



TC03426

Appeal number: TC/2013/07111

VAT - Default Surcharge - No reasonable excuse - Appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

NORTHERN TRANSPORT LIMITED

Appellant

- and -

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

Respondents

TRIBUNAL: JUDGE IAN W. HUDDLESTON

Sitting in public at Belfast on 31 January 2014

Mrs S. Spence, Officer, appeared for HMRC.

Mr Patrick Leonard of Harbinson Mulholland, Accountants appeared for the Appellant.

DECISION

The Appeal

1. This Appeal relates to a default surcharge levied upon Northern Transport Limited ("the Appellant") for the late payment of VAT for the period 03/12. That period coincided with the first period for which the Appellant was required to submit its VAT returns on line and to pay any VAT payable on foot of that return electronically.

The Appellant was represented by his accountant, Mr Patrick Leonard of Harbinson Mulholland and Mr James Sloan, Director who appeared to give evidence.

10 *The Facts*

2. The facts are straightforward and not in dispute. The Appellant failed to file its VAT return and pay its VAT liability on the due date (which in this case was 7 May 2012). Whilst the return was filed electronically the Appellant's bookkeeper was unable to make payment of the Tax having become "confused" and the tax as a result was not in fact paid until 16 May 2012.

3. The Appellant's VAT history showed six prior defaults all of which were not in dispute. Accordingly, on this occasion the default surcharge which became payable was calculated at the rate of 15% and amounted to £6,035.77. Whilst the return had been filed in time the BACS payment was not received until the 16 May 2012 and therefore the default surcharge was levied. On 26 July 2013 the Appellant wrote to HMRC asking for the decision to be reviewed. The review decision, dated 12 September 2012, upheld the original decision and the Appellant appealed.

The Appellant's Case

4. The grounds of appeal were that this was the Appellant's first VAT return to be filed "on line" and that the filing was carried out by a bookkeeper who was responsible for preparing and submitting the Appellant's VAT returns. Due, however, to a lack of experience of on-line submissions she became confused and therefore while she was able to file the return on line was not able to pay the VAT electronically and, further that this and that the default was resolved on 16 May by a direct credit transfer from the Appellant's bank.

5. The Appellant asserts that general inexperience of the electronic system compounded by the lack of familiarity of an employee is sufficient to raise a defence of "reasonable excuse" per Section 71 VATA 1994.

6. The Appellant, in asserting its defence of reasonable excuse, referred to Public Notice 700/50 (December 2011) and in particular paragraphs 6.1 and 6.2. Those paragraphs set out examples of what might constitute reasonable excuse and the Appellant through its advisor argued that the circumstances of this case fell squarely within such grounds. It also argued that it was reasonable to assert that reliance on an employee was a sufficient excuse for the default – even though that employee had failed to achieve what was expected of her. What the Appellant did not refer to was

paragraph 6.3 which in large part replicates the provisions of section 71 (1)(b) VATA 1994 which provides:-

5 "*(b) where reliance is placed on any other person to perform any task, neither the fact of that reliance nor any dilatoriness or inaccuracy on the part of the person relied upon is a reasonable excuse*".

HMRC's Case

10 7. HMRC's case is straightforward namely that in the run up to the compulsory on-line filing and payment of the VAT that there was adequate general education provided to traders of the process that was involved and that if the Appellant had any particular issue that the helpline service was available to provide assistance.

8. With specific reference to the Appellant HMRC also makes the case that given the Appellant's previous default surcharge history that they would have been aware of the default surcharge mechanism and the consequences of late filing and/or payment of tax.

15 9. Finally, relying on Section 71(1)(b) (as above) HMRC say that reliance on the bookkeeper is not sufficient excuse.

Decision

20 10. Whilst there is no definition of what constitutes reasonable excuse section S71(1)(b) (as quoted) provides statutory clarity as to the matters which do not constitute reasonable excuse.

On the facts, the Appellant's case for reasonable excuse is based on the "newness" of electronic filing and that it relied upon a bookkeeper who failed to perform part of her job description and that those two failures constitute reasonable excuse.

25 11. On the basis both that the argument for reliance was weak and that the Appellant delayed in rectifying the default we find that the defence of reasonable excuse is not established and dismissed the appeal.

12. The reliance asserted simply, in law, given the provisions of S71(1)(b) does not constitute reasonable excuse on the facts of the case.

30 13. Indeed, on the facts, as they were adduced in evidence, the Appellant - even though it was aware that it had failed to make that payment on the due date - still failed to make that payment until some 9 days later.

35 14. 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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**IAN W. HUDDLESTON
TRIBUNAL JUDGE**

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RELEASE DATE: 19 March 2014

