



TC02205

Appeal number: TC/2012/04999

VAT penalties. Onus of proof. Evidence of breach

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

MRS PAULA THORNE

Appellant

- and -

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

Respondents

**TRIBUNAL: JUDGE GERAINT JONES Q. C.
SIMON BIRD ESQ**

Sitting in public at Eastgate House, Cardiff on 13 August 2012.

No appearance by the Appellant

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

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DECISION

1. The appellant, Mrs Thorne, took over the business known as The Turberville Hotel, Llanharan with effect from 1 November 2010. She was obliged by Schedule 1, Value Added Tax Act 1994 to register herself for VAT purposes within 30 days thereof.
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2. On 20 May 2011 the respondent wrote to the appellant to inform her that it proposed to charge a penalty for late registration, which, by its later letter of 30 August 2011, it quantified at £2140. That sum was later reduced to £631. We are not sure why the figures were so discrepant.
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3. The appellant responded, by her letter dated 9 November 2011, to say that she had sent the necessary registration forms to the respondent, timeously, in November 2010. It was after that that the penalty amount was reduced to £631.
4. The appellant pointed out in her response to the respondent, which appears in manuscript on the face of form NPPS1, that she had sent the necessary registration documents to the respondent in good time and then asked the respondent to say on what date it contended that it had received the documents. Instead of receiving the courtesy of a proper reply to that query, the appellant then received an "Amended Notice of Penalty Assessment" dated 9 December 2011 in the sum of £631.
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5. The appellant's response, by her letter of 4 January 2012, was that she had sent the necessary registration forms to the respondent, by post, on 26 November 2010. The respondent treated this letter as a request for a review. By the respondent's letter of 13 March 2012 it upheld the penalty after undertaking a review that completely failed to address the real issue, that is, that the appellant had in fact submitted her registration forms timeously. Instead, the review concentrated on the amount of the penalty.
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6. The appellant has appealed to the Tribunal. She did not attend the hearing but relied upon her written material.
7. As this is a penalty case, the burden of proving the alleged default, which is denied by the appellant, lies upon the respondent. Further, as this is a penalty case, by reference to the decision of the European Court in *Jusilla v Finland [2009] STC*, the appellant is entitled to have the case against proved, if it can be proved, in a manner compliant with and respecting Article 6 ECHR.
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8. The respondent has adduced no witness evidence to show anything about how it deals with incoming mail. It has simply produced the front page of the registration form which shows that somebody put a "Post Proceed" stamp upon it showing the date 8 March 2011.
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9. There are three possibilities. They are:

(1) That the appellant did not post her registration form on 26 November 2010, but in fact posted it in early March 2011. In short, that she has lied about when she posted them.

(2) That delivery of the posted form was delayed by the Royal Mail.

5 (3) That the form was posted as the appellant says and delivered in due course of post, but not properly logged and dealt with once it arrived at the respondent's premises.

10 10. It is not for us to speculate as to which of the three above possibilities, is correct. It suffices for us to say that the respondent has come nowhere near to proving that possibility (1) is applicable. The respondent has adduced insufficient evidence to justify any such finding. The registration form is dated 24 November 2010, only two days before the appellant says that she put it into the post. There was no purpose to be served by her delaying its submission to the respondent.

15 11. If possibility (2) represents the true factual situation then the appellant's honest belief that she had sent the registration forms to the respondent would undoubtedly amount to a "reasonable excuse" until such time as she became aware of the fact that the registration forms had not in fact been delivered to the respondent.

12. It thus follows that this appeal must be allowed. No penalty is due.

20 13. 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.

Decision.

Appeal allowed. No penalty is due.

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**GERAINT JONES Q.C.
TRIBUNAL JUDGE**

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RELEASE DATE: 21 August 2012

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