



TC02685

Appeal number: TC/13/00721

Value Added Tax – Default surcharge of £204.42 – fourth consecutive late Return/payment – whether “reasonable excuse” or disproportionate penalty? – No – Appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

GILMOURS OFF SALES

Appellant

- and -

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

Respondents

**TRIBUNAL: JUDGE KENNETH MURE, QC
MEMBER: S A RAE, LLB, WS**

**Sitting in public at George House, 126 George Street, Edinburgh on Friday
26 April 2013**

The Appellant did not attend and was not represented.

Mrs E McIntyre, HMRC Officer, for the Respondents.

DECISION

1. In this appeal HMRC was represented by Mrs E McIntyre. The Appellant
5 (Ms Clearie) was not represented and indicated that the appeal should proceed in her absence.

2. This is an appeal by the taxpayer against the imposition of a default surcharge
of £204.42, made in respect of the late payment of VAT for the period 08/12. This
was the fourth consecutive occasion on which late payment of VAT had been made
10 by the taxpayer, and accordingly a 10% surcharge was levied. Reference may be
made to page 13 of the bundle.

3. The taxpayer complains in her letter of 20 December 2012 that the 10% charge
was excessive given that there was only a one day delay. She complains further that
her business was facing increasing financial problems given the current economic
15 climate.

4. It appears that while the Return may have been received only one day late,
payment was in fact four days late (see further the Schedule of Defaults on Page 13).
Mrs McIntyre argued that a reasonable excuse had not been demonstrated by the
taxpayer. It is trite law that an insufficiency of funds is not a reasonable excuse: see
20 Section 71 of the Value Added Tax Act 1994. She argued further that this was the
fourth occasion on which a late Return had been submitted by the taxpayer, and given
HMRC's form of warning notices issued on such occasions, the taxpayer should have
been well aware of the consequences for the delay. Finally, Mrs McIntyre observed
that this Tribunal had no general discretion in considering the fairness or
25 proportionality of the default surcharge system. She referred us to the recent decision
in *HMRC v Total Technology (Engineering) Limited* [2012] UKUT 418 (TCC).

5. We considered that Mrs McIntyre's submissions were logical and sound.
Accordingly this appeal falls to be dismissed.

6. This document contains full findings of fact and reasons for the decision. Any
30 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)"
35 which accompanies and forms part of this decision notice.

KENNETH MURE, QC
TRIBUNAL JUDGE

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RELEASE DATE: 30 April 2013

