

[2012] UKFTT 72 (TC)



TC01768

Appeal number: TC/11/05985

Value Added Tax – Default Surcharge – whether “reasonable excuse” for late payment – yes – VATA 1994, Section 71.

FIRST-TIER TRIBUNAL

TAX

CRAIGHILL SERVICES LTD

Appellant

- and -

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

Respondents

TRIBUNAL JUDGE: Mr Kenneth Mure, QC

**Sitting in public at Wellington House, 134-136 Wellington Street, Glasgow on Tuesday
10 January 2012**

Mr G McDowell, for the Appellant

Mrs E McIntyre, for the Respondents

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DECISION

1. In this Appeal Mr G McDowell, a director of the Appellant company, appeared on its behalf assisted by Mrs Dickson. Mrs Elizabeth McIntyre appeared for HMRC.
- 5 2. Mrs McIntyre referred me to the Schedule showing a sequence of Returns lodged late and with late payments. These start with the Return 12/09 which occasioned a Surcharge Liability Notice. The next Return for 03/10 was also late as was the necessary remittance. A 2% surcharge resulted, but as the sum was less than £400, no cash penalty was imposed. The following Return, 06/10, together with payment due
10 was late too. A 5% surcharge was imposed but no penalty was exacted as the amount was again under £400.
3. This appeal relates to a surcharge penalty of £627.41, being 10% of the sum due, but paid late, for the period 12/10.
4. This factual narrative was not, as I understand, in dispute. The issue arising is
15 whether the taxpayer had a *reasonable excuse* in terms of Section 71 VATA for the delay. A *reasonable excuse* is not defined exhaustively by statute, but it does not extend to mere insufficiency of funds. It appears that the taxpayer had not consulted HMRC's debt management section before the due date of payment. Otherwise, some indulgence might have been afforded to the taxpayer company.
- 20 5. Mr McDowell founded on the general economic difficulties prevailing in the calendar years 2009 and 2010 and, additionally, to certain specific difficulties encountered by his company. While general economic factors might not excuse late payment, I was satisfied that these other particular difficulties, when taken together *in cumulo* did amount to a *reasonable excuse*. These factors affected the business's
25 finances throughout 2009 and 2010, the period shortly before and covering the time of the defaults.
6. The particular difficulties noted are set out in a helpful narrative provided by the taxpayer. Firstly, the company lost a valuable contract with a fork-lift concern, Hyster. Business from this source amounted to approximately 50% of its turnover.
30 The taxpayer no longer required such extensive accommodation and chose to terminate a lease of premises, which gave rise to substantial costs in settling dilapidations. The cost amounted to between £15,000 and £20,000 and had to be met in the 3 months between March and June 2009. Additionally there were staff redundancies resulting from the reduction in turnover, costing the taxpayer a further
35 £20,000.
7. A second trading setback arose as a result of a bridge closure and road diversion which continued for about a year following April 2009. That reduced the company's other sales by almost 50%.
8. In May 2009 Mr McDowell was carrying out personally some necessary work at
40 the company's premises. He fell, sustaining serious personal injuries. He was in hospital for about 3 months and thereafter developed a DVT. While his role is a

management one, he was unable to pay personal attention to the running of the business at a crucial period when re-structuring of its market strategies was required. Mr McDowell noted also the withdrawal of credit by the company's principal tyre supplier, Hankook.

5 9. While individually these factors might not amount to a *reasonable excuse*, they have, I think, to be viewed together. They caused a major reduction in turnover, and their coincidence could not have been anticipated. While, as Mrs McIntyre suggested, any business has to anticipate the need at various stages to diversify its activities, a radical re-structuring of the business was necessitated in the present case.

10 10. For these reasons I consider that the taxpayer did have a *reasonable excuse* for late payment. I appreciate that a Return could have been lodged independently of late payment, but I accept Mrs Dickson's evidence that she believed both had to be made together.

11. Accordingly the Appeal is allowed and the Default Surcharge is quashed.

15 12. 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
20 "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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**MR KENNETH MURE, QC
TRIBUNAL JUDGE**

RELEASE DATE: 20 JANUARY 2012

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