



Neutral Citation: [2025] UKFTT 94 (TC)

Case Number: TC09420

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

By remote video hearing

Appeal reference: TC/2023/17121

*LATE PAYMENT PENALTY – whether appellant had a reasonable excuse for the late payment of VAT – paragraphs 5, 12 and 13 of Schedule 26 to Finance Act 2021 – appeal dismissed*

**Heard on:** 9 January 2025

**Judgment date:** 30 January 2025

**Before**

**TRIBUNAL JUDGE ROBIN VOS  
MOHAMMED FAROOQ**

**Between**

**THE JERK YARD LIMITED**

**Appellant**

**and**

**THE COMMISSIONERS FOR HIS MAJESTY’S REVENUE AND CUSTOMS**

**Respondents**

**Representation:**

For the Appellant: The Appellant did not appear and was not represented

For the Respondents: Ms Megan Vanderhook, litigator of HM Revenue and Customs’ Solicitor’s Office

## **DECISION**

### **INTRODUCTION**

1. The hearing took place by video using Microsoft Teams. Prior notice of the hearing had been published on the gov.uk website, with information about how representatives of the media or members of the public could apply to join the hearing remotely in order to observe the proceedings. As such, the hearing was held in public.
2. Unfortunately, on 3 January 2025, the appellant's representative contacted the Tribunal to say that he had contracted Covid and would not therefore be able to attend the hearing. However, he had contacted the appellant whose director would also not be able to attend the hearing but who nonetheless wished the hearing to go ahead based on the documents provided.
3. Having read the various documents setting out the appellant's points in support of its appeal, we concluded that those documents set out the points in question in sufficient detail and that it would be in the interests of justice to proceed with the hearing in the absence of the appellant.
4. The appeal itself relates to a penalty of £424.98 charged by HMRC for the late payment of approximately £10,000 of VAT relating to the 07/23 VAT period.
5. The appellant, The Jerk Yard Limited ("Jerk Yard") says that it has a reasonable excuse for the late payment of tax. To a large extent, this focuses on HMRC's failure to process a VAT repayment of approximately £7,500 for the 04/23 VAT period sooner than they did.
6. Although not mentioned specifically by Jerk Yard, HMRC have also considered whether there are any special circumstances justifying a reduction in the amount of the penalty but have concluded that there are not. We have therefore also considered whether, in the light of the points put forward by Jerk Yard, this decision should be revisited.

### **THE REGIME FOR VAT LATE PAYMENT PENALTIES**

7. The regime for late payment penalties in respect of VAT was changed from 1 January 2023. The provisions are now contained in Schedule 26 to Finance Act 2021 ("Schedule 26").
8. It is common ground that the due date for payment of the VAT due in respect of the 07/23 VAT period was 7 September 2023 (this is the combined effect of Regulations 25 and 40 of the VAT Regulations 1995 (as supplemented by a Direction made by HMRC under Regulation 40 allowing an additional seven days where payment is made electronically)).
9. The result of paragraph 5(1) of Schedule 26 is that no penalty is due if the tax is paid in full within 15 days of the due date (or alternatively an application for a time to pay arrangement is made which is subsequently approved). However, if tax remains outstanding after 15 days and no time to pay arrangement is agreed, a penalty becomes payable in accordance with paragraph 5 of Schedule 26. This is described as the "First Penalty" and potentially has two elements depending on whether tax still remains outstanding after 30 days (with no time to pay arrangement in place).
10. The first element of the penalty is 2% of the tax which is outstanding 15 days after the due date for payment. The second element is a further 2% of the tax which remains outstanding after 30 days.
11. The VAT shown as due on the return submitted by Jerk Yard for the 07/23 period was £10,624.65. The full amount remained outstanding after 30 days and so the penalty comprised 2% of this amount as it was outstanding after day 15 (£212.49) and a further 2% of the same amount as it was also outstanding on day 30 (the total penalty being £424.98).

12. There is a second penalty provided for under paragraph 8 of Schedule 26 at a rate of 4% of the outstanding tax from day 30 up to the date on which payment is made. We understand that HMRC have charged such a penalty totalling approximately £65 but that no appeal has been made against this penalty (at least to the Tribunal) and so we are not concerned with it.

13. As with the previous penalty regime, paragraph 12 of Schedule 26 provides that no penalty is payable if the taxpayer has a reasonable excuse for the failure but that an insufficiency of funds is not a reasonable excuse unless attributable to events outside the person's control. If there is a reasonable excuse which has ceased, the failure must be remedied without unreasonable delay after that time.

14. In addition, HMRC may reduce a penalty if they think it right to do so as a result of special circumstances. Again, special circumstances cannot include inability to pay (paragraph 13 of Schedule 26).

15. On an appeal to the Tribunal, it is for the Tribunal to determine whether a reasonable excuse exists. However, as far as special circumstances are concerned, the Tribunal may only reduce a penalty to a greater extent than HMRC if it considers that HMRC's decision was flawed in a judicial review sense (paragraph 21(3) of Schedule 26). Essentially, this means either that HMRC have taken the wrong factors into account or have made a decision which no reasonable officer of HMRC could have reached in the circumstances.

16. The approach the Tribunal should adopt in determining whether there is a reasonable excuse was set out by the Upper Tribunal in *Perrin v HMRC* [2018] UKUT 0156 (TCC) at [81]. We do not set out that paragraph in full as it is well known and uncontroversial.

17. Essentially, what we have to determine is whether, objectively, based on our findings of fact, the reasons put forward by Jerk Yard constituted a reasonable excuse taking into account "the experience and other relevant attributes of the taxpayer and the situation in which the taxpayer found himself at the relevant time" (paragraph [81(3)] of *Perrin*).

#### **BACKGROUND FACTS**

18. Jerk Yard is a company which operates mobile food stands at festivals. The sole director is Joel Thompson-Neathey. Its business is seasonal with April-September being the busiest period.

19. In the course of preparing its accounts in October 2022, Jerk Yard's accountant identified that its turnover was such that it should have registered for VAT with effect from June 2022.

20. The VAT registration application was submitted on 31 January 2023.

21. HMRC initially refused registration on 10 April 2023 due to a mistake they had made about the figure for Jerk Yard's turnover.

22. The mistake was however rectified and Jerk Yard was registered for VAT on 20 April 2023 with effect from 30 June 2022. It was required to make its first VAT return for the period from that date up to 30 April 2023. The return was due by 7 June 2023.

23. Unfortunately, the VAT registration certificate was not received by Jerk Yard until 22 June 2023. HMRC's records show that the certificate was sent by them to Jerk Yard on 23 April 2023. They do not however challenge Jerk Yard's evidence that the certificate was only received on 22 June 2023. The reason for the delay is unexplained although there is speculation that this may have been caused by problems with the postal service. Whatever the reason, we accept that the certificate was not received by Jerk Yard until 22 June 2023.

24. In the meantime, on 15 June 2023, HMRC had raised what is known as a central assessment for the 04/23 VAT period of just over £10,000 as no VAT return had been received.

25. On 7 August 2023, HMRC's records show that Mr Thompson-Neathey contacted HMRC's debt management unit in relation to the central assessment of just over £10,000 to say that his accountant was having problems filing the 04/23 return. HMRC agreed to put a short hold on any collection activities and advised Mr Thompson-Neathey that, if he was contacted by the debt collection agency, he should tell them that the assessment was an estimate and that the actual figures were in the process of being filed.

26. On 10 August 2023, Mr Thompson-Neathey telephoned HMRC and was told that he would receive a letter from them telling him how much VAT was due. Jerk Yard's evidence (which is not challenged by HMRC and which we therefore accept) is that no such letter was ever received.

27. Jerk Yard submitted its return for the 04/23 VAT period on 17 August 2023. This showed a repayment of £7,540.56. As a result of this, the central assessment which had been made on 15 June 2023 was cancelled.

28. HMRC say in their statement of case that, on 30 August 2023, they notified Jerk Yard that they would be checking the 04/23 return and the claim for repayment of input tax. There is no copy of this letter in the bundle of documents with which we were provided. However, we note that Jerk Yard submitted a response to HMRC's statement of case taking issue with various statements made by HMRC but did not challenge this particular point. We therefore infer (and find as a fact) that such a notice was given by HMRC on 30 August 2023.

29. Jerk Yard's second VAT return was for the 07/23 VAT period. This was due on 7 September 2023. The return was submitted on 4 September 2023 and showed VAT due of £10,624.65. The payment of this VAT was due on the same date as the return (7 September 2023). However, no payment was made at that time. Instead, the VAT due was paid as follows:

- (1) £2,273.59 was paid by Jerk Yard on 11 November 2023;
- (2) a further £1,687.67 was paid on 28 November 2023;
- (3) the remaining £6,213.39 was paid by way of a credit from the repayment of £7,540.56 relating to the 04/23 VAT period which had been finally processed by HMRC on 5 December 2023.

30. It will be noted that all of the payments were more than 30 days after the due date of 7 September 2023. In fact, due to the introduction of the new penalty regime in 2023, HMRC allowed a 30 day "familiarisation" period before applying penalties and so payment by 7 October 2023 would not have incurred any penalty. However, as can be seen, none of the payments were made by the end of the grace period nor within 30 days after that date.

31. On 5 October 2023, Jerk Yard responded to HMRC's initial queries relating to the VAT return for the 04/23 period.

32. As the VAT for the 07/23 period had not been paid by the end of the familiarisation period (7 October 2023), HMRC assessed late payment penalties under Schedule 26 totalling £424.98. Notice of the assessment was sent to Jerk Yard on 11 October 2023. Although this was sent to the address held by HMRC for Jerk Yard, the business had moved and the penalty notice was not received until 24 October 2023. There is some dispute as to whether Jerk Yard had previously notified HMRC of the change of address. However, this is not a point relied on by Jerk Yard in its grounds of appeal, rightly so in our view given that the penalty notice clearly was received by Jerk Yard.

33. Following a request for a review of the late payment penalty, HMRC upheld their decision in a letter dated 30 November 2023. Unusually, at the request of Jerk Yard, HMRC carried a second review and, on 3 January 2024, again upheld the original decision to charge

the penalty. Jerk Yard had, in the meantime, lodged its appeal with the Tribunal on 28 December 2023.

34. We should note that Jerk Yard has made various complaints to HMRC about the way in which HMRC dealt with the original registration application and their subsequent compliance activities. These complaints are of course for HMRC to deal with, not the Tribunal, although the facts giving rise to the complaints may be relevant when we consider whether there are any special circumstances which would justify a reduction in the amount of the penalty.

#### **THE PENALTY ASSESSMENT**

35. HMRC accept that they have the burden of proving that the penalty has been properly assessed and notified. This has not been challenged by Jerk Yard other than the fact that it has noted that HMRC used an incorrect address for the penalty notification.

36. Based on the evidence before us, we accept that (subject to the question of reasonable excuse or the existence of special circumstances) the penalty is in principle due in accordance with Schedule 26 and that it has been properly assessed and notified. As we have said, even if HMRC should have used a different address, this does not invalidate the notice as it was in fact received by Jerk Yard.

#### **REASONABLE EXCUSE**

37. There are two main strands to Jerk Yard's submission that it has a reasonable excuse for the late payment of the VAT for the 07/23 VAT period. They are however linked in that the underlying point is that it was expecting to receive the VAT refund of approximately £7,500 for the 04/23 VAT period sooner than it did and that, had it done so, it would have been able to pay the VAT due for the 07/23 VAT period on time.

38. The first complaint relates to the processing of the original VAT registration application, which took HMRC almost three months, together with the fact that the VAT registration certificate did then not arrive for a further two months. Jerk Yard had been expecting the VAT registration to be completed by March 2023 which, it says, would have enabled it to put together all of the historic information needed for the first VAT return before its busy period started in mid-April. On this basis, Jerk Yard was expecting its VAT refund by 7 May 2023 at the latest.

39. As it was, the result of not receiving the VAT registration certificate until 27 June 2023 was that, as this fell within the busiest period of Jerk Yard's business, there was a delay in putting together the information needed for the first VAT return which is why it was not submitted until 17 August 2023. In addition, Jerk Yard points to the fact that, even then, the repayment was not approved until 5 December 2023.

40. The second point relied on by Jerk Yard is that, given the increased requirements for working capital in high season, it did not have funds available to pay the VAT for the 07/23 period without the VAT repayment relating to the 04/23 VAT period.

41. In relation to these points, HMRC's view is that it is not reasonable for a taxpayer to rely on an anticipated repayment in order to meet a tax liability. In support of this, Ms Vanderhook referred to the decision of the High Court in *R (on the application of UK Tradecorp Limited) v HMRC* [2004] EWHC 2515 (Admin)). Although in a different context, the decision makes it clear that there was no right to a repayment of input tax until the claim is accepted by HMRC (see paragraphs [33-34]).

42. As an aside, we note that the Court in *Tradecorp* also observed that HMRC nevertheless have a duty to process claims expeditiously and that, if they fail to do so, this can be challenged by way of judicial review (see paragraphs [24-25]). We will return to this point.

43. Essentially what Ms Vanderhook is saying is that Jerk Yard should have anticipated that HMRC may have queries in relation to the VAT return and that it could not therefore be sure that the repayment would be accepted in time to pay the VAT for the 07/23 VAT period.

44. In relation to cashflow difficulties, Ms Vanderhook rightly notes that this can only be relied on if the insufficiency of funds is attributable to events outside the person's control (paragraph 12(2)(a) of Schedule 26). In any event, she submits that it was open to Jerk Yard to agree a time to pay arrangement with HMRC, in which case no penalty would have been due. Although Jerk Yard was in contact with HMRC's debt management unit, Ms Vanderhook observes that there is no evidence that it asked for a time to pay arrangement to be put in place.

45. Having considered all the circumstances, we do not consider that Jerk Yard has a reasonable excuse for the late payment of VAT for the 07/23 VAT period.

46. Whilst we accept that there were delays on the part of HMRC in dealing with the VAT registration application and that there was also a further delay (due to reasons unknown) before Jerk Yard received the VAT registration certificate on 22 June 2023, this does not satisfactorily explain the delay in submitting the VAT return for the 04/23 period until 17 August 2023.

47. Given that the VAT registration application had been made on 31 January 2023 and that Jerk Yard was clear that it needed to be registered, it would, objectively, be reasonable to expect Jerk Yard to have taken steps to put together the information needed for its first VAT return prior to the start of its busy period in mid-April 2023. It clearly knew that it would have to file a VAT return covering the period from June 2022. There is no evidence that any attempt was made to put together the required information before the VAT registration certificate was received in June 2023.

48. In our view, a reasonable taxpayer, knowing of the obligation to file a VAT return (even though Jerk Yard did not know the precise period for which the return would be required) would have started to put this information together so that it would be a relatively straightforward matter to bring the information up-to-date once the VAT registration certificate had been received and Jerk Yard knew the date up to which the first VAT return would need to be prepared. In the light of the Jerk Yard's known other commitments after mid-April 2023, it was not reasonable for it to do nothing about this pending receipt of the VAT registration certificate.

49. In any event, we agree with HMRC that a reasonable taxpayer would not rely on receiving a VAT repayment in time to meet a subsequent VAT liability. Any taxpayer (particularly one who has the assistance of an accountant) would know that there may well be reasons which could delay the processing of a repayment claim. It might perhaps be thought that this would particularly be the case where the first VAT return shows a significant repayment due to the taxpayer. It is not surprising that HMRC wished to investigate the return and to satisfy themselves that the VAT repayment was due.

50. Whilst Jerk Yard may have hoped that the VAT repayment would have arrived in time to pay the VAT due for the 07/23 VAT period, it was reasonably foreseeable that this might not be the case. A reasonable taxpayer would therefore have made contingency plans to ensure that it had funds available to meet the VAT liability.

51. Jerk Yard knew by the end of August 2023 that HMRC intended to investigate the 04/23 return and the claim for repayment. It must therefore have known at that stage that it was unlikely that the repayment would be forthcoming before the due date of payment of the 07/23 VAT on 7 September 2023 or even by the end of the grace period allowed by HMRC on 7 October 2023. The fact that the repayment was not in fact made until 5 December 2023 does not change this.

52. Jerk Yard therefore had time either to make alternative arrangements to pay the VAT due to the 07/23 period or to ask for a time to pay arrangement which would have prevented any penalty from arising. We do not consider that simply failing to pay the tax when due was a reasonable course of action.

53. It is no answer to this that Jerk Yard thought that it was waiting to receive a letter from HMRC setting out the amount of VAT due. It had submitted its VAT returns and therefore it knew the amount of the repayment which it had claimed and also the amount of VAT which was due for the 07/23 period. It cannot therefore say realistically that, in the absence of a letter from HMRC, it did not know how much VAT was due based on its own returns.

54. It is in our view significant that Jerk Yard accepts in its own submissions to the Tribunal that it is reasonable for HMRC to charge a penalty on the difference between the tax due for the 07/23 period of £10,624.65 and the repayment which had been claimed of £7,540.56 for the 04/23 period (i.e. a net amount of £2,724.09).

55. This demonstrates that Jerk Yard knew full well that some VAT was payable and yet it paid nothing at all until November 2023 when action was taken by the debt collection agency. The inference from this is that Jerk Yard had cashflow difficulties which prevented it from making a payment sooner than it did; otherwise it would have paid the balance which it must have known was due of £2,724.09 by the due date. As we have said, if there were cashflow difficulties, this could have been addressed by asking for a time to pay arrangement.

56. Our conclusion therefore is that, objectively, the reasons put forward by Jerk Yard for the late payment of the VAT do not constitute a reasonable excuse for the failure to pay the VAT on time or, alternatively, to ask for a time to pay arrangement.

#### **SPECIAL CIRCUMSTANCES**

57. As we have explained, where HMRC have made a decision about whether to reduce a penalty based on the existence of special circumstances, the Tribunal may only interfere with that decision if it is satisfied that it is flawed in a judicial review sense.

58. In this case, HMRC note in their Statement of Case that they have considered the points put forward by Jerk Yard (in particular the fact that it did not have time to prepare the 04/23 VAT return due to the late arrival of the VAT certificate, the fact that had HMRC acted more expeditiously, it would have had the VAT refund for the 04/23 period sooner and the fact, due to working capital requirements, it did not therefore have the funds available to pay the VAT). HMRC's conclusion is that these are not special circumstances which justify a reduction.

59. However, it is not clear that HMRC had in fact given proper consideration to the points made by Jerk Yard. When giving their reasons why there are no special circumstances justifying a reduction in the amount of the penalty, HMRC simply explain that because the penalties had been charged in accordance with the legislation, the penalties are appropriate, notwithstanding their consideration of the relevant circumstances.

60. In our view, this is not a proper analysis of the circumstances as no reasons are given as to why these specific circumstances do not justify a reduction in the amount of the penalty. HMRC's decision is therefore flawed. We have therefore considered whether any reduction is appropriate based on the circumstances put forward by Jerk Yard.

61. As we have already noted, Jerk Yard does not explicitly rely on the existence of special circumstances. However, in its absence we have inferred, given the nature of the points put forward and the fact that various complaints have been made about the way in which HMRC have handled the VAT registration application and subsequent compliance activities that Jerk Yard is in fact relying on the existence of special circumstances as an alternative to there being a reasonable excuse for the failure to pay the tax on time.

62. However, having considered the various points put forward by Jerk Yard, we do not consider that there are any special circumstances which justify a reduction in the amount of the penalty.

63. As far as the VAT registration process itself is concerned, it is true that HMRC initially made a mistake in rejecting the application. However, this was not until 10 April 2023 and it was quickly remedied as the VAT registration was then processed on 20 April 2023. We heard no evidence on HMRC's normal processes when they receive a VAT registration application nor the time which is normally taken to process an application.

64. Bearing in mind that it is for Jerk Yard to prove the existence of special circumstances, in the absence of any such evidence, we do not consider that a period of just under three months for processing the application constitutes undue delay. In concluding that this is not a special circumstance justifying a reduction, we also take into account the fact that, although Jerk Yard identified in October 2022 that it needed to apply for registration, no application was in fact made until the end of January 2023, a delay of over three months.

65. There was then of course a further delay before Jerk Yard received the VAT registration certificate on 22 June 2023. This was not the fault of either Jerk Yard or HMRC. We have already concluded that this does not constitute a reasonable excuse for the failure to pay the 07/23 VAT on time. For the same reasons, we do not consider that it is a special circumstance which justifies a reduction in the amount of the penalty. Jerk Yard should have taken action earlier to gather the information to enable it to submit the 04/23 VAT return in a more timely fashion and should have either made alternative arrangements to pay the VAT due or asked for a time to pay arrangement.

66. The other element of delay on the part of HMRC is during the period from 17 August 2023 when the 04/23 VAT return was submitted until 5 December 2023 when the repayment was approved. As noted above at [42], HMRC have an obligation to deal with claims expeditiously. However, once again, we have no evidence at all as to what took place during this period.

67. It is apparent that HMRC notified Jerk Yark that they were going to make enquiries and that HMRC subsequently asked Jerk Yard to provide a significant amount of information. We do not know when this request was made although we do know that the information was provided on 5 October 2023. We have no information as to whether there was any further communication between the parties before the repayment was approved on 5 December 2023.

68. Again, taking into account that the burden of proof is on Jerk Yard, we are unable to conclude that there was delay on the part of HMRC sufficient to justify a reduction in the amount of the penalty. It is also relevant to our conclusion in this respect that no VAT was paid at all until November 2023 despite Jerk Yard knowing that there was a net payment of £2,724.09 due by 7 September 2023.

69. We have mentioned in our discussion relating to the existence of a reasonable excuse the fact that HMRC did not specifically notify Jerk Yard of the amount of VAT due and the cashflow difficulties explained by Jerk Yard in their various submissions. For the reasons we have already given in that section, we do not consider that these factors constitute special circumstances justifying a reduction in the amount of the penalty.

70. It is apparent that some mistakes have been made by HMRC and that they could have perhaps handled the situation better. We know for example Jerk Yard's complaint that HMRC's debt management unit was issuing demands for payments of VAT which do not appear to have been due and that the whole process has, as explained by Mr Thompson-Neithey been very stressful for him. However, in circumstances where there was a failure to pay the



VAT which Jerk Yard knew to be due based on the return which it had made, we do not consider this to be a special circumstance which justifies a reduction in the amount of the penalty for the late payment.

**CONCLUSION**

71. The penalty charged by HMRC is due under the terms of Schedule 26 and has been properly assessed and notified.

72. Jerk Yark does not have a reasonable excuse for the failure to pay its VAT for the 07/23 VAT period within the relevant time limit.

73. Although HMRC's decision in relation to special circumstances is flawed, we do not consider that there are any special circumstances which, in this case, justify a reduction in the amount of the penalty.

**RIGHT TO APPLY FOR PERMISSION TO APPEAL**

74. 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.

**ROBIN VOS  
TRIBUNAL JUDGE**

**Release date: 30<sup>th</sup> JANUARY 2025**