



**TC03805**

**Appeal number: TC/2014/01432**

*VAT – default surcharge – penalty – whether properly imposed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**SYNMED LTD**

**Appellant**

**- and -**

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

**TRIBUNAL: JUDGE WDF COVERDALE**

**The Tribunal determined the appeal on 14.07.2014 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 12.03.2014 (with enclosures), HMRC's Statement of Case submitted on 09.04.2014 (with enclosures) and Amended Statement of Case submitted on 15.05.2014 (with enclosures), the Appellant's Replies dated 29.04.2014 and 30.05.2014 and the Tribunal's Directions dated 21.05.2014.**

## DECISION

1. The Tribunal decided that the Notice of Assessment of Surcharge dated  
5 13.12.2013 in the sum of £1,335.13 in respect of VAT due for the period 01.08.2013  
to 31.10.2013 was properly imposed.

2. The appeal is dismissed.

3. The Tribunal found that the VAT Return for the period 01.0-8.2013 to  
31.10.2013 was received by the Respondents on 09.12.2013. The due date for  
10 payment was 07.12.2013 for electronic payments; payment was received by the  
Respondents on 09.12.2013 via the Faster Payments Service i.e. two days late.

4. The Tribunal further found that there was no reasonable excuse for the late  
payment of VAT for the period ended 31.10.2013. In particular it is noted that the  
15 thrust of the appeal, set out in the Appellant's Replies dated 29.04.2014 and  
30.05.2014 is that the late payment was an oversight and payment was forgotten; the  
Tribunal adopts the language of VAT Notice 700/50 Section 6.3 which states that  
genuine mistakes are not reasonable excuse.

5. It has already been noted by the Tribunal on 21.05.2014 that one member of the  
Appellant's staff was due to go into hospital for an operation in December 2013 and  
20 this may have led to her forgetting to remind the Managing Director to make the  
payment of VAT. This type of event could, arguably, constitute reasonable excuse  
and the Appellant has been invited to supply further details but has failed to do so.  
The Tribunal is therefore now unable to give further consideration to that aspect of the  
matter; it is noted in any case that the Managing Director and one other staff member  
25 were aware of VAT matters such as the requirement for a quarterly Return and  
payment of the VAT due. The staff member's hospitalisation does not, therefore,  
amount to reasonable excuse.

6. Likewise the Appellant has not supplied any further details of the circumstances  
leading to the issue of a V165 Surcharge document on 30.04.2014 despite the  
30 Tribunal suggesting, on 21.05.2014, that it might be possible to reconsider those  
circumstances and the propriety of placement in the default surcharge regime at that  
time if there was a reasonable excuse for late payment. Consequently today's Tribunal  
accepts that placement in the default surcharge regime was indeed appropriate.

7. The Appellant, having been in the default surcharge regime since the quarter  
35 ended 30.04.2013, will have been aware of the consequences of any repeat of a failure  
to account for VAT on due dates.

8. The Appellant had hoped that payment would be received by the Respondents  
on Saturday the 7<sup>th</sup> December 2013, instructions having been given to their Bank on  
Friday the 6<sup>th</sup> December. Use was made of the Faster Payments Service which usually  
40 secures payment for the Respondents promptly, even on Bank Holidays and  
weekends. However this will depend upon the payer's Bank facilities and the

Appellant evidently had the mistaken belief that the Faster Payments Service would make payment by the due date but this was not to be the case. It is for the Appellant to make appropriate arrangements for the respondents to receive payments on time and any shortcomings in banking facilities do not assist in relieving the Appellant of this responsibility.

9. In the Notice of Appeal the Appellant refers to the penalty as “interest”. That is not the case: it is a penalty, fixed by statute.

10. The default surcharge regime is strict and a penalty is properly imposed even if payment is made only one day late. The Respondents are under no obligation to issue reminders.

11. The test applied by the Tribunal in considering the matter of reasonable excuse is whether the exercise of reasonable foresight and due diligence and a proper regard for the fact that payment of the VAT would become due on a particular date would not have avoided the default. The facts and chronology of events, set out in the Notice of Appeal and the Respondent’s Statement of Case, disclose that such foresight and diligence would have avoided the default.

12. In so far as the Appellant argues 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* [2102] 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 argument.

13. 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**