[2011] UKFTT 622 (TC)

TC01464

Appeal number: MAN/2008/1131

VALUE ADDED TAX- – MTIC-sale of apple I pods and other electronic equipment- appellant in 'clean chain' claiming repayment £673,493.65 - appellant knew that the deals were part of a VAT fraud in three associated chains — appeal dismissed

FIRST-TIER TRIBUNAL

TAX

J P COMMODITIES LIMITED **Appellant**

- and -

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

TRIBUNAL: DAVID S PORTER (Judge)
GEOFFREY NOEL BARRETT (Member)

Sitting in public in Manchester on 9, 10, 11, 12, 16, 17, 18, 20 May 2011

Prithpal Singh Johal, Managing Director of J P Commodities Ltd, appeared for the Appellant.
Mr Joshua Shields, of counsel, instructed by the General Counsel and Solicitor to HM Revenue and Customs for the Respondents

DECISION

1. Prithpal Singh Johal (Mr Johal), Managing Director of J P Commodities Ltd (Commodities), appeals on behalf of Commodities against the decisions of the Respondents (HMRC) contained in a letter of 16 July 2008 (as clarified in letters dated 12 September 2008, 29 September 2008 and 21 October 2008) denying Commodities' entitlement to a repayment of input tax of £673,493.65 in respect of the period 09/06 arising from the export of Apple Ipods, Creative Zen, I-River, Archos and other electrical goods to Imperia in Poland and Gredis in Antwerp. Mr Johal says that Commodities neither knew nor ought to have known that the transactions were connected with fraud. HMRC say that the Appellant's due diligence was no more than window dressing and any reasonable businessman would have known or ought to have known that the transactions were connected with fraud or with a fraud in a related chain. HMRC submitted that Commodities were parties to the frauds.

2. Joshua Shields (Mr Shields), of counsel, appeared on behalf of HMRC. Mr Shields produced both a skeleton argument and written submissions by way of summing up. He called the following witnesses, who gave evidence under oath:

Susan Margaret Tressler (Mrs Tressler) a member of HMRC MTIC team gave evidence as to the dealings by P & M Transport and Communications Limited (P&M).

Jennifer Thelma Davis (Mrs Davis) a member of HMRC MTIC team gave evidence as to the dealings by Commodities.

Farzana Shaheen Malik (Mrs Malik) attended with Mrs Davis when investigating Commodities

The following unchallenged witness statements were produced to the tribunal and treated as evidence in chief.

Roderick Guy Stone (Mr Stone) who produced a witness statement which has not been challenged as to MTIC fraud in general

Kathryn Judith Rees (Mrs Rees) a member of HMRC MTIC team produced a witness statement which has not been challenged as to the dealings by J S R Limited.

Walter Watt (Mr Watt) a member of HMRC MTIC team produced a witness statement that has not been challenged as to the dealings by P F Williams Trading Limited.

Mr Liban Ahmed (Mr Ahmed) of C M T Limited of 9 Lower Brook Street, Ipswich IP4 1AG, had been instructed by Commodities to prepare this appeal for the hearing. They did not appear at the hearing as Mr Johal, on behalf of Commodities, indicated that Commodities were unable to pay their costs in relation to the hearing. Mr Ahmed, produced a skeleton argument on behalf of Commodities and Mr Johal produced written submissions by way of summing up and gave evidence under oath

We were also provided with 20 lever arch files a large number of which contained details of HMRC's witnesses' working papers.

3. We were referred to the following cases:

Axel Kittel and another v Belgium [C-439/04]

Blue Sphere Global Ltd v HMRC [2009] EWHC 1150 Ch,STC 2239

Calltel telecom Ltd; and another v HMRC [2009] EWHC 1081 (Ch)

Livewire Telecom Ltd; and another v HMRC [2009] EWHC 15 (Ch)

Mobilx ltd (in administration) v HMRC [2009] EWHC 133 (Ch)

Megtian v HMRC [2010] EWHC 18 (Ch)

Moblix Ltd (in administration); and others v HMRC [2010] EWCA Civ 517

POWA (jersey) Ltd v HMRC [2009] UKFTT

Radarbeam Limited [2010] UKFTT 431 (TC)

Red 12 Trading Ltd v HMRC [2009] EWHC 2563 (CH)

HMRC v Brayfal Limited [2010] FTC 53 (*Brayfal)*

4. Most readers of this decision will be familiar with the way in which Missing Trader Fraud operates. Dr John Avery-Jones gave a helpful introduction in Livewire Telecom Ltd; and another v HMRC [2009] EWHC 15 (Ch):

> "In order to demonstrate where the loss 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 the sale by X will be cancelled by the 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 because X disappears with it, and Y will recover the same when it is repaid to Y by HMRC on Y's repayment claim.
>
> "The only gain by the fraud is if HMRC pay the input tax to Y, when the exchequer is left with the loss of the amount of the import tax: The non-payment of the 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 even though this represents tax never paid by X and the exchequer is left with the same loss of the amount of input tax".

In his example X is the defaulter and Y the Broker. The chains are often longer as they include intermediaries, known as Buffers, who are introduced to confuse HMRC and to make the transaction harder to trace. The 5 deals the subject of this appeal form part of a VAT chain where there has been no VAT tax loss. HMRC

claim that the VAT due from P & M Transport (UK) Limited (P&M) has been set off against P&M other trades where P&M have not paid the VAT due from them to HMRC.

5. The case law, as now developed in Moblix Ltd (in administration); and others v HMRC [2010] EWCA Civ 517, provides that an exporter will not be innocent if he knew or ought to have known that his transaction was connected with the fraudulent avoidance of tax.

6. We think it would be helpful to set out how the money flows in such schemes and, in that regard we have been much helped by the evidence given by Mrs Davis. Mr Stone, who did not appear, but whose witness statement we have read, also confirms that losses to HMRC only occur in all of these transactions when a repayment is made to the Broker, in this case the repayment claimed by Commodities. He states at paragraph 6 of his witness statement that there are two forms of MTIC fraud, namely 'acquisition' fraud and 'carousel' fraud. An MTIC acquisition fraud, as described above by Judge Avery-Jones, is a commodity based fraud in which VAT standard-rated goods or services are purchased zero-rated for VAT purposes from a supplier based in another EU member state and sold in the UK for domestic consumption. The importer, who is officially known as the 'acquirer', subsequently fails to account for the VAT due on the standard rated taxable sales to its UK-based customer(s), which then impacts on HMRC's VAT receipts. MTIC 'carousel' fraud, which is sometimes referred to as 'MTIC export fraud', is a financial fraud and is an abuse of the VAT system that results in the fraudulent extraction of revenue from the UK Treasury. The fraud predominantly involved computer chips and mobile phones. The finance for the deals is provided from an outside source and is introduced to the chain when the Broker is paid by his European customer. It then cascades down the chains, each trader withdrawing their agreed profit and paying their appropriate amount of VAT. That VAT is often very small (apart from the Brokers repayment claim) because the intermediate Buffers can set off their input tax against their output tax. The money is then returned to the original funder.

7. The participants in the chain are all seen to make a small profit. It can be seen from the deal table at paragraph 58 that Commodities appear to have made a consistent mark up of 3.50% on the sale price for its goods. Apart from the defaulter (who ostensibly purchases the goods from Europe) each of the traders thereafter makes appropriate VAT payments to the Revenue. However, they do not necessarily pay each other the correct amounts, either under the apparent contracts, or of VAT. The participants are required, if the transactions are fraudulent, to make an initial contribution to the scheme. In the example below only half the VAT liability due to their supplier has been paid, so that the participants carry some of the risk and thereby reduce the risk of the fraudsters receiving nothing. When the repayment is obtained by the Broker, he will have sufficient money to take the balance of his profit and to pay his outstanding VAT liability to his supplier. That supplier will then be in a position to pay his outstanding VAT to the defaulter, who will then receive all the VAT he should have paid to HMRC, but which he intends to keep, less the contribution to the profits and VAT down the chain. The vast majority of these transactions were handled by The First Curacao International Bank (FCIB) in the Dutch Antilles in sterling although the participants were, in part, European. However, by the time of this appeal

FCIB was about to be closed down by the Dutch authorities and many of the fraudsters migrated to ICB Bank. The UK VAT repayments are made to the Brokers in sterling. The payments for the goods do not appear to follow the total amounts due under each contract but are often paid in a random fashion. Later invoices being paid with earlier funds. The speed with which the payments are made indicate that the payments are orchestrated by the fraudsters. It is unlikely that the several traders in a chain would be available at their computer consoles to make the payments in the time scales suggested. The outsider, who financed the transaction from the beginning, is presumably repaid his original loan plus any agreed interest.

8. Carousel fraud was rife from 2003 up to 2007, when the reverse charge was introduced. Any loss to the exchequer only occurs when the input tax is refunded on a repayment claim. HMRC had been repaying substantial sums of money, in many cases well in excess of £10,000,000. The total loss to HMRC during those years amounted to in excess of £20 billion. It appears that many of the frauds have been financed by third parties outside of the various transaction chains.

9. **Example**

The participants are

A", the trader, in Europe sells the goods to "B" in the United Kingdom (the defaulter). "A", or an outside Financier, provides the money to "E" at the top of the chain, which is retuned to "A", or the financier, when the payment cascades down the chain back to "B"

"B", the defaulter, who purchases the goods from Europe, sells the goods to "C" and charges VAT on the sale but does not account for the VAT to HMRC but pays it to the fraudsters.

C", a buffer, sells the goods to "D" and having purchased them from "B" pays VAT to HMRC being the difference between the VAT he paid to B and the VAT he charges to "D"retaining a small profit for himself

"D", the broker, who seeks repayment from HMRC, sells the goods to "E" having paid VAT to "D" but who is unable to charge VAT to "E" and applies for the repayment of the VAT he paid to "D". He retains a larger profit for himself and pays the balance to "D" to cover the shortfall in the earlier payments.

"E", the customer, in Europe returns the goods to the fraudsters so that they can go round again- hence the "carousel"

As all the transactions are 'back to back'. That is the traders only pay for their goods when they are paid. Frequently they do not pay a large part of the VAT as they rely on the repayment to make up the shortfall.

Many of these transactions took place through the FCIB, which appears to have been the bank of preference. It was closed down by the Dutch Authorities in 2006 and many of the accounts appear to have migrated to International Credit Bank Ltd (ICB) registered in Panama with its head office in Switzerland. All the money appears to have taken a very short time to pass through both Banks, so that the initial funding, in the example £1,015,050, is only at risk for a short time so long as all the participants pay their share of the money as soon as they receive it.

- A (in the EU) sells the goods to B (the Defaulter) for £1,000,000

- B sells the goods to C (the Buffer) with a profit of 1% for £1,010,000

  B charges VAT of £176,750 at 17.5 %

- C pays the full price for the goods and half the VAT of £88,375 to B and sells the goods to D (the Broker) with a small profit of ½ % for £1,015,050

(C charges VAT of £177,633.75 at 17.5% to and C pays VAT to HMRC of £883.75 the difference between the £177,633.75 and £176,750)

- D pays the full price for the goods but only pays half his VAT liability of £88,816.88 by way of payment of the VAT to C and sells the goods to E (in the EU) with a profit of 6% (£60,903) for £1,075,953

- E pays D the full price for the goods less D's profit and no VAT £1,015,050

  leaving D to recoup his profit and his VAT liability to C from the repayment.

- D applies to HMRC for a repayment of VAT of £188,291.78

  being 17.5 % of £1,075,953 (his selling price and assuming,

  for the sake of this example, there is no other VAT).

- D obtains a repayment from HMRC of £188,291.78

D recovers his VAT payment of	£88,816.88	
and the balance of his profit of	£60,903.00	£149,719.88
Leaving a balance		£ 38,571.90

D owes a further £88,816.87 by way of VAT to C, who accepts the sum of £38,571.90 which C then pays to B as the balance of the VAT that he presumably has agreed to pay to clear his liability having agreed everybody in the scheme could keep some profit..

As a result the participants receive the following:

A/B have already received part of the VAT from C	£88,375.00
and receive the balance above	£ 38,571.90
making a total which they keep and do not pay to HMRC	**£126,946.90**
C receives his profit of	£ 5,050.00
Less the VAT paid to HMRC of	£ 833.75
Making a profit of	**£ 4,216.25**
D receives his VAT of £88,816.87and his profit of	**£ 60,903.00**

D will be normally be operating on a monthly VAT cycle and C on a quarterly cycle. If the sale to E can be brought as near to D's month end as possible, the repayment will be accelerated.

10. As the fraudster expected to obtain the repayment from D, D would only need to pay a proportion of the VAT and take some or none of his profit. He can recoup the shortfall or the entirety of his profit from the repayment. That way, the fraudsters ensure that they receive the appropriate amounts from the fraud and D will obtain a refund of the money he had introduced to the chain. As Mr Stone has indicated the fraudsters are all expected to put money into the 'pot' so that further frauds can be generated. The middleman C only makes a small profit because he effectively does very little and takes very little risk. He merely pays the price for the goods with the money provided by A. The Broker, D, usually takes the largest profit (6% of the selling price) because he takes the risk that the repayment may not be made. All the parties require the monies to be paid as soon as they are received to minimise the risk of a party failing to make a payment and they need to be participants in the scheme to ensure that the money is dealt with properly.

11. HMRC introduced a more robust verification system in 2006 and as a result the fraudsters changed the shape of the scam. As a result, instead of making repayment claims in excess of £10,000,000 the fraudsters created another chain (an apparent 'clean – chain') dealing in goods other than mobile phones and computers, and the Broker appeared in the new chain as well as the dirty chain. In that way the Broker was able to set off the output tax in supplying the clean chain in the United Kingdom against the input tax he had incurred on a transaction from Europe in a similar chain. When HMRC received the application from the Broker in the clean chain, it would not be alerted to the fact that the repayment in that chain was financing the fraud in the dirty chain. As a result a considerable VAT liability could be washed out of the system without alerting HMRC and the repayment claim in the dirty chain is reduced to a substantially lower figure in the Broker's return. This case relates to Commodities 5 deal chains linked to contra-trading chains.

The Legislation.

12. The right to deduct is contained in sections 24 -29 of the Value Added Tax Act 1994 (the Act). Section 25 requires such a person to account for and pay any VAT on the supplies of goods and services which he makes and entitles him to a credit of so much of his input tax as is allowable under s 26: see s 25(2). Section 26 gives effect to what is now Article 168 of EC Council Directive 2006/112 (the VAT Directive) and allows the taxable person credit in each accounting period for so much of the input tax for that period as is attributable to supplies made by the taxable person in the course or furtherance of his business: see s 26(2) These provisions are in mandatory terms. If a trader has incurred input tax, which is properly allowable, he is entitled, as of right, to set it against his output tax liability or to receive a repayment if the input tax credit due to him exceeds that liability. He is required to hold evidence to support his claim (see article 18 of the Sixth Directive and regulation 29(2) of the Value Added Tax Regulations 1995 (SI 1995/2518). As a result the right to deduct or the right to a repayment is absolute, and no element of discretion is conferred on the tax authority, save that the authority may accept less evidence than normally required; it has no

right to demand more evidence than that prescribed by article 18. The right is also immediate, that is it may be exercised "when the deductible tax becomes chargeable". The only limitation is the practical one that, although deductibility is determined on a transaction by transaction basis, the mechanical process of deduction or repayment is effected by reference to prescribed accounting periods.

The Case law

13. In view of the decision in Moblix Ltd (in administration); and others v HMRC [2010] EWCA Civ 517 we think it would be helpful, before considering the evidence, to indentify the law as we understand it. The case law has developed from Optigen Ltd and others v HMRC [C-354/03] which decided that a repayment must be made to a trader, who is innocent of the fraud, even though the transaction did not amount to an economic activity, through Axel Kittel and another v Belgium [C-439/04] which extended the concept of knowledge to include a trader, who ought to have known that there was a fraud, to Moblix Ltd (in administration); and others v HMRC [2010] EWCA Civ 517, which refers to the various cases and has refined the concept of knowledge and the evidence required to prove it. In the light of that decision, we do not think it is necessary to trace the development of the concept through all of the cases we have been referred to, but rather to refer to Lord Justice Moses' observations in the Court of Appeal. We have been assisted in that by the observations of Mr Shields and Mr Ahmed in their skeleton arguments and Mr Shields in his final submissions. Moses LJ stated;

"…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:- (see Kittel para 42, citing BLP Group [1995] ECRI/983 para 24) 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." [Paragraph 24]

14. "In Kittel after §55 the Court developed its established principles in relation to fraudulent evasion. It extended the principle, that the objective criteria are not met where tax is evaded, beyond evasion by the taxable person himself to the position of those who knew or should have known that by their purchase they were taking part in a transaction connected with fraudulent evasion of VAT… It extended the category of participants who fall outwith the objective criteria to those who knew or should have known of the connection between their purchase and fraudulent evasion. Kittel did represent a development of the law, because it enlarged the category of participants to those who themselves had no intention of committing fraud, but who, by virtue of the fact that they knew or should have known that the transaction was connected with fraud, were to be treated as participants. Once such traders were treated as participants their transactions did not meet the objective criteria determining the scope of the right to deduct…"[paragraph 41]

41. ".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"; [paragraph 43]

15. The European Court of Justice in Optigen Ltd and others v HMRC [C-354/03] has made it clear that a trader can recover his output tax even though the transaction is outside the VAT scheme. Both Kittel and Moblix confirm that where a trader meets the objective criteria for compliance with the VAT regime, it is not open to the Authorities to withhold any tax repayment. If, however, a trader does not comply with the objective criteria, because there is a fraud, that trader cannot recover any tax. Moses LJ at paragraph 30 states:

"The Court (The European Court of Justice when considering Optigen) rejected the United Kingdom's argument that unlawful transactions fell outside the scope of VAT. Fiscal neutrality prohibits the distinction between lawful and unlawful transactions; such a distinction must be restricted to transactions concerning products which by their very nature may not be marketed, such as narcotic drugs and counterfeit currency (see paragraphs 49 and the Advocate General's Opinion paragraph 40). By its rejection of the United Kingdom argument, the Court made it clear that the reason why the 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."

And at paragraph 52:

"If a taxpayer has the means at his disposal of knowing that by his purchase he is participating in a transaction connected with fraudulent evasion of VAT he loses his right to deduct, not as a penalty for negligence, but because the objective criteria for the scope of that right are not met. It profits nothing to contend that, in domestic law, complicity in fraud denotes a more culpable state of mind than carelessness, in the light of the principle in Kittel. A trader who fails to deploy means of knowledge available to him does not satisfy the objective criteria which must be met before his right to deduct arises";

16. As the Advocate General stated at paragraph 40:

> "As becomes clear from the commissioners own description of what they consider to constitute carousel fraud, its characteristics is that it makes use of lawful economic channels in order to facilitate the retention of money paid as VAT"

At paragraph 59 "The test in Kittel is simple and should not be over-refined. It embraces not only those who know of the connection but those who "should

have known". Thus it includes those who should have known from the circumstances which surround their transactions that they were connected to fraudulent evasion. If a trader should have known **that the only reasonable explanation** (our emphasis) for the transaction in which he was involved was that it was connected with fraud and if it turns out that the transaction was connected with fraudulent evasion of VAT then he should have known of that fact. He may properly be regarded as a participant for the reasons explained in Kittel";

At paragraph 61 "A trader who decides to participate in a transaction connected to fraudulent evasion, despite knowledge of that connection, is making an informed choice; he knows where he stands and knows before he enters into the transaction that if found out, he will not be entitled to deduct input tax. The extension of that principle to a taxable person who has the means of knowledge but chooses not to deploy it, similarly, does not infringe that principle. If he has the means of knowledge available and chooses not to deploy it he knows that, if found out, he will not be entitled to deduct. If he chooses to ignore obvious inferences from the facts and circumstances in which he has been trading, he will not be entitled to deduct";

17. Moses LJ also expressed concern that HMRC have in the past placed too much importance on a traders' failure to carry out due diligence and not enough on the circumstantial evidence available. At paragraph 75 he stated.

" 75 The ultimate question is not whether the trader exercised due diligence but rather whether he should have known that the only reasonable explanation for the circumstances in which his transaction took place was that it was connected to fraudulent evasion of VAT…..

18. We have decided that the legal test is that a trader will not be entitled to a repayment if he knew or ought to have known that his transactions **were** connected with fraud on the basis that the only reasonable explanation for the circumstances in which the transactions took place was that they were connected with such fraudulent evasion. In contra-trading cases HMRC's ability to establish a connection between the actual tax losses in the contra-trade to the specific repayment claim in the clean chain is extremely difficult. This is not least because of the timing of the payments, where the Broker, in the clean chain, will be on monthly returns, and the transaction to which that repayment relates, will be some two or three months later, dependent on the accounting dates in the dirty chain. In Livewire Telecom Ltd; and another v HMRC [2009] EWHC 15 (Ch) Mr Justice Lewison stated:

Paragraph 102: "In my judgement in a case of alleged contra-trading, where the taxable person claiming repayment of input tax is not himself a dishonest conspirator, there are two potential frauds:

i) The dishonest failure to account for VAT by the defaulter or missing trader in the dirty chain; and

ii) The dishonest cover-up of that fraud by the contra-trader.

Thus it must be established that the taxable person knew or should have known of a connection between his own transaction and at least one of these frauds. I do not consider it is necessary that he knew or should have known of a connection between his own transaction and both of those frauds. If he knows or should have known that the contra-trader is engaging in fraudulent conduct and deals with him, he takes the risk of participating in a fraud, the precise details of which he does not and cannot know."

19. In Blue Sphere Global Ltd v HMRC [2009] EWHC 1150 Ch,STC 2239 in paragraph 44 the Chancellor held that:

> "44. There is force in the argument of counsel for BSG but I do not accept it. The nature of any particular necessary connection depends on its context, for example electrical, familial, physical or logical. The relevant context in this case is the scheme for charging and recovering VAT in the member states of the EU. The process of off-setting inputs against outputs in a particular period and accounting for the difference to the relevant revenue authority can connect two or more transactions or chains of transactions in which there is a common party whether or nor the commodity sold is the same. If there is a connection in that sense it matters not which transaction or chain came first. Such a connection is entirely consistent with the dicta in Optigen and Kittel because such connection does not alter the nature of the individual transactions. Nor does it offend against any principle of legal certainty, fiscal neutrality, proportionality or freedom of movement because, by itself, it has no effect.
>
> 45. Given that the clean and dirty chains can be regarded as connected with one another, by the same token the clean chain is connected with the fraudulent evasion of VAT in the dirty chain because, in a case of contra-trading, the right to reclaim enjoyed by C (Infinity) in the dirty chain, which is the counterpart of the obligation of A to account for input tax paid by B, is transferred to E (BSG) in the clean chain. Such a transfer is apt, for the reasons given by the Tribunal in Olympia to conceal the fraud committed by A in the dirty chain in its failure to account for the input tax received from B.
>
> 46. Not all persons involved in either chain, although connected, should be liable for any tax loss. The control mechanism lies in the need for either direct participation in the fraud or sufficient knowledge of it."

The Chancellor concluded at paragraph 55.

> "55 .In my view it is an inescapable consequence of contra-trading that for HMRC to refuse a reclaim by E it must be in a position to prove that C was party to a conspiracy also involving A. Although the fact that C is a party to both the clean chain with E and the dirty chain A constitutes a sufficient connection it is not enough to show that E ought to have known of the fraudulent evasion of VAT involved in the subsequent dirty chain. At the time he entered into the clean chain there was no such dirty chain of which he could

have known, nor was the occurrence of such a dirty chain inevitable in the sense of being pre-planned."

20. Mr Shields has specifically referred us to Christopher Clarke J's comments at paragraph 109 of Red 12 Trading Ltd v HMRC [2009] EWHC 2563 (CH) as authority for the proposition that the Tribunal may considerer compelling similarities between one transaction and another and that it is not precluded from drawing inferences , where appropriate, from a pattern of transactions of which the individual transaction in question forms part. We refer to this later in this decision.

21. In his skeleton argument, which he has prepared for Commodities, Mr Ahmed referred us to the decisions in the first and second-tier tribunals of *Brayfal.* As suggested we have read both decisions and note in the first-tier that the two members, who had commercial experience, took the view that Mr Kibbler, on behalf of Brayfal…

> "was an experienced businessman with many years experience in exporting mobile phones….Brayfal did all that could reasonably expected to do to ensure the integrity of the supply chain"

Mr Ahmed suggested that the facts in this case are very similar. It should be noted that the commercially knowledgeable members found nothing sinister in a lack of contractual agreements, a supplier holding the required stock in the right quantities, delivery to a country other than to the customers, the use of freight forwarders, the use of the same FCIB bank, a poor credit rating for customers etc. It should be clear to all concerned how these matters relate directly to this appeal. Mr Justice Lewison stated at paragraph 19:

> "….Accordingly in order for a trader in the clean chain to know or have the means of knowledge that his transaction is connected with fraud, he must either know or have the means of knowledge <u>that the contra-trader is a fraudster</u> (Mr Ahmed's emphasis) or he must know or have the means of knowledge of the fraud in the dirty chain"

Mr Ahmed suggests that there is no evidence that Commodities knew, or could have known, that the alleged contra-trades were acting fraudulently. We note that Mr Kibbler was an experienced businessman with many years experience in the mobile phone business. Mr Johal is not. We consider that all these cases are fact specific and we have found that Mr Johal not only ought to have known but knew of the frauds. The circumstances of the transactions, the subject of this appeal, were substantially different to those of *Brayfal.* Mr Ahmed also has suggested that as a result of the decision in the second-tier Tribunal it is necessary for HMRC to plead a conspiracy to participate in the frauds by Commodities.

We do not accept that. HMRC need only plead in the Statement of Case, as they have done at paragraphs 27, 28 and 29, that Commodities knew of the frauds and was party to them. Furthermore, at paragraph 65 of Moblix Moses LJ stated

> 65. The Kittel principle is not concerned with penalty. It is true that there may well be no correlation between the amount of output tax of which the fraudulent trader has defrauded HMRC and the amount of input tax which another trader has been denied. But the principle is concerned with identifying the objective criteria which must be met before the right to deduct input tax arises. Those criteria are not met, as I have emphasised, where the trader is regarded as a participant in the fraud. No penalty is

imposed; his transaction falls outwith the scope of VAT and, accordingly, he is denied the right to deduct input tax by reason of his participation.

These are not criminal cases but appeals brought by appellants to recover input tax which they allege they are entitled to receive. All an appellant needs to know when making a claim is whether HMRC consider the appellant either 'knew' or 'ought to have known' that the appellant's participation in the transactions were connected with fraud.

22. We have concluded that HMRC must establish either that Commodities knew of the fraudulent nature of the 5 deals or that it or ought to have known that it was party to transactions which caused it to participate in those frauds.

Burden of proof

23. In Mobilx Ltd (In Administration) –v- HMRC [2010] EWCA Civ 517, Moses LJ considered where the burden of proof lies and observed (at paragraphs 81 and 82) that;

"..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. No sensible argument was advanced to the contrary.

"But that is far from saying that the surrounding circumstances cannot establish sufficient knowledge to treat the trader as a participant. As I indicated in relation to the BSG appeal, 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 focusing 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.

Standard of Proof

24. These are civil proceedings and, as such, the standard of proof is the ordinary civil standard i.e. on the balance of probabilities. The case of Reventhi Shah (Administratrix of the Estate of Naresh Shah Deceased) v Kelly Anne Gale; Kelly Anne Gale v Jason Grant, Mark Young, Paul Hilton, Samantha Easton [2005] EWHC 1087 (QB) (concerning a civil action for unlawful killing) made it quite clear that there is a single civil standard of proof (i.e. on the balance of probabilities) applicable in all civil proceedings regardless of the allegations levied. Lewison J (as he then was) stated:

"In my judgment, it would be wrong to approach this case on any basis other than the balance of probability with appropriate respect paid to the need for cogent evidence to reflect the serious nature of the allegation and the inherent improbability that this 22 year old young lady of good character should involve herself in such conduct as that alleged. I simply do not accept that it is appropriate, as a matter of law, to require a higher standard of proof simply because of the nature of the allegation. If murder, why not allegations of rape or the most serious fraud."

The facts

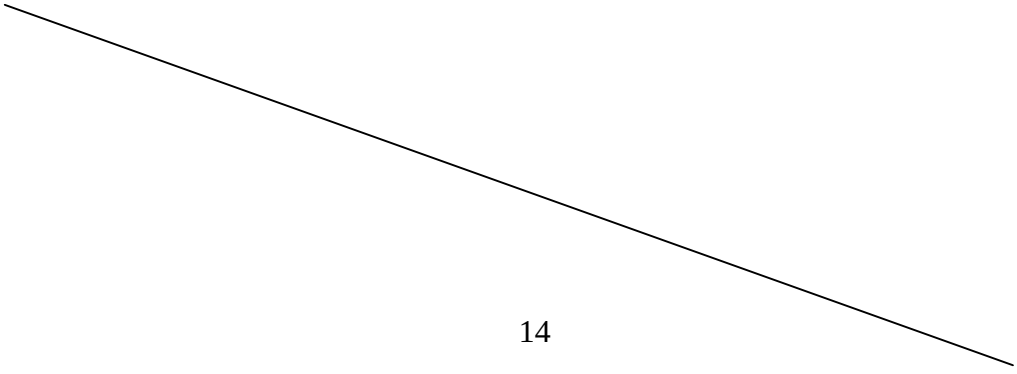
25. We are in some difficulties in this case because Mr Johal did not attend on the first day, because he had anticipated that Mr Ahmed would act for Commodities. Mr Ahmed had been unable to act as Commodities were unable to pay his fees. In a Notice dated 1 September 2010, Mr Ahmed, when preparing the case on behalf of Commodities, accepted that HMRC had identified a tax loss and evidenced fraud in the transactions with P & M Transport & Communications Limited (P&M), JSR Limited (JSR), Asylum, EU.Com and Fine Arts of India. We therefore decided to hear this evidence in Mr Johal's absence. When Mr Johal attended the Tribunal on the following day, it was unclear whether he agreed with Mr Ahmed's acceptance of the identified frauds.. Mr Johal's case is that he was unaware of both the tax losses and the frauds and as such could not say whether there was a tax loss or not. As a result we have had to consider that evidence in some detail.

26. There are three issues which need to be satisfied in order to justify HMRC's refusal to make the repayment of £673,493.65 to Commodities:

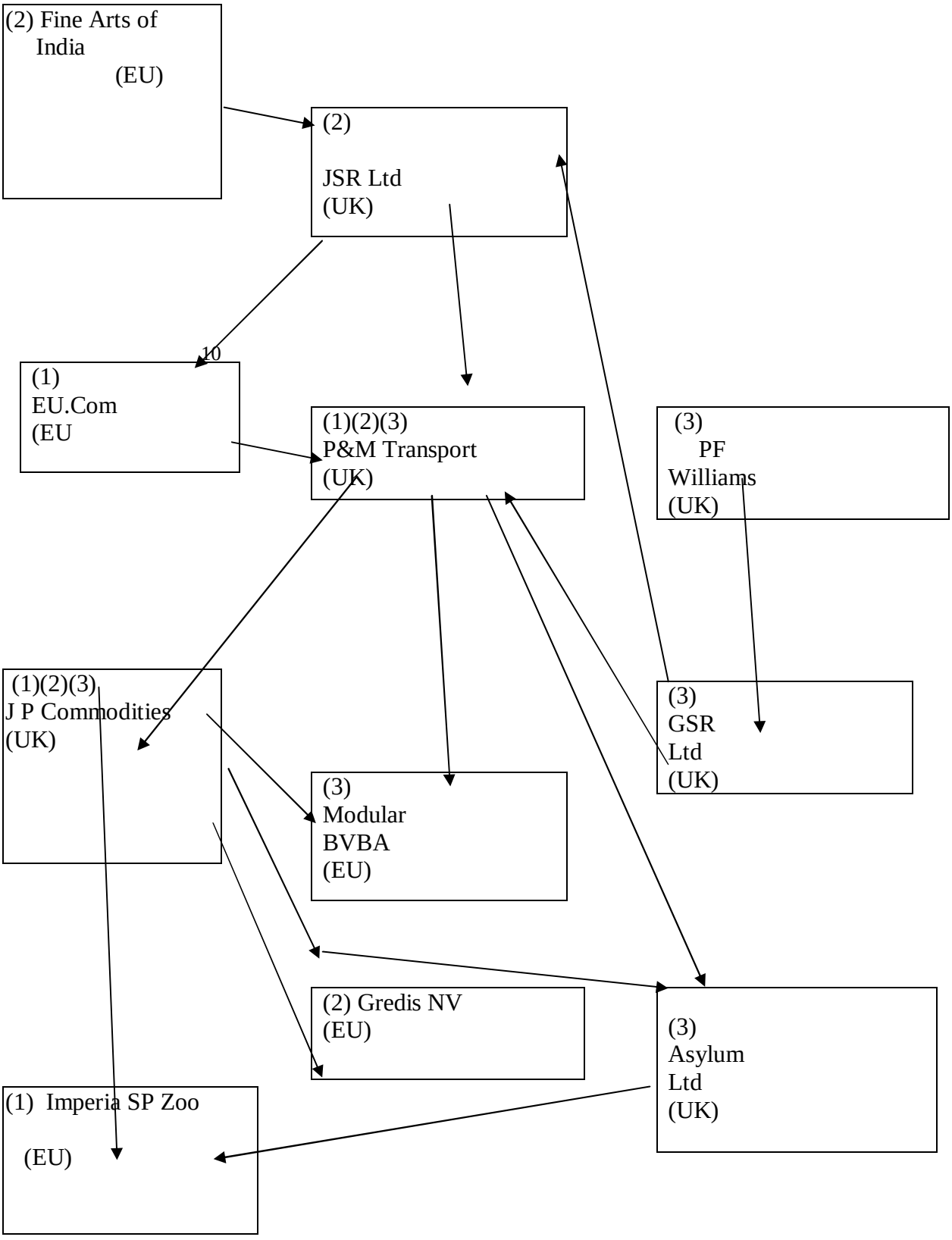
1. There must be a loss of tax.
2. The claim for the input tax of £673,493.65 must arise from a transaction 'connected' with the fraudulent evasion arising from such tax loss; and
3. It must be established that Commodities, through Mr Johal, knew or ought to have known that the only reasonable explanation for the circumstances in which the purchases took place was that it was a transaction connected with such a fraudulent evasion.

27. Mrs Tressler gave evidence about the chains involved with P&M, which acquired some of its supplies from JSR Limited and sold them on as a buffer to Commodities. There were three separate chains all of which were interlinked. All of which bought and sold goods to each other in circumstances where, in a commercial deal, one would expect traders to buy and sell at the most profitable level rather than trading unnecessarily through the United Kingdom.

28. We set out below a schematic of the transactions and we have numbered them 1 to 3 and shall deal with each separately.



Deal Table


(2) Fine Arts of India (EU)
(2) JSR Ltd (UK)
(1) EU.Com (EU
(1)(2)(3) P&M Transport (UK)
(3) PF Williams (UK)
(1)(2)(3) J P Commodities (UK)
(3) GSR Ltd (UK)
(3) Modular BVBA (EU)
(2) Gredis NV (EU)
(3) Asylum Ltd (UK)
(1) Imperia SP Zoo (EU)

29. It is accepted that the schematic is complex, but it will be noted that the various chains are numbered 1, 2 and 3. From these it can be seen that P & M acquired goods from JSR Ltd, GSR Ltd in the UK and sold goods to Modular BVBA in Europe and Asylum and Commodities in the UK. The supplies appear to have come from Europe through Fine Arts of India and Martin Sampson. Commodities sold its goods to Imperia SP Zoo (Imperia), Modular BVBA (Modular) and Gredis NV (Gredis) in Europe and Asylum Distributions Ltd (Asylum) in the United Kingdom. Asylum appears to have also sold goods to Imperia.

30. The FCIB has in the past been used by traders involved in MTIC fraud. It will be seen that all the participants in these chains left that bank several months before it was closed down by the Dutch Authorities and opened accounts with the International Credit Bank (ICB) in Panama, but with a correspondence address in Switzerland. When the accounts were opened at ICB the account numbers appear to have been opened sequentially as there are no more than 9 consecutive numbers between each of the traders as follows:-

Box 1

GSR Euro	1055601073
Gredis	1055601080
P F Williams	1055601088
Commodities	1055601089
P & M	1055601096
JSR Euro	1055601098
Imperia	1055601105

Mr Johal has given no evidence as to why Commodities needed a Euro account or how he came to open it. Nor has he indicated why payments ceased to be made from his Royal Bank of Scotland account in October 2006 and changed to the ICB. It will be seen that Commodities identified when monies would be paid to P&M by letters which referred only to sterling payments, although they were ultimately paid in Euros. We consider on the balance of probabilities that it is unlikely that the accounts would have been opened so close together unless the transactions were orchestrated.

31. Mrs Tressler told us that P&M were originally registered at Companies House as P&M Transport Limited on 18 November 2002 and registered for VAT on 3 August 2003 as haulage contractors. The company changed its name in August 2005 to P&M Transport and Communications Ltd and indicted that it would be dealing in transportation, selling navigation systems and small television screens. It also moved its office from Philip Andrew Temme's (Mr Temme) home on 13 September 2005 to Unit 1, Sir Frank Whittle Business Centre, Great Central Way, Rugby. CV21 3XH. It moved again to Unit 8 from 9 October 2006. Mrs Tressler visited Unit 1, which was a small office consisting of two desks and a fax machine When she attended she noted that Mr Temme was using a lap top computer. There appear to have been no employees nor were any such employees notified for PAYE purposes to HMRC. Mr Temme was the Director and Barry Marshall Nicholls (Mr Nicholls) was subsequently appointed the company secretary. Mr Nicholls was the company secretary of three associated companies: Trans Pacific Trading Ltd; Aventis Import

Export limited; and Sim City Phones Ltd; all of which were made insolvent owing HMRC a significant amount of unpaid tax. The directors of these three companies were also members of Mr Temme's family. The haulage company operated from Mr Temme's home address and up to the period 31 October 2005 declared a VAT turnover of £40,540. Accounts had also been filed at companies house and for the year to 30 November 2007 revealed a turnover of £23,652. No accounts have been filed for the periods 30 November 2006 to 30 November 2007 the period during which the company traded in mobile phones.

32. P&M undertook its first deal involving the purchase and resale of mobile phones on 24 September 2005. P&M's VAT return for the period ending 01/06 was received on 28 February 2006, several weeks late, and the declared sales for the period were £33,000,344, a dramatic increase from the sales declared of £1237 in the previous period to 10/05. Once P&M commenced trading in mobile phones its turnover increased to £223,055,668 in the twelve months from 1 November 2005 to 31 October 2006. The return for the period 04/06 declared sales for that period of £172,802,736. As there was a set off for P&M's input tax a repayment of £36,540.36 had been made. On investigation, the repayment was changed to an assessment of £422,482.37 and no appeal in that regard has been received from P&M. The return for 07/06 declared sales of £9,574,917 and the net liability of £39,480.70 was not paid.

33. Mrs Tresslar stated that P&M acted as a buffer trader in the VAT quarter ending 01/06 and as a contra trader in the tax periods ending 04/06, 07/06 and 10/06. In the period 10/06 P&M were the United Kingdom supplier to Commodities, who, in this appeal, are seeking a VAT repayment of £673,493.65. During the period P&M undertook 12 deals. In two of them P&M acted as the acquirer importing the goods from Europe. (See schematic deal numbered 1 EU > P&M > Commodities > Imperia). In three of them P&M acted as a broker and exported the goods to Europe. (See deal 2 in the deal table above – Fine Arts > JSR Ltd > P&M > Commodities > Gredis and deal 3 - Martin Sampson > PF Williams > GSR Ltd > P&M > Commodities > Modular). The table below shows how the export deals undertaken by P&M have off set the output tax on the acquisition deals. Acquisition deals have been undertaken in August in the first month of the VAT quarter and the export deals undertaken in the second month of the quarter.

Box 2

Deal Number	Invoice date	Invoice number	Type of deal	Input tax due	Output tax due
2	23/08/06	23080601	Acquisition		£140,759.50
3	25/08/06	25080601	Acquisition		£211,901.72
7	21/09/06	21090601	Export	£155,656.55	
9	27/09/06	27090601	Export	£168,280.53	
11	30/09/06	30090601	Export	£166,113.68	
Total				£490,050.76	£352,661.22

The value of the goods imported by P&M on deals 2 and 3, in the box above, amounted to £2,015,207. The acquisition tax due on these deals from Commodities

amounted to £352,661.22. P&M had, however, already set off that liability against its repayment claim without accounting for its VAT liabilities of £5,225,030.67.

32. Of the 5 deals referred to in box number 2 7, 9 and 11 involved exports to a European customer Poirots International (Belgium). The net value of these deals was £2,884,287.50 and related to the sale of digital cameras and camcorders. All three deals have been traced to a defaulting trader. The tax losses on these transactions amounted to £489,008.03. Assessments have been raised against PF Williams and have been dealt with in Mr Watt's witness statement at paragraph 36. It appears that the VAT number for PF Williams has been hijacked.

33. Mrs Tesslar explained that GSR Ltd (GSR) is an intermediate trader (buffer) in P&M's defaulting deal chains (see schematic). GSR registered for VAT from 8 May 2006. Like P&M, its first VAT return was £1,846. Its second VAT return for the period to 11/06 showed an incredible increase to £10,787,469 of which £7,290 related to consultancy and the balance to wholesale purchases from hijacked PF Williams, which were sold on to Poirot's. GSR appear only to have dealt with mobile phones during the period11/06. Officers R Perkins and B Hall met with the Director, Surinder Bajwa, on 13 September 2006 when they were told that GSR had not undertaken any mobile phone transactions. It transpired that GSR had already undertaken four transactions. It appears that Mr Bajwa had carried out no due diligence and had relied on the freight forwarders for insurance. As a result of the enquiries GSR's repayment claim became a liability of £158,082.21.

34. Mr Temme had originally stated that P&M had not traded between 25 August 2006 and October 2006. He retracted that statement subsequently and produced evidence of another nine deals showing sales amounting to £6,962,469.83. P&M made all its sales and purchases on the same day and in the same quantities. None of its chains can be traced to the manufacturer of the goods in question or to an end user. It is notable that both P&M and the other contra deals associated with Commodities have all been traced to the same defaulter, through exactly the same deal chains. Martin Samson (Spain) > PF Williams > GSR > P&M > Poirots or Intercommercium Ltd (Malta). Mr Temme has provided bank statements for FCIB and HSBC, but they reveal no evidence of payments for any of the goods. Commodities bank account with ICB makes reference of payment to 'pandmtransportltd'. It appears that P&M must have other bank accounts which it has not disclosed to HMRC even though Mr Temme stated in a letter dated 16 May 2008 that P&M had no other bank accounts. HMRC wound up P&M when it failed to pay the outstanding VAT liability of £5,225,030.67 on 3 September 2008.

35. All the mark ups between the various traders are contrived. All the acquisition deals achieve a mark up of 0.50%; the buffer deals between 0.22% and 0.25% ; and all broker deals 3%. The mark ups remain consistent in spite of the change in the commodities.

Box 3

Type of deal	GSR	P&M	JSR
Broker	3%	3%	3%

deal			
Buffer deal	0.20%	0.25%	No deal
Acquirer deal	0.50%	0.50%	0.50%

There is no reason why the mark ups on the broker deals should be more than those on the buffer deals as all the traders are United Kingdom based wholesalers competing in the same market place.

36. As a result of the evidence provided by Mrs Tressler we are satisfied, on the balance of probabilities, that P&M's transactions were fraudulent and that there are tax losses of at least £5,225,030.67. We are similarly satisfied that all the parties to the transactions (including Commodities deals as identified below) are part of a contrived scheme to defraud HMRC.

37. Mr Watt works as a member of the MTIC team based in Scotland enquired into the activities of PF Williams. He told us that the shareholders of PF Williams were Hafiz Noorullah and his brother Javid Ullah. The company was originally registered for VAT on 1 September 1996 by Paul Francis William. In March 2006 an application was made to transfer the VAT registration number and company name to Mr Ullah and Mr Noorullah, who indicated that the company would be trading in export machinery and machine parts amended subsequently to include surgical/medical equipment and other industrial equipment. Mr Noorullah was previously a director of other companies including Space Solutions Ltd. Mr Noorullah had given evidence before the Manchester tribunal in relation to a security case and the tribunal had found his evidence to be vague and evasive. Mr Noorullah has previous convictions for fraud and theft. The company operated from 1 St Colme Street, Edinburgh, which consisted of an office with a number of desks and 2 computers. The company was de-registered for VAT purposes by HMRC in August 2006 as no taxable supplies had been made. PF Williams refute that the deals were made by them and state that the VAT registration number must have been used by another person without their knowledge. Mr Watt concluded that the registration number had been hijacked. Mr Noorullah and Ms Misbah Ahmed, a recently appointed Director, denied having ever traded in mobile phones and produced various invoices relating to the sale of machinery. Mr Noorullah appears to have been evasive in both the arrangement for meetings and in giving evidence of PF William's trading activities and had requested that the company's VAT number be reinstated. After extensive enquires Mr Watt received faxed copies of invoices and purchase orders relating to 8 deals with Bits and Pcs (Edinburgh), Global Wellness Ltd, and GSR apparently purchased from PF Williams in September 2006 totalling £8,110,384.05. None of these deals appeared on the VAT returns for PF Williams. Mr Noorullah stated in November 2006 that no trading had taken place other than the sale of heating systems. Mr Watt concluded that the were a number of unusual features, but as PF Williams' personnel had stated that they had no knowledge of the relevant deals they must be either telling the truth and the VAT numbered had been hijacked and the transactions must be fraudulent, or they were not telling the truth and they have been conducting a fraudulent trade. On balance he concluded that the VAT registration

number had been hijacked and he had inconclusive evidence that any of the personnel at PF Williams were involved.

38. We have concluded on the balance of probabilities that as the invoices tie in with the general trading pattern of P&M and GSR that there has been a tax loss arising from fraudulent activities by persons ostensibly operating through PF Williams. An assessment has been raised against the dummy VAT number for P F Williams in the sum of £3,859,657, which has not been paid.

39. Mrs Rees, who was seconded to the MTIC team from Cardiff in January 2007, provided evidence as to the activities of JSR. JSR was registered for VAT on 8 July 2005 and operated from Rugby selling electrical goods e.g. radios, toasters, TVs, videos etc. Mr Ranjit Singh was the director and declared anticipated sales of £70,000 for the first 12 months of trading and confirmed that the company would not be trading in the European Community. The company had been incorporated on 6 May 2005 and Charandeep Kaur was appointed company secretary. In spite of enquiries to Redhill to verify VAT numbers Mr Singh confirmed that the company had no intention to trade in mobile phones. Its first return for the period 09/05 showed a net VAT repayment of £100.73 for business expenses. Mr Singh subsequently told HMRC that he intended to trade in mobile phones. HMRC reiterated the warnings that he had been given earlier with regard to the mobile phone market. In its first transaction on 30 January 2006 JSR purchased cameras from a Danish trader, Fluid Trading APS, for £834,490. JSR sold the goods to a United Kingdom Trader Time Line (Leicester) Ltd for £838,661.50 charging £146,765.77 output tax. Mr Singh indicated that he had met a Mr Irfan Valli of Time Line by chance in a shopping centre in Leicester. Information obtained from the Danish Authorities in March 2007 questioned the legitimacy of Fluid Trading APS as they had 'gone missing' having traded in mobile phones. The authorities also doubted that the goods had existed.

40. During the period 06/06 JSR had raised 81 sales invoices. JSR acted as broker in 54 of the transactions and as acquirer in the remaining 27. The 54 transactions have been traced back to defaulters PF Williams (hijacked), NVA Communications Ltd (NVA hijacked), Intelligent Planning Ltd (Intelligent) and FX Drona Ltd (FX). NVA was the European Community acquirer in 19 of JSR's broker chains in 06/06. NVA was deregistered for VAT purposes from 28 February 2005 and failed to pay £2,471,749.53 output tax on the 19 transactions. To account for this unpaid output tax an assessment was raised on 30 March 2007 against a 'dummy' VAT registration. This has not been paid and HMRC have not recovered the £2,471,749.53 output tax due. The invoices giving rise to this liability were dated 5 June 2006 to 27 June 2006.

41. In the same period 06/06, Intelligent Planning Limited was the European acquirer for twenty-six of JSR broker chains. Mrs Rees produced the working papers showing the invoices and details of these transactions. Intelligent Planning Limited have not submitted returns for the period 07/06 which would have included the output tax on twenty of these transactions. An assessment for the unpaid tax has been raised against Intelligent Planning Limited, but has not been paid. All fifty-four transactions where JSR acted as a defaulter in the 06/06 period resulted in significant tax losses to HMRC. Mrs Rees produced copies of the letters to JSR identifying the tax losses. The

last of those letters dated 17 September 2007 denied an input tax reclaim for £10,336.353.29 and JSR have not appealed this decision.

42. The VAT returns for JSR during their period of trading (which fall within Commodities periods) show exceptional net sales as under:-

Box 4

Period	Net sales
09/05	Nil
12/05	Nil
06/06	£112,301,862
09/06	£7,521,759
Period ended 17/11/06	Not submitted

JSR have produced no evidence as to how they funded these transactions. Ranjit Singh had stated at the visit on 22 August 2005 by HMRC that he had not started trading as he could not obtain any credit. He said at that meeting that he had recently visited his family in Spain to try to raise some money. He had also estimated when registering the company for VAT purposes on 8 July 2005 that the company's supplies would not exceed £70,000. The VAT return for the period 09/06 was received on 07/02/07 showing a net liability of £669,055.93 and as such was never subjected to extended verification. However, to the best of HMRC knowledge this liability has never been paid.

43. In his witness statement, which is not contested, Mr Stone describes how extended verification is carried out. HMRC process some 7.8 million VAT returns each year. Nearly 30% of those returns result in a repayment and HMRC repaid £54 billion of VAT in 2005-6. In June 2002 MTIC fraud alerted HMRC to the risks that were involved in making such repayments and they introduced an extended verification process. The process was invoked when the business activities of a taxpayer demonstrated characteristics and a style of trading associated with MTIC fraud. Extensive forensic verification took place and transactions were frequently traced back to missing traders. One of the purposes of the extended verification is to establish whether there was a deliberate and significant tax loss within the relevant supply chains. The process also depends upon the co-operation of other traders who participated in the supply chains. Often chains can be traced through freight forwarders and suppliers to those other traders, where that trader may not have sufficient evidence of its transactions. HMRC has to strike a balance between the need to protect the state from fraud and the necessity for the traders to receive their repayment. As a result not, all transactions were subjected to extensive verification.

44. Mrs Rees has attempted to trace each transaction that JSR carried out in the quarter 09/06. She traced each transaction up and down the deal chains utilising HMRC's electronic folder and the deal sheets prepared by Paul Fisher, which she produced to the Tribunal. JSR was involved in forty-seven transactions during this quarter. In nine of them JSR acted as broker and in the remaining thirty-eight acted as acquirer. The participants in the thirty-nine transactions (apart from one with MTS

Limited, which were not registered for VAT and could not therefore be traced), which took place in July, August and September 2006, were Commodities, Simshop UK Limited, BIP (UK) limited and Time line (Leicester) Limited. The purchases were made from two European suppliers The Fine Arts of India and BVBA Poirot's International. The total output tax charged by JSR on these transactions was £988,164.84. The Fine Arts of India acted as JSR's immediate European supplier in all but one of JSR's transactions. Mrs Rees has been advised by the Spanish Authorities that Fine Arts of India was de-registered on 27/10/2006 due to alleged fraud. In relation to BVBA Poirot's International, she has been unable to find any independent information on the company's affairs, therefore she does not know whether it has been investigated for fraud. The nine other transactions took place in September 2006 with supplies being made to one European customer Intercommercium Limited based in Malta. Input tax of £318,584.79 was incurred in these deals all of which have been traced back to PF Williams tax losses of £317,951.12. This amount has been allocated to Commodities in deal 2 in the deal table at paragraph 28 above.(Fine Arts of India > JSR Ltd >P&M > Commodities > Gredis) The resulting tax position from these transaction chains, excluding expenses is as follows:-

- Output tax on acquisition deals £986,164.84
- Input tax on Broker deals £318,584.79
- Net VAT due to HMRC £669,580.05

The high tax liability, which would have been created by the acquisition deals, has therefore been greatly reduced by introducing the tax loss broker deals in September 2006.

45. The four United Kingdom brokers in JSR's acquisition chains sold goods on to three European customers, Eurl Sarl MS Enterprise Ltd; Gredis NV and BVBA Poirot's International. Information from the French authorities states that Eurl Sarl had not had any actual business activity and its role consisted of issuing false invoices to European companies. As stated earlier, no independent information is available in relation to Poirots. We deal with Gredis in more detail when considering Commodities deals the subject of this appeal. Mrs Rees is in no doubt that the four broker deals in the JSR acquisition chains were all part of an overall scheme to defraud HMRC and we agree. It will be seen that Commodities was one of the Brokers and acted in twenty-eight of the transaction chains. As a result of its involvements, Commodities is reclaiming £319,072.03 which was declared as output tax on JSR sales invoices. JSR did not, however, pay the output tax on these goods, but rather off set it against the input tax credit generated in the nine transaction chains where JSR acted as Broker.

46. In a further three chains JSR sold to P&M, which in turn sold to Time Line (Leicester) Ltd, who sold on to BVBA Poirot's International. Time Line was not required to charge output tax on these transactions and reclaimed £120,186.15. Gredis NV acted as the European Customer in twenty-eight of JSR's acquisitions. The Dutch Authorities have advised Mrs Rees that the company is 'very suspect' and that there appeared to be no activities at all in 2006. This raises the question as to whether the

transaction chains involving Gedis NV ever took place. Commodities acted as the supplier to Gredis NV from JSR in all the transactions in 09/06. Eric Pierre Marcel De Bolle, the director of Gredis, was previously sentenced to 7 ½ years in prison for VAT fraud and was released on 15 May 2003.

47. Mrs Rees made enquiries as to JSR's due diligence and found that:

- In spite of the high value of the goods it carried no insurance.
- There appeared to be no formal contract with its customers.
- It did not keep any records of the unique serial numbers of its goods.
- JSR had been repeatedly advised to keep due diligence records, but all that could be produced were a few inspection reports.
- Its mark up in all the transactions in which it acted as a Broker was 3% and .05% where it acted as acquirer. This uniformity occurred irrespective of the type of goods and models sold.
- All its suppliers in the period 09/06 appear to be wholesalers without any end user.
- All the transactions (except the one referred to above) during the 09/06 period commenced with businesses outside of the United Kingdom, were sold to three businesses in the United Kingdom, who then sold them back to Europe.
- JSR, P&M and Commodities are located in the same geographical area - Rugby /Leicester

Mrs Rees has produced extensive evidence of the various transactions referred to above and has concluded that, in the light of the same, she considers that JSR has acted as both a contra and defaulting trader participating in an overall scheme to defraud HMRC. We are satisfies that JSR acted fraudulently and that there have been extensive tax losses exceeding £12,000,000 as a result.

The transactions of Commodities

48. Commodities were involved in a series of transactions, prior to the transactions the subject of this appeal, for the periods 03/06 and 06/06 in which £888,837.38 was repaid by HMRC. The repayment was made without prejudice, but the transactions were not subjected to an extended verification, as explained by Mr Stone above. Commodities was incorporated on 14 March 2005 and Mr Johal was appointed a director and Aujla Jagit Singh (Mr Aujla) was appointed secretary and the company was registered for VAT on 1 June 2005. Its proposed activities were to be Importers and Exporters of Clothing Wholesale. Mr Johal's father was in the textile trade. In July 2005 Commodities indicated that it wished to change its trade to 'general trade or electrical goods' as it intended to trade in computer software, components and mobile phones'. The VAT class was subsequently amended to 'wholesale of other electronic parts and equipment'.

49. Mr Johal told us that he first became interested in electronics when he was 7 years old. At 14 years old his father had asked a friend to teach him about televisions and Hi-fis and he worked at his father's friend's shop on Saturdays. At 19 years old he worked in a mobile phone retail shop for six months. He subsequently studied for three years and achieved a BSc degree in Business Information Systems and a MSc in

Electronic Commerce. Given those qualifications, we were surprised at his evasive responses to some of the questions raised by Mr Shields on which we will comment later. At 23 years old he made his first purchase of mobile phones importing just 10 limited edition handsets from Hong Kong. He made other purchases over the next two years and at 25 years old he travelled to Hong Kong to explore other business opportunities. Mr Johal already held a VAT registration as a sole proprietor trading under the name 'e-innvo8' which he had registered in February 2005. The company never traded and was de- registered. Apparently this business had been set up when the Prince's Trust had supported its formation. Mr Johal said that he did not know that he could change the name so that he could have traded as Commodities without having to register again. We consider it strange that somebody with the qualifications that Mr Johal had would not have known that information.

50. Mr Johal told us that before starting in business he visited electronic fairs at the National Exhibition Centre in Birmingham and at Olympia in London. He also explored the many trade websites including Alibaba, International Phone Traders and International General Traders. The research revealed that the wholesale electronics industry was a fast moving market. He has not, however, produced any copies of these enquiries, which surprised us. We assumed that he would have produced evidence of the internet enquiries. He indicated that he had received many offers of stock and requests for the same. He also confirmed that Commodities were aware of MTIC Fraud and had been provided with Notice 726 and the warning letters by HMRC. Commodities had decided by August 2005 not to continue to trade in mobile phones, because they considered the market place to be too risky. They had therefore traded in electrical and electronic equipment.

51. Commodities started trading at the end of July 2005 with assistance from his father's ex-business partner and friend, Raj Probit (?) (Mr Raj), who lives in Romania. When Commodities registered for VAT it indicated that its turnover would not exceed £500,000. Mr Johal had said that when he started Commodities only had enough money to set up an office. There appeared to have been a loan of £37,000 which Mr Aujla appears to have obtained for Commodities from large lenders such as Alliance and Leicester Building Societies. However, Mr Johal stated that the loan had been transferred to Blue Mirage Limited, a company owned by Mr Aujla, who was also the only director. Mr Johal appears to have had an interest in Blue Mirage Ltd in that Mr Aujla had insisted that his interview with Mr Makepeace, from HMRC, should not proceed until Mr Johal arrived. It was not clear from the evidence what capacity Mr Johal had with Blue Mirage. As it was run by his friend Mr Aujla, and Commodities had apparently lent it money, we can only conclude that that Commodites and Blue Mirage must have worked closely together. Mr Johal denied any such involvement, although the company was formed at approximately the same time as Commodities and would also have been available for trading by Mr Johal. At an interview in September 2006 Mr Aujla confirmed to Stephen Makepeace an MTIC investigating officer for HMRC:-

> "Start up capital. £37,000 personal loan to Mr Aujla, made up of £15,000 (Tesco Loan) for home improvements…An Egg loan for £15,000 and £7000 from the AA".

As a result the £37,000 ostensibly borrowed for Commodities would not have been available to them. We assume this must be the same £37,000 although the parties from whom it appears to have been borrowed are different.

52. Mr Johal confirmed that his father had lent him £10,000 to 15,000, which again appears to have been before he started making any money. Mr Johal confirmed that he paid his father back over a period of 12 months between 05/05 and 05/06. It also appeared that he had paid his father a further £50,000 during the earlier period when Commodities had had sufficient money to do so. Mr Johal also told the Tribunal that one of Mr Raj's companies had lent Commodities £100,000 some time after February 2006. Mr Johal could not remember the name of the company. No evidence of either of these loans had been supplied by Mr Johal, who appears only to have referred to them at the hearing. He had not disclosed them to HMRC as they had never asked him about any further loans. It appeared that Mr Raj has not been paid back; there was no documentation evidencing the loan; and no interest has been charged. Mr Johal confirmed that he anticipated paying some of the loan back out of the repayment due from HMRC on the deals the subject of this appeal. Given that Commodities had received a repayment of £888,837.38 on the earlier transactions, we would have expected Mr Raj to have been repaid either in whole or in part out of those monies. Failing that, Commodities appears to have made a profit of nearly £250,000 from the earlier transactions, which should also have been available to make the repayment. Either way we find it extraordinary that an ex-business partner of Mr Johal's father, living in Romania, would have been prepared to assist in setting up the business when it had no assets, unless there was an ulterior motif.

The earlier transactions

53. When it first started trading, Commodities prepared a suite of documents to enable it to carry out its due diligence. The documents relating to the first transactions were produced to the Tribunal and consisted of :-

- A letter of introduction
- Certificate of incorporation and a Companies House check
- Redhill enquiry
- 2 trade references
- Passport details of the directors involved with their customer.
- A visit to the office and a photograph

It is unclear how these documents were prepared but it appears that they must have been obtained from somebody familiar with trading in mobile phones. Mr Shields referred the Tribunal to the transaction with Maxro Technology Ltd (Maxro) based in Hounslow. Mr Johal confirmed that Mr Raj had put Commodities in touch with an individual, who recommended Maxro, although Mr Johal had been unable to give specific details as the transaction was over 6 years ago. Maxro was incorporated on 27 August 2004 but had not filed any accounts by 27 June 2005. The introductory letter from Commodities addressed to Maxro, dated 14 July 2005, indicated that Commodities were an international trading house buying and selling electronic equipment ranging from mobile phones to computer components. This was not true, since the company had only just registered for VAT purposes as "Importers and Exporters of Clothing Wholesale'. It was not until the end of July 2005 that it

changed its business purposes to 'general trade or electrical'. Maxro had given Microriver Ltd of Maidenhead as a referee, who replied to Commodities stating that they had never traded with Maxro. At a meeting on 29 November 2005, Mr Johal confirmed to Mrs Malik that he had not noticed that information. He also said at the meeting that he had not met the managing director, although the due diligence indicated that he had done so. Mrs Malik suggested that the due diligence checks carried out by Commodities did not accurately reflect what was actually carried out. She also noted that Maxro had been liquidated.

54. We note that a substantial number of the faxed copies of the documentation, in the initial due diligence details, have on them a detailed legend of the fax and the date printed from the machine. This is not the case in relation to the due diligence documentation referred to below in relation to the transactions, the subject of this appeal. Mr Johal was unable to explain this irregularity other than to say that the fax machine was an old machine and probably did not give that detail. In checking the earlier documents, it is clear that observation cannot be correct as such detail does appear on the earlier documents used on the same machine. We would have expected Fax documents to carry the appropriate detail even where they were copies. In so far as they do not provide relevant details, it casts considerable doubt on their authenticity.

55. The first transaction of which we have evidence with P&M is the one referred to below at paragraph 56 dated 24 February 2006. Mr Johal said that P&M was introduced to him by his friend Johnny Chatta from Wolverhampton. Under cross-examination Mr Johal was unable to elaborate on the circumstances giving rise to this business. He indicted that he had met Phillip Temme with Mr Chatta at the Halfpenny Golf Course in Wolverhampton owned by Mr Chatta. He had also been to Mr Temme's office in Rugby on several occasions and met Mr Temme's father there. Mr Johal confirmed that he realised that P&M were principally hauliers, but he believed that they had substantial contacts with other businesses due to their haulage connections. He could not remember all the details as it was some 6 years ago. He had not arranged any transaction immediately, but agreed to contact Mr Temme when he had any business he thought might interest P&M, this Commodities did in February 2006.

56. Mrs Davis gave evidence as to the trading activities of Commodities from its incorporation. She produced a table as under showing Commodities growth up to the first VAT repayments, there are several transactions within each period,

Box 5

Period	Tax repaid	Outputs	Inputs	EC Acquisitions
06/05	£545.31	Nil	£10,362	Nil
09/05	£100,261.80	£3,548,811	£3,515,940	£609,656
12/05	£7,577.91	£2,945,717	£2,918,331	£510,148
03/06	£348,817.23	£6,718,879	£6,621,554	£2,513,115
06/06	£431,635.13	£8,008,345	£7,943,288	£2,537,697
Total repayments	£888,837.38			

for the periods				

There have been fourteen transactions during the period 03/06 and 06/06. The bulk of the supplies were purchased from P&M but were sold to Asylum; Modular; and Gredis. In seven of the transactions Commodities were the exporter; in six of the transactions Commodities acted as an intermediary (buffer) and in one as the acquirer from Europe.

57. The due diligence had been examined by HMRC, albeit not on an extended verification basis, but on a without prejudice basis, and HMRC has seen fit to make the repayment of £888,837.38. HMRC also indicated that they do not intend to challenge that repayment as it was more than 3 years ago. Mr Johal, however, was concerned following Mrs Malik's comments about Commodities' Due Diligence Review Form in relation to its dealing with Maxro. She had recommended that Commodities needed to improve its due diligence. Mr Aulette, of Asylum Limited, had suggested to Mr Johal that Commodities should employ Mr Ahmed's company to advise with regard to the due diligence documentation. Mr Ahmed met with Mr Johal at Commodities offices on 7 January 2006 and we were told that Mr Ahmed overhauled all the documentation. Mr Shields took Mr Johal through the revised due diligence format and suggested that it was not materially different. The principal differences were the reference to:-

- The freight forwarder
- The Companies House report
- The Credit Safe report and
- The Directors home utility bill

57. The revised Due Diligence Review Form was first used in relation to the P&M transaction between 09/01/06 and 17/02/06 as follows. We propose to go through all the Due Diligence in some detail as it appears, on the face of it, to be very thorough, but on close examination is meaningless in many areas The Review identifies P&M and the date that the documents were examined:-

- The certificate of incorporation dated 9/01
- A certificate of Registration for VAT purposes dated 9/01
- Redhill verification of VAT number dated 17/02. (The actual result was dated 23/2 the day of the purchase notice sent by Commodities to P&M see below). When asking for the VAT confirmation, Commodities also advised HMRC of the goods that they were dealing in.
- Companies House report dated 9/01. This revealed the last accounts were made up to 30/11/2003 as exempt accounts and that the accounts to 30/9/2005 were overdue. Commodities should have been alerted to the fact that further accountancy information was needed for P&M
- Europa report. The date has been inserted incorrectly as 14/02 as the actual document is dated 17/3 several weeks after the transaction.
- Credit Safe Report dated 09/03-11/03 for P&M; this reveals a turnover of £7,227; total assets of £34,669 and total liabilities of £46,150; revealing a negative net worth -£11,481 also that P&M's profitability and liquidity were weak. The principal director was Phillip Andrew Temme, The secretary

Barry Marshall Nicholas and no credit should be given. All these matters should have alerted Commodities to the fact that P&M was technically insolvent.

- Passport, Utility bill, Carphone warehouse, Bank account for Mr Temme. The Carphone account revealed a penalty had arisen because a payment by cheque by Mr Temme had been rejected. Mr Johal said that he had not noticed and that he had only obtained the detail for Mr Temme's address for money laundering purposes.
- Account application form addressed to P&M from Commodities dated 9/01; Referees C&G Enterprises, Worldwide Digital Ltd and P&M's Accountant B Nicholls
- References taken up on 16/01 (It is unclear when they were returned). C&G advised that they had known P&M for 6 months; payment terms 2 to 14 days ; a similar verbal reference given by Mr Aujla on 16/01 told him that C&G had known P&M for 5 months; The reference to Worldwide Digital is dated 16/01; person contacted Peter Temme. It appears that he is Phillip Temme's brother. Mr Johal said that he was not aware of the connection, although he ostensibly had known Phillip Temme for some time and should, in those circumstances have known he had a brother; Peter Temme indicated that Worldwide had known P&M for 12 months; payment terms net 1 month; and that they paid promptly. In the verbal reference Mr Aujla was told that Mr Temme had known P&M for 8 months, and that they paid their bills quickly. The last reference given was from Barry Nicholas, Accountant to P&M, and dated 25/01. This again was not an independent reference as he was company secretary to P&M. He indicated that the company had not traded, but that the accounts were up to date. This contradicted the Companies House report which indicated that the accounts for 30/9/2005 were outstanding. Mr Johal had made no further enquires of P&M as he was satisfied with the results. He accepted at the Tribunal that the reference could hardly be independent;
- Freight Forwarder verbal reference by MG Ltd stated that they had known P&M for 6 months and that they paid promptly.

Mr Aujla, Mr Johal's friend and company secretary, was involved in the day to day running of the business. It appears from the above that Mr Aujla signed most of the documentation although Mr Johal confirmed that he was aware of it all and was in charge.

58. Mrs Davis has produced all the documentation for each of Commodities transactions starting with those prior to the ones, the subject of this appeal. Mr Johal relies on these in part as evidence of Commodities due diligence for the transactions the subject of this appeal. The sequence of events leading to the transaction on 24 February 2006 and thereafter was as follows:

- P&M acquired the goods from Hass Packaging, which supplied a stock list of electric shavers, including 4 different Oral-b machines, these P&M did not purchase.
- P&M passed on the same stock list to Commodities on 15 February 2006 before it had placed the order with Hass.

- P&M placed an order with Hass for £698,174.72 for all of the Braun and Philips machines on 22 February 2006.
- Commodities placed an order with P&M for all the Braun and Philips shavers on 22 February 2006 at a price of £595,981 plus VAT of £104,296.67 making a total of £700,277.67 which was invoiced by P&M to Commodities on 24 February 2006. P&M requested J&J Transport Ltd (their Freight Forwarders) to release the goods to Commodities on 23 February 2006 the day before they raised the invoice and in any event before they were paid by Commodities.
- Modular, in Antwerp, acknowledge the stock list (which still had the Oral-b machines on it) on 15 February 2006 and placed an order with Commodities on 21 February for the same Braun and Philips Shavers for £616,840.50, which Commodities invoiced to them on 22 February 2006. It will be noted from the above that Commodities invoice for the goods from P&M was dated 24 February 2006 two days later. It is unclear how it could sell the goods to Modular before it had purchased them from P&M. Commodities' purchase order to P&M was dated 22 February 2006
- Commodities asked J & J Transport to inspect the goods for them on 23 February 2006 the day after they had sold the goods to Modular. The Certificate of shipment dated 27 February 2006 for Modular indicates that the delivery is to be made to Madrid, although Modular was in Antwerp in Belgium. Mr Johal did not enquire why the deliveries were not made to Modular in Belgium
- Commodities instructed J&J Transport to release the goods to Modular on 3 March 2006 although Modular had only paid £366,000 for the goods, leaving a balance of £250,840.50 outstanding, which was not paid until 9 March 2006.
- Commodities paid P&M by instalments and advised them by Fax that they would do so. They paid £75,000 on 2 March 2006; £48,501.39 and £359,000 on 3 March 2006; and £217,776.29 on 9 March 2006 making a total of £700,277.68. Commodities had only received £616,840.50 from Modular and had only received £366,000 as the first instalment from Modular on 3 March 2006 before it paid P&M £482,501.39. It is unclear where £116,501.39, the difference, came from unless it was from the loans from Mr Raj and his father referred to above at paragraph 51.
- It appears that HMRC have disallowed a repayment claim for Asylum for their transaction dated 18 August 2006 on a 'means of knowledge' basis and Asylum have lodged an appeal, which has yet to be heard. It appears that Commodities sold the goods to Asylum for £1,402,762 and would have made a profit of £6,972.
- In February 2006 HMRC disallowed a repayment to Commodities in relation to a deal with Gibraltar. It appears that although all the transactions were carried out in Europe the contacting party was a company in Gibraltar. As Gibraltar is not part of the European Community there was no right to a VAT repayment. Commodities pursued the matter by way of appeal to both the Tribunal and the High Court, but without success. A net repayment of £83,557.47 had been applied for but after the deduction of the disallowed output tax of £75,979.56 the adjusted repayment was only £7,577.91. Mr Johal suggested that it was as a result of the failure to obtain a full repayment on this occasion that Mr Raj's company lent Commodities £100,000.

59. We have explained the earlier transactions in February 2006 in detail as we understood from Mr Johal that the transactions, the subject of this appeal, were carried out in a similar manner. All of the deals were 'back to back'. This meant that Commodities could only pay P&M when they were paid by their customers Imperia and Gredis. In fact, checking some of the earlier deals it also appears that part payments were made on all the transactions and that the subsequent VAT repayment resolved the majority of the amounts outstanding. There appears to be no documentation in which the parties agreed that credit would be given. Given the details of the reports referred to above into the credit worthiness of P&M and Modular, no such credit ought to have been given. After the repayment of £888,837.38 was paid by HMRC to Commodities it appears to have made a profit from the earlier trades of about £250,000. For that reason we fail to understand why Commodities has insufficient funds to pay for legal representation in this appeal.

The Appeal transactions

60. Commodities carried out 36 transactions in five separate deals, between 18 August 2006 and 20 September 2006. All of these were subjected to extended verification, as explained by Mr Stone see paragraph 41 above. In the first transaction (not being one of the 5) dated 18 August Commodities acquired Apple Ipods from EU.com in Europe and sold them to Asylum, which exported them to Imperia. This transaction did not give rise to a repayment claim and is not therefore considered further. Commodities have produced the documentation for each deal in considerable detail. Their evidence is that their due diligence and general management of the transactions was such that there was no more that they could have done to protect themselves against any fraudulent trading. As a result it is necessary to examine each of the five transactions in some detail.

Commodities Deals Table

VAT period	**09/06**	Date of Inspection Commodities				**Emboldened Amount paid**	
Supplier and Sale to	Invoice Dates		Price per unit £	Invoice £	Vat £	Total £	Difference £
(1)P&M	23/8/06	**31/08/06**	165.40	496,200	86,385	583,035	
Imperia	Jcp/06/08/002 23/8/06		169.54 (2.50%)	508,620	Nil		
P&M	23/8/06	**31/08/06**	78.04	312,160	54,628	366,788	
						949,823	
			Released	23/8/29/11	Paid 12/10	**50,000**	
	Goods			In Euros	Paid 23/11	**358,579.09**	
	Harman				Paid 27/11	**293,565.68**	
	One for all				Paid 27/11	**247,678.23**	
						949,823	
Imperia	JCP/06/08/002		79.99 (2.50%)	319,960	Nil	828,580	
Invoice	23/8/06		Released	31/8/06			
Imperia	*Payments on*	*first two*	*transactions*		Paid 23/11	**358,579**	
	Asked for			In Euros	Paid 27/11	**293,900.80**	

	Extended		received	29/11/06	Paid 27/11	**265,080.47**	
					Paid 27/11	**6,021.18**	
						923581.65	
		Over paid	*Transferred*	*to next*	*transaction*	***95,001.65***	
VAT period	**09/06**	Date of Inspection Commodities				**Emboldened Amount paid**	
Supplier and Sale to	Invoice Dates		Price per unit £	Invoice £	Vat £	Total £	Difference £
(2)P&M	25/8/06		539.55	863,280			
			141.45	353,625	212,858.38	1,429,863.38	
	Selection of	**Requested 25/8/06**	Released	25/8	Paid 12/10	**50,000 RBS**	
	Goods all	**Done 31/8/06**			Paid 1/11	**50,000 RBS**	
	Same chosen		In Euros		Paid 27/11	**288,538.87**	
					Paid 27/11	**273,458.45**	
	Goods				Paid 27/11	**268,431.64**	
	Phillips SBCR				Paid 8/12	**53,853.89**	
	Logitech					**984,282.84**	
						Unpaid	**445,580.54**
Imperia	25/8/06 JCP/06/08/003		553.04 (2.50%)	884,846			
	Extended credit asked		144.99 ((2.50%)	362,475		1,247,339	
	And given		Released	31/8?27/11	Paid 27/11	**284,852.55**	
			Received	29/11/6	Paid 27/11	**268,096.51**	
					Paid 27/11	**268,096.51**	
					Paid 27/11	**258,713.14**	
					Paid 27/11	**95,000**	
					Paid 08/12	**53,900.80**	
						1,228,659.52	
						Unpaid	**(18,679.48)**
VAT period	**09/06**	Date of Inspection Commodities				**Emboldened Amount paid**	
Supplier and Sale to	Invoice Dates		Price per unit £	Invoice £	Vat £	Total £	Difference £
(3)P&M	18/9/06	**Requested**	116.09	94,032.90			
		2/10/06	97.32	63,258.00			
	Goods	**Done**	97.32	63,258.00			
	M3Players	**2/10/06**	41.95	20,555.50			
	Zen Micro		50.68	36,743.00			
			74.05	55,537.50	58,342.36	391,727.26	
		Paid in sterling	Released 18/9/06		Paid 16/10 Paid 18/10	**310,000 81,272.26**	
Gredis	JPC/06/09/001		120.15 (3.49%)	97,321.50		391,727.26	
	18/9/06	Released 17/10.06	100.73 (3.50%)	65,474.50			
		Received	100.73	65,474.50			
		18/10/06	43.42 (3.50%)	21,275.80			

			52.45 (3.495)	38,026.25			
			76.64 (3.49%)	57,480		345,052.55	
					Paid 18/10	**304,000**	
					Paid 18/10	**41,052.55**	
						345,052.55	
VAT period	**09/06**	Date of Inspection Commodities				**Emboldened Amount paid**	
Supplier and Sale to	Invoice Dates		Price per unit £	Invoice £	Vat £	Total £	Difference £
(4)P&M	19/9/06	**Requested**	295.61	180,322.10			
		2/10/06	258.54	178,392.60			
	Goods	**Received**	204.88	129,074.40			
	Multimedia	**2/10/06**	112.19	78,533.00			
	M3 players		112.19	78,533.00			
			112.19	78,533.00	126,592.92	849,981.02	
			Released		Paid 18/10	**308,000**	
			3/10/06		Paid 18/10	**220,500**	
		Paid in			Paid 22/11	**307,432,43**	
		Sterling			Paid 27/11	**14,048.59**	
Gredis	19/9/06		305.96 (3.49%)	186,635.60		**849,981.02**	
			267.59 (3.50%)	184,637.10			
			212.05 (3.49%)	133,591.50			
			116.12 (3.50%)	81,284.00			
			116.12	81,284.00			
			116.12	81,284.00		748,716.20	
			Released		Paid 16/10	**305,000**	
			18/10/06		Paid 18/10	**275,000**	
			Received		Paid 22/11	**168,716.20**	
			18/10/06			**748,716.20**	

VAT period	**09/06**	Date of Inspection Commodities				**Emboldened Amount paid**	
Supplier and Sale to	Invoice Dates		Price per unit £	Invoice £	Vat £	Total £	Difference £
(5)P&M	20/9/06	**Requested**	73.92	55,440.00			
	Goods	**2/10/06**	73.92	55,440.00			
	M3 Players	**Done**	116.09	37,729.25			
	Zen Micro	**2/10/06**	97.73	63.258.00			
	Multimedia		97.73	63,258.00			
			97.73	63,258.00			
			41.95	30,413.75			
	Paid in Euros		112.19	67,314.00			
			41.46	30,265.80			
			46.78	34,149.40			
			50.68	25,340.00			
			74.05	46,281.25			

			295.61	62,078.10			
			258.54	49,122.60			
			204.88	37,902.80			
			258.54	45,244.00	134,136.70	900,632.15	
			Released	20/09/06	Paid 22/11	**313,851.35**	
					Paid 22/11	**85,135.14**	
					Paid 27/11	**261,013.51**	
		% mark up				**660,000.00**	**240,632,15**
Gredis	JPC/06/09/003	(3.50%)	76.51	57,382.50			
		(3.50%)	76.51	57,382.50			
		(3.50%)	120.15	39,048.75			
		(3.06%)	100.73	65,474.50			
		(3.06%)	100.73	65,474.50			
		(3.06%)	100.73	65,474.50			
		(3.50%)	43.42	31,479.50			
		(3.50%)	116,12	69,672,00			
		(3.50%)	42.91	31,324.30			
		(3.50%)	48.42	35,346.60			
		(3.50%)	52.45	26,225.00			
		(3.50%)	76.64	47,900.00			
		(3.50%)	305.96	64,251.60			
		(3.50%)	267.59	50,842.10			
		(3.50%)	212.05	39,229.25			
		(3.50%)	267.59	46,828.25		793,335.55	
Released	J & J Freight		Released	19/10/06	Paid 16/10	**£255,000.00**	
	3/10/06		Received	19/10/06	Paid 22/11	**142,299.73**	
					Paid 22/11	**310,810.81**	
					Paid 22/11	**85,295.31**	
						793,335.85	
			Still	due to	P&M from	Commodities	**686,212.69**
			Still	due to	Mr Raj		**100,000.00**
						Total	**786,212.69**
						Repayment	**(673,493.65)**
	Commodities	Owed	£18,679.48	by Gredis		Short fall	**112,719.04**

59. It is convenient at this point to work through the above transactions.

a. Mr Johal has told us that he researched the market on the internet to find out the current prices so that he could negotiate the best deal with his customers. The stock list from P&M on deal 2 was received on 22 August and sent to Imperia on the same day, but with a price increase of 2.50%. The stock lists on all the other deals follow the same pattern. In relation to the September deals there are 3 purchase orders and invoices raised in respect of goods purchased from identical stock offers, which have been sent out on three separate occasions. Commodities had carried out the product pricing research before the first purchase order was received. Two different members of staff signed the product research documents and the underlying research is dated. This could not be a mistake as suggested by Mr Johal.

b. The price increases to Imperia are all 2.50% greater than the purchase price from P&M. Similarly, the price increases for Gredis are all 3.50% greater than the purchase price from P&M across all the deals. Mr Johal produced research details carried out by Nam Vu one of his employees in relation to deal 1 above. This revealed the selling price for a

Harman/kardon TC30 (remote controller) as £169.54 and a buying price of £187.19. A Mac heaven was bought for £170.20. Mr Shields suggested that as Commodities used a sales figure and a purchase figure the comparisons were of no value because they were not comparing like with like. In any event, Commodites appear to have used the figure typed in the form of £169.54 and £79.99 prepared by its staff, whatever the other prices were. We do not believe that Mr Johal researched the market in the way that he told us. On the balance of probabilities we assume that he merely added an identical percentage mark up to the price that he had to pay for the goods.

c. The goods in deal 1 were remote controls. Mr Shields asked Mr Johal how the Harman/kardon TC30 worked. In spite of his enthusiasm for electronics and his degrees, Mr Johal was unable to explain to us how the unit worked and indeed what its function was. Mr Shields also pointed out that the Harman/kardon's web site indicted that the goods were not warranted if they were not sold through their agents, of which neither P&M nor Commodities were one. Mr Johal suggested that Harman/kardon would honour the warranty anyway. We got the distinct impression that Mr Johal knew very little about any of the goods in question. Commodities arranged for the goods to be inspected by J&J Trading (UK) Ltd (J&J). In every instance the result was obtained by Commodities after the sales had been completed with their purchasers, Imperia and Gredis. The inspection merely states that the Electrical Goods were new. Furthermore the weight of the consignment differs from the weight of the items by a substantial amount. For example the inspection report for deal 2 dated 31 August 2006 identifies the weight of the consignment as 910 kg. The addition of the two products comes to 383.25kg. Mr Johal was unable to explain this discrepancy saying that he had not noticed. The inspection report for the third deal has a weight consignment of 1575 kgs and the items at 1474kg. The results throw serious doubts on the veracity of the inspections. In any event the results were of no value as they were obtained after the goods had been acquired..

d. The first release notes from Commodities addressed to J&J merely ask for the goods to be dispatched and do not ask that they be held to Commodities order until payment. The International consignment note for deal I indicated that the delivery is to Calais "Ship and Hold". Mr Shields suggested that this was a mistake as it should have read "Ship on hold". Mr Shields asked Mr Johal if he understood what "Ship on hold" meant. At a meeting on 26 November 2005 Mrs Malik noted that Mr Johal had been unable to explain the meaning to her. At the hearing he appeared to have the same difficulty and did not appreciate that it meant that the goods were held to the order of Commodities until released by them when Commodities had been paid. We were surprised that he could not answer either of the questions given his University degrees and commercial experience. In deal 2 the request dated 31 August 2006 asks for the goods to be delivered to Marco Industrial Europe Sarl (Marco) in Lille, France for the order of Imperia. Mr Johal does not appear to have queried why the goods for a Polish company were to be delivered to France. It is possible that Imperia had customers in France. It is also

possible that the goods formed part of a fraudulent transaction and were more readily accessed in France than Poland. Either way on a transaction worth £949,823 it would have been prudent to enquire, not least because Commodities had not been paid at this point.

e. There is then a release and allocation fax addressed to J&J on 27 November 2006 requesting it to authorise the release of the goods. The goods were in Lille and we would have expected such a request to have been addressed to Marco in Lille. Presumably J&J were expected to notify Marco, who in turn would have to notify Imperia. Commodities had faxed Imperia on the same day that it had notified J&J. Imperia acknowledged the receipt of the goods to Commodities two days later on 29 November 2006. We would have expected the earlier request to J&J to indicate that the goods were to be held to Commodities order. As it did not take place Commodities had lost control of the goods when they were first sent to Lille. At that stage Commodities had not been paid. No reasonable businessman would have released the goods until payment had been made.

f. Each of the transactions was insured through Martinez & Partners. The forms are all identical and carry the correct information. They provide that temporary cover is not needed at the freight forwarders following the sale of the goods, although it identifies that the goods will be stored at J&J. This is unusual as automatic cover for this purpose appears to have been agreed when the insurance was set up. The sale was effected on 23 August 2006 when the invoice was issued. The goods were never in Commodities possession but held at J&J. The insurance form was supplied to Martinez & Partners on 8 September 2006, 16 days after the invoice date and 6 days after the goods had ostensibly been transported to Lille on 2 September 2006 following the request on 31 August 2006. The form states at the bottom:

> "Please note that no cover is in force until you have transferred the necessary premium and received a subsequent confirmation cover fax or email…"

No fax or email has been supplied, nor were the goods insured after they reached Lille.

G. In a letter dated 19 April 2007 Mr Ahmed of CMT indicated that this wording did not affect Commodities as it had a continuous agreement with Martinez & Partners that Commodities would forward all relevant documentation to them at the end of each month. The schedule provided by them indicates that the period of insurance is "always open from 21/08/2006" and no premium is quoted. The insurance detail was, however, sent to Martinez & Partners on 8 September at the beginning of the month and not at the end of August. The schedule indicates:-

> "it is hereby understood and agreed that this policy is extended to cover the subject matter insured from the time the insured takes possession of the goods at the premises of J&J Trading (UK) Limited and whilst at these premises for a maximum of 7 days. It is warranted that the subject matter insured is kept within alarmed security cages within a locked building of substantial construction whilst at the premises".

Additional conditions require Commodities to have a written agreement with J&J, which included the security requirements set out in the conditions. The goods for deal 1 were dispatched on 2 September 2006, 9 days after they were held at J&J to Commodities order. As a result they appear to have been uninsured for 2 days and for the entire time they were at Lille. Mr Johal said that he relied on J&J's insurance although he had made no enquiry as to the type of cover J&J would supply. Such cover would not have provided protection once the goods had left J&J's possession. There is an invoice for the insurance premium with Martinez & Partners for £2594.90 for the period to 11 September 2006 which required payment within 14 days. It was actually paid on 5 October 2006. On the balance of probabilities, we believe the insurance was of no value.

h. We have seen that P&M were effectively insolvent from the information provided to Commodities on the occasion of their earlier transactions. There has been no evidence as to the terms of any credit. Mr Johal told us that he would have agreed to pay perhaps half the price of the goods to P&M and he would have asked his customers Imperia and Gredis for half of the value of their contracts. Judge Porter pointed out that such a division would not have taken in to account the VAT. Mr Johal has told us that he was not dependent on the VAT refund on the earlier occasion as he was funding the transactions on a back to back basis. That is, when Commodities were paid, he would pay P&M. It is extraordinary therefore that in every transaction Commodities, Imperia and Gredis all asked for credit from P&M, which, being insolvent, would not have been in a position to agree to such large sums to remain outstanding. Each deal has copies of the letters between the parties asking for credit. There is no indication of any resistance even though no satisfactory reason had been given for the failure to pay.

i. In a normal commercial transaction, at this level, a supplier would have expected its customer to have sufficient funds to meet its obligations. In deal 1 above Commodities appears to have had insufficient money from its sale to Imperia to have been able to pay P&M the additional £121,243, which it did. We have not been told how this was achieved, but must assume that it is from the money received from Mr Raj. If that is the case, it is unclear where the two £50,000 paid on 12/10 and 1/11 came from for deal 2 as they were not paid by Imperia. The payment came from the Royal Bank of Scotland account which appears to have had over £240,000 in it at 12 October 2006. This account may be the same account used to discharge the additional £121.243 referred to above. We have had no evidence as to how the Royal Bank of Scotland was serviced, but there would appear to have been sufficient monies in it to discharge the loan to Mr Raj if Commodities has been minded to do so. In every deal payments were made to Commodities after Commodities had arranged for the goods to be transferred to Lille for Imperia and Belgium for Gredis. Nearly all the payments were made towards the end of November, some 3 months after the original invoices. Goods worth almost £4,000,000 had been at risk for nearly 3 months outside of the United Kingdom before they had been paid for.

j. On every transaction there is a letter from Commodities advising of the sterling payment that they would make. This is extraordinary for two reasons. First, apart from deal 4, all the payments were in Euros. Secondly, there are two letters from Commodities to P&M, both dated 27 November 2006, advising that part payments of £273,458.45 and £268,431.64 would be paid that day. Why did Commodities not send one letter advising that the total of £541,890.09 would be paid? Furthermore, Imperia, in a letter dated 28 November 2006, the day after all the payments had been made for all the deals, asked Commodities to credit £95,000 from the payment of £265,080.43 made on the first deal to the second deal. The debt was actually £95,001.50 (see italics in deal 1 above). Why not ask for the correct amount? Imperia also indicated that they would pay off the remainder of the balance for this invoice shortly. They had already paid the debt and they had not paid the entire amount outstanding. It can be seen from the deals table above that Imperia still owed Commodities £18,679.48 from deal 3. Mr Johal told us that this has still not been paid nor had Commodities started proceedings to obtain payment.

k. It would have been much simpler to keep a track of the payments and for each party to pay the full amounts owing between them rather than making four separate payments on each deal. This is how payments would have been made on a normal commercial transaction. It is unusual that each deal asked for further time to pay and even more unusual that four separate payments of different amounts were nearly all paid on sequential days. Mr Johal told us that he used monies from earlier deals to pay off later ones. He said that he could not make the payments outstanding at the end of the appeal transactions because he had not been paid by Asylum. That cannot be right. All the deals with Gredis were made in September 2006 and paid for by the 22 November 2006. If what Mr Johal said is correct, why did he not use those payments to pay Imperia earlier? All the payments have to be contrived and to have been designed to make it as difficult as possible to check how the transactions had been carried out. Mr Johal has produced to the tribunal 3 of the four Deal Check Sheets, presumably designed by Mr Ahmed. There is no such sheet for the last deal with Gredis. It would appear that the sheets have been completed at the end of each transaction when payment was made. The statements do not all contain a correct detail of the payments. If the entries hade been made as each deal went through the mistakes should not have been made. Mr Johal appears to have been confused in relation to the first deal as he has indicated that £95001.50 was to be transferred to invoice no 3. On the second deal sheet, dealing with that invoice, he has merely recorded £95,000, as set out in the letter from Imperia of 28/11/06 the day after the payment. On that second deal the Deal Sheet makes no reference to the payment of £53,853.89 to P&M, which was paid on 8 December 2006 when £53,900.80 was paid by Imperia on the same day.

l. Presumably the Deal Sheets were designed to keep a track of the payments. Apart from one invoice asking for payments by cheque to Commodities there appears to have been no details of the ICB accounts numbers. Mr Johal indicated to the Tribunal that much of the detail with

regard to the contracts was dealt with over the telephone. No evidence of any of those calls has been provided. Whilst we accept that many of the calls would not need to be recorded we would have expect those advising with regard to payment to have been. We would have expected Mr Johal to be aware that Imperia still owed £53,853.89 by 27 November 2006 something he appeared unsure of at the hearing. It is strange that Commodities only paid £53,853.89 to P&M, when at that time it owed £499,434.43 on that transaction. Mr Johal appeared at the Tribunal to be unsure as to the amount Commodities still owed P&M and Mr Shields advised that it was £445,580.54 on deal 3 and £240.632.15 on deal 5 making a total of £686,212.69. P&M have not sort to recover the monies from Commodities and we are advised that P&M are now in liquidation. Mr Johal was unsure how Commodities would now pay the outstanding liability even if Commodities receives the repayment of £673,493.65. It has to be more than a coincidence, that the amount owing and the repayment expected are almost identical.

m. The bundle of documents for the earlier deals copying documents from Commodities' customers carries details of the dates and times when the faxes were sent. All the documents relating to the appeal transactions, which purport to have been sent by fax do not carry such a legend.

Due diligence

60. Mr Johal annexed to his witness statement details of the due diligence carried out on Imperia and Gredis. Commodites Due Diligence Review Form prepared for Imperia and altered by Mr Ahmed consists of:-

(a) A letter dated 1 July 2006 confirming that Imperia's services included management consultancy, Trade Mediation, General Services provision to industries such as Agiculture, Transportation,Oil and Gas…. and it was in the process of supplying house-hold products. The address on the letterhead is Mariacka, Katowice, Poland.

(b) The same letter as sent to Gredis relating to Commodities' activities.

(c) A Europa search for VAT purposes dated 16 August 2006.

(d) A photocopy of a Polish passport for Lebiocki Jaroslaw Sergius with an indistinct photograph of the owner.

(e) A National Court Register dated 20 November 2005 (and in Polish but not the same layout): Chairman Lebiocki. Shareholder Swirtun, Jaroslaw Robart. Capital 50,000 polish Zloty (3.123 to the £ = £16.000). Long list of activities wholesale solid, liquid and gaseous fuels and related products waste and scrap; freight transport by road; financial intermediaries; restaurants and catering. Accounts to 31/12/2004. Limited Company – Polish Business classification "Restaurants"

(f) FCIB account.

(g) Creditsafe report as at 12/7/2006; States Electronic Equipment Services. Credit risk satisfactory i.e "smaller credits can be considered….. A cautious credit control policy applies" recommended

limit 20,000 Euros. No accounts available. Sales turnover 35,000,000. trade reference not supplied.

(h) Bank statement ING in Polish.

(i) Photocopy of passport Mr Swirtun

(j) Trade reference Arta Network SARL 6/7/2006. Dealt with Imperia for 1 year payment prompt; Time Line (K) Ltd (undated) Dealt with Imperia 3 months payment slow 30 to 60 days.

(k) On-going Due-diligence checks 5/7/06 to 8/4/07 Europa checks. VAT telephone checks (no evidence in deals of these)

61. It would also appear from the above that there is also some confusion as to what Imperia does. The report from Credit Safe indicates Electronic Equipment. In light of the report from Poland further enquiry would have been sensible. Their credit rating is poor and Commodities ought not to have allowed them any credit for the monies they owed to Commodities. Furthermore, in his witness statement Mr Johal states :

> " I can't remember how I first started trading with Imperia but I believe they first contacted me in June or July 2006. I do, however, remember that they were advertising heavily on various trading websites. We had a long chat as I remember and I understood that he had several businesses in Poland, involved in a wide range of industries……"

Mr Ahmed wrote to HMRC on behalf of Commodities on 4 January 2007 some six months after the last deal and stated:-

> "Imperia Sp. The Director was met in London on three occasions prior to trading and the full due diligence system was applied, including obtaining trade references. One of these trade references was obtained via a trusted family contact.."

We assume this information had been supplied to Mr Ahmed at the time by Mr Johal. However, given the same difficulties referred to below with regard to Gredis, we are in considerable difficulties to know which version is correct.

62. Commodites Due Diligence Review Form prepared for Gredis as altered by Mr Ahmed consists of:

(a) A trading application form and a letter of introduction, which followed the letter sent to P&M referred to above and enclosed the necessary verification documents. There is also a note from Eric De Bolle, the managing director, confirming that Gredis specialises in trading in computer and mobile phone products and was established in 1994 and that it had a vast knowledge of the telecom, computer hardware and software industries. Mr Johal said at the tribunal that this information had not concerned him in spite of the fact that he had indicated that he had stopped trading in mobile phones because they represented too high a risk. The company is based in Antwerp and there is included a document, presumably in Belgian, which is untranslated. Reference is made on the first page to Modular BVBA.

(b) A copy passport with a photograph, presumably of Mr Bolle.

(c) Commodities had retuned to Gredis its details with confirmation that Commodities banked with I C B.

(d) A credit safe report. This revealed that the business activity was management consultancy; wholesale office machinery and equipment. The company was incorporated on 28 June 1989 although Mr Bolle had indicted it was established in 1994. The last accounts were lodged on 31 December 2004 and indicated an authorised capital of 30,987 Euros and liabilities of 215,482 Euros. Its credit facility was at 2,478.93 Euros with a credit score of 6, which indicated a high risk. The fax reference reveals that the detail was provided on 30 June 2006. The first deal with Gredis was on 18 September 2006 some two and a half months later.

(e) A Europa validation response of 30 June 2006 confirming the VAT Number. There are similar reports from Europa with regard to the individual transactions referred to in the deal table above.

(f) Trade references were given for Construct Beheer which indicated that it had traded with Gredis for 2 years and that it paid promptly; Facet Trading which indicated that it had known the company for 2 years and that it paid its bills slowly, sometimes very slowly;

(g) A photograph of Mr Bolle standing outside what appears to be a builder's garage as there are ladders and pallets leaning against the wall. The location is unspecified..

(h) A series of ongoing due-diligence checks indentifying some of the Europa checks referred to above starting at 6/7/2006 to 08/3/7. There appears to have been a Redhill check on 10 August 2006 but no such report appears with the papers. Commodities did not start trading with Gredis until 18 September 2006.

63. Mr Johal told us in his witness statement and at the Tribunal that he had travelled to Belgium to meet Mr De Bolle. The Gredis premises consisted of a warehouse large enough to accommodate a full articulated lorry; an open plan office, with a separate office for the director. Mr De Bolle had indicated that he had 12 years experience and Mr Johal said that he had been very impressed. He had met Mr De Bolle again at the Sanderson Hotel in London some three months after his visit to Belgium. Mr De Bolle had asked Commodities to trade with Gredis, rather than Modula, with which it had dealt in the earlier transactions, as he wanted to limit his tax liability by trading through a separate company. Mr Johal did not query this further, which he should have done as he was aware of VAT fraud in the market place. When Commodities dealt with Modular the goods were delivered to Madrid. When trading with Gredis the goods were delivered to an address in Belgium. It is odd that Mr Johal did not query this either in light of the difficulties that Commodities had had with regard to the transaction with Gibraltar. Furthermore, in his letter of 4 January 2007, Mr Ahmed referred to Mr De Bolle. He stated:-

> "The director of Gredis, Eric de Bolle, was introduced to Commodities by a friend of the director's father in 2004. Mr de Bolle has a variety of business interests and Commodities has worked with him on a number of projects. The directors have a good business and social relationship that has stemmed from shared goals and business vision. They have worked together on several property deals and are currently developing

other joint ventures outside the electronic sector. Commodities traded with Mr de Bolle's previous company Modular NV"

Mr Johal insisted again that Mr Ahmed was mistaken. We note that the letter was written on behalf of Commodities some 6 months after the last deal and we assume that the facts must have been made available by Mr Johal for Mr Ahmed to have been able to write in those terms. We are unable to say which version is correct. Mr Shields referred us to information that HMRC had obtained from the Belgian authorities. The buildings from which Gredis operated appear to have been Mr De Bolle's father's carpet business. The information also confirmed that Mr De Bolle had been sent to prison by Oxford Crown Court in February 2000 for seven and a half years for knowingly being concerned with the fraudulent evasion of VAT on five counts. Mr De Bolle appears to have been released from prison in September 2003 in spite of the sentence having been for 7 ½ years from 2000. Mr Johal told us that "Monty" had introduced Commodities to Bronteum, but under cross-examination accepted that that was untrue and that Mr Raj had made the introduction.

Submissions

65 Both Mr Shields and Mr Johal were asked to submit written submissions, which they have done, running to a total of 79 pages. It is not intended to do more than highlight the points that they raise as they repeat much of the evidence set out above. We have dealt with the law and the cases at the beginning of this decision and have incorporated the points raised by the parties in that regard and do not propose to deal with them again here. Mr Shields submits that there is a clear contrivance within the defaulting chains of P&M, JSR and PF Williams. Each dealt with the other buying and selling either directly or through one party acting as an intermediary. For example P&M dealt directly with PF Williams on 28 September 2006 and yet on the next day purchased goods from GSR, which had originated from PF Williams. There is further evidence of contrivance by reference to the mark-ups on the deal chains, which were all uniform, depending on their positions as brokers of buffers. Commodities had dealt with Asylum in the earlier transactions. Mrs Tressler confirmed that it appeared that P&M sold Asylum goods on 19 April 2006 of the same brands at the same price and in almost the same quantities as Asylum had purchased from Commodities a few day before. This was despite having a previous trading relationship with P&M. Mr hields maintains that these transactions only took place to defraud HMRC of VAT.

66 Mr Shields submitted that there is ample evidence of the tax losses in the fraudulent chains. All the transaction chains, which have been traced to JSR and P&M when acting as Brokers, lead back to tax losses across several periods. Taxes losses in excess of £10.5 million have been identified in the chains where JSR acted as broker. Tax losses in excess of £5 million have been identified in the chains where P&M acted as broker, and of £3.8 Million where P R Williams were involved.

67 Having established that the tax losses have arisen as part of a fraudulent scheme, Mr Shields asked the Tribunal to consider whether the transactions undertaken by Commodities are connected with those tax losses and the fraudulent scheme. The export of the goods by Commodities is an essential ingredient of the fraud, generating an input tax repayment from HMRC which provides liquidity for the fraud to be continued. HMRC take the view that the evidence clearly shows that

Commodities entered into the transactions knowing that they were connected with fraud. Mr Johal described himself as an experienced and educated businessman. In spite of that, he wholly failed to provide adequate explanations for Commodities dealings. He was uncooperative and made no attempt to make eye contact with Mr Shields but stared at the ceiling. During the first morning of questioning, his answers were specific and demonstrably wrong. He stonewalled falling back essentially on three responses:-

- Counsel did not understand commerce.
- He could not deny or confirm the accuracy of any of the notes of the visit reports.
- He could not remember due to the passage of time. This may have been relevant to minor matters it should not have prevented him from remembering substantial commercial matters.

Mr Shields submits that Mr Johal was a very unconvincing witness and that his failure to tell the truth was because he knew that if he did so he would have to admit to the fraud.

68 Mr Johal had the opportunity of using his existing business e-Innov8 to trade in electronic equipment. He did not do so because he wanted to trade in electronic equipment without alerting HMRC to that fact. He therefore formed Commodities to trade in wholesale clothing and changed its category to be wide enough to include MTIC style trading. The evidence as to how Commodities was funded is wholly unsatisfactory and unclear. £37,000 appears to have been to set up the business, but it transpired the money had been used by Blue Mirage. Loans from Mr Johal's father and the repayments were not clearly identified. It appeared that his father was being paid but it was not clear what for or, indeed, whether the payments were instalment payments for the moneys borrowed. The loan of £100,000 from Mr Raj was wholly uncommercial. Mr Johal admitted under cross-examination that Mr Raj had introduced Commodities to several of its customers. It also appeared that people dealing with Commodities where Mr Raj was involved would have been frightened of him.

69 Commodities first substantial deal was the purchase of mobile phones from Maxro Technology Ltd, introduced to the company by Mr Raj. Commodities due diligence had a fairly professional presentation but Mr Johal would not say how he prepared it, other than to say that the format had been suggested by an outside party. It was equally surprising that he could not recall, on his first substantial deal, that Maxro had gone into liquidation. Commodities moved away from dealing in mobile phones because of the risk of fraud. Mr Johal was fully aware of the difficulties arising from MTIC fraud. He was not, however, prepared to accept, as he had been told by HMRC, that the transactions he had entered into in relation to electronic equipment followed the patterns involving mobile phones. Mr Johal had banked with FCIB for his earlier transactions, but changed to ICB in June 2006 he merely explained that he wanted 'a back up'. By June 2006, the MTIC frauds moved away from FCIB and migrated to ICB. Mr Johal was clearly aware of this when he opened Commodities ICB account but appeared reluctant to give an explanation. It may well have been that he knew the movement was connected with fraud.

70 Mr Shields submitted further that Mr Johal's explanations as to how Commodities came to trade with P&M, Imperia and Gredis were far from satisfactory. As far as P&M were concerned he was unclear as to the meetings he had had with Mr Temme. He could not explain why P&M would want to trade with Commodities in the United Kingdom, when the margins were so small. The evidence relating to the involvement of Imperia and Gredis was so conflicting that it is not possible to know how the introductions were made.

71 It is not for HMRC to advise traders as to the checks they should make, this is a matter of commercial judgement for individual traders. Such checks that are made must of necessity establish whether a trader is legitimate, honest and reliable. The checks that Mr Johal did carry out were wholly inadequate. Mr Ahmed had introduced a Credit Safe check. The information provided indicated that all three companies were not commercially sound but Mr Johal disregarded that fact. When Commodities entered into its transactions with the traders there is no evidence of negotiation on any point. Commodities bought the stock, at whatever price it was offered, and sold it on at whatever price appeared on its copy of the stock list. His mark ups were the same on all the transactions. There is no evidence that Mr Johal contacted any other supplier than P&M. There was no discussion or specification of basic aspects of the goods either with manuals or operating instructions. Mr Johal described a market in which numerous companies, each having access to the other, have nothing to offer in terms of contacts or experience. All the companies allow each other substantial credit and carry on business on precisely the same terms and at the same price. This is in a market where contracts are meaningless and can be cancelled notwithstanding that goods worth millions of pounds are involved, yet every company makes money. For someone with a degree that involves business, who had been warned about fraud in relation to the types of deals Commodities was carrying out, Mr Johal cannot have failed to have known that the only reasonable explanation for Commodities being allowed to be a party to the deals was that they were connected with fraud. Basic commercial terms were not recorded and millions of pounds of goods were released to Commodities before payment. Nowhere were the ICB accounts details provided.

72 Mr Johal's attitude to inspection was extraordinary. He did not want any of the boxes opened. He had not checked whether a warranty would be available. The inspections revealed a difference in the weight of the boxes to the units contained within them. Mr Johal had not noticed that. He was content for the goods that had been released to him to be inspected and held by J&J, although he appears to have made no enquires with regard to J&J. He was content for Commodities goods to be carried abroad and retained with a freight forwarder, which he neither knew nor checked. Commodities appeared to have the same attitude to insurance. Mr Johal knew that Commodities had to inform the insurers before the shipment took place, but failed to do so. Having taken out the insurance, Commodities failed to comply with its terms. Mr Shields pointed out that it was extraordinary that the September deals were all related to one stock sheet and that the price enquiry had been made even before the first purchase order was received.

73 Mr Shields further submits that the random payments bear no relationship to the invoices raised. Imperia paid in Euros. There appears to be no agreement as to how this would be achieved or indeed of the accounts to which payment should be made. Extended credit was given on every deal and further transactions entered into

before the earlier ones had been paid for. The Gredis deals are partly paid in sterling and then in Euros. Mr Johal clearly knew nothing about the changes from November in the ICB account, when all payments were in Euros. Mr Shields submitted that Mr Johal was no more than a passenger in this regard. In relation to the Gredis transactions, cutting across the fact that there are three invoices, all of the goods were released to Gredis at a time when Gredis owed Commodities a very significant amount of money. It was submitted that releasing goods in those circumstances would have been commercially unthinkable and Mr Johal agreed. This was in fact exactly what Commodities did.

74 Mr Shields submitted that the evidence should be considered in the round. As Christopher Clarke J in Red 12 Trading stated:

> "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".

It is not credible that Commodities would be permitted to take part in these transactions and generate a profit exceeding £100,000 for 5 days work, if it was simply an unwitting accomplice. It would not be given the opportunity to handle such large amounts of cash unless the fraudsters knew it could be trusted – this is particularly so in relation to the VAT repayments which would be paid into Commodities United Kingdom bank account. On the basis of all the evidence available, and for the reasons given above, the Tribunal can be satisfied that the transactions entered into by Commodities were connected with fraud and that Mr Johal, on behalf of Commodities knew or ought to have known that they were so connected. If the Tribunal disagrees, then HMRC submit that Commodities, through Mr Johal, tested by reference to the standard of the reasonable businessman, should have known that the transactions were connected with fraud. The Tribunal is invited to dismiss the appeal with costs.

Mr Johal's submissions on behalf of Commodities.

75. As Mr Johal appeared on behalf of Commodities, which was otherwise unrepresented, we allowed him additional time to serve his written submissions. Those submissions have been considered in conjunction with the opening skeleton argument prepared by Mr Ahmed for Commodities prior to the instructions being withdrawn. Mr Ahmed, in his skeleton argument, refers in some detail to *Brayfal*, which we have dealt with earlier when considering the case law at paragraph 21. He further submitted that the evidence against Commodities is that it must have known of the fraud due to identified patterns. Commodities position is that it purchased the goods in a genuine arms length transaction and sold to certain customers. It is difficult to see how Commodities could have known for sure that the transactions were connected with fraud. No amount of due diligence on Commodities suppliers would have identified the fraud. Viewing the goods at the freight forwarder's warehouse would not have revealed the fraud, nor was there any evidence that the freight forwarders were dishonest. Mr Ahmed also suggests that P&M would need to have been party to the conspiracy to hide the 'dirty chain' transactions in Commodities clean chain. This has not been pleaded by HMRC nor has P&M had a chance to

defend itself. P&M cannot be classed as a dishonest party, which covered up the fraud, because there was no fraud in the 'clean chain'. Furthermore, there is no evidence to suggest that even one other company in the alleged 'dirty chains' has been asked one question about the alleged frauds. HMRC must have visited all the companies and yet no officer has served one statement to evidence an involvement in fraud.

76. The intermediate traders have been allowed to deduct their input tax, which is inconsistent with HMRC's case as the intermediaries ought also to have lost the right to deduct. If HMRC's confused approach is to be accepted, there is a fraudster at the start of the 'dirty chain', then a series of parties that have the right to deduct input tax in the middle and then Commodities at the end of a clean supply chain which is the only party penalised. Commodities is so far removed from the alleged defaulters that it is the company least likely to know about the fraud. The 'missing tax' is the net amount for which each missing trader failed to account (being, in respect of each deal chain, a lesser sum than the amount of input tax being reclaimed by Commodities) and Commodities ought to have received credit for the difference between the total amount of repayments claimed and the missing VAT.

77. It is extremely important that the Tribunal does not exercise hindsight in its assessment of the conduct of Commodities and Mr Johal – but rather to consider what actually happened and what evidence was actually available at the time. Mr Johal submits that Commodities did not act fraudulently and did not have any contact with any traders in the 'dirty chains' other than its direct trading partners. Mrs Tresslar has given evidence to the effect that there have been no tax losses in Commodities chains, so how could Commodities 'ought to have known' never mind known of the frauds. Commodities had traded successfully in other deals not the subject of this appeal. Its procedures and due diligence documentation had been examined by HMRC who had been sufficiently satisfied with them to make the repayment of £888,837.38. Commodities brought in Mr Ahmed's company to view and improve their due diligence as Mrs Malik had suggested that it was not robust enough. Commodities were anxious to be transparent at all times and were more than content to allow HMRC to check its procedures at any time, as it had an 'open door' policy. The various officers of HMRC do not appear to have kept each other informed of the various fraudulent transactions they had uncovered. They appear not to have told each other of the names of the defaulting companies. If HMRC had warned Commodities that it was dealing with defaulting traders, it might have been able to have prevented further loses. As HMRC were not minded to do so, Commodities ought not to have its repayments refused.

78. Mr Johal explains in his submissions why he did not look at Mr Shields when answering his questions. He had behaved in this manner because he had felt that Mr Shields would have made him nervous, and he might have lost track of what he wanted to say if he looked at him. He had therefore looked straight ahead. He accepted that he was other than transparent with some of his answers, but after the passage of some six years, he could not always remember or indeed be sure of the facts. Mr Johal submitted that he had always been interested in electronics. He confirmed that Commodities, through him, was well aware of the problems with MTIC fraud. In fact they had ceased to trade in mobile phones because of that. He did not accept that dealing in Ipods and other electronic equipment amounts to dealing in

similar products to mobile phones. The goods were well known in the market place, as were their functions. It was not necessary, therefore, to advise a purchaser of their specifications. Commodities were entitled to believe that J&J were reputable freight forwarders. Visiting their premises, in various locations, would not have assisted. Freight forwarders are situated all round the country and did not need to be near the coast, as they frequently have a central hub. Mr Johal submits that he had researched the market thoroughly through the internet and that once he had made a contact he got to know the people through telephone conversations and dealing with them. This coupled with the substantial due diligence information was sufficient for him too make a judgement as to whether the trader was legitimate, honest and reliable. He suggested that this was normal commercial procedure. It was not uncommon in commercial transactions in the 'grey market' for goods to be sold without being seen. People frequently paid deposits on goods even before they had been made. He gave as an example 'DFS' sofas. He submitted that as far as Commodities were concerned the goods were insured and there was sufficient evidence that the premiums had been paid.

79. All the payments were fully identified on Commodities Deal Sheets. Commodities had not made a profit of £100,000 as that would only be achieved when the repayment is made. Commodities had been content to receive payments in Euros as the amounts paid represented the correct figures when the conversion rate was applied. Commodities had been content to set up a back-up bank account with ICB, which it ran in conjunction with the account at the Royal Bank of Scotland. Both accounts could only be accessed by Commodities and the ICB account had been opened because Commodities customers wished to pay in Euros. Mr Johal and his team had worked extremely hard to set up and progress the business. No business operates perfectly and Mr Johal submitted that if any business was checked mistakes could be found. Commodities had followed all the basic checks according to the guidelines it had been given. It appears that it would have been found to be fraudulent if it had not followed the guidelines. It is also suggested that it is fraudulent because it appears to have done too much due diligence and as a result it is suggested that Commodities due diligence was no more than window dressing. Mr Johal confirmed that he had known Mr De Bolle socially and that he had tried to put together some other business deals.

80. There was no need for a formal contract, a legally binding contract arose with the purchase order and the invoice. Much of the negotiations were over the telephone, so that the parties would know that the goods would only be released when the money was paid. The release and allocation notice confirms this. Commodities were content to release the goods on part payment as this was how the trade operated. Details of the payments appeared on the Deal Sheets and any issue with the banking evidence should have been pleaded in the statement of case to allow Commodities time to serve evidence in response. In light of the submissions Mr Johal invites the tribunal to allow the appeal.

The decision

81. We have considered the evidence and the law and have decided that Commodities through Mr Johal, knew that it was participating in a fraud. Mr Ahmed, on behalf of Commodities agreed that there had been a tax loss and that it arose through the frauds. As Mr Johal appeared not to agree with Mr Ahmed's assessment

we have looked carefully at the deals with P&M, JSR, and PF Williams. Mr Ahmed has also suggested that credit should be allowed to Commodities for the VAT paid within the chains to HMRC. We cannot accept that. Commodities VAT liability arises from their transactions and the repayment claimed is related to those. If VAT had been accounted for properly Commodities VAT position would have been the same. The legitimate payment by others in the chain gives rise to the objective criteria justifying a repayment. We have found that Commodities were party to the fraud and that it is not, therefore, entitled to its repayment as it is out with the objective criteria.

82. The Deals Table at paragraph 58 shows the interconnections between the companies. We are satisfied from the evidence that the deals between these parties were contrived and designed to defraud HMRC of substantial sums of money, which they have achieved. Mr Ahmed has rightly submitted that the Tribunal should look at the facts as they were presented to Mr Johal, on behalf of Commodities, at the time of the deals and that the Tribunal should not be persuaded as a result of hindsight. We do, however, need to consider the earlier transactions as it was from those that the subsequent deals, the subject of this appeal, arose. What was Mr Johal's position? He has told us that he has always wanted to be involved in electronic equipment. Although he already had a business, 'e-innvo8', he decided to set up Commodities and identify that it would be importers and exporters of clothing wholesale. Mr Johal, once registered, changed its trade to 'general trade or electrical goods'. We were unimpressed with Mr Johal's comment that he had not realised that he could change 'e-innvo8''s name. He has a qualification in business studies and would have known this fact. We concur with Mr Shields that the reason for the new company was to disguise Commodities intentions to deal in electronics. When registering for VAT on 1 June 2005, Mr Johal indicated that he did not expect Commodities turnover to exceed £500,000. We have been told by Mrs Davis that repayments totalling £888,837.38 had been paid to Commodities for the periods 09/05 to 06/06. In its first year of trading Commodities turned over £5 million. As Judge Colin Bishopp suggested in C*alltell TelecomLtd & Another –v- Revenue and Customs* [207] UKVAT V2066:

"Much will depend on the facts, but an obvious example might be the offer of an easy purchase and sale generating conspicuously generous profit for no evident reason. A trader receiving an offer would be well advised to ask why it had been made; if he did not he would be likely to fail the test set out in paragraph 51 in the judgement of *Kittel*."

83. It appears that Commodities were able to start trading and achieve deals exceeding several million pounds without any capital. Mr Johal confirmed that the £37,000 initial capital borrowed by Mr Aujla had been transferred to Blue Mirage. The lenders in relation to Blue Mirage were not the same as those we were advised of for that same amount when the £37,000 was originally borrowed by Commodities, which is confusing. Mr Johal's father had lent the company some money, but it appears that some £50,000 had been repaid to Mr Johal's father during the earlier deals. Mr Johal told us at the Tribunal that Mr Raj had lent the company £100,000, he thought some time in February 2006. Mr Johal could not remember the name of Mr Raj's company. There appears to have been no written documentation in relation to that loan. No interest was to be charged and it had not, at the time of the hearing, been repaid. He said that he hoped to make some partial repayment if he received the VAT

he was entitled to as a result of the deals the subject of this appeal. The Deals Table shows that this will not be possible. No reasonable businessman would lend £100,000 to a fledgling company on the terms suggested by Mr Johal. This, the more so, when the businessman lives in Romania. The only reason such a loan would be made is if there was some other benefit to Mr Raj but we have not been told what that benefit was. Mr Raj appears to have had a considerable influence on Commodities trading. He had put it in touch with Maxro in the earlier deals. Mr Johal had to concede that his friend Monty had not introduced Bronteum, but that Mr Raj had done so. No explanation was given for this distortion of the truth.

84. We have found Mr Johal's evidence before the Tribunal to be at best evasive and on some occasions to be dishonest. We have also found that all the due diligence, which on the face of it appears to be extensive, to be inconsistent to such an extent that we believe it to be window dressing. Mr Johal has produced details of the due diligence Commodities carried out with regard to P&M in the first deals. Superficially they appear substantial, but they do not bear close scrutiny. Mr Johal was both evasive and unclear as to how and when he had met with Mr Temme. He accepted that he knew P&M were hauliers, but he suggested that P & M would have had many connections with all the businesses they provided haulage for. We fail to see how that would have made them experts in dealing with electronic equipment. Mr Johal should have noted the same. The Companies House report reveals that P & M's accounts were outstanding. The report from Credit Safe indicated that the company was technically insolvent. Mr Johal suggested that businesses often carry out transactions with companies which have not put in their accounts. We believe that to be unlikely, when the transactions are as large as those undertaken by Commodities. Mr Johal had indicated in the VAT registration that Commodities business would not exceed £500,000, - that must have been the level of the financial risk he had in mind. How could Commodities risk entering into a transactions with P&M, which in total amounted to over £8,000,000 against that unsound back ground?

85. The due diligence, as improved by Mr Ahmed, indicated that enquires had been made of Redhill on 17 February 2006. This was incorrect, it had been responded to on 23 February, the same day Commodities had decided to purchase the goods. We accept that the Redhill report indicated that P&M were appropriately registered. The problem is that Commodities were prepared to enter into the transaction without knowing that fact. No reasonable businessman dealing in a transaction at this level would have done so without being sure of the relevant background information. It is no answer to say that all the enquiries appeared in order, after the orders had been made. Mr Ahmed has also suggested that there was no reason to suppose that J&J were dishonest. Mr Johal was prepared to allow valuable goods to be sent out of the country by and to freight forwarders that he neither knew nor made enquiries about and at a time **before** Commodities had been paid. That makes no commercial sense at all. How would Commodities have recovered the goods if anything went wrong with the transaction? The answer must be that he knew nothing would go amiss because all the deals Commodities were involved with were contrived. Commodities release notes to J&J are ambiguous. Imperia had asked Commodities to forward the goods to their freight forwarder in Lille. Commodities contacted J&J, before Commodities had been paid, and instructed them to send the goods to Lille, which J&J did. The release note had no requirement that the goods should be held to Commodities' order. Mr

Johal does not appear to have appreciated that in releasing the goods to J&J, without such a requirement, Commodities effectively lost control of the goods as J&J had already released them immediately to Imperia's freight forwarders. Subsequently, when Commodities were paid in November, they wrote again to J&J

"Please authorise Allocation and Release of the stock from JP Commodities Ltd to Imperia SP".

Commodities knew that the goods were with the freight forwarders in Lille so we fail to understand why they would contact J&J to release the goods, as J&J no longer held them.

86. The insurance does not appear to be adequate. It is accepted that the premiums were paid and on the face of it the insurance was effective. Closer examination casts serious doubt on that. Paying a premium to make it look as if proper insurance has been taken out is well worth doing, if a profit in excess of £200,000 is to be made. The goods do not appear to have been insured once they left the United Kingdom nor does the appropriate documentation appear to have been provided.

87. HMRC made the repayment of £888,873.38 in relation to the first transactions. They have indicated that they had not carried out the extended verification, which they have done in relation to the appeal deals. Mr Johal has argued that if Commodities due diligence was robust enough for that repayment, why was it not acceptable in relation to the appeal deals, particularly as Mr Ahmed had improved them? The answer is that the earlier due diligence should not have been acceptable as it was also window dressing.

88. There are similar extensive due diligence reports in relation to Imperia and Gredis. Again these do not bear close scrutiny. Alarm bells should have been ringing in relation to the financial status of both companies. In spite of that, Commodities was prepared not only to allow the companies extended credit without any real explanation, but also to continue trading with them. No reasonable businessman would have entered into further transactions when he had not been paid for the earlier ones. No proper inspection of the goods has been made. In fact the inspection reports are ludicrous. First, they all appear to have been sent to Commodities after the deals had been agreed; secondly, the unit weights and overall weights were not the same, with no explanation given. From the two examples at paragraph 59 above, it can be seen that the answer cannot be that the difference was in the weight of the packing as the variances are huge; thirdly, there is no evidence as to what the terms were for the inspection. The report merely states 'new'. It is unclear whether there was a box count and whether the boxes had been opened to make sure the goods were new. If the latter, it is difficult to see how the report could have been provided so quickly.

89. The real problems arise when the payments are considered. The goods were by and large paid for towards the end of November 2006.Commodities received no VAT payments from Imperia and Gredis and Mr Johal has confirmed that he had sufficient monies to run the business without relying on the VAT repayment. That is untrue. The total exposure to VAT across all the transactions in the appeal deals was £673,493.65. Mr Johal seemed to be unaware that he still owed P&M £445,580.54 for the deal dated 25 August 2006 and £240,632.15 for the deal on 29 September 2006 making a total of £686,212.69. It can be no coincidence that these figures are within £12,719.04 of each other. What is surprising is that Commodities was meant to have

made 3.5% on the sales to Imperia and Gredis which would have amounted to £138,726.17. On the figures Commodities would have been £107,327.65 short even allowing for the £18,679.48 that it is still owed by Imperia from the second deal. It is extraordinary that P&M appear to have made no attempt to recover the monies owing to them. No reasonable commercial business would have allowed that. Mr Johal has indicated that his shortfall will be resolved when HMRC release the repayment claims due to Asylum as Commodities will then be paid in the first deal. Commodities only made a profit of £6972 in that deal after paying for the goods and accounting for the VAT. We fail to see how that transaction could help.

90. Commodities appears to have believed that all the payments would be made in sterling. That is the information given to P&M in their various letters. No satisfactory explanation has been given by Mr Johal as to why the payments were in Euros. More particularly, the bulk of the payments have been made in November 2006 and there appears to be no indication as to the rate of exchange in relation to all the transactions at the invoice date and as against the apparent rate of 1.492 at the payment date. There must have been some difference which needed accounting for between the parties. The ICB account numbers were as follows:

GSR Euro	1055601073
Gredis	1055601080
P F Williams	1055601088
Commodities	1055601089
P & M	1055601096
JSR Euro	1055601098
Imperia	1055601105

It would not be possible for all the account numbers to be so close together unless they had all been applied for at the same time. As Mr Johal only dealt with P&M, Imperia and Gredis it is extraordinary that Commodities account falls in the middle of the run. The setting up of the accounts and consequently the payments must have been contrived.

91. No commercial business man would split up the payments an the same day as he would need to keep track of the payments and that would be best done by making a single payment representing the full amount due on the invoice. Mr Johal has clearly not kept track of the payments. Yet again Commodities due diligence in the form of the Deal Check Sheets is also incomplete with regard to the payments. It is no surprise that Mr Johal was unclear as to the outstanding balances. On the basis of the evidence we have decided that Commodities, through Mr Johal, were parties to the fraud and we dismiss the appeal.

92. We reserve our decision with regard to costs. We have found that Mr Johal, on behalf of Commodities, knew that the transactions were connected to fraud and as a result the costs of this appeal must be decided under the old Tribunal Rules as Commodities notice of appeal is dated 16 July 2007. On that basis those rules and not the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 apply. We direct that HMRC submit their application for costs, if they intend to do so, to the Tribunal and to Commodities within 56 days from the release of the decision. Commodities shall reply to HMRC and the Tribunal within 21 days from the receipt

of the application from the Appellant with HMRC's right to reply within 21days thereafter. The tribunal will decide the costs on the basis of written representations.

93. This document contains the 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: 16 September 2011