



TC01825

Appeal number: TC/2011/05194

Permission to appeal out of time – appeal against VAT default surcharge – cause of cash flow problems amounting to reasonable excuse – appeal allowed

FIRST-TIER TRIBUNAL

TAX

**IAN GREER T/A
RAINBOW SIGNS AND
MAINTENANCE**

Appellant

- and -

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

Respondents

TRIBUNAL: J. BLEWITT (JUDGE)

Sitting in public at Belfast on 15 November 2011

Mr Greer, the Appellant was unrepresented

Mr Donnelly, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents

DECISION

1. This is an appeal against the VAT default surcharge for the period 11/10 in the sum of £984.26.
- 5 2. The first issue before the Tribunal was whether to allow the appeal which was made out of time to proceed. Mr Donnelly, on behalf of HMRC indicated that there was no objection to the appeal being made out of time and consequently the Tribunal proceeded to hear the appeal.
3. The sole issue for the Tribunal to determine is whether there was a reasonable
10 excuse for the default.
4. The facts were agreed; the Appellant's VAT return was received on 24 December 2010 and the due date for payment for the period 11/10 was 7 January 2011. The Appellant's VAT liability was £19,685.33; £10,000 was paid on 7 January 2011 and received by HMRC on 11 January 2011 and the remainder was paid on 17 January
15 2011 and received by HMRC on 19 January 2011.
5. The Appellant appealed against the default surcharge on 4 July 2011. The ground
relied upon were that the surcharge was calculated on the full amount of VAT due on
7 January 2011, however as £10,000 was paid on that date, the surcharge should have
been calculated on the balance outstanding. In the alternative, the Appellant submitted
20 that the surcharge should not have been imposed as the full liability was paid before
the Appellant received the surcharge notification.
6. During the hearing Mr Greer clarified the reason for the late payments; the
company has a steady and significant monthly turnover. During the VAT quarter
relevant to this appeal, two specific and valued customers were late in making
25 payments. Mr Greer explained that the companies who owed monies to the Appellant
had been invoiced and contacted regarding the outstanding sums, which were
expected prior to the date on which the Appellant's liability was due to be paid.
7. Mr Greer explained that one of the Appellant's largest customers was KFC, with
which the Appellant trades with 76 shops and had been a valued customer for
30 approximately 25 years. Another customer was the Henderson Group Spa, another
large company which provides the Appellant Company with a significant proportion
of its income. Mr Greer stated that both customers had been late in making payments
which had been due and expected prior to 7 January 2011 and that as soon as the
income was received, the Appellant made its VAT payment.
- 35 8. Mr Donnelly, on behalf of HMRC submitted that insufficiency of funds as relied
upon by the Appellant cannot amount to a reasonable excuse, it being specifically
excluded by Section 71(1) of the Value Added Tax Act 1994. However, it was
accepted by Mr Donnelly that, depending on the particular facts, the case of *J B*
Stepto (*Lon. 89/745Z*) may apply, in which it was recognised that whilst
40 insufficiency of funds cannot per se constitute a reasonable excuse, the reason for the
insufficiency may be regarded as such; as per HHJ Medd O.B.E., Q.C.:

“...but it seems to me that it was conduct of a sort that a small trader was entitled to expect would not happen. It is not something that can be regarded as a normal hazard...If he had brought pressure to bear on the Council he would probably have received no further orders and the bulk of his livelihood would have disappeared. It
5 seems to me, therefore, that this is one of those rare cases where the taxpayer may legitimately put forward as the reason why he should be excused the unexpected and continuing conduct of the person...”

9. The Tribunal accepted the evidence of Mr Greer, who presented as an honest and credible witness, and found as a fact that his account was accurate.

10 10. The Tribunal considered the fact that Mr Greer had not contacted HMRC to make a “Time To Pay Arrangement” but accepted his evidence that there had been no reason to doubt that the invoices would not be paid prior to the due date. The Tribunal found as a fact that the payments made by Mr Greer on 7th and 17th January, so soon after the due date, corroborated its finding that the monies owed to the Appellant had
15 been due over the period with which this appeal is concerned.

11. The Tribunal found as a fact that the reason for the Appellant’s shortage of funds which led to the inability to meet its tax obligations by the due date was a result of the unanticipated and unforeseeable non-payment of monies owed by two of the Appellant’s largest customers; which until the point of non payment, as far as the
20 Appellant had been concerned, gave the Appellant Company a large degree of certainty as to income it could expect.

12. The Tribunal also accepted Mr Greer’s evidence that in chasing the two customers for payment, he was careful to balance the need for the invoices to be paid, against the volume of work provided by the two companies and his very real concerns
25 that such work would be lost if he made repeated demands of the companies. On the particular facts of this case, the Tribunal found as a fact that the events which befell Mr Greer could not be described as normal hazards of his business and that this was one of the few cases which fell within the exception as set out in *Stepto*.

13. The Tribunal found that there was a reasonable excuse for the default.

30 14. The appeal is allowed.

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
35 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.

5

TRIBUNAL JUDGE
RELEASE DATE: 23 November 2011

10