



TC03983

Appeal number: TC/2014/00460

Value Added Tax - Default Surcharges - Appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

DIPSTICKS TYRES & EXHAUSTS LTD

Appellant

- and -

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

Respondents

**TRIBUNAL: JUDGE HOWARD M. NOWLAN
MRS SHAMEEM AKHTAR**

Sitting in public at 45 Bedford Square in London on 20 August 2014

Alison Pepler of Dipstick Tyres & Exhausts Limited on behalf of the Appellant

Mark Ratcliff of HMRC on behalf of the Respondents

DECISION

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1. This was a default surcharge Appeal covering 9 defaults, for which there were surcharges for the last 6. It was clear that there had indeed been late payment in all 6 material periods, and since any claimed excuse for late payment was the same for all periods, we could largely ignore the detail. For the sake of the record, however, the following table summarises the relevant facts:

	<i>VAT period</i>	<i>Return late or not</i>	<i>Payment late by days</i>	<i>Rate</i>	<i>Amount</i>
15	<i>06/08</i>	<i>20 days late</i>	<i>4 days late</i>	<i>10%</i>	<i>£589.82</i>
	<i>09/08</i>	<i>12 days late</i>	<i>5 days late</i>	<i>15%</i>	<i>£871.82</i>
	<i>03/09</i>	<i>21 days late</i>	<i>8 days late</i>	<i>15%</i>	<i>£986.62</i>
	<i>12/09</i>	<i>1 year 4 days late</i>	<i>nearly 4 years late</i>	<i>15%</i>	<i>£453.42</i>
	<i>03/10</i>	<i>on time</i>	<i>6 days late</i>	<i>15%</i>	<i>£1,083.42</i>
20	<i>09/10</i>	<i>on time</i>	<i>4 days late</i>	<i>15%</i>	<i>£1,409.90</i>
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					<i>£5,395.00</i>

2. The main suggested grounds of appeal in the Appellant's Notice of Appeal complained not so much about the circumstances pre-dating the late payment of any of the relevant VAT liabilities, but the fact that the Appellant had thought that nothing was owed to HMRC in respect of surcharges until a demand was received from a debt collection agency. When the matter was then immediately put in the hands of the Appellant's accountant, and there had been some communication with HMRC, it appears that the accountant thought that the matter had been "sorted out". The Appellant certainly made this assumption when nothing further was heard for 2 ½ years, particularly as all its current payments were being made by direct debit, and no later payments had been late.

3. There was no evidence from the individual accountant, but it must plainly be the case that the matter had not been "sorted out". We were told that in 2011, the accountant's wife died, and after that a different person in the accountancy firm dealt with matters for the Appellant. The death of the accountant's wife obviously played no part in explaining any of the delays in payment with which we are concerned, since they all occurred well before 2011.

4. Ms. Pepler, on behalf of the Appellant explained that the only explanation or excuse for the late payments themselves was that prior to her arrival to work for the Appellant, the proprietor and others in the business had been mechanics, and had therefore left the VAT returns to the accountant and relied on him. She accepted that matters had been a bit of a shambles. Her second claim was that the penalty of £5,395 was excessive for a few late payments, particularly as all but one had only been late by a few days. She explained that the business had recently had to lay off one employee on account of the difficult business climate, and that the Appellant would really struggle to pay the surcharge liability. Accordingly she asked for it to be reduced.

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5. We had to explain to Ms. Pepler that while we could discharge the liability for a default surcharge if we concluded that there had been a reasonable excuse for the late payment, the sort of excuse that might justify that conclusion was the sudden and unexpected illness, or absence of the only person able to deal with VAT matters, or a very major delay by the

trader's dominant customer in discharging its debts to the trader. Beyond that, section 71 VAT Act 1994 made it clear that a general insufficiency of funds could not constitute a reasonable excuse for late payment, and secondly "*reliance .. on any other person to perform any task, neither the fact of that reliance nor any dilatoriness or inaccuracy on the part of the person relied upon [could constitute] a reasonable excuse.*" We accept that in the case of reliance on, say, the Appellant's accountant, if specific facts could have been advanced to the effect that the accountant in question suffered some sudden and unexpected event that precluded him from dealing with a particular payment on time, then that factor might constitute a reasonable excuse for a particular late payment. In the present case, however, since there was actually no knowledge as to what had occasioned any of the fairly regular late payments, and the level of ignorance extended to the fact that the Appellant had thought that everything had anyway been sorted out, it was impossible for the Appellant to establish, or for us to accept, that there had been any reasonable excuse for the late payments in question.

6. We also had to explain to Ms. Pepler that the calculation of the surcharges results from a strict mathematical calculation, and that neither HMRC nor the Tribunal can mitigate them. Furthermore a recent Upper Tribunal case has undermined any possible claim that the level of the surcharges is disproportionate, such that they could be challenged on that basis. While the delays in payment in all but one of the 6 cases that we are concerned with were relatively modest, the regrettable fact is that the level of the surcharges would have been exactly the same even if every single payment had been late by only one day.

7. We accordingly dismiss this Appeal. We were pleased to note that HMRC's representative and Ms. Pepler were going to have a discussion, after the hearing and after we had left, in relation to HMRC's debt management principles, and any element of staged payments of the liability that HMRC might be able to offer to the Appellant. This matter has, however, no bearing on the outcome of the Appeal, or of anything that could concern us.

Right of Appeal

8. This document contains full findings of fact and the reasons for our decision in relation to this appeal. Any party dissatisfied with the decision relevant to it 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.

**HOWARD M. NOWLAN
TRIBUNAL JUDGE**

RELEASED: 3 September 2014

