



TC03870

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Appeal number: TC/2014/01848

VAT – Reverse Charge Sales List – failure to file – taxpayer unaware of requirement to file – cash flow problems – no defence

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**FIRST-TIER TRIBUNAL
TAX CHAMBER**

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SKY BLUE CELLULAR LTD

Appellant

- and -

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

TRIBUNAL: JUDGE ALASTAIR J RANKIN

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The Tribunal determined the appeal on 29 July 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 2 April 2014 and HMRC's Statement of Case received on 5 June 2014 (with enclosures).

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DECISION

1. This is an appeal by Sky Blue Cellular Ltd (Sky Blue) against a penalty of £500.00 imposed in respect of a failure to submit a Reverse Charge Sales List (RCSL) form for the period 03/13.

2. Sky Blue was incorporated on 16 March 2011 and made a loss in the period of trading ending on 31 March 2012 of £1,488.00. It registered for VAT with effect from 1 April 2011 and notified HMRC that the reverse charge would apply from 7 December 2011. There was therefore a requirement for Sky Blue to submit a RCSL form for the period 12/11.

3. As no RCSL was received by HMRC a Penalty Liability Notice was issued on 12 February 2013 and sent to the business address appearing on the VAT application form. This Notice advised Sky Blue that if it did not submit the outstanding RCSL by 2 March 2013 it would receive a penalty of £5.00 a day from 3 March 2013 until the RCSL is received, subject to a maximum of 100 days (£500.00). The Notice also advised Sky Blue that if it did not submit future RCSLs on time it would be penalised without any further notices being served.

4. It appears that HMRC issued to Sky Blue on 19 August 2013 a civil penalty notice for £500.00 though no copy of this notice is among the papers furnished. Ossman Consultants Limited, Sky Blue's accountants (Ossman), emailed HMRC on 11 September 2013 advising that Sky Blue was not aware that the RCSL form needed to be submitted and that due to the current economic climate Sky Blue would find it extremely difficult to carry on its day to day business if the penalty had to be paid.

5. HMRC by letter dated 16 October 2013 advised Ossman that it had decided to uphold the penalty after reviewing the case as the correspondence did not provide sufficient grounds for the penalty to be withdrawn.

6. By letter dated 12 November 2013 Ossman requested the penalty notice to be reviewed by an independent HMRC decision maker. The same reasons were put forward by the accountants as in their email dated 11 September 2013.

7. A Higher Officer of HMRC carried out a review and by letter dated 10 March 2014 advised Ossman that she was upholding the penalty notice as Sky Blue had been correctly penalised in accordance with section 66 VAT Act 1994.

8. The grounds of appeal in the Notice of Appeal are in essence the same as those put forward by Ossman in its email dated 11 September 2013

The Law

9. Section 66 (2) VAT Act 1994 provides that where any person is in default HMRC may serve a notice on him stating (a) that he is in default; (b) that no action will be taken if he remedies the default within 14 days; (c) that if the default is not so

remedied, that person will become liable to penalties calculated on a daily basis. Section 66 (5) provides that the penalty shall be whichever is the greater of £50.00 and £5.00 for every day for which the default continues subject to a maximum of 100 days.

- 5 10. Section 11 of VAT Notice 735 issued by HMRC clearly advises when it is necessary to submit a RCSL.

The Decision

10 11. The Penalty Liability Notice dated 12 February 2013 clearly advised Sky Blue that it was in default, that the default could be rectified without penalty within 14 days and that further penalty notices could arise without further notice.

15 12. Sky Blue cannot try to have the penalty notice cancelled by simply arguing that it was not aware that it was necessary to file an RCSL. If it fails to read notices sent to it, certain consequences will follow. Insufficiency of funds or cash flow problems are not grounds for allowing an appeal against a penalty. It is possible for Sky Blue to enter into an arrangement with HMRC as to how the penalty will be paid.

13. The appeal is dismissed and the penalty of £500.00 remains payable by Sky Blue.

20 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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Alastair J Rankin
TRIBUNAL JUDGE

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RELEASE DATE: 01 August 2014