



TC04707

Appeal number: TC/2015/02879

Value Added Tax – Default Surcharge – whether reasonable excuse – no – appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

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| | JOBEC UK LTD | Appellant |
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| | - and - | |
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| | THE COMMISSIONERS FOR HER MAJESTY'S REVENUE AND CUSTOMS | Respondents |
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TRIBUNAL: JUDGE DR K KHAN

The tribunal determined the appeal on 21 September 2015 without a hearing under the provisions of Rule 26 of Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (default paper cases) and submitted a late appeal on 12 March 2015 to which there was no objection. HMRC's Statement of Case was submitted on 5 June 2015.

DECISION

Introduction

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1. This is an appeal against a Default Surcharge for the period 11/14 in the amount of £546.37 calculated at 5% of the tax due which was £10927.49.

10 The Appellant acknowledges that the return and payment for the period 11/14 was rendered late and as a result a default occurred.

Background Facts

15 (1) The Appellant was registered for VAT on 1 February 1998 and has been in the Default Surcharge Regime from period 05/13 onwards. As such prior to the period to this appeal two earlier Surcharge Liability Notices have been issued. The Appellant has paid the VAT through Direct Debit. The Appellant requested a review of the
20 surcharge in a letter dated 26 January 2015 and the Respondents issued a reply, upholding the surcharge on 25 February 2015. An appeal to the tribunal was made on 12 March 2015.

Appellant's Case

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(1) The Appellant says that the return and payment for the period subject was submitted one day late and the reason for the late payment was due to poor cash flow. They say that the Appellant's administrator was ill on the date the return should have been
30 submitted and attended to the matter as soon as she returned to work. They feel the amount charged in the surcharge is harsh, and unfair.

HMRC's Submission

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(1) The HMRC say that the surcharge was properly applied, served and the penalty should be upheld. The due date for the return was 7 January 2015 and the return was received on 8 January 2015 and payment received by Direct Debit on 13 January 2015. Both return
40 and payment were therefore late.

(2) Given that the Appellant was in the Default Surcharge Regime since 05/13 they would have known of the financial consequences attached to the risk of further default and would have received proper notification of penalties and their calculations.
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- (3) The liability to the VAT surcharge is governed by the VATA 1994 section 59 which applies the surcharge and percentage calculation.
- 5 (4) The fact that the Appellant was suffering poor cash flow would not give rise to a reasonable excuse. However, in this situation, if the Appellant contacted HMRC and agreed to a time to pay arrangement this would have prevented the surcharge occurring.
- 10 (5) With regard to the Appellant's admission that the penalty was harsh, HMRC said that the Appellant would have been aware of the rate of surcharge reached, having received two earlier surcharge notices which showed the penalty calculations. They also draw reference to the case of Total Technology (Engineering) Ltd in which the Upper Tribunal stated that the surcharge regime did not infringe the principle of proportionality and fairness.
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Conclusion

- 20 (1) In these cases the onus of proof rests with the Respondent to show that the Appellant failed to pay the VAT on time and was liable for a number of surcharges. The onus then passes to the Appellant to show that they had a reasonable excuse. The standard of proof is the ordinary civil standard and of the balance of probabilities.
- 25 (2) The Tribunal has considered the evidence carefully. A reasonable excuse is normally an unexpected or unusual event, either foreseeable or beyond the person's control, which prevents them from complying with an obligation which they would otherwise have done. The matter has to be considered in the light of the actions of a reasonable prudent taxpayer exercising foresight and due diligence and having proper regard to their responsibilities under the Taxes Act. While it is accepted that the payment was just a few days late, the Appellant were in the Surcharge Regime and other payments had previously been late. They therefore ought to have been aware of the ramifications of another late payment. In the circumstances the Tribunal agrees with HMRC that the Appellant have not established a reasonable excuse for the late payment. There is no reasonable excuse for an insufficiency of funds or reliance on a third party. The default surcharge regime, according to the Total Technology case, is not unfair and is proportionate. The appeal is therefore dismissed.
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45 1. This document contains full findings of facts 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

