



TC03814

Appeal number: TC/2014/01541

*VAT – default surcharge – late payment – whether reasonable excuse – No –
Section 71 Value Added Tax Act 1994 – Appeal dismissed*

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

NORMA CLARK HAIR & BEAUTY LTD

Appellant

- and -

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

Respondents

**TRIBUNAL: JUDGE KENNETH MURE, QC
DR HEIDI POON, CA, CTA, PhD**

**Sitting in public at Wellington House, 134-136 Wellington Street, Glasgow on
Friday 27 June 2014**

Appellant – not represented

Respondents – Mrs L Ahammed, Officer of HMRC

DECISION

1. The appellant's Director, Mr Sergeant, advised that he did not intend to appear
5 at the hearing and that he was content that it should proceed in absence.

2. Mrs Ahammed explained that a surcharge in respect of the appellant's VAT
liability for the period 11/13 (September – November 2013) of £462.11 had been
imposed. This was a fourth default by the appellant and accordingly a rate of 10%
applied. The total VAT due of £4,646.26 had been reduced by a credit balance of
10 £25.10 (respondents' productions no 25), resulting in an outstanding amount of
£4,621.16 in respect of which a 10% penalty had been imposed.

3. The due date for payment (as extended by seven days for electronic payment)
was 7 January 2014. A payment of £3,646.26 was made on the following day by Fast
Payment System, which would have been an immediate "same day" transmission.
15 The balance of £1,000 was paid on 28 January 2014.

4. Mr Sergeant explained in correspondence (no 12) and in the Grounds for
Appeal that there had been an error in paying £1,000 less than the full amount due. It
was a genuine mistake, he insisted. Payment of that lower amount had been taken
from his bank account on 6 January 2014, he explained. (This seems inconsistent
20 with an "FPS" immediate payment being received on 8 January 2014.)

5. The issue for determination by the Tribunal was whether in these circumstances
a *reasonable excuse* for late payment emerged. This term is defined by statute
(Section 71 VATA) to a limited extent but has been further clarified in the decision of
the Upper Tribunal in *Total Technology (Engineering) Ltd* [2012] UKUT 418 (TCC).
25 A delay of only one day occasioning a surcharge is not necessarily disproportionate
(see paras 88 and 89). Here in any event there was a further delay of about three
weeks before payment in full was made. Having regard to that three week delay we
do not consider that a *reasonable excuse* arises. Accordingly the appeal falls to be
dismissed and the surcharge is confirmed.

30 6. 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
35 "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)"
which accompanies and forms part of this decision notice.

40 **KENNETH MURE, QC**
TRIBUNAL JUDGE

RELEASE DATE: 18 July 2014

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