



TC02657

Appeal number: TC/2012/08673

VAT – appeal against the penalty imposed for failure to submit an EC Sales List by the due date- appellant did not receive penalty notice in accordance with Section 66(2) and (3) of the Value Added Tax Act 1994 – appeal allowed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

ETP CARD PROCESSING LTD

Appellant

- and -

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

**TRIBUNAL: JUDGE SANDY RADFORD
 HELEN MYERSCOUGH FCA**

Sitting in public at Norwich on 27 November 2012

Mr Billings, Managing Director of the Appellant, for the Appellant

Mr Reeve, officer of HMRC, for the Respondents

DECISION

1. This is an appeal against two penalties imposed by HMRC as a result of the appellant's EC Sales Lists ("ESLs") for the 6/11/2011 period and the 12/11/11 period not being received by the due date. A penalty of £500 was imposed for the 6/11 period and a penalty of £1000 was imposed for the 12/11 period.

Legislation

2. Section 66 of the Value Added Tax Act 1994 ("VATA") states:

10 Failure to submit EC sales statement

(1) If, by the last day on which a person is required in accordance with regulations under this Act to submit an EC sales statement for any prescribed period to the Commissioners, the Commissioners have not received that statement, that person shall be regarded for the purposes of this section as being in default in relation to that statement until it is submitted.

(2) Where any person is in default in respect of any EC sales statement the Commissioners may serve notice on him stating—

(a) that he is in default in relation to the statement specified in the notice;

(b) that (subject to the liability mentioned in paragraph (d) below) no action will be taken if he remedies the default before the end of the period of 14 days beginning with the day after the service of the notice;

(c) that if the default is not so remedied, that person will become liable in respect of his default to penalties calculated on a daily basis from the end of that period in accordance with the following provisions of this section; and

(d) that that person will become liable, without any further notices being served under this section, to penalties under this section if he commits any more defaults before a period of 12 months has elapsed without his being in default.

(3) Where a person has been served with a notice under subsection (2) above, he shall become liable under this section—

(a) if the statement to which the notice relates is not submitted before the end of the period of 14 days beginning with the day after the service of the notice, to a penalty in respect of that statement; and

(b) whether or not that statement is so submitted, to a penalty in respect of any EC sales statement the last day for the submission of which is after the service and before the expiry of the notice and in relation to which he is in default.

(4) For the purposes of this section a notice served on any person under subsection (2) above shall continue in force—

(a) except in a case falling within paragraph (b) below, until the end of the period of 12 months beginning with the day after the service of the notice; and

(b) where at any time in that period of 12 months that person is in default in relation to any EC sales statement other than one in relation to which he was in default when the notice was served, until a period of 12 months has elapsed without that person becoming liable to a penalty under this section in respect of any EC sales statement.

(5) The amount of any penalty to which a person who has been served with a notice under subsection (2) above is liable under this section shall be whichever is the greater of £50 and—

(a) in the case of a liability in respect of the statement to which the notice relates, a penalty of £5 for every day for which the default continues after the end of the period of 14 days mentioned in subsection (3)(a) above, up to a maximum of 100 days; and

(b) in the case of a liability in respect of any other statement, a penalty of the relevant amount for every day for which the default continues, up to a maximum of 100 days.

5 (6) In subsection (5)(b) above “the relevant amount”, in relation to a person served with a notice under subsection (2) above, means—

(a) £5, where (that person not having been liable to a penalty under this section in respect of the statement to which the notice relates) the statement in question is the first statement in respect of which that person has become liable to a penalty while the notice has been in force;

10 (b) £10 where the statement in question is the second statement in respect of which he has become so liable while the notice has been in force (counting the statement to which the notice relates where he has become liable in respect of that statement); and

(c) £15 in any other case.

15 (7) If a person who, apart from this subsection, would be liable to a penalty under this section satisfies the Commissioners or, on appeal a tribunal, that—

(a) an EC sales statement has been submitted at such a time and in such a manner that it was reasonable to expect that it would be received by the Commissioners within the appropriate time limit; or

20 (b) there is a reasonable excuse for such a statement not having been dispatched, he shall be treated for the purposes of this section and sections 59 to 65 and 67 to 71, 73, 75 and 76 as not having been in default in relation to that statement and, accordingly, he shall not be liable to any penalty under this section in respect of that statement and any notice served under subsection (2) above exclusively in relation to the failure to submit that statement shall have no effect for the purposes of this section.

25 (8) If it appears to the Treasury that there has been a change in the value of money since 1st January 1993 or, as the case may be, the last occasion when the sums specified in subsections (5) and (6) above were varied, they may by order substitute for the sums for the time being specified in those subsections such other sums as appear to them to be justified by the change; but an order under this section shall not apply to any default in relation to a statement the last day for the submission of which was before the order comes into force.

30 (9) In this section “EC sales statement” means any statement which is required to be submitted to the Commissioners in accordance with regulations under paragraph 2(3) of Schedule 11.

35 **Background and facts**

3. The appellant failed to submit its ESLs by the due date.

4. Mr Billings stated that the appellant’s major German customer had rejected certain transactions which threw the appellant’s accounts into disarray as those transactions had already been accounted for and it took the appellant months to sort
40 out the problem. However all the appellant’s ESLs were now up to date.

5. Section 66(2) of VATA states that where a person is in default in respect of any ESL HMRC should serve a notice informing them that no action will be taken if the ESL is produced within 14 days.

45 6. Section 66 (3) states that where a person has been served with such notice and does not comply within 14 days then that person will become liable to a penalty.

7. Mr Billings stated that he was absolutely certain that the appellant had not received the Penalty Liability Notice which HMRC claimed to have issued on 15 September 2011.

8. He stated that the appellant had only two other employees and he was always passed any HMRC correspondence.

9. Mr Billings confirmed that the appellant had never had any issue with receiving post at its address and had never suffered from overdue mail.

5 10. Mr Rowe stated that although HMRC records showed the issue of the notice it was not recorded as sent and had not been returned undelivered.

11. Mr Rowe accepted that if the appellant had not received the penalty notice then it could not become liable to a penalty.

Findings

10 12. The Tribunal found Mr Billings to be honest and sincere and accepted his evidence that the appellant had not received the penalty notice issued on 15 September 2011.

13. The Tribunal found therefore that in the absence of such notice in accordance with Section 66(2) and (3) of VATA the penalty could not arise.

Decision

14. The appeal is allowed and the penalties are hereby cancelled.

15. 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.

25

**SANDY RADFORD
TRIBUNAL JUDGE**

RELEASE DATE: 18 April 2013

30