



TC01370

Appeal number TC/2011/03020

VALUE ADDED TAX – Default surcharge – Payment received just two days late – HMRC’s inability to accept faster payments – Whether reasonable excuse – No - Whether 15% scale charge disproportionate – No - Appeal dismissed.

FIRST-TIER TRIBUNAL

TAX

POUND ROAD STORES LIMITED

Appellant

- and -

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

Respondents

**TRIBUNAL: JOHN BROOKS (TRIBUNAL JUDGE)
CHRISTOPHER JENKINS (MEMBER)**

Sitting in public at Vintry House, Wine Street, Bristol on 5 July 2011.

Mr Christopher Ray, Director of Appellant Company for the Appellant

Mr D R Bradley, Officer of H M Revenue and Customs, for the Respondents

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DECISION

Introduction

- 5 1. Mr Ray, as the sole Director of the Appellant, prepared the quarterly VAT Return for the period 12/10 during the weekend of 29 and 30 January 2011, and, having noted that the “due date for payment” was 7 February, made the on-line submission and issued on-line payment instructions to the company’s bankers on Sunday 6 February 2011.
- 10 2. Despite having received several previous Notices and reminders about payment transmission times, Mr Ray accepted that he had overlooked the fact that the bank used by HMRC did not participate in the faster payments system – and that three working days were usually required for a payment to leave the payers bank and arrive with HMRC.
- 15 3. It was agreed by both parties that the VAT return had been submitted on-line by the due date and that the full payment due had been sent by the Appellant on Sunday 6 February and received by HMRC on 9 February 2011 - two days after the due date. The Appellant made no claim for any reasonable excuse for the late arrival of the payment, but claimed that the 15% penalty of £1,003.99 was disproportionate.

20 The Penalty

4. The Appellant had a history of late payments and was, at the material time, making regular weekly instalments of £400 in settlement of earlier quarterly VAT payments due. Although Penalties had been waived or discharged in the past, the Default Period had continued to apply at the 15% level until 31 December 2010. The
- 25 full amount of the VAT due for the quarter 12/10 was £6,693.30 and therefore the Penalty for late payment, calculated at the 15% level amounted to £1,003.99.

Proportionality

5. Whilst both the existence of rate of the surcharge at 15% for the Default Period at and the lateness of the payment, were agreed by the parties, it was the *proportionality*
- 30 of £1,003.99 for a two day delay which was being challenged by Mr Ray. The non-availability of Faster Payments was suggested to be an unreasonable hindrance to payment being made in due time.
6. For HMRC, Mr Bradley explained that it was not HMRC themselves who were refusing to accept Faster Payments, but, rather, their recently selected bankers who
- 35 were not yet operating that system.
7. We were referred to the decision of the Tribunal in *Energys Holdings UK Limited* [2010] SFTD 387 in which Judge Colin Bishopp considered proportionality in relation to a VAT default surcharge saying at [69]:

- 40 “I am quite willing to accept—indeed experience of its operation tells me—that the default surcharge regime, by and large, produces a fair

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penalty, or at least one which is not obviously disproportionate to the offence, albeit I have particular misgivings about the absence of any correlation between the period of delay and the amount of the penalty. But, as I have indicated, the penalty imposed in this case is in my view wholly disproportionate to the gravity of the offence—it is, as Simon Brown LJ put it in *Roth*, “not merely harsh but plainly unfair”—and I am not persuaded, in the absence of any justification of it, that it can be saved by the state’s margin of appreciation. It is, in my view, one of those exceptional cases which the tribunal had in mind in *Greengate Furniture*.”

Conclusion

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8. Mr Ray, on behalf of the Appellant had accepted that the payment had been made late and did not advance any reasonable excuse for the delay. He had suggested that the absence of a Faster Payments facility was unsatisfactory, but accepted that he had been made aware of this in the past. On the basis of Mr Ray’s evidence we concluded that the Appellant’s circumstances and its trading during the quarter 12/10 were not exceptional. Accordingly we find that the surcharge was not “plainly unfair” or disproportionate.

9. We therefore dismiss the appeal.

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.



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JOHN BROOKS
TRIBUNAL JUDGE
RELEASE DATE: 2 AUGUST 2011