



**TC05124**

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**Appeal number: TC/2016/00185**

*VALUE ADDED TAX – whether late payment of VAT, Yes. Whether reasonable excuse for late payment - No. Whether surcharge excessive - No.*

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**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

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**ASCOT INTERNATIONAL SPORTS & FOOTWEAR LIMITED      Appellant**

**- and -**

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

**TRIBUNAL: PRESIDING MEMBER:  
PETER R SHEPPARD FCIS FCIB CTA AIT**

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**The Tribunal determined the appeal on 23 May 2016 without a hearing under the provisions of Rule 26 of the Tribunal Procedure (First-tier Tribunal)(Tax Chamber) Rules 2009 (default paper cases) having first read the Notice of Appeal dated 6 January 2016, and HMRC's Statement of Case dated 26 January 2016 with enclosures. The Tribunal wrote to the Appellant on 4 March 2016 indicating that if they wished to reply to HMRC's Statement of Case they should do so within 30 days. No reply was received.**

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## DECISION

### 1. Introduction

5 This considers an appeal against a VAT default surcharge of £867.21 for what the respondents (HMRC) submit is the late payment of VAT totalling £43,360.98 which was due to be paid by 7 November 2015 in respect of the appellant's VAT return for the three month period ending on 30 September 2015.

### 10 2. Legislation

VAT Act 1994 Part IV Sections 59, 70 and 71  
VAT Regulations 1995 Sections 25 and 40 SI 1995 No 2518  
Finance Act 2009 Section 108

### 15 3. Authorities

Neither party referred the Tribunal to any authorities in support of their submissions. However the Tribunal was aware of the Upper Tribunal decision in the case of *HMRC v Total Technology (Engineering) Ltd* [2011] UKFTT 473 (TC).

### 4. Facts

20 4.1 A Value Added Tax return for the three month period ended 30 September 2015 was due to be submitted by the appellant with the appropriate payment to reach HMRC by 7 November 2015.

4.2 HMRC received the return in time on 3 November 2015 but did not receive the payment which was made by BACS until 11 November 2015.

### 25 5. Appellant's submissions

5.1 In the Notice of Appeal dated 6 January 2016 the appellant gives the following grounds of appeal

“We made the payment on 05/11/2015 but unfortunately it reached HMRC on 11/11/2015; in between weekends as well.

30 We had new staff who did not know the time delay for a BACS payment.

Normally BACS payment will take 3 working days to reached the payment. Unfortunately the payment took 2 more days to reach..... HMRC.

We accept that we were late because by law we must submit our VAT return and have to pay by due date, but the surcharge amount £867.21 was excessive for us. We  
35 already paid £43,360.98 as VAT.

In future we will carefully consider HMRC payments and make sure to reach HMRC's bank accounts by the due date."

Elsewhere on the appeal form the appellant states

5 "We do not deny that the payment was late. We paid on 5/11/2015 it was Thursday and it was BACS payment".

The appellant provided a copy of the BACS payment slip.

## **6. HMRC Submissions**

10 6.1 HMRC pointed out that the appellant was issued with a default surcharge notice following its late payment for the period ending 31 December 2014. This had the effect of placing the appellant in the default surcharge regime but because it was the first failure no surcharge was levied.

15 6.2 In respect of the return for the period ended 30 September 2015 HMRC submit that payment was received four days late on 11 November 2015. They therefore issued a default surcharge assessment levying a surcharge of 2% of the tax due. This they calculated to be £867.21 which is 2% of £43,360.98.

6.3 HMRC point out that on a previous occasion the appellant had requested and been granted time to pay. They were therefore aware of the time to pay arrangements but had not requested it on this later occasion.

20 6.4 HMRC pointed out that the appellant had paid using the faster payment system in respect of the returns for the periods ending 31 March 2015 and 30 June 2015. They were therefore aware of the faster payment system and could have used it for the return for the period ending 30 September 2015 but chose not to do so.

25 6.5 HMRC contend that a prudent trader, having employed new staff, would have taken steps to make them aware of the payment dates and processing times as they related to themselves. Any reliance on a third party to submit the payment of the VAT due is precluded from providing a reasonable excuse under VAT Act 1994 Section 71(1)(b).

6.6 HMRC say that there was nothing significantly unusual or unpredictable about the size of the appellant's trading in the relevant period..

## **30 7. The Tribunal's Observations**

7.1 The Tribunal notes that both parties accept that the return was sent on time and that the appellant does not deny payment was made late.

35 7.2 That being the case the Tribunal considered whether the appellant has established a reasonable excuse for the late payment. The only excuse offered is that the staff were new and did not understand the time delay when paying by BACS. The Tribunal agrees with the submission of HMRC at paragraph 6.5 above. As the appellant knew

that it was using new staff to make the payment it should have ensured that those staff were properly trained. Knowing they were using new staff those in authority should have supervised the actions of the new staff and checked that payment had been made properly and timeously.

5 7.3 The only remaining argument made by the appellant is that the surcharge is excessive. Although not referred to in the papers the Tribunal is aware of the decision of the Upper Tribunal in the *HMRC v Total Technology (Engineering) Ltd* [2011] UKFTT 473 (TC). This indicated that penalties of this nature are not excessive.

10 7.4 The appellant's observation that it had already paid £43,360.98 VAT is a red herring. That money had been collected by the appellant from its customers and became funds temporarily held by the appellant for HMRC. It was therefore due to pay HMRC that money on its VAT return.

15 7.5 The Tribunal finds that payment was made late, the appellant has not established any reasonable excuse for the late payment, and the surcharge is not excessive. It follows that this appeal is dismissed.

20 8. 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.

25 **PETER R SHEPPARD**  
**TRIBUNAL JUDGE**

**RELEASE DATE: 1 JUNE 2016**