

DECISION

5 1. This appeal concerns amended assessments of excise duty, upheld on review, totalling £19,466,982.55 and amended assessments of VAT totalling £3,266,428.35.

2. The calculations of the sums in dispute are not challenged.

3. The appellant's liability to excise duty is alleged to have arisen under the Excise Goods (Holding, Movement, Warehousing and REDS) Regulations 1992 either because he imported the excise goods or because he caused the irregularity that took
10 the goods past the duty point without payment. Mr Young agreed that if the facts were as alleged by the respondents the appellant would be liable under those provisions and that no issue of law arose.

4. The liability to be assessed for VAT arose from the same alleged facts on the basis that, if the respondents' allegations were proved, the VAT would be payable
15 under the VAT Act 1994 on sales of the goods by the appellant acting as a taxable person in the UK all of which were taxable at the standard rate.

5. The respondents allege that the appellant is liable to pay the assessed duty and VAT because of his involvement in a fraud by which payment of duty on alcoholic drinks was dishonestly evaded by the importation of those goods which were dutiable
20 goods and which were not legitimately entered under any duty deferment regime and by which payment of VAT was evaded on their onward sale. The sole issue to be decided is the issue of fact about whether the appellant had acted as a party to that fraudulent evasion of the duty and tax. The respondents did not put forward any argument that the appellant would be liable to the duty or the tax on some other
25 ground if his involvement in the alleged fraud was not proved.

6. The appellant's name is Gurdip Singh Dhadwal but he is sometimes known just as Gurdip Singh. We will refer to him as Mr Dhadwal.

The existence of a fraud.

7. The goods are alleged to have been imported and/or dealt with in the name of
30 one of two entities. But it is alleged that those entities did not in fact import or deal with them and rather the appellant and another man named Karamjit Singh Sagoo (hereafter Mr Sagoo) either together or with other persons were the actual importers or dealers in pursuance of the alleged fraudulent scheme.

8. The first entity in whose name the goods were imported and then dealt with was
35 N&R Supplies (hereafter N&R), a partnership of Mr Roy Rogers and Mr Nick Rogers, which was the holder of a REDS registration allowing it to import dutiable goods without immediate payment of the duty. The second entity was a sole proprietor, Mr Wayne Jackson trading as WJW Wholesales (hereafter WJW), who was the holder of a registration under the Warehousekeepers and Owners of

Warehoused Goods Regulations 1999 which entitled him to import goods duty free and to hold them without payment of the duty until they left the warehousing regime.

5 9. In both cases the allegation is that those entities were ‘hijacked’ which is to say their identities were used by the appellant and Mr Sagoo without any permission
10 having been given by the true proprietors of those businesses and that the relevant transactions were not carried out by those entities at all. The consequence was that the person or persons who did carry out the transactions were liable for the duty in the N&R importations as the persons truly involved in those importations did not have any duty deferment status and were thus liable to pay the duty at importation. No
15 duty has been assessed in respect of the WJW transactions because HMRC do not hold evidence to show what the actual source of those goods was so that it may have been the case that duty had already been paid on them. As far as VAT is concerned it is alleged that the goods had been brought into the UK in respect of the N&R goods and then sold on by the fraudulent persons so that the VAT was due on the basis that
the goods must have had a value at least equal to the duty evaded in the case of the N&R importations and in the case of the WJW goods UK sales had been made and VAT was due whether or not the excise duty had also been evaded.

20 10. Mr Sagoo neither requested a review of the assessments nor did he attempt to take part in the appeal or to dispute the sums assessed but it appears that those decisions were made on his behalf by his trustee in bankruptcy and so those decisions may not amount to an explicit acceptance of liability as, if his other debts were such that his bankruptcy was inevitable, the trustee’s decision may be pragmatic in the sense that disputing the assessments would have served no purpose.

25 11. We will deal with the evidence that shows that there had been importations and/or onward sales of the goods without payment of the duty and tax before we deal with the evidence that the appellant was involved in the evasions of duty and tax. However, as Mr Young admitted in his skeleton argument submitted on behalf of the appellant, that the evidence does prove that a fraud of the type described by the respondents did take place and that Mr Sagoo was responsible for it; we do not think
30 it necessary to go into great detail about that evidence. Mr Young did rightly point out that it remains for the respondents to prove that the appellant was involved in the fraud and that the burden of proof lies upon them to do so to the normal civil standard. We have heard evidence from both parties and will base our decision on all the evidence.

35 12. Amongst other activities, Mr Sagoo was a counsellor or advisor to persons setting up new businesses and he acted as such as a sub-contractor engaged by an organisation called Birmingham Enterprises Ltd which operated from the Waterlinks Enterprise Centre at Aston. Mr Sagoo was Birmingham Enterprises Ltd’s expert for import and export businesses. The Waterlinks premises were managed by Just for
40 Starters Ltd which let or licensed office accommodation to new businesses referred to it by Birmingham Enterprises Ltd. Mr Sagoo saw clients of Birmingham Enterprises Ltd at its Sparkbrook addresses as well as at Aston.

13. One of the businesses which had a licence to occupy premises at Waterlinks was a business called Hexagon Supplies operated by or purporting to be operated by a person called Jattinder Singh, a copy of whose passport was produced in evidence showing that he was a citizen of the United States of America. Jattinder Singh or a
5 person purporting to be him was also the sole director of a Dutch company called Noord-Zuid Trading BV (hereafter Noord-Zuid) which features as a supplier of goods connected with the fraud in this case.

14. We refer to Jattinder Singh in the alternative as a person purporting to be him because no direct evidence was given as to whether he was in fact the person
10 concerned, though it does appear that the real Jattinder Singh was involved in the alcoholic liquor trade in the USA.

15. The above facts found by us about Hexagon Supplies and its occupation of the premises come from the evidence of Mr Mark Ansermoz who was the accountant and company secretary of both Birmingham Enterprises Ltd and Just for Starters Ltd.
15 That evidence was not disputed so far as these facts are concerned.

16. Mr Ansermoz was shown the passport photograph of Jattinder Singh by a Customs Officer and said in his witness statement that that was not the person who had taken the licence to occupy the Hexagon Supplies office at Waterlinks. In his witness statement he also stated that he had been shown a photograph of the appellant
20 and describes him as “the individual I knew as Jattinder Singh and who signed the licence agreement as Jattinder Singh t/a Hexagon Supplies”. He also stated in his witness statement that a copy of a driving licence photograph had been produced by “Mr Singh” as proof of identity when the licence to occupy was granted and that the application for the licence to occupy had been on a file kept at the Just for Starters
25 Ltd’s office relating to the licence to occupy. The witness statement did not unequivocally say that the photograph was filed with the application nor did Mr Ansermoz specifically say in his statement that the photograph of “Mr Singh” was in fact the photograph of the appellant.

17. The file was later found to be missing from the office when Mr Ansermoz
30 looked for it in connection with the enquiries being made in this case. We will return to that evidence later but so far as Mr Sagoo is concerned it was not disputed that Mr Ansermoz was right when he said that Mr Sagoo came to the Hexagon Supplies office often and that Mr Ansermoz had seen him there with the appellant. In addition, when Mr Ansermoz gave evidence he made it clear that he understood that Mr Sagoo had
35 been involved in the Hexagon Supplies business itself and in the licence to occupy (i.e. he had not acted only as a counsellor or advisor to that business but rather as a principal).

18. It is not disputed that the appellant was a client of Birmingham Enterprises Ltd where Mr Sagoo was his advisor or counsellor. Mr Sagoo and the appellant had had
40 business dealings together before the times relevant to this appeal when they were both involved in other businesses and had in fact also previously been fellow directors of a company, albeit one that does not feature in this appeal. No doubt that makes it surprising that Mr Sagoo was advising the appellant supposedly as a newcomer to

business. As the appellant and Mr Sagoo had been involved in business together it was known to Mr Sagoo that Mr Dhadwal should not have needed advice about setting up a business and it seems clear that Mr Sagoo, assisted by the appellant, took the opportunity to make some easy money by taking on the role of counsellor for someone who did not need counselling.

19. The undisputed evidence shows that the goods in question were brought to the UK by various hauliers and were taken to sites where they were “slaughtered” as the HMRC terminology has it. Slaughter is a word ultimately derived from an Old Norse term for butchered meat and so carries with it the suggestion that something is cut to pieces. Thus in the context of contraband goods it normally means that the goods are separated into smaller parcels for distribution. However, the evidence in this case shows that the goods were brought to the so called slaughter sites but were then moved on in bulk as single loads to unknown destinations. Essentially it matters not that HMRC do not have evidence about where those goods ended up or even that they do not have positive evidence that the goods were later split up into smaller parcels for distribution on the black market because the duty was payable at importation, unless the importer could show that a duty deferment regime applied to the goods, which has not been the case. Equally onward sales would attract VAT whether or not they were in single or multiple parcels of goods.

20. The hauliers and their staff have provided information and written statements and it suffices for us to record for present purposes that none of those witnesses’ evidence proves directly that Mr Sagoo was involved in the importations. That evidence also fails to implicate the appellant in involvement in the importations.

21. The evidence that Mr Sagoo was involved in the importations came from computer records, the evidence about which is also relied upon by HMRC in its allegations against the appellant and from Mr Ansermoz’s evidence. That evidence is central to this appeal. The evidence we have summarised above shows that a fraud occurred but the evidence of involvement by Mr Sagoo and the appellant will be dealt with hereafter.

30 **Evidence about Mr Sagoo’s participation in the fraud.**

22. On 30 June 2005 officers of West Midlands Police searched the Hexagon Supplies office at Aston and DC Clarke seized an HP Laptop computer which was given reference RC/2 and a Toshiba Laptop computer which was given reference RC/3. Another computer was seized from Mr Sagoo’s home and that was given reference MJE4. Hard copies of documents were also seized. On 17 July 2006 DC Riley prepared forensic hard drives and EnCase®Images of the information on the hard drives of those computers. Later examinations of the computer evidence were made by examining the forensic hard drives (i.e. copies) of the material on the computers but for convenience we will refer to the computers as if it were they that were being examined.

23. So far as Mr Sagoo’s involvement in the fraud is concerned we hold that that evidence proves he was involved. Mr Ansermoz knew Mr Sagoo well and his

evidence was that Mr Sagoo visited the Hexagon Supplies office at Aston very regularly and that he had access to the Aston office 24 hours a day and indeed that he had access to the clients' files when he was there. Mr Ansermoz saw Mr Sagoo working on a computer at the Hexagon Office on at least one occasion.

5 24. The documents found at the Hexagon Supplies office and on the computers
there included many that illustrate and confirm to our satisfaction at least on a balance
of probabilities that Mr Sagoo was involved in the fraud. The hard copy documents
found at the Hexagon Supplies office included many from Noord-Zuid including ones
10 relating to haulage of the goods involved in the fraud, bank statements in the name of
Jattinder Singh and documents appearing to relate to N&R's rental of premises which
the legitimate N&R had not rented and which were used for delivery of alcoholic
goods on which duty had not been paid. Assuming the real Jattinder Singh had taken
a licence to occupy the Aston office and assuming he was also the real director of
15 Noord-Zuid the presence of the documents relating to that company would not have
been particularly significant. But the presence of the documents relating to N&R are
in a different category because those documents were ones that clearly relate to the
fraud and were not documents that were legitimately part of Jattinder Singh's
business, or the business conducted in his name.

25. Those hard copy documents are not, however, particularly probative as far as
20 Mr Sagoo's alleged involvement in the fraud is concerned because, although he was a
regular visitor to the office, he may have been there for the purpose of counselling
Jattinder Singh or the appellant.

26. The much more directly relevant and probative evidence about Mr Sagoo's
involvement came from the records on the computers RC/2 and RC/3.

25 27. RC/2 was Mr Sagoo's computer or was at least regularly used by him as emails
to and from his email address (mduklimited@yahoo.co.uk) show. Documents found
on that computer also clearly relate to the fraud. Examples are invoices from Noord-
Zuid to the hijacked N&R and documents from the hijacked N&R. These documents
were found on RC/2 by the computer experts whose evidence we will consider under
30 the heading of the appellant's alleged involvement in the fraud.

28. In addition, that evidence of Mr Sagoo's involvement in the fraud is
corroborated by other circumstantial evidence. An address used by the hijacked N&R
which was an unoccupied flat with an open letter box was in the same block as a flat
owned by Mr Sagoo. Mr Sagoo had known the true owners of N&R for some years
35 and had counselled Mr Jackson the proprietor of WJW in his capacity as counsellor
and advisor at Birmingham Enterprises and so was in a position to imitate those
businesses.

29. The computer RC/3 was used mainly for faxes and was used extensively by Mr
Sagoo. A small number of faxes relating to the appellant but not to the fraud were
40 sent or received via RC/3 but we do not regard that as proof that the appellant was
involved in the fraud as they may only have been sent or received in that way for
convenience when he was visiting Mr Sagoo.

30. The fact that Mr Sagoo's computer, or one he used extensively, was used for the purposes of the fraud together with the other corroborative evidence clearly amounts to a prima facie case that he was involved in the fraud and so in light of the fact that the parties to the appeal both agree that he was involved it is sufficient for the purposes of this appeal for us to find that he was involved in the fraud.

Evidence about the appellant's involvement in the fraud.

31. It is not in doubt that an extensive fraud occurred and we have found that the parties to the appeal were justified in agreeing that Mr Sagoo was involved in it. The respondents' case against the appellant is that he was also involved and, although under the relevant legislation he could be liable either as the importer or as a person who caused the goods to reach the duty point, the respondents have not put forward a case that he was involved in any other way than as a fellow conspirator in the fraud which, if proved, would certainly be sufficient to establish liability. Mr Young agreed on the appellant's behalf that there were no legal issues involved in this appeal and that the only issue was the factual one about whether the appellant was involved in the fraud.

32. There are three main grounds put forward by the respondents as evidence that the appellant was involved in the fraud. Firstly, they allege that he put himself forward as Jattinder Singh in dealing with Birmingham Enterprises and Just for Starters. Clearly, if that is proved that would be strong evidence of involvement in the fraud because the occupation of the office by Hexagon Supplies was at least part, indeed a major part, of the operation of the fraud at least up to the point where the computers and other evidence were seized by the police. The information contained in the computers and related discs being used at the Hexagon office have been shown to have been used in the fraud as we have already held in considering Mr Sagoo's role. The second main allegation made by the respondents is that the appellant is linked to the computer RC/2 by certain entries and that that is circumstantial evidence that he was involved in the fraud. The third main ground was what might be termed general circumstantial evidence consisting of evidence of extensive association with Mr Sagoo and a bad record of unsatisfactory business dealings by the appellant.

33. We have already touched on the fact that the Hexagon Supplies office was occupied under a licence entered into by Jattinder Singh or a person purporting to be him. The respondents' case was that the appellant had pretended to be Jattinder Singh and that he had entered into a licence agreement with Just for Starters Ltd to occupy an office on behalf of Hexagon Supplies.

34. The respondents relied principally on the evidence of Mr Ansermoz for proof of these allegations. In his witness statements Mr Ansermoz stated that he had been shown passport photographs of Jattinder Singh and Gurdip Singh (who it is agreed by both parties is Mr Dhadwal) and he said that Mr Dhadwal, was "the individual I knew as Jattinder Singh and who signed the Licence agreement as Jattinder Singh t/a Hexagon Supplies". He also said that he had been shown a photograph of the real Jattinder Singh and that was "not the Jattinder Singh that signed the licence agreement and who I met on several occasions ... I told HMRC that Mr Singh produced a copy

of his driving licence as proof of identity and that I still had it on file but when I went to retrieve it from my filing system, in the presence of Mr Duxbury, officer, I discovered that it was missing”.

5 35. The copy of the licence to occupy that was produced at the hearing was an unsigned copy found in the Hexagon Supplies office and there is no evidence about who might have removed the original (which was presumably signed) from the filing cabinet.

36. In a second witness statement Mr Ansermoz gave a very similar account of these points of evidence.

10 37. Mr Young cross examined Mr Duxbury, the officer in charge of the enquiries in this case, at length about issues relating to how he had dealt with enquiries made to various persons connected or tangentially connected with this case. Mr Young put it to Mr Duxbury that he had used heavy handed tactics and veiled threats to encourage those persons to co-operate with his enquiries. Mr Young explained that the
15 relevance of those lines of cross examination was that he would be putting it to Mr Ansermoz that he had been persuaded to give evidence by such tactics and that the content of his evidence was affected by them.

38. In fact when Mr Ansermoz was cross examined he was somewhat critical of Mr Duxbury’s manner, although he said it was no more than typical of the manner
20 adopted by Customs Officers he had dealt with in his years in business and in practice as an accountant.

39. In light of the content of Mr Ansermoz’s evidence to the Tribunal we do not need to make any finding about whether or not there is any substance in these allegations against Mr Duxbury or any affect they might have had on Mr Ansermoz’s
25 evidence. Indeed Mr Young decided in light of Mr Ansermoz’s sworn evidence to the Tribunal that he did not need to call any of the witnesses whose evidence might or might not have been relevant to any such issues.

40. The witness statements already referred to give a clear impression, at least, that Mr Ansermoz was able to assert from his own knowledge that Mr Dhadwal had
30 passed himself off as Jattinder Singh. However when he gave evidence Mr Ansermoz agreed that he had known the appellant only as ‘Mr Singh’ and we find that he had, in effect, assumed it was Jattinder Singh he saw at the premises when he saw the appellant because he knew that was the name of the licensee.

41. Contrary to the impression possibly given in the witness statements, Mr
35 Ansermoz also said in his evidence to the Tribunal that it was not in fact he who had dealt with the creation of the licence agreement so that the appellant cannot have represented himself to Mr Ansermoz as Jattinder Singh when the licence was being negotiated. It follows that Mr Ansermoz’s evidence cannot support any allegation that the appellant represented himself to be Jattinder Singh at that time. In fact we
40 heard no evidence about the actual identity of the person who negotiated the licence agreement from anyone concerned in its negotiation.

42. Mr Ansermoz was also unable to confirm the identity of the person shown on such photographic evidence of identity as had been produced at the time of the negotiation of the licence. The respondents' case was that a driving licence photograph of Mr Dhadwal had been attached to the licence agreement as proof of his identity, which would have amounted to evidence that he had represented himself as being Jattinder Singh. However the appellant produced evidence from the DVLA which showed that he had not been issued with a photographic driving licence until a date later than the creation of the licence to occupy so that evidence was clearly incorrect. It might have been the case that Mr Ansermoz had simply misremembered what type of photograph he had seen. But in fact when he gave evidence, in addition to it becoming apparent that he had not dealt with the negotiations and so could not have seen any photograph at that stage, Mr Ansermoz also said that such dealings as he had had subsequently with the file in which the licence was kept and which should have contained the photograph, consisted of the routine filing of documents such as copy invoices. At those times he did not claim to have consciously seen the photograph and nor would we have expected him to.

43. We do not doubt Mr Ansermoz's integrity but as can be seen from the above findings, although he may have believed that the person he dealt with had been Jattinder Singh and he may have believed that the person concerned had so represented himself, the evidence provides no proof that the appellant had in fact represented himself to be Jattinder Singh.

44. Mr Ansermoz's witness statements omit to mention that he always understood that Mr Sagoo was involved in Hexagon Supplies personally and not just as a counsellor or advisor in his capacity as a sub-contractor to Birmingham Enterprises. It is of some significance that Mr Sagoo was involved in that way because it provides an explanation of how the licence could have come into existence without the involvement of the appellant or for that matter without the involvement of Jattinder Singh.

45. On the basis of the above evidence we find that the respondents have not proved that the appellant represented himself to be Jattinder Singh.

46. The other main strand of evidence on which the respondents relied for proof that the appellant was a conspirator in the fraud was an allegation that the appellant had been actively involved in the use of the computer RC/2 which had been used in connection with the fraud.

47. Initially, the respondents were intending to rely on the evidence of a Mr David Wayne Lack to support their claims about Mr Dhadwal's use of the computer. By the time Mr Lack made a witness statement he was running a security business which he claimed also specialised in "teaching computer skills, repairing and rebuilding computers, fault diagnosis system analysis as well as data recovery and retrieval". He did not claim to have any relevant forensic expertise. He had been recruited as a so called expert by HMRC when Mr Duxbury needed an expert in another case and, frustrated by a lack of access to qualified experts used by the Department in more serious cases, he had simply gone out into the streets of Northampton and sought the

help of Mr Lack who was at that time running a computer repair shop, after which he was put forward as an expert in this and some other cases.

48. Mr Lack's evidence was served and was to be relied upon in this appeal. The appellant's representatives sought to agree that a joint expert should be appointed but
5 that was resisted by the respondents. The appellant's representatives did not succumb to the temptation to assume that once a computer expert had been appointed there could be no answer to his evidence. No doubt because the appellant was adamant that he had not used that computer and, as he told us in evidence, he had instructed his solicitor that was the case, they prepared for a hearing of this appeal at which Mr
10 Lack was due to give evidence and prepared to challenge his evidence.

49. Shortly before the initial date listed for the hearing of this appeal it came to the attention of the respondents that Mr Lack was being prosecuted for fraudulent benefit claims and they persuaded the Tribunal to adjourn the hearing so that they could obtain the evidence of a different expert. As far as we can tell that was not because
15 they had realised that Mr Lack was not qualified to give expert evidence but was solely because of the prosecution. It is an ironic footnote to this aspect of the case that it appears the prosecution came about because the Department of Work and Pensions became aware of Mr Lack having income he had not declared which consisted of fees for the so called expert opinion given in connection with this case by
20 Mr Lack and paid to him by the solicitors then acting on behalf of the respondents.

50. At the hearing of this appeal Mr Young wanted to explore how what turned out to be the false evidence put forward by Mr Lack had come about. As we will say hereafter there were documents produced, which appear at least, to have been deliberately falsified because they were produced as having been on the computer
25 which the proper experts who were later appointed by both parties agree was not the case.

51. Mr Young wanted to attempt to get to the truth of how that came about. Mr Young suggested that one explanation might have been that Mr Lack had created those documents in an effort to assist the respondents, his clients, and that someone
30 had suggested to him that he should do so. However, not having heard evidence about that from Mr Lack, we are not prepared to make any such finding nor would it be relevant to our decision to do so. This appeal must be decided on the true evidence not on any guesses about how the false evidence came to be produced.

52. One point we consider to be very pertinent is that if it had been someone's
35 intention to produce false but damning evidence something much more relevant than any of the false evidence that was produced would have served that sinister purpose much better than what was produced. For example a "false cookie" that was produced which might have been intended to show that the appellant had accessed RC/2 to view the Racing Post was hardly damning evidence even if it had proved that
40 he had used RC/2 for that purpose. Given that the appellant undoubtedly visited the Hexagon Office, for whatever reasons, occasional use of a computer there for purposes which are clearly nothing to do with the fraud is barely suspicious let alone damning evidence against him. Had someone wanted to incriminate the appellant and

had that person been willing to perjure himself, it would surely have been just as easy to create a false document showing the appellant contacting someone connected with the fraud as it was, or might have been, to create one showing him reading the Racing Post. It is disturbing that false evidence was produced and it seems unlikely that it could have happened innocently but without more evidence about how it occurred we cannot make a finding about who might be responsible.

53. We would note that although the respondents and Mr Duxbury in particular claimed to be unable to locate Mr Lack, who appeared to have left the Northampton area, the appellant's instructing solicitor was able to locate him in a nearby town by the simple expedient of a Google search for a newspaper report of his criminal case which gave his address. The respondents declined to produce Mr Lack as a witness and having withdrawn his evidence they appear to have considered the matter closed. They rather unrealistically suggested the appellant could have obtained a witness summons to call Mr Lack but it seems clear to us that the appellant could hardly have been expected to do that. When Mr Lack's address was disclosed to the respondents they sent an officer to interview him but the evidence then produced takes the matter no further in our opinion and the respondents did not call or summons him to give evidence in person.

54. A good deal of evidence was given about a visit the appellant made to Istanbul to attend a football match in which Liverpool FC, the team he supports, won the European Cup. Some of the booking arrangements for that trip were made on the computer RC/2. That in itself is not necessarily suspicious in our opinion. The appellant claimed he was not very computer literate and so asked Mr Sagoo to help him by booking a hotel and flights on that computer. We entertain some doubts as to whether the appellant was unable to make those arrangements himself but even if he exaggerated his evidence by saying that he could not have done it himself on his own computer we do not regard it as very significant that he got a friend or business colleague to help him.

55. The bookings are in no way connected with the fraud and the respondents rely upon them to support a general allegation that the appellant used the computer that was undoubtedly used for the purposes of the fraud. The respondents ask us then to draw the inference that that also goes towards proving that the appellant was involved in the fraud.

56. The respondents allege that the appellant took RC/2, which was a laptop computer, to Istanbul. Some of the times when that computer was used between 24 May and 26 May 2005, which his passport shows were the dates on which the appellant was in or en route to and from Istanbul, appear to have been while the appellant would have been in flight which makes it unlikely that he could have used the computer. No evidence was given about whether the computer would have been usable during the flights or for that matter whether internet access would have been possible in Istanbul. As there was no evidence about how the clock on the computer was set and no evidence about the precise times and durations of the relevant flights we are unable to make any conclusive findings about whether it was used only at

times when the appellant would have been on the ground at places where internet access would have been available.

57. The respondents allege that a booking or enquiry made about hiring the services of a prostitute in Istanbul could only have been made by the appellant or one of his
5 three friends who accompanied him to Istanbul. They say that is further proof that the computer must have been in Istanbul. However, the evidence is inconclusive at best because an email from the agency representing the prostitutes requested an email in reply from the potential customer about when and where her services were required but there was no proof that a reply was sent. The appellant denies that he or his
10 friends used the services of a prostitute while in Istanbul and contends that these enquiries about the services of a prostitute were carried out by Mr Sagoo on his own initiative and without the appellant's knowledge.

58. Although RC/2 was used to enquire about the services of a prostitute for the appellant and his companions during the visit to Istanbul we find that such enquiries
15 as were made did not result in the services of a prostitute being engaged. We find that those enquiries do not prove that the computer was with the appellant in Istanbul or even that the appellant had asked someone else to book a prostitute for him. The use of RC/2 in that way may just as well have been some kind of prank by which the appellant would have been embarrassed by a prostitute turning up at his hotel or some
20 such explanation.

59. Evidence was also given about the use of RC/2 to visit escort agency websites. Evidence proved that the appellant regularly visited such sites on his own computer and the respondents contended that the fact that RC/2 was used to visit escort sites shows he was using RC/2 regularly. However, as Mr Young pointed out, many of the
25 visits to escort agency websites on the appellant's own computer were to sites specialising in facilitating contact with transsexual escorts whereas none of the sites visited through RC/2 were for transsexual escort sites. Mr Young therefore submitted that the likelihood was that someone other than the appellant had accessed escort agency sites on RC/2 – the obvious candidates being Mr Sagoo or Jattinder Singh if
30 the latter was really involved in the Hexagon Supplies office. We cannot conclude who made the visits to escort sites on RC/2 but we do find that the evidence fails to prove that the appellant used RC/2 for those purposes.

60. The respondents also relied upon evidence which tended to show that the appellant and Mr Sagoo were closely involved in business activities together over a
35 number of years.

61. The respondents also relied on evidence that the appellant had what might be termed a bad record in business having been involved in more than one company that ceased to trade owing the Revenue Departments money and leading to the appellant's being barred from acting as a director of any company for ten years.

40 62. The appellant undoubtedly lied about his visit to Istanbul in one major respect. He gave a detailed account of how he and his companions had arrived in Istanbul and had driven straight to a hotel in a taxi. The hotel proved to be unacceptable to them

so they went to another hotel and then on to the football match arriving only shortly before the match began leaving no time, as he claimed, for him to have used the laptop. All that was said to have been on 24 May 2005 and as the laptop was used on that day by someone his account of the journey would, if his evidence were accepted, prove that he had not had it with him in Istanbul as he had had no opportunity to use it. However, undisputed evidence was given that the match occurred on 25 May not 24 May so that the appellant's account of travelling from the airport straight to the match via the hotel without a break during which he could have used the computer is untrue. That does not prove that he did use the computer.

63. The appellant also understated his knowledge and closeness to Mr Sagoo with whom he had had business dealings over many years and with whom had been involved in the same business at one time.

64. We have also already found that the appellant was not as ignorant of the use of computers as he had claimed.

15 **Conclusions.**

65. The three main strands of the respondents' case were firstly that the appellant had represented himself to be Jattinder Singh, secondly that he had used RC/2 to a considerable extent and thirdly the general evidence of association with Mr Sagoo and unsatisfactory business dealings. The first two have not been proved as we have already explained. We hold that the third standing alone comes nowhere near proving the specific fraud alleged.

66. On those grounds we find that the appeal is allowed and the appellant is not liable to pay any of the duty or tax assessed.

Coda.

67. Mr Young asked us to refer the papers in this case to the Director of Public Prosecutions or to take some other action to put in train an inquiry into the propriety of the respondents' officers' conduct of this case. It is obviously disturbing to find that the respondents appointed an entirely unsuitable person to act as an expert and indeed put him forward as an expert when he was no such thing. We cannot say that the evidence we have heard proves that any actual wrongdoing occurred though, as far as some of the false documents which were put forward as having been found on the computer but which were not on it are concerned, there must be grave suspicion that they had been produced deliberately.

68. We cannot do more than note that suspicion as we have no powers to direct the respondents to do anything about the shortcomings in their handling of this case or to make enquiries about who may have deliberately falsified evidence.

69. The respondents at first refused to review the duty assessments with which this appeal is concerned because the appellant's previous legal advisers had failed to request the review in the time allowed by statute and, although the respondents have a discretion to give an out of time review, they had declined to do so until forced to do

so by Judicial Review proceedings. They must have realised that their case against the appellant was based only on circumstantial evidence. They no doubt formed a view that that circumstantial evidence proved their case but it must have been obvious that a different view of it might prevail. This was not a case where the evidence could
5 be said to have made it certain that liability would be established. The appellant had a right of appeal in respect of the VAT assessments for which no statutory review was needed and which would have raised the same issues as an appeal relating to a reviewed decision about the duty. In the circumstances the initial refusal to conduct a review appears to us to have been obviously unfair.

10 **Costs.**

70. Any application concerning costs is to be made to the Tribunal within 42 days of the release of this decision. Any such application is to be made in principle only at that stage by which we mean that no schedule or detailed statement of the costs need be submitted if an order in principle is sought.

15 71. 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
20 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.

25 **RICHARD BARLOW**
TRIBUNAL JUDGE

RELEASE DATE: 17 July 2012