



TC05179

Appeal number: TC 2015/06835

Value Added Tax – default surcharge - whether reasonable excuse – no – appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

AZ Automobiles Ltd.

Appellant

- and -

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

TRIBUNAL: JUDGE DR. K KHAN

The Tribunal determined this appeal on 22 March 2016 without a hearing under the provisions of Rule 26 of the Tribunal Procedure First-tier Tribunal (Tax Chamber) Rules 2009 (default paper cases) after having first read the Notice of Appeal dated 16 November 2015 and HMRC's Statement of Case of 7 December 2015.

DECISION

Introduction

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1. This is an appeal against a default surcharge for the period 02/15 in the amount of £652.96 being 5% of the tax due.

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2. The period had a due date of 7 April 2015 for electronic VAT returns and payments.

3. As a VAT return and payment were both received after the due date, the Appellant became liable to a Surcharge.

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4. The tax due for the 02/15 period was £13,059.25.

Legislation

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5. VATA 1994 Sections 59(4); Section 59(5); Section 70; Section 71(1) (ii) VAT Regulations 1995, Regulation 25A; Regulation 40.

Background

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6. The Appellant acknowledges that the VAT Return and Payment for the Period 02/15 was rendered late and as a result the default surcharge was issued.

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7. The Appellant's business is sale and repair of second-hand cars, a business which was transferred as a going concern to a limited company which registered for VAT in 2011.

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8. The Appellant has been in the default surcharge regime from the period 02/14 onwards. In the period 02/14 there was a due date of 7 April 2014 for electronic VAT Returns and Payments. The VAT Return was received before the due date on 3 April 2014 but the payment was received late.

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9. For the period 11/14 the VAT Return and Payment were both received late and a Surcharge Liability Notice was issued.

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10. The Appellant in their Notice of Appeal dated 16 November 2015 stated that the payment and the return were filed only one day late. They explained that the business was a small company and run as a family concern with a father and son. The father dealt with the purchases of the stock and the son with sales, staff and administration of the business. There are no further employees. The son was absent from work on paternity leave as his wife had their first baby around the time when the returns were due to be filed. A copy of the baby's birth certificate was provided.

11. They say that there is a genuine reason on this occasion why the Return was filed late which gives rise to a reasonable excuse.

5 12. They have asked the Tribunal to be sympathetic given their personal circumstance.

HMRC's Submissions

10 13. The Respondent's say that the Appellant does not have a reasonable excuse. The birth of the son of one of the Directors was a foreseeable event and as such a reasonable and competent business would have put measures in place to ensure that the Vat Returns and Payment would be submitted on time.

15 14. The failure of the internal procedures of the company is not a reasonable excuse for late payment of VAT. Further, there are two Directors of the company and both are jointly responsible for the submission of VAT Returns and tax due thereon. Whilst there is now in place procedures to deal with book-keeping, these should have been established at an earlier time.

20 15. The Respondent's also say that a genuine mistake, honestly made, is not a reasonable excuse for Surcharge purposes. The legislation does not provide for mistakes being reasonable excuses.

25 16. There is a statutory obligation on a person to make a return to pay the VAT to HMRC. Where this has not been done in a timely manner a Surcharge arises. The rates of the Surcharge are laid down in law and neither HMRC nor the Tribunal have the power to reduce the amount due to any mitigating circumstances.

Conclusion

30 17. While the Tribunal is sympathetic to the Appellant's position there is no reasonable excuse in this case. As the Respondent has pointed out, the law allows very little leeway to the Tribunal in these matters. It is correct that a reasonable and competent business would have made sure that there were arrangements in place to
35 deal with a foreseeable absence of the Director due to the birth of his son. The Appellant has traded since 2011 and submitted VAT returns each quarter since that time and would have known the requirement to file and pay by the due date.

40 18. In considering the actions of the taxpayer it is necessary to look from the perspective of a prudent person, exercising reasonable foresight and due diligence, having proper regard to their responsibilities under the Taxes Acts. If a person could reasonably have foreseen the event, whether or not it is in their control, then that person should take steps to meet their obligations.

45 19. It is understandable that the Appellant would think a penalty for a one day delay is harsh; however, the Tribunal has limited power to intervene in such a case. The law does not make a distinction between a short and long delay.

20. In the circumstances the appeal is dismissed and the Penalty is upheld.

5 21. 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
10 “Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)”
which accompanies and forms part of this decision notice.

15 **DR K KHAN**
TRIBUNAL JUDGE

RELEASE DATE: 16 JUNE 2016