



TC01810

Appeal number: TC/2011/06338

VAT – Default surcharge – payment by BACS arriving late – no reasonable excuse – Appeal dismissed.

FIRST-TIER TRIBUNAL

TAX

VALE CONCRETE PRODUCTS LTD

Appellant

- and -

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

Respondents

TRIBUNAL: LADY MITTING (TRIBUNAL JUDGE)

Sitting in public in Birmingham on 17 January 2012.

The Appellant was not represented.

Mrs L Taylor, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents

DECISION

1. The Appellant was appealing against a default surcharge imposed by the Commissioners for period 03/11 in the sum of £1956.76. The due date for submission of return and payment was 30 April 2011 but as payment was being made by BACS, the Appellant was given the usual seven day extension. The Return was received on Wednesday 4 May 2011 but payment was not received until Monday 9 May.

2. The Appellant was not represented at the hearing and in a telephone call which the Tribunal clerk made to Mr T C White of the company, Mr White advised that it was not his intention to attend. The Tribunal therefore proceeded in the absence of the Appellant.

3. The Appellant entered the surcharge regime in period 03/09 when Return and payment were both made late. For periods 06/09 and 09/09, no Returns were submitted and centrally issued assessments were raised. The Appellant continued to default in periods 12/09, 03/10, 06/10, and 09/10. In 06/10, the Appellant attempted, for the first time, to pay by BACS. The company did not manage to transmit the payment and instead sent in a cheque which arrived late as the company was working to the extended deadline for BACS payments. The Commissioners raised a surcharge but after representations from the Appellant the surcharge was withdrawn by letter dated 16 November 2010 in view of the fact that the Appellant was new to the system. The letter of the 16 November, advised the Appellant very clearly that the date which counted was the date upon which the Commissioners received payment not the date it was sent and also clearly advised that if the seventh day falls on a weekend the payment must be received by the previous Friday. The Appellant was advised to check with its bank to see how long it would take for the transactions to be completed. As this letter would not have reached the Appellant before the due date for the 09/10 Return, the Commissioners also withdrew that surcharge.

4. In relation to the surcharge currently under appeal, the Appellant claimed to have authorised the payment on Wednesday 4th May, but as its bank statement shows the payment leaving the account on the 5th, it is possible that the authorisation was given too late to be processed on the 4th. The payment did not reach the Commissioners' account until Monday 9th.

5. The Appellant's grounds of appeal read as follows:

"We feel that your reaction is heavy handed and unhelpful especially in the current business climate.

We are a small young business and as you are aware trading conditions are tough for all. In the past 12 months we have managed to increase our workforce from 7 to 12 employees, which I am sure you will agree is a significant achievement given the difficult and uncertain times we find ourselves in. To be penalised to the tune of nearly £2,000 for in effect being one day late with a VAT payment is in our opinion unreasonable. As the bank statement shows the payment left our account on 5 May. Should you impose this penalty it will seriously affect our

cash flow and put on hold our plans for any further investment in the short or medium term.

We are, in the words of David Cameron, “all in this together” and would ask you bear this in mind and show a little understanding and leniency when considering this appeal. Our latest VAT payment left our account on 1st Aug and trust it was received by HMRC well before due date.”

6. The Appellant had full notice by the letter dated 16 November 2010 that payments by BACS would take at least three working days and it also knew that when the seventh day fell at the weekend, the payment had to be received by the previous Friday. The date to which the Appellant should therefore have been working was Friday 6 May. A payment which left its account on the 5th, or even the 4th, would have no chance of reaching the Commissioners by the 6th. As the Appellant had clearly been put on notice of the system and the process, we find that it has no reasonable excuse for its default in this period. The Tribunal is looking at the reasons for late payment, not the consequences of the surcharge. It is not therefore relevant to the issue before the Tribunal that payment will affect the company’s cash flow.

7. The Appeal is therefore dismissed.

8. 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.

TRIBUNAL JUDGE
RELEASE DATE: 26 January 2012