



TC01438

Appeal number: TC/2011/4237

VAT – default surcharge – whether reasonable excuse that HMRC had not sent blank return forms to Appellants’ new address – no – appeal dismissed

FIRST-TIER TRIBUNAL

TAX

RIAZ DATOO and others (The Dattoo Partnership)

Appellants

- and -

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

Respondents

**TRIBUNAL: JUDGE ROGER BERNER
MR HARVEY ADAMS FCA (Member)**

Sitting in public at Cophall House, 9 The Pavement, Grove Road, Sutton, Surrey on 23 August 2011

The Appellants appeared in person through Riaz Dattoo

Bruce Robinson, HM Revenue and Customs, for the Respondents

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DECISION

1. This is an appeal by the Datoos Partnership, which comprises Mr Riaz Datoos and members of his family, against the imposition of default surcharges for the late payment of VAT in respect of the periods 02/09 and 05/09. The surcharge amounts are, respectively, £236.25, calculated on the late paid VAT of £2,362.50 at a rate of 10%, and £354.37, calculated on the same amount of late paid tax, but at the rate of 15%. These rates have been applied because of earlier defaults for periods 02/08, 08/08 and 11/08.
2. There is no dispute that the payments were made late. Mr Datoos argued that the Appellants had a reasonable excuse for the fact that payments were made late (and the necessary VAT returns were rendered late) in that the Appellants had not received from HMRC the necessary blank VAT returns for the relevant periods.
3. In this appeal therefore we are concerned only with whether the Appellants are, in accordance with s 59(7)(b) of the Value Added Tax Act 1994 (“VATA”), not liable to the default surcharge and can be treated as not in default in respect of the relevant accounting periods.

The facts

4. The Appellants are registered for VAT only in respect of taxable supplies they make on the letting of commercial property for which an election to waive exemption (option to tax) has been made.
5. The Appellants have no business premises of their own, but have used premises which they own and lease to a company (“the company”) for whom Mr Datoos’s wife works, as their office address. Staff at that company are used to complete the VAT returns, from information provided to them by Mr Datoos. We were told by Mr Datoos that he had attempted to register his home address for the business, but that this was refused. We saw no evidence of this, and can make no finding; but in any event we do not consider it material.
6. In June 2008, the company moved its premises from 288 Lower Addiscombe Road, Croydon, which at that time was used as the business address of the Appellants for VAT purposes. The new address was Stoneham House, 17 Scarbrook Road, Croydon CR0 1SQ. However, up to March 2009 there is no evidence of there having been any notification of a change of address to HMRC. Accordingly, we find that the change of address was not notified to HMRC in that period.
7. During that time Mr Datoos explained that mail would periodically be collected from the address at 288 Addiscombe Road. Mail was not redirected through Royal Mail. However, no VAT returns were recovered in this way. Mr Datoos said that 288 Addiscombe Road comprised both commercial premises and residential premises and that it was possible therefore that mail could have been delivered to the residential part and not recovered. We consider this explanation implausible, but it is not necessary for us to make any finding in this respect. We accept for present purposes

that the relevant blank returns in that period, which were made late, were not received.

5 8. On 16 March 2009 a telephone call was made by a Mr Mohamed Hansraj of Selsdon Travel Limited to HMRC's National Advice Centre. Mr Hansraj was the accountant who looked after the affairs of the Appellants. The call was prompted by the receipt, at 288 Lower Addiscombe Road, of a notice of assessment issued on 16 January 2009 in respect of the period 11/08. Mr Hansraj was advised that change of address could be notified by fax to HMRC's variations department, the fax number of which was provided, and that a new return would be sent out. Before that could be done, Mr Datoos (who was with Mr Hansraj) was asked to confirm some answers to security questions, and he at that time gave the Stoneham House address.

15 9. Following that call, on the same day, Mr Hansraj sent a fax to HMRC with the new address. However, the fax was unsigned. Mr Datoos explained that this was a computer generated fax that would be sent electronically, without there being a paper copy to sign. He expressed incredulity that, as was the case, an unsigned fax was not accepted by HMRC.

20 10. That non-acceptance was confirmed by letter from HMRC to the Appellants dated 25 March 2009. This letter was addressed to 17 Scarbrook Road (omitting Stoneham House), but Mr Datoos did not argue that it was not received. The letter enclosed a reply section to be completed and signed, giving the new principal place of business address.

25 11. In spite of the fact that no signed change of address mandate had been supplied by the Appellants, HMRC did on 16 March 2009 send duplicate returns to the address Mr Datoos had given in the telephone call. Those returns were for the period 11/08 (the period of the assessment that had given rise to the call) and an earlier period, 08/08, for which, at that time, no return had been made. No other returns, including one for 02/09, were at that time sent to the Appellants.

30 12. On 22 April 2009 HMRC sent to the Scarbrook Road address what was described as a final reminder in respect of the need for written confirmation of the requested change of address. A further copy of the reply section was enclosed. This was completed by Mr Datoos and signed by him on 29 April 2009. Unfortunately, due to a slip, Mr Datoos included the wrong postcode (using his own personal address postcode).

35 13. This error was reflected in the new certificate of registration for VAT which HMRC issued on 14 May 2009. But it was not the only error in that certificate: instead of Stoneham House, the certificate referred to Toneham House.

40 14. These errors were brought to HMRC's attention in a call on 21 May 2009. Advice was again given that the correct details should be notified to the variations unit by fax. At the same time HMRC were informed that the 02/09 return had not been received. HMRC agreed to issue a duplicate return.

15. The change of address (giving the correct details) was notified to HMRC by fax, signed by “the Datoos Partnership” sent on 22 May 2009.

16. However, no duplicate return was sent for 02/09, and no return was sent in respect of period 05/09 until a further call was made, this time by a Mr Moyez, also describing himself as Mr Datoos’s accountant, to HMRC on 23 July 2009. This was prompted by receipt of a letter (which we infer were the assessment and surcharge notices for 02/09 and 05/09 which were issued on 17 July 2009) referred to by Mr Moyez as concerning the non-filing of the return 05/09. This resulted in the duplicate returns for 02/09 and 05/09 being sent to the Appellants on 23 July 2009.

17. The Tribunal has considered the transcript of that call on 23 July 2009. In it Mr Moyez refers to the fact that the last return that had been received was that for 11/08, and recites the change of address position. The reply given to him by the HMRC officer is:

“... Right in which case I’ll get copies of the missing returns to the new address. If those are completed and sent in the assessments that have been sent out will be removed from the record.”

The officer repeats this and confirms it later on in the conversation. Nothing, however, is said about the fact that late filing of the return and actual payment of the tax will generate a default.

18. The returns for 02/09 and 05/09 were made, together with payment of the relevant amounts, on 28 July 2009 and were received by HMRC on 30 July 2009. This gave rise to the revised surcharge notices issued on 31 July 2009 that are the subject of this appeal.

Discussion

19. The sole question for us on this appeal is whether, in the circumstances that have arisen, there was a reasonable excuse for the Appellants to have failed to make their VAT returns and pay the VAT due on the due dates in respect of the periods 02/09 and 05/09.

20. The Appellants were not new in business and they had been making timely VAT returns in respect of their taxable supplies over a period. They were fully aware of the requirement to make returns and to pay the VAT by the due date.

21. A series of errors occurred after the Appellants changed their business address from 288 Lower Addiscombe Road to Stoneham House. However, we have found that they did not notify that change of address to HMRC until 16 March 2009, and they did not take steps to have mail redirected, in spite of the fact that they say that there was a possibility that mail could be wrongly delivered to the residential part of the premises at Addiscombe Road.

22. In our judgment, the mere non-receipt of blank VAT returns is not a reasonable excuse for failure to pay the tax. The reasonable course of action would have been for

5 the Appellants to have contacted HMRC and to have made payment of the VAT in order to avoid the imposition of the surcharge. It was not reasonable in our view for the Appellants simply not to pay over to HMRC the tax that they had collected as part of the rents they had received, and to wait until HMRC had sent the returns for completion.

23. The Appellants did not take these reasonable steps. It was unreasonable for them not to have paid the VAT for the periods 02/09 and 05/09 by the respective due dates and accordingly we find that the Appellants do not have a reasonable excuse for the defaults.

10 24. The failure by HMRC to send the returns to the Appellants, although in part due to some inefficiency on the part of HMRC, cannot affect the position. The reason why the forms were not received is not material. The non-receipt of the returns cannot reasonably justify the failure of the Appellants to pay the tax due, and thus avoid the imposition of the surcharges.

15 25. Nor can the comments made to Mr Moyez by the HMRC officer in the telephone call on 23 July 2009 affect our determination. They were made at a time after the defaults had taken place, and cannot therefore impact on the question whether there was a reasonable excuse for the defaults themselves. The officer correctly stated the position in that the original assessments, based on estimated turnover, would be
20 removed on payment of the tax according to the actual returns. However, as no reference was made to the position regarding default, and the possibility of surcharge, the Appellants might have assumed from this that on filing the returns the matter would be at an end. This has no doubt contributed to the Appellants' sense of grievance, but that is not a matter within the scope of our own jurisdiction.

25 26. This appeal is accordingly dismissed.

27. When we announced this decision orally at the hearing, Mr Datoos enquired what could be done to redress his grievances as to the faults that he claimed lay on the HMRC side in respect of the failures to send the returns to the correct address in a timely fashion. We acknowledge that HMRC were not as efficient in dealing with the
30 change of address issue as they might have been, but as we have found that this did not affect our determination on the issue of reasonable excuse, that is a matter for complaint to HMRC. In this connection we referred Mr Datoos to the possibility of an approach to the Adjudicator's Office (<http://www.adjudicatorsoffice.gov.uk/>) in this respect.

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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
40 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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ROGER BERNER

TRIBUNAL JUDGE

RELEASE DATE: 12 SEPTEMBER 2011

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