



[2015] UKUT 640 (TCC)
Appeal number: UT/2015/0046

VAT:- Default Surcharge, appeal, recall of Decision of First-tier Tribunal

**UPPER TRIBUNAL
TAX AND CHANCERY CHAMBER**

ROBERT P SLIGHT & SONS LIMITED

Appellant

- and -

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

Respondents

TRIBUNAL: JUDGE J GORDON REID QC FCIarb

**Sitting in public at George House, 126 George Street, Edinburgh on Monday
16 November 2015**

Douglas Slight for the Appellant

**Ross Anderson, advocate, instructed by the Office of the Advocate General for
HM Revenue and Customs, for the Respondents**

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DECISION

Introduction

5 1. This appeal relates to one default surcharge imposed in relation to the
appellant's VAT quarter ending on 31 May 2012. The amount at stake is just under
£2000. The appeal before the First-tier Tribunal (FTT) was heard and dismissed by
decision dated 11 September 2013 in the absence of any representation by or on
behalf of the appellant. That decision was eventually appealed late, with permission,
10 in March 2015.

2. In the meantime, further default surcharges were levied on the appellant. These
were also appealed. In a further decision, dated 15 January 2015, following a hearing
at which the appellant was, on that occasion, represented by its managing director,
Douglas Slight, the same Tribunal allowed the bulk of the appeal. They did so on the
15 basis of evidence which demonstrated that the appellant had a reasonable excuse for
late payment.

3. When this appeal against the 2013 decision came before the Upper Tribunal on
16 November 2015, the appellant was represented by Mr Slight. The Respondents
(HMRC) were represented by Ross Anderson, advocate.

20 Settlement

4. Following some submissions by Mr Slight, and discussion between the parties
and the Tribunal, the proceedings were briefly adjourned. The parties returned and
HMRC intimated a proposal for settlement of this appeal which the appellant
accepted.

25 5. The Tribunal was invited to pronounce an order giving effect to the settlement
agreed, which it now does. The Tribunal accordingly **ORDERS AND DIRECTS
THAT:-**

1. "The Decision of the First-tier Tribunal dated 11 September 2013 is
recalled.
- 30 2. The proceedings are remitted to the First-tier Tribunal (as previously
constituted, if reasonably practicable) for further procedure to consider of
new, whether the appellant has a reasonable excuse for the late payment
of VAT in respect of the quarter ending 31 May 2012.
- 35 3. No expenses shall be found due to or by either party in relation to the
proceedings before or in relation to the appeal to the Upper Tribunal.
4. It is a condition of this Order recalling the Decision dated
11 September 2013, that, within 30 days of the release hereof, the
appellant intimates to HMRC:-

i a 'medical certificate' setting forth, at least in general terms, Mr Slight's physical and mental health, in or about 2012 and in particular throughout the Spring and Summer of that year; and

5 ii documents relating to facilities provided to the appellant by The Royal Bank of Scotland (RBS), and their reduction, variation or withdrawal, including the Facility Letter relating to such facilities, any related RBS swap agreement, and details of any compensation paid by RBS to the appellant in respect of any such facilities or any
10 Interest Rate Hedging Product provided to the appellant by RBS, and including the appellant's dealings with the RBS Global Recovery Group (GRG); all with particular reference to or covering Spring and Summer 2012."

6. In relation to paragraph 4(ii), neither the Tribunal nor HMRC expects a full and comprehensive bundle of all documents falling within that subparagraph. Rather, a
15 modest selection (which may be in the form of copies), will probably suffice, in the first instance. The subparagraph should be regarded as illustrative rather than prescriptive. Should the documents subsequently produced raise reasonable enquiries on the part of HMRC, further documents may be produced voluntarily or, if appropriate, by further order of the FTT.

20 7. It is hoped that the production of the documents contemplated will lead to a final resolution of the appeal without the need for the further expense of another substantive hearing before the FTT.

25 8. Finally, the Tribunal records its gratitude to the parties for dealing with this appeal in a flexible, fair and just manner, and in a way which appears to be proportionate to the importance of the case and the costs and resources of the parties.

30 **J GORDON REID QC FCIArb**

**UPPER TRIBUNAL JUDGE
RELEASE DATE: 18 NOVEMBER 2015**

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