# TC01374

**Appeal number: MAN/2007/0619**

***VALUE ADDED TAX – input tax – denial of right to deduct on grounds that the Appellant knew or should have known that the transaction was part of fraud by others – alleged MTIC – whether shown that the Appellant's transactions connected with fraudulent evasion of VAT – yes – whether Appellant "knew or should have known" of fraud – yes – valid refusal of right to deduct – appeal dismissed***

**FIRST-TIER TRIBUNAL**

**TAX**

**MANATLANTIC LIMITED** **Appellant**

**- and -**

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

**TRIBUNAL: Mr. D. Demack (JUDGE)**
**Ms. J. Blewitt (JUDGE)**

**Sitting in public in Manchester on 20, 21, 22, 26 April, 5, 7, 8 July 2010 and 18 January 2011**

**Mr A. Young, Counsel, for the Appellant**

**Mr V. Mandalia, Counsel, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents**

DECISION

## Introduction

1. This is an appeal against HMRC's decision, contained in a letter to the Appellant dated 29 May 2007, to refuse payment to the Appellant, Manatlantic Limited ("Manatlantic"), of input tax reclaimed on the Appellant's VAT return for the periods 01/06, 03/06 and 05/06. The total amount refused is £364,431.39; £65,212.88 for the VAT period 01/06, £132,685.88 for the VAT period 03/06 and £166,532.63 for the VAT period 05/06. The disputed input tax was incurred in the purchases of CPU's. HMRC say, as set out in the amended Statement of Case, that "the input tax incurred by the Appellant was done so in a transaction or transactions connected with the fraudulent evasion of VAT" and that the Appellant "knew or should have known of this fact". It is asserted by HMRC that the transactions formed part of a contrived scheme purposely designed to defraud the revenue. The Appellant maintains that it did not know and had no means of knowing that its transactions were connected with such fraud.

2. Mr Vinesh Mandalia, of Counsel, appeared on behalf of HMRC. Mr Andrew Young, of Counsel, appeared on behalf of the Appellant. Both produced skeleton arguments and written submissions which set out the issues to be determined by us. We were also provided with 6 lever arch files containing witness statements and documentary exhibits relied upon by both parties. There were many issues upon which the parties did not agree and we heard evidence from a number of witnesses. We also had the statements of several other witnesses some of which dealt with uncontroversial issues and others which, although not agreed, related to minor or ancillary matters and did not warrant the witness attending to give evidence.

## Missing Trader Intra-Community Fraud

3. It may assist in understanding the facts of this case to set out the way in which missing trader intra-community ("MTIC") fraud operates. The nature of such frauds has been helpfully summarised in a number of judgments. In *The Commissioners for Revenue and Customs v Livewire Telecom Ltd* [20533], Dr Avery-Jones CBE explained:

*"In order to demonstrate where the loss of tax arises from MTIC fraud we start with a simple example of an import of goods by X who sells them to Y who exports them. The tax on acquisition (import) by X is cancelled by input tax of the same amount, and the output tax charged on sale by X will be cancelled by input tax repaid to Y on the export, so that the United Kingdom exchequer receives no net tax. If both X and Y are fraudsters Y will have to finance the output tax charged by X, which is recovered by X not paying the output tax to Customs. The only gain by the fraud is if Customs pay the input tax to Y when the exchequer is left with a loss of the amount of the input tax; the non-payment of output tax by X is merely the recovery of what Y put in. If the exporter is innocent of that fraud he is entitled to repayment of the input tax that he has actually paid to X even though this represents tax never paid by X and the exchequer is left with the same loss of the amount of the input tax."*

4. There are a number of terms commonly used when ascribing roles to the parties involved. The goods are initially purchased from Europe by the defaulting trader who sells to a trader in the UK, referred to as a buffer. There are often a number of intermediary traders acting as buffers, the purpose of whose involvement is to distance the defaulting trader from the repayment claim made by the trader at the end of the UK transactions known as the broker. The defaulting trader charges VAT on the goods to the buffer and it is this amount of VAT which is never paid to HMRC and is subsequently set off against the repayment claim by the broker. The buffers are able to set off input VAT on the purchase of the goods against the output VAT charged to the next trader on sale, thus enabling a valid VAT return to made to HMRC for the difference. The broker, who is unable to charge VAT on exporting the goods, reclaims the VAT it was charged on purchase, which is often sufficient to fund the fraud and pay a profit to the participants of the fraud.

**Law**

5. The legislation governing the right to deduct is contained within Sections 24 – 26 of the Value Added Tax Act 1994 and the VAT Regulations 1995. It was common ground between the parties that these provisions are applicable and conform to European legislation.

6. The European Court of Justice in *Optigen Ltd and Others v HMRC* [C-354/03] made it clear that output tax can be recovered even though the transaction is outside the VAT scheme. It was confirmed in the cases of *Axel Kittel and another v Belgium* [C-439/04] and *Mobilx Ltd (in administration) v HMRC* [2009] EWCH 133 that there is no discretion on the part of the Authorities to withhold any tax repayment where the objective criteria for compliance with the VAT regime are met. However where a trader does not comply with the objective criteria because there is a fraud, that trader cannot recover any tax. Moses LJ observed in *Mobilx Ltd and The Commissioners for Her Majesty's Revenue and Customs, The Commissioners for Her Majesty's Revenue and Customs and Blue Sphere Global Ltd, Calltel Telecom Ltd & another and The Commissioners for Her Majesty's Revenue and Customs* [2010] EWCA Civ 517 ("Mobilx"), at paragraph 24:

*"The scope of VAT is identified in Art. 2 of the Sixth Directive. It applies, in addition to importation, to the supply of goods or services effected for consideration within the territory of the country by a taxable person acting as such. A taxable person is defined in Art. 4.1 as a person who carries out any of the economic activities specified in Art. 4.2. Art. 5 defines the supply of goods and Art. 6 the supply of services. The scope of VAT, the transactions to which it applies and the persons liable to the tax are all defined according to objective criteria of uniform application. The application of those objective criteria are essential to achieve:-*

> *"the objectives of the common system of VAT of ensuring legal certainty and facilitating the measures necessary for the application of VAT by having regard, save in exceptional circumstances, to the objective character of the transaction concerned." (Kittel para 42, citing BLP Group [1995] ECR1/983 para 24.)*

And at paragraph 30:

*"...the Court made clear that the reason why fraud vitiates a transaction is not because it makes the transaction unlawful but rather because where a person commits fraud he will not be able to establish that the objective criteria which determine the scope of VAT and the right to deduct have been met."*

Moses LJ summarised this position at paragraph 43:

*"A person who has no intention of undertaking an economic activity but pretends to do so in order to make off with the tax he has received on making a supply, either by disappearing or hijacking a taxable person's VAT identity, does not meet the objective criteria which form the basis of those concepts which limit the scope of VAT and the right to deduct (see Halifax § 59 and Kittel § 53). A taxable person who knows or should have known that the transaction which he is undertaking is connected with fraudulent evasion of VAT is to be regarded as a participant and, equally, fails to meet the objective criteria which determine the scope of the right to deduct."*

7. Mr Young, for the Appellant, conceded in his skeleton argument that the standard of proof to be applied is the ordinary civil standard; that being on the balance of probabilities, and not a heightened civil standard as initially asserted in the Appellant's Amended Notice of Appeal.

**Mobilx**

8. Although the hearing commenced before the handing down of the Court of Appeal decision in *Mobilx*, both parties reserved the right to make closing submissions after judgment was given in that case.

It is helpful at this point to highlight some of the observations made by Moses LJ in Mobilx which have guided us in reaching our decision (paragraphs 81 and 82):

"*It is plain that if HMRC wishes to assert that a trader's state of knowledge was such that his purchase is outwith the scope of the right to deduct it must prove that assertion.*

*But that is far from saying that the surrounding circumstances cannot establish sufficient knowledge to treat the trader as a participant...Tribunals should not unduly focus on the question whether a trader has acted with due diligence. Even if a trader has asked appropriate questions, he is not entitled to ignore the circumstances in which his transactions take place if the only reasonable explanation for them is that his transactions have been or will be connected to fraud. The danger in focussing on the question of due diligence is that it may deflect a Tribunal from asking the essential question posed in Kittel, namely, whether the trader should have known that by his purchase he was taking part in a transaction connected with fraudulent evasion of VAT. The circumstances may well establish that he was"*

9. Both parties agreed that the test to be applied is whether, on the balance of probabilities, HMRC have proved either that the Appellant knew or ought to have

known that the transaction in which he was taking part was connected with fraud, that being the only reasonable explanation for the circumstances in which the transactions took place.

**Issues**

10. The test established in the case of *Axel Kittel* can be helpfully summarised as follows:

> (a) A fraudulent evasion of VAT must be shown to have taken place in each deal chain;
>
> (b) A connection between the fraudulent evasion of VAT and the Appellant's purchase must be established; and
>
> (c) It must be shown that the Appellant knew or should have known that the only reasonable explanation for the circumstances in which the purchase took place was that the transaction was connected to the fraudulent evasion of VAT.

11. The Court of Appeal in *Mobilx* approved this approach and it was common ground between the parties that each of these elements must be present to justify the denial of a right to deduction of input tax.

12. It was not conceded by Mr Young for the Appellant that there was fraud in the deal chains. It was the Appellant's contention that "the Appellant has no knowledge as to the activities of other persons in its supply chain save that it knows who it bought from and sold to". Mr Young submitted that "there may or may not have been a tax loss..." and that although HMRC "have raised the spectre of tax losses they did not go on to prove it". The second limb of Mr Young's submissions on behalf of the Appellant was that even if fraud did exist in the supply chains, the Appellant did not know, nor could it be said that they should have known of such fraud.

13. HMRC put their case, that the Appellant knew or should have known that there was fraud in the its supply chain, on the following bases:

> (a) Declarations on the Appellant's VAT application shown to be inaccurate and the link between Mr Rogelj, Company Director of the Appellant Company, and Mr Ryder, Company Secretary of the Appellant Company, with Sirrnet Ltd;
>
> (b) That Mr Rogelj and Mr Ryder were aware of the prevalence of fraud in the CPU industry but continued to trade irrespective of the risks involved;
>
> (c) That the trading model of the company was devoid of any commercial reality and would have put a reasonable business man on notice that the company was not involved in legitimate trade;
>
> (d) That the due diligence undertaken by the Appellant was inadequate and unnecessary;

(e) That there was little regard for the terms and conditions of any insurance policy covering the goods;

(f) That the same terms and conditions of trading were used for purchase and supply;

(g) That the terms of funding were based on recovery of VAT from HMRC and that the agreements entered into failed to address any liability where repayment was not made by HMRC to the Appellant or by the Appellant to the financiers.

(h) That there was no credible explanation as to why the Appellant stopped trading, given the Company's growth, when the "reverse charge" provisions were introduced in June 2007.

**Background Summary**

*History of the Company*

14. The Appellant Company was incorporated on 7 December 2004. Mr Igor Rogelj was appointed Company Director and Mr Steven Ryder was appointed Company Secretary. Mr Igor Rogelj is the sole shareholder of the company.

15. The original address of the Appellant Company was 77 Oxford Street, London, then, as of 13 October 2006, Trident One, Styal Road, Manchester. HMRC were notified of a new address on 27 March 2007, that being 13 Moorfield Road, Manchester.

16. The Appellant Company was registered for VAT with effect from 21 March 2005. The company's main business activity was specified on the application, dated 8 March 2005 and signed by Mr Rogelj, as "the purchase and sale of computer parts." The application specified that the company did not expect to receive regular repayments of VAT and the estimated value of taxable supplies over a 12 month period was given as £1,000,000.00. The application stated that the value of goods likely to be bought from, or sold to, other EC member states over the 12 month period was "none."

17. Within the first eight months of trading, the turnover of the Appellant Company rose to £4,539,333.00 per annum.

*Sirrnet Limited*

18. During the relevant period, both men were also involved with a company called Sirrnet Limited ("Sirrnet"); Mr Rogelj was the Company Secretary and Mr Ryder was the sole Director. Sirrnet was set up by Mr Rogelj and Mr Ryder in 2004. The Company traded in computer and networking components.

19. Mr Rogelj's statement dated 13 November 2008 describes how he loaned £125,000 to Sirrnet in November 2004 to provide it with the working capital it needed

to start trading. However, Mr Rogelj and Mr Ryder subsequently found that the margins were slim and that it was difficult to source the stock required by customers. In December 2004 a Company called Syskal Limited ("Syskal") made an offer to meet all of Sirrnet's stock requirements through its network of companies, leaving Sirrnet to concentrate on generating sales.

20. On 9 December 2004 Mr Rogelj sold Sirrnet to the main owners of the Syskal group, retaining 10 shares in the company and remaining its Director with Mr Ryder as Company Secretary until the company went into liquidation on 6 October 2006.

21. On 15 November 2004, HMRC wrote to the Sirrnet in what appears to be a standard letter which highlighted the dangers of MTIC fraud and requested that traders verify customers' VAT numbers via HMRC's Redhill office.

22. A letter from HMRC to Sirrnet dated 24 May 2006 outlined in general terms the dangers of MTIC fraud. It stated that an extended verification exercise conducted into Sirrnet's trading activity in the 02/06 VAT period had identified transactions involving UK defaulting traders and in the periods 01/05 and 02/05 VAT identified as unpaid within the deal chains exceeded £740,000. The Company was informed that verification of other deal chains within the same periods was ongoing. The Company was referred to Notice 726 "Joint and several liability" provisions and the consequences if it was shown that due diligence had not been demonstrated by the Company.

23. Sirrnet repaid £90,000 of the £125,000 loaned to it by Mr Rogelj on 15 December 2004 with a further sum of £34,000 being repaid on 8 February 2005.

24. Following the sale of Sirrnet, Mr Rogelj states in his witness statement dated 13 November 2008 that he took the decision to incorporate his own company; that being the Appellant Company, in order to take full control of all matters pertaining to the company, in particular any funds invested by him.

*HMRC involvement with the Appellant*

25. On 3 May 2005 and 25 May 2005, HMRC wrote to the Appellant, in what appear to be standard letters, which outlined in general terms the dangers of MTIC fraud and requested that traders verify customers' VAT numbers via HMRC's Redhill office.

26. A letter dated 24 June 2005 to the Appellant refers to a meeting which took place at the Appellant's premises on 23 June 2005. Mr Rogelj states in his written evidence dated 13 November 2008 that he does not recall the content of this meeting. The letter from HMRC reads:

*"During our meeting I explained the scale of Missing Trader Intra Community (MTIC) fraud...within the United Kingdom...it is particularly prevalent with companies involved in the wholesale of mobile phones and computer components...traders are expected to make reasonable commercial checks in respect of their customers and suppliers. Examples of these checks were included in Notice 726: Joint and Several Liability...and Notice 700/52...*

*If you are buying and selling any goods, you should be able to provide details regarding the goods...such as serial numbers, part number, batch number, product details, quantity, price per unit, what market research you carried out, name of the manufacturer, website address, contact name, etc...*

*We discussed what additional steps you could take to protect Manatlantic Ltd...Whilst it is not possible to give a list of cast iron measures, I strongly recommend you follow the steps outlined in Public Notice 726...*

*Commercial credit checks should be undertaken on all suppliers...You should check with the freight forwarder...confirming how long the goods have been with them and how many times they have been traded in that period...Also, prior to any deals you must verify the VAT numbers..."*

27. A further letter was sent to the Appellant Company on 4 July 2005 which drew attention to the fact that four transactions which took place in April and May 2005 for which the Appellant had provided invoices, originated with a defaulting trader. The letter reiterated the consequences to the Appellant Company under the joint and several liability provisions if it was shown that due diligence has not been demonstrated by the Appellant Company.

28. The Appellant responded to HMRC's letter dated 4 July 2005 by email dated 8 July 2005, in which information was sought as to who the defaulters were, whether they were importers and querying the incentive to default. In the email Mr Rogelj requested any information and advice as to how to avoid supplies from defaulting traders.

29. HMRC responded by letter dated 18 July 2005, in which Mr Monk, an HMRC Officer, stated that he was unable to provide specific information relating to another company's tax affairs due to confidentiality rules, however as much advice and information as could be provided was set out within the letter.

30. A letter was sent to the Appellant dated 7 November 2005 informing the Appellant of tax losses and defaulters in four sales with which the Appellant was connected on 20 July 2005, 4 August 2005, 9 August 2005 and 24 August 2005. The letter states that the information is provided to assist the Appellant Company with its due diligence procedures and reiterates the potential consequences under the joint and several liability provisions.

31. By letter dated 16 June 2006 the Appellant was advised that transactions carried out in the period 03/06 commenced with a defaulting trader. Further inquiries appeared to show that deals carried out by the Appellant in November 2005 and January 2006 also commenced with a defaulting trader.

32. In an email from the Appellant to HMRC dated 28 July 2006 the Appellant wrote:

*"It comes as a great surprise to us that you identified that some goods I traded with in Nov 05, Jan 06 and March 06 originated from a defaulted trader. We...will approach*

*our suppliers to notify them about the problems in their supply chains and further question their due diligence process and supplier vetting procedure..."*

The Appellant sought further information as to the identity of the defaulting trader and stated he would welcome the opportunity to discuss the matter with HMRC.

33. A meeting took place on 7 September 2006 at Dorset House, London at which Mr Saul (HMRC Officer), Mr Outram (HMRC Officer), Mr Rogelj and Mr Ryder were present. During the meeting Mr Rogelj explained that he was responsible for all of the Appellant Company's operational activities, such as buying, selling, marketing and research. Mr Rogelj stated that the Company advertised via its website and by attendance at trade fairs. Mr Rogelj stated that he had previous experience in the trade and had contacts from previous employment. As regards the Company's due diligence checks, Mr Saul noted Mr Rogelj's response as being that the checks are "time consuming to enable to carry out a deal." Mr Rogelj went on to state that the Company made checks with Companies House, HMRC's Redhill office and that a procedure recommended by KPMG was followed, although no written procedure was ever provided to Mr Saul. Mr Rogelj stated that the Company did not see the goods which were held at freight forwarders; usual practice being to request inspection of the goods to be carried out by the freight forwarders.

34. Mr Saul's written statement dated 4 September 2008 makes reference to Mr Rogelj stating at the meeting that the Company had no uniform terms of business; terms were often dependent on the supplier or customer, the quantity of goods bought and/or type and age of stock purchased; that there were no written contracts between the Company and its suppliers or customers and that ownership of the goods passed on payment. By contrast, the handwritten note of the meeting made contemporaneously by Mr Saul makes no reference to these matters and consequently we did not attach any significant weight to these matters.

35. In an email from the Appellant to Mr Saul dated 2 August 2006, Mr Rogelj queried the reason for delay in respect of repayment for the 03/06 return and noted that the Appellant Company was about four trade steps away from the defaulting trader. Mr Rogelj again reiterated that the Company followed a due diligence procedure recommended by KPMG prior to the appointment of any supplier and that although it was felt that the Company could do little more to avoid MTIC fraud any suggestions made by Mr Saul would be taken into account.

36. In a letter from Mr Saul to the Appellant dated 21 September 2006, Mr Saul referred to previous correspondence in which the Appellant was informed that goods purchased from Multisystems International Limited ("Multisystems International") in August 2005 had commenced with a defaulting trader. Mr Saul highlighted his concern that goods purchased thereafter from Multisystems Technology Limited ("Multisystems Technology") had also commenced with a defaulting trader. Mr Saul queried why the Appellant had purchased goods from Technology, knowing that the common director of both companies was Mr Richard Dawson. Mr Saul also requested evidence of the due diligence checks undertaken in respect of both Multisystems International and Multisystems Technology.

37. By letter dated 19 October 2006 from Mr Rogelj to Mr Saul, Mr Rogelj stated that following advice from HMRC that goods purchased from Multisystems International Ltd started with a defaulting trader he had "*reluctantly made the decision not to trade with International...notwithstanding the fact that I was very satisfied with the due diligence that I had carried out on International, and International's Director, Richard Dawson, and on the vetting procedures which International adopted with regard to its suppliers. I informed Mr Dawson of my decision. Because of my satisfaction with Mr Dawson and International, I was prepared to consider entering into transactions with Mr Dawson's company, Technology. However it was only after having undertaken stringent due diligence on Technology, and Technology's vetting procedures, that I made the decision to buy goods from Technology...*"

*Transactions subject of the Appeal*

38. This appeal concerns the refusal of payment to the Appellant of input tax reclaimed in respect of 3 transactions contained within the Appellant's VAT return for the periods 01/06, 03/06 and 05/06. The claims were selected by HMRC for detailed verification, following which HMRC alleged that in each case the transactions trace back through deal chains to a tax loss.

39. The transaction relating to the repayment claim made in the period 01/06 in the sum of £65,212.88 concerned the purchase of 4095 SL7Z9 CPU's from a UK Company called 21st Trading Ltd and the subsequent export of the goods.

40. The transaction relating to the repayment claim made in the period 03/06 in the sum of £132,685.88 concerned the purchase of 9135 SL7Z9 CPU's from 21st Trading Ltd and their subsequent export.

41. The transaction relating to the repayment claim made in the period 05/06 in the sum of £166,532.63 concerned the purchase of 11,970 SL7Z9 CPU's from a UK company called Multisystems Technology Ltd and the subsequent export of the goods.

42. A Notice of Assessment in respect of the transactions was served by HMRC on 8 June 2007.

**Evidence**

43. We heard oral evidence from the following witnesses:

(a) Mr Gary Saul, Case Officer for HMRC who made the decisions under appeal to deny input tax in relation to the claims made in the 01/06, 03/06 and 05/06 tax periods.

(b) Mr Simon Haggett, HMRC Officer who links the trading activities of Steven Philips to HMRC's decision to deny input tax to the Appellant.

(c) Mr Michael Downer, HMRC Officer who provides an overview of MTIC frauds, an analysis of FCIB accounts for traders within the supply

chains of the three transactions subject of this appeal and an analysis of evidence obtained in criminal investigations; namely a notebook containing transaction chains.

(d) Mr Colin Miles, HMRC Officer who investigated MS Sethi & Co Ltd, the defaulter in the supply chain to the 01/06 transaction.

(e) Mr Robert Lamb, HMRC Officer who investigated the trading activities of Samson Trading Ltd, the defaulter in the supply chain to the 03/06 transaction.

(f) Mr Steven Sharrock, HMRC officer who investigated the trading activities of Focus Racing Ltd, the defaulter in the supply chain to the 05/06 transaction.

(g) Mr Steven Ryder, Company Secretary of Appellant company

(h) Mr Igor Rogelj, Director and sole shareholder of Appellant company

44. The statements of the witnesses who gave oral evidence had been served in advance and those statements stood as the witnesses' evidence in chief with further evidence given to correct the statements and bring the evidence up to date, save for the evidence of HMRC Officer Mr Colin Miles which was adduced just prior to the hearing and which, with the consent of the parties, we admitted having taken the view that the evidence was relevant.

45. We also read the statements of Mr Roderick Stone who provides an overview of the general nature and features of MTIC fraud, Mr Michael Kerrigan who exhibits a notebook seized in a criminal investigation and Mr Kevin Wright who extracted information from the FCIB Project Server. The Appellant objected to parts of the evidence contained in these statements where opinions are given or hearsay relied upon and we bore the objections in mind in reaching our decision.

**Was there a fraudulent evasion of VAT in the chain of each transaction?**

46. The three transactions in respect of which this appeal is brought, were traced by HMRC back to three alleged defaulting traders; i.e. traders who had not paid the VAT from their UK sales of CPUs which were subsequently bought by the Appellant.

47. Mr Saul's evidence dealt with his investigations, through the enquiries of other officers, into tracing the goods purchased and sold by the Appellant through the chain of transactions. There was no dispute as to the identity of the supplier in each case.

48. Mr Saul produced the chains in a "deal sheet". He confirmed in evidence that he obtained the information used to compile the deal sheet from other HMRC officers and from checking the records contained on HMRC's electronic folder; a computerised system containing data.

**01/06**

49. The sequence in relation to the 01/06 transaction shows that 4095 units of SL7Z9 CPU's were acquired by Stephen Philips trading as First Call on 13 January 2006. The goods were purchased on the same date by DDMP Ltd at £90.65 per unit and then by 21st Trading Ltd at £90.75 as evidenced by 21st Trading Ltd's purchase order and DDMP's invoice. The Appellant purchased the goods on the same date at a cost of £91.00 per unit and sold them to a Swiss trader, Bergmann Associates, on 17 January 2006 at Euro 133.00 per unit.

50. Mr Saul gave evidence that Stephen Philips trading as First Call was initially believed to be the defaulting trader in the chain and was deregistered as of 19 April 2007. First Call was subject to extended verification for their claims amounting to £6,538,329.00 for the period March to May 2006.

51. Mr Haggett, an Officer of HMRC provided further information as to First Call. Mr Haggett's witness statement provides the background to the investigation into Steven Philips' trading activities which does not require repetition here. In summary, enquiries revealed that Mr Phillip's trading activities were linked to a company called MS Sethi & Co Limited, which was dealt with in evidence by Mr Colin Miles.

52. Mr Miles gave evidence, both oral and written, that information was received from an insolvency practitioner, Mr Kevin John Hallard, who was dealing with the bankruptcy of Stephen Philips trading as First Call, that MS Sethi & Co Ltd had made supplies to Stephen Phillips in December 2005 and January 2006. In 50 days of trading Stephen Phillips had raised purchase orders for a total of 293 separate supplies of mobile telephones and CPUs from MS Sethi & Co Ltd for a net value of almost £78 million.

53. Mr Miles stated that an application to register MS Sethi & Co Ltd for VAT was received on 29 June 2004, signed by the company's sole director, Habib Shahid and dated 17 June 2004. The trading activity declared on the application for VAT Registration was "Importers of fruit and vegetables" and the principal place of business was the home address of Mr Shahid of 9 Westwood Road, Ilford, London, Essex, IG3 8SB. The application form stated that the company did not expect to receive regular repayments of VAT and that the estimated value of taxable supplies over the following 12 months was £50,000. Mr Shahid declared on the application for VAT registration that no goods were likely to be bought from, or sold to, other EC member states. The company was required to submit quarterly VAT returns; however it failed to submit any returns during the period of its registration.

54. MS Sethi was registered for VAT from 16 June 2004. On 28 November 2005, a request for transfer of the company's VAT registration was received dated 18 November 2005. Mr Shahid declared on the form that he had transferred the company as a going concern to Mr Zeeshan Ahmed.

55. Mr Ahmed declared that the name of the transferred business was to be "M S Sethi & Co Ltd." Mr Ahmed signed the application form, which was dated 15 November 2005, agreeing by so signing to send in his first VAT return with all the VAT due for the whole of the period shown on the form and any outstanding returns due from Mr Shahid.

56. A change of address of the company was notified to Companies House on 19 November 2005; the new address being Office No 213, Olympic House, 28 – 42 Clements Road, Ilford, Essex, IG1 1BA.

57. On 17 January 2006 an email was sent by HMRC Officer Ms Rowsell to Newry VAT Registration Unit requesting that the company be de-registered on the basis that it never traded and was therefore not liable to be registered. On 15 February 2006 MS Sethi was compulsorily de-registered from VAT on 16 January 2006.

58. Mr Miles' written evidence stated that *"MS Sethi did not render a final return for the period 1 December 2005 to 20 January 2006 inclusive, or indeed any return during its period registered for VAT purposes, before or after the TOGC and thus failed to account for £1,361,716.44 output tax."* HMRC Officers visited the last known principal place of business of the company and were met by a tenant who had moved into the property on 1 October 2006 and had no knowledge of the company or its directors, Mr Shahid or Mr Ahmed.

59. A visit to Mr Shahid's address took place on 8 August 2007. HMRC Officers Mr Patterson and Mr Armond spoke to Mr Shahid who initially stated he could not recall who he had sold the company to and that he and his family had been the only residents of 9 Westwood Road, Ilford, Essex. Subsequently Mr Shahid recalled Mr Ahmed, who he stated was a friend of his younger brother's friend, had lived at the address, bought the company and moved out 6 weeks later. Mr Shahid stated he did not have a contact address for Mr Ahmed and did not know if Mr Ahmed had traded.

60. The deregistration date for MS Sethi was amended to 20 January 2006 on 10 August 2007.

61. Mr Miles stated that the link between MS Sethi and the Appellant is seen in the chain of sales which took place on 13 January 2006, on which date MS Sethi sold 4095 SL7Z9 CPU's to First Call which were purchased on the same date by DDMP Ltd then by 21st Trading Ltd. The Appellant purchased the goods on the same date and sold them to a Swiss trader, Bergmann Associates on 17 January 2006.

62. Mr Young submitted that the paper exercise carried out by Mr Saul was constructed on the basis of information given to him by other officers and that there must be, as a result, doubt as to the accuracy of Mr Saul's conclusions. Mr Miles accepted that he had not seen the source of the deal chain produced by Mr Saul, but stated that as a result of his involvement with MS Sethi and having consulted all relevant information that could be obtained, for example that contained on HMRC's electronic folder, he had concluded that the defaults in respect of the transaction 01/06 are fraudulent on the basis that MS Sethi declared its business activities as importers

of fruit and vegetables, the supplies to First Call were not declared or accounted for and there is no evidence of payment for the goods.

63. Mr Miles stated that he had no reason to doubt Mr Hallard's findings which, from an examination of First Call's records, showed purchase orders for CPU's supplied by MS Sethi, including the transaction which took place on 13 January 2006.

64. Mr Haggett confirmed in his written and oral evidence that the spreadsheet compiled by Mr Hallard was contained on HMRC's electronic folder, although not exhibited. Mr Haggett stated that the spreadsheet, complied from First Call's records, showed that a supply was made by Stephen Phillips to DDMP Ltd on or about 13 January 2006 of 4,095 CPU's originating from MS Sethi.

65. Mr Haggett accepted in cross examination that he had not seen the records from which Mr Hallard's spreadsheet was produced and therefore had not had the opportunity to verify the information.

66. Thereafter, the evidence of Mr Downer who examined the FCIB statements, showed that following receipt of payment on 24 January 2006 by the Appellant from Bergmann Associates, two payments was made by the Appellant to 21st Trading on 24 and 25 January 2006 in the total sum of £437,857.88 which matches the total amount charged by 21st Trading on sales invoice 2634 dated 13 January 2006. 21st Trading made a payment of £600,000 on 25 January 2006 into the FCIB account of DDMP Ltd. There is no evidence of any payments made by DDMP to Stephen Philips T/A First Call, however Mr Downer noted a connection to Best Buy Computers (S) PTE ("Best Buy Computers") who feature in deal 3.

67. The connection was made as follows; following receipt of £600,000 from 21st Trading, DDMP made an immediate payment of £2,000,000 into the account of a Danish Company, Northcom APS who then made two immediate payments in the sums £1,319,115 and £661,500 to a Dubai based company called Abyss Int FZE ("Abyss"). Upon receipt of the two payments, Abyss immediately paid £1,533,641 to the Dutch Rabobank and £744,156 to Singapore based trader Best Buy Computers.

68. It was submitted on behalf of the Appellant that a loss had been made in respect of the 01/06 transaction. Mr Rogelj gave evidence explaining that due to an incorrect name on the invoice, Swiss Customs had rejected the goods which then had to be shipped back to the UK and shipped back out to Bergmann. Mr Rogelj explained that as a result of the delay, Bergmann negotiated a lower price, resulting in a loss to the Appellant in the region of £10,000. It was submitted on behalf of the Appellant that if the transaction was connected with fraud, there would be no loss to the Appellant.

**03/06**

69. The sequence in relation to the 03/06 transaction shows that 9135 units of Intel P4 SL7Z9 CPU's were acquired by Samson Traders Ltd ("Samson") on 31 March 2006. The supplier declaration and invoice exhibited showed the goods were purchased on the same date by The Routers Group at £82.50 per unit and then by Alpha Wholesale Ltd at £82.55 as shown in the sales invoice and purchase order

exhibited, both dated 31 March 2006. Quiass Ltd purchased the goods from Alpha Wholesale Ltd on the same date at £82.65 per unit as evidenced by an invoice dated 31 March 2006 from Alpha to Qiass. The goods were then purchased by 21st Trading at £82.75, as shown in the invoice and purchase order both dated 31 March 2006. The Appellant purchased the goods on the same date at a cost of £83.00 per unit as evidenced by a purchase order and invoice both dated 31 March 2006. The Appellant sold the goods to a Swiss Systems based in Switzerland on 31 March 2006 at £86.75 per unit.

70. Mr Robert Lamb gave written and oral evidence that Samson was the defaulting trader in this chain. Mr Lamb acted as MTIC controlling officer for Samson from 21 April 2006.

71. The company was incorporated at Companies House on 11 January 2005. Mr Anthony Rajah Samson was named as a director appointed from 11 January 2005, Mr Donald Elwell was named as a director appointed from 23 November 2005 and Mr Fred Hesse was the company secretary appointed on 11 January 2005.

72. An application to register for VAT signed by Mr Samson and dated 1 February 2005 was received at Newry Vat Registration/Deregistration Office on 3 March 2005. The company was subsequently registered for VAT with effect from 1 February 2005. On the application form, VAT1, the intended business activities are declared as "general traders." The form stated that the company did not expect to receive regular payments of VAT and the value of taxable supplies over the following 12 months was estimated to be £100,000. The company did not expect to make any exempt supplies and did not declare any intention to buy goods from, or sell to other EC member states. The principal place of business for the company was stated as being the same as the residential address of the director, Mr A. Samson.

73. On 7 October 2005 the company was contacted by HMRC in order to establish its intended business activities. The company responded by stating that the trading activity was the "importation, distribution and installation of electronic and mechanical components for machinery and cars".

74. On 21 April 2006, Mr Lamb and Mr Martin of HMRC attended the company address in order to establish whether sales had been made as identified in the purchase records of The Routers Group Ltd of £2,400,000. The address was found to be a private house without any evidence of trade and there was no answer at the property. A deregistration letter was left by the officers.

75. Mr Lamb confirmed in his written evidence that he had been contacted on 27 April 2006 by the controlling officer for The Routers Group Ltd and asked to raise an assessment against Samson in respect of its output tax liabilities totalling £36,700,000 which had been identified in the purchase records of the Routers Group Ltd. Mr Lamb produced a schedule showing in excess of 700 sales invoices from Samson to The Routers Group Ltd upon which his assessment was based.

76. Mr Lamb accepted in cross examination that he had not seen direct evidence in support of information he received from the controlling officer for The Routers Group Ltd that 3rd party payment instructions issued by Samson to The Routers Group Ltd meant that Samson would not be in a position to meet their tax liabilities without UK purchased documentation and input tax to reclaim.

77. On 4 May 2006 the Alcohol Strategy Team requested a visit to Unit 407, Premier House, 114 Station Road, Edgware, HA8 7AQ, which was the same address of the known accountants for Samson, in order to verify alcohol related sales made by Samson. A telephone number for Mr Samson was obtained from the office receptionist as there was no response at unit 407. A telephone call was made to Mr Samson on 10 May 2006 to arrange a meeting with HMRC on 16 May 2006 in order to review the company records. On 16 May 2006 Mr Samson and his accountant failed to attend the meeting.

78. Mr Lamb confirmed that Samson failed to submit any VAT returns for VAT periods 05/05, 11/05, 02/06 and final/99 and failed to notify HMRC of a change of address.

79. Samson was deregistered with effect from 21 April 2006 and on 25 May 2006 the registered address details were amended to Unit 407, Premier House, 114 Station Road, Edgware, HA8 7AQ.

80. Mr Lamb stated in oral evidence that he had telephoned and emailed all broker officers linked to Samson who confirmed that there is no additional business records or documentation from 3rd parties to show potential alternate acquirers of the goods and no evidence of Samson ever having acquired the goods.

81. A civil recovery proceeding order dated 31 August 2006 was issued against Samson. A winding up order was made on 1 November 2006 requesting information from HMRC as to enquiries into the directors and their fitness to be involved in the management of future companies. A letter from Kingston Smith Insolvency Practitioners dated 20 November 2006 advised that a liquidator had been appointed.

82. An MTIC assessment in the sum of £36,730,983.99 was raised against the final period covering 01/03/06 to 21/04/06. A Notice of Assessment in the sum of £73,653.00 was issued to Samson on 31 July 2006 as a result of their failure to render VAT returns/records for the periods 02/06 and 04/06. A Notice of Assessment of Tax dated 14 August 2006 in the sum of £9,367.00 was issued to Samson due to a failure to submit their P02/06 return. A letter was issued to Samson on 14 September 2007 advising of an Assessment in the sum of £726,896.63 relating to unaccounted output tax due in their final period and a Notice of Assessment dated 25 September 2007 issued to Unit 407, Premier House, 114 Station Road, Edgware, HA8 7AQ was returned. A Notice of Assessment to Tax in the sum of £11,380.00 was issued to Samson dated 5 November 2007.

83. Mr Lamb accepted in cross examination that he had not put his conclusions to the parties involved, but stated that this was a result of the parties' failure to contact or

cooperate with HMRC. Mr Lamb confirmed that to date no appeal has been lodged by Samson in relation to any of the assessments. The conclusion drawn by Mr Lamb was that the trading pattern of Samson and its failure to co-operate with HMRC indicates that as a missing trader the company was there to act as an acquirer of EU goods and sell them with VAT, never intending to account for its output tax and was a perpetrator of MTIC fraud.

84. Mr Downer analysed the chain of transactions originating from defaulting trader Samson.

85. There is no dispute that Manatlantic sold 9135 units of Intel P4 SL7Z9 CPU's to Swiss based trader IT Swiss Systems as evidenced by sales invoices 1023a and 1023b both dated 31 March 2006. Sales invoice 1023a was for £409,893.75 and 1023b was for £382,567.50 and payments were received into Manatlantic's FCIB account from IT Swiss Systems via Bankers Order on 13 and 19 April 2006.

86. It is accepted by the Appellant that their supplier of the goods was 21st Trading Ltd who sold the goods to Manatlantic on 31 March 2006 for £890,890.88. This sum was immediately paid (in sums of £400,000.00 and £490,890.88) into the FCIB account of 21st Trading Ltd upon receipt of each. In turn, 21st Trading Ltd made two payments on 12 April 2006 in the sums of £717,935.19 and £550,000.00 into the FCIB account of Qiass Ltd. A further payment was made by 21st Trading Ltd to Qiass Ltd on 20 April 2006 in the sum of £709,146.28.

87. Mr Downer concluded that his analysis of the FCIB statements indicated that Qiass Ltd were the primary supplier of goods to 21st Trading Ltd and payments were made by 21st Trading Ltd in bulk as all significant debits shown on the FCIB statements of 21st Trading Ltd were paid, in the relevant period, into the FCIB account of Qiass.

88. On 13 April 2006, upon receipt of payment from 21st Trading Ltd, the FCIB statements of Qiass show a payment of £1,119.954.18 to Alpha Wholesale Services Limited ("Alpha"). Upon receipt of payment from 21st Trading Ltd on 20 April 2006, the FCIB accounts of Qiass show an immediate payment of £695,200.62 into the FCIB account of Alpha.

89. Mr Downer concluded that his analysis of the FCIB statements indicated that Alpha were the primary supplier of goods to Qiass and payments were made by Qiass in bulk as all but one of the significant debits shown on the FCIB statements of Qiass were paid, in the relevant period, into the FCIB account of Alpha.

90. Further analysis of the FCIB accounts by Mr Downer showed that no payments were made by the supplier to Alpha, shown on the deal chain as The Routers Group Ltd and evidenced by a sales invoice dated 31 March 2006. Instead, Alpha made the following payments immediately upon receipt of payment on 13 April 2006: £595,900.00 and £235,100.00 to Dutch Rabobank, £412,536.00 to Northcom APS (based in Denmark) and £463,250.00 to Emshel Puerto Banus SL (based in Spain). Alpha then made the following payments immediately upon receipt of payment on 20

April 2006: £195,200.00 to Bruins Consortium Limited (based in Malta) and £500,000.00 to SNV Worldwide Limited (based in Cyprus).

91. Mr Downer found no carousel of monies in this deal and concluded that Alpha had made 3rd party payments to traders based in the EU rather than to their direct suppliers, The Routers Group Ltd, leaving the UK defaulter with no means with which to meet their VAT liability.

92. Mr Young on behalf of the Appellant put to the witnesses that the conclusions reached have been based on hearsay and information provided by others which they themselves have no verified. Mr Young also contended that the Tribunal should be wary as to the weight attached to any such evidence bearing in mind it involves serious allegations levelled at third parties who have not had the opportunity to respond.

**05/06**

93. The deal chain relating to the repayment claim made in the period 05/06 has been traced back to Focus Racing Ltd ("Focus") as the defaulting trader and concerned the purchase of 11,970 SL7Z9 CPU's. Focus sold 15120 SL7Z9 CPU's to FoneFingz on 23 May 2006 at a cost of £78.00 per unit as shown by invoice number 1702 dated 23 May 2006. Although there is no invoice or purchase order in support of the contention, HMRC traced the chain to the sale by FoneFingz of the same quantity of goods on the same date to Sundial International Stock Inter Ltd ("Sundial") at £78.10. The goods were then sold as shown by the purchase order and invoice number 2016 of the same date to Emmen Communications Ltd at £78.20. Emmen Communications Ltd sold 11,970 units to Multisystems Technology on the same date for £78.50 as shown by purchase order dated 23 May 2006 and invoice number 4040878. There was no dispute that Manatlantic purchased the goods from Multisystems at a cost of £79.50 and sold them to GigaAsia Plc Ltd for £83.00 as evidenced by invoice number 1024 dated 23 May 2005.

94. Mr Steven Sharrock, an officer of HMRC and member of the MTIC team provided written and oral evidence as to how the trading activities of Focus relate to HMRC's decision to deny input tax to the Appellant.

95. Mr Sharrock confirmed that Focus was incorporated on 3 April 2002 and registered for VAT with effect from 8 July 2002. The company was de-registered with effect from 10 April 2006. The intended business activity stated on the VAT1 was "building racing cars". The VAT registration form also stated that the estimated value of taxable supplies over the following 12 months was estimated as £100,000 and the company did not expect to make any exempt supplies. The company declared that the value of goods likely to be bought from and sold to other EC Member States was "none".

96. The initial address for the company was Unit 2, Hawthorne Business Park, Hawthorne Street, Warrington, WA5 0BT. From 15 January 2003 until deregistration the company's address was notified to HMRC as Unit 16, First Floor, Penketh

Business Park, Warrington, WA5 2TJ. Deregistration took place as a result of a VAT demand being returned from the latter address undelivered and consequently the trader was listed as a missing trader.

97. On 26 May 2006, Mr Darren Cooper contacted HMRC identifying himself as an employee of Focus and querying why the company's VAT registration number was invalid. Mr Cooper was directed to contact the VAT registration unit at Newry and the company subsequently requested that the VAT number be reinstated.

98. A visit to the company was deemed necessary in order establish whether they were still trading and verify the VAT position. On 1 June 2006, Mr Sharrock and another HMRC officer, Mr Crooks, visited the last known address to find that it was occupied by an unrelated company. Information received from the unrelated company indicated that Focus was trading from Unit 4 on the same estate. There was no response at this unit and Mr Sharrock confirmed in evidence his view that there were no signs of recent use.

99. The company contacted HMRC on 1 June 2006 and Mr Sharrock returned the call and spoke to Mr Cooper who identified himself as the company secretary of Focus. Mr Cooper stated that Unit 16 had been the company's premises prior to his and Mr Stephen Musson's appointments as company officials. Mr Cooper stated that the company had then used the premises at Unit 4 until 31 May 2006 as sub-tenants of a company run by Mr Scott who previously ran Focus. Mr Cooper stated that they were in the process of finding new premises and he would make contact when this was completed in order to reinstate the company's VAT number.

100. The address of the company's new premises was notified to Mr Sharrock on 2 June 2006. By letter dated 24 February and signed by Mr Scott, Director, Focus informed HMRC that the company was "adding to its existing product range of vehicles and parts and were also going to be trading in general wholesale, telecommunications equipment and products, electrical equipment and other commodities." On the same day that the letter was sent, Mr Scott sold his interest in the company to Mr Musson.

101. Mr Sharrock visited the company on 5 June 2006. He was informed by Mr Cooper that the sole company bank account with Barclays had been closed and that the company intended to use Mr Musson's Lloyds TSB account. Mr Cooper also stated that two more accounts were being set up with Lloyds TSB; a business account and a second account to be used for funds with which to meet the company's VAT liability.

102. Mr Cooper stated that the first wholesale deal had been put in place on 22 May 2006 and that up to that point the company had purchased in the region of £3,800,000.00 of stock from a Slovenian company, PZP ENA D.O.O. ("PZP") which was made with finance arranged by Mr Musson. Mr Cooper informed Mr Sharrock that this stock had been sold and released to two UK companies, Fonefinz Ltd and Easy Way Ltd without payment to Focus by the customers. Mr Cooper stated that no due diligence had been carried out on PZP. Mr Sharrock was provided with the sales

and purchase invoices which showed that stock in excess of £6,000,000.00 had been purchased by the company.

103.A further meeting took place on 14 June 2006 at which Mr Cooper informed HMRC that although funding for the stock had been arranged, the company's supplier PZP had not yet been paid, nor had Focus received payment although the deals had gone ahead. Mr Cooper stated that there was a formal agreement in respect of the loan in existence but despite agreeing to forward it to Mr Sharrock, a copy was never received. At the time of the meeting on 14 June 2006, the company still had no bank accounts in place. No records were held for the 01/06 tax period and Mr Cooper told HMRC that together with the company accountants, he would be reconstructing sales and purchases based on bank records.

104.Mr Sharrock raised concerns that Mr Cooper and Mr Musson had taken over a company despite having no knowledge of the company's liabilities. The 01/06 return was outstanding and neither Mr Cooper nor Mr Musson had the records to complete the return. Mr Sharrock queried why such a risk would be taken if the company intended to run legitimately. Mr Sharrock did not accept that Mr Masson wanted to take over a company with a trading history given that the history of Focus was in racing cars and related parts, which is of little value to a company trading in large wholesale deals of CPU's and mobile telephones. Mr Sharrock concluded that the only gain to Mr Musson and Mr Cooper was a company with a VAT registration number.

105.Mr Sharrock took into account factors such as the ability to secure millions of pounds worth of stock without any trading history, the lack of a bank account, the lack of any evidence to show finance arrangements and the conflicting accounts that Mr Cooper had given as to the arrangement that the supplier was to be paid in advance of payment from Focus' customers (meeting 5 June 2006) as compared with his account that the supplier had not been paid (meeting 14 June 2006). Mr Sharrock noted that on 25 May 2006 Mr Musson had issued two separate payment instructions to request split payments to be made to Easyway Ltd. He concluded that Mr Cooper had provided false information to disguise the actions of Focus. Combined with the lack of due diligence checks undertaken as per Mr Cooper's account which contradicts the "supplier declaration" signed by Mr Musson in respect of Easyway Ltd stating that checks had been carried out, the fact that stock was never seen or inspection reports provided and the inability to identify stock from poor descriptions on the sales invoices, Mr Sharrock concluded that the indication was that the company had traded fraudulently with no intention of meeting its VAT liability for purchase of CPU's in the relevant period.

106.Mr Sharrock's evidence highlighted the discrepancy in the account of Mr Cooper that Focus had purchased approximately £3,800,000.00 of stock whereas the invoices produced by Mr Musson showed stock in excess of £6,000,000.00 and stated that the fact that the company secretary Mr Cooper was not aware of this further indicates the contrived nature of the deals.

107.The documents examined by Mr Sharrock showed that the principal customer was Fonefingz Ltd, the name of which is recorded on sales invoices in various forms such as “Fone things”, “Fone Fingz” and “Fone Things”. A number of invoices were issued with the same reference number and some invoices with different numbers appear to be for the same stock although it cannot be ascertained whether one or both were issued. Mr Sharrock found a number of missing invoices and incomplete sequences, which given the limited number of transactions with only two customers suggests a lack of control of documentation and that the company was not trading in normal commercial transactions.

108.Focus were assessed by letter following a debt to the Crown procedure as proof existed that invoices had been issued including VAT at a time when the company was not registered, but it was unknown if supplies had been made. The assessment was in the sum of £1,191,680.70 that being the amount recorded as VAT on the sales invoices provided.

109.Once it was established that supplies were made, a letter assessment in the sum of £1,191,680.70 was issued on 17 March 2008, amended on 31 March 2008 and re-issued in the sum of £1,434,335.70. The assessments were issued on the basis that the purchase invoices show Focus to be the UK acquirer of stock from PZP in Slovenia which were then sold in the UK and on which the VAT liability has not been paid.

110.Mr Sharrock confirmed that Focus have not appealed the assessments and that there has been no further contact by the company since June 2006; letters from HMRC to Focus have been returned marked “refused” and undelivered and a visit to the last known premises on 3 June 2008 revealed that the unit had been occupied by an unrelated company since July 2006. No further action has been taken to pursue the company’s debts.

111.Mr Downer gave oral and written evidence as to his examination of the FCIB statements in relation to the 05/06 period. There was no dispute that the goods were sold by Manatlantic to Giga Asia and the FCIB statement for Manatlantic shows the sum of £993,510.00 being received from Giga Asia on 23 May 2006 which matches the sum invoiced by Manatlantic.

112.The FCIB statement for Giga Asia shows that prior to making payment to Manatlantic, £999,450.00 had been paid into Giga Asia’s account by Best Buy Computers who are also based in Singapore.

113.Following receipt of payment from Giga Asia, Manatlantic made an immediate payment of the same amount (£993,510.00) to Multisystems Technology Ltd who sold the goods to Manatlantic on 23 May 2006 for £1,118,147.00. Mr Downer found no trace in the FCIB statements to show payment of the outstanding balance from Manatlantic to Multisystems Technology Ltd. The FCIB account of Multisystems Technology Ltd shows that upon receipt of payment from Manatlantic, the sum of £975,000.00 was immediately paid to Emmen Communications Limited who had sold the goods on the same date to Multisystems Technology Ltd for £1,104,082.88. Mr Downer found no evidence of payment of the outstanding balance from Multisystems

Technology Ltd to Emmen Communications Ltd. The FCIB statements showed that the supplier to Emmen Communications Ltd was Sundial International Stock Traders Ltd ("Sundial") who received £975,000.000 on 23 May 2006 from Emmen Communications Ltd. The sales invoice in respect of this transaction showed that Sundial had sold the goods on 23 May 2006 for £1,389,301.20; however Mr Downer could find no evidence within the statements to show payment of the outstanding balance. The deal chain shows the supplier to Sundial as Fone Fingz Ltd, however the FCIB statements showed no evidence of payment made by Sundial to Fone Fingz Ltd. A payment was made by Sundial to Intertech SARL, a company based in France, in the sum of £975,000.000 on 23 May 2006; the same amount was then immediately paid by Intertech SARL to High Level Trading GMBH, who are based in Switzerland. Two immediate payments were then made by High Level Trading GMBH in the sums of £544,950.00 and £27,247.50 to the FCB account of Best Buy Computers PTE. Best Buy Computers PTE then made a payment on 24 May 2006 to Giga Asia PTE in the sum of £565,582.50.

114.Mr Downer accepted in cross examination that he could not provide an explanation as to why the payments to Best Buy Computers and Giga Asia reduced and that the statements showed payment for goods, but he could not say what those goods were. However, Mr Downer highlighted the circularity present in the payment chain and the fact that there appeared to be no end user for the goods.

115.The written evidence of HMRC officer Mr Michael Kerrigan confirmed that a search warrant was executed at 67 Worcester Street, Oldham on 14 August 2006. In a cabinet in the living room of the premises a Sainsbury's plastic bag was seized which contained 4 notebooks and various A4 documents.

116.Mr Downer's written evidence set out his analysis of the contents of the notebooks which he concluded were relevant to the transactions on 23 May 2006. A handwritten entry exhibited by Mr Downer matched the transaction chain of CPU's as traced by examination of the traders' records and FCIB statements of the 23 May 2006. There is no reference to the Appellant Company, however the notebook contains annotations which Mr Downer concluded referred to High Level Trading, Intertech SARL, PZP, Focus, FoneFingz, Sundial, Emmen and Multisystems Technology.The notebook entry was headed Tuesday 23 May and the quantity, price and order of supply chain were set out beneath. Mr Downer's analysis indicated that the chain set out in the notebook matched that which had been traced below Manatlantic.

117.Mr Downer highlighted an apparent price drop contained in the notebook where the buying price of PZP was higher than the selling price. Mr Downer contended that such features are common in carousel frauds as without a price drop the unit cost would keep increasing until it reached a level which was not credible. Mr Downer also drew our attention to the lack of any payments shown in the notebook to Focus or PZP and concluded that monies were paid by 3rd parties to bank accounts of traders purported to be based in other EU countries.

118.Mr Downer adduced evidence of documentation seized at the SAS Radisson Hotel, Manchester Airport in November 2005 as part of a criminal investigation. The documentation which had been found in the room of Mr Darren Bagnall, appeared to contain details of transactions chains. Mr Downer explained that the relevance of the documentation to the Appellant's case is the inclusion of Multisystems International Ltd within, as accepted by Mr Bagnall in criminal proceedings, contrived transaction chains. The common director of Multisystems International Ltd and Multisystems Technology Ltd (the Appellant's supplier in the 05/06 deal) was Mr Richard Dawson. The documents contain reference to "Rich" which Mr Bagnall accepted during criminal proceedings was Mr Dawson.

*Summary*

119.HMRC submitted that there was no real challenge to the evidence of the defaulter officers and that all 3 transactions that are the subject of this appeal trace back to a tax loss. Mr Mandalia submitted that the Appellant had not attempted to show that the defaulting trader in each transaction had failed to account for VAT, nor that the failure could be anything other than fraudulent. It was HMRC's case that the evidence of contrivance shown in the notebook entry seized from 67 Worcester Street, Oldham on 14 August 2006 and the link between Mr Bagnall, Mr Dawson and the associated companies, corroborates the conclusions of the officers.

120.Mr Young, on behalf of the Appellant objected to HMRC's reliance on hearsay evidence in seeking to establish that there was a fraudulent tax loss in the 3 transactions. It was submitted by Mr Young that the 3rd parties referred to by HMRC had not had the opportunity to respond to the serious allegations made against them. Mr Young invited us to follow the principle set out in the case of ***Wayne Farley Ltd v Customs and Excise Commissioners*** *[1986] STC 487* and consider legal questions as to the validity of hearsay evidence. It was submitted on behalf of the Appellant that there may or may not be a tax loss but that HMRC have not proved this.

121.Mr Young highlighted the lack of certainty on the part of HMRC as to whether MS Sethi was the supplier to First Call and defaulter in the 01/06 deal and the fact that Mr Miles had not verified the information provided to him by the insolvency practitioner Mr Hellard. Mr Young referred us to the fact that the purchase orders relating to MS Sethi had been in the possession of HMRC from, at the latest August 2007 yet the evidence had not been adduced until the hearing without any explanation.

122.Mr Young relied on the fact that no assessment had been raised by HMRC against MS Sethi and that the submission of HMRC that the object of the fraud is for the Appellant to obtain a repayment of VAT and the fraud crystallises when that end is achieved is nonsensical on the basis that the fraudulent tax loss crystallised when the alleged defaulting traders did not meet their VAT liabilities.

**Findings on whether there was a fraudulent evasion of VAT in the chain of each transaction.**

123.We read the case of ***Wayne Farley Ltd v Customs and Excise Commissioners*** with care. The objection to hearsay in that case was made on the basis that an officer of HMRC adduced orally information obtained by his predecessor who was not a witness at the hearing nor had provided a witness statement. Macpherson J held:

*"prima facie hearsay may be admitted in the discretion of the chairman of the tribunal... There is nowhere in the rules anything which indicates that where hearsay is to be sought to be admitted it is necessary or even desirable that a statement of the possible hearsay witness's evidence must be filed under r 8. When the matter comes to be heard and if a witness seeks to give hearsay evidence, which Mr Coulson did in respect of Mr Birkett's limited activity in this matter, the chairman may decide whether or not it is right that such evidence should be admitted."*

124. Macpherson J went on to state that care must be taken in reliance on hearsay and the weight to attach to it. We did not accept that Mr Young's objection to hearsay prevented us from admitting the evidence; rule 15 (3) (a) of The Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 provides that we may "admit evidence whether or not the evidence would be admissible in a civil trial in the United Kingdom". We were satisfied that the evidence should be admitted and that our assessment of the witnesses would guide us as to the weight to be attached. We found Mr Young's argument in reliance on PACE 1984 that the allegations made by HMRC against traders other than the Appellant which had not been put to those traders affected the reliability to be misconceived. These are not criminal proceedings, nor were criminal proceedings brought against the defaulting traders. The standard of proof to which we must be satisfied is on the balance of probabilities and the issue as to whether we are so satisfied that there was a fraudulent tax loss is one which can be decided on the facts before us. We found as a fact that the absence of an explanation by the defaulting trader came as a result of the actions of each trader by failing to maintain contact with HMRC. We were satisfied that each of the default officers who gave evidence had made thorough investigations and that the weight to be attached to their evidence was sufficient for us to accept the evidence as reliable.

125.We were referred to the VAT Act 1994 Schedule 11 paragraph 14:

*(1)A certificate of the Commissioners—*

*(a)that a person was or was not, at any date, registered under this Act; or*

*(b)that any return required by or under this Act has not been made or had not been made at any date; or*

*(c)that any statement or notification required to be submitted or given to the Commissioners in accordance with any regulations under paragraph 2(3) or (4) above has not been submitted or given or had not been submitted or given at any date; or*

*(d)that any VAT shown as due in any return or assessment made in pursuance of this Act has not been paid;*

*shall be sufficient evidence of that fact until the contrary is proved.*

126.Mr Young highlighted the fact that it was open to HMRC to prove tax losses through certification; however they chose not to so do. We found that the manner in which HMRC chose to prove tax losses was not a matter for us to make any determination on; the question for us was whether or not the tax losses were proven.

**01/06 MS Sethi**

127.We were satisfied on the evidence of Mr Miles that MS Sethi was a defaulting trader in the 01/06 deal. We found the witness to be credible and accepted that he had received accurate information from the insolvency practitioner dealing with First Call. We were satisfied that the increase in MS Sethi's turnover increased far beyond that which would be expected of a legitimate trader and that the company failed to submit a final return for the period between 1 December 2005 and 20 January 2006, thereby failing to account for £1,361,716.44 of output tax.

128.We were satisfied that MS Sethi registered for VAT solely for the purpose of defrauding the revenue on the basis that its declared business activities were as importers of fruit and vegetables yet over 50 days of trading, Stephen Phillips T/A First Call had raised purchase orders for a total of 293 supplies of mobile telephone and CPU's for a net value of almost £78,000,000.00. We accepted that these supplies to First Call, which included the CPU's subsequently sold to the Appellant, were not declared or accounted for and there is no evidence of payment for the goods.

129.We did not accept that the late admission of the evidence of Mr Miles had any bearing on the weight to be attached. We found the evidence to be compelling and the sources of it to be reliable.

130.We were not satisfied on the evidence before us that the Appellant had incurred a loss in relation to the 01/06 deal; the price may have decreased but we found that this resulted in a lower profit rather than a loss to the Appellant. Even if this had been the case, we did not accept that this affected our decision as to whether or not the Appellant's transactions were connected to a fraudulent evasion of VAT.

131.We rejected Mr Young's submission that no actual tax loss had been shown and that it was pertinent that there had been no assessment raised against MS Sethi; tax losses from fraudulent evasion are losses arising as a result of the non-payment of output tax by the defaulting trader and there is no requirement that an assessment must have been raised in order to find that there has been a failure to meet VAT liabilities. We were satisfied that MS Sethi was the defaulting trader in the 01/06 deal chain and that default was fraudulent.

**03/06**

132.We were satisfied on the evidence of Mr Lamb that Samson was incorporated and registered for VAT with the sole intention of defrauding the revenue by failing to account for its output tax.

133. The declared business activities were stated as "general traders" and subsequently "importation, distribution and installation of electronic and mechanical components for machinery and cars". No appeal has been lodged against the assessment raised by Mr Lamb reflecting the output tax liability of £36,700,000.00 identified from the purchase records of Samson's customer, The Routers Group Ltd which we found to be indicative of the lack of legitimacy. Third party payment instructions issued by Samson to The Routers Group Ltd meant that Samson would not be able to meet its VAT liability.

134. We were satisfied that the deal chain had been correctly traced and that the failure to contact or cooperate with HMRC is a further indication of the fact that the default by the company was intended to perpetrate the fraud.

**05/06**

135. We were satisfied that the deal chain for the period 05/06 had been accurately traced and we accepted the evidence of Mr Sharrock as to the fact that Focus was a missing trader. We concluded that Focus had deliberately misled HMRC as to its trading activity, which was declared as building racing cars and subsequently extended to "general wholesale, telecommunications equipment and products, electrical equipment and other commodities". Despite having no trading history, no bank account and there being no evidence of any finance in place, the company purchased in excess of £3,000,000.00 of stock. We were satisfied on the evidence of Mr Sharrock that Focus had traded without any intention of meeting its VAT liability upon its purchase of CPU's.

136. We accepted that Focus acquired goods from Slovenia which it sold on in the UK without paying the VAT liability arising as a consequence. We found that Focus was a missing trader and the lack of any appeal against assessments made is indicative of the fact that the company was not legitimate but was designed to perpetrate MTIC fraud.

137. We found that the notebook entry seized from 67 Worcester Street, Oldham on 14 August 2006 left us in no doubt as to the contrivance of the deal chain. We found that there was no other plausible explanation as to why the entries made matched the deal chain traced. The lack of any specific reference to the Appellant Company in the notebook did not negate the overall inference of a premeditated scheme.

138. We attached less weight to the documents seized from the SAS Radisson Hotel at Manchester Airport which did not contain details of transactions involving the Appellant; however we did find that to a degree this evidence provided further corroboration that the suppliers with which the Appellant was directly linked were closely connected to MTIC fraud.

139. We therefore find that there was a fraudulent evasion of VAT in respect of each of the defaulters identified above. It is generally the case in MTIC fraud that the original acquirer/importer defaults without payment of output tax, however this need not be so and therefore the fact that HMRC have not proved that every defaulter was

the original acquirer/importer does not affect their right to deny the Appellant's repayment claim, so long as the conditions set out in paragraph 10 above are satisfied; as per Clarke J in ***Red 12 Trading Limited v HMRC****[2009] EWHC 2563 (Ch) at [84]:*

*"In many cases of MTIC fraud the defaulter, ie the company which fails to account for VAT and beyond which HMRC will not have been able to trace the chain, will be the actual importer. But it need not be so. Y may be the actual importer who sells (or transfers possession of) the goods to A who sells to B. Both the actual importer and A may go 'missing' and make no payment to HMRC at all... The goods may bypass the defaulter and be allocated by the freight forwarder directly to one of the buffer companies... although input and output tax is accounted for by a buffer company earlier in the chain. The buffer company serves its function of preventing HMRC tracing back to the original importer. Third party payments may be made by purchasers in the middle of the chain cutting out those above. What is needed for an MTIC fraud to work is an importation without payment of VAT, a trader who disappears without accounting to HMRC for the output tax it has received...and an export which generates an entitlement to claim back input tax. The original importer will make the most profit from failing to pay over output VAT. For that reason the defaulter is usually the original importer; but any company in the chain which defaults at any stage in the chain will make a profit from not accounting for the VAT, assuming that it has sold on at a profit. In order to justify denial of the right to deduct input tax there must be knowing participation in a transaction connected with fraudulent evasion of the tax. If that is established, the right is lost. It would be inconsistent with that principle, and an unmerited boon to fraudsters, to require the authorities to prove that the defaulter was the original importer."*

140.And per Moses LJ in ***Red 12 Trading Limited v HMRC*** *[2010] EWCA Civ 402* on appeal:

*"The essence of the fraud consists of depriving the Customs, and therefore the tax payer, of the tax for which the supplier has to account, whilst at the same time obliging the Customs to pay the input tax to one who has, by virtue of his knowledge of what is going on, participated in that fraud. Whether the fraudster was the importer or someone further down the line seems to me completely irrelevant and unarguable. There is no basis, in my judgment, in any of the authorities for contending that the importer has to be the defaulter."*

141.We rejected the Appellant's privity of contract submission as set out in Mr Young's skeleton argument that the Appellant's transactions are not connected to fraud as there is no fraud between the Appellant, its supplier or customer. The judgment in Mobilx at paragraph 62 makes clear that:

*"The principle of legal certainty provides no warrant for restricting the connection, which must be established, to a fraudulent evasion which immediately precedes a trader's purchase. If the circumstances of that purchase are such that a person knows or should know that his purchase is or will be connected with fraudulent evasion, it cannot matter a jot that that evasion precedes or follows that purchase. That trader's*

*knowledge brings him within the category of participant. He is a participant whatever the stage at which the evasion occurs."*

142.Having accepted the deal chains, we were satisfied that they give rise to a connection between the fraudulent defaults and the Appellant's purchases in 01/06, 03/06 and 05/06 as evidence by the sales and purchase invoices and FCIB evidence.

**In respect of each transaction did the Appellant, through Mr Roglej and Mr Ryder, know or should it have known that by its purchase it was participating in a transaction which was connected with the fraudulent evasion of VAT?**

*Preliminary issues*

143.This was the principal issue in the case to which the majority of the evidence and parties submissions were directed.

144.Our approach to the issue was to recognise that while the question must be applied to each separate purchase, the fact that the transactions occurred over a short period of under 6 months was relevant to the developing knowledge on the part of the Appellant, for example as a result of the notifications and warnings provided by HMRC that the Appellant's purchases had been traced back to defaulting traders. We did not therefore view each transaction in isolation but decided that the surrounding circumstances of each transaction and the totality of the deals were relevant considerations; as per Clarke J ***Red 12 Trading Limited v HMRC****[2009] EWHC 2563 (Ch) at paragraphs 109 - 111:*

*"Examining individual transactions on their merits does not, however, require them to be regarded in isolation without regard to their attendant circumstances and context. Nor does it require the tribunal to ignore compelling similarities between one transaction and another or preclude the drawing of inferences, where appropriate, from a pattern of transactions of which the individual transaction in question forms part, as to its true nature e.g. that it is part of a fraudulent scheme. The character of an individual transaction may be discerned from material other than the bare facts of the transaction itself, including circumstantial and 'similar fact' evidence. That is not to alter its character by reference to earlier or later transactions but to discern it.*

*To look only at the purchase in respect of which input tax was sought to be deducted would be wholly artificial. A sale of 1,000 mobile telephones may be entirely regular, or entirely regular so far as the taxpayer is (or ought to be) aware. If so, the fact that there is fraud somewhere else in the chain cannot disentitle the taxpayer to a return of input tax. The same transaction may be viewed differently if it is the fourth in line of a chain of transactions all of which have identical percentage mark ups, made by a trader who has practically no capital as part of a huge and unexplained turnover with no left over stock, and mirrored by over 40 other similar chains in all of which the taxpayer has participated and in each of which there has been a defaulting trader. A tribunal could legitimately think it unlikely that the fact that all 46 of the transactions in issue can be traced to tax losses to HMRC is a result of innocent coincidence.*

*Similarly, three suspicious involvements may pale into insignificance if the trader has been obviously honest in thousands.*

*Further in determining what it was that the taxpayer knew or ought to have known the tribunal is entitled to look at the totality of the deals effected by the taxpayer (and their characteristics), and at what the taxpayer did or omitted to do, and what it could have done, together with the surrounding circumstances in respect of all of them".*

145.HMRC put their case on the basis that the Appellant, through Mr Rogelj and Mr Ryder, was a knowing participant in the fraud, relying on the judgment of Floyd J in ***Calltel Telecom Limited v HMRC*** *[2009] EWHC 1081 (Ch) at 66 to 67*:

*"In his oral opening, Mr Cunningham for the Commissioners made it clear that the Crown would be asking the tribunal to infer actual knowledge, in the absence of an admission:*

*"It is of course our case that [the tribunal] are required to draw inferences here. We would not be here if we had Mr Gohir with a white flag up saying, 'I knew'. There would not have to be a trial because there would be no issue. His case is, 'I did not know' and more than that, 'I could not have known'. So we cannot tackle that with an admission or a plea of guilty. We can only deal with it by saying, 'You had all of this information**, you must have known, you should have known**'." (Emphasis supplied)*

*To assert that an individual must have known something is of course different from a case of mere constructive knowledge. By asserting that Mr Gohir "must have known" the Commissioners were saying that the objective evidence pointed towards a conclusion of actual knowledge, which Mr Gohir would in due course be called upon to answer"*

146.In the alternative, HMRC submit that the Appellant should have known that its transactions were connected with fraud by reason of the information available to it and the lack of precautions taken which could be reasonable required of it to ensure that that its transactions were not connected with fraud; ***Kittel v Belgium, Belgium v Recolta Recycling*** *[2008] STC 1537 at 51:*

*"...it is apparent that traders who take every precaution which could reasonably be required of them to ensure that their transactions are not connected with fraud, be it the fraudulent evasion of VAT or other fraud, must be able to rely on the legality of those transactions without the risk of losing their right to deduct the input VAT..."*

147. Floyd J made the following comments on the passage cited above ***Mobilx v HMRC*** *[2009] EWCH 133 (Ch) at paragraphs 6 and 7:*

*"Of course, an otherwise innocent trader can only do so much to ascertain whether its supply line is "clean" or "dirty" (to use the expressions used in MTIC fraud cases). It can make enquiries of its immediate supplier, including enquiries as to the diligence with which its immediate supplier checks, in turn, on its supplier. Beyond that, the immediate supplier cannot as a matter of commercial reality be expected to reveal the identity of its own suppliers without risking being cut out of the business.*

*In the light of the difficulties of making enquiries beyond the immediate supplier, there is a danger in reading para 51 of Kittel in a narrow sense and as suggesting that provided proper checks are carried out by the trader on a supplier, then the trader's claims to repayment of VAT are not capable of challenge. That is not, in my judgment, a correct view. Suspicious indications obtained by a trader from carrying out due diligence checks on its supplier are one, but not the only basis from which it may properly be inferred that a trader knew or should have known of its implication in VAT fraud. The test to be applied is that set out in para 61 of the Judgment, and indeed in the court's final determination at the end of the judgment. Paragraph 51 needs to be understood in the sense that "all reasonable precautions" may, in some cases, involve ceasing to trade in specified goods in a particular market, at least in the particular manner in which the trader undertakes that trade. Such a situation may conceivably arise where, from other indications available to the trader, the trader knew or should have known that it is more likely than not that, despite all due diligence checking, any further goods traded in the same way will be implicated in VAT fraud."*

148.We were conscious to ensure in assessing the knowledge of the Appellant through Mr Rogelj and Mr Ryder, that we only took account of information known to them through the relevant period; for that reason we did not take into account the information provided in witness statements as to the general CPU market or opinions provided by HMRC officers as to MTIC frauds.

149.HMRC relied upon a number of features which, they submitted, taken together lead to the clear conclusion that the Appellant either knew or should have known that its transactions were connected to the fraudulent evasion of VAT. We will address each factor in turn.

*The Appellant Company*

150.HMRC relied on the fact that the declaration on the Appellant's VAT application was shown to be inaccurate in stating that the main business activity was specified as "the purchase and sale of computer parts". In evidence, Mr Rogelj stated that it was correct that Manatlantic had never traded in anything other than CPUs.

151.The VAT registration application also stated that the Company did not expect to receive regular repayments of VAT. Mr Rogelj stated in cross examination that the business had always intended to export goods but went on to state that at the time of trading "we still weren't strictly sure what we were gonna be doing..." Mr Rogelj accepted that the first deal of the Company took place in May 2005 and that the VAT application form was also dated May 2005 and that he could provide no explanation as to why the form had stated that no regular repayments were expected.

152.When questioned as to the basis for the estimated value of taxable supplies, Mr Rogelj was unable to give any specific detail as to how the estimate had been arrived at other than to say his target turnover was in the region of £1,000,000.00 to £2,000,000.00. It was put to Mr Rogelj that this contradicted his witness statement in which he had stated that his target was £5,000,000.00 in order to achieve a salary of

£50,000 plus. Mr Rogelj stated that he had certain objectives when he started the company but it could not be expected that the business would be an immediate success and that he could not accept HMRC's assertion that within two months of trading the Company had reached £1,000,000.00 turnover without checking the Company records.

153.Mr Rogelj was questioned as to the profit and loss account for the 6 month trading period between 1 April 2005 and 30 September 2005 in which sales in excess of £2,800,000.00 were made by Manatlantic. Mr Mandalia queried how such a significant value of sales was generated given Mr Rogelj's oral evidence that "by the time we made the arrangement in Sirrnet we didn't have much credibility, that's why we couldn't get the suppliers...it was very difficult to establish trading relationships..." Mr Rogelj stated that Mr Ryder's association with Manatlantic and their experience in the trade of export meant that business was generated as a result of reputation.

154.Both Mr Ryder and Mr Rogelj were cross examined about the reason behind establishing Manatlantic when the pair had both been involved in similar trading activities in Sirrnet. Mr Rogelj's witness statement set out his desire to incorporate his own company in order to be in full control. In cross examination Mr Rogelj stated he did not "give up" Sirrnet in which he retained a 10% share "in what was a bigger pie...because by having...better supplies you increase the trading volume and having a smaller stake in a bigger pie is sometimes much more beneficial." Mr Rogelj stated that with Manatlantic he was in charge of his own money and the Company's affairs while Mr Ryder helped out with trading. Mr Ryder explained that the reason for allowing Syskal's involvement in Sirrnet was a result of the difficulties in getting supplies and sourcing stock. Mr Rogelj described the two companies effectively working together as a "joint operation" and that he was never inclined to create any conflict of interest. Mr Ryder accepted in cross examination that although the shareholding of Sirrnet changed to the directors of Syskal, he remained Company Director and Mr Rogelj remained Company Secretary, in effect both still running Sirrnet. Mr Ryder explained that Syskal dealt with the procurement side of the business and he and Mr Rogelj dealt with sales and marketing. Mr Ryder gave no further explanation as to the reason behind setting up Manatlantic while he still retained involvement with Sirrnet.

*Knowledge of MTIC fraud*

155.The contact between HMRC and the Appellant in both letters and meetings is set out in detail at paragraphs 34 to 46 of this decision. Throughout the period from May 2005 and September 2006 HMRC had highlighted to the Appellant the existence and characteristics of MTIC fraud.

156.There was no dispute by the Appellant that he had no general knowledge of fraud within the industry which is accepted in Mr Rogelj's witness statement dated 13 November 2008.

157.In Mr Rogelj's capacity as Company Secretary of Sirrnet the same information was provided by HMRC warning of the dangers of the prevalence of fraud within the industry.

158.HMRC highlighted the concession made by Mr Ryder in cross examination that, despite the appearance from his CV of a significant amount of experience within the IT industry and the impression of a natural progression to wholesale of CPUs through established contacts, he had never before been involved in the purchase and sale of CPUs stating "...trading components is trading components, you don't need any technical knowledge to do it."

159. Similarly, Mr Rogelj confirmed that although he had worked in the same industry, he had no previous experience of dealing in CPUs.

160.When questioned as to where he had met the trading partners subject of the appeal, Mr Ryder's evidence was vague, stating that the contacts had not been made at conferences or exhibitions but in a variety of other ways such as through Sirrnet and Manatlantic's website. Mr Ryder was unable to recall how specific relationships were established despite Mr Rogelj's evidence that Mr Ryder was heavily involved in the transactions.

161.HMRC submitted that by continuing to trade irrespective of the risks involved and the lack of any credible explanation as to why the Appellant stopped trading, given the Company's growth, when the "reverse charge" provisions were introduced in June 2007, is indicative of the fact that the Appellant knew that the transactions they were conducting were connected with fraud.

162.Mr Rogelj explained that the financing he had is no longer available, and that despite the "reverse charge" provisions which he was aware came into force in 2007 and despite the profits he had made with the Appellant Company, he was so disheartened by the treatment of him by HMRC that he has not continued trading.

*Methods and Pattern of Trading*

163.Mr Rogelj's witness statement dated 13 November 2008 describes the trading methods of the Appellant Company. The Company initially had a London trading address as Mr Rogelj found through his experience at Sirrnet that many traders were based in London and he took the view that a London address would assist relationships with trading partners.

164.Mr Rogelj sets out how he loaned £80,000 to the Company to use as trading capital and that he obtained £300,000 from external investors. Mr Rogelj, as Director, was responsible for the Company's operational activity and Mr Ryder was heavily involved in sales, marketing and the transactions.

165.The transactions subject of this appeal were "back to back" deals, in that each purchase of CPUs from a supplier linked directly to a sale of exactly the same CPUs to a customer. The Company had no storage facilities and purchased stock when a buyer had been found. Mr Rogelj describes in his witness statement dated 13

November 2008 that "back to back trading is common in a lot of industries. It was exceptionally difficult to enter into transactions. Much negotiation was required. We had to source supplies to match individual orders so that no stock was maintained in the Company...it was often taken a number of days to enter into a transaction...the Company never purchased stock without knowing that there was a buyer..."

166.Mr Rogelj states in his witness statement that the Company tried to notify Redhill of every trade to be entered into and seek validation of the VAT details of trading partners prior to entering deals. Mr Rogelj describes that he was unable to validate the VAT details of customers in the transaction subject of this appeal as they were based in Switzerland and Singapore and Redhill are only able to validate details in respect of EU trading partners.

167.In oral evidence, Mr Ryder described how the price of goods fluctuates on a daily, sometimes hourly basis. Mr Ryder stated that either the Appellant Company would receive information about available stock from a supplier and attempt to find a customer to buy that stock, or alternatively, a customer would enquire about stock it was seeking to purchase and the Appellant would then source that stock. In oral evidence Mr Rogelj stated that there was no commitment to buy or supply the stock until a purchase order is sent or received.

168.The passing of title of the goods was described by Mr Rogelj in oral evidence; his supplier retained title in the goods until payment was made as stated on the invoice, however this did not prevent the Appellant supplying the goods to the customer abroad prior to payment being made. Mr Rogelj contended that permission was given by the customer to take goods out of the country, although no documentary evidence was produced to support this assertion; he stated: "They released them to me, which allowed me to release them to my client and I think by releasing them to me, I would expect that they allowed me to."

169.Mr Rogelj stated that the Company would pay its supplier once payment had been received from the customer and the Appellant did not question whether its suppliers were in a position to provide goods of such significant value without receiving payment from the Appellant, stating "I can't make that sort of enquiries because I can't be asking my clients or supplier how their payment arrangements...nor would they disclose that information."

*Inspections*

170.Mr Rogelj stated that he relied upon either inspections commissioned by the Appellant or those provided by the Freight Forwarder and carried out on behalf of the supplier. Mr Rogelj explained that "the inspection is carried out by my supplier...and I look for that inspection...I don't see any reason why I would need to inspect the goods again, because...they are not accessed by anybody else but the forwarder, they would just be duplicating work." Mr Rogelj confirmed that he had never made checks as to how the Freight Forwarders carry out the inspections but stated Mr Ryder had. Mr Rogelj stated that he saw no point in doing so.

171.Mr Ryder stated in evidence that he had visited the Freight Forwarder "Forward Logistics Ltd" in his capacity as Company Secretary of Sirrnet, although he had made no record as he did not believe this was necessary. Mr Ryder stated that he had no cause to view the stock on behalf of the Appellant Company but that he obtained people's opinions through casual conversations. He stated that it would not have been possible for the Appellant to physically inspect the goods, but gave no further explanation as to why he believed this to be the case, and stated that this was the job of the Freight Forwarder.

172.Mr Rogelj stated in oral evidence that it was never suggested that the Freight Forwarders used by the Company were involved in fraud and that he considered their role to be independent. Consequently Mr Rogelj stated that he was content to rely on feedback from other traders.

*Specifications*

173.Despite having no previous experience of trading in CPUs both Mr Rogelj and Mr Ryder stated that they understood the relevance and importance of how the goods were packaged. Mr Ryder stated in oral evidence that the information provided to the Appellant in a deal would specify how the goods were packaged. Mr Rogelj disagreed in cross examination that the manner in which the goods were packaged would be an important detail expected to appear on the documentation.

174.Mr Rogelj was referred to purchase orders relating to the 01/06 deal which after comparison showed that the Appellant's customer specified "OEM tray packed open boxes" however the purchase order to the Appellant's supplier made no reference to this specification. Mr Rogelj explained that he would always start "with clear specifications over the phone what the client needed." Mr Rogelj accepted that this information may not be included on the purchase order to the supplier but stated that all of the boxes the Company traded in were in trays.

175.Similarly in respect of the 03/06 deal, Mr Rogelj accepted that the customer's purchase order contained specifications which were not included within the purchase order provided to the Appellant's supplier. Mr Rogelj stated "we always deal in trays, this is a wholesale product...not a product to go into retail...it was common knowledge amongst all traders..."

176.In respect of the 05/06 deal where the customer's documentation did not contain specifications, Mr Rogelj reiterated that the Company always dealt in trays and that the customer had also seen the inspection report.

*Insurance*

177.The evidence in respect of insurance of the goods was given by Mr Rogelj. As regards the 01/06 deal, Mr Rogelj stated that Bergmann Associates arranged the shipment and the insurance "so it wasn't for me to insure those." Mr Rogelj stated that he viewed the purchase order as confirmation that insurance was in place.

178.In respect of the 03/06 deal, Mr Rogelj accepted in his oral evidence that the insurance information he had provided to HMRC was worthless as the goods had not been moved by airline security handling, which invalidated the terms of the insurance. Mr Rogelj expressed surprise and explained that he is not an expert in insurance, had not appointed an agent to deal with the matter and must have overlooked the relevant condition.

179.The same point arose in respect of the 05/06 deal and the documents provided by Mr Rogelj to HMRC purporting to provide insurance cover for the goods. HMRC submitted that the inference to be drawn from this evidence was the failure by the Appellant to have any regard to the terms or conditions of the policy, which would not be expected of a reasonable businessman trading in such high value goods.

*Terms and Conditions of trade*

180.Mr Rogelj explained that in 2006 the Company had terms and conditions upon which it traded and this document was exhibited within the bundles. Mr Rogelj stated that the supplier application form and customer application form, to which the terms and conditions were attached, were very similar, that the terms and conditions ought to be different but that he did not know how he had "managed to put the wrong terms and conditions to the supplier application form." Mr Rogelj denied that this was because the terms and conditions were of little or no importance as the transactions were contrived, stating that it had been a mistake on his part although he accepted one which could have been "very costly if something had gone wrong." Mr Rogelj stated that he believed the purchase order and invoice to be the legally binding document between the parties which would provide protection should something go wrong.

181.Mr Rogelj's oral evidence was that the terms and conditions had been downloaded from the internet as he could not afford to appoint a lawyer to draft them. It was put to Mr Rogelj that the terms and conditions of payment and title as set out on the documentation of both the Appellant Company and its suppliers/customers bore no resemblance to what had occurred in the deals, for example in the 01/06 transaction, the goods were transferred to Bergmann Associates prior to the Appellant receiving or making payment. It was put to Mr Rogelj that this did not match the conditions of payment which stated that payment would be due upon receipt of goods or services. Similarly, Mr Rogelj was questioned about the 31 March 2006 deal in which the Appellant's invoice to IT Swiss Systems stated "payment on delivery" yet payments were not received until 13 and 20 April 2006. Mr Rogelj stated that in the case of Bergmann Associates he had been unable to negotiate the terms of payment, but that he knew from experience that they were credible suppliers and for that reason he was happy to supply the goods before payment was received.

182.When questioned as to how the goods could be supplied by the Appellant prior to making payment to its supplier, such as happened in the 05/06 transaction, Mr Rogelj stated that although the invoice from Multisystems Technology declared that the goods remained their property until full payment was made, he had supplied the goods as they were in his possession which allowed him to release them. Mr Rogelj stated that he believed such declarations to be common terms and agreed that only once full

payment was made could full ownership be claimed. Mr Rogelj highlighted the fact that he had made payment on 23 May 2006 and stated that he had adopted common practices which he had learnt in the course of business and that he found nothing strange in this manner of dealing.

*Funding*

183.Mr Rogelj set out the funding arrangements in place to finance the Appellant Company's trading activities, which involved Mr Rogelj investing £80,000.00 of his own money and £300,000.00 from external investors which was unsecured because the Appellant was unable to offer security. Mr Rogelj explained that he is liable to his investors and that the only way in which he can meet his liabilities is by recovery of the disallowed input VAT.

184.Mr Rogelj accepted in oral evidence that there was no provision in the event of the Appellant not recovering the disallowed input VAT as both he and his investors always had the expectation that the VAT would be repaid. Mr Rogelj also accepted that the finance agreement exhibited failed to specify that the 10% interest rate for the investors was per 2 months.

*Due Diligence*

185.The objective of carrying out due diligence is to provide protection against the risk of a non-paying customer, a supplier who does not supply the goods or provides goods from an illegitimate source/goods which fail to meet specifications. It is therefore in the best interests of the trader to carry out due diligence checks on his customers and suppliers and to keep records of checks undertaken.

186.HMRC submitted that the due diligence undertaken by the Appellant was inadequate and unnecessary. HMRC contended that the Appellant's due diligence was limited to establishing that a company existed and had a VAT registration number.

187.Mr Rogelj explained in oral evidence that he carried out due diligence to understand a client, verify that they are what they claim to be and understand their history. Mr Rogelj stated that it is important that he feels comfortable that a company with whom he trades will deliver what is expected, whether as client or customer. Mr Rogelj explained that contact would usually be made by telephone and if he then decided to proceed a meeting would be required, preferably involving a visit by Mr Rogelj to the company's offices. Information would be exchanged either by fax before the meeting or during the meeting and it would usually take at least a month before a new supplier or customer is appointed.

188.Mr Rogelj stated that sometimes not all steps are necessary in carrying out due diligence as "you are satisfied with...the first meeting or you had a recollection of their trading pattern to show that they are a credible supplier." Mr Rogelj explained that he valued information given by Mr Ryder confirming the validity of a trader known from his experience prior to Manatlantic. Mr Rogelj stated that the type of due diligence checks carried out were dependent on who the Appellant was dealing with.

*21st Trading Ltd*

189.The Appellant produced the following documents relating to the due diligence checks carried out in respect of 21st Trading Ltd:

(a) Certificate of Incorporation dated 24 October 2002;

(b) Certificate of Registration for VAT effective from 16 November 2002;

(c) An agreement for the supply of office facilities dated 23 November 2004;

(d) Copy of driving licence of Mr Haider Al Hasani, Director;

(e) Faxed letter of Introduction dated 23 August 2005;

(f) An account application from 21st Trading Ltd to the Appellant dated 7 October 2003;

(g) Dunn and Bradstreet Report dated 2 August 2005

190.Mr Rogelj had been in contact with 21st Trading Ltd while at Sirrnet. He could not recall the exact circumstances in which contact was first made but confirmed that he had spoken to the company on the telephone and had visited it twice and confirmation of the visits was outlined in the due diligence documents provided. He claimed that the visits had left him with a favourable impression of it.

191.Mr Rogelj accepted that the letter of introduction is very limited in terms of information about the company but stated that he sought further details in his telephone conversation. Mr Rogelj also explained that he verbally verified the company with other traders as he did not have time to carry out a full report.

192.21st Trading Ltd's certificate of incorporation was obtained which Mr Rogelj stated he verified via the Companies House website. He explained that he had not printed off the relevant document as he may have verified the details against the Dunn and Bradstreet report and although he could not recall the precise nature of his enquiries, he would have used an independent source of information.

193.Mr Rogelj also obtained a copy of 21st Trading Ltd's tenancy agreement as he wanted to check the location of the company. It was put to him that his suspicions must have been raised by a clause in the agreement requiring only one month's notice to vacate the premises. Mr Rogelj explained that this clause did not concern him as it was a standard agreement and that the Appellant would not be left without the goods but rather 21st Trading would be left without payment if they disappeared. He disagreed that his lack of concern was a result of knowing he would receive payment irrespective of whether 21st Trading remained at the premises due to the contrived nature of the transactions.

194.It was confirmed by Mr Rogelj that he did not seek written references in respect of 21st Trading as he had verified the company's credibility by telephone calls to trading contacts. He accepted that there was no documentary evidence to support the verbal enquiries made with Forward Logistics.

195.HMRC questioned whether Mr Rogelj had queried an entry on the trade application form which stated, in response to whether HMRC had ever raised an assessment against the company or whether there were any outstanding enquiries or appeals, that the matter had been resolved. Mr Rogelj explained that he did not carry out any enquires in relation to this matter as the company had explained to him that their VAT number had been returned and the issue had related to a bank account. He said that he had previously confirmed with HMRC's Redhill Office that the company was trading. Mr Rogelj stated that he found 21st Trading Ltd's director to be honest and credible.

196.The Dunn and Bradstreet report showed a credit limit for the company of £19,000 with a risk indicator of slightly greater than average. Mr Rogelj found that to be common for a company which had only traded for 2 years.

197.It was noted that the address of the company director as shown on the driving licence differed from that on the Dunn and Bradstreet report to which Mr Rogelj responded that he had taken a copy of the driving licence.

198.The Dunn and Bradstreet report shows under "operations" that the company provides "miscellaneous business services". Mr Rogelj stated that he did not know why this description was given but knew that the company had a trading history in CPUs which he found sufficient. He accepted that he could not indicate where within the due diligence documents provided by 21st Trading Ltd it was recorded that the company traded in CPUs, but believed it to be contained in the deal documents, and from the oral references he had received it was obvious. Mr Rogelj explained that many companies change their trade and that he did not find this a relevant consideration if he had an understanding of the company's history.

199.The fact that 21st Trading appeared to have more liabilities than assets was highlighted to Mr Rogelj who stated that there may have been a number of reasons for this and speculated that the directors had made a loan to the company which was not accounted for as capital. Mr Rogelj confirmed his view that it was appropriate to have a trading relationship of significant value with 21st Trading Ltd irrespective of the fact that the company has more liabilities than assets, a small credit rating, a greater than average risk assessment and operates from shared facilities where one months notice to vacate is required.

*Multisystems Technology Ltd*

200.The Appellant produced the following documents relating to the due diligence checks carried out in respect of Multisystems Technology Ltd:

(a) Companies House print out dated 23 May 2006

(b) Letter of Introduction dated 23 May 2006

(c) Certificate of Incorporation dated 30 June 2005;

(d) Certificate of Registration for VAT effective from 10 August 2005;

(e) Account application and Manatlantic Terms and Conditions fax date 23 May 2006

(f) Dunn and Bradstreet Report dated 23 May 2006

201.Mr Rogelj's written evidence set out the background to contact with Multisystems which came about through its director Mr Richard Dawson who had also traded as Multisystems International, a company which had traded with Sirrnet. Mr Rogelj had visited the premises of Multisystems International in or around July 2005 and the same premises, from which Multisystems Technology traded, on 1 June 2006.

202.He accepted that HMRC had given a warning that goods bought from Multisystems International had traced back to a tax loss. Mr Rogelj explained that he considered his trading relationship with Multisystems International very carefully following the warning and whilst he had concerns about how the company was carrying out its due diligence checks, he did not consider that Mr Dawson was involved in any fraud.

203.Mr Rogelj decided not to trade with Multisystems International but did trade with Multisystems Technology, the director of both companies being Mr Dawson. Mr Rogelj could not recall asking Mr Dawson why he did not continue to trade as Multisystems International but instead as Multisystems Technology.

204.Mr Dawson informed Mr Rogelj that the company had a new due diligence system in place, which Mr Rogelj considered to be a much more professional approach when it was explained to him and when he met Charley Cullender, the employee in charge of the procedure.

205.Mr Rogelj stated that as part of Multisystems Technology's due diligence they had required information from the Appellant, although he could not specifically recall which documents were requested.

206.Mr Rogelj went through the documents obtained by the Appellant Company in conducting their due diligence checks on Multisystems Technology. It was noted that the letter of introduction arrived 15.44 on 23 May 2006; the day on which the transaction with Multisystems Technology took place. Mr Rogelj stated that the checks had commenced prior to the day of the transaction and that he had spoken to the company by telephone and evaluated Mr Dawson as a trader throughout their trading relationship. Mr Rogelj stated that it is his knowledge of the trader and company which is important, not paperwork and confirmed that it was important to him that the company was carrying out its own due diligence.

207.It was accepted by Mr Rogelj that the letter of introduction from Multisystems Technology was a standard letter addressed "to whom it may concern" which stated that the company was a worldwide distributor servicing the demands of the global market. Mr Mandalia questioned Mr Rogelj's knowledge of the company which on the face of it had started trading in August 2005 and 9 months later achieved clients worldwide. Mr Rogelj stated that he had no reason to doubt the contents of the letter;

that the description encapsulated how the company perceived itself and that traders are prone to exaggeration.

208.Mr Rogelj accepted that the company's VAT registration certificate had been received by fax at 15.44 on 23 May 2006, as was the certificate of incorporation. Similarly the Dunn and Bradstreet report was printed out on 23 May 2006, which Mr Rogelj clarified was done prior to the exchange of invoices and purchase orders.

209.As regards the Dunn and Bradstreet report, it was highlighted that "line of business" is stated as "non-classified establishment" with a credit rating being unavailable. An association with Multisystems International Ltd is declared and a credit search is recommended in order to "gain additional insight into the principals of this business." Mr Rogelj confirmed that he had not undertaken a credit search of the company, stating that the documents added a little more additional information beyond that given by Mr Dawson but stated that the important issue was that he, Mr Rogelj, understood Mr Dawson as a trader and the manner in which he conducted his business. Mr Rogelj's stated that his experience of Mr Dawson was that he was one of the most professional traders. Mr Rogelj stated that the most important matter for him was to verify the company's due diligence checks, not those of the Appellant.

210.Mr Rogelj accepted that the date of first trade of the company was 2 months prior to the transaction between the Appellant and Multisystems Technology, but stated that it was a new company with an experienced trader and he found nothing unusual in there being different trading companies, which he stated was a common occurrence.

211.In respect of the Companies House print out, Mr Mandalia on behalf of HMRC highlighted that it was obtained on the date of the transaction between the Appellant and Multisystems Technology and that no information as to the nature of the business was supplied. Mr Rogelj explained that by collecting document on the day of the transaction verifies the depth of understanding that he had as to the company's credibility. Mr Rogelj stated that in a back to back deal, it is a case of protecting your own company by "closing off everything at once...this is a completely normal commercial practice and in fact it was executed really well."

*Bergmann Associates*

212.The Appellant produced the following documents relating to the due diligence checks carried out in respect of Bergmann Associates

(a) A document setting out the company's address, accountants, contact details, freight forwarders, bank details and general information about the company;

(b) A company report stating the company number and capital from the Swiss authorities;

(c) A list of professional references;

(d) Dunn and Bradstreet report dated 30 June 2005

213.Mr Rogelj's written evidence explained that he had been involved in transactions with Bergmann Associates while at Sirrnet and that he had visited the company's premises in Switzerland in 2005 in his capacity as Company Secretary of Sirrnet, which visit was paid for by the Syskal group, although there was no documentary evidence before us to confirm that the visit had taken place. Mr Rogelj confirmed in oral evidence that he did not obtain references as he did not believe this to be necessary given his level of knowledge about the company.

214.The Dunn and Bradstreet report gave the company a credit recommendation of 30,000 Swiss Francs which at the time equated to approximately £13,000 and the financial documents showed that the profit and loss account had not been prepared when the information was obtained. Mr Rogelj explained that his view that the company could deal in large transactions came from his experience and knowledge of the company and the traders associated with the company.

215.Mr Ryder's written statement stated that he had carried out a significant amount of business with Bergmann Associates while working at Sirrnet. Mr Ryder recalled that Sirrnet obtained professional references but could not be certain whether this was done in writing or orally. In oral evidence, Mr Ryder stated that although there should be evidence of the references, he had not made any enquiries in that regard.

*IT Swiss Systems Ltd*

216.The Appellant produced the following documents relating to the due diligence checks carried out in respect of IT Swiss Systems Ltd:

(a) A print out of information contained on the company's website;

(b) A certificate from the Institute of Chartered Accountants in England and Wales certifying that Geoffrey Senogles was admitted as an associate and dated 1 February 1994;

(c) An certificate of residence as a foreign national of Geoffrey Senogles;

(d) A copy of Geoffrey Senogles' UK passport;

(e) A trade application form dated 5 October 2005 with references attached;

(f) A VAT certificate (not translated);

(g) A registration certificate (the equivalent of a certificate of incorporation) dated 13 May 2005;

(h) A telecommunications bill stating the company address;

(i) Company accounts;

(j) A credit report dated 10 March 2006

217.Mr Rogelj explained that his main reference for the company was Mr Ryder who was involved with IT Swiss Systems Ltd through Sirrnet. Mr Rogelj confirmed that no written references were obtained.

218.Mr Rogelj stated that IT Swiss Systems Ltd was a new company and that he had not had the document purporting to be a VAT certificate translated as it was from the authorities and confirmed the company's address which Mr Rogelj considered to be part of the due diligence check.

219.It was stated by Mr Rogelj that he noted the company's financial status, shown on the Graydon credit report as medium risk with a maximum monthly credit of CHF 10,000. The report also stated that there was insufficient financial data to provide an assessment of the company's financial situation and that IT Swiss Systems Ltd and other companies in which Mr Senogles holds a position on the Board of Directors have no official telephone connection and that Mr Senogles was not contactable through his private telephone number. Mr Rogelj stated that he had been able to contact Mr Senogles when he needed, had seen Mr Senogles' offices and noted his credibility as a chartered accountant and UN forensic accountant. Mr Rogelj stated that he found nothing unusual in a chartered accountant who had given evidence as an expert at the United Nations now dealing in CPUs.

220.Mr Ryder's written evidence confirmed that he had introduced the company, which had traded with Sirrnet, to Mr Rogelj. Mr Ryder stated that Mr Senogles had visited the Appellant at its Manchester Office and that, together with Mr Rogelj, they had gone out for a meal at a local restaurant.

*Giga Asia*

221.The Appellant produced the following documents relating to the due diligence checks carried out in respect of Giga Asia:

(a) A letter of introduction dated 22 May 2006;

(b) An E-biz file internet print out dated 23 May 2006;

(c) A certificate of incorporation dated 6 June 1995 with a fax/print out date of 22 May 2006;

(d) Company Accounts with a fax/print out date of 22 May 2006;

(e) A Dunn and Bradstreet report dated 15 May 2006;

(f) An account application dated 22 May 2006 with reference attached from Best Buy.

222.Mr Rogelj confirmed that Giga Asia was introduced to him by Mr Ryder in 2006 as a reliable and credible customer of Sirrnet. Mr Rogelj accepted that a number of the documents which formed the Appellant's due diligence checks had been printed out either the day before or the day of the transaction on 23 May 2006. Mr Rogelj stated that the purpose of the documents was to verify that the company existed in addition to the fact that Mr Ryder had visited the company and made thorough checks approximately 4 or 5 months prior to the transaction.

223.It was accepted by Mr Rogelj that the Dunn and Bradstreet report showed that the company had no credit rating and was assessed as higher than average risk level. Mr Rogelj confirmed that he had requested the written reference provided by Best Buy

which stated that Giga Asia had provided excellent support in the supplies of computer related products and was recommended as a solid and reliable supplier. Mr Rogelj confirmed that Giga Asia were in fact a customer, not supplier, in the transaction involving the Appellant, but stated that he considered a reference from Best Buy to be credible and was satisfied by the due diligence that Giga Asia would pay in advance.

224.Mr Rogelj accepted that the due diligence documents only showed that the company existed, had an address and a VAT registration number, but stated that due diligence is not confined to paperwork, but also "getting a feeling for the client and get a good feeling that they are credible" and that he had taken the limited information about the company's financial status on board. Mr Rogelj's written evidence sets out that, as a result of the Dunn and Bradstreet report showing a risk of late payment, he insisted on payment in advance in sterling.

225.Mr Ryder's evidence confirmed that he had introduced Giga Asia to Mr Rogelj as a company with a good track record with Sirrnet. Mr Ryder stated that on behalf of the Appellant, he had been in discussions with the company director, Mr Bradbury, for several months regarding potential future trading.

**Findings as to whether the Appellant (through Mr Rogelj and Mr Ryder) knew or should have known, at the time of the transactions, that they were connected to the fraudulent evasion of VAT**

226.We considered the evidence before us, both documentary and oral, in respect of each of the matters relied on by HMRC in support of their contention that the Appellant either knew, or in the alternative should have known, that the transactions subject of this appeal were connected with fraud.

227.It was submitted by HMRC that the Appellant's VAT registration form is inaccurate. The Appellant responded by referring us to Mr Rogelj's oral evidence in which he explained that handwritten amendments had been made to the application by a person with initials which were not recognised by Mr Rogelj. We noted that Mr Rogelj accepted in evidence that the application would have been filled out on the basis of his instructions. We found that there was no evidence of any attempt by the Appellant to trade in anything other than CPUs, in contrast to the main business activity declared on the VAT application of "the purchase and sale of computer parts." We found that the declaration on the VAT application that regular repayments of VAT were not expected to have no plausible basis given the evidence that the Appellant Company was established to make purchases from UK suppliers and sell to customers abroad. We found the evidence of Mr Rogelj to be vague as to how he had estimated his target turnover, which was notably different to the estimated value of taxable supplies over 12 months as declared on the VAT application form.

228.It was accepted by Mr Rogelj that he had general knowledge of MTIC fraud within the industry. We found that this knowledge was a relevant background against which to assess the nature of the Appellant's trading and we found, given the number of warning letters provided by HMRC and correspondence between the parties

relating to MTIC fraud, that Mr Rogelj had a good understanding of the consequences of being involved in or linked to such fraud both prior to commencing trade through the Appellant Company and which increased throughout the trading history.

229.Mr Rogelj's evidence was that negotiations took place over a number of days before the transactions took place. Mr Ryder gave evidence that the price of the goods traded can fluctuate on a daily basis. We found that there was no explanation as to why, if negotiations had taken a number of days, documentation relating to due diligence and the deals themselves was on a number of occasions obtained either the day before or day of the transactions. The deals then took place over the course of one day, although in two deals there was a delay between delivery of the goods to the Appellant's customer and payment being made, which we found contradicted the proposition that in such a fast moving market the price and shelf-life of such goods fluctuates unpredictably. There was no evidence before us of any significant negotiation to account for the consistent profits achieved by the Appellant. Taken together with Mr Rogelj's knowledge of fraud within the market and risk involved, Mr Rogelj should have been suspicious that the transactions were fraudulently manipulated.

230.The evidence of Mr Ryder was vague. Mr Ryder stated that his role within the Appellant Company was mainly sales and marketing, yet he was unable to give any detailed evidence as to how the trading relationships with Bergmann Associates, IT Swiss Systems and Giga Asia had developed with the Appellant Company as opposed to Sirrnet. Mr Ryder claimed that the transactions subject of this appeal had been conducted by both himself and Mr Rogelj, but gave no evidence as to the nature and detail of the "protracted conversations" which had taken place prior to the transactions, nor was there any documentary evidence to support the assertion that such negotiations had taken place.

231.There was no explanation as to why the Appellant did not source the goods directly from abroad to supply to its customers and we did not accept Mr Rogelj's evidence that "I simply bought and sold but by doing so, I actually added value." There was no evidence to support Mr Rogelj's assertion that he added value or provided anything above and beyond that provided by other traders in the chain. Mr Rogelj was aware of the profit achieved from his own purchase and sale of the goods, and that even if unaware of the price of the goods as between other traders in the chain, there was no explanation as to why the Appellant was able to consistently achieve such profits, there being no identifiable addition made to the transaction by Mr Ryder or Mr Rogelj.

232.Mr Rogelj's evidence in respect of the title of the goods and terms and conditions of purchase/sale was vague and unconvincing. The reality of the situation and the manner in which the goods were released without payment bore no similarity to the terms and conditions of the parties involved. When set against the background of the credit and risk assessments contained within the Dunn and Bradstreet reports, it is implausible that Mr Rogelj, as an experienced businessman, would not satisfy himself as to the financial arrangements of his suppliers and purchasers given the significant amount of money involved in the transactions.

233.We accepted that the Appellant would not necessarily incur the legal expense of contracts being drafted for each transaction undertaken, but Mr Rogelj's evidence that terms and conditions had been downloaded from the internet and that due to a mistake the wrong terms and conditions were attached to the supplier application form was not feasible, particularly given Mr Rogelj's concession that it would have been "very costly if something had gone wrong." Mr Rogelj and Mr Ryder both placed great emphasis on their experience in business and it is highly unlikely, given the values of the transactions with which they were involved, that such an oversight would be made. We found this to be an indicator as to the fact that little or no significance was placed on the content of the terms and conditions due to the contrived nature of the transactions; any reasonable businessman proposing to enter into transactions of such volume and value would take a significant amount of care to limit any exposure to risk.

234.The evidence that there was no commitment to buy or supply stock until a purchase order was sent or received, and thereafter payment was not made to the supplier until received by the customer, lacked the commercial viability to be expected from independent transactions in the normal course of business. Set against the background of the Appellant Company being relatively young and the credit ratings of the companies with whom the Appellant traded as shown on the Dunn and Bradstreet report, this manner of trading lacked any commercial reality and was such as to put a reasonable businessman on notice that the trade was not legitimate. In a trade where MTIC fraud is a well known danger, there was no explanation as to why the Appellant's customer would make payment to the Appellant who, at the time of that payment, does not hold title to the goods. The Appellant's customer was reliant on the Appellant and thereafter a purported unknown number of unknown traders to make payment down the chain. This was a risk which a reasonable and independent businessman would not take and we inferred from this evidence that it was an indication that the chain of transactions were fraudulently manipulated. Not only did the Appellant enter into this manner of trading without hesitation, but neither Mr Rogelj nor Mr Ryder had questioned why the customers were also content to enter into the transactions on such a seemingly relaxed basis. The nature of these arrangements would have made any reasonable businessman exercising precaution suspicious.

235.The lack of specifications on the documents relating to each of the three transactions was an indication as to, at the very least, the casual approach taken by the Appellant. We considered the evidence given by Mr Rogelj that details were discussed with trading partners via telephone; it lacked any commercial sense to fail to include such information within the documents as the Appellant would have been left without recourse if the purchaser ultimately rejected the goods as not being to the correct specification. We inferred from this evidence that the only reasonable explanation for the general lack of any detailed documentation existing was that the transactions formed part of an overall scheme to defraud.

236.The lack of insurance in respect of the 03/06 and 05/06 deals was indicative of the contrived nature of the transactions. Mr Rogelj's evidence that he overlooked the invalidating clause was unconvincing given the value of goods involved and Mr

Rogelj's experience in business. The failure by the Appellant to have any regard to the terms or conditions of the policy would not be expected of a reasonable businessman trading in such high value goods, and we did not accept that in the usual course of commercial trading, a prudent businessman would be content to shift responsibility onto a customer without enquiries of any substance so as to ensure his own protection, as happened with Bergmann Associates.

237.There was no evidence given by the external investors of the Appellant Company. We considered the evidence given by Mr Rogelj and found the manner of the investment, which relied on the Appellant recovering VAT and failed to provide for the Appellant's liability if such VAT was not recovered, to lack credibility and we inferred from the evidence that the Appellant and the investors had failed to take every precaution which could reasonably be expected.

238.Given the value of stock involved in the transactions, it was a reasonable precaution to be expected of a businessman to ensure that thorough and regular inspections were undertaken. The Appellant relied on inspection reports either prepared by the freight forwarder or those commissioned by the Appellant's supplier. This approach to inspecting the goods lacked the thoroughness which would be expected of a trader protecting his own interests and was indicative of a level of trust placed by the Appellant Company in those with whom it traded which went beyond that to be expected of an independent commercial relationship.

239.No credible explanation was given for establishing the Appellant Company. Both Mr Rogelj and Mr Ryder were involved in the export of CPUs through Sirrnet. We found Mr Rogelj's evidence that he had incorporated the Appellant Company in order to be in full control did not explain the reason for establishing a trading vehicle (the Appellant Company) which to all intents and purposes was identical to Sirrnet, in which Mr Rogelj relinquished the majority of his shares. Despite his involvement in both companies, Mr Ryder was unable to explain with any clarity the need to set up the Appellant Company. The two companies were described by Mr Rogelj as "acting together" and as a "joint operation." There was no clear evidence as to why transactions would be conducted through Manatlantic rather than Sirrnet, how or by whom this decision was made, or how Mr Ryder and Mr Rogelj avoided the clear conflict of interest which existed in such a situation. We were satisfied, in the absence of any clear explanation for the existence of the Appellant Company, that the purpose of it was to participate in the chain of transactions connected to the fraudulent evasion of VAT.

240.We considered the significant volume of documents before us showing the due diligence checks which had been undertaken by Mr Rogelj. It was submitted on behalf of the Appellant that the documents showed that Mr Rogelj had carried out all reasonable checks into his suppliers and customers and that HMRC had failed to identify any additional measures which could have been taken. It was submitted by Mr Young on behalf of the Appellant that as the Appellant's trading partners did not default, there was nothing more that the Appellant could have done to change the position. HMRC did not dispute that some due diligence checks had been carried out,

but contended that the checks were wholly inadequate and only went so far as to verify the existence and VAT registration of the companies involved.

241.The guidance issued by HMRC within Notice 726 provides a non-exhaustive list of suggested checks a trader should carry out. Among the suggested checks are enquiries into a supplier's history in the trade, insurance on the goods, the commercial viability of a price increase within a short duration, whether the goods are as described/exist and checks into existing businesses.

242.Mr Rogelj's emphasis throughout, in respect of the documents he did obtain, was on satisfying HMRC rather than himself. When questioned as to what the documents produced showed, other than the legal entity and VAT registration of the company with whom he was trading, Mr Rogelj simply reiterated that due diligence was not about paperwork and stated that he had verbal assurances as to the credibility of his suppliers and customers from others within the industry, but gave no further detail as to who had given such assurances and on what basis.

243.Mr Rogelj's attitude was summed up by his oral evidence that due diligence is "...not about paperwork...Due diligence is about understanding your client and gaining trust in that client..." yet there was no evidence of any steps taken by Mr Rogelj such as would afford him understanding and trust in his clients. If anything, Mr Rogelj ignored the evidence which would cause concern to a reasonable businessman, as seen from the credit and risk assessments contained within the Dunn and Bradstreet reports. Mr Rogelj did not follow up the information which these reports disclosed nor did he, in the majority of transactions, seek references. The only reference which was provided, attached to the trader application form, was from Best Buys, who feature in the 05/06 transaction as part of the deal chain and were connected to the 03/06 transaction. The reference related to Giga Asia as a supplier when, for the purposes of the Appellant, Giga Asia were acting as customer and consequently the reference would have been of limited assistance to the Appellant in satisfying himself as to the credibility of Giga Asia as a customer.

244.The due diligence, such as it was, carried out by Mr Rogelj lacked any substance. Mr Rogelj failed to look beyond the limited documents he had obtained which were inadequate for the purpose of ensuring that the companies with which he traded were legitimate.

245.In particular, we noted the Appellant had been warned by letter from HMRC dated 7 November 2005 that 4 transactions in which the Appellant had been involved commenced with a defaulting trader and that in each of the 4 deals the Appellant's supplier was Multisystems International Ltd. Although trading ceased with Multisystems International, the Appellant did not cease trading with Multisystems Technology, which was, in reality, the same entity and had the same director as Multisystems International but traded under a different name. It was clear from Mr Rogelj's evidence that he was reluctant to cease trading with Multisystems International and had been satisfied with their due diligence procedure. Mr Rogelj did not provide any evidence in support of his assertion that he was satisfied that the due diligence checks undertaken by Multisystems Technology had improved on those

used by Multisystems International to such a degree as to justify trading with the company, in contrast to his letter to HMRC dated 19 October 2006 which describes having "*undertaken stringent due diligence on Technology, and Technology's vetting procedures"*. The Appellant took no real precautions to guard against the connection to fraudulent evasion of VAT or ensure that the transaction in which the Appellant was involved were legitimate.

246.The Appellant, through Mr Rogelj and Mr Ryder, was aware of existence, prevalence and characteristics of fraud within the industry. We were satisfied that he Appellant's knowledge went beyond the general existence of fraud within the industry and that both men were aware that the transactions with which they were involved were connected to the fraudulent evasion of VAT. The Appellant took no steps to change its methods of trading in order to take the precautions which could be expected of a reasonable businessman.

247.We asked ourselves why the Appellant, a relatively small and new company with little or no history of dealing in CPUs, was approached with offers to buy and sell very substantial quantities of such CPUs. We did not accept that the involvement of Mr Ryder and Mr Rogelj in Sirrnet had established their reputation within the trade to such a degree as to combat the difficulties which both men explained existed in sourcing and supplying goods at Sirrnet and within such a short period of trading had led to such a substantial turnover "without any difficulty" as stated by Mr Rogelj. If such had been the case, there would have been little reason to cease trading when the "reverse charge" provisions were introduced in June 2007. The explanation as to why the Appellant stopped trading (due to loss of financing and feeling disheartened by HMRC's treatment) was unconvincing and we infer from the overall picture that the true reason for the Appellant ceasing its trade of CPUs was the reverse charge provision.

248.We considered how likely in the ordinary commercial world it would be for a company in the Appellant's position to be approached to supply substantial quantities of particular types of CPU and to be able to find without difficulty a supplier able to provide exactly that type and quantity. We noted the evidence that on occasion the Appellant was approached but was unable to source the requested stock, however there was no evidence before us to support such an assertion and we found the evidence to be unreliable and vague. We found that the combination of features such as no stock was held, the transactions were always "back to back" and the Appellant was never left with unsold stock to be indicative of the artificial market in which the transactions took place.

249.We concluded from the absence of commercial features in each of the transactions that the only reasonable explanation for the circumstances in which the Appellant entered into the impugned transactions was that they were connected with fraud. We could not ignore the compelling similarities between the transactions, pattern and nature of trading of a relatively young company which held no stock, had no left over stock and which consistently achieved a significant turnover. Taking into account the characteristics of each transaction, the surrounding circumstances in respect of all of the deals and the acts/omissions of the Mr Ryder and Mr Rogelj, we concluded that the Appellant knew that the transactions were connected to a fraudulent scheme.

**Conclusion**

250. We are satisfied that there was a fraudulent evasion of VAT connected with each of the transactions which form the subject of this appeal.

251. We are satisfied that the Appellant, through Mr Rogelj and Mr Ryder, knew that its purchases were connected to the fraudulent evasion of VAT, having drawn inferences from the evidence where there was no clear direct evidence to assess.

252. Accordingly we found that the decision of HMRC to deny the Appellant's input tax in respect of purchases of CPUs reflected in its VAT returns for the periods 01/06, 03/06 and 05/06 was correct and is upheld.

253. The appeal is dismissed.

**Costs**

254. We direct that the Appellant is to pay HMRC costs of, incidental to and consequent upon the appeal, to be the subject of detailed assessment if they cannot be agreed.

255. No adjustment to be made to an order for costs in respect of an adjournment of the hearing on 22 April 2010 for which an order directing the Appellant's costs to be paid by HMRC was made on 19 May 2010.

256. 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.

**TRIBUNAL JUDGE**
**RELEASE DATE: 3 August 2011**