



TC03804

Appeal number: TC/2014/01419

VAT – EC sales lists – penalty for late submission – whether reasonable excuse

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

VB BLIND SYSTEMS LTD

Appellant

- and -

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

Respondents

TRIBUNAL: JUDGE WDF COVERDALE

The Tribunal determined the appeal on 14.07.2104 without a hearing under the provisions of Rule 26 of the Tribunal Procedure (First-tier Tribunal)(Tax Chamber) Rules 2009 (default paper cases) having first read the Notice of Appeal dated 11.03.2014 (with enclosure) and HMRC's Statement of Case submitted on 28.05.2014.

DECISION

5 1. The tribunal decided that penalties of £500 and £1,000 in respect of the late submission of EC Sales lists for the periods 06.12.and 09.12 were properly imposed by the Respondents.

2. The appeal is dismissed.

3. The Tribunal found that the filing dates for the 06.12 and 09.12 sales lists were 14 days after the end of the reporting period for paper Sales lists. The Appellants submitted their lists in paper form. The lists were, therefore, due on 14.07.2012 and 14.10.2012. They were both received by the Respondents on 05.03.2013 i.e. more than seven months late and more than four months late respectively.

4. Section 66 of the VAT Act 1994 provides that the amount of penalty to which a person who has been served with notice is liable is the greater of £50 and a penalty of the relevant amount for every day for which the default continues, up to a maximum of 100 days. The relevant amounts in this case are £5 in respect of the 06.12 period and £10 for the 09.12 period. The penalties have properly been calculated by the Respondents as £500 and £1,000 on the basis of the defaults having continued for more than 100 days in each case.

20 5. The Tribunal further found that there was no reasonable excuse for the late filing of the Sales lists.

6. By email dated 29.04.2013 the Appellant said that the forms were submitted to the appellants “around the required time”. In the Notice of Appeal it is said that the Appellant “may not always have submitted by the exact final date but always within a few days at least” but this is not borne out by the facts found by the Tribunal:

1.) The 06.12 and 09.12 Sales lists, when submitted, bore the dates 21.07.2012 and 30.10.2012 respectively. They would, therefore, have been late even if submitted on those dates.

30 2.) The Sales lists were not, in fact, received by the Respondents until long after the dates that they purported to have been sent: they arrived on 05.03.2013 and there is no evidence that they had been posted earlier than the beginning of March 2013; the Tribunal concludes that they were sent by the Appellants to the Respondents on or about 01.03.2013 which was well out of time.

35 7. The Appellant had a poor record of submission of Sales lists and had defaulted on several previous occasions. Clearly it will have been aware of the time limits and, having previously received a Penalty Liability Notice on 01.09.2011 (which was subsequently withdrawn by the Respondents) will have been aware of the penalty regime.

8. The test applied by the Tribunal in considering the matter of reasonable excuse is whether the exercise of reasonable foresight and of due diligence and a proper regard for the fact that Sales lists would become due on a particular date would not have avoided the default. The chronology of events, set out in the \Notice of Appeal and the Respondents' Statement of Case, disclose that such foresight and diligence by the appellant would have avoided the default.

9. In so far as the Appellant suggests that the imposition of the penalty is disproportionate, unjust or unfair, those arguments have already been disposed of by the Upper Tribunal in *HMRC v Hok* [2012] UKUT 363 (TCC) and *HMRC v Total Technology (Engineering) Limited* [2012] UKUT 418 (TCC). In the former it was made clear that the First-Tier Tribunal has no jurisdiction to determine the fairness of a penalty imposed by statute. It is plain from a perusal of the latter that a penalty of the magnitude of that imposed in this case could not be described as disproportionate even if there were jurisdiction to deal with the matter.

10. 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.

**WDF COVERDALE
TRIBUNAL JUDGE**

RELEASE DATE: 15 July 2014