



TC04736

Appeal number: TC/2015/02842

Value Added Tax- Default Surcharge - whether reasonable excuse – no – appeal dismissed.

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

	GROUNDWORK (TERROCOTTA AND STONE) LTD	Appellant
	- and -	
	THE COMMISSIONERS FOR HER MAJESTY'S REVENUE & CUSTOMS	Respondents

TRIBUNAL: JUDGE DR. K KHAN

The Tribunal determined this appeal on 30 September 2015 without a hearing under the provisions of Rule 26 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (default paper cases having first read the Notice of Appeal dated 23 April 2015 and HMRC's statement of case which was undated.

DECISION

Introduction

- 5 1. This is an appeal against a default surcharge for the period 10/14 at the rate of 5% and in the amount of £1320.32.
2. The Appellant has been in a default surcharge regime since 04/13.

10 Legislation

3. (1) Value Added Tax Regulations 1995, Regulation 40
- (2) VATA 1994 Section 98
- 15 (3) VATA 1994 Section 59 and 71.
- (4) Finance Act 2009 Section 108(2) (b).

20 Appellant's submission

4. The Appellant states that they have paid the amounts due by the due date. They explained that over the last 15 years they always paid their VAT on time and in good faith. They paid the amount due for the period ending 25 October 2014 on 8 December believing that this was the correct time for payment.

5. They explained that the business has struggled in a changing market over the last three years. The business has had to be reorganised several times. 30 They have indicated that they had cash flow difficulties with customers not paying on time with a 30 day credit line.

6. Their payment has always been through the Faster Payment System.

35 HMRC's case

7. HMRC says that there is a statutory obligation to make payments by the due date. Given that the Appellant has not changed her address since 1998 then no contention or inference that the default surcharge notices have not been received. 40 Therefore HMRC contend that the surcharge notices have been correctly issued in accordance with VAT in 1994 Section 59(4).

8. It is possible that the Appellant had not realised previously that the notices received were the full surcharge notices. However this would not have been the 45 position with the notice for the period 10/14 since it contained a financial element.

9. The Appellant acknowledges that having initiated payment after the due date on Monday 8 December 2015 they were late with their payment. The due date for payment for the period 10/13 and 10/14 fell either on a weekend or on a Bank Holiday. However it was up to the Appellant to make themselves aware of the times when this was the case and arrange for payment to be initiated such as to enable a timely receipt.

Conclusion

10. While the Tribunal understands the position of the taxpayer that they are in a difficult trading period perhaps with limited cash flow and intend to honour their payment obligations, it is clear that in this case they did make payments after the due date.

15. While the returns were received within the time limit, the payment though using the Faster Payment Service, did arrive late and incurred a penalty of £1320.32. The Tribunal have very limited powers to intervene in such cases as the statutory framework is very clear on the penalties and the discretion given in these matters.

20. 11. For this reason, the penalty in this case is upheld and there is no reasonable excuse.

This document contains full findings of facts 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.

TRIBUNAL JUDGE K KHAN
RELEASE DATE: