



TC03888

Appeal number: TC/2013/07911

VAT – Late Return and payment – surcharge – whether reasonable excuse – whether amount disproportionate – No – Sections 59 and 71 VATA 1994 – Appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

NORTHSTAR PMC LIMITED

Appellant

- and -

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

Respondents

**TRIBUNAL: JUDGE KENNETH MURE, QC
PETER R SHEPPARD, FCIS, FCIB, CTA**

**Sitting in public at George House, 126 George Street, Edinburgh on Monday
14 July 2014**

Appellant: not represented

Respondents: Mrs L Ahammed, Officer of HMRC

DECISION

1. Mr McHardy on behalf of the Appellant company indicated that he did not
5 intend to appear and was content that the Hearing should proceed in his absence.

2. Mrs Ahammed appeared on behalf of HMRC, the Respondents, and addressed us on the papers and information available.

3. This appeal is in respect of a 10% surcharge to VAT of £1102.81 for the Period
05/13 for late submission of the company's Return and payment. Mrs Ahammed
10 referred us to the Schedule of defaults at p9 of the Bundle. The Return was not
received until 27 July 2013, 20 days late, and payment was not received until
31 July 2013, 24 days late. This was the fourth default. No penalty had actually been
imposed on the previous occasions: the amounts fell below £400 and were
accordingly waived. There is no apparent challenge to the timetable set out in the
15 Schedule or the previous defaults. (However, notwithstanding the absence of any
challenge we would suggest that at least some documentary record of the issuing of
surcharge liability notices he produced for the Tribunal's reference.)

4. Mr McHardy explained in the Grounds for appeal and correspondence that he
and his domestic partner had been under severe personal stress. She had recently had
20 a baby and they had arranged a holiday at short notice in the hope of easing the
pressures which they were facing. The company was a one-man business with
Mr McHardy bearing all responsibility for it. The holiday, he argued, was not
foreseeable – it had been arranged at 48 hours notice. In his letter of 21 August 2013
(p10) Mr McHardy stressed the factors of the holiday, work commitments and family
25 life as contributing to his delay. Moreover, he considered the penalty excessive and
disproportionate. There had been a genuine oversight on his part, he claimed. He
indicated that there had been a "7 day delay": the Schedule indicates a lengthier
period.

5. Mrs Ahammed did not challenge the foregoing narrative and we accepted it as
30 *pro veritate*. The issue for the Tribunal was whether the taxpayer had a *reasonable
excuse*. Mrs Ahammed considered that there was no such excuse. She referred us to
the very limited statutory definition of the term in Section 71 VATA and the decisions
in *HMRC v Hok Ltd* [2012] UKUT 363 (TCC) and *HMRC v Total Technology
(Engineering) Ltd* [2012] UKUT 418 (TCC). From these decisions it is clear that
35 even a short delay of one day does not necessarily render a penalty disproportionate.
(Accordingly the possible difference of an admitted seven day delay but lengthier
delay claimed by HMRC may be immaterial.) There was no professional evidence
setting out any exceptional medical factors. The taxpayer had not approached HMRC
with a view to negotiating a time-to-pay arrangement. The holiday and the
40 circumstances in which it was arranged did not disclose a *reasonable excuse*.
Mr McHardy as the Appellant company's director should have been familiar with the
manner of the operation of the default regime.

6. We considered that the stance adopted by Mrs Ahammed was well-founded. In
our view a *reasonable excuse* has not been demonstrated. While we have a degree of
45 sympathy for the taxpayer, the new family and work commitments are not unusual,
certainly not exceptional. We regard the timeous submission of VAT returns and
payments to be another routine and important work commitment. The responsibility

for ensuring prompt payment rested with Mr McHardy, and given the previous defaults he must be presumed to be familiar with the system of surcharges.

7. For these reasons we dismiss the Appeal and confirm the surcharge.

8. 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.

KENNETH MURE, QC
TRIBUNAL JUDGE

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RELEASE DATE: 6 August 2014