



TC06612

Appeal number: TC/2015/02107

VALUE ADDED TAX – Nature of the decision under appeal - Scandico Ltd [2017] UKUT 0467 (TCC) considered and applied - Evidence of export - Whether or not the totality of the evidence fulfilled the requirements? - No - Appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

SHAKS SPECIALIST CARS LIMITED

Appellant

- and -

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

**TRIBUNAL: JUDGE CHRISTOPHER MCNALL
MR IAN ABRAMS FIA FCSI**

**Sitting in public at Tribunal Centre, Alexandra House, 14-22 The Parsonage,
Manchester M3 2JA, on 25 September 2017 and 16 April 2018**

**Mr Alan Rashleigh, a VAT Consultant, of Alan Rashleigh & Associates Ltd, for
the Appellant**

**Mr Bernard Haley, an Officer of HMRC, instructed by the General Counsel and
Solicitor to HM Revenue and Customs, for the Respondents**

DECISION

Introduction

5 1. This appeal (made by a Notice of Appeal dated 18 September 2014) challenges HMRC's refusal to give VAT input tax credit in the sum of £35,164, as follows:

(1) £16,378 - for the period 01/13

(2) £18,786 - for the period 04/13

10 2. This relates to four sales orders, said by the Appellant to relate to three businesses in other EU Member States:

(1) 'Various Car Parts' sold to 'Direct Components', Dublin, ROI on or about 31 October 2012;

(2) 'Various Car Pts' sold to 'Direct Components', Dublin, ROI on or about 28 January 2013 [(1) and (2) together, '**the Irish Transactions**'];

15 (3) 'Denso Injectors' to Timon Trade SRO, Prague, Czech Republic, on or about 23 March 2013 ('**the Czech Transaction**');

(4) 'Parts' sold to 'Meuda Investments Sp z o o', Warsaw, Poland, on or about 21 April 2013 ('**the Polish Transaction**').

20 3. Whilst the amount stated on the Notice of Appeal is £56,081, we understand that the difference between it and £35,164 relates to a matter which has been resolved between the parties, and to which we do not need to have any further regard.

4. It is not disputed that the decision as set out above were made in formal compliance with VAT Act 1994 section 73.

The issue for us to decide, and our jurisdiction

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5. We first need to identify with precision what we are actually being asked to decide.

6. The Grounds of Appeal read as follows:

30 *"...the element relating to disallowing of input tax/ charging output tax has been treated by HMRC incorrectly as all correct export documentation was produced to officers and the procedures followed by the appellant was (sic) in line with the published information issued by HMRC. It would appear that no satisfactory reason for the Commissioners' actions in this respect has been forthcoming."*

35 7. Consistently with this, the Appellant's Skeleton Argument is clear that the appeal is on the footing that the Appellant provided HMRC with export documentation which, the Appellant contended, was sufficient to meet the requirements of HMRC's Public Notice 703 Paragraph 6.

8. In its Statement of Case, HMRC observed as follows:

"5. The Respondents were not satisfied that full evidence of export had been provided. The actual evidence of export is missing.

5 [...]

8. *The Respondents concluded that there was insufficient evidence to show the supplies had taken place and the correct course of action was to disallow the input tax claimed as it could not attributed to supplies made in the course of business".*

9. However, by the time of the hearing, HMRC's position had evolved so as to include a further proposition, namely that *'the Respondents consider the alleged goods did not exist and therefore no taxable supply was capable of being made (section 26(2) of the Value Added Tax Act 1994).'*

10. This seems to be an instance of the practice which had arisen in the FTT of treating appeals of this kind as a two-stage process: (i) whether in fact the taxpayer made taxable supplies (if it did not, then the appeal must fail); and (ii) if the taxpayer did make taxable supplies, whether nonetheless HMRC acted reasonably in refusing to accept the evidence - albeit in this case issue (ii) emerged first, and issue (i) emerged only subsequently.

11. As the Upper Tribunal (Rose J, the then-President of the Tax and Chancery Chamber, and Judge Hellier) explained in *Scandico Ltd v HMRC [2017] UKUT 0467 (TCC)*, the FTT should be careful to address only the decision which is actually before it: see Para [43].

12. In this case, the decision is contained in the letter dated 1 May 2014 (at page 57 of the bundle) which says:

"A full response to my letter of 20/12/13 has not been provided and ... in the absence of the information requested, I am disallowing the input tax claimed in respect of these 4 transactions".

13. The letter of 20 December 2013 referred to says (inter alia) as follows:

"With regards to the four sales of exported car parts no full export evidence has been provided for any of these sales. The information provided suggests the goods were being prepared for export and may have been picked up by carriers for delivery to the ports but the actual export evidence is missing. Please provide full export evidence including complete bills of lading showing the date of export and the vessel on which they were carried. Can you also confirm the costs of shipping for each supply. If it is the Automotive Centre or FI who have shipped the goods themselves the same information is required including evidence that they have been paid for this service. Also be aware that export evidence should clearly detail the goods shipped not just the number of pallets."

14. HMRC had chased the letter of 20 December 2013 on 18 March 2014, and had required a full response.

5 15. As such, this is clearly a case in which HMRC exercised its discretion to refuse a claim for input tax on the footing that it did not have sufficient information before it to decide whether the substantive requirements for the entitlement to deduct input tax were met. Whilst Paragraph 8 of HMRC's Statement of Case could perhaps have been worded with greater precision, the Statement of Case is not the decision being appealed against, and it is clear, from looking at the contemporary correspondence,
10 that HMRC's decision was made on the footing of evidential inadequacy - i.e., it was not satisfied that the evidence presented to it was sufficient to justify the claim to input tax.

15 16. So, and irrespective of the way in which HMRC's case evolved, or its submissions at the hearing (which are not evidence) this is not a case in which HMRC has ever, on our reading of the correspondence (the material portions of which are set out above) actually ever made a decision as to whether there was a taxable supply or not - i.e., as to whether the goods actually existed.

20 17. There has been no decision one way or the other on this point by HMRC and it is not the task of this Tribunal to arrive at a decision on the issue, no matter how much the parties may ask it to do so, or indeed regardless of how useful such a decision would be. The task of this Tribunal is not to 'fill in the gaps' in order to come to a conclusion, for the first time, as to whether all the substantive requirements for deduction are met. The fact that the decision comes to the Tribunal through the gateway of VAT Act section 83(1) does not expand our jurisdiction so as to consider
25 a decision that has not in fact been made by HMRC.

30 18. The effect of this is that, although our jurisdiction is appellate, we cannot substitute our own decision for that of HMRC, but we can only decide whether HMRC's discretion has been exercised reasonably: see *Kohanzad v Customs and Excise Commissioners* [1994] STC 967 (Schiemann J); *Best Buys Supplies Ltd v HMRC* [2011] UKUT 497 (Judge Theodore Wallace and Judge John Clark), esp at [49]; and *Scandico*, loc. cit, at Para. [21].

35 19. As such, our task is to look at the decision taken by HMRC to see whether the Commissioners *'have exercised their jurisdiction in a defensible manner'*: see the passage from *Khohanzad*, cited with approval in *Scandico* at [19]. In *Scandico*, the Upper Tribunal explained it in this way: *'In a case where HMRC have taken a decision that they are or are not satisfied, the Tribunal will examine that decision and decide whether that decision was reasonable'*: at Para [53]. The question is not whether we might have reached a different conclusion from HMRC.

40 20. As to reasonableness, the correct approach, which we follow and apply, is as follows (*Scandico* in the FTT (Judge Nowlan and Mrs Gable) at Para [119], and approved of by the Upper Tribunal at [61]):

"...there needs to be something quite seriously deficient in the officer's conclusion before we should conclude that it was simply unreasonable. The question is not whether we might have reached a different conclusion...."

5 **The evidence**

21. The hearing of the appeal began on 25 September 2017. It was listed for a day. It was adjourned part-heard on that day for the reasons set out in our earlier decision which, in summary, were that the Appellant's director, Mr Shakeel Shah, in the course
10 of giving his evidence to the Tribunal, made it clear that he had never read HMRC's Statement of Case, and (somewhat surprisingly) was unaware that HMRC put its case, at least in part, on the absence of certain so-called "itemised sheets" relating to the transactions in dispute.

22. A vigorous dispute emerged as to whether the Appellant had in fact ever
15 provided those documents to HMRC. Whilst this was ventilated on the day, any dispute ultimately became academic because, in response to a question from the Tribunal, Mr Shah confirmed that he knew what those "itemised sheets" were, and that they still existed. However, unfortunately, they were not available at the hearing. In the interests of justice, we gave directions in relation to those further documents,
20 and further documents were produced by the Appellant before the resumed hearing.

23. Unfortunately, problems with disclosure did not end there. During the course of the resumed hearing, and whilst Mr Shah was still in the course of giving his evidence, it became clear that HMRC (i) without having sought or obtained the Tribunal's permission, (ii) without drawing attention to the fact by (for example) filing
25 any supplementary disclosure statement, and (iii) without actually alerting the Tribunal to the fact on the day, had introduced further documents of its own into the updated bundles. It was doubly unfortunate that neither the Appellant nor his representative had been alerted to the existence of those 'new' documents, let alone shown them. When it became clear that this is what had happened, Mr Rashleigh
30 (rightly) objected to Mr Shah being cross-examined on HMRC's 'new' documents.

24. In response, Mr Haley, in the face of the Tribunal, sought an adjournment in order to allow HMRC to frame a formal application to admit the new documents. We refused that application for the reasons given at the time. In short, on 2 September
35 2016, the Tribunal (Judge Cannan) had approved directions for disclosure by 16 November 2016. There had been no application to vary or set aside those directions. HMRC's 'new' documents had not been prompted by the Appellant's further documents (produced after the first day of the hearing) but had been available to HMRC all along. The appeal had already been adjourned as part-heard for six months, and Mr Shah was still in the course of giving his evidence. It would have been unfair
40 and contrary to the interests of justice to have adjourned yet again. The Tribunal's resources were a scarce public resource and an appeal listed for one day was already into a second day. Mr Rashleigh very sensibly expressed a preference to proceed with the appeal, if that could be done without regard to HMRC's new documents.

25. As such, and without permission, HMRC's 'new' documents were not formally in evidence although they were in the updated hearing bundles provided to the Tribunal (although not in those provided to the Appellant). We did two things to set the position straight. We removed the impermissible documents from the files and
5 returned them to HMRC, and we identified our note of those questions and answers which related to the 'new' documents and we struck them out.

26. We heard oral evidence from Mr Shakeel Shah, the Appellant's Managing Director, and from Officer Debbie Tidmarsh of HMRC.

27. Mr Shah had given a short witness statement. Its main contention was that "*we provided HMRC with the evidence of export requested, to substantiate the exports of those parts to EU countries. The documentation was that specified by the Commissioners in their publicly available VAT Notice 703 Section 6, together with copies of the relevant bank statement confirming payments relating to the transactions*".
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28. He went on to comment that HMRC have, despite the evidence produced, raised assessments alleging that the exports never took place. But, for the reasons already explained, that is a misapprehension on the appellant's part. HMRC's decision does not allege that no exports have taken place. HMRC's decision is based on insufficiency of evidence so as to permit HMRC to allow the claim.
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29. The documents put forward were (eventually) collated into three supplementary bundles.
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30. In relation to the Irish Transactions, the Appellant relies on the documents at pages 1-45 of supplementary bundle 1, including:

- (1) Its invoice 1969 (31 October 2012)
- 25 (2) Its invoice 2060, appearing in three versions, all dated 28 January 2013, but each with different figures (£44,091; £43,425; £43,225), the latter of which is marked 'Received Payment';
- (3) Bank statements showing 'inward sterling payments' from Direct Components Ltd of £42,756 on 10 January 2013; and £43,218 on 28 February
30 2013;
- (4) Bank statements showing a CHAPS transfer to F1 Automotive Ltd of £48,872 on 11 January 2013;
- (5) Emails from 'Sheraz Aziz' on 16 October 2012 and 30 October 2012, and other emails between directcomponents@mail.com and the Appellant;
- 35 (6) Invoices to it from F1 Automotive;
- (7) Emails from F1 Automotive to the Appellant;
- (8) Stock or Inventory lists;
- (9) A Customer Statement to the Appellant from Kenneth Howley Transport Ltd dated 27 January 2013;

(10) A Customer Statement to the Appellant from Kenneth Howley Transport Ltd dated 17 March 2013;

(11) A Delivery Note from UK Pallets of consignment ending 855, being 1 pallet weighing 500kg;

5 (12) An online TPN Online Track and Trace of 2 black shrinkwrapped pallets weighing 1000kg.

31. In relation to the Czech Transaction, the Appellant relies on the documents at pages 1-34 of supplementary bundle 3, including:

10 (1) Emails to it from Timon Trade dated 13 February 201, 28 February 2013, 11 March 2013, 20 March 2013, 19 April 2013 and 22 April 2013;

(2) An email from F1 Automotive to it dated 21 February 2013;

(3) A Sales Invoice to it from Automotive Trading Centre dated 25 February 2013;

(4) Invoice 2111 (23 March 2013) in the sum of £49,227.36

15 (5) A bank statement showing payment to the Appellant from '*Commodity Solutions Limited*' in the sum of £49,227.36 dated 19 April 2013;

(6) An Invoice numbered 22106 dated 25 April 2016 from 'My Logistics Ltd' to the Appellant with Timon Trade named as consignee, being 1 pallet of 'parts etc' weighing 500kg, giving Dewsbury as port of loading and 22 April 2013 as date of sailing;

(7) An Invoice, also numbered 22106 and also dated 25 April 2016, from 'My Logistics Ltd' to the Appellant with Timon Trade named as consignee, being 1 pallet of 'parts etc' weighing 500kg, but giving Dover as port of loading and Calais as port of discharge and 27 April 2013 as date of sailing;

25 (8) A 'Certificate of Shipment' from 'My Logistics Ltd', dated 10 January 2014, relating to a 500kg load shipped from Dover to Calais on 26 April 2013. This bears the printed name 'Trevor Hooks' but is unsigned.

32. In relation to the Polish Transaction, the Appellant relies on the documents at pages 1-40 of supplementary bundle 2, including:

30 (1) Invoice 2141 (21 April 2013);

(2) Authority for CHAPS payment from the Appellant to Automotive Centre as 'payment for Denso Injectors' dated 21 April 2013 in the sum of £56,259.84;

(3) Sales Invoices from Automotive Centre Ltd to the Appellant dated 25 February 2013, 8 April 2013; 12 April 2013; 23 April 2013;

35 (4) Bank statement showing CHAPS transfer is from '*Commodity Solutions Ltd*' on 30 April 2013, in the sum of £49,405.81;

(5) Emails to and from Khayyam Nazir, Director of Automotive Centre Ltd;

- (6) Shipping Note from Redhead International dated 22 May 2013 relating to the delivery of 1 standard pallet weighing 450kg to an address in Melnik Mlazice, Czech Republic;
- 5 (7) Emails from Piotr Grabski, Sales Manager, at Meuda dated 30 April 2013; 18 June 2013 giving instructions to deliver goods to Melnik Mlazice; and 20 January 2014 stating that Meuda was no longer trading '*due to some difficulties we are having to face in Poland*';
- 10 (8) Shipping Note from Redhead International dated 28 June 2013 relating to the delivery of 1 standard pallet weighing 500kg to an address in Melnik Mlazice, Czech Republic;
- (9) Certificate of Shipment from Redhead International dated 5 July 2013 relating to the delivery of 1 standard pallet weighing 450kg to an address in Melnik Mlazice, Czech Republic;
- 15 (10) Certificate of Shipment from Redhead International dated 5 July 2013 relating to the delivery of 1 standard pallet weighing 500kg to an address in Melnik Mlazice, Czech Republic;
- (11) Duplicate Certificate of Shipment from Redhead International dated 8 January 2014 relating to the delivery of 1 standard pallet weighing 450kg to an address in Melnik Mlazice, Czech Republic.
- 20 33. The Appellant has been registered for VAT since 1 December 2004, and its registration remains extant.
34. The Appellant's main business was the sale of new and used prestige cars. The Appellant extended its business activities to include the sale of car spares.
- 25 35. Mr Shah is its Managing Director. He gave evidence-in-chief, was cross-examined, and re-examined. He impressed us as a courteous and dynamic individual. We could well believe that he has the business skills which had led to him making a success of the Appellant company. He obviously knew a lot both about his core business (being imports of prestige cars) and about another business (car modelling, using kits imported from China) into which he had considered diversifying.
- 30 36. But his evidence as to the car part business and transactions which had given rise to this appeal was far less impressive. It was clear that he did not know very much at all about car parts, or the 'Denso injectors' which were ostensibly the subject matter of these transactions, or the car parts business, or - most significantly - the actual circumstances of these alleged transactions.
- 35 37. When challenged as to the adequacy of the documents, Mr Shah's oral evidence was that '*as far as I am concerned, everything has been done as it is supposed to be*'.
- 40 38. Mr Shah's evidence was vague - and, at times, very vague. This was striking in two particular regards. Mr Shah's evidence about visiting a 'huge warehouse' and seeing car parts was very vague. Mr Shah was unable to give a satisfactory account as to how he come to deal with Automotive Centre Ltd or F1, which he described as 'sister companies', and which occupied the same address. He could only give the first

name 'Ayaz' of the person who had approached him from Automotive, and 'Danny' for the person he had dealt with there.

39. That degree of vagueness was especially striking from an individual who is otherwise obviously commercially aware and astute. It contributed to an overall impression, alongside the documents, that we were being asked to *'fill in the gaps'*.

40. HMRC's evidence came from Officer Tidmarsh. She gave evidence in chief, and was cross-examined and re-examined. She was the author of the letters in which HMRC had sought further information, and had eventually decided to refuse the claim for input tax.

41. She impressed us a careful and conscientious witness.

42. We have already set out the key passages in her letters which led to her decision to deny the claim for input tax.

43. In relation to each of Deals 1 (Poland) and 2 (Czech Republic), her written evidence was *"no clear export evidence provided"*. In relation to Deal 3 (Ireland), her written evidence was *"no full export evidence"*. These are consistent with the letters which she wrote at the time.

44. She was also concerned that Timon Trading and Meuda Investments had both been notified to HMRC, via the 'Standing Committee on Administrative Co-operation' ('SCAC') as missing traders.

45. Following a meeting on 11 December 2013 she wrote to the appellant asking for more information. That is the letter dated 20 December 2013. Her written evidence was that no response was received to that letter, *"and, based on the information available input tax was disallowed in respect of the motor spares purchased"*. That evidence is consistent with the letter, and an accurate description of it.

46. At Paragraph 16 of her witness statement, she said (in relation to assessing for penalties) *"I considered the export evidence provided which I did not consider complete or clear; this provided no details of the goods being exported. The lack of any real due diligence checks carried out. The lack of knowledge about who had insured the components. The chance of out of 3 customers 2 were found to be connected. All suppliers and customers found to be under investigation for suspected MTIC trading. The facts that the customers of Shaks were also customers of their suppliers F1 and Automotive making the same supplies which does not make business sense"*.

Discussion

Export evidence

47. VAT Notice 703 deals with the 'Export of Goods from the UK'. The text in the box at the top of the Notice, immediately following the Foreword, and in Paragraph 6.5, has the force of law. It sets out 'What must be shown on export evidence':

“The evidence you obtain as proof of export, whether official or commercial, or supporting must clearly identify:

- the supplier
- the consignor (where different from the supplier)
- the customer
- the goods
- an accurate value
- the export destination, and
- the mode of transport and route of the export movement.”

48. VAT Notice 703 goes on to say, albeit by way of guidance, and not with the force of law:

"Vague descriptions of goods, quantities or values are not acceptable. For instance, 'various electrical goods' must not be used when the correct description is '2000 mobile phones (Make ABC and Model XYZ2000),...."

49. These guidance notes make it clear that the underlying purpose of those requirements, which have the force of law, is to enable HMRC to be satisfied that particular, identifiable, goods, have been physically exported so as to entitle the exporter to zero-rate the goods.

50. The Court of Appeal has confirmed that these conditions are reasonable and binding. In *Customs and Excise Commissioners v Henry Moss of London Ltd* [1981] STC 139 it held that HMRC is entitled to impose whatever conditions are practical for being satisfied that the goods supplied had been exported for the purpose of making the concession that the supply of those goods should be zero-rated.

51. We consider that HMRC did focus on the relevant question, which was whether the taxpayer had established that the substantive conditions for zero-rating were in place.

52. HMRC's concern was entirely reasonable in circumstances where the appellant was embarking on what was (for it) a new line of business, and it was dealing with companies abroad with whom it had no trading relationships.

53. The documents were the focus of the meeting which took place at the offices of the appellant's accountants on 11 December 2013. Mr Shah and Officer Tidmarsh were present at that meeting. We have read HMRC's note of that meeting, the accuracy of which is not challenged. The gist of the questioning concerned the appellant's knowledge of and due diligence as to its counterparties. Mr Shah was asked specifically about a document which purported to show the original destination of goods as Poland which had been changed to Czech Republic, but he could not explain this and could only speculate that perhaps his Polish customer had decided to have the goods sent directly to their customers.

54. The letter of 20 December 2013 explained that HMRC was concerned to establish that the car parts had in fact been exported. The actual export evidence was

missing. The appellant was asked to provide full export evidence, including bills of lading.

55. HMRC stated that *'export evidence should clearly detail the goods shipped, not just the number of pallets'*. In our view, whilst that sets out the non-binding guidance as to the meaning of 'the goods' in the VAT Notice, it is a fair and reasonable approach for the Officer to have taken.

56. That part of the VAT Notice which has the force of law provides that *'the goods'* must be *'clearly identified'*.

57. The goods in this appeal are not clearly identified on the Shipping Notes / Certificates of Shipping with a degree of particularity which satisfies the requirements of VAT Notice 703 Paragraph 6, and the Officer was right to treat those Shipping Notes / Certificates of Shipping as insufficient.

58. In relation to the Irish Transactions, there is:

(a) A driver's delivery note for 1 pallet weighing 500kg with no recorded volume dated 21 January 2013, but delivery signed for by one Peter Connolly on 18 January 2013;

(b) A note from Kenneth Howley Transport Ltd dated 17 March 2013, collecting '2' 'EHalf 2Plt' from F1 Automotive;

(c) A Track and Trace for 2 pallets apparently dispatched on 8 March 2013, described as '2 black shrinkwrapped pallets', total weight 1000kg, with a signature by an otherwise unidentified signatory on 12 March 2013.

59. HMRC was reasonable in refusing to accept these documents as clear identification of the goods.

60. In relation to the Czech Transaction there is:

(a) Invoice, and

(b) Certificate of Shipping, each from 'My Logistics Ltd' '1 Pallet Parts etc not hazardous 120 x 100 x 100, gross weight 500kg, cube 1.2m3'.

61. HMRC was reasonable in refusing to accept these documents as clear identification of the goods.

62. In relation to the Polish Transaction there is:

(a) Redhead International Certificate of Shipment (5 July 2013), 1 standard pallet, 500kg, 1.098m3;

(b) Certificate of Shipment (5 July 2013), 1 standard pallet, 450kg, 1.2m3.

(c) Each of these was followed by an identical 'Duplicate' (8 January 2014).

63. HMRC was reasonable in refusing to accept these documents as clear identification of the goods.

64. HMRC considered that the Appellant had not complied with the requirements of Paragraph 6.5 of Notice 703, and we consider that view to have been reasonable. The Appellant has failed to show any deficiency in the Officer's reasoning which would suffice to engage the Tribunal's supervisory jurisdiction.

65. Mr Rashleigh sought to persuade us that the way in which the goods were described on the shipping notes and documents was nothing out of the ordinary, with the inference that the Officer's treatment of these was therefore inherently unreasonable.

66. But no evidence has been placed before us - whether from the shipping companies themselves, any trade or industry body, or any independent expert in international shipping - that the (extremely unrevealing) descriptions on the Shipping Notes / Certificates of Shipping is accepted industry standard practice and should be deemed sufficient to satisfy or should be treated as satisfying VAT Notice 703.

67. On one view, strictly speaking, no *goods* are actually described on those Shipping Notes. The only things which are described are the *pallets* - the number of them; their weight (which are all in round figures); in one instance, the fact that the pallets were shrink wrapped, in one instance the dimensions, and the cubic volume.

68. Beyond that, there is nothing on the documents to indicate - even in the most general terms - the nature of the items actually loaded on those pallets. As such, there is nothing to satisfy us, even on the balance of probabilities, that any things so palletised were the self-same goods which the Appellant claims to have bought and sold and exported.

69. Mr Shah's simple assertion that everything had been done does not really answer the point. HMRC was legally entitled to insist on documentary evidence of export, and not simply to go on Mr Shah's 'say-so'.

70. Officer Tidmarsh's conclusion and evidence on this point were reasonable, and we accept them as such. The documents do not show what was dispatched. On the basis of those documents, HMRC does not know what was dispatched, and neither do we.

71. It was reasonable for HMRC, even on that basis, to have concluded that there was insufficient evidence to permit the appellant's claim.

72. Whilst there is some evidence that the Appellant was paying Redhead International for something (the cheque stubs for £110.88, dated 13 June 2013, and for £136.08 dated 13 August 2013) there is no evidence from any of the transport companies as to the precise composition of the loads which were the subject matter of the Shipping Notes.

73. There is no evidence as to the composition of the 450kg 'standard pallet' volume 1.2m³ shipped by Redfern on 22 May 2013 to Melnik Mlazice, or the 500kg 'standard pallet' volume 1.098m³ shipped by Redfern to the same destination on 28 June 2013. The certificates of shipment are each signed by an unidentified person who simply certifies that 'the above consignment was shipped, as detailed above, in apparent good order and condition'. That is not a certificate as to what was actually shipped to Melnik Mlazice.

74. When scrutinised, and as a cross-check, the shipping documents provided in relation to the Czech Transaction do not make much sense. Whilst they all bear the same job reference (MY112338/2223) the details are otherwise inconsistent, and no explanation has been given by the Appellant for this:

- (1) The date of sailing is given variously as 22 April 2013, 26 April 2013, and 27 April 2013;
- (2) The port of loading is given variously as Dewsbury, and Dover;
- (3) The port of discharge is either not stated or is stated as Calais;
- (4) In the document giving a date of sailing as 26 April 2013, an identity is given for a 'local vessel/trailer/container' (4JO1659). However, in the document giving a date of sailing of 27 April 2013 (i.e. the very next day) the 'local vessel/trailer/container' is 'TBC'.

75. None of the invoices for the Czech Transaction make any reference to the actual address where the goods were supposed to be delivered, which on 22 April 2013 Timon had said in an email was to be in Melnik Mlazice, and not in Prague. On the face of it, these are goods being consigned to an address in Prague where the consignee had said they could not be delivered. There is no relevant note or endorsement of this on any of the documents. Nor was there any evidence from anyone at My Logistics Ltd as to these documents - neither as to their meaning, or to explain the inconsistencies in them, nor to the actual physical consignment or consignments to which they relate. There was no evidence from Mr Trevor Hocks, who on 10 January 2014 had apparently been prepared to certify that a consignment had been shipped in accordance with the details, but had not signed the certificate.

76. There was no evidence put before HMRC or us from any of the Appellant's counter-parties or customers to confirm receipt of any goods. No evidence was put before HMRC or us from any of the persons who signed for goods (whether being dispatched, or received).

77. None of the shipping documents refer to the value of the goods. There is no evidence as to insurance of the goods during shipping.

78. In his evidence, Mr Shah in his evidence said that he did not know anything about these certificates of shipping. This goes to another point made by HMRC, discussed further below, which is absence of due diligence.

40

Other evidence

79. HMRC's letter of 20 December 2013 raised other concerns, which were, in summary: (i) lack of any real due diligence checks carried out; (ii) the lack of knowledge about who had insured the components; (iii) The chance of 2 out of 3 customers being connected; (iv) All suppliers and customers found to be under investigation for suspected MTIC trading; (v) Customers of Shaks being also customers of their suppliers, making the same supplies, and hence absence of business sense.
80. In exploration of these issues, HMRC sought further information and documents, including (amongst other matters) whether the Appellant was aware of any connection between Timon Trade and Meuda Investments; information as to why payments received by the appellant came from Commodity Solutions Ltd; and listings of the motor parts provided.
81. The Appellant arranged for delivery, and Mr Shah said that he had been given the details of the delivery companies by F1. This does not make a great deal of sense, since F1 was ostensibly facilitating trade by the Appellant.
82. Mr Shah's evidence as to insurance of the shipments was vague and unsatisfactory. He said that he did not arrange insurance, but that it was up to the purchaser to arrange its own insurance. His oral evidence was that *'more in conversation'* he would say *'you are liable for your own insurance'*.
83. This makes little commercial or practical sense. The Appellant was arranging (and, at least on the face of it) paying for shipping. These were (again, on the face of it) valuable consignments of precision parts, in sets (so - presumably - not satisfactory if even one unit in a set was damaged or did not work), which the Appellant (as Mr Shah accepted) had never seen. Since the appellant had never seen a single part, it had never inspected any of them for damage, nor had ever even checked to see that they were what they were supposed to be (and indeed, would not have had the technical knowledge to know if they were).
84. The question of insurance was obvious. The goods (on the face of it) were going from a place not under the Appellant's control, into the hands of shippers, and on a long journey across the Irish Sea or the Channel and across the Continent. Mr Shah's lack of knowledge about the insurance arrangements was surprising and corroborative of his evidence that he was not troubled as to the paperwork so long as he was paid.
85. On 21 February 2013, F1 Automotive emailed the Appellant setting out a price of £49,227.36, with no mention of tax, in relation to a quantity (280) of Denso Injectors with various (25) part numbers. That does not match the sales invoice dated 25 February 2013 from Automotive Centre Ltd (a sub-total of £46,883.20 plus VAT at 20% = £56,259.84) which gives an obviously incorrect VAT number (since it only has 8 digits).

86. The Appellant's own documents in relation to the Irish Transactions are not satisfactory. The first transaction apparently relates to invoice 1969 dated 31 October 2012. The description is of 'parts as per attached sheet', in the sum of £42,763.78. Payment of £42,756.78 (that is, a difference of £7) was credited on 10 January 2013
5 as an 'inland sterling payment'. In relation to the second transaction, three invoices - all bearing the same number (2060) and the same date (28 January 2013) - were put before us. But those invoices each bears a different sum: £44,091.89, £43,425.09, and £43,225.65. We were not given any satisfactory explanation as to the existence of three invoices with the same number but different details. A payment of £43,218.65
10 was received on 28 February (a £7 difference), described as an 'inland sterling payment'. HMRC's treatment of this information and material was reasonable.

87. In relation to the Czech Transaction and the Polish Transaction, the Appellant received payments from a third party, '*Commodity Solutions Ltd*', with whom it had no trading relationship, and in relation to whom it had performed no appropriate due
15 diligence. On 27 January 2014, Mr Shah was reported as having told his accountant that he had not seen anything unusual about this and had simply accepted payment from another company (see the email at page 69 of the bundle). That suggests that Mr Shah was aware that payment was coming from a third party, but did not think it curious. However, we accept that the note of that exchange is at one remove and need
20 to be cautious in placing too much weight on it, especially since neither Ms Smith (the caller) nor Mr Chisman (the recipient) gave evidence.

88. Before us, Mr Shah's evidence was slightly different. He told us that the Appellant had never been told that these were third party payments. That is simply unsustainable in the light of the Appellant's own bank statements. We believed him
25 when he told us that neither he nor his accounts staff were concerned as to the identity of the payer, but simply sought to reconcile the amounts of payments-in with invoices. He was asked (fairly) if he was simply 'not bothered'. His answer to that was no, 'as long as we got payment'. Mr Shah's explanation in his oral evidence as that Commodity Solutions 'could have been a sister company', which he considered
30 'quite normal really'. We reject this explanation.

89. We accept the evidence of Officer Tidmarsh, who accepted that hire purchase companies often make payments for vehicles, and are for that purpose third parties; but we also accept her evidence that those are instances where the car dealer sells to the finance company, and delivers to the finance company. That is not the position
35 here.

90. In our view, the unexplained receipt of payment from Commodity Solutions Ltd was something which was obvious, which was or should have been known to the Appellant, and which should have been explored with the buyers since it called for explanation. HMRC was entitled to ask the appellant about it; and was entitled to
40 have regard to the appellant's failure to provide that information when making the decision to refuse the appellant's claim.

91. Understanding who was making the payments was even more important where payment was being made by Commodity Solutions both for a company in Poland, and

one in the Czech Republic. The potential link was obvious, but the Appellant made no inquiries.

92. In relation to the Polish Transaction, the Appellant either failed to spot, when it should have done, or did spot, but was simply indifferent to the fact that a Polish company in Warsaw was, in May 2013, giving directions for delivery to a Czech warehouse which was also apparently the destination of goods for the Czech company in relation to the Czech Transaction in April 2013. This was inherently suspicious. It was reasonable for HMRC to ask; and it was reasonable for HMRC to have regard to the appellant's failure to give adequate information when making its decision.

93. The reason for this lengthy discussion is that, even if we were mistaken as to the scope of our jurisdiction, and we have a full appellate jurisdiction as opposed to a narrower judicial-review type jurisdiction, we would still have no hesitation in finding, on a consideration of the totality of the evidence, that there was still non-compliance with VAT Notice 703, and insufficient proof of export.

15 **The Appellant's Subsidiary Argument**

94. In its Skeleton Argument, but not in its Grounds of Appeal, the Appellant advances a subsidiary argument. We heard very little by way of evidence or submissions on the point. It is as follows:

20 *"If the export evidence produced in the bundle of documents is deemed to be insufficient, the proper course of action would have been for the Commissioners to raise a VAT output tax assessment - not disallow input tax. Indeed when this anomaly was pointed out to the Commissioners, the appellant's representative was told that this was done to minimise any VAT charge. While it is accepted that this was done with the best of intentions, nonetheless the procedure was technically incorrect."*

95. Nothing is put before us, whether by way of case law, or legislation, to support the argument.

96. It seems to us, at best, that the argument is one that HMRC, even if it properly denied the claim for input tax, should nonetheless have gone on to do something different.

97. For the reasons already explained, the only decision before us for determination is HMRC's denial of input tax, on the footing that insufficient evidence had been put forward. This appeal does not concern any other decisions.

98. But ultimately, and even if there had been a decision not to raise a VAT output tax assessment, it seems to us that the argument that HMRC should have done something different is most appropriately characterised as of a judicial review character, and hence outside the jurisdiction of the Tribunal.

40

Decision

99. For the above reasons, the appeal is dismissed.

5 100. 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
10 “Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)”
which accompanies and forms part of this decision notice.

**Dr CHRISTOPHER MCNALL
TRIBUNAL JUDGE**

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RELEASE DATE: 23 JULY 2018