



TC03955

Appeal number: TC/2014/01246

Value Added Tax - Default Surcharge - Appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

JULIAN MATTHEW

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 in person

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

DECISION

1. This was an unfortunate Appeal in which we felt somewhat sorry for the Appellant, both for suffering a level of default surcharge that was relatively serious, and also because having had his review turned down, and now hoping that we might quash or diminish the surcharge simply because he regarded it as harsh, we had to inform him that we had no alternative but to dismiss his Appeal.
2. The Appellant was an electronics expert, working as an independent contractor for Ericsson. As an independent contractor, whose receipts must have exceeded the VAT threshold, he knew that he was liable for VAT and he said that the liability caused him no concern since, as he described matters, Ericsson paid him “amounts on top” of his remuneration to fund his VAT liability, and indeed he even had the cash flow benefit of having that money in advance of the due date for the payment of his VAT liability.
3. He must have been unaware of the dates by which he was required to file his VAT returns, and more relevantly to pay his VAT because for six three-monthly periods from 06/12 to 09/13, he was late in paying his VAT in every single period. He said that he could not particularly remember having received letters about the late payments, and about the risk of default surcharges if he continued to be late in paying his VAT, and we can well understand that when the first three defaults occasioned no surcharge, he may have been lulled into a sense of indifference in relation to the significance of paying his VAT on time. Nevertheless we must assume that he would have received the relevant warning letters, and in particular when the fourth, fifth and sixth periods occasioned actual surcharges in the amounts of £347.76, £422.28 and £421/20 (with the rates of surcharge in those three periods being 10%, 10% and 15%) it is surprising that it took him until the receipt of the last of those surcharges until he realised the serious significance of being late in paying his VAT.
4. The Appellant offered no excuse that might rank as a reasonable excuse for the late payments, and candidly admitted that the late payments resulted more from his ignorance that he had a very marked incentive to pay his VAT on time, and ignorance that he might end up with a cumulative penalty of well in excess of £1,000 for being late.
5. We explained to the Appellant that there was no way in which the Tribunal could adjust the level of surcharge. Our only jurisdiction was to quash the surcharge when we were convinced that the Appellant had shown a reasonable excuse for his late payment in one of the very limited circumstances where the legislation enabled us realistically to reach that conclusion. It was also clear that the Appellant would not have taken the morning off work in order to attend the Appeal, had he known that we did not have a general power to diminish the surcharge to reflect his innocent but ignorant delays in making payments.
6. We clearly have no alternative but to dismiss his Appeal.
7. 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

