



**TC03709**

**Appeal number: TC/2014/01486**

*VAT – Default Surcharge – penalty – whether properly imposed – whether reasonable excuse*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**SAFETY SOLUTIONS (NI) LTD**

**Appellant**

**- and -**

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

**TRIBUNAL: JUDGE WDF COVERDALE**

**The Tribunal determined the appeal on 03.06.2014 without a hearing under the provisions of Rule 26 of the Tribunal Procedure (First-tier Tribunal)(Tax Chamber) Rules 2009 (default paper cases) having first read the Notice of Appeal dated 28.02.2014 and HMRC's Statement of Case submitted on 09.04.2014 (with enclosures).**

## DECISION

1. The Tribunal decided that the Notice of Assessment of Surcharge dated  
5 17.01.2014 in the sum of £1,150.08 was properly imposed.

2. The appeal is dismissed.

3. The Tribunal found that the VAT Return for the period 01.09.2013 to  
30.11.2013 was received by the Respondents on 06.01.2104. The due date for  
payment was 07.01.2014 for electronic payments. Payments have been received by  
10 the Respondents as follows:-

	FPS – 07.01.2014 (on time)	£6,000.00
	FPS – 07.01.2014 (on time)	£5,000.00
	FPS – 16.01.2014	£3,000.00
	FPS – 27.01.2014	£3,000.00
15	FPS – 30.01.2014	£3,000.00
	FPS – 17.02.2014	£2,000.00
	FPS – 28.02.2014	£1,000.00
	FPS – 05.03.2014	£2,000.00

After the 05.03.2014 payment there remained the sum of £9,001.78 outstanding.

20 4. At the due date 07.01.2014, after the payments of £6,000.00 and £5,000.00,  
there was £23,001.78 outstanding. It is upon this sum that the 5% surcharge of  
£1,150.08 was imposed.

5. The Tribunal further found that there was no reasonable excuse for the late  
payment of VAT for the period ended 30.11.2013. In particular the Appellants had  
25 been in the Default Surcharge Penalty regime since the period ended 31.08.2012  
although by a series of concessions and Time to Pay arrangements they had not  
previously been required to pay any penalties. No Time to Pay arrangement was  
agreed by the Respondents in respect of the period ended 30.11.2013 and indeed no  
request for deferment under Section 108 of the Finance Act 2009 was made before the  
30 due date 07.01.2014.

6. The Appellants have claimed that the reason for the late payments of VAT has  
been cash flow difficulties. Section 71(1)(a) of the VAT Act 1994 specifically  
excludes lack of funds from being a reasonable excuse for the late payment of VAT  
but the Tribunal has considered the underlying reason for the Appellants' lack of  
35 funds in order to see whether any further allowance can be made to them in the  
context of this appeal.

7. In a letter dated 13.01.2014 the Appellants say that "Our reason behind late  
payment is due to selling of stock and higher level of Sales against actual purchases.  
We have been unable to make purchases due to insufficient cash flow". The Notice of  
40 Appeal also refers to customers, including Local Authorities and Government bodies,

exceeding credit terms and failing to settle accounts. It is said that payments to the Respondents have been made continually within the Appellants' means.

5 8. It can be acknowledged that the Appellants have endeavoured to meet their obligations with regard to the payment of VAT as quickly as they were able to do so but the fact remains that they have been significantly late in making payment in full. Delinquent debtors have been a problem but that is not unusual in the current financial climate and must be treated as a normal business risk.

10 9. The Appellants' circumstances do not, therefore, take them outside the scope of Section 71(1)(a) of the VAT Act 1994 and their insufficiency of funds does not assist them in this appeal.

10. There has been lengthy correspondence between the Appellants and the Respondents and the Appellants will have received numerous Notices concerning the Default Surcharge regime so they will have been aware, at all material times, of the consequences of failing to make timely payments.

15 11. In so far as the Appellants have argued that the imposition of the surcharge is unfair or disproportionate the Tribunal applies the decision in the case of *HMRC v Total Technology (Engineering) Limited* [2012] UKUT 418 (TCC). Such an argument is unsustainable in this Tribunal.

20 12. 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.

30 **WDF COVERDALE  
TRIBUNAL JUDGE**

**RELEASE DATE: 10 June 2014**