



TC04776

**Appeal number: TC/2015/03453
and TC/2015/02549**

VAT - penalty notice under Para 39 and 46 of Schedule 36 Finance Act 2008 for non-compliance with an Information Notice - whether reasonable excuse - no - appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

MUHAMMAD MAHOOD SAIFY

Appellant

- and -

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

**TRIBUNAL: JUDGE: MICHAEL CONNELL
MEMBER: PETER WHITEHEAD**

**Sitting in public at Tribunal Service – Tax, City Tower, 5 – 7 Hill Street,
Birmingham on 20 July 2015**

**The Appellant did not attend and was not represented
Mr Barry Sellars, Officer of HM Revenue and Customs, for the Respondents**

DECISION

The Appeal

5 1. Mr Muhammad Mahood Saify (“the Appellant”) appeals against an Information Notice under Schedule 36 FA 2008 (TC/2015/03453) and against a penalty notice of £300 under Para 39 and 46 of Schedule 36 Finance Act (“FA”) 2008 (TC/2015/02549). On 3 June 2015 the Tribunal directed that the appeals be enjoined and heard together.

10 2. The Appellant did not attend the hearing and was not represented. AKA Chartered Accountants (“AKA”), acting on behalf of the Appellant, had indicated prior to the hearing that neither they nor their client would be attending. The Tribunal was therefore satisfied that the Appellant had been notified of the time, date and venue of the appeal hearing and that it was in the interests of justice to proceed.

Background

15 3. In a letter dated 2 October 2014, HMRC made an informal request for information about the Appellant’s business activities in relation to whether or not he was or should have been registered for VAT. HMRC informed the Appellant that the information was required by 2 November 2014.

20 4. On 9 October 2014, AKA replied to HMRC’s letter saying that the Appellant had ceased trading on 10 May 2011 and that all of his Self-Assessment Income Tax returns were up to date.

25 5. On 16 October 2014 HMRC wrote to the Appellant referring to AKA’s letter, informing him that HMRC required a 64-8, ‘Authorising your agent’, form if he wished AKA to act on his behalf when dealing with HMRC. HMRC added that they still required the information requested in their letter of 2 October 2014.

6. AKA forwarded the Appellant’s signed 64-8 to HMRC on 31 October 2014.

30 7. On 7 November 2014, as HMRC had not received the information from the Appellant as requested in its earlier letters, a Notice to Provide Information (Information Notice issued under FA 2008 Schedule 36 Paragraph 1) was issued to the Appellant. The Information Notice provided that the information was required by 6 December 2014. A copy of the Information Notice was sent to AKA.

35 8. On 15 December 2014, as HMRC had not received the information requested in the Information Notice by the specified date, they issued a Penalty Notice to the Appellant for £300 (standard penalty) made under FA 2008 Schedule 36 Paragraph 39.

9. On 22 December 2014 on behalf of the Appellant, AKA wrote to HMRC saying:

“Please accept this letter as an appeal against your penalty notice dated 15 December 2014 on the grounds that in our letter dated 9 October 2014 we informed you that our

5 client ceased trading on 10 May 2011, yet you are still requesting information after this date. Furthermore, we also stated in our letter dated 9 October 2014 that our client's affairs are up to date, which means you just needed to view our client's SA Income Tax Returns for the information you requested. If you still required any information after our letter dated 9 October 2014 you should have written back to us but you did not even acknowledge our said letter. Therefore, we request that you waive your penalty and revoke your notice immediately."

10. On 9 January 2015, Mr Chris Nichols, of HMRC, wrote to the Appellant in response to AKA's appeal against the Notice of Penalty. Mr Nichols said that AKA had appealed against the penalty on the following grounds:

- "Your agent's letter dated 9 October 2014 informed HMRC that you ceased trading on 10 May 2011, yet we still requested information after this date.
- Your agent's letter also explained that your affairs are up-to-date and that we just needed to view your SA Income Tax returns for the requested information.
- 15 • We should have written back to your agent after receiving this letter if we still required information, but we did not acknowledge your agent's letter."

11. Mr Nichols responded that:

- 20 • "The questionnaire asks for background information about your trading activities and is not date specific. While I initially asked for monthly turnover figures for February 2013 - October 2014 in the schedule, section E of the questionnaire asks for turnover for the last months of trading, which could have been provided. There's been no attempt to supply any of the information requested on the questionnaire.
- 25 • While your completed Self-Assessment returns show your business turnover for a 12 month period, it does not give monthly turnover figures which was requested. We also requested other information about the business which is not shown on your SA returns. The information requested was not available to HMRC.
- 30 • After receiving your agent's letter dated 9 October 2014, I wrote to you to explain that HMRC needed authorisation for your agent to act on your behalf. I enclosed form 64-8. I also sent the Information Notice to you and your agent which clearly explained that I still required the information."

Mr Nichols concluded that he saw no reason why the Appellant was unable to provide the requested information within the specified timescale and that the penalty notice dated 15 December 2014 still stood.

35 12. On 22 January AKA responded on behalf of the Appellant saying that he had told HMRC that the Appellant had ceased trading on 10 March 2011, and that all returns were up to date. He nonetheless enclosed a copy spreadsheet showing the Appellant's sales and expenses, adding that the Appellant was trading from home between 1 April 2010 and 11 May 2011 and was not involved in any other business.

Appellant's submissions

13. In the Appellant's Notice of Appeal to the Tribunal his grounds of appeal are:

5 “On 2 October 2014, HMRC requested information. In our letter dated 9 October 2014
we informed HMRC that we would provide them with the requested information.
However, HMRC did not acknowledge our letter. The agents sent completed form 64-8
on 30 October 2014 but they did not acknowledge that either. They raised the penalties
on 15 December 2014, which we believe is unfair and unjust. The appellant's business
10 records and agent's analysis were available but the Appellant was waiting for a reply
from HMRC.”

HMRC's submissions

22. At the hearing, Mr Barry Sellars for HMRC said that the Information Notice
relating to the Appellant was issued by HMRC on 7 November 2014 and required the
Appellant to provide the requested information by 6 December 2014. The Appellant
15 did not comply with the Notice and therefore became liable for a Penalty for £300
(standard penalty) under FA 2008 Schedule 36 Paragraph 39. The Penalty Notice was
issued on 15 December 2014 and so was in time under paragraph 46(2)) “*An
assessment of a penalty under paragraph 39 or 40 must be made within the period of 12
months beginning with the date on which the person became liable to the penalty...*”.

20 23. AKA contends that as they did not receive an acknowledgement to their letter
dated 9 October 2014, they believe that this is sufficient grounds for the Appellant not
complying with the Information Notice by the specified date, and therefore HMRC
should not have issued the initial Penalty Notice.

24. The fact that AKA had not received an acknowledgement to its letter dated 9
25 October 2014 has no bearing on HMRC's decision to issue the Penalty Notice on 15
December 2014. The Appellant was reminded by HMRC in their letter dated 16
October 2104, that he should provide the requested information to HMRC by 22
October 2014.

25. The information required by the Information Notice was available prior to the
30 specified date and there is no reason why that information could not have been
provided by 6 December 2014. Had the information been provided by that date then
HMRC would not have issued the Penalty Notice.

Conclusion

26. The Appellant contends that he has a reasonable excuse under FA 2008 Schedule
35 36 paragraph 45 for not complying with the Information Notice.

27. A person will not be liable to a penalty for a failure to comply with an Information
Notice if they can show that they have a reasonable excuse for their failure and they
remedied that failure without unreasonable delay after the excuse has ended. A
reasonable excuse is normally an unexpected or unusual event that is either

unforeseeable or beyond a person's control. The onus is on the taxpayer. Whether there is a reasonable excuse is a matter of judgment based upon the evidence provided.

5 28. The fact that HMRC did not directly acknowledge AKA's letter dated 9 October 2014 is neither relevant nor a reasonable excuse. When issuing the Information Notice on 7 November 2014, HMRC wrote to AKA and provided them with a copy of the Information Notice that had been issued to their client. AKA was therefore aware of the specified date by which the Appellant was required to provide the information requested by HMRC.

10 29. The information required by the Information Notice was available prior to the specified date and there is no reason why that information could not have been provided by 6 December 2014.

15 30. Although the Appellant had ceased trading on 10 May 2011 and his Self-Assessment returns were up to date that did not amount to compliance with the Information Notice. The information required regarding his turnover could not be obtained from his Self-Assessment records.

20 31. The Appellant did not provide the requested information, as requested in HMRC's informal request of 2 October 2014, by 22 October as requested in HMRC's letter of 16 October 2014, or 6 December 2014, being the date specified in the Information Notice and as a consequence the Appellant became liable to a penalty under Schedule 36 paragraph 39(1). We therefore agree with HMRC's decision to issue the penalty for a failure to comply with the Information Notice issued on 15 December 2014.

32. The appeal by the Appellant is therefore dismissed and the penalty confirmed.

25 33. 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)" 30 which accompanies and forms part of this decision notice.

MICHAEL CONNELL

TRIBUNAL JUDGE

RELEASE DATE: 9 December 2015

35