



TC03405

Appeal number: TC/2013/06217

VAT – Penalty – late return and payment – whether *reasonable excuse* or other ground of appeal – No – Appeal disallowed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

COMPLETE CLADDING SYSTEMS LIMITED Appellant

- and -

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

**TRIBUNAL: JUDGE KENNETH MURE
 MR JOHN WILSON FCA, CTA**

Sitting in public at North Shields on 28th November 2013.

Mrs R Oliver for the Respondents.

The Appellant Company was not represented.

DECISION

1. This Appeal is in respect of a penalty of £9,437.24 imposed in respect of the late Return and payment for (only) the period 03/13. This and earlier defaults are set out
5 in the schedule at B1 of the Bundle. (The other Defaults did not arise for our consideration). Payment was made in three instalments on 8th May, 7th and 17th June 2013 as shown on B2, being respectively 1, 31 and 41 days late.

2. The Appellant because of earlier delays and failures was well aware of the
10 consequences of default. While the Appellant referred to IT problems as contributing to his delay in filing the return for 03/13, it did not then address or seek to explain away the lateness of the payment. We were referred by Mrs Oliver to the correspondence dated 22nd March and 1st August 2013 between the parties, set out at B14 – 17 of the Bundle. Also, in a subsequent letter dated 28th August 2013 the
15 Appellant refers to financial and trading difficulties (B19).

3. Mrs Oliver submitted that in terms of Section 71(1) VATA 1994, an
insufficiency of funds was not a *reasonable excuse*. She referred us also to the recent
20 decision of the Upper Tribunal in *Total Technology (Engineering) Limited [2012] UKUT 418 (TCC)* which did not in her view assist the Appellant.

4. We consider that Mrs Oliver's stance was well-founded. While initially no
reference was made to the reasons for the delay in payment, we note the reference to
trading difficulties in the later letter of 28th August 2013. However, we do not
25 consider that the financial difficulties, which are referred to in very general terms, are sufficient to give rise to a *reasonable excuse* or any other sufficient ground of appeal. Accordingly the Appeal is disallowed and the penalty confirmed.

5. 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.

40 **KENNETH MURE**
TRIBUNAL JUDGE

RELEASE DATE: 17 March 2014