



TC06883

Appeal number: TC/2018/01022

VAT – default surcharge – delay in information from accountant – whether reasonable excuse – no – appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

J G ENG SERVICES LIMITED

Appellant

- and -

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

Respondents

TRIBUNAL: JUDGE ANNE FAIRPO

The Tribunal determined the appeal on 11 September 2018 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 15 January 2018 (with enclosures) and HMRC's Statement of Case (with enclosures) acknowledged by the Tribunal on 29 June 2018.

DECISION

1. This is an appeal against a VAT default surcharge of £469.75 for late payment of VAT for the period 08/17, being 5% of the VAT due for that period. The payment was due on 7 October 2017, as the appellant makes electronic payments.

2. The appellant company has been registered for VAT since its incorporation in August 2014. The company has been in the default surcharge regime from the 11/16 period onwards, having made payment ten days late for the 11/16 period and having submitted the 02/17 return 13 days late and made payment over a month late for that same period.

Appellant's case

3. The appellant accepted that the payment was made late but argued that they had a reasonable excuse for the delay for the following reasons:

(1) Their accountants had only advised them of the amount of VAT due on 6 October 2017;

(2) The delay was due to the lack of communication from their accountants and the accountants' last minute approach to VAT submission;

(3) The appellant was now dealing with VAT submissions directly in order to make sure that the delays did not happen again;

(4) They have never ignored VAT letters and demands and will ensure that the problem does not arise again;

(5) They cannot afford the large fine imposed on them for something was only a few days late, and only late because of their accountant. They struggle with cashflow.

HMRC's case

4. HMRC's submissions are as follows:

(1) The directors of a company are responsible for the timely submission of VAT returns and any tax due. Reliance on a third party in respect of this is precluded from being a reasonable excuse by s71(1)(b) Value Added Tax Act (VATA) 1994;

(2) The appellant states that their accountants notified them of the amount of VAT due on 6 October 2017. The appellant could have therefore made payment on the same day or the following day, 7 October 2017, and still been in time. Payment was not received by HMRC until 14 October 2017, a week after the due date, and no explanation has been given for the additional delay;

(3) The appellant mentions that they cannot afford the penalty but, if lack of funds was the reason for the additional delay, that is also prevented from being a reasonable excuse by s71(1)(a) VATA 1994;

(4) Although HMRC accept that the appellant has taken steps to avoid future problems, this does not provide a reasonable excuse for removing the 08/17 surcharge;

5 (5) The surcharge liability notices sent to the appellant include information on how to avoid surcharges, together with details on how the surcharges are calculated.

Decision

5. The appellant has not disputed that the payment was made late and so the appellant was in default in respect of the 08/17 period and the only question is
10 whether there was a reasonable excuse for that default.

6. There is no statutory definition of “reasonable excuse” but, in my view, the test set out in *Clean Car Company* [1991] VTTR 234 should be applied:

15 “a reasonable excuse should be judged by the standards of reasonableness which one would expect to be exhibited by a taxpayer who had a responsible attitude to his duties as a taxpayer, but who in other respects shared such attributes of the particular appellant as the tribunal considered relevant to the situation being considered”

7. In this case, the appellant explains in correspondence with HMRC that they have been “put in this position before by our previous accountants as well as now
20 with our current accountants”. The appellant does not give any information as to whether they had undertaken any steps to improve the timing of their accountants’ communications; there is a suggestion that they have changed accountants but the fact that the same problem has arisen with the new accountants suggests that they have not made clear their requirements as to communication.

25 8. Although I note HMRC’s submission that s71(1)(b) precludes reliance on a third party from being a reasonable excuse, that legislation precludes “the fact of that reliance [and] dilatoriness ... on the part of the person relied upon” from being a reasonable excuse. Accordingly, I consider that an appellant may still have a reasonable excuse where they have not simply relied on a third party but have taken
30 reasonable care in doing so.

9. Nevertheless, even if the appellant could be said to have a reasonable excuse in their reliance on a third party, the appellant has provided no explanation as to why they did not make payment as soon as they were advised of the necessary amount by their accountants, nor why there was a delay of over one week between the date on
35 which their accountant advised them of the amount to pay (6 October 2017) and the date on which HMRC received the payment (14 October 2017).

10. Applying the *Clean Car* test, I find that a taxpayer in the position of the appellant, intending to comply with their tax obligations, would have taken steps to ensure that they made payment on time as they had all the necessary information
40 before the due date for payment.

11. I have considered the appellant's information as to their difficulty with cashflow and inability to pay but I find that as this is an ongoing problem, and applying the *Clean Car* test, a taxpayer in the position of the appellant, intending to comply with their tax obligations, would have taken steps to ensure that they had the necessary funds as this was not a new or unexpected situation.

Decision

12. The appeal is dismissed and the default surcharge is confirmed in full.

13. 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.

**ANNE FAIRPO
TRIBUNAL JUDGE**

RELEASE DATE: 19 DECEMBER 2018