[2019] UKFTT 0246 (TC)

TC07092

Appeal number: TC/2018/03528

VALUE ADDED TAX – appellant having unusually high VAT liability for 12/17 period – unable to pay whole amount on one day because of banking restrictions so large amount paid shortly after due date – appellant relied on accountants to give them figure of VAT – accountants failing to provide figures in time to allow a staggered payment in time – whether reasonable excuse – appeal dismissed.

FIRST-TIER TRIBUNAL
TAX CHAMBER

MATERIAL APPLICATIONS LTD **Appellant**

- and -

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

TRIBUNAL: JUDGE RICHARD THOMAS
SHAMEEM AKHTAR

Sitting in public at Alexandra House, Manchester on 12 February 2019

Tim Lwin of Howard Worth & Co, Chartered Accountants, for the Appellant

Sophie Brown, litigator, HMRC for the Respondents

DECISION

1. This was an appeal by Material Applications Ltd ("the appellant") against a default surcharge of £28,075.71 assessed on the appellant for failure to pay all of the VAT due for the three months ended 31 December 2017 ("12/17") by the due date.

2. At the conclusion of the hearing, having retired briefly, we announced our decision that the surcharge was upheld. The parties agreed that a short decision could be issued and we duly released our decision on 14 February 2019.

3. On 11 March 2019 Mr Lwin emailed the tribunal to ask for a full decision, and this is it.

Evidence

4. We had a bundle of papers prepared by HMRC containing among other things the communications between the parties.

Facts

5. From the papers we have and from what we were told by Mr Lwin, we find the following facts, being ones not in dispute.

6. The appellant has been registered for VAT from 1 April 2015 and carries on the business of steel fabricator under the name MA Steel in Winsford, Cheshire. It has prescribed accounting periods of 3 months ending on each quarter day.

7. The appellant's accountants, Howard Worth & Co, produce management accounts for the directors to indicate the size of the VAT liability.

8. At the time the return and payment for 12/17 were to become due, the appellant's arrangements with its bank were such that it was limited to a maximum of £100,000 on any one day.

9. Howard Worth & Co had prepared the management accounts for 12/17 by mid-January 2018 which showed a VAT liability of £280,757. Because this was substantially higher than any previous VAT figure (the highest previous we were told about was £106,681 in 03/16) Howard Worth & Co decided to double check the figures, but they did not inform the appellant's directors of the figure they had calculated.

10. When they had completed the recheck they informed the appellant of the liability, but by the time they did that it was too late for the full amount to be paid by the due date of 7 February. The appellant delivered its return and paid £93,586.66 (one-third of the liability) on that date and paid the balance in three further instalments, the last on 14 February.

11. On 16 February 2018 HMRC issued a notice of default surcharge and on 27 February the appellant sought a review. That review was conducted and the conclusion, to uphold the surcharge, was imparted to the appellant on 10 April 2018.

12. Following some further correspondence which did not change matters, the appellant notified their appeal to the Tribunal on 4 June 2018. That notification was strictly late, but HMRC properly did not object to this appeal being heard on those grounds as they had willingly engaged in the correspondence subsequent to the review

Law

13. There is no point in setting out the lengthy text of s 59 Value Added Tax Act 1994 ("VATA") which contains the default surcharge rules for those businesses which do not make payments on account, as there is no dispute that the surcharge was imposed in accordance with the provisions of s 59 and that the assessment of the surcharge was correct in amount (although there were some clarifications needed), was assessed in time and notice of it was served on the appellant.

14. But it is worth setting out the provisions of s 59(7) VATA:

> "(7) If a person who, apart from this subsection, would be liable to a surcharge under subsection (4) above satisfies the Commissioners or, on appeal, a tribunal that, in the case of a default which is material to the surcharge—
>
> (a) the return or, as the case may be, the VAT shown on the return was despatched at such a time and in such a manner that it was reasonable to expect that it would be received by the Commissioners within the appropriate time limit, or
>
> (b) there is a reasonable excuse for the return or VAT not having been so despatched,
>
> he shall not be liable to the surcharge and for the purposes of the preceding provisions of this section he shall be treated as not having been in default in respect of the prescribed accounting period in question (and, accordingly, any surcharge liability notice the service of which depended upon that default shall be deemed not to have been served)."

Submissions

15. HMRC submit that the appellant had no reasonable excuse for its failure to pay on time. They knew what their banking limits were and if they had contacted HMRC in advance to explain this then they may have avoided having a surcharge issued.

16. The appellant submits that they had a reasonable excuse, in that they didn't know until it was too late what the VAT liability was, and once they found out they made every effort to pay the full amount as soon as it could.

Discussion

17. We agree with HMRC that the appellant has shown no reasonable excuse for its failure to pay the full amount of VAT on time. Essentially, as Mr Lwin admitted, it relied on Howard Worth & Co to given them the necessary information and had that firm told the appellants in mid-January of the likely figure, even if it was surprisingly large or subject to refinement, then arrangements could have been made to stagger payment but still be in time.

18. But s 71(1)(b) VATA provides explicitly that:

> "(b) where reliance is placed on any other person to perform any task, neither the fact of that reliance nor any dilatoriness or inaccuracy on the part of the person relied upon is a reasonable excuse."

19. That is exactly what happened here. It was Howard Worth & Co's dilatoriness in providing a reliable figure to the appellant that was the excuse, but although it is an excuse that might, absent s 71(1)(b) have been held by the Tribunal to be reasonable, it is explicitly treated by s 71 as being incapable of being reasonable.

20. We therefore uphold the surcharge.

21. 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.

RICHARD THOMAS
TRIBUNAL JUDGE

RELEASE DATE: 12 APRIL 2019