TC004360

Appeal number LON/2007/1602

VAT – *MTIC fraud – whether contra-trades subject to the rule in* Kittel *– yes; whether the Appellant knew or should have known of the connection of his trading with fraud – yes; appeal dismissed*

FIRST-TIER TRIBUNAL
TAX CHAMBER

RIONI LIMITED **Appellant**

- and -

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

TRIBUNAL: JUDGE CHRISTOPHER HACKING
HELEN MYERSCOUGH

Sitting in Bedford Square, London on 1-2, 5, 8-9, 11, 17 and 18 September 2014

There was no appearance by or on behalf of the Appellant

Ms J Goldring, Ms I Udom and Mr H Watkinson instructed by Solicitors for Her Majesty's Revenue & Customs for the Respondents

DECISION

The Appeal

1. This was an appeal against a decision of HMRC to deny Rioni's claim to input tax on the purchase of mobile phones and other electronic components in the VAT periods 10/05, 04/06 and 07/06 in a total sum of £22,367,334. HMRC's decision was communicated to Rioni by letter dated 21 August 2007 and was stated to be based on HMRC's primary contention that Rioni knew that its transactions were connected with a VAT fraud and must have known of that connection to have played such an integral role in the fraud and to have taken such a significant share of the profits.

2. Alternatively, HMRC contends that Rioni ought to have known of the connection to fraud by virtue of the cumulative circumstances presented to it.

MTIC fraud

3. MTIC fraud is to be distinguished from simple fraud. In the latter a fraudulent trader sells goods at a price which includes VAT but fails to account for the VAT in the usual way. This kind of fraud is of little advantage to a trader whose activities are limited to the UK as he will usually be able to offset input tax on the acquisition of the goods so that the net gain is relatively small.

4. It is of greater interest however to traders who import from another EU member state as the goods will be imported effectively VAT free so that on the first subsequent sale in the UK market VAT will be charged and is due to HMRC without any offsetting input tax. The dishonest trader will go missing at this stage and pocket the VAT. It may be some time and several further onward transactions before the fact that the first importer has gone missing is realised and the fraud becomes apparent.

5. The point at which it often does become apparent is when a trader in the dealing chain seeks a VAT input repayment on a subsequent export of the goods to a customer in another EU member state.

6. This is what is referred to as an MTIC fraud. The acronym refers to "Missing Trader Intra Community" fraud.

7. Further complications have been deliberately introduced by fraudulent traders to seek to cover up the fraud or at least to defer detection for a time so as to enable the best profit to be realised from this activity.

8. The first is the interposition of a number of traders in between the importer and the ultimate exporter of the goods. Typically such a chain may be of five or more traders each of whom on-sells the goods for a small mark-up. The exporter or "broker" as he is known, claims not to know anything about the default on the part of the importer or "acquirer" or any subsequent participant in the supply chain. In reality the whole chain is a contrivance designed to defraud the tax authority of VAT.

9. A further sophistication which has increasingly been encountered is the introduction of one or more "contra trading" chains.

10. These are apparently "clean" chains of transactions orchestrated to generate VAT outputs roughly equal to the input claim which is made in respect of a "dirty" chain traceable back to a missing trader. The purpose of the contra-trade is to enable the fraudster to set off his reclaim on export of the goods in the dirty chain against the VAT outputs generated in the ostensibly "clean" chain. In this way the extent of the input VAT sought to be recovered by the broker on export of the goods is masked.

11. In fact the so called "clean" chain is no such thing. It is pre-planned so as to obscure the fact of the reclaim and so minimise the risk of detection. The "clean" chains will themselves frequently be capable of being traced back somewhere to a defaulting trader.

12. For the purposes of this decision we shall use the expressions "acquirer", "buffer" and "broker" to refer respectively to the first importer of goods into an EU member state, an intermediate trader in the goods and, lastly, the ultimate exporter of the goods out of the EU member state whether to another "acquirer" in an EU member state or elsewhere outside the EU.

The law

13. The right to deduct input VAT derives from the provisions of the Sixth Directive (Council Directive 95/7/EC of 10 April 1995).

14. Article 17(1) and (2)(a) of the Directive provides:

> "1. The right to deduct shall arise at the time when the deductible tax becomes chargeable.
>
> 2. In so far as the goods and services are used for the purposes of his taxable transactions, the taxable person shall be entitled to deduct from the tax which he is liable to pay:
>
> (a) Value added tax due or paid in respect of goods or services supplied or to be supplied to him by another taxable person"

15. Articles 167 and 168 of Council Directive 2006/112/EC of 28 November 2006 on the common system of VAT provide:

> "167 – A right of deduction shall arise at the time the deductible tax becomes charged.
>
> 168 – In so far as the goods and services are used for the purposes of the taxed transactions of a taxable person, the taxable person shall be entitled, in the Member State in which he carries out these transactions to deduct the following from the VAT which he is liable to pay:
>
> (a) the VAT due or paid in that Member State in respect of supplies to him of goods or services, carried out or to be carried out by another taxable person."

16. Sections 24, 25 and 26 of the Value added Tax Act 1994 (VATA) provide:

> 24 – (1) Subject to the following provisions of this section, "input tax", in relation to a taxable person, means the following tax, that is to say –
> VAT on the supply to him of any goods or services;
> VAT on the acquisition by him from another Member State of any goods;
> and
> VAT paid or payable by him on the importation of any goods from a place outside the member States,
> being (in each case) goods or services used or to be used for the purpose of any business carried on or to be carried on by him.
>
> (2) …….
>
> (6) Regulations may provide –
>
> (a) for VAT on the supply of goods or services to a taxable person, VAT on the acquisition of goods by a taxable person from other member States and VAT paid or payable by a taxable person on the importation of goods from places outside the member States to be treated as his input tax only if and to the extent that the charge to VAT is evidenced and quantified by reference to such documents as may be specified in the regulations or the Commissioners may direct either generally or in particular cases or classes of cases;
>
> 25 – (1) A taxable person shall –
>
> (a) in respect of supplies made by him, and
>
> (b) in respect of the acquisition by him from other member states of any goods,
>
> account for and pay VAT by reference to such periods (in this Act referred to as "prescribed accounting periods") at such time and in such manner as may be determined by or under regulations and regulations may make different provision for different circumstances.
>
> (2) Subject to the provisions of this section, he is entitled at the end of each prescribed accounting period to credit for so much of his input tax as is allowable under section 26, and then to deduct that amount from any output tax that is due from him.
>
> 26 – (1) The amount of input tax for which a taxable person is entitled to credit at the end of any period shall be so much of the input tax for the period (that is input tax on supplies, acquisitions or importations in the period) as is allowable by or under regulations as being attributable to supplies within subsection (2) below.

17. Regulation 29 of the Value Added Tax Regulations 1995 provides:

> 29. (1) Subject to paragraph (2) below, and save as the Commissioners may otherwise allow or direct either generally or specially, a person claiming deduction of input tax under section 25(2) of the Act shall do so on a return made by him for the prescribed accounting period

in which the VAT became chargeable

(2) At the time of claiming deduction of input tax in accordance with paragraph (1) above, a person shall, if the claim is in respect of –

(a) a supply from another taxable person, hold the document which is required to be provided under regulation 13; …..

provided that where the Commissioners so direct, either generally or in relation to particular cases or classes of cases, a claimant shall hold, instead of the document or invoice (as the case may require) specified in sub-paragraph (a)…. Above, such other documentary evidence of the charge to VAT as the Commissioners may direct.

18. Thus if a taxable person has incurred input tax that is properly allowable he is entitled to set it off against his output tax liability and, if the input tax credit due to him exceeds the output tax liability, to receive a payment.

19. However it was contended in the conjoined cases of *Axel Kittel v État Belge* (C-439/04) and *État Belge v Recolta Recycling SPRL* (C-440/04) in the Cour de Cassation in Belgium that Article 1131 of the Belgian Civil Code provided that

"an obligation with no basis or with a false or unlawful basis can give rise to no effect whatsoever"

Article 1133 of the same code elucidated this by explaining that

"the basis is unlawful when it is contrary to law, morality or public policy"

20. At paragraph 56 of Kittel, the ECJ stated:

"…….a taxable person who knew or should have known that, by his purchase, he was taking part in a transaction connected with fraudulent evasion of VAT must for the purposes of the Sixth Directive, be regarded as a participant in that fraud, irrespective of whether or not he profited by the resale of the goods"

The rationale for the above approach was set out at paragraphs 57 and 58:

"That is because in such a situation the taxable person aids the perpetrators of the fraud and becomes their accomplice" (paragraph 57); and

"In addition such an interpretation, by making it more difficult to carry out fraudulent transactions, is apt to prevent them" (paragraph 58)

21. At paragraph 59, the ECJ therefore concluded:

"…..it is for the referring court to refuse entitlement to the right to deduct where it is ascertained, having regard to objective factors, that the taxable person knew or should have known that, by his purchase, he was participating in a transaction connected with fraudulent evasion of VAT, and to do so even where the transaction in question meets the objective criteria which form the basis of the concepts of 'supply of goods effected by a taxable person acting as such' and 'economic activity'"

22. The issues involved in these two cases were referred to the Court of Justice (CJEU) which held that:

> *"49. The question whether the VAT payable on prior or subsequent sales of the goods concerned has or has not been paid to the Treasury is irrelevant to the right of the taxable person to deduct input tax…*
>
> *51. Traders who take every precaution which could reasonably be required of them to ensure that their transactions are not connected with fraud, be it the fraudulent evasion of VAT or other fraud, must be able to rely on those transactions without risk of losing their right to deduct input VAT.*
>
> *…..54…..preventing tax evasion, avoidance and abuse is an objective recognised and encouraged by the Sixth Directive (see joined cases C-487/01 and C-7/02 Gemeente Leusden and Holin Groep [2004] ECR I-5337 at paragraph 76. Community law cannot be relied on for abusive or fraudulent ends (see C-367/96 Kefelas and Ors [1998] ECR I-2843 at paragraph 20; 373/97 Diamantis [C-32/03 Fini H [2005] ECR I-1599 at Paragraph 32)*
>
> *55. Where the tax authorities find that the right to deduct has been exercised fraudulently, they are permitted to claim repayment of the deducted sums retroactively (see Case 268/83 Rompelman [1985] ECR 65 at Paragraph 24; Case C-110/94 INZO [1996]ECR I-857). It is a matter for the national court to refuse to allow the right to deduct where it is established, on the basis of objective evidence that the right is being relied on for fraudulent ends (Fini H at Paragraph 34).*
>
> *56. In the same way a taxable person who knew or should have known that, by his purchase, he was taking part in a transaction connected with the fraudulent evasion of VAT, must for the purposes of the Sixth Directive, be regarded as a participant in that fraud, irrespective of whether or not he profited by the resale of the goods.*
>
> *57. That is because in such a situation the taxable person aids the perpetrators of the fraud and becomes their accomplice.*
>
> *58. In addition, such an interpretation, by making it more difficult to carry out fraudulent transactions is apt to prevent them".*

23. The CJEU summarized the position in these terms:

> *"61…. Where it is ascertained, having regard to objective factors, that the supply to a taxable person who knew or ought to have known that by his purchase, he was participating in a transaction connected with the fraudulent evasion of VAT, it is for the national court to refuse that person entitlement to the right to deduct"*

24. *Kittel* has been considered on a number of occasions and represents sound law which this tribunal is bound to follow. The primary position adopted by HMRC in this appeal is that Rioni knew of the fraudulent nature of the transactions in which it was involved. Even if it did not know it is asserted by HMRC that Rioni should have known that its transactions were connected with fraud.

25. It is therefore relevant to consider what the words "should have known" mean.

26. In the conjoined appeals of *Mobilx Ltd (in administration) v HMRC; HMRC v Blue Sphere Global Ltd ("BSG"); Calltel Telecom Ltd and Anor v HMRC* [2010] EWCA Civ 517 *("Mobilx")* Moses LJ in the Court of Appeal stated in relation to the words "should have known" as follows:

> *"50. The traders contend that mere failure to take reasonable care should not lead to the conclusion that a trader is a participant in the fraud. In particular, counsel on behalf of Mobilx contends that Floyd J and the Tribunal misconstrue § 51 of Kittel. Whilst traders who take every precaution reasonably required of them to ensure that their transactions are not connected with fraud cannot be deprived of their right to deduct input tax, it is contended that the converse does not follow. It does not follow, they argue, that a trader who does not take every reasonable precaution must be regarded as a participant in fraud.*
>
> *51. Once it is appreciated how closely Kittel follows the approach the Court had taken six months before in Optigen (C-354/03 Optigen v HMRC [2006] (a case in the CJEU)) it is not difficult to understand what it meant when it said that a taxable person "knew or should have known" that by his purchase he was participating in a transaction connected with fraudulent evasion of VAT. In Optigen the Court ruled that despite the fact that another prior or subsequent transaction was vitiated by VAT fraud in the chain of supply, of which the impugned transaction formed part, the objective criteria, which determined the scope of VAT and the right to deduct, were met. But they limited that principle to circumstances where the taxable person had "no knowledge and no means of knowledge" (§ 55). The Court must have intended Kittel to be a development of the principle in Optigen. Kittel is the obverse of Optigen. The Court must have intended the phrase "knew or should have known" which it employs in §§59 and 61 in Kittel to have the same meaning as the phrase "knowing or having the means of knowing" which it used in Optigen (§ 55)*
>
> *52. If a taxpayer has at his disposal of knowing by his purchase he is participating in a transaction connected with fraudulent evasion of VAT he loses his right to deduct, not as a penalty for negligence, but because the objective criteria for the scope of that right are not met. It profits nothing to contend that, in domestic law, complicity in fraud denotes a more culpable state of mind than carelessness, in the light of the principle in Kittel. A trader who fails to deploy means of knowledge available to him does not satisfy the objective criteria which must be met before his right to deduct arises".*

27. Moses LJ drew attention to the significance of the fact that Mobilx, aware that the CPU (computer component) business in which it was engaged was "rife with fraud", nevertheless chose to ignore HMRC's warnings that its own transactions had, upon extended verification, been shown to trace back to fraud.

28. In paragraph 83, Moses LJ adopted the passage from paragraph 110 of *Red 12 Trading v HMRC* [2009]EWHC 2563 in which Christopher Clarke J highlighted the following as indicia of MTIC fraud:

> (a) *"compelling similarities between one transaction and another"*
> (b) *"pattern(s) of transactions"*
> (c) *"transactions all of which have identical percentage mark ups…"*
> (d) *"…made by a trader who has practically no capital"*
> (e) *"…as part of a huge and unexplained turnover…"*

(f) *"…with no left over stock"*
(g) *"A tribunal could legitimately think it unlikely that the fact that all 46 transactions in issue can be traced to tax losses by HMRC is a result of innocent coincidence."*

29. Moses LJ concluded:

> *"59. The test in Kittel is simple and should not be over-refined. It embraces not only those who knew of the connection but those who "should have known". Thus it includes those who should have known from the circumstances which surround their transactions that they were connected to fraudulent evasion. If a trader should have known that the only reasonable explanation for the transaction in which he was involved was that it was connected with fraud and if it turns out that the transaction was connected with fraudulent evasion of VAT then he should have known of that fact….."*

30. In paragraph 84 the Court of Appeal commended as significant the fact 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 reward over a short space of time"*

31. In this appeal it is alleged that Rioni was not only engaged in transactions which formed part of a "dirty" chain; that is to say a chain in which there was a defaulting or "missing" trader who had not accounted for VAT received on his sale but also in transactions which amounted to contra-trading as described above. The question arises whether participation in such contra-trading is caught by *Kittel*.

32. Mr Justice Roth in *Powa (Jersey Ltd* [2012] UKUT 50 TCC) said:

> *"[50] …. HMRC must establish that the fraudulent evasion of VAT took place, and if the form of fraud involved was contra trading then that is what they have to prove. But it is a misconception to consider that they must also establish that the party seeking to deduct input tax……should reasonably have known that its own transaction was connected to (or involved in) this particular form of missing trader fraud as opposed to another form….."*

33. There is too further High Court authority which makes clear that all that HMRC have to show is that the claimant knew that his transaction was connected to fraud. There is no requirement to show that he knew the identity of the fraudster or of the missing trader. He may be unaware of the nature of the fraud and in particular there is no requirement that it be shown that the claimant knew that the connection with fraud was by a straight "dirty" chain to a default or a "clean" chain connected to the fraud by way of one or more contra-trade chains. (See *Megtian Ltd* [2010] EWHC 18 (Ch) at §§ 33 -38 and *Calltel* [2009] EWHC 1081 (Ch) at §§ 79-82)

The factual background to the appeal.

34. Rioni Limited was incorporated on 16 September 2003. Its stated business activities were said to include "Sawmill, plane, impregnated wood"; "Wholesale wood, construction" and "Other business activities".

35. A Mr Craig Court is shown at Companies House to have been a director from 28 February 2005 to 15 November 2005.

36. Victor Dare was a director from 28 September 2005 to 1 August 2006.

37. Nicholas Gligic was appointed a director on 1 July 2006 and remained in that position as at the date of the appeal hearing. Mr Gligic has however accepted in one of the witness statements he has tendered to the tribunal (as to which see post) that at all times material to the transactions which are the subject of this appeal, his was the controlling mind behind the company's business activities. Mr Gligic has provided to the tribunal a statement which indicates his participation in those activities and in which he makes plain that the trading undertaken by Rioni and the subject of his claim to repayment of input VAT was undertaken solely by him.

38. According to the records at Companies House introduced into evidence by the Respondents the shareholders of Rioni are stated to be Ms Sofia Mohamed and one Kakhaber Togonidze (who had been a director of the company between 16 September 2003 and 28 February 2005). Each of these persons is understood to be registered as the holder of one £1 share in the £100 capital of the company.

39. Mr Gligic however has maintained that he is the beneficial owner of the whole of the company's issued share capital and as such is the alter ego of the company. This is not disputed by the Respondents.

40. Rioni was registered for VAT under number 854 2594 06 with effect from 15 April 2005 then describing its business as "Electrical supplies, Electrical work, Construction related work and other related services".

41. The expected value of taxable supplies in the 12 months following registration was estimated by Rioni to be £250,000. Expected purchases from and sales to the EC were stated to be zero and the company indicated that it did not expect to receive regular repayments of VAT.

42. Mr Gligic claims to have been engaged in the electronics industry and to have some knowledge of its workings although he had not had specific experience of the mobile telephone market or indeed the electronic components market until his participation in it through Rioni. Mr Gligic has stated that he had previously been involved in businesses as diverse as the fashion trade and IT training and consultancy. He is now, following HMRC's refusal to allow his VAT input claim, engaged in an enterprise in gold mining in Tanzania.

The evidence presented by the Respondents

43. This appeal relates to the input tax claimed on 37 purchases by Rioni in the VAT periods 10/05; 04/06 and 07/06 (October 2005 to July 2006).

44. In each of the 12 purchases made by Rioni in October 2005 the supplier was one of three UK based contra-traders being:

- Blackstar UK Limited ("Blackstar")
- MAK Corporation t/a Mobile City Communications ("MAK") and
- H&M UK Trading Limited ("H&M")

45. The goods were then, say HMRC, sold on to one of the following customers, all of whom were based in other EU member states:

- Neo Abaco
- B4 International
- Olympic Europe
- FAF International
- Nordic Telecom

46. Each of the contra-traders had purchased the goods that were sold to Rioni from suppliers based outside the UK ("the acquisition deals"). In relation to these deals Blackstar, MAK and H&M had a liability to account for output tax.

47. It is HMRC's case that as well as being the acquiring trader in Rioni's transactions chains, the contra-traders also, in separate transaction chains, purchased goods from UK based traders and dispatched those goods to traders outside the UK ("the contra tax loss deals"). The output tax liability of the contra-traders in relation to the acquisition deals was offset against the input tax that the contra-traders were prima facie entitled to deduct in relation to the contra tax loss deals. In each of the contra tax loss deals however there had been a fraudulent evasion of VAT.

48. Whilst therefore the 12 transactions in this period are sometimes referred to as being in the "clean" chain the reality is, say HMRC, that they were connected to fraud so as to entitle HMRC to withhold payment to Rioni of its input tax on these transactions.

49. In the April and July 2006 VAT periods Rioni was said to have been engaged in 25 "broker" deals each of which traced back to a defaulting trader and fraudulent tax loss. The tribunal was taken to the deal sheets for these transactions and the supporting documentation.

50. In each of these deals Rioni purchased from one of the following 3 companies:

- Hexamon Limited
- XS Enterprise Ltd
- Crestmount Solutions Limited

51. In each case Rioni sold on to Con Animo SRO a company registered in the Czech Republic.

52. The chains leading up to Rioni's purchase in each of the months from February through to May 2006 follow a very similar pattern. For example, the chain for the first 4 deals can be traced from the defaulting acquirer TCSL Services Ltd through I Partner Ltd to Hexamon and on to Rioni. These deals were all concluded in February 2006.

53. In March 2006 TCSL dropped out of the chain and a new fraudulent acquirer, UR Traders Ltd, enters the chain using, again, I Partner and, this time XS Enterprises as the buffers. 9 deals were transacted through this chain.

54. The pattern changed in April 2006 when another new defaulting acquirer is introduced into the chain. This was Homes Sales & Lettings Ltd, a company whose VAT registration number appears to have been hi-jacked by a fraudster. This company then sold to Premier Insurance Services Ltd, a new buffer, which then sold to XS Enterprises and then to Rioni. 7 deals were traded through this chain.

55. In May 2006 there was a further change for the next 5 deals as the buffers, Premier Insurance Services and XS Enterprises, dropped out and were replaced by, respectively, Bright Time UK Ltd and Crestmount Solutions Limited (from which latter Rioni purchased)

Further transactions in which Rioni acted as a contra trader

56. Apart from the above transactions in which Rioni's claim to repayment of its input VAT has been refused it is asserted by HMRC that Rioni was engaged in a further 116 transactions in which it acted as an acquirer in contra-trading chains.

57. These transactions are said to be part of a scheme which appears to have been largely orchestrated by a group of individuals based in or around Malaga ("the Malaga Cell") in Spain.

58. A number of these deals (34) appear to have involved companies with which a Mr Candy Wallace was associated. This gentleman is a director also of a company called Ballantyne International SA of Mahe, Seychelles which provided a loan of £720,000 to Rioni in December 2005. The purpose of this loan was to fund an initial shortfall experienced by Rioni in financing the required VAT on its purchases. The tribunal was taken to banking records which make this clear. HMRC say that, contrary to suggestions made by Mr Gligic, he was able to participate in this business by reason of his having a property asset in London. In fact, say HMRC there is no evidence to support the suggestion that Mr Gligic put any funds of his own into the enterprise.

59. Rioni's principal purpose in these deals was, say HMRC, to have been to generate VAT output claims to be offset against repayment claims when acting as a broker.

60. Rioni also engaged in a further 3 apparently rather curious deals in September 2005 in which Rioni bought goods from a UK company of which Mr Candy Wallace appears to have been the owner and sold to another UK company which again was owned by Mr Candy Wallace. The reason for this purchase and sale is less than clear. 2 further similar deals were conducted in October 2005. In all of these transactions the profit element realised by Rioni was marginal – around £1 on sales prices of between £84 and £300 per unit.

61. The conclusion drawn by HMRC from the extensive evidence it has uncovered in the course of its enquiries into Rioni's trading activities is that each of the 37 transactions in relation to input tax which has been denied were connected with the fraudulent evasion of VAT and that the Appellant knew or should have known that its deals were so connected.

The Respondents' evidence

62. This appeal was one of some complexity. The tribunal was required to read a number of lengthy signed statements of evidence from officers of HMRC who had been engaged in the extensive enquiries which had been conducted into the activities of the Malaga Cell generally and Rioni in particular.

63. Over 150 large ring binders of evidence had been produced which included not just the deal sheets showing the chains but also, in relation to the 37 deals the subject of the claim for repayment of input tax, supporting commercial documents and the relevant banking records.

64. The tribunal heard the evidence of the principal witnesses for HMRC which included that of Desmond Lewis who gave evidence about Rioni's 25 broker deals taking the tribunal to the supporting evidence and demonstrating the circular movement of the goods around the participating members of the chains

65. Mr Lewis also addressed the tribunal as to the circular nature of the payments made around the chains by reference to information held by HMRC from the Dutch server used by First Curacao International Bank (FCIB) producing evidence derived from the server

66. Dean Walton gave particular evidence of his enquiries on behalf of HMRC into the contra-trader, H&M.

67. A further HMRC witness, Nigel Humphries had conducted an investigation into the activities of the Malaga Cell and produced the results of his enquiries in the form of a diagram which provided an overview of the operation of the Malaga Cell. This indicated the role played by Rioni as a contra-trader as well as the way in which Blackstar, MAK and H&M also acted as contra-traders. The diagram cross referred to more detailed evidence including in particular information extracted from the Dutch and Paris servers of FCIB as well as to the deal packs and the documents included in those packs.

68. Nikolas Mody gave evidence as to the extensive enquiries made by him concerning the way in which money moved around the Cell chains so as to facilitate the transactions including those in both the "clean" and "dirty" chains. The tribunal heard that, typically, a sequence of consecutive seller/buyer/seller deals involving 5 or 6 separate companies within a chain would take FCIB around 12 minutes to execute.

69. Mr Mody told us that to satisfy a sales invoice of around £5,000,000 a payment of £500,000 would be circulated as many as 10 times around the chain members. The records of these money movements was evident from the Dutch server as

supplemented by the additional details subsequently made available to HMRC from the Paris server used by FCIB.

70. The tribunal was taken to detailed exhibits both in graphical form and by way of summaries of the bank statements extracted from the FCIB servers.

71. On behalf of HMRC, Michael Downer introduced into evidence details of "Operation Ghast" which arose as a result of the discovery in May 2006 by police of two compact discs (CDs) at the home of one Bhupinder Singh Samra. Mr Samra had been arrested on suspicion of conspiracy to commit murder. In the resulting search of connected properties, CDs were found behind a microwave and were passed over to HMRC in February 2008 and had been analysed. What they revealed was, in effect, an MTIC instruction sent to a potential, if not actual, chain member comprising templates for commercial documentation as well as details of chains including references to H&M, Blackstar and others. It had taken some time for the officers involved in the initial enquiries concerning Mr Samra to appreciate the true significance of the CDs.

72. This discovery confirmed the belief held by HMRC that the level of orchestration of the deals could only be realised through means such as the issue to chain members of CDs such as those which had come to light. Intending participants in the fraud were told with whom they should trade, at what price(s) and, possibly at a later stage and by telephone, when. The documentation was not aimed at reflecting a "real" deal but attempted to serve the purpose of satisfying tax authorities about what would otherwise appear to be an absence of supporting commercial documentation and due diligence by the member concerned in its approval of both its seller and its customer. This documentation also directed the intending member to the use of a particular freight /storage company, persons from a number of which had, we were told, been arrested and charged with offences linked to MTIC fraud.

73. Peter Birchfield gave evidence on behalf of HMRC as to the way in which basic information available from the Dutch server had been supplemented by more detail derived from the Paris server such as, for example, details of invoice numbers and payment reference numbers all of which enabled HMRC to tie payments made to particular transactions.

74. The evidence concerning the 37 transactions with which Rioni was particularly concerned will be considered below in more detail.

Rioni's response.

75. Rioni's Notice of Appeal was filed with the tribunal on 1 September 2007. It included reference to a representative, Cowgill Consultants Ltd, who gave a PO Box address in Bristol and a telephone number. Cowgill has played no role in the further conduct of the appeal. The Notice of Appeal was supported by 16 pages of attachments being copies of correspondence between HMRC and Rioni including the letter setting out HMRC's refusal to allow the claim for input tax dated 21 August 2007.

76. The Grounds of Appeal are simply stated thus.

"The assessment is wrong in law"

The signature on the document is not decipherable but does bear a resemblance to that of Mr Gligic and is accepted as being his signature.

77. On behalf of Rioni and prior to the reference of this appeal to the tribunal, Mr Gligic had instructed solicitors to sue HMRC in the High Court for the balance of monies owed to Rioni following the denial of its input VAT repayment claim. The amount claimed was stated to be £2,448,215.93 (a sum closely similar to Rioni's gross profit on its 37 broker deals (£2,684,830.75)

78. The High Court proceedings were stayed and the matter of whether or not HMRC were entitled to withhold the input tax was referred to this tribunal.

79. In seeking to address HMRC's original Statement of Case (an amended Statement of case was filed on 3 May 2013) Mr Gligic submitted as evidence in support of Rioni's position a witness statement dated 22 December 2011 in which he stated in some detail why Rioni rejected the suggestion that through Mr Gligic it knew or should have known that the transactions it had undertaken between October 2005 and July 2006 were connected with fraud. This document was in fact submitted in support of Rioni's High Court claim but necessarily addresses the matters in issue in the present appeal.

80. In substance Mr Gligic says in this statement that he was dealing with a limited number of contacts, both suppliers and customers whom he had no reason to suppose were other than honest traders. He explains that he had identified the business of trading in the grey market in mobile phones as one which had promising potential. He was, it seems, attracted by the fact that this business could be expanded so as to meet the growing demand for computers and computer related equipment for schools.

81. In a further series of witness statements introduced only at the commencement of the hearing but dating back to 1 March 2013, Mr Gligic states that he worked for up to 18 hours a day contacting dealers in electronic components and mobile phones and seeking to match supplies from these sources with purchasers. He was, he said, "constantly negotiating".

82. Mr Gligic maintains in these statements that he worked mainly on the telephone but also by fax. He would read his daily faxes in the morning and then, apparently, consign these to the waste paper basket.

83. Mr Gligic saw nothing particularly unusual in making a profit of well in excess of £2M in a few months. He compared this return with the exceptional income earned by traders and hedge fund managers.

84. It is apparent from Mr Gligic's witness statements that he was well aware of the prevalence of MTIC fraud in the business field in which he had chosen to engage. Evidence was presented to the tribunal of a number of visits made on behalf of the

Respondents to Rioni when warnings concerning the high probability of MTIC fraud were given.

85. In October 2005, after Mr Gligic had joined Rioni and was, by his own account, running the business, a visit was made to Rioni when Mr Dare spoke to Officers Cooper and Coulson about MTIC fraud, particularly in light of Mr Dare's stated intention to deal in mobile phones. A letter confirming advice to use the Redhill verification unit of HMRC as part of its due diligence into its suppliers and purchasers was sent by HMRC to Rioni on 24 October 2005.

86. Similar advice was repeated in January 2006 following a further visit by HMRC officers. On that occasion Mr Dare said that he was trying to stop trading in mobile phones because he believed that there was too much risk involved and the profit margins were too small.

87. Despite these warnings Rioni continued to trade in the subsequent two quarters (04/06 and 07/06). It is clear from Mr Gligic's statement of 1 March 2013 that he knew of the warnings given by HMRC and, more particularly of the written advice from HMRC as to the existence of defaulting traders and losses of VAT in the chains of transactions in which Rioni had been engaged. Mr Gligic asserts that he wrote to HMRC asking who the defaulters were but that he received no reply to this question.

88. Mr Gligic says Rioni wrote to HMRC as follows:

> "Being informed of Defaulting Trader 05/01/07
>
> I thank you for informing me that there was a defaulting trader present in a chain of 5 export deals I did in May 2006. I was not aware of this situation and confirm that I did everything in my power to check the integrity of my suppliers and customer. For our records could you please indicate to me the name of the defaulting trader for future reference."

89. Mr Gligic in his further witness statement of 8 August 2013 says this about the way in which he would select his business partners on behalf of Rioni:

> "……..I would then start making phone calls to other traders, many of whom I had to cultivate over time by the sometimes tortuous process of nurturing quasi-friendships, often with people whom I might not normally have associated with away from the office. Such is the nature of business and the black arts of networking. Much of the day was taken up with making and receiving calls, therefore – some of which (and at least twice a week) involved calls from individuals seeking a partner for palpably criminal purposes. It was not uncommon for these individuals to propose absurd numbers (such as *"[…] a million phones mate")*, to which I developed the standard response *"excuse me but are you calling from HMRC?"*

90. It is Mr Gligic's case that on behalf of Rioni he worked diligently, mainly on the telephone establishing an honest business in a field in which he had no previous experience but which he believed was one which offered good prospects for profit. He says that he took all reasonable steps to try and ensure that his company's business was conducted in a properly regulated way and he does not accept that he knew or should have known of the fact that the transactions in which Rioni was engaged were in fact connected to VAT fraud.

91. The tribunal will have more to say about Mr Gligic's knowledge of the fraudulent nature of the transactions in which Rioni was engaged.

What the tribunal needs to be satisfied about

92. Miss Goldring on behalf of the Respondents, when addressing the tribunal on the first day of the hearing, suggested that the test for the tribunal to apply in determining this appeal was in four parts:

(1) Was there a VAT loss?
(2) If so was it occasioned by fraud?
(3) If so were the Appellant's transactions connected with such fraudulent VAT loss?; and
(4) If so did the Appellant know or should it have known of such a connection?

93. On behalf of Rioni its then solicitors (they ceased to represent Rioni some time ago) had put in issue each of the above questions. They contended that there was no tax loss therefore attribution to fraud was irrelevant as was the question of whether Rioni should have known of the fraudulent evasion of VAT.

94. By reason of this response it is right that the tribunal should explain why it has come to the view that there was a tax loss which was occasioned by fraud and that not only should Rioni have known of that fact but that Rioni did as a matter of fact know very well what was going on.

The tax loss

95. As explained above the 12 purchases in VAT period 10/05 arose as a result of sales by one of three UK based contra-traders, Blackstar, MAK and H&M. Each of these companies had themselves purchased the goods outside the United Kingdom and in relation to each of these "acquisition deals" therefore had a liability to account for output tax

96. Rioni then sold on the goods it had purchased to one of the following customers, all of whom had a base in another member state of the EU –

- Neo Abaco;
- B4 International;
- Olympic Europe;
- FAF International and
- Nordic Telecom

97. As well as acting as acquiring traders in Rioni's deals these three contra-traders also, in separate transaction chains, purchased goods from UK based traders and shipped these goods to traders outside the UK (the contra tax loss deals).

98. The output tax liability of the contra-traders in relation to the acquisition deals was offset against input tax that the contra-traders were prima facie entitled to deduct in relation to the contra tax loss deals

99. Each of these contra tax loss deals however traced back through a transaction chain to UK traders who failed to account for the relevant VAT.

100. The tribunal was able to undertake the tracing of these deals by reference to the evidence from the deal packs and corresponding documentation submitted in evidence by the officers of HMRC to which reference has been made above.

101. By way of example, in the 10/05 VAT period which equated to Blackstar's 12/05 period, Blackstar was engaged in 36 tax loss deals and 148 acquisition deals of which 6 of the latter were Rioni deals, being deals nos 1,2,3,4,6 and 8 corresponding to Blackstar deals nos 217, 218, 221, 220, 223 and 225.

102. Similarly Rioni featured in 3 of MAK's 125 acquisition deals in the same VAT period and 3 again in H&M's 42 such deals.

103. The defaulters in the Blackstar contra-trader tax loss chains for the relevant periods (Blackstars periods 12/05 and 03/06) include Colourtrade Ltd; Falcoon UK Ltd; Telcoo Traders Ltd; Fonesville Ltd; Termina Computer Services and Fastec Solutions Ltd.

104. The three defaulters in the case of MAK were Ami Tec Ltd; Mobicomm Ltd and (again) Telcoo Traders Ltd.

105. Finally the defaulting traders in the H&M tax loss chains were Pearl Crafts UK Ltd; DDBM Ltd t/a Deegital Tech and, yet again, Telcoo Traders Ltd.

106. Again, by way of example, the tribunal was taken to the witness statements of Geoffrey Swindon and Sarah Jane Allen concerning Telcoo Traders Ltd and learned that Telcoo Traders had been issued with an assessment for over £52 million in undeclared VAT. The invoices issued by Telcoo traced to MAK's broker sales in November and December 2005

107. The tracing of tax loss in the direct broker chains which led back to defaulters is, by contrast, a much simpler task. The defaulters in these chains were one of either Termina Computer Services (deals 13 to 16 in VAT period 04/06); UR Traders Ltd (deals 17 to 25 in VAT period 04/06) and Home Sales and Lettings Ltd (deals 26 to 37) in the tax periods 04/06 and 07/06).

108. Undeclared output tax in the case of Termina came to a total of over £3.5 million. Termina never filed any returns or accounts at Companies House, conducted its business from a terraced house and was deregistered from VAT on 8 April 2006. Following deregistration it was found that the company had been involved in a further £12.6 million of transactions which had not been declared, 14 of its invoices tracing back to Blackstar sales in VAT period 03/06.

109. 9 of Rioni's broker deals trace back directly to UR Traders Ltd. The evidence of HMRC witness statements from Michael Quartey and Jane Matthews establishes that the company had undeclared output tax of £7.4 million which has remained unpaid. URT's first VAT return showed outputs of £126 for the VAT period 10/05. It made no further returns. When further enquiries were made at the address of the company as recorded at Companies house, the residential address of one of its directors, no one was found at the property.

110. URT has disappeared after creating what has been discovered to be a total VAT default of £54.6 million.

111. Home Sales and Lettings Ltd appears to have had its VAT registration number hijacked following an approach by a potential purchaser of the company. Assessments for £39.8 million have been raised against the company in respect of transactions concluded over the short period of 2½ months. The activities of this company have been assessed by the Respondents as fraudulent.

112. The tribunal concludes from the evidence it has both heard and read and from the extensive documentation to which it has had its attention drawn that in respect of both the direct loss chains and the contra-trading chains the tax losses claimed by the Respondents have been established.

Were the tax losses occasioned by fraud?

113. The tribunal finds that the tax losses were the result of fraudulent activity on the part of the participants in both the contra-trading and direct loss chains in which Rioni was concerned. Rioni was, the tribunal finds, involved in the relevant transactions either as an acquirer or as a broker. All 37 of the Rioni transactions which are the subject of its claim to be entitled to claim its input VAT were, the tribunal finds, tainted by fraud

114. The nature of the fraudulent activities giving rise to huge tax losses to the Revenue are such in our finding that they could only be executed successfully with the highest degree of orchestration – an element that would render it extraordinarily difficult for the participants to deny their involvement in this activity.

115. If the tribunal had had any reservations about the orchestrated nature of the deals, this aspect was only confirmed by the evidence given to it by both Peter Birchfield and Nicolas Mody.

116. All 37 of Rioni's broker transactions the subject of this appeal formed part of the wider Malaga Scheme. Mr Mody gave evidence about this which the tribunal will consider below. Mr Birchfield has traced all 37 deals and 2 sample acquisition deals to fraudulent activity and the tribunal has satisfied itself about this aspect.

117. It was demonstrated to the tribunal that in all but one of the 37 broker deals the monies associated with the transactions moved in a circle. In the remaining deal (deal 10) the monies passed to an account held by a company called Twintex used to circulate monies associated with every other Rioni contra-trading transaction (deals 1-

9 & 11-12). The strong likelihood is that these monies too moved in a circle but there was no clear evidence to this effect.

118. Helpfully the information concerning money movements extracted from the Dutch and Paris servers of FCIB had been set out in charts which could then be cross referred to the data from the servers. The charts showed quite dramatically just how circular were the money movements lending support for the alternative description of MTIC fraud as "Carousel" fraud.

119. For example in relation to deal 2 the money-go-round starts with Twintex (£368,003) passing to Zorba, a Slovakian company which then pays on to B4 International (£367,553). B4 pays Rioni (£366,800). Rioni receives a "top-up" payment from Ballantyne (as to which we shall return later) and then pays £367,000 to Blackstar which pays £345,400 to Microzero. Microzero the closes the chain with a payment of £344,900 to, once again, Twintex.

120. Mr Birchfield's Chart shows the sum of £720,000 being paid by Ballantyne to Rioni and from these monies an additional sum of £39,950 being paid to Blackstar together with the sum of £367,000 referred to in the preceding paragraph. The £720,000 was, says Mr Gligic, the money he borrowed to put his company on a sound financial footing. In fact the evidence is that this money was needed to make good to Rioni as the broker, deficits in the dealing chains in which he engaged, such deficits arising by reason of Rioni's need to pay VAT on its inputs but not being able to recover these sums until reclaimed from the Revenue. In fact of course the Revenue did not oblige in this respect which is why Mr Gligic's enterprise, through Rioni, came to an end.

121. There are two points worth making from the above. The first concerns the speed at which the money revolves around the chain. In the case of deal 2 the total loop time was 14 minutes and 59 seconds. Loop times of between this time and an hour were typical. Some loops were completed in a considerably shorter time.

122. The second point is that when taken in particular to the Ballantyne "loan" and the mechanics of payment to Rioni it becomes apparent that within minutes of the money becoming available to Rioni it is fully disbursed in facilitating 3 deals where funding pending repayment of VAT was needed. This was not, as suggested by Mr Gligic, a loan put in place and carefully managed to secure financial stability for his company. It was quite simply money needed to oil the wheels of corrupt transactions.

123. An exhibit (EX111A/103) to Mr Birchfield's evidence demonstrates graphically the money movements for the Ballantyne "loan". The money, £720,000, came in from Ballantyne on 10 December 2005 at 19.33.02 and was shown in the diagram produced for the purpose as having been disbursed as follows:

- 3 payments of £62,750, £46,250 and £23,000 were made to H&M to facilitate deals with FAF and Olympic within 22 minutes of receipt.
- 2 payments stated to be of £122,990 (but which appears to be incorrect as this was in fact for £122,900) and £41,700 were made to MAK within just over an hour of receipt providing finance for deals with Neo and B4

- 6 payments of £36,398;£83,550;£113,250;£39,550;£27,875 and £123,750 were made to Blackstar within around 12 minutes from receipts from B4, Olympic and Neo to finance deals involving, again, FAF,

124. These payments together total £720,883. At the start of the payment cycle, Rioni's bank statement, to which we were taken, showed a positive balance of £2,030.06 and at the end, having received the Ballantyne money and it having been paid out in a short period of time the balance reduced to £883.42 after bank charges. This may be coincidental but as Mr Gligic has stated on more than one occasion in his evidence he prefers to use other people's money and the remaining balance just happens to represent the amount by which he would have been out of pocket had he in fact needed to top up the £720,000 to complete the payment schedule. This makes the assumption that the money in the account at the start of the cycle was also money which was not Rioni's in reality but money gleaned one way or another from its previous dealing.

125. Interestingly, the "loan" money did not in fact originate from Ballantyne but appears initially to have been supplied by another company, Sirius in the UAE, which features elsewhere in the scheme of the Malaga Cell.

126. Having been taken to the matter of the circularity of the payments in the Rioni broker deals the tribunal is satisfied that they demonstrate the entirely artificial nature of the trading conducted between the parties concerned including Rioni.

127. In none of these deals is there an open chain such as to suggest that there might have been an end user of the goods concerned. Even in deal 10 it has been established that the payment to the apparent originator of the loop, Bulgarian Elect, itself received a payment of £497,000 completing one of the money flows for a deal involving the company called Neo Abaco, which features elsewhere in the broader Malaga scheme

128. The information from the Dutch server was useful in the money tracking exercise but it had its limitations in that the precise payments references and the further breakdown of the timings could only later be established using the fuller information from the Paris server.

129. This additional information made known in evidence to the tribunal revealed that money would not just make one cycle through the chain but within a matter, this time of seconds only, it would circulate up to 5 or more times around the chain to satisfy the total amount of a given invoice value.

130. Mr Mody told the tribunal with reference to a chart showing payments of this nature how he was able to identify the start and end of a chain. He did this by looking at the FCIB reference numbers which are sequential. He demonstrated a payment chain settling an £5,583,000 invoice which revolved around the chain six times with payments between the participants being of the order of from £732,000 to £775,000. Each circulation through the chain took 3 minutes. The circulations around the chain conclude at the predestined point when the invoice price was fully satisfied.

The circular movement of the goods.

131. In theory and in real commercial life, the movement of the goods should go hand in hand (but in the opposite direction) with the payments made for the invoices raised.

132. Generally this appears from the evidence seen by the tribunal to have been the case but there are a number of anomalies where the goods, despite having been paid for by one apparent customer go to someone else or somewhere else entirely.

133. The tribunal heard for example from HMRC witness Michael Downer that in the course of his investigations concerning goods which had been ostensibly delivered to an address in Holland the goods simply did not arrive. Despite this a false CMR (International transport document) had been drawn up and relied upon for the purpose of making payment.

134. Specifically this had been the situation in deals 3 (Olympic); 4 (FAF); 5 (Olympic); and 12 (Neo Abaco). In these cases the Freight Forwarders had also drawn up false documentation for a number of other deals which involved traders which had been identified as part of the Malaga Cell. The Dutch freight forwarder, Magic Transport was, the tribunal was told, the subject of criminal investigation.

135. There was in fact very little evidence before the tribunal as to the goods themselves. It is a matter of conjecture as to precisely what goods did actually exist, what they may have comprised and where at any given time they might be.

136. The transactions appeared to be devoid of any 'real world' indicia. Nothing is heard about goods returned as unsatisfactory; all goods appear to be delivered with no shortages or damage, All goods would, it seems, inevitably be of first class quality and to specification. All were precisely as ordered and in the exact numbers ordered. Rioni's experience of this perfect commercial world is one which the tribunal finds to be wholly at odds with reality.

137. For the purpose of the fraud however the existence of the goods was not vital given the fact that more than one dishonest freight forwarder/warehouse was involved. What was needed was an invoice and shipping documentation which purported to set out the arrangements between the various participants and which would reasonably satisfy the enquiries of the tax authorities of the countries through which the goods were said to be traded. In this respect it was the illusion which mattered, not the true facts.

138. That this was so is also confirmed by some of the rather strange timings in relation to the apparent movement of the goods when compared with the payments made for them. An analysis of the documentation indicates that there were occasions when payment would be made although the goods may have already have been delivered to the purchaser sometime prior. On other occasions payments were made for the goods before they were delivered. The goods and their delivery appear to be something of an irrelevance which for the purposes of the fraud, the tribunal finds, they were.

139. A number of other points can be made about the goods but these are more appropriately dealt with later when looking more particularly at whether Mr Gligic knew or should have known that his company's transactions were connected with fraud.

140. Suffice to say that the weight and detail of the evidence shown to the tribunal establishes beyond any reasonable doubt that Rioni's dealings were indeed connected with fraud and because they were, there has been a fraudulent loss to the Revenue.

141. This leaves for the tribunal's consideration the critical question whether Mr Gligic knew or should have known of this fraudulent connection.

Did Mr Gligic know that Rioni was engaged in fraud?

142. The case advanced by HMRC is that Mr Gligic knew of the fraudulent nature of his dealings through Rioni by reason of the very nature of the fraudulent scheme on which he was embarked. It was, say HMRC, of such sophistication that it could only operate if all of the participants within the scheme played the roles allotted to them coordinating precisely their several activities as required.

143. Mr Gligic on the other hand says in his evidence that he dealt with a limited number of traders who he had no reason to believe were engaged in fraud. He purchased and sold the goods concerned at agreed prices settled often only after some hard bargaining. Had Mr Gligic been present at the tribunal to give his evidence he would have heard in detail of the operation of the Malaga Cell and the way in which it is said that Rioni was involved. Mr Gligic would no doubt have told us that he had no knowledge of the fraudulent activities which were effectively shielded from him.

144. The Respondents in their Amended Statement of Claim plead the following matters as indicative of Mr Gligic's knowledge of the fraudulent nature of the dealings in which his company was engaged.

- The sheer number of transactions traced back to default or a contra-trader is something from which HMRC says the Appellant's knowledge can be inferred.
- The fact that the description of the business on its registration for VAT bore no resemblance to its actual trading. The inference here is said to be that the Appellant, intent on engaging in what was known to be a risky area of trading sought to avoid delays in registration by employing a misleading description.
- Mr Gligic is said to have a history of involvement with other companies in relation to which there are VAT concerns.
- The evidence indicates that in relation to a number of the deals in which Rioni was engaged the goods simply did not arrive at their planned destination in the Netherlands. False CMR documentation had been drawn up. If the transactions had been legitimate the customers would surely have complained about non delivery.
- Not only did the supply of goods to the Appellant trace back to fraudulent traders or contra-traders but the parties to which Rioni supplied the goods were EU customers about whose trading there are said to be serious suspicions

and/or who have links to traders that have supplied goods at an earlier stage in the fraud

- The evidence more generally is of a "scheme" designed to defraud the public revenue – a scheme which by its nature would require the connivance of all of those engaged in it.
- The goods traded by Rioni in its acquisition deals in 04/06 and 07/06 were mobile telephones. In the broker deals in the same periods no mobile phones were traded although in the 10/05 period in which Rioni did not enter into any acquisition deals it did trade in mobile phones. It is suggested by HMRC that this pattern of trading is unlikely to be the result of chance and again suggests knowledge of the underlying fraud.
- The Appellant has been unable to produce any of the CMRs connected with its transactions
- The circularity of funds could not, it is said, have been achieved other than by design as opposed to the apparently freely negotiated selection of trading partners claimed by Mr Gligic.
- The use on a number of occasions by the Appellant of the same IP address as other traders in the transaction chains which suggests that one person based at one location was accessing the FCIB accounts of both the Appellant and the other traders in the chain.
- The so called "loan" from Ballantyne, a company that shares a common director with Pan Euro Ventures, a contra-trader within the Malaga cell and a customer of the Appellant in the 01/06 period. It was claimed that there was no documentation concerning this loan although in a development during the hearing of this appeal, a copy of what is said by Mr Gligic to have been the loan agreement, was produced.
- There were large and unexplained payments from the Appellant's bank account to companies with whom the Appellant had no apparent direct trading relationship. An example of this was a payment of £1,092,000 to ACT Abreco SL which then immediately paid the money over to Bilgisel Ticaret. There is no explanation for this substantial payment other than in the context of the fraudulent scheme.
- The frequent and rapid re-use of sums of money to support the value of invoices raised. This matter has already been mentioned in connection with the evidence from the Dutch and Paris servers of FCIB.
- The rapid achievement by Rioni of a turnover of £242 million from a standing start in the period from 1 August 2005 to 31 July 2006.
- The fact that the Appellant's account of its trading in the "grey market" bears little resemblance to the characteristics of that market and that, in particular, there is no evidence of any value being added at any point along the transaction chain. How in these circumstances a trader could reasonably expect to make any profit, let alone a significant one, is inexplicable.
- The fact that the 12 contra-trader deals were significantly more profitable to Rioni than the 25 deals which traced back to a defaulting trader must have suggested to Mr Gligic that the 12 deals were in some way different.
- The deals were lacking in commerciality. None of the parties involved were companies of real substance, the goods appeared to come into the UK for no good reason, the deals were all of a "back-to-back" nature, no one appeared

ever to actually take possession of the goods as an end user – they mostly just appeared to sit in a warehouse and, if these matters were not by themselves very odd, the payment arrangements were distinctly bizarre. It seemed to matter little whether the goods had actually been paid for before they were released for delivery. There did not appear to be any written terms of trade, insurance was not arranged as would be normally expected and the goods themselves were so poorly specified that it would be difficult at time to know just what it was that was being purchased.

145. The Respondents say that Rioni did not undertake proper commercial due diligence as to the parties with which it engaged in business despite the high value of the transactions involved. Rioni also failed to keep any record of distinctive IMEI numbers for the goods traded from which particular products could, if needed, be identified. It did not do this, say the Respondents, because there would be no stock returns or other claims concerning the goods which would require their identification as all of the transactions were fraudulent.

148. The above objections to Mr Gligic's account of his trading were further elucidated by Ms Goldring in her closing submissions.

What Mr Gligic has to say about these matters

149. Mr Gligic did not attend the hearing but did submit, in addition to his witness statement of 22 December 2011 further witness statements dated 1 March 2013, 8 August 2013, 16 August 2013 and 26 August 2013. Of these the principal document in which Mr Gligic contends that he was unaware of fraud is his witness statement of 8 August 2013 which is accompanied by a number of exhibited copy documents. Each of the witness statements contains a statement as to the truth of the matters addressed therein.

150. Mr Gligic in his original witness statement of 22 December 2011 deals in some detail with the suggestion advanced by the Revenue that his involvement with other companies has been less than satisfactory as regards compliance with VAT issues. Although this was a matter pleaded by the Respondents the underlying facts are hotly disputed by Mr Gligic and the tribunal does not draw any inference from them. The tribunal will confine its consideration of this appeal to the involvement of Rioni in the fraudulent transactions alleged by the Respondents and rejected by the Appellant.

151. What Mr Gligic does say in his statement of 22 December 2011 is that he had been aware for many years as a result of his extensive work within the IT industry, of the grey/parallel market in electronic goods and the high volumes of trading in those markets. It was an area of business which was of interest to him as the particular business he was in at the time was in the process of experiencing a downturn and he was therefore looking "*for another avenue for our financial health*".

152. Mr Gligic says that he therefore decided to research the field of grey/parallel imports and was excited by the prospects which this seemed to offer. He says in his

statement that the world of the grey market was a small one in which *"….deals are built on trust and experience and move very fast"*

153. The statement goes onto say that Mr Gligic joined Rioni in September/October 2005 when he focussed on "driving the business sales and making the deals". He had apparently entered into an agreement with the existing owner/director of Rioni, Victor Dare, whereby if he were to succeed either he personally or Mr Gligic's company, SMG (London) Ltd, would take a majority stake in Rioni.

154. Relations between Mr Gligic and Mr Dare became strained however: *"…exacerbated by the financial problems caused by HMRC Mr Dare and I parted company. I formally took over directorship 01 July 2006 and informed HMRC in writing 01 August 2006"*

155. In dealing with the incorporation of Rioni, its VAT registration and its bank accounts Mr Gligic makes the following points:

- He cannot comment on the matter of the trade classification for VAT as he was not part of the company at that time. The officers who had visited Rioni did not themselves take any steps to deregister the company or to correct the classification. The tribunal does not draw any adverse inference from this matter.
- Only details of a single bank account are called for as part of the VAT registration process. No great significance is, presumes Mr Gligic, attributed to this fact. The Tribunal accepts this as reasonable.
- The setting up of an account with FCIB was, says Mr Gligic, *"an industry preference if you wanted to become an active trader. It was difficult to trade in volume without a FCIB bank account"*. Mr Gligic expands on this arrangement at some length indicating that the use of such an account was well known to HMRC. FCIB was the industry preference because it *"simply worked efficiently because it had been established as a traders bank"*

156. Mr Gligic states that when he joined Rioni, Victor Dare had already started to trade *"marketing Rioni within the industry with the various trade bodies such as International Phone Traders (IPT) website and others e.g. Handset Trader"*

157. Mr Gligic explains that :

> *"We needed to secure finance to support our activity as without it we would not be able to continue. November and December [2005] were dedicated to raising finance which we did by way of an industry finance operation we had found via a recommendation on the International Phone Traders website, the industry online bible.*
> *Rioni took out a loan with Ballantyne International S.A. in early December 2005 and I as owner of a Central London property and existing established business acted as guarantor to the company loan.*
> *With the loan underneath us as a solid working capital Rioni was well placed with careful financial control to capitalise on the market opportunities before it"*

158. Mr Gligic in both his above statement and in the later statement of 8 August 2013 seeks to explain in some detail the way he worked and how he was able on his company's behalf to develop the business so quickly and profitably.

159. There is an account in the latter statement as to the long hours worked by Mr Gligic identifying both purchase and sale opportunities. The day would start, Mr Gligic states, with his reading of a great many faxes which, having been read would then, it seems, be consigned to the waste paper basket. One might reasonably ask why he felt it necessary to destroy the records on which his trading rested. Without his testimony the tribunal can only speculate that his trust in his business partners was such that he felt he had no need of the faxes.

160. The rest of the day would be spent on the telephone arranging deals between his company and those from whom he was to purchase goods and those to whom they would be sold on.

161. Mr Gligic explains in his first statement that the market for mobile phones in the UK was unique in that the supply chain was one which operated within a developed technology and was very sophisticated. Its mobile phone operators such as Vodaphone were some of the largest in the world. These operators had suppliers which had the ability to bulk purchase mobile phones at huge discounts from the manufacturers. Other markets such as the emerging European markets as well as those in the Middle East, Africa and Asia did not have the capability to purchase in such large quantities.

162. Rioni had before it, says Mr Gligic, opportunities not only in the mobile phones field but also in emerging markets for the growing demand for computers for companies and in other organisations and schools. This was a slightly different market as base computers were themselves recycled for further use but there were opportunities in the simple upgrading of equipment including the replacement of processors and increases in memory storage.

163. In both the first (22 December 2011) and the second (8 August 2013) witness statements Mr Gligic explains "How The Deals Work" (first statement) and by way of describing "A Day in the Life of….." (second statement) he seeks to give a picture of the business in which he was engaged. It was by his accounts a very hectic business which was mainly conducted from his office.

164. There are no detailed accounts of meetings with intended suppliers or customers. Indeed not a single person's name is mentioned throughout Mr Gligic's account of his routine business dealings. Company names are used to identify the parties concerned which it may be thought convenient in light of the possible serious consequences of identifying individuals involved in these fraudulent transactions

165. As to the workings of the deals Mr Gligic states that they were carried out on a "back-to-back" basis which reduced any financial risk and allowed Rioni time to make best use of its limited finances.

166. Once a customer requirement had been identified Rioni set about sourcing the requirement. Mr Gligic notes in this respect:

> *"Initial requirements/requests may have been very different from what was actually supplied, for example 10,000 units of a particular product but only a capability to satisfy 50% of this request therefore supplying 5,000 units. If agreement was given then the deal would be agreed and go ahead to supply 5,000 units.*
>
> *Paperwork was then passed down the chain from purchaser to supplier until whoever had the stock received their purchase order from their customer thereby contracting them to the deal.*
>
> *An individual trader had no way of knowing how big a trading line might be. The only thing they could confirm is the actuality of the stock as the freight forwarder who was holding the stock would be required to confirm the stock existed as per the paperwork. Once everything was verified invoices were issued. The terms were always title would only be passed on with payment.*
>
> *The whole process is very much like one of a property chain with the movement of money going down the chain through each trader releasing their title to the goods in respect of their customer on receiving payment by way of instruction to the freight forwarder.*
>
> *Once the payment reached the end supplier title automatically passed to the last purchaser who was able to instruct the freight forwarder as to what they wanted to do with the goods."*

167. Mr Gligic then goes on to detail the paperwork which accompanied each order including where the goods were to be exported the requisite shipping documentation including the CMR s required for transport. Why he retained no CMRs is not explained.

168. Insurance was, said Mr Gligic, unnecessary

> *"As traders barely had title to the goods …… there was no need for them to hold insurance because if there was any loss any insurer of the chain would argue that their client was not holding title at the point of loss".*

169. The explanation concerning the lack of insurance is in the second witness statement, rather differently expressed thus:

> *"With regards to insurance, it was unnecessary to carry insurance since the deals were back to back".*

170. Mr Gligic has however, and yet again, somewhat contrarily, also stated that there was no need to arrange insurance because this was carried either by the owner of the stored stock or, if carried internationally, by the carrier/freight forwarders, something which from the limited documentation from the freight forwarders seen by

the tribunal, is manifestly not the case as customers are expressly put on notice of the fact that the carrier/freight forwarders do not carry insurance so that appropriate arrangements do need to be made as to this.

171. Interestingly Mr Gligic referring to the metaphor of a house sale says that:

> *"Like house purchases there were a lot of aborted deals where either the end purchaser did not perform for whatever reason for example they may have sourced their requirement from somewhere else or where a supplier could no longer supply.*
>
> *There is no telling whether a purchaser had managed to get the exact stock from the same end supplier via another chain for slightly less money because that chain may have been shorter or a couple of traders were prepared to cut margin a little more.*
>
> *Traders were very aware of the competition and because of this traders looked at each deal on its merits and kept margin percentages low and looked at a deal from a monetary perspective, a trader would rather make a definite £2.250 GBP on an individual deal to make it happen than try to make £2.500 GBP and potentially put the deal at risk just to increase their gross profit margin percentage."*

172. In his second witness statement Mr Gligic tells us more about the hectic life of a grey market trader. He says that he spent up to 18 hours a day on the telephone dealing with putative partners – either sellers or buyers and liaising as necessary with others such as presumably the freight forwarders/ carriers/warehouses. As described above he also received calls from those who clearly had dishonest intent when he would respond by asking whether they were from the Revenue.

173. Much of this second statement and the additional shorter statements listed at paragraph 149 above is taken up with a point by point attempt to refute the evidence of the Respondent's witnesses. The tribunal does not propose to catalogue these but would observe that had the statement dated 8 August 2013 been supplied in a timely way the points made could have been addressed comprehensively. As it is, the reasons for the delay in delivery of the statement must remain opaque but are said to relate to Mr Gligic's troubles with his solicitors. In any event the tribunal is satisfied on the evidence it has heard that the points made by Mr Gligic are without merit. The Respondents, through counsel, took considerable, and, in the tribunal's view, justified, exception to the admission of the statements but as they constituted the only 'voice' of Mr Gligic heard in this appeal the tribunal was most reluctant not to admit them particularly in light of his claimed inability to attend the hearing.

The tribunal's consideration of the evidence

174. The tribunal has before it two accounts of Rioni's trading.

175. The first account, that of the Respondents, provides a detailed analysis of not just the transactions in respect of which repayment of input tax has been refused but

of a much larger scheme of fraudulent trading of which Rioni is said to have been an integral part.

176. The second account, Rioni's account, is of a trader recently embarked on a new venture which has yielded improbably high profits over a short period of time from a turnover which can only be considered as extraordinary in its size. The success of this remarkable enterprise is said to be accounted for by the hard work and dedication to his task by Mr Gligic.

177. This second account tells of an honest trader doing the very best for his company, originally motivated by the prospect of a directorship and an equity stake in the company but subsequently, in effect, trading on his own account through Rioni Limited without let or hindrance by co-directors, other owners or indeed anyone.

178. For every doubt raised by the Respondents as to the good faith of the Appellant in its dealings Mr Gligic professes to have an answer.

179. What the tribunal is required to do is to make an objective assessment of the evidence before it and come to a conclusion as to the essential nature of Rioni's trading – either honest or dishonest. More particularly and having found that the transactions with which the tribunal is concerned were part of a fraudulent scheme, the tribunal must decide whether the Respondents have discharged the burden upon them to establish that Mr Gligic, as the operating mind of Rioni, knew or ought to have known of the essentially fraudulent nature of what he was doing.

180. The standard of proof required is the normal civil standard being the balance of probabilities.

181. The burden of proof is, as a practical matter a shifting one. Initially it falls to the Respondents to establish why they have refused the repayment of input tax to which prima facie Rioni is entitled. Having established by reference to "objective factors" the high probability of Rioni's transactions being connected to fraud the burden of disproving this shifts to Rioni. It is therefore incumbent on Mr Gligic to come forward with reasonably plausible explanations for the many apparently curious features of his business.

182. The logical starting point is the evidence provided by the Respondents. That evidence, unlike the witness statements of Mr Gligic, was detailed, thorough and the result of years of investigation. It was compelling evidence in written form given life by the testimony of witnesses who had been prepared to come along to the tribunal, to swear to the truth of their statements and to deal with questions directed to them by both the tribunal and their own counsel.

183. Mr Gligic was not present and had chosen to rely on witness statements in which he questions the accuracy or completeness of the Respondents' witnesses, Kathleen Norton (Mr Gligic's statement of 26 August 2013), Andrew Letherby, Desmond Lewis and, again, Kathleen Norton (statement by Mr Gligic dated 1 March 2013).

184. The witness statements of Mr Gligic are argumentative in nature when not simply asserting that the matters of fact related by the Respondents' witnesses were not within his knowledge. The tribunal has searched unproductively within these witness statements of Mr Gligic for any evidence supportive of his account of his trading which is of probative value. The statements are unhelpful to either the tribunal or Mr Gligic.

185. The tribunal unreservedly accepts the Respondents' evidence for what it is, namely an overwhelmingly persuasive account of a dishonestly conceived, carefully planned and executed fraud on the public purse.

186. The tribunal has no doubt whatsoever that Rioni was an important player in this fraud, one which fulfilled the role both of a broker and at other times an acquirer in respect of the goods traded. Those roles were essential to the fraud in the manner which the Respondents have described.

187. Rioni was rewarded for its part in the fraudulent scheme by payments which by their consistency of value and the way in which they were related to the different roles played, militate against any suggestion of chance. No element of this fraud was left to chance.

188. We look to the guidance of Christopher Clarke J (see paragraph 28 above) in deciding that Mr Gligic, and therefore Rioni, knew that the scheme operated by Rioni was connected with fraud. Looking at the criteria suggested by the learned judge the tribunal would observe as follows.

"…..compelling similarities between one transaction and another" and the pattern of the transactions.

189. Whilst Rioni claims to have negotiated hard the terms of the transactions between them and their suppliers and purchasers, the format and way in which each of the transactions were completed was the same. This is despite the fact that the goods themselves changed from telephones to computer components and cameras. The documentation used was the same. The banking arrangements were the same. The casual approach to such matters as insurance, delivery and payment were the same. There is an underlying element of implausibility in all of this. The pattern of the transactions was the same in each case. The deals were all concluded on a "back-to-back" basis with payments arranged as a circulation of funds around the fraudulent chain. In no instance was there ever any evidence of an ultimate purchaser. The bank used was the same bank used by every other participant in the chain and the payments around the chain came from a single source as was clear from the evidence before the tribunal. There was nothing to distinguish the way in which Rioni dealt with any of its suppliers or customers irrespective of the value of the deal or the goods concerned.

190. It is clear too from the evidence that the trading activities of Rioni depended on whether it was acting as a broker in the direct loss chains or as an acquirer. Most of the deals in in the 04/06 and 07/06 VAT periods involved mobile phones. However in the acquisition deals contracted in these periods none concerned mobile phones.

In the 10/05 period (being a period in which no acquisition deals were concluded) Rioni did trade in mobile phones as a broker. This pattern of trading dependant as it appears to have been on the particular role adopted by Rioni at any given time is more readily explicable by reference to the orchestrated nature of the deals than to genuine supplier/purchaser considerations in a free market.

Trading undertaken by a trader who has practically no capital.

191. Mr Gligic has at several points in his witness statements made reference to the fact that he provided Rioni with the start-up capital it needed. Later, he said, he needed an injection of capital to create a firm base for future business. There is however no evidence at all that Mr Gligic introduced any capital to the business. To the contrary, the clear evidence is that the transactions in which Rioni was involved could not have been undertaken without the financial support of Ballantyne International S.A. which in effect funded a shortfall in VAT which it was expected would be recovered from HMRC in due course when the goods concerned were exported out of the UK.

192. The genuine nature of the payment made by Ballantyne was put in issue by the Respondents. It was pointed out that there did not appear to have been any documentation in relation to the substantial loan which had been made. In response to this and at the last moment, indeed actually during the early stage of the hearing, Mr Gligic (through his friend Mr Bower) produced a document which he says was that which memorialised the loan arrangement.

193. It is in the tribunal's experience a very odd document too. It occupied 4 pages of A4 paper only, the last page being the signature page. After reciting details of the parties to the agreement (which included Mr Gligic as well as Rioni) and definitions of the terms used it provided that a loan would be made to Rioni in the sum of £720,000 to be repaid without interest in 3 months' time. Only if not repaid by that time would it bear interest at 12 % p.a. to be calculated annually (and not compounded). Mr Gligic would stand surety for Rioni in case of default but only after "reasonable endeavours" had been made by Ballantyne to secure payment from Rioni.

194. These terms by themselves may not appear to be unusual. What is unusual however is the willingness of an apparently cash rich lender to enter into such a transaction with a company with a £2 share capital supported only by a guarantee from someone who appears not to have been required to provide any security. Had the document been of a truly commercial nature it would, in the experience of the tribunal, have been prepared by solicitors experienced in commercial banking matters who would have included many protections additional to the simple guarantee from Mr Gligic. The document would undoubtedly have been one of some greater substance. The suspicion must be that this document was produced to order so as to deal with the doubts which existed and had been voiced by the Respondents concerning the bona fides of the loan transaction.

"……..transactions all of which have identical percentage mark-ups"

195. Although the "profits" generated on Rioni's sales were not identical, they, like so many other aspects of the case advanced by Mr Gligic, made no commercial sense.

196. The gross profits on the broker sales in the October 2005 VAT period in which the products traded were supplied by a UK contra trader averaged 5.7% on sales. The April and July trading, by contrast yielded Rioni only 1.9%.

197. The margins within the October 2005 trading period however are remarkably similar. The margins ranged between 5.4% and 6.2% with 9 out of the 12 transactions being within a band of 5.6% to 5.7%

198. The gross profits for the 04/06 and 07/06 VAT periods did exhibit greater variation but 13 of the 20 deals in 04/06 were within a very narrow, and inexplicably low, range of from 0.2% to 0.8% although some transactions yielded up to 7.1%

199. The figures for the 07/06 period were (3 out of the 5 deals) within a band of 0.7% to 0.9% with up to 3.9% on the remaining deals.

200. The profits on the acquisition deals during the 01/06; 04/06 and 07/06 VAT periods display an even more remarkable similarity. 114 of the 116 deals were within the band of 0.1% to 0.7% with most of the deals (85 out of 116) showing returns within an even narrower range of between 0.1% and 0.2%.

201. What is perhaps even more indicative of the pre-arranged nature of these transactions is the way in which the prices for the goods sold appear not to distinguish between either the volume of the deal effected or the identity of the actual products dealt in. The Respondents point to 33 of Rioni's acquisition deals in which a profit of £1 per item was achieved despite the fact that the volumes of 7 different types of telephone ranged from 500 to 3500 units. In the same way sales of products by Powertec Computers LDA to Rioni were effected in volumes ranging from 1,700 units to 20,000 units but were all at £0.25 profit per unit. No doubt Mr Gligic would say that this constituted a good deal for Rioni. The pricing structures employed however do not appear to exhibit any clear rationale. The marked similarities observed in the deals evidenced run contrary to the suggestion by Mr Gligic that deals were individually negotiated so as to achieve the best result for Rioni.

" a huge and unexplained turnover"

202. It is a striking feature of the trading undertaken by Mr Gligic that he was apparently able, from a standing start and without previous experience of the market in the products concerned, to generate within the period from 6 September 2005 and 30 May 2006 sales of no less than £242 million. It is perhaps unfair to Mr Gligic to adopt the description "unexplained" as Mr Gligic has sought to explain how this was managed as a result of his constant attention to the negotiation and matching of deals between sellers and purchasers. The problem is that his explanation is not credible. It is explicable only in terms of the fraudulent scheme described by the Respondents.

"…..with no stock left over"

203. Whilst the tribunal well understands the natural desire of businessmen not to hold stock unnecessarily it defies belief that one could trade in the volumes seen in this appeal, seeking to match the availability of product with the demand for those products, so carefully as to avoid entirely the holding of at least some stock. That Mr Gligic apparently achieved this trading Nirvana is as difficult to believe as are so many of the other features of the deals said by Mr Gligic to have been freely negotiated.

Other considerations taken into account by the tribunal

204. It will be apparent from the above that the tribunal is unable to accept that Mr Gligic's trading was that of an honest man realising success as a result of great effort. In coming to the conclusion that Mr Gligic, on behalf of Rioni, was in fact engaged in a fraudulent scheme whose principal aim was to profit from the improper extraction of VAT from HMRC (and in the wider context of Rioni's trading from the revenue authorities of other countries) the tribunal has not looked at any single feature as determinative of this conclusion but has considered the totality of the evidence.

205. It has done this as it is very aware of the fact that a single unusual feature in Rioni's trading might well be capable of being explained away. Where however a considerable number of such features are clearly established on the evidence brought by the Respondents, the ability of the Appellant to resist the adverse inferences which are reasonably drawn from the evidence becomes difficult and ultimately impossible.

206. The tribunal has, contrary to the compelling and quite proper submissions of counsel for the Respondents, as to their admissibility, read and taken into account all that Mr Gligic has had to say in his statements of evidence. As explained above we have done so as these somewhat dubious documents constitute Mr Gligic's only voice in the proceedings.

207. The careful presentation of the Respondents defence to this appeal and the detail into which it went was necessary as any allegation of fraud whether in a criminal or a civil context does require a high degree of particularisation. Any such allegation would normally be required to be put to the alleged fraudster in the court or tribunal so that he or she may respond and the evidence both for and against the allegation tested by cross examination.

208. That course was not open in this appeal as Mr Gligic did not attend the hearing. He had made a number of attempts to postpone the hearing citing variously either his inability to secure a passport, his work commitments in Africa and the state of his health. The tribunal judges dealing with these applications appear not to have been convinced as to either their merit or legitimacy. A final attempt to postpone the hearing was made on Mr Gligic's behalf at the outset of the hearing by Mr Bower who had no proper standing before the tribunal but who was listened to before the decision was made to proceed.

209. It is in these circumstances that if the evidence concerning fraud is to be rebutted it can only be so on the basis of the material within Mr Gligic's statements. The tribunal has attempted to analyse those statements with a view to extracting the

basic propositions on which Mr Gligic relies in support of his contention that Rioni's trading was undertaken in the normal course.

210. There is some difficulty in this regard as the apparently comprehensive statement made by Mr Gligic on 22 December 2011 has been replaced by the statement of 8 August 2013. In this latter Mr Gligic states:

> *"This statement replaces any and all previous statements and addresses not only the narrative and detail of my claim, but also the evidence provided by the Respondent's (1) Mr Desmond Lewis ("Lewis") and (2) Ms Kathleen Norton ("Ms Norton")"*

211. A further difficulty arises because there are inconsistencies as between the two statements. This does little to give confidence in the accuracy or truthfulness of either of the statements.

212. It should be made clear that the tribunal has not considered itself fettered in the way Mr Gligic requests. It has looked at both of Mr Gligic's principal statements (i.e. 11 December 2011 and the so called "substituted" statement of 8 August 2013) Both contain statements of truth and are apparently signed by Mr Gligic.

213. As indicated above Mr Gligic spends the first few pages of his August statement explaining the inadequacies of his former legal advisers and the business reasons why he had been unable to arrange to attend the hearing at that time. The reason he advanced was that the demands of and risks to the business in Tanzania were such that he would be unable to attend a trial until 2015. He then proceeds to describe his family and educational background and in particular the role played by his Mother, Margaret Gligic in his business education. This is then followed by a description of various business activities engaged in by either Mrs Gligic or her son or both. Some of this information was no doubt considered by Mr Gligic as necessary to be included so as to respond to suggestions made by the Respondents to the effect that Mr Gligic had been involved in businesses prior to Rioni which had run into difficulties. As no evidence as to such matters which the tribunal was able to test was produced by the Respondents and as this did appear a contentious matter the tribunal considered it irrelevant and has drawn no inferences from these matters.

214. Only on page 17 of his statement does Mr Gligic start to deal with his role at Rioni. He states that he was attracted by the Rioni business model as it closely followed that of a company in which he had previously been involved in essentially avoiding risk by identifying customers (some of which would approach him) and finding a supplier who could fulfil the order requirement. A declaration was, asserts Mr Gligic, prior to purchase, sought from his company's suppliers confirming that "the goods were free and clear, and untainted by carousel or MTIC fraud"

215. Mr Gligic confirms that he used the services of FCIB *"for transactional processing"*. The reason for doing so is explained in Mr Gligic's first (December 2011) statement as being the fact that using this bank was a condition of those providing finance to traders. The tribunal does not doubt this as those providing the finance (such as Ballantyne) would need to be completely in control of the movement of moneys around the trading circles so as to provide security for their loans. The

rapid rotation and coordination of funds could not work unless there was a single source controlling this aspect of the transactions concerned. This single feature by itself distinguishes Rioni's business from any normal trading activity.

216. It is under the general heading "A Day in the Life of….." that Mr Gligic proceeds to describe his business.

217. Mr Gligic describes his daily work load as involving an "often debilitating weight of work". He made little use of the internet dealing with customers both in the UK and overseas by fax. He had also to secure "significant shipping and warehousing facilities, all of which necessitated exceptional logistics management".

218. No evidence was brought forward by Mr Gligic to substantiate any of this. He has destroyed all of his faxes apparently and there is no documentation concerning the transport and storage arrangements to which he has referred.

219. Mr Gligic challenges the Respondents' assertion that he was not operating in a genuine parallel market in the field of telephones. The Respondents' evidence however was principally directed towards establishing that despite the fact that many mobile phones were traded in a parallel or "grey" market, the transactions with which Mr Gligic was concerned were such that they formed no part of this market but were simply a component part of the fraudulent enterprise in which he was engaged.

220. The Respondents' evidence was that Rioni entered into 34 wholesale purchases of telephones in the period 04/06. Only 3 of these purchases were from an original equipment supplier (or OEM)(Sony Ericsson). The input tax on these deals has been allowed as there was no evidence of any connection with fraud. The remaining trading in mobile phones was with partners in the trading circles in which Rioni participated. All were "broker" transactions and it was shown by way of reference to the transaction documents that all involved fraudulent tax loss at some stage.

221. This artificial trading was seen also in relation to the trade conducted by Rioni in electronic components. The Tribunal was taken to the Respondents' expert's evidence which was that the quantities of the components said by Mr Gligic to have been traded exceeded the numbers of such components traded worldwide. The Tribunal would have been interested to hear from Mr Gligic's explanation for this.

222. Mr Gligic makes much of his attempts to ensure that he avoided trading with partners who were involved in MTIC fraud. His requirement that those with whom he dealt should sign a statement was the starting point but perhaps more importantly were the "strong and trusting relationships" built up by Mr Gligic with those with whom he did business. He was, he said, keen to achieve the optimum margin for his company without putting at risk "the integrity of the relationship".

223. Again there is a perplexing absence of any evidence at all not only as to how, specifically, these connections were made, but who the individuals were with whom these "strong and trusting relationships" were formed. Not a single person's name appears in Mr Gligic's evidence as to this aspect. Indeed the complete absence of any

reference to other people by name only serves to confirm the essentially anonymised nature of the account given by Mr Gligic of Rioni's trading.

224. On the subject of due diligence Mr Gligic waves away any suggestion that using IMEI numbers which would enable identification of particular telephones to be made would be useful as a safeguard against fraudulent trading. This he says is because there is no International database against which the numbers could be checked to see whether the same telephones had been traded more than once. It does not seem to occur to Mr Gligic that IMEI numbers might represent a useful tool to assist in identifying any products traded by Rioni which for one reason or another proved to be faulty or not to specification. Perhaps this is not surprising as the Tribunal has learned during the course of the hearing that Rioni's was a unique business in which there were never any returns, leftover stock, shortages, faults or other customer focussed concerns.

Summary of indicia as to Mr Gligic's knowledge concerning the fraudulent nature of Rioni's trading

225. The cumulative circumstances which point inevitably both to the fact that Rioni's trading was connected with fraud and that Mr Gligic knew of this include:

- The fact that the business in which Rioni chose to trade was and was known to be rife with fraud
- Rioni was enabled to make a large and unrealistically high profit over a very short period of time in a business sector with which it had no previous familiarity.
- There was no apparent logic to the importation of telephones from Europe which would then be traded in the UK only to be exported again to Europe. This must have appeared odd to anyone who thought that the trade was legitimate.
- The documentation for the deals whilst maintaining a generally consistent format did not follow the actual course of the transactions in a number of instances. Goods were either not delivered to the stated customer or were paid for only after they had been shipped elsewhere.
- The payment arrangements were placed in the hands of the bank so as to facilitate a series of payments more or less instantly between multiple partners to the trading. Whilst "back-to-back" trading is not unknown, trading of the nature exhibited by the Respondents in their evidence can only really be explained by reference to orchestrated fraud
- The deals by their frequency, value and consistency were too good to be true.
- Rioni had been warned on more than one occasion of its having traded within a sequence of trades one of which led back to fraudulent evasion of VAT but had continued to trade in the same market and in the same way despite this.
- Despite the checks made by Rioni concerning its trading partners (company registration checks) no proper due diligence was exercised. There is no evidence as to enquiries ever having been made by Rioni of the people running the companies with which it traded, no banking checks or other credit checks were undertaken. Lip service only was given to the due diligence requirement.

- Mr Gligic, even now, appears not to have understood the significance of the above matters. There is no evidence that he ever stood back and questioned himself as to the true nature of what was going on.

Conclusions

226. We find that Mr Gligic's account of his trading is nothing short of a work of fiction which bears not even a passing resemblance to the truth.

227. Mr Gligic would have the tribunal believe that he worked tirelessly in the way he has described seeking to ally the requirements of his purchasers with the offerings of sellers in the market. He says that often they did not match and that sometimes a deal had to be made based on different quantities of goods. At other times traders in the chain dropped out and the deals fell apart. Mr Gligic paints a picture of an honest dealer seeking at all times to look after his customers and make the best deal he can. In all of this flexibility must be a key component of the dealing process.

228. In reality flexibility, changed requirements and broken chains of transactions were the last things that the fraudulent scheme required for its success. What it needed was strict compliance and adherence to a pre-planned, timed schedule of deals. That could only be assured by the handing over of control by companies involved in the fraud of their banking arrangements. That is why FCIB was used. It was itself, as has now been shown to be the case, a fraudulent enterprise which conveniently accommodated the needs of other fraudsters.

229. The last thing that the fraudulent scheme required was a participant which might sell the goods elsewhere or change the timings or amounts of the planned payments.

230. These are not matters which were outside the knowledge of Mr Gligic. He simply could not have operated his business in the way he described and the tribunal finds that he was well aware of that fact.

231. Mr Gligic did not spend the hours he states trying to arrange deals. The deals were presented to him and all that he was required to do was to do as he had been told.

232. The Respondents, through their counsel, have pointed to the facts and matters which they say indicate the fraudulent nature of Rioni's activities. A number of these matters – for example the speed of the rotation of funds around a transaction chain and the defaults in those chains are matters which, whilst accepted by the tribunal as evidence indicating fraud, are matters which rely on an assumption of knowledge by Mr Gligic whereas it is Mr Gligic's position that he could not have known about these matters.

233. For this reason the tribunal in coming to its conclusions about the question of knowledge has, as an initial step in its decision making process, looked more to those aspects of the Appellant's account of his trading, and the evidence supporting that

account, which the tribunal believes would inform a reasonable businessman that what was going on was so highly unusual as to be explicable only in terms of fraud.

234. What did strike the tribunal as very strange is (as stated above) that whilst Mr Gligic has made much of his devotion to telephone communications with potential suppliers and purchasers he has not mentioned the name of a single person with whom he dealt. All of his references are to companies.

235. There is also a complete lack of any information about meetings with those with whom he dealt. When did any meeting take place? where? and with whom? Everything Mr Gligic did, appears to have been at a distance from his trading partners. This despite the fact that he was making "quasi friendships" which resulted in £242 million of business over a very short period of time.

236. Even allowing for the fact that that most of his contact with traders was by telephone it would have been a simple matter to provide, as evidence of this type of trading, a record of telephone calls in and out of Mr Gligic's office. This might at least have given some substance to Mr Gligic's account. There has been no such evidence.

237. Mr Gligic in his most recent statement says that he had kept records of "every relevant document [which has been] filed as an exhibit". In fact what Mr Gligic has produced is no more than a record of his business dealings which are the very documents on which the Respondents rely to establish the fraudulent nature of his trading.

238. Mr Gligic appears to have traded without any terms of trading or any contracts other than those made verbally over the phone. Everything appears to rely on trust. That level of trust extended it seems to his handing over authority in respect of the management of his bank account to FCIB who were also trusted to deal with freight matters. That is quite extraordinary in the finding of this tribunal. It was, of course, essential to the smooth running of the fraudulent scheme. Everything had to be controlled by a very small number of persons for the scheme to succeed.

239. Mr Gligic appears not to have asked himself what the purpose of his deals really was. He seems to have been quite happy to accept goods from Europe which he would then sell onto another European or foreign customer. The goods themselves were often quite unsuitable for use in the UK market. He was not adding any value to the transactions in which he was involved. He seems to have had a low level of curiosity as to why his company's participation in such a transaction would have been necessary or desirable in any way other than to seek to extract VAT from the Revenue.

240. This possibility of VAT fraud appears not to have crossed his mind as a possible explanation for the very unusual features of the business on which he was engaged despite the very clear warnings given to Rioni by HMRC.

241. It would also seem that, according to Mr Gligic's theory of how his role as a trader worked, he (or more accurately Rioni), would never be troubled by such

matters as customer rejects or stock shortages, faulty goods, goods which did not meet specifications or any of the many matters which a genuine trader would have in mind and take steps to guard against. That is why, the tribunal concludes, he had no time for IMEI number records which could be used to trace products. Insurance was also apparently quite unnecessary.

242. Mr Gligic's account of the way he conducted business not only makes no sense but is wholly lacking in any supporting evidence. It is explicable only by reference to his knowledge of the true nature of what he was doing, namely engaging in MTIC fraud.

243. Mr Gligic sought to make much of his knowledge of the "grey" or "parallel" market which existed in the products he traded and explains the huge volumes by reference to the claimed size of this market.

244. That account too is fanciful. The tribunal had before it the expert evidence of Dr Findlay concerning this market in which he concluded that Rioni's trading did not exhibit the characteristics of a business trading in the grey market. The grey market operated in well-defined sectors serving particular purposes. These could conveniently be summarised as sub-distribution; the distribution of obsolete/niche components, emergency supplies to assemblers and the offloading of excess inventory and arbitrage. It is difficult, if not impossible, to see which of these could be said to encompass the trading undertaken by Rioni.

245. It is also a characteristic of the grey market that the margins made are very small. The volumes traded can be large but not as large as Rioni would suggest.

246. Dr Findlay looked at the products in which Rioni dealt and came to the conclusion that the product specifications for most of the electronic components was insufficient. In relation to computer memory the specification was not only insufficient but it was in his opinion "inconceivable" that Rioni could have legitimately traded the volume it purported to have traded (£10 million) as the entire market was of only a little over £13.8 million.

247. The volume of CPUs (Central Processor Units) purported to have been traded by Rioni was actually in excess of what was possible at that time. Rioni was said to have traded £36 million of this product as compared to an addressable market of less than £2 million.

248. Dr Findlay was equally clear that Rioni's dealings in the mobile telephone market could not plausibly be explained as being related to the grey or parallel market.

249. The Tribunal reminds itself that the burden of proof required to deny Rioni its repayment of input tax rests with the Respondents. Prima facie Rioni is entitled to its repayment unless fraud has been established. That is what Article 17 (1) and (2)(a) of the Sixth Directive provides. (See also paragraph 18 above and paragraph 51 of the CJEU decision in *Kittel*) The standard of proof required is the civil standard of the balance of probabilities.

251. The tribunal needs therefore to decide whether on the evidence it has heard and seen the Respondents have persuaded it that it is more probable than not that Rioni knew that its transactions were connected to MTIC fraud. If Rioni knew such then it is not entitled to be repaid its claim to input tax.

252. The tribunal has no doubt that Mr Gligic did know that his company's transactions were connected with fraud. It is very apparent to it that even if the Respondents had been wrong about this Mr Gligic and hence Rioni ought to have known of the fraudulent connection between its transactions and MTIC fraud.

253. The tribunal finds that Rioni was actively engaged, to the knowledge of Mr Gligic, in a fraud solely designed to extract VAT from HMRC. The Appellant's explanation for its trading is highly implausible and without any evidential support.

Decision

254. Accordingly this appeal is dismissed. The disallowance of input tax by the Respondents is confirmed

255. 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

CHRISTOPHER HACKING
TRIBUNAL JUDGE

RELEASE DATE: 20 April 2015