



TC01847

Appeal number TC/2011/05293

Section 59(7)(b) VATA 1994 – VAT default surcharge – payment made electronically via method involving 3-day processing delay – Appellant should have been aware of this – appeal dismissed.

**FIRST-TIER TRIBUNAL
TAX**

CLAUGHTON (OFFICE EQUIPMENT) LIMITED

Appellant

- and -

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

Respondents

**TRIBUNAL: MICHAEL S CONNELL (TRIBUNAL JUDGE)
ANN CHRISTIAN (MEMBER)**

**Sitting in public at 4th Floor City Exchange 11 Albion Street Leeds LS1 5ES on 07
October 2011**

Ms Tracey Irwin, Finance Manager of the Appellant Company, for the Appellant

Ms W Newham, Officer of HM Revenue and Customs, for the Respondents

DECISION

1. This is an appeal by Claughton (Office Equipment) Limited (“the Appellant”) against the default surcharge imposed by the Commissioners for Her Majesty’s Revenue and Customs (“the Commissioners”) under the default surcharge regime in relation to the late payment of VAT for the VAT period 03/11. The surcharge was levied at the applicable rate of 5%, the Appellant having been in the default surcharge notice regime at the date of the default.

2. The Appellant disputes that it was late in its payment of VAT for the period in question. The Appellant submits that payment was made on 06/05/11, that is within the 7 calendar days allowed from the due date of 30/04/11 for payments made electronically.

3. In evidence, the Tribunal was provided with a copy of the exchange of correspondence between the Appellant and the Commissioners as to the default surcharge and the Appellant’s reasons why it considered the VAT payment had been made on time; a schedule prepared by the Commissioners showing the Appellant’s default surcharge ‘history’; a copy of the Appellant’s relevant bank statements; a copy of the Appellant’s electronic VAT return submission and the notice of assessment of surcharge given in respect of the period in question.

4. Under s59(1) Value Added Tax Act 1994 (VATA 1994) a taxable person is regarded as being in default if he fails to make his VAT return for a VAT quarterly period by the due date for that quarter, or if he makes his return by that due date but does not pay by that due date the amount of VAT shown on the return as payable in respect of that period. The Commissioners may serve a surcharge liability notice on the defaulting taxable person, which brings him within the default surcharge regime so that any subsequent defaults within a specified period result in an assessment to default surcharges at the prescribed percentage rate.

5. Section 59(7) VATA 1994 states that :

(7) “if a person who, apart from this sub-section would be liable to a surcharge under sub-section (4) above, satisfies the Commissioners or, on appeal, a Tribunal that, in the case of a default which is material to the surcharge -

(a) the return or, as the case may be, the VAT shown on the return was despatched at such a time and in such a manner that it was reasonable to expect that it would be received by the Commissioners within the appropriate time limit, or

(b) there is a reasonable excuse for the ... VAT not having been so despatched

he shall not be liable to the surcharge ... “

It is clear from the provisions of s59(7) VATA 1994 that the burden rests on the Appellant to show why its grounds of appeal fall within the provisions of the sub-section and it is not liable to the surcharge.

6. The Appellant's bank statement shows that on 06/05/11 its account with HSBC was debited under the bank's 'Bill Payment' Scheme in respect of the VAT due on 30/04/11 in the sum of £16,134.53. The Appellant appears to have been under the impression that the Bill Payment Scheme guaranteed a same-day payment and that accordingly the monies would reach HMRC that same day. Although not entirely clear from the evidence, the Bill Payment Scheme appears to be operated under the bank's BACS system which can take up to 3 days to clear a payment, and the monies were received by HMRC on 10/05/11.

7. HSBC, like many other banks, also operate other payment schemes such as 'Telegraphic Transfers' which guarantee same-day payments, and a 'Faster Payment Scheme' although HMRC's IT system does not accommodate this scheme. Payment was therefore transmitted by BACS which resulted in the late payment to HMRC.

8. Ms Irwin on behalf of the Appellant said the Appellant's accounts department thought that they had been operating under the Faster Payment Scheme for over a year prior to the default and were unaware that HMRC's systems could not accept payments under that scheme. They were not aware that payments had been sent by BACS. The Appellant says that, having discussed matters with HSBC, they were told that payment had been taken from its account on 06/05/11 and that the bank was not responsible for delays in processing once it had been remitted to HMRC's bank.

9. HMRC says it also offers other payment methods, including direct debit, payment by debit and credit card over the internet and direct credit via customers' own internet and telephone banking facilities. Payment can also be made by telegraphic transfer on a same-day basis. HMRC also submit that the Appellant had defaulted in respect of four previous periods and therefore would have been aware from the guidance notes on the surcharge liability notices issued of the potential financial consequences of future defaults within the surcharge period. Details of the rising scale of surcharges were explained on the reverse of each surcharge liability notice. HMRC also asserts that its record show that the Appellant had been advised of HMRC's non-participation in the Faster Payment Scheme on two previous occasions (letters dated 23/06/10 and 15/07/10) and therefore it was reasonable to expect that the Appellant would either remit monies by different means or allow sufficient time for payments to be transferred from its account to HMRC.

10. Taking all the circumstances into account, the Tribunal is not satisfied that the Appellant's grounds of appeal fall within the provisions of either s59(7) (a) or (b) and it has not therefore shown a reasonable excuse for the VAT not having been sent on time.

11. For the above reasons the Tribunal dismisses the appeal.

12. The appeal hearing, having taken place in the absence of the Appellant, the Appellant has a right to apply for this decision to be set aside pursuant to Rule 38 of the Tribunal's Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The Appellant has a right to apply for permission to appeal against this decision. 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: 22 February 2012

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