



TC05268

Appeal number: TC/2016/00505

*Construction Industry Scheme - Late Filing Penalty - whether reasonable excuse-
Appeal dismissed*

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

PARAMOUNT ELECTRICAL CONTRACTORS LLP Appellant

- and -

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

TRIBUNAL: JUDGE JENNIFER A TRIGGER

The Tribunal determined the appeal on 6 June 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 with enclosures and HMRC's Statement of Case with enclosures acknowledged by the Tribunal on 8 March 2016.

Decision

Introduction

1. This is an appeal against a Late Filing Penalty imposed under paragraph 8 of Schedule 55 Finance Act (FA) 2009 for the late filing of a Contractor's Monthly Return (CMR) under the Construction Industry Scheme (CIS) for the year ending 5 April 2015.

2. Summary judgment was given by the Tribunal. The Decision was released on 14 June 2016. On 29 June 2016 the Appellant made a request for a full statement of reasons.

Background Facts

3. The Appellant was required to file a CMR for the period ended 5 April 2015. The filing date was 19 April 2015.

4. The Appellant's CMR was filed on 22 April 2015. As the CMR was not received by the filing date HMRC sent a late filing penalty notice on 6 May 2015 for £100.00.

Appellant's submissions

5. On 12 May 2015 the Appellant appealed to HMRC against the penalty. The appeal was rejected by letter dated 27 May 2015 but HMRC offered a review.

6. On 30 August 2015 the Appellant again appealed to HMRC on the grounds that the CMR was returned to HMRC two days late because the Appellant "did not receive the it through the post on time", in other words there was insufficient time to enable the CMR to be delivered to HMRC by 19 April 2015.

7. The Appellant claimed also that a penalty of £100.00 was a significant cost to the business in the economic climate pertaining at that time.

8. As the Appellant had previously been offered a review but failed to avail itself of the offer, HMRC wrote to the Appellant on 17 December 2015 to tell the Appellant that a further review was not possible and at the same time advised the Appellant that an appeal could lodged with the Tribunal.

9. On 27 January 2016 the Appellant notified the Tribunal of its appeal on the grounds that the late filing of the CMR was not the fault of the Appellant.

HMRC's submissions

10. The Appellant was been registered for CIS on 1 March 2010 and filed CMR's from 5 March 2010. Since then there had been several instances when the CMR was filed late, including two occasions when the grounds of appeal were the same as those pleaded in this appeal.

11. HMRC accepted the earlier appeals. However, educational letters were sent to the Appellant by HMRC. Those advised that it was the sole responsibility of the Appellant to complete a CMR and send it to HMRC by the 19th of each month. The letter contained information on how to avoid penalties and the escalating scale on which penalties were levied.

12. The Appellant, in common with all CIS contractors, was sent a CMR each month. The CMR was issued on or about the 29th of the month so as to ensure the document was received by the 5th of the following month. The process was automated.

13. The Appellant had the option to file the CMR electronically. If the Appellant had chosen to do so HMRC would no longer have sent the CMR in paper form.

14. The responsibility to ensure that the CMR was filed on time was the Appellant's. As the appeal had not revealed anything exceptional which had prevented the Appellant from filing the CMR by the 19th of the month HMRC were entitled to levy a penalty.

15. Therefore, HMRC pleaded that the penalty had been correctly charged and levied at the appropriate rate.

16. HMRC maintained that consideration was given as to whether the penalty could be reduced below the statutory minimum under paragraph 16 Schedule 55 FA 2009 but decided that there were no exceptional circumstances which would justify a reduction.

The Law

17. The Finance Act 2004, effective 6 April 2007, as supplemented by the Income Tax (Construction Industry Scheme) Regulations 2005.

The scheme provides for certain payments made under construction contracts by a contractor to a subcontractor to be made under deduction on account of income tax. Subcontractors who are registered for gross payment may receive payment without deduction.

Sections 58, 59 and 60 Finance Act 2004 define a subcontractor, contractor and a contract payment.

Section 61 requires a contractor to make deductions at a relevant percentage from payments to those subcontractors who are not registered to be paid gross under section 63 Finance 2004.

Section 70 allows HMRC to make regulations requiring contractors to submit periodic returns. Those regulations are cited above. Regulation 4(1) provides that a return, the CMR, must be made by the 19th of each calendar month. Regulations 4(2) and (3) specify the information which must be included in the CMR.

18. Paragraph 8 Schedule 55 FA 2009 provides that if the CMR is not received by the filing date a penalty of £100.00 is payable.

Both the “filing date” and the “penalty date” are defined in Paragraph 1(4) Schedule 55 FA 2009.

19. Paragraphs 23(1) and (2) Schedule 55 FA 2009 provide that an appeal against a late filing penalty will be successful where the contractor shows that there is a reasonable excuse for the late filing.

A reasonable excuse is generally regarded as something that is normally unexpected or unusual that is unforeseeable or beyond the contractor’s control and which prevents the contractor from complying with their obligation to file on time.

If there is a reasonable excuse it must exist through the failure period.

An insufficiency of funds is not a reasonable excuse, unless attributable to events outside the contractor’s control. Where the contractor had a reasonable excuse for the failure but the excuse has ceased the contractor is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.

Findings of Fact

20. The Appellant filed the CMR late.

21. The Appellant did not have a reasonable excuse.

Reasons for the Decision

22. The Appellant accepted that the CMR had been filed late but claimed that there was a reasonable excuse. The Tribunal did not accept that the Appellant had demonstrated that there was a reasonable excuse.

23. The Appellant had been registered for CIS returns since 1 March 2010 and had filed a CMR from 5 March 2010. In the following years there had been several instances when the CMR had been filed late including two occasions when the Appellant had claimed that the paper CMR had been received late from HMRC.

24. The Tribunal considered that the Appellant should have put in place procedures to ensure that the CMR was received on time. The HMRC despatched the CMR by automated system on or about the 29th of the month. This was to ensure that the document was received by the 5th day of the following month. In the opinion of the Tribunal HMRC had allowed sufficient time for a CIS contractor to file the CMR. When the CMR was not received by the Appellant on the 5th day of the month the Appellant should in the opinion of the Tribunal have contacted HMRC. There was no evidence that the Appellant had taken any such action before the 19th of April 2015.

25. The Tribunal did not accept that the late receipt of the CMR, if that in fact was what had happened, was a matter beyond the control of the Appellant. A prudent contractor would have taken steps to ensure that the CMR was received in time so that it could be completed and returned to HMRC by the 19th of the month.

26. As the Appellant had filed the CMR late in previous years HMRC had sent an advisory letter. An example of such a letter was within the appeal bundle before the

Tribunal at folio 7a to 7b. It was clear to the Tribunal that the Appellant had been adequately warned of the consequences of filing the CMR late. The letter advised that the Appellant could avoid a penalty by filing the CMR on line. If the Appellant had filed on line the filing would be immediate and a receipt sent.

27. The Appellant had chosen not to file on line. In fact the Appellant had taken no action to avoid filing the CMR late. The Tribunal decided that the failure to file on time was not caused by the HMRC but by the Appellant, who had failed to act in a prudent and responsible manner to ensure that its legal obligations were met.

28. The Appellant had pleaded an insufficiency of funds. This cannot amount to a reasonable excuse unless the lack of funds is caused by an event outside the Appellant's control. The Tribunal did not accept that the effect of the economic circumstances was an event outside the Appellant's control. It was incumbent on the Appellant to have in place contingency arrangements. A downturn in trade was not unusual but it was something that the Appellant should have made arrangements for in his trading accounts.

29. The Tribunal noted that HMRC had considered a Special Reduction under the FA 2009. As there were no exceptional, abnormal or unusual circumstances HMRC had not made a Special Reduction. The Tribunal upheld that decision.

30. The Appellant did not have a reasonable excuse and the appeal therefore failed.

31. 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 no 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.

**JENNIFER A. TRIGGER
TRIBUNAL JUDGE**

RELEASE DATE: 29 JULY 2016