



TC03139

Appeal number: TC/2013/05925

VAT – Default Surcharge – late payment – whether the taxpayer had taken all reasonable steps to make payment on time – yes – appeal allowed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

AREA PLANT AND SCAFFOLDING LIMITED Appellant

- and -

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

**TRIBUNAL: DR K KHAN
MR JULIAN STAFFORD**

Sitting in Cambridge on 7 November 2013.

Mr Robert Marsden, Director, appeared for the Appellant.

Erika Carroll, Presenting Officer, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents.

DECISION

1. The appeal was allowed on the day and the parties agreed to a short form decision. The decision is therefore given pursuant to Rule 35 of Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009.

2. The matter under appeal is against a default surcharge for the VAT return period ending 31 March 2013 (03/13) in the sum of £9,509.73 being 15% of the VAT unpaid at the due date.

3. HMRC carried out a review of the appeal on 17 July 2013 and reduced the surcharge to £5,009.73 to reflect the fact that £30,000 had been paid by the due date.

4. The sole issue in this case is whether the Appellant had made all the necessary arrangements for the payment of the VAT by the due date with the bank.

5. The bank wrote to the Appellant explaining that if all forms had been completed and there were available funds in the company account and bank charges had been paid by 3.00 p.m. on the date the tax payment was due to be made, then the payment would be made on that date. The evidence suggested the Appellant had done everything before 3.00 p.m. on the day and so it was reasonable for him to believe that the payment would have been made on that day. It is quite clear that if the Appellant had exceeded the time limit of 3.00 p.m. set by the bank then the bank would have informed the Appellant that the payment could not be made on that day. This was not done.

6. On the balance of probabilities therefore, the Tribunal concluded that the Appellant had done everything he could have done to make the requisite tax payment and it is fair to assume that the payment would have been made by the due date. As it happens, the payment was made on the following day which resulted in the penalties.

7. The Tribunal therefore allows the appeal on the ground that the Appellant had taken all reasonable steps to make the payment. It is a fair assumption that the payment would be made on that day.

8. Appeal allowed.

9. 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.

**DR K KHAN
TRIBUNAL JUDGE**

RELEASE DATE: 12 December 2013

5