



TC02139

Appeal number: TC/2011/08076

Default Surcharge – payment made one day late – standing instruction to bank for payment on 25th day in each month – 25th fell on a Friday in relevant month – no reasonable excuse – penalty not disproportionate in sense of “plainly unfair” - appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

MCGEE GROUP LIMITED

Appellant

- and -

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

**TRIBUNAL: JUDGE JUDITH POWELL
 I B ABRAMS**

Sitting in public at 45 Bedford Square, London WC1 on 5 January 2012

Persons present: Mr Chris Shea Officer with HMRC

Mr Philip Shepherd Officer and tribunal caseworker with HMRC

DECISION

The Appeal

1. This appeal was heard in the absence of the Appellant and the decision was
5 announced at the end of the hearing that the appeal was dismissed.

2. Permission for the appeal to be heard out of time was not opposed by the Respondents and leave was granted.

3. The appeal was brought against a default surcharge of £2503 imposed in respect
of a default for the VAT period 3/11. The VAT was due to be paid by 28th February
10 2011 but was not received until 1 March 2011.

4. We had to establish the facts and the reasons for the appeal from the Grounds
for Appeal and the correspondence. The facts we found are straightforward. The
Appellant is obliged to make monthly payments of VAT. In the written grounds for
15 appeal the Appellant explained that their bank is instructed to make payments on 25th
day of each month. A bank statement was produced which showed that the payments
were debited to the Appellant's bank account on 25th February 2011. In February
2011 the 25th fell on a Friday. It was not received by the Respondents until the
following Tuesday which was one day later than the due date.

5. The Appellant accepted that because of the combined effect of February being
20 shorter than other months and the 25th falling at the end of a week the VAT payment
due on 28th February 2011 was not received until 1st March 2011. In the grounds
for Appeal this was described as an "error" and no further reasons were given. There
was no suggestion that the error was caused by anyone other than the Appellant. The
Appellant made the point that the usual instruction for payment on 25th of each month
25 resulted in the payments being made earlier than the due date in most months and that
the surcharge was a "disproportionate" fine for a single day's delay.

6. The review letters produced to us were unhelpful by the Respondents and failed
to address the Appellant's points in a constructive way. In particular they failed to
comment on the original point made for the Appellant that it could not understand the
30 reason for the surcharge since the bank statements show the payments being debited
to the Appellant's account on 25th February and therefore before the due date. The
letter was written in standard form and did not adequately deal with the points made.
The shortcomings in the review letters (which were of course written after the default)
could not have contributed to it.

7. We were unable to find any reasonable excuse for the delay in paying the VAT.
We do not have a discretion to reduce the surcharge and although we considered the
argument made in the Notice for appeal that the "fine was disproportionate" we
agreed with the Respondents that this was not a case where the surcharge was "not
35 merely harsh but was plainly unfair". We noted the delay was one day. The facts
available to us concerning the payment were fairly simple. It was made in line with
40 all other payments on 25th day of the month. It was plain that such a standard
instruction might cause the payment to be late in some months due to weekends, bank

holidays and so on. February is always a shorter month than any other month. Although the surcharge may seem to be harsh it cannot be described as plainly unfair.

8. Accordingly we dismissed the Appeal.

5 9. 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 "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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**JUDITH POWELL
TRIBUNAL JUDGE**

RELEASE DATE: 20 July 2012