This is the successful MTIC appeal of Crucial Components Limited where CTM offered a no win no fee on the bases that the case was very strong. The hearing lasted 3 weeks and Liban Ahmed from CTM acted without counsel in preparing legal submissions and the client's 3 witness statements and also cross-examining 10 HMRC witnesses.

**FIRST-TIER TRIBUNAL**

**TAX**

**CRUCIAL COMPONENTS LTD Appellant**

**- and -**

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

**TRIBUNAL: JUDGE THEODORE WALLACE**
**MRS GILL HUNTER JP**

**Sitting in public at the Royal Courts of Justice**

**Liban Ahmed, tax consultant, of CTM Tax Litigation Limited, for the Appellant**

**Christian Zwart, Counsel instructed by Howes Percival LLP, for the Respondents**

DECISION

1. This is an appeal against the refusal by Customs of input tax on purchases of iPods and CPUs on the grounds that the Appellant knew or should have known that its transactions were connected with the fraudulent evasion of VAT.

2. The decision made by Customs on 6 August 2008 was in relation to £113,665.55 input tax claimed in the return for 08/06 on four invoices for a total of 3465 Intel CPUs and four invoices for a total of 4000 Apple iPods.

3. It was agreed by the Appellant that the purchases traced back to fraudulent defaulters. This type of fraud is known as Missing Trader Intra-Community (or "MTIC") fraud. The identity of the traders from which the defaulters acquired the goods was not established. The sales by the Appellant were to four overseas companies, one in the USA, one in Taiwan and two in the EU.

4. On the first day of the hearing the Tribunal directed Customs to provide particulars of the matters relied on for the allegation that the Appellant had actual knowledge that its transactions were connected with fraud, as opposed to the allegation that the Appellant should have known. This was in accordance with the statement by Briggs J in *Megtian Ltd (in administration) v Revenue and Customs Commissioners* [2010] STC 840 at [42] as to the need for an allegation of dishonesty to be clearly and specifically pleaded.

5. Customs complied by submitting an Amended Statement of Case on 23 May in which it was contended in paragraph 34.2.1 that applying the test in *Kittel v Belgium* [2008] STC 1537, ECJ the Appellant must have known that the transactions were connected with fraud for the reasons set out in paragraphs 32, 33.2A, 33.4B, 33.6, 33.9, 33.12, 33.16A and B. In paragraph 34.2.2 the Amended Statement of Case specified why the Appellant should have known of the connection with fraud.

6. The paragraphs in question contained extensive additions, some being entirely new, however the matters pleaded were covered by the witness statements and Customs' skeleton argument. The Tribunal directed that paragraphs 25.1.6B, 27.1.6, 33.8 and 33.16F, all of which were entirely new and which covered matters which were after the transactions in question, should be deleted. Mr Ahmed did not raise any objections to the Amended Statement of Case and the Tribunal allowed the other amendments.

7. The allegations of actual knowledge can be summarised as follows:

> (i) Paragraph 32. Due diligence was not undertaken at all in some instances in respect of the supply chain and what was undertaken was incomplete or inadequate. The Appellant failed to carry out checks with Customs at Redhill on all of its suppliers, or to await the results of those made. The Appellant did not obtain credit checks on trading partners before deals. "The precipitous manner of its approach demonstrates that in reality it was a sham process";
>
> (ii) Paragraph 33.2A. The Appellant's sale invoices contained retention of title clauses, however the Appellant in no case ascertained whether its suppliers had title but assumed that it had title; the Appellant knew that there was no true risk from its suppliers or customers as to title because "it knew that its transactions were contrived";
>
> (iii) Paragraph 33.4B. The Appellant's checklists were a sham;
>
> (iv) Paragraph 33.6. The Appellant had made purchases directly from Aston Technology Partners ("ATP") on several previous occasions including on July 24. ATP supplied the Appellant's suppliers in the July Deal and in August Deals 1, 3 and 5. In August Deal 1 the Appellant received a faxed inspection report directly from ATP and must have realised that ATP was a supplier higher in the chain, however the Appellant made no inquiries of ATP to see

whether it could cut out the intervening parties. The Appellant must have known that by its transaction it was connected with fraud;

(v) Paragraph 33.9. The Appellant has given "mutually exclusive reasons" for the last minute change in customer from Duwin SRL for August Deal 2 and undertook no due diligence checks on OHM Traders GmbH("OHM"); this indicated contrived trading. We observe that the reference to August Deal 2 was clearly an error for August Deal 3;

(vi) Paragraph 33.12. In August Deal 5 there was an additional purchase order for the same goods by the Appellant's customer, Klystron International ("Klystron"), addressed to the Appellant's supplier;

(vii) Paragraph 33.16A. "The August Deals 2 and 3 contained money circularity … The occurrence of each of those transactions within a single day demonstrates that, to enable that money availability, the Appellant knew that it was required to pay its supplier when it did. This chimes in with the feature that the Appellant did not have to pay its supplier until it was itself paid. Thereby, the Appellant knew that it had no choice but to pay when it did, and it knew thus that the transactions were artificial …";

(viii) Paragraph 33.16B. "The Appellant released in each case title to goods" which it did not have until its supplier released title to the Appellant. This showed that its transactions were artificial and connected with fraud.

8. During the hearing the parties agreed the following statement of agreed facts:

"(a) Mr N Holmes and Mr M Westley were directors of Datec Electronics Holdings Ltd ("Datec") during the currency (respectively) of its then employment of Mr John Hanson and Mr Carl Webb;

"(b) Mr Holmes and Mr Westley were, during currency of trade between the Appellant and Techcomp Limited (and remain at this time), directors of Techcomp Limited;

"(c) On 29 July 2009 a decision letter (subsequently amended on 29 August 2009) was issued by the Respondents to Techcomp Limited denying input tax relating to £173,704.35 for period 07/06 and £42,934.72 for 08/06, totalling £216,639.07. … Subsequently, Techcomp Limited made appeals against those decisions …;

"(d) In [the present] appeal LON/2009/1672, the Respondent has proven a tax loss in the appealed transactions, and that this loss was fraudulent. The Appellant does not dispute these matters."

It was subsequently agreed by Customs that at the time of the deals giving rise to the appeal iPod Nanos were the only 4GB iPods.

9. The following witnesses gave evidence for Customs, confirming witness statements, and were cross-examined : Mrs Judith May Elmer and Mrs Julie Hall, who visited the Appellant on a number of occasions between 1 April 2004 and December 2005; Gavin William John Stock, who visited Carl Webb a director of the Appellant on 9 January 2004; Terence

Mendes, who visited Datec between December 2000 and March 2003; Roderick Stone, who visited Quest Trading Ltd ("Quest") and who is a senior policy adviser; Matthew Eaton, who gave evidence as to financial circularity but not including the Appellant; Peter Howard Dean, who gave evidence as to CPU circularity, and James Bond, who was the allocated officer for the Appellant from October 2006. Sarah Barker, in respect of Kaymore, the defaulter in five chains namely the July deal chain and the chains from August deals 1 to 3 and 5, and Gerard Marescaut, in respect of EMS, the defaulter in the two chains from August deals 4a and 4b, both made statements which were admitted without cross-examination.

10. There were three witnesses for the Appellant: John Hanson and Mr Webb, directors, and Tom Hanson, the younger brother of John Hanson, who was an employee.

The Repayment Claim

11. A copy of the Appellant's VAT return for 08/06, which was sent by the Appellant's accountants, Blanche & Co, was received by Customs at Peterborough on 7 September 2006 with supporting schedules and invoices. Output tax shown was £49.90 on 11 domestic sales. The remaining sales were zero-rated being to OHM in Germany, Technology Main Informatica SL ("TMI") in Spain and Klystron in Taiwan. An invoice to Converge Peabody ("Converge"), a US company, dated 28 July was presumably sent with the 07/06 return.

12. Input tax claimed totalled £114,331.44 giving a net repayment claim of £114,281.54. The seven disallowed invoices totalled £113,665.55, the balance was mainly for freight forwarder and telephone invoices which were allowed. Three of the disallowed invoices were for Intel SL7Z9 computer chips purchased from Techcomp Ltd ("Techcomp"). Four of the disallowed invoices were for Apple iPods, of which one was from Techcomp, two were from Miatek Ltd ("Miatek") and one was from Silverstar Components Ltd ("Silverstar"). It appears that the input tax on the supply on 28 July by Silverstar of 630 Intel CPUs was claimed in the July return and was repaid.

The Deal Chains

13. In his skeleton argument dated 4 May 2011 Mr Ahmed conceded that a fraudulent tax loss had been identified at the start of each of the Appellant's supply chains. There was no dispute as to the composition of the deal chains.

14. There was no dispute by Customs as to the supplies having taken place and the goods having been removed abroad.

15. In the July Deal the defaulter was Kaymore. Sales of 2520 Intel SL7Z9 CPUs were invoiced successively on 27 July 2006 by Kaymore to Simply Connect Ltd, by Simply Connect to Imang, by Imang to Ultimate Wholesale ("Ultimate"), by Ultimate to Bluestar Trading Ltd ("Bluestar") and by Bluestar to Tradex Corpn. On 27 July Tradex invoiced 1890 to ATP and 630 to Silverstar; Silverstar invoiced 630 to the Appellant. ATP invoiced 1890 to Techcomp which invoiced 945 to the Appellant. The Appellant invoiced Converge for 1575 CPUs on 28 July 2006.

16. In August Deal 1 the defaulter was again Kaymore. Successive invoices for 1575 SL7Z9 CPUs were issued to Simply Connect, thence to Imang, thence to Ultimate, thence to Bluestar, thence to Tradex, thence to ATP and thence to Techcomp. Techcomp invoiced the

Appellant for 945 CPUs and the Appellant invoiced TMI for the same number. All of the invoices were dated 1 August.

17. August Deal 2 was also on 1 August. Kaymore was the defaulter once again. This time the goods were 1000 Apple iPods. The traders in the chain from Kaymore were successively, Simply Connect, Imang, Ultimate, Bluestar and Tradex, which was the Appellant's supplier. The Appellant's customer was OHM. All the invoices were dated 1 August.

18. August Deal 3 again led back to Kaymore as defaulter and the invoices were on 1 August throughout. It involved 1842 Apple iPods. The traders in the chain were successively Simply Connect, Imang, Ultimate, Bluestar, Tradex, ATP and Miatek, which was the Appellant's supplier. The invoices from Kaymore down to Bluestar included an additional 695 iPods. The Appellant's customer was again OHM.

19. August Deal 4 involved one sale on 2 August of 1158 Apple Nano iPods by the Appellant to OHM and acquisitions by the Appellant of 500 white iPods from Miatek and 658 from Techcomp. The Miatek chain is referred to as Deal 4a and the Techcomp chain as Deal 4b. Miatek purchased 500 from Tamsa Trading Ltd ("Tamsa") and Techcomp purchased 658 also from Tamsa on 2 August. Tamsa bought 2158 from Culmain Ltd on 1 August. Culmain was invoiced by Futuristic Electronics Ltd ("Futuristic") for 1298 and 1965 iPods on 1 August. Futuristic was invoiced for 1298 by Connect Communications Ltd ("Connect") on 1 August; Connect was invoiced by EMS on 1 August. Futuristic was invoiced for 1965 by Connect also on 1 August (1638); however Futuristic was also invoiced by EMS on the same day for a larger amount, see invoice EMS 0027/28. EMS defaulted.

20. The final deal, August Deal 5 involved 945 Intel SL7Z9 CPUs sold by the Appellant to Klystron on 3 August. The Appellant bought 945 from Techcomp, which bought 1890 from ATP. ATP bought 3780 from Tradex and the chain of deals for 3780 led back via Bluestar, Ultimate, Imang and Simply Connect to Kaymore which was the defaulter. The chain from the Appellant back to Kaymore contained the same traders in the same order as the July Deal.

Witnesses for Customs

21. We turn now to the witnesses in the order in which they gave evidence.

Mrs Elmer

22. Mrs Judith Elmer confirmed witness statements dated 29 June 2009 and 26 July 2010.

23. She stated that she was appointed as a Customs Officer in 1988 and between 2002 and April 2005 was part of an MTIC team at Peterborough verifying repayment returns by mobile phone or CPU traders. After a brief period working with a specialist team dealing with gangmasters she was redeployed in April 2006 to the Peterborough MTIC team. Her role included visiting premises with another officer and carrying out partial verification of returns. She was specifically responsible for the Appellant's returns for 09/04, 01/05 and 02/05; on a number of occasions she acted as second officer.

24. Mrs Elmer exhibited her notes of a visit with Mrs Hall on 1 April 2004. She stated that a hard backed banner notebook had been stolen from her home in January 2007.

25. Her notes showed that the visit was an hour and a half, with John Hanson and Carl Webb. It included the following:

> "Trader knows to clear numbers through Redhill …
> 2/04 FP VAT Return £11,691.60 I/T. Only 1 deal …
> Sold to Technology Main Informatica SL …
> Funding from father £100k
> Agreed trader can go onto monthly VAT returns but evidence must be sent every deal to Julie. Credit checks to be made including on European Cos."

Both officers signed the note.

26. On the following day John Hanson faxed a list of current customers and suppliers and the monthly deal sheet for March showing four Intel CPU deals, Techcomp being the supplier for one and TMI and Converge being customers. He confirmed in the fax that any new business contacts would be verified with Redhill before trading.

27. Mrs Elmer stated that on 21 June 2004 with another officer she collected the copy accounting records for 05/04; they saw Mr Webb and Tom Hanson who would also be assisting. A repayment for £63,594 was released for period 05/04. Further repayments for 06/04, 07/04 and 08/04 were released in under a month from the returns being rendered. She visited the Appellant on 12 October 2004 with Mrs Hall. The repayment for 09/04 was increased by £14,106 because two purchase invoices had been omitted from the claim, one being from ATP. The repayment claims for 10/04, 11/04, 12/04, 01/05 and 02/05 were all met promptly.

28. Mrs Elmer stated that she accompanied Mrs Hall on visits on 11 April, 14 June and 20 October 2005 which was her last visit. She had no notes and assumed that they were in the large stolen notebook.

29. She stated that Tom Hanson applied for the registration of Net Storm Ltd. A letter by Tom Hanson on 7 March 2006 headed "Gadget Group.co.uk" stated that once a VAT number was acquired transactions would go to Net Storm's account instead of Crucial Components.

30. In response to a letter from the Appellant, Mrs Elmer stated that she did not dispute "that we had a good working relationship with the traders."

31. In her second statement she said that she was certain that Mrs Hall and she gave verbal warnings regarding the checks.

32. She stated that she did not witness a full size poker table being put in Mrs Hall's car or accept one herself.

33. Mrs Elmer was cross-examined for 5½ hours. She told Mr Ahmed that it became apparent that the Appellant's transactions were contaminated by fraud when Mr Bond had completed a full extended verification. In 2004 this was not apparent. In 2004 they would look at the export documentation, purchase invoices, the onward supply invoices, bank statements, due diligence files, if provided, and any other information such as insurance documents. She would know the freight forwarders from the CMRs. She did not recall seeing any inspection reports or release documents. She said that sometimes the documents

had been sent by the Appellant's accountants to Peterborough; the original documentation was currently at Customs' Peterborough office.

34. She said that in 2004/05 Customs were looking at circularity and non-economic activity. They were instructed to make sure that traders were fully aware of joint and several liability. She said that she did issue Notice 726 and that they did give warnings. She knew that verbal warnings were given "because it was part of our mantra as an MTIC officer." On each visit she made she gave the Appellant Notice 726. She said that she may not have told Mr Bond of this because it was so common for her to issue Notice 726 on visits that she may have assumed that he knew; he was not an MTIC officer in 2004 and 2005.

35. Mrs Elmer said that when the repayments were made local management had decided that there was no requirement to complete full audit reports. Up to March 2006 there was a resource issue.

36. She agreed that her notes for 1 April and 21 June 2004 did not show that warnings of fraud had been given or that Notice 726 was left. The notes were not contemporaneous but were written in the car afterwards. She said that she knew that they would have reviewed the Appellant's due diligence. She said that perfect records do not occur in every day life. She believed that she made seven visits to the Appellant and gave out Notice 726 each time.

37. Mrs Elmer said that she did not know why she had stopped printing from the electronic folder with the pre-credibility report for 02/06. She did not know why she had not exhibited her pre-credibility report for 06/06 dated 4 August 2006; Mrs Elmer agreed that this was important because it related to a telephone call with John Hanson on 4 August 2006 about the 06/06 return. She did not remember it when she made her statement. In 2004/05 she never saw any inspection reports; by 2006 she was very interested in seeing inspection reports and insurance documents. She said that she asked for inspection reports in case 06/06 was selected for verification. She brought John Hanson's attention to the *Kittel* ruling. She said that she had no part in any verification or repayment of 06/06. She was then asked about an e-mail to the Appellant on 9 August at 6.46am which read,

> "Hi John and the Gang
> Know its too early to phone you so here's an e-mail instead! Just to let you know the repayment is on its way.
> Regards
> Jude"

She said that she was simply following up their telephone call; she knew the repayment had been queried and it was a matter of courtesy. She said that on face value the e-mail looked very unprofessional: she was appalled by her own standard. Asked whether she had developed a friendship with the Appellant's directors, she said that friendship would be a strong term, they had a working relationship.

38. The report of 4 August 2006 included a passage,

> "I have asked him to send into this office details of all the insurance Docs relating to the deals carried out. Asked him to send in inspection reports containing the batch numbers of the CPUs".

39. She was asked about her statement that she wrote notes in the car after each visit and said that they had felt that it would be intimidating to write notes contemporaneously in front of two relatively young directors new to the business; she did that with nearly all her visits. She wrote her notes on 1 April 2004 in the car having moved off the premises. Mrs Elmer said that she totally refuted an allegation about taking poker tables. She said that she and Mrs Hall were never over familiar although they did have tea and biscuits with John Hanson and Mr Webb. She agreed that she had sent an e-mail "about girly things on their website", she believed that was after the June 2005 visit.

40. She said that in 2005 they would look briefly at the accounting records, make sure the bank payments had been made and look at the export documentation. It was almost impossible to remember exactly what they did for each period.

41. Mrs Elmer agreed that during the visit on 1 April 2004 the Appellant asked to be put on monthly returns. An earlier request to the Registration Unit had been denied. Normally a trader had to show a regular repayment pattern. At the April visit Mrs Hall and herself had exceptionally agreed to monthly returns; Mrs Hall had initially said no. Because of the type of business they required Redhill checks.

Mrs Hall

42. Mrs Julie Hall confirmed statements dated 3 July 2009 and 27 July 2010. She stated that she had been a Customs Officer since 1979. Between April 2002 and April 2005 she was part of a team verifying repayment claims by mobile phone or CPU traders. From April 2005 she was part of a team checking non-compliant labour providers. From 28 May 2006 to 13 September 2006 she was absent on medical grounds and on her return was redeployed to MTIC.

43. She stated that she was specifically responsible for the Appellant for periods 05/04 to 08/04, 10/04 to 12/04 and 03/05 to 01/06. She stated that she had visited the Appellant on 1 April, 25 August and 12 October 2004, 17 February, 7 March, 11 April, 14 June, 26 August, 27 September, 20 October and 20 December 2005 and on 14 November 2006, the last visit being with Mr Bond. The visits on 1 April and 12 October 2004 and 17 February, 11 April, 14 June and 20 October 2005 were with Mrs Elmer.

44. She stated that for the monthly returns to be approved authorisation was needed from a senior officer, at the time Ian Robson. She stated that if it was found that a party within the supply chain was missing, deregistered or hijacked a "veto letter" would be issued to the Appellant.

45. She denied accepting a poker table stating that neither she nor her husband had any interest in poker. She produced a photograph of her vehicle showing that the tailgate could not have been in the position described by the Appellant (see paragraph 172 below).

46. She stated that she could not have advised the Appellant if it was operating within a legitimate industry because her role involved checking accounting records only. Due diligence was relatively new at the time. She stated that she may have commented that the Appellant's due diligence appeared comprehensive compared to other traders. She stated that notes were written after the visit in her vehicle or Mrs Elmer's; this was their usual practice. She stated that in addition to accounting checks on the documents sent in by the

Appellant she made references for supply verification which would have been passed to the Central Coordination Team.

47. Cross-examined she said that her MTIC training was "on the job"; part of this was to warn of areas of fraud. Written warnings were given if any fraud was found during a visit: she did not think that she found any fraud in the Appellant's chains. She said that she gave verbal warnings as to fraud on every visit and discussed in general terms the things the Appellant was doing. She disagreed with the allegation that they chatted about nothing but personal matters. She said that she did not know if the Appellant had Notice 726 before the visit on 1 April 2004 but she issued it then and thereafter. She said that the Appellant may have asked if the due diligence was adequate. She denied praising the Appellant's due diligence, but then said that she may have done so. She said that in April 2004 onwards she did not suspect that all or some of their transactions were connected with fraud. Before visits she would have looked at the deal packs sent.

48. Mrs Hall said that all the Appellant's returns would have come to her via her manager and she would have dealt with them if she was able to do so. Three MTIC traders were allocated to her but she had other work also.

49. She denied telling the Appellant that if they stayed under approximately £200,000 there would be no delays or telling them to keep their repayment claims low.

50. She said that from April 2005 she changed to dealing with the Appellant on a care and maintenance basis. She told the Appellant that she would not be dealing with them on such a regular basis but reminded them of the risks and still had the role to clear their repayments. She was not doing the same checks in the office. She collected documents if the accountant had not sent them, for example export evidence and bank statements but not inspection reports. She said that the checks would have appeared brief throughout because most of the work was done at the office. As far as she knew there were no visits after December 2005.

51. Mrs Hall said that when Mrs Elmer was with her Mrs Elmer was the second officer and wrote the notes; she remembered her writing notes in a large notebook in the car afterwards. Using that method they got more information. She denied that Mrs Elmer's notes on 1 April 2004 were written in front of the traders.

52. She looked at the bundles sent with the returns for maybe a couple of hours before a visit but did not prepare a check list of questions before visits. Appointments were normally booked for visits.

53. Mrs Hall denied being offered a poker table and taking it and said she did not discuss poker tables. She said that she had a Land Rover Discovery at the time: it had a side hinge and did not open with the tailgate down as stated by the Appellant. She produced a photograph.

54. Mrs Hall said that she had refused the Appellant's request for monthly returns in March 2004 when asked by the Registration Unit. When asked at the April meeting she had needed to be convinced that the Appellant would be in a regular repayment situation. There was no friendly arm-twisting. She was convinced and said that they could have monthly

returns. She probably did not say that she needed authorisation from her manager, however that was the system.

55. She denied having told the Appellant that they were trading in a genuine industry. She said that it was never up to her to decide whether the business the Appellant was conducting was legitimate.

56. Mrs Hall said that she could not remember whether she had seen a fax from Mr Webb on 6 May 2004 asking for a full chain check on a deal in which he was being supplied by IC Components Ltd and was selling to TMI. She had sent an e-mail to another officer on 20 April attaching details of a deal and that officer had replied on 12 May including the words "IC Components, who as usual bought from K2 Technology, a defaulting trader in Bristol". She said that she did not tell the Appellant of a defaulting trader in the chain because in the Appellant's particular chain K2 was not a defaulter. She said that there was nothing in the Appellant's supply chain for her to tell the traders about regarding fraud. Her letter of 28 June 2004 releasing the 05/04 repayment without prejudice, stating that a number of transactions remained to be verified and that she would keep the Appellant advised of progress of enquiries, was a standard form letter. She denied warning John Hanson and Mr Webb of who not to trade with. She said that she did not say that their suppliers were fine to trade with.

57. Mrs Hall agreed that they invited her and Mrs Elmer out to lunch on several occasions but did not know when the invitations started or why they kept on asking them. She agreed that they offered her daughter free entrance to their night club in October 2005 but said that she had turned it down Asked about conversations with John Hanson and Mr Webb, she said that it was as friendly as it could be on a professional standing. She denied telling John Hanson to keep under £200,000 as they were walking over to the club where the office was to be located.

58. Mrs Elmer was briefly recalled at this point. She said that having reviewed the documentation she now believed that she made her notes on 1 April 2004 in front of John Hanson and Mr Webb because she had written down the exact input tax claimed whereas the invoices were only faxed on 16 April. She said that on later occasions she wrote her notes in the car. She denied the allegation that this was another attempt to hide the fact that no notes were subsequently written.

59. Mrs Hall, cross-examined further, said that she was not disputing what Mrs Elmer was saying but was also saying that she did not remember anything different to what she had said. She said that she was saying that the notes could have been written in front of the traders but she did not remember that.

Mr Stock

60. Gavin William John Stock confirmed a statement dated 6 January 2010. He stated that he visited the Appellant on 9 January 2004 to verify the application to register and saw Mr Webb, the director. He made notes and later filled in a questionnaire. He noted the business as buying and selling computer components. The business had not yet started. Mr Webb was employed as part of the Datec Group acting as buyer and seller and had five years' experience in the trade. He was given a list of UK customers and suppliers. He noted that the trader might look at exports in the future.

61. Cross-examined, he said that he was on the MTIC team. The Appellant was intending to trade in MTIC-type goods and he discussed MTIC with Mr Webb. He could not remember exactly what he said but would have spoken about contacting Redhill and verifying numbers. He would have left Notice 726 as on every visit.

62. He said that he registered the Appellant in the knowledge that Mr Webb was currently employed by Datec, that John Hanson had been a director of Quest and that Mr Hanson's father had agreed to invest £50,000.

Mr Mendes

63. Terence Mendes confirmed a statement dated 30 March 2010. He stated that he had been an HEO and now a Higher Officer since 1991, being attached to the validation team at Redhill since 2001.

64. He stated that his initial visit to Datec was in December 2000 when he met Michael Westley, the managing director. Mr Westley told him that Intel produced a new CPU every three months and that Datec was able to buy the previous product cheaply and market it in Europe or around the world.

65. He stated that Datec's return for 11/02 was subject to verification to see whether VAT losses would be identified in transactions where Datec was the exporter. On 9 October 2003 he visited Datec with another officer and they informed Datec that all its supplies commenced with a hijacked trader; joint and several liability which had just been introduced was discussed and Notice 726 was issued; he saw Mr Buckley who said that he was leaving.

66. Cross examined, Mr Mendes told Mr Ahmed that he did not recall purchases from Tiny Computers but had heard of that company.

67. He said that by the visit on 9 October 2003 Mr Westley and Mr Holmes had left Datec.

68. He said that if he identified a de-registered or hijacked trader at the bottom of the chain he would notify Datec but not who it was. October 2003 was the first time that he had identified fraud in Datec's supply chain.

69. He told Mr Ahmed that he had a professional relationship with Mr Westley and Mr Holmes as with any other trader. It was not correct that they had given him helpful advice. He had not been aware of any suggestions by them as to how to tackle fraud.

Mr Stone

70. Roderick Guy Stone confirmed statements dated 8 January 2009 and 17 March 2011. The first statement was purely generic and made no mention of the Appellant.

71. In the second statement he produced a spreadsheet showing that between 18 February 2004 and 7 June 2006 the Appellant made 176 validations with Redhill VAT; he stated that he could find no record of validations by the Appellant after 7 June 2006.

72. He told the Tribunal that there never had been a threshold for risk assessment of repayment claims. A repayment inhibit had been put on the Appellant from the outset. Inhibits were set at the local VAT office. When a repayment return arrived at the local VAT office it could be desk-cleared or the trader could be visited. In respect of suspected involvement in MTIC fraud there was a preference for a visit. Once a return was received and selected for verification Customs normally had 30 days to conduct the enquiries and release the money; the clock stopped if a verification was undertaken.

73. In April 2006 Customs embarked on a full extended verification programme verifying the returns of all traders suspected of involvement in MTIC fraud. On 1 May 2006 a decision was taken to verify 90 per cent of such returns by value in order to match resources to risk. This was done on a monthly basis and resulted in selection of the Appellant's 08/06 return. If an officer wanted to repay a claim subject to extended verification, it was submitted to Mr Stone to decide.

74. Mr Stone said that Quest was subject to an inhibit.

75. He said that Mr Westley had suggested in 2001 a memorandum of understanding for computer chip traders but that Customs did not consider that this was appropriate with the suggested companies.

76. Cross-examined, Mr Stone said that Mrs Hall and Mrs Elmer may have referred to care and maintenance in April 2005, however limited interventions were possible pending references to the Court of Justice including *Bond House*. The inhibit was still in place for the Appellant and officers were still visiting, but there were more significant claims to be dealt with first. He did not override the officers in relation to the Appellant. He agreed that the officers would know that smaller reclaims were getting less attention.

77. Mr Stone told the Tribunal that Customs' policy was that notes should be taken at the time or when still fresh in memory. There was a special document for officers to fill in for traders suspected of MTIC fraud known as an "MTIC activity report". Unfortunately officers did not always do this.

Mr Eaton

78. Matthew James Eaton confirmed a witness statement dated 1 March 2011. He stated that he had been a Customs officer for over 6 years and joined the MTIC team in Peterborough in 2009. His duties included the interrogation of accounts held in the First International Bank of Curacao ("FCIB"). At the request of Mr Bond he had viewed and interrogated data obtained from the Dutch and Paris servers in the Bankmaster Plus and Datastore Systems. He traced the money movements in relation to the chains of purchases and sales leading to and from the Appellant's transactions in so far as the traders had FCIB accounts.

79. The Appellant did not have an FCIB account, nor did its suppliers, Techcomp or Miatek, although Silverstar did. None of the Appellant's customers had FCIB accounts.

80. Reports showed FCIB payments from Tradex to Bluestar and from Bluestar to Ultimate in the July Deal and in August Deals 1, 2, 3 and 5 payments which were equal to the sums invoiced by Bluestar and Ultimate; in the case of August Deal 3 the invoices and payments covered the additional 695 iPods (see paragraph 18 above). Credits by bankers order to

Tradex were shown from ATP equal to the sums invoiced in the July Deal and in August Deals 1, 3 (for 1842 iPods) and August Deal 5. Payments were made by Ultimate to Alfa (which was not in the invoice chain) in the July Deal and in August Deals 1, 2 and 5 which were a few hundred pounds less than the amounts due from Ultimate to Imang, which did not have an FCIB account, and which were £1,341 less than that due in August Deal 3. All transfers were in Sterling.

81. Mr Eaton identified other onwards money transfers by Alfa to traders not in the Appellant's transaction chains, namely to Imanse, a French company, in the July Deal and August Deals 1 to 3 and 5, and thence by Imanse to DRA, a Cypriot company, and by DRA via the Union Bank of Switzerland to OHM. He also identified payments to companies not in the transaction chains in August Deal 4a and 4b which were a few hundred pounds less than the sums due from Connect to EMS.

82. Mr Eaton was cross-examined briefly by Mr Ahmed who said that he did not particularly disagree with the facts in Mr Eaton's statement. Mr Eaton agreed that in the July Deal, when the Appellant's invoice was on 28 July, ATP made a payment to Tradex and Tradex made a payment to Bluestar on 26 July. Alfa had paid Imanse before ATP paid Tradex. Mr Eaton said that he could not identify circularity of funds in the July Deal.

Mr Dean

83. Peter Howard Dean, Higher Officer, confirmed a witness statement dated 30 March 2011.

84. He stated that, based on material provided by Intel, boxes of CPUs typically contained 315 units in 15 trays of 21 units. Intel fixed a label to each box with a box number consisting of two letters identifying the factory and six computer generated digits. Controls by Intel rendered it highly improbable that two or more boxes of CPUs with exactly the same box numbers could be in circulation.

85. He stated that a spreadsheet produced by Mr Bond containing details of CPUs sold by the Appellant and other traders showed that boxes BH 098900 and BH 09YR19 had both been sold by the Appellant to TMI and also by Pars Technology Ltd ("Pars") to Incoparts, a Dutch trader, on the same day, 7 April 2006.

86. Mr Dean stated that the Appellant appeared to have sold box No. BH 099310 twice, once in November 2005 to Klystron and then again to Tech Trader in the USA in February 2006 when it was purchased from ATP.

87. The relevance of much of Mr Dean's statement was not apparent to us and was not explained to us.

88. Cross-examined, he said that there was a fax from John Hanson to the freight forwarder on 7 April 2006 identifying BH 098900 to be shipped to TMI in Spain. The same box number had been sold by Pars on the same day, although the invoice was not available. He did not know when the goods were shipped for Pars, he had not considered it necessary to get that information. He said that box BH 098900 had been shipped by seven different UK companies including the Appellant.

Mr Bond

89. James John Bond confirmed witness statements made on 19 February 2009, 22 January 2010 and 4 April 2001, containing a total of 159 pages and a further 2085 pages of exhibits.

90. He stated that he is a Higher Officer having been employed by Customs since 1989 and that from August 2006 he had been a member of the MTIC team at Peterborough.

91. He stated that the Appellant had been registered for VAT from 1 January 2004 as an intending trader buying and selling computer components; its expected annual taxable supplies had been given as £200,000 but turnover in March 2004 alone exceeded that figure. Up to and including 08/06, repayments totalling £2,261,882 were claimed. Following 08/06 there have been no further wholesale sales of CPUs or iPods.

92. He stated that the 08/06 return was received on about 6 September 2006. On 17 October the Appellant was informed that one or more returns had been selected for verification, This verification showed that all of the purchases subject to this appeal led back through unbroken chains to defaulters.

93. Mr Bond produced a note taken by Mrs Hall on a visit by appointment to the Appellant on 14 November 2006 at which they saw John Hanson and Mr Webb. He had signed the note. It was clearly a lengthy meeting; some of the note appears to be verbatim but by no means all. It is summarised in paragraphs 94 to 113 below.

94. John Hanson told him that he and Mr Webb both worked in distribution at Datec, the biggest distributor trading in the UK, and decided to work together. He worked for Datec for 4 years. The directors of Techcomp had been directors of Datec.

95. He told Mr Bond that 90% of the Appellant's business was CPUs but it sold iPods also.

96. He told him that he had been a director of Quest. Asked why, John Hanson said that he was young, naïve and wanted the title – at 21/22 years old it had seemed the right thing; he was a director in name only, they fell out.

97. Mr Webb told Mr Bond that Blanche & Co were their accountants; day to day records were on Quick Books; Blanche & Co did the VAT returns. He said that the Appellant had three accounts with Lloyds, he and John Hanson were the signatories; there was an overdraft. John Hanson's father lent capital, and was still owed £70,000. There were three equal shareholders.

98. Mr Bond asked how they were financing the money tied up with VAT, Mr Webb said they had no wages. John Hanson said that he realised that there was a massive problem but expressed concern at the amount of time taken to visit them.

99. John Hanson said that they did not advertise but went to some trade fairs. They normally stuck with known contacts.

100. He said that they did not normally buy on credit; terms were normally net 1 day. They could not afford to offer credit: "we ship out and they pay the next day". They only released goods when paid. Mr Webb said that they used Creditsafe for credit checks; John Hanson

said they asked for references for overseas customers; Converge were sometimes bad payers, normally taking 2 days.

101. Mr Webb said that they imposed retention of title clauses on all invoices; they had no trade credit insurance and did not factor sale invoices. John Hanson said that they offered no payment discounts and made no third party payments.

102. John Hanson said that there were currently four or five core suppliers – ATP, Techcomp, Miatek and Silverstar. He contacted the main suppliers by MSN. They never traded with anyone if they had not traded for 6 months. Others contacted them by phone, e-mail and MSN with prices.

103. He said that customers use MSN and sometimes telephone. A typical message would be, "Have you got Z9s etc" with quantity and value or "Other trader looking for iPod Nano" and the Appellant would reply, "How many, where do you need and why." The business stood or fell by MSN; it always came down to price and was very cut throat. There could be great fluctuations.

104. John Hanson told Mr Bond that he tended to sell overseas for bigger margins.

105. He said that Techcomp was the main supplier. They had met other suppliers and had been to their premises. Mr Webb said that the Appellant had no written contracts, only invoices with terms; the terms were C.I.F. or ex works; generally, with the same customer the terms were the same.

106. John Hanson told Mr Bond that to check suppliers' integrity they visited, issued a questionnaire, took photographs and asked whether they understood joint and several liability with a check list. The Appellant had used the VAT site for validation.

107. Mr Bond asked why suppliers did not sell abroad and so cut out the Appellant; Mr Webb said that it was expensive to export and they may not have the contacts. John Hanson said that the Appellant only had overheads to cover so that once they had used their cashflow they could "afford to twiddle our thumbs for a couple of weeks." He said that overseas sales had better margins even after allowing for costs. They hoped to make 3 to 4 per cent on CPUs but sometimes made 6-7 per cent; 2 per cent or lower was not viable.

108. John Hanson told Mr Bond that his brother Tom was on PAYE; he got involved in deals.

109. He said that the Appellant did not hold stock, the insurance was too high. Occasionally but not often there were returns. Mr Webb dealt with those, sending out a form which went up the chain. Money came back from the supplier and they tried not to pay customers until reimbursed by the supplier.

110. John Hanson said that Forward Logistics were the freight forwarder for 90 per cent of transactions; they asked for £1000 up front. Transport was mainly by Fedex on customers' account. Forward Logistics shipped the goods and raised CMRs. Title changed hands on payment. The Appellant did not insure goods in transit.

111. When asked if they had a record of box numbers, John Hanson told him "Normally but hopefully they are on shared drive because my laptop has been wiped." Mr Webb said that they had box numbers on inspection reports. John Hanson said that inspections were by the

freight forwarders who did a box inspection report; the inspection was to ascertain that the goods were what they said. Asked why the boxes got beaten up, John Hanson was recorded as saying, "Yes because they keep going round."

112. John Hanson said that they still used Redhill to check numbers when dealing with a new company, often there was no response. On the last enquiry in October 2006, the reply took a week.

113. The meeting ended at 3.05pm. Mrs Hall's note stated "general chat re: holidays prior to leaving". It was signed with the time 3.15pm.

114. Mr Bond said in his statement that on 13 December 2006 he wrote to the Appellant stating that there were tax losses on four deals on the 08/06 return.

115. He stated that on 10 January 2007 he visited the Appellant with Peter Goulding, a Higher Officer, who made a note. John Hanson had said that he did want to ask about defaulting traders but Mr Bond had said he had not done the verification. Mr Goulding explained the verification process. John Hanson wanted to know why missing traders were not pursued. Mr Webb said that they had been told that their due diligence was perfect. John Hanson said that they were concerned about involvement in fraud and it would be unwittingly. Mr Bond said that four August Deals and one in 07/06 were traced back to defaulters. Mr Goulding said traders had the responsibility to ensure that there were no tax losses. John Hanson explained the due diligence actions and said that nothing had changed; they get all their returns every month and deal with the same people; if they had been told, they wouldn't deal with them. Mr Goulding said, "So have you not been informed of any losses before Mr Bond's letter?" John Hanson said, "No, I've never been told of any tax losses before." Mr Bond gave a receipt for a bundle of documents relating to August 2006. The visit lasted an hour and 40 minutes.

116. Mr Bond stated that a report from the German VAT authorities dated 5 November 2007 cast serious doubt on the activities of OHM, referring to suspected VAT carousel fraud.

117. He stated that there was a late change of customer in August Deal 3 involving 1842 iPods. An invoice from the Appellant made out to Duwin SRL in Italy dated 1 August was crossed out being marked "Changed OHM No Money Wankers." However, in an e-mail to Customs on 21 November 2007, John Hanson wrote that the deal was cancelled when a customer application form and a VAT authorisation did not come through. The Appellant invoiced OHM on the same day.

118. Mr Bond stated that Apple, the manufacturer of iPods, and Intel, the manufacturer of the CPUs, both used authorised distributors. None of the goods could be traced to the manufacturer or to an authorised dealer. There was no evidence that any traders in the supply chain to the Appellant ever took physical possession of the goods, which went to the freight forwarders before despatch overseas.

119. Mr Bond produced a table showing that the Appellant received an average of 54.9 per cent of the total profit made by traders from the defaulter's customer to the Appellant.

120. He stated that in August Deal 5 there was in the Appellant's paperwork a purchase order from the Appellant's customer, Klystron, to Techcomp, the Appellant's supplier.

121. Mr Bond stated that the inspection reports by Forward Logistics showed deficiencies in the goods. For example the closed box inspection report in August Deal 1 showed the boxes as "very good" or "good" rather than "new"; there was no electronic testing. In August Deal 2 all 67 boxes had been resealed and the general condition was "fair"; all boxes had had additional labels removed. OHM's purchase order for August Deals 2, 3 and 4 stipulated that the goods "must be brand new". In August Deal 3 106 boxes were "fair" and 11 "worn".

122. He stated that although the Appellant traded with Techcomp from March 2004 there was no evidence of a credit check until January 2005 when no credit rating was given. On 10 January 2006 Veracis visited Techcomp and provided a report to the Appellant outlining Telecomp's due diligence procedures and providing records which were in the public domain such as Companies House checks.

123. He stated that on 21 December 2005 Veracis visited Silverstar and provided a report which included two negative factors: that there was no transaction based supplier declaration and that Michael Bale, a director, had been involved in a number of dissolved companies. There was a complete absence of credit checks on Silverstar.

124. Mr Bond stated that the Appellant visited Miatek on 14 July 2006 and previously on 9 January 2006 Veracis had visited Miatek. There was a signed but undated supplier declaration by Miatek and due diligence papers including a copy certificate of incorporation. There was evidence of a Creditsafe check dated 10 February 2005.

125. He stated that although the Appellant had a German VAT certificate and company documentation for OHM, there was no evidence of any enquiry about its credit-worthiness. Looking at the freight forwarder paperwork for August Deals 2 and 3, OHM was buying back goods which it had sold a few hours earlier.

126. He stated that for TMI the Appellant had a Spanish VAT certificate and company documentation, but there was no enquiry about its credit-worthiness. For Klystron in contrast there was no due diligence documentation.

127. He stated that there was no apparent due diligence undertaken on the freight forwarders, Forward Logistics Ltd and Tech Freight Ltd.

128. Paragraphs 90 to 127 cover Mr Bond's first statement including his visits in November 2006 and January 2007 the second of which is covered at paragraph 115. A substantial proportion of the statement consisted of comment and argument rather than evidence. We do not summarise that part nor the parts of the statement covering the connection with the defaults, this being accepted by the Appellant.

129. Mr Bond's statement of 22 January 2010 was in response to John Hanson's first statement (paragraphs 157 to 180) and was almost entirely comprised of comment and argument rather than further evidence. It contained considerable repetition.

130. Mr Bond's third statement, dated 4 April 2011 less than seven weeks before the appeal hearing, followed an inspection of trading records produced by the Appellant in 2010 and John Hanson's second witness statement dated 28 October 2010. Again most of the statement consists of comment and argument rather than further evidence.

131. He stated that the extended verification of the Appellant's VAT returns occurred for period 08/06 alone. This was a resource decision made by others.

132. He produced evidence of payments in the Appellant's chains for the deals in issue other than those covered by Mr Eaton's evidence derived from FCIB records. In the July Deal the Appellant was paid $203,162 on 2 August 2006 by Converge, to which it had sold 5 boxes of 315 CPUs; on the same day the Appellant paid Techcomp, from which it had bought 3 boxes, $137,964 and on 31 July had paid Silverstar, from which it had bought 2 boxes, £75,000.

133. In August Deal 1 the Appellant received €98,270 from TMI on 2 August and paid £76,061 to Techcomp on 4 August, being part of a payment of £164,586 which covered August Deal 4b also.

134. In August Deal 2 the Appellant received £119,750 from OHM on 2 August and paid Silverstar £50,000 on 2 August and £85,125 on 3 August.

135. In August Deal 3 the Appellant received £219,837 from OHM on 4 August and paid Miatek £240,000 on 3 August and £5,654 on 4 August.

136. In August Deal 4a and 4b the Appellant received £138,375 from OHM on 3 August and paid Miatek £66,975 on 2 August and Techcomp £88,586 on 4 August.

137. In August Deal 5 the Appellant received $127,543 from Klystron on 8 August and paid Techcomp $143,127 on the same day.

138. The dates shown in the preceding six paragraphs are those on the Appellant's Lloyds TSB bank statements. Mr Bond's statement also covered the receipts and payments by Techcomp, Silverstar and Miatek, which did not have FCIB statements and so were not covered in Mr Eaton's statement.

139. Mr Bond said that he was allocated to the enquiry after the letter of 17 October 2006 to the Appellant (see paragraph 92 above).

140. Cross-examined, Mr Bond said that he had been involved in three extended verifications from scratch and another which he took over in May 2007.

141. He said that Mrs Hall and Mrs Elmer made their first statements as a result of John Hanson's allegation that no warnings were given at any of their visits. He said that when he was gathering his evidence neither Mrs Hall or Mrs Elmer told him that they provided verbal warnings; he could not say what he asked them; it was a long time ago, he could not remember. Because of the allegations of impropriety against them, he had a only read their statements after they were served.

142. He was asked what evidence there was that John Hanson was still employed by Quest when the assessment dated 10 December 2003 (on the basis of non-economic activity) was received and replied that John Hanson formally came off as a director on 31 December. The assessment covered 08/02 and 09/02; John Hanson had been sales director.

143. Mr Bond said that he had requested the report from the German authorities dated 5 November 2007 on OHM. He accepted that this material was not available to the Appellant; presumably the figure for supplies from the Appellant came from an EC Sales List returned by the Appellant, but he was not sure.

144. He was asked about a table showing the average profit per deal in the chains in the Appellant's six deals and why the defaulter was not included, he said that he did not know what the defaulters had paid for the goods.

145. Asked about a Veracis report dated 6 January 2006, Mr Bond said that he did not know whether Mr Bale, who was a Dubai-based director in Silverstar, was a director at the time when the companies referred to under "negative indicators" were dissolved.

146. Mr Bond was then asked about a purchase order from Klystron to Techcomp on 3 August 2006 for 945 CPUs; he said that this was among the records given to him at the visit in January 2007, it had been openly provided.

147. He said that the Appellant could have asked the freight forwarders about the length of the chains; this could have been disclosed without a single name being mentioned. Mr Bond said that he had not asked the freight forwarders whether they would have provided such information and he had not visited them, although he did get somebody to go and get the deal packs. He agreed that there was a release note from Imanse to Bluestar in the middle of the chain in August Deal 5. Asked whether the freight forwarders did Redhill checks on their customers, he said that he had no idea. He did not know when he had asked the freight forwarder team to obtain the deal packs.

148. Mr Bond said that the instruction to carry out an extended verification on the 08/06 return came from Wigan not from the Peterborough office. He came into MTIC in August 2006 and there was a whole tranche of people new to MTIC.

149. There was no re-examination.

150. In answer to questions from the Tribunal, Mr Bond said that for the November 2006 visit (see paragraphs 93 to 113 above) he had a check list as an aide-memoire and Mrs Hall wrote the answers. Mrs Hall had just come back from an extended period of sick leave; the interview was quite long and following it she was off sick again. There was no real opportunity to see the notes written up straight away. He did not remember reading the notes before signing them. The note "general chat re: holidays before leaving" referred to John Hanson's holiday home in Croatia; he did not take a great interest in it.

151. Sarah Barker, Higher Officer, made a statement dated 13 February 2009 covering the tax loss attributable to Kaymore on supplies to Simply Connect in the July Deal and August Deals 1, 2, 3 and 5. This was not in dispute, see paragraph 8 above.

152. Gerard Marescaux made statements dated 13 February 2009 and 4 April 2011 covering the tax loss attributable to EMS on supplies to Connect in August Deals 4a and 4b. Again this was not in dispute.

153. Statements by Michelle Austin dated 18 March 2011 and David Berry dated 25 March 2011 were served by Customs following a directions hearing on 1 April 2011. Both

statements were based on statements prepared for appeals by Techcomp and Datec. Substantial parts of both were of doubtful if any relevance to this appeal and had the danger of adding considerably to its length and complexity. Mr Berry's statement consisted of 150 pages and around 6,500 pages of exhibits. It was prepared at a time when the connection between the Appellant's transactions and the defaults was in issue; it was clear from the Appellant's skeleton argument that these were no longer in dispute. Michelle Austin's statement consisted of 25 pages with exhibits.

154. On the morning of 25 May the Tribunal directed that the statements by the two officers should not stand as evidence in chief but that counsel for Customs could ask the officers to confirm specific paragraphs which were relevant to this appeal, so avoiding the need for lengthy oral evidence in chief; the Tribunal directed that the documents exhibited to the statements which were not produced in such specific paragraphs be removed from the hearing bundles.

155. Later on that day, Mr Zwart informed the Tribunal that he and Mr Ahmed proposed that they agree a short statement of facts instead of him calling the two officers. The facts so agreed are set out at paragraph 8 above. The officers were not called; their statements and exhibits were removed from the hearing bundle, resulting in the removal of bundles 15 to 42 out of the 57 bundles.

Witnesses for the Appellant
John Hanson

156. John Hanson confirmed statements dated 1 October 2009, 28 October 2010 and 22 April 2011.

157. In his first statement he said that he was first introduced to the electronics industry in 1998 when employed by the company which later became Datec; two of the directors were Nick Holmes and Mick Westley who are currently directors of Techcomp. He was a salesman for all types of computer components including wholesaling CPUs. Datec was one of the UK's largest distributors of these. It did not trade in iPods. Mr Westley and Mr Holmes were very experienced. He was never aware that Datec was likely to be involved in fraudulent chains. Datec was well respected by Customs.

158. He stated that in 2001 he went to work for Quest wholesaling CPUs, purchasing in the UK and selling to Europe. He was made a director of Quest. By 2002 he and Mr Webb discussed setting up in business together.

159. He stated that he believed that he left Quest at the end of November 2003, before Customs' letter to Quest dated 10 December 2003 disallowing £1,288,000 input tax relating to periods 08/02 and 09/02 on the basis that the purchases were devoid of economic activity. He knew that Quest had financial problems but he did not know it had anything to do with fraud in its supply chains. He had had no sight of the letter and the assessment.

160. He stated that he read Mr Stone's letter of 9 February 2004 and knew that Redhill enquiries would assist in avoiding fraudulent supply chains; the letter did not contain Notice 726. He stated that at every single stage the Appellant was given the impression that it was trading in a legitimate industry and that fraud was very unlikely in its supply chains; the Appellant was never warned by its officers of the risks of fraud.

161. John Hanson stated that the Appellant's trading style was the same throughout the 2½ years of trading. He was present for all the deals and either created the Appellant's documents or was aware that Mr Webb did; they worked alongside each other and were the main two people controlling purchases and sales; his brother, Tom, was employed to assist under their supervision. Mr Webb would not deal with the trading in detail in his statement.

162. He stated that stock was insured by the Appellant or its customer depending on the negotiated price. The Appellant had an insurance policy with freightcover.com for the shipment of CPUs and iPods up to £1m per vehicle. The Appellant made a separate on-line application for each consignment paying the premium in advance.

163. He stated that the Appellant's officers never stated that it was necessary to carry out due diligence on customers. If Redhill verified an EU customer he assumed that Customs were confirming that the registration documents were valid. When he wanted to verify a new EU customer, Redhill did not respond quickly and he often had to rely on electronic verification.

164. He stated that TMI was a Spanish customer when he worked for Quest, with many years experience in the computer industry. He met the sales manager and general manager at the CeBit electronics trade fair in Hanover where TMI had a huge stand. The Appellant verified TMI's VAT number through Redhill on several occasions.

165. He stated that Converge was a massive company based in USA which supplied CPUs to Hewlett Packard. Converge had an office in the Netherlands. Mr Webb and he met members of the Dutch office at the CeBit trade fair and met the main trader from USA in the UK. He traded with Converge while with Quest.

166. John Hanson stated that the Appellant first started trading with OHM on 31 July 2006 completing OHM's trade application form and on 1 August verified OHM on EU's Europa website.

167. He stated that the Appellant decided to use Veracis Ltd which he knew from when they both worked at Quest. Veracis described the directors of Miatek as "very knowledgeable". There was a long list of positive indicators, the only negative being that the lease was not on long term. Mrs Elmer and Mrs Hall made no adverse remarks about Miatek.

168. He stated that Veracis provided a full written report with supporting documents on Techcomp following a visit in January 2006. It was an impressive report with no negative indicators. The report stated that the directors had in-depth knowledge of the industry due to their long involvement; they had fallen out with the owners of Datec and decided to set up their own business; due diligence procedures had been recently reviewed by Grant Thornton. Mrs Hall and Mrs Elmer knew that the Appellant was trading with Techcomp from the first meeting in April 2004.

169. He stated that Silverstar were very experienced and previously owned Red Star from whom he made purchases when he worked for Datec. He met the directors at a trade fair in Birmingham where they had a stand. Veracis provided a detailed report after a visit in December 2005; the directors were described as very knowledgeable; Veracis gave a series of positive indicators; the two negative indicators were not indicators of fraud.

170. John Hanson stated that 2-3 months after the Appellant was registered they were visited by Mrs Hall and Mrs Elmer who he referred to as Julie and Jude. They were extremely friendly, but not unprofessional; it seemed that they wanted to help; the emphasis was on getting the Appellant's paperwork in order. They asked about the Appellant's trading pattern and partners. The officers did not warn them that fraud was likely in the Appellant's supply chains. Due diligence was discussed. The officers said what they expected in terms of paperwork and said that they would be verifying the repayment chains. The Appellant asked to go onto monthly returns; after an initial refusal they said, "We shouldn't really, but OK." On 4 May 2004 Customs wrote stating that the Appellant had been moved onto monthly returns.

171. He stated that on one occasion Mrs Hall indicated that they should not trade with a company; once she pointed to a name on a piece of paper and made a face; on another occasion she told them not to trade with Shelford Trading Ltd which traded in mobile phones, an industry that was very dodgy; she made derogatory comments about another company trading in mobile phones. He stated that on more than one occasion Mrs Hall told the Appellant that she would tell them if they were trading with a company they should avoid. During one visit Mrs Hall told them that there would be no problem if repayment claims were kept under £250,000 or £200,000; this was around October 2005.

172. John Hanson stated that on one occasion he showed the officers a poker table, said that they had hundreds and offered one. Mrs Hall said, "We're not really meant to take gifts," but said that she would like one but didn't want to carry it out. Mr Webb carried it down the stairs to her Land Rover. Mr Webb lifted it over the tailgate which was not down and into the boot.

173. He stated that on several visits the officers told them that they were operating in a legitimate industry and were unlikely to be caught up in fraud. Mrs Hall once said that they had used the Appellant's due diligence procedures as a model. Although the repayment for 05/04 was expressed to be without prejudice, 24 repayments were made without such qualification.

174. He stated that although Mrs Elmer stated that she held no e-mails to or from the trader she had on 9 August 2006 sent an e-mail starting, "Hi John & the Gang" (see paragraph 37 above).

175. John Hanson stated that in August Deal 2 the Appellant tried to sell to Duwin but there wee two problems : after "mucking us around" Duwin's directors said that they did not have the funds; further Redhill did not verify Duwin's VAT number. The Appellant was already shipping a consignment of iPods to OHM and was negotiating another. The Appellant simply offered the Duwin consignment to OHM.

176. He stated that very often a customer would ask for more stock than the Appellant could supply. The Appellant matched what it could, so that what was bought matched what was sold. When trading back to back the Appellant could not sell more than its suppliers were selling. Very often the Appellant was called by phone or contacted through MSN offering stock; as soon as he was offered stock he would contact a number of potential customers.

177. John Hanson stated that he was not the only one working for the Appellant and that Mr Webb and Tom would do much as he would. On the day of a deal it was very frantic.

178. He stated that the Appellant did not hold stock because it would have been necessary to pay for storage and insurance. There was also a risk of the price dropping. Back to back trading was the best way of managing risk.

179. He stated that in August Deal 5 Techcomp had insufficient funds to export the goods but had an order to fulfil. Techcomp asked him if he would export on their behalf, possibly this was to keep their customer happy; he agreed. He knew the directors from when he started his career at Datec and they were good friends.

180. He stated that he had visited Forward Logistics several times and had seen many boxes; the boxes looked as he would expect a box to look like which had travelled half way round the world and had been in and out of warehouses. He was buying the goods inside not the box. His comment (see paragraph 111) in respect of boxes getting beaten up was not directed to the boxes in his deals. He paid extra to Forward Logistics for an open box inspection to ensure that what was being offered was correct. Gail Smith at Forward Logistics had told him that Customs were regularly attending their warehouse and conducting supply chain checks. He had believed that at least some of the Appellant's consignments had been looked at but he had never heard of his stock being connected with fraud.

181. John Hanson's second statement dated 28 October 2010 responded to the statements by Mr Bond and Mrs Hall and Mrs Elmer and produced material which had recently come into his possession.

182. He produced as evidence of familiarity an e-mail from Mrs Elmer dated 20 June 2005 to suggestions@gadgetgroup.co.uk an address on the Appellant's website. It read,

> "Like the web site still, but get some girly things on it!!!
> Tee Hee
> Jude"

He stated that this was a typical flirty comment. The officers knew everything about the Appellant's trading procedures, trading partners and inspection process but quite clearly did not think that the Appellant knew about fraud in its supply chains. The e-mail was just after the officers told them that they were moving to a non MTIC team which the Appellant viewed as downgrading of a risk that was already low. The e-mail followed a visit on 14 June. On 21 June Mrs Hall requested that the 05/05 repayment be authorised.

183. He stated that when at Datec he was responsible for developing the UK customer base using grey market stock purchased direct from manufacturers; he supplied CPUs to companies that included small to medium sized system builders. Manufacturers would remove CPUs which had been placed in computers as they could not sell computers in the quantities they had planned. Datec purchased from several manufacturers and authorised distributors and received many consignments that were split and repackaged. Therefore a damaged, worn box would not be an indicator of fraud; the important thing was that the boxes were strong enough and the CPUs well packed.

184. John Hanson produced copies of OHM advertising on websites specialising in advertising products for electronics wholesalers. The Appellant wanted to get involved in iPods initially for the gadget website and Tom identified OHM as a potential customer for

wholesale transactions. The Appellant was told by OHM that they had a large open order from a retailer. OHM's IGT website posting showed that on 31 July 2006 OHM was looking for 4GB Black iPods. This was the product sold in August Deal 2, there were further advertisements to buy 2000 iPods on 2, 3, and 4 August; the Appellant supplied 1,842 and 1,158 in August Deals 3 and 4.

185. He produced e-mails dated 2 August 2006. Tom Hanson instructed Forward Logistics to allocate to OHM 1000 iPods and to Duwin 1842 iPods but "please DO NOT release"; Forward Logistics copied this to Mitt Rotterdam BV (a Dutch freight forwarder) telling Mitt to inspect but not release until written confirmation; an e-mail later that day from Tom Hanson to Forward Logistics to release 1000 to OHM; and finally an e-mail from Forward Logistics to Mitt to release 1000 to OHM continued,

> "The Duwin shipment will have to stay on hold with you over night as they have not paid for the goods."

186. He stated that the Appellant knew from its conversation with Forward Logistics that their staff had been told to say nothing at all about the provenance of stock.

187. He stated that Customs officers regularly visited Forward Logistics through the Appellant's trading period, but that Mrs Hall and Mrs Elmer never gave any indication that there was a problem.

188. John Hanson made a third statement on 22 April 2011 in response to the third statement of Mr Bond and the statements of Mr Dean and Mr Eaton.

189. He stated that the Appellant was able to make a decent profit on August Deal 5. He knew that Klystron was a very respectable company from the time when he had worked at Datec which supplied Klystron. He said that CPUs were often repacked into old Intel boxes.

190. He stated that to the best of his knowledge he did not receive Notice 726 at any time, however he knew about it and that it focused on CPUs and mobile phones.

191. He stated that Mrs Hall and Mrs Elmer effectively told him and Mr Webb that there was fraud in the wider industry and that they should make sure they traded with the right companies. The officers told them that the Appellant was trading with the right companies; they put the Appellant on monthly returns at the first opportunity and were extremely friendly during visits. They visited the office and did not take any notes, simply chattering and laughing for two hours. They warned the Appellant to stay under a certain level of repayment claim, visited their night club and stopped visiting 9 months before the deals under appeal.

192. He stated that the officers gave them the impression that they were happy with the source of goods, reviewed the Appellant's deal files including inspection reports and stated that they had checked the Appellant's supply chain. No officer wrote to the Appellant for over two years before the period under appeal.

193. John Hanson produced MSN messages between Silverstar and another company on 31 July 2006 in which Silverstar offered Nano iPods at £115, the same price at which it sold to the Appellant in the July deal. On 2 August Silverstar offered iPods to another company at

£113.50, the same price as the Appellant paid in August Deal 2. Other MSN messages also indicated arm's length trading.

194. John Hanson was cross-examined for three days. He agreed that he was taking the lead role answering questions about the deal transactions but said that it might be best to put questions to Tom about documents with his name on them.

195. He said that he was appointed sales director of Quest in February 2001.

196. John Hanson said that in October 2005 while walking to the night club Mrs Hall said that if they stayed about £200,000 or £250,000 then they should be fine with regard to their payments and the speed of them; he could not remember word for word, it was sort of off-the-cuff.

197. He agreed that he had not brought up the poker table at the interviews with Mr Bond in November 2006 or January 2007 and that he had first fully set out his concerns in the first statement in September 2009. He said that his description of the tailgate was obviously incorrect but Mr Webb lifted the poker table over something; he denied that his statement was untrue. He said that he had not wanted Mrs Hall to lose her job; there was no formal complaint. It had been acceptable at the time to have a friendly relationship with the two ladies.

198. John Hanson said that he had seen Notice 726 and must have read it or parts of it. He agreed that Mr Webb had asked Customs in May 2004 to do a full chain check on the supply chain; the Appellant had been asked to send everything over to Redhill; he did not know how many people there were in a chain. He agreed that he was aware that the Appellant was one of a number of entities within a supply chain.

199. Asked about Mr Stone's letter of 3 June 2004 stating that each business must make its own decision whether to deal with a supplier or customers, John Hanson said that when they asked Mrs Hall and Mrs Elmer whether there were any problems with their suppliers the answer was always that there had been no problems. He said that he did not remember discussing joint and several liability at the meeting on 1 April 2004.

200. Mr Zwart then asked John Hanson about his historic relationships. John Hanson agreed that Mr Holmes and Mr Westley, the directors of Techcomp, were very good friends. Mr Westley had been in hospital with a stroke; he had visited him as soon as he was out of hospital. Mr Westley had given him his first job. Mr Westley and Mr Holmes had taught him the ropes. Their relationship was social as well as business.

201. John Hanson said that he had a good relationship with Silverstar although not the same as with Mr Holmes and Mr Westley. He and Mr Webb did not socialise regularly with Silverstar.

202. He said that he had worked with David Doran of Miatek when they both worked at Quest.

203. He said that he had not worked with Jason Weeks at ATP but he had traded with Jason when he was at Quest or maybe just at Crucial; Jason was very well respected in the industry.

204. John Hanson said that due diligence was an additional measure confirming what they already knew, namely that the suppliers were long established. They did due diligence on customers. They showed the due diligence to Mr Hall and Mrs Elmer who said that it was great.

205. He said that they did not get Veracis reports on overseas customers; this would have been very expensive, Veracis quoted nearly £2,000. The Appellant chose not to have reports for overseas customers.

206. John Hanson said that he and Mr Webb had visited Forward Logistics once, at some time in 2004. The Appellant had open box inspections but did not power up the CPUs which was too expensive. Forward Logistics carried out inspections for the Appellant using its own staff rather than an inspection company.

207. He said that the Appellant obtained a supplier declaration form from Techcomp and a report from Creditsafe.com in January 2005; Techcomp had no rating, being newly established. Mrs Hall and Mrs Elmer knew that they were dealing with Techcomp throughout and said it was a good company. The Appellant obtained Veracis reports on Techcomp and Silverstar in January 2006.

208. John Hanson said that an email to Mr Bond in November 2007 saying that the Appellant "had done many deals before" with OHM referred to the July deal which was the first: Tom had had a dialogue with OHM. He said that "many" deals might be wrong; "a few deals" would have been better.

209. He said that at the start the office had just himself and Mr Webb, Tom joined during that year. Turnover to January 2005 was just under £4.2million and went up to £6.2 million in the year to January 2006. He did not think this extraordinary in a market of very high priced commodities. He said that they thought that they were doing well.

210. He said that he knew Appellant's suppliers well and had visited them. He had also met the Appellant's customers, Converge and TMI at trade shows. He had not met OHM which was his brother's customer and was very new to the Appellant. He had not met Klystron. Mrs Hall and Mrs Elmer always put the stress on the Appellant's immediate supplier.

211. John Hanson said he had a list of the box numbers for Intel chips on an Excel sheet on his computer but the computer crashed after they moved offices in 2006. There came a time when it would not boot up. He did not know whether the computers in their office were networked; some were on a shared folder. He thought the computer was still usable at the time of the disputed deals but was not 100 per cent sure. He did not take manuscript notes of the box numbers after the breakdown.

212. Asked about August Deal 5, he said that he imagined that Techcomp got an order from Klystron which it could not fulfil for financial reasons and asked the Appellant to fulfil it. He said that it looks as if Techcomp forwarded Klystron's order; Techcomp probably did not want to let Klystron down but could not afford to do the export at the time. The Appellant contacted Klystron on MSN and Klystron confirmed the deal. Mr Zwart said that the effect was to add to the number of companies in the supply chain. John Hanson said that obviously Techcomp afforded themselves a margin. Mr Zwart said that this deal gave the Appellant a

mark-up of 5.6 per cent the highest of all the appeal transactions and said that the Appellant must have known that it was connected to a fraud. John Hanson replied, "absolutely not", Techcomp was a fantastic company and he would never in a million years have suspected that there was a fraud. He said that he had been dealing with Techcomp for $2^1/_2$ years and as far as he was aware there had never been any fraud.

213. Asked about an inspection report from Forward Logistics for August Deal 1 with the name Aston Technology Partners showing that someone else was supplying other than Techcomp, he said that he did not notice that at the time but that there was no denying that they did business with each other. He was not aware on that day that Techcomp had bought from ATP, they may have bought in advance. Asked whether the Appellant would not want to buy directly from ATP, so by-passing Techcomp, he said that would have been "pretty underhand". He denied that he must have known that the deal was connected with fraud; he said that he did not know when the deal between Techcomp and ATP took place, Techcomp would take gambles on the price whereas the Appellant would not. He denied abrogating independence of commercial judgment in favour of personal relationships. There was nothing different to any other deal in the previous $2^1/_2$ years which they had been told on numerous occasions were fine.

214. John Hanson was then asked about a check list for the July Deal filled in in his writing indicating that Customs were informed. He said that there were often times when information would be sent to Customs with no response or days before a response. The check list for August Deal 1 was completed by Mr Webb and himself, perhaps some was later. The check list for August Deal 3 seemed to be in Mr Webb's writing: he was overseeing Tom and it could have been Tom. He said that in the case of OHM the Appellant would have checked on the Europa website. Against "VAT check date" they would put the last response from HMRC. John Hanson said that he was having a problem trying to remember doing the sheets; he said, "This cover sheet was just for us." He said that where "HMC+E informed" was ticked, that was a Redhill check. Asked about Mr Stone's evidence that there were no Redhill validations after 7 June 2006, he said, "I don't understand that." He said that the check lists were for the Appellant, "not to prove to you in due course five years later." The VAT numbers would all have been checked out online and customers would have been informed by fax. The number could be checked on a European website. A tick against "valid" may well have been an online check. John Hanson denied Mr Zwart's suggestion that the check lists were a sham; he said that the lists were for the Appellant, there was no intent to mislead anyone.

215. John Hanson was then asked about a fax to Forward Logistics on 28 July 2006, stating that the Appellant had bought boxes of CPUs from Silverstar and Techcomp asking for an open box chip inspection and a check that there were no double lot numbers; he said that it should probably have read that he has ordered the boxes, rather than bought them.

216. He was asked about the order from Converge requiring "original factory packaging" and stating that Converge reserved the right to return if the criteria were not met. He said that Converge were probably protecting themselves against something really poor turning up. He said that CPUs would be in boxes containing five trays with maybe 63 CPUs in each tray and the trays slotting on top of one another. The outside box might suffer wear and tear. Sometimes the boxes were shipped inside bigger boxes. Forward Logistics may have packed the CPUs in an outer box for Converge, charging the Appellant for packing. Asked whether there was a risk of not meeting Converge's requirements if the inspection was after

purchase, John Hanson said that the Appellant would not have paid for them at that stage, although the stock had definitely been ordered. The Appellant would have the box inspection report before the open box chip inspection. He denied the suggestion that the Appellant was not interested in the actual goods. He said that the Appellant's relationship with its suppliers was such that if the goods were not in perfect condition they would give the Appellant its money back or a replacement.

217. John Hanson was asked about a retention of a title term in the conditions of Silverstar the supplier in the July Deal and the retention of title clause in the Appellant's invoice to Converge on 28 July. He said that he did not think that he read the Silverstar terms, although he would have known that Silverstar had terms and conditions. He said that Mr Webb may well have read them because he dealt with the paperwork. John Hanson said, "I am not majorly academic but a lot of it does not make a huge amount of sense to me." He said that from memory he thought that the Appellant had paid for the goods in full, but he could not be sure. Mr Zwart accepted that the Appellant did pay Silverstar on 28 July.

218. John Hanson said that the Appellant would contact all of its customers and find out if they were looking for stock, would speak to suppliers to find out what stock they had available and would see if something could be pieced together. In the July Deal the Appellant would have spoken to Converge in the afternoon. He was sure that Converge was looking for more than the Appellant could provide – Converge was a huge company. The Appellant would have known what was out there from speaking to suppliers in the morning. He said that the Appellant did not have standard terms apart from what was on the invoices; the individual terms would be negotiated at the time of each transaction – price, delivery, delivery date and shipping. The settings on the Appellant's computers were not set to save. In relation to the July Deal he imagined that he communicated by MSN and telephone. MSN was instant on the screen. He had maybe 50 contacts and might be talking to 10 suppliers and 10 customers at the same time with separate conversations boxes; MSN print-outs do not look like they did on the screen. He said that Tom used MSN with OHM, which was his customer. When logging in on the following day, unless it was saved on the previous day the MSN conversation would not be there. He did not recall printing any out.

219. John Hanson said that the Appellant's standard working day was from 9am until 6 or 7pm. He and Mr Webb would leave together. Normally the telephones would be diverted to their mobiles. No documentary evidence of terms that had been agreed were kept, apart from the purchase order or invoice. The rest of the conversations would be gone. If goods were returned the Appellant would go through its RMA (Return Merchandise Authorisation) procedure and would check that the lot number matched the inspection report. Customers would have asked about the RMA procedure when sending in the trade application form.

220. He said that Techcomp's invoice for the July Deal just said "net 3 days" and said nothing about title. He did not ask whether Techcomp owned the stock, he assumed they did. When asked about August Deal 2, he said that he did not do the deals, and that Mr Zwart should ask Mr Webb or Tom. Mr Webb would have been overseeing the deals with OHM because Tom found OHM. Mr Webb did not trade as much because he dealt with a lot of the paperwork and invoicing. Tom was salaried. He came from university on work experience and stayed on; he had not completed university. John Hanson taught Tom everything he knew. By August 2006 Tom had grown the website from zero. They were confident in his abilities and encouraged him to find new customers. There was no induction procedure, Tom

learned "on the job", asking when there was a problem. Internally, OHM was Tom's customer, he looked after all the negotiations with Mr Webb overseeing.

221. Mr Zwart then asked about the insurance policy which referred to goods "the property of the insured or for which the insured has a responsibility to insure". John Hanson said that if it was not his stock he would not insure it; the terms would not cover someone else's property. He was asked about a condition precedent that 10 per cent of CPU box numbers be scanned and about disclosure requirements. John Hanson said that he had probably flicked through the policy and that he had been given quite detailed responses on the telephone as to insurance cover. Mr Webb or he himself would deal with insurance. He did not know if he obtained the quotations for those deals. Payment would have been by card.

222. John Hanson said that he did not get separate supplier declarations for each transaction and did not ask the suppliers whether they had paid for the goods, he assumed that they owned the goods. He was involved in deals at the same time as August Deals 2, 3 and 4; he knew that there were negotiations with Tom and Mr Webb; they were all rushing around, there may have been some crossover; he did not stand behind Tom in any of the OHM deals and see what he was writing on the screen. He said that he thought that there had been some communication with OHM before the July Deal; Tom was chatting to new customers for months but John Hanson only appreciated that OHM was going to be a customer when the July Deal was negotiated. Tom was quite excited because it was his first wholesale transaction. Mr Webb or himself obviously said that Tom needed to get company details. John Hanson told Mr Zwart that it is all quite vague how they played out, referring to his memory.

223. John Hanson said that he kept an old fashioned A-Z book of telephone and fax numbers and MSN contacts. Potential customers would go into the book. Once a potential customer had become a customer, this would be on the Quick Books System on Mr Webb's computer for invoicing. Mr Webb did all the purchase orders and invoicing.

224. He said that the check list for August Deal 2 with "OHM" on 1 August was filled in in his writing, apart possibly from "CMR" which might be by Mr Webb. He could have filled it in at the end of the day. The check list for August Deal 3 was a mixture of the three of them. He wrote, "Changed to OHM Traders", maybe on the day after because the deal did not change on 1 August. He said that the check lists were "just an internal thing" to make sure they had proof of exports and things like that. He said that the change in the supplier for August Deal 4 from Silverstar to Miatek was in his writing; he agreed that he authorised a reduction of 15 pence to OHM on the return of ten iPods.

225. John Hanson agreed that OHM's trade application form was signed by him and dated 31 July 2006; OHM did not trade with the Appellant before that date. Mrs Hall and Mrs Elmer had always told the Appellant that it was its direct supplier that it needed to be concerned with; if he had wanted advice about customers he would have asked them. Veracis would probably have charged; the contract with Veracis was not open-ended. The Appellant had all the company information, and checked OHM's VAT number, letter of instruction et cetera. He had no concerns about OHM although they were a new customer. He did not instruct Veracis to do due diligence on them.

226. He said that he had some contact with Forward Logistics in August Deals 2, 3, and 4. He did not ask them how many companies were in the supply chains; he would never have

asked and if he had done so she (Angela) would not have said. He denied the suggestion by Mr Zwart that having not made any enquiries to establish the supply chain, he had not been in a position to exercise a commercial judgement and that he must have known that the transactions were connected to fraud. He said that he would never ask his suppliers who they bought from. He denied that the Appellant must have known of the connection to fraud when it sold goods to which it did not have title, chose not to insure and released goods to customers before being paid. He said that the sales to OHM were on a "ship on hold" basis and the other deals were with customers with which the Appellant had long standing relations. He denied surrendering the Appellant's commercial independence of mind to people such as Mr Holmes and Mr Westley.

227. Asked about an assessment on Quest notified on 10 December 2003 involving Tapeware Data Man software purchased in September 2002 at a time when he was sales director, John Hanson said that he had no idea about those deals and never remembered selling software in his life, he was a CPU man.

228. Re-examined, John Hanson said that after 1 April 2004, Mrs Hall and Mrs Elmer never advised the Appellant to carry out credit checks on European companies.

229. He said that Mrs Hall and Mrs Elmer always told them to be careful who they bought from and that ATP, Techcomp, Miatek and Silverstar were good companies to trade with; they told them absolutely not to trade with Shelford Trading.

230. He said that he and Mr Webb visited Forward Logistics and were shown round the premises, talked through procedures and shown the safety aspect. There was no demonstration of an inspection. He knew about electronic testing of chips but never saw the process; once a chip had been wired up it was a used chip. An inspection of one chip per tray involved opening the box, selecting trays at random and ensuring that the lot number on the chip corresponded to that on the box.

231. He said that Intel had the largest market share in CPUs, AMD was the only other main manufacturer. In $2^1/_2$ years trading only five to seven pieces had been returned to the Appellant. A chip cost anything from £80 upwards.

232. He said that when at Datec his remit was to build up a UK customer base of small system builders and traders; gradually he built up relationships with customers in Europe. Tiny Computers would over-order from Intel every quarter and would sell on a certain amount to Datec which would sell on. Mr Westley would get feedback from managers all over the world as to what could be sold and at what price. Datec could not buy direct from Intel; Tiny, another company and Datec were under the same ownership. When at Datec he traded in five to ten times as much as at the Appellant.

233. He said that the supplier would fax a closed box inspection report or sometimes the Appellant would ask the freight forwarder to make sure that the stock was there. After placing an order the Appellant would ask for an open box inspection. He could not remember whether ATP had offered the stock in August Deal 1 to the Appellant, but the Appellant did not take boxes for stock. It was tough to get credit from ATP.

234. John Hanson said that he did not remember the purchase order for August Deal 5 from Klystron to the Appellant coming later. He would probably not have looked at the fax

header. He said that he believed that he knew that the goods were being supplied directly to Klystron's business premises.

235. He said that his understanding at the time was that the Appellant offered a one-year warranty; that was in the Appellant's RMA procedures. If the goods were faulty, Mr Webb would check that the Appellant had sold the chips and would send them back to its supplier. He understood that Intel gave a 12 month warranty.

236. He said that he believed that the Appellant was insured at all times. The insurance premiums were a lot of money.

Mr Webb

237. Carl Webb confirmed a statement dated 6 October 2009. He stated that he became involved in the electronics industry when he was 18 and worked for two computer companies before moving to Datec in June 2000 when his friend, John Hanson, left and recommended him as a replacement salesman. His role was purely sales of computer components, a large proportion being CPUs. He learned a great deal from Mr Holmes and Mr Westley. They had been involved in purchases from Intel as well as trading in the grey market.

238. He stated that he had read John Hanson's first statement and agreed with his comments in their entirety when they were together. He did not hear Mrs Hall saying that they should keep under £250,000 but John Hanson told him immediately after.

239. He stated that after a year at Datec he discussed setting up a business with John Hanson and in 2002 bought an off the shelf company Pernant Ltd which was prematurely registered. In late 2003 they decided that they were ready, changed the name of Pernant Ltd to Crucial Components Ltd and applied again for VAT registration. On 9 January 2004 he was visited; it now appeared that this was by Mr Stock but he did not remember being visited by anyone except Mr Beaddie who visited him in 2002. The 2004 visit was nearly 6 years ago and his memory was quite hazy.

240. He stated that he did not remember ever being warned by officers of the risk of fraud but did not deny that he knew in early 2004 that there was a risk. Techcomp, Silverstar and Miatek were all very solid experienced companies which he and John Hanson had known for many years. The due diligence which he reviewed showed nothing to indicate fraud.

241. Mr Webb stated that his role was the same as John Hanson's and they would both put deals together, talk to the freight forwarders and prepare and receive paperwork. He had additional responsibility for bookkeeping and general administration. Tom Hanson assisted in transactions but only under their supervision.

242. He confirmed John Hanson's evidence as to the gift of a poker table. He carried it downstairs and Mrs Hall opened the glass hatch of Mrs Hall's vehicle. Mrs Hall and Mrs Elmer were both beside it when it went in. The table was a gift as they did not think they could sell them all. Mrs Hall and Mrs Elmer were really good company and they had a good laugh every time they came. They would look at the deal files, but flick through the paperwork in a matter of minutes.

243. He stated that the way they were treated by the officers left them in no doubt that they were operating in a genuine industry free from fraud.

244. In supplementary evidence in chief, Mr Webb said that there were some matters which he remembered differently from John Hanson. He said that they made a decision to stop sending notifications to Redhill on every occasion and used the Europa website to confirm VAT numbers. They would ensure that they had a recent response from Redhill regarding suppliers and if so ticked the box on the check list. They stopped notifying on a deal-by-deal basis because the responses were taking several days to a week.

245. He said that electronic testing of chips involved putting the chip into a test rig and that the firing up always left a putty like substance so that the chip could not be sold as new.

246. Mr Webb said that his role was similar to that of John Hanson but that in addition he dealt with all the finances ensuring that their payments were allocated to the correct invoices. He dealt with RMAs, checking the serial number.

247. He said that he and John Hanson worked together to put deals together. John might call out that a customer was looking for a product, and he would go to suppliers. With the OHMs deals and the iPod transactions he was overseeing Tom. The iPod transactions were Tom's "baby"; communications with customers and suppliers were by him and Tom. John was not directly involved in iPod deals. Tom had built a website called "Gadget Group" with gadgets and novelty items including poker tables and asked if he could look at other products including iPods and sell wholesale. They wanted Tom to concentrate on new customers. The iPod deals were with existing suppliers but through a different contact. Mr Webb said that he created the purchase orders and invoices because Quick Books was on his computer. He said that he probably spoke to the freight forwarders on the iPod deals, but it may well have been Tom.

248. Mr Webb said that they kept all iPod box numbers and all iPod deals. The time when they lost the information on John's computer was after the deals under appeal. If they had continued to trade they would have compiled a new list using the box numbers and inspection reports in the deal packs.

249. Mr Webb was cross-examined for a day and a half. He told Mr Zwart that from his time at Datec he considered Mr Holmes and Mr Westley to be friends; they had a wealth of knowledge of the industry, he had learned the ropes from them. He socialised with them regularly in 2006.

250. He said that he did not know Mr Doran of Miatek before but he became friendly through dealings at the Appellant. He had spoken to Jason Weeks, of ATP, while at Datec; he was a very friendly guy. Angela, of Silverstar, was not one of his accounts at Datec, but she was very bubbly and he spoke to her.

251. He said that his background was always in electronics, starting with semi-conductors, then trading in memory modules. iPods were another electronic item, but the Appellant moved into iPods because they were a natural progression on the website. He did not know when the Appellant started selling iPods, Tom Hanson would probably know.

252. He said that they did not test iPods electronically, they were in sealed retail boxes and they could assume they were tested at the factory. Apple's warranty started when the end user registered it; registration could be done at an Apple shop even when the iPod was bought on the grey market.

253. Mr Webb said that John Hanson mainly dealt with recording CPU box numbers. They created an Excel spreadsheet and could find whether a box number had been sold before by the Appellant.

254. He said that he and John Hanson had adjacent desks facing the same way with a walkway between. Tom was quite close. There would always be some noise; John used to be far too loud on the telephone; Mr Webb said that sometimes he and Tom could not hear what they were doing.

255. He said that if Tom made the contact with OHM that would go into his book, not into John's; the information would also be put into Quick Books. Tom had been speaking to him about OHM for at least two months.

256. Asked about the application by Pernant Ltd in 2002, he agreed that Steve Hanson had confirmed that he would invest £200,000 expecting an annual return of 20%. He said that he always tried to achieve a 5% a mark-up and on his first deal for the Appellant made in excess of 50% when the buyer wanted a month's credit. He said that the Pernant registration application was very premature although he had signed it.

257. He said that his role at Datec tended to be sale specific dealing mostly with customers. Before the visit by Mr Beaddie he knew of the concept of missing traders: that sometimes a supplier was paid VAT but ran off without paying. This was something that Mr Holmes and Mr Westley explained. He said, "We had to make sure that we knew and trusted our suppliers." He said that as far as he was aware there were no problems with Datec's suppliers. He agreed that on 13 June 2002 he had told Mr Beaddie that Barclays had closed Pernant's bank account because Customs had sent a letter about risks in the trade sector. He said that he got a promotion and salary increase at Datec and Pernant was deregistered at that stage.

258. Mr Webb said that the agreement with Steve Hanson was fairly informal; they toyed with different ideas but decided to have him in the business with a one-third shareholding. When they asked Steve for money he let them have what he could afford. At one time he may have loaned £250,000; there was an account on Quick Books. When he and John were paid dividends Steve would be paid also. Maybe they made £200,000 gross profit in the first year. Overheads were kept to a minimum and their wages were very modest.

259. He said that he filled in the VAT application for the Appellant dated 4 December 2003. He was in discussion with John Hanson then and had an office. He said that John had fallen out with the guys running Quest over a text message.

260. He said that until he saw Mr Stock giving evidence he did not remember meeting him on 9 January 2004. He assumed that at that point John Hanson had not agreed to join. He gave Mr Stock an indication of some customers but said that he might look to export as well. He said that he was not aware of the term "MTIC" at the time but that he was not saying that he and Mr Stock would not have discussed missing traders, which he had also discussed with Mr

Beaddie. He did not remember whether Mr Stock told him of any recommendation that he was making.

261. Mr Webb said that he recalled seeing Mr Stone's letter of 9 February 2004 warning of problems with VAT fraud involving computer equipment saying that verification of the VAT status of new customers and that suppliers should be faxed to Redhill.

262. He was then asked about the fax dated 6 May 2004 when he asked for a supply chain check on Intel goods being supplied to the Appellant by IC Components Ltd for sale to TMI. He said that it was his impression that it would be very simple for Customs to do a full chain check; he did not know where he got that impression from. He understood that his supplier and customer and anyone who had handled the goods would be checked by Customs, including the supplier's suppliers etc. He said that it was his understanding that Customs would check every single fax, piecing together the supply chain and notifying any problem. He said that he did not have any idea how complicated this was.

263. He said that he read Mr Stone's letter of 3 June 2004 basically saying that chain verifications were for Customs' purposes and that they could not always do them. He said that he never expected that it would be done as a service. He assumed that Customs would check every single one and that if there was a missing trader the Appellant would have been told. He did not think that it would be such a difficult task to marry them up. He assumed that Techcomp would be notifying its suppliers. He knew that Mr Holmes and Mr Westley asked for verification each time.

264. Mr Webb said that the Appellant stopped sending faxes to Redhill because it was getting no response. The Appellant had a significant trade history with its suppliers and was wholly confident that they were legitimate companies. He said that the Customs officers never asked any questions to do with customers or asked for additional checks. At the end of every month a report with details of suppliers and customers was put in so that Mrs Hall would always have that information. Because the Appellant was getting Redhill responses after doing the deals they decided to use the Europa website. It was no longer viable to rely on Customs coming back with a response; the Appellant would have been out of business.

265. Mr Webb agreed that Mr and Mrs Hanson invested £50,000 on 10 January 2004 in return for one-third of the profit and a further £50,000 on 1 February with further payments and repayments, leaving a balance on 9 February 2006 of £89,999.46.

266. He said that John Hanson did tell him about keeping under £250,000 or £200,000; they could not understand why Mrs Hall had said that because the Appellant had never come close.

267. He said that it was absolutely true that he put the poker table into the back of Mrs Hall's car. To him it was not a big deal. The vehicle was a farm vehicle.

268. Mr Webb said that he was aware of Notice 726 and he and John Hanson had discussed due diligence. He said that he had not been given Notice 726. If he had been handed it he would have read it through. He understood the concept of missing traders and chain checks; he understood that Customs were doing checks at Redhill. He could not see that it was commercially possible for the Appellant to verify the chain. The freight forwarder had a strict confidentiality clause. He would not expect his freight forwarder to tell his customers

anything other than the information he asked them to tell them. He and John Hanson always understood that they had good suppliers. He felt that the lack of response from Customs' checks spoke volumes, because Customs would have told them of any problem. He knew that Veracis could check the credibility of suppliers and customers. He was aware of potential joint and several liability but felt that the Appellant's suppliers would do everything to have excellent due diligence. He did not think that any company in a commercial situation could have any idea of the length of its supply chain. The Appellant's avoidance of risk was trading with people it trusted; Customs had checked and found no problems. The officers were well aware of the companies they were dealing with and said that we would be fine as long as we kept dealing with those suppliers. There was never a letter to suggest a problem.

269. When asked about wrong timings on fax headers, Mr Webb said that they had never had an issue when someone said that the wrong time or date was on the fax; the sequence had never been a problem, they were very aware of the sequence. Usually a fax would be backed up with a telephone call. Mr Zwart said that no telephone records had been disclosed. Mr Webb said that they assumed that his supplier and customer would perform; they knew from the freight forwarder that the stock was there. He was confident that if there was a problem with the Appellant's suppliers it would be dealt with efficiently.

270. He said that for August Deals 2, 3 and 4 he completed the faxes, purchase orders and invoices, John Hanson completed the check lists mostly at the end of the day. John would come and ask for the information to make sure that the check lists were all in order and complete. Mr Webb did all the Quick Books information; it was an accountancy programme, a bit beyond a basic Sage package.

271. Mr Webb was then asked about the retention of title clause on the back of Silverstar's invoice for August Deal 2 for £135,125; he accepted that the Appellant's invoice to OHM on August 1 was before the Appellant's payment to Silverstar of £85,125 on August 3. He said that he had not read Silverstar's terms in the past; he thought that it was general legal waffle. Silverstar knew that the Appellant was selling stock and never asked them not to sell it but to hold it. He said that the Appellant's retention of title clause on the invoice to OHM was a similar sort of saying. The Appellant would never have released stock to OHM until paid. He did not ask Silverstar whether they had title or property in the goods, he assumed they did. The clause was fairly standard across any industry. He said that it looks as though the Appellant paid Silverstar a deposit and then the balance. Mr Webb said that he was "not sure what entitlement you have of it being your property if you've paid a deposit for it." He accepted that he did not know 100 per cent that the Appellant had entitlement.

272. Asked about August Deal 3 where the invoice to OHM was dated 1 August whereas that to the Appellant from Miatek was dated 2 August, Mr Webb said that Miatek may have sent a proforma invoice first and backed it up next day; Miatek were one of the only suppliers to send proforma invoices. Asked about the payments to Miatek on August 3 and 4, he said that Miatek were probably aware that the Appellant had sold the goods and had not told the Appellant that it was their property and not to sell.

273. Mr Webb agreed that an invoice on 1 August from FreightCover.com for insurance "in respect of goods shipped on 01/08/06" predated the Miatek invoice. Mr Zwart pointed out that the insurance terms gave under subject matter insured goods which included iPods

> "the property of the Assured or for which the Assured have a responsibility to insure, whether contractually or otherwise, or have received instructions to insure."

Mr Zwart said that from the date of the invoices and payment not having been made "this was not the property of the Appellant." Mr Webb said that the Appellant had a responsibility to insure because the goods were at its risk. Asked about a note on the checklist "Not insured forgot overlooked", Mr Webb said that this would have been the subject of heated debate in the office.

274. Mr Zwart put it to Mr Webb that the Appellant knew it was selling goods to OHM in which it did not have property for want of payment and had no insurance, that it was an unreal sequence of transactions and the Appellant must have known that it was connected to fraud. Mr Webb denied this, saying that on his understanding the title had been passed; the financial terms were negotiated on a deal by deal basis. As to the note "not insured forgot overlooked", he said that John Hanson may well not have realised that he had gone onto John's computer and done the invoice; payment would have been by his or John's company card.

275. Mr Zwart than asked Mr Webb about the difference between OHM's purchase for August Deal 2 for "Apple iPods 4GB Black" and the Appellant's purchase order to Silverstar for "Apple iPod 4G Nano Black MA107J/A. Mr Webb said that the Appellant had given OHM an inspection sheet. He said that there would have been a considerable difference in price between iPods and Nano iPods. Asked about an IGT website which showed that OHM was not advertising for black Nano iPods until 2 August, Mr Webb said that Tom would have spoken to them on the telephone; everyone was aware that when they were asking for an iPod at that time it was for an iPod Nano. The inspection reports clearly said "iPod Nano 4gb". The question would have to be passed to Tom who had the conversation about OHM's requirements. The purchase order by OHM was based on the inspection reports. The release by the Appellant was for 1000 iPod Nanos.

276. Mr Webb said that the Appellant would ask the supplier whether goods had been released if it had not been told already; the freight forwarder would always confirm. The Appellant would not release to the customer until it was paid.

277. He said that the endorsement "changed OHM no money wankers" on the invoice to Duwin was by John Hanson. Mr Webb said that he recalled speaking to Duwin himself; they said that they had no confirmation that the goods were all at Mitt; Forward Logistics had confirmed that the goods were all at Mitt; he was concerned that Duwin were just withholding payment. The goods had been shipped at the same time as the previous OHM deal (August Deal 2). The Appellant had already paid Miatek £240,000. There was an urgent need to find a customer. Asked about John Hanson's e-mail to Mr Bond on 21 November 2007 (see paragraph 117 above), he said that John's understanding was incorrect. Mr Webb was the one dealing with Duwin; he said that Duwin were coming up with excuses why they had not sent the money which they believed to be untrue; Duwin were removed from the deal when he suggested to Tom that since OHM required more stock the day before he should offer it to them. Tom phoned OHM who agreed.

278. Asked about the fact that OHM was a new customer, on which there had been no credit checks or due diligence, Mr Webb said that there would be no release of stock unless the

Appellant had been paid; Duwin were making excuses for not paying; OHM had stock for which it had paid.

279. He said that although Tom had found Duwin, Duwin wanted to speak to a director or service sales manager and Tom passed the contact to him.

280. He said that in terms of background checks on OHM Tom had the conversation with them asking about their customers, looking at their websites and satisfying himself that they were a bona fide customer; there was a trade application form.

281. Asked about the lack of requests to Redhill after 7 June 2006, he said that the Appellant wanted a recent verification and for him a quarterly verification was sufficient, given the time that Redhill confirmation was taking. They had not been asked to do checks on customers. The suppliers were well known to them. He did not know how he could suspect that all of a sudden the suppliers were tangled up in anything. He did not feel that he would need to question the integrity of Mr Holmes and Mr Westley.

282. Mr Zwart asked Mr Webb about coloured charts produced by Mr Bond and Mr Eaton appearing to show that in August Deal 3 the Appellant completed a circular movement of funds by its presence, but Mr Zwart accepted that there was no evidence that the Appellant was aware of the FCIB movements.

283. Mr Webb disagreed with Mr Zwart's suggestion that commercial common sense was not to proceed with a recent customer on which there was no due diligence except a trade application form rather than wait for a customer on which there was due diligence.

284. Mr Webb was then asked about August Deal 4a where OHM's purchase order was for 1158 black iPods whereas the Appellant ordered white iPods from Miatek. He said that he could not remember exactly how the deal went through but the Appellant would go by the inspection report at which point it would ask the customer whether they wanted black or white. He said that he would put asking Miatek for white down to a mistake because it was after seeing the inspection report. Mr Webb said that it would be necessary to ask Tom because he did not remember the variation in colour. Asked whether the variation in colour showed Appellant's lack of interest in the actual nature of the goods, Mr Webb that they always sent inspection reports to customers and that there was no way that these would not have been discussed with the customers.

285. Mr Webb said that he did not specifically remember stock in August Deal 4a being moved from Forward Logistics to Tech Freight prior to going over to Mitt, but this would not be unusual. He denied that it was another example of lack of interest in the goods and that the deals were contrived.

286. He confirmed that the Appellant kept an electronic spreadsheet of CPU box numbers with a find key to detect duplicates. He assumed that this had been done with box BH 099310 (see paragraph 86 above). He could not recall a time when it came to the Appellant's attention that it was being offered the same stock. If this did happen they would want to know the reason. The electronic database did not enable the Appellant to ask the freight forwarder if they were aware of an earlier sale. He did not make any general inquiries of Forward Logistics about duplicates; he did not think that they had a list of boxes sold before

but they did scan against a stolen list. He said that the Appellant had records of box numbers in packs for each deal but these had been stored up since the Appellant ceased trading.

287. Mr Zwart put it to Mr Webb that given that the Appellant had stopped Redhill verifications on 6 June 2006, that it was dealing with suppliers known and trusted by it, that the only recourse to protect itself against joint and several liability was to undertake some form of supply chain tracing exercise, a concept of which the Appellant was well aware, the Appellant must have known that via those transactions there was a connection between the Appellant and fraud. Mr Webb denied this.

288. Re-examined, Mr Webb said that the stock in August Deal 4 was in different warehouses.

289. He said that black iPods were the most popular in the market generally.

Thomas Hanson

290, Tom Hanson confirmed a statement dated 9 October 2009. He stated that from 2002 he was studying computer studies at Nottingham Trent University during which he was required to do a one year placement with a company; his brother, John, offered him a job at Crucial. His role was mainly administrative at first, creating a website to retail gadgets such as portable playstations and DVD players. At no stage did he have control over who the Appellant purchased stock from; he spoke to suppliers and customers at times mainly to chase up paperwork and also to freight forwarders.

291. He stated that when the placement at Crucial was complete he stayed on, being more involved in marketing particularly on-line sales. He was also involved with finding wholesale customers in the UK and overseas. These contacts led the Appellant to companies supplying Sony PSPs; sales of PSPs were very good and the natural progression was to iPod Nanos. He stated that he e-mailed dozens of companies every day offering stock.

292. He stated that one of the companies that responded was OHM which was advertising heavily on the International Computer Brokers and International General Brokers websites daily requesting large quantities of CPU's and iPods. His e-mails triggered the business relationship. He believed OHM to be a large company with good retail distribution links throughout Europe; it was so long ago that he remembered very little. His contact at OHM told him that he had a contract to supply a large customer selling directly to retail.

293. He stated that John Hanson told him that the industry had issues with fraud, but he understood that this related to suppliers. He did not understand how onward sales to customers could affect whether there was fraud in the Appellant's supply chain.

294. He stated that he was present during many VAT visits and spoke to Mrs Hall and Mrs Elmer regularly. They gave him the impression that the Appellant would never be connected to fraud if it continued to purchase from established suppliers. The officers told them during more than one visit that they were doing everything right and were very unlikely to be caught up in fraud; at one point the officers said that the Appellant was a model case which they would use as an example.

295. He stated that the officers were very amusing and they all tried to be around when they came. He liked Mrs Elmer and exchanged comical e-mails at times. Mrs Hall was also good company. During one visit the officers were offered poker tables as gifts. They were reluctant at first but gave in. He heard Mrs Hall agreeing to take one. He remembered Mr Webb taking the table out of the office and leaving at the same time as the officers but he did not see him put it in Mrs Hall's car.

296. Tom Hanson was cross-examined for 20 minutes. He said that he was director of Rushland Ltd and Net Storm Ltd. He had a 9 per cent shareholding in Rushland Ltd, the night club, but did not take an active role running it. He did not recall receiving a letter enclosing Notice 726. He said that he signed a VAT application form for Net Storm Ltd on 8 December 2005. He said that Net Storm was set up because the website, Gadget Group, was going to be moved to Net Storm so that he would have ownership.

297. He said that he did not recall his brother or Mr Webb explaining to him anything about Notice 726. He said that he did not really understand joint and several liability.

298. He denied being mistaken in his recollection about Mrs Hall accepting a gift of a poker table. He said that it was not a big deal, they were about £2 each for the Appellant.

299. John Hanson was not cross-examined about his role in August Deals 2, 3, and 4 involving iPods.

Discussion

300. The issue in this case is whether "having regard to objective factors [the Appellant] knew or should have known that, by [its] purchase, [it] was participating in a transaction connected with fraudulent evasion of VAT", see *Kittel* at [56] and *Mobilx* at [16]. "Knew or should have known" has the same meaning as "knowing or having any means of knowing" in *Optigen* at para 55, see *Mobilx* at [51].

301. "Knowing" is clearly not the same as "having any means of knowing". As a matter of language "knowing" in this context means "the state or fact of being aware or informed of something", see New Shorter Oxford English Dictionary (1993). If a person is aware of a fact it would not be normal to say that he "should have known" of the fact, since "should have known" implies either that he did not know in fact or that it is not clear that he did know.

302. Knowing involves having actual knowledge which is not at all the same as having means of knowledge, although the means of knowledge may lead to an inference of actual acknowledge. Knowing participation in transactions connected with fraud is clearly dishonest, see *Megtian* [2010] STC 840 at [41]. On the other hand a trader who should have known of the connection with fraud but did not know is not dishonest but is nevertheless not entitled to input tax deduction.

303. The position is confused by the fact that many of the objective factors by which a court or tribunal ascertains whether actual knowledge is established are the same as those by which it is established that a trader should have known of the connection. In the absence of an admission or an informer, if actual knowledge is to be established, this nearly always has to be inferred from the circumstances and the actions of the trader.

304. The objective factors although substantially the same have an important difference. When considering whether "a trader should have known that the only realistic explanation for the transaction" was a connection with fraud, the relevant circumstances are those known to the trader or which should have been apparent if the trader had used his means of knowledge. These do not include transactions between other parties in the supply chain of which the trader had no means of knowledge.

305. On the other hand, transactions between other parties may lead to the conclusion that a trader must have known of the connection with fraud because the actions of the other parties make no sense unless the trader was also a party to the fraud.

306. It will often be the case that if the objective factors are such that the only realistic explanation is a connection with fraud the tribunal will infer actual knowledge.

307. The civil standard of proof, namely the balance of probabilities, clearly applies, however conceptually it does not sit easily either with the concept of actual knowledge inferred on the basis that the trader must have known or with the only realistic explanation test for "should have known". In *Mobilx* Moses LJ said at [60] that *Kittel* does not extend to circumstances where a trader should have known that it is "more likely than not that his transaction was connected with fraud." However, whatever the conceptual difficulty of applying the civil standard of proof, this does not have the effect of bringing in the criminal standard.

308. We consider that in this appeal it is appropriate to address first the allegation of actual knowledge, focussing on the allegations in paragraph 7 above, and if Customs do not establish actual knowledge to turn then to consider whether the Appellant should have known, applying the only reasonable explanation test.

309. However, before considering the issue of actual knowledge in detail we make the following observations. There were a number of factors in this case which are not present in many MTIC appeals. The Appellant was not a new company but had been engaged in selling CPUs to overseas companies since February 2004. The directors were familiar with the trade. Up to the period under appeal regular repayments had been made within a few weeks of the repayment claim being submitted. In 2004 and 2005 there were at least 12 visits of up to 2 hours to verify the repayment claims. No veto letters were issued in respect of any period before 08/06 warning the Appellant that its supplies had been traced back to a defaulter. The Appellant knew its suppliers. Following the visit on 1 April 2004, the Appellant was placed on monthly returns and remained so right up to the period under appeal. The volume of trade was not6 as great as in many MTIC appeals.

310. It is clear that the directors of the Appellant were aware of the risk of fraud in the computer chip and iPod sectors. There was no dispute that the Appellant's transactions had been traced back to fraudulent defaults. Neither the Appellant nor any of its suppliers or customers had FCIB accounts, however in each chain four traders in the chains leading back to defaulters did have FCIB accounts. There was an element of circularity of funds in August Deals 2 and 3 taking account of the non-FCIB accounts; the transfers by traders within the invoice chains matched the invoices. Two earlier trades by the Appellant involved boxes of CPUs which the Appellant had previously sold.

311. The task of the Tribunal has been made substantially more difficult by the fact that the original time estimate was clearly inadequate given the number of documents and witnesses. The time estimate was even inadequate following Mr Zwart's decision after the direction on the fourth day (see paragraph 154) not to call two witnesses. It is the responsibility of the advocates, particularly the advocate for Customs, to ensure an adequate time estimate.

312. One result was that inadequate time was given to the opening for Customs and substantial parts of the documents were not covered until closing. The parties agreed two days for closing. Both parties produced written closing submissions before oral closing. Mr Zwart's written submission dated 21 June covered 60 pages; his closing speech occupied up to 3.48pm on the second day and another half hour on a third day 1 July. Mr Ahmed was disadvantaged by the need to make further submissions in writing instead of a full oral closing.

313. A major problem was the time which had elapsed since the events covered by the evidence. Both the Appellant's witnesses and the visiting officers had difficulty at times in remembering details of what they had done and what had been said. It would have been surprising if this had not been the case. Inevitably there were inconsistencies in the evidence on both sides.

314. We now turn to the matters pleaded in the Statement of Case in support of the allegation of actual knowledge, see paragraph 7 above. Paragraph 32 of the Statement of Case was directed to due diligence, Redhill checks and credit checks. At the time of the transactions, the Appellant had obtained relatively recent reports from Veracis on all of its immediate suppliers. The directors knew all the suppliers, in particular Techcomp. Mr Zwart's criticism concentrated on the chains beyond the immediate suppliers. While we accept that the Appellant needed to form a judgment of the chain, we do not accept that the fact that the Appellant did not ask their suppliers who supplied them and did not ask the freight forwarders is evidence of knowing participation; such inquiries would not be normal in business. Nor do we consider the fact that the Appellant did not verify its suppliers with Redhill after June to be evidence of knowledge. Notification was not a statutory requirement. There were delays in obtaining responses from Redhill. The Appellant did carry out Europa checks on customers. It is to be noted that the Appellant did seek verification of OHM and Duwin from Redhill before the August deals. The Appellant did not obtain credit checks on overseas customers but was able to stop the transaction with Duwin when there was a payment problem.

315. Paragraph 33.2A concerned failure to check the suppliers' title before trading. The Appellant knew its suppliers and had experienced no problems with them. It would have been another matter if they were new suppliers who were not known to the directors.

316. Paragraph 33.4B of the Statement of Case alleged that the check lists were a sham. John Hanson's evidence was that the checklists were for the Appellant's use: this was not challenged. It does not appear that Mrs Hall and Mrs Elmer had been shown any such lists. There was no evidence that the checklists were produced to Customs before the decision, unless they were part of the material produced at the visit on 10 January 2007. They were exhibited to Mr Bond's first statement without any explanation as to when he received them. We accept the directors' evidence which was not challenged that they were for internal use. It follows that they were not evidence of an intent to deceive.

317. Paragraph 33.6 was primarily concerned with the inspection report with ATP's fax number at the top in August Deal 1. While it is possible that the fax number on one copy had been blanked out, it is equally possible that it was obscured when being copied. We accept John Hanson's evidence that he had not seen ATP's fax number on it. Given his close relations with Techcomp's directors, we do not find it a matter of criticism that he said that he would not have sought to cut out Techcomp even if he had seen it.

318. Paragraph 33.9 of the Statement of Case concerned the change of customer from Duwin to OHM in August Deal 3. We do not understand the contention that the reasons given were mutually exclusive, although they were different. We see no reason why both may not have been factually correct. If anything the change points against knowing involvement in fraud, since the change would tend to attract attention if questioned, as indeed it did. The documents referring to Duwin were left in the file. Tom Hanson was not cross-examined on the change.

319. Paragraph 33.12 of the Statement of Case covered the additional purchase order by Klystron to the Appellant's supplier, Techcomp. We find the explanation given by John Hanson at paragraph 212 above to be perfectly credible.

320. Paragraph 33.16A was directed to the Appellant's part in money circularity in August Deals 2 and 3. We do not understand the contention that the Appellant was required to pay its suppliers when it did in relation to money circularity, since in both deals its suppliers had paid their suppliers on the day before they were being paid by the Appellant, so that they cannot have depended on being put in funds by the Appellant in order to make their own payments.

321. Paragraph 33.16B was essentially directed to the Appellant being paid by its customers before paying its suppliers. We did not find Mr Webb's answers at paragraphs 271 to 276 inherently incredible, although "ship on hold" did involve an element of risk both for the Appellant and for its suppliers.

322. Although not pleaded in the Statement of Case we have considered the total picture including the transactions themselves when considering whether actual knowledge has been proved.

323. An important factor was the directors' knowledge of the Appellant's suppliers and the lack of any problems in deals over 2½ years with prompt repayments of VAT for all claims.

324. The submission by Mr Zwart at paragraph 44 of his written submissions in closing that the Appellant's deals formed part of an overall scheme to defraud and that the transaction features and the Appellant's conduct demonstrated that it knew of this faces the problem that August Deals 2 to 4 involving iPods were handled at the Appellant's end by Tom Hanson, albeit under Mr Webb's supervision. The unchallenged evidence was that Tom found OHM as a potential customer. Tom was not cross-examined as to the iPod deals. It is difficult to see how the directors could have known that the iPod deals all involving OHM as customer were connected with fraud without Tom knowing also. His knowledge was implicit in Customs' case. He was not cross-examined as to this. We do not consider that the fact that he was not a senior employee and had not covered the deals in his statement removed the

need for this to be put to him in cross-examination. The importance of putting allegations properly to witnesses was made clear by Moses LJ in *Mobilx* at [84].

325. The relations between the directors and the visiting officers were unusually familiar, particularly since the visits arose because of the sector in which the Appellant was trading. This is illustrated by the e-mails at paragraphs 37 and 182 above and by the discussion at the end of the visit on 14 November 2006, see paragraph 113.

326. The Appellant has not satisfied us on the balance of probabilities that Mrs Hall was given a poker table, however we do find that Mrs Hall told John Hanson at the visit in October 2005 that there should be no problem if the Appellant's claims were kept down; up to August 2006 that was the reality.

327. We find it surprising that prior to 2006, although two officers were employed on visits to check repayment claims, local management dispensed with audit reports, see paragraph 35.

328. Except insofar as appears from the pre-credibility reports on the electronic folder, the extent of the checks carried out by the officers is unclear, however we are satisfied that cumulatively they must have been considerable. Paradoxically, the greater the extent of the checks, the weaker is Customs' case since they found nothing to cause them to suspect a connection with fraud, see paragraph 47; on the other hand the fewer the checks, the less reliance the Appellant could place on them.

329. The evidence of John Hanson, see paragraph 161, that the Appellant's trading style was the same throughout was not challenged. However we do observe that the trade in iPods only started after Tom joined and that the repayment claim for August 2006 was the largest made by the Appellant.

330. Mr Zwart relied on the fact that customer's requirements on purchase orders as to the colour of iPods were not met. Again this was not put to Tom who on the evidence handled these transactions.

331. We do not find the fact that the Appellant carried out back to back deals on the same day to be evidence of knowledge of fraud. The evidence was that the Appellant sought to match the requirements of potential customers with goods which it could obtain. It was not suggested that any of the deals was so large that this was not credible.

332. The lack of written terms other than in purchase orders and invoices is a matter of legitimate comment, particularly since significant sums were involved. However the Appellant was dealing with known suppliers and sold on a "ship on hold" basis until paid. This clearly did involve an element of risk as happened when there was a problem with Duwin paying. We are, however, not convinced that such arrangements were as unusual as was suggested.

333. Mr Zwart relied on the fact that the Appellant traded in CPU boxes which it had sold before, although this was not in the deals in question. Although the Appellant kept box numbers on an Excel spreadsheet, the prior dealing may well have not been picked up. Some identified boxes were traded by both the Appellant and Pars Ltd on the same day in April 2006; there was however no evidence that the Appellant knew of this.

334. Although there were occasions when the Appellant insured goods in which it did not have title because its supplier had a retention of title clause and the Appellant had not paid, the insurance policy covered not only goods which were the property of the Appellant but goods which it had a responsibility to insure, see paragraph 273 above. In our view the Appellant would have had an insurable interest.

335. On a number of occasions the inspection report on CPU boxes indicated that their condition might not meet the purchaser's requirements. The Appellant therefore took a risk when shipping them that they would be rejected. This was a legitimate point which was not answered apart from the statement that this had never in fact happened.

336. The Appellant accepted that transactions were not verified with Redhill after 7 June 2006, however assuming (which we do) that Mr Stone checked the Redhill records thoroughly the letter from Redhill on 3 August 2006 giving a negative response in relation to OHM and Duwin indicates that the Redhill records were not wholly reliable. Such records are subject to human error. The Appellant produced Europa verifications for both OHM and Duwin dated 1 August 2006.

337. This decision does not address every one of the numerous points made in Mr Zwart's very thorough written closing submissions, and in his oral closing. We have however considered them with care. Our task was made substantially more difficult by the absence of a transcript for opening and closing speeches.

338. We heard the directors of the Appellant cross-examined at length. While we do not accept the entirety of their evidence, having considered the evidence as a whole and having regard to the objective factors, Customs have not satisfied us that through them the Appellant knew that its transactions were connected with the fraudulent evasion of VAT.

339. We consider finally whether Customs established that the Appellant should nevertheless have known of the connection with fraud. At [59] in *Mobilx Ltd and Others v Revenue and Customs Commissioners* [2010] STC 1436 Moses LJ said this,

> "If a trader should have known that the only reasonable explanation for the transaction in which he was involved was that it was connected with fraud and it turns out that the transaction was connected with fraudulent evasion of VAT then he should have known of that fact."

Elsewhere he referred at [64] to "no reasonable explanation for the circumstances in which the transaction was undertaken other than that it was connected with fraud", at [69] to "no reasonable possibility other than they were connected with fraud" and at [80] to "the only reasonable possibility".

340. Since "should have known" is alternative to actual knowledge the word "known" is used in the sense of "realised". Another way of putting it is that the connection with fraud should have been obvious to the trader.

341. In the present case the circumstances included the Appellants' admitted knowledge of fraud in the sector. They also included the fact that the Appellant was trading as it always had done, had received no warnings of problems in its supply chains in spite of a large number of visits and that all repayment claims had been met promptly. In contrast with many

other MTIC appeals the Appellant knew its suppliers well, particularly Techcomp, and had obtained favourable Veracis reports.

342. Having considered the transactions and the surrounding circumstances and having heard the lengthy cross-examination of the Appellant's directors, we are not satisfied on the balance of probabilities that it should have been obvious to them that the only reasonable explanation was that the transactions were connected with fraud.

343. The appeal is allowed.

344. Whereas a direction was released on 4 April 2011 that Rule 29 of the VAT Tribunals Rules 1986 should apply to these proceedings, any application for costs shall be made within 28 days of the release of this decision and shall specify the amount of costs sought.

345. 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.