



TC01622

Appeal number: TC/2011/07270

VAT default surcharge – reasonable excuse – error by another – appeal dismissed

FIRST-TIER TRIBUNAL

TAX

RED CONTRACTORS LIMITED

Appellant

- and -

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

Respondents

TRIBUNAL: J. BLEWITT (JUDGE)

Sitting in public at Leeds on 28 November 2011

Mr Adams and Mr Fitzpatrick for the Appellant

Mrs Newham, of HM Revenue and Customs, for the Respondents

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DECISION

1. The appellant appealed against an assessment to a default surcharge for the period 03/11 in the sum of £12,241.03, subsequently reduced by HMRC to £12,008.29.
- 5 2. The Appellant had been in the surcharge regime since period 12/09. The due date for payment had been 30 April 2011. The Return was submitted and received on 28 April 2011. The Appellant had instigated payment on the 7 May (a Saturday) but payment did not reach the Commissioners' account until 9 May 2011.
- 10 3. Mr Adams confirmed that he understood that HMRC do not accept fast payments and that the payment had not been made on time. It was submitted in support of the appeal that the Appellant's bookkeeper had been instructed to ensure that payments were made on time however on this occasion payment had been attempted on a Saturday but not received by HMRC until Monday.
- 15 4. Mr Adams and Mr Fitzpatrick explained that HMRC had conducted a VAT inspection on the Company due to an increase in turnover and that the visit had gone well. It was accepted that mistakes do not constitute a reasonable excuse, but the Tribunal was asked to take into account the fact that all monies owing to HMRC both prior to and since this appeal have been paid. It was submitted that the penalty was disproportionate.
- 20 5. Mrs Newham on behalf of HMRC submitted that the grounds relied upon, namely reliance on another, cannot amount to a reasonable excuse.
- 25 6. The Tribunal was referred to a document dated 6 April 2011 in which HMRC reviewed the Appellant's default for the period 12/10. On that occasion, HMRC agreed to withdraw the default. The reason given by the Appellant for late payment was contained in a letter to HMRC dated 28 March 2011 which stated:
"We obviously know that the last date for payment is the 7th day of the month following and did in all honest intention make our final payment for that date...it was only after talking to a gentleman from HMRC who advised me that your bank is not part of the fast pay group. I apologise...for this oversight...after a most honest error."
- 30 7. The response contained within HMRC's letter to the Appellant dated 6 April 2011 explained that:
"For future reference please note that when paying by the BACS system...payments must reach the Customs account by the seventh calendar day. However, if the seventh day falls on a weekend the payment must be received by the Friday before..."
- 35 8. Mr Adams clarified that he receives a significant amount of post daily and apologised for the fact he had not read the contents of the letter from HMRC fully.
9. The Appellant's Notice of Appeal dated 13 September 2011 cites the grounds relied upon as follows:

“...the error was made by a bookkeeper who quite clearly had the order to make payment on the 7th April only to follow an onscreen message allowing the payment to be made the next working day...this will not happen again.”

5 10. Case law has made quite clear that reliance on another cannot amount to a reasonable excuse. The responsibility rests with the taxpayer to ensure that its tax obligations are met; the fact that the error was that of the bookkeeper and not Mr Adams or Mr Fitzpatrick does not absolve the Appellant from its obligations.

10 11. Taxpayers are advised by the Commissioners that it currently takes 3 bank working days for payments to clear and taxpayers are advised that they should check with their bank to see how long it will take for payments to be processed. Additionally, in this case, when the Appellant defaulted in the period 12/10, the same reason was given as to why payment was made late. Although the default was, on that occasion, withdrawn the Appellant was clearly advised that payments must take account of weekends and bank holidays. The payment was attempted on the due date; 15 a Saturday. The Appellant could not therefore have had any reasonable expectation that the payment would be received on time.

12. The Tribunal found as a fact that there was no reasonable excuse.

13. The Tribunal found that the surcharge was not “plainly unfair” or disproportionate.

20 14. The appeal is dismissed and penalty confirmed.

15 15. 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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TRIBUNAL JUDGE
RELEASE DATE: 5 December 2011

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