



TC02553

Appeal number: TC/2012/07288

VAT – Notice of Requirement to Give Security – was decision to give notice reasonable – yes – was quantum of security required reasonable – yes – appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

KINGSWAY LIFTS LIMITED

Appellant

- and -

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

TRIBUNAL: JUDGE ALISON MCKENNA

Sitting in public at Bedford Square on 25 January 2013

Mr Mulgrave, director of Kingsway Lifts Limited, appeared for the Appellant company

Ms Ratnett of HMRC appeared for the Respondents

DECISION

1. This appeal concerns the decision of HMRC to issue a Notice of Requirement to Give Security pursuant to paragraph 4 (2) (a) of Schedule 11 to the Value Added Tax Act 1994 (“VATA”) to the Appellant company on 15 May 2012. The appeal falls under section 83 (1) (l) of VATA and the question for the Tribunal is whether, on the information available to it at the time, HMRC’s decision to require security was a reasonable one and, if so, whether the amount of security required was reasonable.

2. The security required by HMRC was in the form of either £15,850 in the form of a cash deposit or performance bond with a continuing requirement for quarterly VAT returns, or £10,500 if monthly returns were submitted. HMRC conducted an internal review of its decision at the Appellant’s request but confirmed its earlier decision by letter dated 28 June 2012. The Appellant company appealed by way of Notice of Appeal dated 24 July 2012.

3. The facts in this appeal were not disputed. The Tribunal heard evidence from HMRC Officer Uzzell that Mr Mulgrave is the controlling director of the Appellant company. He had also been the controlling director of a company called B and L Lifts Limited, which had become insolvent on 23 July 2012, having failed to meet its obligations in respect of VAT and owing HMRC over £30,000 in output tax in addition to its liability under several surcharge notices and for interest on unpaid tax. Both companies had the same registered address (Mr Mulgrave’s home) and both traded in the same line of business, namely lift maintenance.

4. Kingsway Lifts Limited had registered for VAT from 15 February 2012 and the form VAT 1 (signed by Mr Mulgrave) estimated turnover in its first year of trading as £250,000. By the time of the review letter of 28 June 2012, Kingsway Lifts Ltd had failed to submit its first VAT return. Officer Uzzell told the Tribunal that in view of the poor compliance history of B and L Lifts Limited, and the fact that the two companies shared a controlling director, address and line of business, she had concluded that the Revenue was at risk so that it was appropriate to require security from the Appellant company. In relation to the amount of security required, she explained that she had set the amount by reference both to the company’s own estimation of turnover as provided in the VAT 1 and on the trading history of B and L Lifts Limited. The Appellant company had submitted no returns at that time and she had no trading accounts to rely upon so this was regarded as a reasonable approach. The higher security figure equated to six month’s estimated VAT liability and the lower figure to four months’ estimated liability using this approach.

5. The Appellant’s grounds of appeal argued that it was inappropriate for HMRC to look at the compliance history of a separate company in reaching its decision as to the perceived risk presented by the new company. Ms Ratnett argued on behalf of HMRC that where two companies shared a controlling director, it was relevant to consider the past compliance history of both companies. She referred me to a First-tier Tribunal decision in which this approach was approved. However, I note that other decisions of the First-tier Tribunal do not set precedent and I am not bound by

5 them. She also referred me to the High Court's decision in *Customs and Excise Commissioners v Peachtree Enterprises Limited* [1994] STC 747 in which the court had considered the role of the Tribunal in security appeals and had noted without criticism the reliance by the Crown upon evidence of a director's conduct of the affairs of other companies.

6. The Appellant also argued that he had experienced cash flow difficulties caused by HMRC's delay in making Construction Industry Scheme refunds for the previous company and that his VAT debts ought to be reduced by the amount of CIS payments due to him. Ms Ratnett submitted that there was no obligation on HMRC to enquire into the reasons for the failure of B and L Lifts limited and that it was for the Appellant to have put forward any evidence of this at the review stage. She submitted that the decision made by HMRC was reasonable on the basis of the information before it at the relevant time.

7. I conclude that the decision to require security and the amount of security required were both reasonable decisions based on the information available to HMRC at the relevant time and so dismiss this appeal. However, it was quite clear from the evidence given by Mr Mulgrave that the estimation of turnover on the VAT 1 form was a significant over-estimate and I therefore encouraged him to make an appointment to see an HMRC officer with his business records so that HMRC could consider making a fresh decision as to a more realistic amount of security, based on fresh evidence. Mr Mulgrave also wished to be advised on whether he could de-register for VAT. Ms Ratnett agreed that it would be appropriate to consider fresh evidence now available and offered to assist Mr Mulgrave in making an appointment to discuss these issues. The Tribunal is grateful for her assistance.

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.

35 **ALISON MCKENNA**
TRIBUNAL JUDGE

RELEASE DATE: 13 February 2013

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