



TC03423

Appeal number: TC/2013/09388

VAT – Late payment – Payment two days late – Director off sick – Previous defaults - Whether reasonable excuse - No – Appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

SIMPLY GLASS LTD

Appellants

- and -

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

Respondents

TRIBUNAL: JUDGE NORMA BAIRD

The Tribunal determined the appeal on 28 February 2014 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 28 November 2013 (with enclosures), HMRC's Submissions (with enclosures) received on 28 January 2014 and the appellants' reply dated 4 February 2014.

DECISION

1 The appellants appeal against the decision of HMRC to impose a surcharge of
5 £1671.80 for the period 07/13 under the provisions of Section 59 of the VAT Act
1994. The return for that period was filed electronically, in time, on 29 August 2013.
Payment was due electronically on or before 7 September 2013. A part payment
reached HMRC's bank account on 29 August and the balance of £16,817.09 on 9
September.

10

2. It is submitted in the Grounds of Appeal that the VAT was due on Saturday 7
September but the person responsible for dealing with this was on holiday the week
leading up to that date and dealt with it immediately on her return the following
Monday. The Director who would otherwise have dealt with it on time was off sick.
15 The payment was therefore two days late. In the reply to HMRC's Statement of Case
it is submitted that the penalty is very large especially in the current economic climate
and it is requested that it be reduced or waived.

3. The position of HMRC is that the appellants' first default had been recorded for
20 the period 07/12 and that their payments for 07/12, 10/12 and 01/13 were either
partially or wholly late. On 11 September 2012 the appellants had telephoned HMRC
seeking Time to Pay which was refused because the request had been made after the
due date and a Surcharge Liability Notice was issued. HMRC say that lack of funds
does not constitute a reasonable excuse and whilst they are sympathetic, it was
25 foreseeable that if the person responsible was on holiday someone else would have to
deal with the VAT. The VAT had been part paid and payment of the balance ought to
have been prioritised. Having been advised of the default surcharge regime
previously, the appellants should have been aware of the consequences of not paying
in time. HMRC conclude that the appellants have not established that they have a
30 reasonable excuse for the late payment.

4. I have given careful consideration to the evidence before me. A reasonable excuse
is normally an unexpected or unusual event, either unforeseeable or beyond the
person's control, which prevents him from complying with an obligation when he
35 otherwise would 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 for his responsibilities under the Taxes Act. I accept that the payment
was only two days late but the fact of the matter is that the appellants were already in
the Surcharge Regime and several payments had been late. They therefore ought to
40 have been aware of the ramifications of another late payment. In all the
circumstances I must agree with HMRC that the appellants have not established a
reasonable excuse for the late payment

5. The appeal is dismissed.

45

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

5 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

**NORMA BAIRD
TRIBUNAL JUDGE**

RELEASE DATE: 19 March 2014

15