



TC01819

Appeal number: TC/2009/12913

Value Added Tax – Input tax – Taxpayer paid for goods which were not delivered – Whether Supply – Yes – Whether taxpayer entitled to credit for input tax – Yes – Appeal allowed

FIRST-TIER TRIBUNAL

TAX

DAVID PETERS LTD

Appellant

- and -

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

Respondents

TRIBUNAL: DR K KHAN (Judge)

Sitting in public in London on 28 November 2011

Paul Windmill, Accountant Myers Clark, for the Appellant

Gloria Orimoloye HMRC Officer, for the Respondents

DECISION

The Appeal

5 1. This is an appeal by David Peters Ltd (“the Appellant”) against an assessment raised by Her Majesty’s Revenue and Customs (“The Respondents”) disallowing £118,335 of input tax claimed in the period ending 10/06, plus interest of £15.334. An assessment was issued on 17 September 2008. Following a review, the decision
10 contained in a letter dated 29 August 2008 was upheld by letter dated 23 June 2009.

Background Facts and Correspondence

15 2. The Appellant is a limited liability company (“Company number 05462124) and has been registered for VAT since 14 March 2006 under VAT Registration number 875 3872 76.

3. On their application for VAT registration, the Appellant described their business activity as “sale of plant and machinery”.

20 4. Mr David Peters is recorded as director of the company and Miss S L Peters as both a director and company secretary.

25 5. Officer David Venable of the Respondents’ Southend-on-Sea office visited the Appellant on 8 January 2008. During the visit Officer Venable interviewed the Appellant’s bookkeeper Sandra Corbett and Mr David Peters. He examined sales credit notes and re-invoicing for the period ending 10/06 and identified problems relating to Thorneycroft (1862) Ltd (“Thorneycroft”) – a business operated by an old friend of the Appellant. It later transpired that Thorneycroft had sold the stock
30 purchased by the Appellant, several times and the company was put into administration. The owner of the business Mr Ross, sadly took his life.

35 6. Officer Venable considered that a full review of all the Appellant’s activities for a reasonable period should be undertaken. A further visit was therefore arranged for 5 February 2008 to resolve outstanding issues.

40 7. On 5 February 2008 Officer Venable revisited the Appellant. On inspection of the Appellant’s records, Officer Venable had serious doubts about the Appellant’s 10/06 input tax claims. He felt that there may have been no supply of some of the goods.

45 8. On 26 June 2008 Officer Venable wrote to Mr Peters drawing his attention to the fact that the Appellant had claimed input tax in the period 10/06 for a large quantity of plant and machinery purchased from Thorneycroft which was never supplied. He referred to two invoices numbered 14901 and 14902 from Thorneycroft to the Appellant. Invoice 14901 which showed thirteen items with a total sale price of £265,785 of which £39,585 was VAT. The second invoice (14902) showed twelve

items with a total sale price of £528,000 of which £78,000 was VAT. The Respondents received these invoices which were sent with the 10/06 returns on 30 September 2006, after Thorneycroft had been put into administration on 5 September 2006. The Respondents took the view that the Appellant was unlikely to receive the plant and machinery stated on the invoice. Officer Venable allowed the Appellant 14 days to identify and provide evidence that the goods supplied by Thorneycroft had been received and was either in stock or supplied onward as taxable supplies.

9. On 8 July 2008, the Respondents received an e-mail from the Appellant confirming that some of the machines ordered from Thorneycroft were not delivered. On 29 July 2008, they confirmed by reference to the invoice numbers, the machines which had been received and those that were paid for but not delivered.

10. On 27 August 2008, the Respondents received the Appellant's 07/08 VAT returns with a credit note dated 15 July 2008 made to J D Demolition Ltd ("J D Demolition"). The invoice was for a sales price of £404,905 with £60,305 of VAT.

11. On 29 August 2008, Officer Venable wrote to the Appellant stating he was raising an assessment for VAT recovered and goods that were paid for but not supplied. He drew reference to section 24 Value Added Tax Act 1994 ("VATA").

12. The Respondents issued an assessment to the Appellant on 17 September 2008 for £118,335 underdeclared tax less £2,330 over-declared tax (totalling £116,005) plus interest.

13. On 31 October 2008, the Respondents received a letter from the Appellant dated 21 October 2008 requesting reconsideration of the matter as they disagreed with Officer Venable's claim that the Appellant had incorrectly claimed input tax in respect of the transactions with Thorneycroft.

14. Officer Venable wrote to the Appellant on 16 February 2009 explaining how interest on the assessment had been calculated. The interest was calculated on the repayment sum due at the rates of 7.5% and 8.5% for the periods 18 December 2006 to 29 August 2008.

15. The Appellant replied on 7 April 2009 disagreeing the Respondents' calculation of interest.

16. The Respondents wrote to the Appellant on 1 June 2009 to advise that the outcome of the Respondents' reconsideration would be notified in writing and on 23 June 2009 Review Officer Sarah Bates upheld both the £118,335 assessment issued on 17 September 2008 and the interest charged on the assessment. In that review, the officer drew reference to the High Court decision in *Pennystar Ltd* [1996] STC 163 ("Pennystar") a decision which disallowed input tax on the grounds that the goods were never delivered and title had not passed. They said that since there was no supply of the goods there could be no recovery of input tax.

Legislation

17. The relevant legislated provisions are as follows:

Sections 24(1), 26, 73 and 74 VATA 1994

Sections 24 and 26 VATA are fully stated below. Sections 73 and 74 VATA are summarised.

Payment of VAT by taxable persons

24 Input tax and output tax

(1) Subject to the following provisions of this section, “input tax”, in relation to a taxable person, means the following tax, that is to say –

- (a) VAT on the supply to him of any goods or services;
- (b) VAT on the acquisition by him from another member State of any goods; and
- (c) VAT paid or payable by him on the importation of any goods from a place outside the member States.

being (in each case) goods or services used or to be used for the purpose of any business carried on or to be carried on by him.

26 Input tax allowable under section 25

(1) The amount of input tax for which a taxable person is entitled to credit at the end of any period shall be so much of the input tax for the period (that is input tax on supplies, acquisitions and importations in the period) as is allowable by or under regulations as being attributable to supplies within subsection (2) below.

(2) The supplies within this subsection are the following supplies made or to be made by the taxable person in the course or furtherance of his business –

- (a) taxable supplies;
- (b) supplies outside the United Kingdom which would be taxable supplies if made in the United Kingdom;
- (c) such other supplies outside the United Kingdom and such exempt supplies as the treasury may by order specify for the purposes of this subsection.

73 Assessment of amounts due by way of penalty, interest or surcharge

This gives power to the Respondents to make an assessment to the best of their judgement in order to establish the traders' true liability and to create an enforceable debt for that period.

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74 Interest on VAT recovered or recoverable by assessment

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This section states that interest is due from the reckonable date (start date for the interest calculation) until payment.

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Witnesses

18. There were two witnesses who gave both oral evidence and provided witness statements. They were Mr David Venable of the Respondents and Mr David Peters of the Appellant.

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19. The evidence given by the witness was as follows:

Mr Peters made the following points in his oral and written evidence

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1. Confirmed his witness statement. He stated that he had dealt with Mr Ross of Thorneycroft on several occasions over a thirty year period.

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2. There was nothing to suggest that Mr Ross was not the owner of the plant and machinery, being sold. There were no suspicious circumstances surrounding the transactions.

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3. Some of the plant and machinery purchased was delivered and some were not delivered (16 of 42 were delivered).

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4. Some of the machines purchased were stored at a different depots throughout the country and therefore not all deliverable at the same time.

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5. Mr Ross said that he had purchased the assets of a company Saville Tractors Ltd ("Saville Tractors") and he needed some urgent funds to pay for the machines. He was willing to do an attractive deal to the Appellant.

6. He confirmed that he had made an onward sale of some of the plant and machinery to J D Demolition.

Mr Venable

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1. He confirmed the contents of his witness statement.
2. He does not dispute any of the facts, most of which were presented earlier in the background facts.
3. He explained the VAT calculations.
4. He said that he refused a credit on the sale to J D Demolition since the 118,000 on the original purchase of the plant and machinery was not input tax for the purpose of s.24 VATA

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20. The Tribunal was provided with a file containing all correspondence between the parties together with documentation and relevant case law authorities.

The Matter in Dispute

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21. There are two core issues in this case. These are:

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1. Whether there was a supply of machinery by Thorneycroft to the Appellant for the purposes of s.24 VATA.
2. Whether any interest payments are due by the Appellant and if so how much.

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Appellant's submissions

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22. The Appellant says that there was a supply for the purposes of section 24 VATA. While accepting that the company did not receive the physical plant and machinery as a result of the fraud committed by the supplier, they confirmed that they had entered into the transaction in good faith having completed several previous transactions with Mr Ross of Thorneycroft over a thirty years period. The transaction was at market value, VAT invoices were received and payment was made. The company was completely unaware of any fraud being carried out by Thorneycroft and had taken all reasonable steps to obtain delivery of the machinery. The output tax should have been declared by Thorneycroft and payment should be requested from them and accordingly the Appellant should be allowed to reclaim the input VAT on the transactions.

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23. The Appellant says that the original HMRC assessment was for £118,335 plus interest of £15,334. Sale credit notes were however issued amounting to VAT of £65,555 leaving net VAT payable of £52,780. The Appellant had sold the half share

of the plant and machinery which they had purchased from Thorneycroft to J D Demolition. Sales invoices were raised by the Appellant to J D Demolition at the same time as receiving the invoices from Thorneycroft. HMRC have not deducted the output tax on the sales invoice raised to J D Demolition from the input tax on the invoices received from Thorneycroft. The Appellant says that if there was no supply of goods from Thorneycroft to the Appellant then there could not have been any supply of goods from the Appellant to J D Demolition. There does not appear to be any consensus in the treatment of the two transactions. Consequently, the Respondents have disallowed the input tax and charged interest but accepted payment of the output tax without any credit to the Appellant.

24. The Appellant believes that the decision in *Ross Pharmacy Ltd v Her Majesty's Revenue and Customs* (Decision 20634, 31 March 2008) ("Ross Pharmacy") is relevant. They draw reference in particular to the statement by Judge Tildesley who stated that an unwitting party to a fraud who acted honestly was entitled to claim the input tax where goods were not supplied due to the fraud.

The Respondents' position

25. The Respondents contend that there is no supply of goods or services where, though payment was made, the goods were never physically supplied. The recovery of input tax is only allowed where there has been an actual supply of goods and services and appropriate evidence is provided to support that position.

26. They say that the case cited by the Appellant in support of their argument, *Ross Pharmacy*, is a case where the Tribunal was satisfied that the supply took place. The Tribunal found the Appellant in that case met the requirements of section 24 VATA. Similarly in the case of *Pennystar*, a case on which the Respondents rely, the High Court found there was no supply of goods and consequently the Appellant could not have incurred the input tax in dispute since no goods were delivered and title had not passed in the goods to the Appellant. Their core point is that there has been no supply according to the facts as presented.

27. The Respondents say that the interest has been correctly charged under the provision of section 74 VATA from 18 December 2006, the date the Appellant's 10/06 repayment to the point where the repayment return for 07/08 was offset against the Respondents' assessment i.e. the assessment calculation date of 29 August 2008. They say that the assessment was properly made and notified to the Appellant under section 73 VATA. The assessment was made within the relevant time limits contained in section 76 VATA. They say that their decision to disallow VAT in the sum of £118,335 claimed as input tax in VAT period 10/06 in respect of sales invoices issued by Thorneycroft for which goods were never delivered was properly made and the interest correctly charged.

28. The Respondents say that the Appellant has not satisfied the requirements for reclaiming input tax under section 24 VATA.

29. The Respondents rely on the case of *Icon Construction Services* (VTD 16416) (“Icon Construction”) which applied ~~the~~ decision in *Pennystar Ltd* and where there was an advance payment for goods which were not received.

5 Discussion

30. Let us start by looking at the evidence which was presented at the hearing.

10 31. The Appellant was offered plant and machinery by Mr Ross, a business associate of thirty years standing, who had acquired the assets of a company dealing in tractors, Saville Tractors. The Appellant was contacted by Mr Ross, who was the owner and director of Thorneycroft. They knew each other. Mr Ross explained that he had acquired the assets of Saville Tractors which he needed to sell. The acquisition was as a consortium of investors and they needed to realise cash quickly to pay for the assets which they had purchased. The evidence suggests that Mr Ross was prepared to make an offer to Mr David Peters which was both attractive and profitable. It was understood between the parties that the Appellant would act quickly to complete the purchase. Mr David Peters, on behalf of the Appellant visited the site of Saville Tractors to inspect the various assets for sale and now in the ownership of Thorneycroft. He selected certain of the plant and machinery which he wished to acquire. During the visit, Mr Peters said that Mr Ross appeared to be completely in charge of the site, the machines for sale and the administration of Saville Tractors. Mr Ross’s sister was responsible for sales administration. The Appellant said that there was nothing suspicious about the sale or his dealings with Mr Ross and he acted at all times as a bona fide purchaser of the goods. He believed that Thorneycroft owned the machines which were being offered for sale.

30 32. The plant and machinery which the Appellant wished to acquire was selected by Mr Peters and invoices were raised by Thorneycroft. The invoices show a schedule of stock, description of the goods, serial numbers of individual items which were individually priced and the agreed overall purchase price and VAT. The invoices (number 14901 and 14902 and dated 30 August 2008) were issued by Thorneycroft to the Appellant. From the items listed on the invoice and the schedule of stock, numbers 871 to 887 were delivered to the Appellant and numbers 888 to 912 were paid for but were not delivered.

40 33. Evidence was given by the Appellant that while 16 of the 42 items purchased were delivered and received, it was explained that several items which were not delivered were at different locations throughout the country and had to be delivered over time. It was agreed between the parties that delivery would take place at a different agreed date in the near future.

45 34. In evidence, Mr Peters, through his accountants Myers Clark, provided copies of Release Notes from Saville Tractors, for the purchased items which were released to the Appellant. These were dated 14 August 2006 and 4 September 2006. They were agreed by both parties and there were signatures for “Authority to Release” and “Received By”. The signatures for Received By were those of B Brooks and J

Cannon. The Release Notes identified goods which were to be collected from different depots including a depot in Sheffield and one in Bolton. In a facsimile from Thorneycroft to the Appellant dated 2 September 2006, authority was given to the Appellant to collect certain machines from the Stratford depot. In that facsimile document it was stated that “title to any goods offered for sale remains with Thorneycroft Ltd until the total sum agreed have been paid and cleared in full”. The Tribunal understands that the goods would have been paid in full by the Appellant at that time. All that remained to be done would have been for arrangements made for the collection of the goods. It was established in evidence that a large amount of stock purchased by the Appellant from Thorneycroft (stock numbers 920-942) had been invoiced to J D Demolition, with whom the Appellant had an existing business relationship and had completed several transactions beforehand. There was a contemporaneous onward sale of half the stock which the Appellant had purchased from Thorneycroft to J D Demolition. It was evident therefore that the transaction was to be completed quickly if the Appellant were to fulfil their obligations to J D Demolition.

35. The Appellant maintained stock books showing all plant and machinery that had been purchased. The stock numbers of the items purchased were identified in both the purchase and sales entries of the Sage computer system of the Appellant. The Respondents accept that the sales and purchases, as identified, did in fact take place and there is no dispute with regard to the transactions under review.

36. The Appellant has raised an issue under the Sale of Goods Act 1979 (“SGA”). The Appellant says that there was a contract for the sale of ascertained goods and there was an intention to sell the goods and therefore there was a valid contract of sale. The Appellant stated in the Notice of Appeal:

“The machinery purchased by the Appellant from Thorneycroft were all specifically chosen by the Appellant and the individual serial numbers were noted and quoted on the sales invoices from Thorneycroft. There was not therefore any sale of unascertained goods or unidentified goods. The decision in *Pennystar* makes reference to the Sale of Goods Act 1979 and possession of goods passing. In reviewing section 18 of the Sale of Goods Act 1979, this states:

“Where there is a conditional contract for the sale of specific goods in a deliverable state the property in the goods passes to the buyer when the contract is made, and it is immaterial whether the time of payment or time of delivery, or both, is postponed.”

Possession of the machinery had therefore passed to the Appellant and there had been a supply of goods”.

37. The Appellant asserts that there was a valid and binding contract for the sale of the goods and therefore an actual supply for the purposes of section 24 VATA and the VAT paid should be deductible as input tax.

38. The section of the SGA which are referred to by the Appellant deals with the transfer of property and title to goods purchased. The relevant provision is S.17 SGA. Under section 17(1) SGA 1979, the sale of specific or ascertained goods passes to the buyer at such time as the contracting parties intend. The intention of the parties is to be deduced from the contract. In our case, there is no written contract so the conduct to the parties and circumstances surrounding the sale becomes relevant in ascertaining an intention. If no such intention can be discerned, the Act provided rules in S.18 SGA to resolve the issue of when the property is to pass. The rules apply to the sale of specific goods.

39. Under section 18 SGA, where there is an unconditional contract for the sale of specific goods, as we have here, which are in a deliverable state, the property in the goods passes to the buyer when the contract is made, and it is immaterial whether the time of delivery is postponed, provided the goods are in a deliverable state. For this purpose, an unconditional contract means that the contract must not have any conditions of any sort and the goods must be in such a state that the buyer can take delivery. The Tribunal finds that both these conditions are fulfilled.

40. The Tribunal therefore takes the view that there is a constructive delivery of the goods, which is to say that while there is no change in the physical possession of the goods, the buyer acquires an immediate right to possession on payment. The completion of the sale is therefore separate from the physical delivery of the goods since the seller holds the goods for the buyer. The seller in fact becomes a bailie of the goods for the buyer. The seller does not dispute that there was a contract for sale and the goods were held to the order of the buyer. The seller released certain of the goods under Release Notes and intended to release the remaining goods once a request has been made to various depots holding the goods were identified. The tribunal has seen the Release Notes from two depots and an order to one of the depots, Stratford, to release goods in future to the buyer. There seems to be no dispute that there was an agreed contract of sale and the purchased goods were to be released to the buyer over time, when the depots holding the goods were identified.

41. The parties do not dispute that there was an unconditional contract of sale. There was nothing left to be completed between the buyer and the seller of the goods and it was agreed that the plant and machinery could be collected, at an agreed time, from the various depots once the Release Notes were issued. The goods were in a deliverable state (largely mobile tractors and diggers which could be driven away). From the documents and limited correspondence between the Appellant and the seller, Thorneycroft, there was nothing else which was required to be done to complete the sale. Given the existing relationship between the parties, it seems to the Tribunal that the Appellant would simply have had to show up and present the paid invoices showing the serial numbers of the machines which they wished to take away and the

appropriate Release Notes would be prepared and signed by the seller Thorneycroft to allow the buyer to take possession of the goods.

5 | 421. It is not disputed that there was a fraud perpetrated by the buyer on the seller. There was also an onward sale of half of the stock purchased by the Appellant to J D Demolition. The VAT on that sale was accounted for and paid. What are the implications?

10 | 432. When a party enters into a transaction after a fraudulent misrepresentation had been made to induce the contract, the contract remains valid and binding until made void. It is voidable. The Appellant treated the contract as valid and binding, and did not seek to set it aside. An innocent party who acquires goods in ignorance of a fraud committed by the vendor is not precluded from recovering input tax. The right to deduct input tax is only lost if the taxable person has participated in the fraud. The case of Ross Pharmacy supports this view.

15 | 443. The Tribunal finds that the Appellant is the owner of the goods and can therefore sell the goods to J D Demolition, a bona fide purchaser who had no notice of the original fraud. Thorneycroft, while in physical possession of the goods, were not the owners of the goods. Rather the owners were the Appellant. A distinction is made in English law between ownership (the Appellant) and possession (Thorneycroft) and that distinction is appropriate in this case. The owners will take priority to the title of the goods since on payment for the goods they acquired an immediate right to possession and an attendant right to sue in conversion. 20 | Thorneycroft therefore held the goods for the buyer, the Appellant.

25 | 454. Let us turn to the cases which the parties referred to at the hearing and in their written submissions.

30 | 465. The first case referred to was that of *Pennystar*. This was a case where a third party interposed themselves between the purchaser and seller of some computer equipment. The third party, who was paid to provide the computer equipment, absconded with the money and the Commissioners refused to allow a deduction in respect of the input tax paid for the computers to the buyers. The Tribunal found that 35 | the invoice was a valid invoice and that the tax had been correctly claimed. There was an appeal. The Court on appeal held that the purchaser was a victim of a fraud and possession of the computers had never passed to them and accordingly there was no supply at all and therefore there was nothing on which a claim for input tax credit could rest. The Court seemed to place significant emphasis on the fact that there was 40 | no invoice in the name of the purchaser and therefore there could be no valid claim for input tax arising on the fraudulent transaction. Further, the goods were not ascertained for the purposes of the SGA.

45 | 467. In the *Pennystar* case the Judge observed:

“No computers ever changed hands so the possession of the goods never passed from Morgan (Sellers) to anyone and it is palpable, in my judgment, that the property in the goods did not pass either.”

5 | 487. The Judge goes on to quote section 16 SGS 1979, which requires goods to be
ascertained under a contract of sale and concludes that there is “no evidence that I
could find on which there could be any conclusion reached that the goods in this
contract had been ascertained other than being part of the stock of Morgan and there
is certainly no evidence of the passing of possession of the goods”. The Court
10 | concluded that there was no supply of goods and there could be no recovery of input
tax. Our case can be distinguished since the buyer has an invoice issued by the seller
and the goods were ascertainable. The Tribunal does not accept the Respondents
submission that the goods were not ascertainable.

15 | 498. The second case relied upon by the Respondents is the case of *Icon
Construction* . In this case the Appellant was induced to make payment for coffee
vending machines where invoices were issued by the seller but there was no delivery
made of the goods. The tribunal in this case held that there was no supply for VAT
purposes and no entitlement to recover input tax. They relied on the decision of
20 | *Pennystar*. As in the *Pennystar* case, there was no evidence that specific goods had
been identified and passed into the possession of the buyer. The Court said that the
holding of invoices does not give rise to an entitlement to input tax. They concluded
that there was insufficient evidence to establish that there was a supply of goods and
consequently there was no entitlement to input tax.

25 | 5049. These two cases, *Pennystar* and *Icon Construction*, were largely decided on
their own facts. In those cases there was insufficient evidence to establish that a sale
had taken place and the goods were clearly not identified in the sales contracts. In the
latter case, the Court felt that the vending machines did not exist at all. In short, the
30 | Court could not find in these cases that the transactions in question had taken place
and a supply had been made. They therefore concluded that there was no right to
recover input tax.

35 | 510. The third case referred to, raised by the Appellant, is that of *Ross Pharmacy* a
case involving input tax and an onward supply of mobile phones in a transaction
where one party was unwittingly caught up in a fraud. The Tribunal pointed out that
where one party was so involved and they acted honestly they were entitled to make a
claim for input tax where the fraud prevented a supply being made. The Tribunal in
Ross Pharmacy applied the principle in *Optigen Ltd* and *Fulcrum Trading Co (UK)*
40 | *Ltd (in liquidation) v C&E Commissioners* (Cases C-354/03 and C-355/03). The ECJ
in that case stated that:

45 | “The right to deduct input tax ... could not be affected by the fact that
in the chain of supply of which those transactions formed part of
another prior or subsequent transaction was vitiated by fraud, without a
taxable person knowing or having means of knowledge”.

5 | ~~521.~~ The question in the Ross Pharmacy case was, whether, a party loses the right to recover input tax where they innocently acquire goods in a fraudulent chain. The court following the Optigen decision concluded that an innocent party does not lose that right. This supports the Tribunal's conclusion.

10 | ~~532.~~ The simple question which has to be answered in this case is whether there has been a supply and the short answer is yes. It is not enough to say that the Appellant simply did not receive the plant and machinery for which they had paid. This is accepted by parties. What is important is whether the Appellant paid for goods under an agreement with Thorneycroft and had a right to those goods even though they were still in the physical presence of the seller. The goods were ascertainable both under the invoice with their serial numbers and were inspected and chosen by the Appellant. The serial numbers were noted on the sales invoice and clearly identified the goods. The goods were clearly ascertainable and deliverable. There was nothing remaining to be done with regard to the goods and so the contract was not conditional. The contract was unconditional and payment had been made. The Tribunal agrees that there was a valid contract between the parties and the fact that delivery was postponed to a later date did not in any way effect the validity of their contract. It was the expectation of the buyer that the goods would be available after a reasonable time for collection since there were stored at different depots throughout the country. This case can be distinguished from the *Pennystar* case and the *Icon Construction* case in that in the former there was no invoice made to the purchaser and in the latter case the goods which were being purchased did not exist. The situation in this case is very different. The goods existed and there was a valid invoice made out to the purchaser, the Appellant.

25 | ~~543.~~ The Respondents have not provided any evidence to show that Thorneycroft did not have a right to sell the goods or indeed that another party acquired title to the goods before the Appellant.

30 | ~~554.~~ The Tribunal finds that the Appellant Company is entitled to a claim for repayment of the input tax for the relevant period under appeal.

35 | ~~565.~~ The only other matter which remains to be settled is the question of interest. Given that the Appellant is successful in their claim for repayment of the input tax there should be a repayment of the interest charged amounting to £15,334.

40 | ~~576.~~ Accordingly the appeal is allowed.

45 | ~~587.~~ 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.

**DR K KHAN
TRIBUNAL JUDGE
RELEASE DATE: 10 February 2012**

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