

Default surcharge
CMS Peripherals Ltd

The appellant made an error on its VAT return by omitting import VAT, so the return consequently overstated the VAT due to HMRC. The correct amount was however paid to HMRC so the return and payment did not match but the reasons for the discrepancy were annotated on the return. A Voluntary Disclosure for the import VAT was then submitted. HMRC challenged much of this initially but subsequently agreed most of it. HMRC treated the failure to pay the amount shown on the return as a default and the surcharge regime began with the issue of a Surcharge Liability Notice.

The original Tribunal found in favour of HMRC and upheld the default surcharge. The appellant appealed the matter to the High Court and argued it had a reasonable excuse for the default and that the Tribunal erred in law in not accepting that excuse. The Tribunal had concluded that a large company should employ staff who can calculate its VAT liabilities correctly and that the 'hasty correction' led to a large underpayment. Both these conclusions were found to be wrong by the High Court. Staff had calculated the liability correctly and the hasty correction actually led to the payment the appellant believed to be for the correct amount being made.

This case is illustrative of the tough approach that HMRC are now taking towards penalising VAT compliance errors.