TC04504

Appeal number: MAN/07/01171

VAT – MTIC - onus of proof on HMRC - whether transactions connected with fraudulent evasion of VAT – yes – whether Appellant knew or should have known this – yes - appeal dismissed.

FIRST-TIER TRIBUNAL
TAX CHAMBER

CONNECTIONS GB LIMITED **Appellant**

- and -

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

TRIBUNAL: JUDGE ANNE SCOTT
MOHAMMED FAROOQ

Sitting in public at Birmingham Magistrates Court, Birmingham on 13-17 and 20 and 21 April 2015

The Viscount Dilhorne, Counsel, instructed by Black Country Legal Consultants, for the Appellant

Vinesh Mandalia, instructed by General Counsel and Solicitor to HM Revenue and Customs, for the Respondents

DECISION

Introduction

1. This appeal is brought by the appellant against the decision of the respondents ("HMRC"), which expression is used for convenience to include HMRC's predecessor, HM Customs & Excise, dated 10 August 2007 ("the decision letter") denying the appellant the right to deduct input tax claimed on the appellant's VAT return for the period 04/06. The total sum refused is £1,192,100.

2. That decision was predicated on the basis that the appellant was not entitled to claim the VAT credit in that sum on the purchase of mobile phones in that period because the two transactions to which the claim related have been traced back directly to identify tax losses which were fraudulent. It was asserted that the appellant knew or should have known that the transactions were connected with fraudulent evasion of VAT. Essentially, HMRC's decision was made on the basis that the transactions to which the claims related were connected to the fraudulent evasion of VAT and part of a missing trader intra-community ("MTIC") fraud and that the appellant knew or should have known that this was the case.

3. On 28 September 2007, the appellant submitted a notice of appeal. That notice of appeal was late but admitted out of time. The stated grounds of appeal were: *"G B Connections did not know nor should they have known that fraudulent transactions were connected to a supply on which input tax was claimed. Checks were made by Connections GB as laid down by the commissioners*".

Preliminary Issues and Procedural Matters

Order of proceedings

4. The draft timetable prepared by HMRC, indicated that they would open and lead their evidence, as is common practice in MTIC appeals. Counsel for the appellant intimated that he vigorously opposed that and that his client would be prejudiced if that timetable was adopted. We heard submissions from both parties. We had due regard to The Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 ("the Rules") and in particular Rules 2 and 5.

5. The onus of proof in this appeal lies with HMRC. We are required to deal with the appeal fairly and justly and that includes "*ensuring, so far as practicable, that the parties are able to participate fully in the proceedings*" (Rule 2(2)(c)). In our view the appellant would be deprived of that right if put in a position where evidence had to be given before the full extent of HMRC's case had been tested before the Tribunal. Accordingly, we refused the application for the appellant and directed that HMRC put their case in the first instance. Mr Talafair, the admitted controlling mind of, and the sole witness for the appellant, did not avail himself of the opportunity to hear the case for HMRC and attended only to give evidence himself. That is his right and we draw no adverse conclusion from that but simply record the position.

Opening submissions

6. As a matter of agreement between the parties, albeit an unusual approach, we heard opening submissions from both Counsel prior to hearing evidence.

Closing Submissions

7. It was latterly agreed between the parties that closing submissions would be submitted, and exchanged electronically, and that the proceedings would conclude with oral submissions thereanent. They did. We are indebted to the parties for that.

8. It should be recorded that, with the consent of the Tribunal and HMRC, Mr Macnamara who had been present throughout and who had instructed Counsel, articulated the oral closing submissions for the appellant.

9. We had had one minor concern throughout the proceedings and that was that although, as we indicate in paragraph 5 above, we wished to maximise the participation of the appellant, Mr Talafair could not realistically be described as perceived by us as having been engaged in the proceedings to any material extent. For that reason, we the Tribunal, explained to him that we appreciated that although he was represented by experienced Counsel, Mr Talafair had presented to us as being evidently outwith his comfort zone and, with the tacit consent of his Counsel and HMRC, we extended to him considerable latitude in terms of giving evidence, all conform to Rules 2 and 5 of the Rules.

10. Effectively, at every stage although having the benefit of experienced Counsel and those instructing Counsel, we treated him as unrepresented and gave him the opportunity of commenting himself.

11. He did not attend for the closing submissions. However, since those submissions on his behalf, in the written version, were very clearly articulated as having been drafted before Mr Talafair had concluded giving evidence, we approached those submissions on the basis that Mr Talafair might challenge any concessions on fact or inference.

12. Accordingly, although the appellant had the benefit of representation, the Tribunal ensured that it fulfilled its inquisitorial role, enabled the appellant to participate as fully as Mr Talafair wished and carefully considered all of the evidence before us both with, and without, reference to Counsel's arguments and concessions.

The Evidence and the issues for the Tribunal

13. Although the Schedule of Issues lodged by the appellant on 23 August 2012, indicated that the appellant contested the witness statements lodged by HMRC, and indeed the skeleton argument for the appellant dated 9 April 2015 also indicated that

those witness statements were contested, counsel for the appellant, formally confirmed that the:

(a) only HMRC witnesses whom he wished to cross-examine were Officers Hirons, Morehead and Emery,
(b) witness statements of Officers Taylor, Letherby and Stone were not challenged and should be taken as read, and
(c) witness statement of Officer Roderick Stone was commended as an exposition of MTIC fraud, and
(d) only witness whom he wished to lead was Mr Talafair.

Evidence of the HMRC Officers, both oral and written

14. In *Megantic Services Ltd v HMRC*[1] the Tribunal (Judge Berner and Judge Walters QC), in relation to an application to exclude "opinion" evidence, observed:

"(15)… an expression of a view…is not a matter of fact but a matter of opinion. It is merely a view of a witness on a matter on which the tribunal itself must reach its own conclusion, and as such is of no value as evidence. Such evidence may rightly be excluded on that basis. In most cases, however, we would not see it as necessary, or indeed proportionate, for a forensic exercise to be undertaken, either by the parties or by the tribunal, to identify any such matters in each witness statement and for the tribunal formally to direct that they be excluded. Generally speaking, we think that the parties can rely upon the good sense of the tribunal to disregard purported evidence that represents conclusions that the tribunal itself must reach. That can usually conveniently be the matter of submission at the substantive hearing, rather than a formal application to exclude."

That Tribunal also noted that:

"(20)… we indicated to the parties that there were in the witness statements clear expressions of view on the conclusions that could be drawn from the analysis presented, and that such expressions of view, on matters which it is for the tribunal to determine, did not amount to evidence to which the tribunal would have regard. … the tribunal itself is quite capable of distinguishing between the evidence on which a conclusion falls to be drawn by the tribunal and an attempt by a witness to draw that conclusion themselves."

We have adopted such an approach in the present case in respect of the opinions, comments and conclusions drawn by witnesses of fact.

15. We proceeded to hear and read the evidence for HMRC and we comment thereon in greater detail below but as far as the unchallenged written evidence is concerned we observe that:

(a) *Evidence of Officer Stone*

The Tribunal is well aware of the numerous Tribunal decisions on challenges to the admissibility of Officer Stone's evidence. We take the view that there are matters of relevance such as the operation of the MTIC Validation team at

[1] [2013] UKFTT 492

Redhill, the identification of IMEI numbers and the description of the NEMESIS database.

(b) *Evidence of Officer Taylor*

Although we had read this evidence and found that it clearly established that Swindon Star Ltd was a defaulting trader and there was a tax loss, for the reasons set out in the following paragraph, we require to make no further findings in regard thereto,

(c) *Evidence of Officer Letherby*
This was a useful prism through which to assess the evidence of Officer Emery.

16. At the conclusion of the evidence for HMRC, Counsel for the appellant very fairly and properly formally intimated to the Tribunal that HMRC had discharged the burden of proof and had established conclusively that:

(a) there had been fraudulent evasion of VAT in the two deal chains of the appellant,
(b) the two transactions in which the appellant sought an input tax credit were connected with that fraudulent evasion of tax, and
(c) there had been an actual loss of tax.

17. Mr Talafair confirmed that that was now his understanding of the position. Having considered the evidence, we agree.

18. Therefore the remaining issue for the Tribunal is simply whether, at the time of the transactions, the appellant, through its Officers and employees, that is to say Mr Talafair, knew or should have known that those transactions were connected with the fraudulent evasion of VAT. HMRC rely on the principle enunciated at paragraph 61 in the joined cases of *Axel Kittel v Belgium*[2] *and Belgium v Recolta Recycling*[3] (*"Kittel")* namely:

> *"(61)…. 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 the fraudulent evasion of VAT, it is for the national court to refuse that taxable person entitlement to the right to deduct."*

We agree that that is the correct test.

MTIC trading – legal principles

19. There have now been many appeals heard by this Tribunal in respect of alleged MTIC transactions and it is unnecessary to give an explanation of how MTIC fraud is carried out. A convenient explanation is given by Christopher Clarke J in *Red 12*

[2] Case C-439/04

[3] Case C-440/04

Trading Ltd v HMRC[4].

20. There was no dispute as to the applicable legal principles.

21. At the European level, the legal right to a deduction for input tax is now found in Articles 167 and 168 of Council Directive 2006/112/EC of 28 November 2006. At the time of the disputed Transactions the corresponding provisions in the Sixth Council Directive applied. These provisions are given effect within the UK by the Value Added Tax Act 1994 ("VATA") and in particular by sections 24, 25 and 26 thereof and by the VAT Regulations 1995 (S I 1995/2518) made under VATA.

22. However, there is no legal right to a deduction for input tax where fraud is involved. There is now extensive case-law on this subject both before the European Court of Justice and our domestic courts.

23. The decision in *Mobilx Ltd v HMRC, Blue Sphere Global Ltd v HMRC and Calltel Telecom Ltd and another v HMRC* [5] examined the ramifications of the decision of the ECJ in *Kittel.*

24. What the Court of Appeal decided at the following paragraphs was:

"(41) In Kittel … after para 55 the court developed its established principles in relation to fraudulent evasion. It extended the principle, that the objective criteria are not met where tax is evaded, beyond evasion by the taxable person himself to the position of those who knew or should have known that by their purchase they were taking part in a transaction connected with fraudulent evasion of VAT … It extended the category of participants who fall outwith the objective criteria to those who knew or should have known of the connection between their purchase and fraudulent evasion. Kittel did represent a development of the law because it enlarged the category of participants to those who themselves had no intention of committing fraud but who, by virtue of the fact that they knew or should have known that the transaction was connected with fraud, were to be treated as participants. Once such traders were treated as participants their transactions did not meet the objective criteria determining the scope of the right to deduct.

(43) …A taxable person who knows or should have known that the transaction which he is undertaking is connected with fraudulent evasion of VAT is to be regarded as a participant and fails to meet the objective criteria which determine the scope of the right to deduct.

(51)…The court must have intended Kittel to be a development of the principle in Optigen… The court must have intended the phrase 'knew or should have known'… to have the same meaning as the phrase 'knowing or having any means of knowing' which it used in Optigen.

(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 careless, 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.

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[4] [2009] EWCH 2563 (Ch) at 2

[5] [2010] EWCA Civ 517

(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.

(61) Such an approach does not infringe the principle of legal certainty … A trader who decides to participate in a transaction connected to fraudulent evasion, despite knowledge of that connection, is making an informed choice; he knows where he stands and knows before he enters into the transaction that if found out, he will not be entitled to deduct input tax. The extension of that principle to a taxable person who has the means of knowledge but chooses not to deploy it, similarly, does not infringe that principle. If he has the means of knowledge available and chooses not to deploy it he knows that, if found out, he will not be entitled to deduct. If he chooses to ignore obvious inferences from the facts and circumstances in which he has been trading, he will not be entitled to deduct.

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

(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.

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

It was common ground that these principles should be applied and in the light of the circumstances prevailing at the date of the transaction.

25. We also adopt the dicta of Lewison J in *HMRC v Livewire Telecom Ltd & HMRC v Olympia Technology Ltd* [6]*:*

"(76 (viii)) It is not contrary to Community law to require a supplier to take every step that could reasonably be required of him to satisfy himself that the transaction which he is effecting does not result in his participation in tax evasion

(ix) Likewise a taxable person can be expected to act with all due diligence and care."

[6] [2009] EWCH 15

26. We should also add that, in relation to the issue whether a trader's transactions were connected to the fraudulent evasion of VAT, Roth J held in *Powa (Jersey) Ltd v HMRC*[7] that it was not necessary that the trader was in privity of contract with a fraudulent trader. Instead, if a trader knows or should have known that the transactions which it entered into were part of a chain in which one or more of the earlier transactions were fraudulent, even if its immediate supplier was not fraudulent, the *Kittel* test is satisfied.

27. In *Megtian Limited v HMRC*[8] Briggs LJ made it explicit that:

"(37) *In my judgment, there are likely to be many cases in which a participant in a sophisticated fraud is shown to have actual or blind-eye knowledge that the transaction in which he is participating is connected with that fraud, without knowing, for example, whether his chain is a clean or dirty chain… or whether the fraud has at its heart merely a dishonest intention to abscond without paying tax, or that intention plus one or more multifarious means of achieving a cover-up while the absconding takes place.*

(38) Similarly, I consider that there are likely to be many cases in which facts about the transaction known to the broker are sufficient to enable it to be said that the broker ought to have known that his transaction was connected with a tax fraud, without it having to be, or even being possible for it to be, demonstrated precisely which aspects of a sophisticated multifaceted fraud he would have discovered, had he made reasonable enquiries. In my judgment, sophisticated frauds in the real world are not invariably susceptible, as a matter of law, been carved up into self-contained boxes even though on the facts of particular cases, including Livewire, that may be an appropriate basis for analysis."

28. We also note the comments of Moses LJ in *Mobilx* in relation to questions of evidence, where he said:

"(83) *The questions posed in BSG …by the tribunal were important questions which may often need to be asked in relation to the issue of the trader's state of knowledge. I can do no better than repeat the words of Christopher Clarke J in Red 12 Trading Ltd v Revenue and Customs…at [109]–[111]:*

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

[110] To look only at the purchase in respect of which input tax was sought to be deducted would be wholly artificial. A sale of 1,000 mobile phones may be entirely regular, or entirely regular so far as the taxpayer is (or ought to be) aware. If so, the fact that there is fraud somewhere else in the chain cannot disentitle the taxpayer to a return of input tax. The same transaction may be viewed differently if it is the fourth in line of a chain of transactions all of which have identical percentage mark ups, made by a trader who has practically no capital as part of a huge and unexplained turnover with no left over stock, and mirrored by over 40 other similar chains in all of which the taxpayer has participated and in each of which there has been a defaulting trader. A tribunal could legitimately

[7] [2012 UKUT 50 (TCC)

[8] [2010] EWCH 18

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.

[111] Further in determining what it was that the taxpayer knew or ought to have known the tribunal is entitled to look at the totality of the deals effected by the taxpayer (and their characteristics), and at what the taxpayer did or omitted to do, and what it could have done, together with the surrounding circumstances in respect of all of them."

29. Those questions posed in BSG as quoted by Moses LJ are:

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

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

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

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

We consider those questions to be pertinent in this appeal when assessing the question of knowledge.

Summary of the Arguments

The Appellant

30. Mr Talafair himself put it succinctly:

(a) he was innocent and until the HMRC evidence had been fully understood, he had had no idea that there had been fraud connected with the telephones that he had bought and sold,
(b) he had done everything that HMRC had required of him,
(c) he had trusted the people with whom he dealt and he had known none of the other parties who were allegedly involved in the fraud.

HMRC

31. HMRC's case on knowledge of the fraud is based on drawing inference from a wide range of facts in order to establish the position that the appellant knew or must have known of its involvement in fraud. They aver that there is actual knowledge of fraud.

32. Alternatively, they maintain that by reason of the information available to the appellant, whether it was obtained or not, the appellant should have known that its transactions were connected with the fraudulent evasion of VAT. HMRC aver that

the appellant did not take every precaution that could reasonably be required of it in order to ensure that its transactions were not connected with fraudulent evasion of VAT.

Overview of the two deals

33. The detail of the deals was described in Officers Hirons' and Emery's evidence and is not in dispute. In his second witness statement, Mr Talafair refers to the two deals as one transaction. Perhaps that explains why the deal 4 is numbered invoice 6163 and deal 5 6162. He stated simply that he had bought and sold the stock and "*I had carried out checks on both of these companies, Saphire and CEMSA, and was confident to trade with them.*"

34. Both deals were transacted on 28 April 2006 and in each of the two deals the appellant's immediate supplier was a UK trader, Saphire Limited. The immediate customer was C.E.M.S.A. ("CEMSA"), a Spanish company. There is a consistent cell of traders in both deals and the transaction chain for the telephones proceeds: PZP ENA (Slovenia) >Swindon Star Ltd (defaulting trader)> Realtech Distribution Ltd >Fonedealers Ltd>Electron Global Ltd> Trimax Trading International Ltd>Saphire Ltd> the appellant>CEMSA> Ignite Technology (Danish).

35. The analysis of the FCIB records then shows identical links in both deals from Fonedealers Ltd to Ignite Technology (and then to CEMSA) in terms of flow of funds, namely: Fonedealers Ltd>Multimode Marketing (Spanish)> Intertech Sarl (French)>RCCI High Tech (Cypriot)> Ignite Technology.

36. There is no retailer, manufacturer or authorised dealer within either deal chain.

37. The same margin is made, or lost by the traders in the chains despite the fact that the deals involve different models of mobile phones. In each deal:

(a) Fonedealers Ltd makes 5p per unit
(b) Electron Global Ltd makes 30p per unit
(c) Trimax Trading International Ltd makes £1 per unit, and
(d) Saphire makes a loss of £1 per unit.

38. The payment chains are circular for both of the deals. For deal 1 (the appellant's invoice 4), the start and finish of the payment chain is the appellant's customer, CEMSA. For deal 2 (the appellant's invoice 5), the start and finish of the payment chain is the supplier (Ignite Technology) to CEMSA. All of the payments were made in quick succession.

39. Counsel for both parties agreed that since both deals were identical in all material respects, albeit involving a different brand of telephone, a different unit price, the telephones were exported on different dates, and there were different times for payment there was no merit in exploring the second deal in any detail since in practice precisely the same issues arose.

The appellant and its Officers

40. The appellant was incorporated on 31 August 2004 and on that date Hardip Singh Talafair was appointed Company Director and his wife, Prabhjot Kaur Talafair was appointed Company Secretary. Both Mr Talafair and his wife have been officers of numerous companies over the years.

41. The appellant was struck off the Register at Companies House after Mr Talafair became bankrupt but has been reinstated for the purpose of this appeal. Mr Talafair's mother, Gurmit Kaur is currently the sole director. At present, Companies House, on production of a witness statement from Mrs Kaur every six months as to the status of this appeal, has permitted the appellant to remain on the Register for a further period of six months. The current period will expire on 13 May 2015 and an application for a further extension will be made.

42. It was not in dispute that Mr Talafair was the controlling mind of the appellant at all material times.

Mr Hardip Singh Talafair

43. In his second witness statement, compiled after having had a sight of the detailed witness statements served by HMRC and in particular that of Officer Hirons which included considerable detail about Mr Talafair and his experience, not least in regard to MTIC matters, he stated:

"*On leaving school I started work in the family business, a clothing manufacturer. I was also involved in general warehousing and sales for a number of years until 1999 when I set up my first business. I have been owner/director of a number of companies, namely Eurocrest Marketing Ltd, UK-Worldwide Marketing Limited, ADS Bond Limited and Connections GB Limited. Connections was set up as a result of my involvement with the mobile phone market whilst running ADS Bond Limited ('ADS'). I am the sole director of Connections…I was responsible for the day to day running of Connections".*

He did acknowledge that both ADS and the appellant had traded in mobile phones but in his witness statements he did not address in any detail any of the issues raised by the officer in regard to the structure of those companies or the detail of his own state of knowledge.

44. In regard to knowledge he confined himself to saying that although he had read Notice 726, HMRC had outlined the existence of fraud at meetings and he had discussed fraud generally with his accountant, he "*was never given any understanding on how prevalent this fraud was…*".

45. We therefore considered it important to establish precisely what he had known, and when, and specifically in relation to MTIC fraud. We deal with the other evidence thereafter.

Evidence of Officer Hirons

46. The principal evidence on behalf of HMRC came from the officer responsible for issuing the decision letter by which the appellant's claim was refused namely, Officer Hirons, who provided detailed reasons for HMRC's decision to deny the appellant's repayment claim in her two statements dated 31 March 2009 and 21 May 2012. We do not simply repeat the contents of those statements, and her oral evidence, but we set out our findings in regard thereto in the light of Mr Talafair's comments thereon.

47. Although she answered a number of questions in cross examination, there was very limited material challenge to her evidence. She was consistent, straightforward and clear and she explained her findings logically. She was entirely credible in her account of her discussions with Mr Patel (the appellant's accountant) and Mr Talafair.

48. As far as Mr Patel is concerned, she was very clear that having met him in connection with diverse taxpayers on a number of occasions, he was very well aware of MTIC fraud, knew precisely what HMRC expected of the trading population, the records that were required etc. and he advised his client base in that regard. We accept that.

49. She explained that, in an endeavour to protect the Revenue, her role was to alert traders as to the dangers of dealing with mobile phones and computer chips because of MTIC fraud. In that role, she gave traders detailed information and advice and always stressed the importance of the sort of checks, outlined at Section 6 of Notice 726, that should be considered.

50. She repeatedly confirmed that HMRC could not make traders perform due diligence and although she, and other HMRC officers would point out the deficiencies that they had noted in what traders had or had not done, the onus was entirely on the trader to take adequate steps tailored to their own particular circumstances.

51. She set out the detail of all of the deals undertaken by the appellant and the underlying chains, together with the history of contact with Mr Talafair and all that had been elicited about ancillary matters.

52. Although it is a matter of opinion, she very fairly conceded that she would not necessarily have expected the appellant to know any detail about any of the chains or the defaulting trader, Swindon Star Limited.

The History

Eurocrest Marketing Ltd

53. This company was involved in sales and marketing for gas and electricity companies after deregulation and had no MTIC involvement. It has been deregistered for VAT with a debt of £15,000.

UK-Worldwide Marketing Limited ("UK Worldwide")

54. The details obtained from Companies House in April 2007, disclosed that at various points Mr Talafair had resigned and been appointed as a director as also his wife, Prabhjot Kaur. She was appointed as Company Secretary on 21 February 2002. His most recent disclosed appointment as a Director was on 1 October 2002. He was unable to explain why, how or when he, or she, had been a director.

55. On 1 December 2000, an application for registration for VAT was lodged. Mr Talafair's wife, as Director, had signed it. Mr Talafair told the Tribunal that his wife had had no active role in any company with which he had been involved and could not explain why she had signed the form other than to suggest that the accountant had told her to do so.

56. UK Worldwide was registered for VAT with a business activity unconnected with MTIC (Sales and marketing) and was stated to have no EU involvement. The business activity was subsequently changed to that of wholesale dealing in mobile phones.

57. Mr Talafair told the Tribunal that that company was a joint venture between him and a Mr Chopra and that they had both put a few thousand pounds into the company.

October 2002 visit

58. On 28 October 2002, Officer Hirons and another officer visited the company and discussed the nature of its trade with Mr Talafair and Mr Chopra. Mr Talafair has confirmed that Officer Hirons' account of that is accurate. At that stage the aspiration, in terms of mobile phones, had been to arrange contracts/free phones and payment would be on commission. That did not materialise.

59. On 22 April 2003, HMRC had issued to UK Worldwide a veto letter informing them that the VAT registration number for a company with whom it had been dealing may not have been authorised and that all transactions would have to be verified.

28 April 2003 visit

60. On 28 April 2003, HMRC officers conducted a post-registration MTIC Assurance Activity visit to the company and met with Mr P Chopra who described himself as a director and a Mr Hardip Singh who described himself as a sales manager. Mr Chopra had previously described Mr Singh to HMRC as his "associate" and HMRC had specifically requested his presence at the meeting. Mr Singh confirmed that he was the husband of Mrs P Kaur, the Company Secretary, who was not present at the interview. He gave his date of birth.

61. The officers expressed significant concern about the business practices that had been adopted by UK Worldwide. It was admitted that only the most basic

information about suppliers and customers had been obtained. The VAT registration numbers had not been verified nor had they considered visiting contacts in order to ensure that they existed. Specifically they had accepted purchase invoices and third-party payment instructions without making any checks.

62. They confirmed that they had not inspected the goods and they did not really know whether they had actually bought anything themselves as they had not checked with the freight forwarder; in summary they had relied on the customers representations.

63. Neither gentleman had any previous experience in mobile phones as the company's primary business activity previously had been the provision of training to students on a commission basis. The business had also been involved in cold calls for utility companies and agency selling of double glazing and alarms etc.

64. The HMRC officers gave both men detailed information about how MTIC fraud worked and the checks that any prudent trader should undertake. It was clearly explained that those checks were not prescriptive; it was just advice. Specifically, the HMRC officers explained how carousel MTIC fraud operated at that time, including back to back deals, the storage of goods at freight forwarders, third party payments and how monies moved back up the chain.

65. In regard to third party payments, on being asked how they expected their suppliers to pay their VAT liability when they themselves were not being paid, the response from Mr Talafair and Mr Chopra, and Officer Hirons' oral evidence on this was not challenged, was: "*Well, we got paid our money. It was down to the customer to make the arrangements as they'd instructed them to do*".

66. It was specifically explained to them that whilst UK Worldwide were issuing sales invoices, in case of deal 1 for £1,002,451.25, they were not receiving that as a payment, since there were third party payments, and UK Worldwide were in fact only receiving what amounted to a commission. They were not in a position to pay their own VAT liability because they had not been paid. It was made explicit that third party payments were an indicator of MTIC fraud.

67. HMRC issued a further veto letter to UK Worldwide informing them that the VAT registration number for another company from whom they had received third party payment instructions might have been hijacked.

68. Following that meeting, on 7 May 2003, UK Worldwide wrote to HMRC requesting deregistration from 10 April 2004 on the explicit basis that they wished to: "*avoid other companies using our VAT number for abuse*". Mr Chopra and Mr Talafair, both designating themselves as directors, signed that letter. On being contacted by HMRC, "Mr Singh" confirmed orally by telephone on 13 May 2004 that the business would not be requesting a new VAT number.

69. We find that Mr Singh and Mr Talafair are the same person. No explanation has been provided as to the use of more than one name and the repeated suggestion to

HMRC that Mr Talafair was not a Director. It is quite clear that he was given detailed information about MTIC fraud and advised that his business practices were not prudent.

ADS Bond Limited ("ADS")

70. ADS was originally owned by one Davinder Singh who was a friend of Mr Talafair. The company secretary at the outset was a Sukhvir Manak and the business activity was Imports/Acquisitions from the EU and Europe (Poland) of duty paid beers, wines and Polish vodka for sale to off-licences. It never traded as such.

71. Although Mr Talafair told HMRC that he "took over" the business, albeit he was unable to remember when he had done so, in fact, Mr Singh remained a 50% shareholder at all times and Mr Talafair acquired the other 50% shareholding for an undisclosed consideration, although, inconsistently he stated that apparently there was no funding in ADS.

72. Mr Talafair appointed another mutual friend, a Mr Patel as company secretary. Mr Talafair asserts that he "ran" the business but he conceded to the Tribunal that he did consult with Mr Singh from time to time on unspecified matters to get another view. It was only Mr Talafair who had access to the company email account with Hotmail. He could not explain why Mr Singh's continued involvement, even if peripheral, only came to light in the course of the Hearing. He stated that he could not remember why Mr Singh had remained involved with ADS.

6 December 2004 visit

73. On 6 December 2004, Officer Camm visited ADS' principal place of business for a post-registration MTIC Assurance Activity visit and at that meeting Mr Talafair confirmed his date of birth, produced his passport and indicated that he had previously been involved in the supply of mobile phones in a company controlled by Wolverhampton VAT office. Based on the date of birth and passport details, HMRC deduced that that company was UK Worldwide and that Mr Talafair was one and the same person as the Mr Singh involved in UK Worldwide. We agree with that conclusion and, in evidence, Mr Talafair confirmed that.

74. Mr Talafair intimated to the officers that customers and suppliers had been obtained from the IPT website and he had sent out letters of introduction with copies of the VAT Certificate and Certificate of Incorporation to a number of companies. At that meeting Mr Talafair confirmed that ADS did not intend to buy or sell to anyone outside the UK. Mr Talafair had remortgaged his house and had between £25,000 and £50,000 available for investment but any deals were intended to be conducted on a back to back basis.

75. However, in his oral evidence to the Tribunal, Mr Talafair said that the proceeds of the remortgaging had been intended for investment in property.

76. Mr Talafair explained to the Tribunal that his understanding of the term "back to back" was that he would usually endeavour to source a customer first and then find a supplier to meet that demand. He viewed the profit margin as effectively amounting to commission and his role as that of broker.

77. The officers discussed with Mr Talafair the detail of what was required in terms of due diligence including visiting the premises/director, issue of supplier declaration and trading application forms and Redhill verification.

78. The standard Redhill letter was issued to Mr Talafair by hand with a further copy being sent by post on 14 November 2005. On both occasions, the Notice 726 was also enclosed. The relevant paragraphs of that Notice are set out at Appendix 1.

79. The standard Redhill letter stated:

"*HM Revenue and Customs are still experiencing certain problems with businesses in your trade sector offering commodities regularly involved in Missing Trader Intra Community (MTIC) VAT fraud. MTIC fraud may involve all types of VAT standard rated goods and services including computer equipment, mobile phones and ancillary items. The current estimate of the VAT loss from this type of fraud in the UK alone is between £1.06 and 1.73 billion per annum.*"

The letter then advised that all future VAT number verifications should be faxed to the Redhill VAT office and that the National Advice Service would no longer verify VAT numbers before continuing:

"*Although the Commissioners may validate VAT registration details, it does not serve to guarantee the status of suppliers and purchasers. Nor does it absolve traders from undertaking their own enquires in relation to proposed transactions. It has always remained a trader's own commercial decision whether to participate in transactions or not and transactions may still fall to be verified for VAT purposes."*

The letter goes on to say that a copy of HMRC's Notice 726 was enclosed and:

" If known, when verifying the VAT status of new or potential Customers/Suppliers the information provided should include the following:

- *The name of the new or potential Customer/Supplier.*
- *Their VAT registration number.*
- *Their contact numbers (including telephone number, fax number, e-mail address and mobile numbers if known).*
- *Copies of any supporting documentation (ie VAT certificate, letter of introduction, certificate of incorporation etc.).*
- *The Directors and/or responsible members.*
- *Whether they are buying or selling goods.*
- *The nature of the goods.*
- *The quantities of the goods.*
- *The value of the goods.*
- *Their bank sort code and account number.*
- *We would also ask that you forward, on a monthly basis, a purchase and sales listing with the identifying VAT Registration Numbers against the suppliers/customers to your local office."*

80. ADS was registered for VAT with a business activity unconnected with MTIC but changed it to that of wholesale dealing mobile phones post-registration. It was Mr Talafair who did so.

81. In June 2005, ADS' 04/05 repayment claim was subjected to verification. There was no response and the VAT returns for periods 01/05 and 04/05 were reduced to nil. HMRC then arranged to meet Mr Talafair again and did so on 7 July 2005.

7 July 2005 visit

82. Mr Talafair was again issued with Public Notices 726 and 700/52 together with the "Statement of Practice for Input Tax without a Valid Invoice".

83. Due Diligence was again discussed and Mr Talafair produced Letters of Introduction and Vat Certificates for a number of companies with whom he intended trading. All of the companies had been verified with Redhill. He again confirmed that any deal would be funded on a back to back basis.

84. Mr Talafair intimated that he was applying for two further VAT registrations. One was the appellant, which he stated was intended to take over the trading activities of ADS and it would include imports/exports, and EC Sales and purchases. He described himself as the sole director and shareholder and his wife was the company secretary.

85. ADS would be "*handed back*" to Mr Singh, its previous director and 50% shareholder. In the event, it has not been handed back.

30 November 2005 visit

86. On 30 November 2005, HMRC officers visited ADS to verify the 10/05 return, which involved sales of memory cards to a Danish company; of course, that sale was in conflict with the information previously given to HMRC to the effect that there would be no imports or exports.

87. His accountant assisted Mr Talafair at that meeting. Invoices, the freight forwarders inspection report and invoice and other documentation were inspected. Due diligence was again discussed and Mr Talafair said that in the future he hoped to use Veracis to carry out due diligence on his behalf. He did not.

88. Mr Talafair explained that he intended to continue using ADS for deals if the appellant was unable to fund a transaction. However, since he was a 50% shareholder in ADS and owned 100% of the appellant, his preference was to use the appellant.

89. At that visit Mr Talafair furnished the officer with outstanding information in relation to the appellant (HMRC having visited the appellant on 3 November 2005 and requested further information; see paragraph 108 below).

90. The repayment was made on a without prejudice basis.

91. On 23 February 2009, HMRC issued a decision denying ADS the credit for input tax in the sum of £1,022,017.52 in relation to the period 04/06 on the basis that that claim was connected with MTIC fraud and that ADS knew or ought to have known that. The appeal in regard to that decision was subsequently withdrawn.

The appellant

The appellant's trade

92. Between the effective date of VAT registration, namely 1 August 2005, and 30 April 2006, a total of 273 days, the appellant recorded trade on precisely three days being 31 October 2005, 31 January 2006 and 28 April 2006 and submitted VAT returns for each of the three periods. The total turnover exclusive of VAT for the appellant in that entire trading period was £8,910,750. The details per the VAT returns are:-

Period	Value of Sales	Value of Purchases	VAT reclaimed
10/05	£ 183,750	£ 173,250	£ 30,318.75
01/06	£1,542,000	£1,443,294	£ 252,541.24
04/06	£7,185,000	£6,822,524	£1,193,209.60

VAT and contact with HMRC

93. On 23 June 2005, the appellant applied for VAT registration seeking registration with effect from 1 August 2005 and the intended business activity was described as "*Electrical & Soft Drinks Wholesalers*". The principal place of business was the home address of the officers of the company. The application form indicated that the appellant did not expect to receive regular repayments of VAT, the estimated value of taxable supplies in the following 12 months was anticipated to be £800,000 and there was no entry in regard to supplies to and from the EC. Mr Talafair had signed that application form.

94. In his oral evidence he confirmed that his accountant had prepared it and he now recognised that it was inaccurate; he had not read it before signing it. The intention had always been to use the appellant in regard to a trade in mobile phones.

95. He was wholly unable to explain to the Tribunal how the figure of £800,000 had been calculated, given that the intention was to trade in large numbers of high value telephones. He could only suggest that, following discussion, the accountant had arrived at it as a guide.

96. On 11 and 18 July 2005, HMRC sought further information from the appellant since there was a degree of conflict in the then available information. In response, specifically, the appellant now indicated that it now had a mobile phone and computer

accessories order which could not be processed without a VAT number, there were planned sales to EC countries (but not purchases) of £3 million per annum and the only sales already made were of 1,444 ball point pen sets.

97. In the interim, of course, HMRC had visited Mr Talafair on 7 July 2005, in regard to ADS and Mr Talafair had explained the appellant's planned trading.

98. HMRC arranged a preregistration visit on 26 August 2005 to enable them to explore matters further.

26 August 2005 visit and VAT registration

99. At that visit, Mr Talafair was reported as telling the officers that although he was the director of another company (ADS) which intended to trade in wholesale mobile phones but had not done so yet, he required the appellant as a vehicle because he wanted a business where he was the sole shareholder. He finds customers and suppliers on the ITP website, he will do back to back deals, he had no accounts with freight forwarders and he had £40,000 to invest. He was noted as having previously received Notices 726 and 700/52 and the Statement of Practice.

100. Following that visit the appellant was granted registration.

101. Thereafter, on about 12 September 2005, the appellant notified HMRC that the trading activity had changed to "*wholesale trade in soft drinks, electrical items i.e. mobile phones & accessories and computer hardware and related items*".

102. On 12 October 2005, the standard Redhill letter together with Notice 726 was issued to the appellant.

3 November 2005 visit

103. At a further meeting on 3 November 2005, in connection with a repayment claim for the appellant in the sum of £30,318.75, the sole deal in the period 10/05 was discussed in detail with Mr Talafair.

104. It was the wholesale purchase of 1500 Nokia 6600 from Balmoral Solutions Limited ("Balmoral") at £115.50 per unit and the sale to Airtel Telecom (Dubai) at £122.50 per unit. Mr Talafair's accountant, Mr Patel had introduced Mr Talafair to Balmoral, which was a client of Mr Patel. The only due diligence on Balmoral was checking the VAT number with Redhill, obtaining a copy of the director's utility bill, and passport photograph and a copy of the VAT certificate. Mr Talafair had not inspected the goods nor had he instructed any inspection. There was no insurance.

105. The purchaser had been found through the IPT website and "*documents*" had been exchanged.

106. Although this was the first transaction by the appellant, other than the sale and purchase of some pens, Mr Talafair only had copy documents for the export deal and no documentation could be found relating to the seller or to the freight forwarder.

107. We find that surprising since the principal place of business was Mr Talafair's home and he told the Tribunal that he kept documentation for deals "together" (see paragraph 189 below).

108. That documentation was subsequently delivered to HMRC when they visited ADS on 30 November 2005. At that meeting, Mr Talafair confirmed that he was the sole shareholder of the appellant and that if a deal required little or no financing he would use the appellant whereas if more finance was involved he would use ADS.

109. The repayment was subsequently made on a without prejudice basis.

6 March 2006 visit

110. On 6 March 2006, HMRC officers visited the appellant in regard to a deal transacted on 31 January 2006, involving the purchase of 3000 Nokia 8800 from Saphire Limited at a unit price of £481 and the sale thereof to France Affaires International at a unit price of £514. Payment had been made through FCIB. The Freight Forwarders (AFI Logistics) issued an invoice in relation to insurance and there was an inspection by A1 Inspections Ltd on 1 February 2006.

111. Mr Talafair did not have the original purchase invoices. The officers discussed record keeping, the information to be retained and other ancillary matters.

112. The repayment was subsequently made on a without prejudice basis.

The 04/06 deals

113. It is the 04/06 VAT Return dated 11 May 2006 covering the period 1 February 2006 to 30 April 2006, which is the subject matter of this appeal. That covered two transactions. The total value of the sales was entered as £7,185,000 and the purchases £6,822,524. The VAT reclaim was £1,193,209.60 and the total value of the supplies to the EC was £7,185,000.

114. Both transactions were concerned with the purchase of mobile phones from the UK company, Saphire Ltd ("Saphire") and the sale of those phones to an EU Customer, CEMSA in Spain.

115. The first transaction was the purchase of 8000 Nokia 8800 phones at a cost of £408 each and their resale at £440 each.

116. The second transaction was the purchase of 10,000 Nokia 9300i phones at a cost of £354 each and their resale at £366.50 each.

117.In both transactions the cost of inspection, insurance, if any, and freight was due to be borne by the appellant. The total value of the invoices for freight and inspection alone in the period was in excess of £5,000.

118.It does not sit well with Mr Talafair's assertions in his second witness statement that:

(a) he took into account the costs of freight, inspection, storage and insurance when calculating profit,

(b) he did not generally enter into deals with a profit margin of less than 5%,

(c) he would not trade unless he achieved his target mark up.

On any analysis it does not make sense. Even if the two deals are conflated, the margin is a maximum of approximately 3.8%.

14 June 2006 visit

119.On 14 June 2006, HMRC Officers Hirons and Neale met with Mr Talafair and his accountant Mr Patel. There is only one detail of Officer Hirons' evidence of fact, including the record of that meeting, that was actually challenged by Mr Talafair and that is when she records that the visit to Spain, when CEMSA was visited, was part of a family holiday. Although it was suggested by Counsel that the sequence of events described by the officer were all disputed, in the event, no material challenge was offered on any other point, either by Counsel or Mr Talafair, albeit her conclusions were neither agreed nor accepted.

120.In summary, at that meeting, Mr Talafair stated that Mr Patel had recommended Saphire to him at the end of 2005 or the beginning of 2006, stating that they were "legitimate". He did not know if Mr Patel had continued to act for Saphire. He had verified the VAT number in relation to the first transaction with Saphire in January 2006 but had not repeated the exercise. (In fact that verification was after the date of that transaction and was dated 1 February 2006) He had made a site visit in January 2006. He had made no other checks. Saphire had used Verasis at some stage (he could not remember when) to check on the appellant but he declined to say why he had not employed them to check on Saphire. When the same point was posed to him by the Tribunal, he said that he had not used them because he did all diligence himself.

121.As far as CEMSA were concerned, he stated that he had visited them with the Messrs Bains (see paragraph 129 below) at the end of April 2006, verified their VAT registration number with Europa (rather than Redhill) on 28 April 2006 and he had read a magazine article stating that CEMSA were in the top 50-100 companies in Spain and the top 50 in Malaga. No third party checks had been carried out.

122.Saphire had instigated the deals and Mr Talafair had then found that CEMSA would purchase the stock.

123.1st Freight Ltd held the stock for Saphire and the appellant had used them. They had undertaken an IMEI scan but only on 10% of the stock, whereas a 100% scan had been instructed. As a result, as at the date of the visit they had not been paid.

124.He stated that he had arranged insurance at a cost of approximately £15,000 but as at the date of the visit, nothing had been paid.

125.No evidence has ever been produced of payment of insurance and, in response to questions from the Tribunal, Mr Talafair tried to argue that he just assumed that 1st Freight had included the insurance in their invoice. Not only is that inconsistent with what he told the officers at this visit but not even the figures involved match. It was evident to the tribunal and to both Counsel that no insurance had been effected.

Mr Talafair's knowledge of MTIC fraud

126.Officer Hirons had recognised Mr Talafair when visiting him in regard to the appellant, having visited him in regard to UK Worldwide when he had used a different name. We accepted her evidence that over a period of years, Mr Talafair had been extensively educated about the prevalence, hallmarks, nature and extent of MTIC fraud and that he had been given advice on more than one occasion as to the recommended steps (not prescriptive) that prudent traders should adopt, not least for their own protection. She was very clear indeed that on every visit due diligence checks and MTIC fraud generally would be discussed with traders, including Mr Talafair, in order to ensure that traders understood the risks in the industry and could make informed decisions about whether or not they entered into transactions. It is clear from the foregoing paragraphs that Mr Talafair was frequently advised about MTIC fraud.

127.Accordingly, we have no hesitation in rejecting Mr Talafair's assertion that he had no understanding as to the prevalence of fraud in the industry. On the contrary, on the basis of the information and advice repeatedly given to him, we find that a prudent trader, concerned about its own risk profile should have been very aware of the possibility of fraud.

Corporate Structure of the appellant

128.On incorporation, the appellant had share capital of £1. The appellant filed dormant accounts for the year ended 31 August 2005, approved by the Board on 4 April 2006, and the only shareholder recorded was Mr Talafair. We note that as at that date, under the heading principal activity, the company is described as "*dormant and has not traded during the period or subsequent to the period end*". Of course, as is now known, by 4 April 2006, the appellant had completed three transactions and was not dormant.

129.At some point before 5 September 2006, that share capital was increased to £100. In fact, it has been established that latterly the appellant actually had three shareholders, namely, Hardip S Talafair with 34%, and Rajesh K Bains and Aron K Bains with 33% each.

130.Mr Talafair was wholly unable to even suggest an approximate date when the Bains brothers had become shareholders, although initially he said that it had been the middle of 2005. When it was put to him that that could not have been the case, if anything that he had told HMRC had been correct, he said that he could not remember. He described them as friends. Certainly, as we note below, he told HMRC at the June 2006 visit that they were shareholders in May 2006.

131. As can be seen, prior to that, and certainly at the end of 2005, Mr Talafair repeatedly represented to HMRC that he was the only shareholder in the appellant.

132.In response to questions from the Tribunal, Mr Talafair said that he had consulted with the Messrs Bains about "deals" and indeed they had accompanied him to Spain to visit CESMA (see paragraph 121 above). He told the tribunal that they were silent investors in the appellant, albeit he used to "*put things past them*".

133.Mr Talafair could not explain why there was no business plan or cash flow projections etc. He could not explain what information had been given to the Bains brothers to persuade them to invest in the appellant.

134.He was unable to explain orally how he, or the Messrs Bains, were remunerated other than that he drew no salary from the appellant. He did make it clear that "profits" were fed back to the shareholders. The mechanism was not explained. We note from the record of the June 2006 visit that he had told HMRC that the finance for the deals, that are the subject matter of this appeal, had come from the Messrs Bains and from his own savings. A total of £101,856 had been transferred from the appellant to FCIB on 3 May 2006. As at 14 June 2006, he told the Officers that he had been repaid £30,000 and the Messrs Bains had been received £40,000 each. Whilst the print out from the FCIB account dated 13 June 2006 shows the said opening balance, the closing balance is only £3,496.20. The only payments out which are not to Saphire are two wire transfers of £10,000 and £4,000 on 10 and 18 May 2006 respectively. Clearly those are not the "repayments".

135.Details of the appellant's UK bank account have never been produced.

136.Mr Talafair was unable to explain the circumstances in which Mr R Bains was the witness to the loan agreement with Saphire (see paragraph 147 below).

Conflict in the evidence

137.As we indicate earlier, the only material challenge in regard to factual matters was the visit to CEMSA. In our view, it is not material whether or not Mr Talafair was on a family holiday to Spain when he visited CEMSA. He did visit CEMSA. He did not visit 1st Freight where the telephones were apparently actually located.

138. Far more to the point is the very strong challenge to Officer Hirons in the second witness statement of Mr Talafair to the effect that Mr Talafair's contact with Saphire had been organized by his accountant. His witness statement states:

"*I challenge officer Hirons to substantiate her claim that my supplier Saphire cam (*sic*) from my accountant Mr Patel. This most certainly was not the case…I could not honestly say the name Saphire did not crop up in conversation but I can say with great certainty Mr Patel never provided Saphire's details to me as a potential supplier."*

139.It is beyond doubt, on the oral evidence from Mr Talafair, let alone on the officer's evidence, that Mr Patel was the lynch pin and arranged the contact. Quite why, on what was conceded to be professional advice (not that of the current agents), that fact was challenged right up to and including this Hearing is incomprehensible and Mr Talafair was wholly unable to offer a credible explanation. He would only say that Mr Patel had arranged for Saphire and the appellant to be in contact and he had relied on Mr Patel's *bona fides*. His torturous attempt to explain his stance was wholly unconvincing.

Saphire

140. Apart from the matter of the introduction to Saphire, Officer Hirons had produced extensive information and exhibits about that company and that was not challenged.

141.It had been explained to Mr Talafair in very clear terms that one of the factors, which was deemed relevant, was the relationship between Saphire and the appellant. Mr Talafair was anxious to establish that Saphire was a "good" company. He was well aware that HMRC argued that Saphire was a competitor of the appellant in the marketplace and he was asked why he had chosen to trade with a potential competitor.

142.Although he had stated in his second witness statement, that there were no credit arrangements in place, in cross examination, he told the Tribunal that one of the reasons that he had traded with Saphire was because they had been "*prepared to give us a little bit of terms, credit terms in order for us to complete, sell…*" . He then confirmed that there was no paperwork recording any such arrangement. However, he was insistent that at some point things had changed and he had been offered credit. He could remember no detail at all. He could not explain the conflict with the witness statement. We found him wholly implausible on this point. However, as a matter of fact, credit was indeed extended in the sense that the appellant was paid in full before Saphire was paid by the appellant and indeed, Saphire was never paid in full.

143.In the course of the hearing, we were provided with extraordinary new evidence, for which there had been no prior intimation and there was no supporting documentation.

144.Mr Talafair said that he had checked Saphire's creditworthiness and that apparently he had ascertained that £90,000 was their credit limit. There was no documentation and he could not remember when, or why that check had been done.

145.Unsurprisingly, although this was news to HMRC, Counsel asked Mr Talafair how, in pure commercial terms, he could have thought that £90,000 had any relevance to an ability to fund a multi million pound deal. He was wholly unable to offer any logical, commercially orientated explanation. He stated that he had visited their premises, taken photographs and come to know and trust Mr Rai, the director. They had visited at their homes. He had verified the VAT registration with Redhill. (see paragraph 158 below).

146.Even more extraordinary was the explanation of the loan from Saphire to the appellant. In his witness statement he had simply observed that he had given HMRC details and "*There was nothing untoward about this".*

147.The loan documentation consists of a one page document apparently sourced from the internet. It was between the appellant and Saphire and was signed for the appellant by Mr Talafair in the presence of Mr R Bains as witness on 8 May 2006.

148.In his oral evidence, he stated that the loan had been negotiated over a period of time but he could furnish no detail. He alleged that it had been provided in regard to proposed property development. He could not explain why the appellant was the apparent vehicle for the loan when he was involved with other companies allegedly established for property development. He tried to suggest that his home had been offered as security but then had to agree that he had allegedly already remortgaged that.

149.He could not explain why, when the loan was drawn down (and the documentation signed), on 8 May 2006, Saphire, to whom the appellant already owed many millions, was prepared to give an unsecured loan of a further £500,000 to a company with a minimal trading history and an authorised share capital of, at maximum, £100. There were not even personal guarantees. We put it to him that it seemed improbable at best. He had no answer. He was unable to explain to HMRC why Saphire had not pursued the appellant for repayment, or at a minimum interest, in 2006 and his only answer was that they had phoned him and called him.

FCIB account and movement of funds

150.The appellant's own FCIB bank statement shows that that loan was drawn down on 8 May 2006. That statement also makes it explicit that those funds were utilised that same day as part payment to Saphire for the telephones in Deal 5. Prior to the injection of those funds, the appellant had £331,827.10 in the account. Saphire was paid £800,000 that day leaving a balance of only £31,808.10. The only other funds paid into the account thereafter came from CEMSA. Those funds were utilised to pay Saphire.

151.Lastly, in that context, we note that Saphire was never paid in full for the telephones. The closing balance on the account at 13 June 2006 of £3,496.20 was insufficient to fund the outstanding balance then due.

Conclusion in regard to the loan

152.We have absolutely no hesitation in finding that the offer of a loan, which was indeed used to fund one of the deals in question, is clear evidence that these were not commercial transactions conducted in the normal course of business. The standard of proof is on the balance of probabilities and we find that on the basis of the loan dealings alone, the appellant, through Mr Talafair, knew or most certainly should have known that the dealings with Saphire were connected with fraud. Of course we also considered all of the other factors and circumstances in this matter.

Chain of Supply

153.There was no challenge to the chains of supply traced by HMRC and reported by Officer Hirons.

154.We can see from the specification in the documentation earlier in the chain, albeit the appellant has been wholly unable to produce any specification in regard to its own deals but it is now conceded that the same telephones were involved, that the telephones in question had two pin plugs and therefore were destined for the European market. The fact that the phones had 2 pin plugs was also indicative of the fact that they came from the EU. Why were they in the UK? Had it been thought about, it should have been apparent to the appellant that a company other than the manufacturer had imported the mobile phones into the UK.

155.The appellant's wholesale trade in respect of the transactions with which the Tribunal is concerned, was therefore based entirely upon the appellant buying from a UK supplier and selling to a customer abroad. That the appellant failed to consider where the goods came from, beyond its supplier, or where the goods ended up, was, in our view, a feature which indicated knowledge of the contrivance or, at the very least turning a blind eye to a feature which, in our view, any legitimate trader would have considered.

Due Diligence

156.Officer Hirons was repeatedly asked what elements of due diligence should have been carried out by the appellant and were not. She consistently confirmed that that was a matter for the appellant, and the appellant alone as it was a business decision. We agree.

157.In her witness statements she furnished detail of what had been produced by way of due diligence. It is not in dispute but it is appropriate to record it. In his oral evidence Mr Talafair commented on due diligence. He "did not think" that he had had a standard form of trading application form for intending customers and suppliers. He stated that the appellant did "check out" credentials and would get company registration documents like letters of introduction, possibly utility bills, passport identification and similar from potential customers and suppliers.

Saphire

158.The general detail of the due diligence is given at paragraph 120 above and as we indicate Mr Talafair stated that he had obtained Redhill verification. In point of fact, there was no current Redhill verification either before the first deal in 01/06 (it was received on 1 February 2006) or before these deals were transacted.

159. As far as the site visit is concerned, in response to questioning, Mr Talafair confirmed that the premises were two or three open plan offices in a former village post office with a car park, there were two or three staff and he had not seen or inspected any mobile phones. He had relied on what he described as the referral from his accountant and moved on from there. There were no other checks made other than the alleged Credit report.

CEMSA

160.The Letter of Introduction, which enclosed a copy Certificate of Incorporation and VAT registration number states that the company was incorporated in July 2001 but also says that it has a 30 year history. The due diligence report produced by Mr Talafair himself does not address that apparent discrepancy.

161.In our view that report dated 27 April 2006, the day before the deals were concluded, is lamentably sparse in detail and indeed, on examination, transpired to be inaccurate. If Mr Talafair is to be believed he visited CEMSA once immediately before the deals were concluded and on that visit he met the Director, saw 250 sq m of office space (8 internal offices) and reception area and took photographs of personnel and premises. It states that the business deals with genuine stock, yet no stock was seen.

162.Further it states that the business can provide satisfactory trade references, which are awaited. None have been furnished. Officer Hirons identified that as a deficiency in due diligence in her witness statement at paragraph 161 yet Mr Talafair simply stated that he was satisfied with the checks he had done.

163.It is not clear when the Europa validation was obtained although we note that the request was only received on 28 April 2006. Mr Talafair had repeatedly been advised that Europa was less reliable than Redhill because it was less up to date.

Ist Freight

164.Officer Hirons recorded in her witness statement at paragraph 163 that in relation to 1st Freight Limited, a Company Introduction, Account application and Bank details had all been faxed to the appellant (on 21 April 2006) but although all carried the company registration number, none had the VAT registration number. When the Inspection reports were issued they had the same company registration number but the sales invoices in the name "1st Freight" had a different company registration number

but that discrepancy had not been identified by the appellant. That was not addressed in Mr Talafair's witness statement. In his oral evidence Mr Talafair made it very clear that he had not perceived that there was any need to conduct due diligence in regard to 1st Freight since at all times they had held the stock.

165. That was not consistent with his witness statement. He had stated therein, that: "*The location of the stock was very important to me as if it was at a freight forwarder I had a professional relationship with then administration was much easier. A great reliance was placed on the freight forwarder… I carried out checks on them and verified their VAT number…Had we not been satisfied with the freight forwarder our supplier was using we would not have agreed the trade."*

166. In response to cross-examination he had to concede that he had "possibly" checked their VAT number on Europa but had conducted no other checks. Accordingly, it is difficult to know how he could have been satisfied; it is yet another pointer towards contrivance.

167. Pertinently, the second witness statement of Officer Morehead dated 5 November 2013 comments in detail on the appellant's due diligence (or lack thereof) in relation to 1st Freight.

168. The invoices for the transportations and inspections were in the name of School of Computers Technology (London) Limited trading as "1st Freight" and had a different VAT number to that which had previously been provided. When this was put to him, Mr Talafair was unperturbed and indicated that it was not a problem because it was the same address and telephone number. We disagree. That should have been a major cause of concern to a prudent trader. Further, as we note at paragraph 123 above, those invoices indicated that the inspections allegedly carried out were not those instructed and that should have been another cause for legitimate concern.

Conclusions on due diligence

169. On the basis of the diligence completed, we find it incomprehensible that a prudent trader, could possibly consider that there had been anything like an appropriate assessment of the potential risk factors, let alone in relation to easily transported goods of such high value. It is particularly noteworthy that no stock was ever seen. It does not suffice to say, as Mr Talafair does that he knew that, in regard to the purchases the stock was at the freight forwarder. At the time the diligence was allegedly done that could not have been the case. Further, if Saphire was a major trader, what about other transactions? There are many, many other inquiries that a prudent trader, engaged in an arms length transaction would be expected to have pursued. The appellant has done exceptionally little. That is further compounded by the actual trading process alleged by the appellant (see paragraphs 193 – 198) below)

170. We were satisfied that the due diligence obtained provided insufficient information from which the Appellant could meaningfully assess the financial viability of its trading partners and was carried out to meet the standards set out in Notice 726 rather than for the Appellant to satisfy itself as to the veracity of its customer and supplier. The fact that Mr Talafair did not even make any relevant

checks about 1st Freight and saw no need to do so was indicative of just how little the appellant knew and its willingness to enter into such high value transactions on the basis of such limited knowledge was indicative, in our view, of the appellant's knowledge that the deals were contrived.

Terms and condition, specifications, warranties

171.Officer Hirons had identified the significant, in her view, lack of information in regard to these matters.

172.Mr Talafair confirmed in cross examination that he had had no written terms and conditions and that it had not seemed important to him at the time. There were no written agreements regarding matters such as shipping terms and responsibility for returns of faulty goods.

173.In his witness statement Mr Talafair had stated that he monitored the availability of suitable products in the UK trying to match with the requirements of the customers and that the factors affecting that match would be model specification, product, quantity available, price, location and availability. The model and specification of product required by a customer could vary from day to day. Mr Talafair conceded that matters such as warranty, instruction manual, type and colour of phone, charger etc were important parts of a specification and mattered when negotiating the price. The purchase orders, invoices and inspection reports carried absolutely no information in regard to the specification in these deals. The only explanation, which Mr Talafair could offer was that the specification, would have been included in emails. None have ever been produced.

174.When he was asked what he would have done if a problem had arisen he repeatedly stated that he would have dealt with it "accordingly" at the time. He was not able to explain what he would have done other than that he would have relied on the purchase and sales invoices. We find that wholly incredible in a context where he embarked on transactions involving high value goods worth many millions of pounds.

175.In our view the absence of any contract terms was implausible for a legitimate trader seeking to minimise exposure to risk. In our view, in order to protect itself, any legitimate business involved in transactions of such high value would have recorded all of the agreed terms. Specification of the goods in question would have been on the face of the invoices etc. Further specification would have been on the inspection reports. There was none.

Title to goods

176.In her witness statement Officer Hirons indicated that one of the indicators of MTIC fraud was that "*Title to goods was released by all buffers before they received payment.*" Mr Talafair did not respond to that in his witness statement.

177.In our view legal title is an issue crucial to any trader and a reasonable

businessman would ensure that it was clear which party had legal title to the goods and at what point legal title passed. We do not accept that the term should be beyond the comprehension of the appellant; ownership of goods is an important and obvious feature where goods are traded and we do not accept that the appellant required any specialist legal knowledge to understand such a basic concept. We are equally clear that he had considerable difficulty in explaining his actions in that regard.

178. We are satisfied that the lack of clarity or formal record regarding legal title was indicative of the contrived nature of the deals whereby legal title would never be in issue. We found the oral evidence relating to title extremely persuasive in that Mr Talafair was wholly unable to explain how title passed and his lack of understanding was obvious.

179. He was wholly unable to explain why he had said in his witness statement that if he had failed to pay for the goods the supplier, in this case Saphire, could instruct the freight forwarder to return the goods to the UK and the appellant would be charged the costs. That is simply incredible and flies in the face of common sense, commercial logic and basic legal principles. In this instance Mr Talafair had to concede that he had instructed the release of the goods to CESMA on 9 May 2006 before the appellant had been paid in full and before Saphire had been paid more than a small proportion of the monies due in Deal 5 and none of what was due in Deal 4. It is even more extraordinary when we note that in response to a call from Mr Talafair CESMA stated that they only received the goods in Calais on 11 May 2006, coincidentally the date of the VAT return. In any event, the goods had been there since the previous week. Mr Talafair could not explain why he had authorised the release.

180. In our view, the evidence laid bare the lack of commerciality of the trade in which the appellant was engaged.

Evidence of Officer Morehead

181. In the event, this Officer's evidence which related to 1st Freight was not challenged. They are a missing trader and have debts to HMRC in excess of £300,000. It is not in dispute that it would appear that 1st Freight could neither physically have stored all of the goods that they were alleged to hold for various clients nor conduct the level of examination offered to those clients. Apart from issues around due diligence (see paragraphs 164 - 168 above), as far as the appellant itself is concerned the only evidence of fact which is directly applicable to the appellant (other than the invoices), and which was not contested, was that

(a) the last IMEI number apparently in the appellant's deal precedes an IMEI number in a deal allegedly scanned two days previously and that obviously should not be the case,
(b) the vehicle allegedly utilised for transporting some of the telephones was a low loader and therefore wholly unsuitable for that purpose,
(c) 6000 of the telephones in Deal 1 arrived in Calais on 2 May 2006 in three shipments, with the remaining 2000 arriving the following day,

(d) 6000 of telephones in Deal 2 arrived in Calais on 5 May 2006 in three shipments, with the remaining 4000 arriving in two shipments the following day,

(e) the Letter of Introduction issued to the appellant states that "1st Freight Limited has over 5 years of experience…" yet Companies House records show that it was only incorporated on 25 January 2006.

Evidence of Officer Emery

182. Officer Emery explained her flowcharts, and supporting documentation, setting out the full details of the flow of funds (via FCIB) in both of the deal chains. Those had been compared and reconciled with the dates and values of the invoices identified by Officer Hirons. They are long and complex chains with a significant number of traders on both sides of the chains.

183. It was agreed that the precise detail of the times shown, by hour, could not be relied upon since it was not clear which time zone(s) had applied (Officer Letherby's evidence).

184. The crucial fact is that it is not in dispute that the appellant's customer paid the appellant first and then all the other participants in the chains were paid within a matter of hours on each occasion. It is evident to us that those payments were made in a timescale that is completely devoid of commercial reality.

185. She had also traced the money movements in respect of the loan from Saphire to the appellant. There was no dispute in regard thereto.

186. Officer Emery very fairly stated that she did not know what the appellant might or might not have known about any of the participants in the chains other than its immediate counter parties.

187. We note from the exhibits to her witness statements that when Mr Talafair applied to open an account with FCIB on 15 September 2005, amongst other matters, he stated that:

(a) the appellant was the "sister company" of FCIB's existing client ADS,

(b) the appellant had been trading in the telecom business for more than one year,

(c) the countries where the appellant had trading partners included the UK, Europe, the Middle East and USA.

That information, which is clearly inaccurate, at least in regard to trading, is not consistent with the information given to HMRC by Mr Talafair, in the same week, in his application for registration for VAT, as amended.

Mr Talafair's other evidence

Added Value and profit margins

188.It was confirmed that the appellant had done nothing to add value to the telephones. The stock was not split. The appellant did nothing other than to export the goods. In our view, that is a factor that should have led the appellant to question why a large profit in a crowded and what he described as a "vibrant" market place could be achieved other than if connected to fraud.

Supporting evidence

189.Although both in his witness statements and orally Mr Talafair indicated that he had a "network" of traders to whom he would speak on a regular basis, there was not a shred of supporting evidence in regard thereto. Although he alleged that there had been telephone calls, faxes, emails and stock offers they have never been produced. He conceded that he did not keep documentation in a folder but he allegedly kept it "together" for each deal. That does not sit well with him being unable to produce much key documentation to the officers on their visits.

190.On being pressed by Counsel for HMRC, he said that the "office" had been broken into and items stolen. No detail was provided. In any event the principal place of business was his home and the appellant only ever completed five deals including the pens. Further, as we note above, when the officers visited he had only very limited primary documentation available. We find his explanation about the theft, proffered for the first time at the hearing, to be inherently incredible.

Conclusion on added value and margins

191.We rejected Mr Talafair's evidence that all deals were robustly negotiated. In our view this was implausible and, in the absence of any documentary evidence to support the assertion that negotiations took place, we were satisfied that the only reasonable explanation for the high mark up for the appellant alone was that the deals were contrived. The price was pre-determined.

192.We were satisfied that the profits made for such little work and without adding any value to the product were indicative of the link to fraud, a fact about which the appellant must either have known or should have known.

The Deal Process

193.Counsel for HMRC and the Tribunal explored with Mr Talafair at some length the precise mechanism for the two deals. Unfortunately, and fairly incredibly, given that there were only a total of five deals for this company and we were concerned with two of them, Mr Talafair was wholly unable to give clear and consistent answers. In his second witness statement he had outlined the process. He stated that once he knew the stock was physically at the freight forwarders he would discuss detailed

terms with a customer and try to complete negotiations. If he had agreed the trade with the customer then he would send the purchase order and supplier declaration to the supplier. A pro-forma invoice would be sent to the customer and thereafter the customer would send the appellant an official purchase order. The supplier would have returned the supplier declaration together with the sales invoice. At that juncture he would request the stock inspection from the freight forwarder and he would have the VAT numbers verified. Lastly, if all was in order then he would send the shipping instructions to the freight forwarder. Those instructions would include detail of insurance for the stock. Once he was paid he would then immediately pay his supplier.

194. In his oral evidence, he initially said that he would check with the supplier first and ensure whether or not the stock was at the freight forwarders. He would then negotiate with both customer and supplier but, of course, the price could, and did, change. His view was that when the purchase order was issued then the price was fixed and he would be committed to buying the stock. The point was repeatedly made to him that if he had agreed a deal with, in this instance Saphire, but had not yet concluded the negotiations with CESMA then he was exposed to considerable risk. On reconsideration, and he was told to think very carefully about his answer, he said that he thought that he would have agreed the price with the customer and then negotiated with the supplier. He went as far as stating that he would never buy from someone until he had agreed to sell.

195. He was explicitly asked if he considered that there was a risk and his answer was "*I think an element of risk but probably not to how, you know, you're trying to say the amount of risks*".

196. He was wholly unable to explain why he would have sent the supplier declaration after the negotiations had been completed, since his final stance was that when the purchase orders were exchanged the deal was "done". Clearly if the supplier declaration was unsatisfactory it would have been too late to have taken any remedial action.

197. Ultimately his position was that he could not say definitively how the deal process would work because "it would depend on the timing".

198. As far as stock inspection is concerned he could not explain why that would be done after the deal had been concluded. He then argued that his witness statement was incorrect and the inspection would have been done once he had agreed prices with both parties and before the purchase orders had been exchanged. He could not remember what had happened with the deals in question. To say that there was a lack of clarity would be an understatement. That point was made to Mr Talafair. He had no answer other than that …it depended.

Inspection reports

199.It was quite clear from his evidence that Mr Talafair had absolutely no idea what comprised the various types of inspection reports. In his oral evidence he also said that he had not challenged 1st Freight (because the invoices recorded inspections other than those instructed) albeit at the June 2006 visit he had told the Officers that he had done so.

200.He was entirely unable to explain how he had expected 18,000 telephones to have a 100% inspection all in the course of one day.

Conclusions on Mr Talafair's evidence

201.We found that the evidence of Mr Talafair did not withstand scrutiny, was unconvincing and on numerous points wholly inconsistent. He repeatedly stated: "I cannot remember". We bore in mind that a significant period of time has elapsed since the transactions, which are the subject of this appeal, were carried out. However, unlike many MTIC appeals, the appellant has only ever entered into a total of five transactions, one of which in relation to pens is wholly irrelevant, and in regard to the remaining four there were only two suppliers and three customers in total.

202.Mr Talafair has been in possession of HMRC's detailed evidence for a number of years. He has had every opportunity to review same and collate information.

203.In our view, the evidence of Mr Talafair went beyond a recollection limited by the passage of time; rather it appeared to us that he did not have any real understanding of the mobile phone industry, or the trade connected to it. He did not appear to understand even basic terminology relating to import or export such as FOB or Letters of Credit. He did not understand basic principles of domestic, let alone international trade.

204.We did not accept that a reasonable prudent businessman would have so little understanding of the market generally or his role in it. We were not satisfied with his explanation that he had to start somewhere. He has been a director of numerous companies. We were satisfied that Mr Talafair could not be relied upon as a truthful witness.

205.The appellant's counsel has consistently argued that Mr Talafair has shown a degree of innocent naivety, described by him as "*unbelievable*". In our view it is precisely that. It is incredible.

206.It is conceded for the appellant that questioning of Mr Talafair "*revealed a large number of commercial lacunae*" in Mr Talafair's "*conduct in carrying out this transaction, all of which show a remarkable naivety*" and that there were "*remarkable disparities*" in the evidence. There were. It was argued for the appellant that none of those factors begin to establish that there was fraudulent intent. We were asked to find that the appellant

had exhibited an extraordinary degree of risk taking and non-commercial naivety rather than an involvement in a contrived fraud. In support of that it is suggested that the appellant, because of inexperience, was "*suckered into a deal that they could not resist, with the allure of much 'fine gold at the end of the rainbow*' ". We were asked to find that he was a careful and honest trader.

207. Shortly put, whilst for the reasons outlined, we certainly accept that if these had been legitimate deals there was an extraordinary degree of risk taking, we do not accept that it was attributable to, or should be attributed to naivety. The almost complete lack of care and attention, not to minor detail but to basic commercial imperatives such as documentation and insurance and assessment of risk go very, very far beyond naivety and point to either knowledge or means of knowledge of fraud.

208. We agreed with and had regard to the comments of Judge Bishopp in *Calltel Telecom Ltd v HMRC*[9]*:*

"(52)…it is, we think, possible that a trader could have the means of knowing that, by his participation, he is assisting a fraud. Much will depend on the facts, but an obvious example might be the offer of an easy purchase and sale generating a conspicuously generous profit for no evident reason. A trader receiving such an offer would be well advised to ask why it had been made; if he did not he would be likely to fail the test set out at paragraph 51 of the judgment in Kittel*".*

That is precisely the position in which the appellant found itself yet it proceeded with the deals.

Reasons for Decision

209. We have set out above a number of our conclusions on various aspects. We confirm those and expand thereon.

210. Counsel for HMRC repeatedly put it to Mr Talafair that his explanations were unbelievable and that effectively the transactions were a sham, the documentation and explanations were mere window dressing and he must have known that he was involved in fraudulent transactions. He denied that on each occasion.

211. We were quite satisfied that the appellant, through Mr Talafair, was aware of the general prevalence and characteristics of fraud within the industry, and it was against this background that we assessed the nature of the appellant's trading.

212. At paragraph 29 above, we indicated that the questions asked in BSG (substituting the word Saphire for "Infinity" in the third question) were pertinent when assessing the question of the appellant's, and therefore Mr Talafair's knowledge. It was clear that the appellant failed to consider or query these obvious features of its transactions which would have led to the clear indication that the transactions were connected to fraud.

[9] [2007] UKVAT V20266

213.We were satisfied that looking at the overall pattern of trading there were numerous objective factors indicative of the contrived nature of the transactions which were within the knowledge of Mr Talafair, for example the high value deals with previously unknown trading partners despite the appellant's lack of experience, the movement of goods prior to obtaining legal title, the lack of insurance, the profit margins and mark-ups made irrespective of adding value, the lack of standard contractual terms and the absence of evidence of variation of allegedly agreed terms. Further, the invoices and inspection reports carry no details of specification of the goods and, bearing in mind that the appellant did not take physical possession of the goods, we concluded that attention to detail in documentation should, and would, have been even more important to any reasonable businessman who was conducting transactions at arms length. The fact that the appellant was offered an unsecured loan of £500,000 by a customer, whilst that customer was owed several times that sum by the appellant, should have been cause for concern had the transactions been at arms length.

214.For the reasons set out above, we rejected the appellant's submission that it was an innocent dupe in the scheme and in the absence of any alternative reasonable explanation for the appellant's involvement we were wholly satisfied that the appellant, through Mr Talafair, had the knowledge and, at the very least, the means to conclude that its transactions were connected to fraud.

215.For the avoidance of doubt, we confirm that we found that some reasons carried more weight than others and we did not base our decision solely on one reason, such as the loan, but rather the cumulative effect of our findings viewed in totality.

216.We did not focus unduly on the issue of due diligence, and we took into account all of the surrounding circumstances in reaching our decision that the appellant knew that both of its transactions were part of an artificial scheme. In doing so, we concluded that the appellant, through Mr Talafair, had actual knowledge that the transactions were connected to fraud and that, by its purchases, it was taking part in transactions connected with the fraudulent evasion of VAT. We were also satisfied that the factors identified above would also support a finding of means of knowledge.

Decision

217.HMRC has proved that the appellant's means of knowledge was such that the transactions fell outside the scope of the right to deduct input tax. Accordingly we found that the decision of HMRC to deny the appellant's input tax was correct and is upheld.

Costs

218.As the decision of the Tribunal issued on November 2014 indicated, the question of costs in relation to that Hearing was reserved. At closing, HMRC confirmed that the costs in regard thereto should simply form part of the costs of the whole appeal and the appellant agreed that.

219.Both parties sought costs if they had won and both accepted, when the Tribunal asked, that this was a case where costs could and should be awarded. Essentially, this was because it was an old case started before the cost position was changed. This appeal was allocated as Complex and neither party opted out of the costs regime.

220.We see no reason here why costs should not follow the event, as is usually the case, and we therefore direct that the appellant is to pay HMRC the costs of, incidental to and consequent upon the appeal, to be the subject of detailed assessment if not agreed.

221.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.

ANNE SCOTT
TRIBUNAL JUDGE

RELEASE DATE: 26 JUNE 2015

Appendix 1

NOTICE 726

8. Dealing with other businesses – How to ensure the integrity of your supply chain

8.1 Checks you can undertake to help ensure the integrity of your supply chain

The following are examples of checks you may wish to undertake to help establish the integrity of your supply chain.

(1) Undertaking reasonable commercial checks to consider the legitimacy of customers or suppliers. For example:

- What is the supplier's history in the trade?
- Are the normal commercial arrangements in place for the financing of the goods?
- Are the goods adequately insured?
- What recourse is there if the goods are not as described?

(2) Undertaking reasonable checks to ensure the commercial viability of the transaction. For example:

- Is there a market for this type of goods – such as superseded or outdated mobile phone models?
- Is it commercially viable for the price of the goods to increase within the short duration of the supply chain?
- Have normal commercial practices been adopted in negotiating prices?
- Is there a commercial reason for any third party payments?

(3) Undertaking reasonable checks to ensure the goods will be as described by your supplier. For example:

- Do the goods exist?
- Have they been previously supplied to you?
- Are they in good condition and not damaged?

We recommend that sufficient checks be carried out in each of the above categories to ensure that you are not caught in a fraudulent supply chain.

8.2 Checks carried out by existing businesses

The following are examples of specific checks carried out by existing businesses. These may also help you to decide what checks you should carry out, but this list is not exhaustive and you should decide what checks you need to carry out before dealing with a supplier or customer.

- obtain copies of Certificates of Incorporation and VAT registration certificates;
- verify VAT registration details with Customs and Excise;
- obtain letters of introduction on headed paper;
- obtain some form of trade reference, either written or verbal;
- obtain credit checks or other background checks from an independent third party;
- insist on personal contact with a senior officer of the prospective supplier, making an initial visit to their premises whenever possible;
- obtain the prospective supplier's bank details, to check whether:

  (a) payments would be made to a third party; and

  (b) that in the case of import, the supplier and their bank shared the same country of residence.

- check details provided against other sources, eg website, letterheads, BT landline records.

Paperwork in addition to invoices may be received in relation to the supplies you purchase and sell. We believe that this documentation should be kept as evidence of a transaction's legitimacy. The following are examples of additional paperwork that some businesses retain:

- purchase orders;
- pro-forma invoices;
- delivery notes;
- CMRs (Convention Merchandises Routiers) or airway bills;
- Allocation notification;
- Inspection reports.

Again this is not an exhaustive list, but does show some of the more common subsidiary documentation.