



TC03662

Appeal number: TC/2012/02385

Value Added Tax – Default Surcharge – whether reasonable excuse – no – appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

NORMAN PERKINS LTD

Appellant

- and -

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

Respondents

**TRIBUNAL: DR KAMEEL KHAN
MR NICHOLAS DEE**

Sitting in public in Bedford Square, London on 25 March 2014

Norman Perkins appeared for the Appellant

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

DECISION

Introduction

5 1. This appeal was heard initially some months ago (14 October 2013) and the Appellant presented a letter from his Accountant indicating that the company was experiencing cash flow difficulties because a major customer, Gilby construction Limited, went into liquidation owing the Appellant approximately £25,000. At that time, the appeal was adjourned to give the Appellant sufficient time to present information to the Tribunal to show that the financial difficulties claimed were due to unforeseen and unexpected events. If this was the case, there would be a reasonable excuse for the late payment of the VAT pursuant to the case of *J B Steptoe CA* [1992] STC 757.

15 2. At the present hearing, the Appellant did not raise the “*Steptoe* argument” but rather relied on other arguments which are explained below.

Matter under appeal

3. The appeal is against a Default Surcharge for the VAT period ending 31 August 2011 (08/11). The tax due was £10,584.39 and the surcharge was £1,058.43 which was charged at the 10% rate.

20 Appellant’s arguments

4. The Appellant explained that this appeal was not about a lack of funds. He made several points which included:

25 (1) He was asked by his accountant to write to HMRC to change his VAT return period dates. He wanted periods to end in March, June, September and December to be in line with other payments which were received by the company and to assist with cash flow.

30 (2) He wrote to HMRC on 29 July 2011 requesting a change of address and change of VAT return periods (staggered periods). On 12 August 2011 HMRC wrote to the Appellant requesting completion of certain forms for the change of address.

35 (3) On 31 August 2011 HMRC wrote to the Appellant regarding the change of the VAT return periods saying that they were unable to accede to the request. That letter however was sent to the wrong postcode. The Appellant completed the forms to change the VAT return periods on 12 September and returned these to the Revenue.

(4) On 19 September 2011 a letter was sent from HMRC to the Appellant confirming the effective dates of the new VAT return periods but pointing out that under the existing arrangement VAT returns would need to be

completed at the due date of 08/11. This letter was sent to the wrong postcode and it would appear that the letter went astray.

- 5 (5) The Appellant telephoned HMRC several times to enquire about progress. On 7 November 2011 the Appellant received a letter stating that its VAT return was late and the Appellant replied saying that the late payment was due to the CVA of a major client. He said he had telephoned HMRC to explain this position.
- 10 (6) In explaining the grounds of appeal, the Appellant said that he had made “numerous telephone calls and received different advice”. He was told that the new VAT payment dates had been agreed but unfortunately he had not taken the name of the officer of informed him of this position.
- (7) HMRC accept that various letters sent to the Appellant were wrongly addressed and acknowledged that the Appellant had called HMRC several times.
- 15 (8) The Appellant explained that he was under the impression that the VAT return periods had been changed and in addition he had received very poor service since there were delays in communication and misdirected mail.

The Respondents’ contentions

20 5. The surcharge for the period 08/11 has been correctly issued in accordance with s59 (4) VATA 2994 since a payment was received by HMRC after the due date.

6. The Appellant entered the Default Surcharge regime in 2010 after their first default was recorded for the period ending 31 August 2010. The Appellant was aware of the consequences attached to further late payments.

25 7. While the Appellant contends that he had several conversations with HMRC there has been no evidence to support or substantiate these calls. HMRC has no record of any calls being made by the Appellant regarding the period 08/11.

8. The Appellant was advised by an Accountant who should have been aware of how to seek advice and contact HMRC.

30 9. A completed form was received by HMRC on 14 September and they confirmed on 19 September in a letter to the Appellant that his request had been approved and that changes will take effect from the date of the letter which is 19 September. HMRC accept that this letter was not received by the Appellant due to the wrong postcode being addressed. A further copy of that letter was issued on 23 November 2011. Consequently, the Appellant has not been disadvantaged by the
35 wrongly addressed letter.

10. In terms of the default surcharge, the due date for payment had remained unchanged. The date for payment was 7 October and the Appellant’s payment was received on 2 November which was 26 days late. The Appellant was advised by the

National Advice Service helpline on 2 November on how to make a late payment and how to contact the Debt Management Unit to discuss the 08/11 outstanding liability.

11. The Appellant said that he did telephone HMRC to notify them that the payment for 08/11 would be late. The reason provided was that one of his major clients had gone out of business. On 1 December 2011 the Appellant wrote to HMRC saying that the late payment was due to a change in the VAT payment dates and he had only just received HMRC's letter of 23 November 2011.

12. HMRC submits that the Appellant has given two different reasons for the late payment neither of which the Respondents submit constitutes a reasonable excuse. It appears that the Appellant was confused as to the correct payment date but did not contact HMRC to confirm that his understanding of the payment dates was correct. The Law

13. The following provisions of VATA 1994 were relevant: section 59 (Default Surcharge); section 71 (Construction of section 59-70); section 76 (Assessment of amounts due by way of penalty interest and surcharge) and section 83 (Appeals).

Decision

(1) The Appellant would have had a reasonable excuse for late payment if he was able to demonstrate that the lateness had been caused by misleading or inaccurate information being provided to him by HMRC. He has not been able to do so.

(2) HMRC's position is that cash flow problems can only be accepted as a reasonable excuse where they arise from an unforeseeable or inescapable event; something more than the normal hazards of being a business. An insufficiency of funds itself is not a reasonable excuse. The Appellant has clearly stated that an insufficiency of funds was not the reason for his late payment though when the appeal was originally heard this was presented as a reason. The Tribunal will therefore discount and not consider an insufficiency of funds on the grounds that a major client has gone into administration. We have not been asked to consider this matter.

(3) The main point of the appeal is that the Appellant says he was informed that his payment dates had been changed. However when the Appellant signed and completed forms on 12 September requesting a change in the payment periods, he knew his request had not been processed at that time and should have understood or been advised by his accountant that he had to continue with the old payment dates. There is nothing to indicate that HMRC had changed the old payment dates and that these should not have been complied with. It is expected that the Appellant should have complied with these unless advised otherwise.

(4) The Appellant's argument that he should have made payment on different dates since his old payment dates had been changed by HMRC is not

valid. A change in payment dates can only be agreed if HMRC have given permission for those dates to be changed. There is no evidence whatsoever to show that those dates were changed and there should have been no Default Surcharge for the period 08/11.

5 (5) The Appellant was clearly confused but should have sought advice from
his accountant. It is quite surprising that that his accountant had asked
him to deal with the change of the payment dates with HMRC. This was
not a good idea and it is clear that the Appellant did not understand the
10 procedure for changing payment dates nor understood clearly what had to
be done to do so. It is in this confusion that the Default Surcharge arose.
It is most unfortunate that an Appellant with an accountant should have
found himself in this position.

14. Accordingly the appeal is dismissed.

15 15. 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
20 "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)"
which accompanies and forms part of this decision notice.

25 **DR KAMEEL KHAN**
TRIBUNAL JUDGE

RELEASE DATE: 30 May 2014