



TC05422

Appeal number: TC/2016/02306

VALUE ADDED TAX – late submission and late payment of VAT due on Return – whether reasonable excuse for late payment – no – appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

RAT Ventures LLP

Appellant

- and -

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

TRIBUNAL: JUDGE DR K KHAN

The Tribunal determined this appeal on 15 August 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 18 April 2016 and HMRC's Statement of Case dated 26 May 2016.

DECISION

Introduction

- 5 1. This is an appeal against a Default Surcharge for the period 10/15 for the late submission and consequently the late payment of VAT. The surcharge was levied at 10% of the tax due with the amount being £865.50.
2. The Appellant's preferred method of payment was via Direct Debit (DD). Where payment is made by DD the VAT will normally be collected three working days after the payment deadline. However, if the Return is submitted late, collection will take place three working days after the submission. The 10/15 Return had a due date of 7 December 2015. However, the Return was not submitted until 8 December 2015, therefore the DD could not be collected until 11 December 2015 and was late.
3. The Appellant has been in the Default Surcharge Regime since the period 07/13.

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Legislation and case law

4. VATA 1994 S. 59 and 17.
5. The legislation lays out provisions whereby a Default Surcharge may be levied where HMRC have not received a VAT Return for a prescribed accounting period by the due date or have received a Return but have not received by the due date the amount of VAT shown on the Return as payable.
6. The first default does not give rise to a Penalty but the Trader is brought within the Default Surcharge Regime. A second default within a twelve-month period leads to a Penalty of 2% of the tax due. Further defaults within the following year result in a 5% Penalty which further defaults can increase to 15%. The Trader will escape a Penalty if a reasonable excuse can be established.

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Appellant's submission

7. The Appellant stated:
- 30 "We are appealing on the grounds that we feel that to levy a 10% charge on a payment that was only one day late but was made all the same without the need for reminder, represents an unnecessarily harsh penalty for what was merely an honest oversight as stated in our original appeal in January and February. We urge you to reconsider the amount".

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Respondent's submissions

8. HMRC say that the Appellant does not have a reasonable excuse. Honest mistake as cited by the Appellant as the reason for the late submission of the 10/15 Return does not provide a reasonable excuse under Notice 700/50 Para.6.3. This states that genuine mistakes, honestly and acting in good faith are not reasonable excuses.

9. They draw reference from the case of *Garnmoss Ltd. t/a Parham Builders TC/2011/8183* where Judge Hellier stated:

“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 for reasonable excuses. We cannot say that this confusion was a reasonable excuse. Thus this default cannot be ignored under the provisions of subsection [S.59 VATA (7)]”.

10. They further say that the Surcharge is laid down in law and neither the Respondent nor the Tribunal have the power to reduce the amount because of mitigating circumstances.

11. The appeal should be dismissed and the Penalty upheld.

Conclusion

12. The first point raised by the Appellant is that they did not receive a reminder from HMRC. The non receipt of a reminder does not amount to a reasonable excuse for the late submission of a VAT Return. VAT registered traders are expected to be aware of their quarter ends and not rely on receipt of a reminder for the period end. Normally reminders are issued before the due date but lack of receipt of a reminder will not be considered a reasonable excuse. The Tax Return itself shows the due date and it is the Taxpayer's responsibility to ensure that the Return is received by that date. Likewise, the Tax Return Guidance shows the due date for payment and it is the Taxpayer's responsibility to pay on time.

13. The Surcharge Notice will also advise the Appellant that they would be in default and that a Penalty would arise if payment is not made by a certain date. The Appellant therefore would be fully aware of the potential financial consequences of failing to render the Return and full payment by the due date.

14. If the Appellant was going to be late with their submission or payment they should have contacted HMRC and made alternative arrangements. This was not done.

15. The Tribunal understands the Appellant's feeling that the Penalty is harsh for being one day late. However the Penalties are laid down by statute and various cases have decided that the Penalty Regime is fair and proportionate.

16. For these reasons the appeal is dismissed and the Penalty is upheld.

5 17. 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
10 "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)"
which accompanies and forms part of this decision notice.

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DR K KHAN
TRIBUNAL JUDGE

RELEASE DATE: 18 OCTOBER 2016