



TC03265

Appeal number: TC/2013/04380

VAT – default surcharges – notices served? – yes – reasonable excuse? – no.

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

SKIPTON WINDOWS LTD

Appellant

- and -

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

**TRIBUNAL: JUDGE RICHARD BARLOW
LESLIE BROWN**

Sitting in public at Bradford on 10 January 2014.

Mr G J Barnes and Mr M Maginnis directors for the Appellant

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

DECISION

5 1. The appellant appeals against default surcharges notified to it in respect of periods 01/12 (£427.96), 07/12 (£692.00), 10/12 (£2,323.89) and 01/13 (£2,963.56).

2. The first issue that arises is whether the appellant had been given notice of the default surcharge period and the default surcharges under appeal. The respondents contend that the default surcharge period was notified by letter dated 16 December 2011 because of late payment of tax for the period 10/11. The surcharges under
10 appeal were alleged to have been notified on 16 March 2012, 17 September 2012, 7 January 2013 and 2 April 2013. A surcharge for period 04/12 had allegedly been notified on 15 June 2012 but that had been withdrawn. The surcharges for periods 07/12, 10/12 and 01/13 had all originally been calculated on assessed sums but were replaced by the sums in dispute after the appellant made its returns for those periods.

15 3. In each case where surcharges were originally based on assessed sums the respondents allege that they had notified the surcharges by letter both in respect of the original sums and the amended sums.

4. In total therefore nine letters were allegedly sent to the appellant concerning the surcharges relevant to this appeal.

20 5. In its notice of appeal the appellant claimed not to have received the letters of 16 March 2012, 15 June 2012, 17 September 2012, 7 January 2013 and 2 April 2013. At the hearing it was claimed that the others of the nine letters had not been received as well as those specifically mentioned in the Notice of Appeal.

25 6. We read the witness statement of Richard Lang, officer of Revenue and Customs, of the VAT Central Unit who explained the procedure for sending out such notices. He described a system which included the recording of the sending out of such letters on a tape. The letters are printed automatically put in envelopes in accordance with the details on the tape and there is system for checking that the numbers sent out accord with the numbers on the tape. The taxpayer's principal place
30 of business is used as the address to which the letters are sent and is automatically printed on the envelopes before they are dispatched.

7. The appellant has only ever used one address and it is the address recorded in the commissioners' records as the principal place of business.

35 8. Whilst it might be said that any system is capable of malfunctioning we find that the respondents' system is robust and that the likelihood of any particular letter being incorrectly addressed or not being sent out is minimal. The chances of nine letters all being incorrectly dealt with is so small that it can be discounted. We therefore find as a fact that the letters were all sent.

40 9. As a matter of law under section 59 of the VAT Act 1994, the respondents are required to "serve notice on the taxable person" to establish a surcharge period or its

continuation and in practice after the original notice is served the commissioners send out extension notices which are incorporated in the notices of surcharges. Section 98 of the Act permits notices to be given by sending them by post to the usual place of business.

5 10. Mr Barnes and Mr Maginnis both admitted that there had been no instances of other correspondence from any of their customers or suppliers or anyone else going astray and explained what their own system for dealing with post was. Letters from HMRC would have been shown to one of them by one of two members of staff who would have been the people who would open letters.

10 11. On any reasonable examination of the evidence we can only conclude that the letters were not only dispatched correctly but were also received.

12. Indeed the matter does not entirely end there.

15 13. We were shown a transcript of a telephone conversation between an officer of Revenue and Customs and Mr Barnes which took place on 20 June 2012. That was after three of the allegedly non-received letters had been sent. Mr Barnes was, in effect, ringing to explain why a payment was being made late. His reason was an unexpected bad debt which in fact gave rise to the withdrawal of the surcharge for period 04/12 (the commissioners having accepted there was a reasonable excuse for that period).

20 14. During the course of the conversation the following exchange occurred. We quote it as recorded by the commissioners with minor grammatical errors which do not affect the sense of what is recorded:

25 Officer: No I'll set that up for you. What you might need to do though is I don't if you're aware that the last VAT quarter you've been charged a surcharge and in this VAT quarter you've been charged a surcharge of being late.

Mr Barnes: Right.

Officer: I don't know if you're accountant knows or

30 Mr Barnes: No at this moment in time I will not be appealing what they have to do. If I get this payment then you'll have to write to me then I'll have to pay then which I am quite happy to do.

15. That exchange is entirely inconsistent with the appellant's account of not having received the notices. Mr Barnes expressed no surprise when the surcharges were mentioned and states himself to be happy to pay them.

35 16. There had been no problems with the post generally and as the appellant's evidence in respect of the non-receipt of at least three of the letters has been shown to be incorrect; we reject the appellant's evidence for these reasons as well as those mentioned above.

17. The appellant has not put forward any other reasonable excuse for the late payments of the relevant amounts of VAT than the misconceived assertion of non-receipt of the letters and so the appeal is dismissed.

5 18. 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.

**RICHARD BARLOW
TRIBUNAL JUDGE**

15

RELEASE DATE: 22 January 2014