



TC03406

Appeal number: TC/2012/06460

VAT – Penalty – submission of return and payment both one day late – direct debit for payment in place – whether reasonable excuse or other ground of appeal – No – Appeal disallowed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

GILLENS LIMITED

Appellant

- and -

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

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

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

Those appearing:

Mrs Leigh Walker, Director of the Appellant company; and Mrs R Oliver, HM Inspector of Taxes

DECISION

1. This appeal is in respect of a penalty surcharge of £1,903.55, being 15% of the tax due of £12,690.30. The submission of the Return was one day late and payment via a direct debit was one day late also.
- 5 2. There had been an earlier hearing in the Appeal on 4th June 2013 when Judge Connell directed that HMRC should investigate and explain the operation of the direct debit system. In particular could the three day period be abbreviated?. Given that the direct debit was in place, could HMRC have accelerated payment to complete the process by Thursday 5th April 2013, the due date for payment?.
- 10 3. The timetable is as follows. The due date for the Return and payment was 26th March 2013. The seven day extension would allow the Return to be submitted timeously by 2nd April. In fact it was not filed until Tuesday 3rd April. There was a direct debit arrangement in place for making payment. A further three days after the due date for submission of the Return was allowed, enabling payment to be made
15 timeously on Thursday 5th April 2013. Because of the intervening Easter weekend, payment was not effected until Tuesday 10th April 2013. It was acknowledged that both the intervening Good Friday and Easter Monday were Bank Holidays, on which payment could not be made.
- 20 4. At the adjourned hearing before us Mrs Oliver explained that the three day period could not be abbreviated. If the Return was filed late, payment would be taken late by a corresponding period. The direct debit process required three banking days after receipt of the Return. Direct debit was the only means of payment which could be initiated by HMRC. They could not instigate any form of accelerated payment: that could only be done by the tax payer. In the present case such an accelerated
25 payment could have enabled timeous payment on Thursday 5th April 2013.
5. Mrs Oliver explained that the means of accelerated payment is publicised on HMRC's web site and in its publications.
- 30 6. In reply Mrs Walker conceded that she was familiar with the means of accelerated payment, which she had used to settle PAYE liabilities. She had not used such a payment method here, believing that HMRC were able to do this. She acknowledged that she was familiar with the penalty system and the consequences of late payment. She had considered that HMRC could have effected immediate payment, completing the cash transfers by Thursday 5th April.
- 35 7. We consider that Mrs Oliver's arguments are well founded. We are satisfied that the process of payment via direct debit requires three days. However, the Appellant should have appreciated the consequences of any delay. While we have a certain measure of sympathy for Mrs Walker who may have genuinely believed that an accelerated payment could have been made via direct debit, we do not consider that a *reasonable excuse* for the purposes of Section 71 VATA 1994 has been
40 demonstrated. We note the consideration of such an argument, which was rejected in *HMRC –v- Total Technology (Engineering) Limited [2012] UKUT 418 (TCC)* at para 88.
8. Accordingly we disallow this appeal and confirm the penalty.

9. 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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**KENNETH MURE QC
TRIBUNAL JUDGE**

RELEASE DATE: 17 March 2014