



TC01849

Appeal number: TC/2011/06547

VAT – late payment – s 59(7) VATA 1994 – default surcharge - Appellant claimed VAT payments made on time and that he had not received notice of default or notice of default surcharges – whether reasonable excuse – no

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

KARL BADAMCHI ZADEH

Appellant

- and -

**THE COMMISSIONERS FOR HER MAJESTY'S Respondents
REVENUE & CUSTOMS**

TRIBUNAL: JUDGE MICHAEL S CONNELL

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

**For the Appellant : the Appellant did not attend the hearing and was not
represented**

For the Respondents : Ms W Newham Officer of HM Revenue and Customs

DECISION

1. This is an appeal by Karl Badamchi Zedah ('the Appellant') against default
5 surcharges imposed by the Commissioners of Her Majesty's Revenue & Customs ('HMRC') under the default surcharge regime in relation to the late payment of VAT for the period from 07/2007 to 01/2011.

2. The Appellant had previously advised that he would not be able to attend the
hearing and requested a postponement on the basis that he had been working away
10 from home and had only recently become aware of the appeal hearing date. The Tribunal noted that the notice of hearing had been sent to the Appellant at his usual address, being the address from which VAT returns had been sent during the appeal period, and the same address as that used by HMRC in its exchange of correspondence with the Appellant in connection with the default surcharge. The
15 Tribunal was therefore satisfied that reasonable steps had been taken to give notice to the Appellant of the hearing and that it was in the interests of justice to proceed with the appeal hearing in his absence.

3. The Tribunal received in evidence, a bundle of documents including a schedule
of defaults, the Appellant's notice of appeal to the Tribunals Service, HMRC's
20 decision review letter to the Appellant, copies of all the Appellant's VAT tax returns for each of the VAT default periods, copies of the default surcharge liability notices and a copy of the exchange of correspondence between the Appellant and HMRC regarding the default surcharges.

4. The Appellant's grounds of appeal are effectively two-fold. Firstly, he
25 challenges the validity of the default surcharges on the basis that payments were made on time by electronic transfer and secondly, that because he had not, he claims, received a response from HMRC having disputed a VAT default surcharge in 2007, subsequent VAT payments had been partly taken against the default surcharge and interest, with the balance set against sums due under subsequent VAT returns, causing
30 further surcharges.

5. Under s 59(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
35 does not pay by that due date the amount of VAT shown on the return as payable in respect of that period. HMRC may serve a surcharge liability notice on the defaulting taxable person which then 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.

6. Section 59(7) VATA 1994 states : -

40 (7) on appeal, a Tribunal that, in the case of a default which is material to the surcharge -

- 5 (a) “if a person who, apart from this sub-section would be liable to a surcharge under sub-section (4) above, satisfies the Commissioners or, 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
- 10 he shall not be liable to the surcharge ... “

The Appellant therefore relies upon both sub-s (a) and sub-s (b) of s 59 VATA 1994. The burden rests on the Appellant to satisfy the Tribunal that the provisions of s 59(7)(a) or (b) apply.

15 7. The Appellant’s default surcharge ‘history’ show that there were a total of eighteen defaults for the period from 07/005 to 04/2011. For six VAT return periods VAT was paid on time. HMRC say that the original surcharge notices would have been automatically generated and issued to the Appellant at his usual address. HMRC say that they had not received any returned mail stating that correspondence had not been delivered. With regard to the Appellant’s contention that in 2007 he had requested a surcharge review in respect of the period 10/2006 HMRC’s records show that a letter of reply was sent to the Appellant dated 5 October 2007.

25 8. The Appellant pays his VAT returns electronically, and accordingly the payment must reach HMRC by the second calendar day after the standard due date. If the payment is received after the due date a default surcharge may be imposed. The Appellant’s default surcharge history shows that the Appellant made late payment in all of the default periods in question and in fact, according to Ms Newham on behalf of HMRC, the Appellant had paid all of the default surcharges save for the sum of £860.66 which was still outstanding. Ms Newham argued that the Appellant must have received the VAT default surcharges as these are sent to the same address as the VAT returns which had been completed and returned to HMRC by the Appellant. He must therefore have received the surcharge liability notice extension and subsequent notice of VAT default surcharges. He would therefore have been aware of the potential financial consequences of future defaults within the surcharge liability period.

35 9. Taking all the circumstances into account the Tribunal does not accept that the Appellant either paid VAT within the appropriate time limits in respect of each of the VAT default surcharge periods, or that there was a reasonable excuse for the VAT having been paid late.

10. For the above reasons the Tribunal dismissed the appeal.

40 11. The appeal hearing having taken place in the absence of the Appellant, the Appellant has the right to apply for this decision to be set aside pursuant to Rule 38 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The Appellant has the 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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