TC03388

Appeal number: MAN/2006/00894 & MAN/2007/01348

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

FIRST-TIER TRIBUNAL
TAX CHAMBER

ADVENT WORLDWIDE DISTRIBUTION LIMITED (IN ADMINISTRATION) **Appellant**

- and -

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

TRIBUNAL: JUDGE JENNIFER BLEWITT
MRS BEVERLEY TANNER

Sitting in public at Manchester on 28, 29, 30, 31 May, 3, 4, 5, 6, 7, 10 June and 30 July 2013

Mr James Pickup QC leading Mr Craig Ferguson of Counsel for the Appellant

Mr Jeremy Benson QC leading Mr Joshua Shields of Counsel for the Respondents

DECISION

Introduction

1. The Appellant appeals against decisions of HMRC dated 13 November 2006 and 18 June 2007 denying entitlement to the right to deduct input tax in respect of transactions in February, March and April 2006 which took place in the Appellant's VAT periods 02/06, 03/06 and 06/06. The total amount of tax under appeal is £22,073,042.37.

2. HMRC's decision dated 13 November 2006 relates to input tax in the sum of £10,862,437.37 claimed in respect of 82 deals which took place in February and March 2006. The decision dated 18 June 2007 relates to input tax in the sum of £11,210,605.00 claimed in respect of 95 deals which took place in April 2006. HMRC contend as set out in its Statement of Case, that the transactions were connected with the fraudulent evasion of VAT and that the Appellant knew or should have known of this fact. The Appellant's grounds of appeal as set out in its Notices of Appeal dated 11 December 2006 and 11 November 2007 are that the Appellant is a taxable person which traded honestly and with reasonable care at all material times. The input tax claims are legally payable to the Appellant and HMRC have wrongfully breached the Appellant's rights under the sixth directive and VAT Act 1994 by failing to make the repayments.

Missing Trader Intra-Community Fraud: Legislation and Case law

3. There was no dispute between the parties as to the legislation and case law applicable to this appeal, which we will summarise below.

4. The legislation governing the right to deduct is contained within Sections 24 – 26 of the Value Added Tax Act 1994 and the VAT Regulations 1995 (SI 1995/2518). If a taxable person has incurred input tax that is properly allowable, he is entitled to set it against his output tax liability and, if the input tax credit due to him exceeds that liability, he is entitled to a repayment.

5. That the onus and burden of proof in this type of case rests with HMRC was confirmed by Moses LJ in *Mobilx Ltd and The Commissioners for Her Majesty's Revenue and Customs, The Commissioners for Her Majesty's Revenue and Customs and Blue Sphere Global Ltd, Calltel Telecom Ltd & another and The Commissioners for Her Majesty's Revenue and Customs* [2010] EWCA Civ 517 ("*Mobilx*") (paragraph 81):

"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."

6. A description of Missing Trader Intra-Community Fraud, hereinafter referred to as "MTIC fraud", can be found in *HMRC and Livewire & HMRC and Olympia Technology Ltd* [2009] EWHC 15 (Ch) at paragraph 1:

"…In its simplest form it is known as an acquisition fraud. A trader imports goods from another Member State. No VAT is payable on the import. He then sells on those goods to a domestic buyer and charges VAT. He dishonestly fails to account for the VAT to HMRC and disappears. The importer is labelled a "missing trader" or "defaulter".

ii) The next level of sophistication involves both an import and an export. A trader once again imports goods from another Member State. No VAT is payable on the import. Typically the goods are high value low volume goods, such as computer chips or mobile phones. He then sells on those goods to a domestic buyer and charges VAT. He dishonestly fails to account for the VAT to HMRC and disappears. The domestic buyer sells on to an exporter at a price which includes VAT. The exporter exports the goods to another Member State. The export is zero-rated. So the exporter is, in theory, entitled to deduct the VAT that he paid from what would otherwise be his liability to account to HMRC for VAT on his turnover. If he has no output tax to offset against his entitlement to deduct, he is, in theory, entitled to a payment from HMRC. Thus HMRC directly parts with money. Sometimes the exported goods are re-imported and the process begins again. In this variant the fraud is known as a carousel fraud. There may be many intermediaries between the original importer and the ultimate exporter. These intermediaries are known as "buffers". The ultimate exporter is labelled a "broker". A chain of transactions in which one or more of the transactions is dishonest has conveniently been labelled a "dirty chain". Where HMRC investigate and find a dirty chain they refuse to repay the amount reclaimed by the ultimate exporter.

iii) In order to disguise the existence of a dirty chain, fraudsters have become more sophisticated. They have conducted what HMRC call "contra-trading". The trader who would have been the exporter or broker at the end of a dirty chain, with a claim to repayment of input tax, himself imports goods (which may be different kinds of goods) from another Member State. Because this is an import he acquires the goods without having to pay VAT. This is the contra-trade. He sells on the newly acquired goods, charging VAT but this output tax is offset against his input tax, resulting in no payment (or only a small payment) to HMRC. The buyer of the newly acquired goods exports them and reclaims his own input tax from HMRC. Again there may be intermediaries or buffers between the contra-trader and the ultimate exporter. The fraudsters' hope is that if HMRC investigate the chain of transactions culminating in the export, they will find that all VAT has been properly accounted for. This chain of transactions has conveniently been called the "clean chain". Thus the theory is that an investigation of the clean chain will not find out about the dirty chain, with the result that HMRC will pay the reclaim of VAT on the export of the goods which have progressed through the clean chain."

7. The present case involves "contra-trading" and we should note that throughout this decision the use of the terms "contra-trading", "clean chain" and "dirty chain" are used for the purposes of convenience and without any inference of pre-judging the issue.

8. In *Blue Sphere Global Ltd and The Commissioners for HM Revenue and Customs* [2009] EWHC 1150 (Ch) the Chancellor stated (at paragraphs 42 – 45):

"…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 transaction in which there is one common party whether or not 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.

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 any 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…to conceal the fraud committed by A in the dirty chain in its failure to account for the input tax received from B."

9. The cases of *Kittel v Belgium, Belgium v Recolta Recycling* [2008] STC 1537*("Kittel")* and *Mobilx Ltd (in administration) v HMRC* [2009] STC 1107 made clear that there is no discretion on the part of the Authorities to withhold any tax repayment where the objective criteria for compliance with the VAT regime are met. At paragraph 61 the Court stated:

"*Where it is ascertained, having regard to objective factors, that the supply is to a taxable person who knew or should have known that, by his purchase, he was participating in a transaction connected with fraudulent evasion of VAT, it is for the national court to refuse that taxable person entitlement to the right to deduct."*

10. The test was further clarified by Moses LJ in *Mobilx & Others v The Commissioners for HM Revenue and Customs* [2010] EWCA Civ 517 at paragraph 24:

"The scope of VAT is identified in Art. 2 of the Sixth Directive. It applies, in addition to importation, to the supply of goods or services effected for consideration within the territory of the country by a taxable person acting as such. A taxable person is defined in Art. 4.1 as a person who carries out any of the economic activities specified

in Art. 4.2. Art. 5 defines the supply of goods and Art. 6 the supply of services. The scope of VAT, the transactions to which it applies and the persons liable to the tax are all defined according to objective criteria of uniform application. The application of those objective criteria are essential to achieve:-

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

And at paragraph 30:

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

11. At paragraph 72 Moses LJ identified a number of important questions which may be relevant in assessing the issue of knowledge:

"(1) Why was…a relatively small company with comparatively little history of dealing in mobile phones, approached with offers to buy and sell very substantial quantities of such phones?

(2) How likely in ordinary commercial circumstances would it be for a company in [the Appellant's] position to be requested to supply large quantities of particular types of mobile phone and to be able to find without difficulty a supplier able to provide exactly that type and quantity of phone?

(3) Was [the supplier] already making supplies direct to other EC countries? If so, he could have asked why [the supplier] was not making supplies direct, rather than selling to UK traders who in turn would sell to such other countries.

(4) Why are various people encouraging [the Appellant] to become involved in these transactions? What benefit might they be deriving by persuading [the Appellant] to do so? Why should they be inviting [the Appellant] to join in when they could do so instead and take the profit for themselves?"

12. Moses LJ went on to state at paragraphs 79 and 80:

"…the evidence clearly established that Mobilx knew that the CPU business in which it was engaged was rife with MTIC fraud…Accordingly, this is a case in which Mobilx knew that those transactions which could be traced by HMRC had led back to fraud in the past in a trade where fraud was rife. It chose not to change the manner in which it conducted its trade but merely continued to trade in the same pattern as before.

In my judgment, on the basis of those findings the true and only reasonable conclusion, is that Mobilx ought to have known that the only realistic possibility, as it continued to trade in that manner, was that its purchases would be connected with fraudulent evasion of VAT and not merely that all its transactions were more likely than not to be connected with fraud."

13. We adopted the approach advocated by Christopher Clarke J in *Red 12 Trading Ltd v HMRC* [2009] EWHC 2563 (CH) that the purpose of having regard to the attendant circumstances and context of a transaction was in order to understand the true nature of the transaction, not to alter it (at paragraphs 109 – 111):

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

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

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

14. We followed the dicta of Briggs J in *Megtian Ltd v HMRC* [2010] STC 840 *("Megtian")* that there is no *"rigid prescription"* as to what HMRC must prove and we note the guidance of Moses LJ in *Mobilx* that the test should not be *"over-refined"*:

"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…such circumstantial evidence…will often indicate that a trader has chosen to ignore the obvious explanation as to why he was presented with the opportunity to reap a large and predictable award over a short space of time." (paragraphs 75 and 84).

A Summary of the Parties and Evidence

15. We heard evidence from the following witnesses:

- Mr Neil Brownsword, an HMRC officer who made the decisions to deny the Appellant's repayment claims;
- Mr Allistair Strachan, an HMRC Officer who provided evidence relating to Mitek Computer Components;
- Mr David Kenneth Leach, an HMRC Operational Accountant;
- Mr Terence Mendes, an HMRC Officer who provided evidence relating to FCIB;
- Mr Norman Morrison, an HMRC Officer who provided evidence in respect of LCD Limited;
- Mr Julian Cook, an HMRC Officer who provided evidence relating to Dastech.com;
- Ms Renate Allen, an HMRC Officer who provided evidence relating to associated companies Advent Worldwide Distribution (UK) Ltd and R & L Products Ltd;
- Ms Lesley Camm, an HMRC Officer who provided evidence relating to the Appellant;
- Mr John Fletcher, Director of KPMG who provided a report relating to the grey market;
- Mr Patrick Hammond, Director of the Appellant;
- Mr David Prince, Director of the Appellant;
- Mr Nigel Attenborough, who provided a report addressing the grey market;
- Mr Lee Carvell, Director of the Appellant.

16. The remainder of the evidence was agreed and we were provided with a large number of lever arch files containing the witness statements and exhibits. We should note that the Appellant raised an objection to the second witness statement of Mr Rod Stone which related, in the main, to information pertaining to the Appellant's supplier KTS. After hearing oral submissions from the parties we excluded the statement save for two paragraphs (1 and 6 which contained information already in evidence) on the basis that the information either related to activities which post-dated the period with

which we are concerned or that the evidence did not assist us in determining the issue of knowledge. We should also make clear that we found Mr Stone's first statement too generic to assist us in determining the principal issue in this case.

Issues

17. The parties agreed that the issues for the Tribunal to consider are:

(a) Is there a tax loss;

(b) If so, does that tax loss result from fraudulent evasion;

(c) If there is fraudulent evasion, were the Appellant's transactions connected with that fraud;

(d) If they were so connected, did the Appellant know or should the Appellant have known that its transactions were connected with the fraud.

18. It was accepted on behalf of the Appellant by letter dated 22 February 2010 that the following issues were not disputed:

(a) That there is a tax loss;

(b) That the tax loss results from fraudulent evasion; and

(c) That the Appellant's transactions were connected with the fraud.

19. In those circumstances the only issue for the Tribunal to determine is whether the Appellant knew or should have known that its transactions were connected with fraud.

20. The primary case of HMRC is that the Appellant, through its officers and employees, knew that its transactions in the periods under appeal were connected with fraud. In the alternative it was submitted by HMRC that by reason of the information made available to the Appellant, whether or not such information was obtained, the Appellant should have known that its transactions were connected with fraud.

Background Facts

21. The Appellant is a limited company which carries on trade as a supplier of various goods including mobile phones. Mr Hammond had previously traded in partnership with his cousin Ms Carol Hammond as Advent, which was registered for VAT with effect from 1 October 2000. The main business activity described on the VAT1 was "advertising consultants."

22. HMRC Officer Strachan visited the partnership on 5 September 2002. At the meeting Mr Hammond told Mr Strachan that the partnership had been offered CPUs to sell and that he had found an outlet through his friend and business associate Mr Ian Tuppen. Mr Hammond stated that he purchased from 3 suppliers, sold on a back-to-back basis to KTS and that Mr Tuppen would either pay the supplier directly or Mr Hammond.

23. On 17 December 2002 Mr Strachan made another visit at which he noted that the business had not conducted any deals with KTS since July 2002. At the meeting Mr Hammond confirmed that the partnership mainly acted as a "broker with deals normally financed by Kingswood."

24. The Appellant took over the partnership which was de-registered for the purposes of VAT from 1 August 2003.

25. The Appellant was incorporated on 28 April 2003 in the name of First Midlands Limited. Its name was changed to Advent Worldwide Distribution on 20 May 2003 and it was registered for VAT with effect from 1 June 2003. The declared main business activity was "general trading of stock including import and export." The Appellant made monthly returns until required to render a quarterly return for the period commencing April 2006. From the Appellant's first trading period of 03/04 it conducted wholesale deals in computer equipment including hardware, software and accessories, mobile phones and electronic goods.

26. During period 02/06 Mr Patrick Hammond was the director of the Appellant. He resigned on 1 March 2006 and was appointed as Secretary on 24 May 2007. Mr Lee Carvell was appointed as Director on 1 March 2006 until his resignation on 21 November 2006. From April 2004 Mr David Prince acted as manager of the Appellant and was appointed as Director on 21 November 2006. Mr Prince had been disqualified from acting as a director for 7 years in 1999. Ms Sarah Walton was appointed as Secretary on 16 June 2004 until her resignation on 24 May 2007.

27. The shareholders of the Appellant throughout the relevant period were as follows:

- Mr Patrick Hammond (75%)
- Ms Catherine Hammond (25%).

28. From 28 April 2007 Mr Hammond and Mr Prince each held a 50% shareholding.

29. The turnover of the Appellant is set out below:

VAT Period	Net Tax repayment /payment	Net Outputs	Net Inputs	EC Supplies
10/03	£0.00	£0.00	£0.00	£0.00
11/03	£0.00	£0.00	£0.00	£0.00
12/03	£2,344.30	£0.00	£13,396	£0.00
01/04	£300.63	£0.00	£1,718	£0.00

02/04	£0.00	£0.00	£0.00	£0.00
03/04	£155,172.90	£919,260	£887,103	£0.00
04/04	£80,854.20	£480,600	£462,024	£0.00
05/04	£101,371.38	£600,750	£579,343	£0.00
06/04	£531.20	£0.00	£3,035	£0.00
07/04	£220,191.65	£1,301,625	£1,258,238	£0.00
08/04	£0.00	£0.00	£0.00	£0.00
09/04	£457,800	£2,720,000	£2,616,000	£0.00
10/04	£1,970.10	£0.00	£11,258	£0.00
11/04	£0.00	£0.00	£0.00	£0.00
12/04	£0.00	£0.00	£0.00	£0.00
01/05	£416,509.42	£2,559,479	£2,419,610	£2,520,000
02/05	£421,178.48	£2,528,166	£2,408,900	£2,526,000
03/05	£790,500.66	£4,720,000	£4,530,967	£4,720,000
04/05	£588,071.98	£351,000	£3,360,411	£2,632,500
05/05	£1,492,612.56	£9,093,258	£8,563,526	£5,854,000
06/05	£1,111,002.84	£6,681,590	£6,401,297	£1,040,250
07/05	£2,502,961.05	£14,944,092	£14,310,292	£9,298,700
08/05	£3,922,832.37	£23,182,974	£22,463,222	£16,336,974
09/05	£2,177,941.54	£17,484,769	£16,897,614	£13,084,000
10/05	£5,292,669.62	£31,302,922	£30,248,100	£15,975,400
11/05	£5,739,689.60	£34,166,893	£32,808,358	£24,174,687
12/05	£2,087,825.62	£12,413,579	£11,936,259	£12,408,300
01/06	£4,770,334.60	£27,966,733	£27,261,016	£27,966,733
02/06	£7,035,403.87	£41,600,837	£40,202,959	£41,600,837

03/06	£3,824,586.98	£22,696,818	£21,882,100	£22,671,250
06/06	£11,271,345.84	£67,322,088	£65,049,205	£66,923,525
09/06	£136,717.03 payment	£696,744	£84,246	£0.00
12/06	£0.00	£0.00	£0.00	£0.00
03/07	£796.45 payment	£35,000	£31,957	£0.00
06/07	£756.61 payment	£51,875	£47,821	£0.00
09/07	£0.00	£0.00	£0.00	£0.00
12/07	£3,500 payment	£75,000	£55,000	£0.00

30. On 3 December 2003 Mr Strachan and a colleague from HMRC visited the Appellant. During the meeting Mr Hammond explained the set-up of the company and stated that there were no plans to use the VAT registration however the company may become involved in the import and export of various commodities. He was unsure whether the VAT returns would be repayment or payment returns and explained that other sources of income came from property in the UK and abroad. Mr Hammond expected trading to start between December 2003 and March 2004. On 15 March 2004 the Tax Operations Manager at Redhill wrote to the Appellant informing it that MTIC fraud constitutes one of the most costly forms of VAT fraud within the EU and listing the commodities involved including computer equipment and mobile phones.

31. On 23 April 2004 Mr Strachan visited the Appellant's PPOB to carry out VAT assurance checks relating to the repayment claim for 03/04. At the visit Mr Strachan spoke to Mr Prince, who he understood to be a manager in the company, about the Appellant's business affairs.

32. Mr Brownsword visited the Appellant on 7 September 2004 and spoke to Mr Prince who described himself as the "business manager" of the Appellant. The purpose of the visit was to examine the records for 07/04, which was a repayment claim in the sum of £220,191.65. The Appellant had purchased high value electronic semi-conductors from KTS which it had sold to United King Trading in Dubai. At the meeting Mr Brownsword discussed MTIC fraud and due diligence with Mr Prince. The repayment claim was subsequently made in the full amount claimed.

33. HMRC visited the Appellant on 18 January 2005 to examine records pertaining to the repayment claim for 12/04. The Return was subsequently reduced to nil on the

basis that the Appellant had intended to purchase 4gb Microdrives from Mr Tuppen to sell to United King Trading in Dubai however the deal had collapsed and HMRC officers were told that neither money nor goods had been exchanged.

34. Further visits were made by HMRC to the Appellant in respect of VAT periods 01/05, 02/05, 04/05, 05/05, 06/05, 08/05, 09/05 and 10/05 for which repayments were made by HMRC on a "without prejudice" basis. Mr Brownsword noted in his witness statement that Mr Prince was advised that a defaulting trader had been traced in the supply chain of a transaction undertaken by the Appellant in 02/05 and that Mr Yewdell was advised that the Appellant's deals in 07/04, 01/05 and 02/05 had also been traced to defaulting traders.

35. HMRC undertook verification of the Appellant's 11/05 repayment return in the sum of £5,739,689.60 relating to the sale of 10,000 units of XO Office User Licences to Marxman International FZE in the UAE which HMRC was subsequently informed had in fact been cancelled.

36. HMRC officer Ms Regan visited the Appellant on 16 January 2006 to examine records for period 12/05. 8 deals in that period in which the Appellant was supplied by KTS were traced back to defaulting traders. The Appellant's repayment claim was released on a "without prejudice" basis.

Transactions under Appeal

37. In period 02/06 there were 54 relevant deals in respect of which the Appellant's claim for credit to input tax in the sum of £7,035,403.87 was disallowed. The deals took place between 7 and 24 February 2006 and the supplier to the Appellant in each transaction was KTS. All 54 were traced back to a tax loss. The Appellant's EU customers were:

- SARL D.G.B. France (9 deals)
- SARL URTB France (8 deals)
- J Corp, APS, Denmark (13 deals)
- France Affaires, France (2 deals)
- LPDC, France (3 deals)
- D Jenson Trading AB, Sweden (12 deals)
- EC Trading APS, Denmark (7 deals).

38. In period 03/06 there were 28 relevant deals in respect of which the Appellant's claim to input tax in the sum of £3,824,586 was denied. The deals took place between 5 and 10 March 2006 and the supplier in each deal was KTS. All deals were traced back to a defaulting or missing trader. The EU customers to whom the Appellant sold were:

- J Corp APS, Denmark (10 deals)
- EC Trading APS, Denmark (10 deals)
- All Com Trading APS, Denmark (8 deals).

39. In period 06/06 there were 95 relevant deals in respect of which the Appellant's claim to input tax in the sum of £11,210,605 was denied. The deals took place between 19 and 27 April 2006 and the supplier to the Appellant in each deal was KTS. All 95 were traced back to a tax loss. The Appellant's EU customers were:

- 2 Trade, Belgium (19 deals)
- J Corp, APS, Denmark (11 deals)
- France Affaires, France (9 deals)
- LPDC, France (8 deals)
- D Jenson Trading AB, Sweden (23 deals)
- EC Trading APS, Denmark (25 deals).

Associated Companies

40. The officers of the Appellant have at various times been associated with the following companies:

- LCD Limited ("LCD");
- Advent Worldwide Distribution (UK) Ltd ("AWDUK");
- Rich and Lucky Limited, now R & L Products Ltd (R&L").

LCD

41. HMRC officer Mr Morrison provided a witness statement detailing his involvement with LCD, which was situated in the Highlands of Scotland.

42. The VAT 1 dated 27 June 2005 was signed by the director Miss Carol Ann Hammond and showed the place of business as Cammhor Cottage, Flichity Farr, Inverness. The business activities were described as "exporting" and the company expected to receive regular VAT repayments. It was expected that the VAT threshold would be exceeded within the following 30 days and the taxable supplies over the following 12 months were estimated as £10,000,000.

43. The VAT Registration Unit ("VRU") issued a questionnaire to the company given the very high anticipated turnover and the fact that no details were provided regarding its business activities. Miss Hammond returned the questionnaire on 14 July

2005, indicating that the company intended to supply a range of computer peripherals into Europe and Dubai. A letter from AWD Ltd was also enclosed which quoted prices for wholesale supplies of goods by AWD Ltd to LCD.

44. On 20 July 2005 the VRU issued another questionnaire, which was returned by Miss Hammond on 29 July 2005. It showed that LCD dealt in computer software and documents were enclosed in support of the application to register for VAT. LCD was registered for VAT on or about 4 August 2005 with an effective registration date of 1 July 2005.

45. On 25 August 2005 Miss Hammond contacted the National Enquiry Line to verify the VAT registration numbers of two companies, one of which was Raptor Commerce Ltd which had acted as a supplier to Kingswood Trading Services Ltd (KTS) in from 2004 to 2006.

46. On 1 and 2 September 2005 Miss Hammond contacted the National Enquiry Line to verify the VAT registration number of AWDUK.

47. On 7 September 2005 the VRU received a request from Miss Hammond to make monthly VAT returns. As a result of the request Mr Morrison was allocated the casework for LCD which led to a visit to the company on 16 September 2005. The address was found to be up a rough track off a minor road in the hills to the south of Inverness. No one was present at the time of the visit and consequently a letter was left requesting the director to make contact within 7 days. On 23 September 2005 Miss Hammond contacted Mr Morrison and a further visit was arranged for 27 September 2005.

48. During the visit Miss Hammond confirmed that LCD had carried out a transaction on 23 September 2005; this was the first taxable supply undertaken, contrary to the information provided on the VAT1 which suggested that LCD had already made taxable supplies on 1 July 2005. This made the application for registration compulsory rather than voluntary. Miss Hammond explained that the supplier's director was her cousin who had set the deal up to help pay Miss Hammond back for money owed (£150,000) to her for a property deal which had taken place some years earlier. Miss Hammond told Mr Morrison that her cousin, Patrick Hammond, would give her credit for a time until her customer paid her and he had also provided funds for her bank accounts. She stated that there was £100,000 in the FCIB account and £20,000 in the Bank of Scotland account. Miss Hammond went on to state that she was not sure if she would continue to trade once the money owed to her by her cousin was repaid through the profits made by LCD.

49. Miss Hammond confirmed that LCD had two bank accounts including one with the FCIB. She stated that she had no business plan but had taken advice from her cousin and his manager Mr Prince. She stated that the deal undertaken involved a despatch of 3600 Nokia 6680s to a customer in the EU; the Appellant had supplied the phones and provided LCD with its customer. The purchase and sales invoices and purchase orders produced by Miss Hammond showed the customer as Roma and the Appellant as supplier. Miss Hammond also produced documents showing the checks

carried out on the companies. She stated that no payments had, at that time, been made or received. Mr Prince had arranged the supply and she had negotiated the price with the customer, although Mr Prince had also spoken to them. Miss Hammond explained that the Appellant would continue to provide customer contacts although she may look for other customers and suppliers in future on her own.

50. Miss Hammond confirmed that she had a copy of Public Notice 726 and Mr Morrison issued her with the Security Notice and Statement of Practice relating to invalid invoices. She stated that she was aware of due diligence and had employed and ex-Customs officer, Mr Richard Yewdell to carry out line checks for LCD.

51. On 19 December 2005 Miss Hammond contacted Mr Morrison to inform him that she had completed a further three deals on 9 December 2005. Subsequently a repayment claim was received for the sum of £208,794.60, as a result of which Mr Morrison visited LCD again on 17 January 2006. The supplier in the deals had been KTS and Mr Morrison established that the chains of supply could be traced back to defaulting traders. The chain of supply traced for the period 12/05 tallied with that provided by Mr Yewdell of Tax and Legal Services Ltd who had provided HMRC with his own line check information.

52. At the visit on 17 January 2006 Miss Hammond informed Mr Morrison that she had engaged Halliwells to carry out due diligence checks and that Mr Yewdell continued to check the lines of supply.

53. On 3 March 2006 Miss Hammond contacted Mr Morrison to inform him that she had carried out deals in February 2006 and changed her quarterly stagger to tie in with her financial year end, the effect of which was to shorten the VAT period to two months. The VAT reclaim received by HMRC on 6 March 2006 was for the sum of £2,002,821.60.

54. On 9 March 2006 Mr Yewdell wrote to HMRC on behalf of LCD requesting monthly VAT returns. In his letter, Mr Yewdell stated that a pattern of repayment claims had been made by the company and satisfactorily verified. Mr Morrison noted that this was not correct as the substantial claim for 02/06 had only just been received by HMRC.

55. Mr Morrison traced the chains of supply for the 02/06 deals back to one defaulting trader. The chain traced was confirmed by Mr Yewdell who provided HMRC with an incomplete line check.

56. Mr Morrison also noticed that the company's bank records showed a loan of £1,500,000 from a company called Info Tech, however the documents relating to the loan showed a different name of Future Connection FZCO ("Future Connection") in Dubai.

57. Mr Morrison analysed FCIB data from which he established that although Future Connection is based in Dubai, its director, beneficiary and signatory Mr Afzal Saeed lives and operates from an address in Glasgow. On 16 February 2006 £1,500,000 was transferred to LCD and a further £1,500,000 was transferred to the

Appellant. On 15 March 2006 another £1,500,000 was transferred to the Appellant from Future Connection.

58. At a visit to LCD on 4 April 2006 to verify the 02/06 return, it was established that all purchases had been made from KTS. Miss Hammond informed Mr Morrison that her cousin had asked if she wished to obtain a loan to facilitate trading and she believed that the same company had provided a loan to the Appellant and others at the same time as LCD. A loan facility agreement between Future Connections and LCD was provided by Miss Hammond, who could not explain why the loan agreement was with Future Connection but the loan had been paid by Info Tech but stated that Mr Hammond would be able to explain. Later the same day Mr Hammond provided an email in which he explained that the two companies, InfoTech and Future Connection, were connected and that he was satisfied that this was the case.

59. Miss Hammond told Mr Morrison that LCD was, in effect, a sister company of the Appellant and that due diligence checks, such as visits to customers, were carried out by someone from the Appellant. Miss Hammond confirmed that KTS had been visited prior to the transactions taking place and that the Appellant had provided the contact to LCD. LCD's list of customers came from the Appellant and due diligence checks carried out were from a list provided by Halliwells although Miss Hammond was not prepared to provide the list of checks as her cousin had paid a significant amount of money for the service and did not want the list given out. <Miss Hammond did, however, provide a summary of the checks completed. Visits were made by members of the Appellant and credit checks were carried out although not the full Dunne and Bradstreet type as the checks carried out were considered sufficient. Miss Hammond also made checks with referees provided such as France Affaires and Future Connection. LCD received payment before it paid its supplier KTS. Although Mr Hammond had now settled the debt he owed to Miss Hammond, she stated that the Appellant continued to provide her with deals as Mr Hammond was her cousin and he loved her. She stated that Mr Hammond was not a director of LCD but was an investor who would profit share with her. She confirmed that Sarah Walton, LCD's company secretary, also worked for the Appellant.

60. LCD's repayment claims were repaid on a without prejudice basis. Verification of the three periods 09/05, 12/05 and 02/06 established that all deals led back to defaulting traders: Crystalmews t/a Replique 8 in 09/05, Ideas 2 Go in 12/05 and the Ultimate Security Agency in 02/06.

61. LCD and Mr Yewdell were notified in writing that the deals undertaken in 09/05, 12/05 and 02/06 had been traced back to defaulting traders on 24 April 2006, 10 May 2006, 23 May 2006, 6 June 2006 and 23 August 2006. Mr Yewdell acknowledged the letters and confirmed to HMRC that LCD would not deal with the supplier again on 25 April 2006, 15 May 2006 and 31 May 2006. Miss Hammond also acknowledged the letters from HMRC on 29 August 2006.

62. LCD did not undertake any further transactions and Miss Hammond subsequently resigned as director on 1 October 2007. On 6 November 2006 Mr

Hammond submitted an application requesting de-registration of LCD from VAT. The company was de-registered from 1 September 2007.

63. Mr Morrison concluded in his witness statement that the associations between the Appellant and LCD were artificially contrived to assist VAT fraud and that LCD was little more than an extension of the Appellant with Miss Hammond being coached in her role as director by Mr Hammond and Mr Prince from the Appellant.

64. In oral evidence Mr Morrison confirmed that Ms Hammond had contacted the National Enquiry Line in August 2005 to verify the VAT registration numbers of a French company, an Italian company and Advent. She had also informed Mr Morrison at his visit on 27 September 2005 that she did not have a business plan, she had been introduced to the wholesale phone market by Mr Hammond and that she was wholly reliant her cousin and Mr Prince for advice.

65. On 17 January 2006 Ms Hammond notified Mr Morrison that she had engaged Halliwells to conduct due diligence checks and that Mr Yewdell continued to carry out line checks for her. She had been told by Mr Yewdell that she was "7 away from LCD" which Mr Morrison had understood to mean that Mr Yewdell had managed to trace 7 companies in the chain of supply. Ms Hammond made mention of a previous deal being traced to a defaulter but she was not aware of who that trader was as Mr Yewdell had to respect confidentiality agreements.

66. Mr Morrison confirmed in oral evidence that although all 12 transactions carried out by LCD in 02/06 were traced to tax losses, the repayment claim was made without prejudice. Thereafter the company stopped trading in mobile phones.

AWDUK

67. AWDUK was registered for VAT with effect from 1 June 2005. The main business activity described on the VAT1 was "Import/Export" and following further clarification by HMRC the company stated it would be "selling approximately £20m per year of computer software."

68. On 31 October 2005 HMRC Officer Ms Regan visited AWDUK to examine the records for 09/05, which was a repayment claim of £1,722,787.50. Ms Regan's point of contact was Mr Prince. AWDUK had purchased wholesale electronic software from KTS, which it had sold to Euro Gulf Trading in Dubai at a value of £10,218,000. The repayment claim was subsequently made on a without prejudice basis.

69. Ms Renate Allen provided a witness statement detailing her involvement in the verification of R & L's 06/06 repayment return, together with that of AWDUK for the same period.

70. The accounting records for both AWDUK and R & L were collected by Ms Allen on 18 August 2006. The value of the repayment return submitted by AWDUL was £141,041.95 and did not include any transactions for the supply of mobile phones or computer chips. AWDUK had received 3 direct purchase invoices from the following companies:

- The Appellant for the "recharge of management fees and expenses" dated 30 June 2006 in the sum of £200,000;

- Columbus Systems Ltd dated 5 June 2006 for "Licensing fees" in the sum of £605,279;

- Columbus Investments Ltd dated 1 June 2006 for "Freight and Marine insurance for March 2006 agreed at 0.20% of sales" in the sum of £36,199.

71. The "licensing fees" described on the invoice from Columbus Systems Ltd related to the supply of Mr Hammond's "unique skills" to "supply and satisfy HMRC with their ever increasing complicated due diligence requirements, and find trusted and highly credible third parties to deal with" as set out in a letter from Mr Hammond dated 6 March 2006.

72. Mr Prince advised HMRC by letter dated 13 February 2007 that the agreement between Columbus Systems Ltd and the ADWUK was not fully met and therefore a credit note was issued by Columbus Systems Ltd for 75% of the invoice value. The credit note in the sum of £453,960 was dated 30 November 2006 and was omitted from ADWUK's 12/06 return. Mr Prince advised that it would be included in the 03/07 return however a nil return was submitted and consequently an assessment was raised. Ms Allen was informed by the HMRC officer involved in Columbus Systems Ltd that the credit note was not repaid to ADWUK as the full value of the original sales invoice was required by Columbus Systems Ltd as a working capital loan.

73. ADWUK paid the invoice of Columbus Investments Ltd from its Bank of Cyprus UK account on 8 June 2006. The agreement between Columbus Investments Ltd and ADWUK dated 20 March 2006 for the supply of insurance was provided by Mr Hammond on or about 17 October 2006.

R & L

74. R & L was registered for VAT with effect from 16 March 2004. The business activities were initially described as the chartering of a helicopter to corporate clients however this subsequently changed to the wholesale of mobile phones. On 23 September 2005 R & L notified HMRC of a change of business activities to that of "the sale and purchase of computer hardware and software and mobile telephones."

75. Ms Allen's witness statement provided information relating to the VAT repayment return in the sum of £94,241.71 submitted by R & L for the period 06/06 and which was paid following verification on a without prejudice basis. The return did not include any transactions for the supply of mobile phones or computer chips. The company had received 4 direct purchase invoices from the following companies:

- The Appellant for "recharge of expenses and management fees" in the sum of £200,000 dated 30 June 2006;

- Columbus Systems Ltd dated 1 June 2006 in the sum of £322,962 for "Licensing fees";

- Columbus Investments Ltd dated 1 June 2006 in the sum of £19,410 for "Freight and Marine insurance for March 2006 agreed at 0.20% of sales";

- Columbus Management Ltd dated 5 June 2006 in the sum of £4,000 for "Management consultancy services."

76. The invoice for the supply of "licensing fees" was, as with ADWUK, subject to a credit note. The credit note in the sum of £242,220 dated 30 November 2006 was omitted from R & L's 12/06 return however that return was selected for verification and adjusted by HMRC which resulted in a payment due return.

77. Ms Allen was advised by the HMRC officer for Columbus Systems Ltd that the value of the credit note has not been repaid to R & L.

78. The invoice from Columbus Investments Ltd was paid from R & L's Co-Operative bank account on 8 June 2006. The agreement dated 20 March 2006 between Columbus Investments Ltd and R & L for the supply of insurance was provided by Mr Hammond on or about 17 October 2006.

79. Ms Allen noted in her witness statement that the letters issued by Columbus Systems Ltd and Columbus Investments Ltd were signed by Mr Hammond as the director. Companies House information confirmed that Mr Hammond was the director of both companies.

80. In oral evidence Mr Brownsword agreed that R&L had carried out the same type of trading activity in the same manner as the Appellant and that HMRC had paid R&L's repayment claim in 03/06 on a without prejudice basis. He explained that the level of the Appellant's repayment claim was much greater and that this factor, together with the history of the company formed part of HMRC's decision to carry out an extended verification. He stated "*the strategy at that time was to select certain traders for an extended verification process. The Appellant was one of them, and that selection process would have been based, I would imagine, on figures and historic information…it would be the values and history of the company…the case officers are not consulted as to which traders were selected at that time…*" (Transcript 30/5/13 page 41 – 43).

Was there a tax loss and if so, did the tax loss occur as a result of fraud?

81. In this appeal there are three relevant periods: 02/06, 03/06 and 06/06. Although there was no dispute as to the existence of a fraudulent tax loss connected to the Appellant's transactions, it may be helpful to the reader to set out a summary of the nature and extent of the fraud against which the Appellant's knowledge is considered.

<u>02/06</u>

82. In period 02/06 there were 54 deals which were traced back to defaulting traders. 12 traced back to Ideas 2 Go Limited, 9 traced back to Puwar UK Limited ("Puwar"), 32 traced back to Ultimate Security Agency Limited ("Ultimate") and 1 traced back to Zoom Products Limited ("Zoom").

(a) Ideas 2 Go

83. HMRC Officer Mr Andrew Nicholas Charles provided unchallenged evidence regarding the defaulting trader Ideas 2 Go, which was incorporated on 27 April 2005. The director and company secretary upon incorporation was Nigel Dennis Cranswick and Nicola Cranswick respectively. On 14 July 2005 Nicola Cranswick resigned as company secretary and was replaced the following day by Darren Smyth. On 1 August 2005 Mr Cranswick resigned as director and was replaced by Tom Murphy. On 3 January 2006 Mr Murphy resigned and was replaced by Brian Olive.

84. Mr Charles formed the impression that Ideas 2 Go made tactical changes to the company's appointed officials in an attempt to mask the company's true awareness of MTIC fraud.

85. Ideas 2 Go was registered for VAT with effect from 1 June 2005. The intended business activities were described by Mr Cranswick as "computer, office and IT supplies". From a standing start on 1 June 2005 Ideas 2 Go reached a turnover of £269,790,639 by 27 July 2005. As a result of a number of visits to and conversations with Mr Cranswick HMRC established that the main business activity was the buying and selling of mobile phones. The business operated by passing on third party payment instructions to their customers and receiving "commission" from its customer. Mr Charles noted that numerous officers explained to the company official on a number of occasions the dangers of operating such a payment system and the fact that it indicated VAT would go missing. The company was also informed that its suppliers were defaulters and hijacked VAT registrations as soon as practicable. Despite being directed to undertake due diligence and verify VAT registrations with Redhill, Ideas 2 Go continued to trade without doing so.

86. HMRC Officer Mr Terrell provided unchallenged evidence in respect of Mr Cranswick, Mr Murphy, Mr Smyth and Mr Olive who were subsequently disqualified from acting as directors for periods of 15 years (Mr Cranswick, Mr Murphy and Mr Smyth) and 12 years (Mr Olive). Mr Cranswick was convicted of Conspiracy to Cheat the Public Revenue in connection with VAT fraud carried out through Ideas 2 Go and received a sentence of imprisonment for a term of 10 years and 3 months on 11 November 2011. In respect of Mr Smyth the Court found that his conduct as director of Ideas 2 Go during the period 31 October 2005 to 5 December 2005 caused the company to trade in a manner which involved it in, and put HMRC at risk of being subject to, MTIC fraud.

87. Ideas 2 Go failed to submit returns covering the periods 11/05 and 02/06. The quarterly period 11/05 was assessed by HMRC in the sum of £72,801,263 on 13 February 2006 in respect of purchases from a company called Volitone Limited which did not have a valid VAT number and had issued invalid invoices.

88. The period 02/06, which covered 1 December 2005 to 28 February 2006 was centrally assessed by HMRC in the absence of a VAT return being submitted in the sum of £34,907,043.

89. The schedules of transactions undertaken by Ideas 2 Go examined by Mr Charles were incomplete however he concluded, having analysed the trading activities of the company over a period of time, that if the full documentation had been made available it would have shown that the chains of sales including those involving the Appellant could be traced back to a fraudulent tax loss and that Ideas 2 Go acted as a "first line buffer" within MTIC supply chains as Ideas 2 Go typically purchased goods from those who acted fraudulently by not declaring output tax. The transactions known to have been carried out by Ideas 2 Go involved purchases from the following traders which were all either defaulting traders, businesses whose identities appear to have been hijacked or are traders with a history of trading with defaulters or hijacks:

- Celltec Distribution Limited whose VAT registration was not valid as it was de-registered from 9 February 2005;
- P C Drive – In Limited which was de-registered prior to the transactions with Ideas 2 Go taking place;
- Microstart Computer Services whose VAT number was invalid;
- Volitone Limited which was never registered for VAT;
- Rosebeach Marketing whose VAT registration number was not valid;
- Blackheath Marketing whose VAT registration number was cancelled as HMRC could not make contact with the business at its principal place of business;
- Direct Accessories which was found to be a hijacked registration;
- Eutex which was found to be a hijacked registration;
- HJK Trading which had a history of trading directly with hijacked and suspect traders. HJK was compulsorily wound up by HMRC in February 2006 and failed to submit any VAT returns since registering for VAT on 4 July 2005. Further information provided by Baker Tilley, the insolvency practitioner acting in the insolvency of the company revealed that HJK had purchased goods from a further hijacked trader called Logiprime Limited;
- Global Logistics whose records indicate that sales to Ideas 2 Go came from Logiprime and HJK;
- Interix Limited which was not VAT registered but later obtained registration only to be de-registered as a result of purchasing from HJK and Global Logistics.

90. From the manner in which Ideas 2 Go carried on business Mr Charles concluded that it was strongly indicative of the fact that the company was knowingly involved in MTIC fraud. All of the transactions for which documentation is available lead back to fraudulent defaulters. The company also failed to submit returns and has been assessed in the total sum of £107,709,054.

(b) Puwar UK Limited

91. HMRC officer Katie Finn provided unchallenged evidence regarding the trading activities of Puwar which was registered for VAT with effect from 20 May 2002. The main business activity was stated on the VAT 1 as "import and export of goods."

92. Mr Vincent Quiqley was appointed as director on 7 December 2004 and resigned on 12 December 2005 although he continued to give HMRC the impression that he remained director past the date of his resignation.

93. On 28August 2002 a first VAT visit was carried out to the company's premises by HMRC officer Mummery; no one was present and a letter requesting contact with HMRC within 7 days was left at the premises. At a visit by HMRC to the company on 6 September 2002 it was established that the main business activity would be the buying and selling of garments and machinery. At that time the three purchases made by the company had all been from a missing trader, Ali & Co UK Ltd.

94. The first VAT period ending 31 August 2002 declared sales to the value of £221,250. The second VAT period ending 30 November 2002 declared sales to the value of £8,200. The company made no declarations of any sales in the remaining VAT periods 02/03 to 02/06.

95. On 2 May 2005 HMRC visited the company whereupon officers were informed that no trading had taken place and that the company was intending to source mobile phones in the UK and sell abroad.

96. On 27 January 2006 HMRC officer Jackson visited the company to collect the VAT return for period 02/06 in accordance with the Regulation 25 notice issued the day before. A repayment return of £239,091.38 was collected together with a full list of purchases and sales. On 10 February 2006 HMRC amended the VAT return resulting in an increase of the net tax due to £13,760,826.37. Records produced by Puwar on 27 January 2006 indicated that sales in the region of £21,000,000 had taken place up to 6 January 2006 contrary to Mr Quigley's assertion that no trading had taken place. The documents also showed that Puwar issued third party payments and was selling computer chips as well as mobile phones. Release notes from freight forwarders showed at least 100,000 additional mobile phones had been purchased from EU suppliers.

97. HMRC concluded that de-registration was appropriate and the company's VAT registration was cancelled with effect from 16 February 2006.

98. On 31 March 2006 HMRC assessed the company in the sum of £26,273,818.14. HMRC subsequently became aware of further transactions Puwar had undertaken which resulted in an assessment for £12,364,462 being raised on 25 August 2006.

99. Ms Finn raised an additional assessment on 19 September 2006 in the sum of £27,473,695 in respect of sales for which records had not been provided by Puwar.

100. On 12 September 2007 The Official Receivers Office notified HMRC that a winding up order had been made against Puwar on 5 September 2007 due to the level of VAT arrears owed to HMRC. As at 12 January 2009 the outstanding debt of Puwar was £75,996,480.19. Puwar did not appeal against the decision to de-register the company or the assessments raised. It was wound up owing HMRC in excess of £75,000,000. Ms Finn concluded that the loss was not caused by genuine business failure but by fraudulent activity on the basis that the only VAT return filed which indicated trading had grossly under-declared the extent of trading. Furthermore, Puwar failed to produce complete records to HMRC and as a result the true liability in relation to sales has not yet been fully quantified. The company made third party payments despite being warned by HMRC about the consequences of so doing and the director of the company cannot be found.

(c) Ultimate

101. HMRC Officer Mendes provided unchallenged evidence regarding the defaulting trader Ultimate, which was incorporated on 28 October 2003. On 16 July 2004 Ms Rachel Julie Billingham, the sole director as of 24 May 2004, applied for and was granted VAT registration. The business activity was stated as computer software sales.

102. The first VAT return to 10/04 showed no taxable supplies and was a nil return. The second return to 01/05 showed a repayment claim in the sum of £104,333.12. The third and fourth returns up to 07/05 showed that no taxable supplies had been carried out.

103. On 20 June 2005 Ms Billingham resigned as director and was replaced by Younes Elmellas. The fifth VAT return for the period 10/05 showed a repayment claim in the sum of £88,000.50. At a visit by HMRC officers to the premises on 1 December 2005 the records showed that the goods were purchased in the UK and exported to Dubai.

104. On 10 January 2006 Mr Elmellas resigned as director and Mr Hamovan Khan, who gave his name as Billy Khan on Companies House documents became the new director. On 21 February 2006 a visit to the premises was undertaken by HMRC officers. Mr Khan was unable top access the premises, which was his mother's house, and a discussion took place with HMRC officers in his car. HMRC issued a Regulation 25 notice requiring the company's VAT return for trade between 1 February and 20 February 2006. Mr Khan stated that the return would not be a large amount as he had been exporting goods purchased from Parkacre, which he had sold to Umbria in Italy. Mr Khan stated that he believed he had verified his supplier

Parkacre Contractors Ltd however this proved to be incorrect and the company was informed by hand-delivered letter dated 22 February 2006 that Parkacre had been de-registered from 30 January 2006. Enquiries at Companies House and HMRC's electronic folder indicated that Parkacre had been set up as a bogus company and no VAT returns had ever been rendered by the company.

105. On 23 February 2006 Mr Mendes wrote to Ultimate informing the company that he was not satisfied that an export of goods had taken place and that he believed that the dispatch had been included on the 02/06 return to negate the VAT due on acquisitions identified. This decision was based on information relating to the participants of the purported transaction; Parkacre Contractors Ltd and Maximillia Solutions Ltd, which appeared to have been set up as bogus companies by individuals not registered as officials of the company. A notice of de-registration was delivered to the company on 23 February 2006. Following examination of the company's trading pattern, HMRC de-registered the company as it was satisfied that Ultimate had been a witting participant in trade in which it had no intention to account for VAT on the sales invoices raised.

106. Assessments in the sum of £63,063,584.24 were raised by HMRC in respect of transactions identified. No contact was made with HMRC by company officials and the company was placed into voluntary liquidation on 11 July 2006. Mr Mendes' evidence confirms that the amount of £4,312,834.40 that related to VAT charged by Ultimate to its customer in identified deals connected to the Appellant's transactions was included within the assessment.

107. Mr Mendes concluded that the trading activities of Ultimate from 16 January 2006 to 23 February 2006 have the characteristics of a defaulting trader trading without any intention of accounting for VAT due on sales invoices. The company acted as a dispatcher of goods with an annual turnover of slightly over £1,000,000. Between 16 January and 23 February 2006 the company's turnover increased to £148,703,796. No further staff were employed and no evidence of supplies was ever produced to HMRC. The records provided to the Insolvency Practitioner were incomplete but included purchase invoices from Parkacre and Maximilla Solutions Ltd, both of which were de-registered traders. The purported sales were to an Italian company; the claims to input tax and purported zero rate sales resulted in a declaration on the return of a £357.24 payment to HMRC. No evidence of the purchases or sales were produced and Mr Mendes concluded that the purchases and supplies did not take place but were declared to negate the VAT due on the acquisitions identified by visits to freight forwarders, transaction chain checks and bank schedules produced by the Insolvency Practitioner. The company officials have not challenged this contention and Mr Mendes concluded that Ultimate produced a fraudulent final VAT return.

(d) Zoom

108. HMRC Officer Hirons provided unchallenged evidence in respect of fraudulent trader Zoom, which was incorporated on 10 January 2005.

109. The VAT 1 signed by the director, Ajmair Singh Helate stated the main business activity to be the wholesale of "aircraft products – night flying kit." Zoom was registered for VAT from 15 September 2005. At a meeting with HMRC on 3 November 2005 Mr Helate confirmed that the business had been set up to purchase and sell specialist aviation equipment and that he had no intention of trading in either mobile phones or computer chips.

110. At a meeting with HMRC on 13 March 2006 Mr Amarpit Singh Khera confirmed that he had purchased the company from Mr Helate on or about September/October 2005. This was confirmed by Mr Helate in a telephone conversation with HMRC on or about 2 February 2006. Mr Helate also stated that no MTIC trading had taken place whilst he was a director. Mr Khera had informed HMRC that as at the end of 2005 there had been no trading however HMRC obtained release documents which indicated that Zoom had begun trading in mobile phones.

111. On 2 February 2006 Mr Khera reiterated to HMRC that there had been no trading and that a nil return for the period 1 November 2005 to 31 January 2006 would be submitted.

112. On 20 February 2006 a visit by HMRC took place to the principal place of business which was a residential property. The occupant stated that Mr Khera was out of the country and a contact letter was left. A further visit took place on 28 February 2006 however no one was present and another contact letter was left.

113. A visit was arranged for 13 March 2006 and Mr Khera was requested to have the books, records and due diligence checks available for HMRC to inspect. At the meeting it was established that the principal place of business was the home address of Mr Khera who stated that he had taken his books and records to his accountants on 10 March 2006. It was stated that Zoom began trading on 24 January 2006 in mobile phones and CPUs. Mr Steven Singh, who identified himself as a sales employee, produced a laptop computer from which at least 218 transactions were identified in February 2006 up to 7 March 2006. Mr Singh stated that the estimated gross value of the transactions was £250,000,000. A Regulation 25 letter was issued to Mr Khera on 14 March 2006. The following day no company officer was present when HMRC officers called to collect the VAT return and an Abuse De-Registration letter was left at the premises.

114. 262 transactions were identified as having taken place, which would fall within the shortened VAT return period 1 February 2006 to 13 March 2006. Of those, 208 related to UK sales net £200,056,810.20 with VAT of £35,009,941.93 and 8 related to EU despatches in the sum of £192,844,364.44 made to an Italian company called Umbria Equitazione.

115. On 5 April 2006 Zoom rendered its outstanding VAT return, which showed a repayment claim of £3,360,141.17.

116. There has been no contact by Zoom with HMRC since 14 March 2006 and no documentary evidence was ever received by HMRC to support the declarations made in the VAT return.

117. On 7 June 2006 Zoom was notified by HMRC that it was being assessed in the sum of £74,596,848.21. The assessment was issued to the company on 8 August 2006 and remains unpaid.

118. Ms Hirons concluded that Zoom was fraudulent in its wholesale supplies and that it entered into such transactions intending to defraud the revenue by failing to properly declare and pay any VAT due to HMRC, failing to produce all the companies' books and records resulting in the final return not being verified and HMRC incurring a tax loss of £74,596,848.21. Zoom attempted to recover input tax on zero rated sales to Umbria Equiazione and in doing so attempted to negate the impact of the output tax due on its acquisition sales. Italian authorities have subsequently confirmed to HMRC that Umbria Equitazione was the victim of an attempted fraud and Ms Hirons concluded that the despatches said to have been made by Zoom to Umbria Equitazione were false and an assessment was raised in the sum of £35,713,395.91.

119. In June 2009 HMRC was notified by the Insolvency Service that a director's disqualification order had been made against Mr Khera on 29 April 2009 for a period of 15 years on the basis that *"during the period 20th February 2006 to 14th March 2006, Amarprit Singh Khera caused or allowed Zoom to undertake a method of trading which involved it in, and put HMRC at risk of being subject to…MTIC VAT fraud. If he did not so know, he was reckless or grossly negligent as to whether Zoom was concerned in such fraud."*

120. Zoom remains a missing trader which failed to account to HMRC for the VAT due on its trading.

03/06

121. In period 03/06 there were 28 deals which were traced back to defaulting traders. 4 traced back to CHP Distribution Limited ("CHP"), 22 traced back to Bargain Trade Centre Limited, 1 was traced back to Zoom and 1 was traced back to F Options Limited.

(a) CHP

122. HMRC Officers Griffiths and Phipps provided unchallenged evidence in respect of fraudulent trader CHP, which was incorporated on 9 July 2004. The director of the company was Ranjit Pradeep Singh Lawla and the company secretary was his brother, Saleem Singh. Both were appointed on 9 July 2004 and remained the only company officials during the relevant period. The recorded trade category at Companies House was "other computer related activities."

123. The VAT 1 received on 20 July 2004 declared the business activity as "computer hardware and software wholesaler."

124. At a visit to the premises on 12 August 2004 HMRC officer Furber noted that the company's main business activity was that of a computer retail store. CHP was registered for VAT with effect from 1 November 2004. It traded from a retail shop located in a suburban commercial area of Birmingham.

125. On 24 April 2006 HMRC notified CHP by letter that it was de-registered with effect from 24 April 2006, Mr Griffiths concluded that the reason for this action was to protect the public revenue from abuse of the VAT system. The company did not appeal the decision.

126. On 19 May 2006 HMRC uplifted the available records of the company from MGI Wenham Major, a firm of accountants acting on behalf of the company. Mr Griffiths noted that the turnover declared on the returns for periods 10/05 and 01/06 is substantially higher than the estimated turnover on the VAT1 and is inconsistent with the level of turnover expected to be achieved from the retail outlet.

127. CHP made payment of £5,000 in respect of the declared liability of £141,739.10 for period 10/05. It rendered a repayment claim in the sum of £108,576.95 for period 01/06. The company failed to produce all records to substantiate the claim which was subsequently cancelled by HMRC on 13 April 2007; a decision against which the company has not appealed.

128. CHP failed to render the return for its final VAT period and has not made any payment in respect of the liability arising in respect of that period.

129. CHP was identified as the acquirer of goods from EU member states from the records uplifted on 19 May 2006 which contained 232 deal packs. A further 52 sales by the company were identified by Mr Griffiths from information from the company's customers obtained by HMRC. The supplier to CHP in the 52 deals could not be ascertained and Mr Griffiths concluded on the balance of probabilities that the goods were acquired from other EU member states on the basis of the similarity with the 232 deals.

130. The value of sales represented by the undeclared output tax assessed in the sum of £42,474,278 is £242,709,362. The sales were made in the six week period between 22 February 2006 and 5 April 2006. The assessment has not been paid either in part or in full by the company and HMRC has received no correspondence regarding the outstanding liability. A letter to the company from HMRC dated 10 September 2007 was returned by Royal Mail as "addressee has gone away."

131. Mr Griffiths concluded that the significant increase in turnover, change in trading activity to wholesale of mobile phones combined with the company's failure to render or pay the final VAT return and associated liability indicated that the company had acted dishonestly. In addition CHP failed to pay the full liability for period 10/05 or the assessment raised against it. The company has disappeared from its principal place of business and attempts to locate it have been unsuccessful. Mr Griffiths concluded that CHP acted fraudulently and entered into wholesale mobile

phone transactions with the intention to defraud the public revenue by collecting VAT due which it failed to declare or pay.

(b) Bargain Trade Centre Limited

132. HMRC officer McDonald provided unchallenged evidence regarding the trading activities of defaulting trader Bargain Trade Centre Limited which was incorporated on 20 January 2004 and registered for VAT with effect from 1 November 2004. The intended business activity declared on the VAT1, signed by director Andrew Day, was the buying and selling of liquidated and damaged goods. Mr Day resigned on 12 January 2006. The company's two additional directors were Mr Shaun John McMain who was appointed on 23 January 2004 and resigned on 1 January 2005 and Mr Anthony Trinder who was appointed on 22 November 2004 and resigned on 1 January 2005.

133. The VAT return for period 03/05 was a repayment claim in the sum of £22,105.94 which related to the purchase of stock for resale valued at £132,119. Period 06/05 was a repayment return in the sum of £2,309.11 with no declared sales, period 09/05 was a payment return of £955.07 with sales to the value of £11,513 and the 12/05 return was a repayment claim of £225.36 with no declared sales.

134. At a visit to the business on 19 January 2005 Mr Day informed HMRC that he intended to buy liquidated, bankrupt and fire damaged stock, such as screws, locks and padlocks, to re-sell at a profit.

135. HMRC visited the principal place of business and trading premises on 27 February 2006 however the company could not be located within the building. On 15 March 2006, due to no contact having been made by the trader, arrangements were made by HMRC to de-register the company.

136. 15 assessments were raised against the company. Sales made by it to Hillgrove Trading Limited were traced through a transaction chain which included the Appellant.

137. On 21 March 2007 the Debt Management section of HMRC wrote to Bargain Trade Centre Limited advising the company of a debt totalling £4,700,995 for which payment was required within 7 days.

138. Further losses were identified for the period 12/05 for which the company failed to render a return. The transactions were traced through chains which included the Appellant and for which the tax loss has not been assessed.

139. On 3 April 2007 a Civil Recovery Proceedings Order was issued for £4,700,995. On 3 July 2007 HMRC was informed by the Insolvency Service that a Winding Up order was made against Bargain Trade Centre Limited on 27 June 2007. The current departmental claim against the company is £6,771,355 and as at 20 May 2008 Companies House shows the business to be in liquidation.

140. Ms McDonald concluded, on the basis of the manner in which the company conducted its business and disappeared owing substantial sums, that the default was fraudulent.

(c) Zoom

141. The unchallenged evidence is set out at paragraphs 108 to 120 above.

(d) F Options Limited

142. HMRC Officer Payne provided an unchallenged witness statement detailing the trading activities of defaulter F Options Limited which was the acquirer in relation to one deal connected to the Appellant's transactions upon which VAT was not declared.

143. F Options was incorporated on 19 August 2002 and Mr John Saunders was the director. Mr Payne noted that the original officer with responsibility for the company had made a cold call visit to the principal place of business on 18 August 2003 as the previous company based at the address, Rydenmead, of which Mr Saunders was also the director, had dealt in MTIC goods from missing traders and then disappeared.

144. In July 2003 Mr Saunders requested to move to monthly VAT returns. Due to the history of Rydenhead HMRC expressed concerns. The goods dealt by F Options Ltd at that time were access cards to pornographic websites.

145. At a visit to Mr Saunders on 16 November 2004 HMRC established that the business had ceased trading in access cards and had begun trading in the wholesale of mobile phones as of 29 October 2004.

146. On 27 February 2006 Mr Saunders requested de-registration of the company as it had stopped trading. Mr Payne subsequently received information that a number of sales had been made by F Options Ltd to Raptor LTD which had not been declared by F Options Ltd. Mr Saunders was requested to provide an explanation for the unaccounted sales to which he responded on 21 September 2006 and provided a series of sales invoices and credit notes explaining that the sales in the relevant period had been cancelled. The documents produced only related to one of the under-declared sales and Mr Payne requested the missing paperwork in order to verify the return.

147. No response was received from Mr Saunders and consequently Mr Payne issued an assessment on 5 December 2006 in the sum of £2,170,701.84 for the under-declared sales. A further sale was identified in respect of which Mr Payne adjusted the assessment to take account of the VAT of £76,475 which had not been declared. No response was received from F Options Ltd and the Insolvency Department took over responsibility of the case to recover the debt.

148. In February 2008 the Insolvency Practitioner contacted HMRC to advise that sales invoices from M Allen General Traders based in the UK to F Options Ltd had been discovered. HMRC records showed that the VRN of M Allen General Traders was used as a hijacked number.

149. A total of £2,247,176.84 has been assessed as owed by F Options Ltd. F Options Ltd failed to render any information since the 03/06 return and the information it did provide was of limited use. Mr Payne concluded that F Options Ltd had acted as a fraudulent defaulter.

06/06

150. In period 06/06 there were 95 deals which were traced back to defaulting traders. 46 traced back to C & B Trading Limited ("C&B"), 42 traced back to Midwest Communications Limited ("Midwest"), 6 traced back to RS Sales Agency Limited and 1 traced back to Bullfinch Systems Limited.

(a) C&B

151. HMRC Officer Taylor provided a witness statement regarding the trading activities of C&B, a fraudulent trader which made onward supplies of goods to a number of UK companies and failed to account for the output tax due on those sales thus creating a tax loss.

152. C&B was incorporated on 30 January 2001. A VAT1, which was signed by the director Mr Delroy Chambers was received by HMRC on 17 April 2003 and declared the main business activity as "car valeting". The company was registered for VAT with effect from 1 May 2003.

153. On 24 August 2005 HMRC was notified by letter that the company had changed its name from "C and BB Car Care Limited" to "C & B Trading (UK) Ltd" as a result of the company changing its trading activities. On 6 March 2006 Mr Darren Robert Heath was appointed as director.

154. A request on 5 September 2005 to be placed on monthly VAT returns was refused by HMRC on 21 September 2005.

155. On 9 November 2005 HMRC visited the principal place of business. Officers were advised that the trader was not present having recently been arrested for fraud.

156. On 24 February 2006 HMRC was notified by a letter signed by Mr Chambers that the company had changed its trading activity to the sale of chemicals and alloy wheels.

157. On 8 March 2006 HMRC was informed that the company director and secretary had resigned as of 28 February 2006 and that the new director was Mr D. Heath and the company secretary was Mr B. Mooney.

158. A nil VAT return was received by HMRC on 3 March 2006 for the period 01/06.

159. HMRC received a letter signed by Mr Heath on or about 16 March 2006 which notified HMRC that the company was no longer working in the vehicle valeting industry but instead bought and sold chemicals, car components, alloy wheels etc. Mr

Taylor noted that this information was not borne out by the evidence available to HMRC, which showed that the company's subsequent trading related to mobile phones.

160. HMRC officers visited the company on 26 April 2006 however access could not be gained as the office complex in which the company was based (The Quadrangle) was secured by combination locks on all entrance doors, no signs were displayed indicating either room numbers or the names of tenants and The Quadrangle had no reception area or management area on site.

161. Mr Taylor spoke to Mr Mooney later that day and was informed that the company was now trading in mobile phones, which were purchased from a Czechoslovakian company and sold within the UK. A further visit was arranged for 2 May 2006. On 28 April 2006 HMRC issued a Regulation 25 letter which brought forward the due date for the 04/06 return to 2 May 2006 and notified the company that its VAT registration had been cancelled with effect from 1 May 2006 on the basis that C&B had been a willing participant in trade in which it appeared to have no intention to account for VAT.

162. At the visit on 2 May 2006 Mr Taylor was again unable to access the office or make contact with the company.

163. HMRC received information from the purchase records of other traders that C&B made considerable sales in the 04/06 period. As a result, assessments were raised against the company on 7 July 2006 in the sum of £59,047,843.54 and on 14 November 2006 in the sum of £23,022,219 in respect of known VAT amounts due from the company.

164. The assessment raised on 14 November 2006, which was sent to The Quadrangle address, was returned on 24 November 2006 marked "no longer here." Further mail, including additional assessments, was also returned to HMRC.

165. The total assessment raised against C&B totalled £22,614,728 which includes 46 of the Appellant's deals which originated with C&B. Mr Taylor was satisfied that C&B acted as acquirer of the goods which were subsequently supplied to the Appellant for the following reasons:

- Mr Mooney informed HMRC in the same month as the relevant deals that the company was acquiring goods from a Czech company; and

- There is evidence of a pattern of trading in all the deals involving the Appellant in which goods were supplied within the UK by C&B to a company called Highbeam. There is also evidence in unrelated deals of goods being allocated directly to Highbeam from an overseas company to disguise the role of C&B as the acquiring company.

166. C&B went into liquidation on 10 January 2007. Subsequent enquiries with the former letting agents for the landlord of The Quadrangle revealed that there was a tenancy agreement in effect from 1 March 2006 in the personal name of Sarah Dunn

(recorded as an employee of C&B) but no tenancy agreement was held by C&B. HMRC records indicated that a company called C3 Trading Ltd held a lease agreement for the same premises which had been signed on 10 February 2006 by Mr Darren Heath. Ms Dunn had signed a letter to HMRC as director of C3, which indicated that C3 had moved from the premises prior to 1 June 2006. C3 became a missing trader having vacated the premises without notifying HMRC or Companies House of the change of address.

167. HMRC attempted to make contact with C3 at an address which was "care of C&B Valeting Centre Limited", a company which had been registered by Ms Dunn from 1 November 2006. At a visit on 2 September 2008 Mr Ahmed informed officers that he had purchased the company from Ms Dunn on 1 March 2008 for £35,000. He provided HMRC with the name of Ms Dunn's business "Pink and Black" in Meir Heath. Upon contacting the company, officers were told that Ms Dunn was not present. A 7 day contact letter was left to which no response was received.

168. Mr Taylor concluded that the actions of C&B were fraudulent; it registered its trade class as "other wholesale" thus enabling the company to enter into MTIC deals in excess of £480,000,000 without being challenged by HMRC in respect of which no returns were rendered and VAT in excess of £84,000,000 remains unpaid. The assessments were not appealed or paid and the directors have failed to maintain contact with HMRC. Mr Taylor concluded that C&B acted as a defaulting trader which fraudulently failed to pay the VAT due on its sales and is now a missing trader. In the 46 deals in which goods supplied by C&B were ultimately supplied to the Appellant, C&B's customer was, in 39 cases, Highbeam. Ms Rozzell, the director of Highbeam has given an undertaking to The Insolvency Service that she will not act as a company director for a period of 13 years effective from 12 December 2008 on the basis that she either knowingly entered into transactions which put HMRC at risk of being subject to MTIC fraud or was reckless or grossly negligent in that regard.

(b) Midwest Communications Ltd

169. HMRC Officer Bycroft provided a witness statement in respect of defaulter Midwest Communications Ltd ("Midwest"), which was incorporated on 15 June 2004. On the same date Mr Brent Ian Gardiner was appointed as director and company secretary and Ms Marian Rose Beckett was appointed director. On 10 April 2006 Mr Simon Powell-Smith was appointed as company secretary.

170. The VAT1 dated 9 July 2005 signed by Mr Gardiner stated that the company was involved in the sale of telephones, which was later clarified as "mobile phones as upgrades and new contracts." The company was registered for VAT with effect from 6 June 2005. At a visit to the company on 8 September 2005 HMRC was informed that the sale of mobile phones was via call centres with commission being received on the sale of contracts.

171. A further visit to the business, at an address in Peterborough which Mr Powell-Smith had requested be the new trading address, took place on 16 March 2006 to verify documents received from freight forwarders relating to deals allegedly

involving Midwest. Mr Powell-Smith stated that the company had not traded for 6 months and that the company had not bought, sold or allocated any stock. Mr Powell-Smith also denied having opened an account with freight forwarder Hawk Precision Logistics.

172. An attempt was made to visit the company at its principal place of business in Abergavenny on 17 March 2006. No one was present and a letter was subsequently sent to the address notifying the company that de-registration action had commenced. On 5 April 2006 Mr Powell-Smith contacted HMRC and stated that he would notify the officer once trading commenced and that IMEI numbers would be retained on all electrical items bought and sold.

173. On 20 April 2006 HMRC were informed that the company had commenced trading within the previous 24 hours. On 28 April 2006 Mr Bycroft was provided with a spreadsheet of deals conducted and 5 lever arch files of underlying documents such as sales invoices. From the records it was ascertained that all sales were to UK customers and all purchases were from EU suppliers. On 2 May 2006 Mr Powell-Smith informed HMRC that further deals had been conducted including some sales to an Italian customer with purchases from UK company Bestleg. Mr Bycroft noted that the records in HMRC's possession did not indicate any EU sales and Mr Powell-Smith agreed to provide details of the alleged exports. He later informed Mr Bycroft that there had been approximately one purchase per day from Bestleg with an approximate value of £6,000,000 per invoice. He promised to send HMRC the relevant documents pertaining to the deals however failed to do so.

174. At a visit on 12 May 2006 Mr Bycroft discussed with Mr Powell-Smith the company's trade in exporting phonecards. Mr Powell-Smith gave contradictory information as to how Midwest had met its trading partners Bestleg and Umbria Equitazione and acknowledged that insufficient due diligence had been carried out. Records were uplifted which included 9 invoices from Bestleg for "Euro East & West Phone Cards @ £50" all dated 14 April 2006 showing VAT of £57,583,433.25. Also included were 9 corresponding sales invoices to Umbria Equitazione dated between 11 April and 14 April 2006.

175. Mr Bycroft attempted to contact Midwest by telephone on several occasions on 9 June 2006 however received no reply. On 13 June 2006 Mr Bycroft managed to contact Mr Powell-Smith who stated he had been sacked by the director. On 26 July 2006 HMRC received a letter from Kallis & Company, insolvency practitioners who stated they had been approached by Midwest to arrange a creditors meeting. On 11 August 2006 joint liquidators were appointed.

176. Subsequent criminal checks revealed that on 1 July 2002 Mr Powell-Smith had bee convicted of 7 counts of obtaining property by deception, 5 counts of false accounting, 1 count of theft and 1 count of making a false instrument for which he received a term of 4 years imprisonment.

177. The Insolvency Service confirmed that on 17 December 2008 the Court made a disqualification order against Brent Gardiner which precluded him as acting as a director or manager for a period of 13 years from 7 January 2009.

178. HMRC investigated the alleged purchase of phonecards by Midwest from Bestleg. No evidence was seen of credit history checks having been completed despite Mr Powell-Smith's assertion that this had been done. There was no evidence of any commercial checks having been carried out nor was there evidence of any payments made by Midwest to Bestleg. The VAT registration form for Bestleg showed the business activity as "management consultancy." An unannounced visit on 23 May 2006 established that the principal place of business was a residential address. Mrs Vanessa May who was present at the address informed HMRC officers that she had no involvement in the trading activities of Bestleg but that her address was used as a mailing address after she answered an advert in Exchange & Mart. All mail received was posted on. Bestleg's VAT registration was cancelled with effect from 1 April 2006.

179. Mr Bycroft also examined the due diligence documentation provided by Mr Powell-Smith in respect of its alleged customer Umbria Equitazione. Three documents were provided; one was a letter describing the company as a telecommunications company, the second documents was in Italian and was illegible and the third document was a Europa VAT validation. Checks by HMRC revealed that the company was in fact an Italian saddler wholesaler.

180. Checks into the phone cards revealed that the product was American and only available in $ denominations. No evidence was found that £50 phone cards as described on the invoices provided to HMRC by Midwest actually existed.

181. HMRC concluded that the goods supplied were not as described on the invoices and the VAT incurred was disallowed. An assessment in the sum of £57,583,433 was raised against Midwest and remains outstanding.

182. Mr Bycroft concluded that Midwest acted as a fraudulent defaulter for the following reasons:

- None of the records provided on 28 April 2006 made any reference to deals involving phone cards or exports. The first mention of such deals was made by Mr Powell-Smith on 2 May 2006. No documentation was provided in support of the alleged transactions valued at approximately £329,000,000;

- Due diligence on Bestleg and Umbria Equitazione was wholly insufficient;

- No payments or receipts have been traced with regard to the alleged phone card transactions;

- On the VAT return rendered by Mr Powell-Smith the input tax deducted in respect of alleged supplies from Bestleg offset the output tax charged on sales of mobile phones and CPUs to UK customers. The VAT deducted by Midwest

was disallowed which left the company with a tax liability of £57,591,542.83. No payment has been received in respect of the debt;

- Transactions undertaken by Midwest involving mobile phones were traced to goods ultimately exported by the Appellant which form the basis of this appeal.

(c) RS Sales Agency Limited ("RS")

183. HMRC officer Parsons provided a witness statement setting out her involvement with defaulting trader RS, including 6 transactions in which the Appellant ultimately exported the goods and in respect of which RS failed to account for VAT.

184. Rafik Sodawala was the sole director of RS. All of the transactions relevant to this appeal were undertaken by the limited company, which was not registered for VAT at the time of the transactions. Mr Sodawala continued to use the VRN allocated to Rafik Sodawala trading as RS Sales Agency in respect of sales made by the limited company and in respect of which he issued invoices in the name of RS Sales Agency Limited. RS was retrospectively registered for VAT with effect from 14 May 2003.

185. The intended business activities were shown on the VAT1 as "sales agent for ladies, men's and children's wear and buying and selling similar goods."

186. On 20 February 2006 Mr Sodawala requested that the VRN allocated to Rafik Sodowala be transferred to RS and informed HMRC that the future business activities would be wholesaling and retailing mobile phones and other electronic goods. The transfer did not take place as due to the change in business activities it was not deemed a transfer of a going concern.

187. The net turnover from the date of registration (14 May 2003 to 30 September 2005) was £115,141. No taxable supplies have been declared since June 2005 and no VAT declaration was submitted for period 12/05.

188. On 3 July 2006 HMRC made an unannounced visit to Rafik Sodawala at the principal place of business as a result of information obtained by HMRC at a visit to Highbeam, which indicated that it was a customer of RS. No one was present at the address, which consisted of a doorway between two shops with no visible sign that RS, or any other business, was operating from the premises. A contact letter was left to which there was no response which resulted in the VRN being cancelled with effect from 4 July 2006.

189. On 6 July 2006 HMRC received a telephone call from a male purporting to be Mr Sodawala's accountant. He stated that Mr Sodawala was away and that the records of the business could not be accessed. Ms Parsons requested that Mr Sodawala be asked to contact HMRC upon his return. Mr Sodawala failed to make contact with HMRC and failed to submit VAT returns from 1 October 2005.

190. The transactions undertaken by RS have been identified from records obtained from other traders within the chains of supply. The net turnover of RS from 26 April 2006 to 4 July 2006 was £165,704,862 with a VAT liability of £28,998,350.90. Ms Parsons concluded that the history and trading pattern of the company was contrary to genuine business trading and reinforced the view that RS was a fraudulent defaulter set up for the sole purpose of defrauding the revenue and then disappearing.

191. In the absence of records and lack of co-operation by Mr Sodawala assessments were raised on the basis that RS was the acquirer of the goods in the relevant transactions. That RS failed to declare its transactions or associated tax liability, indicated to Ms Parsons that the company did not intend to discharge its VAT liability.

192. To date the total value of unpaid VAT on identified transactions by RS totals £29,718,255.90. A winding up order was made against RS on 13 December 2006 and Mr Sodawala was disqualified from being a company director for a period of 13 years with effect from 1 August 2008.

(d) Bullfinch

193. HMRC officer Laing provided information pertaining to defaulting trader Bullfinch which was the acquirer in relation to one of the transactions in this appeal for which it did not account for VAT.

194. Bullfinch was incorporated on 28 May 2004 and registered for VAT with effect from 1 August 2005. It submitted two VAT returns but failed to submit its two final returns.

195. The company director was Sanjay Pandya who was appointed on 28 May 2004. Another director, Mr Sanjeev Chabra was appointed on 1 August 2006 and resigned on 13 November 2006. The main business activity set out on the VAT1 was "software and security implementation/no hardware."

196. Bullfinch agreed to provide a VAT security deposit on 12 October 2005, which was required by HMRC on the basis that Mr Pandya was director of Elephant Flooring Ltd which owed HMRC in excess of £70,000. There is no evidence that the security was ever paid.

197. In 04/06 the company's trading pattern changed to acquiring goods from the EU which led to an increase in its turnover in excess of £121,000,000 in April 2006. The 04/06 return was not submitted to HMRC and the trader went missing. Bullfinch was de-registered on 13 May 2006.

198. At a visit to the premises by HMRC on 3 November 2005 it was noted that accountancy software was purchased from a company in Dubai who was recommended by someone the director met while on holiday in the South Pacific.

199. On 23 May 2006 HMRC received a call from Mr Arun who claimed to be the bookkeeper for the company. Mr Arun stated that the records requested by HMRC would be ready by 30 May 2006 however no papers were ever submitted.

200. On 5 June 2006 HMRC officer Atkin emailed Mr Pandya asking for copies of deal logs from 1 February 2006 to 11 May 2006, explaining that he was in the process of raising an assessment for £23,000,000. No information was ever provided by Mr Pandya.

201. A number of assessments were raised against Bullfinch totalling approximately £54,000,000. All of the assessments raised cover the periods 04/06 and the final VAT return period and include the deals in which goods were ultimately supplied to the Appellant.

202. Mr Laing concluded that the transactions undertaken by Bullfinch were set up fraudulently on the basis that the company failed to file returns and the trader subsequently went missing from both his office and his home. Bullfinch did not provide HMRC with any data to negate the assessments raised against it nor were the assessments appealed.

Buffers

203. In addition to the defaulting traders, HMRC relied on the buffer traders as further evidence that there existed a fraudulent scheme to defraud the Revenue.

(a) Mitek Computer Components Limited ("Mitek")

204. Mitek acted as a buffer in 26 of the Appellant's deals in period 02/06, 1 of the Appellant's deals in 03/06 and 76 of the Appellant's deals in 06/06. HMRC officers Strachan and Jarrold provided witness statements which set out the evidence pertaining to Mitek.

205. Mitek was incorporated on 14 February 1990 under the name Financedate Ltd. It changed its name to Mitek Group Limited on 29 March 1994 and then to Mitek Computer Components Limited on 7 March 2003. In December 2005 Mitek was taken over by Global Management Group Holdings ("Global").

206. Operation Vex was a criminal investigation into MTIC fraud. HMRC Officer Jarrold provided a witness statement which set out details of 10 individuals charged with offences involving conspiracy to cheat the Revenue between 1 January 2005 and 13 December 2006. One individual concerned was Bart Van Laarhoven who was a director of Mitek Group Limited and Global Management (GB) Limited. Mitek Group Limited is shown on FAME database records as holding total share ownership of Mitek. Another individual charged was Satbinderpal Singh Hyre who was a director of Mitek from 31 March 2006 until its dissolution. Mr David Donnelly was also charged under Operation Vex. He described himself as a consultant accountant for the shareholders of Mitek.

(b) Shelford Trading Company Limited ("Shelford")

207. Shelford acted as a buffer in 9 of the Appellant's deals in 02/06. The controlling mind of the company, Mr Andreas Nicholas, was convicted of conspiracy to cheat the public revenue, attempting to pervert the course of justice and handling stolen goods in 2000. In 2005 Mr Nicholas was found to have breached a restraint order by failing to disclose assets and held in contempt of court. Mr Nicholas was the controlling mind of three other companies: Shelford IT Limited, Mobile Export 365 Limited and Live Telecomms. All three were denied input tax claims and the Tribunal found in the appeals of Shelford IT Limited and Mobile Export 365 Limited that the companies had actual knowledge that the transactions entered into were connected to fraud. The appeal of Live Telecomms was struck out following the dismissal of the two appeals.

Disqualifications of Directors

208. HMRC highlighted the number of directors in buffer companies connected to the Appellant's transactions in this appeal who were disqualified from holding directorships:

- Highbeam: a buffer in 44 deals in 06/06. Director Dawn Rozell was disqualified for a period of 13 years;
- V2 (UK) Ltd: a buffer in 9 deals in 06/06. Director Nadeem Ahmed was disqualified for a period of 13 years;
- S Electrical Store Limited: a buffer in 1 deal in 02/06. Director Yasar Ali was disqualified for a period of 12 years;
- Kwik Projects Limited: a buffer in 4 deals in 02/06. Director Lai Ram Main was disqualified for a period of 12 years;
- Atlas (UK) Trade Limited: a buffer in 7 deals in 02/06. Director Nadeem Anwar was disqualified for a period of 12 years;
- AE Resources Limited: a buffer in 6 deals in 02/06 and 4 deals in 06/06. Director Nasser Hussain was disqualified for a period of 14 years.

FCIB

209. We address the issue of cash flows within the FCIB accounts of traders, in particular the Appellant, in the relevant deal chains in more depth in due course however we should note at this point that HMRC relied on the following features set out in the evidence of HMRC officer Mendes as evidence of contrivance:

- All of the Appellant's transactions which were traced (26 in 02/06, 13 in 03/06 and 20 in 06/06) involved circular money flows;
- The full circular flow generally occurred in less than 5 hours and in some cases less than 2 hours;

- Integralphone GmbH, Destonia General Trading Ltd and Karippa SRO made payments from the same IP address, as did Maks Information Technology, Marxman International FZCO and Kima Estates SRO'

- Marxman International FZCO initiated the circular flow of money and received the money back in 16 of the deals analysed. This was a company with which the Appellant had traded in 11/05.

Uncommercial Patterns of Trade

210. HMRC relied on the following patterns of non-commercial trade which indicated contrivance in the Appellant's transaction chains:

- Shelford sold goods on 8 February 2006 via a buffer to KTS despite it having a direct trading relationship with KTS since September 2003;

- In one deal goods sold by Shelford passed through 2 buffers and the Appellant which sold them to France Affaires, a company with which Shelford had traded directly since September 2003, as had KTS since July 2003;

- Similarly goods sold by Shelford which passed through 2 buffers and the Appellant were sold to La Parisienne de Commerce, a company with which Mr Nicholas (through his companies) had had a direct trading relationship since September 2003;

- In January 2006 Mitek purchased goods from Shelford which it sold to Kinetic Distribution Limited which was controlled by Mr Nicholas' brother;

- Mitek and the Appellant shared a number of EU customers and in some cases the Appellant sold to those customers despite the fact that the goods had originated with Mitek;

- The buffer traders always made a mark-up of £1 or less, KTS always made a profit of between £1.50 and £5.00 whilst the Appellant always achieved at least double that made by KTS at between 2.72% and 5.80%;

- The volume of sales by the Appellant of certain models of mobile phones represented a significant percentage as compared with units sold in Europe and the UAE.

Findings on whether there was a tax loss, whether the tax loss was fraudulent and whether the Appellant's transactions in periods 02/06, 03/06 and 06/06 were connected with fraudulent VAT losses?

211. We were satisfied on the basis of the evidence adduced by HMRC that there are tax losses in the Appellant's deal chains and that each of the transactions which form the basis of the Appellant's claims for repayment of input tax in periods 02/06, 03/06 and 06/06 were traced back through a chain of transactions directly to a defaulting trader. We accepted HMRC's evidence that the defaulting traders were:

(a) In 02/06

- Ideas 2 Go (12 deals)
- Puwar (9 deals)
- Ultimate (32 deals)
- Zoom (1 deal)

(b) In 03/06

- CHP (4 deals)
- Bargain Trade Centre Limited (22 deals)
- Zoom (1 deal)
- F Options Limited (1 deal)

(c) In 06/06

- C&B (46 deals)
- Midwest Communications (42 deals)
- RS Sales Agency Limited (6 deals)
- Bullfinch (1 deal).

212. We accepted the evidence of the HMRC officers that the tax losses resulted from the fraudulent evasion of VAT and that there existed a wider scheme to defraud the Revenue. We were satisfied that the evidence of an orchestrated fraudulent scheme was compelling in view of the trading activities of the defaulters and buffers, the convictions and disqualifications from directorships of various participants in the chains, the circularity of money movements and shared IP addresses of traders further up the chain.

213. We were also satisfied that the Appellant's transactions were directly connected with fraud through the transaction chains of which it was a part.

Did the Appellant know, or should it have known, that its transactions were connected to fraud?

214. HMRC must satisfy us that the Appellant knew, or in the alternative should have known, of the connection with fraud at the time it entered into the relevant transactions. The main evidence came from HMRC Officer Mr Brownsword, who set out a number of features of the Appellant's trading from which we were invited to infer knowledge or means of knowledge. These features are set out in more detail below, together with the responses of Mr Hammond, Mr Prince, Mr Carvell and Mr Attenborough on behalf of the Appellant. We should note that due to the volume of evidence, both oral and documentary, what follows is simply designed to provide an overview of the evidence and features highlighted by both parties.

215. Mr Brownsword was responsible for conducting the extended verification into the Appellant's 02/06 and 06/06 Returns. HMRC Officer Mr Bayliss conducted the enquiries into the Appellant's 03/06 Return, the results of which were incorporated into the evidence of Mr Brownsword.

216. The 02/06 Return was received by HMRC on 6 March 2006 and showed a repayment claim of £7,035,403.87. The Appellant was notified by letter dated 23 March 2006 that the return would be subject to extended verification.

217. The 03/06 Return was received by HMRC on 3 April 2004 and showed a repayment claim of £3,824,586.98. The Appellant was notified by letter dated 13 April 2006 that the return would be subject to extended verification.

218. The 06/06 Return was received by HMRC on 1 August 2006 and showed a repayment claim of £11,271,245.84. The Appellant was notified by letter dated 14 August 2006 that the return would be subject to extended verification.

Background of the Company Officers, Awareness of Fraud and Due Diligence

219. As a result of advice received from HMRC, Mr Brownsword believed that the Appellant had a general understanding of MTIC VAT fraud before and during the relevant period.

220. On 27 March 2005 HMRC Officer Ms Camm notified the Appellant by letter that 8 of its 18 deals in 12/05 traced back to a tax loss of at least £854,901.25. KTS was the Appellant's immediate supplier in all of the deals. Ms Camm confirmed in oral evidence that the remaining 10 deals could not be traced back to the start of the chains for a number of reasons, principally the lack of information from traders in the supply chains.

221. In April 2005 the Appellant was advised that the deals in which it had been supplied by KTS were traced back to a defaulting trader. Mr Prince was notified by HMRC on 18 April 2005 that a defaulting and de-registered trader had been identified in the transaction chains of the Appellant in February 2005. The Appellant's sole supplier in that period was KTS. On 27 April 2005 Mr Brownsword notified Mr Yewdell that all of the Appellant's deals in 07/04, 01/05 and 02/05 had been traced back to defaulting or de-registered traders. Mr Brownsword noted that there appeared to have been no action taken by the Appellant following receipt of this information.

222. On 7 February 2006 the Appellant was informed by Ms Camm that 18 of its deals in 08/05 were traced back to defaulting traders resulting in a Revenue loss exceeding £2,223,719. HMRC supplied the relevant invoice numbers from which it could be established that the Appellant's immediate supplier was KTS.

223. On 10 February 2006 Mr Hammond met Mr Tuppen in New York to discuss the information received from HMRC. Both parties agreed that their due diligence procedures needed to be reviewed which led to a confidentiality agreement being signed by Mr Hammond and Mr Tuppen on 17 February 2006 allowing the Appellant confidential access to KTS' due diligence records. Mr Brownsword noted that despite

the Appellant's concern about its due diligence, trading continued unchanged between the two companies throughout February 2006 and the volume of trade increased in April 2006.

224. The Appellant employed Mr Yewdell of TLS Ltd to conduct a check of the supply chains. Mr Yewdell is a former criminal investigator employed by HMRC. Part of his checks involved tracing the VAT registered businesses in the Appellant's supply chains and providing that line check analysis to HMRC in order to assist with the Appellant's repayment claims. It was Mr Brownsword's understanding that Mr Yewdell would retrospectively inform the Appellant of the results of his line checks and whether any anomalies had been found in the chains as Mr Prince had told him that he would not be able to carry out a deal if the Appellant waited for the checks to be completed. Mr Brownsword formed the view that the line checks were superficial given that they were carried out after the deal had taken place and that the Appellant did not change its main supplier, KTS. In oral evidence Mr Brownsword clarified that he understood that Mr Yewdell shared the information regarding supply chains with the Appellant as he was employed by the Appellant. He agreed that Mr Yewdell would not have been aware of tax losses in the supply chains from his own enquiries but noted that he had informed Mr Yewdell that the Appellant's deals in 07/04, 01/05 and 02/05 had been traced back to a defaulting trader; he stated that he had not informed the Appellant directly as Mr Yewdell was *"a representative of the company as far as I was concerned."* Mr Brownsword agreed that in respect of enquiries carried out into the 01/05 return, HMRC had informed the Appellant that there were no reasonable grounds to suspect that VAT repayable on an earlier supply would go unpaid. He explained that this had been the position at the time of the enquiries but that the comment should not be taken as applicable to the Appellant's total trading but rather was confined to the specific period.

225. The Appellant also engaged Halliwells LLP to review its due diligence procedures and carry out checks on its suppliers. According to the Appellant Halliwells also produced a due diligence manual which was followed although Mr Brownsword stated in oral evidence that he could not recall ever having seen the manual.

Appellant's supplier: KTS

226. The Director of KTS, Mr Ian Tuppen was registered for VAT as a sole proprietor trading as Kingswood Trading Services. This was subsequently changed to Springledown Ltd trading as Kingswood Trading Services. Mr Tuppen subsequently formed a new legal entity, Kingswood Trading Services Ltd ("KTS") which commenced trading in January 2005.

227. Halliwells produced a report on KTS from which Mr Brownsword highlighted the following as factors which would have been identified by a legitimate company as warning signs:

- A media search revealed that in July 1999 Mr Tuppen had been the subject of legal proceedings taken by Microsoft for the sale and distribution of pirate

software which resulted in costs and compensation being awarded to Microsoft by the High Court;

- Most suppliers are personally known to Mr Tuppen;

- KTS is funded exclusively by Mr Tuppen's personal wealth; there are no other private investors or outstanding charges/loans;

- No credit facilities are offered to suppliers and goods remain the property of KTS until payment is received;

- Other than the fabric of the office premises, the company owns no assets of significance;

- No written contracts with suppliers/customers are maintained nor are there any confidentiality agreements between parties;

- KTS' due diligence was restricted to the completion of a supplier declaration form (described by Halliwells as having little value) and the forwarding of a VAT certificate, Certificate of Incorporation, letter of introduction, bank details and a director's personal utility bill. Redhill checks were undertaken and a print out of the directors was obtained from Companies House;

- Halliwells described the checks as "superficial and without structure and would be unable to repel any future J & S liability assessment by HMRC";

- No insurance was held, instead KTS placed reliance on goods being stored in secured premises;

- Mr Tuppen stated that the company had a good VAT compliance history although Mr Calver, who was responsible for due diligence, alluded to default surcharge difficulties in the period prior to his arrival. A web-search revealed a VAT Tribunal case involving the Commissioners and KTS, although no further details are known;

- Mr Tuppen was arrested by HMRC in connection with an alleged VAT fraud from which he was released from bail in May 2005;

- The major area of risk for potential trading partners is the company's actual due diligence rather than its attitude towards the subject. The supplier declaration form used was of little value in reality, although Halliwells took the view that it was better to request completion than not;

- The chief weakness of the company's due diligence regime is the failure to undertake site visits;

- The company has an overall medium risk rating.

228. In oral evidence Mr Brownsword noted that the contents of the report were set out on the basis of information provided to the author and it was unclear whether any supporting evidence had been produced. By way of example, Mr Brownsword highlighted the comment that *"KTS is funded exclusively by the director's personal wealth"* and he queried whether this had been accepted at face value or whether, given his longstanding personal friendship with Mr Tuppen, Mr Hammond had sought to verify the information. Mr Brownsword went on to explain that although he had been told that the Appellant had been given access to KTS' due diligence, he had not been informed as to what material the Appellant actually saw.

229. Mr Brownsword did not disagree that a trader in the wholesale distribution market could only conduct due diligence on its immediate trading partners, although he noted that the ability to conduct checks past an immediate supplier would depend *"how much knowledge a trader has and what history he has in the trade and who he has had links with in the past."*

230. Mr Hammond provided four witness statements and a number of exhibits in addition to giving oral evidence. His first witness statement provided details about his career history which included a one year accounting course followed by continuing professional development with the intention of becoming a chartered accountant. Prior to completing his qualification Mr Hammond began working in-house for Mr Howard Thacker at Howson Sports which he considered a good opportunity given that the company had expanded to a turnover of around £600,000. Mr Hammond considered that he knew the importance of balancing risk with prudence and having the right balance of investments. It was during his period of employment with Howson Sports that he began to understand the importance of cash flow and liquidity to a company's longevity. By the time Mr Hammond turned 30, the turnover of Howson Sports had increased to £20,000,000. Mr Hammond subsequently worked freelance in accountancy for a number of years, including undertaking work for his cousin, Carol Hammond until she moved to Scotland where she set up a new company called LCD, which Mr Hammond described as *"more of a hobby business than anything else."* At that point Mr Hammond decided to set up Advent using contacts from Carol Hammond's old business Hammond Distribution which dealt in computing books, accessories, hardware and similar products. Mr Hammond explained that *"at some stage, Carol decided to try some mobile phone export deals with LCD as well as her general computer parts trade"* but he never considered LCD a competitor to Advent although knowledge and advice was shared with Miss Hammond. He stated that neither he nor anyone at the Appellant ever told Carol Hammond *"what, when or from whom to buy"* nor was LCD a sister company to the Appellant although they did work closely together. In oral evidence Mr Hammond stated:

"Well, things were getting better in September 2005. I spoke to Carol, she'd set up LCD and I said, "Do you fancy learning about the export market in phones?" and she said, "Yeah. Tell me more. Tell me more. I'd like to know all about that." I said, "Okay. You need working capital. I'll transfer you some money. Call it a loan. I will tell you how it works. Dave and I will explain the dos and don'ts, the due diligence, everything you have to do. You need to do these particular things in this

particular way. That's what you've got to do. Ring up Sonia at Roma, ask her if she wants to buy some phones. With a bit of luck she'll want to buy some phones. Dave will tell you what we can get for you. Hopefully we'll be able to satisfy Sonia's demands. When you know what Sonia wants come back to me, talk through the prices with you, make sure you're selling at the right price but, you know, these phones might have been £220, I don't know, but that's the sort of price you can get. Go and ask Sonia for that. That will give you a good return on your money. I'll put the money in. That will finance your export deal. You're up and running, you're starting to make profit." (Transcript 5 June 2013 page 154)

231. In addition to the Advent, Mr Hammond also invested in Spanish property with a man named Rob Jarrett. Mr Hammond noted in his witness statement that he had not carried out any due diligence on Mr Jarrett who *"felt reliable and had been introduced to me by a good friend"* whose recommendation he had trusted. Mr Hammond further explained the he "*would check a business existed and I had to be satisfied that businesses I dealt with appeared reliable, but throughout all of my business experience I had never done, or never been asked to do any of the type or extent of due diligence expected here."* It was important to Mr Hammond to do business with people he trusts implicitly and all of his business ventures have involved friends; in the Appellant Company that was Mr Prince. Mr Hammond agreed in oral evidence that his role in the Appellant was principally raising funds and that although he had overall control as director, it was Mr Prince and subsequent to that Mr Carvell who carried out the deals. He could not recall how Mr Price was paid or whether he was a signatory on the bank account, stating:

"I employed accountants…administration staff who would deal with all of that. I was very much dealing in Spain. My priorities were Spain at that point in time. Dave was looking after Advent. I think he just assumed that PAYE was being deducted, we'll sort it out tomorrow.

Q. He was never given a payslip.

A. I don't know whether he was or he wasn't because I didn't do the wages. I never did the wages for anybody." (Transcript 6 June 2013 page 8)

232. Mr Hammond agreed that the accounts showed £559,000 being paid as wages during the relevant period to staff. He stated that the wages were paid although the staff did not do a great deal as *"it was imperative that employees who are here today continued to be paid a salary. It was imperative that we looked after those people and that's what we did. They were on good, big salaries because they were running a company that was significant. I had moved to the Isle of Man and I'd agreed good, big, significant salaries with those employees and that's what the accounts reflect. The salaries that had to continue to be paid to those employees."* (Transcript 6 June

2013 page 15) He believed that there were about 4 or 5 members of staff with *"very little to do."*

233. Mr Hammond was not always present during visits by HMRC, and even when he was there Mr Prince or Mr Carvell tended to take charge of the meeting. Mr Hammond commented in his witness statement that although they would ask HMRC officers for guidance during the meetings, they were rarely given any. The officers were always very vague and so *"without any specific warnings or instructions…I was not as worried about fraudulent trade as it seems I would have been with the power of hindsight."* Mr Hammond stated that he did not know a great deal about MTIC fraud in 2004 and took his cue from HMRC. He understands now that MTIC fraud can only occur if the goods enter the UK, but he was not sure if he was aware of this fact at the relevant time; his concern was not how a fraud worked but trying to ensure he was not involved in such fraud. Once Notice 726 was received, the Appellant implemented its recommendations but guidance was continually sought from HMRC. From November 2005 Lee Carvell was appointed s due diligence manager.

234. Mr Hammond's written evidence explained how he met Mr Tuppen via an advertisement on the IPT website, however the pair had met before at a party in the 1990s and on a number of occasions thereafter. He recalled Mr Tuppen making a good impression and he *"seemed to be quite successful and an extremely intelligent man."* He described Mr Tuppen as a businessman with *"a number of different projects on the go"* which *"kept cash turning over"* although Mr Hammond did not believe he had large reserves to call upon. As Mr Tuppen was therefore unlikely to have the resources to export, Mr Hammond was content with the arrangement of KTS as sole supplier as the company had excellent contacts and business relationships.

235. As a result of HMRC's warnings to the Appellant in respect of its August returns, Mr Hammond arranged an urgent meeting on 7 February 2006 with Mr Prince and Mr Carvell. The implications of HMRC's letter of the same date were discussed and it was decided that they needed to talk to Mr Tuppen to ensure that he was doing all that he could in terms of due diligence as if he was not, then the Appellant would be left with no choice but to cease trading with KTS.

236. Mr Tuppen told Mr Hammond at their meeting in New York on 10 February that he had not been advised by HMRC of any losses in his chain, however in view of HMRC's letter to the Appellant he would do all that he could to improve matters and demand that his suppliers improved their due diligence. Mr Hammond was happy with this response and could not see what more Mr Tuppen could do; he therefore decided to follow his instincts and continue to trade with KTS rather than find a ne, unknown company to trade with.

237. The confidentiality agreement with KTS allowed the Appellant full access to his due diligence reports on his suppliers which Mr Hammond explained was to *"show us that he was following the Halliwells recommendations."* As Mr Hammond was less familiar with what was required, he took Mr Prince with him to the meeting. Mr Prince spent hours looking through documents and appeared happy with Mr Tuppen's procedures. Mr Hammond explained that although the agreement meant that the

Appellant knew the identity of KTS' suppliers, there was no question that the Appellant would use the suppliers as *"it would have destroyed all trust for any future deals we may do together, whether in this industry or any other."* In oral evidence Mr Hammond told us that Mr Tuppen would not provide the due diligence documents which had been made available to the Appellant and copies had not been taken at the time because Mr Tuppen had not allowed it. The Appellant had been shown 2 or 3 due diligence files on KTS' suppliers and the same amount in respect of its customers.

238. It was not until September 2006 that Mr Hammond believed the Appellant received any kind of "tangible warning" from HMRC about trading with KTS.

239. In oral evidence Mr Hammond stated that he was not aware that KTS was an authorised distributor of mobile phones, conceding that he did not particularly know what an authorised distributor was, although he could *"hazard a guess"* (transcript 5 June 2013 page 188).

240. Mr Hammond had been aware that Mr Tuppen had gone bankrupt, despite the fact that that this was not mentioned in the Halliwells report, but he could not recall when he became aware of that fact. He subsequently stated:

"A. Well, what I accept is I know Tuppen was made bankrupt now…I don't know when I knew he was made bankrupt.

Q. You knew that he was a bankrupt prior to his bankruptcy being discharged and him being able to be a director again in 2003. You knew that.

A. Did I?

Q. Yes. You knew about his little problem with Microsoft, didn't you?

A. I knew because of the Halliwells' report.

Q. No, you knew before then. Are you seriously saying that despite the fact you and Mr Tuppen were mates, he never mentioned that Microsoft had gone after him for a very large amount of money?

A. When you say mates, this is a relationship that developed, principally from about 2002/2003, a business relationship that grew into a position where we were friends come 2006. In 2003 I wasn't his mate, I hardly knew the bloke.

Q. Before you started trading with him, did you Google to see whether there was

anything about him on the internet?

A. No.

Q. He never mentioned then, did he, that Microsoft had taken a civil action against him because he had been involved in supplying counterfeit software…

A. He told me about 28th/29th January 2006, when I got the Halliwells' report which pointed out that he'd had a civil case with Microsoft, and I asked him about it and he told me that it wasn't counterfeit, it had been licence infringement. Mr Tuppen told me it was a civil case, it was alleged counterfeit, never proven counterfeit and I was satisfied there was no counterfeit goods involved. Mr Tuppen showed me a website, and on this website it said Mr Tuppen had been arrested by the Serious Fraud Office and Mr Tuppen had been found not guilty of counterfeit. He showed me that website. I have printed that website off here if you want to see it. It says at the bottom "not guilty". Now that to me means that there was no counterfeit, because he was arrested. If there had been counterfeit, he would have been charged and it says "The judge ordered the recording of a not guilty verdict." That is what it says. That is what it says. So I believed him when he said this was a licensing issue. I believed him. I asked him and I believe what he said and he proved to me that there was no counterfeit stock involved. He proved that to me.

MR BENSON: I am not talking about the criminal proceedings; I am talking about the civil proceedings. He had to pay Microsoft a very large amount of money, did he not?

A. I understand that he did, yes, but that does not mean paying them a large amount of money means it was counterfeit. It could easily have been with regard to licence

infringements, which is what he told me it was. If -- and this is how he explained it to me -- I had, bearing in mind Microsoft, that he had to pay them a large amount of money, Microsoft then got the police involved, I understand. If Microsoft had all the evidence in the world, which they had possibly, they would have given all that to the police and the police would have brought charges if they had been counterfeit. There were no charges brought against him. He was found not guilty. What more can I do than believe that this was licence infringements, which is what he told me. That is what he told me; that is what I believed at the time…

Q. Apart from him showing you that website, did you carry out any investigations of your own as to what this all about?

A. What this all about, the Microsoft?

Q. Yes.

A. If you employ a firm of solicitors, Halliwells, which we paid them significantly for, and they came to me and they said, "There is a civil issue with Microsoft", I don't know what more I can do myself than rely on that report, which I paid good money for, that what they say is true. I asked Tuppen, I looked at that website, I don't know what more I could have done or what more somebody would have wanted me to do to disprove or prove one way or another what Tuppen was saying. I had employed some lawyers to look at it for me. What more could I have done?...

Q. Except, of course, you were close to him. You were dealing with him on a regular basis. You said you had become friends?

A. Yes."

241. In oral evidence Mr Hammond did not agree that prior to 7 February 2006 the Appellant had not carried out any due diligence other than on VAT numbers in

respect of its customers but he did not know where the documentation confirming visits was, speculating that they may have been taken by HMRC.

242. Mr Prince told us that he had not been aware of Microsoft's legal action against Mr Tuppen until the Halliwell's report was received: *"Mr Hammond was Mr Tuppen's associate. He found Mr Tuppen, he found Kingswood, he introduced me to him a year after he had met…I wasn't going to start questioning the integrity of Patrick Hammond's…"* (Transcript 7 June 2013 page 72)

243. He believed that Halliwells had been engaged by Mr Tuppen prior to the Appellant but he could not recall how the introduction occurred. He did recall Mr Tuppen had outlined to him that if all of KTS' suppliers could be convinced to engage Halliwells to provide a manual, they would be in a strong position.

244. Mr Yewdell had been engaged since 2004; Mr Hammond believed that Mr Prince had engaged him although in his oral evidence Mr Hammond clarified that it had been his idea as he knew there were a number of people in the chain. Mr Hammond did not speak to Mr Yewdell who was *"never a part of our due diligence and he wasn't on the team to protect AWD directly, but he was engaged to assist HMRC."* A note of a conversation between Miss Hammond and HMRC indicated that Mr Yewdell had provided Miss Hammond with information that his line checks reached "seven away from LCD." Mr Hammond denied being made aware of this information and stated that he was not sure if the information would have been significant to Miss Hammond. As far as the Appellant's chains were concerned, Mr Hammond stated:

"I think the fact that we asked Richard Yewdell to do line checks would indicate that there were a number. He didn't say what that number was, whether it was 3, 4, 7. I didn't know. He didn't ---

Q. You never asked him?

A. No, it didn't seem relevant because what we wanted him to do was to get to the bottom of the line as soon as possible and give that information to HMRC so that HMRC could go back to number 3, 6 or 7 and work out that there were no defaulting traders. That was the object, so it was irrelevant how many people were in it. The smaller the deal chain the better as far as we were concerned because that meant that Richard would get down there quicker. It wasn't -- I didn't say, "Oh, by the way, Richard, how many people are in the line?", you know? It was a line check. Therefore we assumed there were people beyond here." (Transcript 6 June 2013 page 65).

245. Mr Hammond's written evidence explained that *"Lee was the real trader with Dave taking a step back to overview and general management of the deals whilst I had very little input in substantially reviewing due diligence on any customers or negotiating deals, although I did see the due diligence done and completed checklists for each deal."* Mr Hammond never queried why the market worked in the way that it did as the evidence of supply and demand was obvious. Mr Prince stated he was

surprised by the growth in the industry during the time he had been away from the sector and it was clear to him that the volume of phones was so large because the grey market demand was obvious.

246. The due diligence checks carried out at the relevant time were:

- Establishing the trader's identity via materials such as VAT certificates;
- Site visits by Sean or Lee Carvell;
- VAT validation checks;
- Halliwells review of KTS and due diligence manual.

247. In oral evidence Mr Hammond accepted that he was informed by HMRC by letter dated 15 March 2004 that he was trading in a sector which was tainted by fraud, but he noted that there would have been fraud in virtually every industry.

248. Mr Prince added that before trading with a company, the following documents were required:

- Full company details on headed notepaper, together with any marketing material including website addresses;
- Copies of VAT registration certificates and company registration certificates;
- Bank details.

249. Once the initial details were received, a trade application form requesting further information was sent to the trader. Further checks were made with HMRC and at Companies House following which a decision was made whether or not to trade. After the initial checks were made, a site visit was carried out, for example Mr Prince carried out site visits to KTS on 17 February, 26 February and 18 March 2006. He also visited the premises of several freight forwarders used by the Appellant in order to ensure that the premises were secure.

250. Mr Prince provided further details on the role of Mr Yewdell. He stated that TLS was engaged to undertake checks down the chain of supply. The information would remain confidential and TLS would only reveal the details to HMRC. Mr Prince recalled an occasion when Mr Yewdell found a default in the Appellant's chain. He informed Mr Prince that a defaulter existed in a transaction chain in April 2005. Mr Yewdell did not provide the name of the defaulter but told Mr Prince that the circumstances of the default were that VAT in the sum of £600 was owed to HMRC by one of the companies in the chain. Mr Yewdell informed Mr Prince that he had arranged for the company to make the payment as soon as possible.

251. Mr Lee Carvell met Mr Prince in 1994 and worked for him for approximately 2 years. In 1996 he took over Mr Prince's company with his brother Sean and remained there until the company was wound up in 2004. In mid-2005 Mr Carvell was offered a

role in the Appellant, although at that time he had no knowledge of the industry. He began working in an administrative capacity and he was shown by Mr Prince how to conduct wholesale mobile phone deals. Mr Carvell assisted in the paperwork and he would check the dates of due diligence checks, letting Mr Prince know if it required updating. Mr Carvell clarified in his written evidence that he was employed to work for the Appellant, AWDUK and R&L doing the same role but at different times depending on the VAT stagger, which affected the times when deals were undertaken.

252. The Appellant's VAT stagger was originally set at monthly periods from the date of VAT registration. On 25 April 2006 the Appellant was advised of HMRC's decision under Regulation 25 (1) (a) of the VAT Regulations 1995 (SI 1995/2518) that the VAT accounting periods of the Appellant would be changed from monthly to quarterly with effect from 1 April 2006. The reason for HMRC's decision was that tax losses had been identified in the Appellant's transaction chains. Despite the Appellant's objections, the change was implemented. As regards the associated companies, R & L had VAT periods ending March, June, September and December and LCD had VAT periods ending April, July, October and January.

253. Mr Carvell was responsible for the completion of deal packs and paperwork, for example matching the correct due diligence with inspection reports and sales invoices. The volume of trade was such that Mr Carvell's brother Sean joined the team and they began to become more involved in the buying and selling side of the business. Mr Carvell explained that whilst he understood that due diligence checks were undertaken for the company's own protection, he did not understand how VAT number checks protected the Appellant. He had never seen such requirements before and he regarded all that was required by HMRC as *"excessively bureaucratic"*. Over time he picked up a basic understanding of MTIC fraud and as the due diligence on KTS had already been completed at the time he arrived at the Appellant, Mr Carvell focussed on checking the company's customers. By 2005 Mr Carvell was the designated due diligence manager and by February 2006 he was a director which led to an increase in salary, although his role did not alter greatly.

254. Mr Carvell explained that the prevalence of fraud was not spoken about with customers: *"we confirmed that we did due diligence but that was the extent of the discussion."* He understood that a customer's main concern would be that the company existed and had a track record in the industry which would satisfy the customer that their money was safe when they paid prior to receipt of the goods. He also understood that Mr Yewdell checked the line of supply but confirmed that he and Mr Yewdell's contact was limited to having met a couple of times.

255. In oral evidence to the Tribunal Mr Carvell explained that he brought in a system whereby the paperwork was put onto a spreadsheet and he made a checklist whereby ticks were marked against documents that were available. His role initially was to organise the administration rather than analyse the information contained therein and once he became a director, Mr Carvell stated that the role did not alter significantly. He believed that the Halliwells manual had not offered anymore than the company was already doing: *"so it was pretty much just carry on with what we are doing. I think they were saying our due diligence was pretty good"* (transcript 10

June 2013 page 110). Mr Carvell had no dealings with Mr Yewdell, although he met him a couple of times and he looked through some of the due diligence reports produced by Halliwells for KTS on its suppliers.

256. Mr Carvell told us that he was unaware where the goods came from as he was not involved in the buying and selling; only that they were purchased from KTS. He stated he did not understand how MTIC fraud worked at the time, although he also stated that his understanding of the fraud grew as he continued to work at the Appellant.

257. Mr Carvell was cross-examined about his role as director from March 2006 and the loan from Future Connection during that period. He explained that he knew nothing about Future Connection nor was he sure about how the loan was intended to be repaid as *"at the end of the day even though Pat had gone to the Isle of Man they were both still his companies and his job was to arrange all the finance, any financial dealings. I didn't get involved in any of that"* (transcript 10 June 2013 page 148). He explained that he would have been asked to sign documents on behalf of the company but that he was not responsible for any negotiations in respect of financial affairs and had no knowledge as to how the various investments worked.

Associated Companies

258. Mr Hammond explained that he treated the associated companies as separate investment vehicles. Although the companies had the same supplier and similar customer base, the profitability of each company depended on the investment put into it and, as each was self-insuring should anything happen to one company, it would not affect other investments.

259. The sale proceeds of the helicopter from R&L was used as most of the trading capital. The company used the same FCIB account as the Appellant but proper records were kept so that no confusion arose as to how much money belonged to each company. Mr Hammond queries in his written evidence why ADWUK was repaid by HMRC despite using the same trading partners, the same due diligence, the same staff and presumably being given the same warning signs of fraud as the Appellant.

260. Mr Hammond explained that AWDUK was set up to allow Mr Prince to take his electronics and software opportunities further, however some of the deals fell through and instead it was used to trade in mobile phones. Mr Hammond took the view that letting Mr Prince trade via AWDUK rewarded him for his "*all-round efforts.*"

Payment Terms, Title and Conditions

261. Mr Brownsword noted that the "commercial invoice" issued by the Appellant sets out its payment terms as "*payment by telegraphic transfer prior to request of goods.*" The terms were not adhered to as payment followed invoicing, sometimes days afterwards, and delivery of the goods to the customer. He also highlighted the fact that all deals were conducted on a back to back basis and the Appellant was never left with unsold stock.

262. Mr Hammond's witness statement explained that there was no formal time period by which the Appellant had to pay its customer; rather it depended on the situation. At times the Appellant could obtain credit and at times the supplier required quick payment.

263. Mr Prince stated in oral evidence that he had not given any thought as to whether someone was financing the deals by credit. He agreed that KTS traded in a similar manner to the Appellant in that they did not hold stock. He explained that the contract arose when a purchase order was received and the Appellant's contract for purchase occurred at the same time when a purchase invoice was sent to the supplier.

264. Mr Prince was unsure as to when title was held by the Appellant:

"Q. When did you get title to the goods?
A. When we paid for them.
Q. So you released them to your customer before you had title.
A. Sorry. When they paid for them, sorry. When our customer had paid for the goods. No, when we paid for the goods, sorry. Yes.
Q. But you paid for the goods after your customer had paid you for the goods.
A. Correct.
Q. So you release the goods to your customer when you have been paid.
A. Yes, correct.
Q. So when you release the goods you do not have title in those goods.
A. I don't – seconds. You're talking seconds.
Q. It might be seconds or it might be a number of weeks, as we can see in some circumstances.
A. Title of goods remains with Ian Tuppen until they're paid for.
Q. Did Ian Tuppen have title?
A. Not sure.
Q. So why did you say ----
A. He must have had title. He must have had title somehow.
Q. Why?
A. I don't know. He may have paid for the goods himself. I don't know…"

265. As regards the Appellant's payment terms "*prior to request of goods*" Mr Prince explained that this meant the money must be received before the Appellant parted with the goods or the goods are requested. He clarified that the term "*probably should have said "receipt of goods" or "release of goods""* (transcript 7 June 2013 page 141) and that the word "request was probably a typographical error. He explained that payment terms were "*when we got paid, you get paid."* (Transcript 7 June 2013 page 172).

266. Mr Prince explained that where goods were transferred out of the UK before payment KTS would have been informed, although he did not specifically seek permission despite the fact that the goods still belonged to KTS.

Loans and Financial Information

267. The evidence in respect of the loans received by the Appellant and LCD came from HMRC Officer Mr Leach who provided two witness statements and also gave oral evidence to the Tribunal.

268. Mr Leach is an associated member of the Chartered Institute of Management Accountants who is employed as an operational accountant in the Large Business Service. He also provides accountancy support to other teams within HMRC by analysing the processes and procedures employed by businesses operating in certain sectors including the mobile phone industry.

269. Mr Leach reviewed the loan arrangement dated 9 February 2006 between Future Connection FZCO ("Future Connection") based in the UAE and LCD. In summary, he noted that the agreement is signed between Future Connection and LCD but there is a possibility that Info Tech may have acted as an agent for Future Connection. In an email to Mr Morrison dated 4 April 2006 Mr Hammond, who arranged the loan and was made aware of this fact after the loan was agreed, stated: *"The money came from Info Tech, not the lending company. When I questioned why this was the lender informed me that the two companies were connected and for easy and speed the money had been sent from Info Tech. They did not provide any further information, and I was satisfied with the answer."* Mr Leach queried, in such circumstances, the due diligence carried out by LCD and Mr Hammond prior to signing the agreement.

270. The loan document and promissory note contain some strange and ambiguous terms for legal documents, which suggest that, in parts, they were not drawn up using professional help such as a solicitor, for example the promissory note makes a comment relating to *"trial by jury"* which Mr Leach found odd as he would expect any forfeiture to be dealt with on a civil rather than criminal basis.

271. Although Mr Hammond was not, at the time of the loan, a director, company secretary or shareholder of LCD he appeared to have had influence by his negotiation of the loan on LCD's behalf.

272. In oral evidence Mr Leach agreed that the fact that the purpose of the loan is not stated is not unusual and the high rate of interest reflects that fact. The loan is unsecured which leaves the Lender with all of the risk; in Mr Leach's view the loan is so risky that he did not consider it to be a loan that a normal commercial lender would make. He noted that there was no evidence as to how LCD planned to fund repayment of the loan interest and principal.

273. Mr Leach noted that he was unclear as to why there were two documents (a loan facility agreement and a promissory note) as he would only have expected to see one loan agreement document and although the two are broadly similar, they are not entirely consistent. Mr Leach noted that although the loan was stated to be unsecured, the agreement appeared contradictory in that it also contained a provision which stated *"if this loan becomes past due, the Lender will have the right to pay this loan from any deposit or security Borrower has with Lender without further notice."*

274. No evidence was provided to Mr Leach to confirm whether the loan has been paid in full or in part and he noted that if the loan remains unpaid, there was no evidence that the Lender had taken any action to either charge additional interest or recoup the money.

275. Mr Leach noted that a Dun & Bradstreet report on Future Connection in May 2006 showed the company's business as "electronic parts and equipment" and not the supply of finance. Furthermore the only executives named are Mohammed Hussain and Deepa Amar neither of whom signed the agreement, which was signed by M K M Hasan with the title of manager. Mr Leach queried the authority under which Mr Hasan signed the document.

276. HMRC Officer Mr Skelly, who is an Associate Member of the Chartered Institute of Management Accountants, provided a witness statement setting out his review of the Appellant's draft accounts for the Year Ended 30 April 2005. In summary, Mr Skelly noted that the turnover of the company increased from £17.9 million in 2005 to £308.9 million in 2006; an increase of 1,625%. In conjunction the turnover per employee achieved was £36.6 million for the year ended 30 April 2006 as opposed to an average of £296,000 achieved by 5 of the UK's leading telecoms companies.

277. There is an agreement between AWD and Columbus Investments Limited ("CIL") to insure the goods in transit. CIL is registered in the Isle of Man and is owned by Mr Hammond. The insurance started from 6 March 2006 however CIL was not incorporated until 20 March 2006 and therefore had there been any loss on the 28 deals which took place between 6 March and 10 March 2006 the Appellant would have no company to make a claim to as CIL did not exist. Mr Skelly also queried the decision of CIL to insure the Appellant's risk when ultimately it would be Mr Hammond who would be affected by any loss.

278. Columbus Systems Limited ("CSL") is another company of which Mr Hammond is the sole shareholder. From March 2006 CSL charged the Appellant a licence fee of 3.5% of the value of goods purchased and then sold in the month. In April 2006 there were 32 deals that took place for which the Appellant made a gross profit of approximately 3% or lower. Mr Skelly noted that the agreement with CSL meant that any profit made on the deals would have been wiped out as more was due to CSL than the Appellant actually made.

279. The terms of the agreement are set out in a letter from Mr Hammond to the Appellant dated 6 March 2006 which notes that the fee will only be payable once HMRC has paid any refund due to the Appellant. The letter also states:

"Following my resignation as director from the company last month, it is my intention following our negotiations, to charge Advent a licensing fee to cover the position I have with regard to the business and its ongoing capacity to continue in business.

As we have discussed, without my unique skills it would be virtually impossible for Advent to continue to supply and satisfy HMRC with their ever increasingly complicated due diligence requirements, and find trusted and highly credible third parties to deal with."

280. Mr Skelly did not see any written agreement between AWDUK or R&L however he did see an invoice containing the licence fee charged for March 2006 to both companies which equated to 3.5% of the value of goods purchased for resale in the month.

281. In April 2006 the Appellant completed 95 deals; 32 had a mark-up of 3.04% or less and the remainder had a mark-up of 4% or higher. Mr Skelly calculated the gross profit on the deals before any costs are taken into account as £2,862,925 (4.5%). The total value of goods purchased was £64,060,600 and the licence fee would have been £2,242,121.

282. Mr Skelly noted Mr Hammond's involvement with R&L and AWDUK and queried why 3 companies were used to trade in the wholesale buying and selling of mobile phones with the same customers and suppliers as the Appellant as to do so incurred additional costs.

283. The other practices highlighted by Mr Skelly as unusual are: no staff costs recorded in the accounts for 2004 and 2005, no stock held at the year end in 2004 and 2005 and use of the Appellant's FCIB account by AWDUK and R&L despite the companies holding accounts with the Bank of Cyprus and The Co-Op respectively.

284. Mr Skelly concluded that Mr Lee Carvell, who was the sole director in April 2006, appears not to have acted in the best interests of the company by entering into transactions that would be loss making for the Appellant due to its commitment to CSL. Mr Skelly also questioned whether, in view of the agreement with CSL, Mr Carvell had any influence over which transactions the Appellant entered into as it appeared to be the role of Mr Hammond and the service for which the Appellant paid CSL a licence fee.

285. HMRC Officer Mr Cashmore, a Chartered Accountant within Specialist Investigations, was asked to consider certain financial statements and accounts of the Appellant. He noted that in 2005 the company was profitable even though it operated at very low margins. The company had few fixed overheads and incurred few costs other than cost of sales. There were no payroll costs paid in 2005, although a dividend was paid to shareholders. Turnover was very high especially when compared to staff and other administrative costs, and to the level of fixed assets, stock and net current assets. Sales increased by 1,178.6% in 2005 and 1,625.6% in 2006. In December 2009 the Company went into Administration.

286. Mr Hammond's witness statement explained that he initially financed the Appellant himself but as the business grew he sought investors from whom he took personal loans. The investors were people he knew well and trusted, most of whom had successfully invested in other products. The money was put into the Appellant

and the investors were repaid if the business performed well. Mostly the loans were informal but Mr Hammond remains liable for approximately £10,000,000.

287. A Mr Graham Townend provided the start up capital by investing £300,000, which was set out in a profit share agreement dated 10 March 2004. The agreement states that:

"50% of the gross profit for the period 1 May 2004 – 30 April 2005 and 15% for the period 1 May 2005 – 31 August 2005.

This being in consideration for all the help and advice undertaken by yourself in helping build the export business in all areas.

This money will be paid to you as a profit share and is therefore only payable if Advent makes a profit."

In June and August 2005 Derwent Bridges invested £60,000 and £12,000 respectively and a further £15,000 on 3 January 2006. In evidence Mr Hammond gave the following explanation:

"Q. All right? So we will say on this particular occasion 5%, so that is the top end really, is it not, of your mark up?

A. Yeah. Yeah.

Q. If I could borrow "£12.50 from an investor, then when the funds were returned by way of our VAT return we could split the profit on that trade with the investor 50:50." All right?

A. Generally the way it worked, yeah.

Q. Right. So in February of 2005 ---…you have a gross profit of £5.

A. Yeah.

Q. Right? Your investor whose money you have used gets 20% of the £12.50, does he not?

A. Yeah. Yeah.

Q. £2.50.

A. Yeah.

Q. So that is half your gross profit gone.

A. Yeah.

Q. Also in February 2005 you were paying Derwent Bridges 50% of the gross profit.

…A. Yeah.

Q. Okay? So, basically, you pay the investor in the example where you have a 5% mark up £2.50.

A. Yeah.

Q. Half the gross profit.

A. Yeah.

Q. You pay Mr Townend 50% of the gross profit.

A. Yeah.

Q. That is £2.50.

A. Yeah.

Q. So your gross profit after you've taken those out is zero.

A. I think you are making an assumption that this £100 that we invested, that that was Rob Jarrett's £12.50. It could have been my £12.50.

Q. No, no, no, but I am talking when his money was used, which it was used ---

A. Yeah. Yeah. In January 2005.

…Q. So on that deal with a 5% mark up ---

A. Yeah.

Q. --- you are going to make a loss.

A. Yeah. It's conceivable. These are the business decisions you make. The other alternative I had to doing that deal with Graham Townend was, "I tell you what, Pat, I'll have 50% of the company. Don't worry about it. I'll have 50% of the company,

so I'll have 50% of the profits forever." That was not an alternative for me. That would have meant he could have a say in how the business was run. He might have done a better job than me. He might well have done and maybe I wished I'd done that but 50% of the profits forever were nothing compared … this 50% for one year was nothing compared with potentially the 50% of the profits forever. By January … by December 2005 the company had retained profits of £4 million. Graham Townend would have been entitled to £2 million, so I think at £368,000 I've done a fantastic deal and when you think about things like Casares del Sol, okay? Who put the money into Casares del Sol? Did Rob put any in? I think he put 30 grand in. Did Coops(?) put any money in? No, not a penny. Did Phil Donlan(?) put any in? No, none whatsoever but we shared … we shared the equity of the business out 42, 42, 5 and 10, okay? That cost me a fortune. Why didn't I at that point in time say, "No, sorry lads, you're not doing it. I tell you what, you can have 50% of the gross profits for the first year. I'm going to take everything else." We didn't make any profits in the first year. All the profit was related to the back of the deal. I wouldn't have had the fall out with them at the end of 2006 where they can control the company because they're the directors, they've got the major shareholding. The problems that caused me by doing this with Graham Townend. Yes, it was giving away a lot in the short term but in the long term I hoped I would benefit and I wished I'd done that deal with Rob, Pete and Phil but I didn't. I didn't. And that principally is why I did this deal with Graham Townend, because I'd realised I'd given too much away in Casares del Sol. I had to go to investors, I raised the money, personal contacts, Howard Thacker, all the contacts, to raise the money for Casares del Sol. That's what I did. Rob had none of those contacts whatsoever and I gave away 42%.

Well, that was a terrible business decision, wasn't it? What a great business decision this was in comparison. Sorry, do you understand what I'm saying, yeah? …MR BENSON: So it was a good business decision to basically trade at a loss? A. There are lots of companies that trade at losses and continue to trade. You don't need profit to be able to continue to trade. You need cash to be able to continue to trade. Loss-making companies can survive, profit-making companies often do not survive."

288. As regards the loan to LCD Mr Hammond explained that he and Carol Hammond were very close and at the time of the loan she was turning business away on a daily basis as she did not have the capital to fund the transactions. Mr Hammond made contact *"with an associate who had previously arranged loans for me ad asked if he could help. The loan was an unsecured loan…I helped to negotiate the loan but the final decision was always up to Carol.*

289. Mr Hammond provided details regarding his relationship with Mr Thacker, who he met in his early 20s. Mr Hammond worked for Mr Thacker for about 7 years during which time they became friends. When Howson Sports was sold in 1996 they kept in touch with Mr Hammond taking an interest and investing in an internet dating business set up by Mr Thacker. In 2003 the internet business was sold for about $100,000,000 from which Mr Hammond received his investment back with a substantial bonus. When Mr Hammond needed to raise capital for LCD and the Appellant he approached Mr Thacker as *"it was perfectly natural to believe that either he could help me or that he knew someone who could help me."* Mr Thacker gave Mr Hammond the name of a contact who worked in the mobile phone industry and a loan to LCD was arranged via a company called Future Connection, which Mr Hammond agreed in oral evidence had nothing to do with Mr Thacker. He stated that he had not made efforts to find out who owned Future Connection as he trusted Mr Thacker. He explained that there was no correspondence between the Appellant and Future Connection or LCD and Future Connection beyond the loan facility nor did he speak to the people lending the money. The contact was *"a guy called Lewinski, we called him Lenny. Lewinski was an investor/founder of Kiss.com…he was a…very wealthy man, who had invested in the mobile phone market, understood it, and that's where Thacker told me the money was coming from."* (Transcript 6 June 2013 page 92). Mr Hammond did not know where Lewinski's company was based and he agreed that the loan document had not been signed by Lewinski but was signed by Mr Hassan, a manager who Mr Hammond assumed had the authority to sign the document. A document entitled *"Possibility of funding from First Connection"* in respect of the March 2006 loan was exhibited by Mr Hammond who accepted that the name of the company was incorrect and stated that it was possibly a typing error. Mr Hammond confirmed that Future Connections have not taken action to recoup the money lent to the Appellant, nor had he received any correspondence from the

company although he had informed Mr Thacker that the loan could not be repaid and *"they know what the situation is."* (Transcript 6 June 2013 page 117).

290. On 16 February 2006 the Appellant was loaned £1,500,000 via InfoTech. Mr Hammond discussed the possibility of further investment with Mr Thacker who stated that the same individual who provided a loan to LCD would also invest in the Appellant. When the loan came it was arranged via InfoTech Mr Hammond was not surprised that it was a different company as it seemed reasonable that a lender would not necessarily want all his eggs in one basket.

291. On 15 March 2006 the Appellant received a further £1,500,000 via Future Connections. Mr Hammond explained that as with the previous loans it was negotiated by Mr Thacker who Mr Hammond believed benefitted from a finder's fee. He stated: *"that this loan came via a different company still did not surprise me, but I understood it was the same investor."*

292. On 5 June 2006 Mr Hammond agreed an unsecured loan facility with Baddesley Holdings for £7,310,000 which was also arranged via Mr Thacker. The terms of the loan facility agreement were:

"Within 6 months from today or immediately upon receipt of the April 06 VAT refund for Advent, the Borrower promises to pay the Lender the sum of £7.3M together with interest. In the event that the refund is not received within 6 months the interest shall not be charged at the penal rate of interest."

Mr Hammond explained that he provided the Appellant with an unsecured loan facility in a similar amount. In oral evidence Mr Hammond explained that the reason for the loan was because the Appellant was under significant pressure to pay KTS, who in turn were under pressure from their supplier to make payment. The loan was made to Mr Hammond as opposed to the Appellant because: *"Mr Thacker felt that it was a short-term loan, it would be better and would be easier to get the loan if it was to me. He knew that Casares Del Sol was coming to an end. He knew that there was potentially a big payday for me and that therefore it would easier to get the money as a loan to me because I would be able to pay it back. I was perceived as a wealthy man…"* (Transcript 5 June 2013 page 140)

293. In oral evidence Mr Hammond clarified that Baddesley Holdings had not taken legal action to recoup the money nor was he aware whether the company was in liquidation. He added that he had never met the director of Baddesley Holdings but could : *"remember talking to a guy, I can't remember his name but I spoke to a guy on the telephone about the loan."* (Transcript 5 June 2013 page 187). Mr Hammond stated in oral evidence that the connection was also Lewinski: *"it was one of Lenny's companies"* (Transcript 6 June 2013 page 187).He did not know what type of business Baddesley Holdings was, nor did it matter, although with hindsight Mr Hammond accepted he should have checked. We were told that since these proceedings began Mr Thacker had made attempts to find Lenny but has no up to date number for him.

294. Mr Hammond explained that there was a pool of investors in a profit share arrangement. For example the agreement with Mr Jarrett was that the Appellant would pay a 20% return on capital invested and *"every month you would say to the investor, "Do you want to invest this month?" and it's in a pool, it's in a bank account, it's in the current account, the deposit account, but it's there, it's account … it is there. If he said, "Yes, I want to invest it," we would assume that if we invested £100,000 that Rob's £100 or Rob's £10,000 was in that because he wanted to invest in it. If he'd have said, "No, I want my £10,000 back this month," I would have invest … I would have looked for less sales and we would have invested £90,000."* (Transcript 6 June 2013 page 27)

295. Mr Hammond explained that he would talk to the investors every day and ask whether they wanted to invest as: *"these were my friends, family, business associates. I had lots of time to talk to the people that I loved and cared about and I was in business with and worked with every single day."* (Transcript 6 June 2013 page 37)

296. As regards the licence fee charged to the Appellant by CSL Mr Hammond agreed that if the Appellant made a profit of 3.5% or less, the company theoretically made no money but he clarified that he had the discretion to reduce or waive the charge. He disagreed that the reference to his "unique skills" was nonsense; it was the help, advice, direction and guidance he provided as the driving force for the business, plus being able to provide the working capital required to fund the company.

Insurance

297. At a meeting on 11 April 2006 Mr Prince told HMRC that insurance was arranged by the freight forwarder or the Appellant. Mr Brownsword noted that on 1 June 2006 the Appellant was invoiced by Columbus Investments Limited for "*Freight and Marine Insurance for April agreed at 0.20% of sales*" however it related to the transactions which had taken place in April 2006.

298. Mr Hammond did not agree with HMRC that the goods should be insured. The Appellant's trading model was such that the goods were generally only owned by the Appellant for a very short period of time; a few minutes to a few hours, which was a very narrow window in which something could go wrong. Furthermore he noted that the goods should have been covered by the freight forwarders own insurance when held at their premises. When Mr Hammond moved to the Isle of Man in February 2006 he discussed the issue with associates who dealt in insurance and came up with the idea to self-insure. He set up CIL to do so with some of his contacts on the Isle of Man and as a result he provided the Appellant with affordable formal insurance. The insurance premiums were never paid as it was part of the agreement that the premium would only be paid once the Appellant had recovered its input VAT.

299. Mr Hammond went on to explain:

"We took this insurance out because one of the few things that HMRC would say to us on a regular basis was, "You haven't got any insurance have you? Ooh", so we thought, "Hmm, they're telling us something there, aren't they?" I know it's a

complete waste of money to take out insurance because during every single one of our consignments out we've never lost a single phone, not one phone. I made inquiries with Tuppen: "Do you know anybody who's ever lost any phones, had them damaged, burgled?" "No, none whatsoever". This was a commercial decision not to insure prior to this and we did it partially because we felt that's what HMRC were asking us to do. Now it appears that HMRC want to come and hit us round the head with it and say, "This isn't commercial is it?" Well, quite frankly I wish I'd not bothered. I wished we'd have carried on not insuring because we never suffered a loss anyway and what a great decision it had been for the whole length of Advent not to insure because we saved hundreds and hundreds of thousands of pounds in insurance premiums." (Transcript 6 June 2013 page 163).

Enquiries with other EU Member States

300. Mr Brownsword instigated enquiries via the Central Co-ordination Team ("CCT") which is the UK's Competent Authority for the purposes of Mutual Assistance enquiries via the fiscal authorities in other Member States. Mr Brownsword's witness statement set out information obtained in respect of the Appellant's EU customers. We do not intend to repeat that information within this decision on the basis that it was gathered after the period with which we are dealing; in our view the information would not have been known to the Appellant during the relevant period and therefore does not assist us in determining the issue of knowledge.

FCIB

301. Mr Brownsword agreed in oral evidence that there was nothing in the public domain at the relevant time which would have caused a trader to question the integrity or reputation of the FCIB.

302. Mr Mendes provided FCIB evidence in respect of his analysis of 58 transactions in which he traced the movement of monies in the chains of purchases and sales. He noted that the signatories to the Appellant's account were Mr Hammond and Mr Prince. By way of example, (invoice reference 1222) on 7 February 2006 the Appellant raised a sales invoice showing a dispatch of 1,400 Sony Ericsson W900is with a sales value of £436,800 which were consigned to DGB Sarl based in France. The movements of monies in the transaction chains showed:

- Payment took place on 8 February 2006 when the Appellant received £436,800 from DGB Sarl;
- DGB Sarl sold the goods to Kima Estates SRO based in Slovakia and for which DGB received a payment of £438,200 on 8 February 2006;
- Kima Estates sold the goods to Mobile Direct based in Pakistan for which it received a payment of £439,250 on 8 February 2006;
- Mobile Direct sold the goods to Duck Trading FZCO based in Dubai for which it received a payment of £439,250 on 8 February 2006.

303. In this transaction the Appellant was supplied by KTS, which it paid £493,500 on 8 February 2006. The chain traced back from the Appellant and KTS was as follows:

- KTS was supplied by AR Communications and Electricals Ltd in the UK which it paid £486,097.50 on 8 February 2006;
- AR Communications and Electricals was supplied by Electron (GB) Ltd in the UK which it paid £484,452.50 on 8 February 2006;
- Electron (GB) Ltd acquired the goods from Duck Trading FZCO in Dubai which it paid £480,340 on 8 February 2006.

304. Mr Mendes noted that Duck Trading FZCO appeared to start and end the transaction and the VAT which should have been retained by the acquirer to pay the VAT due was paid to Duck Trading FZCO. In all but one of the deals analysed Mr Mendes identified circularity of payment.

305. Mr Mendes provided a further witness statement following his analysis of the Paris Server which held details of narrative that related to the transfer of funds within the FCIB bank and which was made available to HMRC on 27 September 2010. He re-examined the 58 transactions and noted that there was no evidence which altered his initial findings. He noted that a number of payments, often made within a very short space of time, were made from the same IP address.

306. He concluded that the evidence showing where the funds commenced and were returned indicated orchestration in that the participants would have to be aware of the role they were to play within the chain in order for the funds to return to the commencer of the transaction.

307. On 2 occasions the Appellant received investment into its account from Future Connections FZCO; on 16 February 2006 it received £1,500,000 and on 15 March 2006 it received £1,500,000. Mr Mendes noted that the Appellant had never traded with Future Connections and that the latter company itself received funds from a company that apparently extracted funds inclusive of VAT in the transactions that have been identified with the Appellant as a participant. Mr Mendes' review of his evidence following analysis of the Paris Server showed that the narrative on injection of the loan in February 2006 is identified as "INFOTEK LOAN." The funds came from Future Connections which received the funds from Total profit who extracted funds which would have included VAT. There was no narrative on the Paris Server in respect of the March loan. The funds came from Future Connections which had received the funds from Mobile One. Examination of the account of Mobile One showed that the payment to Future Connections was facilitated by the receipt of funds from Telecom Trade Ltd which extracted amounts that included the VAT in 7 of the March 2006 transactions.

308. On 12 June 2006 the Appellant received loans totalling £7,310,000 which enabled it to pay 8 outstanding supplier invoices. The funds came from Baddesley

Holdings Ltd, based in Hong Kong and Marbella, Spain. Baddesley Holdings had received the funds from Mobile One which in turn received the funds from Marxman International. Marxman had received £5,917,850 from Maks (the difference already being available in the account). Mobile, Marxman and Maks were all identified as having extracted funds including the VAT in 14 transactions in the April sales sampled by Mr Mendes.

309. All amounts traced in the supply chains in the UK were inclusive of VAT and the funds, when passed to an overseas company, are also inclusive of VAT which would result in the acquirer being unable to account for acquisition VAT in the UK. He concluded that where loans were made to the Appellant, which enabled the VAT to be paid to its supplier, the funds commenced with the traders who had either commenced the transaction or were the extractors of funds that apparently included the VAT.

310. Mr Mendes was asked in oral evidence about the fact that the Appellant and KTS shared an IP address in respect of payments made by both companies on 2 May 2006, 16 May 2006 and 12 June 2006, a fact if which he was aware but unable to comment, referring us to the evidence of Mr Letherby.

311. HMRC Officer Mr Letherby, who is the lead digital forensics officer responsible for the recovery of evidence held on the computer systems of the FCIB, provided an unchallenged report dated 12 August 2010. In his report Mr Letherby considered the possible causes of commonality in IP addresses generally and the likelihood of allocation of the same IP address to disparate companies by virtue of each of those general causes. There are 6 general reasons why two or more individuals may have the same IP address which can be summarised as follows:

- The users were located at the same physical location and sharing the same Gateway connection to the Internet;
- The users were connecting remotely to another "shared" computer and therefore sharing the same Gateway connection to the Internet;
- The users were connecting remotely to a server which was co-located with other computers in a "shared hosting" company and sharing the same Gateway connection to the Internet;
- The users were connecting remotely to a common Proxy Server sharing the same Gateway connection to the Internet;
- The Users connected using a common mobile data connection from a common provider, using a mobile data device issued in a common geographic region;
- Simple co-incidence.

312. As regards the users being at the same physical location Mr Letherby's view was that users physically located in separate places cannot receive the same IP address,

however users being in the same physical location, such as different offices in the same building, could share common IP addresses.

313. In respect of connecting remotely to a "shared" computer, Mr Letherby considered it very unusual for two companies in a "customer and vendor" relationship to share such a service as it potentially compromises business confidentiality and security practice, although he noted that companies may have made such an arrangement which would require a co-operative relationship over and above that usually seen in business.

314. To achieve the same IP address shared hosting would require each of the traders to have, by coincidence, hosted their servers with a common provider which he considered unusual but possible for companies trading in many different countries.

315. As regards a common shared Web Proxy, Mr Letherby considered this unlikely, but possible, and noted that it would require access to a common computer (the Web Proxy) and a co-operative relationship over and above that usually seen in business. For each user to have randomly selected the same 3rd party Web Proxy would require significant coincidence.

316. In respect of mobile data connections, Mr Letherby considered that it was unlikely, but not inconceivable, that a company based overseas would have a UK mobile data device which it used regularly to connect from overseas as the availability of such UK devices in other countries is limited.

317. Finally, on the possibility of coincidence, Mr Letherby took the view that it is very unlikely that such an event would occur once and due to the frequency with which the logs suggest that IP addresses were shared across multiple sessions, multiple times within minutes of each other he concluded that coincidence is not a reasonable explanation for the presence of the same IP address across multiple accounts, across consecutive or near consecutive transactions.

318. Mr Hammond clarified in his oral evidence that Mr Prince was responsible for making payments for the transactions. Mr Prince told us he made more than one payment from Mr Tuppen's computer, hence the fact that payments by the Appellant and KTS are shown on the FCIB evidence as originating from the same IP address on 12 June 2006, 2 May 2006 and 16 May 2006. Mr Prince stated that he happened to be in Hampshire on those occasions and as KTS were under pressure to make payment to their supplier, he was instructed by Mr Hammond to make payment straight away. An enquiry was made on the Appellant's FCIB account on 29 April 2006 which also showed the same IP address as KTS; Mr Prince explained that he spent a lot of time in Hampshire.

Profit Margins

319. Mr Brownsword analysed the profit margins made in the Appellant's deal chains during the period with which we are concerned. He noted that the profit margins of the traders in the supply chains in 02/06 ranged from 25p per unit to £18.75. The Appellant always made the highest profit, which in the majority of deals

was at least three times greater than that of KTS. A similar pattern emerged in respect of the 03/06 deal chains where the margins ranged from 20p to £17.50, again with the Appellant always achieving the highest margin, which in most deals was three times greater than that of KTS and ranged between 3.96% and 4.02%. In the 06/06 deal chains margins ranged from £6.50 to £24.25 and the mark-ups were as follows:

- In 19 sales to 2 Trade which involved 5 different models of mobile phones with values ranging from £261 to £379 the Appellant always achieved a mark-up between 5.73% and 5.80%;

- In 44 deals to 5 customers involving 11 different models of mobile phones with values from £219 to £485 the Appellant's mark-ups ranged from 4.94% to 5.05%;

- In 32 sales involving 12 different models of mobile phones with values from £215 to £482 the Appellant's mark-ups ranged from 2.73% to 3.04%.

320. When cross-examined on the issue Mr Brownsword accepted that the Appellant's profit margins did vary; in February between 2.9% and 4%, in March between 2.9% and 4.5% and in April between 2.7% and 5%.

321. In terms of adding value, Mr Hammond's oral evidence was that he added the most important value, which was cash flow:

"You could not export if you did not have the cash to do so". (Transcript 5 June 2013 page 192)

322. He accepted that his customers were wholesalers and therefore potential suppliers but they could never supply the Appellant at the price it needed.

IMEI Numbers

323. Mr Brownsword noted that 25 separate irregularities were notified to the Appellant in respect of IMEI numbers recorded for deals undertaken in April 2006 (06/06) in that the numbers were recorded as scanned by HMRC before and after April 2006. The IMEI scanning was carried out on behalf of the Appellant by its freight forwarder Capital Logistics (GB) Limited and provided to HMRC as part of its due diligence. Mr Brownsword noted that despite the irregularities there was no indication that the Appellant queried the results or took steps to cancel the order but instead chose not to continue the IMEI scans in respect of a further 95 deals undertaken in the same period. In oral evidence Mr Brownsword clarified that there was no evidence to suggest that the goods which had been scanned previously related to earlier deals conducted by the Appellant. He also agreed that his evidence in respect of irregularities only came to light in 2007 after the numbers were checked on the NEMESIS database.

324. Mr Prince explained that the Appellant recorded IMEI numbers when the phones were held by freight forwarders. The numbers were recorded and checked online to ensure that the numbers matched the phones inspected.

325. Mr Hammond agreed that the Appellant drew back from IMEI checks as it was an expensive procedure and HMRC was ambiguous as to whether they were actually needed. He noted that the irregularities identified by Mr Brownsword made up a very low figure of the amount of phones actually traded.

Anomalies in deal documentation

326. Following an analysis of the deal documentation provided by the Appellant to HMRC, Mr Brownsword highlighted the following discrepancies as evidence of the contrived nature of the deals and Appellant's awareness of such:

- In 02/06 2000 Nokia 8800s - sales invoice 1233 dated 9 February 2006: the purchase order received by the Appellant from D Jensen Trading is dated 9 February 2006. The Eurotunnel vehicle-tracking document relating to delivery of the phones shows a UK departure time of 08:41 on 9 February 2006. The goods were also said to have been inspected by A1 Inspection Limited at AFI Logistics (UK) Ltd in Middlesex on the same date. KTS received a pro forma invoice in respect of the goods from Mitek at 12:09/12:34 on 9 February 2006. Payment was received by the Appellant on 14 February 20066 3 days after the sales invoice date despite the payment term on its invoice which stated *"payment by telegraphic transfer prior to request of goods."*

- In 03/06 sales invoice 1300 for 2400 Nokia 9500: the Appellant received a purchase order from Allcom ApS which showed a fax time of 11:15 on 9 March 2006. The supporting Eurotunnel ticket regarding delivery of the phones shows a UK departure time of 03:24 on 9 March 2006. The Appellant's shipping instructions fax sent to AFI Logistics (UK) Ltd is dated 9 March 2006 and requests *"a 100% inspection report of all goods and a random sample of 5 IMEI numbers"* however the A1 inspection report is dated 8 March 2006. The signed "customer declaration" due diligence document is timed at 16:18 on 9 March 2006, post-dating the time at which the goods appeared to have left the country. Allcom ApS paid the Appellant on 15 March 2006, on the face of it in breach of the invoice term "*payment by telegraphic transfer prior to request of goods."*

- In 06/06 sales invoice 1369 for 2300 Imate Jamin mobile phones: the purchase order was received from EC Trading by the Appellant on 24 April 2006 at 13:27 according the fax stamp. The shipping certificate provided by AFI Logistics showed the goods left the UK on 24 April 2006. The Eurotunnel ticket shows UK departure date of 25 April 2006 and A1 purported to inspect the stock at AFI Logistics on 26 April 2006. EC Trading paid the Appellant on 28 April 2006.

327. In oral evidence Mr Hammond confirmed that he did not look at any inspection reports and could not be sure that he was aware of the fact that the reports referred to the phones having European two pin plugs.

328. Mr Prince was unsure as to how many phones were contained on a pallet or how the goods were packaged. He imagined that in order to count the phones shrink-wrap would need to be removed but he had never watched an inspection in order to understand the procedure. He believed that a 100% inspection was documented proof of what the Appellant had purchased although he did not know the mechanics of it.

329. As regards anomalies in the documentation, such as timings of deals compared to the times when the goods left the UK, Mr Prince explained that he had not noticed certain discrepancies: *"we were doing a lot of work, we're putting stuff into bundles…and these things get missed…"* (transcript 7 June 2013 page 189). He added that people make mistakes. He did not see of inspect the phones traded and was unable to say whether the 8801s had American or European plugs, only that *"my customer wanted them for his customer"* (transcript 7 June 2013 page 189).

330. Mr Carvell was asked about missing release instructions, which he assumed Mr Prince would have dealt with as the person who dealt with payments. He acknowledged that release documents should exist and could not explain why none were exhibited as part of the Appellant's case.

Company Officers

Mr David John Prince

331. Prior to his involvement in the Appellant Mr Prince traded as Dastech.com ("Dastech") and was VAT registered with effect from 16 April 2002. The business activity was described on the VAT1 as *"software supplier to the trade."* There was an expected turnover in the following 12 months of £80,000 and VAT repayments were not anticipated.

332. HMRC Officer Mr Cook gave evidence regarding the trading activities of Dastech. On 7 May 2002 Euroglen Computers based in Eire had verified the VAT registration number allocated to Mr Prince. As the MTIC Central Co-ordination Team had been attempting to contact Mr Prince by phone without success, he was de-registered from 21 May 2002 as a missing trader. On or about 23 May 2002 Mr Prince contacted HMRC and stated that he had not been in contact with any Irish company. HMRC considered that his VAT registration number may have been hijacked by a third party which led to a visit to Mr Prince on 24 May 2002. At that meeting Mr Prince disclosed that he had entered into a business relationship with Mr Keith Holmes who traded as "Kase Logistics", a hardware company. Mr Prince told HMRC that he had been contacted by Mr Holmes in December 2001; he was acquainted with Mr Holmes from previous business dealings, although in oral evidence Mr Prince clarified that he had never in fact sold anything to Mr Holmes. Mr Holmes had suggested that they could work together and although it was indicated that Mr Holmes would do the buying and Mr Prince the selling (for which he would receive £1,000 plus VAT per week) Mr Cook clarified in oral evidence that in practice Mr Holmes had done both.

333. In February 2002 Mr Holmes contacted Mr Prince again. As Mr Prince believed he would be unable to get a business bank account due to his credit rating, Mr Holmes said he would organise this for Mr Prince. Subsequently Mr Holmes provided Mr Prince with a mobile telephone and asked him to use it to call prospective customers. The pair then met in a bar called Edwards Bar in Burton everyday for a period of approximately 3 to 4 weeks where Mr Holmes would give Mr Prince a series of sales invoices made out as though raised by Mr Prince trading as Dastech.com. Mr Prince was instructed to fax the invoices to the numbers written on the back of the documents. He told HMRC that he could not recall the names of the business on the invoices but he did recall that 2 faxes were sent to Ireland. All of the invoices were for large sums - £2 million to £3 million plus VAT. On average 2 to 3 invoices were faxed each day using a fax machine at "Partners." Mr Holmes told Mr Prince that he would only be liable for £175 VAT due on his weekly commission payment of £1,000.

334. At a further meeting with HMRC on 28 June 2002 Mr Prince stated that he had met Mr Holmes on about 7 occasions over a two week period and that the invoices, which varied between £1 million and £2 million, were sent to two companies of which one might have been in North or Southern Ireland. He also stated that "Ionson" which was written on the back of a copy of Mr Holmes' driving licence, was the name of one of the companies where invoices had been sent and which he believed was based in the North of England.

335. Mr Cook explained in his oral evidence that HMRC subsequently issued assessments for £3,675,000, £8,927,529 and £446 on the basis that he did not consider that Mr Prince's VAT registration had been hijacked as he (Mr Prince) had issued the invoices and was fully aware that his VAT registration number and name were on the documents.

336. The assessments were withdrawn between 6 and 8 January 2003 as HMRC had disallowed the subsequent input tax by the recipients based on the decision that no supply had been made and therefore there was no output tax liability for Mr Prince or Dastech.

337. The VAT registration number was cancelled from 20 May 2002.

338. HMRC relied on this evidence to show that the Appellant, through Mr Prince who was the main point of contact for HMRC, had knowledge of MTIC fraud before he became involved in the Appellant. Furthermore Mr Brownsword discussed MTIC fraud and Notice 726 with Mr Prince at a meeting in 2004 at which Mr Prince did not inform Mr Brownsword of his involvement in Dastech.

339. Mr Prince two witness statements in addition to giving oral evidence to the Tribunal. His written evidence explained that in the 1990s Mr Prince worked in the mobile phone industry for a company called Mainline Limited, which sold mobile phones and airtime to individuals and retail outlets. During his time at Mainline, Mr Prince developed many contacts in the phone business, including people at Motorola and Phillips. Mr Prince accepted in oral evidence that he did not use these contacts

when he began working at the Appellant Company and his experience had not involved grey market wholesale trading.

340. In 1996 Mr Prince set up his own business which, in 1999 he was ready to sell off in order to develop opportunities elsewhere. He explained that as a result of using money from that company to develop the new business he was held by the DTI to have acted recklessly and disqualified from acting as a company director for 7 years. Consequently Mr Prince's next venture was as a sole trader. The business idea was to sell anti-virus software and the company was called Dastech. In oral evidence Mr Prince agreed that the purpose of registering Dastech for VAT was partly to do with Mr Holmes:

"yes and no. I had got my own business plan, which I showed Mr Homes, that I expected to, what I wanted to do with… my whole point of joining in allegiance with him was to get my software business of the ground. That's what I wanted to do, and I showed him my business plan and he said to me, "Well, on that you'd need to be VAT registered anyway," so that's why I did it." (Transcript 7 June 2013 page 32)

341. Mr Prince's witness statement explained that *"it came to my attention that Dastech's VAT number was hijacked by a contact that had purportedly been going to set up sales leads for me."* In oral evidence Mr Prince clarified that Mr Holmes had given him a mobile phone to call prospective customers which he did not have and whose details Mr Holmes did not provide. He stated he may have been naïve, but at the time he had never heard of hijacking VAT numbers. He did not agree that his actions had been dishonest but stated he had been stupid.

342. After Dastech Mr Prince worked in property, buying and renovating repossessed houses. He met Mr Hammond socially who was looking to trade in the wholesale market. Mr Prince's initial role in the Appellant Company was managerial; he ensured that the company ran smoothly, all paperwork was completed and that the deals undertaken were backed up by due diligence and appropriate checks. All decisions regarding deals were discussed between Mr Hammond and Mr Carvell as the trading director although Mr Prince was kept informed to ensure that the business implemented decisions taken by Mr Hammond and Mr Carvell. Mr Prince was the liaison point with HMRC and he set up the FCIB account.

343. In his second witness statement Mr Prince addressed the evidence of Mr Cook in greater detail. He explained that had not found it strange that Mr Holmes would obtain a bank account for him; he had understood this would entail being introduced to a bank manager. He accepted that his involvement with Mr Holmes was *"unwise at best, very foolish at worst"* although Mr Holmes had presented as plausible, confident and knowledgeable about CPUs and computer hardware. When Mr Holmes had spoken to him, there was no suggestion that a fraud was being committed. At the time Mr Prince had not thought faxing invoices was strange, nor had he looked at the front of the invoices. In hindsight, Mr Prince conceded his actions were *"at best negligent, at worst reckless."* Mr Prince stated that he was unaware of any kind of fraud going on at the time and he believed he was purely earning a flat fee for facilitating Mr

Holmes' sales, although he accepted that the sales went through Dastech and he had turned a blind eye to Mr Holmes' actions.

344. Mr Hammond met Mr Prince approximately 15 years prior to starting the Appellant, at the time when Mr Hammond was working at Howson Sports, and the pair met socially on and off from that point. It was Mr Prince's suggestion that opportunities lay in exporting phones and he had some contacts from his earlier days in the industry who were working in the wholesale market. In oral evidence he described Mr Prince as follows:

"Q. Good friend?

A. He grew on me.

Q. Right…What were his skills? What was his knowledge that you were hoping to utilise?

A. He had good organisational skills, he was a good salesman. Again, I'm not a salesman. If there's one thing I'm not it's a salesman. I look at deals, making sure they add up financially whatever the commodity is. You know, you need a skill to be able to work out you can sell it…Dave knew the mobile phone industry. I needed somebody that I could trust, I needed somebody with salesman skills, buying skills. Dave had those. Somebody I could trust, most importantly, who could work with me because I was substantially involved in the Spanish project. I was going to Spain every other week spending a week in Spain."

345. In oral evidence Mr Hammond stated:

Q. Then was there a reason why he was not made a director of the company until March 2006?

A. I was aware Dave had been disqualified as a director.

Q. Right, yes. So in 1999 he was disqualified from acting as a director for seven years, yes?

A. I don't know exactly when or why.

Q. But you knew he had been disqualified from acting as a director?

A. I did.

Q. Did you ask him about it?

A. It wasn't really relevant to me because Dave wasn't going to be a director and the only time the issue came up potentially of Dave being a director was when I moved to the Isle of Man, and by that time I knew Dave had been disqualified. I can't remember whether I asked him or not. It wasn't relevant, okay. He shouldn't have been. He's obviously done something wrong, but by which time I had become aware that Dave was disqualified from being a director, I was working with Dave. Dave was performing a task. He was helping me. It wouldn't have mattered if he'd have said, "I've been disqualified as a director because ...", I don't know, perhaps ... I don't know any grounds why you might have been disqualified as a director. I've never been and I can't remember what the answer is. I know he told me, because I asked him, but I can't remember what the answer was. But it wouldn't have affected my relationship with Dave, because I didn't consider when he told me it was significant enough to say to Dave, "I am sorry, Dave, I don't want to do business with you any more." I wouldn't do business with anybody that was disqualified as a director. Yes, it was unfortunate, but it wasn't terrible." (Transcript 5 June 2013 page 219)

346. Mr Hammond clarified that he had not been aware of Dastech until it was set out in one of the statements forming part of these proceedings and Mr Prince had never mentioned the fact that he had been assessed by HMRC for approximately £12,000,000,. In Mr Hammond's view Mr Prince had acted foolishly and he presumed Mr Prince had not mentioned it because he was embarrassed.

A1 Inspections

347. HMRC Officer Mr White provided an uncontested witness statement regarding a programme of covert searches of heavy goods vehicles undertaken by HMRC in

June and July 2006. As part of the programme A1 Inspection Limited was identified as having completed inspection reports which confirmed that the vehicles were carrying high value electrical goods when in fact the covert searches revealed that the actual contents varied from animal feed to cardboard.

Grey Market

348. Ms Catherine Clerk, who is a UK qualified solicitor employed within the Nokia litigation team provided an unchallenged witness statement in which she provided information about the Nokia 8801. Two models were produced one in metal and later, after October 2006, one in black. Manufacturing began in September 2005 and the last shipment out of a Nokia factory took place in April 2007. Production of the 8800 phone (of which the 8801 was a variant) stopped in May 2006.

349. The Nokia 8801 was launched in the US, Canada and Latin America and was strategically designed for the US market. Ms Clerk remarks that sales in Europe would have been small as the 8800 was the same model as the 8801, but destined for the European market. The total reported sales from the Nokia Profitability Reporting System shows 144,541 Nokia 8801 phones were sold in North America and Latin America. The total number manufactured was approximately 161,000. The 8801 was not released into the UK by any Nokia authorised distributors.

350. The preloaded language and text packages on the 8801 would have been: American English, Brazilian Portuguese and American Spanish in the American market and American English, American Spanish and Canadian French for the Canadian market.

351. The 8801 covered 3 GSM bands: 850, 1800 and 1900. Phones in the rest of the world would usually have GSM bands 900, 1800 and 1900. The 850 and 1900 are for North America and 900 and 1800 GSM bands are used in Europe. If an 8801 was for sale in the UK market, it would have a US 2 pin charger. She noted that as the 8800 was the same model destined for Europe, taken together with the labour and expense involved in changing the 2-pin charger, it was unlikely that there were parallel imports of the 8801 into the UK or Europe which would necessitate changing the 2-pin plug.

352. The price of the 8801 varied over 2006. The price at which Nokia sold to retail and distributors in May 2006 was approximately $501.32, although this varied with each Nokia customer.

353. Mr Fletcher, a Principal Advisor in KPMG LLP has significant experience in the telecoms industry having held positions in audit, accounting, corporate finance, international business development and providing strategic advice to participants and investors in the industry. Mr Fletcher provided three witness statements and gave oral evidence.

354. We will not set out the written or oral evidence of Mr Fletcher in any significant details, for reasons set out later in this decision. In summary, the main issues taken by the Appellant with his evidence related to questioning his independence as a member

of the Anti-Grey Market Alliance and the size and value of the grey market in mobile phones during the relevant period.

355. Mr Fletcher explained that the Appellant dealt with 14,450 Nokia 8801s in a 7-day period in April 2006. By comparison, in 2006 retail sales for Nokia 8801s in Europe and UAE totalled 299 units. In oral evidence he reiterated his conclusion that there was effectively no market for the 8801 handset in Europe and that the volume of the Appellant's trade is implausible.

356. Mr Fletcher raised queries as to why a mobile phone trader operating in the European market would not have questioned orders for such high quantities of the 8801 from a customer in Europe or the apparent availability of such handsets from suppliers within the UK. He concluded that he would expect a trader to have been concerned that the trade was not part of the rational grey market.

357. He noted the generic descriptions on the invoices and purchase orders produced by the Appellant which referred to "Nokia 8801 (Simcard Free) Euro Spec" which did not provide sufficient detail to ensure that the correct specification was ordered, purchased or sold. Furthermore, no European specification of 8801 was ever manufactured; the equivalent phone in Europe being the 8800. He therefore found it surprising that in 8 transactions involving the 8801 the Appellant's invoices described the handsets as "Euro Spec."

358. Mr Fletcher explained that although the 8801 worked on a GSM band of 1800 and therefore would work in most European countries, in Europe there are few networks which are solely GSM 1800. Those networks which use a combination of GSM 900 and GSM 1800 will likely not operate nationally on that basis and outside of urban areas they are unlikely to offer GSM 1800 coverage. Consequently the 8801 would have extremely limited use outside of North America.

359. Mr Fletcher concluded that although the characteristics of the Appellant's trading appeared to be consistent with arbitrage trading, he considered the Appellant's market share to be implausible, particularly given the limited use of the 8801 in the European and UAE markets. He found the deal documents produced by the Appellant contained insufficient detail and had fundamental errors on them with regards to the specification. The presence of such features led Mr Fletcher to conclude that it was highly unlikely that the Appellant was involved in rational grey market trading.

360. In oral evidence Mr Fletcher clarified that his evidence was based on approximately 92% of retail sales of GFK data which did not include all European countries. He stated that approximately 21 or 22 countries and the UAE were included but that 17 or so countries were not. He did not have any figures from 2006 to show where corporate purchasers acquired their phones but he did not believe that they would be purchased from the grey market.

361. Mr Fletcher clarified that he had not made an attempt to estimate the size of the grey market in 2006 due to the lack of reliable data and that he had used a number of different methodologies to estimate the maximum number of phones that could have

been traded on the grey market. In this respect he disagreed with Mr Attenborough, who gave evidence on behalf of the Appellant, as to the size of the market. The figure used by Mr Fletcher represented a maximum possible mixed market whereas Mr Attenborough's figure is stated to be entirely grey market trading.

362. He explained that there was no need for the phones to physically move through EC Trading or Jenson unless the goods were intended to be used ultimately and he reiterated his conclusion that it was implausible that phones coming from America to a UK trader would export them to a country with a 1800 GSM band. Mr Fletcher did not agree that 8801s may have been purchased as a replacement for the 8800 which ceased production.

363. In oral evidence Mr Fletcher agreed that he had never spoken to a grey market trader who was trading in 2006 nor asked to provide a report for such a trader. He agreed that KPMG has an engagement with Nokia and that his report was provided pursuant to an agreement between HMRC and KPMG. KPMG have been a member of the Anti Grey Market Alliance since 2010 and have provided reports to the AGMA in the past which, as far as Mr Fletcher was aware, addressed IT equipment and not mobile phones. Mr Fletcher reiterated that he was completely independent in providing evidence to the Tribunal.

364. In oral evidence Mr Hammond explained that his understanding at the time was that authorised distributors in the UK and Europe could not achieve their targets and consequently sold onto the grey market to achieve their sales targets. This led to surplus phones in the UK. There were price differentials between the UK and Europe and stock was being dumped into the UK. He did not contact authorised distributors *"because I wasn't a big plc company potentially, or their chosen company for getting rid of phones. Maybe there was a great big vetting procedure that they needed to go through that I could or couldn't do. What I had was a business that was simple. We bought phones and we sold phones. That was it. I was mainly based in Spain. I was working away. This was a model that worked and we concentrated on making this model as safe as we possibly could. That's what we concentrated on doing"* (Transcript 6 June 2013 page 137).

365. On behalf of the Appellant, Mr Nigel Attenborough gave evidence regarding the grey market. Mr Attenborough is an economist who specialises in the field of telecommunications. He was a Director of NERA Economic Consulting and Head of its European Communications Practice from 1997, prior to which he worked as a Senior Consultant and Associate Director at NERA.

366. In addition to giving oral evidence Mr Attenborough provided two witness statements and a report dated 31 October 2011. As the volume of information contained in the statements and report was substantial we only intend to set out a précis of the contents set out therein.

367. The issues upon which Mr Attenborough disagreed with the evidence of Mr Fletcher were helpfully summarised as follows:

- The volume and value of OEM sales to Ads and the implied maximum value of handsets available to UK distributors in 2006 as calculated by Mr Fletcher is fundamentally flawed;

- Nokia can be shown to adopt different pricing internationally rather than a consistent price as Mr Fletcher contends;

- There is no data to support the assertion that box breaking is predominantly a UK phenomenon;

- Mr Fletcher's assumptions that ADs only sell surplus stock to overseas distributors and MNOs do not sell to the grey market are incorrect. He also overstates the difficulties facing UK grey market traders;

- Mr Fletcher has ignored the possibility of sales of surplus handsets to customers in overseas markets'

- Intermediaries play an important informational role on wholesale trading and their presence is not commercially irrational.

368. Mr Attenborough contended that Mr Fletcher had failed to take into account a number of factors and, as a result, his conclusion that the Appellant's market share was unreasonably high cannot be relied upon. He commented that the phones may have been passing though Europe on their way to a final destination elsewhere. If so, a comparison of the volume of the Appellant's deals with the volume of retail sales of the Nokia 8801 is meaningless. Mr Attenborough also noted that the GFK retail sales data covering Europe used by Mr Fletcher excludes 17 countries, 10 of which are EU members. Mr Attenborough concluded that, as a result, Mr Fletcher understated the size of the European retail market. In oral evidence Mr Attenborough agreed that the major economies of Europe were included and that the figures used by Mr Fletcher represented about 90% of the total sales figures in the relevant period, however he believed that the final destination of the phones would need to be known before any comparison could be made between the Appellant's volume of sales and European retail sales.

369. Although Mr Attenborough agreed with Mr Fletcher that the Nokia 8801 was intended for the American market and could not be used on a 900GSM band, he noted that in 2006 there were 23 countries outside Europe where the 8801 could be used, for example India, which represented potential destinations for the phones. Mr Attenborough also hypothesised that the demand for the 8801 was likely to have been boosted by the cessation of production of the Nokia 8800 in May 2006.

370. In oral evidence Mr Attenborough explained that he believed that if in 2006 phones were exported to Europe they could be expected to be used either in the country to which they were exported or moved on to different markets. He also clarified that there must have been a large stocking of the 8801 phone in Europe as people knew that it was not going to be manufactured after May 2006 which in turn led to rush to buy the phones.

371. He agreed that generally a trader would appear in a transaction chain because he gave value in some way, for example by holding the stock or having contacts which other traders in the chain did not have. He also agreed that it was in a trader's interest to make the chain of supply as short as possible, which was a factor to balance against other issues such as costs.

Submissions of the parties

372. We were assisted by written submissions from the parties, which were expanded upon orally. The written submissions were substantial, the Appellant's running to some 147 pages, and we do not intend to repeat them in any great detail, however the following is designed to provide the reader with an overview.

HMRC's submissions

373. HMRC invited us to draw adverse inferences from the failure by the Appellant to call Mr Yewdell, Mr Thacker and Ms Hammond as witnesses. HMRC relied on *Revenue and Customs Commissioners v Sunico A/S* [2013] EWHC 941 which cited with approval the principles set out by Broke LJ in *Wisniewski v Central Manchester Health Authority* [1998] PIQR 324:

"*…the familiar four principles summarised by Brooke LJ in Wisniewski v Central Manchester Health Authority ([1998] PIQR 324, at p 340:*

"(1) In certain circumstances a court may be entitled to draw adverse inferences from the absence or silence of a witness who might be expected to have material evidence to give on an issue in an action.

(2) If a court is willing to draw such inferences, they may go to strengthen the evidence adduced on that issue by the other party or to weaken the evidence, if any, adduced by the party who might reasonably have been expected to call the witness.

(3) There must, however, have been some evidence, however weak, adduced by the former on the matter in question before the court is entitled to draw the desired inference: in other words, there must be a case to answer on that issue.

(4) If the reason for the witness's absence or silence satisfies the court then no such adverse inference may be drawn. If, on the other hand, there is some credible explanation given, even if it is not wholly satisfactory, the potentially detrimental effect of his/her absence or silence may be reduced or nullified."…

What is true, however, is that the question of whether there is a case to answer does depend on the individual case and the allegations in question. If the court is to draw adverse inferences, they cannot simply be of a general nature; they must be specific inferences in relation to specific pleaded issues. I am mindful that this is a case where very serious allegations of fraud have been made against the Defendants and, whilst this does not affect the standard of proof, it does have some bearing on my approach

to the evidence and the burden on HMRC to prove its claim."

374. HMRC submitted that evidence would have been expected from Mr Yewdell in respect of the information he provided to the Appellant, Mr Thacker in respect of the loans and Ms Hammond in relation to the operation of LCD.

375. It was contended by HMRC that each of the fraudulent tax losses arose as part of an orchestrated fraudulent scheme which involved each of the participants in the transaction chains. In support of this submission HMRC highlighted the FCIB evidence which demonstrated orchestration by the circular flow of money from and to Duck Trading, Mobile Direct, Gulf Phones, Telecom Trading, Total Profit, Maks Information Technology and Destonia General Trading in all but one of the transactions analysed which commenced with Destonia and ended with Mobile Direct. HMRC also relied on the fact that IP addresses where payments were made were shared by Maks Information Technology, Marxman International FZCO and Kima Estates SRO and that Duck Trading based in Dubai and Total Profit Limited based in Hong Kong were introduced to the FCIB by KTS. HMRC invited us to infer that on the basis of the analysis of the FCIB evidence, which represented differently constituted chains in which the Appellant participated and which showed circularity in every instance, every deal in which the Appellant was involved in the relevant period had involved circular movements of money.

376. HMRC noted the vague product descriptions on the Appellant's purchase orders and invoices, and those of their customers and supplier were also indicative of fraud. In support of this contention HMRC relied on the evidence of Mr Fletcher as to the information which would be expected on a commercial invoice in a legitimate sale which should at least include information regarding the warranty, battery, charger, manual and any auxiliary software.

377. In support of its case that the Appellant, through the company officers, had actual knowledge that its transactions were connected to fraud or, in the alternative should have known, HMRC highlighted the fact that Mr Hammond, Mr Prince and Mr Carvell are articulate and intelligent men. Mr Prince had been directly involved in MTIC fraud prior to the transactions which form the basis of the appeal and the Appellant had a clear awareness of such fraud in the industry from HMRC's visits and correspondence in 2003 and 2004.

378. HMRC invited us to treat the evidence of Mr Hammond with caution and submitted that his evidence that he had never asked Mr Prince about his disqualification from acting as a director indicated that he was not a frank witness.

379. The Appellant's only supplier from 2004 and throughout the relevant period was KTS despite the fact that HMRC had warned the Appellant both before and during the relevant period that its deals had traced back to tax losses. Furthermore Mr Yewdell was informed in April 2005 that the Appellant's deals in 07/04, 01/05 and 02/05 traced back to defaulters and HMRC submitted that it is inconceivable that this information would not have been given to the Appellant. Similarly HMRC submitted that it was equally implausible that Miss Hammond or Mr Yewdell would not have

shared information with the Appellant that a deal chain in one of LCD's transactions in which it purchased from the Appellant had been traced back "seven away from LCD" on the basis that Mr Hammond was, in reality, running LCD as Miss Hammond had no knowledge of the industry and the Appellant fed LCD deals and shared its customers.

380. The Halliwells report dated 26 January 2006 stated that KTS carried out superficial checks without structure and concluded that KTS posed a medium risk in terms of MTIC fraud. HMRC submitted that given the information contained in the report, notably that in respect of Mr Tuppen, would have led an honest trader to cease trading with KTS yet trade continued in the same manner at an increased level which is indicative of knowledge on the Appellant's part.

381. Despite Mr Prince's evidence that he carried out due diligence, he conceded that he had never carried out an internet search on Mr Tuppen notwithstanding the information set out in the Halliwell's report. The Appellant also produced no evidence of due diligence checks carried out on its customers. The claim that the Appellant had been given access to KTS' due diligence files was also unsubstantiated by evidence and the manual said to have been provided to the Appellant by Halliwells was not exhibited nor had it ever been seen by Mr Brownsword. The only changes to the Appellant's due diligence following HMRC's letter dated 7 February 2006 which warned of traces to tax losses were site visits. HMRC submitted that the due diligence was simply window dressing.

382. The Appellant's business was clearly "too good to be true"; that the Appellant could conduct as many deals as it could fund was suspicious, the Appellant had no unique knowledge of its customers, the goods were removed from the country prior to payment and KTS gave credit to the Appellant with no documented terms. Furthermore there was no concern by the Appellant, its supplier or customer regarding specification of the goods; inspection records showed that the phones had different language packs and warranties but failed to identify how many phones with each type of language pack and warranty were present. The contractual documentation failed to specify colour or accessories. It was clear from Mr Prince's evidence that he had no understanding as to the nature and extent of the inspections nor did he consider the cost or time involved. HMRC also relied on the lack of any evidence of negotiation as would be expected in legitimate wholesale dealings.

383. Anomalies in the Appellant's deal documentation indicated that it was simply a paper exercise and the Appellant was aware of this fact. Furthermore HMRC submitted that the quantities of phones involved in the Appellant's transactions were unrealistic when compared to the retail market figures produced by Mr Fletcher. No documents were exhibited by the Appellant showing release instructions, although Mr Prince suggested that the documents did exist and may have been lost.

384. HMRC highlighted that the goods were dispatched by freight forwarders prior to their release to the Appellant and Mr Prince was unable to explain how title of the goods passed.

385. HMRC also relied on the associated companies as evidence of knowledge on the Appellant's part. It was noted that LCD had falsely implied in its VAT1 that it would be selling computer software when in fact it purchased and sold phones. Mr Carvell confirmed in evidence that following Mr Hammond's resignation as director of the Appellant he continued to control the company. Mr Hammond explained that the use of 4 companies (R&L, AWDUK, LCD and the Appellant) was to reflect different levels of investment by different investors however HMRC submitted that there was no reason that this could not have been done with one company and the potential conflict of interest as to which company carried out a deal was highlighted.

386. It was submitted that the gross profit on the deals was not credible, for example £1,548,363 on the 02/06 deals, as was the fact that the Appellant could apply a consistent mark-up on its sales irrespective of the date of sale, volume, supplier or customer.

387. The investment documentation is vague and unprofessional. The terms of the loan from Future Connections to the Appellant are recorded on AWDUK stationery. A letter was also exhibited by Mr Hammond dated 6 January 2006 which refers to the possibility of a loan from "First Connection" rather than "Future Connection" for which no satisfactory explanation was given. No checks were made into Future Connections and there are various anomalies in the loan documentation which was signed by an unknown individual who described himself as "manager." In oral evidence Mr Hammond referred to Lenny Lewinski as the source of the loan; no further information was provided about this male who Mr Hammond stated was not contactable.

388. Similarly, Mr Hammond knew nothing about Baddesley Holdings which provided him with an unsecured loan in excess of £7,000,000. He had made no enquiries about the director and had had no further contact from the company.

389. HMRC highlighted the circumstances of the loan to LCD which was said to be from InfoTech but was in fact from Future Connections. Mr Hammond sent an email dated 4 April 2006 in which he confirmed that the money came from InfoTech which was connected to Future Connections. It was submitted that Mr Hammond's evidence was untrue and his failure to check the identity of the lender is indicative of knowledge that the loan was part of a contrived and fraudulent scheme.

390. HMRC highlighted the fact that the Appellant had a direct relationship with Marxman International FZE in the UAE, having entered into transactions with the company in 11/05, which HMRC subsequently accepted were cancelled. Marxman initiated circular flows of money in respect of a number of deals and this factor, taken together with the timings of payments over a short period and the shared IP address with KTS where payments were made, indicates that the Appellant was aware of its part in the fraudulent scheme.

391. HMRC invited us to conclude that in weighing all of the evidence, the Appellant knew that its transactions were connected to fraud or, if such knowledge is not found by the Tribunal, the Appellant should have known.

Submissions on behalf of the Appellant

392. On behalf of the Appellant Mr Pickup submitted that the issues taken by HMRC in this appeal arise only with the benefit of hindsight and knowledge of the extent of MTIC fraud during the relevant period. The anomalies in documentation such as CMRs and release notes are few and, as stated by Mr Prince in evidence can be attributed to human error.

393. HMRC' s reliance on the Appellant's turnover is misplaced; at the relevant time both Mr Fletcher and Mr Attenborough agree that there was a vibrant and expanding market.

394. The Appellant's transactions prior to the periods under appeal involved the same type of goods, customers and suppliers and pattern of trading yet its repayment claims were met by HMRC. Furthermore the Appellant's transactions during the relevant period were the same as those of R&L, AWDUK and LCD. In such circumstances there is no basis for HMRC's contention that the only reasonable explanation for the Appellant's transactions was that they were connected to fraud.

395. The role of the exporter in the transaction chains carries all of the risk; those engaged in fraud would not take such a role and it is the defaulting trader who provides liquidity to the fraud, not the broker.

396. As to the issue of adverse inferences, we were reminded that the burden of proof lies with HMRC in this appeal and that the witnesses called by the Appellant and material produced are matters for the Appellant. No weight should be given to evidence which might have been adduced but was not.

397. A full account was given by Miss Hammond to Mr Morrison in late 2005 and April 2006. The Appellant takes no issue with the account given and her presence before the Tribunal would add little more. Mr Thacker was asked to provide a witness statement and give evidence to the Tribunal. Mr Hammond explained in evidence that Mr Thacker's position is that, for employment reasons, he cannot be associated with financial arrangements, which appear to be connected to fraud. The explanation is credible and no adverse inference should be drawn; if any prejudice is caused by Mr Thacker's absence, it is to the Appellant. Similarly no adverse inference should be drawn by Mr Yewdell's failure to give evidence; his role was explained to HMRC and evidence was given on behalf of the Appellant as to the information provided by Mr Yewdell. The electronic records such as spreadsheets created by Mr Carvell have been lost, possibly by HMRC or when passed between solicitors as suggested by Mr Hammond in evidence. The absence of such material can only harm the Appellants case, although oral evidence confirmed the existence and content of the records. Given that the Tribunal cannot be satisfied that there has been any deliberate attempt to withhold or conceal evidence, it would not be appropriate for any adverse inferences to be drawn.

398. The Appellant was never advised to stop trading in the mobile phone market nor was he told to stop trading with KTS. It was noted

399. Mr Yewdell was engaged by the Appellant in November 2004, initially to assist in the resolution if a withheld repayment return for 09/04. The purpose of the line checks was to assist HMRC in speeding up the verification process. Details were provided to Mr Yewdell in a questionnaire which identified participants in the chain. The questionnaire expressly stated that the details provided were confidential and not to be divulged to the Appellant.

400. The Appellant engaged Halliwells in December 2005 to advise, improve and strengthen the Appellant's due diligence. At that time Mr Carvell was updating due diligence procedures and in addition to the company profile report on KTS and confidentiality agreement, site visits were carried out in February 2006 and 18 March 2006. Mr Carvell believed that KTS' due diligence had improved after an employee was tasked with responsibility and that the company ceased trading with two suppliers identified by Halliwells as high risk. It as submitted that overall the Halliwells report on KTS was positive and one from which the Appellant could take comfort.

401. It was submitted that HMRC was aware of Mr Hammond's connection to LCD as a sister company and "mere adjunct of Advent." There had been no attempt to conceal the fact that the companies shared trading partners and due diligence or that both had received loans from Future Connection. Mr Pickup noted that HMRC's repayment of LCD's 02/06 claim provided comfort to Mr Hammond that the Appellant's repayment claim would be forthcoming.

402. It was submitted that written contracts were unnecessary and inappropriate in this type of trading; there was neither the time nor the necessity to enter into a detailed legal relationship. Once the price was agreed and purchase orders and invoices exchanged, the agreement was sealed and the goods moved on as quickly as possible. Legal title was not a concept that caused traders in this market any difficulty. Title in the goods rested with the supplier until such time as the Appellant's customer had paid for the goods.

403. Mr Attenborough confirmed that trading transactions in the mobile handset grey market are frequently carried out on a back-to-back basis. As to the length of chains, Mr Prince explained in oral evidence that the Appellant had only checked KTS' due diligence in 2006 and therefore "*how were we to know about all these chains and how this worked. I thought he was buying from an importer…*" (transcript 7 June 2013 page 91).

404. Negotiations took place over the phone and as soon as a purchase order was received, someone had bought the stock. Mr Prince described the process as "*instantaneous*" (Transcript 7 June 2013 page 108) adding that the goods would usually be released by telephone, although it might have been sent over the Internet. Anomalies identified by HMRC, such as the absence of release notes, were small in number when viewed against the substantial number of transactions. The Appellant did all it could to ensure that the documentation was in order however the commercial

realities of the trade being undertaken by the Appellant in the relevant period meant that there probably would be oversights.

405. On the issue of inspections it was submitted that it was not for the Appellant to examine in detail the manner in which A1 put its pricing structure together or how long the inspection process took. The commercial reality was that the Appellant was satisfied with the quotation provided by A1, the charges that they made and the job A1 did. There was never any cause to question the integrity of A1.

406. There was no legal requirement to take or retain IMEI numbers, nevertheless the Appellant did record IMEI numbers initially 100% then 10% and then a random selection of 5 numbers. There was however nothing for the Appellant to check IMEI numbers against as HMRC's Nemesis database was not accessible to traders; a point conceded by Mr Brownsword.

407. Due diligence reports for February, March and April 2006 confirm visits made by Mr Lee Carvell and Mr Sean Carvell on 3 February 2006 to DGB, L a Parisienne De Commerce, URTB and France Affaires. On 27 and 28 February 2006 Messrs Carvell visited Allcom and EC Trading and on 29 March 2006 2 Trade.

408. Mr Carvell understood the Halliwells report on the Appellant to indicate that *"our due diligence was pretty good"* (Transcript 10 June 2013 page 98). It was submitted that the Appellant's due diligence became more sophisticated as Lee Carvell was taken on in the specific role of compliance manager.

409. On the issue of insurance, it was submitted on behalf of the Appellant that there was no legal requirement for the Appellant to insure goods whether at the premises of the freight forwarder or in transit. Mr Hammond took a commercial decision not to insure and explained in oral evidence that there was only a very narrow window in which anything could go wrong. The fact that HMRC queried the reason why there was no insurance led, in part, to the decision to self-insure.

410. HMRC's contention that Mr Prince's involvement in Dastech is indicative of his willingness to engage in VAT fraud is illogical, misconceived and places undue weight on the Dastech evidence. The essential facts are not disputed and whether Mr Prince was duped or knowingly concerned in Mr Holmes' VAT fraud, it was submitted that the last thing Mr Prince would do would be to knowingly involve himself in transactions connected to fraud.

411. It was accepted that the FCIB evidence shows contrivance in respect of money flows between parties further up the chain of supply and the shared IP addresses of purportedly unconnected parties in making payments. Mr Pickup submitted that Mr Prince had provided an explanation as to why the Appellant and KTS had shared an IP address in making payments and that without documentary evidence it remains unknown whether certain payments, for example notated "12B" and "14B" relate to mobile phone transactions or not.

412. As to the size of the grey market, both Mr Fletcher and Mr Attenborough agree that there is no literature or statistics available which accurately identifies the volume

of grey market trade during the relevant period and in such circumstances the Appellant could not know the size of the market; it was simply concerned in the buying and selling of mobile phones at a profit.

413. It was submitted that HMRC's case was fundamentally flawed on the basis that Mr Brownsword had applied the wrong legal test in reaching the decision to deny the Appellant's right to deduct, a right which is central to the fiscal neutrality of the common EU VAT system. By way of example, in the November 2006 denial letter Mr Brownsword referred to *"…factors which indicated that these transactions may have formed part of such an overall scheme…"* The test applied by Mr Brownsword offends *Mobilx* and the principle of legal certainty. Mr Brownsword made similar errors in his written evidence to the Tribunal in respect of each of the periods under appeal, approaching his consideration of the evidence on the basis of the *"risk"* of the Appellant's transactions being connected to fraud, for example *"evidence of the Appellant's specific knowledge that the transactions entered into would be likely to form part of MTIC supply chains."* In cross-examination Mr Brownsword confirmed that he stood by his written evidence. Mr Pickup accepted that in re-examination Mr Brownsword was taken to his later witness statements, all of which post-dated Mobilx and in which the correct test had been applied, but argued that the later evidence did not remedy the misconceived approach taken by Mr Brownsword which underlines the fundamental error on the part of HMRC in this appeal.

Findings on whether the Appellant knew or should have known that its transactions were connected to fraud.

414. Before we turn to our assessment of the evidence in this case and findings thereon, it is appropriate to deal with two issues. HMRC invited us to draw adverse inferences in this case. Having carefully considered the guidance set out in Revenue *Revenue and Customs Commissioners v Sunico A/S* [2013] EWHC 941 and *Wisniewski v Central Manchester Health Authority* [1998] PIQR 324 we concluded that it would be inappropriate to draw any adverse inferences from the failure of the Appellant to call Mr Yewdell, Mr Thacker or Miss Hammond and we proceeded to determine the issue in this appeal on the basis of the evidence before us.

415. It was also argued on behalf of the Appellant that HMRC's case is fundamentally flawed by Mr Brownsword's misunderstanding of the test to be applied on the issue of knowledge. We do not accept that argument. HMRC's case was correctly pleaded in its Statement of Case and Mr Brownsword's evidence forms only part of the evidence relied upon. It is a matter for the Tribunal, not the witnesses, to assess whether or not on the basis of the evidence before us as a whole the Appellant knew or should have known that its transactions were connected to fraud.

416. All of the submissions and evidence, both oral and documentary were considered. In this case we agreed with the words of Lord Radcliffe in *Edwards v Bairstow* [1956] AC 14 that *"many of the facts are likely to be neutral in themselves, and only…take their colour from the combination of circumstances in which they are found to have occurred."*

417. We will begin by addressing the credibility of the witnesses who gave evidence. We were satisfied that there was no substantial challenge to the evidence of the HMRC officers such that their evidence was undermined. We accepted that their enquiries were taken as far as possible in order to present the fullest picture possible and the fact that certain information remains unknown did not impair the force of their evidence.

418. We found Mr Hammond and Mr Prince particularly unconvincing witnesses; we formed the view that they were intelligent men with a good understanding of fraud in the mobile phone industry and their evidence was unpersuasive and at times evasive. For the reasons we will set out, we were satisfied that both Mr Hammond and Mr Prince had actual knowledge that the Appellant's transaction were connected to fraud. The roles of Mr Hammond, Mr Prince and Mr Carvell were unclear; at times Mr Hammond appeared to suggest that he had little direct involvement in the running of the Appellant, instead focussing on building his property portfolio, which was contradicted by other statements made by him in which he indicated that he not only oversaw the transactions but checked the due diligence documents. Mr Prince appeared to take charge of conducting the deals but we found his evidence on the details of deals was vague. The evidence of Mr Carvell did not assist the Appellant; we were satisfied that even though Mr Carvell held the title of director during the relevant time, in reality the controlling force of the company remained Mr Hammond. Mr Prince and Mr Hammond suggested that Mr Carvell was responsible for due diligence however we formed the impression from his evidence that, other than site visits, he did little more than organise paperwork and check whether due diligence needed updating. This was also evident from Mr Carvell's evidence that he signed documents as director, such as the loan agreement, without any understanding as to its content or implications. We were satisfied that the appointment of Mr Carvell was an artificial measure by which Mr Hammond distanced himself from the company and we found that Mr Carvell must have known this. That Mr Carvell's administrative role within the company did not change to any great degree following his appointment as director was suggestive of something other than normal commercial business and Mr Carvell's apparent failure to question this was, in our view, indicative of the fact that he was aware that the Appellant's transactions were part of an overall scheme to defraud, or that he turned a blind eye to the fact.

419. There was no evidence of any meaningful due diligence checks having been carried out on Mr Tuppen prior to the Appellant trading with KTS and we found the evidence of Mr Hammond in which he explained that Mr Tuppen had impressed as a successful man lacked substance. We found Mr Hammond to be evasive in evidence as to when he became aware of Mr Tuppen's bankruptcy and the fact that he was unaware of Mr Tuppen's issues with Microsoft, VAT Tribunal case and arrest on suspicion of VAT fraud prior to the Halliwells report raised serious questions as to why the Appellant had been prepared to trade with KTS when seemingly so little was known about Mr Tuppen. The evidence indicated that following receipt of the Halliwells report Mr Hammond was content to make superficial enquiries into these matters, taking Mr Tuppen's explanations at face value and making no independent enquiries. We could only conclude that that these were not the actions of a reasonable businessman and that Mr Hammond was either aware of Mr Tuppen's history or was

unconcerned about it. Either way, given that this was the Appellant's sole supplier and bearing in mind the significant value of the transactions undertaken we were satisfied that Mr Hammond was aware that there was no real risk in trading with KTS as the deals were contrived. In those circumstances we concluded that the meeting held with Mr Tuppen in New York regarding defaulters in the chains of the Appellant and KTS' supplies was artificial and that the Appellant was content to continue trading with KTS regardless of the warnings given by HMRC.

420. Even if we had not reached this conclusion in respect of Mr Hammond's knowledge of Mr Tuppen, we were unconvinced by the evidence regarding Halliwells. The report provided to the Appellant raised a number of issues which would have concerned a reasonable businessman seeking to ensure that his trade was legitimate. The risk assessment of KTS would only be reduced if it followed Halliwells recommendations in respect of its due diligence. The evidence as to what steps KTS had taken was vague and unconvincing, as was the evidence in respect of the KTS due diligence documents seen by Mr Prince. Even accepting that Mr Tuppen had refused to allow copies to be made or a record to be kept, given the importance to the Appellant we would have expected Mr Prince, or indeed any of the company officers to have some recollection as to what was seen and on what basis they were satisfied that KTS had due diligence procedures in place.

421. There seemed to us to have been little change in the Appellant's due diligence following the engagement of Halliwells. We were not provided with the due diligence manual created by Halliwells which we were told the Appellant adhered to, nor was there any cogent evidence as to what the issues the manual addressed or how the Appellant implemented it. It appeared that the only additional checks carried out after Halliwells was engaged were site visits and there was no evidence before us upon which we could conclude that the information obtained by conducting visits satisfied the Appellant that the companies with which it traded were bona fide. Significance was placed on the employment of Mr Carvell to carry out due diligence but our impression from Mr Carvell's evidence was that he did little in the way of checks; his role appeared to be no more than that of an office administrator responsible for organising documents already in existence onto spread-sheets. On Mr Carvell's own admission, he understood the Halliwells report had indicated that the Appellant's due diligence was *"pretty good"* which in our view undermined the Appellant's reliance on its engagement of Halliwells as an indication that its due diligence was improved from that point on. When we considered the information known to the Appellant about its customers and supplier prior to and during the period with which we are concerned, we concluded that the due diligence obtained did little to verify the legitimacy or otherwise of the companies.

422. It was notable to us that in the type of transactions carried out by the Appellant, the real commercial risk existed in respect of the Appellant's customer and whether it could pay for the goods, particularly in circumstances whereby the goods had left the UK prior to payment. We found that there was no evidence of this risk having been identified and no due diligence of substance carried out to ascertain the extent of such a risk. We concluded that this was an indicator that the deals were contrived and that

the Appellant, by its failure to make relevant checks, was aware that no real risk existed.

423. We considered the evidence in respect of Mr Yewdell carefully. If, as the Appellant contended, Mr Yewdell was employed to conduct retrospective line checks for the sole purpose of speeding up the Appellant's repayment claims and did not provide the Appellant with any information arising from his line checks, there seemed little that he added which would satisfy the Appellant that its transactions were not connected to fraud. However, we did not accept the Appellant's evidence that it was not provided with any information from Mr Yewdell. Mr Brownsword's written notes of a visit to the Appellant dated 8 March 2005 recorded that *"Mr Prince also provided a letter from his tax representative TLS (Mr Yewdell, ex Dept) showing the line checks of the supply chains. This was used as the basis of my verification enquiries…"* In addition Mr Prince also confirmed in evidence that Mr Yewdell had notified him of a defaulter in the Appellant's chain in April 2005 and that the nature of the default, although not the name of the defaulter, was explained to Mr Prince. Finally we noted that Mr Yewdell had informed Miss Hammond that his checks in respect of LCD's chain of supply had traced seven away from the company, from which we inferred that Mr Yewdell did provide information to his employers about the length of chains and whether any defaulters were present in the chains, albeit he may not have provided the name of the defaulting trader. Taking each of those factors together we concluded that the evidence of the Appellant that it was given no information was not only extremely unlikely but contradicted the evidence which suggested otherwise. In those circumstances we were satisfied that the Appellant would have been aware of the defaults in its chains in 07/04, 01/05 and 02/05 in which KTS was its supplier and the length of the chains traced by Mr Yewdell. Both factors in our view would have given any reasonable businessman cause for concern yet the Appellant continued to trade increasingly with KTS.

424. We noted the evidence that A1 Inspection Limited was identified as having completed inspection reports which confirmed that the vehicles were carrying high value electrical goods when in fact the covert searches revealed that the actual contents varied from animal feed to cardboard. We accept that the reports were created by A1 with the intention to deceive however the evidence was not specific to the Appellant and we do not consider that this evidence supports HMRC's case on the issue of knowledge. We did however find Mr Prince's evidence on inspections relevant. It was clear to us that he had no understanding as to how the process of inspecting goods was carried out, whether the prices quoted were reasonable or how long inspections took. It is only a small point but we were surprised at Mr Prince's lack of understanding given the reliance placed on inspection reports by the Appellant in circumstances where it never physically took possession of the goods and bearing in mind the absence of documentation confirming the specification of the goods.

425. It was clear to us that Mr Hammond was not only the controlling force of the Appellant but also LCD and AWDUK. We found Mr Hammond's evidence that LCD was not told from whom or what to buy was misleading, and did not sit well with a visit note of Mr Morrison dated 27 September 2005, which was not challenged and which recorded Miss Hammond as stating that: *"…Advent had ordered the stock for*

her and provided her with the customer…Dave Prince…had arranged her supply and that she had negotiated the price with Sonia at Roma. Dave had also talked to Sonia…" As the evidence emerged it became apparent that the Appellant, LCD and AWDUK were used as vehicles by which Mr Hammond sought to take advantage of different VAT staggers through his control of the companies. We found Mr Hammond's explanation that separate companies were used in order to keep investments distinct unconvincing and we concluded that the truth of the matter was, as stated by Mr Carvell:

"They were all run by the same people to do the same thing, just at different times. That's how I sort of gauged it… Different VAT quarters or just to coincide with whenever that VAT quarter was so if it was on a quarterly VAT quarter, the trade would be at the end of the quarter… so that you could then put the return in and get the money back quicker. That's how it was explained." (Transcript 10 June 2013 page 106)

426. We did not accept the argument that, as HMRC had paid the repayment claims of LCD and AWDUK, the Appellant was entitled to rely on this as an indication that its own repayment claim would be met or that HMRC were, by making the repayments, confirming that it was satisfied as to the bona fides of LCD or AWDUK's transactions. All payments were made without prejudice and we were satisfied that at no point had HMRC indicated to the Appellant, LCD or AWDUK that their simply because the companies traded in the same manner they could rely on this fact in support of repayment.

427. We found that the product descriptions contained on the Appellant's documentation were vague; in particular the repeated use of the term "Euro spec" which Ms Clerk confirmed was not an official description known to her. It was notable that the Appellant failed to query the use of "Euro spec" as a description for phones which were destined for the American market and in our view this was indicative of the fact that the Appellant knew little about the goods it was trading because, in reality, the nature of the goods did not matter.

428. We found the absence of evidence of negotiation unusual. Mr Prince's evidence that he would "*sometimes I'd have two phones in my ear. I'd have trader on one end and I'd have the supplier on the other"* (Transcript 7 June 2013 page 27) was unconvincing and, even accepting that deals were carried out quickly we were satisfied that any reasonable businessman conducting legitimate transactions of such high value would have a record, whether emails or faxes, covering discussions regarding price, payment or shipping. We found it implausible that the Appellant chose to operate with such a remarkable lack of documentation in respect of the transactions which are subject of this appeal. The lack of documented payment terms and conditions with its trading partners and the contradictory explanations given for the Appellant's own invoice which stated "*payment by telegraphic transfer prior to request of goods"* (which we were told was either a mistake or clear to its customer) and which was not adhered to lacked any commercial reality and in our view was indicative of the fact that the Appellant was willing to participate in orchestrated transactions whereby factors such as payment terms simply did not matter as the

parties were aware that payment would be made. There were no written terms pertaining to issues such as responsibility for returns of faulty goods. In our view this was implausible for a legitimate trader seeking to minimise exposure to risk.

429. The evidence as to legal title was vague and unconvincing. In our view a reasonable businessman would ensure that it was clear which party had legal title to the goods and at what point legal title passed. It was clear from the evidence that Mr Prince had little understanding as to when title passed and had given no thought as to whether KTS held title at the point the goods were sold to the Appellant. We concluded that this was another issue which bore little relevance in a contrived scheme and that the evidence of Mr Prince was indicative of knowledge on the Appellant's part that its transactions were part of that fraudulent scheme.

430. We found the evidence as to how the Appellant obtained loans from Future Connection and Baddesley Holdings particularly unconvincing. Irrespective of the lack of evidence from Mr Thacker on the issue, that an intelligent businessman such as Mr Hammond would obtain a loan from an unknown person, who during the hearing he recalled was called "Lenny" and make no enquiries whatsoever into the companies from whom such significant loans were obtained was nonsensical. The document entitled *"Possibility of funding from First Connection"* in respect of the March 2006 loan was notable for the fact that Mr Hammond appeared not to have queried why the name of the funder was incorrect and we were satisfied that any legitimate trader seeking an arm's length loan would have noted such an obvious error. The email from Mr Hammond to Mr Morrison in which he clarified that the loan to LCD came from Info Tech was inaccurate and his statement that: *"they did not provide and further information, and I was satisfied with the answer"* added to the implausible nature of the evidence. Furthermore, Mr Hammond's failure to query whether Mr Hasan had the authority to sign the loan on behalf of Future Connection to LCD was not the attitude of a legitimate businessman in an arm's length loan transaction. The only reasonable explanation for companies providing funds to the Appellant in such circumstances, and fail to seek to recoup the money, was that the loans were not commercial loans but rather formed part of the contrived transactions; a fact of which we concluded Mr Hammond must have been aware.

431. It was clear from Mr Hammond's evidence that having previously not insured goods, the decision was made to insure for the sole purpose of satisfying HMRC that the Appellant was trading legitimately. Our concern was that there was no credible explanation why the Appellant believed that insurance was unnecessary; that this was a "*commercial decision*" did not seem to us consistent with a trader seeking to protect himself from risk. We were satisfied that the arranging of insurance was no more than an attempt by the Appellant to appease HMRC. The terms of the insurance were unclear as was the remedy that the Appellant could seek if any losses arose between 6 and 10 March 2006, as CIL was not incorporated until 20 March 2006.

432. We found Mr Mendes' methodology and evidence reliable and had implications for all of the disputed transactions. We concluded that the number of circular payments identified by Mr Mendes is indicative of not only the contrived nature of the transactions but also the fact that the participants in the scheme knew to whom

payments should pass in order that money was successfully circulated. We considered the possibility that the Appellant was manipulated or duped by others but in considering the number of transactions in which circularity was identified, taken together with the other features in this case which indicated knowledge on the part of the Appellant we were satisfied that the only explanation was that the transactions were connected to fraud and that the Appellant knew of this fact.

433. We noted HMRC's reliance on the Appellant's use of the FCIB in which all accounts were suspended in the autumn of 2006 by the Dutch Authorities. We were not satisfied that this fact indicated knowledge or means of knowledge on the part of the Appellant.

434. That the Appellant was able to achieve such profits was notable. We queried what the Appellant did to make such enormous profits simply by arranging for the goods to leave the UK. We were not convinced by Mr Hammond's explanation that he added cash flow; whilst the Appellant's ability to export the goods may have achieved profit, in reality the Appellant added no value to the goods and the level of that profit was, in our view, too good to be true.

435. We accepted that the Appellant did not have access to the NEMESIS database and therefore would not have been aware of the irregular results highlighted by Mr Brownsword. We also accepted that there was no legal requirement for IMEI numbers to be obtained during the period with which we are concerned and we found that this did not support HMRC's case on knowledge.

436. We rejected the submission that the anomalies identified in the Appellant's documentation could be explained by carelessness and human error. Given the manner in which the Appellant traded and the lack of contractual documents, the paperwork created by the Appellant and received from its trading partners formed the basis of its transactions and warranted careful attention. The failure by the company officers to notice the anomalies highlighted by HMRC is relevant to what the Appellant knew about those with whom it traded and indicated a lack of concern about the accuracy of its own and others' paperwork. We acknowledged the submission that the discrepancies in the documentation were not vast in number and we accept that had this been the only notable feature of this case it would not, of itself, be sufficient to conclude knowledge or means of knowledge on the part of the Appellant but when viewed against the other factors indicating knowledge, we were satisfied that the evidence carried some weight.

437. Mr Prince's explanation that the Appellant and KTS shared IP addresses when payments were made because he had been near to KTS' office when payment was made to the Appellant and had used their facilities to make payment. This indicated to us the close relationship between the Appellant and KTS. KTS had also introduced Duck Trading and Total Profit to the FCIB, both of which appear in the circular money flows. We also noted that the Appellant had traded directly with Marxman International, which initiated the circular flows of money in respect of a number of deals in this appeal. Whilst we could not conclude with any certainty that this indicated that the Appellant knew of the circularity of money flows or the identity of

Duck Trading and Total Profit as participants in the fraud, we accepted HMRC's submission that its association with KTS and Marxman, both of whom appeared to be controlling forces in the fraud, was an unlikely coincidence.

438. We did not accept Mr Prince's evidence that his involvement with Mr Holmes and Dastech had been "*naïve*" or "*stupid*". Mr Prince is clearly an intelligent man who, prior to setting up Dastech, had experience of business and commercial documents such as invoices. His repeated attempts to evade responsibility and downplay his role in the incident affected his credibility as a witness. That said, we did not think his involvement with Mr Holmes could be said in any way to indicate knowledge of fraud in respect of this appeal.

439. Having considered the evidence of Mr Fletcher and Mr Attenborough we make no findings as to the scale of the legitimate grey market nor can we conclude that the volume of phones traded by the Appellant was inconsistent with legitimate trade. We also attached no weight to the fact that the Appellant carried out its deals on a back-to-back basis. Whilst we accept that both Mr Fletcher and Mr Attenborough have significant experience in identifying the characteristics of the grey market we concluded that their evidence did not assist us in determining the issue of knowledge.

Decision

440. We were satisfied HMRC had established fraudulent tax losses and that there was an orchestrated scheme for the fraudulent evasion of VAT connected with all of the transactions which form the subject of this appeal.

441. We were careful not to focus unduly on the issue of due diligence, and we took into account all of the surrounding circumstances in reaching our decision that the Appellant, through Mr Hammond, Mr Prince and Mr Carvell, had actual knowledge that the transactions were connected to fraud for the reasons set out above.

442. We found that some reasons carried more weight than others and we did not base our decision solely on one reason but rather the cumulative effect of our findings viewed in totality.

443. Even if the Appellant did not have actual knowledge, we are satisfied that the factors identified above, from which we inferred the Appellant's actual knowledge, would support a finding that Mr Hammond, Mr Prince and Mr Carvell at least should have known that the only reasonable explanation for the Appellant's transactions was that they were connected to fraud.

444. The appeal is dismissed.

445. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to

"Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

JENNIFER BLEWITT
TRIBUNAL JUDGE

RELEASE DATE: 6 March 2014