



TC05125

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Appeal number: TC/2016/01589

VALUE ADDED TAX – whether late payment of VAT, Yes. Whether reasonable excuse for late payment - No.

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**FIRST-TIER TRIBUNAL
TAX CHAMBER**

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GAMMA INFINITY LIMITED

Appellant

- and -

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

**TRIBUNAL: PRESIDING MEMBER:
PETER R. SHEPPARD FCIS FCIB CTA AIT**

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The Tribunal determined the appeal on 23 May 2016 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 a letter of Appeal dated 8 March 2016, and HMRC's Statement of Case dated 30 March 2016 with enclosures. The Tribunal wrote to the Appellant on 7 April 2016 indicating that if they wished to reply to HMRC's Statement of Case they should do so within 30 days. An e-mail reply dated 14 April 2016 was received and read by the Tribunal.

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DECISION

1. Introduction

- 5 This considers an appeal against a VAT default surcharge of £737.32 for what the respondents (HMRC) submit is the late payment of VAT totalling £4,915.50 which was due to be paid by 7 December 2015 in respect of the appellant's VAT return for the three month period ending on 31 October 2015.

10 2. Legislation

VAT Act 1994 Part IV Sections 59 and 70
Finance Act 2009 Section 108

3. Authorities

- 15 *Garnmoss Limited t/a Parham Builders v HMRC* TC/2011/8183

However the Tribunal was aware of the Upper Tribunal decision in the case of *HMRC v Total Technology (Engineering) Ltd* [2011] UKFTT 473 (TC).

4. Facts

- 20 4.1 A Value Added Tax return for the three month period ended 31 October 2015 was due to be submitted by the appellant with the appropriate payment to reach HMRC by 7 December 2015 assuming payment was made electronically.

4.2 HMRC received the return in time on 30 November 2015 but did not receive the payment which was made by the Faster Payment service until 20 December 2015.

5. Appellant's submissions

- 25 5.1 The appellant wrote a letter to HMRC bearing the date 5 February 2014. This was received by HMRC on 11 February 2016. The contents of the letter are such that the date of the letter could not have been 5 February 2014 and is more likely to have been written on 5 February 2016. In the letter the appellant states

- 30 "Further to our telephone conversation, I am writing this letter in regards an appeal against the surcharges (penalty) of £737.32 which were added due to the late payment of VAT due for the period ended 10 2015

- I can confirm that the VAT return was submitted on time. The payment was made late on 22nd December 2015 due to some banking issues. My online banking user ID and login was locked out and it took three weeks to sort that out (I had to go to a branch with proofs (of id and address) and request a new password to be sent out in post to my address) As soon as I got that sorted I paid it.
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You can also check and verify that my company has never made a late payment in all previous years.

So considering the extraordinary circumstances, I kindly request you to wave off the penalty.”

5 The letter was signed by Prasanna, a director of the appellant. Later correspondence reveals this to be Prasanna Venkatesh Arumugam Pownsubbiah.

5.2 On 8 March 2016 the appellant wrote to the Tribunal which included the following:

10 “Further to our correspondence dated 19 Feb 2016 that states a decision was made not to cancel the VAT penalty. I would like to appeal against that decision based on the reason below:

1. The banking password was wrongly entered by my joint account holder and my banking ID was locked out.
- 15 2. I had to reset the banking password by personally visiting a branch with my ID proof and address proof.
3. The new password arrived in post only after 14 working days.

All these resulted in an overall delay of 3 weeks. The reason stated above were unforeseen by myself and was beyond my control. It was simple human error that set off a sequence of events which resulted in this delay.....”.

20 **6. HMRC Submissions**

6.1 HMRC had included in the papers a schedule of defaults for late payment by the appellant.

- 25 i. In respect of the period ended 31 January 2014 the appellant submitted its return on time by 7 March 2014 after allowing seven days for electronic payment. The payment was however received one day late on 8 March 2014. HMRC issued a surcharge liability notice form V160 but levied no surcharge because it was the first default.
- 30 ii. In respect of the period ended 30 April 2014 the appellant submitted the return due by 7 June 2014 on 11 June 2014 and payment on 17 June 2014. Both were late and so HMRC issued a Surcharge Notice form V161 but because the penalty was only £20.75 (2% of £1,037.50) they did not levy it.
- 35 iii. In respect of the period ended 31 July 2014 the appellant submitted the return due by 7 September 2014 on 1 October 2014 and payment on 2 October 2014. Both were late and so HMRC issued a Surcharge Notice form V164 but again because the 5% penalty was small they not levy it.

iv. In respect of the period ended 31 October 2014 the appellant submitted the return due by 7 December 2014 on 10 December 2014 and payment on 22 December 2014. Both were late and so HMRC issued a Surcharge Notice form V162 and charged a penalty of £101.40 being 10% of the tax due of £1,014.

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v. In respect of the period ended 31 October 2015 the appellant submitted the return due by 7 December 2015 in time on 30 November 2015 but did not make payment until 20 December 2015. Payment was late and so HMRC issued a Surcharge Notice form V162 and charged a penalty of £737.32 being 15% of the tax due of £4,915.50. It is this surcharge which is the subject of this appeal.

6.2 HMRC observe that the appellant accepts that payment was made late and that the appellant has consistently made payment using the Faster Payments Service.

6.3 HMRC point out that the notes on the back of Surcharge liability notices give advice to taxpayers who are having difficulties in paying. Advice to contact HMRC Business Payment Support Service is included.

HMRC contend that once it had been established that the appellant would have difficulty paying on time the appellant should have contacted HMRC requesting time to pay.

Alternatively they say the Director could have arranged payment to be made using alternative means such as CHAPS. As stated in the appeal letter of 8 March 2016 the Director had to visit the bank in person to request a new password so could at that time have discussed how payment could be made so as to meet the due date.

6.4 HMRC say that whilst they accept that the reason for the appellant's account being locked was due to a simple human error this would be precluded from providing a reasonable excuse under the VAT Act 1994 Sections 59 and 70. In support of this they quote from the case of *Garnmoss Ltd t/a Parham Builders v HMRC* where Judge Hellier said

“What is clear is that there was a muddle and a bona fide mistake was made. We all make mistakes. This was not a blameworthy one. But the Act does not provide shelter for mistakes, only reasonable excuses. We cannot say that this confusion was a reasonable excuse. Thus the default cannot be ignored under the provisions of subsection 59 Vat Act.”

7. The Tribunal's Observations

7.1 The Tribunal notes that both parties accept that the return for the period ended 31 October 2015 was sent on time but the appellant does not deny the relative payment was made late.

7.2 That being the case the Tribunal went on to consider whether the appellant has established a reasonable excuse for the late payment. It is regrettable that the appellant

has given insufficient attention to dates. The appeal letter incorrectly dated 5 February 2014 referring to making a payment in December 2015 may be explained by a simple typographical error but the letter also refers to payment being made late on 22 December 2015 which date does not agree with the date HMRC say they received payment namely two days before on 20 December 2015.

The appellant says that “my company has never made a late payment in all previous years”. This is not in accordance with the compliance record provided by HMRC and detailed at paragraph 6.1 above. That record shows late payment in respect of all four return due dates in 2014.

7.3 The appellant details problems at the bank but is imprecise as to the dates those problems occurred and dates action was taken and the problem resolved. There is no explanation of whether the payment due to HMRC was explained to the bank and whether alternative means of making payment were discussed. In the papers provided to the Tribunal there is no copy of any correspondence or e-mail to the bank concerning the matter or any evidence to support the appellant’s claims. There is no statement that the appellant tried to contact HMRC to explain the difficulty and seek a time to pay arrangement.

7.4 The Tribunal is not convinced that the appellant did all it could to make payment to HMRC or to contact HMRC in order to advise of the difficulty..

7.5 The Tribunal finds that although the VAT return was received by HMRC on time payment was made late. Further the appellant has not established any reasonable excuse for the late payment. It follows that this appeal is dismissed.

8. 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: 1 JUNE 2016