



**TC01851**

**Appeal number TC/2011/03005**

*Value Added Tax – Default surcharge – Late payment due to non-payment  
of debts by four customers – Whether reasonable excuse - No*

**FIRST-TIER TRIBUNAL  
TAX**

**THE LONDON KITCHEN LIMITED**

**Appellant**

**- and -**

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

**Respondents**

**TRIBUNAL: PHILIP GILLETT FCA  
JUDGE PETER KEMPSTER**

**Sitting in public at 45 Bedford Square, London WC1 on 18 July 2011**

**Caroline Lucas FCCA (employee) for the Appellant**

**Mrs L Ratnett (HMRC Appeals Unit) for the Respondents**

## DECISION

1. This is an appeal against a default surcharge of £2,492.83, levied at the rate of 10%, in respect of the late payment of VAT due of £24,928.29 in respect of the VAT accounting period to 31 December 2010. Pursuant to s 59 VAT Act 1994 and VAT Notice 700 the VAT should have been paid by 7 February 2011, if paid by electronic means, but in fact was paid in instalments over the period from 18 February 2011 to 25 May 2011, at which time £3,428.29 remained outstanding. We understand that this amount had been paid by the time of this hearing.
2. Miss Lucas, on behalf of the Appellant, did not dispute these facts but referred us to a letter from HMRC Specialist Investigations dated 16 December 2010 which stated that HMRC would not be pursuing their request for the Appellant to provide security under paragraph 4(2)(a) of schedule 11, Value Added Tax Act 1994 because, since the service of the Notice to provide security dated 14 January 2010, the company's compliance "in terms of timely submission of VAT returns and payments has been good." The letter did point out that the return and payment due for the period to 30 September 2009 was received late, but did not mention the late payments of VAT due for the periods to 30 June 2010 and the period to 30 September 2010, which lead to the 10% rate of penalty being applied to the late payment of VAT due for the period to 31 December 2010.
3. Miss Lucas stated that she had been employed by the Appellant from 17 February 2011 and that the whole of the previous accounts department had been dismissed over the weekend following her appointment. It was immediately following Miss Lucas's appointment that the Appellant reached a time to pay agreement with HMRC and commenced to pay off its VAT liabilities in instalments. No attempt had been made to contact HMRC on this subject before 7 February 2011.
4. Miss Lucas explained that four significant customers of the Appellant, who had previously been reliable payers, had defaulted on their debts during January 2011. The amounts due from these customers totalled £24,722.42. In addition Miss Lucas said that around this time the Appellant had agreed a contract to supply catering services at a wedding in Delhi, India which would amount to approximately £50,000. The Appellant's Managing Director, Mr Clarkson, had visited Delhi during January to check on progress on the contract but, when he had asked for a £30,000 deposit, this had not been paid and Mr Clarkson therefore returned home and cancelled the contract. This was an additional unexpected loss of funds.
5. Miss Lucas also mentioned another customer, Rushmoor Restaurants, which had defaulted on its debts in the amount of £9,000 at or around this time.
6. We accepted the above facts.
7. This appeal had previously been considered by the Local Compliance Appeals and Reviews division of HMRC and in a letter from Richard Taylor dated 8 June 2011 they had stated that the company's VAT return for the period showed gross sales of £361,626 (including VAT) and had therefore concluded that the total of the debts

5 on which the customers had defaulted was a comparatively small part of the total turnover for the period, and that sufficient funds had been received by the Appellant in the period to pay the VAT due. In response to this Miss Lucas said that Mr Clarkson had decided to prioritise payments to suppliers, in order to keep the business in existence.

8. When asked why the Appellant had not paid as much as it could afford of the VAT due Miss Lucas stated that this was owing to the incompetence of the previous accounts department, as evidenced by its dismissal, en masse, shortly after the commencement of Miss Lucas's employment by the Appellant.

10 9. For HMRC Mrs Ratnett stated that there was no dispute over the lateness of the various payments of VAT and that although HMRC accepted that the non-payment by a number of debtors had adversely impacted the company's cashflow their view was that no attempt had been made to pay any of the VAT due, owing to the inefficiency of the company's accounts department, and that (as provided by s 71 VAT Act 1994) 15 insufficiency of funds was of itself not a reasonable excuse.

*Conclusion*

10. Having considered the evidence we concluded that the main reasons for the late payment of the VAT due was a decision by Mr Clarkson to prioritise the payment of suppliers and the inefficiency of the Appellant's accounts department. These do not 20 in our view amount to a reasonable excuse for the late payment of the VAT and we therefore DISMISS the appeal.

11. 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 25 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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**PHILIP GILLETT FCA  
PRESIDING MEMBER**

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**RELEASE DATE: 23 February 2012**

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