



TC03715

Appeal number: TC/2014/01384

VAT – Default Surcharge – penalty – whether properly imposed – whether proportionate

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

THE WHITE HORSE EDWARDSTONE LLP

Appellant

- and -

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

Respondents

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 10.03.2014 (with enclosures) and HMRC's Statement of Case submitted on 07.04.2014 (with enclosures).

DECISION

5 1. The Tribunal decided that the Notice of Assessment of Surcharge dated 13.12.2013 in the sum of £516.55 in respect of VAT due for the period 01.08.2013 to 31.10.2013 was properly imposed.

2. The appeal is dismissed.

3. The Tribunal found that the VAT Return for the period 01.08.2013 to 31.10.2013 was received by the Respondents on 11.12.2013. The due date for
10 payment was 07.12.2013 for electronic payments; payment was received by the Respondents on 10.12.2013 via the Faster Payments Service i.e. three days late.

4. The Tribunal further found that there was no reasonable excuse for the late
15 payment of VAT for the period ended 31.10.2013. In particular the Appellant had been in the Default Surcharge Penalty regime since the period ended 30.04.2012 and had defaulted on two previous occasions; the Surcharge Liability Notices will have included clear instructions upon the importance of making timely payments.

5. A misunderstanding by the Appellant as to the due date for payment cannot constitute a reasonable excuse: Notice 700/50 Default Surcharge S6.3 refers.

6. The Notice of Appeal refers to the impact of the Surcharge upon the Appellant's
20 business; shortage of funds is specifically excluded as a reasonable excuse by S71(1)(a) of the VAT Act 1994.

7. In so far as the Appellant has argued that the imposition of the surcharge is
25 disproportionate to the lateness of the payment the Tribunal has applied the decision in the case of *HMRC v Total Technology (Engineering) Limited* [2012] UKUT 418 (TCC). Such an argument is unsustainable in this Tribunal.

8. This document contains full findings of fact and reasons for the decision. Any
30 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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**WDF COVERDALE
TRIBUNAL JUDGE**

RELEASE DATE: 11 June 2014

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