



TC02187

Appeal number: TC/2012/04066

Construction Industry Scheme- late return – reasonable excuse – no

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

MASTERS AT CARPENTRY LIMITED

Appellant

- and -

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

Respondents

TRIBUNAL: JUDGE ALISON MCKENNA

The Tribunal determined the appeal on 7 August 2012 without a hearing under the provisions of Rule 26 of the Tribunal Procedure (First-tier Tribunal)(Tax Chamber) Rules 2009 (default paper cases) having first read the Notice of Appeal dated 12 March 2012 (with enclosures), HMRC's Statement of Case submitted on 25 April 2012 (with enclosures) and the Appellant not having filed a Reply.

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DECISION

1. This appeal concerns penalties for late return of the monthly contractor's returns under the Construction Industry Scheme. The returns for 5 November 2011 and 5 December 2011 were both received late by HMRC, which imposed a fixed penalty of £100 in respect of each month.

The Facts

2. The Appellant has chosen to file the returns on line. The return for the period ended 5 November 2011 was due on 19 November 2011 but HMRC records show it as having been made on 8 January 2012. The return for the period ended 5 December 2011 was due on 19 December 2011 but HMRC's records show it as having been made on 8 January 2012. Penalty notices were issued on 6 December 2011 and 4 January 2012 respectively.

The Law

3. Section 70 of the Finance Act 2004 requires a contractor such as the Appellant to make a return and Regulation 4 of the Income Tax (CIS) Regulations 2005 provides for when such returns must be made. A return period runs from the 6th of one month to the 5th of the next and the contractor is obliged to send a return by the 19th of the month in which the return period ends. Paragraphs 8 to 13 of Schedule 55 to the Finance Act 2009 provide for penalties to be charged where a contractor fails to file a return on time.

4. Paragraph 23 of Schedule 55 to the Finance Act 2009 provides that a penalty may be cancelled by the Tribunal where it is satisfied that there was a reasonable excuse for the late return. A reasonable excuse is generally regarded as one that relates to circumstances outside the tax payer's control.

The Grounds of Appeal

5. It is stated in the Grounds of Appeal that the two returns were made on time but for some unknown reason were not processed by HMRC and shown as "pending" on the website. This meant that, in the Appellant's view, they were erroneously recorded as having been made late. The Appellant also points to the fact that the tax due was paid on time. However, the Appellant had written to HMRC on 12 December 2011, apologising for the late filing of the return for the period ended 5 December 2011, and stating that the company was in the process of changing accountants and that the return had been overlooked.

HMRC's Statement of Case

6. HMRC has filed a Statement of Case in which it points to earlier late on-line returns by the Appellant, in respect of which penalties were cancelled and educational

5 letters issued. These specifically advise taxpayers to keep a copy of the electronic “Gateway Receipt” generated by the filing of the on-line return. The Appellant has not produced a Gateway receipt in relation to this appeal and HMRC submit that she had been advised to do so. HMRC states that there were no reported problems with its computer at the relevant time and that if the Appellant had experienced difficulty she could have contacted the helpline, which she did not do.

Conclusion

7. I have considered these issues carefully. The legal responsibility to ensure that the returns are made on time is that of the Appellant, however if I were satisfied that a problem with HMRC’s computer had prevented the return being made on time it seems to me that this could amount to a reasonable excuse. In this case, I am not satisfied that this was the case. Firstly, the Appellant has not kept a Gateway receipt (as she has been advised to do) so cannot produce any evidence of when she says she made the return. Secondly, the Appellant company (under a different signature) made a previously inconsistent statement in referring to the return having been over-looked in the process of changing accountants. In these circumstances I am not satisfied on the balance of probabilities of the Appellant’s account of events and do not find that there was a reasonable excuse for late return. Accordingly, I dismiss this appeal and uphold the two penalties of £100 each.

8. 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.

**ALISON MCKENNA
TRIBUNAL JUDGE**

RELEASE DATE: 13 August 2012