



TC02916

Appeal number: TC/2012/05736

*Default surcharge – payment one day late – Faster Payment Service –
incorrect advice from bank as to daily limit – s71(1)(a) VATA 1994 –
reasonable excuse - appeal dismissed*

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

MANSELL McTAGGART LIMITED

Appellant

- and -

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

**TRIBUNAL: JUDGE MALACHY CORNWELL-KELLY
MS ELIZABETH BRIDGE**

Sitting in public at 185 Dyke Road, Brighton on 16 August 2013

**Mr Christopher Atkinson of Simpson Wreford & Partners for the Appellant
company**

**Ms Gloria Orimoloye of HM Revenue and Customs Solicitor's Office for the
Respondents**

DECISION

1. This is an appeal against a default surcharge of £611.17, being 2% of tax paid one day late in respect of period 12/11. There was one previous default in this case: for the period 6/11 the tax was also paid one day late, and a default in period 9/11 was judged to have a reasonable excuse.

2. Mr Atkinson for the appellant explained that his firm, which had been unaware of the previous defaults, had advised their client to use the Faster Payment Service to pay VAT due at the end of a quarter and had checked the limits applicable to this procedure on HMRC's website. The payment for 12/11 would have been made by the extended due date but for incorrect advice from NatWest bank on that day to the effect that there was a daily limit of £10,000 for such payments, when the correct advice was that the daily limit was £30,000.

3. The amount payable was £30,558.66, but had £30,000 been paid on the last day (7 February 2012) as it could have been, the surcharge would only have been on the remaining £558.66 (i.e. £11.17), or perhaps that amount could have been paid in time separately. The total tax due was transferred by the bank – in spite of the £30,000 limit – by means of the Faster Payment Service on 8 February 2012, one day late. Mr Atkinson confirmed that the company had not suffered from a cashflow problem and that the only issue was that his client could not have foreseen that the bank would give the incorrect advice it had given.

4. Ms Orimoloye pointed out that that the taxpayer had been well aware of the importance of payment dates being met when HMRC had cancelled a surcharge for period 9/11 in view of its previous good record and because they accepted in that case that there had been a reasonable excuse for the delay; the letter from the commissioners cancelling the surcharge was sent on 25 January 2012, only a fortnight before the events giving rise to this appeal. The need for punctuality was thus very fresh in the company's awareness when the current delay occurred. Moreover, the case was exactly covered by section 71(1)(a) of the Value Added Tax Act 1994, which provides:-

71 Construction of sections 59 to 70.

(1) For the purpose of any provision of sections 59 to 70 which refers to a reasonable excuse for any conduct-

(a) an insufficiency of funds to pay any VAT due is not a reasonable excuse; and

(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.

5. Parliament has given the tribunal no power to reduce or mitigate default surcharges. It is well established that if a surcharge complies with the statutory requirements in the circumstances of the case, it must be upheld and any indulgence or mitigation is a matter for the commissioners alone or, in certain eventualities, for judicial review. In the circumstances, the appeal must therefore be dismissed.

6. 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.

10

**MALACHY CORNWELL-KELLY
TRIBUNAL JUDGE**

15

RELEASE DATE: 30 September 2013