



TC01298

Appeal number MAN/08/0223

VAT –invalid invoices- appellant to prove supplies took place – yes –HMRC to prove exercised discretion reasonably in refusing to accept invoices as valid – no – article 17(2 and 23 Sixth Directive – Regulation 14 Value Added Tax Regulations 1995 - Appeal allowed – HMRC decision referred for further review

FIRST-TIER TRIBUNAL

TAX

LONDON WIPER COMPANY LIMITED

Appellant

- and -

**THE COMMISSIONERS FOR HER MAJESTY'S
REVENUE AND CUSTOMS**

Respondents

**TRIBUNAL: DAVID S PORTER (JUDGE)
SUSAN STOTT (MEMBER)**

Sitting in public at Alexandra House, Manchester on 7, 8, 9 and 10 March 2011

Mr Mario Angiolini, of counsel with his junior Laura Elizabeth John, for the Appellant

Mr Richard Smith, of counsel,, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents

DECISION

1. Mr John Robert Hughes (Mr Hughes) the managing director of Appellant (London Wiper) appeals on behalf of London Wiper against two decisions by the Respondents (HMRC) disallowing London Wipers input tax. The first was dated 5 July 2007 with a related assessment dated 16 July 2007 for £690,687 plus interest in relation to supplies from Power & Civil Ltd (Power). The second was dated 2 October 2007 with a related assessment of the same date for £548,187 plus interest in relation to supplies from Bempton Limited (Bempton) and Valley Wood Limited (Valley Wood) (all together referred to as the three companies). Both decisions were based on HMRC's conclusion that the invoices (hereinafter referred to as the Disputed Invoices) in relation to all the supplies were invalid, and that London Wiper did not hold sufficient alternative evidence for them to satisfy HMRC that the supplies underlying the Disputed Invoices took place. London Wiper says that the supplies did exist and that HMRC had acted unreasonably in not accepting alternative evidence as to the validity of all the invoices.

2. Mr Richard Smith, of counsel appeared for HMRC and called:

- William Day, an officer of HMRC
- William Bardsley, an officer of HMRC

Both of whom gave evidence under oath.

He produced the following witness statements which were not contested and which was treated as evidence-in-chief and the witnesses did not appear-

- Anthony Alan Airey, a director of Airey's Road transport Ltd.
- David Jack Wood the company secretary of B J Waters (transport)

He also produced bundles of documents lettered A -F

Mr Mario Angiolini, of counsel, appeared, with his junior Laura Elizabeth John, for London Wiper and called the following all of whom gave evidence under oath:

- Mr Hughes
- David Butler (Mr Butler), accountant to London Wiper
- Kevin Perkins (Mr Perkins), accountant to London Wiper
- Lisa Mary Pickering (Mrs Pickering), sister to Mr Hughes, and an administrator for London Wiper.
- William Townson, an employee of London Wiper

He also produced the following witness statements, which were not contested and which were treated as evidence-in-chief-

- Steven Mower, an employee of London Wiper

5 He also produced supplemental bundles lettered AA, CA,EA, G, H and additional correspondence and documents to be inserted in Bundle F

3. We were referred to the following cases:

- CASE 73/06 *Planzer* [2007] ECR 1-5655
- Case C-152/02 *Terra Baubedarf-Handel GmbH v Finanzamt Osterhok Scharmbeck* [2004] ECR 1-5583
- 10 • Case C -90/02 *Finanzampt Gummersback v Bockemuhl* [2004] ECR 1-3303
- Case C-338/98 *Commission v Netherlands* [2003] STC 1506
- Case C -85/95 *Reisdorf v Finanzampt Koln-West* [1996]6257
- Case C-342/87 *Genius Holdongs BV v Staatsecretaris von Financien* [1988] ECR 4517
- 15 • *Masood Ahmed* [2007] VAT Decision no 20119
- *Enviroengineering Ltd* [2006] VAT Decision no 19756
- *Elite Designs International Ltd v Commissioners of Customs and Excise* [2000] VAT Decision no 16925
- *John Dee Limited v Commissioners of Customs and Excise*[1995] STC 941
- 20 • *Kohanzad v Commissioner of Customs and Excise* [1994] STC 967
- *Grunwick Processing Laboratories Limited v Commissioners of Customs and Excise* [1987] STC 357
- *Grunwick Processing Laboratories Limited v Commissioners of Customs and Excise* [1986] STC 441
- 25 and HMRC's 'VAT Strategy: Input Tax deduction without valid VAT invoice-Statement of Practice March 2007.

Preliminary issue

4. Mr Angiolini request that the case be adjourned because HMRC had original
30 supplied copies of Mr Days' case notes suitably redacted. Mr Angiolini had subsequently seen the notes and other notes, which indicated that the redactions

should not have been made. As a result, he required HMRC to produce the un-redacted versions of the notes and Mr Day's additional notes of 9 May 2005. He would then need some time to consider the implications of the new material. Mr Smith confirmed that he was prepared to make those documents available to Mr Angiolini by the following day. In view of the fact that the case had been listed for 4 days and concerned matters dating back to 2006 we considered that it was inappropriate to adjourn the hearing as we believed Mr Angiolini would have adequate time, during the hearing, to consider the new material. Mr Smith produced the documentation the next day and the details of those are contained, where appropriate, in this decision

10 **The facts**

5. This case concerns the entitlement of London Wiper to claim input tax which, it says, it paid in good faith to the three companies. We are required to decide, in the first instance, whether the taxable supplies, which are said to be evidenced by the Disputed Invoices took place, and, if so, whether HMRC exercised their discretion lawfully in refusing to accept that London Wiper had provided adequate evidence in support of its right to reclaim input tax as the invoices were invalid. We have been told that HMRC has accepted earlier invoices in relation to all three suppliers, where payments had been made by cheque. If we decide that the goods did not exist then that is the end of the matter and the appeal must be dismissed. If we find that the goods exist and were paid for, we have then to decide whether London Wiper holds appropriate evidence, which allow it to recover the input tax it says it has paid. The burden of proof, on the balance of probabilities, shifts according to whether the supplies in question are supported by valid invoices or not. If there is a valid invoice then it is for HMRC to prove that the supplies did not take place as described on the invoice; in this case the Tribunal has an appellate jurisdiction, (i.e) its decision as to whether the supplies took place would determine the appeal. If there is no valid invoice the London Wiper must prove that the taxable supplies took place and the HMRC have acted unreasonably in refusing to accept that there was sufficient evidence to establish those supplies took place; in this case the Tribunal has a supervisory jurisdiction (i.e) it must go onto decide whether HMRC were reasonable in deciding that there was insufficient evidence to support the claim for input tax. If the Tribunal decided that Mr Day acted unreasonably when considering the evidence to allow the invoices to be treated as valid, then the Tribunal must refer such matters back to HMRC for them to reconsider their decision in the light of the evidence before the Tribunal.

The goods existed

6. London Wiper has accepted that all the invoices are invalid but that they remain good evidence that the supplies took place. It is therefore necessary, in the first instance, for London Wiper to prove on the balance of probabilities that the goods existed. London Wiper trades as the Universal Recycling Co (URC) from Wharf Road, Kilnhurst, Mexborough, S64 5SY and its registered office is at 1 London Road, Kettering, Northants, NN16 0EF. The directors are Mr Hughes, and his parents, Charles Hughes and Nora Louise Hughes. It started trading in 2002 as a recycler of all grades of cables, electronic scarp, aluminium, and tyres. Its accounting year end is 31

October in each year. The company now employees 98 people, who are all based at the site. It is the biggest recycling plant in the United Kingdom for cabling and computers (including VDU and TV screens) and is the principal recycler for British Telecommunications PLC (BT). Its manufacturing process is a dry shedding process, and the business operates a considerable amount of machinery and equipment, which required a substantial investment. Mr Hughes produced photographs of the plant and machinery and explained to us how it operated. There is no doubt that the business and the capital investment are substantial. Mr Hughes expects London Wiper's turnover to achieve £100,000,000 in the current year and for the company to be able to recycle 100% of the materials supplied to it in the immediate future.

7. Mr Hughes told us that at the time of the transactions in 2007 London Wiper's turnover was about £23,000,000 with a profit of £315,667. The accounts also reveal a retained profit of £1,190,604. There is no doubt that London Wiper was a substantial business at the time of the transactions and was growing substantially as a result of the continuing contract to process all BT's cabling. It is, however, significant that the supplies with the three companies amounted to approximately £8,000,000 being just less than half of the entire turnover of the company at that time. There is no doubt that the three companies were substantial customers to London Wiper and ones which Mr Hugh's would wish to retain. It is accepted that when London Wiper commenced trading with the three companies, it paid for the supplies by cheque and as a result HMRC have accepted that the invoices relating to those transaction are valid. It has become apparent, during the course of the hearing, that both Power & Civil and Valley Wood were involved in Missing Trader frauds and had not paid the VAT they had collected during the course of their frauds to HMRC. It was unclear whether Bempton was also involved as a missing trader but it is clear that it had gone into liquidation without paying its VAT liabilities.

8. London Wiper has a sister company Caprina Limited (Caprina), which is also owned by Mr Hughes' mother and father. It is this company that entered into the contract with BT on 28 May 2003. The contract was for 3 years and had been extended to 1 August 2010. London Wiper processes all the material from BT on behalf of Caprina. BT currently has 150 to 170 locations around the United Kingdom at which London Wiper deposited 'Roll on/Roll off bins'. London Wiper delivers fresh bins and collects the full ones as and when required. London Wiper also had entered into a contract with Skanska Construction Limited (Skanska) at the beginning of September 2008 after the transactions the subject of this appeal.

9. Mr Hughes explained how the weighbridge process worked. If the delivery was by a lorry the lorry drives on to the weigh bridge and is weighed. The lorry then tips its load on to the site, where allocated by a member of staff, so that the staff can sort through it. The lorry then returns to the weighbridge and is weighed again. A weighbridge ticket is then created. We were told by Mr Hughes that it was not possible to add all the numbers to the weighbridge certificates by hand as there had to be a vehicle on the weigh bridge to trigger the entries so that the net weight could be inserted automatically. In checking the weighbridge certificates for Bempton, supplied to the Tribunal, in relation to the agreed invoices, it appears that several of the net weights have been completed in manuscript with no automatic entries at all.

MEXBOROUGH SOUTH YORKSHIRE Tel: 01709 5820986 Fax: 01709 571389	03-01-07 13.20 1 st Weight 12940 kg
Security Ticket *£2030 04344	Code Consec No 050025
CUSTOMER/SUPPLIER * BEMPTON TRADING	Date Time 03-01-07 13.43
HAULIER * SAME	2 nd Weight 9320 kg
	Net Weight 3620 kg
Vehicle regn * G736 GSM	Description of goods * L/G SWA
Driver's Signature ? (Illegible)	Weighman's signature ? (illegible)

Mr Smith cross-examined Mr Hughes as to the method used for completing the weighbridge certificates. It is clear from the evidence provided in relation to the Disputed Invoices that the relevant weighbridge certificates were not always completed correctly. (We are in some difficulties in that we have not been supplied with copies of the earlier weighbridge certificates other than for Bempton, the latter of which appear not to have been challenged. As a result we cannot know whether they were completed on the same basis.) The items above, marked with an asterisk, could all be completed by hand. Mr Hughes told us that when the lorry or vehicle is driven onto the weighbridge the details of the load are entered onto the digital display under Re-entered 1 at weight. The machine then records the date and time together with the first weight. When the driver returns, having deposited his load, he drives back onto the weighbridge, and the machine records the date, time and a second weight, which is the unloaded weight of the vehicle. The machine then calculates the net weight of the load. Mr Hughes told us that this last figure cannot be inserted manually and is dependent on the earlier two figures. That appears to be the case if a vehicle has been weighed on the weighbridge. But we have noted above at paragraph 9 that some of the earlier Bempton weighbridge certificates have been completed in manuscript. If a

skip/bin was involved they were weighed on smaller scales and the weight of the skip/bins entered into the machine. This accounts for the different entries on the weighbridge certificates in these cases. Mr Hughes would check the weight and type of material and write the price per ton on the weighbridge certificate as above £2030.
5 3 tickets are printed out, which are usually signed by the driver, who takes one copy and London Wiper retains the other two.

14. Mr Hughes was principally responsible for completing the weighbridge details. He told us that London Wiper do not hold any of the invoices for the various suppliers
10 of the waste. Each company would be asked to bring a couple of their blank invoices with them so that London Wiper could type in the details into them. If the goods did not need sorting this could be done whilst the driver waited. If the goods had to be sorted than the driver would have to come back on another day so that the appropriate invoice could be completed. Mr Hughes passed the weighbridge certificates and the
15 invoice provided by the driver to his son, James, who typed up the invoice and handed one to the driver and the others to Mrs Pickering, so that she could enter the details in the books, which she did. It will be recalled that BT completed their own invoices from the information emailed to them by London Wiper.

15. Mr Hughes indicated to the Tribunal that he had difficulty reading and writing.
20 This was confirmed when Mr Smith, in cross-examination insisted that a mirrored letter “j” was in fact an “I”. Mr Smith robustly insisted that the letter was a “J” written in reverse. We are bound to say he must have been correct, as there is no letter “I” on a vehicle number plate, as it would conflict with the number 1. We believe that Mr Hughes does have difficulty with his reading and writing, but as the owner of a
25 company ostensibly turning over £100,000,000, we do not believe that his weakness in reading and writing has presented any difficulty for him. We found his evidence in the main robust. We were, however, concerned as to his responses to Mr Smith under cross-examination, when Mr Smith took him through several of the weighbridge certificates which were unsigned; referred to several vehicle numbers which did not
30 exist; and failed to indentify the haulier. We have not seen any earlier weighbridge certificates for the valid invoices (other than for Bempton) but it would appear that Mr Hughes, certainly in relation to Power & Civil, has been less than precise in completing many of the certificates. During the course of the hearing he provided inconsistent answers to questions raised with regard to the weighbridge certificates. In
35 his third witness statement he purports to elaborate on his earlier answers. He prefaces many of his responses by saying that ‘he would have..’. There is no means of knowing whether he actually did what he suggests and in light of the conflicting evidence we suspect he does not really recall. What is clear on all of the certificates is the weight of the supplies; the price charged for the goods; and the name of the supplier, however
40 casually written. This information appears to have been extrapolated into the books by Mrs Pickering.

16. Evidence was provided by William Townson, an employee of London Wiper, that he had completed a weighbridge certificate on 24 August 2005, which was produced to the Tribunal. He had signed the goods in but Mr Hughes had told him that he had
45 entered the customers name incorrectly and that it should be Power & Civil. Mr

Hughes had amended the certificate and also inserted the hauliers name and the vehicle registration number. Similarly, evidence was provided in the witness statement of Steven Mower, London Wiper's operation manager, to the effect that he had completed a weighbridge certificate on 16 September 2005 for Valley Wood Recycling. He had identified the haulier as 'Waters' and completed the vehicle registration number. The delivery was of "bailed bright CU wire".

17. Mr David Jack Wood of B J Waters (Transport) Limited confirmed in his witness statement that his company had owned vehicle Y788 DRB, which was a Mercedes artic trailer unit. The vehicle had been used to make deliveries on behalf of Valley Wood to various customers. He was satisfied from his records that the vehicle had delivered goods to Universal Recycling (London Wiper) on 16 September 2005. Mr Hughes said that he recalled the Valley Wood vehicles as they had "Valley Wood" written on their sides. Whilst the deliveries were some considerable time ago we do not find it strange that Mr Hughes could remember that some of the supplies were from 'valley Wood' as the sign on the vehicles was distinctive. He also told us that when he was threatened by Mr Lee (to which we refer later) he agreed to return some of the goods Power & Civil. He could not have agreed to do that without having received the goods in the first place,

18. Mr Day had checked several of the vehicle numbers provided by Mr Hughes supporting the weighbridge certificates for the purposes of this appeal with the following result:

Vehicle	Invoice Reference	Results
FY53 FFJ	172	Honda Accord Salon car, Peterborough
AY53 FFJ	172	Mercedes Lorry haulage Company Immingham
FY53 EET	173	Mercedes car (estate) Humberside
FY53 EEJ	173	Mercedes car (coupe) ,Humberside
GF56 YTE	188	Honda Civic car (estate), Kent
MX51 CXN	189	Hyundai car (coupe), London

19. Out of a total of 15 numbers checked only 4 came back as actual vehicles. Mr Day produced a witness statement by Anthony Alan Airey of Airey Road Transport Ltd. The vehicle numbered AY53 FFJ (referred to above) is one of their Mercedes' artic model 2446. Mr Airey, in his witness statement, confirmed that he had not made any deliveries to London Wiper from Bempton.

20. Mr Hughes admitted in a visit by HMRC on 10 April 2004 that some of the drivers' signatures were his own. Looking at the vehicle numbers we suspect some of these were made up as well.

21. The completion of the Weighbridge Certificates is unsatisfactory in relation to the name of the hauliers, the vehicle numbers and the signature by the drivers. They appear to identify the goods and the supplier. In the case of Valley Wood as 'copper'; for Bempton as 'cable' and 'copper'; and for Power & Civil 'bright granules' 'copper/tin' and 'cabling'. The vast majority of them also carry Mr Hughes note as to the price of the goods, which in any event is extrapolated on to the invoices. We believe that the invoices have been completed contemporaneously with the deliveries and compiled from the appropriate information on the certificates. The details, with regard to the haulier, vehicle number and driver, whilst clearly sensible requirements, are not needed for the purposes of completing the invoices.

22. As a matter of fact, all the details of all the invoices, for the three companies, have been recorded in the company books. The analysis provided by Mr Butler and Mr Perkins (to which we refer latter) reconciles all of the invoices to the cash in the business. Further, the value of those goods matches exactly the amounts referred to in Mr Perkins' evidence. We accept that the weighbridge certificates are the prime source of information but we consider that, although it is preferable for the certificates to record properly all the detail, we do not regard it as critical so long as the weight, price and identity of the customer is included. The weighbridge certificates are not the only independent evidence that the goods existed as can be demonstrated by the evidence from Mr Butler and Mr Perkins accountants to London Wiper.

23. Mr Butler, who affirmed, is a chartered certified accountant and senior partner of John S Wood & Co, accountants, who have been the accountants to London Wiper since 2002. He had analysed all the weights on the Disputed Invoices and concluded that without the invoices to the three companies there would have been insufficient weight to support the company's sales. He conceded that all the information had been provided by the company and that there was no independent evidence. He produced the following schedule:

LONDON WIPER LTD WEIGHT CONTROL

	IN 14,019.494	OUT 16,002.396
	(Should read 13,519.494)	
June 2006	946,315	1,167.080
July 2006	1,182.007	1,289.860
August 2006	1,057.660	1,283.336
September 2006	928.940	1,360.422

	October 2006	994,277	1,417,760
	November 2006	1,408.033	1,350.600
	December 2006	992.608	1,376.806
	January 2007	1,133.749	1,376.806
5	February 2007	1,160.123	1,361.660
	March 2007	1,389.985	1,425.720
	April 2007	1,311.301	1,571.660
	May 2007	1,514.426	1,290.752
	Estimated stock		
10	increase tons	500.000	
	Totals	13,519.494	16,002.396
		84.48%	

Mr Butler has added a further 15.52% as the water content to round the figures up to 100%.

- 15 24. Mr Butler notes that the weight out was greater than the weight received by a factor of 15.52%. He had been told by Mr Hughes that between 12% and 20% of the processed suppliers were wet. Mr Smith was not convinced that this was the case. Mr Hughes produced to the Tribunal copper granules and indicated that they would be washed, before packing, and as a result they would retain some moisture. Mr Smith suggested that that was unlikely and that in any event scientific evidence would be required to prove it. We do not agree. We believe it is self-evident that most materials, which have been submerged in water, will retain some of the moisture when removed. We think it is entirely likely that some of the products, which had been subjected to a water treatment, would retain some moisture. We have no idea how much. 15.52% would appear to be a reasonable figure in the light of Mr Hughes' comments. If HMRC allege that there could be no water retention then it would appear that London Wiper has processed more goods than it has apparently received. This is unlikely as the weights have been extrapolated from the invoices, which would mean that the company would have raised an output tax on those additional sales with no corresponding input tax on its purchases. As a result it would pay more VAT than it needed to. Mr Butler advised that the invoice amounts for the three companies were as follows:

- Power & Civil 13 April 2005 to 28 February 2007

Value £3,947,211.90 VAT £690,762.08

- Bempton Trading 20 March 2007 to 31 May 2007

Value £959,504.20 VAT £167,913.24

- Valley Wood 16 September 2005 to 28 February 2007

Value £ 2,173,009.80 VAT £380,276.72 = £548,189.96

5

Overall total £7,079,725.90 VAT £1,238,952.03. Total purchases £8,318,677.93. This figure corresponds with turnover for the years 2006 and 2007 referred to above. We consider it is unlikely that London Wiper would include £8,318,677.93 unnecessarily and thereby increase its VAT and tax liabilities

10 25. Mr Perkins, who affirmed, told us that he is a chartered certified accountant and is a partner in the firm of John S Ward & Co with Mr Butler. London Wiper had provided him with the appropriate books of account for him to be able to reconcile the cash transactions of all the invoices and expenditure for the periods of the appeal. He states at paragraph 15 of his witness statement:

15 “It can be seen that in every month in the disputed period the sums available to London Wiper... and the sums paid or still held by London Wiper...tally exactly.”

His analysis, like that by Mr Butler, is extensive. His analysis reveals a withdrawal of:

20 • £300,000 on 11 May 2007 which was utilised to pay cash to Power & Civil for the three accounts totalling £280,785.05 for the periods 29/1/07, 06/2/07, 06/2/07 and 22/5/07. Mr Hughes has said that he was threatened by Mr Lee of Power & Civil with violence as a result he said that he withdrew £300,000 in cash so that he could make the appropriate payment. This entry ties in with that evidence. He also confirmed that Power & Civil had said that they would
25 collect the goods which had been supplied and not processed. Mr Perkins’ report confirms that four deals dated 23, 27, 28 and 28 February 2007 amounting to £346,039.85 represented the goods returned to Power & Civil. Mr Day at paragraph 16 of his witness statement stated:

30 “Regarding the £626,824.90, as previously shown as owing to Power & Civil Ltd by the Appellant, Mr John Hughes stated that this figure was now less as he had recently had pay Power & Civil UK Ltd in cash....”

35 If the returned items are deducted from £626,824.90 the balance of £280,785.05 remains, which is the amount paid for the earlier deliveries as shown above. In spite of the above we are concerned that we have been told by Mr Hughes that scrap delivered to the site would be processed as soon as reasonably possible. We do not understand how scarp delivered at the end of February 2007 would still, in those circumstances, be available for collection

by the middle of May over 2 months later or indeed, how it could be identified after such a period.

- £200,000 on 11 June 2007, which was utilised, with the balance of the cash withdrawn from the Bank to pay the first cash demand from Bempton of £266,509.98

26. Mr Pickerings figures reveal that substantial amounts of cash were being utilised to pay Power & Civil in November 2005. For the period from 02/11/05 to 29/11/05 London Wiper withdrew £398,000 in cash. For the following period to 23/12/05 approximately the same amount. Cash was also being paid to Valley Wood from January 2006. By June the cash withdrawals amounted to £585,000 and by July £756,000. Given that the three companies represented nearly half London Wiper's turnover in this period Mr Hughes must have thought it odd that the three companies wanted cash at this level, when they had originally agreed to payment by cheque. He should have been on notice that the transactions were less than straight forward.

27. Mrs Pickering gave evidence under oath. She is employed by London Wiper as their administrator and is Mr Hugh's sister. She is responsible for the 'Pegasus' computer accounts system. This identifies the more significant suppliers under the 'New Supplier' menu. The three companies have their own ledgers. She also produced to the Tribunal details of the cash payments. These show predominantly petty cash payments. Mr Hughes confirmed that the scrap business is a cash business. In his experience all scrap metal and processing plants pay for the scrap in cash. All the supplies from the smaller businesses were paid in cash. This is not altogether correct. From the evidence it would appear that cash was only paid to four of the suppliers, being the Power & Civil, Bempton, Valley Wood and Chip Logistics Ltd although they represented almost half of London Wipers turnover at the time.

28. She confirmed that since this case arose she now checks the VAT accounts of all the suppliers properly. She had, however, checked the VAT verification for Power & Civil. She agreed it revealed that its trading classification was:

"74500: Labour Recruitment and provision of pers"

and that she had not noticed. She said that she had only been concerned to see if they had a VAT number. We are satisfied that Mrs Pickering does no more than keep the books for London Wiper and it appears that they are correctly maintained. We found her evidence to be straight forward and believable.

28. HMRC had suggested that London Wiper needed to identify where the goods, which they allege had been delivered, had gone to. We accept, as stated by Mr Hughes, that as the goods are processed it is not possible to do that. Similarly, it was not realistic to suggest that London Wiper never alleged that there were faulty goods. By definition all the supplies of waste scrap were faulty.

The Invoices

29. Mr Angiolini has conceded that all the invoices, the subject of this appeal, are invalid. We propose to deal with each set of invoices separately starting with Power & Civil. The Power & Civil invoices are addressed from 'Manor Works', Leeds Road, Glasshoughton WF 10 4 PF. This is the address provided to HMRC at the time of the registration and which was seen by Mrs Pickering. Mr Day checked the information held by HMRC with regard to the address for Power & Civil. He confirmed that HMRC had received a facsimile from them on 25/08/2004, which advised that it had changed its address from 'Manor Works' to Unit 11, Stirling Industrial Park, Carr Wood Road, Castleford. On 9/9/2004 HMRC asked for confirmation that the new address was the place at which it received and dealt with orders and carried on and managed the day-to-day affairs of the business. The letter was returned signed by Power & Civil on 14 September 2004. On 3 August 2005 HMRC received a letter from Axholme House (company accountants and company secretaries) advising that Power & Civil trading address had changed to 21 Gordon Close, Tuffley, GL4 0QZ. HMRC requested confirmation but nothing further was heard. As no written confirmation had been received HMRC still retain the earlier address at Unit 11. It would appear that the bailiffs, on behalf of HMRC, attended at Unit 11 on 26 October 2005 to be told that the trade had left several weeks earlier. HMRC's record of the bailiffs' visit does not name the site they went to although the address on the file is Unit 11. We have been told that the earlier invoices, which have been accepted and where payment had been made by cheque, were also addressed to 'Manor Works'. Mr Day attended at Manor Works on 17 April 2007, less than 2 months after the date on the last disputed invoice and he was unable to locate Power & Civil. HMRC do not appear to have had a satisfactory response for them to identify from where Power & Civil traded. Mrs Pickering had relied on a certificate provided, we assume, by HMRC and in a normal course of trade would have had no reason to doubt the information. In any event HMRC appear to have accepted this address for the purposes of the valid invoices.

30. The invoices for Power & Civil are undated. They do, however, carry the date on which they were entered into the company's books. Mrs Pickering has date stamped them all though it appears that her date does not bear any relationship to the delivery date as she appears to have entered the invoices in batches. HMRC advice that Power & Civil were deregistered from 6 September 2005. The invoices are dated from 13 April 2005 to 28 February 2007. HMRC had notified London Wiper in a letter dated 13 April 2007 that it could not reclaim any further input tax from invoices relating to Power & Civil. In light of the evidence as to the way in which invoices were prepared we are satisfied that the date of the invoices should be the date of the delivery of the goods as identified on the weighbridge certificates. All the certificates identify a date in the panel for the second weighing, which appears to have been inserted automatically by the machine.

31. The invoices for Bempton are dated from 20 March 2007 to 22 May 2007. We have been advised of the invoices for the period 10 May 2007 to 31 May 2007 which were all paid by cheque. The invoices were in identical form to those which are disputed by HMRC and totalled £734,634. It appears that London Wiper started trading with Bempton in June 2006. Mr Hughes told us that the contacts were Mr Jim Tomlinson and Mr John Thompson. They would telephone Mr Hughes to advise him

what material they had available. He would discuss London Wiper's terms with them and agree that payment could be made by cheque. The invoices from June 2006 to May 2007 were all paid by cheque. In or about June 2007 London Wiper was asked to make all payments in cash. Mr Hughes confirmed that he was happy to change the method of payment to cash. All of the invoices are addressed to Wath West Industrial Estate, Derwent Way, Rotherham. S63 6EX being the address at which Bempton was registered for VAT. Mr Day visited the premises at Wath West Industrial Estate on 9 May 2007. The offices consisted of a small table in corner of a boardroom, belonging to a coach and travel company. There was no signage, telephone or computers at the premises. A representative from Bempton provided some invoices. None of the Bempton invoices are dated although they do carry the date when they were entered by Mrs Pickering, in batches, in the company books. again all the weighbridge certificates have the date they were apparently prepared in the second weight position. We are satisfied that that date represents the date when the goods were weighed and, as such, should be used as the date for the invoices.

32. HMRC have suggested that these goods could not have existed in the light of a letter dated 31 July 2007 from Messrs Dean Thomas & Co solicitors to Bempton which stated:

".. So far as the schedule attached to your letter of the 10th July is concerned our client is in some difficulties verifying the sales, as you are aware all his documents were stolen from his vehicle, however **we are instructed that invoice number 172 in the sum of £266,509 was not issued by our clients and indeed none of the invoices dated after that date were issued by Bempton Trading Limited....**"

(The schedule is a list of the Bempton's deals from 1/2/07 to 31/5/7, which includes the cash sales from 9/5/07)

(HMRC only disclosed the un-emboldened part of the letter when writing to London Wiper but did not disclose the further section which indicated that the documents had been stolen)

30 Mr Hughes representatives, Thring Townsend Lee & Pembertons, were in correspondence with the liquidator for Bempton and in their letter of 9 December 2009 said:

"We have now had the opportunity to review our record of the meeting. In that respect, your client confirmed that all the cheques raised by our clients (sic London Wiper), and made payable to Bempton Trading Limited, had been traced through the bank account of the company."

33. Mr Angiolini has referred to the redacted notes in the preliminary issue. In Mr Day's additional notes of referring to the visit on 9 May 2007 in relation to Bempton he observed:

" 09/05/07 Most input tax suspect and hasn't been paid to HMRC as output tax.

It would seem at this stage that this co is about to 'do a bunk' – I intend disallowing input tax relating to suppliers. Attempted to call Mr Osborne on his mobile-no reply.”

The note refers to additions on later dates namely

5 “18/05/07 Companies of concern (re input tax) are:

... none of which refer to London Wiper.”

10 “06/07/07 Visited London Wiper.- large VAT amounts charged by BTL (Bempton) BTL not submitted 0207 & 0507 returns- will assess as per new found invoices- if they prove false on LW’s part, I will draw schedule of further 641 and assess.”

“ 090707. Discussion with management – to hold off assessing (Bempton) for couple of weeks.”

15 “090108 My experience of Mr O/Bempton is that he has evaded a large amount of VAT by using false invoices himself. He did not answer my numerous questions and has no credibility.”

This latter note in contrast to the note with regard to Mr Hughes on 10 April 2007

“ Mr H seemed content with this (sic supplying list of new suppliers) and maintained his desire to assist HMRC as much as possible.”

20 Further much of the redacted material related to telephone calls from Mrs Pickering to Mr Day asking whether London Wiper could deal with named supplies. In most case he had confirmed that they could. These queries arose from Mr Day’s request that Mrs Pickering should contact him in relation to any new supplier with a contract over £3000 and are evidence that London Wiper was co-operating with HMRC. Mr Angiolini suggested that it was illogical that HMRC should rely on information
25 provided presumably by Mr Osborne to his solicitors, rather than the proof of the payments by cheque to Bempton’s liquidator by London Wiper. HMRC have accepted that the goods paid for by cheque existed but not the goods paid for by cash thereafter. Mr Day has confirmed that he did not believe Mr Osborne as he was not
30 credible. We agree with Mr Angiolini that, given that the goods paid for by cheque existed, and the cash transactions have been recorded on the balance of probabilities those cash goods were purchased from Bempton and existed.

34. The Valley Wood Disputed Invoices are dated 26 January 2006 to 13 February 2007. All the weighbridge certificates, although omitting the name of the haulier, appear otherwise to have been completed correctly and the invoices are dated. HMRC
35 say that the invoices are invalid as the address at Valletts Wood Works, Cannop, Nr. Coleford, Gloucester.GL16 7HE are incorrectly addressed. London Wiper started trading with Valley Wood in September 2005. Mr Hughes was contacted by telephone by Mr Ewen Knowles in much the same manner as by Mr Tomlinson and Mr Thompson for Bempton. HMRC have advised Mr Hughes that his brother David

James Wood was appointed a director of that company on 27 July 2005. Mr Hughes was unaware of this. We were told by Mr Hughes that he and his brother had fallen out on the occasion of the death of Mr Hughes' son. Mr Knowles rang every time he had a load to deliver. Sometimes he sent a driver on other occasions he came himself.

5 It appears he mentioned that he was selling to competitors of London Wiper. Mr Hughes was the only one who dealt with Mr Knowles. Mr Knowles would bring his invoices for completion by London Wiper. The Invoices were, as with the other invoices, typed by his son James. The first series of invoice, which are not disputed, were paid by cheque, all the rest were paid by cash as the request of Mr Knowles. Mr

10 Knowles would come to the office and Mr Hughes would hand over the cash. Mrs Pickering arranged for the cash to be made available from the bank. The last invoice was dated 26 February 2007 which pre-dated Mr Hughes' discussions with HMRC. All the invoices were paid prior to April 2007. It will be noted from paragraph 17 above that David Jack Wood confirmed that his haulage company had collected goods

15 from Valley Wood on 16 September 2005 and delivered them to London Wiper.

35. Valley Wood's VAT registration certificate shows their address as 'Club Envy', Fusion Corporation, Corporation Street, Rotherham, South Yorkshire.S60 1NG as at 11 July 2003. By a letter dated 10 August 2005 they notified HMRC that they had

20 changed their address to 'Vallets Wood Works'. HMRC wrote to Valley Woods on 9 January 2006 indicating that they could not accept the change of address without written confirmation. There does not appear to have been such a confirmation. William Bardsley, an officer of HMRC, gave evidence under oath and confirmed that he visited the address at Valletts Wood Works. He found no trace of the company or any scrap metal operation. The site appeared to be principally occupied by Gloucester

25 County Council. There was a bus company on the site named Dukes Travel Limited, which had the same telephone number as that shown on Valley Woods' change of address notification date 20 August 2005. The operatives at Dukes Travel Limited had no knowledge of the existence of Valley Wood. We have been told that Valley Wood was de-registered with effect from 18 October 2007. The address on the Disputed

30 Invoices appears to be the same as that on the original invoices that have been accepted by HMRC.

HMRC's discretion

36. Mr Day gave evidence under oath, and ruled that the invoices were invalid for the following reasons:

- 35
1. Power & Civil had been de-registered on 6 September 2005
 2. The address on the invoices for Power & Civil did not appear to be genuine trading address.
 3. The address given on the invoices for Bempton did not appear to be a genuine trading address. The invoices were undated.

4. The trading address for Valley Wood did not match the address held by HMRC and the company had been de-registered on 18 October 2007. (We were advised that this date in Mr Day's statement should read 2007).

5 5. Mr Day considered the alternative evidence referred to above was insufficient to permit a deduction of input tax. He therefore caused assessments to be issued in order to recover the input tax reclaimed on the basis of the Disputed Invoices.

10 37. Mr Day conceded, under cross-examination, that HMRC should not have redacted the areas that it did and should have made his other notes available to London Wiper. He did not accept, however, that any of those matters would have made him change his decision. He confirmed that the address for Bempton had been provided to Companies House as that was the address under which Northstar Transport Ltd was registered before the name changed to Bempton. It would appear that the address at Companies House was not changed until 14 June 2007. He also
15 conceded that HMRC had accepted all the addresses in relation to the earlier invoices. He agreed that where payments had been made by cheque HMRC had accepted that the invoices were valid. He also confirmed that when visiting London Wiper he was given a list of all their suppliers and he had inspected their records. Mr Angiolini suggested that Mr Day and HMRC had taken action against London Wiper because
20 they knew that Bempton had 'done a bunk' and there was no prospect of obtaining and VAT payments from Bempton. Mr Day could not satisfactorily answer questions as to the assets which Bempton might have had which might have been available to recover their outstanding VAT. Mr Angiolini put it to Mr Day that HMRC had decided that they could pursue London Wiper with more success. Mr Day replied that
25 that had been a management decision. Furthermore Mr Day considered that London Wiper had inadequate evidence to justify the validity of the Disputed Invoices. The redacted material revealed that Mrs Pickering contacted Mr Day on several occasions to ascertain whether London Wiper could trade with specific companies. Mr Angiolini suggested to Mr Day that Mr Day should have warned London Wiper as to the
30 problems with the three companies. He said that he had not thought of that. Mr Day did not accept that he was wrong to rely on a letter from a solicitor. He accepted his correspondence had not mentioned that the documents had been stolen from the vehicle.

35 38. With regards to Valley Wood Mr Day conceded that he had not taken into account that Valley Wood might have been trading from 'Vallets Wood Works' in spite of Mr Woods evidence to the effect that he had made a delivery from that address. Mr Day was unable to say why he had got the de-registration date for Valley Wood as 2006 rather than 2007. He also failed to check the Companies House address against the VAT registered address for Power & Civil. In his letter of 7 August 2007
40 he had said that London Wiper should have checked the VAT register for Power & Civil before they started to trade with them. Mr Angiolini told him that they did and suggested that this was a further error. Mr Day confirmed that he was unhappy about the cash figures provided by Mrs Pickering because they had not been independently prepared. He was also surprised that Mrs Pickering or other members of staff were
45 prepared to collect substantial sums of money from the bank. He suggested that it

would have been much better to arrange for payment by BACS or CHAPs. The fact that the cash had been withdrawn in round figures made it harder for London Wiper to justify the amounts. He suggested that it would have helped if London Wiper had taken the exact amount it needed to cover the cash payments. We have found Mr Day's evidence far from satisfactory. Under cross-examination he was vague as to his answers and had not checked matters properly

The Law

39. Article 17 (2) of the Sixth Directive provides:

10 "In so far as the goods and services are used for the purposes of his taxable transactions, the taxable person shall be entitled to deduct from the tax which he is liable to pay:

15 (a) value added tax due or to be paid within the territory of the country in respect of goods or services supplied or to be supplied to him by another taxable person..."

The exercise of that European law right to deduct input tax is circumscribed by Article 18 (1) which states:

20 "To exercise his right to deduct, the taxable person must: (a) in respect of deductions under Article 17 (2) (a), hold an invoice, drawn up in accordance with Article 22 (3)..."

Article 23 (3) provides:

25 "(a) Every taxable person shall issue an invoice, or other documents serving as invoice in respect of all goods and services supplied by him to another taxable person, and shall keep a copy thereof. Every taxable person shall likewise issue an invoice in respect of the payments on account made to him by another taxable person before the supply of goods or services is effected or completed.

30 (b) The invoice shall state clearly the price exclusive of tax and the corresponding tax at each rate as well as any exemptions.

(c) The Member State shall determine the criteria for considering whether a document serves as an invoice

Regulation 14 of the Value Added Tax regulations 1995, outlines the requirements for a valid invoice as follows:

14 (1) Subject to paragraph (2) below and Regulation 16 [and save as the Commissioners may otherwise allow] a registered person providing a Vat invoice in accordance with regulation 13 shall state thereon the following particulars-

- 5 (a) [a sequential number based on one or more series which uniquely identifies the document],
- (b) the time of the supply,
- (c) the date of the issue of the document,
- (d) the name, address and registration number of the supplier,
- 10 (e) the name and address of the person to whom the goods or services are supplied,
- (f)
- (g) a description sufficient to identify the goods or services supplied,
- 15 (h) for each description, the quantity of the goods or the extent of the services, and the rate of VAT and the amount payable, excluding VAT, expressed in [any currency]
- (i) the gross total amount payable, excluding VAT, expressed in [any currency],
- (j) the rate of any cash discount offered,
- 20 (k).....
- (l) the total amount of VAT chargeable, expressed in sterling

In circumstances where an invoice does not meet these requirements, Regulation 29 (2) confers upon the Commissioners a discretion whether to accept:

25 “such other...evidence of the charge to VAT as the Commissioners may direct”

as evidence of the supplies in question having been made, and to permit a deduction on that basis.

30 The Commission have issued a Statement of Practice on ‘VAT Strategy: Input Tax deduction without a valid VAT invoice – Statement of Practice March 2007’ (Statement of Practice) which outlines how their discretion under regulation 29 (2) is to be exercised.

Submissions by Mr Smith for HMRC.

40. Mr Smith submitted that none of the Disputed Invoices is valid. London Wiper has accepted this and the burden of proving that the supplies took place lies with them. EU law permits HMRC to refuse the right to deduct simply on the basis of an invalid invoice. The United Kingdom has broadened the scope for taxpayers, permitting deduction when alternative evidence of a supply can be provided, but that is an exception to the general rule that a valid invoice must be provided, and must be interpreted strictly. This is confirmed by the Advocate General in Case C -85/95 *Reisdorf v Finanzamt Koln-West* [1996] 6257, at paragraphs 25 and 26¹:

“25. As I have said, Article 18(1)(a), subject only to Article 22(3)(c), unambiguously requires the taxable person to ‘hold an invoice’ in respect of the deductions which he claims are due under Article 17(2). Member States are also free to specify, in addition to the information required by Article 22(3)(b), the other information which must be contained in an invoice. The powers reserved to Member States in this respect should not, in my opinion, be interpreted as diminishing the importance of the invoice. I am satisfied that the basic obligation imposed upon the taxable person by Article 18(1)(a) to retain possession of the invoice remains unless and until the relevant Member State prescribes other documents or proofs which may be accepted in its place. However, such other documents or proofs must satisfy the overriding objective of the Sixth Directive of ensuring the proper application of the Community VAT scheme.

“26. This interpretation does not conflict with Article 18(3) of the Sixth Directive, which permits the Member States to determine conditions and procedures for the making of deductions notwithstanding failure to comply with the requirements of Article 18(1) and (2). It is clear, in my opinion, that this is an exceptional provision which should not be interpreted broadly. Where a Member State’s tax authorities are, however, satisfied that, despite the inability of the taxable person to produce an invoice, a deductible supply has occurred, then it is perfectly in accordance with the overall scheme of the Sixth Directive that they should nevertheless permit the claimed deduction.”

41. This is borne out by the conclusion of the ECJ in *Reisdorf*, set out at paragraph 31.

“... Article 18(1)(a) and Article 22(3) of the Sixth Directive permit Member States to regard as an invoice not only the original but also any other document serving as an invoice that fulfils the criteria determined by the Member States themselves, and confer on them the power to require production of the original invoice in order to establish the right to deduct input tax, as well as the power, where a taxable person no longer holds the original, to admit other evidence that the transaction in respect of which the deduction is claimed actually took place.”

The statements by the AG and the Court demonstrate the limits imposed on HMRC (and the Tribunal) by European Law as to the circumstances in which deduction can be permitted in the absence of a valid invoice. Such deduction is permitted only where
5 is established that the transaction in respect of which deduction is claimed actually took place.

42 What is meant by the reference to ‘the transaction’ in this context? It must refer to a supply by an identifiable supplier. If London Wiper cannot establish who made the supply, HMRC are entitled to reject the claim for deduction. To do
10 otherwise would be contrary to fiscal neutrality as HMRC would have no ability to pursue the supplier for output tax, or even to verify that the supplier was a taxable person. One aspect of fiscal neutrality is that input tax is deductible because the supplier is liable for output tax. London Wiper cannot rely on an invalid invoice, or a single load on the weighbridge, suggesting a value of material which exceeds the
15 registration threshold to establish that a taxable supply took place. London Wiper has to prove that ‘the transaction’ actually took place, which involves proving who the supplier was. This submission is not undermined by the approach of the Tribunal in *Masood Ahmed* [2007] VAT Decision no 20119. In that case the Tribunal held that the disputed supplies were taxable, despite being made by an unregistered trader, because that trader’s turnover exceeded the registration threshold². Therefore the
20 trader was registrable and the supplies were taxable. The distinction between that case and this is that in *Ahmed* there was no dispute that the supplies were made by a particular company, called “Euro-tex”. The issue in that case was whether, despite deregistration, the supplies made by Euro-tex were taxable – the Tribunal held that they were. In this case, of course, there is a dispute as to the identity of the supplier which London Wiper is obliged to prove. HMRC’s case is that it is impossible to tell who made the disputed supplies.

43. Mr Smith submitted that the burden of proof is on London Wiper to prove that the goods exist. Power & Civil was a labour recruitment company, which could not be
30 tracked down and which was deregistered without any objection being raised by Power & Civil. He said that Mr Hughes stated in evidence that he believes that the person he dealt with, who used Power & Civil’s name, was involved in organised crime. Mr Hughes may well be correct, but, of course, that points away from him dealing with the real VAT registered company Power & Civil and completely
35 undermines London Wiper’s case. It also assumes that London Wiper was supplied with material by someone using the Power & Civil invoices (this argument applies equally to the Bempton and Valley Wood invoices and should be read accordingly). Given the absence of any evidence that Power & Civil itself issued the invoices and the way in which the invoices were generated (by London Wiper inputting details of
40 the material and price onto a blank invoice), there is a possibility that the invoices were produced by them to cover up illicit supplies of scrap or seek to recover input tax on supplies which were not taxable. Mr Smith submitted that is not fanciful to suggest that London Wiper was in receipt of supplies of material from persons, who were not taxable, either by reason of their level of turnover or that the goods were

sourced illegally, and London Wiper included those supplies on invoices from an apparently taxable trader to enable it to recover input tax.

44. Mr Smith continues by saying very little is known about Valley Wood, save that one deduction has been allowed on one invoice based on the independent haulier's evidence. However, in common with all three suppliers, none of the other invoices can be linked to a vehicle which made a delivery to London Wiper. The way in which such a link can and should be made is by reference to the weighbridge certificates, which are designed to record the registration numbers of the delivery vehicles. In common with the other two suppliers, none of the deliveries, except one, can be linked to a vehicle which could have made or did make the delivery. In fact none of the registration plates were correct apart from two, which referred to London Wiper's own vehicles. Nor is it an answer for Mr Hughes to say that he had difficulty reading and writing. If that was true he ought not to have been working on the weighbridge at all, nor would he have been able to run a business as successful as London Wiper.

45. He submitted that Bempton is the only one of the three suppliers which has had any input at all into the evidence before the Tribunal and this is admittedly small. It amounts to the denial, through its solicitor, that it issued the Disputed Invoices and a subsequent letter to London Wiper, which did not contradict that position. It is submitted on London Wiper's behalf that this input is hearsay and unreliable and it does not prove that Bempton did not issue the invoices. That may be, but it mistakes the burden of proof in this case. That burden lies solely on London Wiper. It is not for the HMRC to call evidence to prove that the supplies did not take place when the invoices are invalid. London Wiper appears to have made contact with Bempton after the assessments and so had the opportunity to obtain evidence from those involved in that company.

46. Mr Smith maintained that London Wiper has to prove that the particular transactions took place. It cannot do this and has not done this on the evidence put before the Tribunal. Instead, it points to invalid invoices as sufficient in and of themselves to establish the right to deduct. This is plainly the wrong approach, as demonstrated by the judgment of the ECJ in Case C-342/87 *Genius Holdings BV v Staatsecretaris von Financien* [1988] ECR 4517. In that case the taxpayer sought to recover VAT simply because it was included on invoices in its possession, despite such VAT not actually being due. The Court concluded that:

35 *"It follows that that right [to deduct input tax] cannot be exercised in respect of tax which does not correspond to a given transaction, either because that tax is higher than that legally due or because the transaction in question is not subject to VAT."*

40 In this case London Wiper cannot even establish the transaction, because it cannot identify the supplier or that the supplies took place as described on the invoices.

47. The Disputed Invoices were completed by London Wiper and are hardly independent in relation to their content. There are problems with the addresses for all three companies as they were out of date. The addresses should have been the places where the essential decisions concerning the companies' general management took place. A fictitious presence, such as a "letter box" or "brass plate" will not suffice. (See: CASE 73/06 *Planzer* [2007] ECR 1-5655). Furthermore, Power & Civil had

been de-registered before the completion of all its transactions with London Wiper. In those circumstances it is more likely that these invoices were being used by a third party.

5 48. London Wiper has not established, on the balance of probabilities, that the supplies took place. The cases discussed previously establish that there are two separate matters that a taxpayer has to establish before HMRC are obliged, or permitted, to credit or pay an amount of input tax – first, that there is a *right* to deduct under article 17(2)(a) of the Sixth Directive and secondly that the taxpayer is entitled to *exercise* that right. The only way in which London Wiper can justify its supplies is from the weighbridge certificates. Mr Hughes was responsible for completing the certificates and even corrected a certificate completed by Mr Townson. Mr Smith submitted that Mr Hughes was not an impressive witness. His evidence under cross-examination was at times evasive, at times dogmatic and on other occasions entirely lacking in credibility. Mr Hughes assured the Tribunal that it was impossible to re-enter incorrect weights in the weighbridge certificates. He also made extraordinary and unbelievable claims to memory. When asked about a Valley Wood invoice with two weighbridge certificates dated 27 and 24 February 2006 he told the Tribunal that he could remember the particular vehicle that made the delivery (one which had Valley Wood painted on it). Given the large number of deliveries per day and the fact that this was five years ago it is obvious that Mr Hughes would not be able to remember those particular loads, and yet that is what he claimed when giving evidence under oath. He was given several opportunities to retract from that position in cross examination, but he did not take them.

15 49. Mr Hughes also claimed to be able to remember crossing out the supplier name on the weighbridge certificates completed by Mr Townson which were dated 24 August 2005. Again, this is simply not credible and reveals a willingness on his part simply to say anything which he thought would help his case. He became confused when cross-examined about the exhibit, enlarging on his observations on the various weighbridge certificates and the vehicle numbers, which conflicted with his evidence given before the Tribunal. The details of the vehicles and hauliers were incomplete. Mr Hughes had alleged that ‘own’ meant the suppliers vehicles, but then suggested it meant ‘London Wiper’s’. Under cross-examination he suggested it meant both meanings, which essentially rendered the entry meaningless. Mr Hughes could not give a satisfactory description of the types of lorries involved. They seemed to vary between ‘articulated trailer’ ‘lorry’ or ‘skip’. When confronted with registration GF56 YTE, he claimed that lorries could also carry skips, which were then removed with a grab.

25 50. Mr Hughes characterised the Appellant’s business as a cash business in his first witness statement. At paragraph 27 he said,

40 *“The scrap business is a cash business. In my experience all scrap metal and processing plants pay for material in cash ... However for London Wiper, the majority of the material is purchased from either BT or Skanska, and that material is paid by cheque and not cash.”*

45 51. The clear implication from that is that most of London Wiper’s purchases were made in cash, save for material purchased from BT or Skanska which were paid for by cheque. However, an examination of the evidence reveals this not to be the case. There is a long list of suppliers exhibited to David Butler’s witness statement.

When that is compared to London Wiper's Cash Payments Book for the relevant period it can be seen that only four suppliers were the recipients of regular cash payments from the Appellant – the three disputed suppliers plus Chip Logistics. In addition to this there are seven other suppliers who received one or two cash payments in the period, but nothing like on the same scale.

52. Mr Smith therefore concluded that when Mr Hughes describes London Wiper's business as a cash business this is misleading. Cash was paid to a very small proportion of its suppliers. Alleged supplies from three out of the four main recipients of cash payments are impossible to verify. This leaves a very real suggestion that cash was used in relation to these supplies to hide the true identity of the suppliers because of the inherent difficulties in tracing where the supplies go. Mr Hughes' claim that London Wiper's business is a 'cash business' is a smokescreen to suggest that this is common practice when in fact it is a minority practice.

53. HMRC submit that the evidence given by Mr Hughes and his resulting lack of credibility is such that it is all too believable that he may have manipulated the records in order to make claims for deduction of input tax where none is permitted. The evidence from the accountants also relied on information provided by Mr Hughes and London Wiper. Mr Perkins gave evidence as to cash flow. He conceded that his evidence depended on London Wiper's records having been completed properly, which was not something that he could have checked, and that he could not ascertain to whom cash was paid. Given one of the main issues in this case was the identity of the suppliers, this evidence was not particularly illuminating. HMRC do not doubt that London Wiper made cash payments, but the question is to whom and for what.

54. Mr Butler gave evidence as to weights, to the effect that if London Wiper had not received the weight of material in the disputed supplies, it would not have been able to make the onward supplies that it did. His evidence was somewhat undermined by the assumptions that he made. Firstly, he assumed a 500 tonne stock increase, but was unable to explain how he arrived at this increase; he thought it might have been because there was an increased value of stock included in the management accounts (which were not before the Tribunal), but conceded that this might have been inaccurate due to price volatility. Secondly, he assumed that all of the processed material would be subject to a weight increase of between 12 and 20%. Mr Hughes' evidence showed this assumption to be incorrect as not all the material was subject to a wet process and therefore not all would have its weight increased. This undermines the accuracy of Mr Butler's evidence. Mr Smith submitted that expert scientific evidence as to the retention of water by the materials needed to be provided, but it had not been available, therefore Mr Butler's evidence in this regard was unreliable.

55. Mr Smith submitted further that from the evidence before the Tribunal London Wiper has not established that the transactions referred to in the Disputed Invoices took place. If the Tribunal decides that the supplies did take place, then HMRC has to show that Mr Day acted reasonably in not allowing London Wiper to treat the Disputed Invoices as valid. His decision can only be considered at the time he made the determination. HMRC has, however, agreed that further evidence could be taken in to account and this was considered in a further review, which reaffirmed Mr Day's

decision and the Tribunal is invited to conclude that a full review of all the evidence was undertaken.

56. The question for the Tribunal when considering this aspect of the case is that set out by the Court of Appeal in *John Dee Limited v Commissioners of Customs and Excise*[1995] STC 941 (i.e.) whether HMRC had acted in a way in which no reasonable panel could have acted or whether they had taken into account some irrelevant matter, or had disregarded something to which they should have given weight. It is submitted that by a combination of Mr Day and the subsequent review all relevant matters were taken into account, nothing irrelevant, and the ultimate decision to disallow the input tax could not be said to be one which HMRC could not have reached.

57. Great play was made of Mr Day's application of HMRC's Statement of Practice to London Wiper's case with regard to an input tax deduction without a valid invoice. It is submitted that his application of this policy was entirely reasonable and, indeed, required. Had he not acted within this policy doubtless London Wiper would be criticising him for that and alleging a lack of reasonableness on that basis. He admitted that he went through the questions required under that policy in a mechanistic way. However, those questions are designed to give the taxpayer the opportunity to provide evidence that the supplies had taken place. Mr Day was also plainly willing to take into account anything that London Wiper told him which supported its case. He sought to fit what he was told into answers to the questions, not always comfortably, but broadly speaking he did take everything into account. The way in which he did this is irrelevant.

58. In summary Mr Smith suggests that if the Tribunal finds that, nevertheless, the decision making process was flawed, it must go on to consider whether, had a reasonable process been adopted or had all relevant material been taken into account, the decision would inevitably have been the same. If so it may dismiss the appeal. It is submitted that, in this case, given the evidence heard by the Tribunal there was only one reasonable decision and that was to disallow the input tax.

Submissions by Mr Angiolini for London Wiper

59. Mr Angiolini submitted that HMRC contend, in their closing submissions, that in order to demonstrate that an actual supply took place London Wiper must be able to show exactly to whom that supply was made - not merely that the goods were received and paid for - or there would be a breach of the principle of fiscal neutrality. This is because HMRC say, "*the Commissioners would have no ability to pursue the supplier for output tax, or even to verify that the supplier was a taxable person. One aspect of fiscal neutrality is that input tax is deductible because the supplier is liable for output tax*". Insofar as the alleged requirement is that the supply be a taxable one by reason of the supplier (whatever its identity) being registered or registerable, that is accepted. HMRC has had every opportunity to pursue Bempton. In so doing it would have accepted that both the original invoices and the Disputed Invoices formed part of the Bempton transactions. The only reason that HMRC did not pursue the assessments due from Bempton was because the 'management' had directed Mr Day to pursue London Wiper instead. This was after HMRC's failure to prevent Bempton 'doing a

bunk' (i.e. becoming a missing trader) in spite of its suspicion that it would do so, or to warn London Wiper of the risk of continuing to trade with Bempton. Mr Day admitted that the idea of warning London Wiper "*hadn't occurred to him*". It would appear that London Wiper switched to paying Bempton in cash shortly after Mr Day had made his visit to Bempton on 9 May 2007.

60. In relation to the decision not to take any action against Bempton, Mr Day's evidence was unimpressive. He was unable to recall the basis on which the decision was made. He retracted his suggestion that the amount to be assessed (£350,000) did not warrant further enquiry. He also conceded, under cross-examination, that he had made no attempt to discover whether Bempton had any assets sufficient to cover the proposed assessment. Mr Angiolini repeated his concern that the un-redacted report was not disclosed until the hearing. Given that its contents clearly support:

- a finding of evasion of output tax by Bempton (and related failure by HMRC to pursue such an evasion);
- highlighted the reason for the request for cash from London Wiper;

its relevance to this appeal should have been self-evident to HMRC's lawyers.

61. HMRC accepted, without questioning, a letter from Bempton's solicitors that Bempton had not made the disputed supplies even though:

- as Bempton was about to 'do a bunk' it is likely to deny having made any supplies
- Mr Day had no faith in Bempton's credibility and believed that the director of that company had already been involved in VAT evasion.
- Bempton claimed to have had the appropriate paper work stolen from the boot of a car
- Bempton's solicitors letter merely stated that 'they were instructed that Bempton did not make the supplies (i.e.) that was what their client had told them.
- Mr Day's reason for 'believing' what was stated was based on the fact that the letter had come from a solicitor.

Mr Angiolini submitted that at least in respect of Bempton HMRC would have to concede that the supplies existed.

62 Mr Angiolini pointed out that in Mr Day's audit report for Valley Wood the conclusion was that the supplies by Valley Wood *did* take place. In the same report Mr Day also indicated that the Valley Wood invoices had been identified by HMRC at the premises of other traders. Mr Day had also accepted that it was perfectly possible that Valley Wood was trading from the address shown on the Disputed Invoices between September 2005 and April 2006. Mr Bardsley confirmed that the address was a "*large clearing in the Forest of Dean in a fairly remote location*" and was "*big enough for a scrap metal business*". HMRC had established that Valley Wood operated from the address shown on the Disputed Invoices at some point in the past and made no further attempt to trace its subsequent location. This, Mr Angiolini submitted, clearly supports London Wiper's contention that Valley Wood, like Bempton, did make the disputed supplies and has since gone missing. Having decided to go missing, Valley Wood sought payment in cash in order to maximise the VAT it

would be able to evade and that London Wiper was an innocent victim of that company's evasion.

63 There is no requirement in law that London Wiper should be able to demonstrate to whom the supplies were subsequently made. London Wiper processed all of the scrap it received so that it is impossible to identify any particular supply to any particular ultimate product. London Wiper has the right to recover its input tax unless it can be established that it 'knew' or 'ought to have known' that they were part of a fraudulent transaction. HMRC have- quite correctly- not run a knowledge/means of knowledge argument in this case. That being so, if London Wiper can show that it received the goods from a taxable trader, and paid for them, then it should not be debarred from reclaiming its input tax.

64 Mr Angiolini pointed out that Mr Butler's evidence, which was not seriously disputed by HMRC, shows that unless London Wiper received the supplies indicated by the Disputed Invoices it could not have made the onward supplies that it did. The evidence reveals that some of the supplies were subjected to a 'wet' process. Mr Angiolini did not accept that this was a matter for 'expert scientific evidence' and invites the Tribunal to take judicial notice of the fact that any material will remain 'wet' if it has been in contact with water and it has not been dried off. If that is not accepted by the Tribunal then the input weights into London Wiper's business would fall even further short of the output weight and the argument does not assist HMRC. As HMRC have not put to Mr Hughes that London Wiper may have received the input weight, but that Mr Hughes had not recorded it, the Tribunal should disregard the allegations.

65 If the Tribunal is not satisfied that the three companies were responsible for all the supplies received it must accept that all the supplies must have been registered for VAT in view of the fact that their supplies exceeded the registerable threshold for VAT purposes. London Wiper do not need to prove the identity of the individual suppliers for the following reasons:-

- Mr Smith has submitted that HMRC do not doubt that London Wiper made cash payments, but queries to whom they were made. So long as the payments have been made to suppliers, who needed to be registered, that will suffice.
- HMRC cannot sustain an argument that London Wiper may have received the input material from a single agent, acting for multiple other parties (and acting as a front for criminal enterprises). Mr Angiolini submitted that that suggestion is very far-fetched, but, in any event, such an agent would be a 'taxable person'. There is, in any event, no evidence of such an agency before the Tribunal.

66. Mr Angiolini submitted that the Disputed Invoices remain good evidence that the supplies took place as the reasons for their invalidity are technical. They describe the quantity or amount of the goods; and the weighbridge certificates accompanying each invoice form a constituent part of that invoice. The suggested defects relating to the registered addresses and the date of the Bempton invoices are not sustainable:

- The address for Bempton is the address registered with HMRC for the purposes of VAT and with Companies House with regard to the company's affairs.
- Mr Day met with a representative of the company at the site.

- HMRC have communicated with Bempton at that address
- VAT returns have been submitted to HMRC by Bempton from that address.
- HMRC have already accepted this address on the earlier invoices for Bempton

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67. HMRC mislead the tribunal by suggesting that *‘Power & Civil had been de-registered before the date carried by a large proportion of the invoices carrying its name’*. Power & Civil were de-registered on 14 February 2006, albeit with retrospective effect from 6 September 2005. The Tribunal should note that less than half of the Power & Civil invoices were issued after 14 February 2006 and London Wiper were not told of the de-registration until 13 April 2007. Similarly Valley Wood’s de-registration had not commenced until 2007, after the Disputed Invoices had been issued.

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68. Mr Angiolini accepted that Mr Hughes’ evidence as to the Disputed Invoices and weighbridge certificates had been less than helpful. The Tribunal should accept that Mr Hughes has a very detailed knowledge of his business and there are certain things which are plain to him but which he is not necessarily capable of articulating clearly. Mr Hughes confirmed to Judge Porter that the ‘First Re-entered Weight’ is the only one that required manual input, whereas the remaining boxes are always automatically generated. The same procedures have been adopted for all London Wiper’s transactions including those for BT and Skanska. HMRC make numerous allegations of fraud against Mr Hughes. On the evidence it is more likely that the three companies acted fraudulently. If Mr Hughes was to create a fraud of the sort HMRC contends he is scarcely likely to have made the mistake of producing counterfeit numbers when he could have included the number plates of London Wiper’s own vehicles. Nor is it an answer for HMRC to allege that the tachographs and tracker devices in London Wipers own vehicles would have proved the vehicles had not been used. Such devices do not reveal where the vehicles have been but merely the distance covered.

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69. Mr Angiolini submitted that it is irrelevant to consider the onward supply of the goods in light of the fact that all the material is processed. It is also irrational to consider the cash payments as significant as a large amount of London Wiper’s business was in cash. Nor should the Tribunal be concerned that there was no return of faulty goods as London Wiper is dealing in scrap. The Tribunal should not be concerned that Mr Hughes failed to contact, or indeed visit, the suppliers of the company’s scrap. It is the nature of London Wiper’s business that individuals contacted them. Mr Day has applied HMRC’s Statement of Practice mechanically and has made his decision on the basis that London Wiper was engaged in the purchase and sale of goods without alteration or processing, which is irrational. Mr Day’s evidence before the Tribunal was unsatisfactory. He agreed that he had ignored a number of pieces of information; For example he views on the reliability and asset value of Bempton. His original decision was unreasonable. The further review was no better as it contained no reasoning but simply reaffirms Mr Day’s views. In the circumstances Mr Angiolini submitted that provided the Tribunal is satisfied the supplies took place, HMRC have no case left hat the exercise of their discretion was reasonable: it clearly was not.

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The decision

70. We have considered the law and the evidence and have decided that the goods existed and that Mr Day acted unreasonably in refusing to accept that the Disputed Invoices were valid. HMRC are in some difficulties in this case because they have
5 accepted that the earlier invoices in the same format as the Disputed Invoices (other than as to the date) were valid. Those earlier invoices presumably were acceptable to HMRC because they were paid by cheque. It is also clear from Mr Day's evidence that both Power & Civil and Valley Wood are defaulting traders within the missing
10 trader frauds current at the time of the Dispute Invoices. HMRC have indicated that three companies would have wanted to maximise the amount of cash they could obtain from London Wiper so that they could disappear with the same without accounting to HMRC for the VAT. HMRC have not attempted to show that London Wiper, through Mr Hughes knew or ought to have known that the transactions with
15 which he was involved were fraudulent. All three transactions took place between 2005 and 2007. We have been provided with the accounts for the periods 31 October 2006 and 2007. They reveal turnovers of approximately £16,000,000 for 2006 and £22,000,000. As the transactions straddle both periods and, for the purposes of this appeal, we have taken the annual turnover to be £19,000,000. If that is the case, then the transactions represent a substantial part of the turnover for the company during
20 that period. The three companies were substantial customers to the business during the period and subsequently the company has expanded considerably. We believe that the growth could not have taken place unless the goods had been supplied in this earlier period.

71. That is not the only reason that we believe the goods existed. In relation to
25 Bempton, HMRC has conceded that it had been trading and that HMRC had raised assessments based, amongst others, on supplies provided to London Wiper. The liquidator for that company has conceded that the cheque payments were made for the earlier goods and we believe, on the balance of probabilities that the supplies were also made for the cash transactions. Mr Osborne, Bempton's representative, has
30 shown himself to be dishonest and HMRC would have been prudent to rely on the evidence from Mr Hughes.

72. With regard to Valley Wood, HMRC have accepted that where a payment was made by cheque the goods existed. Furthermore, Stephen Mower completed a weighbridge certificate on 16 September 2005 for Valley Wood, a delivery which was
35 confirmed by Mr Wood of B J Waters (Transport) limited. Mr Bardsley, on behalf of HMRC, confirmed that the site, ostensibly used by Valley Wood, was big enough for a scrap metal business. There was no reason for Mr Hughes to believe, simply because he was asked to pay in cash, that the supplies came other than from Valley Wood.

40 73. In relation to Power & Civil three deliveries were taken; one on 29 January 2007 and two on 6 February 2007. Mr Hughes has told us that he was threatened for payment by Mr Lee and as a consequence he paid him £300,000. Mr Perkins has established that £300,000 was withdrawn from the bank on 11 May 2007 and that it appears to have been used to pay the three invoices in question amounting to

£280,785.05. Mr Hughes has also told us that two men arrived, ostensibly from Power & Civil, to collect the remaining goods which would complete the £626,824.90 still owed to Power and Civil. Mr Perkins has identified four invoices for the periods 23 February 2007, 27 February 2007 and two for 28 February 2007 which totalled £346,039.85. We have had no evidence as to why the goods delivered at the end of February 2007 were still available to be removed at the beginning of May 2007 and must therefore assume that they had not been processed. London Wiper, cannot in any event, claim any input VAT in relation to those four items and can only claim for the VAT for the invoices amounting to £280,785.05 and not on the entirety of the £300,000.

74. We accept that all the information provided to Mr Butler and Mr Perkins emanated from Mr Hughes. That is not unusual; most accountants have to rely on information provided by the officers of a company. The accountants had been acting for the company since 2002 and no evidence has been provided to suggest that they have either acted unprofessionally or would have cause to believe that the company was not continuing on a satisfactory basis. The analysis provided by Mr Perkins shows that the cash withdrawn from the bank by the company equates to the payments made to the three companies. Mr Butler's analysis is less satisfactory. He has taken the sales for the same period as the supplies. We have been told that the waste is processed so that there would be some delay between its acquisition and its ultimate sale. If this was a period of a month or more then the comparison would have to be made for the period July 2006 to June 2007 at least. We suspect that would not make a lot of difference. We are satisfied, however, that even metals when soaked in water will retain some water on their surfaces. We do not believe that a factor of 15.5% is inappropriate. What is clear from Mr Butler's figures is that London Wiper could not have achieved the growth it has in the two years 2006 to 2007 if it had not had an appropriate amount of supplies to process. We are satisfied from Mr Butler's report that a substantial amount of scrap must have been delivered to London Wiper during the period. Taking all these matters into account we are satisfied that London Wiper have, on the balance of probabilities, received the goods as identified in the weighbridge certificates and invoices.

75. We have also decided that Mr Day has not acted reasonably in refusing to accept that the Disputed Invoices are valid. The European cases confirm that it is for the member states to decide what evidence, if any, they will accept as evidence that a valid invoice has been produced. In that context HMRC, are in considerable difficulties in refusing to accept that the addresses are not correct. This is not least because they have already accepted that they were correct for the earlier invoices. In relation to Valley Wood, Mr Day has accepted, as a result of the evidence from Mr Wood and Mr Bardsley, that there has been some activity on the property allegedly used by Valley Wood. In relation to Bempton it is clear from Mr Day's reports that HMRC have dealt with Bempton at the same address as London Wiper. Furthermore, the addresses for both Power & Civil and Bempton are the addresses that those companies have used for registration purposes both at HMRC and Companies House. In relation to Power & Civil, Mrs Pickering had enquired of the registration at HMRC prior to trading. It is significant that Mr Day had not realised that fact and in his

review stated that the company should have made that same enquiry before it started to trade.

5 76. Power & Civil had de-registered with effect from 6 September 2005 but 24 of
the 70 invoices issued by that company, upon which the assessment was based, were
issued between April 2005 - August 2005. London Wiper had made enquiries before
it started trading; it had a successful trading pattern with Power & Civil, one of its
principal suppliers, up to the time that Mr Hughes was threatened By Mr Lee.
Thereafter, it carried out no further business and returned the goods it could not pay
for. This case has not been processed on the basis that Mr Hughes knew or should
10 have known, when he was asked to pay cash that something untoward was occurring.
It may be that he should have made further enquiries, but we suspect he was content
to keep trading because of the volume of business. His knowledge is irrelevant as to
whether the invoices were valid. They had been accepted in the past. Even HMRC
had been content to allow Power & Civil to continue trading using the same address.
15 It was unreasonable of them to refuse to accept the information on the invoice merely
because they then knew that Power & Civil were a defaulting trader, Mr Hughes was
not privy to that information.

20 77. The position with regard to Bempton is the same as to the address, but the
invoices in question were undated. However, if Mr Day had checked the invoices for
the other two traders, he would have noticed that the date on the weighbridge
certificate was the same as the date on the relevant invoice. In those circumstances, it
is unreasonable not to allow a date on a similar basis for the Bempton invoices. It is
unfortunate that HMRC decided to redact the information on Mr Day's notes from his
audits for Bempton. We agree with Mr Angiolini that HMRC decided to pursue
25 London Wiper as it believed it would have a better opportunity of recovering the VAT
lost to Bempton. The three companies appear to have been part of missing traders
investigations. HMRC rightly decided that it could not pursue London Wiper on the
basis that Mr Hughes knew or should have known that he was involved with fraud.
Scrap metal has, as far as we are aware, never previously been used for contra-trading
30 chains. Mr Hughes knowledge could only be relevant if the weighbridge certificates
were inaccurate as to the supplies, their value and the customers. We have decided
that the supplies have been made and paid for as indentified above. As a result Mr
Day should have accepted the alternative information when considering the invoices.

35 78. Power & Civil was de-registered on 14 February 2006, albeit with
retrospective effect from 6 September 2005. This de-registration was not
communicated to London Wiper until 13 April 2007 after London Wiper had finished
trading with them. As to Valley Wood, Mr Day's note on 24 May 2007 indicated that
it was believed that supplies had taken place and that a debt would be needed to de-
register the company. The process to de-register than took place after the transactions
40 entered into with London Wiper. London Wiper was unaware of that de-registration.
It had been dealing with Valley Wood since September 2005 and had no reason to
suppose that the registration was not in order.

79 Regulation 14 of the Value Added Tax Regulations 1995, outlines the requirements for a valid invoice as follows:

5 14 (1) Subject to paragraph (2) below and Regulation 16 [and save as the Commissioners may otherwise allow] a registered person providing a VAT invoice in accordance with regulation 13 shall state thereon the following particulars-

- (a) [a sequential number based on one or more series which uniquely identifies the document],
- (b) the time of the supply,
- 10 (c) the date of the issue of the document,
- (d) the name, address and registration number of the supplier,
- (e) the name and address of the person to whom the goods or services are supplied,
- (f)
- 15 (g) a description sufficient to identify the goods or services supplied,
- (h) for each description, the quantity of the goods or the extent of the services, and the rate of VAT and the amount payable, excluding VAT, expressed in [any currency]
- (i) the gross total amount payable, excluding VAT, expressed in [any currency],
- 20 (j) the rate of any cash discount offered,
- (k).....
- (l) the total amount of VAT chargeable, expressed in sterling

25 79. As a result of the evidence deduced by London Wiper, we are satisfied that all the invoices, when combined with the weighbridge certificates, provide all the necessary information to validate the invoices and that Mr Day and Mr Mick Brewis acted unreasonably in refusing to accept that there was sufficient alternative evidence. As our jurisdiction in this regard is supervisory, we direct that HMRC arrange for the invoices to be reviewed again by somebody other than Mr Day and Mr Brewis .

30 80. We reserve our decision with regard to costs. We consider that costs must be decided under the earlier rules as the Appellant entered into this appeal on the basis of those rules and not the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. We direct that the Appellant submit its application for costs to the Tribunal and to the Respondents within 28 days from the release of the decision. The Respondent

shall reply within 56 days with the Appellant's right to reply within 70 days. The tribunal will decide the costs on the basis of written representations.

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

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TRIBUNAL JUDGE
RELEASE DATE: 5 July 2011