



**TC01339**

**Appeal number TC/2011/01112**

*Appeal against VAT default surcharges – Appellant did not receive the surcharge notices as they were sent to the wrong address – they were also addressed to the wrong company as the Appellant had changed its name in 2008 and had so informed HMRC- appeal allowed as a result of the surcharge notices not being validly served*

**FIRST-TIER TRIBUNAL**

**TAX**

**DWS ENVIRONMENTAL LTD**

**Appellant**

**- and -**

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

**Respondents**

**TRIBUNAL: S.M.G.RADFORD (TRIBUNAL JUDGE)  
DAVID E.WILLIAMS CTA**

**Sitting in public at The Old Bakery, Norwich NR1 3PL on 24 June 2011**

**Mr C and Mrs D Morris for the Appellant**

**Mr B Robinson for the Respondents**

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## DECISION

1. This is an appeal against the VAT default surcharges imposed on the Appellant for VAT periods 07/09, 10/09, 01/10, 04/10 and 07/10 for the late payment of VAT.

5 **Background and Facts.**

2. Mr and Mrs Morris appeared for the Appellant whose shareholder and director, Ms Susan Newell, was currently suffering from ill health. They explained that the Appellant's water coolers were on lease from their company Chevington Finance and Leasing. Through that company they hold a fixed and floating charge over the  
10 Appellant's assets and from October 2010 have been signatories on its bank account.

3. The Appellant's business is the supply and maintenance of water coolers to customers' premises.

4. In June 2010 Mr and Mrs Morris stepped in to assist Ms Newell who was struggling to cope and was suffering from stress. They felt that she had a viable  
15 business and as the equipment belonged to their company it was in their interests to do so.

5. The Appellant changed its name from Direct Water Solutions Ltd to DWS Environmental Ltd on 7 November 2008 and on 18 November 2008 the Appellant's company secretary wrote to inform HMRC and sent them a copy of the certificate  
20 which confirmed this.

6. A copy of the relevant letter and the certificate were produced in evidence to the Tribunal.

7. On 5 August 2009 the Appellant moved and informed HMRC of their change of address. A copy of the letter was produced to the Tribunal.

25 8. Mrs Morris confirmed that the copies of the letters were taken from the office files.

9. Despite these letters HMRC did not activate the change of name or the change of address and sent the surcharge notices addressed to Direct Water Solutions Ltd and to the Appellant's old address and as a result they were not received by the Appellant.

30 10. Mr and Mrs Morris confirmed that at the time they stepped in to help the Appellant both they and Ms Newell were unaware of the problem until the bailiffs arrived as a result of the non payment of the surcharges.

11. Mrs Morris said that she had phoned HMRC repeatedly about the change of name and address which she believed had finally been changed on HMRC'S files on 15  
35 October 2010 as a result of the visit by the bailiffs.

12. However even as late as 3 December 2010 and 7 January 2011 the Appellant received correspondence from HMRC sent to the right address but using the Appellant's old name.

### **Legislation**

5 13. Section 59 (4) of the Value Added Tax Act 1994 ("VATA") states:

Subject to subsections (7) to (10) below, if a taxable person on whom a surcharge liability notice has been served—

(a) is in default in respect of a prescribed accounting period ending within the surcharge period specified in (or extended by) that notice, and

10 (b) has outstanding VAT for that prescribed accounting period,

he shall be liable to a surcharge equal to whichever is the greater of the following, namely, the specified percentage of his outstanding VAT for that prescribed accounting period and £30.

14. Section 98 of VATA states

15 Any notice, notification, requirement or demand to be served on, given to or made of any person for the purposes of this Act may be served, given or made by sending it by post in a letter addressed to that person or his VAT representative at the last or usual residence or place of business of that person or representative.

### **Appellant's submissions**

15. Mr and Mrs Morris submitted that from the moment they took over they had paid all the bills which appeared to be outstanding.

16. As soon as the bailiffs arrived they paid the outstanding VAT right away on 13 October 2010. They set up a direct debit on 14 February 2011 so that the problem  
25 would not arise again.

17. They submitted that until then they and Ms Newell had been unaware of the surcharges as none of the notices had been received. It appeared that the surcharge notices had been sent to their old address although they submitted that HMRC must have had the correct address for the bailiffs to be able to visit.

### **HMRC's Submissions**

18. Mr Robinson submitted that the case hinged on the letters sent to HMRC to advise them of the change of the Appellant's name and the change of address.

19. He had never before seen these letters until they were produced to the Tribunal.

20. He accepted however that if these letters had been sent to HMRC then the notices  
35 had not been validly served as apart from being sent to the wrong address they had been addressed to the wrong company.

## Findings

21. The Tribunal found the Mr and Mrs Morris's evidence to be sincere and truthful. There was no reason to doubt that the letters had been duly sent to HMRC particularly as even after Mrs Morris had phoned HMRC they were still addressing the Appellant by the wrong name in January 2011.

22. Other correspondence produced to the Tribunal showed that the Appellant had made frequent attempts to correct the situation.

23. The Tribunal found therefore that the surcharge notices had not been validly served in accordance with VATA.

## Decision

24. The appeal is allowed and all of the default surcharges are hereby cancelled.

25. 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.



**TRIBUNAL JUDGE**  
**RELEASE DATE: 21 JULY 2011**