[2015] UKFTT 0216 (TC)

TC04412

Appeal number: MAN/2008/0139 & TC/2010/09369

VALUE ADDED TAX – input tax – denials of right to deduct on grounds that the Appellant knew or should have known that the transactions were part of fraud – alleged MTIC – Section 24 VATA 1994 – input tax claim – inaccurate description in invoice – appeals dismissed

FIRST-TIER TRIBUNAL
TAX CHAMBER

DEVI COMMUNICATIONS LIMITED **Appellants**

- and -

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

TRIBUNAL: JUDGE JENNIFER BLEWITT
MR BEVERLEY TANNER

Sitting in public at Birmingham on 16, 17, 18, 21, 22, 23 and 25 July 2014

Mr Mark Heywood QC, Counsel instructed on behalf of the Appellant

Mr James Puzey, Counsel instructed by HM Revenue and Customs, for the Respondents

DECISION

Introduction

1. This appeal involves the following two disputed decisions of HMRC:

   (i) The decision to assess the Appellant for input tax in the sum of £1,071,817 (subsequently amended to £1,036,021) on the basis that the Appellant had failed to satisfy HMRC that SanDisk memory cards purportedly purchased in or about October and November 2005 actually existed in the quantity claimed by the Appellant and therefore the requirement of Section 14 (1)(g) of the VAT Regulations 1995 had not been met (MAN/2008/0139) (which we shall refer to as the "SanDisk appeal"); and

   (ii) The denial of a claim for input tax credit in the sum of £321,402.20 on the Appellant's purchase of mobile telephones in VAT period 05/07 on the basis that it knew or should have known that the transactions were connected with the fraudulent evasion of VAT (TC/2010/09369) (which we shall refer to as the "MTIC appeal").

2. By Notices of Appeal dated 31 January 2008 (MAN/2008/0139) and 14 December 2010 (TC/2010/09369) the Appellant appealed against the decisions. The grounds of appeal can be summarised as follows:

MAN/2008/0139

(a) The Appellant held sufficient evidence to support a claim to input tax;

(b) That evidence meets the criteria of Regulation 14(1) of the Value Added Tax Regulations 1995 ("VAT Regulations 1995") properly construed;

(c) The Appellant acted in good faith in its purchases;

(d) HMRC have failed to give consideration to, or exercise any discretion under Regulation 29 of the VAT Regulations 1995;

(e) HMRC have failed to seek additional or alternative information from the Appellant in support of its claim;

(f) HMRC are put to proof that the goods purchased were not as detailed on the invoices;

(g) HMRC have failed to adduce any evidence to support its decision to disallow the input tax claim; and

(h) The decision breaches the fundamental Community Law principles of legal certainty, proportionality and legitimate expectation.

(a) HMRC have provided no evidence of the alleged fraudulent evasion of VAT or any connection to the Appellant's transactions;

(b) The Appellant denies any knowledge of the alleged fraudulent evasion of VAT or connection to its transactions;

(c) The Appellant denies that it should have known of the alleged fraudulent evasion of VAT or connection to its transactions;

(d) HMRC have failed to produce evidence or any indication of the legal test applied in reaching its decision.

3. We have dealt with the two appeals and the issues to be determined in each separately on the basis that that they are legally and factually distinct..

Legislation and case law

4. The legislation governing the right to deduct is contained within Sections 24 – 26 of the Value Added Tax Act 1994 ("VATA") and the VAT Regulations 1995 (SI 1995/2518).

5. Section 24 (6) (a) VATA 1994 makes provision for regulations to determine how input tax must be evidenced:

"Regulations may provide –

(a) for VAT on the supply of goods or services to a taxable person…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 or other information as may be specified in the regulations or the Commissioners may direct either generally or in particular cases or classes of cases…"

6. If a trader has incurred input tax which is properly allowable, he is entitled to set it against his output tax liability or to receive a repayment if the input tax credit due to him exceeds that liability. In order to exercise the right to deduct it is necessary to prove an entitlement to do so and the evidence required in support of a claim is prescribed by the VAT Regulations 1995. The relevant Regulations are:

Regulation 29:

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

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

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

Provided that where the Commissioners so direct, either generally or in relation to particular cases or classes of cases, a claimant shall hold or

provide such other evidence of the charge to VAT as the Commissioners may direct."

Regulation 13:

"(1) Save as otherwise provided in these Regulations, where a registered person –

(b) makes a taxable supply in the United Kingdom to a taxable person, or

(c) makes a supply of goods or services other than an exempt supply to a person in another member State, or

(d) receives a payment on account in respect of a supply he has made or intends to make from a person in another member State, he shall provide such persons as are mentioned above with a VAT invoice…"

Regulation 14:

"Subject to paragraph (2) below and regulation 16 save as the Commissioners may otherwise allow, a registered person providing a VAT invoice in accordance with regulation 13 shall state thereon the following particulars:

(a) an identifying number,

(b) the time of the supply,

(c) the date of the issue of the document,

(d) the name, address and registration number of the supplier,

(e) the name and address of the person to whom the goods or services are supplied,

(f) the type of supply…

(g) a description sufficient to identify the goods or services supplied

(h) for each description, the quantity of the goods or extent of the services, and the rate of VAT and the amount payable, excluding VAT, expressed in sterling,

(i) the gross total amount payable, excluding VAT, expressed in sterling,

(j) the rate of any cash discount offered,

(k) each rate of VAT chargeable and the amount of VAT chargeable, expressed in sterling, at each such rate, and

(l) the total amount of VAT chargeable, expressed in sterling."

7. The requirements for a valid VAT invoice are dictated by individual member states. In *Reisdorf v Finanzamt Koln-West* [1997] 1 C.M.L.R 536 the ECJ stated:

"21. Article 22(3) contains mandatory rules for the drawing up of invoices and subparagraph (a) imposes an obligation on every taxable person, in respect of all goods and services supplied by him to another taxable person, to `issue an invoice or other document serving as invoice'. In addition, Article 22(3)(c) allows the Member States to lay down the criteria determining whether a document `serves as an invoice'. 22 It is apparent from Article 18(1)(a), read in conjunction with Article 22(3), that exercise of the right to deduct input tax is normally dependent on possession of the original of the invoice or of the document which, under the criteria determined by the Member State in question, may be considered to serve as an invoice.

23. The power conferred on the Member States by Article 22(3)(c) to lay down the criteria determining whether documents other than the original invoice may serve as an invoice includes the power to decide that a document cannot serve as an invoice if an original has been drawn up and is in the possession of the recipient.

24. That power of the Member States is consistent with one of the aims of the Sixth Directive, that of ensuring that VAT is levied and collected, under the supervision of the tax authorities (see the seventeenth recital in the preamble and Article 22(2) and (8)). In that regard, the Court held in Joined Cases 123/87 and 330/87 Jeunehomme and EGI v Belgian State [1988] ECR 4517, at paragraphs 16 and 17, that the Member States may require invoices to contain additional information to ensure the correct levying of VAT and permit supervision by the authorities, in so far as such particulars do not, by reason of their number or technical nature, render the exercise of the right to deduct input tax practically impossible or excessively difficult.

25. It must therefore be concluded that Article 18(1)(a) and Article 22(3) of the Sixth Directive permit the Member States to regard as an invoice not only the original but also any other document serving as an invoice that fulfils the criteria determined by the Member States themselves.

26. As regards, secondly, the provisions of the Sixth Directive relating to proof of the right to deduct input tax after it has been exercised by a taxable person, it should be noted that, as the German Government has rightly pointed out, Article 18, in accordance with its heading, deals only with exercise of the right of deduction and does not govern proof of that right after it has been exercised by a taxable person.

27. The obligations owed by taxable persons after they have exercised the right to deduct input tax derive from other provisions of the Sixth Directive. Article 22(2) thus requires every taxable person to keep

accounts in sufficient detail to permit application of VAT and inspection by the tax authorities. Article 22(8) adds that Member States may impose other obligations which they deem necessary for the correct levying and collection of the tax and for the prevention of fraud."

8. In *Premier Joint Ventures Limited v HMRC* [2010] UKFTT 135 (TCC) Judge Nolan concluded that it is vital that the description of the goods in the invoice tallies with the nature of the goods supplied for the Appellant to have a valid claim for input tax, stating (at [28]):

"…it seems to us to be settled law that this disparity is fatal to the valid nature of the VAT invoice. It is in other words irrelevant that the Appellant might have thought that he was acquiring what was described in the invoice, and that he may have contracted to acquire what was described in the invoice. The actual goods delivered must correspond."

9. A description of Missing Trader Intra-Community Fraud, hereafter referred to as "MTIC fraud", can be found in the judgment of Roth J in *POWA (Jersey) Ltd v HMRC* [2012] UKUT 50 (TCC):

"[1] This is yet a further case of so-called missing trader or "MTIC" fraud on the system of VAT. The decision of the First-tier Tribunal ("FTT") conveniently describes the nature of a typical MTIC fraud as follows:

> *"5 … goods (almost always small but valuable items such as mobile phones and computer chips) are acquired by a registered trader in the United Kingdom from a trader in another member State, and sold to a second UK-registered trader. The goods then usually change hands several times within the UK before they are sold to an overseas trader which, if it is located in a member State of the European Union, is registered for VAT in that member State. Commonly the transactions all occur within a few days of the entry of the goods into the UK, sometimes even on the same day, so that goods enter the UK in the morning, pass through the hands of several UK traders during the day, and are exported again in the afternoon.*
>
> *6. The first UK vendor, the acquirer from overseas, charges VAT on the consideration paid by his purchaser, but fails to account to the respondent Commissioners for that tax, and disappears. Such documentation as he may have had—if any—relating to his acquisition is never produced to the Commissioners. For the scheme to work he must be a VAT-registered trader who provides the purchaser with a genuine VAT invoice, on the strength of which the purchaser claims an input tax credit. The purchaser's own sale, and those of the other UK traders save the last in the sequence, usually generate a small profit and, consequently, a small net VAT liability, for which those traders account. The last trader, selling overseas, claims credit for the input tax he has*

incurred, but has no output tax liability since the sale is zero-rated. Usually this trader makes a significant profit, though that is not invariably the case; occasionally one of the antecedent traders can be shown to have made the greatest profit of all those in the chain. All of these sales and purchases, including the sale to the overseas buyer, are almost always properly documented.

[2] In the jargon that has developed to describe the various participants in such chains, the initial importer of the goods who fails to account for the output tax he has charged to his purchaser and disappears, is known as the "defaulter" or "missing trader." The trader at the end of the UK chain who sells the goods to a purchaser overseas is known as a "broker". The traders between the defaulter and broker are referred to as "buffers". In the present case, it is alleged that PJL was a broker."

10. *Kittel v Belgium, Belgium v Recolta Recycling* SPRL (C-439/04 and C-440/04) [2006] ECR 1-6161 *("Kittel")* provided the legal basis for the denial of the right to deduct in certain circumstances:

"55. Where the tax authorities find that the right to deduct has been exercised fraudulently, they are permitted to claim repayment of the deducted sums retroactively … It is a matter for the national court to refuse to allow the right to deduct where it is established, on the basis of objective evidence, that that right is being relied on for fraudulent ends...

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

57. That is because in such a situation the taxable person aids the perpetrators of the fraud and becomes their accomplice.

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

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

60. It follows from the foregoing that the answer to the questions must be that where a recipient of a supply of goods is a taxable person who did not and could not know that the transaction concerned was connected with a fraud committed by the seller, Article 17 of the Sixth Directive must be interpreted as meaning that it precludes a rule of national law under which the fact that the contract of sale is void – by reason of a civil law provision which renders that contract incurably void as contrary to public

policy for unlawful basis of the contract attributable to the seller – causes that taxable person to lose the right to deduct the VAT he has paid. It is irrelevant in this respect whether the fact that the contract is void is due to fraudulent evasion of VAT or to other fraud.

61. By contrast, 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."

11. The *Kittel* test was further clarified by Moses LJ in *Mobilx Ltd and The Commissioners for Her Majesty's Revenue and Customs, The Commissioners for Her Majesty's Revenue and Customs and Blue Sphere Global Ltd, Calltel Telecom Ltd & another and The Commissioners for Her Majesty's Revenue and Customs* [2010] EWCA Civ 517 ("*Mobilx*") at [24]:

"The scope of VAT is identified in Art. 2 of the Sixth Directive. It applies, in addition to importation, to the supply of goods or services effected for consideration within the territory of the country by a taxable person acting as such. A taxable person is defined in Art. 4.1 as a person who carries out any of the economic activities specified in Art. 4.2. Art. 5 defines the supply of goods and Art. 6 the supply of services. The scope of VAT, the transactions to which it applies and the persons liable to the tax are all defined according to objective criteria of uniform application. The application of those objective criteria are essential to achieve:-
"the objectives of the common system of VAT of ensuring legal certainty and facilitating the measures necessary for the application of VAT by having regard, save in exceptional circumstances, to the objective character of the transaction concerned." (Kittel para 42, citing BLP Group [1995] ECR1/983 para 24.)

And at [30]:

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

12. On the issue of knowledge, Moses LJ provided the following guidance:

"4. Two essential questions arise: firstly, what the ECJ meant by "should have known" and secondly, as to the extent of the knowledge which it must be established that the taxpayer had or ought to have had: is it sufficient that the taxpayer knew or should have known that it was more likely than not that his purchase was connected to fraud or must it be established that he knew or should have known that the transactions in which he was involved were connected to fraud?

52. If a taxpayer has the means at his disposal of knowing that by his purchase he is participating in a transaction connected with fraudulent

evasion of VAT he loses his right to deduct, not as a penalty for negligence, but because the objective criteria for the scope of that right are not met. It profits nothing to contend that, in domestic law, complicity in fraud denotes a more culpable state of mind than carelessness, in the light of the principle in Kittel. A trader who fails to deploy means of knowledge available to him does not satisfy the objective criteria which must be met before his right to deduct arises…

53. Perhaps of greater weight is the challenge based, in Mobilx and BSG, on HMRC's denial of the right to deduct on the grounds that the trader knew or should have known that it was more likely than not that transactions were connected to fraud. The question arises in those appeals as to whether that is sufficient or whether, as the Chancellor concluded in BSG, the right to deduct input tax may only be denied where the trader knows or should have known that the transaction was connected to fraud (see judgment, § 52). In short, does a trader lose his entitlement to deduct if he knew or should have known of a risk that his transaction was connected to fraudulent evasion of VAT? HMRC contends that the right to deduct may be denied if the trader merely knew or should have known that it was more likely than not that by his purchase he was participating in such a transaction. It contends that if it was necessary to show more than appreciation of a risk then the Court's decision in Kittel would not represent a development of the law and would fail to achieve the objective, recognised in the Sixth Directive, to which the Court referred at § 54…

56. It must be remembered that the approach of the court in Kittel was to enlarge the category of participants. A trader who should have known that he was running the risk that by his purchase he might be taking part in a transaction connected with fraudulent evasion of VAT, cannot be regarded as a participant in that fraud. The highest it could be put is that he was running the risk that he might be a participant. That is not the approach of the Court in Kittel, nor is it the language it used. In those circumstances, I am of the view that it must be established that the trader knew or should have known that by his purchase he was taking part in such a transaction, as the Chancellor concluded in his judgment in BSG:-
"The relevant knowledge is that BSG ought to have known by its purchases it was participating in transactions which were connected with a fraudulent evasion of VAT; that such transactions might be so connected is not enough." (§ 52)…

58. As I have endeavoured to emphasise, the essence of the approach of the court in Kittel was to provide a means of depriving those who participate in a transaction connected with fraudulent evasion of VAT by extending the category of participants and, thus, of those whose transactions do not meet the objective criteria which determine the scope of the right to deduct. The court preserved the principle of legal certainty; it did not trump it.

59. The test in Kittel is simple and should not be over-refined. It embraces not only those who know of the connection but those who "should have known". Thus it includes those who should have known from the

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

60. The true principle to be derived from Kittel does not extend to circumstances in which a taxable person should have known that by his purchase it was more likely than not that his transaction was connected with fraudulent evasion. But a trader may be regarded as a participant where he should have known that the only reasonable explanation for the circumstances in which his purchase took place was that it was a transaction connected with such fraudulent evasion.

13. In *Red12 v HMRC* [2009] EWHC 2563 at [109] – [111] Christopher Clarke J said this:

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

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

Further in determining what it was that the taxpayer knew or ought to have known the tribunal is entitled to look at the totality of the deals effected by the taxpayer (and their characteristics), and at what the

taxpayer did or omitted to do, and what it could have done, together with the surrounding circumstances in respect of all of them."

14. Mr Heywood referred us to the ECJ's judgments in *Kittel* and Case C-642/11 *Stroy trans EOOD* in support of his case in respect of the SanDisk appeal. We will address the submissions in due course but in short Mr Heywood sought to argue that *Stroy trans* provides support for the contention that the knowledge/means of knowledge test as set out in *Kittel* is relevant to an appeal where there is no valid invoice to demonstrate a taxable supply (*Stroy trans* at [50] and [52]):

"*It follows that a national court which is called upon to decide whether, in a particular case, there was no taxable transaction, and before which the tax authorities have relied in particular on irregularities committed by the issuer of the invoice or one of the issuer's suppliers, such as omissions in the accounts, must ensure that the assessment of the evidence does not result in the case-law recalled in paragraph 48 above being rendered meaningless and in the recipient of the invoice being indirectly obliged to carry out checks of the other party to the contract which, in principle, are not a matter for him.*

…In the light of the foregoing, the answer to the second question is that the principles of fiscal neutrality, proportionality and the protection of legitimate expectations must be interpreted as not precluding the recipient of an invoice from being refused the right to deduct input VAT because there is no actual taxable transaction even though, in the tax adjustment notice addressed to the issuer of that invoice, the VAT declared by the latter was not adjusted. However, if, in the light of fraud or irregularities, committed by the issuer of the invoice or upstream of the transaction relied upon as the basis for the right of deduction, that transaction is considered not to have been actually carried out, it must be established, on the basis of objective factors and without requiring of the recipient of the invoice checks which are not his responsibility, that he knew or should have known that that transaction was connected with VAT fraud, a matter which it is for the referring court to determine."

Burden of Proof

15. The parties agreed that in respect of the SanDisk appeal and whether the invoices held by the Appellant were valid the burden of proof rests with the Appellant.

16. In respect of the MTIC appeal the burden of proof rests with HMRC; per Moses J in *Mobilx* (paragraph 81):

"It is plain that if HMRC wishes to assert that a trader's state of knowledge was such that his purchase is outwith the scope of the right to deduct it must prove that assertion."

Issues

17. The issues to be determined in these appeals are:

The SanDisk appeal:

(a) Whether the invoices accurately reflect the supplies that took place; and

(b) Whether there is alternative evidence of the charge to VAT and in respect of which HMRC exercised their discretion in a way in which no reasonable body of commissioners would have done.

The MTIC appeal:

(a) Was there a tax loss;

(b) If so, did this loss result from a fraudulent evasion;

(c) If so, were the Appellant's transactions which are the subject of appeal connected with that fraudulent evasion; and

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

Undisputed Background Facts

18. The Appellant ("Devi") was incorporated on 12 October 1992 as a limited company which carries on business as a trader in *"Telecom, Retail and Installation"* from premises in Wolverhampton. It also had 3 retail premises selling mobile phones and accessories.

19. The director from 12 October 1992 to 11 November 2010 was Mr Parshotam Lal Chhiber and the Company Secretary was Mr Chhiber's wife. The company accountant was Mr Mahesh Jangra.

20. In 1987 Mr Chhiber entered into a business partnership with Mr Sharma and together they formed Sun Telecom, a retail outlet selling telecommunication products. A few months later the partnership ceased and Mr Chhiber set up a sole trader business called PLC Communications which retailed goods such as cordless telephones and mobile telephones. In 1991 Mr Chhiber bought out Sun Telecom and amalgamated it with PLC Communications. In 1992 the business was incorporated into Devi Communications Limited which was founded on 12 October 1992.

21. Devi was registered for VAT with effect from 1 March 1993. The VAT 1 signed by Mr Chhiber on 21 February 1993 declared that the company's trading activities would be telecom, retail and installation and that it would commence trading under the name of PLC Communications.

22. The Appellant shares premises and Mr Jangra's bookkeeping services with a company called Digital International Solutions Limited ("DIS") of which Mr Chhiber's son, Dipak Chhiber is the sole director. The two companies traded with each other in 2005/2006 and Mr Parshotam Chhiber had been, until 2005, the Company Secretary and sole shareholder of DIS.

23. Between 7 October 2005 and 25 November 2005 the Appellant purported to purchase 15,535 SanDisk 8.0 Gb Flash Memory cards. It's supplier was Grade One Trading Ltd ("Grade One") and the total value of purchases was £5,934,745.40 with VAT of £1,071,817.88. The Appellant sold the goods to Unicell AG ("Unicell") in

Switzerland in all transactions save one in which the customer was Lexus Telecom UK Ltd ("Lexus").

24. The majority of the supplies were treated by Devi as zero-rated exports to a third country. The goods were said to have been shipped to Unicell by Express Transport Services of Walsall based in the West Midlands.

25. The goods sold to Lexus were detained at Manchester Airport and subsequently seized on the basis they were counterfeit.

26. At a visit to the Appellant in May 2006 the company records indicated that between May and December 2005 the Appellant had reclaimed input tax on the purported purchase of over 19,000 SanDisk 8.0 Gb Flash Memory cards.

27. On the basis of evidence provided by SanDisk that a total of 5441 8 Gb memory cards had been shipped in 2005 taken together with other features of the transactions such as the lack of detail contained on the Appellant's invoices HMRC concluded that the Appellant could not have purchased the quantity of memory cards it claimed and on 5 October 2007 it was assessed in the sum of £1,071,817. This amount was subsequently reduced to £1,036, 321 on the basis that in the final transaction which involved the supply of goods to Lexus the Appellant was not the exporter, Lexus was and consequently it was the input tax claimed by Lexus which was disallowed.

28. The Appellant's mobile phone transactions with which this appeal is also concerned took place between 27 February 2007 and 18 April 2007. The Appellant made 7 purchases of Nokia mobile phones from Mobile One Distribution UK Ltd ("Mobile One") all of which it sold to Trading Point ApS ("Trading Point") based in Denmark and which is owned by Mr Chhiber with the exception of one transaction where the onward sale was to Elettroberg Sue Srl.

29. HMRC contend that the chains of supply were all traced back to Bushmaster Limited which, it submits, acted as a blocking trader to prevent HMRC tracing the source of VAT losses.

30. It is the case for HMRC that the Appellant either knew or in the alternative should have known that the relevant transactions were connected to tax losses and on that basis it denied the Appellant's entitlement to input tax deduction.

Associations of Mr Chhiber

31. Mr Chhiber was associated with a number of other companies both prior to and during the relevant time. These were:

(i) Mobile One: Mr Chhiber's son was a director of Mobile One from 3 June 2004 until 18 February 2005. Mobile One received a loan from Devi prior to November 2005 which enabled it to carry out an export transaction. It also sold goods to Devi in 2007;

(ii) Digital International Solutions Ltd ("DIS"): a supplier to the Appellant of which Mr Chhiber was appointed company secretary on 4 February 2004 and resigned on 20 July 2005. Mr Chhiber's son was appointed as director from 4 February 2004 and Mrs Chhiber was appointed as

company secretary on 20 July 2005. DIS shared trading premises with the Appellant. In his written evidence Mr Chhiber denied being aware that the Appellant had been DIS's sole supplier for a period of time; he stated that he was not aware of who DIS traded with.

(iii) Trading Point: a company registered in Denmark and of which Mr Chhiber was the sole director;

(iv) IC Distribution Ltd: of which Mr Chhiber was appointed director on 6 March 1998 and his son was appointed company secretary on the same date. The company was de-registered from VAT on 1 April 2004 and assessed by HMRC on 22 March 2002 in respect of dispatches for which satisfactory evidence of removal was not held. The company was wound up on 31 October 2007 with a VAT debt of £362,994.30 and following an investigation by the Insolvency Service Mr Chhiber gave an undertaking that pursuant to Section 1A of the Company Directors Disqualification Act 1986 he would not act as a director for a period of 4 years with effect from 8 June 2010. Mr Chhiber denied any wrongdoing; he stated that he could not afford to fund the appeal of IC Distributions and took the commercial decision to settle the case on a reduced term of disqualification with no admission as to liability after incurring substantial costs.

(v) PL Chhiber Communications Ltd (now dissolved);

(vi) Eternity Developments Ltd of which Mr Chhiber was appointed director on 24 October 2006 and Mrs Chhiber was appointed company secretary on the same date and later as a director;

(vii) Eternity Holding Ltd of which Mr Chhiber was appointed director on 23 October 2006 and Mrs Chhiber was appointed company secretary and director on the same date;

(viii) Eternity Homes Ltd of which Mr Chhiber was appointed director on 23 October 2006 and Mrs Chhiber was appointed company secretary and director on the same date;

(ix) Property la Spania Costa (UK) of which Mr Chhiber was appointed director on 25 February 2003 and his son was appointed director on 1 February 2004. The company (now dissolved) was de-registered on 10 April 2007 due to no response being received to a letter sent regarding the company submitting a series of nil VAT returns;

(x) Roweserve Ltd of which Mr Chhiber was appointed director on 25 July 1996. The company was de-registered on 21 January 1998;

(xi) Discovery Telecommunications (Wales) Ltd of which Mr Chhiber was appointed as director on 17 January 1995. The company was de-registered on 15 September 1997 and became insolvent on 18 July 1997;

(xii) J C Management (Ettingshall) Limited of which Mr Chhiber was appointed director on 26 February 2008 and Mrs Chhiber as company secretary on the same date;

(xiii) Arrival Leisure Limited of which Mr Chhiber was appointed as director on 30 March 2009 and his son was appointed company secretary on the same date.

The SanDisk Appeal: Evidence

32. Ms Andersson-Hudson, an officer of HMRC, gave evidence in respect of the assessment raised in period 11/05 as a result of HMRC disallowing input tax in respect of the SanDisk 8.0 Gb memory cards. She explained that on 3 May 2006 HMRC officer Bayliss requested daybook summaries from Devi of all supplies from Grade One from 1 September 2005 to 28 February 2006. On 4 May 2006 Mr Jangra, the company accountant, sent a supplier invoice breakdown for all of the Grade One supplies.

33. The relevant transactions are as follows:

- In October and November 2005 Devi purportedly sold 15,035 units of SanDisk Ultra 2 8.0 Gb Compact Flash Memory Cards to Unicell AG in Switzerland;
- In November 2005 Devi purportedly sold 500 units of SanDisk Extreme III 8.0 Gb Compact Flash Memory Cards to Lexus Telecom (UK) Ltd.

34. On 19 May 2006 HMRC visited the Appellant regarding 11 purchases of SanDisk 8.0 Gb memory cards. Devi supplied HMRC with its due diligence on Grade One and stated that these particular consignments had been given no more attention than normal. Basic checks had been carried out on the customer and the goods were shipped directly to Switzerland by Express Transport Services. The Appellant was advised that HMRC had serious concerns regarding the legitimacy of the products.

35. On 5 June 2007 HMRC wrote to the Appellant advising that information obtained from the manufacturer of SanDisk memory cards showed that only 5000 units of the product were produced in 2005 however the Appellant claimed to have sold 15,535 units in October and November 2005. The Appellant was asked to provide evidence in support of its claim in the form of serial numbers.

36. On 19 June 2007 Mr Woodward of Barringtons Chartered Accountants wrote to HMRC on behalf of the Appellant. He stated that serial numbers were not kept as the transactions predated any instructions from HMRC to keep such records. The letter enclosed an inspection report from Express Transport Services, a questionnaire completed by the customer Unicell, a letter and enclosures from Peak Developments Ltd (a UK distributor of SanDisk products) and a questionnaire completed by Express Transport Services.

37. On 2 October 2007 HMRC issued the assessment to the Appellant which was subsequently amended on 18 June 2009 due to an inputting error to £1,071,817.

38. In December 2005 HMRC seized the 500 memory cards sold to Lexus at Manchester Airport. SanDisk confirmed that the goods were counterfeit. Ms

Andersson-Hudson noted that there is no evidence that Lexus, which was denied its input tax claim as a result, sought redress from the Appellant for its supply of counterfeit goods.

39. On 11 June 2009 HMRC visited Express Transport Ltd and spoke to the director Mr David Wood. The visiting officer Ms Barnes gave evidence that Mr Wood had confirmed signing the inspection report in respect of the SanDisk products and that he had completed the questionnaire. Mr Wood told the officer that he had taken photographs of the goods on his old mobile phone but did not know how to transfer the photos. Mr Wood stated that he had carried out inspections of mobile phones but did not open the boxes save on one occasion when the phones had not matched those described on the box. He had turned down more work from the Appellant, as he had not been paid in the past. Mr Wood told Ms Barnes that the Appellant also had companies in Portugal, Denmark and Spain. He stated that the freelance driver he used when he was unavailable, Mr Wooley, had been asked by the Devi director "Lal" to take an empty load to Denmark which would be signed for despite the goods not existing.

40. A further visit by Ms Barnes took place on 12 August 2008. On that date Mr Wood told her that there had been a disagreement between himself and the Appellant over money. Mr Wood reiterated that he had been told by another driver that "Lal" had offered to pay for an empty load to be transported to Denmark and back to the UK. Mr Wood stated that it had been his decision not to carry out any more work for the Appellant as he was not being paid properly.

41. On the issue of the visits to Mr Wood and the alleged comments made by him, Mr Chhiber noted in his evidence that many of those comments were vague and it was unclear whether Mr Wood was referring to memory cards or phones, the Appellant's goods or those of other traders. Mr Chhiber highlighted the inaccuracies in Mr Wood's comments, including the assertion that the Appellant had a company in Portugal, although he clarified that he owned a holiday property company in Spain. Mr Chhiber categorically denied having asked a driver to transport an empty load and reiterated that it was his decision to terminate Mr Wood's services, noting that this had clearly left Mr Wood disgruntled hence the allegations made by him against the Appellant. Mr Chhiber also noted that HMRC had not called Mr Wood as a witness in these proceedings.

42. Ms Andersson-Hudson's written evidence also set out the deal chains in respect of each of the SanDisk transactions were identical, beginning with the hijacked company The Export Company (UK) Ltd.

43. In addition to the factors set out above, Ms Andersson-Hudson relied on the commercial checks undertaken by the Appellant in support of HMRC's decision on the invoices. On 27 October 2003 HMRC had informed the Appellant in writing that it had significant concerns that the checks carried out might not be sufficient to robustly support the deals done. The letter noted the following:

- The Appellant was only sporadically verifying VAT numbers with HMRC's Redhill office;

- Notice 726 which advised about MTIC fraud had been sent to the Appellant and advised that VAT numbers should be validated with Redhill prior to each and every deal;

- The Appellant was told to keep fully documented records of checks made.

44. Ms Andersson-Hudson explained that she had considered the due diligence in respect of Grade One. However the documents, such as Creditsafe reports and VAT number verification, were either years or months prior to the date of the relevant transactions or post-dated the deals. In cross-examination Ms Andersson-Hudson stated that she had not been aware of Mr Chhiber's long-standing relationship with the director of Grade One Mr Houghton. Mr Chhiber stated in his oral evidence that he had started trading with Mr Houghton in 2001:

"I never thought they were a wrong product he would supply to us…We always respected him. He's been known to us for a long long time…"

(Transcript 22 July 2014 page 52)

45. In oral evidence Ms Andersson-Hudson did not agree that the Appellant's earlier transactions involving SanDisk products (which fall outside of the scope of this appeal) had not caused concern; she explained that the earlier transactions had not been subject to extended verification.

46. Mr Hugh Connolly, the General Manager of SanDisk's European headquarters gave evidence regarding the memory cards. He confirmed that the closest SanDisk model names for the products purported to have been traded by the Appellant are:

- For the description on the Appellant's invoice stating "SANDISK 8.0 GIG ULTRA 2 FLASH MEMORY CARD" the SanDisk model was "Ultra II Compact Flash 8192MB";

- For the description on the Appellant's invoice stating "SANDISK 8 GB ULTRA 2 FLASH MEMORY CARD" the SanDisk model was "Ultra II Compact Flash 8192MB";

- For the description on the Appellant's invoice stating "SANDISK 8.0 GB ULTRA 2 COMPACT FLASH CARD" the SanDisk model was "Ultra II Compact Flash 8192MB";

- For the description on the Appellant's invoice stating "SANDISK 8.0GBULTRA 2 FLASH MEMORY CARD" the SanDisk model was "Ultra II Compact Flash 8192MB";

- For the description on the Appellant's invoice stating "Sandisk 8 GIG ultra 2 flash mem card"" the SanDisk model was "Ultra II Compact Flash 8192MB";

- For the description on the Appellant's invoice stating "SANDISK 8.0 GIG EXTREME 111- 8.0GB COMPACT FLASH MEMORY CARD" the SanDisk model was "Extreme III Compact Flash 8192 MB".

47. Mr Connolly also provided the launch date of Ultra II Compact Flash 8192MB as being September 2004 with the first shipment from SanDisk International Ltd to a European customer on 11 March 2005. The launch date of the Extreme III Compact Flash 8192 MB was April 2006 with the first shipment on 25 April 2006.

48. Mr Connolly stated that SanDisk had never supplied the Appellant and he could not provide any explanation as to how the Appellant might have acquired the volumes of goods shown on the invoices. He told us that he would normally be aware of a wholesaler dealing in such large volumes of SanDisk goods.

49. Mr Connolly explained that in the memory products trade all genuine invoices have certain indispensible features including payment terms and the product number. Mr Connolly noted that the Appellant's invoices lack most of these features although he accepted in cross-examination that certain features were only indispensible when dealing with international transport. He added that from the descriptions on the Appellant's invoices it would be virtually impossible to identify a precise product which is vital as the product has to be matched to a hosting device; if the product being purchased is unidentifiable it will be difficult to sell.

50. On the issue of a grey market, Mr Connolly accepted that this could hypothetically exist. However he found the possibility very unlikely on the basis that SanDisk have established long-term relationships with all of their partner manufacturers and it would not be in the interests of either side to undermine this and SanDisk's partners would risk destroying their place in the global market place. Additionally unlicensed manufacturing could not take place without SanDisk's knowledge. Mr Connolly explained that a grey market arising out of the pilfering of products does occur on a small scale in respect of low value, low capacity products. However this could not explain the volume of purported trading in high capacity products by the Appellant.

51. As regards the products Mr Connolly explained that the "Ultra" and "Extreme" ranges are aimed at professional users such as photographers. The goods are relatively expensive and the market for them is limited. The ordinary "Compact Flash" range is aimed at ordinary consumers and is produced in relatively large numbers.

52. In oral evidence Mr Connolly told us that in 2005 8.0 GB was the largest memory card produced by SanDisk. He explained that the shipping data from which the information regarding the worldwide shipping total for 2005 was compiled from SanDisk's enterprise reporting system which houses all of the Company's electronic information. In 2005 the 8.0GB products were relatively new and the market would have been very limited. He confirmed that if 34,000 counterfeit 8.0 Gb cards had entered the market he would have been aware of it. The £13,000,000 value of transactions undertaken by the Appellant would have made it one of the top 5 customers for Europe and Asia and on that basis Mr Connolly stated he would have been aware of the Appellant if there purchases of such a magnitude were made.

53. The unchallenged evidence of HMRC officer Maxted confirmed that the total worldwide quantity of SanDisk 8 Gigabyte memory cards shipped from 3 January 2005 to 18 December 2005 was 5,441 units. A report by Mr John Mangan, Director of Failure Analysis Engineering at the SanDisk Corporation dated 13 January 2006

confirmed that the 5 sample memory cards of the 500 seized at Manchester Airport were tested for authenticity:

"The five CF memory cards are clearly not SanDisk products. The labels used on the counterfeit cards are not SanDisk labels, but closely resemble the genuine SanDisk card labels. The PCB, lids, card frame, controller IC, and memory IC components used on the functional cards are not SanDisk manufactured or purchased components."

54. HMRC concluded that the Appellant had provided no positive evidence that the goods supplied were the same ones as those described on the invoices other than the invoices, daybooks and correspondence. The invoices lacked information that genuine invoices would contain and their legitimacy was further questionable given the quantities purported to have been traded by the Appellant. The 500 SanDisk Extreme III units passed through the same deal chain as the other SanDisk products that were seized at Manchester Airport and confirmed as counterfeit.

55. In those circumstances HMRC contend that the goods supplied could not have been those as described on the invoices and therefore did not satisfy the requirements of Regulation 14(1)(g) of the VAT Regulations 1995. In the absence of any alternative evidence HMRC contend that its decision to assess was reasonable.

56. Mr Chhiber challenged HMRC's decision in respect of the invoices. He explained in his written evidence that the Appellant purchased what it believed to be 15,535 SanDisk memory cards from Grade One. Mr Chhiber contended that the goods seized at Manchester Airport were suspected of being counterfeit, not because they were counterfeit and it was only after opening the package and testing the actual memory cards that it was established that they were counterfeit. Mr Chhiber also noted that the consignment seized totalled only 500 of the goods sold; those 500 were the Extreme III and not the Ultra II range. Mr Chhiber's written evidence accepted that the goods were established as counterfeit. However he noted that:

"There was no way, without inspecting and checking each and every one in a computer, could it be established, just by inspecting the packaging, that these goods were counterfeit. To compound things further, if the memory cards worked, they could still have been counterfeit."

57. Mr Chhiber could not comment on the production figure supplied by Mr Connolly but stated:

"We had an inspection report and we took the stock as what it was…in my opinion a manufacturer as big as SanDisk saying they produced 5000 pieces worldwide in that period, I don't believe in my head."

(Transcript 22 July 2014 page 101)

58. Mr Chhiber confirmed that he had told HMRC that the consignments of memory cards which form the subject of this appeal "*had not been given any more attention than normal.*" He explained that HMRC had always been satisfied with the Appellant's due diligence and he took comfort from their approval of his procedures. Consequently Mr Chhiber explained that he did not need to give these transactions special attention.

59. Mr Chhiber exhibited an email from Ms Banford (an employee of the Appellant) to SanDisk dated 19 May 2006 in which she asked for verification of the information provided by HMRC as to the legitimacy of the products traded by the Appellant, however SanDisk would not provide such information to outside parties. The Appellant also contacted three of SanDisk's UK distributors to request assistance in distinguishing between legitimate and counterfeit goods. By way of example we were provided with a letter from Peak Development Ltd dated 26 May 2006 which responded to the Appellant's queries by advising on how to test the authenticity of memory cards.

60. Mr Chhiber also wrote to Mr David Wood on 2 June 2006 and asked him to complete a questionnaire which was subsequently provided to HMRC and which provided information about the goods transported. The questionnaire confirmed that Mr Wood had inspected the goods which were packaged in plastic welded packaging and that the *"product appeared to be visually perfect in appearance and quality."*

61. Mr Chhiber noted that the information contained in a visit report prepared by HMRC after a visit to Mr Wood was hearsay and he disagreed with parts of it. In particular Mr Chhiber denied having asked Mr Wood to transport the same goods to Europe and back and stated that this contradicted Mr Wood's assertion that he was not aware of the stock he was transporting.

62. As regards due diligence on Grade One specifically, Mr Chhiber explained that the Appellant had traded with the company since 2001. The due diligence checks included at least two Redhill VAT validation checks, a utility bill, proof of identity of the director, VAT certificate, certificate of incorporation and a Credit safe report. It is noted by Mr Chhiber that HMRC had previously approved VAT repayment claims in respect of deals undertaken with Grade One. Mr Chhiber had met Grade One's director, Mr Keith Houghton, on several occasions and visited the company's premises.

63. The Appellant's trading history with Grade One involved various goods including telecommunication and IT products. Mr Chhiber notes that HMRC has not denied recovery of VAT on Grade One's purchase of the SanDisk memory cards which it sold to Devi.

Mr Chhiber accepted that he had received HMRC's letter dated 14 November 2006 which advised of tax losses in the 02/06 and 05/06 periods and in which the Appellant's supplier was Grade One. He stated that the letter was received on or about 17 November 2006 at which point Grade One was informed that no further purchases would be made. At that time there were already deals in place and stock was pre-ordered. Consequently the Appellant was obliged to complete those deals on 17 November 2006 and 1 December 2006. After that, all future trade with Grade One ceased.

64. Mr Chhiber noted that he had been advised to keep serial numbers for SanDisk purchases. However this request was only made by HMRC in November 2006 by which time the deals had already taken place.

65. In cross-examination Mr Chhiber was referred to a visit by HMRC to the Appellant on 19 May 2006 at which HMRC had expressed concerns about the

legitimacy of the SanDisk supplies. He was asked why in those circumstances the Appellant had continued to trade on a large scale with Grade One:

> "*Yes, but they were a different product, not Sandisks.*
>
> *Q. Customs have explained to you that they had evidence that Sandisk could not possibly have supplied that many disks and you ---*
>
> *A. Yes, but we ---*
>
> *Q. Just let me finish, please. And all of those Sandisk memory cards were transactions that you had entered with Grade One but you carried on dealing in huge volumes of goods from Grade One. Why did you do that?*
>
> *A. We continued -- we have been dealing with them in mobile phones for a long, long time.*
>
> *Q. Well ---*
>
> *A. If he had a problem on the Sandisk, we agreed and we told him and we sent him a letter that we will not deal with them in that product."*

(Transcript 22 July 2014 page 107)

66. Mr Chhiber notes that HMRC had also *"signed off my other deals"* with Unicell. In addition to the due diligence undertaken on Unicell Mr Chhiber had also met one of the directors in 2004 or 2005. Mr Chhiber points out that the Appellant had carried out transactions in 2005 involving the same products and in which the supplier was Grade One and the customer was either Unicell or Unity Trading (both based in Switzerland). HMRC had approved those deals. In cross-examination Mr Chhiber confirmed that he had no record of the director of Unicell's visit to the Appellant and the company details sent by way of due diligence to the Appellant had been misplaced.

67. In oral evidence Mr Chhiber clarified that he became aware that a new memory card was being launched and that SanDisk was the leader in the market at that time. He told us that he had established from customers that there was a lot of demand for such a high capacity product. He agreed that he had not contacted SanDisk to enquire about the veracity of the product being offered by Grade One or when it was due for release onto the market. Mr Chhiber stated that he was not aware of other dealers trying to get hold of the product or trading in it.

68. In cross-examination Mr Chhiber denied that his suspicion had been aroused by the significant increase in turnover to approximately £13,000,000 in a 6 month period in 2005 as a result of the opportunity to trade in the memory cards, a product which the Appellant had no previous experience of.

69. As regards due diligence on Grade One Mr Chhiber agreed that it demonstrated that the company was VAT registered, an incorporated company and dealt in mobile phones. The Creditsafe report showed that the shareholders' funds were very good but the profitability and liquidity were weak. Mr Chhiber stated that this caused him no concern as credit was not being given to Grade One. Mr Chhiber stated that he did not know how Grade One had paid for the goods and agreed that someone must have given the company credit but stated that he believed the director to be a creditworthy person from personal knowledge.

70. In respect of the trading history between the Appellant and Grade One Mr Chhiber agreed that since 2001 he had purchased goods to the value of a few hundred pounds per deal with Grade One. The memory card transactions not only involved a new product but the value of the transactions increased significantly to £394,800.

71. Mr Chhiber agreed that the Appellant had not carried out its own inspections of the goods but rather the goods were delivered to Mr Wood who had carried out the inspections:

> *"Q. What did Mr Wood know about this product?*
>
> *A. Mr Wood – I mean, if I was a freighter I would check everything out and describe and take necessary details of the product. You don't need to know the product inside. Now even the freight forwarders they carry out the inspection report, but they don't need to know the product itself. They look at the product and they confirm this is what the product is.*
>
> *Q. This was a deal worth hundreds of thousands of pounds to you, wasn't it?*
>
> *A. Yes.*
>
> *Q. Very important, it is the first deal you have ever done in this product.*
>
> *A. Yes.*
>
> *Q. Why didn't you inspect it yourself? Why didn't you check one of these cards to make sure they worked?*
>
> *A. We did not think they were not legitimate, or we didn't even – that thought never came to our head.*
>
> *Q. Why not?*
>
> *A. It didn't. That's all I can say…*

Q. Surely you would want to reassure yourself that these products actually existed and did what they said on the box.

A. I -----

Q. Why didn't you?

A. I had no reason to believe on that side, I'm sorry to say.

Q. You had no reason to think they did either.

A. Did what, sorry?

Q. That they worked.

A. If you go through every product and you want to check everything, you'll be there just spending all your life.

Q. Why not just do one? You bought 35,000.

A. I don't know….

Q. …the products might not exist at all.

A. It did exist because the freighter inspected the stock.

Q. He saw some boxes, counted boxes.

A. In his report he said he's took a picture off his mobile phone as well.

Q. Where is this picture?

A. I don't know, he said he could not offload it, so I don't know.

Q. Did you ask for photographs of -----

A. On that day Customs officer could have taken his mobile.

Q. Did you ask for photographs from Mr Wood at the time?

A. I can't recall. It's been a long time."

(Transcript 22 July 2014 page 89 - 94)

72. In answer to a question from the Tribunal at the end of his evidence Mr Chhiber appeared to change his account regarding inspections:

"MS TANNER: Total, yes, total deals on this. Which seemed to be sort of

double your previous year's turnover, so it must have stood out as something, you must have been really glad to get these deals. Why did you not put the cards into your warehouse so that your staff could have a look at them?

A. We virtually did not keep stocks for stocks. We sold mobile phone in our retail shops at that time, so we just kept whatever we can sell in our shops. The rest was just for distribution.

MS TANNER: Okay. So these memory cards then, because of that reason, went to the freight forwarder, which I believe -----

A. Correct, just to sell. We bought and sold.

MS TANNER: Right. Now, I think Mr Wood's premises is in Walsall.

A. Yes.

MS TANNER: And I think your business is in Wolverhampton.

A. Yes.

MS TANNER: My geography is not brilliant, but I do not seem to think that is very far away.

A. Not far at all. I've been to his place many, many times.

MS TANNER: So why was it that either you or somebody else did not go and have a look at these cards?

A. We had looked at the cards.

MS TANNER: You did look at them.

A. Yes, we had looked at the cards but they – nothing else we would have done. They were perfectly exactly what they were supposed to be.

MS TANNER: No, was that you looked at them or was it others of your staff -----

A. It's one of my – I think Mr Sharma would have gone. We would

have sent somebody over to go and have a look.

MS TANNER: Right.

A. We always used to check even Dave Wood, because, you know, he was very busy running around doing things here, there and everywhere."

(Transcript 23 July 2014 page 133)

Submissions on the SanDisk appeal

HMRC's case

73. Mr Puzey contended that the SanDisk appeal wholly separate from the MTIC appeal. The SanDisk appeal involves invalid invoices; if we find that the invoices are valid then the appeal must be allowed. If we find that HMRC have been unreasonable in not accepting alternative evidence then the appeal must be allowed. However the approach invited by the Appellant, namely to apply the *Kittel* principles on knowledge and means of knowledge is misconceived. Mr Puzey noted that such an approach was adopted in the case of *McAndrew Utilities Ltd* in which permission to appeal was refused by Judge Herrington having considered the *Kittel* argument. Mr Puzey noted that if the *Kittel* principles were applicable to this type of situation it would render redundant the need for documentary evidence as proof of the right to deduct.

74. Mr Puzey submitted that contrary to the arguments of the Appellant, HMRC was not in fact retrospectively imposing a requirement for due diligence in respect of the transactions under appeal; rather HMRC are requesting evidence of the charge to VAT. Regulation 29(2) of the VAT Regulations provides a lifebelt to a trader who does not hold a valid invoice.

75. Mr Puzey accepted that the authorities to which we were referred were First-tier decisions and consequently not binding on us. However he argued that the decisions, which were made by a specialist tribunal, post-dated *Kittel* and all supported the case advanced by HMRC. He submitted that *Mobilx* is irrelevant to the issue of whether or not the Appellant's invoices are valid.

76. It was submitted that the Appellant's reliance on *Story Trans* was misplaced:

"*The authorities were querying the invoices held further upstream and in Stroy's case the supplier was denied input tax on his purchase but was charged output tax on the sale to Stroy and the ECJ upheld that. So, in Stroy there is no argument about Stroy's purchase invoice being valid or not. They all existed. Stroy had an invoice for it. The problem was with the supplier and so the ECJ, with its Kittel hat on, held that Stroy should not be penalised for the fraud of others, which they did not and could not know about. So, that is pure Optigen. We are back in Optigen territory of when the Commissioners back in 2004 were trying to deny input tax to people that they weren't seeking to prove had done anything wrong and the ECJ said, "You can't do that". But what Stroy is not about is invalid invoices. This case has nothing to say about proving the right to deduct. It has plenty to say about exercising it but not proving it because to prove it you need an invoice, a valid invoice.*

77. Mr Puzey submitted that the ECJ has made clear that the purpose of requiring a valid invoice or alternative evidence is to permit supervision by the authorities. HMRC did not seek to argue that the goods did not exist or that a transaction did not take place. However it is the case for HMRC that the goods traded did not correspond with the invoice.

78. Mr Puzey argued that the Appellant's due diligence surrounding the SanDisk transactions is relevant for two reasons: first to show how Mr Chhiber conducted his business generally which is a relevant consideration in the MTIC appeal and second it is relevant to the exercise by HMRC of its discretion under Regulation 29(2). In respect of the latter the Appellant seeks to argue that he took all reasonable steps in conducting his business and could not have known that the goods were not as he believed. The Appellant relies on his due diligence checks, inspection reports and questionnaires in support of this argument. Mr Puzey argued that the Appellant's failure to make proper checks on its supplier and the goods in question does not support the Appellant's case and there is no alternative evidence put forward by the Appellant to prove the charge to VAT. Mr Puzey referred us to *Base Interactive Ltd v Revenue & Customs* [2007] UKVAT V20437 (01 November 2007) in which Judge Bishopp said:

"We may allow this appeal only if we are persuaded that the Commissioners could not reasonably have reached their conclusion, because they have taken into account the irrelevant, have disregarded the relevant, or have misdirected themselves on the law: see Kohanzad v Customs and Excise Commissioners [1994] STC 967 at 971a. We should also not allow the appeal, even if there was an error in the manner in which the discretion was exercised, when, if the Commissioners were required to consider the matter afresh, they would inevitably come to the same conclusion: see John Dee Ltd v Customs and Excise Commissioners [1995] STC 941.

We have found that they did make an error about the law, but that error is peripheral and in our view it does not undermine their conclusion. At the time the decision was taken, Base did not hold valid VAT invoices or, if it did, had not produced them to the Commissioners: as we have indicated, we are satisfied they were not produced until after this appeal had been brought. But even if they had been produced much earlier, the Commissioners would have been entirely justified in viewing them, and their provenance, sceptically. Mr Tractorwala was no longer in contact with them and, as we are satisfied, KK was by then to be regarded as a defaulting, even if not missing, trader. Deficiencies in the invoices, taken alone, might arguably not amount to sufficient justification of the Commissioners' decision, but we agree with Mr Puzey that the manner of Base's trading with KK must cast serious doubt on the genuineness of the transactions. No prudent trader, entering into true arm's length deals, would buy consignments of goods worth, as in this case, several hundred thousands of pounds, unseen, from another trader whom he had never met and about whom he knew as little as Mr Ahmed knew of KK. Mr Ahmed had no evidence that the goods ever existed; he could, wittingly or unwittingly, have merely been the tool of others, engaging in what were no more than paper transactions. The manner in which the payments were made and the complete absence of even the most elementary precautions suggests that that is exactly what they were. There is nothing before us from which we might conclude that the Commissioners' discretion was exercised incorrectly. There is, on the contrary, every reason to suppose that transactions entered into in such a manner were not genuine. Save for the replacement invoices, on

which we have already expressed doubts, Base has produced nothing which was not before the Commissioners when the decision was made and, even if that decision might be regarded as technically flawed (which in our judgment it was not), it is inevitable that, if the Commissioners were required to reconsider, they would come to the same conclusion."

The Appellant's case

79. On behalf of the Appellant it was submitted that the fact that the invoice does not tally with the goods traded is a technical complaint by HMRC. It is important to understand that the VAT Regulations are subordinate legislation made under, inter alia, the enabling powers of Section 24(6)(b). The primary purpose of Regulation 29 is to authorise HMRC to require further information in given circumstances. The letter in which the Regulation was invoked against the Appellant did not offer the opportunity of providing further evidence in support of the claim. It was a misuse of the Regulation after the event; HMRC cannot retrospectively demand documents.

80. Mr Heywood referred us to *F 1 Promotions Ltd v Revenue & Customs* [2010] UKFTT 159 (TC) (13 April 2010) in which it was said (at [147] & [148]):

> "*If F1 had been knowingly trading in counterfeit devices then we accept that prima facie it should be entitled to credit for input VAT. But that credit is available only if the requirements of the invoicing requirements of the Directive are satisfied. It seems to us that they would not have been. An indication that the goods were not genuine would have been an important indication of their nature for both supplier and customer. The invoices held by F1 would not have adequately disclosed this nature.*
>
> *If F1 had unwittingly been trading in counterfeit goods would the position be any different? In that situation also the invoices would not disclose the nature of the goods. The requirements of the Directive were not satisfied."*

81. Mr Heywood sought to draw a distinction between the present appeal and *Reisdorf* (in which the issue was that a copy invoice was held rather than the requisite original) and submitted that in *Reisorf* the trader must have been aware of the requirement to hold the original invoice and had failed to comply with his obligation in that regard. Similarly in *McAndrew* the Appellant's wholly inadequate evidence was his own failing. By comparison the only criticism that can be made of the Appellant in this appeal is that the invoices were made without reference to the Regulations and it falls to Mr Connolly to opine that they do not appear to be genuine because certain details such as the shipping terms are not included. Mr Heywood submitted that the Tribunal's decision in *Premier Joint Ventures* was erroneous in concluding that it was irrelevant that the Appellant may have believed he was acquiring the goods as described on the invoice. There are only two types of taxpayer; those who knew or should have known of a connection to fraud and those who did not and should not have known.

82. Mr Heywood posed the question:

> *"If this analysis is correct how can any trader who has in fact received goods of a quality other than those which he contracted to buy ever be in*

possession of a valid invoice? He cannot be. He could only either know that the material which he has been provided with does not match the invoice or he has been misled about the quality of what he has been provided with, in which case he will be informed if the invoice does not match."

83. In those circumstances, Mr Heywood submitted, HMRC have applied a strained interpretation of the Regulations which results in a strict liability unless a trader is fortunate enough to persuade HMRC to exercise its discretion.

84. Mr Heywood contended that it is not the adequacy of the invoice that is the issue in this case but the extension as to what it can imply. It was accepted that it appears to be the case that the total of the transactions described on all of the invoices for Ultra memory cards could not have been fulfilled by supplies of genuine SanDisk Ultra memory cards. However Mr Heywood contended that it cannot be argued on the evidence available that a number of permutations of genuine, individual transactions could not have taken place. The evidence demonstrates that the consignments existed; the issue as to whether the goods were counterfeit is a separate issue.

85. It must be accepted that Grade One and the Appellant had a long and successful trading history; that relationship must have been founded on good faith. The due diligence carried out by the Appellant was reliable and should not be criticised with the benefit of hindsight. If the Appellant was defrauded by others further up the supply chain he is entitled to the protection set out in *Mobilx*.

86. Mr Heywood distinguished the two different types of memory cards; the Ultra and Extreme ranges. It was accepted that the samples from the 500 Extreme memory cards seized at Manchester Airport were counterfeit and by implication the remainder were too. The five samples were found to be a mixture of cards with non-functional printed circuit boards and genuine Micron or Kodak cards with 4 GB capacities. To the untrained eye there was nothing about the goods that raised suspicion. Mr Connolly has failed to address the scenario which had taken place; namely that lower capacity SanDisk products had been re-labelled with fake higher capacity branding.

87. Mr Heywood submitted that no authority has been advanced to support HMRC's contention that the Appellant's records are inadequate or that serial numbers should have been retained. HMRC has misapplied Regulation 29 (2) which provides that *"such other documentation"* shall be held once HMRC has so directed; it is not a retrospective power to compel the production of information and HMRC's request that serial numbers be retained was only made after the date of the relevant deals.

88. The VAT Regulations require that the invoice contains "*a description sufficient to identify the goods supplied.*" There is no substance in this HMRC's argument that this requirement has not been satisfied. Mr Connolly's evidence as to the legitimacy of the invoices is opinion evidence.

The SanDisk Appeal: Discussion and decision

89. The Appellant is entitled to the input tax credit claimed if the charge to VAT in respect of the taxable supply is supported by a valid VAT invoice. Where there is no valid invoice the Appellant can rely on alternative evidence of the charge to VAT.

90. In this appeal HMRC contend that the Appellant did not hold valid VAT invoices in respect of the relevant supplies on the basis that the invoices failed to comply with Regulation 14 (1)(g) in that the description on the invoices was not sufficient to identify the goods supplied.

91. The burden of proving its case lies with the Appellant to establish that either the invoices were valid or that HMRC failed to reasonably exercise its discretion to accept alternative evidence of the charge to VAT by either failing to take into account relevant matters, taking into account irrelevant matters or reached a decision that no reasonable body of commissioners could reach.

92. Our starting point was to consider what is required by the Regulations. Regulation 14 (1)(g) provides:

"Subject to paragraph (2) below and regulation 16 save as the Commissioners may otherwise allow, a registered person providing a VAT invoice in accordance with regulation 13 shall state thereon the following particulars:

…

(g) a description sufficient to identify the goods or services supplied

(emphasis added)

93. We considered what is meant by "sufficient" and whether the definition is, as contended by Mr Heywood, broad enough to include goods by implication. In *McAndrew Utilities Limited* the Tribunal provided the following helpful comments (at [12]):

> *"There is an issue as to the extent of the particulars necessary to constitute a valid VAT invoice. This does not appear to be the subject of any direct authority. The detailed requirements for a valid VAT invoice are left to individual member states to determine. In Reisdorf v Finanzamt Köln-West [1997] STC 180 the ECJ stated at [27]:*
>
> *"Article 22(2) [of the 6th Directive] thus requires every taxable person to keep accounts in sufficient detail to permit application of VAT and inspection by the tax authorities. Article 22(8) adds that Member States may impose other obligations which they deem necessary for the correct levying and collection of the tax and for the prevention of fraud."*
>
> *13. We consider that the requirements of regulation 14 are at least in part directed to ensuring that VAT invoices provide sufficient information and detail to enable a meaningful audit of transactions to take place. In particular the information must be sufficient for HMRC to identify the nature and extent of the goods or services supplied and thus be able to verify that the supply took place as described in the VAT invoice."*

94. Judge Hellier took a similar view in *F1 Promotions Limited* at [24] and [29]:

> *"It seems to us that the requirement to specify the nature of the goods is wider than simply requiring a description sufficient to identify their VAT*

nature. That is because:-

(i) of the indication that 'nature' is more specific than "the type of the goods supplied", and the latter phrase does not suggest simply "the VAT classification of the supply";

(ii) of the conclusion that the purpose of the requirement is the audit of the supplier and the recipient by the tax authorities and our belief that more could be involved in such an audit than simply checking the VAT rate applied.

…

We conclude that by "nature of the goods" is meant those particulars of the goods supplied which, objectively viewed, are specified between the parties for their supply. The wine merchant has agreed to buy 1985 Chateaux Blanc not 1995; the sand merchant knows he will get only coarse sand from that quarry and the quarry knows that that is all it will supply. The invoices must specify the nature of the goods as '1985 Chateaux Blanc' and "coarse sand". (If a manufacturer agrees to sell "red trousers with a 15" inside leg in style X" to a retailer that is the nature to be detailed on the invoice. It is not necessary to say 'children's trousers': the indication of the availability of an exemption or lower rate of VAT is required by other parts of Art 22(3)(b) and may be audited against that description)."

95. These authorities are not binding on us. However we agreed with and adopted the same approach.

96. The following examples demonstrate the descriptions generally contained on the Appellant's invoices:

(invoice date 7/10/05)

1500 SANDISK ULTRA 2 – 8GIG COMPACT FLASH M

(invoice date 30/11/05)

500 SANDISK EXTREME III 8.0GB COMPACT FLASH MEMORY CARD

97. The Appellant's evidence indicates that there was a supply of goods by Grade One to the Appellant and an onward supply of those same goods to Unicell. The goods are said to be a specified quantity of SanDisk memory cards or either the Ultra or Extreme ranges.

98. To be balanced against the Appellant's evidence is the information provided by Mr Connolly. We found Mr Connolly's evidence to be reliable and compelling. We accepted his evidence that he would have been aware of a trader dealing in the quantity of SanDisk products as purported to have been traded by the Appellant. We also accepted that the Extreme range of products were not launched until April 2006 which post dated the Appellant's transaction in November 2005.

99. From the price and shipping information provided by Mr Connolly, Mr Maxted produced his analysis which we were satisfied accurately reflected the total worldwide supplies made by SanDisk of genuine 8Gb SanDisk products in 2005 as 5441 units.

100. Having accepted the evidence of Mr Connolly and Mr Maxted we concluded that the goods described on the Appellant's invoices could not be the quantity or type of SanDisk products purported to be supplied. We were wholly satisfied that the goods were not as described and therefore the descriptions on the invoices were not sufficient to identify the goods.

101. The question posed by Mr Heywood was whether the description can be interpreted broadly and therefore encompass the goods. This argument appeared to be based on the inference that the goods were counterfeit. The same issue was considered in F1 Promotions at [145], [147] & [148]:

> *"Mr Young raised the possibility that the memory devices F1 bought and sold were counterfeit. If they were he suggested: (a) the purchase and sales were transactions which properly attracted VAT; (b) the principle of neutrality required F1 to be credited with the input VAT on their purchase; (c) the omission of the words "counterfeit" on the invoices was not sufficient to cause them to fall outwith the requirements of the Directive; and (d) even if it was the case that the invoices were inadequate, it was unreasonable in the circumstances not to exercise the regulation 29 discretion in favour of the Appellant.*
>
> *If F1 had been knowingly trading in counterfeit devices then we accept that prima facie it should be entitled to credit for input VAT. But that credit is available only if the requirements of the invoicing requirements of the Directive are satisfied. It seems to us that they would not have been. An indication that the goods were not genuine would have been an important indication of their nature for both supplier and customer. The invoices held by F1 would not have adequately disclosed this nature."*
>
> *If F1 had unwittingly been trading in counterfeit goods would the position be any different? In that situation also the invoices would not disclose the nature of the goods. The requirements of the Directive were not satisfied."*

102. We agreed with the reasoning of the Tribunal in *F1 Promotions*. Had the Appellant been knowingly trading in counterfeit goods, it would be a significant omission from the invoice to fail to refer to that fact. In those circumstances it could not be said that the description would be sufficient to identify the goods such as would enable a meaningful audit of the transactions to take place.

103. Whether or not the Appellant knew the goods were counterfeit does not, in our view, change matters. We rejected Mr Heywood's submission that Premier Joint Ventures was wrongly decided and we were satisfied that deficiency or disparity in an invoice is fatal to its validity. It is irrelevant whether the Appellant believed he was acquiring counterfeit or genuine goods; the goods must tally with the description on the invoice.

104. Having concluded that the requirement that a valid invoice be held by the Appellant was not satisfied in each of relevant transactions, and on that basis HMRC's decision to reject the input tax claim cannot be disputed, we went on to consider whether the Appellant's claim could succeed on the basis of alternative evidence and HMRC's exercise of discretion. Our jurisdiction in this regard is supervisory.

105. HMRC did not allege that the Appellant was part of an MTIC fraud in respect of its sales and purchases of the SanDisk memory cards and Mr Puzey submitted that the issue of knowledge was therefore irrelevant. However HMRC submitted that the Appellant's failure to carry out meaningful commercial checks was relevant to the issue of HMRC's exercise of discretion in relation to alternative evidence. We accepted this submission; in our view HMRC were entitled to take into account all relevant evidence in reaching a decision as to whether to exercise discretion and the nature of the Appellant's trade forms part and parcel that evidence.

106. We would have expected the Appellant to have carried out more thorough checks to satisfy itself as to legitimacy of goods and its trading partners. The absence of a valid invoice arises from its failure to carry out meaningful commercial checks such as inspections and research on products traded, particularly given the Appellant's clear lack of any knowledge about SanDisk memory cards. As regards inspections we noted that neither party called Mr Wood as a witness yet both highlighted documents produced by him and extracts of visit reports which recorded conversations with him. In our view it would be a wholly unsatisfactory and improper approach to cherry-pick from that evidence. We were satisfied from the information before us which was contradictory and untested that Mr Wood's comments during visits by HMRC and documents prepared by him seemingly at the Appellant's request were unreliable. In those circumstances we attached no weight to the visit reports, questionnaire or inspection reports and concluded that they did not support a charge to VAT in respect of the relevant transactions.

107. The due diligence in respect of Grade One was poor; no up-to-date information was obtained by the Appellant at or shortly before the deals to enable it to assess the credibility of the company. There was no credible evidence to support the Appellant's assertion that the "long standing" relationship between it and Grade One satisfied the Appellant that the transactions were legitimate; to the contrary the deals previously carried out had been far less in value and at no time did the Appellant query why or how Grade One as a mobile phone trader had commenced trading in memory cards. Mr Chhiber provided no explanation as to why he trusted Grade One and the checks carried out were, in our view, superficial at best.

108. In summary there was no alternative evidence before us upon which demonstrated the charge to VAT and in those circumstances we were wholly satisfied that the decision of HMRC in respect of exercising its discretion was reasonably arrived at, had not disregarded relevant factors or taken into account irrelevant matters.

109. We rejected the submission on behalf of the Appellant that the cases of *Stroy trans, Kittel* and *Mobilx* set out the principles by which the SanDisk appeal should be determined. The issue in *Stroy* was not the validity of invoices and on that basis we concluded that the case did not assist the Appellant. Similarly the principles set out in

Kittel and *Mobilx* relate to the exercise of the right to deduct, not the evidence required to prove that right. The distinction between the two was made clear in *Reisdorf* at [19]:

> *"It is necessary to distinguish the provisions of the directive relating to exercise of the right to deduct input tax from those concerning proof of that right after a taxable person has exercised it. The distinction between exercise of the right and proof of it on subsequent inspections is inherent in the operation of the VAT system."*

110. We were satisfied that to conclude otherwise would render the Regulations redundant as a trader could fail to provide evidence to prove the charge to VAT by simply pleading good faith and in doing so undermine the effective operation of the VAT system.

The MTIC Appeal

Transactions connected to fraudulent tax losses

111. Between 27 February 2007 and 18 April 2007 the Appellant carried out 7 transactions involving Nokia mobile phones. All of the purchases were made from Mobile One Distribution UK Ltd ("Mobile One") and sold to Trading Point APS ("Trading Point") save for one deal in which the customer was Italian based Elettroberg.

112. HMRC officer McDonald provided unchallenged evidence regarding the blocking trader Bushmaster Ltd ("Bushmaster").

113. Bushmaster was incorporated on 4 August 2004 and registered for VAT with effect from 13 February 2006. The trader's intended business activities declared on the VAT 1 were "Courier Services." The sole director at the date of registration was Mr David Leslie Forester and the company secretary at the date of registration was Ms Donna Moynihan.

114. On 28 November 2006 HMRC visited the business. The premises were found to be The Pool Dam public house. Mr Forester advised HMRC that his wife was the licensee of the pub and the courier business Premier Couriers Ltd was under the fiscal control of Bushmaster. Mr Forester stated that he had been in the pub for two years and had started the courier business in January 2006 purchasing Bushmaster at the same time. Mr Forester stated that the courier business had done trips to Calais and Spain transporting mobile phones. He advised that a friend of a friend had a contact with a customer called Quaser Services Ltd. He was aware that the goods transported were phones but they were shrink wrapped in black plastic so could not see them. He had not unwrapped or inspected the goods.

115. Bushmaster had been approached by Quaser Services Ltd to purchase phones on a drop shipping basis. Mr Forester stated that he would order stock, the stock would be held by him and he did not pay for the stock until he had been paid. Quaser had deposited £30,000 into his bank account as a surety deposit. There were no written agreements; the transactions were all done verbally.

116. At a further visit by HMRC on 18 December 2006 clarification was sought between Premier Couriers Ltd and Bushmaster as both were separate limited companies registered with Companies House. Mr Forester advised that all 3 businesses (Bushmaster, the pub and Premier Couriers) went through the VAT registration number of Bushmaster. HMRC pointed out that invoices raised in the name of Premier Couriers should not show the Bushmaster VAT registration number.

117. Mr Forester was asked about 6 sales invoices with goods described as phones, Pentiums and iPods and 6 purchase orders from Hilgrove Trading Ltd in Congleton which had not been disclosed at HMRC's previous visit. A Regulation 25 direction was issued which gave a due date for the company's next VAT return of 19 December 2006. Twelve transaction files were uplifted which indicated that the goods were held by Express Transport Services and Tay Koff however Mr Forester advised that he had never seen the goods he had purchased and sold and did not know where they were held. In respect of the Hillgrove transactions Mr Forester stated that the invoices were officially his but that the transactions were unofficially not his. Mr Forester was recorded as saying *"that people higher up the chain can kill and will kill to remain anonymous…he did not wish to comment further with regard to Hillgrove Trading."* He stated that he did not have purchase orders for the Hillgrove transactions as he was asked by someone else to produce the paperwork.

118. On 24 July 2007 HMRC visited the company's premises. No contact was made and two broken windows indicated to the officers that the pub may be empty.

119. Mr Forester attended HMRC's office on 21 September 2007 having received a request for the deal files for any trade he had conducted with Eagle Solutions Ltd. In a telephone call the day before in which the request had been made Mr Forester denied having conducted any such deals. When asked who had, he stated he was not prepared to say over the telephone. At the meeting with HMRC Mr Forester was shown 2 sales invoices from Bushmaster dated 5 December 2006; one to D & M Services Ltd and one to MJC (UK) Ltd. He stated he knew nothing about the invoices and had not carried out the deals. He was also asked about deals involving Quaser Services Ltd in August 2006; again Mr Forester said he knew nothing about the deals and had not raised the invoices. He stated that Mr Christopher Lee was running Quaser and that he was "top of the pile". He stated he had received payments into his account from Mr Lee.

120. Assessments were raised against Bushmaster in respect of sales involving mobile telephones and CPUs. Included in the assessments were sales in the period 09/06 which were traced to the Appellant. The current outstanding liability inclusive of interest and surcharges as at 11 May 2009 was £2,078,887.25. There has been no contact from Bushmaster with HMRC since 21 September 2007. Bushmaster was de-registered from VAT on 2 May 2009 and dissolved on 7 April 2009. HMRC concluded that as a defaulting trader Bushmaster was set up and operated to facilitate fraudulent MTIC activity.

121. HMRC traced the Appellant's chains of supply as follows:

Bushmaster Ltd – CPU Trader Ltd – Chatterbox Communications Ltd – SA Trading Ltd – Mobile One Distribution Ltd – Devi – Trading Point APS/Elettroberg.

122. The deals were:

Deal Number	Date	Supplier	Purchaser	Product	Net Value	VAT
1	27/2/07	Mobile One	Trading Point	Nokia 7390	£119,784	£20,962.20
4	16/3/07	Mobile One	Trading Point	Nokia 9300i	£301,600	£52,780
7	28/3/07	Mobile One	Trading Point	Nokia N93i	£113,100	£19,792.50
7	28/3/07	Mobile One	Trading Point	Nokia N93i	£188,500	£32,987.50
8	10/4/07	Mobile One	Trading Point	Nokia N93i	£292,000	£51,100
10 & 10a	13/4/07	Mobile One	Trading Point	Nokia N93i	£556,800	£97,440
11	18/4/07	Mobile One	Elettroberg	Nokia N93i	£264,800	£46,340

123. Ms Andersson-Hudson gave the following evidence regarding the other traders in the chains of supply:

- CPU Trader Ltd which was VAT registered from 1 August 2006 to 30 January 2008 at which point the trader went missing and was de-registered with a debt of £166,643.47 owing to HMRC;

- The Phonebox Stone Ltd was formerly known as Chatterbox. It was originally registered as a partnership between Mr Adrian Grant Seadon and Mr Andrew Peter Webb and changed to a limited company, namely Chatterbox Communications Ltd on 25 May 2005. The company changed its name to The Phonebox Stone Ltd on 31 May 2007. The Phonebox was de-registered on 10 December 2008 as a missing trader with a debt of £17,647.60 to HMRC. It is now in Liquidation;

- SA Trading had input tax in the sum of £2,601,578.44 denied in period 04/06 and £52,589.25 denied in 07/06. The company was de-registered from 1 December 2009 after it failed to pay a debt of £108,810.05 to HMRC;

- Mobile One, according to its director Mr Akhtar at a meeting with HMRC on 18 November 2005,had previously received a loan from the Appellant which had enabled it to carry out an export deal; Trading Point shared the same fiscal representative, Gert Degnegaard, as 8 other companies in Denmark, 6 of which were confirmed by the Danish Tax Authorities as either closed or soon to be closed. All shared the same address. Trading Point commenced on 2 March 2006 and was VAT registered on 3 March 2006 to trade in electronic components.

- Elettroberg which was registered as a wholesale trader of household appliances.

Findings on whether the tax loss was fraudulent and whether the Appellant's transactions connected with fraudulent VAT losses?

124. We considered the evidence in respect of the defaulting and missing traders carefully. We were satisfied that HMRC had accurately traced the Appellants' chains of supply to tax losses caused by the traders in the chains and that Bushmaster had dishonestly acted as a blocking trader to facilitate the commission of VAT fraud.

125. We found that HMRC had proved that the Appellants' transactions in this appeal were connected to fraudulent tax losses.

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

The Appellants and Awareness of MTIC fraud

126. Ms Andersson-Hudson's written evidence explained that on 27 October 2003 HMRC issued a letter to the Appellant which detailed due diligence requirements for businesses dealing in mobile phones. Notices 700/52 "Security" and 726 "Joint and Several Liability" were enclosed with the letter. In the letter HMRC advised about the types of checks that should be made prior to a deal taking place and that the failure to carry out such checks could result in the trader being held liable for unpaid VAT.

127. On 10 August 2004 HMRC Officer Wade wrote to the Appellant's bookkeeper Mr Jangra with a recap of discussions and advice provided to the Appellant at a meeting on 29 June 2004.

128. On 19 May 2006 officers Bayliss and Hancox visited the Appellant's premises and discussed the due diligence undertaken on its supplier Grade One.

129. Ms Andersson-Hudson relied on this contact between HMRC and the Appellant as evidence which demonstrated that the Appellant was fully aware of MTIC fraud and due diligence requirements prior to the transactions under appeal. This was not disputed by Mr Chhiber in evidence.

Commercial Checks

130. In evidence Mr Chhiber accepted that a letter dated 27 October 2003 from HMRC raised concerns that the Appellant's due diligence was not good enough:

"Q. What did you do to improve your checks?

A. We improved as he went through with us a lot of times and we actually did whatever we can to check our suppliers properly.

Q. What did you do as a result of this letter to improve your checks?

A. We introduced extra paperwork to do the checks to get our supplier to agree that they are checking their companies, which we didn't need to do

that.

Q. What's this extra paperwork?

A. I can give you a copy if you ---

Q. Just tell us what it was.

A. It was for them to confirm that they are selling the stock to us, not making a loss, they are doing the checks on the suppliers.

Q. So, it's supplier declarations I think you are talking about isn't it?

A. That's right, yes.

Q. So, your suppliers tell you that they are doing a good job and that was what you brought in as a new measure?

A. It was as far as we know that they are doing their job.

Q. I see.

A. That's what they want to do isn't it?

Q. So, no more third party checks; you just rely on the word of your supplier.

A. We did third party checks. We did your Redhill checks."

(Transcript 22 July 2014 page 60 – 61)

131. At a meeting with HMRC on 15 January 2008 Mr Chhiber was asked whether he had followed up trade references or carried out any other commercial checks on his suppliers and customers as he had supplied little in the way of deal pack paperwork to HMRC in support of his VAT repayment claim despite having been told in the past that his commercial checks should be more robust. Mr Chhiber was recorded as telling HMRC that he did not feel the need to carry out checks every time a deal was undertaken because he had known the majority of his customers and suppliers for many years. Mr Chhiber was also asked whether there were any written contracts between the Appellant and its suppliers; he confirmed that there were not and that the paperwork reflected the trading terms. He added that as his trading partners were longstanding he was able to be more relaxed about trading terms, for example he stated he had dealt with Wood Transport for many years and felt he did not need to carry out regular due diligence to confirm its status.

Customer

132. Due diligence documents were provided for Trading Point including photographs of the Danish premises, Redhill VAT validation, Danish registration documents and an account application.

133. Ms Andersson-Hudson noted that the account application form for Trading Point is on Devi headed paper. It is dated 2 March 2006 and signed by Mr Degnegaard. The form states that all trade references must be at least 12 months old and have "an adequate trading history with your company." However HMRC highlighted the fact that although the form is dated 2 March 2006 the account opening date with one of the references Kuhne & Nagel is given as 5 March 2006 and 07/06 is given as the account opening date for another reference (Sprint Communications Systems). None of the 3 references given were 12 months old and the form was purportedly signed by Mr Degnegaard before two of the account opening dates. In cross-examination Mr Chhiber confirmed that he had not queried this anomaly.

134. Ms Andersson-Hudson noted that the photographs of the company's premises show an office block and the company's name is not discernible from the list on the front of the building. The photographs do not show when or where they were taken or the name of the person in the photographs for identification purposes.

135. At a visit to the Appellant on 15 January 2008 HMRC Officer Griffiths queried why Trading Point would purchase goods from the Appellant at a higher mark-up when it could purchase directly from the Appellant's supplier.

136. In cross-examination Ms Andersson-Hudson stated she had not been aware of *"a long business relationship for many years"* (transcript 21 July 2014 page 62) between the Appellant and Mr Degnegaard.

137. Mr Chhiber's witness statement explained that although he was the director and owner of Trading Point, the company was managed at arm's length by Mr Degnegaard. Mr Degnegaard had his own consultancy company via which he proposed to Mr Chhiber that he would run Trading Point:

"I would call Mr Degnegaard and ask him whether or not he wanted to buy stock. I never knew who Mr Degnegaard dealt with or supplied to, nor did I know who supplied Trading Point APS…"

138. Mr Chhiber stated that in addition to sourcing new trading partners and liaising with existing ones, Mr Degnegaard was also responsible for all of the administration including the bookkeeping. Mr Chhiber's only involvement was sourcing funding for the company to enable it to trade. He stated that given his association there was no point in conducting further checks on the company although despite knowing Mr Degnegaard well he still undertook a Redhill check and obtained due diligence documents. Even though Trading Point was a new company he believed it was Mr Degnegaard's reputation that had ensured a reference from Kuenhe & Nagel who will not allow an account to be opened without checks being carried out. Having met Mr Degnegaard many times Mr Chhiber was satisfied with his integrity.

139. In cross examination Mr Chhiber explained that he wanted to start a company outside of the UK. He reiterated that he had not been aware that his son's company DIS had traded with Trading Point as he did not discuss with his son who DIS was selling to:

"Q. So you did not discuss with your son who he was selling to?

A. No.

Q. Why not?

A. Because I don't do. I did not know that he was supplying to Trading Point as well.

Q. Why wouldn't you discuss that, as a matter of business, or even a matter of father and son -----

A. (Inaudible) that I can see what my son is doing.

Q. Why wouldn't you? You lived together, you worked together. Are you seriously expecting -----

A. He is over eighteen, a person. You let him to run his life.

Q. You worked together, you lived together. You did not know that he was supplying your company.

A. I can't recall, no.

Q. You have fallen back on "I can't recall" now. Did you discuss -----

A. Well, I did not know then, that's what I am saying to you."

(Transcript 22 July 2014 page 134)

140. In his oral evidence Mr Chhiber stated he had known Mr Degnegaard about a year or two before Trading Point was set up but he could not recall the circumstances in which he met or got to know Mr Degnegaard:

"A. I had known him about a year or two before. I can't recall the date when I knew him.

Q. And how did you get to know him?

A. I honestly can't recall.

Q. Well, this was a man that you knew well and trusted with your company, according to your evidence-in-chief.

A. Yes, but you are asking me before.

Q. It's quite a simple question. How did you get to know him?

A. Mainly through the lawyers when I was opening the company ---

Q. You opened the company in March 2006. We see that halfway down page 77: "Trading Point APS was started 2 March 2006, VAT registered 3 March 2006". So, is that when you got to know Mr Degengard?

A. Sorry, I can't recall.

Q. You told us in your evidence-in-chief that you knew him well. What I am asking is how you knew him. How did you come to know him?

A. (no reply)

Q. Was it through an advertisement?

A. I don't know. I might be wrong on this. What I think is maybe we met in the exhibitions in Germany."

(Transcript 22 July 2014 page 143)

141. Mr Chhiber described his surprise and concern at finding out that Mr Degnegaard represented a number of other mobile phone companies. He told us that when asked, Mr Degnegaard said it was confidential. Mr Chhiber explained that Mr Degnegaard had offered to run the company but he could not recall whether he had entered into any written agreement with Mr Degnegaard, although he felt sure he did.

142. Mr Chhiber explained that it was Mr Degnegaard who would call the Appellant to discuss deals. He would speak to any of the staff at Devi or Mr Chhiber; normally the staff would refer back to Mr Chhiber regarding the deals, for instance in respect of pricing. He could not recall an occasion when the Appellant wanted a higher price than Mr Degnegaard was willing to pay and he told us that Mr Degnegaard never spoke to him about how much to offer or whether Trading Point should do a deal:

"Q. So, it was in his interests to get the product at the cheapest price possible wasn't it, Mr Chhiber?

A. Yes, it would be, yes.

Q. So, he would want to negotiate hard with your team in Devi wouldn't he?

A. Yes, he should do, yes he did.

Q. But he never contacted you to say, "You're asking too much, Devi is asking too much"? He never said to you?

A. No one ever said that to me, no.

Q. No, because presumably you wanted Trading Point to make as much profit as possible as well, did you?

A. Yes, of course.

Q. It was your company wasn't it?

A. Yes.

Q. Did you know who Trading Point was selling to and at what price?

A. No, I had no knowledge of that

Q. Did you ask Gurt that question?

A. Not at this time, no…

A. Whenever I spoke to Gurt, I already ask him how much, you know -- are we making good profits, and he said he's trying his best to make good profits.

Q. So, you would ask him, "Are you making good profits?" and he 'd say, "I'm doing my best"?

A. That's right, yes.

Q. Did it get any more complex than that?

A. No.

Q. Presumably you asked to see the books of Trading Point?

A. Yes, you know, eventually we did, yes."

(Transcript 23 July 2014 page 12 - 14)

143. Mr Chhiber told us that he was provided with a breakdown of Trading Point's sales, purchases and profit each quarter but he was not given the details of the transactions as the paperwork was in Denmark. He agreed that as the owner of Trading Point he was entitled to that information but stated that he was very busy at

the time. Mr Chhiber agreed that the Appellant had entered into a loan agreement with Trading Point under which the latter was loaned approximately £8,000,000:

"Q. We can see the totals back and forth on page 354. The debit side of the column loaned £8 million, it looks like. The credit side received £8.3 million back again so it looks like in the end Devi appeared to be £300,000 up on this.

A. No, but that's only until that date. You know, if it continued then it would be ---

Q. Well, this takes us right up to March 2009 doesn't it?

A. Yes.

Q. So, would it be fair to say that you were trading, or that Devi was trading with Trading Point and you were funding Trading Point to do that?

A. Of course, we had a loan agreement between us. We were giving the loan to each other, yes.

Q. So, Trading Point would loan money to -- I am sorry, Devi would loan money to Trading Point so that Trading Point could pay for the goods that Devi was selling it?

A. I can't tell that. I don't know exactly what they're paying for and what they -- but this is the money being loaned to each other, that's all.

Q. Yes. We know that Devi did a lot of business with Trading Point don't we?

A. Yes.

Q. So, it is not unfair, is it, to suggest that you were loaning money to Trading Point so that Trading Point could buy your goods in part?

A. (no reply)

Q. Is that what was happening?

A. To buy goods?

Q. To buy goods from Devi?

A. From Devi or wherever they want to buy from.

Q. And you were trying to get both companies to trade profitably?

A. Yes, sir, I was."

(Transcript 23 July 2014 page 64)

144. It was put to Mr Chhiber that at a visit by HMRC on 15 January 2008 he had told the officers that he had been invited to join the Board of Directors of Trading Point for his knowledge of the mobile phone industry yet there was no such Board as Mr Chhiber was the sole director. Mr Chhiber agreed but stated that he could not recall referring to a Board and that the officers may have interpreted his comments in their own way.

145. In respect of Elettroberg the Appellant's due diligence comprised a Redhill VAT validation, documents which appear to be Italian registration documents and a letter of introduction. On 11 July 2007 the Appellant faxed Elettroberg requesting the names and contact details of two trade references. Ms Andersson-Hudson noted that this was over two months after the date of the Appellant's transaction with the company and no trade references were provided as part of the Appellant's due diligence packs. On 6 July 2007 Elettroberg sent the Appellant a copy of its VAT certificate; this postdated the transactions by two months. HMRC also highlighted the lack of any credit checks carried out by the Appellant on Elettroberg and the absence of a trade application form or references. Information received from the Italian Tax Authorities indicated that the company was involved in the wholesale of household appliances and that the trader was investigated in 2005 and 2006 for possible fiscal frauds.

146. Mr Chhiber stated that the trade references in respect of Elettroberg were chased up even after the period in question:

"Q. But this was well after the deal that you carried out with the

Ellectroberg at period 5/07.

A. That was Mahesh's job. He should have done it at the same time, sir.

Q. But you just went ahead without the due diligence?

A. He would have checked, like I said, the VAT number is more

important to us, if it is valid or not valid.

Q. Presumably you were asking for these documents for a reason?

A. Yes, just to keep, because if you are going to deal or future deals, we got the documentation in our file.

Q. When was this visit that you carried out to Ellectroberg?

A. I actually met the company; I can't give you the exact date I have been. I was introduced to this company by a gentleman called Bianci Bhazi who was our agent in Italy who spoke English and Italian. He requested me to come to, before we done the deals, long before we done this deal.

Q. This was long before you had done any business with Ellectroberg?

A. That's right, yes, with Ellectroberg. Obviously I went down to see their premises and I met with Luizi, who was the main guy in the company.

Q. Where is the evidence of this visit?

A. I did take photographs and I did give it to Mahesh. I don't know if he passed it on to Customs or if he lost it there or we lost it within our house. I don't know

Q. Why would you not have asked for the sort of documentation that you were chasing up in July 07 when you went to see them?

A. I asked them to send it to us because ... I don't know what the reason for ... that he, when we met each other, he took us out and then we didn't go back to the office to gather all the documentation.

Q. And these documents did not come until months after you started dealing with him?

A. Yes.

Q. Is that right?

A. Yes, dates from this documentation tells you that he is chasing afterwards, so yes.

Q. Because you were warned on page 123, warned by Redhill that

Customs could not verify that there was a valid VAT registration on 13 April 2007.

A. Is there a document when we applied to Redhill? Can you check?

Q. The previous page, page 122. You did receive a positive answer from Redhill in July at 124. But the deal that we are concerned with in this period, deal 11, and you sold to Ellectroberg on 20 April 2007.

Q. At the time that that deal was undertaken, Redhill had not given you the green light as regards the registration of Ellectroberg and that did not come until July. So why would you go ahead with the deal?

A. As I said to Mr Puzey, that I actually visited the company. I knew how big the company was and our main aim to check the VAT is not invalid, we need to make sure the VAT number is valid. So we did a Europa check on it and its VAT number was valid to us. To do the Redhill checks sometimes takes weeks."

(Transcript 23 July 2014 page 90)

Supplier

147. The due diligence documents provided to HMRC in respect of Mobile One include photographs of an office in a residential premises, a copy driving licence for Mohammed Javid Akhtar, a Creditsafe report and an account application form.

148. Ms Andersson-Hudson highlighted that the registered address given on the account application form for Mobile One was that of Barrington's accountants which was also used by the Appellant. The form indicated that the company held an account with UMBS bank but did not give any account details or the period over which the account has been held. Referees were provided: DVB and Ace Telecom. However no account opening dates or addresses were provided. Ms Andersson-Hudson noted that there was no indication that Mr Chhiber had contacted the referees. She highlighted that the Creditsafe report for Mobile One was printed on 30 March 2007 and does not give a credit rating or credit limit as the financial statements for the company are too old. The photographs provided do not show when or where they were taken nor the name of the person photographed for identification purposes. Ms Andersson-Hudson also noted that there was no indication as to when the Appellant's supplier declaration which had been completed by Mobile One had been signed.

149. In cross-examination Ms Andersson-Hudson stated that she was not aware of any due diligence documents that had gone missing since she took over the case. She confirmed that additional documents highlighted on behalf of the Appellant had not been part of the deal packs that she had received.

150. In his written evidence Mr Chhiber contended that the Appellant's due diligence was always deemed sufficient as the company's returns were signed off and the procedures became more robust as time went on. The company's general procedures included site visits, Creditsafe reports, supplier declarations, inspections of goods and Redhill VAT validations.

151. Mr Chhiber stated that he had known the Appellant's trading partners for a long period of time and could see *"no point in carrying out due diligence in such companies without a good reason…during the period in question, I was satisfied with the integrity of those that I dealt with…I am keen to stress that I would carry out HMRC's advice. If I did not, then I imagine, HMRC would have refused my VAT repayments. Their own advice said, I was to satisfy myself as to the integrity of my suppliers and customers. In this respect a combination of due diligence and personally knowing the people in some instances provided me with sufficient comfort to trade."*

152. He stated that the companies named as references for Mobile One were known to him and he had contacted them. The Creditsafe report was used to verify the company's address and basic information. He also knew Mr Akhtar and Mr Proctor the directors. Mr Chhiber was unable to comment on why the supplier declaration form sent to Mobile One on 18 April 2007 for a deal which took place on the same date and which specified that the form must be completed and returned prior to the deal taking place was apparently not faxed back to the Appellant until September 2007.

153. In cross-examination Mr Chhiber could not recall how his son had come to be a director of Mobile One:

> *"Q…Your son was a director of Mobile One, was he not? Page 58.*
>
> *A. He was a director of Mobile One but he never traded on that company.*
>
> *Q. How did he come to be a director of Mobile One?*
>
> *A. That I can't recall…Yes, previous director means he was a director only but he never worked with the company. There must have ... I don't know, Mr Aktar was new to us through Twenty Twenty, as I said in the past to you, and obviously he would have known to my son. They probably decided they wanted to deal, do some business together, and obviously didn't continue.*

Q. It was not just that they did business, Mr Dipak Chibber was made a director of this company. I am asking you if you knew how that came about.

A. That's his decision, not mine. You had better ask him."

154. It also transpired from Mr Chhiber's oral evidence that he had had some involvement in the company, although we note that this was prior to the relevant period for this appeal:

"Had you ever had any relationship with his business, Mobile One Ltd, by way of, for example, being a director of it?

A. We had this company originally, Mobile One, set up to do, you know, to do other business what we wanted to do.

…

Q. Were you ever a director of the company?

A. I think it was my son was director on that, if I correctly remember.

Q. Did you have any such relationship with the company like your son did?

A. Not at that – only at the beginning before ever we dealt with the company, is like I was a shareholder, then I given up my shareholding.

Q. When was it that you gave up your shareholding?

A. It was long before we ever dealt with these deals, years before."

(Transcript 23 July 2014 page 86)

155. Mr Chhiber was asked about the references provided by Mobile One:

"Q. Mr Proctor, whose name we also see in the middle of that page, was known to you through a company called Ace Telecom, was he not?

A. Ace Telecom, yes, I believe…

Q. I am just asking you to look at the box with the name of the reference in it.

A. Yes, I am looking at it. Yes, I can see.

Q. DDB, do you see that?

A. Yes, I can see that.

Q. They were a supplier of Trading Point, were they not?

A. DDB?

Q. DDB.

A. I can't recall.

Q. Okay, we will come to that when we look at Trading Point's records.

And the second reference that is put forward is Ace Telecom, is it not?

A. Yes.

Q. Mr Proctor's company.

A. Yes.

Q. Mr Proctor is putting forward his own company as a reference for

Mobile One. Yes?

A. Yes. I don't know, obviously Neil Proctor was a partner in there.

There were several partners in Ace Telecom I believe.

Q. You told us that that was his company.

A. I'm sorry, I made a mistake then.

Q. What mistake?

A. I thought it was a part of the company but not – I don't know if you,

how much share will he work together with that company."

(Transcript 22 July 2014 page 125)

156. Mr Chhiber went on to say that the Creditsafe report in respect of Mobile One meant nothing to him as he *"thought he would be…honest and straightforward guy."* He agreed that the report indicated that the company was not well-established or well-funded but that obtaining the report was part of the procedures:

"Q. Right. So a chap that you knew worked for a proper company some

years before was now selling you phones from his bedroom. That did not cause you any concern?

A. No. I mean, I didn't realise. I mean, if I worked for Twenty Twenty I would be able to obtain stocks from them.

Q. Did he indicate that that was the source of his stock?

A. No."

(Transcript 22 July 2014 page 130)

Turnover

157. The Appellant's annual turnover declared on its VAT returns was £3,305,633 in the 12 months to 28 February 2002. In the following 12 months the turnover increased to £24,031,345. In the 12 months thereafter to 29 February 2004 the turnover was £21,082,550. The turnover then dropped in the 12 months to 28 February 2005 to £6,850,570 but then rose again in the 12 months to 28 February 2006 to £50,486,778. In the following 12 months the declared turnover was £45,593,169.

158. Mr Chhiber agreed that the Appellant's turnover grew exponentially. However he explained that:

"…relative to the international market – in which hundreds of thousands of phones are traded daily, PLC's business model (and its chains of suppliers and customers) accounted for a tiny fraction of the world market. The numbers traded are large because the demand was insatiable…Fluctuation in turnover is explained by the fact that demand was higher in some years than others."

Loans

159. HMRC Officer Tarr's visit report to Mobile One dated 15 November 2005 records that Mr Aktar, the director, advised that he had received a loan from the Appellant which enabled him to complete an export deal. He stated that once the loan was repaid no further transaction between the two companies had taken place.

160. In his written evidence Mr Chhiber stated that he had checked the Appellant's records and found no evidence of a loan to Mobile One nor could he recall any money being loaned. He explained that he had loaned funds to DIS to assist his son, and to Trading Point.

Nature of trade

161. Ms Andersson-Hudson relied on the fact that the transactions in this appeal were conducted on a back to back basis and all within a day or two. In cross-examination Ms Andersson-Hudson explained that she had highlighted the completion of the deals in a short space of time as it was a common feature of MTIC trading and she had been provided with no evidence of negotiation or emails between the parties to show that the deals had been organised over a lengthier period. She explained that documents

such as invoices and shipping notes form part of the business records and therefore should have been retained by the Appellant.

162. Ms Andersson-Hudson noted that none of the transaction chains traced led to the manufacturer of the goods or an authorised distributor. None of the traders in the chains made a loss. During the relevant period the Appellant sold to a company called MBG Associates (UK) Ltd which then sold on to Trading Point. Ms Andersson-Hudson queried why Trading Point had not purchased directly from the Appellant as it had done in the past.

163. The Appellant organised its trading in such a way so that it did not have to pay its supplier until it had been paid by its customer. Ms Andersson-Hudson also noted that no written contracts were produced by the Appellant despite the significant value of the transactions. In cross-examination she accepted that minimising risk, for instance in respect of payment terms, was a common feature of commerce and not always an indicator of complicity in fraud. However she clarified that it could be an indicator in the type of environment in which the Appellant was trading.

164. At a visit to the Appellant by HMRC on 8 June 2005 it was recorded that Grade One offered phones to the Appellant who then purchased to sell and export once a customer was found. The Appellant gave verbal instructions to the freight forwarder and payment was then completed. There was no facility for returns and no confirmation of receipt or inspection by the customer was received; Mr Chhiber explained in his witness statement that there was no need for such a facility as the phones came with a manufacturer's worldwide/EU warranty. He stated that there was nothing unusual in not having signed contracts in place beyond the transactional documentation in which the commitment to buy or sell is confirmed.

165. Mr Chhiber's statement provided details as to suppliers and customers that the Appellant has dealt with which ranged from general traders to large organisations such as Vodafone, 20:20 Communications Ltd and Wolverhampton City Council. The Appellant had large warehouse premises in Wolverhampton where goods could be stored although not all products went to the warehouse. If the goods did not, the Appellant instructed the freight forwarder to carry out inspections.

166. Mr Chhiber explained the general business model as follows: the Appellant either approached a customer or received a request for a quantity of a specific product or it would receive offers of stock for purchase from suppliers. If the supplier was unable to provide the precise quantity the Appellant would either return to the customer to vary the order, offer the stock to another trader or ask the supplier to provide the requested quantity but at the same price. The Appellant sought confirmation that the goods existed prior to the issuing of invoices by verifying with the supplier's freight warehouse that they were holding the goods. A sales invoice would then be issued to the customer and a purchase invoice accepted from the supplier.

167. Mr Chhiber explained that the records held by HMRC only show the transactional information which may have been the result of negotiations over the course of several days. Documents were not raised until negotiations were completed and the necessary arrangements in place.

168. In cross-examination Mr Chhiber could provide no explanation as to why a UMBS statement showed that in respect of one of the deals (invoice number 3997) the Appellant had been paid ten days prior to the invoice having been raised.

Profits and mark-ups

169. Ms Andersson-Hudson noted that each of the traders in the chain prior to the Appellant made a modest profit. In contrast the Appellant's mark-up is significantly increased. By way of example in deal 1 the mark-ups made by Bushmaster, CPU Trader Ltd and Chatterbox were 25p in comparison with that of the Appellant which was £16.90. In cross-examination Ms Andersson-Hudson accepted that there was no evidence to demonstrate that the Appellant had any awareness of the mark-ups in the earlier stages of the supply chains. She did however note that as the director of Trading Point she would have expected him to have been privy to the financial information of Trading Point as well as its customers and suppliers.

170. Ms Andersson-Hudson highlighted that the Appellant had not produced any evidence as to its pricing policy or evidence of negotiations yet similar margins were consistently achieved.

171. In cross-examination it was put to Mr Chhiber that the 25p mark-up made by SA Trading and Chatterbox was wholly disproportionate as compared with the £56 per phone mark-up made by the Appellant. Mr Chhiber explained that:

> *"Our main aim was to make maximum ourselves. I have no knowledge about other people, what they were making.*
>
> *… Sorry, or what, you know, they want to make. That is up to them.*
>
> *Q. Your guide figure to your sales team was £3 to £5 you told us earlier.*
>
> *A. Correct, but if you are exporting the stock it could be higher, but ---*
>
> *Q. Of course if you charged less, that would have enabled Trading Point to make more of a profit wouldn't it?*
>
> *A. As I said, our sales team, they wanted to make the maximum what they can. If they offered it to him at that price and he would be able to sell it at a higher price making a profit.*
>
> *Q. Both of your companies want to maximise their profits don't they? You told us that.*
>
> *A. Yes, well, we are exporting it and we are also funding the VAT in that.*
>
> *Q. It didn't cost £50 odd per unit to export it did it?*

A. It didn't need to. What do you mean, it didn't cost ---

…

Q. You are trying to explain a disproportionate ---

A. If you are working out all the cost, the cost is overheads at our offices, our sales costs, then our insurance costs, and our transport costs for exporting the goods, these are all added up when you are doing the export.

Q. And does that account for about £50 per unit, all those overheads?

A. (no reply)

Q. Does it, or was this just a very good deal?

A. It was a very, very good deal we made. We made a very good profit.

…

Q. So just think about deal 10 again. Devi are making £52 and £32 a unit – huge profit compared to Trading Point, who are making £3 a unit. When you looked at the books did you consider that Devi were effectively overcharging Trading Point?

A. I wouldn't say overcharging. It was Gert's interest to negotiate with Devi's sales team, whatever best he can get the prices.

Q. He cannot have been very good at negotiating if you allowed Trading Point £50 margin.

A. Well, in this case he hasn't, has he, in this case? So I don't – I can't tell, that …..

Q. What were his credentials as a tough negotiating businessman?

A. Well, presumably he was, but it depends on the sales person selling it to you, how good he is.

Q. What did you know of his track record in sales?

A. I really didn't know his track records on sales.

Q. You hired this man to run your company.

A. Yes, I did.

Q. On what basis?

A. Because I could not run the company in Denmark myself. I need to have other employees …..

Q. Why choose him?

…

A. I made a decision that time when I met him, so, you know, that's my decision and my obviously …..

Q. A decision you made apparently without any knowledge of his business experience.

A. Well, when he was speaking to me he was talking that he was very experienced, and to me he looked very experienced and knowledgeable. But on the negotiation side it didn't look very good."

(Transcript 23 July 2014 page 21 & 33)

Freight Forwarder

172. The freight forwarder used by the Appellant, D Wood Transport Ltd, has not submitted any VAT returns since 03/08. The company is now insolvent and its official address is the Official Receiver.

173. Mr Wood was previously registered for VAT as the director of Express Transport Midlands Ltd. The registration was the subject of a compulsory winding up order and is formally insolvent having been de-registered from 23 November 2005.

174. At a visit to the trader on 13 February 2009 HMRC recorded Mr Wood's denial of ever having transported goods from SA Trading to the Appellant. Mr Wood also stated that he had never signed anything from the Appellant apart from some inspection reports which the Appellant had insisted were signed.

175. HMRC had also visited Mr Wood on 16 March 2005 and 1 April 2005 (both of which we should note pre-date the mobile phone deals under appeal). The visit report for 16 March 2005 recorded Mr Wood as stating that he was not always aware of the type of goods he was transporting and that he had some concerns that he had moved the same goods to Europe and back to the UK on the instructions of the Appellant, although he stated he did not want the Appellant to be informed of the concerns he

had voiced. At the meeting on 1 April 2005 Mr Wood indicated that he was still working for the Appellant and had carried out a recent job where the value of stock was £250,000. He stated that he received payments in a mixture of cash and cheques and that the stock collected was usually shrink-wrapped.

176. Mr Chhiber disagreed with much of the content of Mr Wood's conversations with HMRC. He noted that no statement was obtained by HMRC from Mr Wood and that the conversations as reported are uncorroborated hearsay. He disputed the fact that Mr Wood was unaware of the stock he was carrying as Mr Wood had signed inspection reports and CMRs.

Inspections

177. At a visit to the Appellant on 15 January 2008 HMRC recorded Mr Chhiber as stating that if the goods are ship on hold with the freight forwarders then it is the freight forwarder which carries out the inspections. If the goods are delivered to the Appellant's storage unit then either he or his staff would complete the inspection. Mr Chhiber said that he does a 100% check which includes a 100% count to ensure that all the goods are there and the original seals are intact, and a 10% physical check that the contents of the boxes are correct.

178. Ms Andersson-Hudson noted that Trading Point did not specify the type of manual on its purchase orders. The manuals in the deals differ; the inspection report for deal 1 shows the manual language as English, the report for deal 7 does not specify and the reports for deals 8, 10 and 10a show German. Elettroberg which was based in Italy does not specify the manual language on its purchase order but the inspection report for the deal indicates that it is German. In cross-examination Ms Andersson-Hudson accepted that whether a specific manual was required would depend on who was buying the goods and may or may not have an effect on the value of the phone.

179. Mr Chhiber's witness statement explained that the market he dealt with was international and that HMRC *"assumes that because goods were sent to the UK and Denmark, that is where they remained. She provides no evidence as to their final destination…All I need to know is can I find stock for a customer who is willing to buy it."* He clarified that software can be altered in respect of languages.

Banking

180. On 17 September 2007 Mr Jangra advised that the Appellant was only using the Nordea Bank which is a Nordic bank with branches in Denmark, Finland, Norway, Sweden, Poland and the Baltic countires. No explanation was provided as to why this was.

181. The Appellant also held FCIB accounts. The principal shareholder of the FCIB was arrested by the Dutch financial authorities in October 2006 in suspicion of money laundering.

182. The Appellant had also banked with UMBS. HMRC Officer Clarke provided unchallenged evidence in which he exhibited lists of transactions carried out at UMBS by account holders by means of online instruction. The data was obtained via a Production Order in respect of Infrasoft Technologies Ltd; the company that provided

the software to UMBS for the computerised banking system. Having cross-referenced the customer account numbers on the list of transactions to the customer details contained within the records of UMBS the money flows of transactions could be traced.

183. Ms Andersson-Hudson was provided with the information compiled by officer Clarke from which she traced the money flow of four deals under appeal (1, 4, 7 and 8) from the data obtained from the UMBS. In each case the money flowed in a circle:

Devi – Mobile One – SA Trading Ltd – Chatterbox Communication – CPU Traders Ltd – Dusany Traders Ltd – Trading Point - Devi

184. Ms Andersson-Hudson clarified that it was not possible to establish where the chains begin and end. She noted that in all four deals the payments bypass the blocking trader Bushmaster and is instead paid to Dusany Traders LDA which does not appear in the supply chains. UMBS payments for deals 10 and 10a could not be identified and in deal 11 the Appellant used the Nordea Bank, UMBS having ceased operating on 16 April 2007.

185. In cross-examination Ms Andersson-Hudson accepted that no warnings or advice had been given to the Appellant in respect of its use of either the UMBS bank or the FCIB.

Submissions

186. On behalf of HMRC Mr Puzey submitted that the issues to be determined in the MTIC appeal are straightforward. The issues as to tax losses and connection were not challenged. The remaining issue is whether the Appellant knew or should of known of the connection to fraud.

187. He contended that the following features of this appeal indicated knowledge or means of knowledge on the part of the Appellant through Mr Chhiber:

- Mr Chhiber's disqualification as a director and the assessment raised against IC Distribution combined with his receipt of Notice 726 and specific advice from HMRC in correspondence and visits from which he was aware of the prevalence of MTIC fraud and the type of steps to be taken to guard against involvement in it;

- HMRC's letter dated 14 November 2006 in which Mr Chhiber was notified that the Appellant's transactions in period 02/06 and 05/06 and in which the supplier was Grade One had been traced back to tax losses yet trade with Grade One continued;

- Mr Chhiber's connection to Mobile One having been involved in the set up of the company, being a former shareholder and his son's involvement as a former director combined with the poor due diligence carried out on the company;

- The fact that Mr Chhiber was the director of Trading Point and his lack of knowledge about Mr Degnegaard;

- The trading pattern between the Appellant and Trading Point which made no commercial sense.

188. On behalf of the Appellant Mr Heywood submitted that HMRC have failed to establish knowledge or means of knowledge on the part of the Appellant. Mr Heywood accepted that the Appellant had found itself trading in deal chains which had generated tax losses. However that of itself was not evidence of the Appellant's knowledge of contrivance.

189. We were invited to bear in mind the long trading history of the Appellant which, Mr Heywood contended, rebuts any suggestion that the Appellant was formed purely for the purpose of facilitating a fraud.

190. Mr Heywood submitted that the Appellant's manner of trading reflected commercial reality; where a company has been successfully traded with, the likelihood is that trading will continue. The Appellant's trade with connected companies such as Mobile One, Trading Point and DIS indicates that the deals were not contrived as the associations would clearly be brought to HMRC's attention.

191. In relative terms Mr Heywood submitted that the deals were comparatively small when viewed against the other business interest of the Appellant. The Appellant carried out a significant amount of transactions and there would be no reason for the company to mix its legitimate trade with contrived deals.

192. Mr Heywood submitted that all of HMRC's evidence was discovered with the benefit of hindsight, for instance the banking evidence. He, as had Mr Chhiber, accepted that reduced into spreadsheets so many years after the event, the evidence of quick and circular payments reflected badly. However HMRC have produced no evidence of information or events known to the Appellant at the relevant time which indicated the contrived nature of the deals.

193. Mr Heywood highlighted the importance of personal relationships as part of due diligence and the confidence which they could provide above and beyond paperwork. Taking into account all of the evidence, Mr Heywood submitted that there was a startling lack of any evidence to demonstrate the Appellant's knowledge or means of knowledge at the relevant time.

The Decision

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

194. We have set out an overview of the evidence above but we should make clear that we considered all of the oral and written evidence and submissions of both parties carefully in reaching our conclusions.

195. We should note at the outset that we found Ms Andersson-Hudson to be a reliable and credible witness. The Appellant's evidence was less convincing; he was vague and at times sought to distance himself from the transactions by asserting that others had taken responsibility for the deals, more about which we will say in due course.

196.We were wholly satisfied that by the time of undertaking the relevant transactions Mr Chhiber was fully aware of the nature and prevalence of MTIC fraud within the mobile phone trade. We reached this conclusion having taken into account Mr Chhiber's lengthy experience in the industry and the numerous occasions on which HMRC had brought the issue to his attention either at meetings or via correspondence. It is against that background that we judged the Appellant's trading and the transactions under appeal.

197.Mr Chhiber relied on long-standing relationships with his trading partners as the reason why he was satisfied as to their integrity. The difficulty for Mr Chhiber was that the evidence as to why he was satisfied, other than his having conducted successful deals in the past (by which we mean goods were traded and payment made) was vague. By way of example we rejected Mr Chhiber's evidence that HMRC had approved his earlier transactions; the fact was that those transactions were never subject to extended verification by HMRC and therefore any repayments made by HMRC had not been scrutinised.

198.We also found Mr Chhiber's evidence was undermined by the warning he had received in respect of Grade One; HMRC advised by letter dated 14 November that tax losses had been traced in the 02/06 and 05/06 periods in respect of transactions in which the Appellant was supplied by Grade One. Despite this warning the Appellant continued to trade with Grade One for instance on 1 December 2006 when it purchased 3000 Nokia mobile phones in a transaction worth £321,656.25 (VAT inclusive). There was no evidence before us to support Mr Chhiber's assertion that he was contractually obliged to continue this deal and no evidence that Mr Chhiber had taken any meaningful steps to address the matter. We found that this was relevant to Mr Chhiber's attitude to commercial checks generally. Whilst we accepted that the Appellant had a trading history with Grade One the absence of any cogent evidence as to how he met the company officers, came to trade with the company and satisfied himself that the company was legitimate was significant.

199.We formed the same conclusion in respect of Mobile One. Again Mr Chhiber relied on his knowledge of the company officers. We found his evidence evasive; Mr Chhiber sought to distance himself from his son's prior association with Mobile One as a director and it was only as a result of robust cross-examination that Mr Chhiber reluctantly told us that he too had been a shareholder. The evidence as to Mr Chhiber's knowledge of the company officials was vague; again we were left without any detail as to why his knowledge of Mr Proctor or Mr Akhtar satisfied Mr Chhiber as to the veracity of the company other than superficial comments such as thinking *"he would be…honest and straightforward guy."* We then considered what the Appellant did know of Mobile One as a result of its due diligence checks. It was quite apparent that the Appellant knew little as a result of its checks; the Creditsafe report indicated the company was not well-established or well-funded and Mr Chhiber accepted in cross-examination that he did not know where the company was sourcing the goods from. Anomalies in the documents were apparent; Mr Proctor had used a company with which he was associated as a reference and it appeared that the supplier declaration form was not returned to the Appellant until month after the relevant deal.

200.The due diligence in respect of Elletroberg was even more scant. Mr Chhiber seemed to have little understanding as to the contents of the documents in Italian, trade references were only requested after the deals had taken place and no checks as

to the company's financial standing had been carried out. In oral evidence Mr Chhiber sought to bridge these gaps by telling us that he had visited the company prior to the deals and provided Mr Jangra with photographs which may have been lost or passed on to HMRC. He stated that Mr Jangra would have checked the references and VAT number. We found Mr Chhiber's evidence on this matter evasive and we rejected it as untruthful.

201.Mr Chhiber's evidence in respect of Trading Point lacked credibility. Whilst we accepted that it is entirely possible to be a company official with limited involvement in that company, Mr Chhiber sought to persuade us that his role was solely confined to the provision of funds to Trading Point. It transpired from Mr Chhiber's evidence that the relationship between the two which caused Mr Chhiber to trust Mr Degnegaard to run Trading Point so independently was no more than meeting him, possibly at a trade fair or through lawyers when opening the company. It was clear that Mr Chhiber knew little about Mr Degnegaard such as would satisfy any legitimate businessman to entrust his company to him and that there had not been a long standing business relationship between the two and there was no evidence upon which we could conclude that any reasonable person would have been satisfied as to Mr Degnegaard's integrity.

202.We rejected Mr Chhiber's evidence that Mr Degnegaard traded with Mr Chhiber junior's company DIS without his knowledge as untrue. We noted that the Appellant had sold goods to DIS at a loss which had then been sold by DIS to Trading Point. Given that the Appellant shared a bookkeeper (Mr Jangra) with DIS we found it implausible that Mr Chhiber either did not know of this fact or that it was not brought to his attention either by Mr Jangra or Mr Degnegaard or Mr Chhiber's son.

203.We also noted that in transactions during the same period (deals 6 and 6a as allocated by the Appellant) but which do not form part of this appeal, the chains of supply were identical save that the Appellant was in the position of a buffer trader, selling to UK based Sprint Ltd which then dispatched the goods to Trading Point. We could see no commercial explanation as to why, given the close trading relationship between Trading Point and the Appellant, the goods would be sold to an unrelated company thereby depriving the Appellant of a potentially significant mark-up.

204.We were satisfied that other aspects of Mr Chhiber's evidence on this matter were also implausible and untrue. For instance Mr Chhiber had told HMRC officers at a visit on 15 July 2008 that he had been invited to join the Board of Directors of Trading Point because of his knowledge of the mobile phone industry. This was clearly untrue as Mr Chhiber was the sole shareholder and director. Mr Chhiber also indicated that although he would have been entitled to see the details of transactions undertaken by Trading Point he had been too busy to do so and simply asked Mr Degnegaard if the company was making good profit. Mr Chhiber presented as an experienced businessman and it was clear from his evidence that the trade and profits of the Appellant were important to him. We found his assertion that he knew nothing about the trade or profits of Trading Point implausible and it was notable that Mr Chhiber could not explain how pricing was agreed between the two, how conflict between the two companies was avoided or how both were able to achieve maximum profits when it was in the interests of the Appellant to sell at a high price and in the interests of Trading Point to pay the lowest price possible.

205.We found the commercial checks undertaken on Trading Point lacked substance. First we queried why Mr Chhiber felt the need to obtain photographs of the premises and a Redhill VAT validation when the company was his own. Furthermore Mr Chhiber failed to query the documents provided by Mr Degnegaard which contained a number of anomalies. Against this background Mr Chhiber had undertaken no due diligence on Mr Degnegaard who allegedly ran the company. We concluded that all of these features taken formed a picture of contrived trading.

206.The Appellant achieved a radical growth in turnover in such a short space of time (£6,850,570 in the year ended 28 February 2005 to £50,486,778 in the following 12 months). Mr Chhiber knew little, if anything, about the memory cards he traded in high value transactions and despite his experience in the mobile phone industry he provided no detailed evidence as to why his turnover increased so significantly other than to say he was part of a parallel market and that demand was insatiable. Even accepting this to be the case, in our view any reasonable businessman would have questioned why this was so or whether the large profits reaped were too good to be true.

207.We disregarded the evidence that the Appellant had in the past made a loan to Mobile One on the basis that there was limited evidence about it and we were not satisfied that it assisted HMRC's case on the issue of the Appellant's knowledge.

208.We were provided with a copy of a loan agreement between the Appellant and Trading Point dated 29 June 2006 for the loan of £150,000 by the Appellant to the company. We found it notable that the Mr Chhiber was, in effect, funding the trading of Trading Point. Whilst there is nothing wrong in loans between associated companies, we found when viewed in the context of the transactions between the Appellant and Trading Point and DIS and Trading Point there was no reasonable explanation for the loans other than to facilitate the fraud.

209.As regards the nature of the Appellant's trade, whilst there is nothing inherently illegitimate about back to back trade and we did not find that in itself it indicated knowledge on the part of the Appellant, we bore in mind the questions posed by Moses LJ in *Mobilx* at [72]:

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

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

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

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

210.Without adding any apparent value to the distribution chain the Appellant was able to match customer, supplier and quantity of goods in each of the transactions. There was also a lack of clearly recorded formal contracts or terms and conditions which we found surprising given the value of the transactions. Added to this, the Appellant consistently made significant mark-ups. Whilst we accepted that the Appellant may not have been aware of the price paid by those further up the chain, he was aware of the price at which he purchased and sold the goods and the significant mark-up achieved. There was no documentary evidence of negotiations between the parties and we found Mr Chhibber's evidence that deals were organised over a period of time was vague and unconvincing. In our view any legitimate business involved in such high value transactions would have a record of terms agreed in order to protect itself. We were satisfied that the absence of such records was indicative of the contrived nature of the deals and the lack of evidence showing communications between the parties such as emails and letters of offers and counter-offers demonstrated the non-commercial nature of the trade in which the Appellant was engaged. The picture which formed from the circumstances of the transactions is that the deals were simply too good to be true.

211.The inspections of phones were undertaken by the Appellant at its premises. Whilst we noted that anomalies such as no specification of the language on the phone were not queried by the Appellant we did not find that in itself suggests that the deals were non-commercial.

212. HMRC relied on the Appellant's use of banks such as the UMBS and FCIB as evidence in support of its case. We did not accept the Appellant's use of such banks was indicative of knowledge of the connection to fraud as there was no evidence before us that at the relevant time there was information in the public domain which would have caused concern about joining the FCIB or UMBS.

213.As regards circularity of money flows, we were satisfied that this was a clear indicator of contrivance and we noted the surprisingly short period over which the circle of payments were made. However we were not satisfied that this demonstrated knowledge on the part of the Appellant.

Conclusion

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

215. As to the issue of knowledge, we have based our decision on the totality of the evidence and we were careful not to focus unduly on the issue of due diligence or judge the evidence with the benefit of hindsight. We were wholly satisfied that the circumstances of the Appellants' transactions viewed as a whole indicated that Mr Chhiber had actual knowledge that the transactions were connected to fraud. We found that some reasons carried more weight than others and we did not base our decision solely on one reason but rather the cumulative effect of our findings viewed in totality.

216. The factors identified above, from which we inferred the Appellant's actual knowledge, would in our view also support a finding of means of knowledge. That the deals were quite clearly "too good to be true" must have been obvious to Mr Chhiber,

not least by the casual manner in which business was conducted, the little known about trading partners with no evidence to support Mr Chhiber's assertion that he was satisfied as to their integrity, the due diligence that lacked substance and the substantial turnover made for no added value and little work.

217. The appeal is dismissed.

Costs

218. We direct that the Appellant is to pay HMRC costs of, incidental to and consequent upon the appeal, to be the subject of detailed assessment if not agreed.

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

JENNIFER DEAN
TRIBUNAL JUDGE

RELEASE DATE: 13 May 2015