



Neutral Citation: [2024] UKFTT 00827 (TC)

Case Number: TC09286

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

[By remote video hearing]

Appeal references: TC/2020/02074 TC/2020/03210  
TC/2020/03211 TC/2020/03213  
TC/2021/00122 TC/2021/00123  
TC/2021/00453 TC/2021/02813  
TC/2021/02795 TC/2021/02817

*VALUE ADDED TAX – appeal against VAT assessment dismissed - cancellation of VAT registration - denial of relief for input tax - denial of zero-rating on sales – appeals dismissed where the Appellant did not know, but should have known, of connection to fraudulent evasion of VAT - appeals succeeded where the Respondents had not satisfied the burden of showing that, on the balance of probabilities, the transactions were connected to the fraudulent evasion of VAT*

**Heard on:** 26-30 June 2023

**Judgment date:** 12 September 2024

**Before**

**TRIBUNAL JUDGE KIM SUKUL  
TRIBUNAL MEMBER NOEL BARRETT**

**Between**

**YBA LIMITED**

**Appellant**

**and**

**THE COMMISSIONERS FOR HIS MAJESTY’S REVENUE AND CUSTOMS**

**Respondents**

**Representation:**

For the Appellant: Yusef Asghar, Director

For the Respondents: James Puzey and Ini Udom of counsel, instructed by the General Counsel and Solicitor to HM Revenue and Customs

## DECISION

### INTRODUCTION

1. The Appellant ('YBA') appeals against:

(1) The decision dated 19 May 2020 by the Respondents ('HMRC') to deregister YBA for VAT purposes on the grounds that its VAT registration had been used principally or solely for the facilitation of VAT fraud and that YBA knew this or, alternatively, had the means of knowing that was the case.

(2) Various VAT assessments issued by HMRC which have been categorised as:

(a) 'General assessment' relating to an assessment in respect of periods 05/19 and 07/19 issued on 5 October 2020 in the sum of £160,794.35.

(b) 'Kittel assessment', a reference to the decision of the Court of Justice of the European Union (the 'CJEU') in the joined cases *Axel Kittel v Belgium; Belgium v Recolta Recycling SPRL* (C-439/04 and C-440/04) [2006] ECR I-6161 ('Kittel'), which relates to denying YBA the right to deduct VAT incurred (input tax) on cars purchased in the UK. The decision was issued on 5 October 2020 and relates to the sum of £714,555.98.

(c) 'Mecsek assessment', a reference to the CJEU decision in *Mecsek-Gabona Kft v Nemzeti Adó és Vámigazgatóság* (Case C-273/11) [2013] STC 171 ('Mecsek'), which relates to denying YBA the right to zero rate output tax for cars dispatched or exported to EU member states. The decision was issued on 5 October 2020 and relates to the sum of £98,738.45.

2. The hearing lasted 4 days. With the consent of the parties, the form of the hearing was video using the Microsoft Teams platform. Prior notice of the hearing had been published on the gov.uk website, with information about how representatives of the media or members of the public could apply to join the hearing remotely in order to observe the proceedings. As such, the hearing was held in public.

3. The documents to which we referred were contained within the 5,185-page hearing bundle, a bundle of authorities, supplementary bundle and HMRC's skeleton argument. We also have the benefit of transcripts of the hearing.

4. At the end of the hearing YBA requested the opportunity to make further submissions. The Tribunal granted that request and directed that YBA provide any further written representations they wish to make in respect of this appeal within 14 days, and that HMRC provide any further written representations they wish to make in response within 28 days. Having also granted YBA's application for further time to comply with this direction due to a family bereavement, the Tribunal informed the parties on 19 October 2023 that, as no further evidence or representations had been provided, the hearing panel would proceed to consider and make their decision on the basis of the evidence already submitted if no further submissions were received within the next 7 days. No further submissions were received.

5. Having carefully considered all submissions made by both parties and the evidence adduced during the hearing, our conclusions regarding the key arguments are set out below.

### VAT BACKGROUND

6. It is not in dispute that YBA's predecessor, Evolution Car Hire and Leasing Limited, was incorporated on 29 September 2013. YBA's only director is Mr Yusef Asghar, who is also the sole shareholder.

7. The company was registered for VAT with effect from 1 October 2013. The trading activity stated on the application for VAT registration was car hire and no change in the stated activity has been notified. The company estimated that £200,000 in taxable supplies would be made in the following 12 months. No answer was given to the questions relating to supplies and purchases to other EU member states. The application confirmed that the company did not expect to require repayments and the principal place of business ('PPOB') at the time of application was in Leeds.

8. On 15 January 2016, HMRC received an application to change the company name to YBA Limited. A request to change the PPOB to a Bradford address was received on 11 November 2016 and a request to change the PPOB to a Huddersfield address was received on 17 July 2019.

9. Initially VAT returns were submitted on a quarterly basis. On 27 April 2018, HMRC received a request to file monthly returns and VAT returns for periods 06/14 to 06/16 were submitted as NIL returns, with trading activity starting in the period 09/16.

#### **HMRC'S CASE**

10. HMRC's case is that YBA bought cars and then purported to dispatch them to other EU countries, particularly the Republic of Ireland. HMRC contend that any such vehicles never left the UK but nonetheless YBA zero-rated the sales and was reclaiming input tax it was not entitled to, or failing to account for output tax that it should have done. They also contend that Mr Asghar has a long history of involvement in businesses connected to missing trader VAT fraud and is well educated in the risks and signs of such fraud going back to 2006. Yet, in 2019, YBA entered into over 100 transactions where it either purchased from, or sold to, a defaulting trader and therefore knew or should have known that the relevant purchases or sales were connected with fraudulent evasion.

#### **YBA'S CASE**

11. YBA does not accept that any VAT is due and denies that it has knowledge or means of knowledge of a connection between its transactions and the fraudulent evasion of VAT by others. It disputes that the test for deregistration is met and has put HMRC to proof of their case in its entirety.

12. Mr Asghar contends that he has always been open and honest with HMRC, attending all meetings and providing all records requested. He argues that HMRC failed to provide YBA with proper guidance about Missing Trader Intra-Community ('MTIC') fraud and allowed him to continue trading with companies they believed to be fraudulent by failing to inform him that there were people in the supply chain who had potential issues or at least HMRC had reason to believe were involved in MTIC fraud or facilitating it.

#### **LEGAL PRINCIPLES**

##### *Deregistration*

13. The CJEU case of *Valsts ieņēmumu dienests v Ablessio SIA* Case C-527/11 ('*Ablessio*') considered the circumstances where national authorities are permitted to refuse VAT registration to a person on the basis that they believed that the registration would be used for fraudulent purposes. We accept HMRC's submission that those principles also apply to the deregistration of a person who has facilitated the VAT fraud of another, where the person knew or should have known that it was facilitating the fraud. (This view is consistent with the decision in *Thames Wines v HMRC* [2017] EWHC 452 referred to by HMRC, which concerned an application for permission to apply for judicial review.)

### *General assessment*

14. The law relating to the disallowance of input tax relating to unpaid consideration can be found in the Value Added Tax Act 1994 at section 26A, which provides that where a person has “become entitled to credit for any input tax, and the consideration for the supply to which that input tax relates, or any part of it, is unpaid at the end of the period of 6 months following the relevant date, he shall be taken, as from the end of that period, not to have been entitled to credit for input tax in respect of the VAT that is referable to the unpaid consideration or part”.

15. Section 73 of the 1994 Act gives HMRC the power to raise an assessment following a failure to make correct and complete returns. It provides that where a person has “failed to make any returns required under this Act (or under any provision repealed by this Act) or to keep any documents and afford the facilities necessary to verify such returns or where it appears to the Commissioners that such returns are incomplete or incorrect, they may assess the amount of VAT due from him to the best of their judgment and notify it to him”.

### *Kittel*

16. In *Kittel*, the CJEU held that in the context of MTIC fraud, traders who knew or should have known that the transactions in which they were engaging were connected to MTIC fraud would not be entitled to reclaim input tax. The Court stated at [56] that “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... be regarded as a participant in that fraud, irrespective of whether or not he profited by the resale of the goods”.

### *Mecsek*

17. In *Mecsek*, the CJEU confirmed that an exemption from VAT was conditional on good faith. The Court stated at [54] that where “the taxable person concerned knew or should have known that the transaction which it had carried out was part of a tax fraud committed by the purchaser and that the taxable person had not taken every step which could reasonably be asked of it to prevent that fraud from being committed, there would be no entitlement to exemption from VAT”.

18. The CJEU also made it clear at [31] that “the exemption of the intra-Community supply of goods becomes applicable only when the right to dispose of the goods as owner has been transferred to the purchaser and the vendor establishes that those goods have been dispatched or transported to another member state and that, as a result of that dispatch or that transport, they have physically left the territory of the member state of supply”. The 1995 VAT Regulations were supplemented at the relevant time by VAT Notice 725: The Single Market Notice, which requires, amongst other things, a taxable person to obtain and retain valid commercial evidence that the goods have been removed from the UK.

### *Knew or should have known*

19. In considering whether YBA knew or should have known that the relevant transactions were connected to fraudulent evasion of VAT, we are guided by the decision of the Court of Appeal in *Mobilx and others v HMRC* [2010] STC 1436 (*Mobilx*), which held at [59] that 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”.

20. The Court of Appeal also set out guidance at [83] that “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 that by his purchase he was taking part in a transaction connected with fraudulent evasion of VAT. The circumstances may well establish that he was”.

21. With regard to the “important questions which may often need to be asked in relation to the issue of the trader’s state of knowledge” the Court of Appeal commented at [83] that it could do no better than repeat the words of Christopher Clarke J in *Red 12 Trading Ltd v Revenue and Customs Comrs* [2009] EWHC 2563 (Ch) at [109]–[111]:

“[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.”

22. HMRC can establish that YBA "should have known" that its transactions were connected with fraudulent evasion of VAT if the only reasonable explanation for those transactions was that they were connected with fraud. It would not be enough for HMRC to show that YBA should have known that it was running the risk that it might be taking part in a transaction connected with fraud, or even that it was taking part in a transaction that was likely to be connected with fraud. It is also relevant to consider the extent to which YBA performed appropriate due diligence. However, a lack of sufficient due diligence would not establish the necessary means of knowledge, if even an appropriate level of due diligence would not have revealed the connection with fraud. We are mindful that we should not be too focused on the question of due diligence without taking into account obvious inferences that should be drawn from the circumstances as a whole and that it is necessary to consider the

totality of the evidence and not examine each factor in a transaction in a piecemeal way. (See *Northside Fleet Limited v HMRC* [2022] UKUT 256 at [8]).

#### **BURDEN OF PROOF**

23. With regard to the general assessments and whether this is sufficient evidence of dispatch outside the UK, the burden of proof rests with YBA. The standard of proof is the civil standard, namely the balance of probabilities.

24. With regard to the deregistration, *Kittel* assessments and *Mecsek* assessments the burden of proof rests with HMRC. The standard of proof is again the civil standard, namely the balance of probabilities.

#### **OUTSTANDING ISSUES**

25. YBA's grounds of appeal raised the issue of the validity of the assessments and brief submissions were made by YBA during the hearing that the assessments were invalid because they were not notified, authorised or entered on HMRC's system within the required time limit. HMRC submits that the assessments were valid, applying the correct principles as set out in the case of *Aria Technology v HMRC* [2020] EWCA 182 at [44]. Having considered these submissions and the documentary evidence before us, including the letters sent by HMRC on 5 August 2020 setting out their conclusions and tax calculations, we are satisfied that the assessments were notified, authorised, made in time and are valid.

26. In relation to the general assessment, HMRC's case is that the assessment was properly raised pursuant to section 73 and 26A of the VAT Act 1994 on the basis that there were three transactions where the consideration for the supply for which input tax was reclaimed was unpaid, and that the returns for the periods 05/19 and 07/19 were incomplete and/or incorrect due to four cancelled transactions. The nature of these transactions has not been disputed and the burden of proof rests with YBA in respect of this assessment. There is therefore no issue regarding the general assessments for the Tribunal to determine and the appeal against this assessment is dismissed.

27. With regard to the deregistration, *Kittel* assessments and *Mecsek* assessments, the substantive issues which need to be addressed in relation to each purchase or sale which is relevant to the appeals are:

- (1) has there been a loss of VAT?
- (2) has the loss of VAT been caused by fraudulent evasion?
- (3) was the relevant purchase or sale connected with that fraudulent evasion?
- (4) did YBA know or should YBA have known that the relevant purchase or sale was connected with that fraudulent evasion?

28. The burden of proof rests with HMRC to show that there has been a loss of VAT, the loss of VAT was caused by fraudulent evasion and that the relevant purchase or sale was connected with that fraudulent evasion. We are satisfied, on the basis of the substantial evidence before us which demonstrates that the relevant transactions were connected to fraudulent VAT evasion, that the burden has been discharged in relation to these points.

29. The matter which remains in dispute, and the only issue for the Tribunal to determine, is whether YBA knew or should have known that the relevant purchase or sale was connected with the fraudulent evasion. The burden is on HMRC to establish that YBA had the necessary knowledge or means of knowledge.

## THE EVIDENCE

30. Included in the documents referred to at [3] above were the witness statements of HMRC officers Shahzad Kotia, Asif Ali Qayum, Sukdeep Sarai and Stephen Sharrock. Their evidence concerns HMRC's findings in relation to the VAT affairs of traders involved with the disputed transactions. We accept those unchallenged statements and we consider this evidence to be credible and reliable.

31. We also heard testimony from Yusef Asghar, Director of YBA, and from Gavin Stock, Officer of HMRC. We found them both to be honest and credible witnesses and we accept their evidence.

### *Evidence of Mr Asghar*

32. Mr Asghar gave evidence regarding his business and personal background. He set out, in detail, the history of his business activities and his personal endeavours and struggles. He has been heavily involved with various charitable organisations for over 24 years and he is passionate about the reputation he has built and the respect of his peers and community, which he has earned over many years. We accept his evidence that he would not knowingly be connected to any type of fraud or dishonesty. We also accept that Mr Asghar has suffered from very serious medical, personal and financial issues since the commencement of the tax investigation which is the subject of this appeal.

### *Evidence of Mr Stock*

33. Mr Stock gave evidence regarding HMRC's investigation. He has been the allocated officer for this case since March 2023 and he adopted the statements of the previous officer, Olabanji Olufemi, who left HMRC on 7 October 2022. His evidence is that he reviewed the four witness statements and accompanying exhibits produced by Officer Olufemi dated 6 November 2020, 3 June 2021, 23 December 2021 and 26 April 2022 and he agrees with the contents, subject to some corrections. As Mr Stock has not previously had any involvement with YBA and has not dealt personally with anyone connected to YBA, his evidence was of limited value. We instead relied on the documentary evidence in reaching our findings, although we find that evidence to be consistent with the evidence given by Mr Stock.

## FINDINGS OF FACT

34. Having considered the evidence, we make the following findings of fact:

### **Operation of the business**

35. YBA's main business activity was as a car broker, which involved sourcing cars to order and finding customers for specific cars. Transactions were undertaken with main dealers such as Land Rover, Lamborghini, Porsche, BMW and Audi as well as smaller dealers or brokers, where customers would pay YBA the money and YBA would then pay the seller or the customer would pay the dealer direct and pay YBA a brokerage fee. YBA would also be approached by a broker who had a vehicle they wanted to sell with specifications and a price. They would find a customer and the money would be sent to YBA who would send it to the seller minus commission. There was no significant difference in the profit margins YBA achieved from transactions involving smaller dealers, and some of those transactions were loss-making. YBA also operated within the 'grey market' by exporting vehicles to countries such as the Republic of Ireland, outside the usual main dealership franchise model and reclaiming the VAT paid on the UK purchase of the vehicle. The reclaimed VAT amounts impacted the profit margins and cashflow of the business. YBA had no employees and traded from Mr Asghar's home address.

## Overview of Sales

36. YBA made total sales of £7,920,000 over 5 financial years. The sales and profit or loss figures for each financial year are as follows:

Financial year	Sales	Pre-tax profit/loss
30/09/2016	£ 41,375	-£25
30/09/2017	£422,593	£2,058
30/09/2018	£458,318	£27,436
30/09/2019	£6,502,641	-£720,643
30/09/2020	£495,273	-£57,517

## VAT

37. From the 09/16 VAT period YBA began buying used and new cars from both manufacturer-approved and non-approved distributors before selling to other car dealers both in the UK and the Republic of Ireland, Germany and the Netherlands.

38. YBA's application made on 27 April 2018 to file monthly returns was granted with effect from the period 06/18.

39. YBA filed 31 VAT returns between 09/16 and 04/20, of which 28 were repayment returns with input tax totalling £1,451,336 being reclaimed.

40. The returns made by YBA for the periods 05/19 and 07/19 sought repayment of £209,593.66 and £190,269.62 respectively.

41. YBA cooperated with HMRC's requests for information and HMRC conducted visits to YBA's premises in connection with their VAT returns during 2018 and 2019, which were arranged with and attended by Mr Asghar. In July 2019, HMRC provided Mr Asghar with their "How to Spot a Missing Trader VAT Fraud" leaflet, containing guidance on how to conduct due diligence checks. HMRC's visit report made reference to MTIC fraud. The report stated that there were no immediate concerns with YBA's business specifically, but that it may be worth examining the supply chain.

42. HMRC previously conducted assurance visits with Mr Asghar in 2006 as director of another company, Evolution Maintenance & Support Limited. HMRC's visit records refer to discussions with Mr Asghar regarding VAT fraud. Mr Asghar was provided with Public Notice 726 "Joint and several liability for unpaid VAT" on 20 February and 15 March 2006 and HMRC's letter to the company dated 24 March 2006 referred to the checks that can be undertaken to ensure the integrity of a supply chain. Mr Asghar does not recall any of the details regarding these assurance visits.

43. Following an extensive investigation into the activities of YBA and the supply chain, HMRC's Officer Olufemi concluded that VAT was owing from YBA and calculated the sums due, which were set out to YBA by way of letters dated 5 August 2020. The amounts were subsequently entered and recorded on HMRC's computer system as outstanding.

## Disputed Transactions

### *Purchases - the Kittel assessment*

44. YBA recorded the purchase of 136 cars between January and September 2019. HMRC dispute the VAT treatment of 91 of those purchases.



45. There were 5 purchases recorded from Wrottesley Motors Limited ('Wrottesley'). That company was incorporated and registered for VAT in 2017. It filed dormant accounts at Companies House for the year ending February 2018 and no accounts for 2019. The company was deregistered for VAT on 2 October 2019 as a missing trader.

46. YBA purchased a vehicle from Farris Cars Limited ('Farris') on 22 February 2019. Farris and Wrottesley were both incorporated on the same date, applied to register for VAT on the same date, had the same registered office address and moved their trading address to the same place. Farris was deregistered for VAT on 29 November 2019 as a missing trader.

47. There were 48 purchases recorded by YBA from Cygnet Car Leasing Limited ('Cygnet') between March 2019 and June 2019. Cygnet was incorporated on 20 November 2017 and applied to register for VAT on 30 November 2017. No annual accounts were filed and the company submitted a striking off application to Companies House dated 13 May 2019. On 16 August 2019, the agent for Cygnet requested the business be deregistered for VAT from 1 March 2019 because it had ceased trading. On 21 August 2019, Cygnet was deregistered for VAT with effect from 1 March 2019.

48. Mr Asghar was introduced to Cygnet by Alan Simpson, who he met in 2018 through another car dealer. Alan Simpson is responsible for organising fraudulent transactions concerning the sale of vehicles between the UK and the Republic of Ireland. Similar findings regarding fraudulent activity by Alan Simpson have been made in the decisions of previous appeals before this Tribunal. Alan Simpson asked Mr Asghar to get in touch with Cygnet and try and purchase vehicles from them to be sold to Northside Motorpark Ltd ('Northside Motorpark'), based in the Republic of Ireland.

49. YBA recorded 32 purchases from Auto Vanguard Direct Limited ('Auto Vanguard') between June and August 2019. The company was incorporated on 3 February 2017 and accounts for a dormant company for the period ending 28 January 2018 were filed at Companies House on 2 November 2018. No later accounts were filed. A VAT application made by Auto Vanguard was received by HMRC on 28 January 2019. No VAT returns were submitted and the company was removed from the VAT register as of 27 February 2020 as a missing trader. The cars purchased by YBA from Auto Vanguard were all sold to Northside Motorpark.

50. YBA recorded the purchase of 2 vehicles from 2YD Limited ('2YD') in the 08/19 and 11/19 VAT periods. 2YD was incorporated on 19 March 2019 and filed its first set of accounts for the accounting period ending 31 March 2020 on 18 March 2021. The company applied for VAT registration on 4 April 2019. Invoices between 2YD and YBA refer to "Winchester Cars". Winchester Cars Limited was deregistered for VAT with effect from 24 July 2017 on the basis that it had ceased to trade. The company was subsequently dissolved on 23 April 2019. Winchester Cars Limited is connected to Winchester Trading Limited. 2YD shared the same registered address as Winchester Trading Limited, which was incorporated on the same day as 2YD. The directors of the companies are closely related. Winchester Trading Limited was registered for VAT on 21 August 2019 and deregistered on 7 February 2020 as a missing trader. 2YD was also deregistered for VAT as a missing trader on 7 February 2020.

51. HMRC included a purchase of a "Land Rover" by YBA from Charnwood Prestige Limited ('Charnwood') in their *Kittel* assessment (shown in their schedule of transactions assessed). Charnwood purchased the car on 1 March for £25,000 and £5,000 VAT which they sold to YBA on 29 March 2019 for the same amount. Charnwood's bank statement shows that a payment of £30,000, with "RANGE ROVER" as the reference, was received from "WINCHESTER TRADING" on 18 March 2019. There are no further details regarding this

payment. HMRC contend that the supplier of the vehicle to Charnwood did not declare the full amount of the VAT charged on that sale and they adduced a VAT account summary in support of that contention. Although HMRC refer to an email from the director of the supplier which contained the summary, that email has not been adduced. They also contend that Charnwood claimed the full amount of input tax based on their assumption that this was included within the £89,040.99 VAT return for the period. Having considered the evidence presented, we are not satisfied, on a balance of probabilities, that YBA's purchase was paid for by Winchester Trading Limited or that the purchase is connected to fraud.

52. YBA purchased a vehicle from Bebe Clothing Limited ('Bebe') and reclaimed input tax of £15,000 relating to that vehicle. HMRC included this deal in their *Kittel* assessment on the basis that they considered the defaulter in this instance to be YBA for reclaiming input tax that it had no right to claim. This is because HMRC received information from a representative of Bebe who stated that no VAT was paid or reclaimed on the sale because it was a private sale and the company had no direct dealings with YBA. Mr Asghar subsequently queried this with Bebe and received an email from another representative from the company stating that "the invoices that we supplied you are from BB clothing away from the sage line 50 system. Shortly after we moved to the Xero online accountancy system and this is where these errors have appeared. Some information was in the old system someone was being transferred to the new and this therefore has caused confusion. Further to the matter I was not in the office at the time of the questions and [the other representative] replied on behalf of the company who is the sourcing director and does not get involved in the day-to-day running of the cars. This is another reason there has been some discrepancies that I am looking to tie-up. But just to reconfirm the invoices that you have are from BB they are correct and the money was paid from you in full for both and you and your company Paid as what was requested from us Bebe clothing". Having considered the evidence, it is our finding that YBA did have direct dealings with Bebe in respect of the purchase of this vehicle and the payment of VAT.

#### *Sales - the Mecsek assessment*

53. HMRC disputes the zero-rated dispatch of 105 of the 136 cars recorded as being purchased by YBA between January and September 2019. The sale of 95 of those vehicles was recorded as having been made to Northside Motorpark, a company connected with the fraudulent evasion of VAT. The company is based in Dublin and was YBA's biggest customer. YBA's first sale to Northside Motorpark was in 2018 and the company was deregistered for VAT on 23 August 2019.

54. The Director of Northside Motorpark, Alan Harford, was also the Director of Northside Fleet Limited ('Northside Fleet'). Some payments were made to YBA by Northside Fleet for cars purchased by Northside Motorpark. YBA were informed by Northside Fleet that the company was being used as a bureau to save on bank charges on transactions from the Republic of Ireland to the UK. Mr Asghar was aware in October 2019 that Northside Fleet was not trading according to their company records. YBA usually received payment for cars purchased by Northside Motorpark before YBA paid their supplier. Payments received from Northside Fleet in relation to cars sold by YBA to Northside Motorpark totalled approximately £2,500,000.

55. Vehicles purchased from Cygnet between March and June 2019 and from Auto Vanguard between June and August 2019 were sold to Northside Motorpark. Cygnet and Auto Vanguard did not declare the VAT charged on cars sold to YBA. Northside Motorpark did not declare or account for any of the cars acquired from YBA to the Irish Tax Authority.

56. Mr Asghar was introduced to the Director of Cygnet by Alan Simpson, who also introduced him to the Director of Northside Motorpark and Northside Fleet, Alan Harford. No VAT checks or other background checks were undertaken by YBA on Alan Simpson.

57. YBA bought 44 cars from Cygnet which were sold onto Northside Motorpark. Northside Motorpark also directly purchased cars from Cygnet. Alan Simpson arranged for 38 cars purchased by YBA from Cygnet to be transported directly to Northside Motorpark. The vehicles were not inspected by YBA. The 2 UK companies used to transport the vehicles have the same director, trading address and telephone number. One of the companies was dissolved on 3 July 2018. That company issued collection/delivery notes to YBA dated July 2019 in respect of 2 vehicles sold to Northside Motorpark.

58. The *Mecsek* assessment raised by HMRC includes the sale in September 2019 of a car to Keith Morris trading as Aacara Construction, in the Republic of Ireland. Payment to YBA for this vehicle was received from Northside Fleet. Alan Simpson acted as an agent for Keith Morris. The VAT number used by Keith Morris was cancelled with effect from 20 December 2019 and anti-fraud notices were issued to all known suppliers including YBA. No VAT had been accounted for by Keith Morris on the transactions with YBA.

59. The *Mecsek* assessment raised by HMRC includes the sale of 4 cars between 9 April and 5 July 2019 by YBA to Prestige Motor Vehicles BV in the Netherlands. The Dutch Tax Authority informed HMRC that Prestige Motor Vehicles BV did not file VAT returns in 2019 and that when they visited their trading address on 8 August 2019, they found no trace of the company. HMRC disputes the zero-rated dispatch of the 4 vehicles based on their view that there is no satisfactory evidence of dispatch. Having considered 3 invoices issued by SAS Transport relating to the delivery of 3 of those vehicles to Wateringen, the 2 photographs adduced by YBA of what appears to be 2 of the vehicles outside Prestige Motor premises and Mr Asghar's evidence, it is our finding, on a balance of probabilities, that these vehicles were dispatched to Prestige Motor Vehicles BV in the Netherlands.

60. YBA sold a Rolls Royce to Shakk GmbH on 15 January 2019. Shakk GmbH is incorporated in Germany and the company address is in Duisburg. HMRC disputes the zero-rated dispatch of this vehicle and included this deal in the *Mecsek* assessment based on their view that there is no satisfactory evidence that this car ever left the UK. Having considered the invoice issued by SAS Transport for the delivery of this vehicle to Duisburg, the 3 photographs adduced by YBA of the vehicle at what appears to be a shipping dock and Mr Asghar's evidence, it is our finding, on a balance of probabilities, that this vehicle was dispatched to Shakk GmbH in Germany.

#### *Due diligence*

61. The due diligence documents obtained by YBA for Northside Motorpark were their certificate of incorporation, a copy of a telephone bill, VAT registration number confirmation, a copy of Alan Harford's driving licence and the top part of the company's bank statement. Mr Asghar visited the trading address for Northside Motorpark and Alan Harford had been to YBA's trading address.

62. Mr Asghar gave evidence regarding checks having been conducted, or which would have been conducted by the company's accountant, including online checks such as companies house and google, VAT number checks and obtaining copies of identification documents for company directors. The documents adduced by YBA regarding their due diligence were not scheduled or ordered. They related to numerous businesses, individuals and transactions, covering a range of dates from 2010 to 2020. The documentation includes various sources of company information, import data, copies of VAT number checks, passports, letterheads, bank statements, emails, text messages and photographs.

63. Having considered this evidence and the testimony of Mr Asghar regarding the checks he arranged or undertook and the visits he made to business premises, it is our finding that, whilst YBA took some steps to establish the legitimacy of the businesses with which they conducted transactions, the evidence before us does not demonstrate a consistent procedure or explain what conclusions were drawn from the information obtained. We therefore find that YBA's actions fell short of a coherent and reliable due diligence process.

#### CONCLUSIONS

64. Based on our consideration of the relevant legal principles and our findings on the facts, we have reached the following conclusions.

#### **Amendment required to the *Kittel* assessment**

65. HMRC have included YBA's purchase of a vehicle from Charnwood in the *Kittel* assessment based on their view that there was a tax loss, the car was paid for by a missing trader and this transaction did not make any commercial sense as the car was bought and sold for the same price. Having considered the evidence relating to this transaction at [51] above, HMRC have not satisfied us, on the balance of probabilities, that this deal should be included and we have therefore concluded that this transaction should be removed from the assessment.

66. HMRC have included YBA's purchase of a vehicle from Bebe in the *Kittel* assessment based on their view that Bebe had no direct dealings with YBA. Having found at [52] above that Bebe did have direct dealings with YBA in respect of the purchase of this vehicle and the payment of VAT, HMRC have not satisfied us, on the balance of probabilities, that this deal should be included and we have therefore concluded that this transaction should be removed from the assessment.

#### **Amendment required to the *Mecsek* assessment**

67. HMRC have included YBA's sale of 4 cars to Prestige Motor Vehicles BV in the Netherlands in the *Mecsek* assessment based on their view that there is no satisfactory evidence of dispatch. Having found at [59] above that the vehicles were dispatched to Prestige Motor Vehicles BV in the Netherlands, taking the evidence as a whole, we are satisfied that YBA was selling, dispatching and delivering these cars to the taxable person named on its invoice and, as such, satisfied the requirements of Notice 725 regarding evidence of dispatch. HMRC have not satisfied us, on the balance of probabilities, that this deal should be included and we have therefore concluded that this transaction should be removed from the assessment.

68. HMRC have included YBA's sale of a Rolls Royce to Shakk GmbH in the *Mecsek* assessment based on their view that there is no satisfactory evidence that this car ever left the UK. Having found at [60] above that this vehicle was dispatched to Shakk GmbH in Germany, taking the evidence as a whole, we are satisfied that YBA sold, dispatched and deliver this car to the taxable person named on its invoice and, as such, satisfied the requirements of Notice 725 regarding evidence of dispatch. HMRC have not satisfied us, on the balance of probabilities, that this deal should be included and we have therefore concluded that this transaction should be removed from the assessment.

#### **Knew or should have known**

69. Having considered our findings regarding YBA's business operation, trading history and cooperation with HMRC's investigation, and having accepted Mr Asghar's evidence that he would not knowingly be connected to any type of fraud or dishonesty, we have concluded that, on the balance of probabilities, YBA did not have actual knowledge of the fraudulent connection to its relevant purchases and sales.

70. In determining whether YBA should have known that its transactions were connected with fraudulent evasion of VAT, having regard to the totality of the evidence, we consider the obvious inferences that should be drawn from the circumstances as a whole lead us to the conclusion that the only reasonable explanation for those transactions was that they were connected with fraud.

71. Those circumstances were that YBA's turnover in 2019 increased more than tenfold as a result of the transactions. The transactions were connected to traders who lacked or had limited trading history, as demonstrated by dormant accounts or recent VAT registrations. Wrottesley and Auto Vanguard were both incorporated in February 2017, with dormant 2018 accounts. Wrottesley registered for VAT in 2017 and Auto Vanguard in 2019. Cygnet was incorporated in November 2017, registered for VAT in December 2017 and no annual accounts were filed. 2YD was incorporated on 19 March 2019 and applied for VAT registration on 4 April 2019. There were clear links between the traders involved. The details regarding the directors, trading addresses and trading history for Winchester Cars and 2YD showed that the businesses used the same address and had the same controlling minds. This was also the case for Wrottesley and Farris. Payments for cars sold to Northside Motorpark were made by Northside Fleet. YBA usually received payment from the customer in these transactions before paying the supplier and they were repeatedly involved with defaulting traders. Alan Simpson introduced YBA to Cygnet (a supplier) and Northside Motorpark (a customer) and arranged for vehicles purchased by YBA from Cygnet to be transported directly to Northside Motorpark. Alan Simpson effectively orchestrated YBA's insertion into a fraudulent chain by way of this pattern of transactions.

72. We have carefully considered YBA's argument that HMRC should not have allowed the business to continue to trade if they were facilitating fraud when they did not have the knowledge that HMRC possessed about the supply chain. Mr Asghar argues that HMRC "should have informed me so I could have made the decision not to continue to trade. HMRC 'knew or should have known' the outcome and that there was fraud further up the chain and should have put a stop to it. They set me up knowing the outcome. HMRC's own officers stated they believed me and the business to be credible and had no concerns. That further proved to me that I had nothing to be concerned about and I continued to trade with the confidence that HMRC were happy with the business and the supply chain".

73. We have some sympathy for YBA's position. However, the legal principles are clear that we must consider what YBA ought to have known from the circumstances as a whole. Taking into consideration HMRC's actions, which were after the transactions had taken place, in addition to the circumstances as set out at [71] above, our conclusion remains that the only reasonable explanation for those transactions was that they were connected with fraud.

74. Further, we have found that there was a lack of sufficient due diligence by YBA in respect of these traders. We consider that an appropriate level of due diligence which included a proper consideration of the available VAT and company data regarding the traders' VAT registrations, trading history, accounts information, directors details and company addresses, as well as simple background checks (such as an internet search) on Alan Simpson, would have revealed the connection with fraud.

#### **DECISION**

75. Our decision is therefore that:

- (1) In relation to the deregistration of YBA for VAT purposes, YBA facilitated the VAT fraud of another and should have known that it was facilitating the fraud. The appeal is therefore dismissed.

- (2) In relation to the general assessment, the assessment was validly made, in time and in the correct amount. The appeal is therefore dismissed.
- (3) In relation to the *Kittel* assessment,
- (a) in respect of the purchases by YBA from Wrottesley, Farris, Cygnet, Auto Vanguard and 2YD, these gave rise to a VAT loss caused by fraud, the relevant purchases were connected with that fraud and YBA should have known of that connection. The appeal is therefore dismissed.
- (b) in respect of the purchases by YBA from and Charnwood and Bebe, HMRC have failed to satisfy us that, on the balance of probabilities, the relevant purchases were connected with fraud and YBA should have known of that connection. The appeal relating to these purchases therefore succeeds.
- (4) In relation to the *Mecsek* assessment,
- (a) in respect of the sales by YBA to Northside Motorpark and Keith Morris trading as Aacara Construction Limited, these gave rise to a VAT loss caused by fraud, the relevant sales were connected with that fraud and YBA should have known of that connection. The appeal is therefore dismissed.
- (b) in respect of the sales by YBA to Prestige Motor Vehicles BV and Shakk GmbH, HMRC have failed to satisfy us that, on the balance of probabilities, a VAT fraud was committed in respect of the relevant vehicles and that YBA should have known that the relevant sales were connected with that fraud. The appeal relating to these sales therefore succeeds.

**RIGHT TO APPLY FOR PERMISSION TO APPEAL**

76. 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.

**KIM SUKUL  
TRIBUNAL JUDGE**

**Release date: 12<sup>th</sup> SEPTEMBER 2024**

