



TC08268

Appeal number: TC/2021/00936

VAT - Default Surcharges - Late payment - Faster Payment - Effect of furlough - Was there a reasonable excuse? - No - Appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

RADA IN BUSINESS LIMITED

Appellant

- and -

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

Respondents

TRIBUNAL: JUDGE CHRISTOPHER MCNALL

The Tribunal determined this Appeal on 10 September 2021, without a hearing, and under the provisions of Rule 26 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (default paper cases) having first read the document bundle (198 pages)

DECISION

1. This is an appeal against a 5% VAT default surcharge, amounting to £2281.13, imposed on 12 March 2021 in relation to the late payment of VAT for the period 01/21, pursuant to section 59 of the *VAT Act 1994*.
2. The following facts are not in dispute:
- (1) The appellant limited company has been registered for VAT since 31 October 2000;
 - (2) It submits its returns on a quarterly basis;
 - (3) It has been in the VAT default surcharge regime (for which see section 59 of the *Value Added Tax Act 1994*) since the period 07/20;
 - (4) There was a default (first default) in 07/20, attracting a surcharge at the rate of 0%: hence £zero. The default was both the late filing of the return, and the late payment of the tax due;
 - (5) There was a default (second default) in the next period, 10/20, attracting a surcharge at the rate of 2%, but charged at £zero because of HMRC policy relating to the collection of small sums. The default was both the late filing of the return, and the late payment of the tax due.
 - (6) There was a default in the next period, 01/21 (third default), attracting a surcharge at the rate of 5% on outstanding VAT.
3. The due date for filing of the return and payment of any VAT due for the period 01/21 was Sunday 7 March 2021. The return was received, timeously, by HMRC on 1 March 2021. The payment was not received by HMRC until Monday 8 March 2021. It came by "Faster Payment": see page 19 of the bundle.
4. In its Notice of Appeal, the taxpayer says as follows:
- "The return was submitted on time and the payment was processed on 5th March due to a member of staff being away on furlough. The payment was processed on Friday 5th March and cleared from our bank account on Monday 8th March. The reason we made the payment on 5th March is because one of the employees responsible of authorising payments was on furlough and only started working again on 5th March. We always aim to submit and pay our tax on time, but due to the current pandemic the business has had to adjust the way employees work (putting some on flexi furlough and full furlough). This has had an impact."
5. Because this is a penalty appeal, I must first satisfy myself that HMRC have discharged the burden of establishing that the penalty was lawfully imposed. I am satisfied that it was. The taxpayer was in the surcharge regime, and there had been two previous defaults, meaning that this was a second default within the surcharge period (which began on 11 September 2000) resulting in a penalty of 5% of the outstanding VAT (and not the VAT actually unpaid in that quarter). The spreadsheet of the VAT account shows that the taxpayer was credited with payments appropriately.

6. I am satisfied that the payment was not received until Monday 8 March 2021: i.e., it was received a day late.

7. HMRC refer me to section 59(7)(a) of the VAT Act 1994 which says that the taxpayer should satisfy the Tribunal that the VAT shown on the return was despatched at such a time and in such a manner that was reasonable to expect that it would be received by the Commissioners within the appropriate time limit.

8. Hence, the legislation says that the burden is on the taxpayer to show that it had despatched its VAT at such a time and in such a manner that it was reasonable to expect that it would be received by HMRC by the due date.

9. I am not satisfied, even on the balance of probabilities, as to what, if anything, was done by the taxpayer on Friday 5 March. Next to no detail is given in the Notice of Appeal. HMRC wrote on 21 April 2021 inviting the taxpayer to provide it with any further information in support of its appeal. As far as I am aware, there was no response to that letter, and no further information provided.

10. The taxpayer has not provided HMRC (or the Tribunal) with the details of exactly when its bank was said to have been authorised to make the payment to HMRC. This presumably would have been dealt with online and will have left a paper trail: i.e., a means to conclusively demonstrate what the taxpayer had done, and when. If the Appellant had authorised payment by Faster Payment (normally, an instantaneous, or near-instantaneous facility) on Friday, one would have expected payment on Friday or Saturday (Faster Payments being processed 365 days a year, including non-working days, and funds being transferred usually within a couple of hours at most). As such, and if the situation were really as the taxpayer describes, then it is surprising that it does not produce any corroborative evidence: for example, evidence that it has complained to its bank that a payment authorised to be sent by the Faster Payments Service on Friday was not actually sent until the following Monday, or evidence of any bank error. In short, I am not satisfied, on the evidence as it stands before me, that the taxpayer did in fact dispatch a payment by Faster Payment on Friday 5 March.

11. As such, the only issue which remains for me to deal with is whether there was a reasonable excuse for the late payment.

12. Section 59(7)(b) of the Value Added Tax Act 1994 provides that a person shall not be liable to a surcharge if *'there is a reasonable excuse for the VAT not having been despatched'*.

13. The Appellant bears the burden in establishing that it meets this test. The standard of proof is the balance of probabilities.

14. Section 70 of the Value Added Tax Act 1994 deals with mitigation of penalties. Section 71 says that, for the purpose of section 70 and reasonable excuse that, where there has been "reliance upon any other person to perform a task", "neither the fact of that reliance nor the dilatoriness or inaccuracy on the part of the person relied upon is a reasonable excuse." Hence, reliance on a member of staff cannot, in and of itself, constitute a reasonable excuse.

15. This taxpayer was in the default surcharge regime, and had been so for the two immediately preceding quarters. For those quarters, it was both filing its VAT returns late, and paying the VAT late. Even though no penalties had been imposed for those defaults, which may perhaps have lulled the taxpayer into a sense of false security, they
5 still counted for the purposes of the default surcharge regime. The taxpayer was therefore at jeopardy.

16. In those circumstances, a reasonable taxpayer, acting reasonably, exercising reasonable foresight and due diligence, and mindful of its proper obligations under the legislation, would have taken more proactive steps to make sure that the VAT due was
10 paid on time.

17. I am conscious - as we all are - of the effects of the Covid-19 pandemic on ordinary working practices. However, the default here occurred in early March 2021, which was already the best part of a year into the pandemic. On any view, the taxpayer had had sufficient time to put arrangements in place so as to make sure that its VAT
15 was paid on time, but on this occasion failed to do so (having failed to do so in the two immediately preceding quarters as well). The fact that the employee tasked to pay the VAT was on furlough (the timing of their furlough being a matter under the employer taxpayer's control) and did not return to work on Friday 5 March 2021 does not furnish an excuse.

18. For the above reasons, I am not satisfied that the taxpayer had a reasonable excuse.
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Outcome

19. The appeal against the VAT surcharge of £2,281.13 is dismissed. That VAT
25 surcharge is upheld in its entirety.

20. This document contains full findings of fact and reasons for the decision.

21. Any party has the right to apply for permission to appeal against this decision 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
30 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.

35 **Dr Christopher McNall**
TRIBUNAL JUDGE

RELEASE DATE: 14 SEPTEMBER 2021