



TC03342

Appeal number: TC/2013/06401

PAYE/NIC – late payment – whether reasonable excuse – no – appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

FLOWER GROVE LIMITED

Appellant

- and -

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

Respondents

**TRIBUNAL: JUDGE DR K KHAN
MS ELIZABETH BRIDGE**

Sitting in Bedford Square, London on 6 December 2013

**Meir Uzan, Director of the Appellant Company and Anushka Tilakaratne,
Accounts Manager for the Appellant**

**Gloria Orimoloye, Presenting Officer, instructed by the General Counsel and
Solicitor to HM Revenue and Customs, for the Respondents**

DECISION

Introduction

- 5 1. The issue is whether the Appellant had a reasonable excuse for making late payment of their PAYE/NIC monthly liability. The penalty charge is £4,876.53 for six defaults at the rate of 2% for the year 2011.

The Facts

- 10 (1) A penalty determination was issued by HMRC to the Appellant on 15 February 2013. This was for the year ending 5 April 2012. From the payment records the employer had paid their PAYE/NIC late multiple times in the tax year 2011/2012.
- 15 (2) On 14 March 2013 the Appellant appealed on the basis that the delay in payment was unintentional, the cheques were posted using second class post, there had not been any previous correspondence regarding possible penalties and the penalties were unfair.
- 20 (3) On 19 March 2013 a letter was provided to the Appellant explaining that there was no reasonable excuse for the late payment. It was also explained that the Appellant should have known the payment dates which were advertised on the Internet and in materials provided to employers and in addition written and verbal warnings were issued and advice provided of the implications for the late payment.
- 25 (4) On 10 April 2013 the Appellant requested an internal review. They stated that they accepted the payments were late but they had not received any specific notice of their lateness and HMRC had waited until the penalty had accrued in order to provide notice to the Appellant.
- 30 (5) On 23 May 2013 an internal review was completed which conclude that the decision in HMRC's letter of 19 March 2013 should be upheld. It explained that the Appellant had been issued with default warning letters and that HMRC did their best to encourage the company to pay on time. The notes of several telephone conversations, warning letters and notices were outlined in detail.
- (6) It was founded there was no issue with regard to the posting of letters using second class postage but in any event HMRC would expect the Appellant to post letters to ensure that the payment was received on time.
- 35 (7) On 21 June 2013 the Appellant appealed to the Tribunal.
2. The facts are largely agreed in this case and the Appellant has admitted to be late with their payment.

The Appellant's contention

- (1) The Appellant has stated that they were late with their payment. They expected that they could have reasoned with HMRC to provide a less stringent penalty.
- 5 (2) The explained that they had no warnings or not letters or calls explaining that they were late with their payment and the implications of being late and the penalties which could have been charged.
- (3) Trading conditions were difficult and the business has suffered and it was sometimes difficult to pay on time where customers had not paid their invoices on time.
- 10 (4) They explained that they always tried to pay on time even if there were cash flow difficulties. They feel that the penalty imposed on this payment was particularly unfair. They acknowledged that they had made late payments for months 4, 5, 6, 7, 9 and 10 in the year 2011/2012.

HMRC's contentions

- 15 (1) The Appellant has provided no proof of posting and of the 7 late payments 4 were confirmed late during telephone calls with HMRC. These 4 were for months 5, 6, 7 and 9.
- (2) The cheques which were sent for months 3, 5, 6, 7 and 8 were all dated after the due date for payment. If these had been received prior to the due date HMRC
20 would not have been able to clear the cheques to make payment on time.
- (3) If there were issues relating to the use of second class stamps then the Appellant should have ensured that payment arrived on time. This was the responsibility of the Appellant not HMRC.
- 25 (4) The Appellant was provided with adequate guidance warnings, reminders and other details which explained the penalty regime and structure. In addition to general publicity, employers were sent specific late payment penalty warning letters after the first failure to pay on time. This was done on 28 July 2011, after the first late payment of £35,216.84. A further warning was issued in February 2012 and further warnings issued on 28 October 2011, 23 November 2011, 23
30 January 2012 and 29 February 2012.
- (5) Whilst the Revenue accepts that the business may have had cash flow problems as part of the normal cycle of business, these does not provide a reasonable excuse unless due to exceptional circumstances. There were no exceptional or unforeseeable events arising outside of the Appellant's control and outside of
35 the normal cycle which created severe cash flow problems for the business.

Discussion and Conclusion

(1) This appeal is dismissed and there is no reasonable excuse. The Appellant has confirmed that they made late payments and they have not provided any reasonable excuse for making those payments.

5 (2) An insufficiency of funds does not provide a reasonable excuse unless due to circumstances beyond the Appellant's control. While the Tribunal noted that some customers had paid late, no evidence was provided to show that this was the reason for the late payments of the tax. If the Appellant was aware that they were going to have difficulties in making payments on time they should have contacted HMRC to make arrangements to make pay late. This was not done.

10 (3) The lack of awareness of the penalty regime is not capable of constituting a special circumstance and in any event, the Appellant had adequate information to familiarise themselves with the penalty regime, its operation and the implications for late payment. The taxpayer has a primary obligation to make payments on time and a lack of a warning by HMRC does not excuse late payments. A reasonable employer acting in a prudent manner would familiarise themselves with the published information as well as circulated information provided by HMRC to ensure that they are compliant with their payment obligations. A reasonable prudent taxpayer would make all efforts to meet these obligations and in the event that they were unable to do so would approach HMRC to make alternative payment arrangements. Where a taxpayer fails to act in a manner which suggests that they have made all efforts to meet their payment obligations then they cannot be surprised if penalties are imposed on late payments and it is found that they do not have a reasonable excuse for making those payments late.

15 (4) Whilst it is understandable that the current financial climate may make it difficult for certain businesses to meet their payment obligations, this on its own without exceptional circumstances, does not present a reasonable excuse.

20 (5) The Appellant has failed to pay on time and has failed to show that they have a reasonable excuse for such failure.

25 (6) In the circumstances the appeal is dismissed.

3. 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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**DR K KHAN
TRIBUNAL JUDGE**

RELEASE DATE: 29 January 2014