TC02106

Appeal number: LON/2007/1078
LON/2008/0654

TYPE OF TAX – VAT - MTIC fraud - whether the Appellant knew or ought to have known that its transactions were connected with the fraudulent evasion of VAT- appeal dismissed on basis that the Appellant ought to have known and on the balance of probabilities knew that its transactions were connected with fraud

FIRST-TIER TRIBUNAL
TAX CHAMBER

LIFELINE EUROPE LIMITED **Appellant**

- and -

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

TRIBUNAL: JUDGE SANDY RADFORD
MICHAEL TEMPLEMAN

Sitting in public at the Royal Courts of Justice, the Strand, London from 6 December 2011 to 21 December 2011

The Appellant did not appear and was not represented

Jenny Goldring and David Bedenham, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents

DECISION

Introduction

1. In the absence of the appellant the Tribunal considered whether the hearing should go ahead pursuant to Rule 33 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009.

2. The Tribunal noted particularly that the hearing had originally been scheduled for June 2011 and that after two late requests by the appellant for an adjournment of four to six months which were objected to by HMRC, on 24 May 2011, the Tribunal granted a six month adjournment. Mr Haried, director of the appellant stated that he was committed to preparing his own case and "needed a minimum adjournment of four to six months in order that I can go through the case fully and defend myself appropriately".

3. Mr Young, his counsel had previously stated that he was clear from 1 September 2011 for the rest of the year. It was not until 11 November 2011 that the appellant requested a further adjournment on the basis that his counsel was not available.

4. In November 2010 the Appeal was fixed for a hearing on 6 June 2011 this being the appellant's Counsel, Mr Andrew Young's preferred date. Mr Young stated in an email to the Tribunal that he could not manage two clear weeks until June 6 to 17 2011. In this email he also stated that he was then clear from 1 September for the rest of the year.

5. Shortly before the hearing was due to commence, on 18 May 2011, the appellant informed the Tribunal that Dass Solicitors were no longer instructed and requested an adjournment to instruct alternative legal representatives or to prepare the case himself.

6. On 19 May 2011 HMRC objected to the request for an adjournment.

7. On 24 May 2011 the appellant maintained the request for an adjournment and stated that files had been collected from Dass Solicitor's and he was "100% committed to prepare my own case for now." He stated "he had been looking around at a few alternative legal representatives."

8. On the grounds that the appellant had only just received the files and was 100% committed to now prepare his own case, on 24 May 2011 it was directed (without a hearing) that the appeal be adjourned to 6 December 2011.

9. As a result of this adjournment however HMRC had to replace leading Counsel.

10. On 14 October 2011 the appellant made an application to stay the proceedings.

11. The application was due to be heard by Judge Wallace on 24 October 2011 but was not heard due to the non-attendance of the appellant.

12. By application dated 11 November 2011, the appellant applied for an adjournment of the substantive hearing of its appeal. The reason cited in the letter was the non-availability of Counsel Andrew Young. Reference was also made in the notice of application to the request for an interim payment and to references to the European Court of Justice ("ECJ") in the cases of Gabor Toth and Bonik EOOD.

13. By notice of objection dated 15 November 2011, HMRC objected to the appellant's application.

14. By directions released on 22 November 2011 the Tribunal directed inter alia:

> The Appellant's application is hereby refused and the appeals shall remain scheduled to be heard from 6 – 20 December.

15. By notice of application dated 2 December 2011, the appellant renewed its application for an adjournment of the substantive hearing. This notice of application only being received on the penultimate working day prior to commencement of the substantive appeal, HMRC did not file a formal notice of objection. HMRC did, however, raise an objection on the first day of the hearing.

16. On 5 December 2011, an email was received from Peter Smallwood on behalf of the appellant advising that as no response had been received from HMRC to the application for interim funding it was not possible to represent the appellant even if funding were to be released. It was stated that it was unlikely that anyone from the appellant would attend the appeal due to the appellant's belief that there would be an inequality of arms should it not be professionally represented.

17. HMRC submitted that the substantive appeal hearing should proceed as scheduled if necessary in the absence of the appellant.

18. The appellant's renewed application for an adjournment was based on two grounds; firstly that HMRC should make an interim payment to the appellant and/or had not properly exercised the discretion to make such payment and/or that this led to an inequality of arms; and secondly that there were certain references pending before the ECJ which, the appellant submitted, "are likely to give guidance on what is the test for the Tribunal to consider in cases such as this appeal".

19. HMRC submitted that both of these grounds now relied upon were cited as grounds in the appellant's application dated 11 November 2011. Accordingly, each of the grounds was considered and rejected by the Tribunal in the decision released on 22 November 2011. Specifically, the Tribunal held (at paragraphs 8 and 9 of its decision):

> The Tribunal concurs with HMRC's submission that the fact that references have been made to the ECJ does not prevent or in any way hinder the Tribunal's ability to proceed to hear the factual evidence in these appeals.
>
> The Tribunal notes that HMRC have now refused the appellant's application for interim payment. .

20. The appellant had written to HMRC as early as November 2006 requesting an interim payment of £1.6 million and HMRC asked for further information. In April 2007 the appellant offered to provide a bank guarantee and in May 2007 the HMRC securities team wrote to the appellant with formal notice of these requirements but the appellant failed to respond.

21. On 24 May 2011 the appellant submitted a request for an interim payment of £95,000. This was refused by HMRC for various reasons including the fact that the appellant had significant financial problems having assets totalling £682 and liabilities of £750,000. Also when offered the opportunity to provide financial security to HMRC in 2007 no response had been received. In its request the appellant had stated that it had no debts with its previous legal representatives and HMRC therefore considered that the request for £95,000 to fund its final hearing costs was excessive.

22. The appellant submitted a renewed request for an interim payment on 25 November 2011. This was refused by HMRC on 1 December 2011. In refusing to make an interim payment to the appellant, HMRC was acting consistently with their published policy.

23. An independent review of Mr Simmons' decision to refuse an interim payment was conducted by HMRC Higher Officer Nigel Saunders who agreed with the decision. In his letter Mr Saunders stated that the key issues were that the appellant had operated in business sectors which had been greatly affected by fraudulent trading; the appellant had embarked on the appeal process a number of years ago and as it had not traded for the last four years must have known from the outset that it did not have sufficient funds to see through an appeal and HMRC were now faced with a request to release funds on an unsecured basis for an appeal commencing in the next week; and the appellant already owed a significant sum of money to other creditors and so the prospect of HMRC recovering the money if the appeal failed were considered to be very slight.

24. As concluded by Judge Hellier in *Extec Limited v. The Commissioners for HM Revenue and Customs*, the Tribunal has no power to order HMRC to make an interim payment.

25. The appellant left it to the eleventh hour to request and then renew its application for an interim payment. Whilst it is possible to apply to judicially review a discretionary action of HMRC (such as refusal to make an interim payment) this does not mean that it follows that the appellant should be granted an adjournment to seek such review. Rather the Tribunal should consider whether granting an adjournment is in the interests of justice. The appellant could have requested an interim payment and, if it so wished, applied for judicial review of any refusal at a much earlier stage. It did not do so.

26. The Tribunal has already been extremely accommodating towards the appellant. In particular it was noted in the directions on 22 November 2011 that the appellant had had six months to find new legal representation. It had been stated by the appellant that an adjournment would save time and costs but HMRC had already had

to prepare its case again and instruct new counsel. Further the case had twice been listed for a ten day slot thus preventing other cases being heard.

27. This case was originally listed for June 2011. Further adjournment would incur the real risk that the memories of both the appellant and HMRC's witnesses would fade regarding the events in 2005 to 2006.

28. The appellant had had full disclosure of the evidence and adequate time to prepare the case. The appellant could have attended the hearing where his interests would have been safeguarded by the Tribunal and by the fair presentation of the case by HMRC.

29. A very similar situation was considered by the Tribunal in *4 Distribution Limited v. HMRC* [2009] UKFTT 242 (TC). In that appeal, a request for an interim payment was made by the appellant which was refused by HMRC. The Tribunal refused to adjourn the substantive appeal pending a judicial review of the decision not to make an interim payment. At paragraph 10 of its decision, the Tribunal stated:

> "in reaching its conclusion on the application the Tribunal has weighed the general desirability of granting an adjournment (as a means of possibly eventually having the benefit of legal representation of the Appellant at the hearing of the appeal) against the certain inconvenience to the Tribunal and to HMRC (including wasted costs) of adjourning a 3-week fixture indefinitely at the last moment. The Tribunal had regard to its own view (concurred in by Mr Singer) that the contemplated judicial review application was most unlikely to be successful and, particularly, to the safeguard provided by rule 26(3) of the Rules under which a party has an opportunity to apply to the tribunal for it to consider setting aside a decision or direction given in that party's absence on such terms as the tribunal thinks just"

30. The ECJ reference point was considered by the Tribunal in its decision of 22 November 2011. The crux of the Tribunal's decision was that the fact of the references did not hinder the Tribunal in reaching its factual determinations. On 29 November 2011 the Upper Tier Tribunal agreed to stand over two appeals (against decisions of the First Tier Tribunal) and two applications for permission to appeal against decisions of the First Tier Tribunal pending the disposal of certain references made by the courts of other member states to the ECJ (including those cited by the appellant). Without prejudice to the fact that HMRC are considering their position on appeal in relation to the Upper Tribunal's decision, the Upper Tribunal's decision does not mean that the present appeal should be adjourned pending resolution of the references.

31. Pursuant to Rule 33 of the 2009 Rules, the Tribunal may proceed with a hearing in the absence of a party if (a) it is satisfied that the party has been notified of the hearing (or reasonable steps have been taken to so notify that party) and (b) it is considered to be in the interests of justice to proceed with the hearing.

32. In light of the correspondence from the appellant's representatives it seemed clear that the appellant was aware of the hearing. Additionally on the first day of the hearing the Tribunal instructed HMRC to contact the appellant to inform the appellant's director that the hearing was going ahead and to invite him to attend in

order that he might hear the evidence and give evidence on the appellant's behalf. Mr Haried, the director of the appellant, however did not respond.

33. To the extent that the appellant submitted that the appeal ought not to go ahead as it would suffer from inequality of arms in the absence of it being given an interim payment with which to pay its lawyers, the appellant could have made its request (and supplied the relevant supporting documentation) at a much earlier stage. It chose not to. Moreover, it would seem to be the appellant's case that the alleged inequality could only be redressed through release of funds by way of an interim payment and, for the reasons set out above, any application for judicial review of HMRC's decision refusing to make such a payment was unlikely to be successful.

34. In *4 Distribution*, the Tribunal decided on balance that it was in the interests of justice to proceed in the appellant's absence. On the present facts, the balance is tipped even further in favour of proceeding given the previous adjournments that have been granted. Since June 2011 the appellant has consistently cancelled or failed to attend dates set for his applications to be heard.

35. In accordance with rule 33 the Tribunal was satisfied that the appellant had been notified of the hearing and further having examined all the relevant facts considered it to be in the interests of justice to proceed with the hearing:

(i) The appellant originally applied for an interim payment in 2006 but failed to provide relevant information requested by HMRC.

(ii) The original hearing was set down for a date which suited the appellant's counsel but with minimal notice the director of the appellant requested a short adjournment and stated that he was 100% committed to dealing with the case.

(iii) The appellant was granted a six and a half month adjournment but left it until November 2011 to state that its counsel was not available.

(iv) The appellant has been refused an interim payment and appears unlikely to have funds to apply for a judicial review of the decision and which in any event is unlikely to succeed.

(v) Despite being invited to attend the hearing himself without representation on the basis that the Tribunal would have ensured that he received a fair hearing and he would have had the chance to hear the evidence and give evidence himself, the director of the appellant did not appear and stayed away.

The appeal

36. This is an appeal against a decision by HMRC denying the appellant the right to deduct input tax in the sum of £2,481,482.56. This input tax was incurred by the appellant in relation to 38 purchases of CPUs and mobile telephones undertaken in the monthly VAT periods 04/06 (15 purchases), 05/06 (22 purchases) and 06/06 (1 purchase).

37. 35 of the appellant's purchases of CPUs when traced back through the transaction chain were found to commence with a company which had fraudulently evaded the VAT owed by it.

38. Three of the appellant's purchases of mobile phones when traced back through the transaction chain were found to commence with a contra trader Globalised Corporation ("Globalised"). That contra trader had entered into further deals that had commenced with defaulting traders.

39. HMRC denied the appellant the right to deduct this input tax on the basis that the purchases in relation to which the input tax was incurred were connected with the fraudulent evasion of VAT and the appellant knew or should have known that that was the case. It is HMRC's case that the appellant's transactions form part of a Missing Trader Intra Community ("MTIC") fraud and, in some instances, a variant thereof known as "contra-trading".

40. Ian Simmons, Jayne Holden and Michael Downer provided witness statements and gave evidence for HMRC. Witness statements were provided by David Young, Gordon Fyffe, Peter Davies, Peter Watson, Matthew Bycroft, John Cordwell, Martin Evans, Sally Medcroft, Romaine Lewis, Laura Hartnell, Roderick Stone and Dr Robert Finlay for HMRC. All the witnesses were available for questioning.

Background and facts

41. Mr Simmons gave evidence concerning the appellant. He is an HMRC officer whose duties include the verification of repayment claims submitted by traders who are suspected of trading in supply chains connected to MTIC fraud. It was in this capacity that he was allocated the appellant's 04/06 repayment claim and all of the subsequent claims.

42. The appellant is a limited company, incorporated on 17th December 2001.

43. Mr Jitinder Haried was the controlling mind of the appellant, responsible for the deals which are the subject of this appeal. He was appointed as director of the appellant on 7th January 2002.

44. The appellant was registered for VAT on 1st February 2002 (VAT registration number 785 8281 75). The principal place of business ("PPOB") was 111 Whitby Road, Slough, Berkshire SL1 3DR. The VAT 1 was signed by Mr A Singh, the director at that time, who was the father of Mr Jitinder Haried. It showed the Main Business Activity as the "Distribution and Retail of Sports Equipment." The value of taxable supplies over the next 12 months was stated to be approximately £25,000. The value of goods the company was likely to sell to other member states was stated to be £100,000. It stated that there would be no purchases from member states.

45. The VAT returns showed a small amount of trading until 03/04 when the appellant began trading in mobile phones and CPUs. A graph in Ian Simmons' witness statement showed that the appellant submitted VAT returns which were mostly repayment claims. They increased in each period, peaking in the 04/06 period.

46. HMRC attended the PPOB at Unit 4 Thames House, Middle Green Trading Estate in Slough on the 18 March 2004. The visit was triggered because the appellant had been verifying VAT numbers with the National Advice Service. They met with Mr Haried, and explained that the reason for the visit was that it was believed his company was looking to trade in mobile phones and there were problems with VAT fraud in this area of trade.

47. Mr Haried explained to HMRC that the core business of the company was the buying and selling of sports equipment. His background was in freight forwarding and he had many contacts in the import/export business. He said he had brokered deals in the past including mobile phones and he invoiced the suppliers for commission. He said that he was now looking to buy and sell mobile phones as he had the money to do so, and more money could be made than by brokering.

48. Mr Haried said that there were five part time employees and the finance for the company was approximately £100,000 from two loan companies and the rest from savings from himself and his mother.

49. The phone trading side of the business was not advertised on any of the trading websites. He was looking to do more phone deals but was limited by the funds he had available. He felt the checks he was making were robust but as long as the goods and money were in place that was all that mattered.

50. One phone deal was likely to go through that day; the supplier was Topbrandz Limited ("Topbrandz") and the customer Comitel. He explained to HMRC that he had met Claus Hansen of Comitel through his cousin Oliver Hansen, a major car dealer in Germany. He used to go to college with Zia Malik of Topbrandz. He was planning on shipping the goods to his customer on hold. Once they had checked and paid for them he would pay his supplier and the goods would be released. There was some negotiation on price. When asked if he had shopped around for suppliers, he said he had contacted Vodaphone and Orange but the price was too high.

51. The problems within the industry were discussed by HMRC in depth. Mr Haried stated that he had a discussion with his accountant who had advised him of the need to carry out due diligence checks and to clear VAT numbers. When asked what other checks he had made, he stated that he had obtained the copies of certificates of incorporation and VAT registration for Topbrandz. He had also asked his accountant to contact their accountant.

52. Regarding his business in fitness goods, he had contracts with customers and suppliers. He had no contract for the high value phone deal he was looking to do, but might have contracts in the future. He did not have a contract because deals could happen at any time and at short notice. If there was a problem with the goods they had a 12 month manufacturer's warranty and any problems "would be sorted out".

53. Although Mr Haried was aware of the problems with missing traders and hijacked registrations in supply chains involving mobile phones, he was of the impression that as long as he cleared VAT numbers with HMRC this was sufficient. It

was explained that this was not necessarily the situation, and that his money might be at risk if it was later established that there was a VAT loss in the supply chain.

54. Notice 726 was issued to Mr Haried during the visit. It was also explained that any completed mobile phone transaction might be looked at in depth to establish the commercial reality of the transaction.

55. Following this meeting, Mr Haried wrote a letter complaining about the conduct of the HMRC officers; in particular that they had suggested that all his future transactions would involve VAT fraud. HMRC responded stressing the scale of the fraud and the extent of the assistance that HMRC could provide.

56. The appellant's accountant wrote to HMRC on 15, 27 and 18 April 2004 regarding a change in the VAT returns from quarterly to monthly. It was stated that the business pattern had changed and the appellant was now exporting goods and there was only a very small element of local retail business. The company anticipated a refund of VAT every month. It was also stated that the company was expanding in the electronic export department and becoming a major approved service centre amongst most of the major manufacturers.

57. During a VAT visit from HMRC on 7 May 2004 Mr Haried was advised by the officers that the 03/04 return would be subject to verification, including checks into the supply chain for the deal in March.

58. On 7 June 2004 HMRC wrote to the appellant stating that a repayment was to be made in relation to the 03/04 VAT return claim but that this was without prejudice to any post payment verification undertaken by Customs. This letter also stressed the widespread problems that HMRC were having with MTIC fraud and drew the appellant's attention to the fact that the products commonly used in MTIC fraud were mobile phones, computer chips and other high value electrical products.

59. On 14 July 2004 the request to make monthly VAT returns was approved by HMRC.

60. On 7 January 2005 HMRC wrote to the appellant and informed it that of the two transactions completed in the 10/04 period, one of the deals had been traced to a defaulting trader and the other deal was showing features in common with the first deal. The supplier in the transaction that was traced back to a tax loss was Topbrandz Ltd.

61. The appellant had now been informed that it had traded in a supply chain connected with fraud. The supplier was Topbrandz and the customer was La Parisienne Commerce. Further letters on 12 January 2005, 31 January 2005 and 7 March 2006 reiterated that this transaction and others had been traced to a defaulting trader.

62. In his second witness statement Mr Haried stated that following receipt of the letter of 7 January 2005 he telephoned Mr Malik at Topbrandz and informed him what had been alleged. Mr Malik then contacted him to state that he had not defaulted and

that its supplier had also contacted their supplier who had not defaulted. In view of this Mr Haried stated that he decided to continue to trade with Topbrandz. He also exhibited a letter to Top Brandz regarding the October 2004 deal. It was dated 8 March 2006.

63. On 12 January 2005 HMRC informed the appellant that supply chains had been traced to defaulting traders in VAT periods 08/04, 10/04 and 11/04. The appellant was now aware that a number of the supply chains in different periods, had been traced to defaulting traders.

64. In his second witness statement Mr Haried stated that following receipt of this letter he decided that his company would no longer trade with Topbrandz. He took the view that if what HMRC were saying was correct, too many of the supply chains involving Topbrandz led back to defaulting traders. However the appellant did not cease to trade with Topbrandz following receipt of the letter. Mr Simmons produced deal sheets which showed that the appellant conducted deals with Topbrandz on 25 August 2005 and 10 November 2005.

65. On 31 January 2005 HMRC wrote to the appellant informing it again that the transaction in 10/04 with the supplier Topbrandz had been traced to a defaulting trader. Regarding the 11/04 repayment claim, funds were to be released without prejudice to any further post payment enquiry.

66. HMRC visited the appellant on 8 November 2005. A further copy of Notice 726 was provided and the contents discussed with Mr Haried. There was a detailed question and answer session relating to all aspects of how the appellant conducted its business. Mr Simmons stated that the appellant could have been left in no doubt that its trade sector was subject to the closest of scrutiny due to the prevalence of fraud.

67. In response to questions, Mr Haried stated that the company banked with the Bank of Scotland. There was a loan of £200,000 which was a mortgage against the house of his parents. He advertised on IPT, ICB websites and related links. He attended trade fairs in Hong Kong, China and Dubai. He occasionally purchased on credit terms and sometimes offered 30 day credit facilities.

68. He employed Veracis to undertake credit worthiness checks. He did not make third party payments. He did not purchase from authorised distributors. Suppliers and customers were contacted by web or phone. He met all customers and suppliers mainly at his own place of business. He checked the identification of customers. In terms of which came first, customer or supplier, it varied. He knew that suppliers were able to supply goods from the IPT and ICB. He did not have any written contracts. Five to six different suppliers were used.

69. He bought mainly from his brother and trusted him. Mr Haried stated that he could get the goods cheaper than his customer because he knew the market rate. The mark up depended upon the customer and the price was negotiated. He had part time staff and had worked in phones since he was seventeen years of age. Faulty stock returns would go back to suppliers.

70. The freight forwarder insured the goods in transport and title changed hands once payment was received. He used to keep IMEI numbers. He would employ outside contractors to inspect the goods in future to ensure the goods were not counterfeit. At present 10% inspections were carried out.

71. He obtained Companies House and VAT certificates for all customers and suppliers. He verified VAT details of customers and suppliers once, when they first did a deal. He obtained trade references and was awaiting credit checks from Veracis. He said he would still deal with a company if they had a poor credit history. He always met with directors and checked suppliers.

72. On 22 November 2005 HMRC wrote to the appellant and informed it that a transaction entered into during the 06/05 period had been traced to a defaulting trader with a VAT loss to the Revenue exceeding £28,586.00. It stated that Mr Haried may wish to consider what appropriate action was required to ensure that the VAT did not go unpaid in respect of any future transactions.

73. The letter gave sufficient detail so that Mr Haried knew exactly which transaction was associated with fraud. The supplier was Trans Global Traders Limited ("TGT") and the customer was Global Connections FZE.

74. Despite the fact that the appellant had been warned that that this transaction in 06/05 traced to a defaulting trader, it continued to use the same supplier in transactions in 04/06, 05/06 & 06/06. The appellant was supplied by TGT in 30 of the 38 deals which are the subject of this appeal.

75. Mr Haried was originally the director of TGT and at the time of these deals it was run by his brother. Mr Haried confirmed in his second witness statement that he sold the company to his brother on 12 May 2004 for the sum of £15,000 and prior to this it was not involved in any trading activity.

76. In his second witness statement Mr Haried referred to a letter dated 30 November 2005 that he wrote to his brother at TGT regarding the transaction in 06/05 he had been warned about by HMRC.

77. Mr Simmons noted in his witness statement that the letter was clearly adapted from the questions in a paragraph in Notice 726 and that the appellant appeared only to be concerned with collecting sufficient evidence to ensure that a Joint and Several liability ("J&S") assessment was not raised against it, as opposed to conducting checks and taking notice of warnings to ensure that it did not enter into supply chains connected with fraud.

78. On 30 November 2005 the appellant wrote to HMRC enquiring whether the J & S liability provisions would be applied to the appellant; whether HMRC had written in similar terms to the other companies in the supply chain; and what steps HMRC had taken against the defrauders.

79. On 5 December 2005 Mr Haried's brother replied in the terms quoted in Mr Haried's initial letter which had been based upon Notice 726.

80. On 8 December 2005 in response to the letter dated 30 November 2005, HMRC confirmed that no decision had yet been made as to whether there would be application of the J&S liability provisions and that Mr Simmons could not say whether the appellant's checks were sufficient but a meeting in January was suggested. Evidence of all due diligence in relation to the specific deal was requested. Trader confidentiality meant that no comment could be made in relation to the requests for information regarding what action had been taken against other traders.

81. By letter dated 7 March 2006 HMRC informed the appellant once again that a transaction entered into during the 10/04 period had been traced back to a defaulting trader, this time specifying the VAT loss to the revenue which exceeded £34,407.00. The letter gave sufficient detail so that the appellant could ascertain exactly which transaction was associated with fraud. The supplier in the transaction was Topbrandz.

82. By letter dated 7 April 2006 HMRC informed the appellant that a transaction entered into during the 04/05 period had been traced back to a defaulting trader with a VAT loss to the revenue exceeding £49,875.00. The letter gave sufficient detail so that it knew exactly which transaction was associated with fraud. The supplier was Comveen Limited ("Comveen") and the customer was Globalised Trading Corporation ("Globalised").

83. In his second witness statement, Mr Haried stated that upon receipt of the warning letter dated 7 April 2006, he wrote to Comveen on 12 April 2006. The letter once again was based upon Notice 726. He did not receive a written response but there was oral confirmation as to the matters raised in the letter.

84. However despite the fact that the appellant had been warned by the letter dated 7 April 2006 that the transaction in 06/05 traced to a defaulting trader it continued to use the same supplier, Comveen, in transactions in 04/06, 05/06 & 06/06. Indeed just four days after the letter was sent, it dealt with them on 11 April 2006. The appellant dealt with them again on 20 and 25 April 2006 and 9, 16, 25 and 31 May 2006.

85. In total the appellant was notified on six separate occasions that four transactions into which it had entered had been traced to a tax loss. Further Mr Simmons stated that the appellant was aware that Comveen and TGT were the suppliers in at least two of the four transactions, yet it continued to trade with them both throughout VAT periods 04/06, 05/06 and 06/06.

86. The appellant submitted its VAT return for the period ending 30 April 2006. The appellant was informed in a letter dated 26 May 2006 that a period of time was needed for the transaction to be verified prior to any repayment being authorised. The letter once again stressed the problems with MTIC fraud in transactions concerning computer equipment, mobile phones and ancillary items.

87. Trade continued by the appellant after this letter, with five deals conducted on 31 May 2006 which are the subject of this appeal. In each of these deals it was supplied by either TGT or Comveen. The total value of the sales it made in these deals was £1,923,704 with the last deal being worth just over £1,000,000.

88. The appellant then submitted its VAT return for the period ending 31 May 2006. It was informed in a letter dated 26 June 2006 that a period of time was needed for the transaction to be verified prior to any repayment being authorised. The letter once again stressed the problems with MTIC fraud in transactions concerning computer equipment, mobile phones and ancillary items.

89. Although fully aware that its VAT returns for two periods were the subject of extended verification, the appellant conducted the final deal which is the subject of this appeal on 28th June 2006, again using the supplier TGT.

90. By letter to the appellant dated 14 September 2006 HMRC requested information as to the company's bank details, details loans, details how price was negotiated, checks carried out on freight forwarders, insurance for goods in storage and transport.

91. By letter to the appellant dated 17 November 2006 HMRC asked about the fact that the appellant was exporting goods manufactured in China to various countries including China.

92. Dass Solicitors wrote to HMRC on 15 December 2006 in response to a number of letters which the appellant had received from HMRC in September and November of 2006. The letter referred to the fact that decisions to conduct business were made by speaking to other traders and asking whether or not they made third party payments. Other earlier letters from the appellant to HMRC dealing with additional matters were also copied. Amongst other things the letters from the appellant stated that given exchange rate advantages the appellant could sell to EU clients at better rates, credit checks were not relevant as goods were not released without payment, insurance was provided by both the appellant and the freight forwarder, the goods were spot checked at the freight forwarders, prices were negotiated.

93. It was against this background that two separate decision letters dated 14 June 2007 and 29 February 2008 were issued by HMRC to the appellant denying it the right to deduct input tax in respect of 38 transactions between April 2006 and June 2006. That input tax was denied on the basis that the purchases were connected with the fraudulent evasion of VAT, and the appellant knew or should have known that that was the case. It was HMRC's case that the appellant's transactions formed part of an MTIC fraud and, in some instances, a variant thereof known as "contra-trading". An explanation of MTIC fraud and the variant contra-trading was provided in the evidence of Officer Roderick Stone.

94. On a month to month basis the denied input tax was £1,368,693 for the VAT period 04/06, £1,080,816 for 05/06 and £31,973.56 for 06/06.

95. The first decision letter in which input tax was denied was dated 14 June 2007 and concerned 19 transactions in the periods 04/06 and 05/06 in which the appellant acted as a "broker" trader; that is purchasing goods from a supplier in the UK with standard rate VAT being paid and then selling those goods on to a customer based

outside of the UK with zero rate VAT being charged. The input tax denied was £879,222.88.

96. The second decision letter in which input tax was denied was dated 29 February 2008 and concerned a further 19 transactions in the periods 04/06, 05/06 and 06/06 in which the appellant acted as a broker trader. The input tax denied was £1,602,259.68.

97. The appellant appealed against these decisions by notices of appeal dated 18 June 2007 (appeal number LON/2007/1078) and 17 March 2008 (appeal number LON/2008/0654).

98. Twelve of the fifteen deals under appeal in 04/06 and 22 deals in 05/06 and one deal in 06/06 making a total of 35 deals traced back through a chain of buffer traders to a defaulting trader. HMRC's case is that the appellant who appears as a broker in these deals was conducting transactions connected with MTIC fraud.

99. Three of the deals (Deal 11, 12 and 13) conducted in the 04/06 period were contra trade deals; that is that the deals, whilst not tracing directly back to a defaulting trader, were connected with the fraudulent evasion of VAT via a "contra-trader".

100. In each of the 38 deals that are the subject of this appeal, the supplier to the appellant was either TGT or Comveen. In April and June 2005 the appellant had traded with these same suppliers. In letters dated 22 November 2005 and 7 April 2006, the appellant was warned by HMRC that these deals had been traced to a tax loss. However the appellant continued to trade with TGT and Comveen.

101. There were nine further transactions in the period 04/06-06/06 in which input tax was not denied to the appellant. In these transactions the appellant was a "buffer trader"; that is the appellant purchased goods from a UK supplier and sold on to a UK customer. These deals also traced back to a tax loss.

102. There were 35 direct tax loss deals. All of these deals involved the purported purchase and sale of CPUs. In each of the deals the defaulting trader imported/acquired CPUs into the UK from a company based outside of the UK. Their purported purchases were zero rated for VAT. The defaulting trader then purported to sell the CPUs to another UK based trader ("first buffer"), charging output tax on the invoice, which they failed to account for. The CPUs were then purportedly sold on through a chain of other UK based traders ("buffers**"),** until they were purportedly purchased by the appellant ("broker"), who in turn exported/dispatched them from the UK in a purported sale to traders based outside the UK, primarily in Singapore and Hong Kong. The appellant's purported sales were zero rated for VAT and it has sought to reclaim the input tax paid on its purported purchase.

103. HMRC alleged that the remaining three deals purportedly carried out by the appellant in the 04/06 period which involved mobile phones as opposed to CPUs were part of a contra-trading scheme. This variant of the fraud, which involves two sets of transactions, was designed to frustrate HMRC's anti-fraud measures.

104. In the first set of transactions the contra trader, Globalised purported to acquire mobile phones from a trader based in another member state. These were the contra chain/acquisition chain transactions**.** This purported purchase was zero rated for VAT. Globalised purported to sell the mobile phones to another UK based trader **(**first buffer) and received output tax, for which it was obliged to account. However, rather than paying to HMRC the full amount of this output tax, Globalised offset this output tax against a claim for input tax purportedly incurred in its second set of transactions (the "tax loss chains"). The mobile phones were then purportedly sold on to the first buffer through other UK traders (buffers) until they were purportedly purchased by the appellant. The appellant dispatched the mobile phones from the UK to customers in other member states in a purported sale that was zero rated for VAT and the appellant has sought a repayment of its input tax.

105. In the same tax period the contra trader Globalised participated in a second series of transactions, namely the tax loss chains as broker 1. In these transactions it purported to purchase goods from a UK based company and sell them to a company based in another member state. These transactions created an entitlement to deduct input tax.

106. The output tax created by the first chain of transactions was offset against the input tax that would have been claimed by Globalised in respect of the second chain of transactions.

107. Globalised's second chain of transactions have all been traced back through a chain of UK companies to defaulting traders who purported to acquire the goods from other member states. The defaulting traders' purported onward sale created a liability to account for output tax. This output tax was never accounted for or paid and therefore a tax loss has occurred.

108. The UK trader at the beginning of each and every one of the 35 deals in respect of which the appellant has been denied input tax is a defaulting trader. The appellant appears as a broker in all of these chains.

109. The 35 deal chains all trace back to seven different defaulting traders Bullfinch Systems Limited, Data Solutions Northern Limited, Midwest Communications Limited, World of Power Limited, Smart View Limited, 3 D Animation Limited and Heathrow Business Solutions Limited. The majority of the defaulting traders registered under a different trade classification than mobile phone trading and then moved into the mobile phone trade. Their turnover was greatly underestimated and once their mobile phone trading commenced it soared vertiginously. They incurred massive VAT liabilities to HMRC which were never paid.

Bullfinch Systems Limited ("Bullfinch")

110. Information concerning Bullfinch was provided by Mr Gordon Fyffe's witness statement.

111. In 04/06 Bullfinch's trading pattern changed to acquiring goods from other member states and turnover increased to in excess of £121 million.

112. During a visit to the serviced offices on 3rd November 2005 there were concerns as to whether the software Bullfinch was dealing in existed or not. It had been purchased from a company in Dubai, recommended by someone the director had met on holiday in the South Pacific.

113. Allocation and release notes obtained from a freight forwarder revealed Bullfinch to be acquiring a significant quantity of mobile phones from other member states.

114. On 11 May 2006 HMRC officer Dave Atkin visited Bullfinch. The director Mr Sanjay Pandya was not present and an employee stated that Mr Pandya told him what deals to do and all records were picked up daily by Mr Pandya and taken to the accountant's office.

115. On 23 May 2006, HMRC received a telephone call from Bullfinch's bookkeeper stating that he expected to be able to submit papers to HMRC by 30 May 2006.

116. On 5 June 2006, no papers or completed return having been received from Bullfinch, HMRC wrote to Bullfinch asking for deal logs for the period 1 February 2006 to 11th May 2006. No such documentation was ever received by HMRC.

117. On 7 June 2006 HMRC wrote to Bullfinch stating that as the returns had not been submitted an assessment based upon allocation and release notes would be raised. Bullfinch did not respond to this letter.

118. On the basis of documentation obtained from freight forwarders showing the acquisition of goods from other member states and/or on the basis of documentation showing that goods were supplied by Bullfinch, a series of separate assessments totalling in excess of £56 million were raised against Bullfinch.

119. Each of the assessments was sent to Bullfinch's last known place of business being Regent House, Suite 209, Nutford Place, London W1H 5YN. On 10 May 2007, mail was returned from this address marked "not at this address." Another assessment was issued and on 11 September 2007 HMRC wrote to Mr Pandya directly at 54 Balmoral Road, Harrow regarding records. On 24 September 2007, Angalee Pandya responded stating that Mr Sanjay Pandya was no longer at that address.

120. On 26 March 2008 Gordon Fyffe spoke with Ms Angalee Pandya. She stated that she was Sanjay Pandya's sister by marriage. She confirmed that 54 Balmoral Road was the home of the parents of Mr Sanjay Pandya and that Mr Pandya had not lived at that address for almost 12 years. She stated that Bullfinch had never operated from that address. She also stated that the family had been trying to contact Mr Pandya for almost two years but without success and that she believed Mr Pandya to be somewhere in India or the Far East.

121. On 16 May 2008 HMRC officers went to the Regent House address. The receptionist stated that Bullfinch vacated the premises at least a year ago. No forwarding address had been provided. On 16 July 2008 Mr Simmons established

from the manager of Regent House that Bullfinch had occupied the offices about two years ago**.**

122. None of the 32 assessments issued have been paid by Bullfinch nor have they been appealed. There has been no further contact by Bullfinch.

Data Solutions Northern Limited ("Data Solutions")

123. Laura Hartell provided a witness statement concerning Data Solutions.

124. On 14 July 2005, HMRC officers visited Data Solutions at 12 Egypt Road, Bradford. A Mr Thelwell, confirmed that he had made third party payments to a Mr Webster's bank account as his supplier Salamander was having banking trouble. Data Solutions also made third party payments to Eurohandels GMBH in Germany and a Martin Sampson based in Spain. Mr Thelwell denied having made any purchases from Ennocx UK Limited contrary to documentation obtained by HMRC.

125. Prior to Data Solutions, Mr Thelwell had worked for Cobra Trading. Cobra Trading dealt with two of the companies referred to above in connection with Data Solutions, namely Ennocx and Eurohandels GMBH.

126. A further VAT visit took place on 10 August 2005. When shown stock release notes from Ennocx to Data Solutions, Mr Thelwell maintained that he had not conducted these further deals.

127. On 11 May 2006, HMRC visited Data Solutions. The place of business was stated to be 2-4 Kipping Lane on the first floor, above a beauty salon/hairdressers. Mr Thelwell informed HMRC that current suppliers included Midwest Communications Limited ("Midwest") and Bullfinch. He was informed that Bullfinch was a defaulting trader. Midwest was also deregistered on 2nd May 2006 with a debt of £58 million to HMRC. He advised that he had never acquired goods from the EC. There was discussion as to his limited due diligence and he said that he had not got around to it as he did not have the time.

128. Following this visit, records obtained from Mr Thelwell were checked by Officers of HMRC. Thirty percent of the companies with whom he had traded were defaulting traders. He was notified of this in a letter dated 12 May 2006.

129. On 17 May 2006, a letter was sent to Data Solutions advising that one hundred percent of the chains in the 05/06 VAT period had commenced with a defaulting trader resulting in a tax loss of £12,800,110.00.

130. At a visit on 24th May 2006, Mr Thelwell was asked to produce his due diligence for the deals already seen by HMRC, and confirmed that there was none.

131. On 11 September 2006, HMRC wrote to Data Solutions requesting contact within seven days. There was no response to the letter and so the company was deregistered from 8 September 2006.

132. On 27 September 2006, HMRC received a letter from BWC Business Solutions Liquidators stating that Data Solutions had been wound up. A further letter attached the report of a creditor's meeting on 27th September 2006. At this meeting, Mr Thelwell claimed that he had spent more time trying to comply with paperwork required by HMRC than developing the business, the increased pressure of due diligence was having an adverse effect on his health, and so in September 2006 he decided to cease trading.

133. On 29 May 2009 HMRC received a letter from the Insolvency Service. It advised that on 4th February 2009, Mr Thelwell was disqualified from serving as a director of a company for 14 years on the basis that he had "caused or allowed Data Solutions to undertake a method of trading which involved it in and put HMRC at risk of being subject to MTIC VAT fraud". The findings against him included the fact that his transactions had resulted in huge losses to HMRC in the region of £22 million, lack of proper due diligence and the making of third party payments despite warnings against doing so.

134. HMRC also obtained documentation from freight forwarders which revealed that Data Solutions had acquired a significant quantity of goods from other member states.

135. Laura Hartell concluded with a revised analysis of the VAT owed by Data Solutions which was in excess of £13 million and the fact that Data Solutions have not appealed or paid any of the assessments raised against it. In just 18 months since becoming VAT registered on 31 March 2005, Data Solutions made sales in excess of £247 million.

136. VAT returns were not submitted for the periods 05/06, 08/06 and the final period although sales in excess of £199 million had been established.

Midwest Communications Limited ("Midwest")

137. Matthew Bycroft provided a witness statement concerning Midwest.

138. Documentation obtained from a freight forwarder, Hawk Precision Logistics, revealed Midwest to be acquiring a significant quantity of goods from suppliers in other member states, Satt Telecom in Italy and Orange and Green Traders in Spain.

139. A visit was undertaken by HMRC to Thurston House, 80 Lincoln Road on 16 March 2006. There Mr Powell-Smith stated that he was shortly to become a director of the company; that the company had not traded for 6 months; and that one deal was in the pipeline. He also stated that Midwest did not have an account at Hawk Precision logistics and he had not heard of Satt Telecom or Orange and Green Traders.

140. Following the visit, Mr Powell-Smith faxed the visiting officer to state that he had made a mistake and that there had indeed been some contact with Hawk Precision Logistics.

141. On 28 April 2006, HMRC visited Midwest. Mr. Powell-Smith provided a spreadsheet for all deals conducted to date and five files of supporting documents. All deals consisted of purchases from suppliers in other member states with the onward sale being to UK based customers.

142. On 2 May 2006, HMRC visited Midwest. Mr. Powell-Smith stated that there had also been some deals in which Midwest had purchased £50 Euro East West phonecards from a UK supplier, Bestleg and dispatched them to an Italian customer, Umbria Equitazione. When it was pointed out that the records provided on 28 April 2006 had included no mention of such dispatch deals, Mr Powell-Smith stated he would look into matters. Mr Powell Smith was handed a letter informing him that the company was being deregistered from 2 May 2006.

143. On 4 May 2006 a further VAT visit took place. The EU sales were queried with Mr Powell-Smith who stated he had forgotten about the deals when visited on 28 April 2006.

144. The impact of the dispatch deals was to reduce Midwest's VAT liability by some £58 million meaning that a net payment of just £8,109 was due despite the significant number of mobile phones acquired from other member states.

145. On 12 May 2006, at a further VAT visit, Mr Powell-Smith gave contradictory information as to how the business relationships with Bestleg and Umbria arose and could not remember with whom he had conducted the nine Bestleg deals totalling £329,048,190 plus VAT.

146. On 13 June 2006 Matthew Bycroft spoke with Mr Powell-Smith who stated that he had been sacked by the director. Criminal record checks revealed that Mr Powell-Smith had various convictions for dishonesty.

147. On 11 August 2006 joint liquidators were appointed in respect of Midwest.

148. Investigations by HMRC revealed that Bestleg's address was actually a residential premises, the occupant of which stated that she had answered an advertisement in Exchange and Mart and had been asked to act as a mail forwarder, being paid £10 per letter.

149. Umbria Equitazione, the purported customer in the Bestleg deals had never purchased phone cards from anyone and was an Italian saddlery wholesaler. Investigations also revealed that Euro East West phonecards did not exist in £50 denominations.

150. An assessment was raised for £57,591,542. This liability has not been met. No appeal against the assessment has been received.

151. A disqualification order was made against Brent Gardiner, the director of Midwest on 17 December 2008 preventing him from acting as a company director or manager for a period of 13 years. It was found that his conduct as the director of

Midwest put HMRC at risk of being subjected to MTIC fraud. He had failed to conduct adequate due diligence and made third party payments.

World of Power Limited ("World of Power")

152. A witness statement concerning World of Power was received from John Cordell.

153. On 25 May 2006, HMRC visited 62 High Street, Walthamstow, London, the place of business for World of Power. The address was a shop, the name over the door of which was "Appliances". It sold mainly refrigerators and cookers. An employee stated that he had never heard of World of Power. However, the HMRC officers noticed a file containing documents in the name of World of Power, which the employee tried to prevent them from inspecting. The employee stated that he did not know anyone by the name of Nasir Sharif.

154. These documents included invoices that provided a telephone number and fax number of World of Power. When these numbers were called by the HMRC officers, the telephone and fax machine at 62 High Street rang.

155. Nasir Sharif, the husband of World of Power's director, arrived at the premises. Further documents relating to trading conducted by World of Power were found. When compared, the HMRC officers found that the sales prices differed.

156. On 1 June 2006, HMRC officers visited World of Power. They highlighted the fact that the company's banking documentation showed that there had been the purchase of £11,689,127 worth of CPUs and yet sales invoices issued by the company showed the sale of only £7,675,263 worth of CPUs. Mr Sharif was asked about the location of the remaining £4,013,864 worth of CPUs. He smiled and shrugged.

157. At a VAT visit on 6 June 2006. Mr Sharif confirmed that where goods had been purchased from 3D Animations, Sunmac and Smart View payment had been made to other parties rather than to these suppliers.

158. World of Power did not provide full documentation to HMRC. However, documentation that was obtained by HMRC showed that World of Power was purchasing goods from suppliers based in other member states.

159. Assessments were raised against World of Power in relation to the transactions in which it was considered that World of Power had acquired goods from suppliers in other member states.

160. The HMRC officers also uncovered evidence of instances where World of Power claimed to purchase from a UK supplier but had in fact been supplied with goods from a business in another member state.

161. None of the assessments have been paid by World of Power nor have they been appealed.

162. At a visit on 30 October 2006 Mr Sharif denied that he purchased phones from other member states.

163. The assessments have been amended and the accurate and revised figure show that a sum of £1,453,313.74 is owed to HMRC by World of Power.

Smart View Limited ("Smart View")

164. A witness statement concerning Smart View was produced from Sally Medcroft.

165. Prior to registration for VAT, a letter was sent to Smart View requesting evidence of an intention to trade. Documentation relating to transactions in leather goods was provided.

166. For the three quarters from 10 March 2005 to 31 January 2006, Smart View made VAT returns showing total sales of £23,047. A nil return was submitted for the period 1 February 2006 to 30 April 2006. After the company was deregistered for VAT, a final return was issued which was not completed.

167. Allocation and release notes obtained from the freight forwarder, ASR Logistics, revealed Smart View to be acquiring a significant quantity of mobile phones from other member states on 17 and 18 May 2006.

168. On 18 May 2006, a visit was made by HMRC to Smart View's premises. Nobody was present and the shutters were closed. There was no indication of the name of the business or the occupants. The occupants of the neighbouring premises said that number 32 was run by a Pakistani man and that there were deliveries of leather goods to and from the premises.

169. On 19 May 2006, a further visit was conducted to Smart View's premises. A Mr Tarik Mehmood stated that he had previously let the premises to Akhter Mehmood, director of Smart View, but that he had left in December 2005 owing rent. He did not know his whereabouts.

170. On the basis of documentation obtained from freight forwarders showing the acquisition of goods from other member states and/or on the basis of documentation showing that goods were supplied by Smart View, numerous assessments totalling £6.5 million were raised against Smart View. The amount was subsequently revised to £6,908,765.

171. All supplies made by Smart View covered by the assessments raised were at a time when the company had gone missing and it continued to trade and charge VAT after being compulsorily deregistered.

172. None of the assessments have been paid by Smart View nor have they been appealed. On 27 June 2007, a winding up order was issued and Smart View was dissolved on 14 August 2008.

3D Animations Limited ("3D Animations")

173. A witness statement was provided from Martin Evans concerning this company.

174. 3D Animations' registered office and place of business was 170 Selsdon Road, South Croydon, CR2 6PJ. It was deregistered by HMRC before it even reached the first quarter of operating as a VAT registered entity.

175. On 1 June 2006, a visit was made by HMRC to the PPOB. It was a residential building, converted into offices. The name of 3D Animations was written on a piece of a paper that was taped to the door. 3D Animations could not be contacted. A "Regulation 25" letter and a 7-day de-registration letter were left at the premises.

176. No documentation was ever obtained from 3D Animations. However, documentation was obtained from freight forwarders which showed the acquisition of goods from other member states. A massive amount of deals were completed by 3D Animations in a short period. Assessments totalling £128,783,561 have been raised against 3D Animations. This equates with gross sales in a one month period of approximately £866 million.

177. Documentation showed that 3D Animations continued to trade until 5 June 2006 despite the fact that on 1 June 2006 HMRC had left documents for 3D Animations indicating that the company would be de-registered in 7 days if HMRC were not contacted.

178. 3D Animations also passed payment instructions to its customers requesting that payment be made to Kalidas Gopal, 3D Animations' former secretary.

179. On 14 January 2008, HMRC wrote to Mr Sritharan (the director of 3D Animations) at his home address. This letter was returned marked "addressee gone away."

180. On 20 September 2006, 3D Animations was wound up.

181. None of the assessments have been paid by 3D Animations nor have they been appealed. There has been no contact with HMRC by 3D Animations.

Heathrow Business Solutions Limited ("Heathrow")

182. A witness statement concerning Heathrow was provided by Romaine Lewis.

183. Heathrow's registered office and place of business was 1 Martindale Road, Hounslow, London TW4 7EW.

184. For the six quarters 12/04 to 03/06, Heathrow filed "nil" VAT returns. No return was filed for the period 06/06.

185. Allocation and release notes obtained from freight forwarders revealed Heathrow to be acquiring a significant quantity of mobile phones from other member states.

186. On 30 June 2006, a visit was made by HMRC to Heathrow's premises. There was no sign of any presence by Heathrow at these premises. The owner of the premises was contacted and he stated that Heathrow had never operated from those premises.

187. A regulation 25 notice was issued on 30 June 2006 and the company was deregistered on 1 July 2006.

188. Heathrow's address as shown on release notes was TMS House, Orpington, Kent. Officers visited this address on 5 September 2008. They were informed by the accountant/bookkeeper of TMS Business Centre that Heathrow had occupied office space from 20 June 2006. The first month's rent had been paid in cash. Further payments were made by cheque but these cheques had bounced. Heathrow vacated the premises owing arrears to TMS and without giving notice. TMS had been unable to contact any of the officers of Heathrow.

189. On the basis of documentation obtained from freight forwarders showing the acquisition of goods from other member states and/or on the basis of documentation showing that goods were supplied by Heathrow, 43 assessments totalling in excess of £32,641,709 have been raised against Heathrow. All of these assessments relate to trade in June 2006.

190. On 10 January 2007, Heathrow was wound up and dissolved at Companies House on 13 May 2008.

191. None of the 43 assessments have been paid by Heathrow nor have they been appealed. There has been no further contact by Heathrow.

Trans Global Trading Limited ("TGT")

192. TGT acted as the purported supplier in 30 of the 38 deals under appeal. Mr Haried, the appellant's director, originally set up TGT to trade in "wholesale and retail sports equipment". He registered it for VAT in 2004 and was a director. TGT was later taken over by his brother Ravinder, who replaced him as director. The relationship between the appellant and TGT does not therefore represent a commercial at arm's length relationship.

193. The appellant provided HMRC its due diligence in respect of TGT. Within this there is a "Busybody" report dated 23 December 2005. Under the section credit rating, it states "the company is dormant". It also analyses the latest set of accounts produced by TGT as at 30 September 2004. TGT had no fixed assets, no stock, no cash at bank, total current assets of £2, working capital of £2 and a net worth of £2.

194. A trade account application form was completed by TGT on 22 March 2006. It showed that TGT operated out of serviced office space in Uxbridge and provided an

invalid VAT number. An earlier form dated 28 February 2005 showed the full VAT number.

195. TGT had made third party payments in the past. TGT advised HMRC on 8 June 2005 that it would continue to make third party payments until it was told not to by HMRC. It was not until a year later, on 7 June 2006, that TGT wrote to HMRC and advised that it was no longer making third party payments.

196. In his second witness statement Mr Haried stated that he was aware that TGT were making third party payments and did not believe that there was anything wrong with this. However in the letter he sent to HMRC on 18 March 2004 he stated that he considered it an insult that he had been asked if he was splitting any payments to other companies in transactions.

197. In a letter dated 15 December 2006 Mr Haried's solicitor asserted that "Our client would make a decision fairly early on about whether or not to conduct business with a new partner, by example speaking to other traders and asking whether or not they made third party payments, in which case it would take the matter no further."

Comveen Limited

198. Comveen supplied the appellant in the remaining 8 of the 38 deals.

199. The appellant provided HMRC with its due diligence in respect of Comveen. Within this there was a trade account application form dated 3 April 2005 which showed that it had been incorporated on 17 December 2004, its trade sector was "mobiles" and that it operated from the director's home address. The appellant however purported to purchase CPUs from Comveen, not mobile phones.

200. One of Comveen's referees was "Topbrands" at 16 Manton Drive, LU2 7DJ. The appellant had received a number of warning letters, on 7, 12 and 31 January 2005 and 7 March 2006 regarding the fact a deal in 10/04 which it had entered into with Topbrandz traced to defaulting traders.

201. There was a similar trade account application form at dated 21 November 2005.

202. The appellant carried out a "Busybody" check on Comveen on 23 December 2005. It gave a credit opinion of "a high risk company and credit transactions in excess of the credit rating of £500 should be supported by a director's guarantee". Despite this, since 23 December 2005, the appellant carried out £2,565,201.00 worth of transactions with Comveen.

203. The appellant obtained a document from Comveen which listed the checks carried out by Comveen on their suppliers. At the top of the page, Comveen stated the "odd opportunistic deal is subject to minimal checks". Mr Simmons asked the appellant in his letter dated 8 September 2006 what checks it had carried out to determine what the minimal checks would include. In a reply dated 18 September 2006 the appellant stated, "This is Comveen's statement and is of no concern to the appellant.

Globalised Corporation Limited

204. Evidence was given and a witness statement provided by Jayne Holden concerning this company.

205. In the first contra/acquisition chain Globalised appeared as the acquirer. It was in this chain that the appellant appeared as the broker.

206. In the second related set of transactions, the tax loss chains, Globalised appeared as the broker and the transaction chains trace back to two different defaulting traders, Swindon Star Limited ("Swindon") and Anfell Traders Limited ("Anfell").

207. Globalised acted as a contra trader conducting 2 different chains of transactions; the 6 contra/acquisition chains in which the appellant featured and the 15 broker deals which were the tax loss chains.

208. In the acquisition chains Globalised were the UK acquirer and the appellant was the broker.

209. In the related tax loss chains, Globalised was the broker in deals which traced to defaulting traders.

210. Globalised used the output tax created by the acquisition chain transactions to offset the claim for input tax in the tax loss chain transactions.

211. Three broker transactions completed by the appellant in April 2006 were traced back to Globalised and feature in the acquisition chains. They are deals 11, 12, and 13 all dated 24 April 2006 and all involve the sale of mobile phones.

212. Globalised submitted a repayment VAT return of £939,587.18 for 04/06 and HMRC selected it for verification. Records were obtained from Globalised showing the following deals in the 04/06 quarter.

213. In all Globalised undertook 153 deals. All deals up to 24 April 2006 were made to UK companies and were buffer deals. Between 24 and 26 April 2006 Globalised completed six "acquisition" deals where the supplier is shown to be East Telecom in Estonia.

214. At the end of the quarter, between 25 and 27 April 2006, fifteen "broker" deals were completed to 3 EU customers, Korowai in Spain, Magic Phones in Spain and Teletrading in the Netherlands and these were the tax loss deals.

215. HMRC used information held by them on the Electronic VAT folder to trace these deals. Of the 113 buffer deals it was possible to trace, all traced back to a defaulting trader. The six acquisition deals, in which Globalised acted as an acquirer, were traced onwards and the appellant featured in three of the six deals as a broker**.**

216. The fifteen tax loss deals, in which Globalised acted as a broker, were traced back to two defaulting traders with a total tax loss of £2,094,857.64**.** Ten deals traced back to the defaulter Anfell and five deals to the defaulter Swindon.

217. Globalised was notified of the tax losses in three separate letters dated 31 July 2006, 16 November 2006 and 20 November 2006. The tax losses in the fifteen broker tax loss deals and 113 buffer deals exceeded £14.7 million.

218. On 26 February 2007 Globalised were notified by letter that the input tax of £2,112,005 claimed in the period 04/06 had been denied because Globalised knew or should have known that it was a participant in MTIC fraud.

219. On 12 February 2008 Globalised was sent a further letter from HMRC in which it was explained that the transactions formed part of an overall scheme to defraud the Revenue which included claims for input tax made by other parties and that action was continuing to see whether some of those repayment claims should be denied. Given this, HMRC would not insist on full payment until those matters were finalised.

220. Globalised appealed against the decision and were represented by Dass Solicitors. On 3 August 2010, Dass wrote to the Tribunal to advise that they were no longer instructed in the appeal.

Connection with the appellant

221. The appellant featured in three of the six acquisition chains as the broker. On looking initially at these transactions it would appear that there were no tax losses in the chains. However this was part of an overall scheme to defraud HMRC and the tax losses occurred in the related tax loss chains where Globalised appeared as a broker and the deals all commenced with the defaulters Swindon or Anfell.

222. The output tax due by Globalised on the acquisition deals has not been paid to HMRC but has been offset by the input tax claims from the tax loss deals. Although it has not completely reduced the repayment with the acquisition deals, it has done so considerably.

223. Globalised's VAT 1 dated 22 June 2003 stated its main business activity to be "General wholesale of household goods". The value of taxable supplies over the following 12 months was estimated as £100,000. Expected purchases from and sales to the EU were each stated as "none."

224. Between the date of its VAT registration, June 2003, and November 2005, Globalised made only one taxable supply. Following this it did not appear to trade for a further nine months. In the VAT period 01/05, Globalised then dealt in £1.4 million of mobile phones, increasing to £13 million the following quarter with a dramatic increase to £107.5 million in quarter 04/06.

225. Far from the estimated £100,000 turnover, the company's actual turnover was £21.7 million in the year to June 2005 and £176.3 million in the year ending June 2006.

226. Globalised's director as of the date of the VAT 1 was a Mr. Kuldip Bahia. As of July 2004 and throughout 2006, Globalised's director was Mr. Ashok Chahal.

227. Ashok Chahal was also the director of Deb Techno Limited ("Deb Techno") until July 2005. The current director of Deb Techno is Ajay Chahal, Ashok's brother. In October 2008 and June 2009, HMRC notified Deb Techno that it was not entitled to deduct input tax which was in excess of £3 million claimed in relation to the purchase of mobile telephones in the periods 02/06 and 05/06. Deb Techno's appeal against this decision was struck out by the Tribunal.

228. Mr Bahia, the previous director of Globalised, is also a director of Sygnet Computing Limited ("Sygnet"). In April 2007, HMRC notified Sygnet that it was not entitled to deduct the input tax in excess of £4.8 million claimed in relation to the purchase of mobile telephones in period 04/06. Sygnet's appeal against this decision was withdrawn in October 2009.

229. Mr Bahia's brother, Harpal Singh Bahia, is the director of Atomic Limited ("Atomic"). In October 2007, HMRC notified Atomic that it was not entitled to deduct input tax (in excess of £3.6 million) claimed in relation to the purchase of mobile telephones and CPUs. Atomic's appeal against this decision is ongoing.

230. The transaction chains in which Globalised acquired goods from a trader, in another member state, East Telecom in Estonia, were sold on to Atomic who then sold on to TGT who then sold on to the appellant.

231. Prior to the 04/06 period, Globalised was well aware of the prevalence of MTIC fraud within its trade sector. On 9 March 2004 it was visited by HMRC and advised of J & S liability, due diligence and the possibility of hijacked VRN's. On 10 March 2004, HMRC wrote to Globalised advising of the extent of the fraud afflicting its trade sector. On 18 October 2004, HMRC wrote to Globalised reiterating the levels of fraud in its chosen trade sector. On 18 October 2004 and 14 April 2005, Globalised was visited by HMRC. They were written to again on 23 August 2005.

232. Jayne Holden's witness statement showed that there was a large increase in turnover in 04/06 but although the repayment claims also increased it was not in line with the increase in sales. The reason for this was the six acquisition deals which Globalised completed in April 2006 which reduced the repayment claimed in the tax loss deals. Although the chain for the period 04/06 was selected for verification, without the acquisition deals it would have exceeded £2 million. Jayne Holden stated that Globalised would surely have known that a claim of this size would not have been repaid without verification. Earlier and smaller claims in 4/05 and 10/05 had been repaid. However later work established that the claims in 7/05 and 10/05 traced to defaulting traders.

233. Veto letters were sent to Globalised advising that other traders had been de-registered for the purposes of VAT. The letter on 16 March 2006 concerned The Callendar Group deregistered on 15 March 2006. Globalised conducted two buffer deals which traced back to this company. One of these was completed on 15 March 2006, the date of deregistration.

234. On 10 February 2006, HMRC wrote to Globalised to notify it that two sales in August 2005 and September 2005 had been traced to tax losses. One of the suppliers to Globalised in these deals was Guess Trading ("Guess"). Despite Guess having supplied it with goods that traced back to tax losses, Globalised purchased from Guess a further 42 times during the 04/06 period. Guess was the supplier in five out of the fifteen broker deals completed in April 2006. In a further seven deals in the quarter 07/06 Globalised were supplied by Guess.

235. Jayne Holden analysed the evidence in relation to the six acquisition chains and concluded that by reason of the factors described below, it can be concluded that the transaction chains were obviously contrived. Globalised was part of an overall contra trading scheme designed to disguise the actual tax loss transactions and to enable the recovery of input tax by other broker traders, including the appellant.

236. Despite never having traded with East Telecom previously, Globalised purchased goods in a three day period to the value of £6.2 million without first conducting any "due diligence". Checks were conducted well after the deals had been completed. No evidence has been provided, despite requests, of the import of the goods into the UK.

237. In the six deals Globalised supplied the goods to Atomic. They were later sold on in the chain to Gold Phone and Sigma Sixty. Atomic's deal sheet showed that they had sold phones to these customers earlier in the month. Atomic would have made a greater profit had they sold to the EC customer.

238. In the six acquisition chains, the appellant appeared as the broker in three of the deals. The other three brokers were Overall Express, Nijjers Limited and Mediatele Limited. The supplier was East Telecom.

239. The transaction chains were generally from Globalised to Atomic to the broker. In the three deals in which the appellant was involved TGT, run by Mr Haried's brother, was inserted into the chain before the appellant. Although Globalised never dealt with TGT, Globalised conducted various checks upon the company prior to the deals being completed.

240. Regarding the appellant's three deals in which it appeared as broker, although the goods were purportedly supplied from East Telecom in Estonia to Globalised in the UK, the paperwork shows that the goods were moved from ASR Logistics in the UK to Warehouse Logistics in the UK.

241. In the appellant's 17 deals which did not go back to Globalised the appellant made twelve supplies outside the EC and five buffer deals to Mediatele. In all of these deals the transactions have been traced back to the defaulters Data Solutions,

Bullfinch and Midwest. In April 2006 various transaction chains of Globalised's buffer deals have been traced back to the same defaulting traders.

242. Even further similarities were found between the transaction chains of the appellant and those of Globalised's buffer deals. The three traders Midwest, Data Solutions and Bond Corporation appeared in exactly the same order in both sets of deals. This occurred despite the fact that the Globalised deals related to mobile phones and the appellant's deals related to CPUs.

243. The same companies appeared in the broker Overall Express's transaction chains as appear in the chains of Globalised. Deals traced back to the same defaulter Anfell. Atomic and Sygnet, which had strong links with Globalised featured in the chains. MG Components, Fone Dealers, Tracker Trading and Kingfisher also appeared in the chains of both companies.

244. Nijjers Limited ("Nijjers") featured as the broker in one of the Globalised acquisition deals. The other ten broker deals it conducted all traced back to defaulting traders, including Data Solutions and Bullfinch. In the acquisition chain, Nijjers supplied Sigma Sixty. Globalised corresponded with this company regarding due diligence although it conducted no deals with it.

245. A further broker was Mediatele Limited which conducted five purchases from the appellant and two from Atomic claiming input tax of £622,854.38. One of the purchases from Atomic was the acquisition deal of Globalised.

East Telecom

246. The authorities in Estonia confirmed that neither payment for the goods, nor the goods came to Estonia although FCIB data for deals 11, 12 and 13 shows that payment was made from East Telecom to Multimode Marketing ("Multimode") in Spain for the goods. The Spanish authorities confirmed that Multimode was deregistered on 26 July 2006 as a missing trader. The only board member of East Telecom Kenneth Andreson is known to the Norwegian police for several frauds and bankruptcies.

247. Jayne Holden explained that at the end of April 2006, Globalised started acting as a contra trader in acquisition deals. The scheme was to disguise the tax loss transactions and enable recovery of the input tax by other broker traders, such as the appellant. She stated that an overall scheme to defraud HMRC could not work unless the parties involved were aware of the scheme and participated in it.

248. This implicated the appellant which played a key role as the broker in three of the acquisition transactions, which were used by Globalised to offset the input tax claim by Globalised as a broker in the second set of tax loss transactions.

Contrived nature of the deals

249. Evidence as to the contrived nature of the deals was given by Officer Michael Downer. During the course of a criminal investigation in 2006, a memory card was

uplifted from premises in North West England. It contained what appeared to represent transaction templates on Excel spreadsheets. Mr Downer was asked to analyse the documents as they appeared to contain transaction chains typically associated with MTIC fraud.

250. There were over 400 deal "templates" on the memory card for "deals" between April 2006 and July 2006. There were over 175 businesses in the UK and European Union referred to within the templates.

251. Mr Downer established which of these templates related to Globalised. The templates contained a trader reference to the far left, then quantity of goods, description of goods, margin, buying price and selling price.

252. He cross referenced the templates to the electronic VAT folder at HMRC and tied in the information on the templates to the deal documentation held on the electronic folder. Information on the electronic folder confirmed that the deals shown on the templates had in fact been invoiced by the respective companies.

253. The margins to be achieved by the different traders were pre-determined and matched those shown on the template. The templates also contained further information; payment instruction, commission and wash.

254. In total Mr Downer tied in five templates in which Globalised appeared as the broker to the information held on the electronic folder to establish that the deals in the templates were invoiced as described and the VAT removed using third party payments.

255. Globalised also appeared on a further 7 templates between April and May 2006 as a buffer trader. These followed a similar pattern to the broker templates.

256. Mr Downer explained that the templates demonstrated a "controlling mind" over the deals with criminal intent. For the fraud to work the various parties in the chain had to be told how much to buy the phones for and how much to sell them for. Each trader fitted into the chain in a specific place and collusion between the various entities was required to facilitate the fraud.

257. If one looked at the five tax loss chains, in which Globalised appeared as a broker, it could be seen that the transaction chain was extremely similar particularly in relation to the pricing structures and margins.

258. Mr Downer stated that the traders in these five templates clearly did not find their customers and suppliers by normal business practices as the deals were contrived and pre-determined. The traders in these deals were Anfell, Swindon, Realtech, Fone Dealers, Kingfisher and Tracker. His analysis of the other templates showed that these traders also featured in numerous other templates. Anfell 82 times, Swindon 71 times, Realtech 134 times, Fone Dealers 367 times, Kingfisher 68 times, and Tracker 75 times.

259. Mr Downer concluded that Globalised along with the traders named above all had constructive knowledge that they were involved in fraudulent transaction chains.

260. The five tax loss chains referred to by Michael Downer were five out of the fifteen tax loss chains referred to in Jayne Holden's witness statement. He concluded that it could be inferred that the parties in the related six acquisition chains including the appellant as broker on three occasions must also have been part of this overall scheme to defraud HMRC.

Swindon Star Limited

261. Evidence concerning Swindon was provided in a witness statement from Peter Cameron-Watson.

262. On 31 April 2006, Bestworld notified HMRC that its name had changed to Swindon Star Limited and that its business activity was now fast food catering, soft drink and alcohol.

263. Allocation and release notes obtained from freight forwarders revealed Swindon to be acquiring a significant quantity of mobile phones from other member states on 27 and 28 April 2006. On 4 May 2006 HMRC visited Swindon's registered office, the Pembroke Business Centre. No one was available. An immediate deregistration letter was issued.

264. On 18 May 2006 HMRC made another visit. The receptionist informed HMRC that the director of Swindon, Mrs Helvacioglu, had been taken into hospital and provided a telephone number for HMRC to call. On calling the telephone number HMRC spoke with "Tom" who stated that the director of Swindon was eight months pregnant and had been rushed into hospital.

265. On 22 June 2006 HMRC met with Mrs Helvacioglu. She stated that a man named Shak or Shahil had come to her house and advised her that Swindon could be paid 10 pence per unit to act as an agent in mobile phone deals. Shahil had raised the invoices and sent her copies in the post. Swindon had been supplied by traders in other member states. She produced a file of documentation to HMRC.

266. The uplifted documentation showed that Swindon had been supplied by companies based in other member states and had passed payment instructions to its customers requesting that payment be both split and made to third parties. It also showed that the money left over for Swindon was based upon a formula of their unit profit plus 17.5%. In addition the suppliers to Swindon issued payment instructions based upon the gross invoice price charged by Swindon. By operating in this way Swindon knew that it would be unable to meet its VAT liability.

267. On 26 June 2006, an assessment in the amount of £16,864,792 was raised against Swindon**.** On 20 July 2006, Swindon wrote to HMRC advising that it had in fact cancelled the transactions for which it had been assessed and that on 2 June 2006, Swindon had written to its customers advising that it had cancelled all its sales invoices because it had not been paid its "commission". However, the HMRC officer

for MG Components has confirmed that there was no evidence to suggest that the supplies from Swindon to MG Components had in fact been cancelled.

268. Swindon wrote to HMRC in a letter dated 26 June 2006, although the letter was not received until 28 July 2006 and informed HMRC of further transactions that it had undertaken, which had not been mentioned at the meeting on 22 June 2006. These transactions purportedly involved "Just Africa" phone cards of £50 denomination which had been purchased from Bestleg, a UK supplier and sold to a customer, Umbria Equitazione, in another member state.

269. In such circumstances, Swindon would normally be entitled to deduct input tax in the sum of £11,378,319 which would have reduced the amount of the assessment raised on 26 June 2006. However, Swindon did not produce any invoices to prove that dispatches were actually made to Umbria Equitazione and so no deduction of input tax was appropriate.

270. Investigations by HMRC revealed that Bestleg's address was actually a residential premises, the occupant of which stated that she had answered an advertisement in Exchange and Mart and had been asked to act as a mail forwarder. Just Africa phonecards did not exist in £50 denominations and Umbria Equitazione had never purchased phone cards from anyone. In addition, Bestleg did not declare any VAT in respect of the sales allegedly made to Swindon.

271. It was for a time considered by HMRC that Swindon's VAT number should be treated as having been "hijacked" by a third party on the basis that Shahil had raised the invoices in Swindon's name. On this basis the assessment raised on 26 June 2006 was replaced with an assessment in the sum of £14,516,705 raised against a "taxable person purporting to be Swindon Star Limited". However, on review, this decision was reversed and Swindon is considered to have fraudulently defaulted on its VAT liability and so assessments in the sum of £14,695,401 were raised against Swindon.

272. On 12 August 2008, HMRC wrote to Mrs Helvacioglu's home address requiring payment of the Swindon's outstanding liability within 7 days or legal proceedings would commence. On 26 November 2008, Swindon was wound up. The assessments have not been paid by Swindon nor have they been appealed. There has been no further contact by Swindon.

273. On 30 March 2009, Mrs Helvacioglu was disqualified as a company director for a period of three years. The disqualification arose out of allegations by the Secretary of State that "Mrs Helvacioglu, as sole director of Swindon Liquors caused goods, namely 20 pallets of beer being 19,200 litres to be condemned pursuant to section 139(6) and Schedule 3 to the Customs and Excise Management Act 1979 by importing the goods into the UK and causing Swindon Liquors to fail to pay the relevant duty of £42,542 on them."

Anfell College ("Anfell")

274. A witness statement was provided from Peter Davies concerning Anfell.

275. On 6 March 2006, HMRC received a letter stating that a new director had been appointed, that the business had changed its name to Anfell Trading Limited and was now in the business of general trading as opposed to being a private tutorial college.

276. On 18 April 2006, HMRC visited Anfell at its new address, a serviced office. Nobody from Anfell was present but employees of the serviced offices confirmed that Anfell had recently taken up office space at the address. HMRC left a note at the premises requesting that contact be made with them by the director of Anfell.

277. On 18 April 2006, HMRC wrote to Anfell's director to inform him that the VAT registration which had previously been allocated to Anfell College was being withdrawn as the revised activities of Anfell did not constitute the transfer of a going concern. The deregistration date was later amended to 1 May 2006 because Anfell continued to issue VAT invoices after the date of deregistration.

278. Around 26 April 2006 documents obtained from a freight agent were posted on HMRC's Electronic folder which showed that Anfell had been obtaining computer components from Slovenia.

279. On 26 April 2006, a solicitor representing Anfell telephoned HMRC to ask why Anfell's VAT number had been cancelled. Following this call, attempts were made by HMRC to contact Anfell's director but this did not prove possible. On 8 May 2006 Abddul Khudus, the director, contacted the NAS to request a new VAT 1.

280. On 13 September 2006, HMRC visited Anfell's premises. The office manager informed them that Anfell had left the premises in early May owing rent. Anfell had paid the first month's rent in cash, but had rarely been there, usually to collect faxes or check mail.

281. Assessments in excess of £27.8 million have been raised against Anfell. None of these assessments have been paid nor have they been appealed. There has been no further contact by Anfell.

First Curacao International Bank ("FCIB")

282. The FCIB is an obscure bank on a tiny island in the Caribbean Sea. Almost all the companies in the trading chains held accounts with it. The appellant opened its account with FCIB after being informed by NatWest and HSBC between July 2004 and January 2005 that its accounts with those banks were being closed.

283. The FCIB is currently the subject of a criminal investigation being undertaken by the Dutch tax administration in respect of money laundering predicated by MTIC fraud.

284. We received a statement from Mr Simmons and questioned him regarding his analysis of transactions in the accounts held by participants in the deal chains with the FCIB. This was a composite version of two statements. The first was prepared when access was limited to the Dutch server. The second added further information

available from the Paris server which included narrative descriptions of the payments and greatly reduced the scope for errors in allocating payments.

285. In his oral evidence Mr Simmons said that he had analysed 16 out of 38 deals entered into by the appellant which formed the subject of the appeal. This represented a sample ensuring that at least one deal was analysed for each defaulter. In reply to a question from the Tribunal, Mr Simmons said that he believed that his sample was representative and similar results would have been obtained if the analysis had been extended to all 38 deals.

Deal 1

286. The invoice price was £379,260 and the purchaser was Unlimited, a company based in Singapore. The appellant received this amount from Unlimited on 10 April 2006. The appellant's supplier was Comveen. Immediately on receipt of the payment from Unlimited, the appellant paid £414,540 to Comveen. This was the full invoice price plus VAT. Comveen then paid £411,949.13 to its supplier Valler.

287. According to the invoice trail Valler was supplied by a UK company, Bond Corporation. However no payment was made to Bond Corporation, instead a payment of £405,471.94 was made to Parecom SA ("Parecom"), a company based in Luxembourg. Parecom paid £399,105 to Jemax ApS ("Jemax"), a Danish company. Jemax paid £384,772.50 to Unlimited. The sequence of the EBR numbers suggested that the payments started with Jemax and concluded with its receipt from Parecom. This was confirmed by the order of the entries on the statements.

Deal 5

288. The invoice price was £131,197.50 and the purchaser was IDA International ("IDA") based in Hong Kong. A payment of £341,106.58 was made from the account held by IDA to the appellant on 21 April 2006. This covered the full invoice price for both deals 5 and 6. The appellant paid £227,552.85 to its supplier, TGT, which represented the full invoice price plus VAT. TGT then paid £225,332.10 to its supplier, Valler. Valler paid £224,591.85 to Bond Corporation. Bond Corporation in turn paid £223,999.65 to its supplier Data Solutions. Data Solutions paid Midwest £223,555.50.

289. According to the statement from Mr Simmons the goods were supplied to Midwest by EBS, a Dutch company. However the statement from Mr Bycroft in connection with his investigations into Midwest had identified the supplier as Megatek Sarl ("Megatek"), a company based in France. Both he and Mr Simmons were agreed that the payments in respect of this deal and the other deals traced to Midwest were made to Megatek. The payment by Midwest was £223,111.35 compared with an invoice price of £189,882. This overpayment by Midwest indicated that Midwest never intended to pay the VAT in respect of its imports.

290. Megatek paid £221,000.85 to Soluciones, a company based in Spain. Soluciones paid £220,748.85 to Parecom. Mr Simmons could not trace the payment chain further as Parecom appeared to have paid its receipts for this and other deals (including Deal

6) to two Danish companies without FCIB accounts. The EBR numbers indicate that the payments started with IDA.

Deal 6

291. The payments for Deal 6 follow an identical path to Deal 5.

Deal 7

292. The invoice price was £495,558 and the customer was Best Buy based in Singapore. Best Buy paid the full price on 24 April 2006. The appellant was supplied with the goods by TGT and the invoice price including VAT was £537,976.69. The appellant paid TGT £490,000. A further payment of £47,976.69 was made to TGT on 16 May 2006 covering the balance of this transaction. TGT paid £530,944.31 to Valler who in turn paid £529,186.22 to Bond Corporation. Bond Corporation paid Data Solutions £527,428.13. Data Solutions paid Midwest £526,021.65.

293. Midwest paid Megatek £524,966.79. As was stated above this was in excess of the likely invoice price. Megatek paid £520,657.59 to Soluciones. Soluciones paid £520,059.09 to Parecom. Parecom paid £515,308 to Jemax who paid the same amount to Unlimited. Later on 24 April 2006 Parecom paid Jemax a further £5,985 in connection with this transaction.Over a period of nine days Unlimited made payments totalling £513,304 to Best Buy in connection with this transaction. EBR numbers suggest the payments started with Best Buy.

Deal 8

294. The invoice price was £547,222 and the customer was Unlimited. The money was circulated on 25 April 2006. The only differences in the money circle from deal 7 were that Best Buy was not involved and that the appellant's supplier was Comveen. The amount apparently paid by the appellant to Comveen was precisely £80,000 less than the invoice price plus VAT. Unlimited started the payments in motion and received £569, 551.40. This is an apparent profit of 4%. Again the amount paid to the EU supplier by Midwest was significantly more than the invoice price.

Deal 11

295. This deal related to 4750 Nokia 9300i mobile phones. The invoice price was £1,534,962.50 and the customer was Gold Phone ("Gold") based in Singapore. On 2 May 2006 Gold paid the appellant £1,534,962.50. The same day the appellant paid £1,530,000 to TGT, its supplier, significantly less than the full invoice price plus VAT. TGT paid £1,679,956.25 to Atomic. Atomic paid £1,674,325 to Globalised. Globalised paid its supplier, East Telecom, £1,420,250. East Telecom was based in Estonia and paid £1,472,750 to a Spanish company, Multimode. Mr Simmons stated that there was considerable difficulty in allocating payments at the next stage as the next company in the chain, Pol Com Trader ("Pol Com"), based in Poland, received five payments from Multimode on 2 May totalling £3,287,762.50 and described them all as being for the three consignments of phones in the appellant's deals 11, 12 and 13.

296. Pol Com paid £1,540,000 to Ascom ApS, a Danish company who in turn, paid £1,539,712.50 to Gold. The order of these payments was confusing. Atomic made an early part payment but the main series of payments seemed to start and finish with Pol Com.

Deals 12 and 13

297. The pattern of payments was identical to Deal 11. Again the appellant paid TGT slightly less than it received from Gold, leaving TGT in effect to finance the VAT.

Deal 14

298. This deal related to the sale of 5985 Intel P4 SL7Z9 CPUs to Unlimited. On 27 April 2006 Unlimited paid the appellant £495,558, the full invoice price. The appellant paid its supplier, Comveen, the full price, including VAT, of £537,976.69. Comveen paid Compulinx £534,460.50. Compulinx paid Star Express £532,702.41. Star Express paid Data Solutions £531,296.63. Data Solutions paid Bullfinch £529,889.46.

299. Bullfinch was the last UK company in this chain. It paid £527,779.74 to Megatek. Megatek paid £524, 173.79 to Soluciones. Soluciones paid £523,874.34 to Parecom and Parecom paid £521,293.50 to Jemax. Mr Simmons took the view that a payment from Jemax on 24 April of £515,308.50 to Unlimited was linked to this deal and the accompanying notes seemed to support his view, referring to 19 boxes Z9s, the same as the previous payments between overseas companies. The invoice for the sale by the appellant was not raised until 25 April 2006, so there was a clear implication of the transactions being pre-ordained as the circular payments were set up before the invoice trail was laid. However the next entry in the bank account for Jemax, immediately after the receipt from Parecom was a payment of the identical amount £515,308.50 but to Best Buy and the 19 boxes Z9s are not mentioned.

Deal 15

300. The tracing exercise for this deal was similar to deal 14. The differences were that the customer was Best Buy, the UK payments went via TGT, Valler and Bond Corporation to Data Solutions and the final payment reached Unlimited. The onward transfer to Best Buy could not be traced although there were many earlier payments between Unlimited and Best Buy.

301. In addition to the evidence of Mr Simmons we received a statement from HMRC officer David Young. He extracted information from the FCIB Paris server relating, among other things, to the names and addresses of those who had power to operate FCIB accounts. The person empowered to give instructions for the accounts of both Best Buy and Unlimited was Kamran Abdul Gani Radiowala whose address is the same as that for both companies.

302. The appellant paid TGT £46,291 less than the invoice price. The amount paid by Bullfinch to the first overseas company, Megatek, exceeded the amount received by Best Buy from the appellant by £37,028. TGT seemed to be financing the profits

of the overseas participants. EBR numbers indicated that the chain started with Best Buy.

Deal 16

303. The payment chain for this deal was the same as Deal 14 except that TGT was the supplier to the appellant rather than Comveen. The payments were made on 1 and 2 June 2006, although the original invoice from the appellant was dated 3 May 2006. The appellant paid TGT the invoice price plus VAT less £50,000. The amount paid by Bullfinch to Megatech exceeded the amount received by the appellant from Unlimited by £25,937. According to EBR numbers Unlimited started and finished the series of payments.

Deal 17

304. The payment chain for this deal was the same as for deal 16. TGT received the full price from the appellant. There was a delay of a month in the payments as the invoices were dated 2 and 3 May 2006 and the payments were on 1 and 2 June 2006. The amount paid by Bullfinch to Megatek exceeded the amount received by the appellant from Unlimited by £7,224. The EBR numbers and the order of entries in the bank statements suggest that the payments were initiated by the appellant which paid TGT on 1 June and received its payment from Unlimited on 2 June 2006.

Deal 27

305. This deal involved the supply of 1260 Intel Z9s to Unlimited. It appeared that the payment chain was initiated by the appellant paying the full invoice price of £118,440 to its supplier, TGT, on 31 May 2006. TGT paid £117,699.75 to Valler. Valler paid £117,329.63 to Bond Corporation. Bond Corporation paid its supplier, World of Power, £117,033.53. The supplier to World of Power was Smart View and the invoice price was £113,776.42. However World of Power did not pay Smart View but instead made a payment of £116,737.43 to the personal account of Kalidas Gopal. In turn he paid £116,367.30 to Megatek.

306. Megatek paid £115,534.13 to Soluciones. In turn Soluciones paid £115,408.13 to Parecom. Parecom paid £111,825 to Jemax. Jemax paid £280,665 to Unlimited. The difference in the amount paid on by Jemax seemed to be explained by a receipt of £170,100 between its receipt from Parecom and its payment to Unlimited. This receipt was from Best Buy and described as an overpayment. Immediately on receipt of the payment from Jemax, Unlimited paid £108,990 to the appellant. The amount paid to the overseas companies in excess of the purchase price paid by Unlimited was £7,377.30.

Deal 28

307. This deal was identical to Deal 27 in terms of recipients of payments except that the customer was Best Buy. The payments appeared to be initiated by the appellant and went in sequence except that Best Buy appeared to pay the appellant before receiving their payment from Jemax. The appellant paid TGT £19,827.75 less than the

invoice price. The last UK recipient was Khalidas Ghopal although the invoice chain suggested that the importer was 3D Animation as opposed to Smart View in Deal 27. The amount paid to the overseas companies in excess of the purchase price paid by Best Buy was £16981.65.

Deal 32

308. This deal concerned the sale of 11025 Intel P4 SL7Z9s to Syntek , a company based in Singapore. The invoice was dated 25 May 2006 and the sale price was £940,432.50. Syntek paid the full amount to the appellant on 31 May 2006 from its account with UBS. The appellant was supplied by TGT, it paid £940,000, £76,918.44 less than the invoice price plus VAT. TGT paid Valler £940,000, £73,032.13 less than the invoice price plus VAT. Valler paid Bond £1,009,793.53. Bond Corporation paid World of Power £1,009,145.81.

309. World of Power were invoiced by 3D Animation at a price of £973,521.28. However on 31 May 2006 they paid £1,006,554.94 to Khalidas Ghopal. He paid £1,003,316.34 to Megatek. Megatek paid £994,082.91 to Soluciones. Soluciones paid £993,531.66 to Parecom. Parecom paid Jemax £981,225. Jemax transferred £1million to its own Dutch bank account but it was not possible to trace a transfer back to Syntek.

Deal 38

310. The appellant raised an invoice for £197,505 relating to the supply of 3150 Intel P4 SL7Z9s to Syntek on 28 June 2006. It received this amount from Syntek in two payments on 7 July and 13 July 2006. The appellant paid TGT £200,869, £14,672 less than the invoice price plus VAT. TGT paid Data £214,117.31. Data paid £213,562.13 to Cirex. Cirex was supplied by Heathrow with an invoice price of £213,006.94. However Cirex paid this amount to the personal FCIB account of Yasar Ahmed, the company secretary of Heathrow.

311. Yasar Ahmed paid £211,896.56 to Silus, a company based in the Netherlands. Silus paid £219,885 to Symbolix, a Luxemburg company. Symbolix paid £216,405 to Eastern Group based in Belize. Eastern Group made a payment of £423,256.25 to Right Deal based in Hong Kong who paid the money away to unidentified non FCIB account.

Other matters related to FCIB

312. Mr Simmons discovered four payments, each of £50,000 credited to the appellant's account from two accounts in the name of Easycom Electronics. Further research found five FCIB accounts in the names of different companies with the name of Easycom Electronics. The sole director of all of these companies was shown as Bobby Haried. Two were incorporated in the British Virgin Islands, two in the Netherlands and one in the UK.

313. The FCIB account for Easycom BVI (FCIB number 203753) showed a payment of £150,000 on 24 April 2006 from Parecom. In Parecom's account this was shown as

a deposit. There was a further payment from Parecom of £40,000 on 4 May 2006 also shown as a deposit. A payment of £40,000 on16 May 2006 was described as "Deposit Loan". A payment from Parecom of £120,000 on 5 June 2006 was described as "Deposit 20 boxes Z9s" and a payment of £60,000 on 7 June 2006 was described as "Deposit 10 boxes Z9s". In total during a period of 6 weeks Parecom paid Mr Haried through Easycom, a total of £410,000.

314. A total of £360,500 was transferred to another Easycom account (FCIB number 203347) and the balance was either taken as dividends or used for personal expenditure. All the payments coming in to this account were transferred to a third Easycom account, FCIB number 203368. Finally this account was debited with the four payments to the appellant mentioned above. There were also a number of loan payments from FCIB account 203368 where the destination is not specified.

315. There were also three later payments into FCIB account 203753. These were all from Soluciones, £15,000 on 20 July 2006, £7,000 on 27 July 2006 and £3,000 on 15 August 2006. £12,000 was passed through other Easycom accounts to the appellant. The appellant then paid TGT £11,803 and TGT paid £11,000 to Compulinx.

316. According to information from the FCIB datastore quoted in the witness statement of Mr Simmons, the signatory, the beneficial owner and the director of both Parecom and Megatek was stated to be Michael Wyld whose address is quoted as in Nelson in Lancashire.

Other matters

317. The phones purportedly traded all appeared to be of EU specification rather than UK. In these circumstances it was unclear why they would be imported into the UK only to be exported again.

318. There were no written contracts with any suppliers or customers despite the regular high value transactions although Mr Haried had contracts for the low value sports equipment in which he traded.

319. On 17 November 2006, Mr Simmons wrote to the appellant and pointed out that the majority of the CPUs purchased between 04/06 – 06/06 must have been imported into the UK before being exported back to China (Hong Kong). He asked the appellant about the commercial viability of such an arrangement. In a letter dated 15 December 2006, the appellant's solicitor replied "The goods were exported to Hong Kong, which is a recognized international trading hub. Your referral to Hong Kong as being part of China is an unnecessary attempt to confuse the position and of course undermine our clients claim, and does nothing to clarify matters".

320. On 21 November 2006, the appellant's solicitor sent a letter to HMRC. Included was a "Final Demand of Overdue Money" from TGT. TGT were making a final demand for £586,571.57 to be paid by 31 December 2006. TGT appear to have given credit to the appellant with a loose arrangement as to the repayment of the loan.

321. Mr Simmons contacted the freight forwarders to obtain copies of the inspection reports. The condition of each box had been graded by the inspector. 31 (94%) were a 4, indicating that the condition of the boxes was deemed "average" by the inspector. The remaining 2 (16%) were both 5, indicating the boxes were deemed "poor." The key on the inspection reports describes certain type of damage with letters. All of the boxes were found to have scuff marks and knife marks. A small number had extra label or had been relabelled which could be a sign of tampering. Only the boxes and not the contents were examined.

322. The inspection reports indicated whether or not goods appeared on a "stolen list." Mr Haried stated in his second witness statement that if a chip appeared on the stolen list, he did not buy it. Mr Simmons stated that he would expect any legitimate business that wished to avoid handling stolen goods to not only avoid entering into the transaction in question but to also look at all aspects of the transactions and form a view as to whether or not it wished to continue trading with a company that attempted to supply the appellant with stolen goods.

323. The appellant presented no evidence of any due diligence on its overseas customers. This is despite the fact that it was sending high value goods abroad, without having received payment. It was often several weeks between the goods being shipped and payment being received.

324. In his second witness statement Mr Haried stated that although he had carried out due diligence on all the companies with which the appellant traded he had as yet been unable to locate the due diligence. At the time of the hearing no further due diligence had been received by HMRC.

325. Mr Haried stated in his second witness statement that the appellant was trading in the grey market. Dr Findlay, a consultant to PriceWaterhouseCoopers LLP, in his witness statement provided detailed evidence in relation to the scope and characteristics of the grey market in CPUs. Dr Findlay described and analysed the five main grey market opportunities and gave details in relation to level of grey market exports from the UK in 2006.

326. In 2006, the total annual value of grey market exports of Intel CPUs was £1.4 million. In the same year, the total annual value of grey market exports of AMD CPUs was £0.5 million. These total annual figures give a monthly export average of £116,000 for Intel CPUs and £41,000 for AMD CPUs.

327. In a single deal on 4 April 2006 (deal 1), the appellant claimed to have exported £379,200 of Intel CPUs. On 11 April 2006, the appellant claimed to have exported a further £1,408,380 of Intel CPUs (deals 2, 3 and 4) and on 13 April 2006, a further £341,113 of Intel CPUs (deals 5 and 6). Between 19 April and 25 April, the appellant claimed to have exported a further £3,038,628. In April therefore, the appellant claimed to have exported over £5.1 million of Intel CPUS which was more than 3.5 times the number of annual grey market exports. This applied also to the appellant's trading in May.

328. Dr Findlay identified the five grey market opportunities as sub distribution, distribution of obsolete or niche components, emergency supply, offloading of excess inventory and arbitrage.

329. Dr Findlay stated in his witness statement that to successfully exploit the opportunity offered by sub distribution a trader would need to regularly speculatively purchase stock that it believed might be in future demand. The trader would then need to hold that stock until the requisite customer demand materialised. The appellant did not purchase stock on a speculative basis or hold stock.

330. Additionally a trader would need to make every effort to buy from Authorised Distributors ("ADs") and/or assemblers as it was "implausible that a company could participate in this opportunity with no relationships with ADs and assemblers in the major European markets". There was no suggestion that the appellant had any relationship with ADs or assemblers.

331. In order to exploit the opportunity to sell obsolete or niche components a trader would need to speculatively purchase stock that it believes may be in future demand. The trader would then need to hold that stock until the requisite customer demand materialised. A trader would also need to have an ongoing relationship with ADs and/or assemblers and would need to focus on a specific component category and customer segment.

332. In order to be able to take advantage of the offloading of excess inventory a trader would need to speculatively purchase stock that it believed might be in future demand. The trader would then need to hold that stock until the requisite customer demand materialised. Further, a trader would need to have an ongoing relationship with ADS and/or assemblers and would need to focus on a specific component category and customer segment.

333. Similarly to take advantage of emergency supply a trader would need to regularly speculatively purchase stock that it believed might be in future demand. The trader would then need to hold that stock until the requisite customer materialised. Whilst a trader taking advantage of this opportunity would not take physical possession of the goods being traded, the goods would be delivered from trader's supplier to the trader's customer (with the trader simply acting as an intermediary/broker.

334. In order to exploit the opportunity for arbitrage a trader would need to have ongoing relationship with ADs and/or assemblers.

335. Dr Findlay also stated that across each of the five opportunities, it would be expected that the description on any purchase documentation would be to a sufficient level of specificity; and the transactions chains would not contain a large number of participants and would begin with a manufacturer and an AD.

The Relevant Law

336. Article 17 of the Sixth Council Directive provides so far as is material:

"Origin and scope of the right to deduct

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 within the territory of the country in respect of goods or services supplied or to be supplied to him by another taxable person;….."

337. Articles 167 and 168 of Council Directive 2006/112/EC of 28th 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.

338. 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-

(A) VAT on the supply to him of any goods or services;

(B)VAT on the acquisition by him from another member State of any goods; and

(C)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 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 taxable 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 owed to 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 and importations in the period) as is allowable by or under regulations as being attributable to supplies within subsection (2) below.

339. Input tax falls to be denied where a transaction is connected with the fraudulent evasion of VAT and the taxable person knew or should have known of the connection with fraud was made clear by the ECJ in *Axel Kittel v Belgium & Belgium v Recolta Recycling SPRL* (C-439/04 and C-440/04). At paragraph 56 of its judgment 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 no he profited by the resale of the goods"

340. At paragraph 61 of its judgment, the ECJ stated:

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

341. In *Mobilx Ltd (in Liquidation) v. HMRC* [2010] EWCA Civ 517, the Court of Appeal considered *Kittel*. At paragraph 52, Moses LJ stated:

"If a taxpayer has the means at his disposal of knowing that by his purchase he is participating in a transaction connected with fraudulent evasion of VAT he loses his right to deduct, not as a penalty for negligence, but because the objective criteria for the scope of that right are not met. It profits nothing to contend that, in domestic law, complicity in fraud denotes a more culpable state of mind then 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".

342. At paragraph 59 Moses LJ went on to state:

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

343.The Court of Appeal cited with approval the approach of Christopher Clarke J in *Red 12 Ltd v. HMRC* [2009] EWHC 2563. Paragraphs 81 to 83 of the *Mobilx* judgment set out guidance in approaching the "should have known" issue.

"81. HMRC raised in writing the question as to where the burden of proof lies. It is plain that if HMRC wishes to assert that a trader's state of knowledge was such that his purchase is outwith

the scope of the right to deduct it must prove that assertion. No sensible argument was advanced to the contrary.

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

83. The questions posed in BSG by the Tribunal were important questions which may often need to be asked in relation to the issue of the trader's state of knowledge The questions posed in BSG were, (1) Why was BSG, a relatively small company with comparatively little history of dealing in mobile phones, approached with offers to buy and sell very substantial quantities of such phones> (2) How likely in ordinary commercial circumstances would it be for a company in BSG's position to be requested to supply large quantities of particular types of mobile phone and to be able to find without difficulty a supplier able to provide exactly that type and quantity of phone? (3) Was Infinity already making supplies direct to other EC countries? If so, he could have asked why Infinity was not making supplies direct, rather than selling to UK traders who in turn would sell to such other countries. (4) Why are various people encouraging BSG to become involved in these transactions? What benefit might they be deriving by persuading BSG to do so? Why should they be inviting BSG to join in when they could do so instead and take the profit for themselves? I can do no better than repeat the words of Christopher Clarke J in Red 12 v HMRC [2009] EWHC 2563:-

> 109. Examining individual transactions on their merits does not, however, require them to be regarded in isolation without regard to their attendant circumstances and context. Nor does it require the tribunal to ignore compelling similarities between one transaction and another or preclude the drawing of inferences, where appropriate, from a pattern of transactions of which the individual transaction in question forms part, as to its true nature e.g. that it is part of a fraudulent scheme. The character of an individual transaction may be discerned from material other than the bare facts of the transaction itself, including circumstantial and "similar fact" evidence. That is not to alter its character by reference to earlier or later transactions but to discern it.
>
> 110. To look only at the purchase in respect of which input tax was sought to be deducted would be wholly artificial. A sale of 1,000 mobile phones may be entirely regular, or entirely regular so far as the taxpayer is (or ought to be) aware. If so, the fact that there is fraud somewhere else in the chain cannot disentitle the taxpayer to a return of input tax. The same transaction may be viewed differently if it is the fourth in line of a chain of transactions all of which have identical percentage mark ups, made by a trader who has practically no capital as part of a huge and unexplained turnover with no left over stock, and mirrored by over 40 other similar chains in all of which the taxpayer has participated and in each of which there has been a defaulting trader. A tribunal could legitimately think it unlikely that the fact that all 46 of the transactions in issue can be traced to tax losses to HMRC is a result of innocent coincidence. Similarly, these suspicions may pale into insignificance if the trader has been obviously honest in thousands
>
> 111. Further in determining what it was that the taxpayer knew or ought to have known the tribunal is entitled to look at the totality of the deals effected by the taxpayer (and their characteristics), and at what the taxpayer did or omitted to do, and what it should have done, together with the surrounding circumstances in respect of all of them."

344. At paragraphs 84 and 85 Moses LJ stated:

> 84. Such circumstantial evidence.....will often indicate that a trader has chosen to ignore the obvious explanation as to why he was presented with the opportunity to reap a large and predictable reward over a short space of time……
>
> 85. In so saying I am doing no more than echoing the warning given in HMRC's Public Notice 726 in relation to the introduction of joint and several liability. In that Notice traders were warned that the imposition of joint and several liability was aimed at businesses who "know who is carrying out the frauds, or choose to turn a blind eye. (3.3) They were warned to take heed of any indications that VAT may go unpaid (4.9). A trader who chooses to ignore circumstances which can only reasonably be explained by virtue of the connection between his transactions and fraudulent evasion of VAT, participates in that fraud and, by his own choice, deprives himself of the right to deduct input tax.

345. In *Red 12 v. HMRC* [2009] EWHC 2563 (Ch), Christopher Clarke J stated:

> "The tribunal went on to say that they were prepared to draw that inference particularly in view of the fact that Global Dotcom [the first in deals 2,3,4,6, and 11] was a missing trader. Red 12 complains that there was no attempt by the tribunal to link that contention with the acquisition by that company of the products from a Member State. It is true that the mere fact that a trader goes missing does not necessarily mean that he, or his predecessor in the chain, was an importer. But when the company goes missing in circumstances in which it is at the start of several long chains with no apparent commercial purpose in which are included several companies in the same order, with other indicators of importation from the EU the probability shifts towards the chains constituting an MTIC fraud. It was open to the tribunal to think so. Insofar as the contention is that the defaulting trader must be shown to be the actual importer, I have already rejected it."

The Appellant's Submissions

346. The appellant submitted that the burden of proving that there had been a fraudulent evasion of VAT with which the transactions giving rise to the entitlement to deduct input tax were causally connected rested with HMRC.

347. The appellant submitted that the standard to which HMRC had to prove their case was not the normal balance of probabilities but a heightened civil standard which was commensurate with a criminal standard.

348. The appellant submitted that there was no authority in community law which would enable HMRC to take one chain of transactions into account when determining the fiscal consequences of another. Article 17 of the Sixth Directive which was in force at the time did not permit cross referencing of that kind. The VAT consequences should be considered only on a transaction by transaction basis.

349. The appellant contended that the test of knowledge was on what the relevant taxable person knew about the transactions to which it was a contracting party.

350. The appellant submitted that HMRC had also to prove actual participation in the alleged fraud.

351. The appellant contended that to the extent that there was inequality of treatment within the supply chain, such inequality of treatment was unlawful under Community law because the principle of neutrality was breached; the market was distorted; HMRC were favouring one taxable person over another; and HMRC were discriminating as between domestic and Community taxable persons.

352. The appellant contended that in the commercial world agreements could be entered verbally or in writing. It was therefore absurd for HMRC relying on an assertion that the transactions were contrived because no signed contracts were entered into by the appellant and its trading partners.

353. The appellant submitted that its essential aim when entering the transactions was to buy goods which it could sell for a profit. In those circumstances it must be able to rely on the legality of those transactions without losing its fundamental right to deduct input tax which arose inter alia under Article 17 of the Sixth Directive.

354. The appellant noted the reliance placed by HMRC on the FCIB investigation which was commenced after the appellant entered the transactions which are the subject of the appeal.

355. In his second witness statement Mr Haried contended that the credit report on TGT was based on out of date information relating back to 2004 which was when he sold TGT to his brother.

356. Mr Haried admitted that he knew that TGT were making third party payments but submitted that he did not think that there was anything wrong with this as he had seen a "lot of it" when he was working for various freight forwarding companies.

357. Mr Haried submitted that Hong Kong was a trading hub. China manufactured CPUs for Intel and the CPUs went wherever Intel wanted them to go. It was therefore perfectly possible that the CPUs went to Intel's distributors around the world and were then sold onto the grey market from whence they went to Hong Kong because there was a current shortage of CPUs there.

358. Mr Haried submitted that just because some of the boxes were in poor condition this did not mean that the goods were also damaged. He often received brand new televisions in damaged boxes whilst the televisions were in perfect condition.

359. The appellant denied trading in the manner described by HMRC in their decision letter and contended that even if it had traded in that manner, it should not have led HMRC to contend that as a consequence it should have known that by its purchases it was implicating itself in a fraudulent transaction.

360. In conclusion the appellant contended that HMRC's actions were irrational, breached the Sixth VAT Directive and offended against the principle of neutrality.

HMRC's Submissions

361. Dealing firstly with the appellant's submissions HMRC accepted that the burden of proof rested with it. However HMRC submitted that the burden of proof was not as the appellant suggested "a heightened civil standard". HMRC submitted that in *In Re B* [2009] 1 AC Lord Hoffman made clear:

> "…the time has come to say, once and for all, that there is only one rule of law namely that the occurrence of the fact in question must be proved to have been more probable than not".

362. HMRC submitted that the appellant's contention that "there is no authority in community law which would enable the Respondents to take one chain of transactions into account when determining the fiscal consequences of another..." was not fully understood but, to the extent that it was asserted that *Kittel* cannot apply to "contra-trading" cases, this was at odds with the decisions in *Just Fabulous* and *Blue Sphere Global*, the latter of which was appealed to the Court of Appeal and joined with *Mobilx*. Further, in *Mobilx*, Moses LJ stated:

> "The principle of legal certainty provides no warrant for restricting the connection, which must be established, to a fraudulent evasion which immediately precedes a trader's purchase. If the circumstances of that purchase are such that a person knows or should know that his purchase is or will be connected with fraudulent evasion, it cannot matter a jot that that that evasion precedes or follows that purchase. That trader's knowledge brings him within the category of participant. He is a participant whatever the stage at which the evasion occurs".

363. HMRC submitted that the appellant's contention that the "test of knowledge is on what the relevant taxable person knew about the transactions to which he was a contracting party" was not fully understood but, to the extent that it was asserted that only factors that are actually within the appellant's knowledge, as opposed to objective factors, are relevant to whether the appellant should have known of the connection, this was at odds with *Kittel*. HMRC submitted that at paragraph 59 of *Kittel* the ECJ stated:

> "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".

364. HMRC submitted that the appellant's contention that the Commissioners "also have to prove...actual participation in the alleged fraud" was at odds with paragraph 41 of *Mobilx*, in which Moses LJ stated:

> "Kittel did represent a development of the law because it enlarged the category of participants to those who themselves had no intention of committing fraud but who, by virtue of the fact that they knew or should have known that the transaction was connected with fraud, were to be treated as participants"

365. HMRC submitted that to the extent that the appellant contended that there was "inequality of treatment as within the supply chain" and "the Respondents' actions are irrational, breach the Sixth VAT Directive and offend against the principle of neutrality", such contentions were addressed in *Mobilx* where Moses LJ stated at paragraph 20:

> "..the Court's statement of principle [in Kittel] depended upon the application of objective criteria which define the scope of VAT. Since the right to deduct is integral to the system of VAT, those objective criteria also define the scope of the right to deduct. It applied those objective criteria to traders who were not themselves fraudulent but knew or should have known their transactions were connected to fraud. By focusing on those objective criteria the court avoided infringing the fundamental principles of fiscal neutrality and legal certainty which lie at the heart of the VAT system".

366. HMRC submitted that there were four issues requiring determination by the Tribunal:

- whether there had been an evasion or evasions of VAT;
- whether those evasions were fraudulent;
- whether the appellant's purchases were connected with those fraudulent evasions;
- whether the appellant knew or should have known that its purchases were connected with the fraudulent evasion of VAT.

367. Insofar as whether there had been fraudulent evasions of VAT HMRC referred to the evidence concerning the seven defaulting traders Midwest Communications, Bullfinch Systems, Smart View, 3D Animations, Heathrow Business Solutions, World of Power and Data Solutions Northern. 35 of the appellant's deals traced back to these seven defaulting traders.

368. HMRC referred to the statement of Clarke, J in *Red* as set out in paragraph 345 above and submitted that the evidence in relation to these seven defaulting traders was more than sufficient to allow the Tribunal to conclude that there has been a fraudulent evasion of VAT.

369. HMRC submitted that in addition to the facts of the defaults by the traders listed above, the evidence suggested that there was an organised scheme to defraud being perpetrated against the public revenue.

370. It was alleged by HMRC that the transactions which form the subject of this appeal were part of a much wider scheme to defraud HMRC of VAT. HMRC's case was that the appellant was connected with MTIC fraud, and, in some instances a variation of this known as "contra-trading".

371. It was inconceivable that, absent an organised scheme to defraud, seven separate traders all of whom featured in the appellant's transaction chains, should all happen to default.

372. None of the defaulting traders declared on their VAT 1 that their main business activity would be wholesale supplies of mobile phones and/or CPUs. Instead main business activities such as "buying and selling of data", "purchase and sale of mailing lists" or "software and security implementation, no hardware" were stated. The closest that anyone came to mentioning mobile phones or CPUs was Midwest who declared "sale of telephones (mobile both as upgrades and new contracts)" however this description placed emphasis on new contracts and upgrades (i.e. retail supplies) rather than an actual main business activity which involved wholesale supplies. Other than Swindon which stated that it would make minimal sales to other member states, all of the other defaulting traders failed to indicate on the VAT 1 that they would be making any purchases or sales from or to other member states.

373. HMRC submitted that there was a remarkable consistency of participants in the deal chains. By way of example, in deals 7 and 8 the appellant was supplied by TGT (in deal 7) and Comveen (in deal 8) and yet both of those traders happened to be supplied by Valler Associates. Both deals then traced back through the same chain of traders to the defaulter Midwest.

374. Bond Corporation featured in 15 of the 38 deals. Whilst Bond Corporation did not have direct trading relationship with the appellant or the appellant's suppliers (Comveen and TGT) its address was stated on its sales documentation as Office 7, 111 Whitby Road, Slough, SL1 3DR. On the appellant's VAT 1, the address given was 111 Whitby Road, Slough, SL1 3DR albeit that the appellant had since moved from that address. HMRC submitted that in the light of the factors indicating a contrived scheme to defraud, it was incredible that this commonality of address could simply be a coincidence and it suggested that the appellant was a willing and knowing participant in the fraudulent scheme.

375. HMRC submitted that the FCIB evidence showed circularity of monies and in the absence of a contrived scheme being in place, such circularity could not be achieved. By way of example, in deal 28 Jemax transferred £243,101.23 to Best Buy with the narrative "8+1 box Z9s inv 03184". Best Buy then transferred £238,848.75 to the appellant in apparent consideration for 9 boxes of Intel SL7 Z9s. Had the appellant decided to purchase those Z9s from a supplier that was not part of the contrived scheme then the monies would have been paid over to a third party who in turn, would have paid the monies over to his supplier, say, for example, Intel. In such circumstances, circularity of funds would not have been achieved. However because the appellant purchased from a trader, TGT, that was part of the contrived scheme and TGT and the other traders in turn did the same, it was possible to return the monies back to Jemax.

376. HMRC submitted that regardless of whom the defaulting trader was, certain EU companies regularly appeared in the payment chains. By way of example, in deal 7, the defaulting trader was Midwest and the monies flowed through Megatek,

Soluciones, Parecom and Jemax . In deal 17, the defaulting trader was Bullfinch and yet the monies still flow through Megatek, Soluciones, Parecom and Jemax.

377. HMRC submitted that there was no commercial rationale for significant quantities of CPUs and mobile phones to come into the UK only to be dispatched/exported back out of the UK almost immediately.

378. HMRC submitted that in 35 of the deals, the transaction chain had been traced back through various buffer traders to one of the seven defaulting traders. In such circumstances, these 35 deals were connected with the fraudulent evasion of VAT.

379. The remaining three deals were traced back to the contra-trader Globalised. These deals and Globalised's other deals formed part of a scheme to defraud the revenue. In such circumstances, HMRC submitted that the deals were connected with fraudulent evasion of VAT.

380. HMRC submitted that their primary contention was that the appellant knew that the 38 deals in relation to which input tax had been denied were connected with the fraudulent evasion of VAT. The fact that each of these deals, where the appellant acted as a broker could be traced back to a fraudulent tax loss was not mere coincidence. On the contrary it was a direct indication of fraudulent participation.

381. Alternatively HMRC submitted that the appellant should have known that these 38 purchases were connected with the fraudulent evasion of VAT.

382. HMRC submitted that in assessing the appellant's state of knowledge in relation to these 38 deals the appellant's more general and wider knowledge gave important context.

383. As early as 18 March 2004 the appellant knew of the significant concerns that HMRC held in relation to its chosen trade sector. Specifically, at a visit on 18 March 2004, it was explained that the appellant's input tax was at risk if tax losses were found in its supply chain. Notice 726 was also served on the appellant.

384. HMRC continued to have concerns in relation to the appellant's trade sector leading to a further visit on 17 May 2004. This concern was further reiterated by way of letter dated 7 June 2004.

385. Previous deals that it had conducted had been traced to tax losses. Despite being informed of these tax losses, the appellant continued to trade with the same suppliers. These suppliers included Comveen and TGT.

386. HMRC submitted that its contention that the appellant knew that these 38 purchases were connected with fraud was supported by the Easycom payments from FCIB. The appellant shared a common director, Mr. Bobby Harried, with Easycom Limited. Analysis of the FCIB data had revealed that Easycom had received monies directly from Parecom and Soluciones.

387. Parecom and Soluciones were recipients of monies in the tax loss chains. It was submitted by HMRC that the payments from Parecom and Soluciones represented the division of the proceeds of the fraudulent scheme and/or funding for the next round of transactions. In some instances, having received these funds, Easycom then made payment on to the appellant.

388. Regardless of whom the defaulting trader was and who the appellant's supplier was, the money flows in the appellant's chains regularly traced back to the same traders based in other member states. By way of example, in deal 7, the defaulting trader was Midwest and the monies flowed through Megatek, Soluciones, Parecom and Jemax. In deal 17, the defaulting trader was Bullfinch and yet the monies still flowed through Megatek, Soluciones, Parecom and Jemax. HMRC submitted that the fact that this should occur regardless of who the appellant's supplier or defaulter was, was suggestive of the appellant being a knowing and willing participant in the fraudulent scheme.

389. In the vast majority of the 38 deals, the appellant purchased from TGT. TGT was originally set up by Mr Haried and was then taken over by Mr Haried's brother. HMRC submitted that there was no logical commercial explanation for adding this further trader into the transaction.

390. The value of the trade conducted by the appellant was simply too good to be true. Prior to entering into the CPU and mobile phone trade, the appellant was running a sports equipment business. During the VAT visit on 18 March 2004, Mr Haried stated that his company fronted a multi-million pound US operation and he had made a lot of money. Mr Simmons noted that checks on HMRC's systems showed that the business had in fact made a loss.

391. However once the appellant started to deal in CPUs and mobile phones, trade soared vertiginously. In particular, the VAT returns 04/06 to 06/06 show total sales of £16,807,939 in a three month period. This appeared to have been achieved whilst operating from a business unit which Mr Haried rented for £1000 per month and employing only part time staff. There was no logical explanation for the huge increase in trade such as a significant injection of capital and in such circumstances HMRC submitted that it could be inferred that the appellant knew full well that these increases were the result of deals connected with fraud. These were the "large and predictable rewards" alluded to by the Court of Appeal in the *Mobilx* judgement at paragraph 84.

392. HMRC submitted that the number of CPUs claimed to have been traded in the appellant's deals were so significant as to cast doubt on whether the goods actually existed. This was relevant to the existence of fraud in the transaction chains and to whether the appellant knew or should have known that the transactions were connected with fraud.

393. HMRC referred to Dr Finlay's statement. The appellant was purportedly trading a huge number of CPUs. In 2006, the total annual value of grey market exports of Intel CPUs was £1.4 million. In the same year, the total annual value of grey market

exports of AMD CPUs was £0.5 million. These total annual figures give a monthly export average of £116,000 for Intel CPUs and £41,000 for AMD CPUs. HMRC submitted that yet in a single deal on 4 April 2006 (deal 1), the appellant claimed to have exported £379,200 of Intel CPUs. On 11 April 2006, the appellant then claimed to have exported a further £1,408,380 of Intel CPUs (deals 2, 3 and 4) and on 13 April 2006, a further £341,113 of Intel CPUs (deals 5 and 6).

394. HMRC submitted that between 19 April and 25 April 2006 the appellant then claimed to have exported a further £3,038,628. In April alone therefore the appellant claimed to have exported over £5.1 million of Intel CPUs which was more than 3.5 times the number of annual grey market exports.

395. HMRC submitted that before entering into these deals the appellant should have addressed its mind and conducted research as to the extent of the market in these CPUs. In such circumstances, the appellant must have known that the level of trade that it was conducting was incredible and yet it chose to go on regardless and without the benefit of "open box" inspections. This conduct was something from which it could be inferred that the appellant knew that it was involved in chains connected with fraud.

396. Despite the significant value of the CPUs being traded and despite the fact that inspections revealed some of the boxes to be scuffed, which in turn would have led a trader that was entering into genuine, commercial transactions to be concerned with whether the CPUs might have suffered some form of damage, the appellant chose inspections that were "closed box". HMRC submitted that that this was done because the appellant knew that it could not have been trading the number of CPUs that were being invoiced and an open box inspection would have confirmed this.

397. The 38 deals are similar in that they involved back to back trading of CPUs and mobile phones via a third party warehouse and involved the same suppliers, being TGT and Comveen, to previous deals that, to the appellant's knowledge, had traced to tax losses. HMRC contended that the fact that the appellant, despite the previous warnings, went ahead with the 38 deals was suggestive of the fact that the appellant was a knowing and willing participant in the fraudulent scheme.

398. The appellant knew that third party payments were indicative of fraud and yet despite knowing that TGT were making such payments, which was confirmed by Mr Haried's statement, continued to purchase from it.

399. There were no formal contracts in place in relation to the 38 deals. The only terms were those set out on the sales invoices and purchase orders. HMRC submitted that these terms would not give any real level of protection in the case of any dispute between the parties. Given the significant value of the goods being traded and the fact that Mr Haried had utilised written contracts in his sports goods deals it could be inferred, when taken with the other matters set out above and below, that this failing was because Mr Haried knew that there would be no later dispute in relation to the goods as the deals formed part of a scheme to defraud HMRC.

400. "Busybody" reports in relation to Comveen and TGT gave a picture of companies that could not have genuinely sourced millions of pounds of goods. TGT had a net worth of £2 and Comveen a credit rating of £500. HMRC contended that despite this, and despite previous warnings, the appellant pressed on regardless and purchased from these traders. No due diligence had ever been provided in relation to the appellant's customers.

401. The appellant's trading terms, that is customers always wanting to purchase the exact amount of stock that the appellant could secure from its supplier, meant that there was never a need for the appellant to hold stock or to "bulk out" by purchasing from more than one supplier. HMRC submitted that the fact that in numerous of the transactions the appellant's supplier seemingly did not need to be paid until the appellant's customer had paid it was too good to be true especially when repeated across numerous deals and the appellant must have known that such terms were only being offered because the deals formed part of a fraud.

402. HMRC submitted that the fact that each and every deal including the buffer deals was traced to fraud was something from which the appellant's knowledge could be inferred. This was not a case of a trader getting "caught up" in a single deal that traces back to fraud but rather was suggestive of the fact that the appellant chose only to enter into deals that would trace back to tax losses.

403. The mark-ups ups were consistent and fixed throughout many of the chains. The purpose of a fraud is to make money. The appellant received the lion's share of the profits, at least 80% for virtually every deal with the remainder distributed amongst the other traders. HMRC contended that fraudsters would not allow an innocent party to take the bulk of the illicit profit.

404. HMRC submitted that in respect of each deal, the transaction chain was contrived and fraudulent and that each party in the chain, including the appellant, knew or should have known that they were connected with fraud. The transactions were carried out with the sole purpose of cheating the HMRC.

405. HMRC submitted that the 35 "direct tax loss" transactions were part of an overall scheme of MTIC fraud. The UK trader at the beginning of each and every one of the 35 deals in respect of which the appellant has been denied input tax is a defaulting trader. The appellant appears as a broker in all of these chains.

406. In three of the deals the appellant appears as "broker 2" in a contra/acquisition chain in which Globalised acted as an acquirer from the EU. These transactions were linked to a second chain of tax loss transactions in which Globalised appeared as "broker 1". These tax loss chains traced to 2 defaulting traders.

407. The 38 deals which are the subject of this appeal would have made the appellant a gross profit in excess of £1 million. Mr Haried simply had to make a few phone calls and produce a number of purchase orders and invoices. These are the "large and predictable rewards" alluded to by the Court of Appeal in paragraph 84 of the *Mobilx*

judgement and were such that the appellant should have known that its purchases were connected with the fraudulent evasion of VAT.

408. HMRC submitted that in the context of the trade the appellant must have known that these rewards could only be reaped over such a short period of time through its involvement in fraud.

409. HMRC contended that further the appellant never made a loss on a deal and was always able to sell exactly the amount it had sourced or alternatively was able to buy exactly the amount its customer required. The appellant did not have to pay its suppliers for the phones until it was paid by his customers. These circumstances were quite simply too good to be true.

410. With respect to the 38 deals which are the subject of this appeal, each of the 35 MTIC direct tax loss transactions has been traced to one of the seven defaulting traders. In the contra transaction chains, the indirect tax loss transactions, a further two defaulting traders feature. HMRC submitted that the fact that 38 transactions in 3 months all traced to nine defaulting traders could not be mere coincidence. Neither was it a coincidence that the 9 buffer deals in this period also traced to defaulting traders.

411. Other than the defaulters, contra traders, suppliers and customers, the same five companies feature as buffer dealers in the 38 deal chains, namely Bond Corporation, Valler, Atomic, TGT, Star Express and Compulinx. The positioning of the traders in the deal chains was regularly the same in different deals. The appellant was always the broker. It was submitted by HMRC that the reason for this is that trade was contrived.

412. When one defaulter was deregistered, another one was slotted into its place in the chain. The rest of the chain remained nearly identical for each deal. This is further evidence of the contrived nature of the supply chains that the appellant entered into. Mr Simmons had described how Deal 23 was carried out on 9 May 2006. This had been traced to Bullfinch. Bullfinch was deregistered with effect from 13 May 2006.The next transaction, deal 25, was carried out on 16 May 2006 and had been traced to World of Power. The appellant's supplier for both deals was Comveen.

413. In 21 of the 38 transactions in question, a company called Data Solutions Northern Ltd VRN 856 3928 83 ("Data") can be found in the supply chain. In transactions 1, 17 and 18, Data was the defaulter in the supply chains. In the remaining 18 supply chains where they feature, they acted as the first line buffer. Whilst trading, Data made third party payments. It was warned about the risks involved with making or passing on third party payments, yet these were ignored. HMRC submitted that third party payments were a clear indicator of fraud within a supply chain.

414. The goods were bought and sold in large wholesale quantities and the transactions entered into were back to back. The back to back sales purportedly

passed through the hands of up to seven traders, many in different countries in a single day and none of these transactions added any real value to the CPUs or phones.

415. HMRC submitted that almost without exception, the appellant was able to source a specific number of goods from only two suppliers, and find a customer for exactly the same goods, in exactly the same quantity, at a price that gave it a very consistent profit**.** It was highly unlikely that this would occur by chance within such a short timescale under normal commercial conditions. The fact that the requirements could be instantly matched supported the conclusion that the deals were fraudulent and contrived.

416. For the majority of the transactions that the appellant entered into, it was paid by its customer before it paid its supplier. This presented a risk free environment for the appellant as it did not release the stock to their customer until it was paid and it did not pay its supplier until they had been paid by the customer.

417. Both Comveen and TGT granted the appellant substantial credit. There was often a delay of several weeks between the goods being supplied and payment being made. There was no documentation detailing the terms of such credit or an explanation as to why they were prepared to grant such a generous facility, often running to millions of pounds.

418. HMRC submitted that it was strange that it did not appear to concern the appellant that it was able to arrange for goods to be removed from the UK before the suppliers had been paid. HMRC submitted that it should have seemed strange to the appellant that it could achieve consistently high gross margins for no commercial risk.

419. The appellant also told HMRC that credit checks were not particularly relevant in trading as goods were not released without payment. The appellant purchased millions of pounds of mobile phones from suppliers with low credit ratings yet did not appear to question how these suppliers could have acquired goods of such a high value.

420. HMRC submitted that in normal circumstances, it would be unusual, bearing in mind the geographical spread of the dealing, to transact with a supplier or customer who had the same branch of a UK bank. However it appeared that all of the companies in the trading chains held bank accounts with the FCIB.

421. HMRC submitted that the due diligence carried out by the appellant, fell well below the standard expected of an honest trader. Further, a number of negative indicators revealed by the checks were ignored, such as poor credit ratings. The appellant knew that the transactions were fraudulent, and therefore did not actually require any due diligence for its own purposes or peace of mind. It knew that its customers and suppliers would not let it down because the transactions had all been pre-arranged. HMRC submitted that appellant went through the motions of due diligence with the objective of demonstrating compliance with HMRC.

422. No evidence was provided by the appellant to show what research it conducted as to lowest open market value of the CPUs or phones in accordance with Notice 726.

HMRC contended that the appellant was not concerned with establishing the open market price as it was knowingly involved in contrived trade in which the price of the phones did not actually matter.

423. Mr Haried stated in his second witness statement that he relied on verbal references from a person referred to only as "Angela" at Forward Logistics Ltd to tell him who she thought he should or should not trade with. Ian Simmons however stated that the appellant had presented no evidence as to the credentials of Angela or her ability to be able to provide such a reference. The references were verbal suggesting that the check was informal. The appellant did not produce any notes or follow up emails regarding these verbal references. The same applied to Mr Elliott-Square of IPT/ICB.

424. HMRC submitted that in the light of the evidence from Dr Findlay it was clear that the appellant was not trading in the grey market and must have known, or at the very least should have known that this was the case.

425. The appellant's deals and the appellant's trading behaviour did not bear the distinctive characteristics that would be expected if one of the five recognised grey market opportunities was being exploited.

426. The appellant did not purchase stock on a speculative basis nor hold stock. There was no suggestion that the appellant had any relationship with ADs or assemblers. In the appellant's deals there was no such direct delivery as would be expected with the purchase of excess inventory and the goods are simply "released" down a chain whilst ostensibly in a freight warehouse. The purchase documentation in the appellant's deals does not provide the requisite level of specificity and the transactions chain contain an excessive number of participants and yet there is no manufacturer and/or AD present.

427. In the alternative HMRC submitted that all these factors taken together were such that the appellant should have known that its purchases were connected with the fraudulent evasion of VAT.

Findings

428. As will be seen by the introduction, before commencing this hearing we considered very carefully whether to go ahead in the absence of the appellant. These appeals were first made in 2007 and 2008 giving the appellant ample time to prepare for a hearing.

429. We were satisfied by the evidence provided that there had been fraudulent evasions of VAT and that the appellant's purchases were connected with those fraudulent evasions. HMRC subjected the appellant's 38 purchases to extended verification. This verification showed that 35 of the purchases traced back through a chain of "buffer" traders to a trader that had failed to account for the VAT due. The remaining three purchases were traced back to Globalised, the contra trader.

430. The appellant claimed in its appeal that the standard to which HMRC had to prove their case was not the normal balance of probabilities but a heightened civil standard which was commensurate with a criminal standard.

431. We found that the standard of proof is in the words of Lord Hoffman in *In Re B*

> "There is only one rule of law namely that the occurrence of the fact in question must be proved to have been more probable than not".

432. The *In Re B* approach was confirmed by the Supreme Court in *S-B Children* UK SC 17 when Lady Hale confirmed that:

> "…there is no necessary connection between the seriousness of an allegation and the improbability that it has taken place. The test is the balance of probabilities, nothing more and nothing less"

433. The civil standard of proof has been universally applied in the MTIC cases and justification for its use in such cases was enunciated by Judge Avery-Jones in paragraphs 8 and 9 of *Telement Limited v The Commissioners for Her Majesty's Revenue and Customs* [2010] UKFTT 470 (TC) where it was said:

> 8. In relation to the standard of proof, it used to be said that the more serious the allegation the less likely it is that the event occurred and the stronger (or more cogent) should be the evidence before a court concludes that the allegation is established on the balance of probability. The House of Lords in *In re B* [2009] AC 11 has clarified this.
>
> 9. Our understanding is that the dangers of the old formulation were first, that it could be misunderstood to be increasing the civil standard of proof to something above the balance of probability; and secondly, that it was illogical to start with considering the seriousness of the allegation in a vacuum and assume that all serious allegations were unlikely and therefore needed cogent proof. Now one starts with determining the likelihood of the allegation having regard to the surrounding circumstances and not in a vacuum. Having done so the only question is whether the allegation is proved to the balance of probabilities. In other words, the inherent probability itself includes the particular circumstances.

434. These proceedings were not criminal or quasi-criminal, but were rather whether the appellant had complied with all the conditions for claiming input tax.

435. We found that the appellant ought to have known and on the balance of probabilities the appellant did know that its transactions were connected with fraud for a number of reasons as set out below.

436. We carefully examined both of Mr Haried's witness statements and the appeal notices filed on the appellant's behalf. We found that Mr Haried appeared to be an intelligent and experienced businessman who had been operating his own businesses for some considerable time.

437. We found that HMRC had made quite clear to the appellant's director the extent of the MTIC fraud. They visited him at least four times, provided notice 726 and wrote him a number of informative and warning letters. Mr Haried complained to

HMRC after one of these visits and in his witness statement he alleged that the HMRC officers occasionally said something that was incorrect but when he or his accountant corrected them HMRC accused them of knowing too much about the industry.

438. HMRC informed Mr Haried by letter on 7, 12, 31 January 2005 and 7 March 2006 that one of the two transactions completed in the VAT period 10/04 had been traced to a defaulting trader. The supplier was Topbrandz but despite this Mr Haried continued to trade with Topbrandz. Following receipt of the letter dated 12 January 2005 Mr Haried stated that the appellant would no longer trade with Topbrandz. However the appellant conducted deals with Topbrandz on 25 August and 10 November 2005.

439. Despite continued warnings from HMRC concerning its supplier Comveen the appellant continued to deal with this company. In total the appellant was notified on six different occasions that four of its transactions had been traced to a tax loss. Of these Comveen and TGT were the suppliers in at least two of these transactions yet the appellant continued to trade with them through the VAT periods of 04/06, 05/06 and 06/06 which are the subject of this appeal.

440. We found that although Mr Haried's solicitor asserted in a letter dated 15th December 2006 that the appellant did not continue to deal with any of the suppliers where a tax loss had been indicated, this was untrue.

441. Mr Haried referred in his witness statement to the fact that during the period 04/06-06/06 the appellant also purchased goods from a UK supplier and then sold those goods on to a UK customer (termed "buffer deals") and was allowed to credit the input tax on those purchases. However whilst the input tax on those buffer deals is not the subject of this appeal, we found that these buffer deals are relevant in that each of these deals also traced to a tax loss.

442. The Tribunal could find no credible or commercial reason why TGT decided to sell goods to his brother's company rather than export them directly itself particularly when the appellant was unable in many instances to pay it for the goods.

443. We found that TGT had made third party payments in the past. TGT advised HMRC on 8 June 2005 that it would continue to make third party payments until it was told not to by HMRC. It was not until a year later, on 7 June 2006, that TGT wrote to HMRC and advised that it was no longer making third party payments.

444. The appellant knew that third party payments were indicative of fraud and yet despite knowing that TGT were making such payments continued to trade with it. Although Mr Haried submitted that he saw nothing wrong with the making of third party payments we were concerned that despite all the warnings from HMRC and his claim that he and his accountant knew all about the trade, he chose to ignore the warnings about third party payments.

445. In a letter sent to HMRC dated 18 March 2004 Mr Haried stated that he considered it an insult that he had been asked if he was splitting any payments to other

companies in transactions and in a letter dated 15 December 2006 Mr Haried's solicitor asserted that "Our client would make a decision fairly early on about whether or not to conduct business with a new partner, by example speaking to other traders and asking whether or not they made third party payments, in which case it would take the matter no further." However we found that in his second witness statement made in 2009 Mr Haried stated that he was aware that TGT were making third party payments and did not believe that there was anything wrong with this.

446. There were no formal contracts in place in relation to the 38 deals. The only terms were those set out on the sales invoices and purchase orders. These terms would not give any real level of protection in the case of any dispute between the parties. Mr Haried utilised written contracts in his sports goods deals which were of far less value than the significant value of the goods being traded in the 38 deals. We found this an indication that Mr Haried knew that there would be no later dispute in relation to the goods.

447. Although it was submitted by the appellant that this was common in the trade we could not believe that this would apply when goods worth millions of pounds sterling were being sent overseas to a customer of whom the appellant knew very little.

448. We found that an experienced businessman such as Mr Haried would surely have insured these goods of such high value but no evidence of such insurance was ever provided. This suggested to us that Mr Haried knew that this was not necessary as he was a knowing participant in a fraudulent scheme.

449. Whilst Bond Corporation did not have direct trading relationship with the appellant or the appellant's suppliers, Comveen and TGT, it featured in 15 of the 38 deals and its address was stated on its sales documentation as Office 7, 111 Whitby Road, Slough, SL1 3DR**.** On the appellant's VAT 1, the address given was 111 Whitby Road, Slough, SL1 3DR although the appellant has since moved from that address. In light of the other factors indicating a contrived scheme to defraud, we found it unlikely that this commonality of address could simply be a coincidence.

450. On the evidence given by Ms Holden and Mr Downer we were satisfied that the director of Globalised knew that the broker chains led back to tax lost through fraud. This meant that Globalised itself was a fraudulent defaulter in respect of the phones which reached the appellant. Globalised featured in deal "templates" found on a memory card uplifted as part of a criminal investigation.

451. Globalised's deals made little commercial sense especially when it is appreciated that there are significant familial and other links between the parties.

452. We found on the evidence provided that Globalised was a contra trader and that even if it was not a defaulter the phones acquired by the appellant were connected with tax lost by the fraudulent conduct of Anfell and Swindon.

453. We found no commercial reason why significant quantities of CPUs and mobile phones would come into the UK only to be exported back out of the UK almost immediately. In his witness statement Mr Haried claimed that Hong Kong was a trading hub whilst China manufactured the CPUs for Intel. He suggested that it was perfectly possible that the CPUs went to Intel's distributors around the world and were then sold onto the grey market and thence to Hong Kong where there was a shortage of CPUs. The letter from his solicitors stated "The goods were exported to Hong Kong, which is a recognized international trading hub. Your referral to Hong Kong as being part of China is an unnecessary attempt to confuse the position and of course undermine our clients claim, and does nothing to clarify matters".

454. Unfortunately in the light of the evidence provided by Dr Finlay we were not convinced by this. As stated by Dr Finlay in 2006 the total value of grey market exports of Intel CPUs was £1.4 million. Yet in a single deal on 4 April 2006 (deal 1) the appellant claimed to have exported £379,200 of Intel CPUs. On 11 April 2006, the appellant then claimed to have exported a further £1,408,380 of Intel CPUs (deals 2, 3 and 4) and on 13 April 2006, a further £341,113 of Intel CPUs (deals 5 and 6). Between 19 April and 25 April, the appellant claimed to have exported a further £3,038,628 worth of CPUs.

455. In April alone therefore the appellant claimed to have exported over £5.1 million of Intel CPUs which was more than 3.5 times the number of annual grey market exports.

456. As an experienced businessman we would have expected Mr Haried to conduct some research as to the extent of the market in these CPUs before entering these deals. In such circumstances, the appellant must have known that the level of trade that it was conducting was incredible and yet it chose to go on regardless and without the benefit of "open box" inspections. This conduct is something from which we infer that the appellant knew it was involved in chains connected with fraud.

457. Despite the significant value of the CPUs being traded and despite the fact that inspections revealed some of the boxes to be scuffed, which in turn would have led a trader that was entering into genuine, commercial transactions to be concerned with whether the CPUs might have suffered some form of damage, the appellant chose inspections that were "closed box". We found it likely that this was done because the appellant knew that it could not have been trading the number of CPUs that were being invoiced for, and an open box inspection would have confirmed this.

458. Although Mr Haried submitted that he relied on the inspection reports alone and did not think it necessary to obtain photographs, we found it difficult to accept this after taking into account the value of the goods being exported. Similarly although it might have been acceptable for some of the boxes to be scuffed, we found it unlikely that a businessman of Mr Haried's experience would have risked exporting such a large volume of goods without more detailed checks. No goods were ever returned as faulty or damaged despite the large volume traded.

459. We found that the appellant never provided any due diligence in relation to its customers. Although Mr Haried submitted that he knew his suppliers the same did not apply to the customers to whom he was exporting millions of pounds worth of goods. Mr Haried submitted that he had due diligence on the companies used by the appellant but could not locate it and it has still not been forthcoming.

460. We found that the appellant's customers always wanted to purchase the exact amount of stock that the appellant could secure from its supplier meaning that there was never a need for the appellant to hold stock or to purchase from more than one supplier. In numerous of the transactions the appellant's supplier seemingly did not need to be paid until the appellant had been paid by its customer. This seems just too good to be true especially when repeated across numerous deals and the appellant must have known that its transactions were connected to a fraudulent scheme.

461. The FCIB evidence showed circularity of monies. In the absence of a contrived scheme being in place, such circularity would not be achieved In respect of the FCIB evidence we found that regardless of the defaulting trader and the appellant's supplier, the money flows in the appellant's chains regularly traced back to the same traders based in other member states. By way of example, in deal 7, the defaulting trader was Midwest and the monies flowed through Megatek, Soluciones, Parecom and Jemax. In deal 17, the defaulting trader was Bullfinch and yet the monies still flowed through Megatek, Soluciones, Parecom and Jemax. That this occurred regardless of the appellant's supplier and the defaulter led us to believe that the appellant was a knowing and willing participant in the fraudulent scheme.

462. A further point we noted related to deal 14. As a result of Bullfinch paying Megatek, the first of the overseas companies in the chain, an amount that included VAT on the original purchase by the appellant less margins paid to buffers, the overseas companies received their share of the profits even if the appellant failed to recover the VAT.

463. In relation to deal 15 Mr Simmons said that he believed that Best Buy and Unlimited were connected. We found that this was more likely than not.

464. In general we found the analysis of the payments prepared by Mr Simmons to be correct. Of the 16 deals analysed, 12 followed a similar pattern with Parecom being involved in all of them, Megatek and Soluciones in 11 and Jemax in 10. The three phone deals where the contra trader Globalised was involved followed a different but still circular pattern. The final deal, number 38, again involved what were probably circular payments but the absence of an FCIB account for the customer, Syntek, made proof impossible.

465. In at least three of the deals, 17, 27 and 28, the series of payments appeared to be initiated by the appellant. This suggested to us that Mr Haried as the person behind the appellant must have been aware that there was a sequence of circular payments that would be completed by a payment to the appellant by its customer.

466. In all of the deals except the three phone deals, the amounts reaching the offshore companies included most of the VAT which the appellant was charged by its customer less margins to the intermediate UK traders.

467. In deal 14 the payments seemed to start before the appellant raised the invoice to its customer. We saw this as evidence that the transactions were set up in advance, far removed from a trader searching for the best deal in each case.

468. We found that the appellant shared a common director, Mr. Bobby Harried, with a company called Easycom Limited. Analysis of the FCIB data revealed that Easycom had received monies directly from Parecom and Soluciones. Parecom and Soluciones were recipients of monies in the tax loss chains.

469. We found that Easycom received £150,000 on 24 April 2006 from Parecom; £40,000 on 4 May 2006 from Parecom; £40,000 on 16 May 2006 from Parecom; £120,000 on 5 June 2006 from Parecom; £60,000 on 7 June 2006 from Parecom; £15,000 on 27 July 2006 from Soluciones; £7,000 on 27 July 2006 from Soluciones; £3,000 0n 15 August from Soluciones. In some instances, having received these funds, Easycom then made payment on to the appellant.

470. We found that the conclusions to be drawn from the payments received from Parecom by a company controlled by Mr Haried seemed to be firstly that the payments were described as either "deposit" or "deposit for a number of boxes", because the payer was someone other than the appellant's customer. This suggested not only that there was a pre-arranged circle of transactions but that Mr Haried must have known that this was the case. Secondly the decision by Mr Haried to arrange for these payments to be credited to an account in the name of a company in the British Virgin Islands, suggested that he knew the existence of these payments was damning proof of his knowledge of fraud and he intended to conceal them from HMRC.

471. We found that the 38 deals were similar in that they involved back to back trading of CPUs and mobile phones via a third party warehouse and involved the same suppliers, TGT and Comveen, as previous deals that to the appellant's knowledge, had been traced back to tax losses. That the appellant, despite the previous warnings, went ahead with the 38 deals is suggestive of the fact that the appellant was a knowing and willing participant in the fraudulent scheme.

472. We found that Busybody reports in relation to Comveen and TGT gave a picture of companies that could not have genuinely sourced millions of pounds of goods. TGT had a net worth of £2 and Comveen a credit rating of £500. Despite this, and despite previous warnings, the appellant pressed on regardless and purchased from these traders. Although Mr Haried submitted that the report on TGT was out of date he still did not explain how it was able to source goods worth millions of pounds.

473. We found that Mr Haried by his own admission in his witness statements was an experienced businessman. We did not believe that such a businessman would neither question the volume of goods being exported nor discuss with his brother at TGT why TGT did not export these goods itself. We found that Mr Haried and his

solicitor made a number of seemingly false statements to HMRC in an apparent attempt to pacify them and that Mr Haried blatantly ignored all HMRC's warnings.

474. Although the appellant submitted that there was no authority which would enable HMRC to take one chain of transactions into account when determining the fiscal consequences of another we took note of the words of Clarke J in *Red12 v HMRC* at paragraphs 109, 110 and 111 as quoted in the relevant law section above and quoted with approval by the Court of Appeal in *Mobilx*; and the words of Moses LJ in paragraph 83 of *Mobilx*:

> "..there were compelling similarities between one transaction and another…a pattern of transactions…transactions all of which have identical percentage mark ups…made by a trader who has practically no capital…as part of a huge and unexplained turnover…with no left over stock…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".

475. We found that consistent mark ups were made on the transactions regardless of the volume, suppliers or customers. In 2006, the appellant saw a huge increase in both its turnover and level of VAT repayment claim. Trade soared vertiginously. The VAT returns 04/06-06/06 show total sales of £16,807,939. The appellant received the lion's share of the profits, at least 80% for virtually every deal and in the period concerned made a profit of some £1 million. We found that these were the "large and predictable rewards" alluded to by the Court of Appeal in the *Mobilx* judgement at paragraph 84.

476. In conclusion the appellant through Mr Haried, an experienced businessman, who by his own admission was well aware of MTIC fraud, ought to have known that it was part of a fraudulent scheme. Overall we found that there were too many unexplained connections between the various companies for these to be coincidences and the profits of the appellant too good to be true for it not to have knowingly been part of a fraudulent scheme.

Decision

477. The appeal is dismissed.

478. 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.

SANDY RADFORD
TRIBUNAL JUDGE

RELEASE DATE: 28 June 2012