[2018] UKFTT 643 (TC)

TC06791

Appeal number: TC/2014/05177

VALUE ADDED TAX – Second-hand car dealers in Northern Ireland – Denial of input tax

No-supply denial – Did HMRC (having assumed the burden) prove a non-supply? – No

Kittel denial - Was there a tax loss? - Yes - Did that loss result from fraudulent evasion? - Yes - Were the transactions subject to the appeal connected with that evasion? - Yes - Did the Appellants know or should they have known that the transactions were connected with fraud? – Yes, in relation to all the deals which are the subject matter of this Appeal - Appeal dismissed

FIRST-TIER TRIBUNAL
TAX CHAMBER

(1) MR DERYCK GREGORY DAVID BRADY **Appellants**
(2) MRS HEATHER ELIZABETH BRADY
(a Partnership, trading as 'GREGORY BRADY MOTORS')

- and -

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

TRIBUNAL: JUDGE CHRISTOPHER MCNALL
MR JOHN ADRAIN FCA

Sitting in public at the Tribunal Hearing Centre, 2nd Floor, Royal Courts of Justice, Chichester Street, Belfast BT1 3JF on 4-8 December 2017, with further written submissions from the Respondent on 14 December 2017 and the Appellant on 21 December 2017
Mr Tom Penman, an Accountant, of Baker Tilly Mooney Moore, Belfast, for the Appellants
Mr James Puzey, Counsel, and Mr Joseph Millington, Counsel, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents

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DECISION

1. We have decided to dismiss this Appeal. We set out our full reasons for this decision below.

2. The Appellants are husband and wife, who trade together in partnership as 'Gregory Brady Motors' ('**GBM**'). GBM has been registered for VAT since 1988. In November 2009, GBM changed from a sole proprietor (Mr Brady) to a partnership (Mr and Mrs Brady). In January 2010, its VAT registration was transferred to the partnership.

3. HMRC's position is that Mrs Brady, despite being a partner, plays no active role in the business, and that it is Mr Brady, rather than his wife, who was the person who dealt with the deals which are the subject matter of this appeal. So, and although Mrs Brady is named as the Second Appellant, she has not played any part in this appeal. We did not receive or hear any evidence from her, and we draw no inferences from her absence.

4. By way of a Notice of Appeal dated 20 September 2014, GBM challenges HMRC's decision dated 23 June 2014 (upheld at departmental review on 22 August 2014, but with the denial for 09/12 varied) made by HMRC's Officer McMahon, to deny input tax.

5. The denied claim for input tax was made following a period of extended verification of the Appellants' returns.

6. GBM is in the business of buying and selling second-hand motor vehicles. GBM's position was that it maintained a stock of about 30 vehicles at any given time, but, in addition to offering a range of cars for sale, GBM's case is that it is also known for sourcing cars *'that meet all or the majority of its customers' requirements'*.

7. At the time of the deals which are in question in this appeal, there were two distinct sides to GBM's business – UK to UK deals (mainly concerning private customers) and UK to ROI deals (mainly concerning trade customers).

8. This Appeal concerns the denial of input tax claimed in four successive quarters in 2012 and 2013 relating to 49 UK to ROI transactions (**'the Deals'**). In this decision, each Deal is identified in this way: 'D/1'= Deal 1.

9. The cars with which this appeal is concerned are all 'qualifying' cars. Those are cars for which VAT was payable when GBM bought them from other registered persons, and VAT was chargeable when they were sold on, except if they were dispatched to another Member State, in which case they would be zero-rated intra-community transactions.

10. After adjustments made to the amounts, the sum in dispute (as set out in HMRC's letter of 3 July 2015) is £217,174.89:

(1) 06/12 £130,716.57 (Deals 1-30 = 30 deals)

(2) 09/12 £20,299.99 (Deals 31-34 = 4 deals)

(3) 12/12 £56,158.33 (Deals 35-47 = 13 deals)

(4) 03/13 £10,000 (Deals 48 and 49 = 2 deals)

11. Two reasons are given for the denial.

12. The first reason is that, in relation to a total of 46 from 49 deals (that is to say, in all but three deals = D26-28, which were all in period 06/12) HMRC does not accept that a taxable supply was in fact actually made to the Appellants at all: see Paragraph 9 of HMRC's Statement of Case (28 September 2015) and Paragraph 36 of Officer McMahon's first witness statement: '**the No Supply Denial'**

13. This mainly rests on evidence of parallel deal claims: i.e., HMRC relies on positive documentary evidence that each of these vehicles was been traded by other car traders either before or after GBM's transactions, but in such a way – both temporally and geographically - as to be (allegedly) fundamentally inconsistent with GBM's alleged deal.

14. Mr Puzey, on behalf of HMRC, puts it in this way in his Skeleton Argument:

"The central issue for the 'no supply' denial is: Did GBM buy and sell the cars it claims to have?

This overarching question breaks down further:

a. Insofar as GBM claims to have actually seen and handled these particular vehicles, then the Commissioners' case is that Mr Brady is not telling the truth.

b. Insofar as he may claim to have been sold particular vehicles which he in turn sold on without ever seeing or handling them, the question remains as to whether the documents actually evidence a transaction which actually occurred."

15. HMRC acknowledges that it is not clear, from Mr Brady's statement, which vehicles fall into which category.

16. The second reason given for the denial is that, even if the Tribunal finds as a fact that there was a supply in those 46 deals, HMRC nonetheless maintains that all the relevant transactions were connected to a VAT fraud and that the Appellants knew or should have known that they were so connected: '**the Kittel Denial'**.

17. The Grounds of Appeal say:

"These decisions are incorrect, unreasonable, and unfair ... because we have acted in good faith in all our transactions, we have actually suffered the input tax involved, we have the documentation to support the input tax claimed, we have produced all records verifying this to HMRC staff over the past two years, we

have co-operated fully with HMRC including attending meetings with them and answering all their questions to the best of our knowledge and belief. We have expended time and effort to assist them in their enquiries and fully co-operated with them."

18. GBM set out its position further in a letter dated 5 February 2015. In summary:

(1) GBM is a legitimate commercial trader;

(2) The supplies were in fact made;

(3) GBM purchased vehicles in good faith, paid for them, sold them on, and physically handed them over. Handover was either through delivery by GBM to a destination agreed with the customer (with GBM typically retaining a copy of the bus or train ticket used to travel back from the handover point) or by the customer collecting the vehicle (sometimes by driving a vehicle which is to be accepted in part-exchange);

(4) DVLA's information is not always accurate, but depends on whether the seller completes the 'transfer to a motor trader, insurer, or dismantler; (V5C/3) section of the form and/or timeously notifies it to DVLA;

(5) GBM is the innocent victim of fraud;

(6) GBM did undertake due diligence, and neither knew nor could have known that transactions were connected to the fraudulent evasion of VAT;

(7) GMB was satisfied that the proposed transactions 'looked and felt genuine';

(8) GBM did complete some of the invoices on behalf of one of its suppliers (Paul Sava) but this was only because Mr Sava's handwriting was poor and at times Mr Sava's hand was bandaged;

(9) Although the dates on the paperwork suggest that the deals were completed within a short period of time, the paperwork did not accurately reflect the time taken to conclude the deals. GBM spends considerable time discussing specifications with clients and making calls in an effort to secure the correct vehicle or to persuade the customer to take a close equivalent;

(10) There is no need for written contracts (except where a credit agreement is involved) and the absence of written contracts should not be used as proof to indicate that GBM was involved in contrived transactions;

(11) Input tax has been denied on some purchases but not on others in 12/12, on the basis that these were duplicate/parallel deals, in transactions from the same supplier (Hughes Car and Van) on the basis of the same type of information. Hence, HMRC's treatment of those denials is inconsistent.

The Law

The right to deduct

19. The right to deduct input tax is derived from Articles 167 and 168 of Council Directive 2006/112/EC of 28 November 2006 which has been implemented into UK

domestic law by sections 24, 25 and 26 of the *Value Added Tax Act 1994* and Regulation 29 of *The VAT Regulations 1995* (SI 1995/2518), as amended.

20. In brief terms, if a taxable person – such as the Appellant - has incurred input tax which is properly allowable, he is entitled to set it off against his output tax liability (or to receive a repayment if the input tax credit due to him exceeds that liability). Evidence is required in support of a claim: see Article 18 of the Sixth Directive and Regulation 29(2) of the 1995 Regulations. Traders are required, amongst other things, to hold or provide any document required by Regulation 13 of the 1995 Regulations or such other evidence to support the claim as HMRC may direct.

21. It inevitably follows that there can be no allowable claim for input tax credit if there has not been a taxable supply – i.e., '**No Supply'**

Kittel

22. A further exception to the above entitlement to deduct was set out by the European Court of Justice in the joined cases *Axel Kittel v Belgium; Belgium v Recolta Recycling SPRL* (C-439/04 and C-440/04) [2006] ECR I-6161. In a judgment on references for preliminary rulings, the ECJ articulated the legal basis and circumstances in which the right to deduct may lawfully be denied by the taxation authorities:

> "51 […] it is apparent that traders who take every precaution which could reasonably be required of them to ensure that their transactions are not connected with fraud, be it the fraudulent evasion of VAT or other fraud, must be able to rely on the legality of those transactions without the risk of losing the right to deduct the input VAT [...]
>
> 52. It follows that, where a recipient of a supply of goods is a taxable person who did not and could not know that the transaction concerned was connected with a fraud committed by the seller, Article 17 of the Sixth Directive must be interpreted as meaning that it precludes a rule of national law under which the fact that the contract of sale is void, by reason of a civil law provision which renders that contract incurably void as contrary to public policy for unlawful basis of the contract attributable to the seller, causes that taxable person to lose the right to deduct the VAT he has paid. It is irrelevant in this respect whether the fact that the contract is void is due to fraudulent evasion of VAT or to other fraud.
>
> 53. By contrast, the objective criteria which form the basis of the concepts of 'supply of goods effected by a taxable person acting as such' and 'economic activity' are not met where tax is evaded by the taxable person himself [...]
>
> 54. As the Court has already observed, preventing tax evasion, avoidance and abuse is an objective recognised and encouraged by the Sixth Directive...Community law cannot be relied on for abusive or fraudulent ends [...]

55. Where the tax authorities find that the right to deduct has been exercised fraudulently, they are permitted to claim repayment of the deducted sums retroactively … It is a matter for the national court to refuse to allow the right to deduct where it is established, on the basis of objective evidence, that that right is being relied on for fraudulent ends [...]

56. In the same way, a taxable person who knew or should have known that, by his purchase, he was taking part in a transaction connected with fraudulent evasion of VAT must, for the purposes of the Sixth Directive, be regarded as a participant in that fraud, irrespective of whether or not he profited by the resale of the goods.

57. That is because in such a situation the taxable person aids the perpetrators of the fraud and becomes their accomplice.

58. In addition, such an interpretation, by making it more difficult to carry out fraudulent transactions, is apt to prevent them.

59. Therefore, it is for the referring court to refuse entitlement to the right to deduct where it is ascertained, having regard to objective factors, that the taxable person knew or should have known that, by his purchase, he was participating in a transaction connected with fraudulent evasion of VAT, and to do so even where the transaction in question meets the objective criteria which form the basis of the concepts of 'supply of goods effected by a taxable person acting as such' and 'economic activity'.

60. It follows from the foregoing that the answer to the questions must be that where a recipient of a supply of goods is a taxable person who did not and could not know that the transaction concerned was connected with a fraud committed by the seller, Article 17 of the Directive must be interpreted as meaning that it precludes a rule of national law under which the fact that a contract of sale is void – by reason of a civil law provision which renders that contract incurably void as contrary to public policy for [the] unlawful basis of the contract attributable to the seller – causes that person to lose the right to deduct the VAT he has paid. It is irrelevant in this respect whether the fact that the contract is void due to the fundamental evasion of VAT or to other fraud.

61. By contrast, where it is ascertained, having regard to objective factors, that the supply is to a taxable person who knew or should have known that, by his purchase, he was participating in a transaction connected with fraudulent evasion of VAT, it is for the national court to refuse that taxable person entitlement to the right to deduct."

23. These principles - often referred to, in shorthand, as the 'Kittel' principles – have been applied, amplified and clarified, in a domestic context, by the Court of Appeal in

Mobilx Ltd (in administration) and others v HMRC [2010] EWCA Civ 517. Moses LJ (with whom Carnwath LJ, as he then was, and Sir John Chadwick agreed) remarked:

> "[30] ... the Court made clear that the reason why fraud vitiates a transaction is not because it makes the transaction unlawful but rather because where a person commits fraud he will not be able to establish that the objective criteria which determine the scope of VAT and the right to deduct have been met...
>
> [...]
>
> [41] ...*Kittel* did represent a development of the law because it enlarged the category of participants to those who themselves had no intention of committing fraud, but who, by virtue of the fact that they knew or should have known that the transaction was connected with fraud, were to be treated as participants. Once such traders were treated as participants their transactions did not meet the objective criteria determining the scope of the right to deduct.
>
> [42]. By the concluding words of Paragraph 59, the Court must be taken to mean that even where the transaction in question would otherwise meet the objective criteria which the Court identified, it will not do so in a case where a participant is to be regarded, by reason of his state of knowledge, as a participant.
>
> [43]. A person who has no intention of undertaking an economic activity but pretends to do so in order to make off with the tax he has received on making the supply, either by disappearing or hijacking a taxable person's VAT identity, does not meet the objective criteria which form the basis of those concepts which limit the scope of VAT and the right to deduct. A taxable person who knows or should have known that the transaction which he is undertaking is connected with the fraudulent evasion of VAT is to be regarded as a participant and equally, fails to meet the criteria which determine the scope of the right to deduct."

24. On the issue of knowledge, the Court of Appeal in *Mobilx* gave the following guidance:

> "MEANING OF *'SHOULD HAVE KNOWN'*
>
> [52] If a taxpayer has the means at his disposal of knowing that by his purchase he is participating in a transaction connected with fraudulent evasion of VAT he loses his right to deduct, not as a penalty for negligence, but because the objective criteria for the scope of that right are not met. It profits nothing to contend that, in domestic law, complicity in fraud denotes a more culpable state of mind than carelessness, in the light of the principle in Kittel. A trader who fails to deploy means of knowledge available to him does not satisfy the objective criteria which must be met before his right to deduct arises.
>
> [...]

EXTENT OF KNOWLEDGE

[56] It must be remembered that the approach of the court in *Kittel* was to enlarge the category of participants. A trader who should have known that he was running the risk that by his purchase he might be taking part in a transaction connected with fraudulent evasion of VAT, cannot be regarded as a participant in that fraud. The highest it could be put is that he was running the risk that he might be a participant. That is not the approach of the Court in *Kittel*, nor is it the language it used. In those circumstances, I am of the view that it must be established that the trader knew or should have known that by his purchase he was taking part in such a transaction, as the Chancellor concluded in his judgment in *Blue Sphere Global*:-

> "The relevant knowledge is that Blue Sphere Global ought to have known by its purchases it was participating in transactions which were connected with a fraudulent evasion of VAT; that such transactions might be so connected is not enough." (Para 5).

[57] HMRC object that the principle should not be restricted to those cases were a trader has deliberately refrained from asking questions lest his suspicions should be confirmed. This has been described as a category of case which is so close to actual knowledge that the person is treated as having received the information which he deliberately sought to avoid...

[58] As I have endeavoured to emphasise, the essence of the approach of the court in *Kittel* was to provide a means of depriving those who participate in a transaction connected with fraudulent evasion of VAT by extending the category of participants and, thus, of those whose transactions do not meet the objective criteria which determine the scope of the right to deduct. The court preserved the principle of legal certainty; it did not trump it.

[59] The test in *Kittel* is simple and should not be over-refined. It embraces not only those who know of the connection but those who "should have known". Thus it includes those who should have known from the circumstances which surround their transactions that they were connected to fraudulent evasion. 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 if it turns out that the transaction was connected with fraudulent evasion of VAT then he should have known of that fact. He may properly be regarded as a participant for the reasons explained in *Kittel.*

[60] The true principle to be derived from *Kittel* does not extend to circumstances in which a taxable person should have known that by his purchase it was more likely than not that his transaction was connected with fraudulent evasion. But a trader may be regarded as a participant where he should have known that the only reasonable explanation for the

circumstances in which his purchase took place was that it was a transaction connected with such fraudulent evasion.

[61] …if (the trader) chooses to ignore obvious inferences from the facts and circumstances in which he has been trading, he will not be entitled to deduct …"

25. The Court of Appeal referred with approval to the judgment of the then Chancellor, Sir Andrew Morritt, in *Blue Sphere Global Ltd v HMRC* [2009] EWHC 1150 (Ch) where, in relation to the issue of 'connection' with fraud, the judge remarked (see Paras. [42]-[45]):

"…The nature of any particular necessary connection depends on its context, for example electrical, familial, physical or logical. The relevant context in this case is the scheme for charging and recovering VAT in the member states of the EU. The process of off-setting inputs against outputs in a particular period and accounting for the difference to the relevant revenue authority can connect two or more transactions or chains of transaction in which there is one common party whether or not the commodity sold is the same. If there is a connection in that sense it matters not which transaction or chain came first. Such a connection is entirely consistent with the dicta in *Optigen* and *Kittel* because such connection does not alter the nature of the individual transactions. Nor does it offend against any principle of legal certainty, fiscal neutrality, proportionality or freedom of movement because, by itself, it has no effect.

Given that the clean and dirty chains can be regarded as connected with one another, by the same token the clean chain is connected with any fraudulent evasion of VAT in the dirty chain because, in a case of contra-trading, the right to reclaim enjoyed by C ... in the dirty chain, which is the counterpart of the obligation of A to account for input tax paid by B, is transferred to E .. in the clean chain. Such a transfer is apt…to conceal the fraud committed by A in the dirty chain in its failure to account for the input tax received from B."

26. We also have regard to the remarks of Christopher Clarke J (as he then was) in *Red12 v HMRC* [2009] EWHC 2563 at [109]-[111] which were also approved by the Court of Appeal in *Mobilx:*

"[109] Examining individual transactions on their merits does not, however, require them to be regarded in isolation without regard to their attendant circumstances and context. Nor does it require the tribunal to ignore compelling similarities between one transaction and another or preclude the drawing of inferences, where appropriate, from a pattern of transactions of which the individual transaction in question forms part, as to its true nature e.g. that it is part of a fraudulent scheme. The character of an individual transaction may be discerned from material other than the bare facts of the transaction itself, including circumstantial and "similar fact" evidence. That is not to alter its character by reference to earlier or later transactions but to discern it.

[110] To look only at the purchase in respect of which input tax was sought to be deducted would be wholly artificial. A sale of 1,000 mobile telephones may be entirely regular, or entirely regular so far as the taxpayer is (or ought to be) aware. If so, the fact that there is fraud somewhere else in the chain cannot disentitle the taxpayer to a return of input tax. The same transaction may be viewed differently if it is the fourth in line of a chain of transactions all of which have identical percentage mark ups, made by a trader who has practically no capital as part of a huge and unexplained turnover with no left over stock, and mirrored by over 40 other similar chains in all of which the taxpayer has participated and in each of which there has been a defaulting trader. A tribunal could legitimately think it unlikely that the fact that all 46 of the transactions in issue can be traced to tax losses to HMRC is a result of innocent coincidence. Similarly, three suspicious involvements may pale into insignificance if the trader has been obviously honest in thousands.

[111] Further in determining what it was that the taxpayer knew or ought to have known the tribunal is entitled to look at the totality of the deals effected by the taxpayer (and their characteristics), and at what the taxpayer did or omitted to do, and what it could have done, together with the surrounding circumstances in respect of all of them."

27. In *Megtian Limited (in administration) v HMRC* [2010] EWHC 18 (Ch) Briggs J (as he then was) stated at [34], and [37]-[38]:

"In my judgment, there are likely to be many cases in which a participant in a sophisticated fraud is shown to have actual or blind-eye knowledge that the transaction in which he is participating is connected with that fraud, without knowing, for example, whether his chain is a clean or dirty chain, whether contra-trading is necessarily involved at all, or whether the fraud has at its heart merely a dishonest intention to abscond without paying tax, or that intention plus one or more multifarious means of achieving a cover-up while the absconding takes place.

Similarly, I consider that there are likely to be many cases in which facts about the transaction known to the broker are sufficient to enable it to be said that the broker ought to have known that his transaction was connected with a tax fraud, without it having to be, or even being possible for it to be, demonstrated precisely which aspects of a sophisticated multifaceted fraud he would have discovered, had he made reasonable inquiries. In my judgment, sophisticated frauds in the real world are not invariably susceptible, as a matter of law, to being carved up into self-contained boxes even though, on the facts of particular cases, including Livewire, that may be an appropriate basis for analysis."

28. The burden of proof in a *Kittel* type case rests with HMRC. Moses LJ made this clear in *Mobilx*:

"[81] ...it is plain that if HMRC wishes to assert that a trader's state of knowledge was such that his purchase is outwith the scope of the right to deduct it must prove that assertion.

[82] But that is far from saying that the surrounding circumstances cannot establish sufficient knowledge to treat the trader as a participant....tribunals should not unduly focus on the question whether a trader has acted with due diligence. Even if a trader has asked appropriate questions, he is not entitled to ignore the circumstances in which his transactions take place if the only reasonable explanation for them is that his transactions have been or will be connected to fraud. The danger in focussing on the question of due diligence is that it may deflect a tribunal from asking the essential question posed in Kittel, namely whether the trader should have known by his purchase that he was taking part in a transaction connected with fraudulent evasion of VAT. The circumstances may well establish that he was.

[85] ....A trader who chooses to ignore circumstances which can only reasonably be explained by virtue of the connection between his transactions and fraudulent evasion of VAT, participates in that fraud, and, by his own choice, deprives himself of the right to deduct."

29. The test in *Kittel* is simple and should not be over-refined. We note the observations made by Proudman J, sitting as a Judge of the Upper Tribunal, in *GSM Export (UK) Limited v HMRC [2014] UKUT 0529* (TCC) that *Mobilx* does not change the test in *Kittel*, and that the expression 'only reasonable explanation' does not alter the requirement that the taxpayer's state of mind squarely remains *'knew or should have known'*, and is merely a way in which HMRC can demonstrate the extent of the taxpayer's knowledge: that is to say, that the taxpayer knew, or should have known, that the transaction was connected with fraud, as opposed to merely knowingly running some risk that there might be such a connection.

30. The standard of proof is the ordinary civil standard, namely, the balance of probabilities. In *Re B (Children) (Care Proceedings: Standard of Proof) [2008] UKHL 35*, the Supreme Court made it very clear that there is no enhanced burden even if the allegations - as in this case - are ones where the gravity of misconduct alleged is serious, with serious consequences.

31. Lord Hoffmann also made the following helpful remarks concerning the operation of the standard when it comes to fact finding:

"[2] If a legal rule requires a fact to be proved (a 'fact in issue') a judge or jury must decide whether or not it happened. There is no room for a finding that it might not have happened. The law operates a binary system in which the only values are zero and one. The fact either happened or it did not. If the tribunal is left in doubt, the doubt is resolved by a rule that one party or the other carries the burden of proof. If the party who bears the burden of proof fails to discharge it, a value of zero is returned and the fact is treated as not

having happened. If he does discharge it, a value of one is returned and the fact is treated as having happened.

[...]

[13] ... I think that the time has come to say, once and for all, that there is only one civil standard of proof and that if proof that the fact in issue more probably occurred than not."

The Deals

32. The deals are set out in the Schedule to HMRC's letter dated 3 July 2012, the accuracy of which (in terms of its description of the vehicles, the sellers, and the amounts of VAT) is not challenged.

33. On the basis of the authorities cited above, the correct approach to be adopted in this appeal is to recognise that the Deals should not be viewed in isolation from each other. Having said this, the deals do naturally fall into two large sub-groups – 'the Sava Deals' (Deals 1-30), followed by 'the Hughes Deals' (Deals 31-49) – and we approach them as such, but recognising that findings in relation to the Sava Deals (which came first in time) may play a part in our assessment of the Hughes Deals.

VAT quarter 06/12 – Deals 1-30 – 'The Sava Deals'

34. GBM carried out 44 purchases in this quarter. 33 of these were direct purchases from one Paul Sava, trading as 'Sava's Autos'. Initially, GBM's input tax claim was denied on all 33 purchases from Paul Sava, but subsequently HMRC withdrew its denial of input tax in relation to 3 of these 33 deals because GBM informed HMRC that GBM had not itself reclaimed input tax for 3 of the cars in question. This left 30 deals, with all these vehicles bought from Paul Sava between 2 April 2012 (Mr Sava having been registered for VAT with effect from 1 February 2012) and 13 June 2012 (shortly before Mr Sava's de-registration on 15 June 2012).

35. These are the deals claimed by GBM (each deal being the subject of a separate exhibit to Officer McMahon's first witness statement – CMM/1 = Deal 1 etc)

36.

	Date on Sava Inv	Model	Net	VAT	Total	Buyer
(1)	17.4.12	Evoque	34,166.66	6833.33	41,000	Connor Homes Ltd
(2)	3.4.12	BMW	24.083.33	4816.66	28,900	Ronan Brophy
(3)	2.4.12	Audi	18,416.66	3683.33	22,100	Northside Motor
(4)	26.4.12	BMW	26,666.66	5333.33	32,000	RMC Autos
(5)	2.5.12	BMW	16,291.66	3258.33	19,550	NS Cars
(6)	25.5.12	BMW	24,166	4833.33	29,000	Vicarage Green Ltd
(7)	24.5.12	BMW	22,916.66	4583.33	27,500	RMC Autos

(8)	5.6.12	BMW	22,500	4,500	27,000	Vicarage Green
(9)	5.6.12	BMW	22,500	4,500	27,000	Vicarage Green
(10)	1.6.12	BMW	21,666.66	4,333.33	26,000	Newtongore
(11)	21.5.12	Range Rover	42,916.66	8,585.33	51,500	Green Park Motors
(12)	8?12?.6.12	BMW	23,750	4,750	28,500	Shane Kelly
(13)	8.6.12	BMW	20,833.33	4,166.66	25,000	Vicarage Green
(14)	15.4.12	BMW	20,416,66	4,083.33	24,500	David McMahon
(15)	14.5.12	BMW	19,166.66	3,833.33	23,000	David McMahon
(16)	9.6.12	BMW	25,750	5,150.00	30,900	Keith Corcoran
(17)	11.6.12	Focus	7,458.33	1,491.66	8,950	David McMahon
(18)	11.6.12	Focus	7,458.33	1,491.66	8,950	David McMahon
(19)	11.6.12	Focus	7,458.33	1,491.66	8,950	David McMahon
(20)	11.6.12	Focus	7,458.33	1,491.66	8,950	David McMahon
(21)	27.5.12	BMW	24,166.66	4,833.33	29,000	Castlehyde
(22)	27.5.12	Hilux	17,833.33	3,566.66	21,400	David McMahon
(23)	9.6.12	BMW	19,291.66	3,858.33	23,150	Keith Corcoran
(24)	15.4.12	Hilux	16,875	3,375	20,250	Leigh Evans
(25)	4.5.12	Hilux	16,875	3,375	20,250	
(26)	24.5.12	Evoque	36,250	7,250	43,500	Lamberts Garage
(27)	13.6.12	Mercedes	40,416.66	8,083.33	48,500	DTS Contracts
(28)	13.6.12	Mercedes	28,750	5,750	34,500	DTS Contracts
(29)	8.6.12	BMW	20,000	4,000	24,000	Richard Sutton
(30)	24.4.12	Hilux	17,083.33	3,416.66	20,500	Koshima Ltd

37. These come to approximately £784,300.

38. The denial fell into two parts. As to D1-20, HMRC denied a claim for input tax (amounting to £83,208.26) on the basis of non-supply. That is to say, HMRC does not accept that any of the cars in those deals was actually supplied to GBM. But, as an alternative, HMRC says that GBM either knew or should have known that D1-20 were connected to fraud.

39. A further sum of input tax (amounting to £47,508.31) was denied on a further 10 cars (again, purchased directly from Paul Sava) – DD21-30 - but the denial – at least initially - was not on the basis of non-supply at all, but was solely on the basis that the deals were connected to fraud, and that GBM knew or should have known that they were connected – that is to say, a conventional Kittel denial.

40. However, subsequently HMRC's position developed and it came to allege that additional information had come to light showing parallel deal claims in relation to 7 of the 10 cars involved in D21-30 (Deals 21, 22, 23, 24, 25, 29 and 30). This leaves the denial in relation to 3 cars (D26, 27, and 28) from this quarter as a Kittel denial only.

VAT quarter 09/12 – Deals 31-34

41. Input tax (amounting to £20,299.99) was denied on 4 cars purportedly supplied by Hughes Car and Van Sales.

42. HMRC does not accept that any of those cars was supplied to GBM, but alternatively says that there should be a Kittel denial.

43. The paperwork chains for those transactions have all been traced back to Benjamin Nugent trading as 'Altmore Motors'.

44. In one of the 4 deals (D34) Hughes Car and Van Sales has itself informed HMRC that this was an abortive deal, and that the car was never supplied, although there is a vigorous dispute between Mr Brady and HMRC as to whether HMRC's record of a meeting which took place between HMRC and Mr Hughes is accurate.

VAT quarter 12/12 – Deals 35-47

45. Input tax (amounting to £56,158.33) was denied on 13 cars purportedly supplied by Hughes Car and Van Sales.

46. The paperwork chains for those transactions have all been traced back to Benjamin Nugent trading as 'Altmore Motors'.

47. HMRC does not accept that any of those cars was supplied to GBM, but alternatively says that there should be a Kittel denial.

VAT quarter 03/13 – Deals 48 and 49

48. Input tax (amounting to £10,000) was denied on 2 cars purportedly supplied by Hughes Car and Van Sales. HMRC does not accept that either of those cars was supplied to GBM.

49. The paperwork chains for those transactions have all been traced back to Benjamin Nugent trading as 'Altmore Motors'.

50. HMRC does not accept that any of those cars was supplied to GBM, but alternatively says that there should be a Kittel denial.

The No Supply Denial

51. As set out above, there can be no allowable claim for input tax credit if there has not been a taxable supply.

52. HMRC has assumed the burden of establishing non-supply.

Kittel Denial: The Issues

53. In an appeal seeking to challenge a decision on a Kittel basis, four issues conventionally arise:

(1) Was there a tax loss? (**Issue 1**)

(2) If so, did this loss result from a fraudulent evasion? (**Issue 2**)

(3) If so, were the transactions which are the subject of this appeal connected with that evasion? (**Issue 3**)

(4) If so, did or should the Appellants have known that the transactions were so connected? (**Issue 4)**

54. Standard directions were made in October 2015. Neither party sought to vary those directions. No *Fairford* type directions were ever sought, or made. It was not until November 2017 – over two years later, and barely a month before the hearing – that any of the participants seemed to turn their minds in earnest towards seeking to identify, with any degree of clarity or precision, which of the above issues were genuinely in dispute, and why. This meant the production and reproduction of thousands of pages of evidence, many of which were not referred to at all during the course of the trial. This is wasteful of the parties' resources, and the resources of the Tribunal. The 'kitchen sink' approach to the inclusion of documents which neither party intended to refer to (and which were not in fact referred to) obscures the true issues, and impeded efficient management, hearing and disposal of this appeal.

55. In its Outline Skeleton Argument (13 November 2017) (awhich crossed with HMRC's Skeleton) GBM says, in relation to the No Supply Denial: "*GBM actually bought and sold the cars it claims to have done. He (sic) has tried to comply with his fiscal obligations as he saw then and there was no benefit to him knowingly taking part and not telling the truth as he is the one who has suffered a significant loss to his business moneys"*.

56. In relation to the Kittel Denial, the Appellant asserts that the evidence points to it being '*an innocent victim caught in the middle'*. Paragraph 80 of the Outline Skeleton asserts that '*All GBM transactions were carried out on commercial terms with appropriate due diligence carried out. Delivery was arranged by the customer or one of GBM drivers which has been evidenced, and GBM has never knowingly been knowingly connected to a fraudulent transaction'*.

HMRC's evidence

57. HMRC's written evidence was provided by witness statements from Officer McMahon, Officer Goodman (the case officer for Paul Sava), and Officer O'Neill (the case officer for Benjamin Nugent) and the exhibits to those statements.

Officer McMahon

58. Officer McMahon is a senior officer of HMRC. She is highly experienced, having worked for HMRC since 1991. She worked on cases of this kind between 2012 and 2015. We accept her description of herself as 'fairly experienced' in MTICs.

59. She took over the investigation of GBM from Officer Heatley in June 2014. The decision was drafted by Officer Heatley but went out in Officer McMahon's name, after Officer McMahon had applied her own independent judgment to it. Officer McMahon had denied the input tax for the reasons set out in her witness statement and in Deal packs 1-49.

60. In her oral evidence, Officer McMahon made some small corrections to her written evidence, but did not make any substantive changes.

61. Her written and oral evidence was detailed and impressive.

62. In her oral evidence, she made concessions where it was appropriate to do so. For example, she accepted:

(1) Dates on DVLA paperwork might not always be accurate;

(2) DVLA documents are only as good as the person supplying the information wants them to be;

(3) DVLA information could possibly depend on when someone returned the V5 slip;

(4) None of the Deals had been made to traders who were at the time deregistered;

(5) Mr Brady had 2 yards, and 3 different premises, and had every opportunity to hold stock;

(6) She had seen cars on the forecourt during her visit;

(7) She did not have extensive knowledge of the motor trade;

(8) GBM had made its VAT returns timeously; and

(9) The Schedule of Vehicles should have been attached to the original decision letter and was not (although she sent it as soon as she became aware that it had not been supplied).

63. Although she accepted that she was not an expert in the motor trade, her overall approach – which she explained with clarity – was that she did not consider the particular trade to matter, since she was looking at the money and investigating the transport documentation. As she put it, she was 'looking for things that cannot be explained'. We considered this approach to be coherent and appropriate. In her experience, dealers involved in fraud – whatever their precise trade - do have lots of documents "because they have to carry a façade of being genuine."

64. Although she was robustly challenged as to her decision-making in cross-examination, we do not consider that her evidence was undermined. For example, she was asked what documents she had been shown in her visits to GBM and she was

challenged on the footing that GBM's due diligence was appropriate in relation to a sale to Mr Cromie in Deal 32. She was asked "what further due diligence do you expect to see – what else to satisfy you that this is a genuine person?". Her evidence was that even lodgement of funds did not really prove that a vehicle had genuinely been bought and sold. She told us that she expected to see "*transport documents around the order, and delivery."* In short, she was looking for 'stronger evidence' than what she had seen. The examples she gave were "*transport documents from a haulier, or documents showing the car being re-registered in the Republic of Ireland."*

65. She explained that her view was that she had to look at the totality of the evidence being put forward, and we considered that approach to be consistent with the legal guidance. She also explained that she did not think it appropriate to take each deal in isolation, and we consider this to have been an appropriate approach.

66. She was asked if she considered that Mr Brady 'was his brother's keeper'. We took this question to be on the footing of Mr Brady's case that he was an innocent dupe. Her answer was that if she believed that Mr Brady was genuinely an innocent dupe, she would not have been holding him responsible. We accept this evidence. Having heard her give evidence, and having had the opportunity to assess her evidence being tested in cross-examination, we are satisfied that she was open-minded and responsive to the evidence which was being placed before her by GBM, and that if there was evidence genuinely justifying an input VAT credit, she would have given such credit. Indeed, following Ernst and Young's letter of 5 February 2015, she accepted that there was evidence of dispatch for some cars, and gave an allowance for input tax credit.

Officer Goodman

67. Officer Goodman's written evidence is in his witness statement dated 27 January 2016. He is the allocated officer for Paul Sava. He has been working as a VAT assurance officer since completing his training in March 2005. His evidence is that Paul Sava is a defaulting trader. Paul Sava's business was 'sifted' to verify its transactions due to the high number and value of invoices noted in the records of GBM. Paul Sava had never submitted any VAT returns or provided any trading records. HMRC had not been able to make contact with him. His principal place of business was a residential address in Bell Towers South in Belfast (the address which he also used on his invoices). In the absence of returns, he assessed Paul Sava on 29 November 2012 in the amount of approximately £1.407m. The assessment has not been appealed, and the amount remains unpaid.

68. Officer Goodman's evidence was that Paul Sava had dishonestly failed to remit VAT as (i) he failed to submit any VAT returns and pay any VAT due; (ii) he had no principal place of business other than a residential address; (iii) he did not reply to letters or provide any kind of response and was, in effect, a missing trader, and (iv) he issued invoices without declaring them and associated with other defaulting traders. His evidence was that those factors were indicators of someone obtaining a VAT number in order to abuse the VAT system, resulting in a loss to the public revenue. We accept his evidence.

Officer O'Neill

69. Officer O'Neill's written evidence is in her witness statement dated 5 January 2016. She is the allocated officer for Benjamin Nugent. She has been employed by HMRC and its predecessor since 1980. She had identified Mr Nugent as a missing trader. She had assessed Mr Nugent in the sum of approximately £1.77m (which was calculated on the basis of bank lodgments from identified customers). Following investigation, she had concluded that Mr Nugent had fraudulently failed to remit VAT as (i) he described his trade as linesman, but the evidence was that he was trading in cars and tyres; (ii) his principal place of business was residential, and did not have any evidence of car or tyre trading; (iii) despite repeated requests, he did not reply to any letters or make himself available for interview (although an interview did take place with his accountants, on 11 February 2013 and he did speak to HMRC on the phone on one occasion, to say that he was '*currently looking after his uncle's farm and had no idea when he would be back in Ireland'*) and was a missing trader; (iv) he issued invoices without declaring them and did not pay or otherwise attempt to pay sums of VAT due.

70. She was extensively cross-examined. She made sensible concessions in cross-examination. She accepted that none of the records which she had seen from Nugent indicated any trading with GBM, and that there was no reference in them to GBM.

71. But, insofar as the cross-examination took the form of an attempt to challenge her assessment of Benjamin Nugent as a fraudulent defaulting trader, this attempt failed. Her oral evidence was consistent with her written evidence, and it was not undermined by cross-examination. She demonstrated that she had detailed practical knowledge of the working of MTIC fraud, and detailed knowledge of the Margin Scheme and Qualifying Car Schemes. We accept the integrity of the exercise which she had conducted in relation to Benjamin Nugent and the conclusions which she reached. We consider that she had rationally and fairly, on the basis of the evidence before her, concluded that Mr Nugent was a fraudster.

72. She was asked questions about the MTIC assurance visit which she and Officer Wilkinson had conducted in relation to James Anthony Hughes trading as 'Hughes Car and Van Sales' on 14 January 2013 (with the note typed up on 17 January 2013). We were shown a copy of the handwritten, contemporaneous, note of that meeting and we are satisfied that it corresponds materially to the typewritten note. We reject suggestions that the typewritten note was not an accurate reflection of the meeting. It was typed up only three days after the meeting, when memories would have been fresh, especially with the benefit of a handwritten note as an aide-memoire. We accept, consistently with the notes, that Mr Hughes was asked about invoice 1206 (which relates to Deal 34), and that he told HMRC that he had 'cancelled it' since neither Hughes nor GMB got the vehicle. We accept Officer O'Neill's evidence that Mr Hughes told HMRC that Mr Brady 'wanted the invoice'. She said that it was actually said, and what she put in her report was actually said, and we believe her.

73. Mr Brady's evidence was that he had spoken to Mr Hughes 'and he' (that is Mr Hughes) 'has said categorically that he never said this or implied it'. We find that Mr

Hughes did tell HMRC what it says he did, and we reject Mr Brady's challenge in that regard. In doing so, we do not find that Mr Brady was dishonest in this regard. We cannot exclude the possibility that Mr Hughes may simply have been telling HMRC one thing and Mr Brady another thing. There was no evidence from Mr Hughes, and Officer O'Neill made the telling point that she was the one in the witness box on oath giving evidence, and not Mr Hughes.

Mr Fay

74. HMRC also sought to rely on evidence of one Michael Gerard Fay, contained in a witness statement (of which the copy we were shown was undated and unsigned) but who had given evidence in appeals of *Taylors Service Centres Ltd v HMRC.* We were shown a transcript of his oral evidence, where, amongst other matters, he discussed Paul Sava. His evidence was that Paul Sava was living in Drogheda, and not in Belfast, and that his business activity was being 'managed' (it was said, much as a snooker manager manages his stable of players) by one Alan Simpson, who also had David McMahon (trading as DM Cars) and Zoe Brown (trading as NS Cars) on his books. Mr Fay was a close business associate of Mr Simpson. Mr Fay agreed that Sava's Autos, like DM Cars and NS Cars. 'was ultimately run by Alan Simpson', and that Alan Simpson would tell Paul Sava where to go, what vehicles to collect and deliver, and would even have control of Paul Sava's bank account. He agreed that Mr Simpson 'definitely had a huge input in business like that in connection with Paul Sava'. His evidence was that Alan Simpson used other people's names so as to give the impression that it was them who were acting.

75. Mr Fay was not called to give evidence or to be cross-examined, or challenged by GBM, in this appeal. As such, his evidence is a species of hearsay, and we give it only such weight as is appropriate, and as part of the totality of the evidence. It is not determinative of any of the issues in this appeal.

The Appellants' evidence

76. These are our observations and findings about the Appellants' evidence in general.

77. We have already commented that there was no evidence from Mrs Brady, and we do not draw any inferences in that regard.

Mr Brady

78. Mr Brady's witness statement is dated 25 April 2017. It does engage with the thrust of HMRC's case. His over-arching case is that he has never knowingly been involved in VAT fraud, or '*any scam or any arrangements to avoid or evade VAT or any other taxes which are properly due'*.

79. In outline, his case as put forward in his witness statement is this:

(1) He is an extremely experienced motor dealer, having been in the trade for almost 30 years (in effect, the whole of his adult life);

(2) He not only sells cars from stock, but offers a 'sourcing service supplying specific makes, models and colours to order';

(3) He is aware of the VAT issues of cross-border buying and selling and the importance of knowing both customer and supplier;

(4) He has kept proper due diligence records of all his sales and always ensures that he gets adequate evidence of identity from customers;

(5) When he has been made aware of how MTIC fraud operates, he has changed his processes accordingly;

(6) His business model involves buying used vehicles, carrying out whatever checks are necessary and preparing the vehicles for sale, which on occasions involves valeting, servicing and replacing older worn out parts;

(7) His business employs 1 member of staff but also uses self-employed drivers to collect and deliver cars. He also uses a self-employed mechanic to ensure that the cars are fully serviced, valeted and painted if necessary;

(8) He has obtained confirmation from customers to whom he sold cars confirming that they indeed took delivery;

(9) He has satisfied himself as to the bona fides of each purchaser, whether private or trade;

(10) He was not advised of the VAT Wigan checking facility until 20 June 2012;

(11) He was not advised to carry out any checks on suppliers until 20 June 2012;

(12) With regard to the parallel trading allegations, the evidence points to him being 'an innocent victim or even dupe in the middle which is the actual case'.

(13) He 'categorically states' that he purchased each car mentioned and sold it on. The cars were actually delivered to his yard, or directly to the customer, 'which is common practice';

(14) It now appears to him that Paul Sava and NS Cars were one and the same business, and that Paul Sava and NS Cars / Zoe Brown were involved in 'a scam';

(15) He had met Paul Sava and carried out appropriate due diligence. He did not know what further checks he could have been expected to have carried out in relation to Paul Sava. There was nothing unusual in Paul Sava operating from a residential address, and HMRC gave Paul Sava a VAT number;

(16) He sought proof that cars had left the UK. When cars were delivered to ROI, Mr Brady would always follow up and get proof of the new ROI registration number;

(17) He 'categorically states' that a lorry arranged by David McMahon collected cars from his premises and he was issued with invoices from David Corr Haulage;

(18) Some of the evidence of parallel chains from DVLA can be shown to be inaccurate;

(19) He had dealt with Alan Simpson, having carried out appropriate due diligence and his checks did not reveal any untoward issues. In any case, he had not known that he had to carry out due diligence on his suppliers;

(20) He accepts that on occasion he may have got the colour or model wrong on an invoice, 'but this was purely a clerical error';

(21) He cannot be denied input tax on genuine transactions 'just because some unscrupulous individuals have not paid over the VAT they were due to pay to the tax authorities';

(22) He could not possibly have known that the deals were connected to fraudulent tax losses.

80. Mr Brady gave evidence over two days. He gave evidence in chief, was cross-examined in detail, and re-examined. As such, we had an excellent opportunity to assess him as a witness.

81. Whilst making all due allowances for Mr Brady's unfamiliarity with the courtroom environment, the forensic process, the rigours of cross-examination, the strain imposed by such lengthy cross-examination, as well as accepting that there will in any case of this kind inevitably be lapses of concentration or memory, we found Mr Brady to be an unsatisfactory witness.

82. Ultimately, we do not consider his evidence to be reliable:

(1) His account of his association with and knowledge of Mr Sava was implausible, not least given that (on GBM's case) its trade had very rapidly gone from nothing to over £700,000 as a consequence of the transactions with Mr Sava;

(2) His evidence as to his general business model, especially when it came to sourcing vehicles, and how it operated, was inexplicably vague, and was characterised by an absence of the sort of documents which we would have expected such a business ordinarily to have generated;

(3) His evidence on points of detail was often vague and/or demonstrably wrong, in circumstances where he could reasonably have been expected to have given detail, and/or where the documents he was being asked about were documents which had been in his possession, or which GBM itself had produced;

(4) There was a striking absence of independent information which could have corroborated his evidence, including but not limited to (i) correspondence (including emails or texts) to and from customers seeking to source vehicles; (ii) advertising materials; (iii) documents dealing with the checking, valeting, servicing, repairing, or transport of vehicles;

(5) The totality of his evidence, tested against the documents, left us, in the round, with an impression that Mr Brady was not telling us the complete truth about any of these deals, or his association with his counter-parties, and how they had come to pass.

83. Many of these gaps were explored, fairly, in cross-examination. Mr Brady's answers were not satisfactory. For example, and in relation to the absence of any

evidence of advertising, Mr Brady's answer was '*you didn't ask me for it. How can I get an advert from 3 years previously?*' We reject this evidence. Firstly, his own evidence was that, from as early as 2005 when he started to export jeeps and pick-ups to the south, he had originally advertised with Auto Trader, 'and then online via his own website'. No such evidence from his own website was put before us. Secondly, we reject Mr Brady's attempt to shelter behind ignorance. We considered this to be artificial, and staged for our benefit. In our view, Mr Brady has been was well aware of what HMRC was concerned with since 2012 (at the latest). Moreover, he has had the benefit of professional advice. It was down to him to keep or locate evidence supportive of his position.

84. In many regards, we treat his oral evidence with caution except where it is clearly supported and corroborated by authentic, reliable, contemporary, documentation.

Mr O'Hare

85. GBM also placed before us a witness Statement of Peter O'Hare, dated 19 April 2016. Mr O'Hare is a senior manager with Ernst and Young in Belfast. He is a VAT specialist. HMRC objected to this evidence being admitted. Mr O'Hare was not called. We agree with HMRC that his evidence was either not relevant (i.e., in the sense that it was his opinion on matters which were not relevant, such as criticisms of HMRC's conduct of the investigation); he was not put forward as an expert witness (and no permission had been sought for expert evidence); and in any event VAT is not an area in which the Tribunal – as an expert Tribunal – requires assistance.

Discussion : The 'No Supply' Issue

86. In relation to non-supply, HMRC (as Mr Puzey confirmed in his opening submissions) assumed the burden of proof. HMRC must therefore be able to satisfy the Tribunal that a supply did not take place. Two other things are necessarily bound up in this: (i) Mr Brady would have to be lying and (ii) all GBM's documents would amount to nothing more than a 'cottage industry', 'papering' artificial transactions solely for the purpose of VAT fraud. In this sense, there was inevitably some overlap between the evidence concerning the No Supply Denial and the evidence concerning the Kittel Denial.

87. In our view, HMRC has failed to discharge the burden which it had assumed.

88. HMRC assumed the burden of proving a negative which (even where, as here, the standard of proof is the balance of probabilities) can be an ambitious task presenting distinct evidential challenges.

89. These are the following principal reasons for our rejection of HMRC's case on non-supply:

(1) HMRC's evidence was entirely documentary and to that extent was all circumstantial;

(2) There was no single piece of evidence from any 'live' witness seeking to establish that any particular vehicle alleged by GBM actually to have been in its possession on a particular day, but alleged by HMRC to have been somewhere else, was in reality actually elsewhere and in someone else's possession;

(3) Many of the documents in the parallel chains advanced by HMRC involve Taylors Service Centres Ltd. There was no evidence from Taylor's Service Centres as to the integrity of its record keeping, or the accuracy of the documents relied upon;

(4) There was no evidence from any officer or employee of any of the other 'main dealerships' allegedly involved in the parallel chains to establish the integrity of their record keeping, or the accuracy of their documents relied upon;

(5) HMRC relies very heavily (albeit not entirely) on DVLA documents. But, in the absence of evidence as to the integrity of the system from DVLA, and the accuracy of its record keeping, there is certainly scope for legitimate dispute (as Officer McMahon accepted) that the DVLA documents (i) are not invariably reliable in terms of dates and/or (ii) are only as good and accurate as the accuracy of the people giving the information to DVLA;

(6) Moreover, and under close scrutiny, there are unexplained gaps or lacunae in the DVLA documents relied upon in the parallel chains which span the periods when the vehicles were said by GBM to have been in its possession or control and which therefore throw the reliability of the parallel chain into doubt.

90. In our view, these features suffice to permit us to dismiss HMRC's No Supply denial, even on the basis of its own evidence.

91. However, and lest our conclusion on this point should fall for re-examination, the position becomes even clearer when one takes account of some of the Appellant's evidence. Two features stand out, which do on the face of it tend towards supplies (at least in respect of some of the vehicles alleged not to have been supplied) really being made.

92. The first are the public transport tickets which are sometimes found stapled to GBM's sales invoices. We take account of the fact that the bus tickets are circumstantial and not personalised. That is to say, they do not conclusively prove that any identified individual was on a particular bus.

93. But, having said that, they are consistent with, and corroborative of, Mr Brady's evidence that vehicles would sometimes be driven to the ROI, on his behalf, for delivery to the customer, by a septuagenarian called Harry Watson. Whilst we did not read or hear any evidence from Harry Watson, nor were given any explanation for his absence, Mr Brady's evidence was that Harry would drive the vehicle down, then get public transport back to the north. We have looked at the tickets critically, and our own examination is that the tickets are consistent with this explanation, when measured against the other documents in the relevant deal packs.

94. The second is Mr Brady's evidence that, if someone came to pick up a vehicle from the yard (for example, being driven there in a car with someone else) he would

note down the number of the car in which the buyer arrived. Several of GBM's sales invoices do show such numbers. This is consistent with and corroborative of Mr Brady's evidence.

95. Both these features, in our view, undermine HMRC's case as to non-supply and support Mr Brady's case as to supply. It does not make much sense why, if Mr Brady were really involved in non-supply in relation to these deals, he would be going out of his way to make things more sophisticated than they needed to be (thereby opening up further lines of inquiry) by adding extraneous details such as vehicle number plates, or extraneous documents such as bus and train tickets. Given that these are documents which are corroborative of his case, they give force (as set out in our general observations above) to the credibility of Mr Brady's evidence in those particular regards.

96. Although these features are not present in relation to each and every deal where HMRC alleges non-supply, it seems to us that HMRC's case in this regard (and bearing in mind the broad front on which it was pursued) is one which stands or falls in its entirety.

97. Our rejection of HMRC's case in this regard means that we must go on to consider the second limb of its case, which (unlike the No-Supply denial) affects all the vehicles in all the Deals.

Kittel Denial – Issue 1 – Was there a tax loss?

98. This issue was not ultimately in dispute.

99. HMRC bears the burden on this issue. The standard of proof is the balance of probabilities.

100. We are satisfied that it has discharged that burden to that standard. Accordingly, the answer to Issue 1 is 'yes'. There was a tax loss.

Mr Paul Sava

101. Deals 1-30 all involve Paul Sava as the immediate seller. Paul Sava is a missing trader in Northern Ireland. He was registered for VAT with effect from 1 February 2012. No VAT returns were ever submitted. He did not respond to HMRC's repeated attempts to contact him. He was deregistered on 15 June 2012. In November 2012, an assessment was raised in the sum of about £1.407m. The assessment was neither appealed nor paid.

Altmore Motors

102. Deals 31-49 all involve Benjamin Nugent trading as 'Altmore Motors' at one remove from GBM. Benjamin Nugent is a missing trader in Northern Ireland. He applied to be registered for VAT on 17 April 2012 backdated to 13 March 2009. On 2 November 2012, HMRC received a form for the notification of errors on a VAT return, recording a significant increase in outputs and inputs for period 08/12. HMRC found

invoices issued in the name of Altmore Motors but using the VAT number assigned to Mr Nugent. Although a meeting took place with Mr Nugent's accountants on 11 February 2013, and some business records were provided, subsequent correspondence sent by HMRC to Mr Nugent went unanswered, and his accountant stopped acting for him. On 16 April 2013, Mr Nugent was deregistered. In June 2013, an assessment was raised in the sum of about £1.75m. The assessment was neither appealed nor paid.

Kittel Denial - Issue 2 - Did this loss result from a fraudulent evasion?

103. This issue was not ultimately in dispute.

104. HMRC bears the burden on this issue. The standard of proof is the balance of probabilities.

105. Within the context of this appeal, we agree with HMRC that there is sufficient evidence that Mr Sava's failure to properly account for VAT was a deliberately fraudulent act.

106. Within the context of this appeal, we agree with that there is sufficient evidence that Mr Nugent acquired a VRN solely to perpetrate VAT fraud.

107. We are satisfied that HMRC has discharged its burden. Accordingly, the answer to Issue 2 is 'yes'.

Kittel Denial - Issue 3 - Were the transactions which are the subject of this appeal connected with that evasion?

108. This issue was not ultimately in dispute.

109. HMRC bears the burden on this issue. The standard of proof is the balance of probabilities. We are satisfied that it has discharged that burden to that standard.

110. All the Deals lead back to Paul Sava or Benjamin Nugent, who are both defaulting traders. We accept HMRC's evidence that extended verification has revealed that all 49 Deals at issue in this appeal are connected to fraudulent tax loss.

Kittel Denial - Issue 4 – knowledge and means of knowledge

111. Having found that the deals were connected to this fraudulent evasion it is necessary to determine whether GBM, through Mr Brady, knew or should have known that this was the case.

112. We remind ourselves that this has to be proved by HMRC. The standard of proof on HMRC is the civil standard. In ordinary language, in order to succeed on this issue, HMRC must prove that it is likelier than not that GBM (through Mr Brady) either knew or ought to have known that the deals were connected to fraud.

113. In doing so, it is clear from *Mobile Export 365 v HMRC* that we are entitled to rely on inferences drawn from the primary facts. It is also clear, from the approach

taken by Christopher Clarke J in *Red12 v HMRC*, and approved by the Court of Appeal in *Mobilx*, that we should not unduly focus on whether a trader has acted with 'due diligence' but should consider the totality of the evidence.

114. As well as the matters set out above, HMRC also relies on the following features.

(1) By 20 June 2012 at the latest, GBM had been made aware of MTIC fraud by HMRC. On that date, GBM was visited and provided with VAT Notice 726. MTIC fraud was discussed at length, and GBM's attention was drawn to the facility available at HMRC Wigan whereby a trader's VAT number could be checked. GBM was also given a copy of the leaflet 'How to spot missing trader fraud'.

(2) On 9 August 2012, HMRC sent a letter stating that GBM's 06/12 return had been placed into extended verification. MTIC fraud was referred to in that letter;

(3) On 25 September 2012, GBM was advised that Paul Sava had been de-registered for VAT and that other customers of Paul Sava – RMC Autos and NS Cars – had also been deregistered.

115. HMRC also argues that there is no ancillary documentation that one could expect to be generated by a motor dealer in relation to the denied deal – for example, no evidence of the receipt of these vehicles from the supplier, no evidence of checks or repairs, no photographs advertising these cars whilst they awaited a buyer at GBM's premises, and no advertisements.

116. HMRC also points to the following features:

(1) GBM did not carry out any checks or due diligence on Paul Sava, even though GBM's deals with Mr Sava accounted for about 75% of GBM's turnover at the time. For instance, GBM did not visit Mr Sava's business premises, and, had Mr Brady done so, he would have discovered that Mr Sava's principal place of business was a residential flat and not a commercial address at all;

(2) There is no evidence of any negotiation on price;

(3) Mr Sava's sales invoices are unsatisfactory for a number of reasons. They do not contain formal terms and conditions dealing (for example) with warranties, or retention of title, which one would reasonably expect to see in transactions of this nature. The invoices do not contain chassis numbers. Many are undated and unsigned;

(4) Many of Mr Sava's sales invoices were not completed by Mr Sava, but were completed by Mr Brady, or someone else at GBM;

(5) GBM did not issue purchase orders to Mr Sava;

(6) GBM did not carry out any checks or due diligence on Hughes Car and Van;

(7) There were no formal contracts in place with Hughes;

(8) There is no evidence of any negotiation on price;

(9) GBM did not issue purchase orders to Hughes;

(10) Hughes' sales invoices are unsatisfactory, and did not include the mileage;

(11) There is an absence of commercial reality, insofar as if the gross price is taken, then GBM was making a loss on each sale, relying on the repayment of VAT to make a profit (see Paragraph 65 of HMRC's Statement of Case);

(12) Transactions were undertaken on a 'back-to-back' basis: either on the same day, or within a very short period of time thereafter;

(13) There is generally a lack of evidence for dispatch of vehicles;

(14) In some cases, there is a lack of evidence as to delivery or collection.

117. In terms of oral evidence, GBM rested entirely on Mr Brady's evidence. GBM had not called evidence from any other witnesses. It had not called evidence from a single fellow trader or customer, anyone it had employed or whose services GBM said it had used to help (for example) valet, service, repair, drive, or deliver vehicles.

118. As such, GBM's case rested largely on our assessment of Mr Brady's credibility, tested in cross-examination and tested against the documents.

119. We have already set out our general assessment of Mr Brady's evidence above.

120. In our view, the totality of the evidence points clearly and unambiguously to Mr Brady being a culpable participant in VAT fraud.

121. This is for the following reasons.

Knowledge of VAT fraud

122. Mr Brady's evidence was that, prior to the meeting with HMRC in June 2012, he was not aware that there were fraudsters in the car trade, and that he had never even thought that 'this sort of scandal' was going on. We reject this evidence. It is entirely implausible. Mr Brady was an experienced businessman, and had been trading in second hand cars for the whole of his adult life – about thirty years. Moreover, he had been registered for VAT for a significant portion of that time, and confirmed to us that he was aware of the law regarding VAT and cross-border trading. Mr Brady was not living and working in isolation from the outside world. On his own case, Mr Brady was actively involved in the second-hand car trade, involving visiting auctions and speaking to other dealers.

123. We consider Mr Brady's evidence probably nearer to the truth when he said that had only come to appreciate the complexity and mechanics of MTIC fraud when he saw it 'in black and white'. But that is not the same thing as having no knowledge of MTIC fraud at all. The impression which we obtained was that Mr Brady, whilst having knowledge sufficient to sustain a Kittel denial, had perhaps not realised that the fraud was so big in scale, and so far-reaching as it in fact was; but this does not detract from his culpability.

Sourcing of vehicles

124. In relation to the sourcing of cars, Mr Brady's evidence was that he would try to source something which 'ticked as many boxes' as possible in terms of colour, interior colour, style, allows, navigation.

125. In relation to the deals which are the subject matter of this appeal, we reject that evidence.

126. If this was what was really happening, we would have expected to see evidence of this, and there was none. We do not accept that Mr Brady was keeping it all in his head. It is self-evidently implausible.

127. We have not seen any genuine evidence, produced at the time, supportive of this business model. We have not seen, for example, inquiries from any of these prospective customers, or discussions with them as to what was available. There was no evidence from a single buyer. There was no evidence of genuine 'pre-ordering' of cars of particular specifications.

128. Mr Brady's evidence was that when customers are looking for a particular vehicle, then he would (amongst other things) make a list and put this on Autotrader. He said that he would do this for every deal. There was no evidence put before us as to any such lists. We do not accept that things are no longer available. There was no evidence that Mr Brady had even tried to retrieve past postings etc from Autotrader.

129. As an example, Mr Brady was cross-examined about this in relation to Deal 1 - the red Range Rover Evoque which was ostensibly bought from Paul Sava on 7 April 2012. Mr Brady said that the customer for this vehicle had been in the yard a month before looking for an S series, but had then said he wanted an Evoque. When challenged as to the absence of any written record, Mr Brady said that it was all in his head and asked '*Am I supposed to itemise everything?*'. We found this answer frankly unconvincing, given that an important part of Mr Brady's own case was that his business was sourcing vehicles which 'tick as many boxes' as possible for what each particular customer wants. He then seemed to suggest that there had been some information as to the customer's requirements (beyond '*find me a nice Evoque'*) but that he had not kept that information.

130. Mr Brady's memory was demonstrably unreliable. Mr Puzey was able to show, in well-targeted cross-examination, that the photograph of the red Range Rover Evoque, identified by Mr Brady as the vehicle in Deal 1 ('that physical car'), was not that vehicle, since the photographs showed (and which Mr Brady had not seemed to realise) a *3-door* vehicle whereas the parallel deal paperwork, including the V5, referred to a *5-door* vehicle.

131. When this was pointed out to Mr Brady, he then said that maybe he had made a mistake, for which he apologised. But his answer – in the context that it was being given in the course of cross-examination on day 4 of a long-standing appeal – was a surprising one – he would '*have to investigate this car, and have to look into it'*.

132. We tend to consider that Mr Brady was mistaken in this regard as opposed to deliberately lying. We give Mr Brady the benefit of the doubt.

133. However, the evidence about the Red Evoque does in our view demonstrate – in a clear and telling way – that Mr Brady's evidence in this regard was hopelessly unreliable and reinforces our view that it should not be relied upon unless there is independent, documentary, corroborative evidence.

134. There are no records of GBM inspecting any vehicles when they arrived at the yard, or making any report on condition. This would have been an important thing to have done so that Mr Brady could assure himself (i) that the vehicle as delivered was as described and (ii) the vehicle was going to meet the customer's specifications. This would be especially important if the vehicle was being delivered in the ROI so that, when it arrived there, the customer could not unexpectedly say that something was wrong with it.

135. There is no evidence as to valeting, servicing, or repair of any of these vehicles. The same argument applies. There is no evidence of GBM routinely offering an insurance policy on vehicles which were out of manufacturers' warranty, which Mr Brady said was 'normally 6 months' but with an option to purchase one for longer.

136. The overall impression which these features leave is that these vehicles were not in fact being genuinely or specifically sourced so as to 'tick boxes', but rather were coming in and going out with Mr Brady being largely indifferent to their particular characteristics.

The documents

137. Cases of this kind often revolve around the completeness and integrity of trader's documents. Good record keeping can throw a revealing light on other aspects of the trader's business.

138. Mr Brady's basic position in his evidence, initially, was this: "*In a small firm, you take a call and address it. There isn't a paper chain with it. This is a small firm, with everyone hands on. People turn up. You hand them the keys. There is no big chain of manoeuvers'*. Mr Brady went on to say that "*I don't have the time to structure and click everything coming in and out. I just can't work that way."*

139. In this appeal, a number of documents were conspicuous by their absence.

140. For example, when Mr Brady was asked about the arrangements made to collect vehicles from the yard, he said that he kept a 'diary – with cars in and out' although we were not shown this diary.

141. Mr Brady said that he did not prepare his own invoices, and that he had not (for example) put his VAT number on his stamp as he 'was not an educated person', and that it was 'different knowing motor cars and grammar'. We reject this evidence, which we considered an attempt to gloss over the pervasive and manifest failings in GBM's paperwork.

142. These do not only affect Deal 12 (which was the particular deal which was the subject matter of cross-examination during this passage of Mr Brady's evidence). None of this was a matter of grammar. We agree with HMRC that the matters being explored – the accuracy of a business' paperwork – are 'absolutely basic'. Properly compliant paperwork is expected of all traders equally, irrespective of educational attainment. The multiple errors and inconsistencies identified in the deal paperwork could not reasonably or accurately be described as 'clerical errors', which suggests inadvertent slips of the pen and the like. They were mistakes which were thrown into particularly sharp relief when set against the documents in parallel chains.

143. Mr Brady's evidence, as it developed in cross-examination, sought to point more and more at his one staff member at the time - 'Stephen'. Mr Brady said that Stephen had worked for him for about one year, but hadn't worked for him for about 5 years (which we took to be from late 2012). No details of Stephen's employment history were provided. Mr Brady said that he or Stephen would speak to a customer. Stephen was in the office, 'meeting and greeting', and 'doing the legwork' and 'niceties' with the customer. Mr Brady said he left these things to Stephen since Mr Brady was more blunt and to the point, really just focusing on (as he put it) 'What do you want, and can I have your money please.'

144. Later in his evidence, being asked specific questions about Deal 5, Mr Brady said that Stephen would have handled the documents relating to that transaction, *'in his administrative role'*.

145. As Mr Brady's evidence developed, especially in the course of cross-examination, he came increasingly to rely on things which he said Stephen had done. Mr Brady said '*We endeavour to be compliant, but staff do sometimes make mistakes*'. This is not a satisfactory answer. Mr Brady was the boss, with one employee. It is obvious that Mr Brady was the person who was intimately involved in these deals. We reject his attempt to pass the blame for incorrect paperwork onto anyone else.

146. In at least four deals (17, 18, 19 and 20) four Ford Fiestas (which Mr Brady said he remembered as Ford Focuses and not Fiestas) were apparently bought from Paul Sava, apparently sold to David McMahon, and apparently delivered by David Corr. Mr Brady said that these four vehicles had 'come in dribs and drabs' during July and August 2012, although he could not give the exact dates, or exact information, and had been on his forecourt until 30 August 2012. This was a further occasion when Mr Brady said that the 'David Corr documents' (ostensibly relating to the dispatch) *"would have arrived on Stephen's desk. I am not privy to that. I don't have that information"*. We find this evidence unsatisfactory.

147. For example, in relation to Deal 10 the parallel chain paperwork showed that the vehicle could not have arrived on 1 June 2012, which Mr Brady said was 'a clerical error', because that vehicle had been on a ferry from Holyhead to Dublin on 1 June 2012, arriving at 5.25pm, and therefore there was no way it could have been at GBM's premises on 1 June 2012 during business hours. Mr Brady's case was that the vehicle must have been with him on 2 June 2012 (a Saturday) instead. He supported this by saying that '*prior to this case, I would have been very casual about dates'* and put

forward another explanation, which was that he could have typed out the paperwork in advance, printed it out, put it into the file so as to achieve a quick turnaround with the paperwork when the customer came. In re-examination, he offered even more detail as to the people who had come to the yard to collect the vehicle and had then gone back to Co. Leitrim. This evidence was not satisfactory.

148. It was only at the very end of a lengthy cross-examination that he observed that he now realised the importance of 'dotting the i's and crossing the t's'. It struck us that this concession - made very late in the day, and against the backdrop of an appeal which had been ongoing for several years – was not plausible, but appeared to some degree tactical, and a recognition by Mr Brady, when forensically cross-examined, of quite how badly his evidence had gone.

149. Moreover, it is not inherently credible, since it does not sit readily alongside the mass of documentary evidence – even that coming from GBM - which makes little sense now, and cannot have made any more sense at the time it was produced. When we look at Mr Brady's business, and these deals, there simply remain far too many unanswered questions as to what was really happening and why, but we are confident that Mr Brady was not telling us the whole truth about it. We do not consider that Mr Brady was an entirely innocent dupe in this fraud. We consider that the best and likeliest explanation consistent with our factual findings is that he knew of the fraud and was an active participant in it.

150. Mr Brady went so far as to say that HMRC had taken all his documents, and 'hidden them' from him so that he could not make his case. We dismiss this suggestion, which was made late in the course of his cross-examination.

Money movements

151. During cross-examination, it came to be argued that GBM's bank statements do in fact show some of the payments which were otherwise marked as missing in CMM/74. Mr Brady's evidence was that he was not asked. It would have been entirely conventional in a detailed and lengthy investigation of this kind to have asked the Appellant to explain the entries on his bank statements.

152. But, and be that as it may, in his further written submissions, it was argued on behalf of the Appellant that HMRC '*had not taken cognisance of commercial reality where if payment has been made and a deal is subsequently cancelled, the payment is not repaid but is allocated to another deal. Further complications arise in that, as is good commercial practice, deposits are paid initially and the bank statements reflect the balancing payments'*.

153. We reject this submission. There are a number of difficulties with it. It was not the position advanced by the Appellant to HMRC during the inquiry, nor was it the position advanced by Mr Brady to us in his evidence. But principally, there is no evidence that it is 'good commercial practice' – whether as alleged or at all – for a person, having paid for something which is not delivered, to then let the seller (sic) keep the money in anticipation of another deal which may, or may not, materialise.

154. In reality, it seems to us that the contrary is true. We do not accept that a hard-headed and experienced businessman such as Mr Brady would genuinely have behaved in this way – in effect, lending money to his prospective suppliers, for an unknown period, without interest, and adversely affecting its own cash flow.

155. We reject the rider as to *'further complications'*. This simply serve to emphasise the anomalous position where moneys are changing hands without any corresponding exchange of goods. That is not a sale, nor even a deferred sale. It is either a gift of money, or a loan. The financial situation as outlined in those submissions remains, we regret to say, murky.

156. For example Deal 45 is supposed to be 'properly accounted for', but the payment is said to have been represented by four separate payments, in December 2012 and January 2013, with one of the payments in fact not being equivalent to the money, but a purported breakdown of a bank statement showing £26,000. This does not discharge the burden. Neither HMRC nor the Tribunal are the Appellant's book-keeper.

The photographs

157. On the afternoon of the third day of the appeal hearing, Mr Brady produced a print-off of 9 photographs, taken on a mobile phone, said to prove that the vehicles in D1, D14, D25, D30, and D33 had actually been in his possession. The photographs are each dated and time stamped.

158. We agree with HMRC that it would have been the easiest thing for Mr Brady to have said, at some point during HMRC's investigations, or during this appeal, 'But I have got photos of these vehicles'.

159. No entirely satisfactory explanation was given as to why these photographs (ostensibly dating from 7 April 2012 – 30 July 2012) had not been put into evidence previously. But, be that as it may, the photographs emerged and we were prepared to admit them into evidence. But these did not help Mr Brady's case. In many ways, they undermined it.

160. There was no explanation as to why there were photographs of only five vehicles, and not of vehicles in the other 44 deals. Whilst some of the photographs look as if they could have been taken for advertising purposes, but others clearly were not

161. The evidential weight which we can place on these photographs is very limited.

162. There is a photograph, ostensibly dated 4 May 2012, which shows YE11 WOY, which is the vehicle in Deal 14. This is one of the deals which HMRC says is a no supply. GBM's deal pack suggests that vehicle was in GBM's ownership from 15 April 2012 to 25 June 2012, but the parallel deal pack is silent as to what is supposed to have happened to this vehicle after 17 April 2012.

163. The vehicle said to be Deal 25 (a Toyota Hilux) has no number plate, so we cannot establish whether it is the same vehicle referred to in the Deal 25 packs. Indeed, and as Mr Brady himself said, the photograph, with the number plate obscured, 'can be used

to sell any black Hilux'. He said that it was 'being advertised as a new Hilux', but there is no evidence that any black Hilux (let alone the one supposed to have been involved in Deal 25) was being advertised by GBM anywhere on or about 30 May 2012. Mr Brady said that he did buy this vehicle, that he was paid for it, and that he did have it in stock. However, nothing was placed before us by GBM to prove that the vehicle which is the subject matter of Deal 25 was ever in its stock. Mr Brady said that he had not sold this vehicle until December 2012, and that it had been advertised during that period in Autotrader. No such evidence was placed before us.

164. The vehicle said to be Deal 30 (a Toyota Hilux) has no number plate, so we cannot establish whether it is the same vehicle referred to in the Deal 30 packs. However, 3/165O is a document showing that LS12 MOU was released from port of Dublin to Zoe Brown at 10.06am on 4 May 2012. The photograph is timed and dated 14.16 on 4 May 2012 (i.e., just over 4 hours later).

165. The vehicle said to be Deal 33 has a visible number plate (VE61 FJY). The photograph is dated 30 July 2012. GBM's Deal Pack shows that it bought the vehicle on 25 July 2012, although it is then on the Liverpool-Dublin ferry on 28 July 2012.

Alan Simpson

166. Mr Brady did a lot of business with Alan Simpson. According to GBM's VAT book, in 2011, Mr Brady bought a total of 45 vehicles from him (6 in 03/11; 14 in 06/11; 17 in 09/11; and 8 in 12/11) and during that same period sold him (or M3 Cars, which was an entity controlled by Alan Simpson) 6 cars (1 in 03/11; 1 in 06/11; 1 in 09/11; and 3 in 12/11). GBM had been selling to Alan Simpson or M3 Cars as early as 06/10.

167. Despite this extensive trading history – and one in which Mr Simpson must have been one of GBM's biggest clients - Mr Brady was very vague about what he could remember about Alan Simpson. He tried to explain this by saying that he was 'not good with names and addresses' although, on the face of it, that is obviously inconsistent with Mr Brady's own evidence as to sourcing cars for supplies, when he said he would keep the details in his head. We did not regard Mr Brady's evidence about his knowledge of Mr Simpson to be reliable, or truthful. We consider that Mr Brady must have known a lot more about Mr Simpson than Mr Brady was telling us.

168. But Mr Brady did accept that he had met Alan Simpson. He said that he had come to his yard as a customer as long ago as 2010 or 2011. His evidence was that he did not know him socially, and that it was purely business. He said that he would definitively not have dealt with him if he had suspected his involvement in fraud.

169. Alan Simpson was de-registered for VAT at the end of December 2011. Mr Brady was very vague as to when he became aware that Alan Simpson had been de-registered. When it was put to him that GBM had stopped dealing with Alan Simpson at the end of December 2011 on account of the de-registration, Mr Brady's response was *'if you*

say so'. That was not an answer to the question which was being asked. We considered the answer to be evasive.

170. We reject Mr Brady's evidence that he had stopped buying from Alan Simpson in December 2011 because of 'an issue with paperwork' leading them to have 'a bit of a fall out'. There was nothing in writing. It turned entirely on Mr Brady's oral evidence. We do not consider that Mr Brady was telling us the truth about this. It is inherently implausible that they would have suddenly severed all business links, in circumstances where Alan Simpson was selling a stream of cars (on average, 1 a week) to GBM. Moreover, Mr Brady was reticent about the nature of the *'issue with paperwork'* and did not explain it. A falling out was not consistent with the fact that GBM carried on selling to Alan Simpson. A falling out is also inconsistent (although perhaps to a lesser degree) with GBM continuing to trade with Tracy Simpson, who he knew was Alan Simpson's wife.

Paul Sava

171. In turn, that leads us to consider the nature of GBM's association with Paul Sava and the nature of the deals with him.

172. The circumstances of the deals with Paul Sava, viewed objectively, cannot but fail to excite suspicion.

173. The question in this appeal is whether Mr Brady, at the time of the deals, actually knew or should have known, that the Deals done with Paul Sava were connected to VAT fraud.

174. We find that HMRC has easily discharged its burden in this regard, and has succeeded in establishing that Mr Brady did actually know this to be the case.

175. Several overarching features point strongly towards and support this finding.

176. Mr Brady – on his own evidence - did not really know anything at all about Paul Sava. He said that he had seen Mr Sava 'at a distance' at car auctions, but first met him and 'got talking' to him in early 2012. But he had not heard of him previously, nor seen any advertising, and knew nothing of his background.

177. Mr Sava was appropriately characterised by Mr Puzey as 'the man who wasn't there'. Mr Brady had no picture of him, knew nothing about his premises, or his background. Our overall assessment is that the relationship between GBM and Mr Sava was not as described to us by Mr Brady, and that he was not telling the truth about it.

178. A responsible trader in the position of GBM would have looked into and satisfied itself as to the background and antecedents of Mr Sava as a trading counterparty.

179. Any reasonable, honest, trader would have found it extremely strange that Paul Sava - a person without any apparent track record in the trade - should suddenly have emerged as a person who could source and supply GBM, on an almost daily basis, without any apparent difficulty, with a continuous stream of valuable, prestige, high-

specification vehicles. The context is important – these were not deals in generic goods, such as mobile phone SIM cards, but were deals with individual, distinct, vehicles, all apparently being sourced by GBM to 'tick the boxes' for the needs of particular customers.

180. It is also strange that Mr Sava's effective date of registration for VAT was 1 February 2012, which was very shortly after Mr Simpson's effective date of re-registration: 27 January 2012. GBM had lost one good seller and supplier of cars, but almost immediately picked up another.

181. The sheer volume of the business which was done is, in the circumstances, striking. GBM did 22 deals with Paul Sava in the first month. An extremely substantial proportion of GBM's business in the first quarter (33/44 deals) was done with Paul Sava. So, and from nowhere, GBM and Sava were suddenly doing hundreds of thousands of pounds worth of business. GBM was dealing with Sava on the basis of almost a car a day. As suggested by Mr Puzey, it was indeed 'quite a whirlwind'.

182. It all appears too good to be true, and it was. Alan Simpson stepped off the scene as a seller, being de-registered on 27 January 2012 and his place was taken almost straight away by Paul Sava. Of course, it is now known – from the evidence of Mr Fay given in Taylor's Service Centres – that Paul Sava's business was controlled and managed by Alan Simpson. 'the snooker manager', and that Sava himself was not really the person behind his apparent sales.

183. Not only had GBM come to find a new seller, but Paul Sava was a seller 'made in heaven' in that he was able, by some unknown means, to satisfactorily meet all GBM's apparent requirements. There was a sudden, and almost perfect, synergy between (i) the vehicles GBM wanted to buy and the vehicles Sava had to sell, and (ii) the prices which GBM could achieve in an onward sale and the prices which Sava wanted.

184. This is doubly odd in the absence of any evidence of negotiation between GBM and Sava as to the vehicles to be sourced, their attributes, or the price. Mr Brady's evidence was that he was '*not privy'* as to where Paul Sava was getting his vehicles from, and that he had not asked. We did not consider that evidence to be truthful.

185. In cross-examination, Mr Brady was asked how he knew Sava was 'a legitimate trader'. This is a simple question and it is one which is key to this appeal. It elicited a pronounced exhale and a furrowed brow from Mr Brady. Mr Brady's eventual answer was that he knew Mr Sava was a legitimate trader because he had a VAT number.

186. There are two difficulties with this. The first is that Mr Brady made no mention of any of the other features which in general terms permit the reasoned assessment of whether someone is a legitimate trader – that is to say, someone with whom one can safely do business. Mr Brady made no mention (for example) of finding out whether the trader had business premises where stock could be held (and he had not done this for Mr Sava) nor trade references from suppliers or customers, or a bank reference. Mr Brady had not done any of those things either.

187. The second difficulty is that the possession of a VAT number is not a 'be-all and end-all' in establishing the legitimacy of a trader. By its very nature, VAT fraud is perpetrated by people with VAT numbers. One would want to go beyond the simple possession of a VAT number to see and satisfy oneself whether that trader complied with VAT law and their obligations.

188. Here, a striking feature of the documents is that Mr Sava did not put a VAT number on his invoices. Mr Brady knew this, from Deal 1, but was nonetheless entirely undeterred from continuing to do business with this person who, on his own evidence, he hardly knew.

189. Mr Brady was not an innocent or inexperienced newcomer to the motor trader. On his own case, he was an experienced motor trader, and knew about VAT and cross-border trading. Mr Brady has not put forward any sensible or credible explanation why he was prepared (in the first place) to deal with, and then to continue to deal with, Mr Sava in the absence of Sava producing VAT-compliant invoices. We reject Mr Brady's evidence that he raised this with Mr Sava, and was reassured that Sava would 'correct it'. Sava did not correct it. The situation carried on uncorrected.

190. This also undermines Mr Brady's evidence that he was a compliant trader for the purposes of VAT. When it came to his dealings with Sava he was not, because he was accepting VAT invoices without a VAT number. He was extremely reluctant to accept this in cross-examination, although he eventually, and grudgingly, did.

191. Mr Brady did not supply purchase orders to Mr Sava. These would have involved placing materials with Mr Brady's VAT number on in Mr Sava's hands. There was no satisfactory explanation for this failure, which, in commercial terms, seems peculiar to us.

192. Put in a nutshell – none of it hangs together.

193. A lesser point, which nonetheless goes into the overall balance, is that Mr Sava's sales invoices were obviously, and on the face of them, unsatisfactory for a number of other reasons. They were almost childishly amateur for a business (even a sole-trader business) said to have been turning over hundreds of thousands of pounds. Moreover, irrespective of appearance, they do not contain or attach any terms and conditions dealing (for example) with warranties, or retention of title, which one would reasonably expect to see in transactions of this nature. This is a surprising omission given the nature and value of the vehicles being dealt with – prestige vehicles being sold for tens of thousands of pounds. The invoices do not contain chassis numbers. Many are undated and unsigned. Whilst these features were relied upon principally by HMRC in support of its No Supply Denial, we nonetheless consider them relevant to the Kittel Denial.

194. Mr Brady denied that many of the documents – especially those relating to Paul Sava - were in his handwriting, but thought that they could have been completed by Mr Sava's (unnamed) 'helper' or a 'staff member'. The explanation as to how Mr Sava came not to sign or write the invoices was neither particularly satisfactory nor credible. Mr Brady's evidence was that Mr Sava's handwriting 'was not that tidy at the best of

times', and also that at some point Mr Sava had his right hand bandaged, although his fingers were exposed. Under pressure in cross-examination, Mr Brady then sought to say that lots of the paperwork 'was done in Stephen's office with Stephen'. Mr Brady also volunteered, in the middle of his cross-examination, that he was 'not privy to all of them'. It was not clear to us what he meant by this expression (which he repeated). It seemed to us, at the least, to mean that Mr Brady was seeking to suggest that he did not in fact have personal knowledge at all of many of the documents which were ostensibly coming from, or through, his business. This want of knowledge went further: for example, in relation to Deal 26, Mr Brady was asked who had picked the car up, but said that he was 'not privy to it…Stephen was dealing with that'.

195. Mr Brady said that he did not make any inquiries about Paul Sava even following the HMRC visit. His answer to why he had not done this was 'the reason being HMRC had advised that I should be checking any new purchasers', and Paul Sava was not a 'new purchaser'.

196. We reject this evidence. Even on the face of it, it is hard to understand. The thrust of HMRC's concerns was clear – VAT fraud. HMRC was not giving Paul Sava a 'clean bill of health'. Mr Brady was being warned to tighten up his procedures in relation to his commercial counterparties. That was not a representation by HMRC that his existing practices were adequate. It would have been obvious to any sensible businessman that checks needed to be done on existing parties such as Paul Sava.

197. Paul Sava was de-registered on 15 June 2012. At the same time, GBM stopped dealing with him.

198. We reject Mr Brady's evidence that this was 'purely coincidental' and had nothing to do with Mr Sava's de-registration, but rather was 'down to documentation', and what Mr Brady said was Mr Sava's late provision of V5s / 'log books', which was 'causing complications with the end user'. Mr Brady said that this had led to heated conversations over the phone', which had led 'to things being said over the phone which are hard to take back', although he did not tell us what those things were.

199. Mr Brady said that he had received all the V5s 'eventually', but had not kept any copies of them. His answer was that he 'did not realise' that he needed to. We reject this evidence. As Mr Brady acknowledged, the V5 was 'a very important document' (although, even on that footing, he rejected the suggestion made to him that he might have wanted to keep a record of it). We do not understand, and no reason was advanced, why Mr Brady did not consider keeping a copy of the V5 – if not necessary, then as desirable. Any reputable trader would want to make sure that it had taken copies of the V5s. This would be simple. It need not even involve use of a scanner or a photocopier, but could be as simple as taking a photograph on a mobile phone. At the very least, this would give the trader something afterwards if any queries were raised by anyone as to the vehicle.

200. On the following day, Mr Brady adjusted this evidence to say that Mr Sava was being late with *keys* as well as with papers.

201. Here, as in many aspects of this case, Mr Brady's case stands or falls on the basis of his oral evidence alone. We have already set out our overall view that his evidence should not be treated as intrinsically reliable unless corroborated. In relation to the parting of the ways with Paul Sava, there is no written evidence. There is no evidence from any of the end users about alleged 'complications' with documents or keys.

202. Moreover, this evidence is strikingly similar to the evidence given by Mr Brady about his parting of the ways with Mr Simpson. It is also similarly vague. We do not accept this evidence as truthful.

203. We are simply not persuaded of the absence of connection between Sava's de-registration and the cessation of trading with him. We find that there was a connection.

Zoe Brown and David McMahon

204. Mr Brady's evidence about his customers in some of these deals – and especially Zoe Brown and David McMahon – was not satisfactory.

205. In relation to Zoe Brown, Mr Brady said that she had arrived in his yard one day making inquiries about the cars which he had in stock, and about possibly doing further business. He said that he had checked her identity, passport, a utility bill, and a VIES check. However, he did not do any checks to verify if she actually carried out business. His evidence was 'Why would I?' Mr Brady failed to ensure that she was a legitimate trader, in the sense which we have defined above, and he failed to implement, at any time, HMRC's Guidance as to identifying MTIC fraud.

206. Mr Brady said that he had never heard of David McMahon before Mr McMahon rung him up and proposed trading. He denied that he had ever met him before then, or that Mr McMahon had been recommended to him by anyone. Mr Brady said that Mr McMahon had provided a photo ID and a driving licence although Mr Brady did not check the address which he had been given on Google Streetview to assess whether it was a residential address or not.

207. Mr Brady said that he regarded David McMahon as a legitimate trader '*because he said he was'*. This answer is self-evidently unsatisfactory. Mr Brady went on to give some more detail – '*he talked a good game, like a businessman who needed stock'* - but Mr Brady had never seen him at any auctions. He said that all the cars sold to David McMahon existed and were always on GBM's premises, although it struck us that he very hesitantly qualified this with '*to the best of my knowledge'*.

208. GBM sold 16 vehicles to Mr McMahon. This was quite a volume of business falling into GBM's lap out of the blue.

209. The evidence about Mr McMahon did not make a lot of commercial sense. For example, in relation to the four vehicles in Deals 17-20, Mr Brady was not paid until December 2012. So, he was delivering the vehicles several months before being paid. This seems an extraordinary level of commercial trust to put in someone he had never met and did not know. Mr Brady's evidence was that he hoped Mr McMahon would pay for them. None of this makes sense in any ordinary business. It does not make any

sense that Mr Brady, if not paid by Mr McMahon, would not just have sold these vehicles to someone else. It is suggestive that the true relationship between Mr McMahon and Mr Brady was not as described, and was not a typical arms' length commercial relationship, with both parties looking to best preserve their own commercial interests, but was on some other footing.

Conclusion on the Sava Deals

210. Overall, and despite his denial of this to the Tribunal, we consider that Mr Brady (and, through him, GBM) did have actual knowledge that the Sava deals were connected to fraud, and that therefore the appeal against the denial of input tax in relation to Deals 1-30 fails.

The Hughes deals – Deals 31-49

211. The above findings are part of the background and have to be given proper regard when it comes to our assessment of the Hughes Deals. But we should be clear that the fact that we have found that Mr Brady did actually know that the Sava Deals were connected to fraud does not automatically mean that GBM must also be taken to have known that its subsequent transactions were connected to fraud. We have not made any such assumption. Knowledge, in relation to the Hughes Deals, remains something which has to be proved by HMRC.

212. For the reasons which we set out more fully below, we have concluded that HMRC has successfully proved, to the requisite standard, that GBM (at the very least) ought to have known that the Hughes Deals were connected to fraud. Therefore, the claim to input tax in relation to the Hughes Deals was correctly denied by HMRC.

213. We have no hesitation in rejecting Mr Brady's position that he was 'an innocent dupe'. He was and is an experienced businessman in a highly competitive business. He had survived in that business for 30 years. He struck us as correspondingly astute. We certainly did not assess him as an individual who would be easily duped or misled.

214. It was put to Mr Brady that it was more than 'simple bad luck' that, having been in the business for 30 years, he was suddenly exposed to a succession of fraudsters. His answer was that he did not suspect anything at the time, but that, after seeing the evidence and information, he would think of things differently now. We reject this evidence.

215. We stop short of finding actual knowledge because (i) in the light of our finding of constructive knowledge, we do not need to do so; and (ii) the evidence pointing to actual knowledge of fraud is, looked at in the round, not as strong as in relation to the Sava Deals. The effect of that is that it leaves us, when looking at the overall landscape of this appeal, with a significant element of doubt as to whether Mr Brady did actually know the deals were connected to fraud.

216. 'Hughes Car and Van Sales' is the trading style of Mr James Anthony Hughes. At the time of the deals, Mr Hughes was registered for VAT. He was deregistered with effect from 13 November 2013, but was not subject to extended verification of its VAT returns.

217. We reject Mr Brady's evidence that he had been dealing with Hughes for '2 to 3 years'. GBM's records only show purchases going back to September 2012. This may have come from some confusion on Mr Brady's part, who was dealing with a Maurice Hughes, and believed that Maurice and Tony Hughes were brothers and running two businesses, 'Hughes Cars' and 'Hughes Car and Van Sales', which were one and the same.

218. Despite this confusion, James Hughes was another seller – like Sava – who was not a long-standing business associate of GBM, but who had come onto the scene suddenly.

219. We reject Mr Brady's evidence that he had never realised that he had to do due diligence from his suppliers. We have given the reasons for this rejection above. But, by the time he came to start dealing with Hughes, he had – even on his own best case – been visited by HMRC (on 20 June 2012) and had been given advice as to VAT-compliant trading, and the need to carry out due diligence on his suppliers. He had been provided with VAT Notice 726.

220. Mr Brady had been given fair warning by HMRC as to his vulnerability as the end user in the supply chain, and was advised that repayments claimed could be withheld for any deals that lead back to tax losses. But, despite that visit and warning, GBM did not carry out any checks or due diligence on Hughes Car and Van. Repeated warnings were given through 2012 and 2013. Mr Brady did not act on them.

221. Unlike the Sava Deals, the Hughes Deals were not direct purchases from a defaulting trader. The deals led through Mr Hughes to Benjamin Nugent, albeit at one remove. Mr Brady's evidence was that he had not heard of Benjamin Nugent or Altmore. It was accepted by HMRC that there was no mention of GBM in any of the limited paperwork coming from Mr Nugent which HMRC had seen. As such, there was no obvious direct link demonstrated between GBM and Mr Nugent.

222. But it is not in dispute that the Hughes Deals were connected to fraud.

223. Half (9/18) of the Hughes Deals involved one of the same customers as the Sava Deals - Mr David McMahon (Deals 36, 37, 38, 39, 41, 42, 43, 44 and 49). This continuity of customer seems significant to us. We have already expressed our views as to the true nature of the relationship between Mr Brady and Mr McMahon.

224. It is striking that the same manner of trading was adopted with Hughes as with Sava. As with Sava, this was an instance of high-value prestige vehicles, allegedly being sourced in response to particular customer demands, with apparent ease.

225. There is a striking and suspicious synergy between Mr Hughes being able to supply a particular model sought by GBM, or (looked at the other way round) GBM being able to find a willing buyer for a vehicle supplied by Hughes.

226. Again, there is no evidence of dealings with customers as to the particular specifications of these vehicles, nor any evidence of advertisements which Mr Brady said had been put in 'Auto-Trade Mail'.

227. There were no formal contracts in place with Hughes, despite the fact that hundreds of thousands of pounds worth of business was being done from a standing start. Hughes was selling, according to his invoices, 'as seen', without any warranty 'given or implied'. Despite this, there is no evidence of GBM inspecting these vehicles, making any report on condition, or raising any concerns with Hughes.

228. The paperwork is again porous. GBM did not issue purchase invoices to Hughes.

229. Mr Brady's own evidence was frequently surprisingly vague, and did nothing effective to dispel the cloud of suspicion which surrounds the Hughes Deals.

230. The evidence of individual deals was often quite fragmentary and unsatisfactory. A particular instance of this related to Deal 34 (a Mercedes E200 Coupe) which was the deal discussed between Mr Hughes and HMRC and which gave rise to the spirited attack on Officer O'Neill's evidence, outlined above. As it eventually emerged, Mr Brady's position on this was that, he had paid for the car, sold it on, and received the money for it. However, his evidence was that the car was never physically in his possession, and he had sold the car to a company in England (DTS Contracts).

231. Another example of this was in relation to Deal 38 where GBM's documents indicated that the vehicles were delivered on 12 November, but were not sold until 14 November: i.e., they were delivered two days before it was sold. Mr Brady's response was that this was 'a clerical error'. He said that four vehicles had been driven down to Dundalk to be collected by Mr McMahon, 'because that was were it suited Mr McMahon to collect them'. Mr Brady said that he had been there, and had dropped them off, and come home.

232. This was a further instance where the only evidence being put forward to us to go on was Mr Brady's own 'say so' – his own documents did not support him, but were said to contain 'clerical error'; there was no evidence from any of the other drivers who were said to have driven the vehicles down that day; there was no evidence of handover. No explanation was given as to why other people - who could presumably have supported Mr Brady's case that those vehicles had actually been driven to Dundalk, and actually handed over to Mr McMahon – was put forward.

Conclusion on the Hughes Deals

233. For those reasons, we have concluded that HMRC has successfully proved, to the requisite standard, that GBM (at the very least) ought to have known that the Hughes Deals were connected to fraud. Therefore, the claim to input tax in relation to the Hughes Deals was correctly denied by HMRC.

Overall Conclusion

234. Accordingly, the whole appeal is dismissed.

Appeal Rights

235. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

DR CHRISTOPHER MCNALL
TRIBUNAL JUDGE

RELEASE DATE: 31 October 2018