TC03075

Appeal number: TC/2012/05902

Value Added Tax - Default Surcharge - Claim that returns and cheques had been posted and that they must have been lost in one case, and delayed in the other, so occasioning a reasonable excuse for the late payment of VAT - Appeal dismissed

FIRST-TIER TRIBUNAL
TAX CHAMBER

ANTHONY RICHARD HENRY ERRINGTON

Appellant

-and-

THE COMMISSIONERS FOR HER MAJESTY'S REVENUE & CUSTOMS

Respondents

Tribunal: JUDGE HOWARD M. NOWLAN
HELEN MYERSCOUGH ACA

Sitting in public at 45 Bedford Square in London on 25 October 2013

The Appellant did not appear and was not represented

Philip Shepherd of HMRC on behalf of the Respondents

DECISION

1. This was a simple default surcharge Appeal in which the Appellant chose not to appear, and in which he was not represented.

2. Although the Appellant had not indicated to the Tribunal in advance that he would not appear, we asked the clerk to telephone the Appellant, before we commenced the hearing, in order to ascertain whether he wished to attend. He apparently said that he did not have time to attend the hearing, and that as his case was amply explained in the documents, he would rely on the Tribunal to hear his case by reference to the available documents. We accordingly proceeded with the hearing.

3. The Appeal related to two default surcharges, one for the period 10/11 in the amount of £123.67, calculated at the 10% rate, and one for the following period 01/12 in the amount of £267.01, calculated at the 15% rate.

4. The Appellant's practice was to file his VAT return by sending both a completed version of the form, and his cheque, by post, presumably in the correctly addressed envelope that we were told by the Respondents was always sent with the blank return to the trader by HMRC.

5. The due date for the filing of the return for the period 10/11 was 30 November 2011. On 16 December 2011, HMRC wrote to the Appellant and told him that his return and cheque had not been received. On 18 December the Appellant replied in writing to that letter, indicating that he had filed the return on time, the copy of the return that we were shown indicating that the return was actually accompanied by a cheque. In the letter of 18 December just referred to the Appellant said that he deduced that the return that he claimed to have sent cannot have been received, and he accordingly asked for a return form to be re-issued to him. Following that letter, the Appellant wrote to HMRC again on 26 December and attached a copy of the original signed and completed return, dated 28 October 2011, said that he had cancelled his previous cheque and reissued a new cheque. HMRC accordingly received the return and the cheque on 4 January 2013.

6. The facts in relation to the following VAT period 01/12 were different. The due date for the filing of the return was 28 February 2012, and the copy of the return that we were shown was indeed dated 28 February 2012. HMRC asserted that they did not, however, receive the return or the attached cheque until 14 March 2012.

7. The Appellant's implicit contention was that he had a reasonable excuse for the late filing of the two returns, because the first had been filed on time, and must simply have been lost in the post, with the result that the later submission of the scanned return and a replacement cheque were of course late. In the case of the following return, the letter and the return and the cheque were received by HMRC but HMRC claimed to have received them on 14 March and therefore well after the due date. Accordingly the Appellant claimed that he had posted them on time, and that he had proof of this, but nevertheless the letter must have been seriously delayed in the post.

8. The Appellant claimed that he always kept proof of posting, and in relation to the first return, that for 10/11 he said in later letters that he had sent HMRC proof of the

posting of the original return and cheque in his letter of 26 December 2011 that we referred to above. HMRC claimed that they had never been shown proof of posting, and we do specifically note that the copy of the letter of 26 December 2011 that we were shown made no mention of attaching any proof of posting of the return and cheque. HMRC claimed that they had never received proof of posting of either the claimed original despatch of the return on 28 October 2011 or the return for the later period on 28 February 2012.

9. In the papers that we were shown in the hearing, there was no written confirmation of the Appellant's claim that he had posted the two returns when he asserted. Particularly after the October return was said to have been lost, one would have thought that the Appellant, who claimed always to retain proof of posting, would have ensured that he definitely had proof of posting for the return allegedly posted on 28 February 2012, and one would have expected him to be able to produce copies of the document, evidencing posting, both to HMRC and to the Tribunal. We also made the point in relation to the October claim that if the original cheque had been lost, it would greatly have assisted the Appellant's case if he had sent HMRC or the Tribunal a copy of any letter to his bank, stopping the first cheque, or a confirmation by the bank that he had indeed stopped a particular cheque. One would also have expected it to be quite simple, either by producing a bank statement, or by producing the counterfoils in a chequebook to demonstrate that a particular numbered cheque had been removed from the chequebook, and more simply still, never banked by any recipient, according to the bank statements. Demonstrating then that the previous numbered cheque pre-dated 28 October, and that the first cheque issued after the one that had allegedly been lost was dated fairly shortly after 28 October, would have gone a very long way to demonstrating that some cheque really had been lost in the post.

10. In the absence, however, of the Appellant appearing before the Tribunal, and in the absence of HMRC or the Tribunal being shown any document evidencing proof of posting, even though the Appellant claimed that he always retained proof of posting, and in the absence of any evidence along the lines of the points mentioned about stopping the first cheque, and the details of the bank account, we cannot conclude that the Appellant has satisfied the burden of proof in establishing that either of the returns or cheques for the two relevant periods were in fact despatched, as claimed, on time.

11. This Appeal is accordingly dismissed.

12. The Appellant should note that where an appeal has been heard in his absence, he can apply for a re-hearing at which he intends to be present. There is no automatic right to such a re-hearing, it being in the discretion of the Tribunal to allow a re-hearing.

13. 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.

HOWARD M. NOWLAN
TRIBUNAL JUDGE
RELEASE DATE: 22 November 2013