



TC04723

Appeal number: TC/2011/06849

VAT – input tax – claimed in respect of purchase of iPhones without proper invoices – whether alternative evidence of supply should have been accepted – whether taxable supplies made to the appellant – appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

MIAN GLOBAL LIMITED

Appellant

-and-

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

Respondents

**TRIBUNAL: JUDGE KEVIN POOLE
MARYVONNE HANDS**

Sitting in public in Priory Court, Birmingham on 16 March 2015

Imtiaz Ilahi of Midland Accountants Limited for the Appellant

**Joshua Shields of counsel, instructed by the General Counsel and Solicitor to HM
Revenue and Customs, for the Respondents**

DECISION

Introduction

1. This appeal relates to a claim for input tax in respect of supplies of Apple iPhones which the appellant maintains were made to it during December 2010 and January 2011.

2. The appellant did not hold proper VAT invoices in respect of the supposed supplies to it and HMRC, not being satisfied that the supplies had been made to the appellant, refused to accept the alternative evidence of the supplies put forward by the appellant. This appeal is against that refusal.

The facts

3. We received a bundle of documents and witness statements from HMRC officers Deborah Harris (who carried out the verification visit referred to below and issued the decision denying input tax which is the subject of this appeal), Helen Nolan (who made a note of a telephone conversation with Mr Rasoon on 1 April 2011) and Adrian Turner (who accompanied officer Harris on the verification visit). Officers Harris, Nolan and Turner also gave oral testimony. No witnesses were called on behalf of the appellant.

4. We find the following facts.

5. The appellant was incorporated on 3 October 2008 and on 6 October 2008 it submitted an application for registration for value added tax with effect from its incorporation. In that application (signed on its behalf by a Zulfiqar Ali), the appellant's business activities were stated as "sale and distribution of mobile phones". It was stated that the appellant's turnover was expected to exceed the registration threshold in the following 30 days, and it was also stated that the estimated value of the appellant's zero-rated supplies over the following twelve months was £2,000,000.

6. The appellant was duly registered for VAT but appears not to have carried on any business until the autumn of 2010.

7. On 4 August 2009 and 11 March 2010, HMRC received successive letters (dated 1 August 2008 and 1 March 2010) from the appellant, signed on its behalf by Shaahbana/Shahbana Naz (director), notifying HMRC of changes of address. On 10 December 2010, HMRC received a form of notification dated 2 December 2010 signed by Shahbana Naz as director, informing them of a further change of address and a change of bank details for the appellant.

8. There was no evidence before us as to the content of the appellant's VAT returns up to 31 October 2010.

9. The appellant's VAT return for the three month period ended 31 January 2011 was received online by HMRC on 1 March 2011. It included a figure of £26,302.36 in respect of input tax claimed, £11,838.38 in respect of output tax and overall it

therefore claimed a net repayment of £14,463.98. It reported total purchases (excluding VAT) of £141,677 and total sales (excluding VAT) of £151,244. It subsequently transpired that £25,289.25 of the input tax claimed related to the purchase of 313 iPhones, as did all of the output tax. The reason for the output tax figure being smaller than the input tax figure, it later transpired, was that whilst many of the iPhones were sold in small batches, there were two large sales (of £39,400 and £38,980, for a total of 180 phones) to a customer called Sysvox Limited; due to the size of these sales, the appellant had applied the reverse charge provisions and had not therefore accounted for output VAT on them. All 313 of the iPhones were bought and sold within the accounting period, and the appellant made a profit (excluding VAT) of between 6% and 10% on the sales.

10. On 10 March 2011, HMRC received an application dated 28 February 2011 from the appellant (signed on its behalf by Shahbana Naz, director), applying to be put onto monthly returns.

11. On 15 March 2011, HMRC wrote to the appellant, informing it that the claimed repayment had been suspended pending verification of the return.

12. HMRC arranged a verification visit by telephone with a Mr Rasoon (subsequently described as a “manager”) and the visit took place on 12 April 2011 at the appellant’s principal place of business at Unit 178 Argyle Street, Birmingham. Officers Deborah Harris and Adrian Turner attended.

13. A Mohammed Khalid attended the visit on behalf of the appellant. He introduced himself as also being a “manager” of the appellant, and explained that Mr Rasoon (also a “manager”) was away in Norwich, delivering phones. Mr Khalid stated that he started working for the appellant in January 2011 and was now on the payroll, as was Mr Rasoon. The sole director (Shahbana Naz) was unavailable to attend the meeting – Mr Khalid explained that she had a full time job as a beautician in a department store. She was his sister-in-law. He said that he had his own business in the mobile phone sector, as did Mrs Naz’s husband. Her husband’s business Hasson Ahmed Moosa Trading Limited was one of the appellant’s customers.

14. Mr Khalid explained that the phones were sold to UK customers but would eventually be exported to China or the Far East, as there was a large unmet demand for them there. He said the finance to start the business had been raised by a £10,000 to £20,000 remortgage of a flat. He said that employees of the business bought phones on its behalf, and he provided a list of their names. Most of them had been taken on in February 2011 (after the purchases in question) and they were paid £6 per hour. Officer Harris asked for national insurance numbers and addresses to be supplied in respect of the employees.

15. Officer Harris uplifted the records after a cursory examination of them on site. One thing struck her immediately, however, and this was that a great many of the phones had been bought using Apple gift cards. Mr Khalid explained this was because the customers had paid “up front” with these gift cards, usually to a value of between £1,000 and £5,000.

16. Officer Harris considered the records in more detail, including copies of the purchase invoices for the iPhones. She satisfied herself that they did not meet the requirements for a proper tax invoice and asked the following questions, in a letter dated 26 April 2011:

5 “1) Do you hold any alternative documentary evidence of supply other than the till receipts?

2) Do you have any evidence of payment for the goods?

3) How has the business paid for the purchases made? Please provide details of the funding used including:

10 The source of the funds

Dates and amounts received

Any bank transfer, paying in documents, etc.

Details of gift cards and who provided them

15 4) What happens to the Air time vouchers/credits are these sold on to your UK customers? If not please provide details.

5) I have requested details of all employees of the business in order to confirm that the phones were purchased by staff of your business. Please provide this information, including

• PAYE reference

20 • All staff national insurance numbers

• Date of employment for all staff

6) Please provide copies of all bank statements for the National Westminster Bank and Nationwide.”

17. In the absence of any reply, she sent a chasing letter on 11 May 2011, requesting provision of the above information within 10 days, and stating that the input tax totalling £25,289.25 relating to the purchases of the iPhones would be disallowed if no reply was received, “on the basis that you do not hold sufficient evidence to reclaim the input tax”.

18. In the continued absence of any response, she sent a further letter dated 24 May 2011 formally disallowing the input tax of £25,289.25 and assessing that amount for payment.

19. By a letter dated 20 May 2011 which was signed by Mrs Naz, the appellant said this:

“Reply to your questions in letter dated 26/04/2011.

- 1) The Apple invoices are the only invoices they issue and according to the modified VAT invoices rule if the invoices are more than £250 they must show the following

VAT inclusive payable

5 VAT payable on these items

Value of those items excluding VAT

Value of zero rated items

Value of any exempt item include on the invoice

You can check on the website of RAMC *[sic]* as well.

10 2) We pay cash and gifcard as it states on each invoice.

3) Our customer paid us by cash and gift card as we did not have current account. That time we had only account is with Nationwide which has no cash point card and we can't transfer more than twice in one calendar month.

15 4) There is no air time comes with iPhone it is SIMfree.

5) Regarding PAYE I have asked my accountant to keep in touch with yourself to provide all the information.

6) Natwest Bank was not operated at all."

20 20. In addition, on 3 June 2011, HMRC received by fax from the appellant a letter signed on its behalf by Mr Khalid. He attached a list of employees of the appellant, but said that only he and Mrs Naz were employed during the VAT period in question, the rest of the employees joining on 1 February 2011. He also said this :

25 "With reference to the Apple invoices I have been told by them that this is the only VAT invoice they issue to their customers as it is the proper and valid invoice and they pay VAT what the[y] charge to the customer. The receipt consists of their address and VAT number and VAT amount clearly.

And according to the rule of modified invoice the issuing company has to have their address not the buying company."

30 21. In a letter dated 2 June 2011, Officer Harris set out at some length the HMRC guidance on "modified invoices", pointing out that such an invoice must still contain "the customer's name or trading name, and address". She maintained that the till receipts from Apple were "insufficient evidence to substantiate your claim".

35 22. There followed further correspondence in which first Mrs Naz and then the appellant's accountants sought to persuade Officer Harris that the invoices held by the appellant were valid "modified" invoices. This was treated as a request for a formal

review of Officer Harris’s decision, and by an undated letter which was apparently sent on 28 July 2011, that decision was upheld, on the basis that (a) the Apple invoices actually held were not valid VAT invoices as they did not show the name and address of the appellant (indeed, some showed names of people who did not even appear on the list of people who were said to have been employed from 1 February 2011); and (b) no sufficient “alternative evidence” had been provided to show that the appellant had paid for the invoices in question, despite the opportunity to do so having been offered.

23. The appellant then appealed to the Tribunal against HMRC’s decision, the Notice of Appeal being received on 30 August 2011.

24. At around the same time, the appellant’s accountants wrote to Officer Harris (by letter dated 25 August 2011) with some further information. They sent “receipts for the gift cards purchased from Apple by my client’s customers”, and provided some further explanation, as follows:

15 **“Gift Card Purchases**

Over £100,000 of phones were purchased with gift cards and the position in relation to these cards is as follows. The company has been unable to obtain banking facilities that are suitable for its business, as the business depends on large cash withdrawals to facilitate the purchase of phones, and as soon as the banks see large cash withdrawals, they close the account, leaving my client in a difficult situation. Currently the company only has a Nationwide account in which the company is only allowed two transactions a month.

To resolve these issues the company made arrangements with its customers, so that payment for the phones is made to them in the form of Apple store gift card vouchers. I enclose for your attention receipts totalling in excess of £100,000 for the purchase of these gift cards. The cards were purchased by Sysvox Limited and Hassan Ahmed Moosa Trading UK Limited. The cards were then given to my client as payment for the phones and then the company was able to purchase this stock. On the schedule enclosed there is a column headed ‘last 4 digits’ which is the last four digits of the gift card. This can be cross referenced to the invoices, as they show the last four digits. My understanding is that the customers of the company are happy to confirm the above arrangement. If you require any further clarification in relation to the gift card payments, please contact me.

35 **Debit Card Payments**

These total £7,030, being £2,040 (card ending in 4884) & £4,990 (card ending in 9110), and the position regarding these is as follows. This situation occurred where phones were purchased and payment was made directly by the customer to Apple stores. The one card belongs to an officer of Sysvox, and the other belongs to a senior employee of Hassan Ahmed Moosa Trading Limited.

Cash Payments

Cash purchases of phones totalling £44,355 were made in the period. Cash payments were received from customers and which my client then used this money to purchase phones. My client's customers are happy to confirm this."

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25. Included in our bundle was a set of copies of the relevant invoices, together with two spreadsheets on which they were listed (in the same form, except for the inclusion on the second version of gift card purchases). At first sight, the spreadsheets agreed to the bundle, but on closer examination the spreadsheets listed 323 purchases whereas there were only 321 copy invoices in the bundle. The two extra entries on the spreadsheets related to two occasions on which they listed three phone purchases taking place at the same time (all the invoices were not only dated, but timed to the minute); in the bundle there were only two invoices with the relevant date and time in each case. It is impossible to be certain whether the spreadsheet was correct (and the two invoices were missing from the bundle) or the bundle was correct (and the two entries on the spreadsheet were errors).

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26. This appeared, at first sight, to explain the discrepancy. Unfortunately, however, there was a further mismatch between the detailed spreadsheet and the bundle of invoices; two invoices listed on the spreadsheet simply did not appear in the bundle, which instead contained two duplicate copies of two invoices which did appear elsewhere on the spreadsheet. Whilst slightly irksome, these discrepancies were not sufficiently serious to cast material doubt on the reliability of the evidence as a whole, though we have been careful not to draw any inferences based on any assumptions as to the true explanation for the discrepancies.

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27. The slight discrepancy fed through (in part) into the actual amounts of VAT involved. The spreadsheet showed a total figure on all purchases of phones of £26,043.13. An analysis in our bundle of the input VAT actually claimed by the appellant on its VAT return (which must have originated from the appellant or its advisers) showed a total of £25,289.25, supposedly in respect of 313 (rather than 321) phones.

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28. It would appear, therefore, that the copy invoices provided to HMRC must have included some invoices in respect of which the appellant had not made any claim for input VAT. We note in passing that if the apparent duplicates are removed from the spreadsheets, it results in a reduction of £159.32 in the input VAT shown on the spreadsheets (from £26,043.13 to £25,883.81), whereupon the difference between the VAT return figure and HMRC's figure becomes £594.56, the VAT on 8 phones of the most common type shown on the invoices. Whilst HMRC have only formally disallowed the amount of VAT actually claimed by the appellant, the fact that the appellants appear to have held purchase invoices for eight other phones is somewhat curious.

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29. On 184 of the invoices (if the two apparent duplications on the spreadsheet are disregarded and the accuracy of the two entries relating to missing invoices is accepted), the customer name was shown as "Mian Global Limited" or some obvious

5 abbreviation (or typing error) of it. A further eight invoices were listed as showing the name of Shahbanah Naz (or some variant of it) as the customer. The remaining 129 were listed as showing either no customer name at all, or some obvious equivalent, such as "Xxx Xxx". Of course, we have no way of knowing which eight of these purchases were not included in the appellant's input tax claim.

10 30. The only evidence we have as to the means of payment for the phones was that contained in the accountants' letter of which the relevant extracts appear at [24] above and the information shown on the invoices themselves. Of course, at the time when HMRC upheld the disputed decision, they had not received the accountants' letter; all they knew was what was set out on the invoices themselves and the brief explanation about payment by cash and gift cards which had previously been given.

31. The invoices show that the phones were bought in sessions of individual phone purchases, which are summarised in the table set out in the Appendix to this decision.

15 32. The accountants also provided, with their letter dated 25 August 2011, some copy receipts and duplicate receipts for gift card purchases/top-ups and parts of three much larger till receipts for three large purchases/top-ups of gift cards. These documents contained references to the individual gift cards concerned, which could be cross-referenced to the phone purchase invoices where gift cards were used.

20 33. There are certain patterns and oddities which emerge when the list of purchases and the phone invoices themselves are examined closely:

25 (1) Apart from a single cash purchase on 6 December 2010 (the very first purchase for which input tax is claimed), all the purchases up to (and including) 21 December (45 phones in total, to a value of £24,055) were made using Apple Gift Cards. The invoices identify the individual card for each purchase, and also show the remaining credit balance on the card on the foot of the invoice.

30 (2) All the 20 purchases made on 22 December and the first six purchases made on 23 December (as well as two isolated purchases later that day) were paid for in cash, totalling some £10,000 on 21 December and a further £4,000 on 23 December.

35 (3) The purchases on 23 December were so rapid and numerous that in practical terms it would not have been possible for one or even two people to carry them out (and there was no clear statement from the appellant as to how these purchases had supposedly been carried out or by whom). All 108 purchases took place between 11.48 and 14.33 (with a 39 minute break after 13.03), and for certain parts of that period, purchases were taking place at incredible speed – for example, there were eight purchases timed between 12.22 and 12.26, 15 purchases between 12.31 and 21.38, six purchases timed
40 at 12.48 or 12.49, and 13 purchases between 13.42 and 13.50. On numerous occasions, two or even three sales were timed at the same time.

5 (4) No customer name appeared on any of the invoices up to 21 December; thereafter, with just 11 isolated exceptions, the appellant's name (or some variant of it) appeared on the 128 invoices issued on 22 and 23 December; the 8 invoices issued from 8 to 10 January 2011 were either blank or included Shahbana Naz as the customer, and were all settled in cash; all 65 invoices issued from 11 to 14 January included the appellant's name (or some variant of it) as the customer name; and of the 74 invoices issued thereafter, just two (the two issued in Milton Keynes on 25 January) included the appellant's name as the customer name, two (the two issued in Bristol on 16 January) included Shahbana Naz as the customer and the remaining 70 included no customer name.

15 (5) All the phones bought up to (and including) 23 December (174 in total) were bought in Covent Garden. Thereafter, the phones were bought mostly in Norwich, Cambridge or Milton Keynes with a smaller number bought in Birmingham/Solihull and just two in Bristol.

(6) The purchases on 25 January in Norwich and Milton Keynes could clearly not have been made by the same person, in view of the 25 minute gap between them.

20 (7) Many of the gift cards used were either used for other purchases in between the purchases for which input tax was claimed, or were left with unused balances after those purchases. For ease of reference, we refer to such gift cards as "partly used cards" in this decision. From 8 to 21 December, 43 phones were purchased with gift cards, using 21 different gift cards (some on two or three different days); of those 21 cards, just three were simply "used up" on purchases for which input tax was claimed, the remaining 18 were partly used cards. On 23 December, in contrast, 16 gift cards were used to purchase 90 phones; 80 of those phones were purchased with 12 cards which were simply used up in full on the relevant purchases, and only 10 phones were partly used cards. On 11 January, all 26 phones were bought with seven gift cards, all of which were simply used up in the purchases. Thereafter, the picture became more "blurred" again, with 14 gift cards being used to purchase 62 phones from 12 to 31 January, and only five of those cards being exhausted solely in the purchase of 16 of those 62 phones (the other nine cards being partly used cards).

35 34. Certain further oddities also emerge when the gift card receipts provided on 25 August 2011 are also examined closely:

40 (1) The gift cards that were used for the purchases were almost invariably "charged" with sufficient funds to make a specific number of purchases of a specific type of phone. With just one or two exceptions, there were no occasions on which (a) credit was added to a gift card other than in such multiples, or (b) a gift card was used which had anything other than credit in such multiples.

(2) There were a number of occasions when the gift cards were actually “topped up” in the same shop shortly before they were used to purchase phones, on one occasion as little as three minutes before.

The law

5 35. This appeal is against HMRC’s denial of input tax and is accordingly made under section 83(1)(c) Value Added Tax Act 1994 (“VATA”).

36. The appellant appears to have dropped the argument that the Apple invoices constitute all the evidence that is required to justify the input tax. They are correct to do so (irrespective of whether the existence of an underlying supply to the appellant is established), as the lack of a customer address on any of the invoices is fatal to any claim that they amount to full tax invoices.

37. Regulation 29(2) of the VAT Regulations 1995, which sets out what evidence of entitlement to deduct input tax must be held, provides as follows (so far as relevant):

15 “(2) At the time of claiming deduction of input tax in accordance with paragraph (1) above, a person shall, if the claim is in respect of –

(a) a supply from another taxable person, hold the document which is required to be provided under regulation 13; *[i.e. a full VAT invoice, including the name and address of the person to whom the supply is made]*

...

provided that where the Commissioners so direct, either generally or in relation to particular cases or classes of cases, a claimant shall hold or provide such other evidence of the charge to VAT as the Commissioners may direct.”

38. HMRC have issued a Statement of Practice (the relevant version being dated March 2007) entitled “VAT Strategy: Input Tax deduction without a valid VAT invoice”. This set out their policy in approaching the exercise of their discretion to allow input tax deduction without a proper invoice. In essence, it stated that in respect of “supplies of goods subject to widespread fraud and abuse” (which includes mobile phones), HMRC would need to be satisfied that:

- “ * The supply as stated on the invoice did take place
- * There is other evidence to show that the supply/transaction occurred
- * The supply made is in furtherance of the trader’s business
- * The trader has undertaken normal commercial checks to establish the bona fide of the supply and the supplier

* Normal commercial arrangements are in place – this can include payment arrangements and how the relationship between the supplier/buyer was established”

5 39. It was also stated that for goods such as mobile phones, “claimants will be expected to be able to answer questions relating to the supply in question including all or nearly all of the questions at Appendix 2”. Appendix 2 contained the following questions (expressed to be “not exhaustive”):

“1. Do you have alternative documentary evidence other than an invoice (e.g. supplier statement)?

10 2. Do you have evidence of receipt of a taxable supply on which VAT has been charged?

3. Do you have evidence of payment?

4. Do you have evidence of how the goods/services have been consumed within your business or their onward supply?

15 5. How did you know that the supplier existed?

6. How was your relationship with the supplier established? For example:

* How was contact made?

20 * Do you know where the supplier operates from (have you been there?)

* How do you contact them?

* How do you know they can supply the goods or services?

* If goods, how do you know the goods are not stolen?

* How do you return faulty supplies?”

25 40. It is evident that many of the above questions reflect concerns about MTIC trading and a preoccupation with establishing that the goods in question were acquired from a reputable and reliable source of supply. In the present case, of course, there are no concerns about the source of the iPhones. The key questions of concern to HMRC were therefore those numbered 1 to 3 in [39] above.

30 41. When considering an appeal against HMRC’s refusal to accept alternative evidence, the nature of the Tribunal’s jurisdiction has been set out by Schiemann J in *Kohanzad v Customs & Excise Commissioners* [1994] STC 968 as follows:

35 “It is established that the tribunal, when it is considering a case where the commissioners have a discretion, exercises a supervisory jurisdiction over the exercise by the commissioners of that discretion; it is one where it sees whether the commissioners have exercised their

discretion in a defensible manner. That is the accepted law in this branch of the court's jurisdiction, and indeed it has recently been decided that the supervisory jurisdiction is to be exercised in relation to materials which were before the commissioners, rather than in relation to later material...

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It is, of course, well established that in this type of case, the burden of proof lies on an appellant to satisfy the tribunal that the decision of the commissioners was incorrect."

42. It is also clear that, as stated in the First-tier Tribunal case of *McAndrews Utilities Limited v HMRC* [2012] UKFTT 749 (TC):

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"The supervisory jurisdiction in cases such as this involves consideration of whether the Commissioners took into account all relevant matters, whether they took into account any irrelevant matter and whether the decision was within the bounds of reasonableness."

43. It is inherent in this approach that HMRC's decision should be judged only by reference to the circumstances at the time it was made (or, where relevant, upheld on review), i.e. taking account only of the evidence that had been made available to HMRC at that time. In the present case, this means that the purchase receipts for gift cards and other information provided to HMRC after 28 July 2011 should be disregarded when assessing the reasonableness of their decision.

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44. It is also clear that an appellant faces a high hurdle in seeking to persuade a tribunal to exercise its supervisory jurisdiction. As was stated by the VAT and Duties Tribunal in *Baba Cash and Carry v HMRC* (2007) Decision 20416 (at [12]), after an examination of the ECJ decision in *Reisdorf v Finanzamt Koln-West* Case C-85/95 [1997] STC 180:

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"Against the Community law background summarised above, the domestic provision, in the proviso to regulation 29(2)(a) of the VAT Regulations, that where the Commissioners so direct, either generally or in relation to particular cases or classes of cases, a claimant shall hold or provide such other evidence of the charge to VAT [i.e. evidence other than the tax invoice] as the Commissioners may direct, gives only slight scope, as it appears to us, in the absence of mala fides, for a taxable person to appeal successfully to this Tribunal in a case where the Commissioners have considered the case and declined to make any such direction."

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45. *Reisdorf* was a case in which the German VAT authorities had refused to permit deduction of input VAT on a taxable supply which was evidenced by a copy VAT invoice solely because the relevant original VAT invoice was not held – a strict requirement of German VAT law, unless the original had been lost (which was not alleged in that case). It was held that the power to accept alternative evidence was a matter for the member state. This effectively meant that the German authorities were quite entitled to refuse to permit a copy invoice to be used to support deduction of input VAT in a situation where the original invoice could be obtained. It was inherent

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in this decision that input deduction could be denied even if there was no dispute that the taxable supply had taken place; the national authorities were quite entitled to require production of the original invoice as a precondition of allowing the deduction, unless it had been lost or destroyed.

5 **The arguments**

For the appellant

46. Mr Ilahi, in summary, argued that HMRC's decision (by which we took him to mean their refusal to accept the alternative evidence of the supplies which had been proffered to them) was "unreasonable and not proportionate". He submitted that they had not taken account of the evidence that was available, and had asked for further evidence which they knew would not be available. They had not even attempted to consider the information that had been provided in a reasonable manner.

47. He pointed out that the reported purchases and sales generated a profit and cash sufficient to finance the purchases; that the invoices provided all necessary evidence of payment on their face; and that the invoices themselves were perfectly satisfactory from a VAT point of view, apart from the failure to include the appellant's address on the 184 invoices which included its name, and the failure to include its name and address on the other invoices. HMRC should have been aware of the fact that this was the only format of VAT invoice which could be obtained from Apple. In short, the vast majority of the requirements of HMRC's statement of practice "Input Tax Deduction without a Valid VAT Invoice" of March 2007 were satisfied.

48. He also pointed out that HMRC had not questioned the output tax side of the appellant's VAT return, thereby (in his submission) accepting that the appellant had made the on-supplies and therefore must have obtained the goods in order to do so. He submitted that the officer's judgment was clouded by a general and unsubstantiated prejudice against what were perceived to be transactions related in some unidentified way to MTIC trading.

For HMRC

49. Mr Shields, on the other hand, submitted (in summary) that the documentary evidence before the Tribunal (and previously before HMRC) raised more questions than it answered, and did not demonstrate that the supplies had been made to the appellant. It was unfortunate that no director or other live witness on behalf of the appellant had provided any evidence, but the overall result was that the appellant had failed to demonstrate that the supplies had ever been made to it (even in the cases where its name appeared on the invoices) as the overall picture was far more consistent with the purchases being made by the ultimate customer or customers, with the appellant's name being interposed simply in an attempt to generate an input tax claim for it. There was quite simply no commercial sense in a customer buying large values of gift cards and handing them over to the appellant for it to purchase the phones and then sell them to the customer at a profit, often minutes later and in the

same place. The payment for the phones by the customer itself on an employee's debit card made even less sense, if that were possible.

50. In short, both HMRC (when making their decision) and the Tribunal were faced with nothing but a bundle of invoices and a long list of unanswered questions which went to the heart of the commercial fundamentals of the appellant's supposed business.

51. In relation to the invoices which did not include the appellant's name, he further submitted that even if a supply to some agent acting on behalf of the appellant were shown (which he did not accept), section 47(2A) Value Added Tax Act 1994 would apply to disallow the input tax, on the same basis as was set out in *Gold Standard Telecom Limited v HMRC* [2014] UKFTT 577 (TC).

52. In the circumstances, he submitted, there was no basis on which the Tribunal could properly interfere with HMRC's decision to disallow the input tax.

Discussion and decision

53. Essentially we agree with Mr Shields. The existence of invoices from a bona fide source such as Apple obviously demonstrates that a supply of the relevant goods by Apple took place. The inclusion of the appellant's name on the invoices (at its request) provides some evidence that the supply in question was made to the appellant, but it is not conclusive evidence.

54. We consider HMRC to have acted perfectly properly in seeking to satisfy themselves, by reference to other evidence, of the existence of VAT which could properly be treated as recoverable input tax of the appellant. In doing so, they followed their own policy, as set out in their 2007 Statement of Practice, and we have summarised above the very limited further evidence that was supplied to them (beyond the Apple invoices themselves).

55. The crucial concern they expressed was as to the absence of alternative evidence to show that the appellant had paid for the phones in question. We agree with Mr Shields that insofar as any such evidence was supplied, it gave rise to at least as many questions as it purported to answer. There was no substantial evidence whatsoever that the appellant had itself paid for the goods (rather than simply handing over cash and gift cards provided by, or on behalf of, the customers for whom the phones were purchased). The clear fact that the appellant used "partly used cards" (as mentioned at [33(7)] above) shows that the cards in question must have been used for other purposes than paying for the goods the subject of this appeal, which does not sit easily with the assertion that the cards in question were simply provided to the appellant as payment for the phones; no records were produced of the receipt of any of the cash that was used to pay for the phones; and at the time HMRC were making their decision, no explanation whatever had been provided for the debit card purchases (and in any event, the explanation subsequently provided effectively undermined the appellant's position rather than strengthened it). In short, the evidence provided to HMRC up to the time they upheld their decision did not

demonstrate the existence of anything approaching "normal commercial arrangements"; and, whilst not relevant to the appeal, we would add that the same could be said even after taking account of the evidence subsequently supplied.

5 56. In the circumstances, we have no doubt in holding that HMRC's decision to deny the deduction was justified, indeed we would have reached the same decision ourselves. The complete absence of any evidence that the appellant has actually paid for any supplies, indeed the clear inference that most of the supplies have been paid for directly by or on behalf of the appellant's customers, renders HMRC's decision unimpeachable. We find that they took due account of the information that was provided to them and considered the explanations that were offered in respect of the questions they raised. Like them, we find the explanations commercially implausible.

10 57. The appeal is therefore DISMISSED.

15 58. 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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**KEVIN POOLE
TRIBUNAL JUDGE
RELEASE DATE:
19 NOVEMBER 2015**

Appendix – Summary of phone purchases

Date	Location	Time Span	Customer name	Gift card	Cash	Debit card	Total
6 Dec 10	Covent Garden, London	15.02	Blank		1		1
7 Dec 10	Covent Garden, London	20.07	Blank	1			1
8 Dec 10	Covent Garden, London	14.02-15.39	Blank	5			5
9 Dec 10	Covent Garden, London	17.23-17.26	Blank	2			2
10 Dec 10	Covent Garden, London	12.40-20.53	Blank	9			9
14 Dec 10	Covent Garden, London	15.05-16.09	Xxx Xxx or Blank	3			3
15 Dec 10	Covent Garden, London	12.57-16.48	Blank	7			8 ¹
16 Dec 10	Covent Garden, London	09.45-10.20	Blank	4			4 vb
20 Dec 10	Covent Garden, London	14.12-15.06	Blank	11			11
21 Dec 10	Covent Garden, London	19.15	Blank	2			2
22 Dec 10	Covent Garden, London	17.37-17.44	1 Blank, 19 MG		20		20
23 Dec 10	Covent Garden, London	11.48-14.33	10 Blank, 98 MG	90	8	10	108

¹ One invoice, being a duplicate issued by Apple, does not show the method of payment

8 Jan 11	Bull Ring, Birmingham	15.33-15.35	Blank		2		2
9 Jan 11	Touchwood, Solihull	13.29-13.31	SN		2		2
	Bull Ring, Birmingham	14.36-14.39	SN		2		2
10 Jan 11	Bull Ring, Birmingham	13.27-13.31	SN		2		2
11 Jan 11	Milton Keynes	14.02-14.08	MG	10			10
	Cambridge	16.40-17.11	MG	16		4	20
12 Jan 11	Milton Keynes	11.37-11.59	MG		12 ²		14
	Cambridge	14.00-14.23	MG	4	4		8
	Chapelfield, Norwich	16.10-16.23	MG	9			9
14 Jan 11	Milton Keynes	15.21-15.26	MG	4			4
16 Jan 11	Cabot Circus, Bristol	14.55-14.58	SN		2		2
20 Jan 11	Bull Ring, Birmingham	10.15-10.19	Blank		4		4
	Norwich	13.44-13.45	Blank	2			2

² Two invoices for purchases in Milton Keynes are listed in the spreadsheet but missing from the copy invoices. It is therefore impossible to be sure how they were settled; however the missing invoices appear at nos. 1 and 13 of a list of 14 immediately sequential purchases in Milton Keynes, all the rest of which were settled in cash.

	Milton Keynes	14.37-14.52	00	4			4
	Bull Ring, Birmingham	17.50-17.59	Blank		4		4
24 Jan 11	Cambridge	13.55-13.58	...	2			2
	Chapelfield, Norwich	16.44-17.02	8 Blank 1 ...	9			9
25 Jan 11	Chapelfield, Norwich	12.52-13.15	8 Blank, 1 sorry.sorry	9			9
	Milton Keynes	13.39-13.40	MG	2			2
26 Jan 11	Chapelfield, Norwich	12.00-12.10	...	9			9
28 Jan 11	Chapelfield, Norwich	07.58-08.25	Blank	8	15		23
31 Jan 11	Chapelfield, Norwich	10.37-10.38	Blank		2		2
	Cambridge	13.45-13.47	...		2		2
			Totals:	222	82	14	321³

³ The discrepancy of 3 between the subtotals of gift card, cash and debit card columns and this total is explained by reference to the previous footnotes to this table