



TC03287

Appeal number: TC/2013/04866

Value Added Tax – late payment – bank holiday and deposited funds not available to meet payments – whether reasonable excuse – yes – appeal allowed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

A S P INNS LIMITED (THE SELBORNE ARMS) Appellant

- and -

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

**TRIBUNAL: JUDGE DR K KHAN
ELIZABETH BRIDGE**

Sitting in Reading on 26 November 2013

Hayley Carter, director of the Company, represented the Appellant

Mr P Rule, presenting Officer, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents

DECISION

Introduction

- 5 1. This is an appeal against an Assessment of Surcharge of £701.73 for the VAT period ending 03/13.
2. The surcharge was raised as a result of a failure to render full payment of the tax due by the relevant due date. The Appellant was also in default for the periods 12/11, 03/12 and 06/12.
- 10 3. For the appeal period 03/13 the due payment date was Tuesday 07 May 2013 for electronic payment. The period 03/13 return was received electronically on time. The tax due was received on 8 May 2013 via the Faster Payment Service, being one day late.

The Facts

- 15 (1) The payment for the period 03/13 was due by Tuesday 7 May 2013 but was paid on 8 May 2013.
- (2) This carried a penalty at the rate of 10% which amounted to £701.73.
- (3) The Appellant's first default was recorded for the period 12/11 and there followed two further defaults on 03/12 and 06/12. The Appellant would have
20 been aware of the financial consequences attached to further defaults since this information would have been given on the Surcharge Liability Notice which would have been issued when the defaults occurred.
- (4) It would have explained how surcharges are calculated and the percentages used in determining any financial surcharge in accordance to s.59(5) Value Added
25 Tax Act 1994.
- (5) For the period 12/11 the Appellant requested time to pay on 03 February 2012 but this was refused on the grounds that a time to pay arrangement was already in place.
- (6) For the period 03/12 time to pay arrangements were also requested and refused
30 since the request was made after the relevant due date.
- (7) For the period 03/13 there is nothing to indicate that the Appellant requested time to pay arrangements with HMRC.
4. At the hearing the Appellant explained that a bank holiday fell on 3 May with payment due on 7 May. All the monies realised from sales over that weekend were
35 paid into the Appellant's business account a day later meaning it went into account on 7 May and therefore the funds were not available until 8 May. Ordinarily, the weekend takings would be paid in on the Monday after the weekend and cheques

could be written which would be honoured the day after which, would be the Tuesday. Given the bank holiday, it meant that weekend takings were paid on the Tuesday and became available funds for payment on the Wednesday. This meant that the bank holiday delayed payments from the weekend takings until the day after the due date.

5 5. The Appellants had in place an overdraft facility of £5,000 and a reserve account of £1,700 but this together was insufficient to meet the payments to HMRC.

6. The late payment of the cash into account therefore resulted in the Appellant incurring a penalty since there were insufficient funds in the account to pay the tax on the due date.

10 **The Appellant’s submissions**

7. The Appellant did not realise that the weekend takings would have been paid one day late into their checking account and on receiving the Surcharge Notice called HMRC to say that it was their understanding that the payment was made on time. The Appellant explained as follows in a letter to HM RC on 24 May 2013. She stated:

15 “I have received in the post today a surcharge for an outstanding amount of £7,017.39 for the quarter of 1 January to 31 March 2013. However, this payment was paid on 8 May 2013. I phoned the payment helpline and was told that the payment had been allocated correctly to our account but that because it was one day late you are charging us £701.73 10%). The payment was only one day overdue and this was purely due to the bank holiday which meant that money did not reach account until one date later than usual. I could not do anything about this and ask you to reconsider this charge. We are already struggling with cash flow at the moment and a charge such as this would affect us considerably.”

20 8. The Appellant’s main submission is that it was not an insufficiency of funds which resulted in the late payment but rather the banking arrangements whereby cash from the business was paid into the checking account one day later than normal. She explained that this was simply banking practice.

25 **The Respondents’ submission**

- 30 9. The Respondents make the following points:
- (1) The Appellant was aware of the implications of making a late payment given the Surcharge Liability Notices which had been issued previously.
 - (2) The directors have ultimate responsibility for the timely submission of VAT returns and any tax due thereon.
 - (3) An insufficiency of funds is not a reasonable excuse. The Appellant stated they did not have quite enough to make the payment and in this

sense there was an insufficiency of funds to make the full payment. A reasonable and competent business person mindful of their obligations to VAT would in similar circumstances have made arrangements to make the payment by the due date. This was not done in this case. Accordingly the Appellant should be liable for the default surcharge payment.

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Discussion and Conclusion

(1) The Tribunal decided on the day that there was a reasonable excuse.

(2) The Appellant was not aware of banking practice that income arising to the business in the period both before and after a bank holiday would be paid one day later than normal. This is not an insufficiency of funds but rather a banking practice which was outside of the Appellant's control and which resulted in the late payment.

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(3) The funds were available but had not been paid into the Appellant's account on the date when such funds are ordinarily paid, if there was not a bank holiday. Given that the takings arising to the business in the three days before the bank holiday were paid in the following Wednesday rather than the Tuesday was not something the Appellant had expected. They had an overdraft facility to deal with any emergencies and to top up any payments which they had to make for which funds were not available. This overdraft was insufficient to meet the VAT liability. The overdraft facility was meant to top-up capital shortfalls. This shows that they contemplated making larger payments than the sums available in their account. A reasonable business person wanting to meet their financial commitments would have such a facility. However, there was nothing the Appellant could have done to speed up the payments to HMRC since their funds were stuck, as it were, in the pipeline of payments made by the bank where there was a bank holiday. It would appear that the Appellant made several attempts to contact HMRC but was unable to do so as a result of the poor service provided by the HMRC helpline. On the balance of probabilities, we are prepared to accept the Appellant's version of events and to say that there is a reasonable excuse on the facts of this case.

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10. Appeal allowed.

11. 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: 29 January 2014