



TC03282

Appeal number: TC/2012/04685

VALUE ADDED TAX – Default Surcharge – Appeal against 10% surcharge – appeal dismissed and surcharge upheld

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

ORANGE BLOSSOM BEAUTY LIMITED (In Liquidation)
(Trading as Tree Spa & Beauty) **Appellant**

- and -

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

**TRIBUNAL: JUDGE P M PETHERBRIDGE
MRS M HANDS**

Sitting in Public at Nottingham on 18 December 2013

Mr P Osborne, Officer of HM Revenue & Customs, for the Respondent

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Decision

1. This is the appeal of Orange Blossom Beauty Limited (“the Company) against a VAT default surcharge of £567.78 being 10% of the VAT due for the quarter ended May 2011.
2. The Company accepted that it had paid the VAT late.
3. There was no dispute as to whether the Notice of Assessment of surcharge was received by the Appellant.
4. The assessment was raised under Section 59 of the VAT Act 1994.
5. The assessment was charged at 10% of the VAT unpaid at the due date. This equates to a penalty of £567.78.
6. A full review of the decision to raise an assessment was carried out by HMRC and the decision to assess the surcharge was upheld.
7. The Appellant appealed against the Respondent’s decision by Notice dated the 03 April 2012.

The Evidence

8. The Tribunal was provided with a bundle from HMRC, including:
 - (1) The correspondence between the parties and between the parties and the Tribunal;
 - (2) A schedule showing the Company’s defaults from the quarter November 2009 to the quarter under appeal;
9. On the basis of that evidence, the Tribunal found the following facts.

The Facts

10. For the quarter ending the November 2009 the Company paid its VAT late, and received a Surcharge Liability Notice (“SLN”).
11. There were further late payments in relation to the quarters ending May 2010, August 2010, November 2010, February 2011 and May 2011. The Company received a Surcharge Liability Extension Notice (“SLEN”). The surcharge rate for the quarter ending the May 2011 was 15%.
12. Previous surcharges had been reduced by the Respondent so that the 15% surcharge originally levied for the late payment of VAT for the quarter May 2011, was reduced to 10%.

The legislation, regulations and directions

13. The surcharge was levied under Section 59 Value Added Tax 1994 (VATA).
14. The Company was on a quarterly basis for VAT, so its VAT return and the related payments were due on or before the end of the month following each calendar quarter.
15. The Appellant was due to pay its VAT for the quarter ending May 2011 by 30 June 2011, but failed to do so.

In correspondence between the Company, through its agents Ca Parnell Accountancy Services, and in particular by way of a letter dated 30 March 2012 to the Respondent, it was said on behalf of the Appellant that because of “*further challenges*” three key members had ceased employment and there had been difficulty in replacing those employees. Further, the Salon Manager had taken maternity leave and would not be returning until September 2012.

Also, Mrs Spring a Director of the Company had suffered from a throat illness, but it was anticipated that she would be able to return to work.

Reasonable excuse

16. The Tribunal do not find that the Company had a reasonable excuse for the late payment of the VAT for the quarter ending May 2011.
17. The Company at no stage said that they would be unable to pay the VAT for the period May 2011 by the due date. There was no Time to Pay Agreement requested or discussed for the period May 2011 until one day after the VAT was due.
18. Further, the Company suggest that “*unforeseen circumstances had led to serious cash flow problems*”. In this respect, the Tribunal rely upon Section 71 (1) (a) of the VAT Act, which states “*an insufficiency of funds to pay any VAT due is not a reasonable excuse*”.
19. The Tribunal accept the submission of the Respondent that for something to be a reasonable excuse it needs to be something unexpected, something unusual to the business and something outside of the prudent tax payer’s control. Further, the Tribunal accept that a problem that has occurred over a period of time is neither unexpected nor unusual to the business.
20. The Tribunal accept the Respondent’s submission that it would expect a prudent tax payer would have had contingencies in place to deal with staff problems and a Manager having to take maternity leave.
21. Regulation 25 of the Regulations states that the VAT return has to be received not later than the end of the last day of the month, next following the end of the period to which it relates unless it is paid electronically, in which case a further seven days is allowed making the due date for payment the 31 July 2011.
22. Having considered all of the arguments submitted on behalf of the Company that there was a reasonable excuse for the late payment of the VAT for the quarter ending May

2011, the Tribunal finds that there was no reasonable excuse for the late payment and accordingly the appeal has to be dismissed.

Decision and appeal rights

23. On the basis of the foregoing, we dismiss the Company's appeal and confirm the surcharge of £567.78.
24. Having initially indicated that the Tribunal would be providing a summary decision, on further consideration it was determined that a full statement of reasons would be given.
25. 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.
26. The application must be received by the 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.

**P M PETHERBRIDGE
TRIBUNAL JUDGE**

RELEASE DATE: 29 January 2014