



TC03077

Appeal number: TC/2012/06116

Value Added Tax - Default surcharge - Appeal Dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

CLASSIC DESIGN AND BUILD (UK) LIMITED

Appellant

-and-

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

Respondents

**TRIBUNAL: JUDGE HOWARD M. NOWLAN
MICHAEL ATKINSON**

**Sitting in public at Priory Courts, Bull Street, Birmingham on 20 November
2013**

**Kevin Wilson, director of Classic Design & Build (UK) Limited on behalf of the
Appellant**

Pat Checkley of HMRC on behalf of the Respondents

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DECISION

1. This was a default surcharge Appeal in which the Appellant had been charged with a Default Surcharge in the amount of £6,162.26 for being late in paying its Value Added Tax for the period 01/12.
2. The Appellant had plainly been suffering cash flow problems. It appeared that the Appellant had been making genuine efforts to reduce its late payment of VAT, though in the chart that we were shown, listing late payments of VAT in the periods since the period 10/08, 11 defaults had been recorded. On several occasions, HMRC had withdrawn default surcharges, reflecting presumably the fact that the Appellant had contacted HMRC in advance of the due date for the payment of VAT, and the Appellant had been permitted to pay its VAT in instalments. Nevertheless, the consequence of the history of the 11 defaults (with incidentally a further default it appeared in the period following the one that was the subject of the Appeal), was that the rate of surcharge was 15%, such that the default surcharges were significantly aggravating the Appellant's cash flow problems.
3. It appeared that the Appellant had not notified HMRC in advance that it would be unable to pay its VAT for the period 01/12 by the due date. The VAT was in fact paid in two amounts 4 and 6 weeks after the due date, but naturally not in accordance with any pre-agreed instalment profile arranged in advance with HMRC.
4. The only argument advanced by the Appellant to the effect that it might have a reasonable excuse for the late payment of its VAT for the period 01/12 was the cash flow problem being encountered by the Appellant.
5. We explained to the Appellant that insufficiency of funds was specifically precluded from ranking as a reasonable excuse for the late payment of VAT and that inability to pay the VAT could only occasion such an excuse if the Appellant could point to some unanticipated event that had occasioned the inability to pay, with that event constituting the reasonable excuse. Accordingly a major theft of funds that precluded the payment of VAT by the due date might constitute a reasonable excuse for late payment. Ordinary experience of some late payment by customers and some degree of bad debts were all something that the trader should plan to deal with, without ending up being unable to pay its VAT on the due date. The only circumstance where serious late payment by customers might constitute a reasonable excuse for late payment of VAT was where "out of the ordinary" and thus unanticipated delays in payment, particularly by a customer responsible for a high percentage of the Appellant's turnover, occasioned the serious cash flow problem that precluded the payment of the VAT on the due date.
6. Mr. Wilson explained that the particular problem in the present case was that the terms of trade of the Appellant's business themselves led to receivables from clients being taken into account for accounting purposes and VAT purposes in advance of the date when much of the cash was even due. We were told that the Appellant's business was to erect scaffolding and other equipment for display stands and that the terms of trade involved two invoices being rendered at the same time, each for 50% of the entire amount payable by the customer, with the first 50% being receivable on or shortly after the invoice date at the start of a particular installation, but the second

instalment being due only when the display stand had been completed and the show or exhibition was to take place. There might of course be some customer delays in actually making either of the payments, but most of the cash flow problem appeared to result from the fact that for VAT purposes the second or deferred instalment might well be taken into account in one VAT period, notwithstanding that the customer was only due to pay the second instalment in a later period.

7. We naturally did not consider the appropriate basis of accounting in relation to the particular invoicing practice, and the question of whether the Appellant could in any way change its invoicing practice so as to reduce the problem being encountered. The regrettable conclusion so far as the present Appeal was concerned was that the cash flow problems appeared to be a normal and ordinary incident of the Appellant's business and not the sort of exceptional, unanticipated and unavoidable problem that had been held in various earlier cases to constitute a reasonable excuse for the late payment of VAT.

8. We accordingly dismiss this Appeal.

9. We feel that we should record that it was obvious that Mr. Wilson was doing his best to ensure that current VAT liabilities were satisfied by the due date, and we echo the firm advice given by the Respondents' representative to the effect that Mr. Wilson should seek to ensure that if he encounters future similar problems he should contact HMRC in advance of the due date for payment and endeavour to secure some pre-arranged profile for payment.

Right of Appeal

10. This document contains full findings of fact and the reasons for our 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.

**HOWARD M. NOWLAN
TRIBUNAL JUDGE**

RELEASE DATE: 25 November 2013