



**TC03660**

**Appeal number: MAN/2009/00022**

*TYPE OF TAX – VAT - section 61 penalty – no dishonesty – appeal allowed.*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**DAVID LANGHORNE**

**Appellant**

**- and -**

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

**TRIBUNAL:    JUDGE RICHARD BARLOW  
                  MR PETER WHITEHEAD**

**Sitting in public at North Shields on 8, 10, 11, 12, 15, 16, 17, 18, 22, 23, 24 and 25  
October 2012, and 15, 16, 17 and 18 July 2013.**

**Mr Iain MacWhannell of counsel instructed by Blackfords LLP appeared on  
behalf of the appellant.**

**Mr James Puzey of counsel, instructed by the General Counsel and Solicitor to  
HM Revenue and Customs, for the Respondents**

## DECISION

- 5 1. Mr Langhorne appeals against a decision that he is liable to penalties totalling  
£519,437 under section 61 of the VAT Act 1994, (the Act), issued on the grounds that  
a company called Formel E Limited (Formel) had evaded VAT and that the company  
was liable to a penalty under section 60 of the Act. Mr Langhorne was a director of  
the company at the material times and it is alleged that the conduct of the company  
giving rise to the penalty involved dishonesty making it liable to a penalty. It is  
10 alleged that the conduct of the company giving rise to the penalty under section 60 of  
the Act was “in whole or in part attributable to the dishonesty of Mr Langhorne”;  
making him liable to the penalty under section 61.
2. The nature of the evasion of VAT alleged by the company is the claiming of a  
VAT credit to which it is alleged it was not entitled.
- 15 3. Sections 60 and 61 of the Act were repealed in 2007 but were subject to  
transitional and saving measures which mean that the penalties in this case, which  
relate to activities in periods before the repeal, are not invalidated by the repeal of  
those sections.
- 20 4. Section 61(5) and section 83(1)(o) of the Act appear to be intended to restrict the  
right of appeal under section 61 in a way that might be said to be contrary to the  
principles of fairness and the human rights of a person penalised under section 61.  
That is because there is a restriction on the appellant’s ability to challenge the  
underlying liability to a penalty of the company. However, as our finding is that the  
Commissioners have failed to prove that Mr Langhorne acted dishonestly, our  
25 decision is based on that finding of fact and that makes it unnecessary for us to  
consider how far Mr Langhorne could in fact have disputed the liability of the  
company to a penalty under section 60 of the Act on which the penalty assessed on  
him depended.
- 30 5. It is not a defence to the section 61 penalty that no penalty had in fact been  
imposed on the relevant company under section 60. It would be enough that the  
relevant company was liable to a penalty. Again, as this decision is based on the  
finding of fact that the appellant was not dishonest the penalty is not payable whatever  
might have been our decision about whether the company would have been liable to a  
penalty.
- 35 6. This case was heard together with that of Mr John Wood and some of the  
evidence was common to both cases. The cases were not consolidated, nor could they  
have been, so a separate decision is required in both appeals.
- 40 7. The penalty alleged was notified to Mr Langhorne by a letter dated March 2005  
(no day specified). Contrary to what was said in the opening paragraph of the  
Statement of Case the penalty imposed on Mr Langhorne was 90% (not 100%) of the  
penalty that could allegedly have been imposed on the company.

8. There were separate penalties for each of the periods 08/02 to 01/03 inclusive and the penalties all relate to sums of input tax claimed by the company which HMRC say were evaded within the meaning of section 60 of the Act because the company had claimed a VAT credit to which it was “not entitled”. In each period the penalty has been assessed as 90% of the tax allegedly evaded.

9. The VAT credits must be ones to which the company was “not entitled” because that is the wording used in section 60(2). It follows that it could be open to argument whether the facts of this case fall within that provision at all. The basic facts are that the input tax claims were in respect of transactions in which goods were bought by the company and were exported giving rise, in principle, to a claim for input tax without any corresponding output tax liability because the onward sale, being an export, was zero rated. The goods did exist, they were purchased from another UK supplier which was registered for VAT and they were exported so this was not a case where the whole transaction was what might be called a 100% sham, which might have been the case if, for example, the goods never existed or were not in fact exported.

10. The exact parameters of how far a transaction, which is alleged to be a sham, must be shown, as a matter of law, to be such before no entitlement to input tax arises may be open to argument. But we need not consider that point as the ratio of this decision is that we have found, as a fact, that the appellant was not dishonest. Arguments about how far, in law, the transactions might have been held to be shams or otherwise not subject to a credit for input tax have therefore become irrelevant. Obviously some of the evidence that HMRC contends shows that the transactions were shams or otherwise not subject to a credit for input tax is relevant to be considered when deciding whether dishonesty has been proved.

25 *The Commissioners’ case concerning dishonesty.*

11. The allegations against Mr Langhorne do not provide any direct evidence that he had acted dishonestly and the Commissioners’ case is circumstantial though there is no doubt that circumstantial evidence can, in principle, prove dishonesty.

12. Mr Langhorne was a director and shareholder of Formel which was registered for VAT from 18 June 2002. Formel bought a large quantity of irrigation hose from a company called VPS (UK) Ltd (VPS) which was registered for VAT. VPS had manufactured the hose. That transaction was a taxable supply on which the standard rate of tax was payable. The Commissioners alleged in their statement of case that VPS sold most of the hose it manufactured to either Formel or a company called Asgard UK Limited (Asgard) which was owned and managed by Mr John Wood whose appeal was heard at the same time as this appeal.

13. VPS was alleged to be a company owned and operated by a Mr Thompson with whom Mr Langhorne been in business together on two previous occasions. The extent of that association will be dealt with below. VPS was set up by Thompson and, according to Thompson, a man named Volker Kappler (the V in the company name stands for Volker according to Thompson). There is no evidence that Mr Langhorne knew that Kappler was involved in that way until after the transactions in this appeal

had occurred and indeed HMRC agree that there is no evidence, other than Thompson's word, that Kappler was involved in VPS. Mr Langhorne did know that Kappler's companies dealt with Thompson's companies what he does not know is that Kappler may have been directly involved in the operations of VPS (if indeed he was).

5 14. The Commissioners alleged that Formel's sole business was the purchase and export of the hose and that it bought all its hose from VPS and sold it all to a business called Tazar Industries (Tazar) in the UAE.

10 15. The evidence does not provide full details of Tazar. There is some doubt whether Tazar was a UAE company or a Free Zone Enterprise in Dubai, or both. But the Commissioners allege that whatever was the precise legal entity to which the hose was exported it was operating under the name of Tazar and was in fact owned by Mr Thompson. Therefore Mr Thompson was selling the hose to his own company and the Commissioners allege that the interposition of a third party (Formel) made no sense in ordinary commercial terms.

15 16. In addition, the Commissioners allege that the hose was being sold to Formel at £1.39 per metre but its true value was alleged to be between 10p and 20p. Formel sold the hose on at £1.45 per metre.

20 17. Formel's terms of business with VPS and Tazar were that it was not required to pay VPS until seven days after it had been paid by Tazar and that Tazar was not required to pay Formel until 60 days after the hose had been installed in the ground.

25 18. Under the normal rules for crediting input tax, as was later accepted in principle by HMRC, Formel would therefore be able to claim a repayment from HMRC well before it was required to pay a tax inclusive price to VPS. Indeed under the rules Formel were obliged to claim the input tax in the period in which the supplies took place.

30 19. Whether the normal rules for input tax recovery were applicable or whether the special rules for terms similar to those applying in cases of goods sent on approval provided for by section 6(2)(c) of the Act were applicable, was not an issue either party raised. It has become irrelevant to consider that in light of our decision that HMRC's case fails because of their failure to prove dishonesty.

20. It is not in doubt that in the absence of fraud a legitimate claim for input tax can be made by the recipient of a supply whether or not the supplier has accounted for or intends to account for its output tax.

35 21. It was later alleged by the Commissioners that the input tax claim was itself artificially high because of the over valuation of the hose.

22. On 22 January 2003 officers of HMRC interviewed Mr Langhorne about the claims for input tax by Formel and at that stage HMRC had formed the view that Thompson had acted fraudulently but that the claims by Formel were repayable.

23. In fact at first HMRC proposed to Formel that it should accept part only payment of the input tax which they were agreeing was payable in principle and to allow them to credit the unpaid part as part payment of VPS's unpaid output tax. Formel took advice from a VAT consultant and rejected that suggestion. There is no legal basis for such a proposal and Mr Langhorne was so advised by his advisor. The input tax in dispute is £577,156 in total.

*The kidnapping of Mr Langhorne.*

24. On 14 March 2003 Mr Langhorne and Mr Wood were kidnapped in County Durham by men dressed as uniformed customs officers. They were beaten, threatened with guns and taken across the country to what Mr Langhorne believes to be premises owned by Kappler or one of his companies. There they were threatened again and demands for money were made. One of Kappler's companies, Superflexibles Ltd, alleged it was owed money by VPS or one of Thompson's companies. Indeed the money owed to Kappler's company was understood to relate to raw materials used to manufacture the hose that features in this case.

25. Approximately 20 minutes after Mr Langhorne and Mr Wood were released from their kidnap ordeal Kappler rang a customs officer, Karen McNeill, and gave her information.

26. Her notes of the conversation were heavily redacted because they included notes about information relating to serious crime given to Ms McNeill by Kappler. However the un-redacted parts of the notes include allegations by Kappler that he knew how "the hose scam" worked and that Thompson was "the personnel involved". He alleged that the hose was worth approximately 10p per metre and was being retailed (sic) by Thompson at £1.39 per metre. He also alleged that Tazar was owned by Thompson. In other words his allegations mirror those later made by HMRC.

27. In fact HMRC officers agree that they changed their minds about the correctness of the refunds of input tax to Formel as a result of this information from Kappler and they then instituted further inquiries.

28. Kappler also asked Ms McNeill to confirm the amounts of input tax repaid to Mr Langhorne's and Mr Wood's companies but according to her notes she declined to do so saying she was unable to discuss another company's affairs with him and he then told her that he knew the amounts anyway. Mr Langhorne believes that Ms McNeill acted improperly in her dealings with Kappler and suspects that she did tell him what he wanted to know but we do not find that to be the case. It seems someone told Kappler about the repayments but we see no reason to suspect Ms McNeill, rather it seems likely that Thompson may have told him. We consider that the fact that Kappler knew VPS were charging £1.39 per metre for the hose strongly supports the conclusion that it was Thompson who gave him the information.

29. Kappler said in the call immediately after the kidnap had ended that "a meeting had taken place" and that he "was confident that the monies would be repaid" which we take to be a reference to the money he said he was owed by Thompson. He added

“when people get money in the bank it goes to their head, but they get left a bit dented and smelly”. Naturally that last statement was relied on later when Kappler was prosecuted and convicted of kidnapping. He was sentenced to 10 years imprisonment but he obtained a re-trial on an appeal to the Court of Appeal and was acquitted at the  
5 re-trial.

30. The prejudicial statements made by Kappler in the calls to Ms McNeill and in an interview conducted by Mr Terrell, a customs officer, a few days before the kidnap were introduced into evidence in the appeal before us including a statement that Mr Wood was the brains behind the scam. When challenged as to why these statements  
10 were being introduced despite the fact that Kappler was not being called as a witness HMRC gave the excuse they so often give when introducing purely prejudicial evidence namely that it was “part of the background”.

31. They also emphasised that Kappler had in fact been acquitted and clearly hoped that we would give weight to his allegations. They failed to draw to our attention that  
15 he remained a convicted criminal despite the acquittal for the kidnapping in that he had previously received a suspended prison sentence for an unrelated offence of false accounting.

32. We should make it clear that, although the prosecution formally agreed certain things about and to the detriment of Mr Langhorne and Mr Wood for the purposes of  
20 the trial of Kappler, we note that Mr Langhorne and Mr Wood themselves did not agree with those allegations as they made clear in their evidence both at the trial and before the Tribunal. We do not regard the prosecution admissions as binding upon us. The same applies to remarks made by the Court of Appeal in the Kappler case. Those remarks were no doubt based on the prosecution admissions and in any case do not  
25 bind us as the fact finding tribunal in this appeal.

*Evidence about the value of the hose.*

33. Mr Langhorne believes that a witness who was due to give evidence that the hose was valued at 10 to 20 pence a metre was in fact connected to Kappler. That is not a fact we are able to decide.

30 34. On the day that witness, Mr Walton, was due to give evidence after the lunch adjournment Mr Puzey announced at 2pm that he had decided to withdraw the witness statement of Mr Walton and that the Commissioners would not seek to rely on Mr Walton’s evidence and indeed that Mr Walton had left the building in which the hearing was taking place.

35 35. Mr McWhannell expressed his dissatisfaction about this having occurred without his being given an opportunity to cross examine had he wished to do so or the courtesy of prior warning but, as the statement was withdrawn, he did not press the point. Mr Wood, as a litigant in person, was clearly significantly confused. We assured both parties that although we had read the statement of Mr Walton we would  
40 now ignore it and we have done so.

36. We should add that there was an issue about whether the hose examined by Mr Walton was in fact relevant to this appeal at all as there were alleged discrepancies between the sample taken by the police and the description of the hose examined by Mr Walton. Police Sergeant Halliday gave evidence and although we do not need to make a finding about this issue, as it has become irrelevant in the absence of any credible evidence about the value of the hose, whether the sample was a sample of the correct hose or not, we record that we accepted his evidence. The provenance of the hose sample is at least doubtful.

37. The Commissioners then relied on evidence from a Mr Hartley, a self-employed business consultant with a degree in marketing, who had worked for a manufacturer of porous pipes between 1997 and 2008.

38. He made no mention of his instructions nor did he state himself to be aware of any responsibilities he might have as an expert witness. We find that he was not qualified to give evidence as an expert.

39. He referred to prices charged for hose in 2002 by his former employers, for whom he now acted as a consultant. We are not satisfied that he was able to confirm that the type of hose his former employers were selling was equivalent to that which was being sold by Formel. None of the sales he was referring to were to the UAE.

40. Before it could be said that evidence had proved that the hose in this case was overvalued by comparison with other hose sold by other suppliers it would be necessary to establish that the hoses were sufficiently similar and that the market in which they were being sold was also sufficiently analogous to make a comparison worthwhile.

41. Mr Hartley's evidence failed to achieve either of those conditions and whilst other forms of evidence might have established an over-valuation none was presented.

42. Evidence from the Government Chemist about the apparent make-up of the hose added nothing so far as the value of the hose was concerned.

43. We have already indicated why we are not prepared to act on Kappler's assertions and that includes the statement that he alleged the hose was worth 10p a metre.

44. We therefore have to proceed on the basis that the over-valuation has not been proved.

45. We would add that, even if the over-valuation had been proved, that in itself would not necessarily have proved that Mr Langhorne knew it was over-valued.

*The evidence about Mr Langhorne and Mr Thompson's dealings prior to those relevant to the appeal.*

46. Mr Langhorne met Thompson when they both worked for the same employer which was a large plastics manufacturer and distributor. Mr Langhorne was a technical expert and Thompson was a salesman.

47. Around 2000 Thompson suggested that they should set up a company together with a view to starting a business involving the recycling of used tyres. Mr Langhorne researched the best way to recycle the tyres and a business plan was drawn up. A company called Parlex was set up and Mr Langhorne and Thompson were the directors.

48. The airliner attacks on the World Trade Centre in New York badly affected confidence at the relevant time and Parlex never traded in the recycling business.

49. Mr Langhorne told us and we find his evidence to be truthful on this point and in fact generally, that he was unaware that Parlex was the parent company of Tazar (as to which see below) and indeed he believed that Parlex had never traded. A document dated 9 June 2003 purportedly signed by Mr Langhorne concerning the eventual application to strike Parlex off the company register and a document dated 15 November 2001 being minutes of a Parlex meeting purportedly signed by Mr Langhorne; were examined by a handwriting expert. That witness, Mr Anthony Stockton, gave it as his opinion that there is “strong support for the proposition that the questioned signatures [purportedly of Mr Langhorne] ... were not produced by David Langhorne but were attempted simulations of his signature by another person(s)”.

50. We find that that evidence, at least to a balance of probabilities, proves that the signatures were forgeries. That is strong corroboration for Mr Langhorne’s case that he was not involved in Parlex’s trading, if indeed it ever traded, because had he been involved, it seems most unlikely anyone else would have needed to forge his signature.

51. Mr Langhorne was also involved in VPS (UK) Ltd. Thompson set that company up in March 2001 and Mr Langhorne was appointed the company secretary with his consent. He said that was because Thompson had asked him to act as the company secretary only because someone other than the director had to be named as secretary. For the purposes of this case Mr Langhorne’s representatives have obtained a form 288a from Companies House which records his appointment as company secretary on 8 March 2001. He disputes the signature on that document which purports to be his and Mr Stockton came to the same conclusion about that as in the case of the two documents already referred to. It is undoubtedly the case that Mr Langhorne ceased to be the company secretary of VPS on 22 March when Mrs Thompson was appointed in his place.

52. Mr Langhorne’s association with VPS until he became involved in the transactions relevant to this appeal is therefore limited to allowing his name to be used as company secretary for fourteen days.

53. It is a strong possibility that the forger of the signature on the VPS document was Thompson who is the only person known to have been involved in VPS unless he was right to say that Kappler was involved as well. Either way it shows that Thompson was prepared to use Mr Langhorne and to do so illegally (by forging his signature in this instance) for his own advantage.



54. We accept Mr Langhorne's evidence that his involvement in VPS was indeed to that limited extent.

*The evidence about Thompson's involvement with Tazar.*

5 55. We are satisfied that Thompson did have some sort of proprietorial interest in Tazar. The evidence was not complete or fully clear but documents from the Dubai Chamber of Commerce do show that Thompson was at least a part owner of Tazar and/or that a company of which he was a director (Parlex Ltd) was the parent company of Tazar and that Thompson was the manager in charge of Tazar. On the other hand there was also some evidence that suggested that Thompson only owned  
10 50% of Tazar. He himself said he owned 40% when he gave evidence at the kidnapping trial. In addition there was at least a possibility that Tazar consisted of both a UAE company and Dubai Free Zone Enterprise in which case it would not be exactly clear which of those entities the Chamber of Commerce was referring to.

15 56. We are unable to decide what precisely the Chamber of Commerce meant when it said Parlex was the parent company of Tazar. Taken literally, that would be inconsistent with the assertion that Thompson owned Tazar.

57. We find that whatever the true legal form and facts about the ownership of Tazar, at the very least, Thompson had a significant interest in it.

*The evidence about how Mr Langhorne became involved.*

20 58. It was part of HMRC's case that the deals between VPS and Formel were both unnecessary (in that Thompson's company could have sold direct to Tazar which was at least partly his company) and that the terms of business were suspiciously favourable to Formel (in that Formel did not have to pay VPS until it had been paid by Tazar) and that Formel was adding no value to the hose but would receive a profit  
25 for very little effort.

30 59. On the face of it those allegations are true and carry a good deal of weight. Mr Langhorne's explanation is that Thompson had approached him in late 2001 with a business proposition. Thompson wanted to produce irrigation and garden hose and thought the technology that had been researched in the failed Parlex venture would help with that idea. He proposed to Mr Langhorne that he should provide technical assistance in the setting up of the manufacturing of irrigation hose in return for a promise that hose would be sold to him by VPS which his company could sell on to Tazar which Thompson described as a contact he had in the UAE.

35 60. Mr Langhorne's evidence was that he was not told that Thompson had an interest in Tazar or that Parlex was the parent company. Mr Langhorne said that he had met Mr Nazar Omer of Tazar and was told by Thompson that he was the owner. Mr Langhorne also said that he was told his contacts would be mainly with a Mr George of Tazar.

40 61. Thompson also claimed that his relationships with the UAE had been damaged by the failure of an enterprise called Nutretech and that he was therefore not able to deal

with Tazar directly. As this appeal was heard at the same time as the appeal of Mr Wood we can see that the evidence about that having been said by Thompson is consistent with Mr Wood's evidence and both appellants' evidence is therefore corroborative of the other's.

5 62. Mr Langhorne said that Mr Omer had confirmed what Thompson told him about this problem. Mr Langhorne also gave evidence that Mr Omer had told him that Tazar had already secured sales to the UAE government which helped to persuade Mr Langhorne to go into the venture.

10 63. HMRC both contend and agree that Thompson was acting dishonestly and described how he had falsified VPS records, wrongly claimed input tax and deliberately failed to declare output tax. Those facts make it at least plausible that he might have duped Mr Langhorne and told him lies as Mr Langhorne claims was the case.

15 64. Mr Langhorne had had very little previous business experience. He is a technical expert in the polymers field and he certainly had not had experience of any export trade or dealing with the UAE or any other Middle East country as a businessman as opposed to advising as a polymers expert.

20 65. Mr Langhorne gave his evidence in a straightforward manner. It was consistent with the undisputed facts and no contradictions or inconsistencies emerged. He was cross examined at length and we were able to observe that he did not overstate or exaggerate his evidence.

25 66. Mr Langhorne produced evidence of expenditure he had incurred on premises for Formel and it is clear that these were entirely inconsistent with Formel being simply a shell to be used as part of a sham. Indeed HMRC criticised him for having a prestige address in London for which he incurred expense that would certainly not have been likely to be incurred if the transactions were mere shams as alleged. Formel also kept proper records and it is not disputed that the hose existed and was exported to the UAE.

30 67. Mr Langhorne had given up employment with a company in which he had worked for 21 years in order to be involved in Formel. Had he known that the transactions between VPS and Formel were to be mere shams, as HMRC allege, it would not have been necessary for him to give up his employment and he might just as well have simply lent his company's name to the transactions while still working as an employee. His having given up employment is therefore consistent with and  
35 corroboration of his account of the nature of the Formel business.

68. Mr Langhorne did not simply accept the wording of the contract between Formel and VPS which Thompson proposed and he insisted on some additions or amendments to it. That too is inconsistent with Mr Langhorne knowing that the transactions were mere shams set up by Thompson.

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*The questions about the quality of the hose.*

69. Soon after the hose was delivered to Formel and exported to the UAE it became apparent that there were serious issues about its quality. At first it seemed only that the boxes in which it was delivered were defective but it then became clear that Tazar was contending that the hose was not fit for its purpose and was defective. These issues also affected the supplies to and by Asgard and the issues arose before the kidnapping of Mr Langhorne and Mr Wood.

70. Mr Wood made efforts to resolve these issues including travelling to the UAE on 14 October 2002 and 2 November 2002. There is no doubt that he made these trips as he produced his passport which had been stamped by the UAE authorities. On those occasions he said that he negotiated with Mr Nazar Omer and Mr Sam George who were representing Tazar. Negotiations were about the quality issues concerning the hose.

71. Both Mr Langhorne and Mr Wood gave evidence that when Mr Wood made these trips to the UAE he was acting on behalf of both Formel and Asgard. We find that Mr Wood's purpose in visiting the UAE was to try to resolve the quality issues relating to the hose.

72. Mr Terrell, in his fourth witness statement, referred to various documents produced by Mr Langhorne and Mr Wood which they contended proved that the quality issues were genuine disputes. Mr Terrell then contended that "if this entire scenario ... was simply a means to commit fraud" then the documents were "exactly what [he] would expect to see because there was to be no payment for the goods and the manufactured dispute would excuse this whilst still allowing VAT repayment claims to be made". It may be true that Mr Terrell would expect that but the argument is circular and we do not find those documents were produced to prove the existence of an imaginary quality issue.

73. In particular we hold that Mr Wood's trips to the UAE are consistent with the contention that Tazar was asserting that there were defects in the hose and that he was making genuine efforts to resolve the issues that had arisen. Of course we have no way of knowing whether there were actual defects in the hose but Mr Wood's trips to the UAE are consistent with his believing that there was a genuine issue. That is also inconsistent with the case put forward by HMRC that these transactions were entirely sham transactions and that Mr Wood knew that to be the case. Had Mr Wood known that these transactions were shams it is inherently unlikely that he would have incurred the trouble and expense of travelling twice to the UAE. We also accept Mr Langhorne's evidence that these trips were made on behalf of Formel as well as Asgard and so the evidence is equally relevant to the question whether he was knowingly involved in a sham.

74. In that context it is worth noting that the documents about the quality issue had been raised by Tazar on 1 July 2002 (concerning the packing) and 23 September 2002 (so far as the performance of the hose itself was concerned). Those issues were therefore raised well before Mr Terrell began his investigation in January 2003 and

before officer Johnston uplifted Formel's documents on 22 January 2003. In other words the documents raising the quality issue pre-date the earliest date on which Mr Langhorne could be said to be aware that HMRC were investigating.

5 75. Whether or not the uplifting of the documents could have alerted Mr Langhorne to the fact that an investigation was under way is a matter of conjecture but subsequent events point to his having had no inkling that was the case.

10 76. Mr Wood's first visit to the UAE predated the uplifting of the documents. That is significant evidence to suggest that the trips to the UAE were genuine attempts to resolve the quality issues. Mr Langhorne and Mr Wood had agreed to co-operate concerning the attempts to resolve the quality issues and Mr Langhorne was involved in a meeting at Tazar's premises on 7 December 2002 at which Mr Wood was physically present and Mr Langhorne was involved via a telephone connection. Minutes of that meeting were produced and a fax header shows that they were faxed by Tazar on 7 December 2002. An amended supply agreement dealing with the quality issue and involving Tazar, Asgard and Formel dated 8 December 2002 was produced at the hearing. Mr Langhorne's evidence was that that was made as a result of the meeting on 7 December. We find that that amended supply agreement was made before the Respondents began their investigation which is proved by the fact that a Notary Public practising in Hartlepool attested that both Mr Wood and Mr Langhorne had signed copies of that agreement with Tazar in his presence on 11 December 2002.

25 77. Mr Langhorne did not accept that all the hose was defective and believed that defective sections could be removed making the rest saleable and he began to investigate the possibility of selling it to purchasers other than Tazar. He produced a document which he told us, and which we accept, was a list of potential buyers he had researched in UAE.

78. Those facts are at least consistent with the appellant's case that there was a genuine dispute which supports his case that the transactions, at least looked at from his point of view, were apparently genuine.

30 79. Mr Langhorne flew to the UAE in February 2003 to try to resolve the issues but his visit coincided with the Eid holiday and it proved to be ineffective not least because he found it difficult to arrange to meet the people he hoped to meet.

35 80. It is also significant that the supplies of hose to the UAE stopped in September soon after the quality issue was raised. Had Mr Langhorne known, as HMRC allege, that the transactions were shams involving virtually worthless hose designed simply to extract input tax from HMRC, they might just as well have continued after the quality issues arose as well as before.

40 81. Even after the interview on 22 January it seems Mr Langhorne would not have thought that he was under investigation because, as HMRC admit, it was initially their view that the transactions were fraudulent so far as Thompson was concerned but not

so far as Mr Langhorne was concerned. They took a different view only after Kappler had become involved and made the allegations he made in early March 2003.

5 82. The importance of the timings is that we find that the question of the quality of the  
hose arose before Mr Langhorne had any reason to think HMRC were investigating  
the transactions in any other than a routine way. He co-operated with Mr Wood who  
took significant steps to try to satisfy the purchaser and to resolve the issues about the  
quality; also before HMRC had indicated any intention to investigate. Those steps  
involved the expenditure of money and time. Those actions are, we find, entirely  
10 inconsistent with the allegation that Mr Langhorne was involved in transactions he  
knew to be fraudulent or a sham. Had the transactions been known by Mr Langhorne  
to be a sham then he would not have taken these steps at least not before he knew  
HMRC were investigating. Had he taken these steps only after he knew HMRC were  
investigating, that might have been an indication that he knew the transactions were  
15 shams but that is not what happened. We have in mind that, if these steps had only  
been taken after HMRC made it known they were investigating, it might have been  
said that the steps were just being taken to convince them that there was an innocent  
explanation but that is not what happened.

*The investigation.*

20 83. Mr Langhorne was interviewed by officers Johnston and Bonham and at the  
interview on 22 January it seems very clear that HMRC were viewing Mr Langhorne  
as an innocent party because after that interview HMRC had proposed the part  
payment we have already referred to at paragraph 23 above. That proposal was made  
on 4 February 2003. If it is supposed that Mr Langhorne was in fact aware that the  
transactions were fraudulent, as HMRC allege, and given that it was clear that  
25 Thompson was under investigation, as we find was clear from the interview; then it  
might have been expected that Mr Langhorne would have been only too happy to  
have received part of the input tax rather than to risk the investigation continuing or  
being extended to include him. Indeed if the transactions had been wholly a sham as  
HMRC allege and that Mr Langhorne knew that to be the case and he also knew the  
30 goods were worth only a fraction of what they were purported to be worth, all of  
which HMRC allege Mr Langhorne knew; then agreement to accept part payment of  
input tax, which would have ended the enquiries, would have been affordable as well  
as tempting from Mr Langhorne's point of view.

35 84. His taking advice from Mr Braim, the consultant, followed by a rejection of the  
offer of part payment is at least consistent with Mr Langhorne's innocence if not  
actually indicative of it.

*Financial transactions between Formel and other relevant parties.*

40 85. Mr Langhorne readily admitted at the interview on 22 January that Formel had not  
received payment for the hose from the UAE but that VPS had lent Formel significant  
sums of money via a company called Plainclear much of which Formel then paid to  
VPS. That circulation of money is certainly suspicious and is clearly indicative of  
fraud. However, it is clearly the case that Thompson was acting fraudulently as

5 HMRC allege and given Mr Langhorne's lack of business experience it may be that he was not aware that such a circulation of money should be regarded as suspicious. The fact that he readily admitted where the money Formel paid to VPS had come from indicates, we find, that he was in fact unaware of the suspicion that could have raised.

*SA Holdings.*

10 86. Mr Langhorne and Mr Wood were involved in setting up a company called SA Holdings after the transactions with which this appeal is concerned had occurred. That company in fact failed because both of them were too traumatised by the kidnapping to be able to attend to business activities. In fact they had to go into hiding with their families to safe houses for some time.

87. Steps had been taken to do market research at some cost to Mr Langhorne and Mr Wood in connection with the setting up of SA Holdings and we find that it was a genuine enterprise.

15 88. The relevance of that to this case is that it was alleged that they had used it as a means of sending the money they had received from HMRC by way of input tax repayments to Dubai in circumstances where they would then not be in a position to pay VPS for the hose even if Tazar eventually did pay for it.

20 89. The issues about the quality of the hose had certainly put it in doubt whether Formel would ever be paid and therefore whether it would ever be in a position to pay VPS and certainly one consequence of that would have been that VPS would not have been able to pay its output tax. In principle, unless the fraud had been proved that would not have been Mr Langhorne's responsibility. Eventually what should probably have happened would have been the issue of credit notes and a cancellation or fundamental re-assessment of the VAT position of both Formel and VPS but that never happened because of the trauma associated with the kidnapping and the collapse of both Formel and SA Holdings.

30 90. Mr Langhorne lost all the money he had put into SA Holdings and his evidence was that in effect he does not know exactly what happened to it but it seems probable from what he does know that Thompson and his associates in Dubai managed to take it. We find Mr Langhorne's evidence is truthful on these points – that is to say we find that he truly believes that is what happened to the money and certainly that he has not had the benefit of any of it.

35 91. We find that at the time Mr Langhorne was involved in setting up SA Holdings it simply did not occur to him that doing so would have any effect on the VAT position and that subsequently the failure to re-order the VAT position of Formel became impossible.

*Our conclusions.*

40 92. We have found that the respondents' case fails so far as the allegation of under-valuation is concerned and even if the valuation had been found to be exaggerated we

would not have found that the evidence proved that Mr Langhorne was aware of that fact.

93. We have found that Mr Langhorne was given and genuinely believed the reasons why his company was involved in the transactions.

5 94. We have found that the Mr Langhorne took steps and supported steps taken by Mr Wood which were inconsistent with the allegation that the transactions were shams or similar or at least were inconsistent with his knowing they were shams or similar.

10 95. We have found that Mr Langhorne's actions after the transactions went wrong were consistent with his being honest and indeed were inconsistent with his being dishonest.

15 96. We also observed him giving evidence and being cross examined and nothing emerged from that to suggest to us that he had been dishonest. Indeed the impression we formed was that he had genuinely believed that the business proposal from Thompson was legitimate and that it was proposed for the reasons Thompson gave. Mr Langhorne might have been naïve so far as business matters were concerned but our impression of him as a witness reinforces our findings that the evidence does not prove him to have been dishonest and indeed we have formed a positive conclusion that he was not dishonest.

20 On those grounds we find that HMRC have not proved the necessary dishonesty. Considering all the evidence we have reached a positive conclusion that Mr Langhorne was not dishonest. Our decision is not based only on a failure by HMRC to prove dishonesty.

25 97. 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.

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**RICHARD BARLOW  
TRIBUNAL JUDGE**

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**RELEASE DATE: 27 May 2014**