



TC01385

Appeal number TC/2010/02485

Appeal against VAT default surcharges – Appellant had only one main customer that was persistently slow in paying for work done by the Appellant - its factoring limit was much reduced without notice and its company secretary was seriously ill – appeal allowed in part as a result of reasonable excuse

FIRST-TIER TRIBUNAL

TAX

PAUL HOSKINS LIMITED

Appellant

- and -

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

Respondents

**TRIBUNAL: S.M.G.RADFORD (TRIBUNAL JUDGE)
N. L.COLLARD**

Sitting in public at 45 Bedford Square, London WC1 on 21 July 2011

Mr C.Rumbles for the Appellant

Mr B.Robinson for the Respondents

DECISION

1. This is an appeal against the VAT default charges for VAT periods 06/08, 12/08, 03/09; 12/09 and 03/10.

5 2. Paul Hoskins, director of the Appellant and Lynda Hoskins, his sister and company secretary of the Appellant gave evidence.

Background and Facts

10 3. The Appellant is a limited liability company trading as boat refinishers from premises at 11 Cabot Lane, Creekmoor, Poole, Dorset BH17 7BX.

4. Paul Hoskins gave evidence that for the last thirteen years the Appellant's business had been the customised painting of boats and yachts. Previous to that its business was the restoration of classic cars.

15 5. The Appellant had twenty to twenty-five employees at any one time and really only one significant customer, Sunseeker, the business of which was ninety-nine point five percent of the Appellant's entire work.

6. The work is done at the shipyard in Poole which is owned by Sunseeker and is where the boats are manufactured. He is a hands on director who spends the majority of his time at the shipyard.

20 7. The company bookkeeping and accounting were originally dealt with by his sister with assistance for one day a week. She is now helped by a new office assistant. In 2008/09 his sister was responsible for submitting the VAT returns but she knew nothing about VAT.

25 8. Sunseeker is the biggest employer in the area and Mr Hoskins said that "If you work for Sunseeker you play their game". They were very slow payers. He said that at any one time they might owe the Appellant £750,000 to £1,000,000. In 08/09 Sunseeker was having a bad time and he had to constantly press the senior management in order to obtain any money at all from them. He was focussed on paying the wages every Friday as he was very keen to keep his employees, many of whom had specialist knowledge and experience of the work the company undertook.

30

9. The Appellant has never had a written contract with Sunseeker which claims to pay within thirty days but never does. As the boats they were building became larger so the amounts due to the company for the customised painting work became bigger and the Appellant's finances suffered accordingly from the severe delays in payment.

35 10. He had not been aware that in 2008/09 his sister was seriously ill. He was aware that there were visits from officers of HMRC but his sister had dealt with them.

11. Lynda Hoskins gave evidence that she had been working with her brother since 1990. She did the bookwork and the wages and in 2008/09 was responsible for the submission of the VAT returns. She said that, although she passed work on to Jill Dipple, the part time assistant, who filed the information on SAGE, the computerised accounting system, and prepared the VAT returns, because only she and her brother had the signing power for cheques she, Miss Hoskins, was responsible for the submission of the VAT returns. She had not realised that it was possible to submit the returns without the corresponding cheque.
12. They had been short of money particularly since Sunseeker started building the larger boats and taking much longer to pay their invoices which had become correspondingly larger. Eventually they decided to factor their debts with RBS which initially gave them a £500,000 limit and paid them eighty percent of their invoices on presentation, with twenty per cent, less factoring fees, when Sunseeker settled the invoices.
13. However following reports in the press that Sunseeker was experiencing financial difficulties RBS became nervous and phoned her brother to inform him that without notice they were dropping their limit to £350,000. They were bound by contract to give all their invoices to RBS and from then on RBS would only advance up to £350,000 and the rest when Sunseeker paid RBS.
14. Her brother went to Lloyds and Santander to try to find another factoring company but could find no other source at that time that was prepared to take the Appellant on as a factoring client.
15. At any one time Sunseeker might owe them over £250,000 on just one boat. Sunseeker was always slow and erratic with its payments and especially bad around Christmas. Now the Appellant sends monthly invoices for work done to date on the large boats, rather than wait until the boats are completed. It was unable to cut its costs because it was a specialist which required exclusive materials for the big boats. At one stage Morellis its paint supplier was virtually supporting it with extended credit.
16. She was ill from November 2007 and had a series of tests and took various medicines. She did not tell her brother because he got so stressed. Although he is so good at what he does he is no good under stress. They could neither afford to get extra help nor take holidays. Finally in June this year it was discovered that she had lupus, an auto-immune disease.
17. Letters from the medical specialists were produced to the Tribunal confirming the seriousness of her complaints and showing that at some time it was thought that she might have cancer.
18. On 25 November 2008 she telephoned HMRC to inform them of her illness and the telephone attendance note was produced to the Tribunal.
19. The Appellant has regularly sought other customers but other boat manufacturers incorporate the painting into the manufacturing process or do not paint them.

Appellant's Submissions

20. Mr Rumbles pointed out to the Tribunal that because of the medicine she was required to take now for her illness Miss Hoskins was still unable to focus properly as was shown by her appearance in the witness box.
- 5 21. Mr Rumbles drew the Tribunal's attention to the VAT visit report of 30 October 2007 which confirmed that at the date of the visit the bookkeeping was much improved since the last visit three years earlier, as a result of the engagement of Jill Dipple for one day a week.
- 10 22. Mr Rumbles produced to the Tribunal a profile of Sunseeker which confirmed that it was one of the largest employers in the Poole area. He also produced a cutting from a periodical called Motor Boats which reported that in the year to July 2009 Sunseeker had made a £9.1 million loss largely because it had had an unexpected bill of £6.8 million to bail out one of its distributors. Following this Sunseeker was taken over and refinanced in 2010.
- 15 23. He produced emails from RBS dated March 2010 which showed that as a result of the Appellant's cash flow forecasts being reduced because Sunseeker was continuing to pay late, the Appellant's prepayments from RBS were to be reduced still further. By August 2010, RBS was only prepared to advance ten per cent of the invoice value on presentation.
- 20 24. Dealing specifically with the VAT default surcharges under appeal he submitted that the failure to submit the returns for the periods 06/08, 12/08 and 03/09 were as a result of Ms Hoskins' illness and the fact that Sunseeker was taking longer and longer to pay resulting in the Appellant being forced to factor their debts to RBS.
- 25 25. Since 03/09 the payments had been made online and 06/09 and 09/09 were successfully made online. The payment for 12/09 was paid on time but was not accepted in full by HMRC because of HMRC's VAT online payment credit limit. This resulted in the Appellant having to make alternative arrangements but the balance was paid within two days.
- 30 26. Mr Rumbles referred to the case of *Energys Holdings UK Ltd v HMRC Commissioners* [2010] UKFTT 20 (TC) and said that the late payment was not caused by the Appellant's lack of diligence and the scale of the penalty was disproportionate and incompatible.
27. The payment for 03/10 was late because of RBS reducing their factoring limit without notice.
- 35 28. He referred to the case of *Customs and Excise Commissioners v Steptoe* [1992] STC 757 where it was held that whilst an insufficiency of funds could never of itself constitute a reasonable excuse the underlying cause of the taxpayers insufficiency might.

29. He submitted that the combination of an uncooperative bank which was itself in difficulty and the Appellant's virtually exclusive customer's failure to pay its bills had caused the defaults.

5 **HMRC's Submissions**

30. Mr Robinson said that he was prepared to accept RBS's sudden reduction in the Appellant's factoring limit as an exceptional circumstance which made it a reasonable excuse for the late payment of the VAT for the 03/10 period and so he agreed to that default being cancelled.

10 31. Further he accepted that the Appellant had tried to pay the VAT due for the period 12/09 on time and because it was only part accepted by HMRC as a result of the online credit limit he would accept this as a reasonable excuse and he agreed that default should also be cancelled.

15 32. Mr Robinson submitted that defaults in respect of VAT periods 06/07 and 09/08 had been removed as a result of the Sunseeker problem and Miss Hoskins illness.

33. He submitted that from VAT period 06/07 the Sunseeker problems were no longer unforeseen by the Appellant.

20 34. He contended that whilst the initial problem with Sunseeker was exceptional it then became unexceptional and as a result when the Appellant's long term business did not appear viable alternative arrangements ought to have been made particularly after the Appellant was threatened by HMRC with the wind up of its business.

35. He submitted that as a responsible officer of the company Miss Hoskins ought to have known the VAT regulations as they applied to the submission of VAT returns and the payment of the tax.

25 36. He contended that in the *Steptoe* case there were exceptional circumstances which were not the case here apart from RBS reducing their factoring limit without warning.

30 37. He submitted that the facts in the *Energys* were unusual and did not apply here. It was the Appellant's responsibility to pay the VAT and there were consequences if it was not paid on time.

Findings

35 38. We found the evidence given by Mr and Miss Hoskins to be credible. Mr Hoskins worked very long hours on the Appellant's business and his sister had been seriously ill. At the relevant time the Appellant could not afford to take on any other staff.

39. We found that Sunseeker was virtually their only client and they had little leverage when it came to enforcing payment of their bills.

40. We found that the Sunseeker problem became particularly bad during the year to July 2009 when it made a huge loss in part because it bailed out one of its distributors and afterwards, until it was taken over and refinanced in 2010. We found that Mr Hoskins had tried very hard to obtain payment from Sunseeker and had tried to make alternative arrangements by finding other customers but there were none available for the specialist skills of the Appellant.

41. We found that the Appellant had eventually factored its invoices but RBS reduced this facility without notice. It had looked for other factoring facilities but although they have now obtained facilities with Lloyds Bank at the time no alternative was available as a result in part of Sunseeker's financial difficulties.

42. The Appellant was not eligible for cash accounting as a result of the size of its turnover but Sunseeker was making them wait months for payment. The Appellant is now billing Sunseeker monthly with smaller invoices which has eased the problem.

43. We have examined the *Steptoe* case and find similarities to this matter. The Appellant was working almost exclusively for Sunseeker which was persistently slow in paying for work done by the Appellant. This was particularly so in the year to July 2009. We find therefore that the Appellant had a reasonable excuse for the late payment for VAT periods 12/08 and 03/09. In addition Miss Hoskins gave evidence that Sunseeker was particularly bad at paying around Christmas. We therefore find that the defaults for these periods should be withdrawn.

44. Whilst we have every sympathy with Miss Hoskins in respect of her illness HMRC have already cancelled a default in acknowledgement of this and we find that as company secretary she ought to have been aware of the consequences of non payment of the VAT. Even if she did not want to worry her brother she could have phoned HMRC earlier than she eventually did and responsibly informed them of the problem so we do not find that this was a reasonable excuse in respect of VAT period 06/08.

Decision

45. The appeal is allowed in part. The VAT default surcharges in respect of the VAT periods 12/08 and 03/09 are hereby cancelled as a result of our finding that for these periods the Appellant had a reasonable excuse. The VAT default surcharge in respect of period 06/08 is hereby confirmed. The VAT default surcharges in respect of periods 12/09 and 03/10 are hereby cancelled HMRC having accepted that for these periods the Appellant had a reasonable excuse.

46. 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.

5

A handwritten signature in black ink, appearing to read "S. J. Keaford". The signature is written in a cursive, slightly slanted style.

TRIBUNAL JUDGE
RELEASE DATE: 8 August 2011

10