that the First-tier Tribunal has no jurisdiction to determine the fairness of a penalty imposed by statute. It is plain from a perusal of the latter that a penalty of the magnitude of that imposed in this case could not be described as disproportionate even if the Tribunal had jurisdiction to deal with the issue.

14. 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.

**WDF COVERDALE
TRIBUNAL JUDGE**

RELEASE DATE: 22 July 2014