



TC03367

Appeal number: TC/2012/07468

Value Added Tax – default surcharge – whether reasonable excuse for late payment – Bank BACS transfer resulted in late payment – no reasonable excuse – appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

CYGNET ELECTRONICS LIMITED

Appellant

- and -

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

**TRIBUNAL: JUDGE DR K KHAN
MS JANET WILKINS, CTA TEP**

Sitting in Oxford on 7 February 2014

P W Swanson, Director, appeared for the Appellant

**Anna Rees, Presenting Officer, instructed by the General Counsel and Solicitor
to HM Revenue and Customs, for the Respondents**

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DECISION

Introduction

- 5 1. This is an appeal against a default surcharge notice dated 15 May 2009 for the period ending 03/09 in the sum of £1,342.96.
2. The issue for the Tribunal is whether there is a reasonable excuse for the late payment of tax. The Appellant does not dispute that the tax has been paid after the due date.

10 Appellant's contentions

3. The Appellant in their letter to the Respondents of 13 May 2013 states:
- 15 "The requirement for the Commissioners to issue a Surcharge Liability Notice for each default; the requirement for this Notice to be timely, and clear as to the reasons for its issue, such that the taxable person understands the reasons for the Notice and Default; that the taxable person is made aware of the number of defaults which have been counted by the Commissioners for the purposes of the surcharge (whether these defaults be deliberate, accidental, or as a result of a misunderstanding of the requirements)".
- 20 4. The Appellant say that these requirements were not met. In the circumstances they say that this is analogous to "punishing a misbehaving child, with increasing severity, without telling the child what his misdemeanour is".
- 25 5. The Appellant contends that they paid the surcharge on time by initiating bank instructions on or before the due dates and their returns were submitted on time. In explaining this position, the Appellant say that they completed online returns on 7 May and organised a BACS payment from their bank for the amount on that day. The payments were received on 11 May 2009. The due date for payment was on or before 30 April 2009. Where payments are made electronically an additionally 7 calendar days are allowed. As a result of the 7 day extension the VAT Return and Payment
- 30 were due to be with HMRC on or before 7 May 2009.

Respondents' submissions

- 35 (1) The Respondents indicated that HMRC takes every opportunity to remind traders of their obligations to pay their VAT on time. The Default Surcharge Notices issued by HMRC offers assistance via National Advice Service Helpline. The VAT Returns contain comprehensive notes outlining the consequences of late payment.
- (2) The Respondents say that the Appellant entered the Default Surcharge regime in the period 12/07 and defaulted several times thereafter. The

various surcharge liability notices which were served would have indicated the consequences of late payments, explained the surcharge regime and the progressive rate of surcharge payments.

- 5 (3) There is no indication that any of these notices were returned to HMRC and no records of the letters being returned undelivered. The letters were addressed to the Appellant's business address. There is therefore valid service for the purposes of the law.
- 10 (4) All relevant information regarding Default Surcharges could be found in HMRC's website or a copy of VAT Notices 700-50 could be requested from the National Advice Service. There is therefore no reason for the Appellant to say that he was unaware that BACS payments take up to three days to HMRC.
- 15 (5) HMRC say that the Appellant should have known the due date for payment and this should be the action of a reasonable person taking reasonable care when faced with similar circumstances. Further, the Appellant should have been aware of bank terms and conditions regarding the length of time for the transfer of payments and allowed time for payments to be received by HMRC by the due date.
- 20 (6) In the circumstances, the Appellant should have been aware of the time taken for the bank payment to be passed to HMRC and it is no excuse to say that they were not aware of the time taken for the BACS payments to clear. They also pointed out that the 09/08 penalty was withdrawn since the Appellant claimed not to have known that it took three days for BACS payment to clear. In that case the payment was submitted by the due date
- 25 but not actually paid until three days later.

The Law

6. By section 59(1)(a) and (b) of the Value Added Tax Act 1994 (VATA) a person shall be regarded as being in default for that period:

30 "If by the last day on which a taxable person is required ... to furnish a return ... HMRC have not received that return, or have received that return but have not received the amount of VAT shown on the return ..."

7. Under Regulations 25(1) and 40(1) VAT Regulations 1995, if the tax payable is on a quarterly basis the tax payment are due on or before the end of the month next following each calendar quarter. Where however the taxpayer files his returns or pays tax electronically HMRC allows a further 7 days from the end of the month next following each calendar quarter for such electronic filings and payments.

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8. With each Surcharge Liability Notice, HMRC provide a taxable person with notes explaining what amounts to a default and the consequences which will flow

from further defaults. Those notes also advise the taxable person to contact HMRC's local Debt Management Unit if they expect to have difficulty paying VAT on time.

9. The specified surcharge percentages are set out in section 59(5) VATA 1994.

Conclusion

- 5 (1) The Tribunal finds that the Surcharge Liability Notices and subsequent assessments for surcharge were properly served. The records presented to the Tribunal shows that the notices were issued to the Appellant at their business address. There is no indication from Royal Mail that the deliveries were not made or were returned. There is a record of a phone call from the Appellant to the National Advice Service on 8 June 2009 querying why a Surcharge Liability Notice had been received. This suggests that the 03/09 Surcharge Liability Notice had in fact been received by the company.
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- 15 (2) There is nothing to indicate that inadequate notice had been given for the 03/09 surcharges.
- (3) The second issue concerns the payment date. The payment was received electronically on 11 May 2009 and the due date was on or before 7 May. The return was received on 7 May 2009 which is on the due date.
- 20 (4) The Appellant indicated that they had given instructions to the bank to make the payment but did not know that it took three days for BACS payments to clear and so would not have reached HMRC by the due date.
- 25 (5) While it is accepted that the Appellant did make payments there can be no reasonable expectation that HMRC would have received the payments by the due date given that the HMRC website and other information available to the Appellant made clear that such payments can take up to three days to clear. While it is accepted that there was no intention on the part of the Appellant to avoid making payment, this does not provide the Appellant with a reasonable excuse for the fact that the payment was made late.
- 30 (6) The onus is on the taxpayer to comply with their tax obligations and it is not excuse for the taxpayer so say that they are ignorant of the methods available for payment and the time taken to make those payments.
- 35 (7) The Appellant should be aware, having run a business for several years that CHAPS payments are immediate and BACS payments can take three days to clear. It would have been clear that if a payment was made by BACS a penalty would be incurred. There is no evidence that the bank made any errors in dealing with the instructions. If this was the case the Appellant may have had a reasonable excuse but in the circumstances there is no reasonable excuse and the appeal is dismissed.

10. 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.

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**DR K KHAN
TRIBUNAL JUDGE**

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RELEASE DATE: 27 February 2014