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TC03751

Appeal number: TC/2013/06749

PENALTY for late submission of a monthly return required under the Hydrocarbon Oils (Registered Dealers in Controlled Oil) Regulations 2002 – whether the appellant had a reasonable excuse for the late submission – found that the return had been posted to HMRC more than 3 weeks before the due date although it was not received by HMRC – a reasonable excuse found to have been established – appeal allowed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

E J PARKINSON & SON LTD

Appellant

- and -

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

Respondents

**TRIBUNAL: JUDGE JOHN WALTERS QC
MS ANN CHRISTIAN**

Sitting in public at Bradford on 18 June 2014

Mr Steven Merrey for the Appellant

Ms L D'Cruz, HMRC, for the Respondents

DECISION

1. The appellant, E J Parkinson & Son Limited (“Parkinson”), appealed against the
5 imposition of a fixed penalty of £250 in respect of a failure to submit in time a
monthly return for April 2013 pursuant to prescription to that effect by the
Respondent Commissioners (“HMRC”) in exercise of their powers under regulation 9
of the Hydrocarbon Oils (Registered Dealers in Controlled Oil) Regulations 2002.

2. Mr Merrey, who appeared for Parkinson, gave evidence at the hearing as to the
10 facts surrounding the submission of these monthly returns (called HO5 returns) by
Parkinson. Ms D’Cruz, for HMRC, did not require to cross-examine him. Therefore
his evidence was unchallenged.

3. Mr Merrey’s evidence was (and we find) that for several years Parkinson has
15 been submitting HO5 returns monthly by post. Written evidence of posting had never
been retained. The normal procedure was that a blank return would be sent to
Parkinson by HMRC two weeks or so before the end of a month for submission by the
due date of the 21st day of the next month. Such a blank return was always kept at the
top of the in-tray and submitted at the end of the month concerned.

4. Mr Merrey could not remember receiving a blank return for the month of
20 February 2013 and he had no recollection of sending a return for that month.

5. HMRC sent a warning letter to Parkinson informing them that the return for
February 2013 had not been received by the due date of 21 March 2013.

6. The return for the month of March 2013 was received on or before the due date.

7. Mr Merrey’s evidence was that he filled out a form of return for the month of
25 February 2013 (which may have been a duplicate) and submitted it in the same
envelope as the return for the month of April 2013. This was sent towards the end of
April at a time when he could estimate reliably what the information for the whole
month of April would be. This was because he was going on holiday immediately
after he sent the return and, as there would be no activity in controlled oils during his
30 absence he could reliably fill out the April return before the end of the month of April.
We reject the suggestion made by HMRC in correspondence that it was unlikely that
the April return could have been sent before the end of April.

8. HMRC’s evidence (which we accept) is that the envelope was never received by
them.

35 9. Mr Merrey sent additional copies of the February and April 2013 returns to
HMRC and they were received in July 2013.

10. Ms D’Cruz invited us to dismiss the appeal because Mr Merrey had not retained
proof of postage of the envelope containing the February and April 2013 returns,
which he said had been sent before the end of April. He ought reasonably to have

retained such proof of postage because he had been put on notice of the importance of sending the returns on time by the warning letter which had been sent following the failure to submit the return for February 2013 on time.

5 11. We are able to allow Parkinson's appeal if we consider that Parkinson had a reasonable excuse for the late submission of the return for April 2013.

10 12. We find that Parkinson did have such a reasonable excuse. We find that the return was posted to HMRC before the end of April and it was reasonable to expect that in the normal course it would have been delivered to HMRC on or before the due date (21 May 2013). The non-retention of documentary proof of postage cannot affect this. It follows that we find that Parkinson has established a reasonable excuse for the late submission of the return and the appeal is allowed.

15 13. 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.

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**JOHN WALTERS QC
TRIBUNAL JUDGE**

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RELEASE DATE: 24 June 2014