[2016] UKFTT 040 (TC)

TC04839

Appeal numbers: LON/2008 1619

LON/2008/1717

Value Added Tax - MTIC appeal - Appeal dismissed

FIRST-TIER TRIBUNAL

GSM INTER TRADE LIMITED

Appellant

-and-

THE COMMISSIONERS FOR HER MAJESTY'S REVENUE AND CUSTOMS

Respondents

Tribunal: JUDGE HOWARD M. NOWLAN

GILL HUNTER

Sitting in public at the Royal Courts of Justice in London on 5 to 26 October (excluding 14 October) and on 4 November 2015

Hillal Jafar, director of GSM Inter Trade Limited on behalf of the Appellant

Christopher Foulkes and George Rowell, counsel, on behalf of the Respondents

DECISION

Introduction

1. This was a relatively straightforward Missing Trader or MTIC Appeal; straightforward in the sense that the basic facts were relatively simple, but difficult from the standpoint of judging the actual state of mind, intentions and level of knowledge of the Appellant's only director, Mr. Hillal Jafar ("Mr. Jafar").

2. The Appellant was a trader in mobile phones and the Appeal related to the denial of the Appellant's claims to recover input tax in respect of its purchases and exportations to continental EU customers of phones in the VAT periods 02/06 and 05/06. The Appeal in relation to the earlier period was an appeal against an assessment to recover £1,625,250.38 which HMRC had initially repaid to the Appellant. The Appeal in relation to the later period was against HMRC's denial of the input tax claim made by the Appellant for £1,818,780.25. The basis of HMRC's challenge, in reliance on the *Kittel* principle, was that the Appellant's transactions had been traced to fraudulent losses of VAT and that the Appellant "knew or ought to have known" of that connection.

3. It was manifestly the case, and not disputed by the Appellant, that all of the Appellant's challenged deals had been duly traced to fraudulent VAT losses. In all of the deals the Appellant had purchased stock either from Future Communications (UK) Limited ("Future") or Infinity Holdings Limited ("Infinity"). Both these companies were plainly acting as contra-traders in the relevant periods. In other words, as contra-traders, they were exporting to continental EU customers product (not necessarily phones) that had been purchased directly or indirectly from UK fraudsters that had failed to pay the VAT on their initial domestic sale following importation, while in the same VAT period the contra-traders were importing mobile phones from continental EU suppliers and supplying those phones directly or indirectly to the Appellant and numerous other companies that then exported the phones back to such EU customers. As was virtually always the case with contra-traders, the movement of product in each direction was for virtually identical amounts of consideration, with the contra-traders purportedly discharging their VAT liability in relation to the second category of supplies (domestic sales to the Appellant and others) by offsetting against their liability their claimed input tax repayment entitlement in respect of the first category of supplies (their exports to continental EU customers). The purpose of the whole exercise, of course, was to obfuscate matters and to create an apparent, but unreal, breach in the transaction chains between the fraudulent default, and the ultimate export of other product by companies such as the present Appellant. Rather than use the conventional names given to those two supply chains of "clean" and "dirty" chains, we will refer to the contra-trader's importations that led to sales to continental EU customers by the present Appellant as "the primary chains/deals and transactions" and the transactions in which the contra-traders exported as "the secondary chains/deals/transactions". This is for the reasons that we are principally concerned with the primary chains, and because the tag of "clean chains" is so inappropriate.

4. It was clear that Future and Infinity were acting fraudulently in relation to all their supplies to the Appellant. The directors and several employees of Future ended up being imprisoned for long periods (of up to 17 years) for their criminal activities and HMRC's

researches, including tracing of payments through the bank accounts of First Curaçao International Bank ("FCIB"), indicated that Future and Infinity, along with a third company, Soul Communications Limited ("Soul") had performed dominant roles as contra-traders in a cell of companies that appeared to be manipulated by one controlling mastermind. We were shown two charts prepared by HMRC, one that included all the companies performing all the various roles in Future's primary deal chains, and the other the parties involved in Future's secondary transaction chains. The former chart revealed an astonishing number of companies, the chart itself measuring 60 inches wide. Since the activities in the relevant cell plainly involved Infinity's and Soul's deals as well and involved all the parties in both the primary and secondary deal chains, the complexity of the cell transactions and the vast number of participants and deals was quite bewildering.

5. Since it was clear, and accepted by the Appellant, that all the Appellant's purchases from Future and Infinity had been traced to fraudulent losses, via the contra-traders, the only issues for us to determine were whether the Appellant "knew" of this connection (in which notion we include the feature that "it must have known of the connection"), or whether, in the alternative, it "ought to have known" of the connection. In relation to the Respondents' principal contention, namely that the Appellant must have known of the relevant connection, we will indicate briefly the factors pointing in each direction in relation to this issue.

6. Most, if not all, of the payment evidence obtained from the FCIB accounts indicated that money flowed round in circles and periodically aggregate sums owed in respect of several invoiced supplies were discharged by fractions of the total amount owed being passed round several circles (three in two sets of transactions) all in a very short period of time. Circularity of payments makes it vital that each party in the transaction chains should buy product from some identified supplier and supply it to an identified customer, rather than the relevant trader be free to source and supply as it chooses. This reality does not prove that the relevant trader will inevitably have been aware that it was performing a scripted role in artificial, and thus fraudulent, transactions, but particularly when the same pattern emerges in countless deals, the circularity of payment flows does lead to a very strong inference that the Appellant must have been fully aware of its key role in fraudulent chains. Otherwise, the required chains of supplies and payments would not have been accomplished. This expectation is further confirmed in the present case by the facts that:

- The Appellant was the beneficiary of extraordinarily beneficial trading terms, whilst itself having little capital and poor credit standing;
- The beneficial trading terms extended to undocumented credit being provided by both Future and Infinity; by EU customers making full payment for goods to the Appellant before goods were even despatched from the UK, and with loans being made to the Appellant both to fund additional trading (such that the level of the Appellant's turnover increased dramatically) and to fund "the VAT gap", i.e. the excess cost (pending the recovery of input tax from HMRC) when goods were purchased on a VAT-inclusive basis and then sold to continental EU customers on a VAT-exclusive basis. Particularly when the later and much larger of the two relevant loans was unsecured and not guaranteed, and the £500,000 lent was channelled to the Appellant from companies plainly involved in the cell in which Future, Infinity and Soul acted as the contra-traders, it was obvious that the loan was advanced to facilitate fraudulent trading. The cumulative credit support provided to the Appellant can hardly have

left the Appellant in any doubt that none of this credit support was provided on a remotely credible *bona fide* commercial basis.

- The readiness of one of the Appellant's EU customers to pay the Appellant approximately £2 million in advance of the date when that amount might have been applied in payment to the Appellant for supplies, and indeed two months before it eventually transpired that it was an excessive payment such that it had to be repaid, seemed utterly uncommercial and must have suggested that the transactions were uncommercial.
- The Appellant's disinterest in the specification of goods that would have influenced proper pricing and been of vital concern to all parties, and the Appellant's disinterest in inspections all strongly indicated that the basic objective was simply for deals to be done, and payments made, rather than for there to be any commercial dealing.

7. There were however factors that occasioned at least some doubt as to whether the Appellant did know, or must have known, that it was involved in fraudulent trading.

8. These factors included the following:

- Mr. Jafar described how, in the earlier period in and around 2001, he had sought to commence a trade in dealing in mobile phones, first simply as an agent, and then as a principal in transactions involving purchases from and supplies to UK companies. In the course of that trading, Mr. Jafar claimed, with considerable credibility, to have been very concerned about the high level of fraudulent trading. He described the way in which, having received supplies, and obtained payment from customers, he found that the Appellant was being asked or required to make third-party payments, or payment to various different parties and payments to different accounts all in respect of single supplies. He even described the way in which he quite regularly sought to extricate the Appellant from such transactions, periodically refunding to intending purchasers their pre-payments for goods in order to back out of deals. Whilst this was all to his credit, we did note ourselves that he must have been regarded as a "loose cannon" and a menace by the countless counter-parties who would have been quite ready to trade on the instructed terms without any such entirely proper sensitivities.
- Having ceased the role just described, and having, we believe, left the UK for about a year following the 9/11 attack on the "Twin Towers" for fear of prejudice, he returned in or before 2004 with a strategy that he claimed should enable the Appellant to trade without being embroiled in MTIC fraud. In due course we will describe the various steps and theories on which he relied, one being to purchase product only from Future and Infinity, both of which he regarded as reliable and both of which claimed to have purchased their supplies from substantial white market traders on the continent, with then the Appellant avoiding further contact with the fraud-ridden UK market by selling only to continental EU customers. While we will have to consider all the steps that Mr. Jaffar claimed should protect the Appellant from contact with MTIC fraud, only one of the steps that he described and relied upon had any validity at all, and even that entirely depended on two utterly unproven assumptions. The others were all completely without any foundation, and indeed we consider that one at least rendered it more, rather than less, likely that the Appellant would be involved in MTIC fraud. The extraordinary feature of Mr. Jafar's claims, however, was that

even when each had been scrutinised and undermined in cross-examination and by questions and suggestions that we ourselves made, he persisted, right up to the sixteenth day of the hearing, in advancing the same claims and theories with apparent conviction. He periodically suggested to the Respondents' counsel that he, as a businessman, knew far more about the practices in relation to, and for avoiding, MTIC fraud than the Respondents' counsel.

9. We were accordingly left with some genuine doubt as to whether Mr. Jafar did genuinely believe all his repeated protestations; whether he had deluded himself over the long period since 2006 into thinking that the theories that he expounded made some, or rather in his mind compelling, sense, or whether he was simply out of his depth and unable to understand what seemed to us to be the reality. With this doubt in our mind, at some points we tentatively felt that we would dismiss the Appeal on the basis that the Appellant most certainly ought to have known of the admitted connection of its deals to fraudulent VAT losses, but that the case in relation to actual knowledge had not been made out.

10. Further consideration of the evidence in relation to the FCIB money movements, and in particular the confusion in relation to one set of payment steps (involving the Appellant returning funds to its supplier on three occasions) have led us to conclude that those steps, coupled with the compelling points already summarised in paragraph 6 above, do lead to the conclusion that the Appellant must have known of the connection of its deals to fraudulent losses. We feel, in some sympathy for Mr. Jafar, that he was genuinely confused, but we still say that the various circumstances that we will explain in due course make any conclusion, other than that he must have known of the connection of his deals to fraudulent VAT losses, untenable.

The preliminary and other Applications

11. Before dealing in more detail with the substantive matters in this Appeal we need first to refer to various Applications that we had to deal with.

The minor Applications

12. Several of the preliminary Applications were minor, and in the event turned out to be of little significance and so we will not mention them. The Appellant had, for instance, indicated that he wished to cross-examine some HMRC witnesses in order to challenge expressions of opinion that had been included in their Witness Statements. On the basis that we were, in any event, bound to ignore such expressions of opinion, it seemed unnecessary for several of the indicated officers to be cross-examined.

13. One equally minor one related to a dispute in relation to whether Mr. Jafar had indicated in a meeting with HMRC officer Gormley that the Appellant would be acquiring software in order to collate and then cross-check lists of IMEI numbers. We will refer to the evidence in relation to this in due course, having given leave to the Appellant to cross-examine Mr. Gormley in relation to his recollection of the disputed conversation, but we attach little importance to this topic.

The Application to provide a witness statement in relation to the earlier Serenes decision

14. A somewhat more material Application was made by the Respondents to file a Witness Statement basically to record in as short a manner as possible the findings of the First-tier Tribunal in another case involving the same Appellant. We have found the earlier case to

have little bearing on the present Appeal but we must clearly refer to the scope and findings of the earlier appeal. Accordingly we granted the Application to file the relevant Witness Statement.

15. The relevance of this former Appeal is that it dealt with the purchase by the Appellant from Future in the VAT periods with which we are indeed concerned of some very expensive phones described as Samsung Serenes, or broadly similar phones also made by Samsung but marketed as B & O phones. The earlier case was referred to throughout the present hearing as "*the Serenes appeal"*. Although the Appellant had claimed to have purchased various quantities of these phones in the relevant periods, HMRC had elected to challenge the input tax deduction in respect of these phones, either on the basis that no phones had been supplied at all, or that in any event the description of the phones on the invoices did not match anything that had actually been supplied. The ability to recover input tax in respect of these phones when they were exported was not challenged on *Kittel* lines. The First-tier Tribunal had dismissed the Appeal, expressly finding that it was not satisfied that any phones had actually been supplied and it is also relevant to record that the Tribunal indicated that it had found some of Mr. Jafar's evidence to be both dubious and sometimes contradictory.

16. The Appellant appealed against the decision in the *Serenes* appeal on two grounds, one seeking to overturn findings of fact, and the other on the legal claim that even if the entitlement to claim input tax was being challenged on the basis pursued by HMRC in relation to the Serenes, it was still incumbent on the Respondents to indicate that the Appellant *"knew or ought to have known"* of the non-existence of the phones or the disparity between whatever had been supplied and the invoice description of it. The Upper Tribunal has granted leave for the Appellant to appeal solely on this legal point and if the Appellant succeeds in establishing that the *"knowledge or means of knowledge"* requirement has to be established by the Respondents in such a case, then the *Serenes* appeal will doubtless have to be referred back to the First-tier Tribunal for the Tribunal to consider the *"knowledge or means of knowledge"* point. Although this is the very issue that we are required to consider in this Appeal, the deals involving the Serene phones were clearly not the proper subject of this Appeal, and the transactions involving those deals were simply ignored.

17. The *Serenes* appeal is of some continuing significance in this present Appeal, however, partly because of the observations by Judge Brannan in relation to whether or not Mr. Jafar's evidence was sometimes dubious, and also in relation to the now undisputed conclusion that no phones had actually been supplied in the claimed transactions involving the Serenes phones.

T*he Application to file an amended Statement of Case*

18. There was one materially more significant Application before us which was an Application by the Respondents to file an Amended Statement of Case. This had been made approximately three weeks before the present hearing commenced on the basis that it would be considered at the start of the hearing. This meant that we would be considering the Application at a time when we had not yet seen either the original or the proposed Amended Statement of Case.

19. The principal difference between the two Statements of Case was that the former had referred throughout to the Respondents' case being one in which they would seek to establish that the Appellant had either "known or that it ought to have known" of the connection of its

deals to fraudulent losses of VAT, and it was not specifically asserted that the two tests in that composite phrase were two self-standing contentions either or both of which the Respondents would be advancing. More materially, much of the surrounding material in the original Statement of Case appeared to be principally directed to a *means of knowledge* as distinct from an *actual knowledge* contention, as indeed was also the basic tenor of the two original Decision Letters. By contrast, the Amended Statement of Case addressed each challenge, that in relation to actual knowledge and that in relation to means of knowledge, quite separately. There was naturally some overlap between the facts and contentions relevant to each heading, but there were numerous paragraphs added to the Amended Statement of Case, directly addressing the issue of actual knowledge, and indeed the Respondents' principal ground of challenge, none of which had appeared in the original Statement.

20. Not surprisingly the Appellant objected to the admission of the Amended Statement of Case. Mr. Jafar contended that for years he had been preparing for what he described throughout the hearing as *"the means of knowledge appeal"*. He said that it was therefore unacceptable that merely three weeks before the hearing, the whole basis of the Appeal should be changed. Had he been aware of this well in advance, he might have adduced further evidence. In view of the implicit challenge to his integrity were he to lose an *"actual knowledge"* appeal, he might well have thought it worth the considerable additional expenditure of instructing a barrister to advance his case had he realised that it was to be mounted on the *"actual knowledge"* basis, and he might even have reconsidered whether it was appropriate to pursue the Appeal at all.

21. The Respondents' stance was that the recent Upper Tribunal judgment in the case of *Universal Enterprises*, heard by Mr. Justice Henderson and Judge Gammie, was authority for the proposition that the composite *Kittel* test of *"knowledge or means of knowledge"* (as advanced in the original Statement of Case) did enable the Respondents to advance their case on either basis. Furthermore, in addressing the scope of the Appeal and the case that the Appellant had to face, it was appropriate to pay regard not just to the Statement of Case, but also to the Witness Statements. The Witness Statements in the present Appeal had been filed at least two years ago and the Respondents' counsel showed us various passages, and indeed statements of opinion on the part of officers, that counsel suggested made it abundantly clear that the Respondents' case was that Mr. Jafar had had actual knowledge of the connection of the Appellant's deals to fraudulent VAT losses.

22. Prior to the lunchtime adjournment on the second day of the hearing we summarised our preliminary views as follows:

- As a pure matter of grammar, a test along the lines that the Appellant had to be shown to have had actual knowledge of the connection of its deals to fraudulent VAT losses or that it ought to have had such knowledge, must enable either limb to be advanced. If that is disputed and the limb in relation to actual knowledge can only be advanced if the contention of actual knowledge is advanced more clearly and distinctly, the meaning of the composite test becomes obscure. One possibility is that the composite test could only be advanced on the basis of means of knowledge because the implicit allegation of fraud has not been made sufficiently clearly. The other presupposes that the Tribunal will end up deciding the case on the basis of the "either/or" composite basis, but will not make it clear which limb is considered

appropriate, and will thus fail to produce clear reasoning for the decision. Both of these possibilities appear incoherent, and so we conclude that as a matter of simple interpretation, the *Kittel* test in its traditional composite form must expose an Appellant to a challenge on either of the grounds plainly implicit in the wording.

- We did accept that there were references in the Witness Statements that implied that the Respondents would be contending that the Appellant had actual knowledge of the connection of its deals to fraudulent VAT losses, and indeed the Appellant appeared to have complained of just that feature well before this most recent dispute in relation to the proposed Amended Statement of Case.
- The Appellant did, however, have grounds on which to criticise HMRC because their Decision Letters had not been particularly clear; much of the remaining text, beyond the quotation of the *Kittel* test, in the original Statement of Case did indeed dwell on *"means of knowledge"* factors and one had to comb through the Witness Statements to find the passages that supported the proposition that the Respondents' case was to be advanced on the basis of actual knowledge.
- We had therefore indicated that one possibility was to grant the Appellant a relatively long adjournment in which to prepare, as he expressed the point, for a "different case". We acknowledged that this would, however, be highly undesirable because numerous arrangements had been made for a long case to be heard before us, and all these arrangements would have had to be abandoned and then replaced.
- We also paid some regard to the fact that the Respondents suggested that the Appellant had repeatedly failed to engage with the Respondents and the Tribunal in the preparation for the present Appeal, and had failed to comply with Directions. Had Mr. Jafar been more attentive, it would have emerged far earlier that the Respondents' case was to be advanced, as various passages of the Witness Statements made clear, on the *"actual knowledge"* basis.

23. Immediately after the lunch adjournment, Mr. Jafar indicated that he wished to make a statement, and he said that he had changed his mind and wished to proceed with the Appeal immediately, without any adjournment, so that implicitly the Respondents could advance their case as they wished. This was then formally on the basis that the original Statement of Case, phrased in the traditional *Kittel* manner, did permit either contention to be advanced, and that, supported by the content of some of the Witness Statements, the Respondents' original case had been sufficiently clear. Thus the admission of the Amended Statement of Case was merely designed to clarify and simplify matters, and not to advance any contention that could not have been advanced under the original Statement of Case.

24. We therefore allowed the Application to file the Amended Statement of Case.

The disclosures in relation to Mr. Jafar's health problems

25. On a quite different topic, we must record that Mr. Jafar informed us that he had suffered from heart problems and that he also suffered from COPD. This apparently leads to memory loss which, bearing in mind that many years had elapsed since the events in dispute, would be likely to make it impossible for Mr. Jafar to remember many points. COPD apparently also occasioned tiredness such that we were asked to permit various short breaks in the hearing, particularly during the cross-examination of Mr. Jafar.

26. The point about ill-health re-arose at a late stage in the hearing when Mr. Jafar produced a very short, and by no means recent, letter from a specialist in relation to his

illness. This led to a long discussion on the part of the Respondents as to whether the hearing should be adjourned for both Mr. Jafar and the Respondents to obtain detailed medical reports. In the event this mercifully proved unnecessary because Mr. Jafar said that he did not wish to delay the hearing. He was simply re-asserting that he needed the breaks (which had certainly not been refused in any way). He also said rather oddly that his loss of memory only involved forgetting dates and names.

27. Since it was perfectly obvious that after nine years it would be easier to remember points of principle, rather than names and dates, we were entirely content to proceed with the hearing.

The evidence

28. Extensive evidence was given and we will refer to the evidence that we consider to have been material below. The evidence given in relation to analysing the FCIB accounts, given by the case officer, Mr. Reardon, and by the officer who specialised in analysing such accounts, Mr. Birchfield, was very well presented and we are grateful for the assistance that we derived from their numerous and excellent charts, and also from Mr. Reardon's summaries of payment flows.

29. Mr. Jafar was the only witness for the Appellant. We will defer commenting on the reliability of his evidence until we have described the numerous contentions and theories that he advanced.

Background

30. Mr. Jafar appeared to be a member of a reasonably wealthy and well-regarded family resident in the Lebanon. He periodically referred to the fact that if any member of the family got into trouble (sometimes referring to his failure to repay the £500,000 loan that we will deal with below), then other members of the family would seek to solve the problems. He did, however, say that it was a big mistake to borrow from family members, and that he had refrained from doing so in relation to his UK trading.

31. Mr. Jafar had dabbled in trading from the age of 15, selling to others while at school and university and dealing with local corner shops. On leaving LAU University in the Lebanon in 1986 with a degree in computer science, he worked as a sales negotiator around the world for 18 years. Between 1987 and 1991 he worked as a sales negotiator for an African company called Coraland. He initially worked for this company in Liberia, trading in textiles, foodstuffs and women's shoes, though when the company commenced activities in Romania, he moved to Romania and dealt with Coraland's expanding trade in electronic goods such as Sony Playstations and landline phones.

32. Whilst working for Coraland in Romania, Mr. Jafar began to trade in his spare time on his own account. Having been asked by a contact in Dubai to locate and supply some Samsung mobile phones, he said that he realised that this was a growing market and he began to trade in such phones in the domestic market in Romania. Mr. Jafar described how it was very inefficient to conduct a non-domestic business from a base in Romania because local regulations required the product in question always to be brought into Romania and then exported from Romania, even if the product was to be sourced from one foreign country and supplied to a customer in another foreign country. This of course led to both double transport costs and irrecoverable import duties charged on entry into Romania.

33. In the course of his various activities, and operations in a number of countries, Mr. Jafar made numerous contacts. Many were presumably people with whom he had traded in his various activities. Others were rather less material lists of traders that he assembled by contacting embassies and trade bodies, with which traders he had presumably had no direct contact.

34. In 2001 Mr. Jafar moved to the UK both because of a major downturn in the economy in Romania, and because of the difficulties in dealing with movements of goods from one to another country outside Romania.

35. His initial trading in the UK involved simply acting as an agent to facilitate the supply of mobile phones for other traders, he relying principally on his numerous international contacts.

36. After a period he began to trade in mobile phones as a principal, initially only dealing with domestic business, purchasing from and supplying to other UK traders. He explained that he always found this activity particularly troublesome because he considered the market to be rife with fraud. He certainly confirmed that from this early date he was aware of MTIC fraud and what to look out for. As we indicated in the Introduction, he said that he was regularly asked to make third party payments to someone other than his UK supplier of phones; that he was also asked to make payments (in respect of just one supply) to various parties or to various different bank accounts of the one party. He said that because of his desire to avoid being implicated in MTIC fraud, he periodically backed out of deals that had been negotiated, returning to his customer monies that had been paid prior obviously to his releasing the phones. He provided figures in his witness statements of the initial gross turnover; then figures of reversed payments which indicated that he had backed out of a considerable proportion of his deals. We noted incidentally that the resultant reduced figures did not tally with his declared turnover in the relevant VAT returns though it was not material to pursue this side issue in our hearing.

37. We also noted in the Introduction that his attitude, and readiness to back out of deals must have led his trading counter-parties to regard trading with him as a nightmare, since one can reasonably assume that other parties knew that they were simply acting as “buffer” traders (traders designed to distance the original fraudulent non-payment of VAT from the transaction in which the final UK trader in the chain would export the product to a continental EU customer and seek to recover the VAT). Whilst his counter-parties were presumably prepared to perform their scripted roles without hesitation, his readiness to back out of deals must have been highly problematic for them, albeit from our perspective, to his credit.

38. Mr. Jafar also mentioned the practice of supplying goods on a “Ship on Hold” basis at the point of initial importation into the UK (i.e. in the transaction in which the defaulting fraudster acquired the goods) to be a strong indicator of MTIC fraud. We will have to deal with that in much more detail in due course since it led Mr. Jafar to insist, when trading in our two material VAT periods with EU customers, that all the Appellant’s customers should pay the full price before he despatched the goods, such that they were never supplied on a “Ship on Hold” basis. In fact on one occasion they appeared to have been supplied on a “Ship on Hold” basis but it appears that this was because the despatching freight forwarder pursued the much more normal practice and failed to understand that the full price had already been paid to the Appellant.

39. We should finally add that Mr. Jafar was also influenced by the realisation that he would never make much profit by dealing in UK to UK transactions, though he placed more emphasis on the prevalence of fraud than the low profitability in explaining his disquiet with UK to UK transactions.

40. At some time fairly shortly after the attack on the "Twin Towers", Mr. Jafar said that he left the UK largely because he thought that, as a Muslim, there would be prejudice against him that would damage his trading.

41. On his return to the UK and after a gap in trading of approximately one year, Mr. Jafar said that he decided that his business model was not suited to the domestic only market and that the Appellant should move into the export market. We will in due course examine more critically the various explanations and theories advanced by Mr. Jafar but in terms of describing the background facts shortly, it is sufficient to say that the explanation for the move into the export market given in his witness statement was that lack of working capital restricted his trading in the UK to UK market. In later evidence, he explained the move by claiming that he was convinced that the UK market in mobile phones was so rife with fraud that it would be safer to buy from the suppliers, Future and Infinity, that he considered to be reliable, with Future at least assuring Mr. Jafar that they were sourcing product from large white market suppliers on the Continent. Turning to his own supplies, he said that he decided to confine all the Appellant's supplies to export sales to continental EU customers, so avoiding further involvement with the UK market, and all the fraud that was so rife in that market.

42. In September 2004, the Appellant managed to borrow £50,000 from a wealthy old university friend, namely Mr. Zaiour. The loan was on relatively onerous terms in that the interest rate was 2½% a month (i.e. 30% annually), and the loan had to be repaid within 15 days of a demand for repayment. Mr. Jafar also had to give a personal guarantee.

43. In the course of his very limited trading with the benefit of the finance provided by the above loan, he did one deal in the period 02/05, the only deal in that particular 3-month VAT period. In due course he was notified by HMRC that the particular deal had been traced back to a fraudulent loss of VAT, and it was for this reason (as HMRC clearly indicated) that, when Mr. Jafar and his accountant requested that the Appellant go over to monthly returns for VAT purposes, this request was refused. The first significant feature of this point was that when the particular deal had been one in which the Appellant had sourced its product from Future (albeit that it was never disclosed whether at that early date Future was purchasing from Europe for its primary deal chains and acting as a contra-trader), the Appellant might have concluded that its strategy of buying from Future and only supplying to continental customers had failed to protect it from being involved in MTIC chains. Secondly, there was considerable dispute as to whether the Appellant and Mr. Jafar had indeed received the particular notification in relation to the relevant tracing to a fraudulent loss, leading to a suggestion that Mr. Jafar had been lying when he claimed not to have received the relevant notification of loss. We will refer to this again in due course.

44. In July 2005, Mr. Zaiour demanded repayment of the £50,000 loan, and full payment of interest, the repayment apparently being demanded because Mr. Zaiour learnt that NatWest had closed the Appellant's bank account. Although Mr. Zaiour had thus demanded and obtained repayment of the £50,000 loan, he nevertheless introduced Mr. Jafar to a colleague of his, Mr. Khaled Nazir, who might be prepared to advance a replacement loan. The

colleague was involved in mobile phone trading through a Dubai company called Phone 2 Come LLC ("Phone 2 Come"), with which the Appellant had earlier sought to do a deal that had in fact not come to fruition. While Mr. Jafar made it clear that he would like to borrow £100,000, it was said that Phone 2 Come was only prepared to lend £500,000, the lower amount not being worth the trouble. The loan was, in due course, advanced on 19 September 2005. Although it was basically claimed that the loan was documented principally for the benefit of the UK authorities, and presumably for it to be shown to HMRC, it was documented by a UK solicitor. It was on materially more attractive terms than the earlier smaller loan in that the interest rate was only 1% a month (12% annually), the repayment terms were more extended and there was no inclusion of any personal guarantee.

The trading in the two relevant VAT periods, 02/06 and 05/06 - the basic transactions

45. In the present section of this Decision we will simply record the basic facts in relation to the Appellant's deals that are the subject of this Appeal. We will not therefore address most of the contentions advanced by the Respondents to the effect that some features of the deals indicate the likelihood that the Appellant knew of the connection of its deals to fraudulent losses. Other features were advanced to suggest that if Mr. Jafar had not had actual knowledge of the connection of the Appellant's deals to fraudulent losses, he certainly ought to have done, but we will also defer dealing with most of those points. Equally we will ignore the various theories and explanations advanced by Mr. Jafar both to justify the various details of the transactions and to suggest that the steps adopted by the Appellant should ensure that it did not become embroiled in MTIC fraud.

46. The summary of the deals can be relatively short because all supplies derived from one of the two contra-traders, Future and Infinity, and the phones were only supplied to three companies, namely the Dutch company, SLC Handelmij BV (referred to and that we will refer to as "SLC Handels"), the German company, referred to as "Allimpex", and the French company referred to as "Elandour". It was in these relevant VAT periods that the Samsung Serene phones were also sold, but we make no reference to them in this section of the Decision because they were not the subject of the present Appeal. Gaps in the deal numbering assigned to deals by HMRC that we will deal with now indicate that the ignored deals will have been of the Samsung Serene phones.

Deals 1 to 8 in the period 02/06

47. In the 02/06 VAT period, all supplies by the Appellant were obtained from Future. Deals 1 to 8 involved supplies by the Appellant to SLC Handels.

48. The Appellant had dealt with Future in earlier periods and we were told that initially Future was not prepared to grant any credit to the Appellant. By the date of the two VAT periods with which we are concerned, however, Future was prepared to grant credit to the Appellant. None of the documentation between Future and the Appellant made any reference to this and the only term indicating anything about payment or transfer of title was the statement in Future's invoice that title was reserved until Future had received full payment. In the event, Mr. Jafar said that the real deal between Future and the Appellant was that:

- Future would await payment of the element of its sale price that matched the Appellant's VAT-exclusive sale price payable by its customer until the latter had been paid;

- Goods would be released to the Appellant when the Appellant had paid "the majority" of the price owing to Future. Mr. Jafar said that the relevant "majority" would be markedly nearer to 85% than 50%.
- It accordingly followed that the Appellant would be able to supply goods before it had paid the element of price owing to Future reflecting the VAT gap (i.e. the amount of input VAT being reclaimed from HMRC, minus the Appellant's profit margin).

49. The Appellant's purchase orders in respect of Deals 1 to 8 and Future's invoices were sent on either 13 or 14 December 2005. All SLC Handels' purchase orders and the Appellant's invoices were dated 16 December. The Appellant's invoices contained no terms at all. Notwithstanding that it had apparently been agreed orally that the goods would not be despatched until full payment had been received by the Appellant, the invoices made no reference to payment terms or transport risk. The phones were described simply by reference to their model number, such as "Nokia N70", and no further reference was made to the colour of the phones, whether and what proportion of individual seals had been broken and the boxes opened, whether the phone chargers had 2 or 3 pin plugs and indeed any other reference to specification.

50. Full payment was made by SLC Handels on 21 December 2005. The payments were all made through FCIB accounts, and we were satisfied that, as claimed by the Respondents, the aggregate consideration owed by SLC Handels for the eight deals (£4,520,477) was discharged by three payments, each of roughly £1.5 million, with that amount rotating round through various companies in order to discharge the total amount owing, the first of the three payments being received by the Appellant at 7.18 p.m and the third at 9.57 p.m. The Appellant immediately on-paid each receipt to Future, the gaps between receipt and payment being 9 minutes, 6 minutes and 6 minutes. Mr. Jafar explained the feature that he was always able to on-pay his receipts to his own supplier immediately by saying that the practice had been that he would be phoned during the day in which payment was to be made, and then phoned again when it was about to be made.

51. The most significant feature of the tracing of the money flows through FCIB accounts was that between the Appellant's receipt of the first and second payments, the money rotating was applied in discharging the payment steps in one of Future's "secondary" deal chains.

52. Other points to note in relation to Deals 1 to 8 were that the designated place of delivery to the customer did not match the address of the receiving freight forwarder and more significantly it appeared that A1 Freight and Logistics ("A1"), Future's and thus also the Appellant's freight forwarder, did not inspect the goods until after they must have left A1's warehouse on 4 January 2006 in order to undertake the journey from Stoke-on-Trent in time to reach the Channel for the revealed time of departure. This in the event was not particularly material when Mr. Jafar conceded that he never read inspection reports anyway, but simply received them "for the file" and also because, albeit that Mr. Jafar would almost certainly not have known of this, the director of A1, Mr. Lee Sellers, conceded in the trial in which he was convicted and then imprisoned, that he never inspected the goods anyway.

Deals 9 to 20 in the period 02/06 and deals 1 to 4 in the period 05/06

53. The deals indicated by the above heading were all deals in which Future was the supplier and the German company, Allimpex, was the customer. Since the dates and details (or rather generally the lack of details) in purchase orders and invoices were broadly similar

to those that we have already considered, we will deal now only with the distinctly odd relationship between the Appellant's invoice dates, the receipt of payments from Allimpex and the resultant and subsequent despatch of goods by the Appellant. These topics are regrettably detailed and complex. We should add that while we record the facts and some observations in order to emphasise factual points at this stage, the table in paragraph 56 below may become clearer when read in conjunction with the observations from paragraph 133 onwards below.

54. The invoice dates for Deals 9 to 20 in the period 02/06 ranged from 15 to 27 February 2006, and those for deals 1 to 4 in the period 05/06 were all 27 March 2006.

55. The invoice amounts owed by Allimpex in respect of these deals is most conveniently illustrated by grouping together certain deals, and giving the aggregate invoice price for those deals, as follows:

Deal numbers	***Invoice amount***
9 &10 of 02/06	£1,507,300
12,13 & 14 of 02/06	£1,336,108
15,16 & 17 of 02/06	£1,173,360
18,19 & 20 of 02/06	£1,258,950
Total 02/06 invoice prices	***£5,275,718***
1 to 4 of 05/06	*£2,013,428*

56. We turn now to Allimpex's payments and the dates of payments in respect of these deals, and indeed, since pre-payments made in the 02/06 period were not refunded until the 05/06 period, we extend the chart to cover the further deals between the Appellant and Allimpex in that period. Beyond the fact that the payment chains again exhibited circularity, there were the odd features in these periods of substantial unallocated pre-payments, and ultimately reversed payments, returning money to Allimpex. Allimpex had added descriptions in the FCIB accounts indicating the purpose of some, but not all, of the payments. In the following chart, we have repeated the information given in the chart above in relation to Deal numbers and invoice amounts, and now add, for both VAT periods, the dates of invoices and payments, the payment amounts, and where available Allimpex's description of each payment. There are two references in the payments column to amounts "paid back". There were in fact three repayments but we have combined two of them.

Deal no	***Invoice amount***	***Appellant invoice date***	***Payment date***	***Payment amount***	***Payment description in FCIB account***
			15/2/06	£1,507,300	No description
9 &10 of 02/06	£1,507,300	15/2/06	7/3/06	£1,507,300	For deals 9 & 10

12,13,14 of 02/06	£1,336,108	17/2/06	7/3/06	£1,336,108	For deals 12,13 & 14
15,16 & 17 of 02/06	£1,173,360	20/2/06	7/03/06	£1,173,360	For deals 15, 16 & 17
			22/2/06	£1,764,815	No description
18,19 & 20 of 02/06	£1,258,950	27/2/06	7/3/06	£1,358,950	For deals 18,19 & 20 Note (1)
Refund			7/3/06	£1,358,950 paid back	Refund to Allimpex Note (2)
Totals for 02/06	**£5,275,718**			**£7,288,883**	Note (3)
Payments in excess of 02/06 invoice amounts				**£2,013,165**	
Deals 1 to 4 of 05/06	£2,013,428	31/3/06	24/04/06	£2,013,428	For deals 1 to 4 of 05/06
Deals 5 to 23	£8,327,251	7,12 & 13 of 03/06	24/04/06	£8,327,251	Note (4)
Totals for 05/06	**£10,340,679**			**£10,340,679**	
Refund			24/04/06	£2,013,428 paid back	Note (5)
Final excess owed by Allimpex				£263 owed to Appellant	

Note (1) It was assumed, and we accept, that the payment amount for deals 18.19 and 20 was £100,000 in excess of the invoice amounts purely by mistake. Since the payment was immediately refunded in full, the error became irrelevant.

Note (2) This refund (in fact two refunds, reflecting the two payments totalling the aggregate shown in the preceding row above) was made within minutes of the preceding payments being made, and following the refunds, two different amounts, exactly aggregating £1,358,950 were paid by Allimpex, again within minutes, to two other companies regularly involved in the cell payment flows.

Note (3) This figure of aggregate payments is the net figure, after deducting the refund made in the previous row.

Note (4) While deals 5 to 23 also involved supplies by the Appellant to Allimpex, the phones in all these deals were sourced from Infinity and not Future, and since the invoice amounts for these deals exactly matched the payments received by the Appellant on 24 April 2006, and thus neither increased nor reduced the odd pre-payments, we have ignored the detail of these various deals.

Note (5) Note that although the excess pre-payment made by Allimpex in the period 02/06 was virtually identical to the invoice amounts for Deals 1 to 4 of period 05/06, such that these supplies could have been made without the Appellant receiving a payment for them, in rather the manner seen in the case of the payments and refund for deals 18, 19 and 20 in the period 02/06, Allimpex again paid the full amount in respect of the invoices for Deals 1 to 4 of 05/06, those payments indicating that they were made to discharge the invoice amounts for Deals 1 to 4, all being made (along with all other payments for the period 05/06) on 24 April 2006, with period 02/06's excess payment being reversed by the refund made to Allimpex on that same date, namely 24/4/06.

57. We have laid out the above chart because we consider that beyond circularity, the pre-payments are of some significance, as also was Mr. Jafar's explanation for his claim that it was on his initiative that on 7 March 2006 the Appellant refunded the payment of £1,358,950. His explanation was that the payment was refunded because Allimpex had "jumped the gun" and pre-paid for goods that it transpired that the Appellant proved unable to supply, as initially expected, because Future had indicated that the apparently promised goods were not available. There were, however, no documents remotely reflecting any such deal, either between Future and the Appellant or the Appellant and Allimpex. Another particularly odd feature of the pre-payments made, shown in the 1st and 5th rows of the table is that one pre-payment, that paid on 15 February for £1,507,300 happened exactly to match the invoice amount for deals 9 and 10, for which a separate and identical payment was in fact made on 7 March. If, however, one aggregates the two pre-payments (i.e. the payments with no description assigned to them in the FCIB accounts), the total pre-payment was of £3,272,115 (£1,507,300 + £1,765,815) and this figure is virtually identical to the invoice amounts for Deals 18, 19, and 20 of 02/06, and Deals 1 to 4 of 05/06. The total invoiced amounts for those deals was £3,272,378, which was just £263 in excess of the two pre-payments. In other words, while one of the pre-payments happened to match exactly the identical further payment made for deals 9 and 10, it seems that if the pre-payments did really constitute pre-payments for deals that were done, then they bore more relationship to Deals 18 to 20 of 02/06 and Deals 1 to 4 of 05/06.

58. Another very obvious conclusion to draw from the details given in the Table above was that Allimpex had pre-paid slightly over £2 million on the dates 15 and 22 February yet it seemed prepared to wait until 24 April to get the money back. Another observation is the slightly odd one that for each of the VAT periods, all the payments (ignoring the two pre-payments that we have just been addressing) were made on one date in each VAT period. This is slightly more remarkable than the Table above indicates because we have just aggregated Deals 5 to 23 made on 7, 12 and 13 April yet the payments for all those deals and for Deals 1 to 4 as well were all made on one single date.

59. Whilst we will defer a full consideration of the significance of the payment details shown in the above chart, and indeed generally in all the transactions in the two VAT periods, we should mention two additional points that have a particular relevance to the deals illustrated in the above chart. The first additional point is that it was on 27 March 2006 that HMRC notified the Appellant that the repayment for the period 02/06 had been, or was about to be, made. This was not shown in the FCIB accounts because payments to or from (essentially from) HMRC were made through the Appellant's Bank of Scotland account. The second point is that Mr. Jafar emphasised that his method of dealing with receipts and payments was not to address each deal separately but to look at aggregate amounts owed to the Appellant and by the Appellant, and always to on-pay to Future any receipts that he received insofar as monies remained owing to Future. It was for this reason that he said that he never looked at the description of payments made through the FCIB accounts, but just worked from his own calculations of money received and money owing.

The other deals in period 05/06

60. The Table above has dealt just with the payments from Allimpex to the Appellant. Whilst in the period 02/06 all the supplies were made to the Appellant by Future, and the Appellant itself supplied only to SLC Handels and Allimpex, with the exception of Deals 1 to 4 in the period 05/06 all the supplies to the Appellant were made by Infinity, and the

Appellant's supplies were made to both Allimpex and the French company Elandour. The FCIB evidence again illustrated the circularity of the money payments in all of the deals. Although all the payments were received on the same day, there were in fact four separate receipts and of course one refund.

Other features material to the transactions in the VAT periods 02/06 and 05/06

61. The feature that all the Appellant's receipts and payments of consideration were channelled through FCIB accounts, and that the same applied to all the numerous parties also involved in the circular chains, leads to a considerable presumption that the Appellant must have known that it was bound to acquire from designated suppliers and to supply to designated customers. For otherwise the circular chains of payments would have broken down.

Whether there was circularity of goods as well as payments

62. On the reasoning that if actual phones were supplied in all the Appellant's deals, in contrast to the decision of the earlier Tribunal in the *Serenes* case, it seems likely, though in fact not particularly crucial or decisive, that phones were also circulated back to the UK, and repeatedly sold in and out of the UK. There was certainly no suggestion that any of the phones had been sourced from any authorised distributor or sold directly or indirectly to a retailer, and so a fair presumption is that if the deals did involve supplies of the indicated phones, then they would have been repeatedly revolving to and fro across the Channel.

Matching suppliers and customers

63. It is material to consider Mr. Jafar's evidence in relation to how deals got put together; in other words how he matched suppliers and customers.

64. The starting point to this enquiry is Mr. Jafar's protestation that the UK market was rife with fraud, but so far as supplies were concerned, it was safe to source product from Future. His asserted reasoning was that Future had indicated to him that it was sourcing its product from Continental EU suppliers, which was indeed in fact accurate, and furthermore from reliable white goods suppliers. That was certainly not true. Mr. Jafar then relied on Future to have paid the VAT on its supply to the Appellant because he regarded Future as a substantial and reliable trader. He had once visited Future's premises and seen a warehouse, but he had not seen the inside of the warehouse, though he recalled that several people had been working in the offices. Future had been trading for several years and trading in high volumes and since he periodically said that "in order to trade, you have to trust somebody", Future was high up the list of traders that he considered himself entitled to trust.

65. On being asked why the Appellant did not source its product, as Future asserted that it did, from reliable European suppliers (whereupon the product would of course have been delivered on a VAT-exclusive basis if it was delivered to the UK), Mr. Jafar said that the reputable European suppliers were not prepared to deal with the Appellant. Purchasing from Future was therefore the next best course.

66. In terms of selecting customers, the first step in the process was Mr. Jafar's belief that the UK market was so rife with fraud that it was safer to sell and to sell only ever to continental EU customers. He admitted that there might also be fraud in Europe but it was obvious that the fraud in the UK was far more common. Insofar as there might also be fraud in Europe, he said effectively that "there could be fraud in any business, and one had to trust

somebody." He seemed to be oblivious to the fact that it was export sales from the UK to continental EU customers, coupled with claims to obtain repayments of input tax, that were the life-blood of MTIC fraud, and that in terms of taking risks, in regard to challenges from HMRC, sales to EU customers (whilst doubtless more profitable if they were not challenged) were actually where the tax risk lay, whereas in practice traders acting as buffer traders and making very small margins in UK to UK transactions, were far less likely to be challenged by HMRC.

67. Furthermore, of course, the protestation in Mr. Jafar's witness statement that he did not have sufficient working capital to participate in domestic sales, so that he was better off confining his sales to export sales, put the cash flow point the wrong way round.

68. Having established thus that product would be sourced from Future and only ever exported, Mr. Jafar said that he chose his customers essentially on a "first come, first served" basis. The following points anticipate some evidence that we will refer to below in relation to how and why he priced his deals in a particular way but in short he said that he was intent to make a gross margin of between 2.3 and 2.5%. He would not trade for a lower margin; he disliked customers that sought to negotiate lower prices, and in the reverse direction he had no interest in seeking to obtain better prices from a selection of traders. He regarded the required margin of 2.3 to 2.5% as acceptable and was more interested in building up the business than in making more profit. He said that he offered product that he could source from Future to several of his customers, from the lists of traders that he maintained. He was relatively likely to offer the next deal to the customer that had taken the last deal. In this context we should note two points. First in terms of the possibly implausible coincidence that he managed honestly to locate the supplier and the customer that the mastermind required the Appellant to locate, the feature that he used only two suppliers and so few customers diminished the element of coincidence. In other words the coincidence would have been far more marked had the Appellant sourced numerous different quantities and models of phones in a VAT period from numerous suppliers and supplied to numerous customers. To the opposite effect, however, it might have been thought odd to the Appelant that each of SLC Handels, Allimpex and Elandour were constantly ready to purchase whatever happened to be on offer next.

69. There was an odd reference to the fact that on occasions Mr. Jafar would commit first to take product from Future, and only then look around to find customers. This may have been explained by the feature that Mr. Jafar might not have regarded the Appellant as being bound to acquire such product. The product may just have been "provisionally booked". We pay little regard to this point.

70. In the period 05/06, the Appellant changed its supplier from Future to Infinity and this was explained in various ways. Infinity was said also to have been a substantial and reputable supplier, though it had been in business for a much shorter period than Future. The various explanations for ceasing to deal with Future were that its pricing was not as attractive as Infinity's and that the Appellant was also influenced (though it is difficult to understand this point) by a dispute with Lee Sellers of A1, the freight forwarder used by Future, geared to the failure to provide insurance.

The various provisions of financial support to the Appellant

71. This topic is the second most material topic in defining the role of the Appellant, and the judgment as to whether the Appellant must have known of the connection of its deals to fraudulent VAT losses.

Undocumented provision of credit by the suppliers

72. In a manner that anyone would have considered extremely improbable in *bona fide* commercial dealings, Future and Infinity provided credit to the Appellant by first delaying the receipt of consideration until the often considerably later date by which the Appellant received payment from its customers, and secondly by permitting the release of goods to the Appellant, regardless of whether the element of consideration equal to the VAT gap had been paid or not. In contrast to the manner in which Mr. Jafar confirmed that by the two VAT periods in question both Future and Infinity had agreed to trade on this basis, the actual purchase orders to the two suppliers and their invoices made no mention of these points. The invoices simply said that title would not pass until full payment had been received. As we have already mentioned, Mr. Jafar said that it had been orally agreed that goods would be released once most (perhaps around 85%) of the price had been paid.

Total pre-payment of consideration by customers prior to the Appellant despatching phones from the UK; such pre-payment being made without security and not documented in any way

73. Rather more surprisingly, however, than the practical deal between the suppliers and the Appellant, the Appellant insisted on always receiving full payment from customers before it would despatch goods. Again, none of the documentation referred to this requirement, and significantly the continental customers obtained no security for their pre-payments.

74. Mr. Jafar's reasoning for insisting on full payment from customers in advance of the despatch of goods was that he considered the most obvious alternative, namely the despatch of goods on a "Ship on Hold" basis to be conducive to MTIC fraud. It therefore had to be avoided. When goods are despatched on a "Ship on Hold" basis, they are to be held by the receiving freight forwarder, and not released to the buyer until the supplier has authorised such release, generally of course once payment has been received. We never understood Mr. Jafar's reasoning for regarding the despatch of goods on a "Ship on Hold" basis to be likely to increase the risk that the buyer would effect some step that would lead to MTIC fraud, or further MTIC fraud. The asserted reasoning appeared to have something to do with the fact that the buyer would be able to make an immediate domestic supply of the acquired goods, and fail to pay the tax and then disappear. It also seemed to be implicit that this fraud would be facilitated by the fact that if the goods had been supplied on a Ship on Hold basis, this led to there being a window period in which, following the payment of price, the buyer would be able to on-supply and disappear. We altogether failed to understand why this would not also be the case, indeed rather more obviously the case, if pre-payment had been made for the goods such that they were never held, following transport to the buyer's designated delivery location, on the basis that they could not at that point be released to the buyer. Accordingly they could be sold immediately they were delivered, or since title might actually have passed on the making of full payment, the buyer could perhaps have disposed of them even before they were actually delivered.

75. It was suggested that Mr. Jafar's reasoning might have been geared to the point that if the continental buyer was prepared to pay the entire price in advance, then this would indicate that "the buyer was relaxed", ready to trust the Appellant, and if the buyer was relaxed it was

less likely to be bent on perpetrating MTIC fraud. While it did seem that Mr. Jafar purported to derive some comfort from the fact that the buyer was prepared to trust the Appellant and pay the entire price in advance of despatch of the goods, we have to add that our reaction is simply to say that it is incredibly unlikely that a continental EU customer, acting commercially, would have been prepared to pay the Appellant anything, let alone the entire purchase price, in advance of the delivery of the goods. Although the "Ship on Hold" payment structure, almost universally adopted by MTIC traders, did leave the UK exporter with the marginal risk that if the buyer failed to pay, then on the assumption that the foreign freight forwarder did not release the goods in breach of the "Ship on Hold" restriction, the supplier's exposure would simply be that it would have to find another buyer, or it would have to pay for the goods to be transported back to the UK. This structure therefore avoided the implausible feature of either party (UK supplier or continental EU customer) having to effect some step that involved wholly incredible faith in the reliability of its counter-party. In the present case, there are the extraordinary facts that the Appellant knew virtually nothing about its three customers, and none of the three customers appeared to have known much or anything about the Appellant. Certainly directors or employees of two of the customers had "called in" on Mr. Jafar when they were in London. They had apparently met Mr. Jafar either in a coffee bar near Marble Arch or they might have visited his apartment in which he used one bedroom as an office. They had talked about something but Mr. Jafar could not recall what they had talked about and he had certainly made no effort to confirm the identities of the people he was meeting. We were not given any detail of what the customers had asked Mr. Jafar. Had the customers made credit checks or sought information about the Appellant, the answers would have been that the Appellant had only been effecting export sales for a short period; the Appellant was a "one-man band", and it was trading from a private office in an apartment and certainly had no warehouse. Mr. Jafar for his part appeared never to have seen any of the phones that the Appellant traded, with the exception of two Serenes phones that he purchased and collected, and the Appellant's credit rating would have been exceptionally low. We accordingly consider it astonishingly improbable that any customers would have made total pre-payments to the Appellant, were the deals *bona fide* commercial deals. Allimpex would certainly not have left pre-payments (that eventually emerged not to have been required to pay for phones) in the hands of the Appellant from 15 and 22 February 2006 until 24 April 2006.

76. Our conclusion is that Mr. Jafar's claimed required business model of insisting on full payment from customers prior to despatching phones, revealed that the customers ended up acting in a way that would have been virtually inconceivable had they been trading in a *bona fide* manner, and that this business model, designed ostensibly to preclude the risk of the buyer being involved in MTIC fraud, in fact rendered that role to be very significantly more likely.

The loans

77. Mr. Jafar indicated that when the Appellant first acquired supplies from Future, Future was not prepared to give any credit, and on the basis that the Appellant's supplies were then always made (from 2004 onwards) on a VAT-exclusive basis, the Appellant needed finance in order to be able to pay the VAT-inclusive amounts in excess of its VAT-exclusive receipts.

78. Mr. Jafar said that the £35,000 that he had loaned the Appellant had not been applied in financing trading, but had instead been applied in general expenses and overhead costs. It was therefore the initial loan that financed the early trading, prior to its repayment in July

2005. We have already briefly mentioned the terms of the loan and the fact that the lender demanded repayment. The only further point to mention is that Mr. Jafar said that the Appellant actually made net losses in the period when trading was financed with the aid of the initial loan. Since the Appellant's gross margin of between 2.3% and 2.5% was reduced by the cost of freight charges, we were told to 1.9%, and there were doubtless other expenses aside from the monthly interest of £1,250 it is not surprising that losses were incurred when the level of trading was also very modest.

79. Following the repayment of the initial loan in July 2005, the £500,000 was advanced by Phone 2 Come on 19 September 2005. While Mr. Jafar claimed that he was introduced to Khaled Nazir of Phone 2 Come by Mr. Zaiour, and he claimed that he had earlier sought, but failed, to effect a phone deal with Phone 2 Come, it was plain from the FCIB evidence that the £500,000 loan was funded by companies in the Future/Infinity/Soul cell. HMRC's initial tracing of the money movements indicated that in their view, the flow of payments commenced with Future; was then traced through three companies that were plainly members of the relevant cell; then advanced by Phone 2 Come to the Appellant; applied by the Appellant in the entire amount of £500,000 in making a payment to Infinity (presumably discharging some amount owing in respect of the purchase of stock), and then channelled back to Future, all within a very short period. In the course of analysing the flow of payments, another routing of payments was suggested which might have been both shorter and simpler, but the point remained that the origin of the payments was certainly traced back to Future, and the onward payments also ended up with Future. We consider that it is impossible to confirm this payment flow and the feature of payments starting and ending with Future but that this is anyway immaterial. What appears clear is that the funds advanced to the Appellant did derive from companies in the relevant cell, such that they were obviously designed to facilitate further trading on a considerably increased level. Mr. Jafar also indicated that while the loan was documented by a UK solicitor, this was very much for presentation purposes.

80. The other significant points in relation to the £500,000 loan, and the features that will certainly have been evident to Mr. Jafar were that:

- The interest rate at 12% was considerably lower than the interest rate on the earlier small loan;
- The amount advanced was of £500,000, whilst Mr. Jafar claimed that he only wished and needed to borrow £100,000.
- The new loan was in no way secured and according to its documentation was not guaranteed. Mr. Jafar claims that he remains dedicated to repaying it, and that if he cannot manage to do so, one of his relatives will do so. He accepted that he never agreed with any relative in advance that anyone would effectively guarantee the loan but he still asserts that matters of family honour will still compel repayment.
- One or two interest payments have been paid, but unpaid interest naturally compounds and since the loan has remained outstanding for in excess of 10 years, the cumulative balance of principal and compound interest will obviously be a very considerable sum.
- While Mr. Jafar contends that this loan will definitely be repaid he accepts that he will make no effort to pay the remaining amount owing to Infinity of roughly £1.8 million. The reasoning presumably is that Infinity made false representations on selling stock which they would have known were untrue, such that it would be

inappropriate to seek to discharge the payments owing. Even if the Respondents are right to suggest, as we accept, that the funds loaned by Phone 2 Come were indeed channelled from cell companies, Mr. Jafar seemed to consider that that loan would eventually still have to be repaid in some way.

81. In terms of judging whether Mr. Jafar might genuinely have believed that his trading was *bona fide* trading we consider that all the credit support rendered to the Appellant by suppliers, the customers and Phone 2 Come is very strongly indicative that others were procuring and funding trading by the Appellant, and absent all this support, the Appellant could not have undertaken any deals at all.

82. When the Appellant added no value whatsoever to the phones that it traded, and simply on-sold the identical quantities of phones that it purchased to single non-retail customers; while Mr. Jafar himself never saw a single phone and the Appellant itself and Mr. Jafar personally provided none of the funds and finance that facilitated the trading, it is impossible to conclude that the trading was, or that it really could have been considered by anyone to be, normal rather than fraudulent. We might add that, while the Respondents periodically drew our attention to the feature that the Appellant made considerably more significant profits than UK to UK "buffer" traders (and many in the secondary chains just bought and sold at identical prices), our reaction was rather the reverse. Not only was the expected gross margin of 2.3 to 2.5% unusually low for exporting brokers in MTIC transactions but, bearing in mind freight costs and interest, the Appellant's net profits were doubtless at a low enough level to raise the issue (whether this might have been Mr. Jafar's attitude, or rather Future's attitude) that the Appellant simply acted as a "front man" receiving a very small margin for doing effectively nothing. By that we do not suggest that Mr. Jafar and the Appellant were duped, but simply that in contrast to the role and activity of many exporting brokers, the Appellant's realistic role and its net profit were respectively minimal and very much lower than was commonly the case.

83. There is one other point in relation to financial support that we should mention. Although Mr. Jafar refrained from trying to raise finance from other sources, and he made no effort to borrow £100,000, allegedly the amount that he wished to raise, from any other lender, Mr. Jafar did make the point that he would have found it very easy to raise finance from several other lenders.

84. Ignoring the possibility of borrowing from members of his family, we reject the proposition that he would have found it easy, indeed even possible, to raise money from other lenders. He said that others would have realised that his method of trading was risk free. In terms of risk as regards suppliers and customers, it was indeed risk free but only of course because it was conducted on very artificial lines. MTIC risks were, however, widely appreciated, and as the realisation of profits were entirely dependent on obtaining refunds of input tax from HMRC, and for years HMRC's attempts to combat the fraud were widely known, the trading was very far from being risk free. The Appellant risked losing16% in return for the chance of making roughly 1.5% of net profit, and the chance of making that profit was entirely dependent on securing the repayments. Since Mr. Jafar had, by the date of the two VAT periods, certainly been told that one of his deals with Future had been traced to fraudulent losses and the aim of HMRC to deny repayments was very well understood, we conclude that the Appellant would have found it incredibly difficult, and almost certainly impossible, to raise finance from any other lender than either a family member or a company directly or indirectly providing funds from within the fraudulent cell.

Other factors

85. We will now address other features of the trading in the relevant VAT periods. We will comment on some as we describe them, though this section is more concerned with recording the facts, and addressing the points that we will return to in giving our decision.

Documentation

86. The Appellant's documentation was poor. Purchase orders, pro forma invoices and invoices generally contained no terms and no product description beyond the simple make and model of phone. Instructions to the freight forwarders to inspect, and as to the type of inspection required and whether insurance was required, were very short and unclear. Whenever oddities in documentation were pointed out to Mr. Jafar in cross-examination, his response was usually to say that at the time he had not spotted whatever was now being drawn to his attention.

87. The evidence from Matthew Corkery of Ernst & Young indicated that in grey market trading it would generally be essential for deals and documentation to supply information about various attributes of the phones. The Appellant's documentation ignored them all.

88. In terms of the lack of information provided in the documents, none of the Appellant's documents ever referred to the colour of phones, which was hardly surprising because he had not seen any of the phones, the inspection reports disregarded colour, and his purchase orders and suppliers' invoices had never mentioned the colour of phones either. He accepted in the course of cross-examination that the colour of phones could have a significant effect on value though he did point out that "high-end" phones designed for the business user would be likely to be black, white or gold, while those for the young would be in the brighter colours. In other words there was little risk of a phone targeted at the business user turning up in orange. Nevertheless the absence of information doubtless meant that customers would have to price their offers on the basis that the phones might well be of the less popular colours, leading to the conclusion that if the great majority were of popular colours then either the suppliers to the Appellant or the Appellant would fail to receive the better price that might have been commanded.

89. The same point arose in relation to the issue of whether seals had been broken and the individual phone boxes opened. Mr. Jafar said that once seals were broken, the phones would be worth materially less and might be of no interest to some potential buyers. He also said that it was generally assumed that some of the seals to the boxes in a consignment might very well have been broken, and the boxes opened, and that this might apply to 10% of the relevant phones or to a far higher percentage. Again this was ignored.

90. No mention was made either of whether the plugs attached to chargers had 2-pin or 3-pin plugs. This is a significant point because genuine *bona fide* continental EU buyers would normally expect to receive phones with chargers with 2-pin plugs. If the phones supplied had 3-pin chargers, we had to assume that this was a "buyer's risk" because the purchase orders had ignored this feature. Accordingly buyers might have again reduced their pricing in a genuine market in case they would face the cost of changing chargers or supplying adaptors. In the event that the phones and chargers did in fact have 2-pin chargers, that raised the different question of why they had been supplied to Future or Infinity in the first place. Inherently the Appellant claimed to know that the phones had recently been purchased by these suppliers from reputable white market distributors on the continent.

91. No mention was ever made of other aspects of description such as the frequency bands of phones, the languages already available on the phones and anything about accessories.

92. While all the above factors were inconsistent with any ordinary *bona fide* method of trading, Mr. Jafar sought to explain the lack of detail by saying that the result was that his offer constituted "an ordinary offer" (rather akin to "an assorted job lot offer") and that while the buyer would then have priced its offer accordingly, since the Appellant only wished to make a gross margin of 2.3 to 2.5% and could achieve this margin on the "job lot" basis, and thereby hope to "build the business", the lack of detail was irrelevant. We do not accept this. The lack of detail was highly significant, and it suggested that the only thing that mattered was to make supplies of something and, more relevantly, to produce documentation and to receive and make payment. Furthermore, while we can understand that new traders will often keep their prices competitive in order to build up a business, we still find it implausible that any trader would be content to sell goods at below their value, particularly in the situation in which the trader actually had no idea of the detailed quality and value of the goods being bought and sold.

Arbitrage

93. While arbitrage has nothing to do with product description, we mention it at this point because it raises a point rather akin to the point in relation to the type of charger plugs. Mr. Corkery's evidence was that the only explanation for genuine grey market trading that he considered to be remotely credible in the present case was that phones might be worth more or less in different markets on account of currency differences, various levels of supply and demand etc. While we attach little significance to this point, because it was a point of sufficient sophistication that any one-man trader may not have understood the significance of the point, it must be the case that arbitrage opportunity cannot have rendered it commercially attractive for phones to be shifted from the continental market to the UK, and commercially attractive again for them to be transferred back a few days later from the UK to the continental market. We accept that theoretically the continental market was not one single market, and that price differential could lead to the UK price being higher than the price in country A, after which the price in country B might still be higher than the price in the UK. While that might theoretically account for product moving from country A to the UK and then to country B, that would be a very rare situation, and it would be bound to occur to traders that it would be a great deal more attractive for the phones to move straight from country A to country B.

94, We have only mentioned this point at this stage, as we have said because, rather like the 2-pin/3-pin plug point, it is a factor that really tends to undermine the whole of the pattern of trading undertaken by MTIC fraudsters.

Due diligence

95. The Appellant's due diligence was poor. While Mr. Jafar had once visited Future's premises (after, rather than before, he first purchased from Future), he had not seen in the warehouse, but had seen the offices. He may have regarded Future as a company that had been in business for several years and that had a significant turnover, but he never took out references from bankers or accountants and he never undertook a credit check on either Future or Infinity or any of his customers. He said that he refrained from undertaking credit checks because HMRC had given no guidance as to what to look out for in relation to credit

checks. We can only describe that explanation as ridiculous, particularly when the combined features of high turnover and a very poor credit rating would have been a very strong indicator that the trading was connected with MTIC fraud. We understand that Infinity had been trading only for a much shorter period than Future and that, had Mr. Jafar made a credit check on Infinity, the rating would have been very poor, and the maximum suggested reliance on Infinity's credit would have been £0.

96. In relation to customers, the due diligence was similar. He had not visited any of the three relevant customers to which phones were supplied in the two periods, though at least directors or representatives of two had called in to meet Mr. Jafar when they were in London. It did not sound as if their presence in London was specifically for the purpose of visiting Mr. Jafar. As we have already said, the relevant meetings were casual affairs and we were not told of anything that had been discussed or verified. No credit checks were undertaken on the customers. While this may seem understandable since the customers were pre-paying the entire price for goods prior to the goods being despatched by the Appellant, a credit check would at least have indicated whether the customers had the net worth and credit standing to have paid for goods in advance, without the supposition that they could only pay in advance because they would themselves have received payment from their customer to fund their own pre-payment. The customers and their receiving freight forwarders all emerged, when information was later obtained by HMRC from the relevant local tax authorities, to have had connections with MTIC fraud.

Inspection Reports

97. The Appellant's method of requesting, and generally dealing with, inspection reports was also extremely poor. Inspections were often requested from the freight forwarders immediately before the despatch of goods, whereupon there was inadequate time for the inspections to be undertaken before the goods would have had to have been despatched in order to meet the recorded time at which they crossed the Channel. Requests for reports were unclear as to the level of checks, and the information to be provided. This in the event was not of itself particularly significant when Mr. Jafar said that he never looked at the inspection reports but simply obtained them "for the file". While that was of course a point of considerable significance, we attach no significance to the next point, namely the admission by Mr. Lee Sellers of AI in his criminal trial that in fact when inspections were requested, nothing was actually inspected at all. In fairness to Mr. Jafar, we must certainly assume that he would have been ignorant of that.

Insurance

98. There were also problems with insurance, albeit that it seemed that Mr. Jafar did basically intend to insure goods during their transit to customers. Although by the time the goods were despatched, they had been paid for by the customer, and arguably title had passed to the customer, Mr. Jafar accepted that he was responsible for the delivery of the goods and that he should obtain insurance. It appears that from 1 January 2006, some law or regulation had changed, according to Mr. Jafar, and this meant that the freight forwarder was no longer able to insure the goods in transit or, it seems, act on behalf of the Appellant in arranging such insurance. Mr. Jafar had initially been ignorant of this. When he gathered that a consignment of phones was due to be despatched but that there was no insurance in place, he said that because his customer would be keen to take delivery quickly, he decided to despatch the phones immediately and take the risk of loss himself. It initially appeared that this was

the only occasion on which goods were transported without insurance and, had this been so, the conclusion might have been that it was understandable, with a last minute realisation that there was no insurance cover and a customer pressing for delivery of the goods, that the Appellant could have taken the risk of despatching them without insurance. In the event it became clear that most later supplies were also despatched without insurance, with the deals being negotiated and undertaken after it was clear that there was no insurance cover in place.

99. Mr. Jafar said that he had quite a dispute with Mr. Lee Sellers of A1 for not informing him about the change in the law or regulations just mentioned. Mr. Jafar suggested that this was one of the reasons why he switched suppliers to Infinity, though it is perhaps difficult to see why the failings of A1 should be attributed to Future.

IMEI checks

100. The Appellant did not request freight forwarders to scan phones in order to check and record IMEI numbers, i.e. the unique numbers allocated to every individual phone. This topic is of relevance in three respects, albeit only of marginal relevance.

101. The first point is that HMRC were recommending that traders did obtain and record the IMEI numbers of phones supplied, in part so that when later consignments were supplied to the trader, the trader would be able to verify that there had been no earlier exportation of the phones. Notwithstanding this advice, the Appellant did not obtain IMEI numbers from the freight forwarders. Mr. Jafar relied on the fact that he had verified with HMRC officers that there was no legal obligation to obtain such numbers, and that therefore he would ignore the recommendation.

102. The second relevance of the non-recording of IMEI numbers was that in a meeting with two HMRC officers, one being Mr. Gormley, there was a discussion, recorded in a meeting note, in which Mr. Jafar was said to have said to the two officers that he would obtain the software to deal with IMEI numbers. We assumed that what was meant by that was not that the Appellant would acquire the expensive equipment actually to scan and record IMEI numbers (not least because the phones were never seen or held by the Appellant) but that if the freight forwarders recorded IMEI numbers electronically, they could be forwarded to the Appellant and recorded on the relevant software, and presumably that software would enable different batches of IMEI numbers to be checked against each other. Whatever the software might have done, Mr. Jafar claimed that he had either not made the remarks about being about to purchase the relevant software, or that at least he certainly could not remember the conversation. The Respondents' counsel suggested that it was clear from the meeting note that the conversation had taken place, and that the denial of this by Mr. Jafar cast doubt on his honesty.

103. The third point was really a different way of expressing the first point. The Respondents' counsel pointed out that it was significant that when Mr. Jafar attributed the failure to take out any credit checks on counter-parties to the fact that HMRC had given no guidance and recommendations as to what to look out for, it was significant that when HMRC did constantly encourage traders, and certainly Mr. Jafar and the Appellant, to retain lists of IMEI numbers, he ignored that recommendation.

The February 2005 deal that was traced by HMRC to a fraudulent loss

104. We have already mentioned that the Appellant's single deal in the VAT period 02/05 had subsequently been traced by HMRC to a fraudulent VAT loss and that Mr. Jafar had been informed of this. Mr. Jafar claimed that he had never been given this information and it did certainly appear that there had been a minor error in the address to which HMRC had sent the letter, and it is indeed possible that the letter had not been received. When Mr. Jafar later requested a change to monthly VAT returns, however, he was told at a meeting with VAT officers that his request had been turned down, and he was told that the refusal resulted from the relevant tracing of the earlier deal (in which as we have said Future had been the supplier) to fraud. The officers also claimed to have handed Mr. Jafar, at that meeting, a copy of the original letter that may initially have gone missing. When Mr. Jafar said that he did not recollect this and that he had never known of the information about the earlier tracing to a fraudulent loss, we were finally told that when the Appellant's accountant also wrote to HMRC, complaining about the Appellant being denied monthly returns, HMRC again responded by explaining that the request for monthly returns had been rejected because of the earlier tracing of the February 2005 deal to a fraudulent VAT loss. The Respondents' counsel's realistic assertion was that Mr. Jafar must have been aware of HMRC's report in relation to the tracing of the February 2005 deal.

The quantities of phones supplied

105. In his expert evidence, Mr. Corkery indicated that the phones of some categories supplied by the Appellant very considerably exceeded the retail sales in the relevant periods of the same phones in the country to which the Appellant had supplied the relevant phones, all such retail sales being calculated by the "point of sale" system operated by the German company GFK. This system recorded the retail sales in 23 European companies and one non-European country. It was not claimed that it captured every sale but the information provided in the GFK surveys is generally highly regarded. Mr. Jafar made various criticisms of the method of conducting the survey and of the feature, according to him, that it was inappropriate to compare wholesale supplies with retail sales. We reject that last point because there is an obvious relationship between retail demand for various items, measured by reference to retail sales, and the volumes of product likely to pass through wholesalers and distributors. There was also a dispute in relation to the proportion of sales of phones that were supplied by the authorised distributors, or the white market to retailers, and the proportion passing through the grey market. We conclude that plainly the majority of phones were distributed by authorised white market distributors, and we strongly suspect that the white market supplied a very great majority of the phones. This certainly indicated that some of the volume of supplies made by the Appellant appeared to be very excessive, and not consistent with the sales likely to flow through the *bona fide* grey market. We accordingly concluded that while there might obviously be some very marginal inaccuracy in the GFK statistics, and Mr. Corkery was not trying to dispute that, the sensible conclusion is that the volume of some of the phones supplied in the Appellant's deals was plainly excessive.

The Serenes appeal

105. We have paid little regard to the earlier decision of the Tribunal in relation to the denial of input tax in relation to the Serenes phones, the denial being either on the basis that the phones did not exist at all, or that if some phones were in fact supplied by the Appellant in those deals, they were certainly not Serenes. We simply observe that that finding is somewhat akin to the conclusion reached in the previous paragraph. In other words, in this case, while no evidence was furnished to challenge the Appellant's belief that its supplies

were in fact of the phones that the Appellant purported to supply, the excessive volume did suggest either that some of the phones ostensibly supplied may not have existed, or alternatively that the volume of actual phones supplied (assuming that the indicated phones did exist in every case) still exceeded anything that could be consistent with the volume of phones that might pass through the entire *bona fide* grey market, or indeed the grey and white markets together. Something rather odd was therefore still happening.

The decision by the Appellant to open an FCIB account

106. There was considerable cross-examination of Mr. Jafar in relation to the issue of why he had chosen to open an FCIB account when, even though his NatWest account had been closed, he still appeared to have UK bank accounts with Bank of Scotland, Alliance & Leicester and the Cooperative Bank. Mr. Jafar's answer was that while the Bank of Scotland account could be used for occasional payments from HMRC that might relate to VAT affairs, he was fairly sure that if all the money movements involved in his deals were to be passed through his Bank of Scotland account, that account would also be closed. Whether that was on account of concerns on the part of the bank in relation to money laundering or from pressure on the banks from HMRC, he still expected the account to be closed. He accordingly made some enquiries with a Cyprus bank, but in the end decided to open an FCIB account, apparently because Future had recommended FCIB. He also made the point that most of the phone traders were opening FCIB accounts and that it was commonplace for traders in a particular industry to use the same facility as each other, all moving like sheep.

Our decision

107. We have not recorded the parties' contentions because MTIC cases are cases where there is generally no dispute in relation to the law, and all that is in issue is an analysis of the facts and all the surrounding circumstances and our evaluation of the likelihood that the Appellant must have known of the connection of its deals to fraudulent losses or that it certainly ought to have so known. We will, however, refer to the contentions by the parties, particularly those advanced by Mr. Jafar, that are said to support Mr. Jafar's claim that he genuinely believed that his method of trading would eliminate or diminish the risk of the Appellant being embroiled in MTIC deals.

Mr. Jafar's various theories

108. In paragraphs 109 to 117 below we will consider the various theories and claims, not directly to test the two critical *Kittel* issues, but rather to judge whether any of the theories was valid, such that they should be taken into account later in deciding the more critical *Kittel* issues. In this context, we observe that even if all the theories were invalid and hopelessly confused, if we conclude that Mr. Jafar genuinely held some of the relevant views, this of itself might be material, particularly in judging the issue of "actual knowledge".

Lack of working capital for UK to UK trading

109. The first point mentioned in Mr. Jafar's witness statement was that he moved from domestic trading because he did not have sufficient working capital to fund domestic UK to UK sales. This was of course a ridiculous contention in the light of the fact that buffer traders, acting as intermediate buyers, buying from one UK company and supplying to another, admittedly only made a nominal profit, but they generally had no need of working capital at all. They invariably received the consideration for their supply before they on-

paid a slightly lesser sum to their own supplier. Their problem might have been a trivial margin, but as Mr. Jafar later said they could at least undertake any number of such trivial deals in the various VAT periods. By contrast it was the operation of the "broker" or exporter to the continental EU customer that needed the working capital because it had to finance the VAT gap, i.e. the excess of its VAT-inclusive payment to its supplier over the total of the VAT-exclusive consideration received from the continental buyer and the broker's profit margin. Insofar as this cash flow cost had to be financed, this limited the deals that could be undertaken until HMRC had repaid the trader's claim to recover input tax. The claim in the witness statement, therefore, that the move from domestic trading to export trading was for reasons geared to lack of working capital was ridiculous, and effectively the wrong way round.

Ignorance of the practice of contra-traders and the significance of contra-trading in MTIC trading

110. Mr. Jafar claimed that as he was ignorant of the existence and relevance of contra-trading, he considered that he would be immune from MTIC risk if he sourced product from Future (and in due course from Infinity) because he regarded both as substantial and reputable dealers, and they assured him that they were sourcing product from reputable continental white market distributors.

111. Mr. Jafar was right to suppose that if Future was sourcing all its product (as indeed it appears that it was in its primary trading deals) from continental EU customers, then particularly if it was buying from reputable white market distributors, as was fraudulently claimed, and provided that Future actually accounted for the VAT on selling product to the Appellant, the Appellant would be insulated from MTIC fraud. When he was ignorant of the practice of contra-traders, he would not, therefore, have needed to worry about fraud at the origin of a long supply chain. We therefore think it fair to say that, provided that Mr. Jafar was justified in having such confidence in Future's integrity, and later in Infinity's reliability and integrity, there was some validity to his stressing the significance of his ignorance of contra-trading in late 2005 and early 2006.

112. The feature that Future and Infinity were contra-traders did, however, mean that when the Appellant purchased from them, the Appellant was then dealing directly with a key fraudster. Future's trading in the periods ending at the end of January, April and June 2006 produced the following fairly remarkable statistics. In the period ending on 31 January 2006, the turnover had been £578,154,858 and the VAT liability had been 91 pence. In the period ending 30 April 2006, the turnover had been £1,174,171,221 and the VAT liability had been £4.47. In the period ending in June, the turnover had been £343,963,991 and the VAT liability £471.42. On those figures, Future was manifestly purporting to discharge very large VAT liabilities by claims for input tax that Future must obviously have known were fraudulent. So far as the Appellant was concerned, therefore, a key fraudster was not hidden beyond a string of buffer companies; it was the direct supplier to the Appellant. Had Mr. Jafar not said that credit checks were not worth undertaking because HMRC had not given instruction as to what the trader should look out for (a ridiculous claim), Mr. Jafar might very well have ascertained with a credit check that a company with a colossal turnover had a very poor credit rating, a plain pointer to MTIC fraud.

113. Mr. Jafar's constant claim that contra-trading involved a quite different fraud from MTIC fraud was wrong. Contra-trading was simply a mechanism to obscure the tracing of

fraudulent losses to the secondary deals. That detail apart, contra-trading was designed to facilitate the same rotation of product into and out of the UK, with a view to VAT that had never been paid being re-claimed by the contra-trader's customer.

The reduction of risk by confining the Appellant's supplies to export sales rather than UK domestic supplies

114. Mr. Jafar claimed on many occasions that the Appellant would avoid involvement in MTIC fraud if it confined its sales to continental EU customers. This claim seemed to be based on the proposition that fraud in the UK market was rife, and that while there might be fraud on the continent, as indeed there might be fraud in any business, it was still far safer to confine supplies to continental customers because there was less fraud in the continental markets than in the UK. For someone who claimed fully to understand MTIC risks, this seemed a rather remarkable theory since the vast majority of MTIC frauds involved exporting product and reclaiming VAT, and this was well known. Mr. Jafar appeared ultimately to concede that this point about the lesser risk in exporting was not a valid point.

The avoidance of supplying goods on a "Ship on Hold" basis

115. We have already mentioned this point and said that we barely understood the basis of Mr. Jafar's constant claim that the despatch of goods on a "Ship on Hold" basis, whether on their entry into the UK or on their exportation, was a marked pointer to MTIC fraud. This could be avoided, and had to be avoided by the Appellant, and therefore the Appellant had to persuade all its customers to pay for supplies before the goods were despatched from the UK. We have already indicated that we consider this contention to be confused, and indeed that we consider the readiness of continental traders to pay the Appellant the entire price for goods in advance of despatch was a far more material pointer to MTIC fraud. We will deal with that below.

What the Appellant furnished to its customers

116. The final theory or contention advanced by Mr. Jafar in relation to his trading model was that his role, and the value that he claimed that he added, was that he provided his customers with goods that were immune from MTIC risk. This claim was also flawed. Superficially it was flawed because in the event, all the Appellant's deals were indeed connected with fraud. More relevantly, however, the Appellant's continental EU customers were always themselves insulated from any consequence of MTIC fraud on the part of the Appellant and the Appellant's suppliers because the Appellant's export sale was a supply on which no VAT would be paid and no continental purchaser would be worrying about recovering VAT. The continental purchasers would have been in an identical position regardless of whether the Appellant's sale had been an honest export or a knowing sale in an MTIC chain. The purchaser would be wholly unconcerned with whether the Appellant managed to recover its input VAT. The claim that the Appellant's "addition of value" was to provide, rather unusually in the fraudulent market, an "MTIC risk-free" transaction to its customers, was erroneous.

Mr. Jafar's apparent conviction in most of his theories

117. As we said in paragraph 108 above, the relevance of the theories that Mr. Jafar advanced is not confined to whether they were cogent and valid. None of them were, save for our acceptance that there was some validity to the asserted belief that his suppliers were

sourcing product from the continent and that they were reliable traders. Notwithstanding the fact that the other claims were generally based on a complete misapprehension of the realistic position, we do need to say that all the various claims were advanced with apparent conviction, and indeed with considerable consistency. We found it very difficult to judge whether in the years since 2006 Mr. Jafar had woven together a web of nonsense and even eventually persuaded himself that some of his thoughts were valid, or whether he was just hopelessly confused and out of his depth, or finally whether he was delivering a quite convincing sounding picture of theories that he knew perfectly well were largely incoherent.

The next topic

118. Without answering the dilemma just posed, we turn now to consider the *Kittel* test. In some respects the questions of actual knowledge or means of knowledge are related and dependent on the same considerations. When the circumstances indicating connection to fraud become absolutely compelling, such that it is inconceivable that a trader could not have appreciated the obvious connection, the conclusion is more likely to shift from means of knowledge to actual knowledge. A conclusion of actual knowledge can sometimes, however, be based on some factor that indicates that, absent actual knowledge, some step could simply not have occurred.

119. We consider that in this Appeal, it is easiest to commence the enquiry first by considering whether Mr. Jafar and the Appellant ought to have known of the connection of the Appellant's deals to fraud.

The means of knowledge test

120. We start by addressing the favourable finance granted to the Appellant.

121. In the course of cross-examination in relation to the advance by Phone 2 Come of £500,000, Mr. Jafar certainly said that he was convinced that the Appellant could raise finance from numerous sources. The Appellant's trading model was risk free, and Mr. Jafar's reputation was such that the Appellant would have found it easy to borrow from many other lenders.

122. We wholly reject that claim. We find it inconceivable that anyone but family members, close friends or fraudsters would have lent anything to the Appellant. While, from a commercial point of view, the Appellant's trading might have been risk free (admittedly only because it was conducted on a wholly artificial basis), from a tax perspective it was extremely risky. It involved the aim of making a net profit of, say, 1.5% of gross turnover set against the risk of a loss of approximately 15% of gross turnover. The scandal of MTIC fraud was very widely known and any *bona fide* lender would have known about it and researched it. It might admittedly have been the case, following the Advocate General's Opinion in the *Optigen* case, that one basis of challenge of MTIC frauds adopted by HMRC was likely to be undermined, but any lender would have realised that there were bound to be further challenges, and that lending to a phone trader would not only be extremely high risk but also close to the facilitation of fraud. Why were the UK banks closing accounts when they were used for phone trading? Why did the university friend (who may or may not have had some connection to phone trading anyway) withdraw the £50,000 loan instantly when the NatWest account was closed?

123. When we therefore ask why some barely known Dubai entity lent the Appellant 10 times the amount of the earlier loan, and 5 times the amount required, at a much lower interest rate than the original £50,000 loan, and without either security or guarantee, it must have been manifestly obvious to anyone that the £500,000 loan was being advanced to facilitate artificial trading. The connection of the lender to the various trading entities was made obvious by the two facts that, although the advance was originally to be paid into the Appellant's Bank of Scotland account, Phone 2 Come apparently requested that the money should be paid straight to the Appellant's FCIB account, and the entire £500,000 was on-paid by the Appellant to Infinity 5 minutes and 16 seconds after the loan was credited to the Appellant's FCIB account. We decide that the loan could not possibly have been advanced on its actual terms or indeed on any terms had the lender not been channelling funds from the relevant cell companies, all to facilitate further trading; and no person in the position of the Appellant could have considered the loan to be an ordinary commercial loan. And, as we have said, it was probably only documented as it was documented for presentational reasons.

124. Whilst the loan possibly facilitated an increase in trading and turnover, it is difficult to see why it was actually required when we were told that by the VAT periods in question, the two suppliers were ready to delay any receipt of payment from the Appellant until the Appellant had received payment from its customers, and the suppliers were ready to leave the credit outstanding to the extent of the VAT gap until the Appellant had received its repayment from HMRC.

125. We have already suggested that the third element of inexplicable credit extended to the Appellant was also quite extraordinary. Had SLC Handels, Allimpex and Elandour been *bona fide* traders we find it inconceivable that they would have agreed to make full payment for goods prior to despatch unless they had been fully aware that pre-arrangement by some mastermind would ensure that the goods would be delivered. Any *bona fide* trader performing the Appellant's role would have known that its counter-parties knew that the supplier (i.e. the Appellant) would have had a very poor credit rating; that its trading was conducted from a bedroom in an apartment, and that it had been exporting phones for only a relatively short period. Nobody would have trusted the Appellant with full pre-payment, made without any security, and certainly not pre-payments from mid-February 2006 for £2 million until 24 April 2006 for product that had not even been invoiced until 31 March 2006.

126. In conclusion, in relation to the provision of credit, the reality is that an Appellant that was adding no value to goods and that never even saw the goods was receiving credit from three sources such that the Appellant was providing no finance for the deals. Anticipating the point that the documentation contained no detail, and that the trading counter-parties seemed content both to sell and buy without knowing anything about detailed specification, we conclude that the provision of finance meant that the Appellant was being given unbelievable finance for performing a virtually non-existent role in commercially risk-free, but high tax risk, transactions, and that no company in the position of the Appellant could have reached any other conclusion than that the Appellant ought to have known that its deals could only be explained by reference to MTIC fraud.

127. We have just referred to the paucity of documentation. We consider this to be highly significant and indeed to be more significant than the Appellant's own failings in performing due diligence in relation to its trading counter-parties or freight forwarders. For the readiness of both the Appellant's suppliers and customers to deal on the basis that:

- neither would know or ask or require anything in relation to the specification of phones;
- deals would therefore be done without any of the parties knowing whether the prices were right because they had no clear idea what was being sold and purchased;
- on occasions, and in an allegedly fast moving market, customers would periodically wait for extended periods before product was delivered,

all suggested that the concern of all parties was simply to do deals, and more specifically to have some basis for producing documentation and for making and receiving payments. Their actions did not suggest that they were operating in an ordinary commercial manner.

128. Bearing in mind Mr.Jafar's claim that he had been fully familiar with MTIC trading and risks since 2001, and indeed that in several respects, he, as a businessman, claimed to know more about the realities than the Respondents' counsel, the Appellant's attention to properly researching MTIC risks was also very poor. In particular the casual, or almost non-existent, attention to inspections, and more significantly the failure to undertake any credit checks, because HMRC had not instructed the traders what to look out for when making credit checks all indicated that the Appellant was falling very far short of the care that HMRC were recommending that traders should take when involved in the business that Mr. Jafar himself repeatedly said was "rife with fraud".

129. In terms of considering the "means of knowledge" limb of the *Kittel* test we have so far paid no regard to the FCIB evidence. The prime significance of that evidence is that it strongly suggests that we should take the extra step of concluding that the Appellant must in fact have known of the connection of its deals to fraudulent losses. From the means of knowledge standpoint, however, the Appellant would certainly have been aware that the flow of payments would all be preceded by a phone call or indeed by two phone calls and that Mr. Jafar's role would generally be to on-pay everything received within a few minutes. With chains of traders being a characteristic of fraudulent trading, the Appellant should have seen this as an additional strong pointer to MTIC fraud. By contrast, in genuine dealing when a customer paid a trader in the position of the Appellant for goods, it would neither know nor care whether the Appellant had paid for them well in advance, or whether indeed the Appellant would just sit on the receipt of consideration for some period before paying its own supplier. The inter-locking of payments would not be a factor.

Our conclusion on the "means of knowledge" issue

130. Our unhesitating conclusion is that the Appellant ought to have known of the connection of its deals to fraudulent losses.

The Kittel test in relation to actual knowledge

131. We failed in paragraphs 117 and 118 above to conclude the issue of Mr. Jafar's actual state of knowledge, and the significance of his apparent conviction in his various theories. As a result, we consider it inappropriate simply to conclude that Mr. Jafar must have known of the connection of his deals to fraudulent losses simply because it is obvious that the payment chains were all organised by some mastermind. We need to consider matters more

carefully, and in particular we will examine the curious payments and pre-payments recorded in paragraphs 53 to 59 above.

132. Prior to considering those paragraphs, however, we must obviously address the question of whether it is credible that the mastermind behind the transactions not just in these present deals but in countless equivalent deals exhibited to us in the charts that we referred to in paragraph 4 above, could have relied on the parties either side of the Appellant to dupe Mr. Jafar into dealing with the relevant required parties. There appear to be three possibilities. Either the pattern of trading in the vast majority of the deals was that the "exporters" were always duped, and not knowing parties to the frauds. This we consider to be absolutely inconceivable because there would have been total chaos if the mastermind had relied on this expedient for such a vast number of deals. The second possibility is that the present Appellant was the exception to the rule, and that the Appellant was the only, or one of the very few, exporters which was duped and not a knowing participant. This again seems unlikely. As the Respondents always argue, it seems improbable that masterminds behind transaction chains would rely on the feature of duping exporters when there were so many traders ready to participate as exporters knowingly. That of course leaves as the only realistic possibility that the Appellant must have been a knowing participant. When, however, the Appellant dealt with only two suppliers, and three customers, we need to go a step further before we can conclude that on the balance of probability the Appellant must have known of the connection of its deals to fraudulent losses. For once the Appellant had decided to source all its product from Future and Infinity, it might have been relatively simple for those two entities to procure that chosen customers made the relevant requests for stock, or the appropriate responses to stock offers from the Appellant. After all deals 1 to 8 in the period 02/06 all involved supplies to one customer, as indeed did all the remaining deals and deals 1 to 4 in the following period. And Mr. Jafar's evidence was that he generally made the first offer to the customer that had taken the phones in his last deal.

133. The factors that we consider tip the balance and force us to conclude that on the balance of probability the Appellant must have known of the connection of its deals to fraudulent losses are mainly related to the transaction steps considered in paragraphs 53 to 59 above. Admittedly these points are certainly confirmed by circularity in the other deals and all the points that were initially referred to in paragraph 6 above, but it is the odd payment steps revealed in paragraphs 53 to 59 that we consider to be decisive.

134. We start with the observation that when Allimpex made payment for deals 18 to 20 on 7 March 2006, Mr. Jafar said in evidence that it was **on his initiative** that within minutes of receiving the payments, he paid the identical amounts back to Allimpex. He said, and this is critical, that the payments that he was reversing were payments for some other deal that Future had not been able to honour, and that although Allimpex had jumped the gun and pre-paid the orally agreed price for this "other" deal, which had incidentally not been documented in any way, it was nevertheless appropriate for Mr. Jafar to decide to return, and in fact to return, the wrongly paid amount immediately.

135. We cannot accept that evidence and that claim.

136. We first consider that when all the payments in the entire cell of companies were apparently made on the instructions of the mastermind, it is distinctly improbable that one

director in one broker, i.e. Mr. Jafar, would himself take the initiative to reverse a payment, when it was perfectly obvious that all other payments were paid strictly in accordance with instructions.

137. We next note that the payment reversed did not appear to relate to the agreed payment for the undocumented deal that had once been promised (whatever the agreed payment in that deal might have been), because the repayment was of exactly the amount that had been properly paid, and indeed that had been expressed to be paid, in respect of deals 18 to 20, just minutes before the repayment.

138. We also note that once the money was returned to Allimpex (which repayment could not possibly have been anticipated by Allimpex, if the repayment was made on his own initiative by Mr. Jafar, until Allimpex received the repayments), Allimpex immediately knew what to do with the monies repaid and on-paid them, to the last penny, within 6 and 12 minutes of the receipt of the repayments to companies referred to as Kempton Park Marketing and CCA Distribution. This suggests that all of these payment steps, odd as they were, were all pre-planned.

139. We also note that if Mr. Jafar had, on his own initiative, been refunding to Allimpex excess payments, he might have noted that he had only done one third of the job because Allimpex had made further excessive payments of slightly more than £2 million. Of course the answer to this is that Mr. Jafar could not have repaid the remaining outstanding amount of £2,013,165 because the two unallocated payments paid to the Appellant on 15 and 22 February had in fact (not that this was shown on our Table) been on-paid immediately after receipt by the Appellant to Future. Mr. Jafar might still have noted, however, that it was a bit odd for him, on his own initiative, to make the repayments when their aggregate amount had first not been shown to have anything to do with the "orally agreed, but undocumented" deal, and when furthermore the repayment made corrected only just in excess of one third of the apparent excess payments.

140. Our conclusions are therefore that:

- The repayments made on 7 March 2006 were not made on his own initiative by Mr. Jafar, but were repayments that Mr. Jafar was instructed to make. The resultant payment and repayment of the £1,358,950, will not seem quite so odd when we have considered the identical pattern adopted on 24 April.
- There is no documentation to support the odd claim about the orally agreed deal in respect of which Allimpex had jumped the gun and pre-paid notwithstanding that there was no documentation of any sort in relation to the deal.
- The Appellant's repayments must have been made on the instruction of Allimpex or the mastermind, the reason for the payment and repayment, and the amount of the repayment being revealed, we consider, by points that we will discuss below;
- If, as we conclude, the Appellant was repaying payments to Allimpex on the direction of others (whether Allimpex or the mastermind) and doing so extremely promptly, this illustrates that the Appellant was prepared to act, almost instantly, in accordance with instructions of others.

- In the light of the fact that other excessive payments had also been received by 7 March, and that certainly those received on 15 and 22 February had been paid on to Future, it is simply not believable that the Appellant's repayment on 7 March can be explained on any other basis than that the Appellant was acting on instructions and was indeed confident that somebody would sort out the considerable confusion in relation to payments in due course. We consider that, on the balance of probability, the Appellant must have known that it was performing a role in pre-scripted transactions and not taking its own trading decisions in an ordinary commercial manner.

141. We certainly accept that something very odd occurred in relation to the payment flows illustrated on the chart in paragraph 56 above. The first observation is that the pre-payment made, without accompanying description, on 15/2/2006 was for exactly the amount payable for deals 9 and 10 that had also been invoiced on 15/2/2006. Yet on 7 March a further identical payment was paid in respect of those deals, accompanied by the description that the 7 March payment for the relevant same amount was paid in respect of deals 9 and 10.

142. While we have noted that the 15/2/2006 pre-payment was indeed a payment of exactly the amount of the invoice amount for deals 9 and 10, when we aggregate it with the other payment that was not described (i.e. that shown in the 5th row of the Table, paid on 22 February and for £1,174,815), the aggregate of these two undocumented payments is £3,272,115. That aggregate figure is then virtually identical to the invoice amounts for the two deals in respect of which we see further (i.e. second) payments, followed by immediate repayments. Those deals are deals 18 to 20 of the period 02/06 and deals 1 to 4 of the period 05/06. The aggregate invoice amounts for those periods was £3,272,378, which was just £263 in excess of the combined amount of the two unallocated pre-payments. If we then assume that the pre-payments did therefore relate to these deals (that is deals 18 to 20 and 1 to 4) there is the odd, but nevertheless, common feature in relation to those deals that for some reason the invoice amounts are paid again, and then immediately reversed. We do not know why that pattern appears in relation to these deals but there does appear to be some significance to the fact that exactly the same pattern of double payment, coupled with repayment, is adopted on both 7 March and 24 April. One possibility is that it might have been thought prudent by the person planning all the payments to arrange for there to appear to be a subsequent payment for all these deals **after the issue of invoices,** albeit that after the second and subsequent payment there would obviously have been a resultant over-payment so that in substance the second payment would immediately have to be repaid. But at least if someone (perhaps at HMRC) was asking the Appellant when payment was received for deals 18 to 20, the answer could have been "on 7/3/2006", and in response to the same question in relation to deals 1 to 4 of the 05/06 period, the answer could again have been "on 24/4/2006". That would at least have looked rather more credible than for the answer to have been that deals in the period 05/06 had in fact been pre-paid in payments made, significantly without accompanying descriptions, on 15 and 22 February 2006.

143. There are of course other oddities about the payment flows for the relevant period. Assuming that we are right to say that that excess over-payment at the end of the period 02/06 (i.e. £2,013,165) all but matches the invoice amounts for deals 1 to 4 of period 05/06, there is still a gap of 24 days between the date (7 March) at which the excess payments can be calculated for the period 02/06, and the date (31 March) on which deals 1 to 4 of period

05/06 were documented and invoiced. In the "fast-moving market", it appears distinctly odd that a pre-payment of a very substantial amount (roughly £2 million) is pre-paid and left as an outstanding pre-payment for in excess of 3 weeks before the deal is even done and invoiced. Moreover since the relevant phones were not despatched until after the second and subsequent payment was made (and then reversed) on 24 April, the actual gap between the issue of the invoices etc. and despatch is for many weeks. Indeed since the initial payments were made on 15 and 22 February, there is more than a two month gap between payment and delivery of the phones, in what we are told is a fast moving market. We have already said that it is extraordinary in itself that all the customers pre-paid for goods, in which context we meant that generally the deals had been done and invoices issued, and that the pre-payment simply meant that payment was made before the goods were despatched. We now see a customer pre-paying in the different sense that the pre-payment appears to be made on 15 and 22 February; the deal is only invoiced and done on 31 March 2006, and the pre-payment is not reversed until 24 April 2006l, and the phones are not despatched until after that date.

144. The Respondents' suggestion was that the payments made on 15 and 22 February were designed to fund the Appellant's VAT gap, pending the receipt (obviously hoped for and expected at some time in March 2006) of the repayment claim for the period 02/06. We cannot say that this suggestion was right but it does make some sense. HMRC's repayment was made on or within a couple of days of 27 March 2006, and it was then on 31 March 2006 that deals 1 to 4 of period 05/06 were documented and invoiced. The overall rationalisation would then be that the pre-payments were designed to fund the Appellant's VAT gaps, and generally to provide more credit, while the separate decision would have been taken that it would look better for subsequent payments in fact to be made, and described as relating to the relevant invoices, for deals 18 to 20 and 1 to 4. Since those deals would in fact have been pre-paid so that the later payments were superfluous (other than for the feature of "presentation" just suggested) it followed that the subsequent payments had to be re-paid.

145. While we cannot know for certain precisely why the rather odd pre-payments, further payments and repayments had been made in these two periods in the flows between Allimpex and the Appellant, we certainly reject Mr. Jafar's explanation that on 7 March 2006 he repaid an amount on his own initiative, because it matched an orally agreed deal that had never been documented, and in respect of which Future had been shown to be unable, in the event, to supply the phones.

146. There are, of course, other very odd features to the deals illustrated by the Table in paragraph 56 above. Although numerous deals are done in the relevant periods, if we ignore the two pre-payments made on 15 and 22 February, all the payments (including in the period 05/06, payments received from Elandour and not just Allimpex), are all made at the same time. In other words, those for the period 02/06 are all made on 7 March and those for the later period are made on 24 April.

Our conclusion on actual knowledge

147. Our conclusion on the issue of whether the Appellant had actual knowledge that it must have been participating in pre-arranged deals, in which it was inherently doing what it was told to do is that this must have been the case. We reject Mr. Jafar's explanation for the repayment made to Allimpex on 7 March. The result of that is that we conclude that all

payments, and critically re-payments were made on the instruction of the mastermind, and that Mr. Jafar must have known this.

148. In addition, the facts illustrated in relation to the deals shown in the Table in paragraph 56 above illustrate the feature of Allimpex waiting, without complaint, for long periods before receiving goods. More significantly, when we find it incredible (if applying normal commercial standards and expectations) that the Appellant's customers always pre-paid invoice amounts before goods were despatched, it was quite extraordinary for Allimpex to make the vast pre-payments (payments that, in this context, were pre-payments because they even preceded the documentation of deals) that we have been addressing.

149. When we couple these conclusions with the factors briefly mentioned in paragraph 6 above, including of course the extraordinary provision of credit from every quarter, and the apparent total disinterest in the detailed specification and inspection of goods by all parties, we conclude that the Appellant simply must have known that it was participating in arranged deals in which all that mattered was that something be supplied (or that something should at least appear to have been supplied) so that documentation could be exchanged and payments be made.

150. While our conclusion is accordingly that the Appellant simply must have known of the pre-arrangement of all the steps, and thus of the connection of its deals to fraudulent VAT losses, we remain unclear of precisely what Mr. Jafar thought that he was doing. We certainly consider that he was confused, and that it was possible that he got swept into transactions that he did not fully understand. We also stop short of saying that he would have participated openly in discussions in which he would have agreed to participate in fraudulent deals. Nevertheless, our conclusion is still that he must have been aware of the reality and fraudulent nature of the deals by the VAT periods 02/06 and 05/06, even if he had initially been drawn into them unwittingly.

151. This Appeal is accordingly dismissed on the basis that the Respondents have established, on the balance of probability, that both limbs of the *Kittel* test have been established.

Costs

152. While we invite the parties to make further requests and claims as regards the issue of costs, the indications that we have so far received have been to the effect that each party should bear its own costs. Accordingly at this stage we make no order in respect of costs

Right of Appeal

153. 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.

TRIBUNAL JUDGE

HOWARD M. NOWLAN

RELEASE DATE: 25 JANUARY 2016