



TC01348

Appeal number: TC/2011/01255

VAT default surcharge – Appellant erroneously thought time to pay arrangement in place – whether reasonable excuse – no – appeal dismissed

FIRST-TIER TRIBUNAL

TAX

AMBER VALLEY DEVELOPMENTS LTD

Appellant

- and -

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

Respondents

TRIBUNAL: MICHAEL S CONNELL (TRIBUNAL JUDGE)

Sitting in public at 3rd Floor Kings Court 5a New Walk Leicester LE1 6TE on 28 April 2011

Mrs E Vandelli for the Appellant

Mrs Walker for the Respondents

DECISION

Having heard Mrs E Vandelli for the Appellant and Mrs Walker for the Respondents

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1. The Appellant was in default of its obligation to pay VAT due for the period 01.08.10 to 31.10.10 by the due date, being 31.11.10. HMRC issued an assessment of surcharge in the sum of £1,490.32 calculated at 5% of the tax outstanding at the due date, being £29,806.42.

10 2. Mrs Vandelli on behalf of the Appellant explained that the company had been experiencing cash flow problems but accepted that s.71(1)(a) of the VATA 1994 excludes lack of funds from being a reasonable excuse for late payment of VAT and was unable to put forward any particular reason as to why the VAT payment was late. It was not because a major customer of the company had made a late payment. Mrs
15 Vandelli suggested that one principle reason for the late payment of the VAT was because the company wrongly thought that a ‘time to pay’ arrangement was in place. Whilst the company had previously come to a ‘time to pay’ arrangement with HMRC, there was no such arrangement on this particular occasion and that this was accepted by Mrs Vandelli.

20 3. Mrs Vandelli, on behalf of the Appellant, offered no other reasons as to why the VAT payment had been made late, other than to say that systems had now been put in place by the Appellant so as to ensure that there would be no late payments in the future. The Tribunal concluded that a reasonable excuse for late payment had not
25 been shown and that accordingly the appeal should be disallowed and the surcharge confirmed.

4. 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
30 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.

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MICHAEL S CONNELL

**TRIBUNAL JUDGE
RELEASE DATE: 25 JULY 2011**

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