



TC05140

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Appeal number: TC/2016/00618

VALUE ADDED TAX – whether late payment of VAT, Yes. Whether reasonable excuse for late payment - Yes.

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**FIRST-TIER TRIBUNAL
TAX CHAMBER**

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PR POWERSAVING SOLUTIONS LIMITED

Appellant

- and -

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

Respondents

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 the Notice of Appeal dated 4 February 2016, and HMRC's Statement of Case dated 25 February 2016 with enclosures. The Tribunal wrote to the Appellant on 2 March 2016 indicating that if they wished to reply to HMRC's Statement of Case they should do so within 30 days. No reply was received.

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DECISION

1. Introduction

5 This considers an appeal against a VAT default surcharge of £540.01 for what the respondents (HMRC) submit is the late payment of VAT totalling £27,000.71 which was due to be paid by 7 November 2015 in respect of the appellant's VAT return for the three month period ending on 30 September 2015.

10 2. Legislation

VAT Act 1994 Part IV Sections 59, and 71
Finance Act 2009 Section 108

3. Authorities

15 *Garnmoss Ltd – T/a Parham Builders* TC/2011/8183
J B Steptoe CA July 1992, [1992] STC 757

4. Facts

20 4.1 A Value Added Tax return for the three month period ended 30 September 2015 was due to be submitted by the appellant with the appropriate payment to reach HMRC by 7 November 2015. The appellant's preferred method of payment is by Direct Debit.

25 4.2 HMRC received the return in time on 6 November 2015 but when they originated the Direct Debit on 11 November 2015 it was returned unpaid because the amount of £27,000.71 exceeded the balance of cleared funds available in the account by £1,784.61. The appellant had no overdraft facility. HMRC say they received payment by Billpay on 18 November 2015 but it appears that the amount was not debited to the appellant's account until 20 November 2015.

30 4.3 HMRC issued a Default Surcharge notice in the sum of £540.01 on 13 November 2015.

5. Appellant's submissions.

5.1 In a letter to HMRC dated 26 November 2015 requesting a review the appellant states

35 "It was unfortunate that we did not meet the deadline of the 7th November. We believed that we had been paid by our financiers in time, unfortunately the money arrived in our account the day after you attempted to apply the Direct Debit.

We are a growing business who have only just begun to turn a profit. We have laboured for 2 years to get into the position we are now and cash is still incredibly

tight for our business. This additional surcharge will only serve to make business more difficult for us. We have already significantly overpaid on PAYE and have been awaiting repayment from yourselves for this amount for a number of months.”

5.2 The Tribunal notes that in a letter dated 30 December 2015 HMRC confirmed that they had conducted a review and considered that the appellant had given no reasonable excuse for the late payment. They considered that the difficulties experienced by the appellant were no more than the normal hazards of trade. They confirmed the surcharge. In an e-mail dated 19 January 2016 the appellant once again requested a review making similar comments to the above, and sending bank statements for the period 30 October to 30 November 2015. This request was rejected by HMRC because they do not normally conduct more than one review.

5.3 In the Notice of Appeal to the Tribunal dated 4 February 2016 the appellant gives the following grounds of appeal

“After submitting our VAT return on 7th November, 2015, HMRC attempted to take out of the account £27000.71 on the 11th November 2015. Sadly we do not operate an overdraft account as we are a relatively new expanding business and the bank reclaimed the same amount on the same day as the withdrawal of that amount would have made us £1784.61 overdrawn.

Sadly we had been waiting for approximately 12 months for HMRC to repay us for overpaid PAYE almost £3500, which they have finally done this week. This combined with our main client paying us a week later than scheduled meant that payment could not be made until 20 November (only 9 days later).

It seems grossly unfair that we are being made to pay a surcharge by HMRC on a payment we couldn't make because HMRC were late paying us themselves.”

25 **6. HMRC Submissions**

6.1 HMRC say that the appellant's return for the period ended 31 March 2015 was due to be submitted and paid by 7 May 2015 but the return was received one day late on 8 May 2015. HMRC therefore issued a surcharge liability notice to the appellant on 15 May 2015. Whilst there was no financial penalty this had the effect of notifying the appellant that it was now in the default surcharge regime. Subsequently the appellant paid the return for the three month period ended 30 September 2015 late so HMRC issued a default surcharge of £540.01 being 2% of the amount outstanding of £27,000.71.

6.2 HMRC point out that in the appellant's original request for a review dated 28 November 2015 the appellant attributed the lack of funds to the fact that money due from their financiers, £95,000 had not been received when expected. These funds arriving two days after the Direct Debit had failed. In fact the appellant said this in an e-mail dated 30 December 2015 requesting the second review which was turned down.

5 6.3 HMRC say they accept that there was a delay in repaying PAYE overpaid by the appellant. They say that the sum involved, approximately £3,500, was only 13% of the VAT due of £27,000.71, and was less than 1% (0.6%) of the total output figureof £517,253.53. It should be noted however that the overpayment only arose due to the appellant themselves overpaying the sums due in respect of PAYE liabilities.

6.4 HMRC contend that, whilst there was a delay in refunding the monies to the appellant, had the appellant not overpaid their VAT in the first instance the monies would still have been held by them. There appears to be no explanation as to why the appellant made the overpayment

10 6.5 HMRC say “It cannot be said with certainty, however, that had the monies been repaid at an earlier date that they would still have been in the appellant’s account at the time the Direct Debit was due to be collected. It is possible that the appellant would have utilised the monies elsewhere.”

15 6.6 HMRC pointed out that their surcharge liability notices give guidance on submitting VAT returns and payment on time. They also advise that if a taxpayer is having problems paying VAT due they should contact HMRC Business support service before the due date.

20 6.7 HMRC contend that in the circumstances the appellant, knowing the VAT payment was due, should have checked sufficient funds were available and on finding there was a shortfall should have contacted HMRC requesting time to pay.

6.8 HMRC say that the appellant’s case is that an insufficiency of cleared funds at the due date for collection of the Direct Debit resulted in it not being met. This is excluded from providing a reasonable excuse by VAT Act 1994 Section 71(1)(a).

7. The Tribunal’s Observations

25 7.1 The Tribunal notes that both parties accept that the return was sent on time and that the appellant does not deny payment was made late.

7.2 That being the case the Tribunal considered whether the appellant has established a reasonable excuse for the late payment.

30 7.3 It is apparent that many of the difficulties experienced by the appellant such as their main client paying a week later than anticipated and the financier paying two days later than expected are part of the normal hazards of trade and cannot be considered as reasonable excuse for late payment. It was open to the appellant to request time to pay.

35 7.4 HMRC are correct in saying that an insufficiency of funds does not provide a reasonable excuse. However it was established in the case of *JB Steptoe* that the reason for the lack of funds might provide a reasonable excuse.

7.5 Whilst it is clear that the appellant overpaid PAYE of around £3,500 and has offered no explanation for that, the Tribunal notes that HMRC accept there was a delay in repaying the overpaid amount and they offer no explanation for that delay.

5 7.5 The Tribunal notes that when HMRC tried to take the VAT sum due to them by means of a Direct Debit the appellant had in its bank account most of the amount of £27,000.71 due but there was a shortfall of £1,784.61. Had there not been a delay in repayment of about £3,500 by HMRC the Direct debit would have been successful.

10 7.6 In the Tribunal's view HMRC's statement that had they made repayment earlier it is possible that the appellant would have utilised the monies elsewhere is conjecture. The fact is that at the time the appellant was due to make the VAT payment to HMRC he was short of funds by an amount of £1,784.61 and HMRC had delayed making a repayment due to the appellant of about £3,500. There has been no explanation for that delay.

15 7.7 In their letter to the appellant dated 30 December 2015 HMRC say "A reasonable excuse is normally an unexpected or unusual event that is either unforeseeable or beyond a person's control." The Tribunal considers that a delay of almost a year by HMRC of refunding an amount overpaid to them is an event which falls within that definition.

20 7.8 Therefore the Tribunal finds that although payment was made late, the appellant has established a reasonable excuse for the late payment. It follows that this appeal is allowed.

25 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.

30 **PETER R SHEPPARD**
TRIBUNAL PRESIDING MEMBER

RELEASE DATE: 3 JUNE 2016

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