



TC06369

Appeal number: TC/2017/05919

VALUE ADDED TAX – default surcharge – no reasonable excuse – appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

ROMANO’S (a partnership)

Appellant

- and -

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

Respondents

TRIBUNAL: JUDGE RICHARD THOMAS

The Tribunal determined the appeal on 6 December 2017 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 30 July 2017 and HMRC’s Statement of Case (with enclosures) acknowledged by the Tribunal on 21 September 2017.

DECISION

1. This is an appeal by Romano's, a partnership between Mr R and Mrs E Petrucci, ("the appellant") against a decision of the Respondents ("HMRC") that the appellant was liable to a surcharge for late payment of Value Added Tax ("VAT") and against an assessment of that surcharge for the appellant's prescribed accounting period of the three months ending 31 March 2017. The amount assessed is £1,292.86.

2. I considered the appeal on the papers on 6 December 2017 and my decision in summary form was released on 18 December. On 21 December the Tribunal received a request for a full decision, one with the full findings and reasons. This is that full decision.

Evidence

3. I had a bundle of papers prepared by HMRC containing among other things the communications between the parties.

Facts

4. From the papers I have I find the following facts, being ones not in dispute.

5. The appellant was registered for VAT in 1986 and carries on a business of café and restaurant in Stranraer, Scotland. The appellant is currently required to file its returns and make payments electronically, and for this purpose it uses a variety of payment methods, but for this period it used the Faster Payments Service of its bank (as it had done in earlier periods).

6. The appellant entered the default surcharge regime in the period 09/11 and has been in it since then, with only a few quarters where VAT was paid on time. The appellant's appeal against some of these was the subject of a summary decision of this Tribunal in January 2014 which dismissed the appeals.

7. For the 03/17 period the return was on time, but all but one penny of the VAT of £8,619.08 was paid on 8 May 2017, one day after the due date established by law, and the one penny remains unpaid.

8. HMRC records show that a notice V162 (Surcharge Liability Extension Notice) was issued on 12 May 2017, imposing a surcharge of £1,292.86 being 15% of the VAT paid late and remaining unpaid.

9. On 30 May 2017 Mr Romano Petrucci, a partner, wrote to HMRC asking for a review.

10. On 30 June 2017 Miss Carter, an officer of HMRC's Reviews and Litigation Team, sent a letter to the appellant notifying it of HMRC's conclusions of the review, which was to uphold the decision to impose the surcharge.

11. On 18 July 2017 Miss Carter was phoned by Mr Petrucci. He informed her that he was not aware that payment of VAT should be submitted the last working day before

the due date if this is at a weekend. Miss Carter read to him the text on HMRC’s website where it says this.

12. On 30 July 2017 the appellant appealed to the Tribunal.

Law

5 13. There is no point in setting out the lengthy text of s 59 Value Added Tax Act 1994 (“VATA”) which sets out the default surcharge rules for those businesses which do not make payments on account, as there is no dispute that the surcharge for 03/17 assessed on 12 May 2017 was imposed in accordance with the provisions of s 59 and that the assessment of the surcharge was correct in amount, was assessed in time and notice of
10 it was served on the appellant.

14. But it is worth setting out the provisions of s 59(7) VATA:

15 “(7) If a person who, apart from this subsection, would be liable to a surcharge under subsection (4) above satisfies the Commissioners or, on appeal, a tribunal that, in the case of a default which is material to the surcharge—

(a) the return or, as the case may be, the VAT shown on the return was despatched at such a time and in such a manner that it was reasonable to expect that it would be received by the Commissioners within the appropriate time limit, or

20 (b) there is a reasonable excuse for the return or VAT not having been so despatched,

he shall not be liable to the surcharge and for the purposes of the preceding provisions of this section he shall be treated as not having been in default in respect of the prescribed accounting period in question (and, accordingly, any surcharge liability notice the service of
25 which depended upon that default shall be deemed not to have been served).”

Grounds of appeal

15. The appellant’s grounds of appeal were that:

30 (1) HMRC allocated his payment to an older debt because it was one penny out.

(2) He was unaware that he could have paid the VAT on the due date which was a Sunday: he paid it the next day as soon as he could.

HMRC submissions

35 16. HMRC say:

(1) The misallocation is irrelevant because the due date had already passed

(2) Faster Payments, which the appellant used, allows payment to be received in HMRC’s account on a Sunday.

Discussion

17. I do not accept that there is a reasonable excuse for the failure. Faster Payments can be set up some time in advance of the date for payment and can be made on a Sunday. In any event, as Miss Carter pointed out to Mr Petrucci, there is plenty of
5 warning on notices and HMRC's website that if the due date is not a working day the VAT should be paid on an earlier day which is, not on a later one.

18. I also agree that the misallocation is irrelevant as it was done on 8 May, after the due date.

19. My only slight doubt about this case arises from Mr Petrucci's references in
10 correspondence to a payment plan, coupled with the undoubted fact that in previous periods the appellant was paying what seem to be weekly round sums. But there is no evidence in the file that Mr Petrucci had sought an agreement for a statutory Time to Pay plan for this quarter before the due date.

20. The appeal is dismissed.

15 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
20 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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**RICHARD THOMAS
TRIBUNAL JUDGE**

RELEASE DATE: 02 FEBRUARY 2018