



**TC03283**

**Appeal number: TC/2012/10202**

**VALUE ADDED TAX – Default Surcharge – Appeal against 15% surcharge – appeal dismissed and surcharge upheld**

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**MR D.E. COOKE Trading As Unique Paint & Powder**

**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**

**Steve Turvey, Director of the Appellant.**

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

## **Decision**

1. This is the appeal of the Appellant against a VAT default surcharge of £266.46 being 15% of the VAT due for the quarter ended 30 June 2012.
2. The Appellant accepted that he 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 15% of the VAT unpaid at the due date. This equates to a penalty of £226.46. The Appellant has been in the Scheme from the quarter ended 30 September 2009 because the return and payment of VAT were late since then. As a result the default surcharge is the maximum of 15%.
6. The VAT payable for the quarter ended 30 June 2012 of £1,776.46 was paid in three instalments - £1500 on 23 August 2012, £500 on 04 September 2012 and the balance on the 01 October 2012, all three dates being after the due date.
7. A full review of the decision to raise an assessment was carried out by HMRC and the decision to assess the surcharge was upheld.
8. The Appellant appealed against the Respondent's decision by Notice dated the 07 November 2011.

## **The Evidence**

9. 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 Appellant's defaults from the quarter to the quarter under appeal;
10. The Appellant requested that the appeal be determined on the papers.
11. On the basis of that evidence, the Tribunal found the following facts.

## **The Facts**

12. For the quarter ending the September 2009 the Appellant paid his VAT late, and received a Surcharge Liability Notice ("SLN").

13. There were 8 further late payments before the June quarter. The Appellant received a Surcharge Liability Extension Notice (“SLEN”). The surcharge rate for the quarter ending the 30 June 2012 was 15%. .

#### **The legislation, regulations and directions**

14. The surcharge was levied under Section 59 Value Added Tax 1994 (VATA).
15. The Appellant was on a quarterly basis for VAT, so his VAT return and the related payments were due on or before the end of the month following each calendar quarter.
16. The Appellant was due to pay his VAT for the quarter ending 30 June 2012 by 31 July 2012, but failed to do so.

In a letter dated 11 October 2012 the Appellant said that he had made a concerted effort to get monies in that were outstanding and that he had cut his costs to help the business. Also, he had released a member of staff.

17. The Appellant sought to argue that he had a reasonable excuse for the late payment of the VAT.

#### **Reasonable excuse**

18. The Tribunal do not find that the Appellant had a reasonable excuse for the late payment of the VAT for the quarter ending 30 June 2012.
19. The Appellant at no stage said that he would be unable to pay the VAT for the period 30 June 2012 by the due date. A previous Time to Pay Agreement that had been agreed with the Appellant had to be abandoned because the Appellant failed to comply with the conditions.
20. Further, the Appellant argues 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*”.
21. 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.
22. The Tribunal accept the Respondent’s submission that it would expect a prudent tax payer would have had contingencies in place to deal with a client in distress and potentially going into receivership.
23. 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 making the due date for payment the 31 July 2012.

24. Having considered all of the arguments submitted on behalf of the Appellant that there was a reasonable excuse for the late payment of the VAT for the quarter ending 30 June 2012, 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**

25. On the basis of the foregoing, we dismiss the Appellant's appeal and confirm the surcharge of £226.46.
26. 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.
27. 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.
28. 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**

