



**TC03953**

**Appeal number: TC/2014/01244**

*Value Added Tax - Default Surcharge - Evidence in relation to Time to Pay agreement -  
Appeal allowed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**FIRESTATION ARTS & CULTURE CIC**

**Appellant**

**-and-**

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

**Respondents**

**TRIBUNAL: JUDGE HOWARD M. NOWLAN  
MS AMANDA DARLEY**

**Sitting in public at 30-31, Friar Street in Reading on 12 August 2014**

**The Appellant was neither present, nor represented**

**F. Ojo and B. Robinson, both of HMRC, on behalf of the Respondents**

**DECISION**

1. This was a default surcharge appeal in which the material question was not whether there had been defaults, of which indeed there had been countless defaults, but whether a “time to pay” agreement that the Appellant clearly believed covered not just the past VAT debt, but current VAT liabilities as well during the period of the agreement and whilst indeed the backlog was being rapidly diminished, or whether it just covered the historic debt at the date of the agreement, with the Appellant then having to pay current VAT on the due dates to avoid further surcharges.
2. The Appeal was an unsatisfactory one because whilst some facts, which we will mention below, were clear, the absence of the Appellant, the feature that HMRC produced no witness statement from the Field officer who had had all the contact and dealings with the Appellant, and the fact that that officer did not give evidence at the Appeal made it very difficult to gain a full understanding of the facts. Beyond this, we were shown no written agreement in relation to the time to pay agreement, which clearly had been agreed, if only informally. All that we were shown, in terms of anything that might indicate whether the time to pay agreement was intended to cover past and future VAT liabilities until the entire backlog had been cleared or just the historic backlog, were some extremely muddling phone notes, recorded it seems by Call Centre personnel, riddled with abbreviations, and producing a very far from clear picture.
3. The facts that were clear were as follows.
4. In late July 2012, some informal agreement was clearly entered into between a Mr. Macdonald, said to be HMRC’s field force officer who was dealing with the Appellant, and the Appellant. It is equally clear that that agreement provided that the Appellant would pay £1,500 weekly in respect of VAT liabilities. HMRC’s representative at the hearing confirmed what was anyway perfectly evident from HMRC’s schedule of receipts, namely that the Appellant had regularly made the weekly payments of £1,500. We asked whether any point was taken to the effect that the Appellant had breached the terms of the agreement and failed to make any of the weekly payments, and we were told that no issue was taken in relation to any non-payments of the weekly amounts.
5. We also suggested to the Respondents’ representative that since the weekly payments would provide £18,000 in each three-month period, they were clearly sufficient in amount not only to clear the backlog but also to cover ongoing VAT indebtedness during the period when the weekly payments were being made, and to bring the Appellant up to date very quickly. The Appellant had said in correspondence, where he was complaining about further surcharges, based on the claim by HMRC that the weekly payments were not designed to be in substitution for payment on time of the current VAT liabilities, that he was extremely surprised to receive these surcharge demands because the Appellant had virtually caught up, discharging thus the one-time historic debt and also discharging all current VAT liabilities.
6. The Respondents’ representative accepted that the point that we had made, recorded in the previous paragraph, was correct. In other words, the weekly payments were amply sufficient to bring the Appellant entirely up to date; they had apparently nearly achieved that at the point when HMRC issued further surcharge notices, and the Appellant also said that once the backlog had been cleared, he understood that it was agreed that the Appellant would put some form of pre-payment machinery in place for on-going VAT liabilities.

7. We found the very short notes of phone calls, seemingly made by some HMRC call centre staff to be extremely unsatisfactory. They were virtually impossible to read in any coherent manner; they were recording comments that the call centre staff seemed to be making to the effect that there would normally be evidence of a written contract or letter setting out the terms of a “time to pay” agreement, and they could find no such record or document. We do, however, have no doubt that Mr. Macdonald had clearly agreed some sort of time to pay agreement with the Appellant. The Appellant appeared to have been honouring the terms of the agreement to the letter. And the most that the phone notes established was that the call centre staff were suggesting to the Appellant’s officer that they were not clear that the time to pay agreement was meant to cover the ongoing current liability.

8. In order to illustrate the quality of the notes that we have been endeavouring to read, and to record the respect in which the call centre staff were making representations as to what they assumed the position to be, rather than ascertain what Mr. Macdonald may have agreed with the Appellant, we will quote one set of notes, without correction. We might add that our quotation makes the notes far easier to read than they were on the print-out because that kept jumping from minute to minute, as if one phone conversation had occurred in three or four back to back phone calls. The record of at least some of the call on 7 January 2014 was as follows:

*“T ele call from tp  
6004462 – Comp(10VC1 -5PASSED – teli from Mr. D. Eastmond to make DC paymt  
of £1500.00 towards VAT debt. T dr thought he had an ongoing TTP with FFA from  
last year. I checked back notes & also EF but there is nothing to suggest a formal  
TTP in place. From*

*Contd – from the closed notes, the FFA did call out to him but there is nothingnt om  
suggest a formal TTP was agreed & certainly no note of TTP ltr being issued. Per  
trader, said FFA told him to keep paying the weekly paymts of £1500 to enable him to*

*Contd - get ahead of himself and then pay the VAT monthly. I advised whilst there  
is no record of this, I advised the trade4r thast at the time of the FFA call, the VAT  
due on the tax rtn for 07/13 would not have been due, so any “informal” arrangement*

*Contd - that the FFA may have been for the debt at the point of his call to the  
premises. All future taxes were to be paid when due. Current state per VMF today  
is as follows 07/13 tax (bal()) £281.20 D/S £53.45”*

9. We find that quality of evidence extremely unsatisfactory. It is clear to us that there was an informal agreement between Mr. Macdonald and the Appellant, and the trader is recorded as having said that he thought that there was “an ongoing time to pay agreement with FFA (Mr. Macdonald) from last year”. Furthermore the trader said “FFA told him to keep paying the weekly payments of £1500 to enable him to get ahead of himself and then pay the VAT monthly.” And, in the week immediately prior to the one in which the extract just quoted records the call, there was another note recording that “This is next payment as part of TTP”. With references like this in mind, we are not swayed by whoever made these phone notes may have thought the informal agreement should have said, or indeed whether an informal agreement should have existed at all in these circumstances. There is evidence in these notes that the trader believed that he had an agreement to the effect that the £1,500 weekly payments would cover ongoing debt, and once the Appellant had caught up, then monthly payments would be made in advance.

10. We consider that the Appellant's version of events seems to us to be entirely credible, and we decide that that was essentially the informal agreement that existed. Accordingly, recognising that it was accepted that the Appellant duly complied with all the terms of the agreement, and regularly paid the £1,500 weekly payments, default surcharges issued in respect of current VAT liabilities whilst those payments were duly being made should be discharged.

11. The Appellant's appeal is allowed.

12. This document contains full findings of fact and the reasons for our decision in relation to this appeal. Any party dissatisfied with the decision relevant to it 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.

**HOWARD M. NOWLAN  
TRIBUNAL JUDGE**

**RELEASED: 21 August 2014**

