[2016] UKFTT 836 (TC)

TC05561

Appeal number: TC/2016/00417

VAT – default surcharge – late payment for Period 08/15 – whether reasonable excuse – No – Section 71(1)(b) VATA 1994 – Appeal dismissed

FIRST-TIER TRIBUNAL
TAX CHAMBER

STEPHEN McPARTLIN PLUMBING & CENTRAL HEATING LIMITED	**Appellant**
- and -	
THE COMMISSIONERS FOR HER MAJESTY'S REVENUE & CUSTOMS	**Respondents**

TRIBUNAL: JUDGE KENNETH MURE
IAN SHEARER

Sitting in public at The Eagle Building, Glasgow on Monday 5 September 2016

Appellant:- Stephen McPartlin, Company Director

Respondents:- Mark Boyle, Presenting Officer, HMRC

DECISION

Introduction

1. This is an appeal in respect of a default surcharge of £2,204.76 for the late payment of VAT due for the Period 08/15. The Return was duly filed electronically. Payment was due on about 7 October 2015 by electronic payment. It was not made in fact until 20 October 1015.

2. The calculation of the surcharge is not in dispute, nor is the fact of late payment. The issue is whether the appellant company has a "reasonable excuse" for the delay.

The Law

3. Value Added Tax Act 1994, Sections 59, 70, and 71. Section 71(1)(b) thereof provides—

> "(b) Where reliance is placed on any other person to perform any task, neither the fact of that reliance nor any dilatoriness or inaccuracy on the part of the person relied upon is a reasonable excuse."

Value Added Tax Regulations 1995

The Clean Car Company Limited (LON/90/1381X)

Neal v Customs & Excise Commissioners [1988] STC 131

Salevon Ltd; *Harris & Another* [1989] STC 907

Trinity Mirror plc v Revenue & Customs Commissioners [2015] UKUT 421 (TCC)

Evidence and Submissions

4. Helpfully, Mr Boyle agreed to set out the circumstances in which the surcharge regime arose. The first default was for the Period 11/13. There were defaults thereafter in Periods 02/14, 05/14, and 11/14, with the duration of the regime being extended. (A surcharge for the Period 08/14 was cancelled.) There was a fifth default in 08/15 with a surcharge rate of 15%. Tax of £14,698.40 was due, and a penalty of £2,204.76 imposed. Tax was paid about 13 days late. There was no "time-to-pay" arrangement in force.

5. Mr McPartlin then addressed the Tribunal. He did not dispute the terms of the Presenting Officer's factual narrative. He explained that he is the sole employee, a plumber of the appellant company, and also is its sole director. He employed a firm of chartered accountants to assist him with tax and accountancy matters relating to the business. The partner originally acting had provided a very supportive service, but this deteriorated after his services were no longer available. Mr McPartlin emphasised that he had thought it desirable to have a qualified *chartered* accountant to conduct his financial and business affairs.

6. In the course of his address Mr McPartlin produced a two page statement relating to a TSB account for the period from August 2015 to August 2016. He explained that he had set up this extra account in which VAT charged on his invoices was deposited. The purpose was to ensure that the appellant company would always have sufficient in funds to meet its VAT liability. It may be noted that at the material date of early October, when the 08/15 payment was due, there was a balance of about £13,000 in the account, almost sufficient in itself to meet the 08/15 liability.

7. Mr McPartlin explained that there was also a direct debit arrangement in favour of HMRC affecting an older TSB account, but it did not extend to this extra account. However, a simple transfer of funds would have met any shortfall in payment under the direct debit.

8. Mr McPartlin explained that his accountants had failed to access his bank accounts to make the necessary payments to HMRC. The accountants had accepted that the 11/14 surcharge was attributable to their oversight and had settled the liability themselves. However, Mr McPartlin was concerned that the rate of surcharge for any subsequent defaults would increase to 15%. At the due date to make payment for Period 08/15 he had been on holiday. His accountants had not informed him, at least promptly. Immediately he had appreciated the default, he had made payment to HMRC.

9. In these circumstances Mr McPartlin submitted that the appellant company had a reasonable excuse for the late payment.

10. Mr Boyle did not challenge the further narrative of events given by Mr McPartlin as narrated above. He maintained, however, that the appellant company did not have a "reasonable excuse", under particular reference to para (b) of Section 71(1) VATA. He relied on its strict terms and also the case-law cited.

11. He noted firstly comments by Judge Medd in *The Clean Car Company* about the general responsibilities of the taxpayer. In the present case Mr Boyle suggested that that extended to communicating satisfactorily with his accountant. Ignorance of the principles of tax law was not an excuse, he added (see *Neal*). He noted finally the concluding remarks of Nolan J in *Harris* about the involvement of professional agents. Although it had not been suggested, Mr Boyle rejected any argument that the default regime was disproportionate (see *Trinity Mirror plc).*

12. In short Mr Boyle invited us to find that a *reasonable excuse* had not been demonstrated, and that relying particularly on the *Harris* case. Accordingly we should dismiss the appeal.

13. In his final comments to us Mr McPartlin suggested that "reasonable" should be interpreted in a generous way. He had relied on his accountant, a chartered accountant, whose colleague previously had given an excellent service. The accountant had access to his bank accounts. A direct debit had been set up to ensure prompt payments of tax to HMRC. As soon as he learned of the default, he had

transferred sufficient funds to meet the liability. For these reasons he submitted that the appeal should be allowed.

Conclusion

14. In the present appeal we acknowledge that Mr McPartlin has made sterling efforts to ensure his company's compliance with its VAT and tax obligations. He employed deliberately a *chartered* account to advise on its financial affairs. He had set up a direct debit arrangement to facilitate prompt payment of sums due to HMRC. He had a special bank account in which VAT receipts on his supplies and services were deposited, and at the material time, the balance there fell only marginally short of his VAT liability. We are satisfied that the company had sufficient other cash resources to settle the small balance. The company's accountant had access to these bank accounts.

15. However, we are not satisfied that the criteria of paragraph (b) of Section 71(1) VATA are satisfied. Reliance was placed on the (new) partner to ensure prompt payment, and we consider that his services were deficient. That, however, as we interpret the provision is not sufficient to create a *reasonable excuse*. Accordingly we consider that Mr Boyle's arguments are well founded. It may be that in the whole circumstances the company has a remedy against its accountant: that is a matter for Mr McPartlin to consider, not this Tribunal.

16. With some regret we consider that the appeal falls to be dismissed.

17. As the parties are aware, Judge Mure died very suddenly having already drafted this decision. It had been approved by Mr Shearer. As no objection was intimated to the Tribunal by the parties, I have reviewed the decision and corrected a very few minor clerical errors. I therefore authorise the release of the decision.

18. 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.

ANNE SCOTT
TRIBUNAL JUDGE

RELEASE DATE: 20 DECEMBER 2016