



TC02844

Appeal number: TC/2012/09753

Default surcharge – appeal dismissed.

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

TOWNLEY NETWORK SOLUTIONS UK LLP Appellant

- and -

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

**TRIBUNAL: JUDGE RICHARD BARLOW
 ALAN REDDEN FCA**

Sitting in public at Manchester on 25 July 2013

No appearance for the Appellant

**Mr Bernard Haley of the office of the General Counsel and Solicitor to HM
Revenue and Customs, for the Respondents**

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DECISION

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1. The appellant did not attend but the Tribunal, being satisfied that the appellant had been properly informed of the hearing, decided to proceed in the absence of the appellant.

10 2. The appeal relates to default surcharges for periods 11/09, 02/10, 11/10, 02/11, 05/11, 08/11 and 02/12. In fact the surcharge for 02/10 was withdrawn by the Commissioners after the notice of appeal had been served so we will formally allow the appeal for that period but the appeals in respect of the other periods are dismissed.

15 3. The appeal for 11/09 relates to a surcharge at 5% of the tax due, that for 11/10 was at 15% but was amended to 10% after the withdrawal of the 02/10 default and the remainder were all at 15%.

20 4. Section 59(7)(b) of the VAT Act 1994 provides that where an appellant satisfies the Tribunal that it has a reasonable excuse for a default then it is not liable for that default. However, section 71 of the Act provides that an insufficiency of funds is not a reasonable excuse.

25 5. The appellant stated in its grounds of appeal that it had several time to pay agreements but that it was never advised that the surcharges would still apply. We hold that it is for the appellant to produce evidence to satisfy us that a reasonable excuse exists and as the appellant has produced no evidence that burden has not been discharged. We would add that a time to pay agreement is not a reasonable excuse
30 unless it is entered into before the default arose and that either the appellant was told or misled into thinking that would preclude such a default arising; none of which appears to be the case on the documents we have seen.

35 6. In the context of applying to be excused from depositing the amount in dispute the appellant also referred in its notice of appeal to the fact that it could not afford to pay the defaults. That is clearly not an excuse even if it was intended that that statement should be taken to be part of the grounds of appeal. Section 71 relates to an insufficiency of funds to pay the default rather than the surcharge and although, if the
40 appellant cannot pay the surcharge that might be evidence it could not pay the sum in default which is larger than the surcharge, none the less there is no excuse for the default.

7. Accordingly the appeals relating to the periods referred to other than 02/10 are dismissed.

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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.

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**RICHARD BARLOW
TRIBUNAL JUDGE**

RELEASE DATE: 20 August 2013

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