[2015] UKFTT 0637 (TC)

TC04770

Appeal number: TC/2011/07147

TC/2012/06182

VAT - MTIC appeal of the "acquisition fraud" variety where there was no or little evidence that any original fraudster or mastermind had had any influence on the Appellant's own supply of goods - Appeal allowed in part

FIRST-TIER TRIBUNAL

TAX CHAMBER

ELECTRADE 247 LIMITED

Appellant

-and-

THE COMMISSIONERS FOR HER MAJESTY'S REVENUE AND CUSTOMS

Respondents

Tribunal: JUDGE HOWARD M. NOWLAN

MICHAEL SHARP

Sitting in public at the Royal Courts of Justice in London on 21 to 24 and 30 September 2015

Fred Howarth on behalf of the Appellant

Jonathan Kinnear QC and Michael Newbold, counsel, on behalf of the Respondents

DECISION

Introduction

1. This was a Missing Trader or MTIC appeal, though one with a considerable difference from the normal pattern of such appeals.

2. The Appeal was against the refusal of the Respondents to give credit for input tax in the amounts of £276,414.34 in the monthly return period 07/06 and £53,847.40 in the next period, 08/06, therefore totalling £330,261.74. The grounds for the refusals to grant such credit were that the 10 challenged deals (6 in the former period and 4 in the latter) had all been traced to fraudulent VAT losses and that the Appellant knew or ought to have known that the deals were so connected. The only director and employee of the Appellant was Mr. Paramjot Singh ("Mr. Singh"), the only person to give evidence on behalf of the Appellant and it was common ground that it was the knowledge and means of knowledge available to Mr. Patel that governed the knowledge and means of knowledge of the Appellant in this case.

3. The Appellant conceded that the asserted tracing and connection to fraudulent VAT losses had been satisfactorily established by HMRC in 9 of the 10 deals, and we have decided that even the 10th deal was, on the balance of probability, connected to some fraudulent VAT loss.

4. Everything therefore in this Appeal revolves around the issue of whether the Respondents have established, on the balance of probability, that the Appellant knew of such connection or that it ought to have so known.

5. The respect in which this Appeal differed from most other MTIC appeals was that, albeit that this anticipates a finding and decision that we will have to reach, it certainly appeared that the deals in this case constituted what are periodically referred to as "acquisition deals", rather than circular or carousel frauds. By this we mean that while, inadvertently or knowingly, the Appellant had purchased goods that had been traced to fraudulent VAT losses, the Appellant's subsequent dealings with the phones purchased in the 10 deals appeared to be entirely dictated by the Appellant's own, seemingly entirely legitimate, agenda. In other words the deals did not appear, as is commonly the case, to be strings of back-to-back deals in which there was every indication that in some way the mastermind behind the deals had procured that the exporter (the trader performing the role that the Appellant performed in these deals) should not only buy the goods from an intended supplier but should also supply them to a particular continental EU customer such that the goods would always remain under the "control" of the mastermind, the VAT would be recovered by the exporter, and the goods then duly be returned to the UK, in carousel fashion, for a further fraudulent rotation.

6. In short, the factors that distinguish this case from the more common variety of carousel frauds were as follows:

- The Appellant indicated that it had been purchased (the seller and the previous activity of the Appellant being largely irrelevant) in March 2003 for £1,500 by a Hong Kong company, Sunstrike International ("SI") to oversee purchases of mobile

phones in the UK, so as to ensure the quality of purchased phones and the reliability of the purchase transactions, with a view to the phones being sold to SI itself and then marketed in China and the Far East, or with a view to the Appellant itself selling phones directly to customers. Those customers were, however, never located in continental Europe, but in the 10 deals with which we were concerned the customers, beyond SI itself, were either a fellow Canadian subsidiary (or a branch) of SI, or independent customers in Hong Kong, Dubai, the USA, Algeria and indeed the UK.

- In the two relevant VAT periods, approximately 50% of the phones purchased and on-sold by the Appellant were purchased either from Motorola (Singapore) or Vodafone in Germany and then sold to SI in Hong Kong, none of these deals being challenged in any way.
- While MTIC deals often involved the back-to-back purchase and sale of phones for the relatively common MTIC exporter's margin of 5 to 7%, with the quantity of phones sold almost always matching those purchased (generally being purchased and sold on the same day), in the present case if we ignore on-sales to SI itself, there were only two deals amongst the challenged deals in which the phones purchased were all sold to one customer. The general pattern involved splitting a purchase of phones and supplying the phones to as many as seven different customers. The gross margins were generally below 4% which would have been substantially reduced when it is noted that in all cases, the phones were brought to, and inspected at, the Appellant's premises; and then transported, at the Appellant's expense, by the highly reputable DHL by air to destinations, usually distant destinations, in which the customers were located. More relevantly, phones were not always sold swiftly but in some cases phones were sold more than a year after purchase, and some indeed remained, many years later, in the Appellant's warehouse at the date of the hearing itself. As one might expect in these circumstances, one deal involved gross losses of about £22,000 and net losses of considerably more, and a break-even position in another deal even before taking transport and other costs into account, and also before taking into account the feature that unsold phones still in the warehouse would now be virtually worthless.
- Finally, in four of the deals where phones were on-sold to a UK customer, the margins achieved in those deals were the rather extraordinary margins of 10.17% and 21.35%. The margins were not, in other words, remotely the artificial and trivial margins made by companies in MTIC deal chains where intermediate traders had been inserted between two UK parties to distance the frauds from the exporter's transaction (i.e. "buffer" companies).

7. We will of course expand on the points mentioned briefly in the previous paragraph, but simply now make the two fairly obvious observations that the Appellant's on-sales appeared to be dictated by its own, and by SI's, agenda rather than by any mastermind's agenda, and secondly that this renders inapplicable the most common ground on which this Tribunal can often reach the conclusion that an appellant "must have known", i.e. therefore did actually know, of the connection of its deals to fraud. The common reasoning is that if in numerous deals an appellant has purchased and sold to companies that appear to correspond to the parties and payment chains in deals that are plainly circular and plainly arranged by some mastermind, followed by further fraudulent rotations of the goods or the money, there can be no other explanation for the appellant's deals than that the appellant must have known from whom it was required to buy and to whom it was required to sell. In other words, it must

have been implementing the mastermind's plan and thus have been a knowing participant in the frauds. We will of course examine each ground on which the Respondents' counsel still contended that the Appellant ***must have known*** of the connection of its deals to the fraudulent losses in this case, but certainly consider that the pattern of deals exhibited by the points recorded in the previous paragraph undermines the most common and cogent basis for the claim of actual knowledge often advanced by the Respondents.

8. In summary, our conclusion, in addition to the point already mentioned that we conclude that all 10 deals were properly traced to fraudulent VAT losses, will be that:

- the frauds were "acquisition frauds" in which the mastermind that arranged the transactions up to the supply to the Appellant in no way arranged the Appellant's transactions and thus did not extend the fraud to arrangements to secure repayments of VAT from HMRC, and to further rotations of the phones;
- the Respondents have failed to establish that the Appellant knew or must have known of the connection of its deals to fraudulent VAT losses;
- in the case of those purchases from suppliers that Mr. Patel asserted that he had visited and that he regarded as large and reliable mobile phone traders, the Respondents have failed to establish that the Appellant ought to have known of the connection to VAT losses. In part we base this conclusion on the fact that the Appellant was very much conducting a legitimate, apparently world-wide, business of trading in phones, and not just the futile activity of juggling phones to and from the UK and some EU jurisdiction, and secondly we consider that the Appellant (plainly exporting actual phones that would fail to remain under the control of anyone but his customers) was conducting a trade that would be an ill fit with the usual plans of MTIC fraudsters;
- in the case, however of the purchases where Global Roaming was the Appellant's immediate supplier, the Appellant ought to have known of the connection of its transactions to VAT losses because having simply once met the woman who ran Global Roaming at the mobile phone fair in Hamburg (regrettably a breeding ground for MTIC contacts as well, doubtless, as an excellent showplace for the latest technology) and then having failed to visit Global Roaming or conduct any meaningful checks on it, it was wrong to trade with that supplier, that turned out to be a prolific contra-trader, until serious verification had been undertaken.

The format of the remainder of this Decision

9. The format of the remainder of this Decision will be as follows, dealing first with the relevant facts:

- We will first summarise some background facts (paragraphs 13 to 23 below).
- We will then describe the 10 deals, the parties, the date of several of the sales and the margins made in each deal (paragraphs 25 to 38).
- We will then summarise our understanding of the terms of trade, such as whether payment to suppliers preceded or followed supply, and how, and by whom, goods were despatched, including "Title retention" terms (paragraphs 39 to 43).
- We will then deal with inspections, the lack of insurance, the limited circumstances in which IMEI numbers were recorded and the significance of the evidence in relation to

payments made through the First Curaçao International Bank ("FCIB") (paragraphs 44 to 53).
- We will record the various facts material to the role played by a company with which Mr. Patel's uncle was connected (paragraphs 54 to 58).
- Finally, in summarising the facts, we will mention the points relevant to the credibility of the Appellant's suppliers and customers (paragraphs 59 to 70).

10. We will then deal with the parties' respective contentions in paragraphs 71 to 82, and finally will give our decisions on the following issues, namely:

- whether all 10 deals were connected to fraudulent VAT losses (paragraphs 83 to 86);
- whether the frauds were "acquisition frauds" or alternatively more extensive frauds that extended to the Appellant's transactions, the recovery of VAT from HMRC, and further rotations of the phones (paragraphs 87 to 97);
- whether the Appellant knew or "must have known" of the connection of its deals to fraudulent VAT losses (paragraphs 98 to 109); and
- whether, if not, the Appellant ought to have so known ((paragraphs 110 to 119).

Missing information

11. We might say at the outset that while a vast amount of documentation was available in relation to the VAT losses, none of which in the event was particularly contentious, undue attention was given, particularly in the original Decision Letters, to standard facts repeatedly advanced in such letters, regardless of whether they were relevant in this case or not. Those letters appeared to be more dictated by the templates from which they seemed to derive than from a full consideration of the points that we must now address.

12. Another example of the Respondents' odd approach to the evidence was that the case officer's witness statement placed considerable emphasis on the feature that customers' payments to the Appellant were sometimes of very slightly different amounts than the invoiced amounts, when the difference was perfectly obviously accounted for by £20 banking charges. Similarly significance was repeatedly given to customers discharging £ sterling invoices by paying in US $, notwithstanding that there was no claim that the $ payments did not match the £ sterling invoices. In contrast, nobody ever touched on the subject of how the Appellant financed payments to its suppliers. Occasionally the Appellant paid its suppliers before being paid by customers; inevitably the VAT-inclusive payments to suppliers exceeded the VAT-exclusive amounts receivable from customers, and finally there were further cash flow costs inherent in financing both losses and in some cases considerable delays before goods were sold. We were never told how the Appellant was financed, whether for instance by additional share capital, loans or retained profits from earlier trading, with attention just being focused on the trivial and obvious £20 disparities between invoice amounts and actual receipts, and the $ payments.

Historic and general information in relation to the Appellant

13. The Appellant had been formed by a completely different investor in 1997 as some form of massage parlour. It seems that its activity must have changed prior to the sale to SI, and the involvement of Mr. Patel, because the company's earlier name was changed to Electrade 247 Limited, and some mobile phone dealing took place prior to the change of ownership. Indeed Mr. Patel said that he purchased the Appellant, by which he meant that

he chose the Appellant as the company that SI should acquire, simply because he, Mr. Patel, liked the name.

14. The share capital of the Appellant was barely mentioned but we understood that it was modest. If at the time of purchase the payment of £1,500 was attributed to an appealing company name, it rather sounds as if the Appellant's tangible net worth at the time of purchase was minimal.

15. We understood that SI itself was owned in 50/50 shares by Mr. Patel and his brother, and that although Mr. Patel effectively ran the Appellant single-handedly, it was originally owned entirely by SI. We were told that at the date of the hearing, the Appellant, which was still trading in the same line of business, had been transferred to Mr. Patel's father, but we assumed that that transfer took place well after the events with which we are concerned.

16. Mr. Patel was plainly an intelligent man. At the date of the hearing he was 45 years old. He had been well educated, graduating from Delhi university with a degree in chemistry. He initially worked for a Minolta distributor; then set up his own company in India, and at some point obviously formed SI in Hong Kong with his brother. For much of his career he was involved in the mobile phone business.

17. We were given little information about SI, and how substantial a company it was, but it certainly appeared that it had a subsidiary in the UK, a subsidiary or a branch in Canada, and probably representation of some sort in the USA, the Middle East, possibly Dubai, and in Africa, possibly Algeria.

18. We were given no helpful summary of SI's business model, but it seemed reasonable to infer from the 10 challenged transactions undertaken by the Appellant and the unchallenged purchases from Motorola and Vodafone that SI's business model was to search out surplus stock in certain areas of the world and move them to quite different areas where demand might enable the various group companies to make an overall profit. Certainly the Appellant's own business involved it in having some form of distribution role for Motorola and possibly a similar role with Vodafone, and there was no doubt that in the two VAT periods with which we are concerned, the purchases from Motorola and Vodafone were entirely commercial transactions. As we understood matters, the purchases were made in and from Singapore in the case of Motorola and Germany in the case of Vodafone, and since the phones were never brought to or delivered from the UK in any of those transactions, the transactions obviously had nothing whatever to do with UK VAT.

19. We were told that both SI and the Appellant were still trading at the date of the hearing and that the Appellant now had accounts with Apple, Three, T-Mobile and O2, in addition to still having accounts with Motorola and Vodafone.

20. Mr. Patel had an uncle who was mentioned on a number of occasions during the hearing, though he did not appear as a witness. We will have to indicate the various reasons why he (always referred to as "the uncle" or "his uncle") was significant in due course, the relevant factors being heavily contested. The facts that we need to mention now are that:

- the uncle was the accountant to a UK mobile phone trader, referred to as Desgate, Desgate apparently being owned by the uncle's wife, and HMRC certainly contending that the uncle's role within Desgate was more integral than simply that of serving as

the accountant since he had signed and despatched some of the transaction documents in deals where Desgate had been involved:

- Mr. Singh's uncle was also a director, and possibly the owner, of another UK phone trader referred to as Time and Tune;
- Desgate and Time and Tune suffered major disallowances of input tax on *Kittel* lines, there being a dispute between the present Respondents and Mr. Patel as to whether the appeals by Desgate and Time and Tune were abandoned because the evidence against the two companies was overwhelming (as the Respondents contended), or whether the decision was made by the administrators with the principal owner, not the uncle, being unwell at the time;
- While Mr. Patel contended that he had always refrained from dealing in any way with the two companies just mentioned because of possible conflict issues, it emerged that he had on one or two occasions in 2004 had dealings with Desgate and he certainly had had dealings more recently with a new company formed and owned by the uncle, albeit that these dealings did not commence until well after the presently relevant period.

As we said, we will ignore at this stage the various respects in which it was contended, and disputed, that Mr. Patel's uncle and in particular Desgate were significant in relation to the present Appeal.

21. We were given two somewhat different descriptions of the Appellant's business model. The more general description was that the Appellant was purchased in order to be a local UK representative designed to source phones that were likely then to be sold to SI itself, for onward distribution in the Far East, or else the purchased phones might be sold directly by the Appellant to Far East and other customers.

22. The somewhat different description of the Appellant's business model was the rather more typical summary that if phones were offered to it by a supplier at an attractive price, the Appellant would then enquire of its various customers whether they wished to buy such phones. Mr. Singh said that on-sales had often not been arranged at the time the Appellant was committed to purchase, so that on-sales were sometimes made after a short interval, or in the following year or, in a few cases, the stock simply remained in the Appellant's warehouse.

23. Although we were given virtually no information about the deals in the two VAT periods that were not challenged, it was reasonably clear that in relation to purchases from Motorola and Vodafone, the Appellant was acting seemingly as a "purchasing arm" of its Hong Kong parent company. These purchases support the proposition that the Appellant was purchased, and then operated, as the purchasing arm when product was sourced in the UK or from the Appellant's major white market suppliers, for onward sale to those jurisdictions in which the SI companies appeared to have some genuine selling presence, and where product purchased might satisfy demand at higher prices.

The 10 contested deals

24. In many MTIC appeals, there is relatively little difference between the various deals, in the sense that while the suppliers and customers may vary, the terms will often be similar; the payment scheme will often be the same for all the deals, and the purchases and sales will usually be of identical quantities and effected on the same day or on consecutive days. In

the present case the deals not only depart from that normal pattern, but there are very significant differences between each of the 10 deals. This, we consider, has a major bearing on how in reality the Appellant was operating, and so we must consider the 10 deals in more detail than is often required.

The parties to, and the products purchased and supplied in, the 10 deals.

25. The six deals effected in the 07/06 period were numbered 6 to 11 because they had been preceded by five deals, the Motorola and Vodafone deals, which were not challenged.

26. **Deal 6** involved the purchase of 1,500 Nokia N90 phones on 13 July 2006 and the sale of those phones in two invoices on 14 and 17 July to SI. The phones had been purchased from a company referred to as Global Roaming, to which we will have to give considerable attention below. Although it transpired that Global Roaming was a prolific contra-trader, in relation to deal 6 Global Roaming was simply acting as a buffer company in a transaction chain that led back directly, via a "straight-line", to the defaulter. Global Roaming had purchased from another buffer company, KK Electrical, which had purchased from the defaulter, Scintillate Solutions.

27. The Appellant's gross margin in relation to the two invoiced supplies in deal 6 was 2.56%. The Respondents paid no regard to the issue that as the Appellant was in fact supplying to a connected company, it was possible that the transfer price might have passed an undue proportion of any eventual group profit to the Appellant's purchaser, i.e. SI itself, or equally it is theoretically possible that the Appellant might have retained an undue proportion of the anticipated total profit. Since this issue was not raised, we will adhere to the margins illustrated by the actual invoice prices. We should, however, add at this point that the Appellant paid for the transportation by air of the goods to Hong Kong by DHL, and that this naturally meant that the net profit was considerably less than the anyway quite modest gross margin just mentioned.

28**.** **Deal 7** involved the purchase on 14 July of 1,260 Nokia 8800 phones, purchased again from Global Roaming, which again purchased from KK Electrical though on this occasion, KK Electrical's purchase was from a different defaulter, namely Phone City. 100 of the phones purchased were effectively added to the on-sale transaction in Deal 8 mentioned next. The remaining 1,160 were sold to Singh's Electronic Co in Hong Kong (368 units), Rixos in Dubai (528 units) and Smart Mobile in Dubai (264 units), those on-sales being invoiced on 18, 18 and 24 November. The percentage gross margins on those three supplies were 1.68%, 2.12% and 1.55%.

29. **Deal 8** involved a purchase of 1,000 Nokia 8800 phones from a different buffer company on this occasion, namely GSM Worldwide, though GSM Worldwide had in turn purchased from Global Roaming, Global Roaming from KK Electrical, and KK Electrical from the defaulter Phone City. Adding to the 1,000 phones the additional 100 purchased in Deal 7, the 1,100 total phones were sold 6 days after purchase to Al Raghy Electronics in Dubai, the gross margin on this occasion being 1.95%.

30. **Deal 9** was extremely complex and exhibits several features that render this particular deal, at the very least, wholly inconsistent with pre-planned and scripted transactions in which the Appellant was implementing deals dictated by some mastermind.

31. The purchases in deal 9 derived from a straight line chain to the defaulter Phone City, with the goods passing to All Name, to Regal Portfolio, to Linkup Telecom and then to the Appellant. The phones purchased included 6 different identified models of phone with the stock being sold to Parktel in the USA (2 categories of phone), Nabil Phones in Algeria, and two categories of phone being supplied to Mustapha Mobile in Algeria. Some of the remainder were sold either to the Canadian subsidiary or branch of SI. While the sales to Parktel took place a few days and, in the second case, two weeks after the purchases, one single phone was later sold in March 2007 (doubtless to an individual buyer), and the sales of the phones to the Algerian buyers were delayed until March, June and July 2007. Mr. Patel's explanation for the delays was that as he had not been able to find buyers at acceptable prices shortly after purchase, he kept hoping that the market for the particular phones would revive. Evidently, and perhaps not unexpectedly, it did not revive. Accordingly the percentage margins made on the sales of phones in this deal included one gross profit (on one of the sales to Parktel) of 1.31%, and thereafter losses of 10.75%, 45.4%, 37.1%, 43.6%, 153% and 96%. The total losses, just paying regard to the recorded sales above, were in the region of £22,000. Since we were told that other of the phones purchased had never been sold and were still sitting in the Appellant's warehouse, presumably being written down period by period, and doubtless now treated as worthless, we imagine that the gross losses in this deal considerably exceeded the £22,000 rough figure, with the net losses after transport costs being considerably greater.

32. **Deals 10 and 11** were similar, and in reality they constituted one deal in which on the same date, 2000 Nokia 8800 phones were purchased. The most noteworthy features of these deals were that on these occasions, Global Roaming was acting in its apparently common capacity as a contra-trader. It then sold the goods to Desgate, the company with which the uncle was involved. In its turn, Desgate sold to Lexus Telecom Export and Lexus Telecom Export to the Appellant. In the first limb of the composite deal the phones were supplied to Rixos in Dubai and SI itself, and in the second limb of the deal they were sold to Singh's Electronic Co in Hong Kong and again to SI. The gross profit margins in these two deals were the unusually modest percentages of 1.84% and 2.01%, again before taking delivery costs into account.

33. The first deal in the 08/06 period, namely **Deal 08/1**, was another complex deal, somewhat akin to Deal 9 above. It again commenced with Global Roaming acting as the contra-trader with Desgate again as the first buffer company, whilst GSM Worldwide replaced Lexus Telecom but, that substitution apart, the chain in this deal was the same as the short chain in Deals 10 and 11.

34. The on-sales were, however, rather extraordinary. Beyond the fact that the 950 Samsung D600 phones were sold in 9 invoices to 7 different purchasers, one again being SI itself, most of the on-sales were made in April, May and September of the following year, 2007, at considerable losses, but by far the highest profit margin was made on two consignments of phones sold to a UK company referred to as Me London Style. We were given little information about this sale, though one glaringly obvious point was that when the profit margin (at 10.1%) was of about five times the gross profit margin on sales to the Far East, the Middle East and the USA (in other deals), the gross profit on the sales to Me London Style could not conceivably have been the profit margins made available to a buffer company in MTIC chains. We reach this obvious conclusion well before noting that in a later deal, Deal 08/3, where again two consignments of phones were on-sold to Me London

Style, the gross profit margin in those deals was 21.35%. Nobody, however, addressed the question of what these deals involved, and for instance the question of whether the sale by the Appellant was, as we rather assumed, to a genuine retailer.

35. **Deal 08/2** was a direct purchase from Global Roaming, acting as a contra-trader again in which nearly a month later the phones were on-sold at a gross margin of 4.19% to SI.

36. **Deal 08/3** involved the purchase of 1,256 items of "assorted stock" from Future Communications, which had in turn purchased from Unique Distribution, a subsidiary or affiliate of Future Communications. These phones were said to constitute "14-day stock", in other words stock that had been sold by genuine retailers but then returned to the suppliers within the 14-day period in which returns could be made. Implicitly the sales had been made originally by, and the returns also made to, companies such as Tesco and Asda. On being asked to provide invoices in relation to its own purchases, however, Unique Distribution failed to provide any documentation; it was assessed by HMRC for the total output tax due on its sale to Future Communications, and the tax was not paid. This was the deal in which the Appellant sought to dispute the connection to a fraudulent VAT loss since no tracing had been possible beyond Unique Distribution.

37. The on-sales in deal 08/3 were to ME London Style, at margins of 21.35%; to SI itself at a margin of 11.43% and to URL Elghanima in Algeria at 14.01%.

38. **Deal 08/4** was a purchase directly from Global Roaming, operating as the contra-trader with the phones being sold a week later to Singh's ElectronicCo in Hong Kong and Nu-Telecom in Dubai about a week after purchase at margins of 4.14 and 3.85% respectively, again before transportation costs.

The terms of trade in the 10 deals

39. In contrast to the pattern in many pre-arranged deal chains and transaction terms in more usual MTIC appeals, the terms of trade were somewhat less consistent, though by the standards of normal commercial deals they were still somewhat lax and inadequate.

40. There was no uniform pattern of payments, with therefore payments from customers always preceding later payments by the Appellant to suppliers, though that was usually the order of payments. In a few cases, however, full payments were made to suppliers before any payment had been received from customers. Suppliers were always paid the amount that matched their full VAT-inclusive invoice prices, and appeared never to have to wait for the balance of invoice amounts, i.e. the balance generally reflecting the VAT element minus the Appellant's profit margin, until HMRC had refunded input tax to the Appellant or the balance had been financed in some other way. In some way, and as we have said this was not explained to us, the Appellant always discharged the full amounts owed to suppliers. Mr. Patel also made the general point, in relation to the order of payments, that he did not necessarily pay the supplier immediately he had received payment from the matching customer. He might juggle the order of payments to discharge the most pressing claim from a particular supplier first, using monies derived from a customer in another deal if the supplier in that other deal was content to leave credit outstanding for a longer period.

41. Whilst we have just referred to credit effectively being provided by suppliers, there were no written terms granting credit for particular periods. In making its own supplies, the Appellant provided that title would not pass until full payment had been received, but the

Appellant stressed that he never supplied on "Ship on hold" terms, contending that this demonstrated, as did the fact that his own suppliers had not delivered to the Appellant on such terms either, that the absence of such terms indicated that the Appellant was free to deal with goods that it was supplying, and that the goods did not remain under the constant control of some mastermind. We were not clear of the supposed effect of the "Title retention" clause in the invoices in this context.

42. In contrast again to the common pattern in MTIC appeals, when the Appellant purchased goods, Mr. Patel always brought the goods to the Appellant's own warehouse. We were given no indication of the size of that warehouse, but we were told that Mr. Patel always inspected the goods there himself, re-packaged them and then engaged the highly reliable company, DHL, to transport the goods by air to the customers. There were one or two occasions when the goods were inspected at suppliers' premises, probably in addition to Mr. Patel's own inspection, but this was accounted for by the occasional demand by customers that the IMEI numbers of the stock should be provided.

43. There was a muddled exchange on Mr. Patel's part in relation to questions from the Respondents' counsel as to what the position would be if the customer sold goods (possibly to an honest and innocent purchaser), when the Appellant's customer had not paid for the goods at the time of the on-sale. Whilst this is certainly something that Mr. Patel should have considered, it is a complex matter involving either UK or the relevant foreign law in relation to the "Title retention" clause, and it was rather less relevant in those sales made by the Appellant to SI itself, and perhaps to customers that SI itself knew well. For instance supplies to Singh's Electronics Co in Hong Kong were supplies to a customer based in the same road, Nathan Road, in Hong Kong as SI itself, and Mr. Patel said that he and SI had had good dealings with this company.

Inspections, Insurance, IMEI numbers and the limited relevance of FICB evidence

Inspections

44. As we have indicated, Mr. Patel claimed that on all or virtually all occasions when goods were purchased, they were released to his control by the supplier, regardless of whether the price had then been paid, and they were brought back to the Appellant's warehouse for inspection. Following inspection and any required re-packaging they were then entrusted to DHL for transport, by air, to their destinations. In the case of Deal 6, where the goods were invoiced to SI, some of the goods were in fact despatched, we understood, to Rixos in Dubai. We do not see this as being particularly significant. Had SI in fact arranged its own on-sale to Rixos, it would have made sense for the goods to be transported directly from the UK to Dubai, rather than out to Hong Kong and back to Dubai. These steps also seem to indicate that SI trusted Rixos, and this may be of some significance in relation to the issue of why Mr. Patel treated Rixos as a potentially reliable customer in the three transactions in which some of the goods acquired by the Appellant were sold directly to Rixos. In all other deals than Deal 6, our understanding is that the goods were carried by DHL to whichever jurisdiction the customer was located in.

45. One significant result of the feature that Mr. Patel actually saw and inspected the goods is that unless we conclude that he was lying in relation to virtually everything (and we cannot reach that conclusion), his sight and inspection of the goods must indicate that the goods did actually exist. This is of some significance first because in those cases where exporters

despatch goods by sending instructions to the often fraudulent freight forwarder that has held the goods following importation and during the transfer down the chain of buffers, there is no certain way of knowing that the goods did actually exist, and it was the Respondents' evidence that in many MTIC deals there were in fact no genuine goods. The other significance of the fact that Mr. Patel saw the goods is that if, as we do, we conclude that no mastermind had any involvement with the on-sale of goods by the Appellant, and in addition actual phones were definitely purchased and exported, it must follow that on every occasion when phones were sold to the Appellant, the relevant phones would have been lost to any controlling fraudster (in return of course for the Appellant's payment), and further phones (or bricks and straw) would have had to be acquired for the purpose of future rotations. This might account for why the goods sold to the Appellant were usually sold at a price that only enabled the Appellant to make a somewhat lesser margin than that generally commanded by knowing exporters where they were merely a link in a continuous and potentially circular chain, and aware that they were indeed taking the risk of HMRC refusing to give credit for claimed input tax.

Insurance

46. There was considerable discussion in the hearing in relation to the fact that the Appellant admitted that he took a conscious risk in despatching goods without taking out insurance. He said, and this must be entirely credible, that the goods were at least being carried by a highly reputable carrier. He also made the point that he invariably told his purchasers that he was not insuring the goods and that if they wished to do so they should take out insurance.

47. In view of the conclusion that we reach that no mastermind had any control over the on-supply of goods by the Appellant, the absence of insurance does not at least carry the implication (often advanced in MTIC appeals by HMRC) that insurance was not needed because all parties knew that the goods were to be transported and supplied in accordance with the pre-planning. While that point may not dispense with the need for insurance in the context of some third-party theft of the goods (unless there happened to be no genuine goods in any event), that familiar reasoning is obviously inapplicable in this case in view of our conclusion that on-sales were entirely dictated by SI's and the Appellant's own agendas and were uninfluenced by any control by some mastermind.

48. We should mention that we are far from convinced by Mr. Patel's reference to the fact that he always informed his customers that they could take out insurance if they wished, rather implying that it was the customers who bore the risk of loss. In his second witness wtatement, Mr. Patel said that *"If we did not deliver the goods ordered by our customers we would not get paid but would still have to make payment to our supplier."* No point was made in relation to this statement during the hearing, and so we will not over-stress the point but this sentence does suggest that the risk of non-delivery remained with the Appellant so that it was really the Appellant not the customers who might be more interested in taking out insurance. Nevertheless Mr. Patel said that he took a calculated risk.

IMEI numbers

49. Attention was also given to the fact that while the Appellant asked a freight forwarder or inspection company to scan and record IMEI numbers when a particular customer had requested them, Mr. Patel did not record them where there was no such customer request.

50. We accept that the Respondents made a fair point that there were commercial reasons why it might be prudent for a trader to take and record IMEI numbers. It would however be costly to purchase a scanner, and there would be charges for obtaining IMEI numbers from freight forwarders, and in many cases of loss of product, it might still be possible to identify that it was the Appellant's stock that had been lost or stolen even if IMEI numbers had not been recorded. Furthermore the need to have such numbers when the movement of goods was anyway not the subject of insurance would be rather diminished.

51. Purely from the perspective of protecting against MTIC fraud, the Appellant said (with considerable credibility) that he considered it pointless to record IMEI numbers, so that as it was not mandatory, he chose not to record them. There was no way in which the Appellant (or at the time of transactions, even HMRC) could ascertain whether phones that were about to be exported had in fact been exported before. Had the Nemesis database been available on line for all to operate, so that a trader would know that if he recorded IMEI numbers and checked them on the Nemesis system, he would ascertain whether **any trader** had exported the goods previously, there would have been much more point in recording the numbers.

52. The most material point in relation to the Appellant's failure to record IMEI numbers was that as Mr. Patel claimed and certainly appeared to consider that phones that he had previously exported would have ended up in the hands of Far Eastern, American, Canadian, Algerian and Middle Eastern customers, rather than be circled back to the UK, the risk of his buying and supplying phones that he had earlier exported, was virtually non-existent. Similarly the need to record and retain the numbers in case the goods currently being exported might subsequently be sent back to the UK and be re-exported by the Appellant was equally unlikely. We accept the Respondents' evidence that after the *BondHouse* case, phones might have ceased always to be despatched by MTIC fraudsters just to other EU countries, and may instead have been exported to Switzerland and the Middle East, thereafter to return to the UK by a slightly more involved route, but we will deal with that point below in considering whether the phones sold by the Appellant were extremely likely to have been sold in order to meet genuine commercial demand for phones in the customer's jurisdiction. If we conclude that that is a realistic expectation of the export of the phones sold by the Appellant, we certainly then fully understand Mr. Patel's assertion that the recording of IMEI numbers was, at least in his case, a pointless and an expensive exercise.

FICB evidence

53. The Respondents' counsel explained that he would only take us to one of the charts, exhibiting money payments through the FICB. This was because, although the particular chart showed circular money flows, with money paid by Global Roaming, the Appellant's supplier, being circulated and later returned to Global Roaming (then presumably discharging the invoice in some quite different transaction), none of this demonstrated that the Appellant was involved in such circular payments. The Appellant had no FCIB account, albeit that most other companies in the supply chains (with the apparent exception of Desgate) did have and make their payments through, such accounts. All, therefore, that the FICB evidence illustrated was that the companies prior to the Appellant in the supply chains were regularly involved in the making of circular payments, with the returned money then flowing back, not to the Appellant, but to the Appellant's supplier. The presently relevant conclusion was that the chains of supply to the Appellant were indeed pre-arranged, rendering it extremely likely that the parties in the chains down to the Appellant would have known of the details of the pre-planning. Nothing, however, suggested that the Appellant was aware of this pre-

planning, and nothing undermined the expectation that the Appellant's transactions were entirely directed by its own agenda and that of its parent company.

The role and significance of Desgate

54. There was considerable discussion during the hearing about the role of Desgate, and the Appellant's uncle.

55. One of the points was that Desgate had acted as a buffer company in deals 10, 11 and 08/1, and the Respondents suggested that this must indicate that Desgate, the uncle, the Appellant and Mr. Patel were all acting in concert in relation to these deals. The Respondents' counsel suggested that it was too much of a coincidence that in three deals both companies happened to be parties, and that we should treat this as an indication of actual knowledge of the tracing to fraudulent deals, particularly because Desgate had been shown to have been heavily involved in MTIC transactions.

56. The other point raised was that the Respondents' counsel compared the due diligence documents used by both companies, such as the document in which the Appellant asked its supplier to confirm the various points about the integrity of its sale to the Appellant. It was said that not only (as was the case with virtually all such documents) were these documents fairly similar, but that with the alteration of an occasional word Desgate's and the Appellant's documents were actually identical. The same was illustrated in relation to a letter that each company had written, rather than just in relation to documents among the fairly standard pack of documents used by all traders.

57. It was suggested by the Respondents' counsel that this indicated or at least strongly suggested, that one party was using the other's documents, and that both were thus cooperating together.

58. In due course we will address these points in giving our decisions.

Available information about the Appellant's suppliers and customers

59. We were given relatively little information about the Appellant's direct suppliers, and virtually none about its customers.

60. Perversely most of the information about Mr. Patel's knowledge of his five UK suppliers was given in response to questions from the Tribunal, and indeed in questions prompted by the judge suggesting to Mr. Patel that his claim that he could best avoid MTIC fraud by never buying from or selling to continental European traders was flawed, at least in relation to the purchase leg of that proposition. The judge suggested that the most risky step in relation to becoming embroiled in MTIC fraud was indeed to buy from UK suppliers, with VAT free purchases from Continental European suppliers being nil-risk because it would be the purchaser itself (i.e. the Appellant) that would be liable to pay VAT on the first domestic sale, and the Appellant would not then be at risk of forfeiting some deduction for input tax on account of some other party's fraudulent behaviour. We will quote below some of Mr. Patel's responses to the suggestion (that he eventually accepted) that in general terms there was a major risk in purchasing from UK suppliers, but will first look generally at the Appellant's due diligence in relation to its suppliers.

61. While Mr. Patel suggested that he derived most of his confidence in relation to the integrity of his suppliers by having visited them and having dealt with them on many

occasions over a long period, we do agree with the Respondents' counsel that the other aspects of due diligence undertaken by the Appellant were relatively poor. We regard questions posed to suppliers requesting them to confirm that they had paid VAT on their margin, that they had bought and sold the goods at realistic prices, and that they had no occasion to suspect fraud at any earlier point in any deal chain (with suppliers being asked to confirm that they had sought similar representations from their suppliers) to have been virtually worthless. Similarly company Certificates of Incorporation, VAT registration certificates, copies of photos of the director(s) of companies and copies of gas bills etc were again of virtually no use. The only aspects of due diligence that might provide genuine comfort were visits to suppliers' offices and premises, credit checks, inspection of company accounts and references from banks and accountants. In that regard, the Appellant did undertake visits to all of its suppliers with the exception of Global Roaming, but undertook none of the other meaningful checks.

62. The Appellant's conduct in checking current VAT registrations of suppliers before undertaking deals with HMRC's Redhill office was also somewhat lax. Occasionally checks were made after transactions had been entered into, though in fairness when the Appellant was dealing with large companies with which he had had many dealings, it is understandable that he relied on earlier checks without repeating them. In reality furthermore, it is worth saying that since masterminds behind MTIC chains (and we certainly conclude that there were such arranged chains up to the point of purchase by the Appellant) inserted buffer companies to obscure the tracing to the defaulter and to provide an acceptable looking VAT-registered immediate supplier to supply to each assumed exporter, it is fairly obvious that all the Redhill checks were largely pointless.

63. Dealing now with Mr. Patel's evidence about his visits to and knowledge about his main suppliers, Mr. Patel made the following observations in relation to the suggestion that purchasing from UK traders, when MTIC fraud was endemic and when he knew that it was endemic, was risky.

64. In response to the remark that buying from UK traders was at the high risk end of the trade cycle, he replied:

> *"Absolutely, I agree to that. That was the reason why in all these transactions, except for Global Roaming, the rest, all [of the suppliers] have been those companies which I have been dealing with for many, many years and which I believed they are genuine trading companies. And my number of companies with whom I have been dealing has not been very large. Consistently, in all of the returns, even in the present ones, I have been dealing only with the selected companies which I have known for many, many years. "*

65. In response to the question of whether Mr. Patel had visited his suppliers, other than Global Roaming, he gave the following evidence:

> *"Yes. Say if I start with Lexus Telecom, for example, their warehouse is in an area of roughly about one acre and they had exclusive T Mobile contract at that time in the UK. So it was a fairly large company. So I was doing it in a manual way, seeing by myself".*

Mr. Patel then confirmed that Lexus Telecom were based in Harrow.

66. In relation to the purchase from Future Communications, there was the following exchange between Mr. Patel and Judge Nowlan:

> ***Mr. Patel:*** *Similarly Future and Unique. They were equally a very big company. I have seen their premises, seen the people and it all looked good.*
>
> ***Judge Nowlan:*** *Substantial warehouse?*
>
> ***Mr. Patel****: Yes*
>
> ***Judge Nowlan****: And I think we never quite got to the bottom of whether they were in fact an authorised distributor or whether they said they were or you thought they were, but actually it was a lie.*
>
> ***Mr. Patel:*** *Yes, Unique Distribution was the authorised distributor for many brands. That is for effect, like, it even can be checked online by anyone.*
>
> ***Judge Nowlan****: And Future which took them over? I've got that the right way round, have I? Yes, I think I have. Future took over Unique.*
>
> ***Mr. Patel:*** *Yes, sir.*
>
> ***Judge Nowlan****: Future, that is the company you actually dealt with, so Unique were slightly behind the curtain. Were they [i.e. Future] actually an authorised distributor?*
>
> ***Mr. Patel:*** *No, not Future but the email that I first received, that was forwarded from Unique Distribution to the sales person in Future and the same email was forwarded to me. So that stock we actually picked up from Unique Distribution warehouse.*
>
> ***Judge Nowlan****: So in the deal involving Unique and Future, you were aware that Unique was behind Future?*
>
> ***Mr.Patel:*** *Absolutely, sir.*
>
> ***Judge Nowlan****: And Unique had the characteristics you have described?*
>
> ***Mr. Patel:*** *And the same sales person sold me same 14-day stock after 15 months, in October, 4 October 2007."*

67. In then dealing with GSM Worldwide, Mr. Patel confirmed in a similar manner that he had visited their premises. They were a relatively small operation manned by two people but he did confirm that they were not operating from a virtual office, but that they had *"taken space in one of the business buildings"*. Mr. Patel confirmed that GSM Worldwide was still trading currently.

68. We failed to address the visit history in relation to Linkup Telecom, the supplier in the complex Deal 9 that involved numerous purchasers, delayed sales and losses. It was Judge Nowlan's fault for not pursuing the visit history in relation to Linkup Telecom, because he moved to deal with Global Roaming.

69. The facts in relation to Global Roaming were that Mr. Patel had met the woman behind this company, Fea Ismail, at CEBIT in Hanover in March 2006, and had thought (simply from one meeting with her) that he could trust her. He asked around various other traders, perhaps at the same CEBIT meeting and got the impression that she and Global Roaming had

done a lot of business. He undertook no meaningful checks, however, and entered into the Appellant's first deal with Global Roaming, namely Deal 6 in the present Appeal on 13 July 2006. In due course, Fea Ismail was disqualified from acting as a director of any company for a 10-year period, following her involvement in occasioning MTIC losses of £100 million to HMRC, largely through Global Roaming's role as a contra-trader.

70. In contrast to the information in relation to the Appellant's suppliers, little was mentioned about the Appellant's customers. This is significant, but it is worth remembering that insofar as there is little ground for suspecting that the customers were going to circle goods back to the UK, due diligence and checks in relation to the customers were more material for general commercial reasons, and no so much because of any concern that they were parties in circular deals and to any element of pre-arrangement and a broader VAT fraud. Certainly in one or two cases it was said that SI itself had had good dealings with companies to which the Appellant transferred stock, and it is possible that the same applied in relation to others. It was, however, specifically stated that the relations with Singh's Electrical in Nathan Road were good and that SI had certainly also dealt with Smart Mobile in Dubai.

The parties' respective contentions

The Appellant's contentions

71. Mr. Patel accepted that he was fully aware of MTIC risks and that he understood how carousel fraud operated. His principal contention was that since carousel fraud involved the movement of phones to and fro from the UK to Continental Europe, the safest way to avoid being embroiled in MTIC fraud was neither to buy from nor to sell phones to Continental EU companies. His guiding principle was therefore that he would neither buy from, nor supply to non-UK EU customers.

72. We have already said that we rejected the proposition that there might be some VAT risk in the Appellant buying directly from an EU supplier and importing the goods. While that would be risk free, the only conceivable reason for avoiding such purchases was that they might involve the possibility of being manipulated into actually being a VAT defaulter, but that seems wholly irrelevant since it would have been a matter entirely within the control of the Appellant.

73. In contrast, however, we do accept that there is real significance to the fact that the Appellant only sold, and professed always to intend only ever to sell, to non-EU foreign purchasers, or to the UK company Me London Style, where the transactions looked more like genuine commercial sales to a retailer.

74. The significance of selling only to non-EU foreign customers was that it was more difficult for product sold outside the EU to be re-imported into the UK so as to facilitate more rotations and more fraudulent exports than where product was exported to EU customers under the rules in force at the time. In contrast to the situation where product was imported from an EU supplier, whereupon VAT only had to be paid on the first UK sale (giving the fraudster the opportunity to default in paying the VAT on that sale while still providing a fraudulent VAT invoice to the first subsequent purchaser), re-imports from countries outside the EU involved the payment of import VAT before the goods were released to the importer.

A direct re-import thus gave no opportunity for a default in paying the VAT. It was possible, of course, for goods exported to a non-EU foreign company to be imported into some other EU country (France, for example) and then exported from France to the UK. Whilst the TVA would then actually have to be paid on the importation into France, this would obviously be formally evidenced, and when the goods were then exported from France to the UK, the French TVA would be refunded. The movement from France to the UK would then have been identical to the movement of goods in the case where the original UK export had been to France, with the goods immediately being re-imported into the UK. In other words the VAT in the UK would not then be charged at the point of import, before release of the goods, but would only have been due by the importer on the first UK sale, giving the importer the opportunity to default in paying the VAT on that first domestic supply.

75. It follows from the above summary that fraudsters would have found it more complex to achieve multiple rotations of fraudulent supplies if goods were initially exported to a non-EU purchaser rather than an EU purchaser. It is nevertheless the case, and this was revealed in evidence to us given by Officer Sanger, that after the ECJ decision in the *BondHouse* case, fraudsters did seek to cover their tracks by arranging for product to be exported to non-EU customers, and then to be indirectly re-imported as we have described in the previous paragraph. Officer Sanger said that exports were periodically sent to Switzerland and to Dubai as the first step in such rotations, and then brought back indirectly to the UK.

76. In the present case, we are going to reach the conclusion that the frauds were "acquisition frauds" in which, while a mastermind will almost certainly have arranged the steps up to the sale to the Appellant, thereafter there will have been no manipulation of any later steps.

77. This conclusion is then relevant in relation to Mr. Patel's claim that by confining his sales to non-EU foreign customers (or to Me London Style), his business model would have been singularly unappealing to mastermind fraudsters. For instead of such masterminds being able to retain control over the goods, and easily procure their re-circulation, the masterminds would have had to use the cash resulting from the sale by suppliers to the Appellant to purchase replacement products to cycle. Had the Appellant's transactions involved the additional frauds of involving worthless items in the packaging, rather than genuine goods, the masterminds behind supplies would not have cared about loss of control of the worthless consignments. We conclude however that since the Appellant and Mr. Patel himself inspected the goods, and did not just rely on a possibly fraudulent freight forwarder, it must follow that actual, and correct, goods were exported in the present transactions. Accordingly, it does appear that actual goods were exported to genuine customers from whom goods could not be retrieved and indirectly re-imported into the UK, such that the Appellant's business model would be an ill fit with the usual objectives of fraudsters. Whether the sales were made to the Appellant because fraudsters considered that it was time to dispose of goods that had been circulated on a number of occasions, in order to replace them with new and different goods, or whether the supplies to the Appellant were appealing to fraudsters because the Appellant was generally able to trade only at a very slim margin, we do not know. Mr. Patel was certainly entitled to think, however, that his business model would be one that was relatively unlikely to fit with the normal objectives of fraudsters, so reducing his risk of being embroiled in MTIC frauds. In a different context, his business model also made IMEI checks somewhat pointless.

The Respondents' contentions

78. Regardless of the distinct possibility that the frauds in the present case were confined to acquisition frauds, the Respondents still contended, as their primary case, that the Appellant knew, or must have known of, the connection of its deals to fraudulent VAT losses.

79. The secondary contention was that, failing actual knowledge, the Appellant ought to have known of the connection.

80. In advancing the contention in relation to actual knowledge, much emphasis was placed on the suggestion that if the Tribunal did not conclude that the Appellant had known of the connection of its deals to fraudulent losses, the Tribunal would have to have reached the conclusion that there had been the most improbable list of extraordinary coincidences. There was the coincidence that the Appellant would have to have been duped in entering into each of the 10 transactions, and since there were five different suppliers, duped by five different companies. Then there was the contention that it was an extraordinary coincidence if, without prior knowledge, the Appellant just happened to have sourced product from five suppliers, all of whose deals were traced to fraudulent VAT losses. Then there was the point that, unless there was in fact some knowing connection between Desgate and the Appellant, there was a remarkable coincidence in the feature that both happened to be involved in three of the 10 deals. Furthermore another remarkable coincidence was the fact that unless Desgate and the Appellant were operating jointly, their due diligence documentation was surprisingly similar.

81. As a separate issue in relation to actual knowledge, the Respondents' counsel drew attention to the manner in which the Appellant managed to make very considerably greater profits than the earlier buffer and contra-trader parties in the chains. It was suggested that such relatively large profits would only be conceded to the exporter, when the exporter was a knowing party to the frauds, the element of profit being conceded because of the risk that HMRC would refuse to give credit for the input tax.

82. In relation to the contention concerning "means of knowledge", particular stress was placed on the readiness to deal with Global Roaming when the Appellant had only met Fea Ismail on one occasion, and when no responsible checking had been done in relation to Global Roaming at all. In relation to the other suppliers, the contentions extended to poor due diligence, failure to make proper Redhill checks, and to a lesser extent to the oddities in trade terms.

Decisions

Whether all 10 deals, including Deal 08/3 (in which connection to fraudulent losses was not conceded by the Appellant) were connected to fraudulent VAT losses

83. The first question that we must address is whether we conclude that even the one deal in which the Appellant did not concede connection to fraudulent VAT losses was in fact so connected. We do reach that conclusion.

84. Deal 08/3 was the deal in which the Appellant had purchased from Future Communications, which in turn had purchased from its own subsidiary, Unique Distribution.

85. Since Unique Distribution provided no information, and in particular no VAT invoice in relation to its purchase, it follows that it was liable to account for VAT on its entire sales

consideration received from Future Communications. As we have mentioned above, it was assessed for the tax in question and the tax was not paid. The Respondents claimed, and we accept the claim, that since the individuals behind Future Communications and Unique Distribution had all been convicted of criminal offences in relation to MTIC fraud and imprisoned for long periods, Unique Distribution's non-payment of the VAT must be ranked as fraudulent. Our Decision is accordingly that this deal, as well as the other nine deals where connection to fraudulent VAT losses was conceded by the Appellant, must have been connected to such fraudulent losses.

86. There remains the altogether different point that because the stock purchased in deal 08/3 had been 14-day stock and UK stock with 3-pin chargers, that of itself may be a further relevant factor in relation to the issue of whether the Appellant knew or should have known of the connection of its transaction to VAT fraud in this particular deal.

Whether the frauds were "acquisition frauds" or more extensive frauds that encompassed the supplies to and by the Appellant, and the aim of recovering input tax from HMRC and the intended further rotation of goods and payments in later fraudulent schemes

87. We conclude that the frauds in the present case were indeed "acquisition frauds", and that following its purchases, the on-sales were sales made entirely in accordance with the policies and plans of the Appellant and SI, rather than sales that the Appellant was required to make by some mastermind.

88. We accept that the above conclusion cannot be based simply on the fact that all the sales, with the exception of the sales to Me London Style, were made to non-EU foreign customers. We accept HMRC's evidence that in efforts to further conceal matters, MTIC fraudsters did sometimes procure export sales to non-EU customers, whereupon the goods were then indirectly re-imported into the UK as explained above. We conclude, however, that in this case there are numerous reasons for concluding that no mastermind had any control or influence over the on-sales.

89. The feature that approximately half of the Appellant's total deals in the two periods were not challenged, but did involve the plainly commercial purchase of goods from Motorola and Vodafone and on-sales to SI, and the fact that seven consignments of goods in the challenged deals were on-sold to SI or its Canadian subsidiary or branch all entirely support the proposition that the genuine business role to be conducted by the Appellant was to be a purchasing arm of the SI group, designed to move stock to jurisdictions where unappealing stock in one jurisdiction could be sold more profitably in another.

90. The highly unusual, but still realistic looking, pattern of the Appellant's sales appears to be wholly inconsistent with the normal pattern of on-sales arranged by a mastermind. We accept that there are often cases where supplies of product in many appeals have been split and re-amalgamated, but in the present case, sales are often made after a period, and in two cases after a very long period or not at all. Consignments acquired are also split and sold to several different purchasers, with the 10 deals in fact involving different consignments being dealt with in 32 different on-sales.

91. There may have been only two out of the 10 deals in which there were losses, but the pattern of deals 9 and 08/1 are so extraordinary that if a mastermind devised a plan that was duly implemented by the Appellant in making the 16 different on-sales in those two deals, the plan, to say the least, was weird. It is inconceivable that those deals were pre-planned. In

addition there are other deals where there was a delay, albeit less significant than delays of a year, where again the pattern is altogether inconsistent with the implementation of some prior plan.

92. The Respondents' counsel laid stress on the way in which the Appellant was able to make much larger profits than the buffer companies. We consider this to be a wrong comparison. It is obvious that the buffer companies made trivial profits, simply designed to compensate for signing a few papers or designed to make their role look faintly credible. The Appellant was the only company making a realistic sale, and its profit margin was, if anything, unusually small, particularly when the freight costs are also taken into account. MTIC exporters, knowingly aware of taking the risk of not recovering input tax from HMRC have routinely been accorded much larger margins. The margins in the present case made by the Appellant appear to us to be consistent with ordinary commercial practice and to be modest.

93. There was a discussion about the much smaller percentage margins made on the Motorola and the Vodafone deals, with the Appellant contending that the disparity was not as great as was suggested because the smaller margins in those deals were matched by far higher unit numbers. We accept that even taking that into account, the margins were smaller in the Motorola and Vodafone deals, but we do not find it surprising for a small company to operate on such margins, particularly when dealing with major providers, in the hope (now apparently somewhat fulfilled) of building up business.

94. The deals in which phones were sold to Me London Style were not remotely akin to buffer trades made by knowing parties in MTIC chains since the margins were the highest in any of the deals. The sales appear to have been to a retailer, but nobody gave any information about it.

95. In further support of the seemingly now obvious proposition that the frauds were mere acquisition deals, we note that there was no evidence of any tracing involving the Appellant or its customers. Rotations through FICB accounts returned to the Appellant's supplier, and not the Appellant or any of its customers. We were also told by Mr. Patel that customs dues in China made it very costly to export product that had been imported, and therefore improbable that product destined for China would have been re-exported or returned to the UK.

96. As a sanity check we have given thought to the issue of why parties in the supply chains in the 10 deals were content to see some credit given to the Appellant. We were given, as we have indicated, no details about the Appellant's credit standing, or about SI's credit standing, and we certainly suppose that the suppliers to the Appellant had no idea to whom the Appellant might supply, so as to rely on the later payment by the Appellant's customers. In any event, we were told that in most cases, on-sales had not been arranged at the time of the purchases. Conceivably reliance might simply have been placed by suppliers on "Title retention" clauses in their invoices. When, however, the burden of proof falls on the Respondents, and we were given no information about how the Appellant financed its purchases at all, we conclude that while we find the feature that informal credit was conceded to the Appellant to have been curious, it cannot affect our conclusions when the Respondents have not sought to base any contention on this point.

97. Our conclusion is that the Appellant, or the Appellant and SI, arranged the Appellant's on-sales. We conclude that there was pre-arrangement of the transactions prior to the supply to the Appellant but that that pre-arrangement had no bearing on the subsequent transactions.

Whether the Appellant knew or "must have known" of the connection of its deals to fraudulent VAT losses

98. As we have said, the factor that often points most clearly to the conclusion that an appellant must have known of the connection of its deals to the fraudulent losses, and to the feature that all steps had been planned and that all parties had been aware of that planning, is the evidence that illustrates circularity and that the mastermind's planning extended to the exporter's transactions. We have decided that there was no such more all-encompassing planning in the present case.

99. We now turn to the Respondents' counsel's asserted series of coincidences.

100. The first suggested coincidence was that it was extraordinary that the Appellant had been duped, and indeed duped by five different suppliers. The feature of an exporter being duped makes much more sense, however, when the issue at stake is how someone managed to procure that an innocent exporter happened to buy from an intended supplier and also then to sell to an intended customer. Possible explanations to suggest that an exporter was an "innocent dupe" are advanced along the lines that both the supplier and customer might have approached the exporter simultaneously. None of this is remotely relevant, however, in the present case where we have concluded that there was no remote pre-arrangement of the on-sales.

101. The contention about the Appellant being duped might have been meant to refer just to the single issue that the suppliers managed to conceal from the Appellant the fact that they knew (as we assume that they did) that they were supplying phones that were traced back to a VAT fraud. But that coincidence, treating the "duping" coincidence as referring just to that element of concealment, is both not particularly remarkable, and anyway no different from the second suggested coincidence, namely that all 10 deals were traced back to fraudulent VAT losses.

102. It is regrettable, but nevertheless realistic, to observe that when any trader purchased mobile phones, CPUs and other similar items between February and September 2006, it will not have been remarkable for purchases, other than those from white market traders and known *bona fide* traders such as Tesco and Asda, to be traceable to VAT frauds. Indeed we now know that this would have been almost inevitable, and certainly not some farfetched coincidence. We will yet have to consider whether the Appellant, in claiming that purchases had usually been made from long-standing suppliers that the Appellant had visited and trusted, were not purchases in which the Appellant ought to have detected connection to fraud. But at this stage we simply reject the suggestion by the Respondents' counsel that there was a remarkable coincidence when all 10 purchases emerged to have been traced from VAT frauds, and that this suggests that the Appellant must have known of this connection.

103. We are not particularly impressed either by the suggestion that the feature that Desgate were a buffer company in deals 10, 11 and 08/1 was highly significant, and that there were supposedly striking similarities between Desgate's and the Appellant's documentation.

104. The feature of Desgate having been a seemingly hidden buffer in the three deals does not seem to us to be that relevant. There is absolutely no evidence that the Appellant knew of the insertion of Desgate into the three deal chains. Desgate's role also appears to have been pointless. It was relatively common for purchases of phones from a contra-trader to be made directly by the exporter from the contra-trader, without the interposition of any buffer companies, and so it is difficult to see that Desgate's role was a necessary one. It is noteworthy that there was anyway another buffer interposed between Desgate and the Appellant, and that in three deals (Deals 6,7 and 8) the Appellant had bought directly from Global Roaming as the final buffer company in "straight line" deals, and that in Deals 08/2 and 08/4, the Appellant bought directly from Global Roaming when the latter was acting as a contra-trader. It is also difficult to conclude that Desgate's role took the form of some effective commission payment from Global Roaming for having introduced Global Roaming to the Appellant when there had already been deals between Global Roaming and the Appellant over a month earlier, and Mr. Patel had met Fea Ismail in March 2006.

105. We are not asserting that we can actually explain why Global Roaming was inserted pointlessly into the relevant deal chains but we reject the suggestion that this is a remarkable coincidence, and certainly reject the unexplained assertion that Desgate's role in some way means that the Appellant was a knowing participant in the deals.

106. We are not particularly influenced either by the similarity of documentation used by Desgate and the Appellant. The documentation used by all traders was strikingly similar. Much of it was put on the internet for traders to copy, and traders will also regularly have copied the documentation provided to them by other trading parties.

107. We are not persuaded that there is any significance either in the Respondents' counsel's claim that the margin made by the Appellant was materially more than that made by the buffer companies. The buffer companies only ever made a technical profit to lend some faint credibility to their transaction. We imagine that they must always have known that they were involved in a fraudulent chain because they cannot have taken the risk of trading to make a trivial profit unless they had known with certainty that the goods would revolve, and the payments all be made, in accordance with the planning. The Appellant's profit was quite different. Where the Appellant was a knowing participant, it clearly made a much larger profit than the buffers to compensate for the VAT risk that it was taking. In the present case, the notable thing about the Appellant's profit margin is not that it was suspiciously greater than that of the buffers but that it was unusually small in the context of the margins usually made by MTIC exporters that were knowing participants. We consider that there was nothing suspicious about the margin made by the Appellant, and that the criticism by the Respondents' counsel was the wrong way round.

108. One final point that we make in relation to the issue about actual knowledge is that if the Appellant did indeed know that its deals were traced to fraudulent losses, then since Mr. Patel said that he was fully familiar with MTIC risks and the risks of non-recovery of input tax, the decision to enter into the 10 transactions was an odd one, where the risk and reward ratios were stacked heavily against the Appellant. In other words, he stood to make profits, net of transport costs, of roughly 2% or possibly less if he recovered all the input tax, but stood to lose approximately 15% if the input claims were rejected. Mr. Patel was plainly an intelligent man and we consider it highly improbable that he would have done the deals had he known of the connection to fraudulent losses and thus addressed that unfavourable risk/reward ratio.

109. In summary, we fail to see any evidence for the proposition that the Appellant knew of the connection of its deals to fraudulent VAT losses and we consider the various grounds advanced in support of the Respondents' case to be unconvincing.

Whether the Appellant ought to have known of the connection of its deals to fraudulent VAT losses

110. The question of whether the Appellant ought to have known of the connection of its deals to fraudulent VAT losses is more difficult. Our conclusion is that in the purchases from suppliers that Mr. Patel had visited and with which the Appellant had apparently traded for a long time, and which Mr. Patel considered to be reliable businesses, the case is not established by the Respondents that Mr. Patel ought to have known of the connection of the Appellant's deals to the VAT frauds. In the case of the direct purchases from Global Roaming, however, namely therefore in deals 6, 7, 08/2 and 08/4, the Appellant ought to have known of the connection of its deals to the fraudulent VAT defaults.

111. We accept that in the case of the purchases from those suppliers in the first category above, the Appellant's due diligence was still poor. The only meaningful checks on the integrity of suppliers that any trader could undertake were site visits to suppliers, credit checks, Experian reports, examination of company accounts and the obtaining of references from accountants and bankers, rather than from other traders and freight forwarders. Of those meaningful checks, only site visits were undertaken. We regard the repeated assertion by traders that credit checks were irrelevant because the particular appellant was extending no credit to the supplier to be ridiculous.

112. While, therefore, there was much to be criticised in relation to the Appellant's scrutiny of the reliability of his long-standing suppliers, we still conclude that he was entitled to rely on his judgment in relation to them for the following reasons.

113. He had certainly visited each one of them, and he suggested that the results of those visits were favourable in relation to the four long-term suppliers, ignoring Global Roaming of course. We do not for a moment suggest that the Appellant could additionally rely on the fact that it had encountered no earlier problem with HMRC in prior dealings with the relevant four suppliers, but there is still some significance to the fact that Mr. Patel suggested that he derived some comfort from that fact as well.

114. There are, however, other reasons why we consider that it would be wrong to conclude that the Appellant should have known of the connection to frauds, when purchasing from the four relevant suppliers.

115. We certainly believe that the Appellant was performing the legitimate business role that we have indicated. The Appellant operated as the purchasing arm for SI, and it appeared to perform precisely this role in its purchases from Motorola and Vodafone, and in 7 of the 16 on-sale transactions. In the other transactions it was sometimes selling to companies that we understood to have had dealings with SI before, and none were companies in EU countries outside the UK. In the case of all of the Appellant's customers we have concluded that the on-sales were not scripted or planned in any way by any mastermind. Therefore the deals were legitimate commercial sales. They were sales in which product appeared to have been transferred to countries where it might fetch better prices than in the UK, and for genuine commercial reasons.

116. While we are content to allow the appeal in relation to deal 8/03, involving the purchase from Future Communications and indirectly from Unique Distribution, because of the confidence that the Appellant had in those two companies at the relevant time, we do note that when the stock was 14-day stock, that might very well have been acquired directly by Unique Distribution from companies such as Tesco and Asda, this constituted a further reason for the Appellant's confidence that this deal was a legitimate one. HMRC rightly point out that the goods might in fact have undergone several UK to EC rotations, following the initial sale by companies such as Tesco and Asda, but nevertheless when the stock was 14-day stock, and when it had chargers with 3-pin plugs that had obviously been originally destined for the UK market, there was an additional reason for some confidence that the stock had been charged to VAT when purchased by Unique Distribution. Of course we know now that that confidence was misplaced, but at the time, it could understandably have influenced Mr. Patel.

117. While we accept the Respondents' evidence that after the *BondHouse* decision, fraudsters did arrange for product to be exported outside the EU, and then presumably be re-imported via the indirect route that we have mentioned, we have concluded in this case that the customers were not entities controlled by any mastermind, so that when product was sold by any member of the fraudulent chain to the Appellant, it thereafter fell outside the control of the mastermind. That, to our mind, made the Appellant's business model, as we have said, an extraordinarily ill fit with fraudsters' usual motives and planning expectations, and in this context we consider that the Appellant was right to conclude that his practice of refraining from ever selling to EU customers outside the UK was a significant protection against the risk of being embroiled in MTIC frauds.

118. We do, however, uphold HMRC's denial of input tax credit in the deals where the supplier was Global Roaming. Mr. Patel said that he knew that MTIC fraud was endemic, and he ought to have taken every precaution in taking supplies from a hitherto unknown supplier to verify the integrity of that supplier. The only evidence to the effect that he did this was that in one meeting at CEBIT he thought that Fea Ismail looked credible and reliable. He never visited her premises, however, and made no checks whatever to establish that Global Roaming appeared to be holding stocks in a warehouse, or exhibiting any of the other characteristics of a *bona fide* trader. We accept that we do not know and we cannot know what Mr. Patel would have discovered, had he made a site visit or sought a credit report or an Experian report or sought to obtain the company accounts of Global Roaming. We do, however, assume that a contra-trader would have held no stock, and would therefore be likely to have been trading from some very small office, possibly in Fea Ismail's house. Had he made a site visit and asked about her trading, turnover and general business, we believe that he would have been unlikely to have been convinced that Global Roaming's turnover and activity would have been legitimate, had there been no evidence of a substantial business presence and warehouse. In mid-2006, it was simply inappropriate to meet a woman once at CEBIT and then enter into several substantial deals, when he, Mr. Patel, accepted that he was fully aware of MTIC risks. He undertook no meaningful checks on Global Roaming whatsoever, in contrast to his evidence in relation to the other suppliers where he claimed that he had visited them all, only dealt with a small circle of companies as a further protection against MTIC risks, and had traded for a considerable period, without problem, with those four companies that he thus considered reliable.

119. We accordingly allow the Appellant's appeal in relation to the input claims relevant to Deals 8, 9, 10, 11, 8/01 and 8/03. We dismiss the Appeal in relation to Deals 6, 7, 8/02 and 8/04.

Costs

120. Should this Appeal be one where either party can apply for costs, our decision is that no award of costs should be made to either party.

Right of Appeal

121. 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.

HOWARD M. NOWLAN

TRIBUNAL JUDGE

RELEASE DATE: 7 December 2015