



TC03155

Appeal number: TC/2013/05383

*VAT – Default Surcharge for late payment – whether reasonable excuse –
insufficiency of funds – no – appeal dismissed*

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

OMNI JEWELLERS LIMITED

Appellant

- and -

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

**TRIBUNAL: JUDGE DR K KHAN
MRS MARYVONNE HANDS**

Sitting in Northampton on 4 November 2013.

Mr and Mrs GG Fossey appeared for the Appellant. Mr Fossey is a director of the Appellant. Mrs Fossey is the bookkeeper of the Appellant.

Mr Martin Foster, Presenting Officer, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents.

DECISION

Introduction

1. This is an appeal against a default surcharge £873.62 for the period 02/13. The
5 due date for the return was 31 March 2013. Payment was received on 15 April 2013
and the return was received on 10 April 2013.
2. The Appellant, jewellers, claim to have a reasonable excuse.

The Law

3. The provisions of s.59(1)(a) and (b) of the Value Added Tax Act 1994
10 (“VATA”) operates such that a person shall be regarded as being in default for a
period:

15 “If by the last day on which a taxable person is required ... to furnish a
return ... HMRC have not received that return, or have received that
return but have not received the amount of VAT shown on the return
...”.

4. Where a default occurs and HMRC serves a Surcharge Liability Notice (SLN),
then if any further defaults are made by the taxable person before the expiry of the
first anniversary of the last day of the period referred to in the SLN, the taxable
20 person becomes liable to a surcharge being the greater of the specified percentage or
£30.

5. The specified percentages are set out in s.59(5) VATA:

- 25 “(a) In relation to the first such prescribed period the specified
percentage is 2%;
- (b) In relation to the second such period the specified percentage is
5%;
- (c) In relation to the third such period the specified percentage is
10%; and
- (d) In relation to such period after the third the specified percentage
is 15%.”

- 30 6. Section 59(7) VATA provides that a taxable person shall not be liable to the
surcharge and shall not be treated as having been in default:

“If a person ... satisfies ... on appeal a tribunal that in the case of a
default which is material to the surcharge ...”

- 35 “(b) There is a reasonable excuse for the return or the VAT not
having been so despatched.”

7. Section 71(1) VATA provides that there is no reasonable excuse due to:

“(a) an insufficiency of funds to pay any VAT is not a reasonable
excuse; and

(b) when a reliance is placed on any person to perform any task, neither the fact of that reliance nor any dilatoriness or inaccuracy on the part of the person relied upon is a reasonable excuse.

5 8. When issuing a surcharge, HMRC sends each SLN to the taxable person with notes advising what a default is and the consequences which would flow from further defaults. These notes advise the taxable person to contact HMRC local Debt Management Unit if they expect to have difficulty paying the VAT on time.

The Evidence

10 9. The Tribunal was provided with correspondence, notices and documents passing between the parties.

The Facts

10. Based on the evidence provided, the Tribunal found the following facts:

- (1) There is no dispute that the payment and the return were late.
- 15 (2) The Appellant, in the form of Mr and Mrs Fossey, were away on holiday at the relevant time. Their flight was rescheduled and delayed coming back into the UK.
- (3) Mr Fossey is the only person in the business who is familiar with the electronic filing of returns and the matter was not delegated to anyone else
20 in his absence.
- (4) A review was requested which on 19 June 2013 upheld the surcharge penalty.

The Appellant's submissions

25 10. In their Notice of Appeal dated 24 July 2013, the Appellant made the following points:

30 “Reasons for appeal is that the surcharge is only based on the fact that the actual return was completed online a couple of days late. The person who completes our VAT return was on holiday at the time and his flight home was cancelled making him late returning. He made the return as soon as possible afterwards. Even though the return was slightly late, the full amount due was taken from our account by the paid due date.”

35 11. In fact, it transpired that the bank account had insufficient funds to pay HMRC since the director of the company was not available to make the necessary transfer into the paying account and the takings of the business for the period was 30% less than anticipated.

HMRC's submissions

12. The Respondents say that there is no reasonable excuse. Further they say that even with the delayed flight, the Appellant was late in filing the returns since he was under the misapprehension that he had 12 days from 31 March in which to file the VAT. They also say that his absence from the business was known and therefore provisions should have been made for the submission of the return and payment prior to his absence from the company. The fact that he thought that he had 12 days from the 31 March in which to file the returns does not constitute a genuine error or mistake and is excluded under Public Notice 700-50 s.6.3 from providing a reasonable excuse.

Conclusion

13. There is no reasonable excuse and the appeal is dismissed. While the Tribunal has some sympathy for the hardship of the Appellant in having his flight redirected and arriving in the UK on 2 April rather than on 29 March the late submission of the VAT return on 7 April cannot be supported by a reasonable excuse.

14. The Appellant arrived back on 2 April and had until 7 April to submit the VAT return. He was under the misapprehension that he had 12 days to file those returns. This was incorrect. A genuine mistake, however honestly made, is not a reasonable excuse and this is in the guidelines offered by HMRC. It is clear that the lateness in this case was not a deliberate failure on the part of the Appellant.

15. The Tribunal would have been able to accept that there was a reasonable excuse if only the payment was made late and not the return as well.

16. The Tribunal has very little discretion other than to establish whether or not there is a reasonable excuse. However, in cases of a genuine error, it is hoped that HMRC would be sympathetic and provide the necessary time to pay arrangements to assist the taxpayer.

17. The Tribunal can come to only one conclusion which is to dismiss the appeal.

18. 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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**DR K KHAN
TRIBUNAL JUDGE**

RELEASE DATE: 16 December 2013