



TC01369

Appeal number TC/2010/09553

Appeal against VAT default surcharge – Appellant relied on a payment from a client to reach it in time to pay its VAT for the previous period but the client’s accounts department had closed for the school holidays and so the payment was made contrary to the Appellant’s terms which were payment by return – appeal dismissed – insufficiency of funds was not a reasonable excuse

FIRST-TIER TRIBUNAL

TAX

FURY DESIGN CONSULTANTS

Appellant

- and -

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

Respondents

**TRIBUNAL: S.M.G.RADFORD (TRIBUNAL JUDGE)
J.STAFFORD**

Sitting in public at Portal House, Colchester on 21 April 2011

Mr B Weston for the Appellant

Mr P Rowe for the Respondents

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DECISION

1. This is an appeal against the VAT default surcharge of 15% in amount of £708.01 imposed for the late payment of VAT for the VAT period 06/10. The payment was due on 7 August 2010 and was not received until 7 October 2010.

Background and facts

2. The Appellant incurred a series of defaults starting with VAT period 12/08. The late payment for the 06/10 VAT period was the sixth default surcharge imposed and was charged at 15%.
3. This late payment was as a result of a late payment of an invoice by the Appellant's client Essex City Council. The Appellant's terms were payment by return but the invoice was sent to the accounts department of the extended school partnership when it had already closed for the school holidays.

Appellant's Submissions

4. Mr Weston submitted that prior to their contract with Essex County Council the Appellant had only had private clients many of whom still owed money and were paying monthly.
5. Mr Weston contended that the invoice had been sent to Sharon Alsopp who was aware of their terms and who was to forward the invoice to the accounts department.
6. Mr Weston contended that the Appellant had not been informed that the accounts department was closing on 28 July 2010 for six weeks.
7. The Appellant had relied on this payment being received in time to settle the VAT bill but the director of the Appellant was away from work at this time and did not realise that due to this invoice not being settled the VAT was not paid to HMRC electronically by 7 August 2010.
8. Mr Weston submitted that this was an unforeseen circumstance which had prevented them making their VAT payment on time.
9. He submitted that they were a small business that had to manage their cash flow very carefully.

HMRC's Submissions

10. HMRC submitted that unless the Appellant had a reasonable excuse for the late payment the default surcharge should remain in force.
11. The facts indicated that an insufficiency of funds had cause the late payment and submitted that the Section 71(1) of the Value Added Tax Act 1994 specifically excluded an insufficiency of funds from being a reasonable excuse for the late payment of VAT.

Findings

12. The Tribunal found that the period for which the VAT was due terminated before the invoice for Essex Council was sent and the Appellant ought to have put aside the VAT which it had collected from its other customers in order to settle the VAT on time.

13. The Tribunal found that even if it was not able to do so because its other clients had not paid their invoices the Appellant left it very late to send its invoice to the Council bearing in mind it had to go first to Sharon Alsopp and then reach the accounts department in time for a payment to reach the Appellant and then HMRC online by 7 August 2010.

14. The Tribunal found that the Appellant had made an assumption that the Essex Council invoice would be settled in time for it to pay the VAT due for the previous period but did not check. Had the Appellant checked then it could have contacted HMRC to make a time to pay arrangement.

15. The Tribunal found that the Appellant had no reasonable excuse for the late payment of the VAT. Insufficiency of funds is not a reasonable excuse for the late payment of VAT.

Decision

16. The appeal is dismissed and the VAT default surcharge is hereby confirmed.

17. 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: 2 AUGUST 2011