



**TC01615**

**Appeal number: TC/2011/02784**

*VAT default surcharge – late payment of tax – main reason for late payment was insufficiency of funds – whether reasonable excuse – no – appeal disallowed*

**FIRST-TIER TRIBUNAL**

**TAX**

**MILLSIDE LIMITED**

**Appellant**

**- and -**

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

**Respondents**

**TRIBUNAL: MICHAEL S CONNELL (TRIBUNAL JUDGE)**

**Sitting in public at 11 Albion Street Leeds on 4 August 2011**

**Mr M Flesher, Director of the Appellant Company, for the Appellant**

**Mrs N Newham, Senior Officer of HM Revenue and Customs, for the Respondents**

## DECISION

1. This is an appeal by the Appellant, Millside Limited, against the imposition of a VAT default surcharge of £3,079.17 in respect of the period to 30 September 2010.
- 5 2. The Appellant's VAT fell due for payment on 31 October 2010 but was paid on 30 November 2010. The amount due was £20,527.83. The Appellant had previously defaulted in periods 09/09, 12/09, 03/10 and 06/10. As this was the fifth default a surcharge amounting to 15% of the tax due was imposed on 19 November 2010.
- 10 3. Mr Flesher, director of the Appellant company, explained that the company is a small company trading in the supply of industrial pipework with only five employees and run by two directors. The company has an accounts manager who works three days a week and a general office typist who works two days a week. Trading conditions are extremely difficult and cash flow is always a problem. They have a number of core customers who often pay invoices late, although they have never defaulted.
- 15 4. Mr Flesher put forward three grounds of appeal -
- (i) at the time of the VAT default his accounts manager was on sick leave and the directors were not therefore aware of the situation;
  - 20 (ii) the company was awaiting payments from various large companies who were currently taking longer than the standard thirty day payment period. The company had however already paid HMRC VAT on these invoices and this had created serious cash flow problems;
  - (iii) the directors of the company expected that interest would be payable on late VAT payments, but did not realise that there would be a VAT default surcharge.
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### HMRC's contentions

5. Mrs Newham on behalf of HMRC said that whilst HMRC sympathised with the Appellant's position, none of the grounds put forward constituted a reasonable excuse. Insufficiency of funds is specifically excluded under s 71(1)(a) VATA 1994
- 30 as being a reasonable excuse for the late payment of VAT and insufficiency of funds can only be considered when a tax-payer is able to demonstrate that the circumstances that led to the loss of income and subsequent default were unforeseen and entirely outside their influence and control. Mrs Newham added that the directors of the company must have been aware that a VAT default surcharge would have been
- 35 payable in respect of late payment of VAT because the company had previously defaulted in four separate periods when surcharge liability notices were issued fully explaining the surcharge regime and the rate of surcharge that would be applied should the company default within the surcharge liability period.

Conclusion

6. As evidenced from the consistently late VAT payments, the directors of the company had not exercised reasonable diligence and attention to the need to make payments on time. Although it was clear that there were significant constraints on the company's cash flow due to late payment by customers it was nonetheless for the Appellant to arrange its business affairs in such a way that VAT was paid on time. The Tribunal sympathised with the Appellant, particularly given the difficult trading conditions described by Mr Flesher, but such problems as HMRC say are no more than the normal hazards of trade and do not warrant exceptional discretion. The company's directors made no contact with HMRC regarding the likelihood that it would be unable to pay its VAT on time and appear to have been unaware that 'time to pay' arrangements might have been available.

7. In the circumstances the Appellant's grounds of appeal do not show a reasonable excuse for the late VAT payment. The appeal is accordingly dismissed and the VAT default surcharge confirmed.

8. 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.

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**MICHAEL S CONNELL**

**TRIBUNAL JUDGE**

**RELEASE DATE: 2 December 2011**

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