



TC02347

Appeal number : TC/2012/07876

Penalty. Reasonable excuse.

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

ENTECH TECHNICAL SOLUTIONS LIMITED

Appellant

- and -

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

Respondents

**TRIBUNAL: JUDGE GERAINT JONES Q. C.
IAN ABRAMS ESQ**

Sitting in public at 45 Bedford Square, London WC1 on 23 October 2012.

Mr Addati (director) for the Appellant

**Miss Orimoloye, instructed by the General Counsel and Solicitor to HM Revenue and
Customs, for the Respondents**

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DECISION

1. On 8 June 2012. The respondent issued a penalty assessment against the appellant company in the sum of £12,576.17, that sum being calculated as 4% of the amount of tax not paid on time by the appellant in ten months of the fiscal year ended 5 April 2011.
2. The appellant sought a review and the Review Officer upheld the penalty assessment in a decision dated 16 July 2012.
3. The appellant has appealed to this Tribunal.
4. At the hearing before us Mr Adatti, a director of the appellant, presented the appellant's case in a careful and courteous manner. The thrust of his contention was that the penalty amount was unfair and disproportionate given that the various late payments had usually been by no more than a week or ten days. He explained to us that the company, which is in the engineering employee recruitment business, suffered a substantial downturn in business and turnover with the onset of the economic downturn from early 2008.
5. We explained to the appellant's representative that we have no discretion to set aside or reduce the amount of the penalty on the basis that we consider it to be unfair, disproportionate or unreasonable. Parliament has not entrusted the Tribunal with such value judgements. Instead, Parliament has put in place a rigid and inflexible penalty regime in which applies almost regardless of whether it results in the penalties levied being fair, reasonable or proportionate. We explained to the appellant's representative that it is only if there was a reasonable excuse for the failure to pay all or any of the payments on time, that any adjustment to the penalty amount could be made. He very fairly told us, when we gave examples of circumstances that might amount to a reasonable excuse, that he could not rely upon anything other than the general downturn in business, general cash flow difficulties and the fact that the appellant arranged to pay most of its bills, including its wages bill, on or around the 25th or 26th of each month. We are entirely satisfied that the appellant was quite unaware of the consequence of being a week or ten days late with such payments.
6. Harsh though the outcome may seem, this Tribunal can only interfere, in the circumstances of this case, if it finds a reasonable excuse for late payment. Parliament has laid it down that an inadequacy of funds does not and cannot amount to a reasonable excuse although the Tribunal has held that the underlying cause of such financial problems might, in appropriate circumstances, give rise to a reasonable excuse being made out. That does not apply in this case, as the appellant has relied upon nothing more than the most general contention of cash flow difficulties which are not said to be specific to any particular event being causative of those difficulties.
7. The appellant has been unable to present any reasonable excuse for the late payments and so it follows that we have no option but to dismiss this appeal, although we do so with little enthusiasm.

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.

10 Decision.

Appeal dismissed.

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

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RELEASE DATE: 29 October 2012

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