



TC04931

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Appeal number: TC/2015/06937

VAT – Whether there was reasonable excuse for late submission of payment due on VAT return - No.

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**FIRST-TIER TRIBUNAL
TAX CHAMBER**

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MANNOR CONSTRUCTION LIMITED

Appellant

- and -

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

Respondents

**TRIBUNAL: PRESIDING MEMBER:
PETER R. SHEPPARD FCIS FCIB CTA
MEMBER: CHARLOTTE BARBOUR CA
CTA**

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Sitting in public at Eagle House, 215 Bothwell Street, Glasgow on 11 January 2016

25 **The Appellant was unrepresented**

Mrs. Elizabeth McIntyre, HMRC Officer, for the Respondents.

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DECISION

a) **Introduction**

At the commencement of the appeal Mrs McIntyre for the Respondents (HMRC) advised that earlier in the morning she had received a telephone call from the Appellant's representative, Emma McDonnell, advising that neither she nor the company's managing director, Mr. Manus Connor, would attend the hearing. Ms McDonnell advised that on the previous evening Mr. Connor had read through the bundle of papers and formed the opinion that he had little chance of success and wished to withdraw the appeal.

However by the commencement of the hearing the Tribunal had received no written confirmation of the withdrawal of the appeal. Mrs McIntyre made an application for the hearing to proceed under The Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (S.I.2009/279) rule 33 "Hearings in a party's absence". The Tribunal was satisfied that the Appellant had been properly notified of the time of, and venue for, the appeal and that it was in the interests of justice to proceed, so allowed the application.

Mrs McIntyre applied for the hearing to proceed in the absence of the Appellant under rule 33. The tribunal was satisfied that the Appellant had been properly notified of the time of, and venue for, the appeal so allowed the application.

2. The appeal concerned a VAT default surcharge of £3,104.26 for the late payment of VAT due on the Appellant's VAT return for the period ended 30 September 2015.

3. **Legislation**

VAT Act 1994, in particular Sections 59, 70 and 71

VAT Regulations 1995 in particular Regulations 25A and 40

4. **Case law**

Garnmoss Limited T/A Parham Builders v HMRC [2012] UKFTT 315 (TC)

The Clean Car Company Ltd. v HM Customs & Excise VAT Tribunal decision No.5695

Red Contractors Ltd. v HMRC [2011] UKFTT 788 (TC)

Trinity Mirror plc v HMRC [2015] UKUT 421 (TCC)

5. **Facts**

The Appellant registered for VAT in 2011 and its business is building and construction.

HMRC produced a Schedule of Defaults by the Appellant.

5.1 The first default was in respect of the quarter ended 28 February 2014 which was due by 7 April 2014 assuming payment by electronic means. The return was made remarkably early on 04 March 2014 showing an amount due of £8,182.64 but this payment was not received by HMRC until 10 April 2014 that is 3 days late. HMRC issued a Surcharge

Liability Notice Form V160 warning that further defaults might result in the levying of a surcharge.

5.2 Later in 2014 the appellant requested a different stagger period for its returns. In order to facilitate this HMRC sent the Appellant a return for one month namely 1st to 30th June 2014. This return was due by 7 August 2014. Both the return and the payment due of £7,119.15 were not received by HMRC until 17 August 2014, that is 10 days late. A default surcharge of 2% of this sum could have been levied by HMRC but they adopt a policy of not assessing surcharges of under £400. HMRC sent a form V164 to the Appellant extending the period of the surcharge liability notice but not assessing any surcharge.

5.3 No further defaults occurred in the next two quarterly periods. The return for the period ended 31 March 2015 was due by 7 April 2015 but was not received by HMRC until 24 April 2015, 17 days late. The amount due was £11,196.28. This was received by HMRC in three tranches: £8,500 on 15 May 2015; £1,500 on 22 May 2015 and £1,196.28 on 29 May 2015. All three dates are over a month after the due date of 7 April 2015. As this was the second default after the original surcharge liability notice a surcharge rate of 5% of the tax due applied. HMRC sent the Appellant a form V162 Notice of Assessment of Surcharge and Surcharge Liability Notice Extension. The amount of the surcharge was £559.81 being 5% of £11,196.28.

5.4 No default occurred in the next quarterly period. The return for the period ended 30 September 2015 was due by 7 November 2015 assuming payment was made electronically. The return was received on 28 October 2015 within the due date. The amount due was £31,086.79. The payment instruction was made to the bank on 6 November 2015 but the payment did not reach HMRC until 9 November 2015. By this time the percentage of the surcharge had risen to 10%. A small amount had been credited to the appellant's account so that the amount unpaid by the due date was £31,042.61. On 13 November 2015 HMRC issued a VAT Notice of assessment and surcharge liability notice extension form VAT 162 in the sum of £3,104.62 being 10% of the £31,042.61 of unpaid VAT remaining outstanding at the due date in respect of the Appellant's VAT return for the period ended 30 September 2015.

It appears that the Appellant tried to make a same day value payment on Friday 6 November 2015 but this did not reach HMRC until Monday 9 November 2015.

The appellant had had a similar experience before as detailed in paragraph 5.1 above.

6. Appellant's submissions

In the Notice of Appeal dated 25 November 2015 the Appellant's representative states

“VAT amount was paid on Friday 6/11/15 but amount was not received by close of business as I expected it to be. All my payments normally clear within 2 hours. Funds were not received until 9/11 due to a weekend. If 7/11 hadn't fell on a Saturday payment would have been received in time. I would appreciate if you could review as a gesture of goodwill, taking the circumstances into consideration.”

In a letter to the Tribunal also dated 25 November 2015 the Managing Director of the Appellant wrote;

“I understand from this correspondence that my recent VAT payment was not received by yourselves by 7th November 2015 I paid this amount at the bank on 6th November and expected that by using faster payment service this would have been credited to your account in due time. I assume that since 6th November was a Friday this is what caused the delay. I write to ask that on this occasion, that as a gesture of goodwill, this amount is reviewed. I will ensure all future payments are received in sufficient time.”

No other submissions from the Appellant were supplied to the Tribunal.

7. HMRC's submissions

HMRC state that the requirements for submitting timely electronic payments can be found –

- In Notice 700 ‘The VAT Guide’ paragraph 21.3.1.
- On the HMRC website www.gov.uk/hmrc.
- On the E-VAT return acknowledgement

8. HMRC point out that included in the notes on the reverse of surcharge liability notices is advice about submitting and paying returns on time. They also include guidance on how to avoid surcharges.

Of particular note is the advice “Allow enough time for payment to clear HMRC’s bank account”

9. HMRC state that the liability to a surcharge is governed by the VAT Act 1994 Section 59. HMRC submit that the Appellant has not argued that he did not receive the surcharge notices and so they contend that the surcharges were correctly issued.

10. HMRC point out that notice 700 The VAT guide at paragraph 21.3.1 includes the following.

“If your due date falls on a bank holiday or weekend, your payment must clear HMRC’s bank account before then.....

If your payment arrives late you may be liable to a surcharge for late payment. To make sure that your payment clears our account in time, you should check with your bank or building society to find out:

If there are any single or daily limits to how much you can transfer from your account.

If there is a cut off time for processing payments on the same day?

How long your payment will take to clear into HMRC’s bank account?

Checking these details will help to ensure that you do not incur any unnecessary late payment surcharges.”

11. HMRC say that the Appellant did not take appropriate or sufficient steps to ensure that the company met its VAT payment obligations. The Appellant should have made themselves aware of their bank cut off times for Faster Payment Service. Having received previous

surcharge liability notices the Appellant should have been aware of the financial consequences should the VAT payment be received after the due date.

12. HMRC say that genuine mistakes such as mentioned by the Appellant cannot be considered as acceptable as a reasonable excuse and refer to the case of Garnmoss Ltd t/a Parham Builders in support.

13. Tribunal's observations

The level of the default surcharges has been laid down by Parliament. The only other consideration that falls within the jurisdiction of the First-tier Tribunal is whether or not the Appellant has reasonable excuse for the failure as contemplated by the VAT Act 1994 Section 71.

14. The onus lies with the Appellant to prove it had reasonable excuse for the late payment.

15. The Appellant tried to make a same day value payment on Friday 6 November 2015 but this did not reach HMRC until Monday 9 November 2015. The appellant had had previous default notices and penalties and these should have prompted the appellant to make enquiries about the detail of his payment processes. The Tribunal is aware that some banks have a cut off time for making same day value payments. Requests after that time are sent on the next working day. Some banks will only make payments on the same day for amounts below a certain figure. Amounts above that figure are sent on the next working day. There was no evidence as to what the reason for the delay was in this case. In the light of the Appellant's previous experience the Tribunal would have expected the Appellant to familiarise itself with its bank's procedures and conditions for its faster payments service.

16. The Appellant has failed to provide any reasonable excuse for the late payment of the amount due on its VAT return for the period. The Appellant has not challenged the accuracy of the calculation of the amount of the surcharge. The Appellant decided not to attend the oral hearing which it had requested.

17. In these circumstances the Tribunal has no alternative but to dismiss the appeal and confirm the default surcharge of £3,104.26.

18. 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.

**PETER R. SHEPPARD
TRIBUNAL JUDGE**

RELEASE DATE: 2 MARCH 2016