[2018] UKFTT 225 (TC)

TC06458

Appeal number: TC/2015/06799
& TC/2015/07173

VAT – penalty – personal liability notice – jurisdiction of Tribunal – whether liable – amount of penalty

FIRST-TIER TRIBUNAL
TAX CHAMBER

MR STEPHEN BELL **Appellant**
&
MR PAUL HOVERS

- and -

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

TRIBUNAL: JUDGE JENNIFER DEAN
MR JOHN WILSON

Sitting in public at Manchester on 19 – 22 June 2017

Mr S. Bell and Mr P. Hovers, Directors, for the Appellants,

Mr J. Jackson, Counsel instructed by HM Revenue and Customs, for the Respondents

DECISION

Introduction

1. By Notices of Appeal dated 13 November 2015 the Appellants appealed against personal liability notices issued by HMRC pursuant to Paragraph 19 Schedule 24 Finance Act 2007 to Mr Bell on 5 August 2015 and to Mr Hovers on 18 August 2015 (the original having been sent to the wrong address on 5 August 2015) each in the amount of £89,305.55 ("the PLNs").

2. The basis of HMRC's decisions arose as a result of its decision to deny Carwood Commodities Ltd, of which the Appellants were directors, the right to deduct input tax totalling £128,729 in period 04/13 and £162,881 in period 07/13 (revised after review to £104,457) on the grounds that the scrap metal transactions undertaken demonstrated that the input tax was incurred in transactions that were connected with the fraudulent evasion of VAT and that the Appellants knew or should have known of that fact. The denials of input tax were reflected in Notices of Assessment dated 8 December 2014 in respect of period 04/13 and 5 January 2015 in respect of period 07/13 in the sums of £128,729 and £104,457 respectively. The assessments were not appealed and how we have addressed this is covered in later paragraphs.

3. On 25 June 2015 HMRC wrote to Begbies Traynor (Central) LLP ("Begbies Traynor"), the firm dealing with the liquidation of Carwood Commodities Ltd indicating that they intended to issue a penalty of £178,611.12 on the company on the basis that the 04/13 and 07/13 returns were inaccurate as the transactions in respect of which input tax had been claimed were "entirely contrived, pre-arranged and uncommercial". The penalty was imposed on the basis that the inaccuracy was deliberate but not concealed. HMRC indicated that they calculated the penalty at 61.25% of the Potential Lost Revenue (that being the sum of the input tax denied in each period) allowing a reduction for "telling, helping and giving". A penalty was imposed on the company in the sum of £178,611.12 on 5 August 2015.

4. The personal liability penalty imposed on each Appellant individually in the sum of £89,305.55 reflects 50% of the penalty imposed on the company. The penalties were imposed on the grounds that the deliberate inaccuracies were attributable to the Appellants as company officers.

5. The grounds of appeal relied on by the Appellants can be summarised as follows:

   (a) The PLNs were issued because the company did not appeal against the assessments;

   (b) The company was under the control of the liquidators;

   (c) The PLNs were only received after the time limit for the company to appeal the assessments had expired;

(d) The liquidators reasons for not appealing the assessments is unacceptable;

(e) The previous directors were not able to appeal the assessments which resulted in the PLNs which is manifestly unfair;

(f) The penalty calculations are arbitrary and the amount of discount is disputed.

Law

6. Paragraph 1 sch 24 Finance Act 2007 provides (so far as relevant):

"Error in taxpayer's document

(1) A penalty is payable by a person (P) where—

(a) P gives HMRC a document of a kind listed in the Table below, And

(b) Conditions 1 and 2 are satisfied.

(2) Condition 1 is that the document contains an inaccuracy which amounts to, or leads to—

(a) an understatement of a liability to tax,

(b) a false or inflated statement of a loss, or

(c) a false or inflated claim to repayment of tax.

(3) Condition 2 is that the inaccuracy was careless (within the meaning of paragraph 3) or deliberate on P's part.

(4) Where a document contains more than one inaccuracy, a penalty is payable for each inaccuracy."

7. The Table includes VAT returns.

8. Paragraphs 3 to 5 sch 24 provide (so far as relevant):

"3. Degrees of culpability

(1) For the purposes of a penalty under paragraph 1, inaccuracy in a document given by P to HMRC is—

(a) "careless" if the inaccuracy is due to failure by P to take reasonable care,

(b) "deliberate but not concealed" if the inaccuracy is deliberate on P's part but P does not make arrangements to conceal it, and

(c) "deliberate and concealed" if the inaccuracy is deliberate on P's part and P makes arrangements to conceal it (for example, by submitting false evidence in support of an inaccurate figure).

(2) An inaccuracy in a document given by P to HMRC, which was neither careless nor deliberate on P's part when the document was given, is to be treated as careless if P—

(a) discovered the inaccuracy at some later time, and

(b) did not take reasonable steps to inform HMRC.

4. Standard amount

(1) This paragraph sets out the penalty payable under paragraph 1.

(2) … the penalty is—

(a) for careless action, 30% of the potential lost revenue,

(b) for deliberate but not concealed action, 70% of the potential lost revenue, and

(c) for deliberate and concealed action, 100% of the potential lost revenue.

5. Potential lost revenue: normal rule

(1) "The potential lost revenue" in respect of an inaccuracy in a document (including an inaccuracy attributable to a supply of false information or withholding of information) or a failure to notify an under-assessment is the additional amount due or payable in respect of tax as a result of correcting the inaccuracy or assessment.

(2) The reference in sub-paragraph (1) to the additional amount due or payable includes a reference to—

(a) an amount payable to HMRC having been erroneously paid by way of repayment of tax, and

(b) an amount which would have been repayable by HMRC had the inaccuracy or assessment not been corrected."

9. Paragraphs 9 & 10 sch 24 provide (so far as relevant):

"9. Reductions for disclosure

(A1) Paragraph 10 provides for reductions in penalties under paragraphs 1, 1A and 2 where a person discloses an inaccuracy, a supply of false information or withholding of information, or a failure to disclose an under-assessment.

(1) A person discloses an inaccuracy, a supply of false information or withholding of information, or a failure to disclose an underassessment by—

(a) telling HMRC about it,

(b) giving HMRC reasonable help in quantifying the inaccuracy, the inaccuracy attributable to the supply of false information or withholding of information, or the under-assessment, and

(c) allowing HMRC access to records for the purpose of ensuring that the inaccuracy, the inaccuracy attributable to the supply of false information or withholding of information, or the under-assessment is fully corrected.

(2) Disclosure—

(a) is "unprompted" if made at a time when the person making it has no reason to believe that HMRC have discovered or are about to discover the inaccuracy, the supply of false information or withholding of information, or the under-assessment, and

(b) otherwise, is "prompted".

(3) In relation to disclosure "quality" includes timing, nature and extent.

10.

(1) If a person who would otherwise be liable to a penalty of a percentage shown in column 1 of the Table (a "standard percentage") has made a disclosure, HMRC must reduce the standard percentage to one that reflects the quality of the disclosure.

(2) But the standard percentage may not be reduced to a percentage that is below the minimum shown for it—

(a) in the case of a prompted disclosure, in column 2 of the Table, and

(b) in the case of an unprompted disclosure, in column 3 of the Table."

Standard %	*Minimum % for prompted disclosure*	*Minimum % for*

		unprompted disclosure
30%	15%	0%
45%	22.5%	0%
60%	30%	0%
70%	35%	20%
105%	52.5%	30%
140%	70%	40%
100%	50%	30%
150%	75%	45%
200%	100%	60%

10. Paragraph 13 sch 24 makes provision for assessing the penalties.

11. Paragraphs 15 to 17 sch 24 provide (so far as relevant):

"15. Appeal

(1) A person may appeal against a decision of HMRC that a penalty is payable by the person.

(2) A person may appeal against a decision of HMRC as to the amount of a penalty payable by the person.

…

16.

(1) An appeal under this Part of this Schedule shall be treated in the same way as an appeal against an assessment to the tax concerned (including by the application of any provision about bringing the appeal by notice to HMRC, about HMRC review of the decision or about determination of the appeal by the First-tier Tribunal or Upper Tribunal).

(2) Sub-paragraph (1) does not apply—

(a) so as to require P to pay a penalty before an appeal against the assessment of the penalty is determined, or

(b) in respect of any other matter expressly provided for by this Act.

17.

(1) On an appeal under paragraph 15(1) the tribunal may affirm or cancel HMRC's decision.

(2) On an appeal under paragraph 15(2) the tribunal may—

(a) affirm HMRC's decision, or

(b) substitute for HMRC's decision another decision that HMRC had power to make.

(3) If the tribunal substitutes its decision for HMRC's, the tribunal may rely on paragraph 11—

(a) to the same extent as HMRC (which may mean applying the same percentage reduction as HMRC to a different starting point), or

(b) to a different extent, but only if the tribunal thinks that HMRC's decision in respect of the application of paragraph 11 was flawed.

…

(5A) In this paragraph "tribunal" means the First-tier Tribunal or Upper Tribunal (as appropriate by virtue of paragraph 16(1)).

(6) In sub-paragraphs (3)(b), (4)(a) and (5)(b) "flawed" means flawed when considered in the light of the principles applicable in proceedings for judicial review."

12. Paragraph 19 sch 24 provides so far as is relevant:

"19. Companies: officers' liability

(1) Where a penalty under paragraph 1 is payable by a company for a deliberate inaccuracy which was attributable to an officer of the company, the officer is liable to pay such portion of the penalty (which may be 100%) as HMRC may specify by written notice to the officer.

(2) Sub-paragraph (1) does not allow HMRC to recover more than 100% of a penalty.

(3) In the application of sub-paragraph (1) to a body corporate other than a limited liability partnership "officer" means—

(a) a director (including a shadow director within the meaning of section 251 of the Companies Act 2006 (c 46)),

(aa) a manager, and

(b) a secretary.

…

(4) In the application of sub-paragraph (1) in any other case"officer" means—

(a) a director,

(b) a manager,

(c) a secretary, and

(d) any other person managing or purporting to manage any of the company's affairs.

(5) Where HMRC have specified a portion of a penalty in a notice given to an officer under sub-paragraph (1)—

(a) paragraph 11 applies to the specified portion as to a penalty,

(b) the officer must pay the specified portion before the end of the period of 30 days beginning with the day on which the notice is given,

(c) paragraph 13(2), (3) and (5) apply as if the notice were an assessment of a penalty,

(d) a further notice may be given in respect of a portion of any additional amount assessed in a supplementary assessment in respect of the penalty under paragraph 13(6),

(e) paragraphs 15(1) and (2), 16 and 17(1) to (3) and (6) apply as if HMRC had decided that a penalty of the amount of the specified portion is payable by the officer, and

(f) paragraph 21 applies as if the officer were liable to a penalty.

(6) In this paragraph "company" means any body corporate or unincorporated association, but does not include a partnership, a local authority or a local authority association."

13. The Scrap Metal Dealers Act 1964 provides as follows:

2. Records of dealings

(1)Subject to the provisions of this and the next following section, every scrap metal dealer shall, at each place occupied by him as a scrap metal store, keep a book for the purposes of this section, and shall enter in the book the particulars required by this section with respect to—

(a)all scrap metal received at that place, and

(b)all scrap metal either processed at, or despatched from, that place:

Provided that at any such place a scrap metal dealer may at his option keep two books for the purposes of this section, one for recording the said particulars with respect to scrap metal falling within paragraph (a) of this subsection and the other for recording the said particulars with respect to scrap metal falling within paragraph (b) thereof, but shall not at any one place and at any one time have in use, for the purposes of this section, more than one book for recording the said particulars with respect to scrap metal falling within each of those paragraphs.

(2)The said particulars, in the case of scrap metal falling within paragraph (a) of the preceding subsection, are—

(a)the description and weight of the scrap metal;

(b)the date and time of (the receipt of the scrap metal;

(c)if the scrap metal is received from another person, the full name and address of that person ;

(d)the price, if any, payable in respect of the receipt of the scrap metal, if that price has been ascertained at the time when the entry in the book relating to that scrap metal is to be made ;

(e)where the last preceding paragraph does not apply, the value of the scrap metal at the time when the entry is to be made as estimated by the dealer;

(f)in the case of scrap metal delivered at the place in question by means of a mechanically propelled vehicle bearing a registration mark (whether the vehicle belongs to the dealer or not), the registration mark borne by the vehicle.

(emphasis added)

Background facts

14. Carwood Commodities Ltd ("CCL") was registered for VAT with effect from 1 February 2007 with its stated main business activity being related to steel and commodities. It was incorporated on 17 January 2007. The first directors were Mr Hovers and William Delaney. Mr Delaney resigned on 1 May 2008 and Mr Bell was appointed as a director on 18 August 2008.

15. The issued share capital is 1,000 shares of £1 each. At the date of liquidation Mr Bell and Mr Hovers held 320 shares each. Mr Taylor and Mr Sidebottom held 25 each. Persons who were neither directors nor employees held the remaining 310 shares.

16. CCL ceased to trade on 24 December 2014 and on 2 February 2015 a special resolution was passed placing the company into creditors voluntary liquidation and an

ordinary resolution was passed appointing Adrian Graham and Julian Pitts of Begbies Traynor as joint liquidators.

17. The principal place of business at the time VAT registration was granted was Parkers Yard, Stannington Road, Malin Bridge, Sheffield. The premises were rented from a private landlord called Landtask with rent on a monthly basis.

18. CCL had been the subject of ongoing HMRC enquiries since registration because of its suspected involvement in MTIC fraud. The decision to deny input tax claimed arose from the purchase of metals in VAT periods 04/13 and 07/13. The transactions were traced back to fraudulent tax losses and in reviewing the features of CCL's trade and its transactions (including those prior to those in respect of which input tax was denied) HMRC reached the following conclusions:

- That CCL had a general awareness of VAT fraud prior to entering into the transactions under consideration as a result of letters issued by HMRC to the company detailing MTIC fraud, a letter notifying the company of a tax loss in its chain in a previous period and visits by HMRC officers to the company at which MTIC fraud was discussed;

- The transactions were carried out on a back-to-back basis for the same amount of goods and the same product. CCL was never left with unsold stock and the requirements of trading partners could be instantly matched on the day suggesting that the transactions were artificially contrived;;

- Despite the value of the goods, CCL did not enter into any formal written contracts with its supplier or customers nor did it provide terms and conditions during the periods under review. Matters such as legal title to the goods and payment/delivery terms were not subject to any formal agreement which suggests that the transactions were pre-arranged;

- CCL did not pay its supplier until it had received payment from its customer. That feature combined with the inadequate due diligence carried out and lack of formal agreements leads to the conclusion that CCL knew that the transactions would be honoured because they were contrived;

- The due diligence carried out which involved obtaining VAT and Incorporation certificates, a copy of the Scrap Metal Dealers certificate of registration, copy of passport and a site visit could not have provided adequate assurance that the transactions were not connected with fraudulent evasion of VAT.

19. The transactions in respect of which input tax was denied are as follows:

Period 04/13

Purchase Invoice Date	Purchase Invoice Number	Supplier	Net	VAT	Gross

14/02/13	001	GPSE Ltd	£134,898.40	£26,979.68	£161,878.08
19/02/13	002	GPSE Ltd	£130,416.00	£26,083.20	£156,499.20
28/02/13	003	GPSE Ltd	£110,969.60	£22,193.92	£133,163.52
28/02/13	004	GPSE Ltd	£142,642.40	£28,528.48	£171,170.88
28/02/13	005	GPSE Ltd	£124,723.20	£24,944.64	£149,667.84

TOTAL INPUT TAX DENIED = £128,729.92

Period 07/13

5

Purchase Invoice Date	Purchase Invoice Number	Supplier	Net	VAT	Gross
24/5/13	SW01	GPSE Ltd	£85,002.90	£17,000.58	£102,003.47
28/5/13	SW02	GPSE Ltd	£51,846.91	£10,371.38	£62,228.29
30/5/13	SW03	GPSE Ltd	£28,910.85	£5,782.17	£34,693.02
31/5/13	Gp002	GPSE Ltd	£22,362.34	£4,472.47	£26,834.81
31/5/13	SW04	GPSE Ltd	£34,999.56	£6,999.91	£41,999.47
3/6/13	Gp003	GPSE Ltd	£23,122.36	£4,624.47	£27,746.83
5/6/13	Gp013	GPSE Ltd	£7,840.70	£1,568.14	£9,408.84
7/6/13	Gp004	GPSE Ltd	£22,356.82	£4,471.36	£26,828.18
7/6/13	Gp005	GPSE Ltd	£22,149.20	£4,429.84	£26,579.04
7/6/13	Gp014	GPSE Ltd	£6,461.60	£1,292.32	£7,753.92
10/6/13	Gp019	GPSE Ltd	£51,648.30	£10,329.66	£61,977.96
11/6/13	Gp006	GPSE Ltd	£23,144.13	£4,628.83	£27,772.96
12/6/13	Gp015	GPSE Ltd	£6,552.70	£1,310.54	£7,863.24
13/6/13	SW05	GPSE Ltd	£27,232.86	£5,446.57	£32,679.43
13/6/13	SW06	GPSE Ltd	£107,852.16	£21,570.43	£129,422.59
14/6/13	Gp007	GPSE Ltd	£22,869.60	£4,573.92	£27,443.52
14/6/13	Gp017	GPSE Ltd	£408	£81.60	£489.60
14/6/13	Gp016	GPSE Ltd	£3,337.20	£667.44	£4,004.64
14/6/13	SW07	GPSE Ltd	£3,917.10	£783.42	£4,700.52

17/6/13	Gp008	GPSE Ltd	£24,565.55	£4,913.11	£29,478.66
17/6/13	Gp018	GPSE Ltd	£23,355.15	£4,671.03	£28,026.18
18/6/13	Gp009	GPSE Ltd	£25,060.25	£5,012.05	£30,072.30
18/6/13	SW08	GPSE Ltd	£96,174	£19,234.80	£115,408.80
21/6/13	Gp010	GPSE Ltd	£31,343.36	£6,268.67	£37,612.03
25/6/13	Gp011	GPSE Ltd	£28,287.52	£5,657.50	£33,945.02
28/6/13	Gp012	GPSE Ltd	£33,595.62	£6,719.12	£40,314.74

TOTAL INPUT TAX DENIED = £162,881.23

Evidence

20. On behalf of HMRC, officer Wes McDonald provided a lengthy witness statement and gave oral evidence. We have set out the following summary of the witness statement to provide the background to this appeal and Mr McDonald's involvement with the Appellants.

21. As one of CCL's employees Mr David Taylor, the book keeper, completed CCL's VAT returns with the final approval and sign off completed by either Mr Bell or Mr Hovers. Mr McDonald explained that with the exception of the 07/13 VAT return that was selected by HMRC for extended verification, CCL was a VAT payment trader. He stated that CCL's VAT returns displayed "typical MTIC UK buffer characteristics with small margins made on sales in relation to purchases and with metals bought and sold back to back within a short period of time."

22. As regards CCL's employees, Mr McDonald noted that Mr Taylor was also the bookkeeper for Stembridge Metals and Recycling Ltd. He had also acted as bookkeeper for Otter Telecom Limited (previously Otter Communications Limited) which was assessed in relation to buying mobile phones from missing traders before entering into liquidation with a £182,669.18 VAT debt which remains outstanding. Mr William Delaney, formerly a director of Stembridge and CCL, was also a director at Otter Consultancy Ltd and Otter Commodities Ltd.

23. Mr Taylor had also been employed as a bookkeeper at Fonix Limited ("Fonix"). Mr Stephen Sidebottom, CCL's yard manager was also an employee at Fonix. The company traded in mobile phones and during the period of that trade its turnover increased from £2,144,950 in 08/04 VAT period to £85,033,550 in period 03/06. The company is currently appealing HMRC's decision to deny input tax in the sum of £14,612,441 on the grounds of the *Kittel* principle and the company's alleged MTIC trading.

24. Mr Taylor left CCL in January 2014 before returning in August 2014 during which time he worked for Omega Distribution Limited ("Omega") as its bookkeeper. Omega was compulsorily de-registered by HMRC following MTIC monitoring and was assessed in the sum of £613,385.28 for failure to produce documentary evidence in relation to mobile phones sold to the EU. The directors of Omega, Jason Barker and Martin Massey were both directors of Fonix and Otter Telecom Ltd. Jason Barker's father is Francis McDonald Barker, a former director of Stembridge Engineering Ltd.

25. On 8 January 2009 HMRC wrote to CCL to advise traders to use HMRC's central VAT verification service in order to verify the VAT numbers of trading partners. The letter explained the continued risk posed to HMRC in relation to MTIC fraud and detailed examples of the commodities used in relation to such fraudulent activities. Enclosed with the letter was Public Notice 726 "Joint and Several Liability" and HMRC leaflet "How to spot missing trader fraud".

26. On 30 September 2009 HMRC officers interviewed Mr Bell in relation to the trade of carbon credits which were a popular commodity used in MTIC trade at that time. Mr Bell explained that he was an employee of CCL prior to becoming a director and was employed to seek out new avenues of increasing turnover due to a downturn in the scrap metal trade. Mr Bell explained that no trade in carbon credits had been carried out to date. At the meeting due diligence was discussed and Notice 726 provided; Mr Bell stated that he was aware that due diligence checks should be sufficient to "satisfy yourself" and advised that he had heard of MTIC fraud on numerous occasions.

27. On 7 October 2010 HMRC officers visited CCL to confirm supplier details in relation to supply chains of recent trading of platinum. CCL had sold platinum to Specialist Metals Ltd, a trader being monitored by HMRC on the MTIC monitoring project. Mr Bell, Mr Hovers and Mr Taylor were present at the meeting. Mr Bell explained that: due diligence was carried out for suppliers and customers; that he contacted his trading partners on a regular basis; and he had a database on his computer. HMRC officer Jones advised that CCL was trading in a high risk area and needed to be more stringent with their due diligence checks as there were missing traders in CCL's transaction chains. Various HMRC Notices and leaflets were provided and Officer Pabari went through the types of due diligence checks that should be undertaken, advising that the list was not exhaustive.

28. A further meeting took place on 11 January 2012 when Public Notice 726 was issued again and an explanation given regarding the fact that MTIC fraud had mutated from mobile phones into other sectors including the metals trade. Mr Bell confirmed at the meeting that he was aware of the VAT risks within the metals trade. He stated that he had verified all trade partners and had a due diligence file for all companies that CCL traded with including pictures of their premises. Mr Bell stated that he conducted a Creditsafe check and VAT validation on a weekly basis and a credit check on the directors every quarter. Mr McDonald noted that pictures of CCL's trade partners were not included in the due diligence files of all trade partners and that no evidence was provided to demonstrate that the in-depth checks had taken place. Mr

Bell and Mr Taylor confirmed that they would cease trading with any company where discrepancies were found. Mr Bell stated that he had not traded with companies where credibility was in doubt and felt there was no more he could do in terms of due diligence than that which was being done.

29. The Appellants told HMRC that the majority of the time the goods came into CCL's yard but occasionally they went direct to CCL's customers. If the goods went to the customer CCL would inspect the goods there. Mr McDonald highlighted the lack of evidence to support the Appellants' assertion that they travelled to an onward customer to inspect the goods. He also noted that subsequent visit reports recorded Mr Bell as explaining that the onward customer advised CCL of weight and then paid on that amount. There were no written contracts with suppliers or customers as Mr Bell stated there was no reason to have them.

30. On 11 January 2012 HMRC issued to CCL a letter explaining that they were now being included within the HMRC monitoring project. On 28 March 2012 HMRC issued to CCL an MTIC awareness letter.

31. On 6 November 2012 Mr McDonald and HMRC officer Jones visited CCL. Mr Bell explained that due diligence checks were carried out on immediate customers and suppliers but that he was not aware of the suppliers' suppliers or customers' customers and had no reason to be; in that context Mr Bell stated that he did not recognise transaction chains. Mr Taylor confirmed that he had, in the past, worked for a mobile phone company but stated that he had no involvement in stock control. Mr Taylor confirmed that he was aware of MTIC fraud within the mobile phone sector but did not at that point have a great understanding of it. It was explained by HMRC that personal liability debts can arise from penalties raised by HMRC holding the directors personally responsible.

32. In January and February 2013 CCL was issued with tax loss letters just over £50,000 in relation to 63 purchases from Man Metals Ltd in VAT quarters 04/12, 07/12 and 10/12. Man Metals were compulsorily de-registered on 20 December 2012 and was assessed in relation to period 11/12 in the sum of £642,419 due to the non declaration of VAT in relation to sales of scrap metal. Further assessments were issued in August 2013 and February 2014. Mr McDonald relied on CCL's transactions with Man Metals as, inter alia, evidence of the fraud within CCL's supply chains.

33. On 11 and 26 February 2013 CCL submitted a VAT validation request in relation to GPSE Ltd. On 26 February 2013 HMRC verified GPSE Ltd's VAT registration number.

34. On 14 March 2013 HMRC verified GPSE Ltd's VAT registration number following a request by CCL on 13 March 2013.

35. On 11 April 2013 HMRC again verified GPSE Ltd's VAT registration number following a request by CCL on 9 April 2013.

36. On 8 April 2013 Mr McDonald visited the Appellants. Mr Bell explained that CCL always used HMRC's Wigan verification process in relation to new trading partners and that he conducted site visits. Further information was provided by HMRC relating to MTIC fraud. Mr Bell explained that deals were conducted by CCL being offered a product for which they then find a buyer before buying the product on the same day or as soon as possible afterwards for cash flow reasons.

37. HMRC verified GPSE's VAT number on 21 May 2013 and 19 June 2013 following further requests from CCL.

38. On 20 June 2013 HMRC sent CCL a de-registration veto letter advising that GPSE Ltd's VAT number was cancelled as of 18 June 2013.

39. At a meeting on 8 July 2013 Mr Bell confirmed to HMRC that his contact at GPSE Ltd was Mr Neil Gould who had been known to Mr Hovers for approximately 14 years and whom he had known for 6 or 7 years. Mr Bell advised that Mr Gould was previously a surveyor who had decided to go into the scrap metal trade. Mr Bell was aware that GPSE Ltd's VAT number had been revoked and stated that CCL's last transaction with them was on or about 17 June 2017.

40. On 9 August 2013 Mr McDonald issued a tax loss letter to CCL in the sum of £128,131 in relation to 5 metals purchases from GPSE Ltd in CCL's 04/13 VAT period. On the same date Mr McDonald requested the following documents from CCL:

- Bank statements as proof of payment;
- Copies of due diligence in relation to GPSE Ltd;
- Purchase invoices or sales invoices in relation to the 5 supplies made to CCL;
- Any documentation held to support the physical delivery of the metals to CCL's yard.

41. On 10 September 2013 Mr Bell provided the following:

- 5 original sales invoices provided by GPSE to CCL in respect of the 04/13 tax loss purchases. Each invoice had an associated yellow transfer/purchase invoice on CCL headed paper;
- Copies of the CCL NatWest trading current account showing debits to GPSE Ltd;
- Documents detailed as due diligence undertaken in relation to GPSE: Certificate of registration for VAT detailing the trade classification as 'Other Construction Installation', Certificate of Incorporation on change of name from 'Your Property Makeover Ltd' to GPSE Ltd, Scrap Metal Dealers Act 1964 Certificate of Registration in the name of Neil Gould from 7 January 2013, Registration approval document from the Environment Agency dated 24

December 2012 for Neil Gould to be registered as an Upper Tier Carrier Broker Dealer of controlled waste and a photocopy of Neil Gould's passport.

- There were various photographs of GPSE Ltd's unit. Mr McDonald noted that the photographs were provided with a CCL headed fax cover sheet dated 14 February 2013 and the first sales invoice to CCL raised by GPSE Ltd is also dated 14 February 2013. Included in the photographs are what Mr Bell explained were the cars belonging to Mr Hovers and Mr Gould. Mr McDonald noted that an NCU check on the vehicles identified the Audi GL12 BXY as registered to a Miss R Tinsley and the Mercedes YP12 VYN was registered to a finance company. Mr Bell stated that the Mercedes was the car driven by Mr Hovers at the time;

- CCL also provided a copy of the GPSE Ltd lease agreement for the unit. The lease was dated 1 January 2013 charging £15,000 per annum with a £1000 deposit paid. The landlord was Wensleydale Properties Ltd (British Virgin Islands incorporated company ref 560295).

42. Mr McDonald noted that the due diligence did not include any third party checks. Mr Bell had explained to HMRC that Mr Hovers conducted a Creditsafe credit check report on GPSE Ltd prior to meeting to discuss trade however the document had been misplaced. Mr Bell was unable to obtain details of the original check explaining in a letter to Mr McDonald dated 7 November 2013 that *"unfortunately Creditsafe do not keep records beyond current year that a company is registered with them. So we can only look at archived records to 30 March 2013 therefore we cannot provide the information required."* An email from Creditsafe dated 9 December 2013 was included to confirm this however Mr McDonald highlighted that this was not evidence that the check had actually been carried out in order to enable CCL to make a commercial decision to enter into high value transactions with a newly established director in the scrap metals trade sector.

43. HMRC visited GPSE Ltd on 24 June 2013 and noted that there was nothing in the storage area except for a few empty pallets and Mr Gould's car. The office had a desk, phone and business records in several folders. Mr Gould told HMRC that GPSE Ltd was started in 2009. He worked for the company for 6 months before becoming a self-employed land surveyor. Mr Gould's background is in the metals trade and in March/April 2012 he approached the then director of GPSE, Mr Parker, and paid him £3,000 to take over the business. Mr Gould explained that he bought copper stock from UAA Holdings Ltd ("UAA") and Millennium Energy Trading Ltd ("Millennium"), which was in turn sold to CCL. Mr Gould explained that Victor Adeyeri of 221 – 225 Station Road, Harrow telephoned offering loads. He had inspected two loads of cooper at UAA. He made £50 to £60 per tonne and could earn £1,000 per load. After the load was inspected it was taken to CCL's yard by UAA. In terms of due diligence on UAA Mr Gould explained that he asked for a VAT certificate and copy of driving licence. As regards CCL Mr Gould stated that he already knew them and was aware that they had checked him via Wigan. Mr Gould provided further information about the nature of his transactions and was advised by HMRC that the scrap metal trade was considered to be high-risk associated with tax

losses due to MTIC fraud. Mr Gould stated that he had heard of MTIC fraud and read HMRC's Public Notice 726. He agreed that his transactions sounded unusual and contrived but stated that this was not the case.

44. On 26 July 2013 HMRC issued GPSE Ltd a tax loss letter in the sum of £75,007 in relation to copper purchases from defaulting trader Millennium. On 14 November 2013 HMRC raised a VAT assessment for the sum of £182,601 against GPSE in relation to undeclared sales of copper to CCL in CCL's 04/13 VAT period. On 17 November 2013 HMRC raised a further VAT assessment in the sum of £592,801 against GPSE Ltd in relation to undeclared sales of copper; the 07/13 CCL VAT period sales are included in this assessment. GPSE Ltd's VAT debt on file at the time of compulsory de-registration as a missing trader on 18 June 2013 was £775,449.16.

45. Mr McDonald noted that at a visit to CCL on 7 April 2014 Mr Bell advised that Mr Hovers had spoken to Mr Gould who had denied any wrongdoing and stated that he was trying to sort out his VAT affairs but documentation was irretrievable as a result of the theft of his laptop.

46. At a visit to CCL on 18 October 2013 Mr Bell stated that GPSE Ltd had delivered goods to CCL's yard but that he had not recorded the name of the haulage company; Mr Hovers said he would obtain this information. The Appellants confirmed that all copper loads from GPSE came into CCL's yard where they were checked. CCL did not weigh the goods, the customer weighed the goods and CCL were paid accordingly by its onward customer on the weight. Mr Bell stated that he would do "a lot of checks" before dealing with GPSE again. Mr Hovers advised that there were no weighbridge tickets in relation to the GPSE purchases but there was full due diligence.

47. On 29 October 2013 Mr McDonald issued a tax loss letter to CCL for the sum of £513,000 in relation to 239 metals purchases directly from defaulting trader Global Metals Direct Ltd ("Global Metals") in the CCL 01/13 period. Global Metals were assessed for non-payment of £935,042 VAT in relation to the company's 01/13 VAT return with its sales to CCL incorporated in this figure. Global Metals were also assessed for non-payment of £806,455 VAT in its 04/13 period and £886,521 in its 01/12 period.

48. On 7 November 2013 HMRC received a letter from Mr Bell which explained that Creditsafe could not provide confirmation of the credit check the Appellants stated had been carried out. Mr Bell also explained that GPSE did not provide delivery notes and that the yellow transfer documents detailed the deliveries into CCL's yard. At a visit to the company on 23 November 2013 Mr Belle explained that Mr Hovers had contacted the director of GPSE Mr Gould and been advised that he was "sorting out" his VAT affairs. At the meeting Mr McDonald highlighted the differences in delivery documents; those from GPSE did not contain times of delivery or vehicle registration details whereas those from other suppliers to CCL in the same period contained times, dates and vehicle registration details. Mr Taylor, who was present at the meeting stated that a contractor must have delivered the loads but neither he nor Mr Bell could provide the contractor's details at that time. Mr

McDonald explained that the delivery notes for the GPSE transactions do not prove delivery of the copper into CCL's yard and that further evidence was required. Mr Bell clarified the mechanics of CCL's transactions as he had on an earlier visit, namely that when goods are delivered to CCL, the load is checked to confirm the goods are those which were ordered, the goods are then delivered to the customer who weighs the load and pays CCL on that weight. CCL then pay their supplier.

49. On 29 November 2013 Mr McDonald wrote to CCL requesting, inter alia, documentary evidence to support delivery of the goods into CCL, details of the transport company used to deliver the goods, the vehicle registration numbers of the vehicles and weighbridge tickets provided by CCL at the time of delivery. Mr McDonald also requested individual remittance advice sheets for all transactions in the 07/13 period; he noted that these were provided by the Appellants but he queried why the bank account details on the documents did not match the bank account details held on file by HMRC for GPSE.

50. By letter dated 18 December 2013 Mr Bell explained that GPSE do not provide delivery documentation and that the yellow CCL transfer documents already provided by CCL were proof of delivery into their yard. Mr Gould could not provide company transport details as GPSE had been placed into administration. Mr Bell stated that the 18 wheel bulk tippers do not fit onto CCL's weighbridge therefore CCL's customer will have paid on the weight of the load and advised CCL of that weight. Mr McDonald noted that CCL have never provided any explanation as to the haulage company used and therefore hold no details as to the size of the vehicles purportedly used.

51. In February 2014 Mr McDonald raised a number of queries regarding purchases from GPSE and the onward sales. CCL's customers during the relevant period were:

- TME Recycling Ltd ("TME"):

TME was compulsorily de-registered for VAT on 28 February 2015. CCL's due diligence on its customer did not include third party financial credit checks. The sales documents from CCL to TME show "c/o Jason"; the employee Jason Sherratt at TME was not listed as a director at Companies House although HMRC suspected he was heavily involved in MTIC activities as a shadow director. On 6 February 2015 TME had input tax denied in the sum of £268,260.59 on the grounds of *Kittel*.

- PPX Metals Management Limited ("PPX")

PPX traded from two sites; one in Mansfield Woodhouse and the other in Chesterfield at the site formerly used by Spire. PPX traded with two traders known to HMRC as MTIC traders (Golden Corporation and CMS Metals Ltd). At a visit on 17 July 2015 the director Mr Paul Pearce was evasive in answering questions and locating documents in relation to trades with Golden Corporation and CMS. The visit note also records the involvement of Jason Sherratt within PPX. PPX's transaction chains were traced back to fraudulent tax losses.

- Sims Group UK Ltd ("Sims")

Sims is a large "end user" metals company. On 4 November 2011 HMRC raised concerns about the company's due diligence processes and the evasiveness of the company during interation with HMRC. Throughout 2012 and 2013 the company was issued with tax loss letters in relation to its trade with three companies including CCL and Millennium. On 9 December 2013 the company was issued with a VAT assessment in the sum of £159,756 in relation to the incorrect zero-rating of supplies to UK based traders.

- Ron Hull Junior Ltd ("Ron Hull")

On 17 July 2015 Ron Hull was denied the right to deduct input tax on the basis of Kittel. In 2012 and 2013 tax loss letters were issued to the company in respect of its trade with four companies, including two letters relating to purchases from CCL.

52. Mr McDonald queried why in the documentation provided by CCL in relation to the 07/13 deal packs the only documents relating to sales to PPX are purchase notes/ transfer notes provided by PPX on PPX headed paper. In relation to the onward sales of GPSE purchases to TME Mr McDonald highlighted that the deal pack contained sales invoices however the remainder of the information is not consistent, for instance some contained CCL transfer documents with commodities and weights only, others only contain TME weighbridge tickets and the remainder contain both weighbridge tickets and CCL transfer documents.

53. In a letter dated 25 February 2014 Mr Bell explained that CCL paid GPSE when goods were delivered and that no specific terms and conditions were agreed between CCL and GPSE, CCL and PPX or CCL and TME. Mr Bell stated that in respect of the 07/13 onward sales to PPX the yellow transfer notes had been misplaced but now found and PPX had collected the goods from CCL's yard. The differences in the documentation in the TME deal packs was to be expected, as the CCL weighbridge can only take certain sized vehicles.

54. At a visit on 7 April 2014 Mr Bell was asked why the transfer documents for CCL purchases from GPSE did not contain any vehicle registrations or times of delivery when purchases from other traders did provide that information. Mr Bell was unable to explain and stated that Mr Gould would have brokered the deals by arranging delivery from his supplier. Mr Bell stated that he had not been able to get in touch with Mr Gould and that GPSE were no longer associated with him. Mr McDonald queried why Mr Gould had signed the CCL transfer document that is printed on CCL headed paper and asked whether the goods had in fact been delivered straight to TME instead of CCL and whether the goods existed. Mr Bell stated that the goods did exist and that all metals were delivered into CCL.

55. At a visit on 7 May 2014 Mr McDonald advised Mr Bell that GPSE would be the defaulting trader in 07/13 period tax losses if it did not submit the relevant VAT return. Mr Bell reiterated that Mr Gould's laptop had been stolen from his car with all

trading records on it and therefore Mr Gould did not have the information to submit a return. Mr McDonald explained that that HMRC had attempted to contact Mr Gould without success which had led to him being classified as a missing trader. On 22 July 2014 Mr Bell explained to Mr McDonald that he had only spoken to Mr Gould once in his life and that he had never visited GPSE.

56. On 12 November 2014 Mr McDonald visited CCL and explained to Mr Bell that the company had received a significant number of tax loss letters since it had been under MTIC monitoring with no apparent change in trade pattern. Mr McDonald also explained that HMRC could take recovery action in relation to input tax denial.

57. In December 2014 CCL was issued with tax loss letters in relation to 34 metals purchases from defaulting trader Spire Recycling Ltd ("Spire") in the sum of £320,639.46 which covered periods 10/13 and 01/14. Spire was de-registered as a missing trader. Mr McDonald questioned the due diligence undertaken by CCL on Spire; he noted that the undated introductory letter is in English and signed by the Hungarian director who, as far as HMRC were aware, could not speak English, although the Appellants disputed this. The Creditsafe check was carried out by CCL on 15 January 2014 however its first sale to Spire took place on 22 October 2013. The site visit document is dated 16 January 2014 and the first validation of Spire's VAT registration number was 25 October 2013. These latter two dates post dated the first transaction with the company.

58. On 8 December 2014 Mr McDonald issued CCL with a letter notifying it of HMRC's decision to refuse the entitlement to the right to deduct input tax in relation to its purchases from GPSE in the 04/13 and 07/13 periods in the amounts of £128,729 and £162,881 respectively.

59. On 2 February 2015 Mr McDonald attended the CCL creditors meeting at Begbies Traynor following CCL being placed into creditors voluntary liquidation. Mr McDonald's first witness statement stated that HMRC officer Morgan-Gray accompanied him and Mr Bell chaired the meeting. Mr Bell queried why the liquidators received a VAT Statement of Account dated 17 August 2015 showing £0 and submitted that if the company owed nothing as at 17 August 2015 then surely the directors cannot owe anything. As regards the Statement of Account Mr McDonald stated that he was unable to explain the mechanics of HMRC's internal system and he had not been responsible for issuing the document. As he understood it, the Statement of Affairs shows the VAT debt but it is excluded from the Statement of Account to avoid double recovery.

60. In cross-examination Mr McDonald did not accept that he had deliberately omitted from his statement the name of a trainee, Simon Donald, from the list of those present at the creditors meeting. Mr McDonald stated that he had read Mr Bell's witness statement a number of times (which pointed out the error) but had not realised his mistake until he had spoken with HMRC's representatives after which he rectified it. He stated that he had simply forgotten that the trainee had attended and fully accepted that Mr Donald was at the meeting to observe.

61. The Statement of Affairs listed HMRC as a creditor for the sum of £378,000 with total creditors detailed as £494,123.79. A book debt of £100,000 was also detailed in relation to a company called Challenge Resources Ltd.

62. Mr McDonald's recollection of the meeting as set out in his statement explained that the metals trade which was previously undertaken by CCL was continuing to be conducted at Parkers Yard using the trading name Steel City Metals Ltd; a company incorporated by Mr Bell on 24 December 2014. Mr McDonald noted that Mr Bell also incorporated a second company called Steel City Machinery Ltd on the same date. Mr McDonald explained that Stembridge Machinery Sales and Rental Ltd was incorporated on 2 December 2008 with the Appellants both being appointed as directors with a 50% shareholding each. The company was registered at the personal address of Mr Bell and subsequently moved to Parkers Yard and took over the trade of CCL after CCL entered voluntary liquidation. The VAT registration number of Stembridge Machinery Sales & Rentals Ltd was being used for the metals trading and all CCL staff had been transferred from the CCL PAYE scheme to Stembridge Machinery Sales & Rentals Ltd, having been made redundant on 31 December 2014 when CCL ceased trading. Stembridge Machinery Sales & Rentals Ltd had also purchased from the auctioneer Ellis Willis and Becket the plant and machinery from CCL for £10,200 (including VAT).

63. Mr McDonald concluded that CCL was a phoenix of Stembridge Metals and Recycling Ltd whose directors are listed as Mr Bell, Mr Hovers and Mr Delaney (who was an original director of CCL). Mr Francis Macdonald Barker and Mr Graham Delaney are also listed as directors of Stembridge Metals and Recycling Ltd during 2007 and Mr Taylor was the company bookkeeper. Stembridge Metals and Recycling Ltd had a £158,364 VAT debt on file containing an HMRC officer's assessment and two central assessments. The assessment related to invalid invoices and the company was transferred before the assessment was paid.

64. In cross-examination Mr McDonald accepted that he had phrased his description of the companies poorly, and explained that he had not intended to imply that there was a new business entity but rather a new trade name. He explained that he had been considering the position in a VAT context; the incorporation of a new company was not relevant to the VAT position, the point he was seeking to make was that there were, prior to CCL's liquidation, two companies with two VAT numbers whereas after there was one VAT number with two trading names. Mr McDonald accepted that Mr Bell had explained the position to him and that this was accurately reflected in Ms Morgan Grey's notes as follows:

"WM asked in respect of Steel City Metals and Steel City Machinery that have been recently set up. Steel City Metals so the name wasn't taken by anyone else. These will be run under the Stembridge VAT and company number and there will be no inter company transactions."

65. At the creditors meeting Mr Bell explained that the £100,000 book debt arose from CCL paying Challenge Resource Ltd ("Challenge") £100,000 in advance for a copper load which was never delivered. Mr Bell explained that CCL had previously

purchased two copper loads from Challenge on 24 and 26 September 2014 which had both been delivered. The third load was paid for on 2 October 2014. Mr McDonald noted that CCL had never previously paid for metals in advance and had always received payment from its onward customer before paying its supplier. The Appellants provided no explanation as to how trade with Challenge was initiated. Challenge was registered for VAT on 15 August 2014 and de-registered as a missing trader on 5 March 2015. It did not declare output tax in relation to the 3 sales to CCL.

66. In cross-examination Mr McDonald was asked about his officer's notebook which did not contain any reference to the creditors' meeting he had attended. He explained that Ms Morgan-Grey was employed by HMRC as an in-house insolvency expert and therefore was the lead officer at the meeting. Mr McDonald stated that he had never attended a creditors' meeting before and Ms Morgan-Grey asked if he would like to observe. As it was not a visit within his normal pattern of work he felt there was no need to record the meeting in his notebook. Mr McDonald agreed that he had asked more questions than Ms Morgan-Gray at the meeting but explained that he did not have a brief and that his questions were asked as a result of his knowledge of CCL and the Appellants.

67. In oral evidence Mr McDonald explained the penalty percentage in terms of the level of co-operation. He stated that under the heading of "telling" he had allowed a 5% discount which took into account factors such as the lack of explanation provided by the Appellants as to why the transfer documents in the GPSE deals were different to CCL's other transactions and the missing information relating to registration plates, delivery vehicles and times. There had also been no explanation as to how CCL had come to engage Mr Gould or any action taken by the Appellants to clarify his VAT affairs. As to "helping" Mr McDonald had allowed a 10% reduction which reflected the provision of information required. Mr McDonald explained that although the Appellants had received tax loss letters relating to their immediate suppliers in previous VAT periods and the risks of fraud in the trade sector had been discussed, the Appellants nevertheless would not recognise supply chains. Furthermore if Mr Gould was a friend of Mr Hovers, HMRC expected the Appellants to be able to provide detailed reasons as to why GPSE failed to submit returns yet the only vague explanation provided was that Mr Gould's laptop had been stolen.

68. Mr McDonald explained in oral evidence that the deal chains had been traced back as far as possible. The defaulting traders were found to be Millennium and UAA, both of which had been compulsorily de-registered for VAT. Mr McDonald stated that he had obtained GPSE's supplier details for 04/13 from the HMRC officer responsible for GPSE which showed that they had purchased the goods from the defaulting traders. The GPSE transaction documents for 07/13 were missing and therefore Mr McDonald had traced the chains using the supplier to GPSE, IBY's records. IBY declared its main business activity on the VAT1 as "Produce Pantomimes". The company was de-registered with immediate effect following a visit to the PPOB by HMRC on 2 July 2013, as there was no trace of the company at the address.

69. In terms of tracing metals transactions generally Mr McDonald explained that on occasion deals cannot be traced as the metals may be amalgamated, however if that were the case he would trace the chain the other way. Mr McDonald accepted that any metals trader could be caught up in the MTIC arena including large companies with well-established reputations. However, Mr McDonald explained, the difference between a large company and CCL was the fact that CCL was a small company with a large percentage of tax loss deals in VAT period after VAT period which aroused suspicion whereas the company Sims given as an example by Mr Bell was a large company which had been linked to only a small number of fraudulent transactions. He added that each company is assessed on a case-by-case basis. Mr McDonald explained that the Appellant's transactions in 07/13 with GPSE were connected to the tax loss arising from GPSE failing to submit the relevant return. The nature of GPSE's trade, with Mr Gould having no previous history in the trade sector and so soon after commencing trade becoming a missing trader indicated that the tax loss was fraudulent. The deals in 04/13 were traced through GPSE to UAA and Millennium. Mr McDonald explained that UAA was registered for VAT on 1 February 2012 and compulsorily de-registered in 2 May 2013 due to the trader's misuse of the VAT number. The VAT1 for UAA stated the main business activity was the purchase and sale of LED lighting, manufacture of frozen foods and distribution of metals. The VAT 5 issued by HMRC and completed by Mr Victor Babatunde Adeyeri did not indicate any metals trading; it contained a letter from the manager of Mr Adeyeri's private address at St Nicholas Hotel, Harrow which confirmed that a room was rented at the hotel for £215 per week. Trading documentation supplied contained information in relation to supply quick frozen foods produced in Wales and a letter signed by the General manager of Neo Neon UK stating that UAA have no formal contract but provisional distribution rights to supply LED lights to companies in Nigeria and other African nations. At visits by HMRC on 26 April 2013 and 1 May 2013 Mr Adeyeri indicated that he was aware that his VRN had been compromised. He stated that he is an accountant by trade and had been approached by a man named Ricky George, the director or Millennium, to act as an importer of metals from Poland. Mr Adeyeri stated that no money changed hands and payments were made via a banking platform operated by Mr George. Mr Adeyeri stated that Mr George was sending a man called Charles to see him who would provide Mr Adeyeri with sales invoices said to be from Polish companies to UAA. Charles would then provide written instructions on how to prepare onward sales invoices to Millennium. On 3 May 2013 HMRC uplifted 58 further purported sales invoices in relation to purchases from Poland. Mr Adeyeri completed the final VAT return under Regulation 25 showing no EU trade; he was immediately de-registered from VAT for misuse of the VRN. In interview Mr Adeyeri stated that the invoices were "dummy" invoices for alleged purchases from Poland; he did not arrange the purchases, he did not know who had arranged the purchases, he did not know who raised the invoices and he did not arrange for the onward sales of metals to UAA. Although UAA appeared to take the role of acquirer of the goods there is no evidence that the goods existed. UAA was assessed in the sum of £4,163,004 in relation to undeclared sales of scrap metal to Millennium.

70. Millennium was de-registered on 24 September 2013 on the basis of the abuse principle. A VAT debt remains on file in the sum of £9,815,489.95. From 2007

HMRC educated Millennium about MTIC fraud. Millennium was refused the right to deduct input tax on the grounds of MTIC fraud in VAT periods 02/13 and 05/13 in relation to purchases from UAA.

71. Mr McDonald agreed that the Appellants had always treated him with professional courtesy and explained that he would not have recorded Mr Bell's polite greetings in his notebook as his notes are simply to record the facts. He agreed that Mr Bell had made clear at meetings that he was aware of joint and several liability and did not want to spend unnecessary time discussing it at every meeting. Mr McDonald stated that the issue was relevant to his involvement as Mr Bell would not recognise supply chains but there had been tax loss letters to CCL between 04/12 and 04/14 and he was attempting to show the pattern in the context of the Appellant's trading. He confirmed that he had brought the issue of supply chains and checking their integrity to Mr Bell's attention, in addition it was referred to in the Joint and Several Liability leaflet. Mr McDonald agreed that HMRC's Public Notice "How to spot VAT fraud" made no mention of knowing your supplier's supplier but he explained that he considered the Appellants' due diligence on GPSE was inadequate as Mr Gould was new to the industry, the documents showed his business as "other construction/installation", the photographs provided of GPSE's premises did not show a scrap yard nor did it show premises with sufficient capacity to deal with the metal purportedly traded, the lease was short-term (1 year) and there was no evidence to show that Mr Gould had any knowledge of the trade sector. Furthermore no independent credit check document exists from the relevant period and CCL do not appear to have considered how GPSE was funding the deals.

72. It was suggested to Mr McDonald that insurance and contracts were not the norm in the trade sector; Mr McDonald stated that he had visited companies with freight insurance and contracts in place. In Mr McDonald's experience it was traders linked to tax losses who did not have insurance or contracts. Mr McDonald explained that the back to back nature of the deals, nature of the trade and the fact that CCL dealt with a new trader every first or second VAT period which then went missing indicated that the deals were contrived. In simple terms, Mr McDonald stated, the Appellants' deals could all be evidenced except those with GPSE.

73. It was put to Mr McDonald that he had failed to speak to the yard manager of CCL, Mr Sidebottom. Mr McDonald explained that as an MTIC officer he would only speak with the directors or officers of a company. He stated that his main contact had been with Mr Bell; if he had asked a question to which Mr Bell did not know the answer, he was usually provided with an answer in due course and therefore over time he felt no need to call Mr Hovers who was often out making visits nor did he feel it necessary to disrupt staff at the yard. As far as Mr McDonald was concerned, as a company officer it was Mr Bell's responsibility to understand every element of the business.

Mr Bell

74. Mr Bell explained that he had, until 2004, owned Wardson Machine Knives, an engineering company engaged in the manufacture of industrial machine knives; he

had been employed in the business since his apprenticeship as a tool cutter and grinder ultimately becoming operations director responsible for the running of the factory, the employees, plant and machinery maintenance and purchasing along with national and international sales.

75. In 2007 Mr Bell was asked by his friend Mr Hovers to join Stembridge Metals and Recycling as Business Development Manager; he started this employment on 4 November 2007 with the condition that he established a machinery sales business into the scrap metal and recycling industry which accounted for 50% of his time. Mr Bell replaced Mr Delaney as Director of Stembridge Metals and Recycling and its sister company CCL in August 2008. Mr Bell explained in oral evidence that he had over twenty years experience in the trade sector. He agreed that he shared the overall responsibility of running the company with Mr Hovers and that statutory duties such as the filing of accounts came with the position.

76. The Appellants decided to relocate CCL to a larger yard and all assets and liabilities of Stembridge Metals and Recycling were transferred to Axholme House, an accountancy business. In 2008 the Appellants set up Stembridge Machinery Sales & Rentals Ltd which was registered for VAT in December 2008.

77. Stembridge Machinery Sales & Rentals Ltd traded for several years buying and selling machines. Mr Bell was solely responsible for the day-to-day activity of this aspect of the business. Mr Hovers was responsible for all metal purchases and trading activity that was not associated with the yard trade or the public for which Mr Sidebottom was responsible.

78. Mr Bell's witness statement explained that after the failure of CCL, Stembridge Machinery Sales & Rentals Ltd was split into two areas of activity. Steel City Metals was established as a trading name of Stembridge Machinery Sales & Rentals Ltd to trade in scrap metals; it operated in much the same way as CCL had with Mr Hovers responsible for metals purchasing and Mr Sidebottom responsible for running the yard. Stembridge Machinery Sales & Rentals Ltd continued to sell machinery and equipment into the scrap metal and recycling industry as it had done since its formation in 2008 with Mr Bell taking responsibility for this area of trading.

79. Mr Bell explained that CCL was not a "phoenix" of Stembridge Metals & Recycling Ltd as Mr McDonald had described it. CCL was its own entity and traded in its own right in 2007; Stembridge Metals & Recycling Ltd did not stop trading until the end of 2008. Mr Bell also explained that Mr Francis Barker and Mr Graham Delaney were listed as directors during 2007 however Mr Bell did not take up employment at Stembridge Metals & Recycling Ltd until 4 November 2007, and became a director in August 2008. Mr Bell queried the relevance of previous directors of Stembridge Metals & Recycling Ltd given that CCL was not a "phoenix" and the PLNs being appealed relate to CCL and its transactions in 04/13 and 07/13.

80. As regards due diligence generally Mr Bell contended that HMRC were deliberately vague when advising what should and should not be done. However CCL did received HMRC's published guidance and he noted that the VAT Fraud

educational letter dated 14 October 2013 was the first such guidance received which related to the purchase and sales of metals instead of mobile phones and computer chips. Mr Bell explained that other than GPSE being a new company, none of the other indicators applied and the Appellants were unconcerned that it was a new company as *"everything about how they were seen to be conducting business seemed right and Mr Gould was a personal friend of Mr Hovers."* The Appellants were satisfied that the due diligence in respect of GPSE was sufficiently robust. Mr Bell explained in his written evidence:

"The transactions and trades conducted with GPSE in periods 04/13 and 07/13 satisfied all the criteria advised…in that: - the goods existed and were as described, we knew both our supplier and customer. Our suppliers integrity at that time was not a concern to us, neither was our customers. Contrary to Mr McDonald's assertions, the transactions were entirely commercially viable in that we were paying market prices and were able to make a profit, albeit small. We were not buying or indeed selling below market value, we were not selling at a loss, we were not getting inflated or unrealistic prices for the product. We paid valid VAT invoices, issued by a VAT registered company, into a UK high street bank (Barclays). The invoices that we issued were paid into our Nat West account by our customers. I would argue that the suggested checks were satisfied."

81. As regards the keeping of records for transactions Mr Bell agreed that it was unfortunate that there was not a complete set of records in respect of the GPSE deals but stated that Mr Sidebottom was predominantly in charge of the yard and the records made were internal documents. Mr Bell explained that CCL was limited as to the amount of goods it could weigh but when goods were weighed in its yard Mr Sidebottom would have kept a note either in a book or on a piece of scrap paper. He stated that the GPSE deals were unlikely to have been weighed at CCL's premises due to the size of the vehicles the goods arrived in. Mr Bell confirmed that Mr Sidebottom took the main responsibility for metals coming in and going out of the yard and for keeping records. He stated that he had last spoken to Mr Sidebottom in November 2016 when he had requested that Mr Sidebottom make a witness statement. However he stated he had not seen Mr Sidebottom since that date and he had been unable to contact him or secure his attendance as a witness.

82. Mr Bell explained that he had, at some point, been made aware that Mr Taylor and Mr Sidebottom had been employed in the mobile phone industry and was told of the demise of the various companies which employed them. He stated that it had not been important to him; Mr Sidebottom managed the yard well and Mr Taylor kept the company books in good order. He did not need to know their respective employment histories, as they were already employees when he commenced work and he trusted them.

83. Mr Bell stated that he knew Mr Francis Barker socially; Mr Hovers had met Mr Barker in the same circumstances. He did not know Mr Massey and could not comment on whether he was known to Mr Hovers. Mr Bell explained that he had not seen Mr Barker since 2007; Mr Taylor had not informed him that he was going to work for him at Omega nor did he tell Mr Bell that Omega had been assessed in the

region of £600,000 for failing to produce documents relating to mobile phones sold to the EU.

84. Mr Bell was unable to provide an explanation as to why there are no vehicle registration details on CCL's yellow transfer documents and noted that he did not accept the deliveries personally. He stated that there is no legal requirement to record registration plates of delivery vehicles and stated that it may be a result of the goods arriving at the yard with no paperwork, delivered by a contractor organised by the supplier. The goods would be unloaded and the delivery vehicle would leave the yard. Once the goods were checked CCL's internal yellow note recorded the goods that had been delivered. CCL had customers for the goods and there is paperwork for the onward supply of goods which confirms the existence of the goods. However, when shown the Scrap Metal Dealers Act 1964 Mr Bell accepted in cross-examination that there is a legal requirement to record information for all metals traded; he explained that until he was shown the legislation he had genuinely believed that it only applied to yard trade and materials which were paid for at the yard. Mr Bell stated that it was remiss of him not to have known his statutory obligations and that as company officer he took responsibility although his main focus was the machinery side of the business.

85. Mr Bell explained that although Mr Gould was new to the trade sector he had contacts as a result of his previous occupation as a surveyor in land clearance and working with demolition contractors. Mr Bell accepted that he was unaware of the level of Mr Gould's knowledge of the industry and with the benefit of hindsight he accepted that, as a director, it would have been prudent to ensure that details such as vehicle registrations, dates and times of deliveries were recorded. Mr Bell did not accept that he had made inconsistent statements to Mr McDonald as to how long he had known Mr Gould. He clarified that he had known Mr Gould for 6 – 7 years and the reference to speaking to Mr Gould only once was in relation to this particular issue. Mr Bell explained that Mr Hovers had carried out due diligence on GPSE and convinced him that Mr Gould knew the trade, could get materials and had been advised by Mr Hovers to check the integrity of his supply chain; as a result Mr Bell was content to trust Mr Gould and trade with GPSE.

86. Mr Bell stated in cross-examination that he was aware that if CCL's transactions formed part of a chain in which there were tax losses he could be held liable. However he stated that although he was informed about tax losses he did not know any information beyond that of his supplier; he did not know he was part of a chain nor was he aware that there was fraud within the chain. Mr Bell expected that there would be one supplier before CCL rather than the lengthy chain he was referred to in deal 1 in 04/13 which had been traced as follows:

UAA Holdings Ltd (Defaulter)	Millennium Energy Trading Ltd (Buffer)	GPSE (Buffer)	CCL (Buffer)	Sims Groups UK Ltd (End user)
No invoice number	Inv No: 21317	Inv No: 3	Inv No: 270213 -01	
Copper	96% copper	96% copper	96% copper	
No weight given	24.77 tonne	24.77 tonne	24.77 tonne	
Net: £110,946.90	Net £110,226.50	Net £110,969.60	Net £112,951.20	

VAT £22,189.38	VAT £22,045.30	VAT £22,193.92	VAT £22,590.24	

87. He stated that Mr Gould would not tell CCL who his supplier was nor would the Appellants have asked; that type of conversation does not take place in the industry. With hindsight Mr Bell accepted that the chains looked organised for the purpose of MTIC fraud but explained that at the time he was not aware that there were two suppliers before GPSE. He added that he did not know either UAA or Millennium.

88. It was noted that UAA was based in Harrow, Millennium in East Barnet, GPSE in Gravesend and CCL in Sheffield. Mr Bell was not aware of GPSE's transport arrangement with its supplier but assumed they purchased at a price inclusive of transport costs to CCL.

89. Mr Bell stated that the London Metal Exchange set the commodity price. He explained that it could be the case that CCL sold the goods when the price had changed from that at which they were purchased. However he stated it was usually the case that goods were offered to CCL at which point Mr Hovers spoke to CCL's customers who gave the price they would pay. Mr Bell was asked how this worked in a chain as it appeared that no profit would be made until the LME changed the rate to which he responded that there were margins. Mr Bell was cross-examined about the margins which included 0.72% (deal 5), 1.07% (deal 6), 0.94% (deal 8) and 1.17% (deal 23) but stated that it was a question that Mr Hovers was best placed to answer. Mr Bell agreed that, by way of example, in isolation deal 23 was not commercially viable but explained that the deals should be viewed as a whole.

90. Mr Bell explained that contracts were not standard practice in his experience and if there was a problem with goods and GPSE refused to take them back he would rely on the Sale of Goods Act. Purchase orders are seldom raised and the industry relies on verbal agreements between trusted trading partners. However if goods were, for example, stolen, then CCL would be liable although he stated that theft was not a problem CCL had encountered to any great degree. He confirmed that he agreed with Mr Hovers' statement to HMRC officer Lil that the transactions involved a gentleman's agreement but stated that he was not responsible for the purchases or sales.

91. Mr Bell reiterated that it had always been his intention to appeal against CCL's assessment. He explained that his motivation was to do things, and be seen to do things, in the correct manner. He stated that at the creditors meeting his wish to appeal was made clear and that he told the liquidator that the Appellants would undertake the necessary work to do so. Subsequently the Appellant received professional advice and were told that there were no funds with which to appeal. Mr Bell disputed the visit note recorded by HMRC officer Lil in 2016 which indicated that Mr Bell would not seek to appeal. He also denied being aware that the relevant transactions were connected to fraud and that the chains of supply were fraudulent. Mr Bell agreed that if the transactions were fraudulent the returns were, as a result, inaccurate but explained that this was not reckless behaviour on the Appellants' part; the returns had been completed deliberately on the basis that they believed the transactions to be legitimate.

92. Mr Bell agreed that CCL's machinery was sold to Stembridge which continued trading from the same address; the liability remained with CCL and Stembridge continued from the same premises and using CCL's assets. He agreed that Stembridge was a phoenix company in so far as the metals recycling trade but highlighted the distinction with the machinery rentals side of the business which had been established in 2008 and continued as it always had.

93. As regards the back to back nature of the deals Mr Bell stated that no requirements were instantly matched; *"the customer was offered stock and he says yes or no to it. The purchase of the materials will obviously match what has been offered."*

94. Mr Bell denied that CCL's due diligence was inadequate as a result of the absence of a credit check on GPSE. He submitted that Mr McDonald's queries as to what would happen if CCL's trading partners did not honour their obligations and it was left with goods for which purchasers could not pay or orders it was unable to fulfil were baseless. Mr Bell posed the question: "in what situation we would be left with stock for which the customer could not pay? We are dealing with our customers and suppliers on a regular basis."

95. Mr Bell took issue with the written evidence of Mr McDonald in relation to CCL's liquidation and the creditors meeting on 2 February 2015. He noted that Mr McDonald had attended the meeting with HMRC officer Morgan-Grey and he had stated the date of liquidation as being 31 December 2014 instead of 5 January 2015. Furthermore Mr McDonald had failed to make reference to the third HMRC officer who had attended the meeting. The Appellants had requested the minutes of the meeting and had been told by HMRC that the notes could not be found.

96. Mr Bell also challenged Mr McDonald's account of the meeting stating:

"However Mr McDonald further advises that the 'metals trading activity previously undertaken by Carwood was continuing to be conducted at Parkers yard using the trading name Steel City metals Limited, a new company incorporated by Bell on 24 December 2014'. This is a total fabrication and I am astonished given that Mr McDonald knows full well that the metals trading activity would, and was to be done by Steel City Metals, a trading name of Stembridge Machinery Sales & Rentals Limited…He also knows, because he asked at a subsequent visit to Stembridge that the only reason that Steel City Metals Ltd was registered was to prevent any other persons from trading with the same name."

97. Mr Bell contended that Mr McDonald had demonstrated a complete lack of understanding as to how business works; HMRC's reference to low margins being "typical MTIC UK buffer characteristics" fails to recognised that if higher margins could have been achieved, they would. There is a market price for commodities and an inflated price will not attract a buyer. The back-to-back nature of the deals demonstrated, in Mr Bell's view, sound commercial sense rather than HMRC's view that this was a typical feature in UK MTIC buffer transactions.

98. Mr Bell submitted that the VAT assessed against CCL contained calculation errors; in particular the VAT in relation to one invoice in 07/13. In those circumstances Mr Bell queried how many other errors HMRC have made and whether the evidence relied upon by HMRC can be deemed reliable.

99. Mr Bell disputed the transaction chains relied on by HMRC in respect of the deals carried out for which input tax was denied; he explained that the "end users" identified are scrap metal merchants who will sell to another customer who may well be the end user or another scrap metal merchant; therefore the whole chains have not been established. Mr Bell also explained that the Appellant were only aware of its supplier and customer and could not have known the identity of others in the transaction chains.

100. Mr Bell took issue with Mr McDonald's reliance on the Appellant's research into carbon credits which "were a popular commodity used in relation to MTIC trade during this period of time" which he found was an attempt to defame his character. He explained that he had enrolled on the Danish Exchange in order to gain a better understanding of the voluntary carbon credit market; the Appellants never traded carbon credits and HMRC have misrepresented the position.

101. Mr Bell explained that tax loss letters were received in relation to a number of companies, one of which was Man Metals however part of the tax loss arose from Man Metals' undeclared sales to All Nations Metals and the remainder its undeclared sales to CCL. Mr Bell stated that CCL never traded directly with All Nations Metals nor did it have any contact or connection with it.

102. As regards GPSE the Appellants attempted to verify the company's VAT number at Wigan as it did with any supplier; on the first attempt the Appellants were told to resubmit in 10 days.

103. Mr Bell explained that there is a difference between sourcing new trade and the task of conducting due diligence on that company; he made several visits when in the relevant areas to companies to ensure the nature of the business and that the company was operating from the premises advised although Mr Hovers carried out the majority of visits. Due diligence was a collective effort.

104. In response to HMRC's concerns regarding pictures provided by the Appellants of GPSE's premises, Mr Bell dismissed Mr McDonald's scepticism and explained that the pictures showed GPSE's PPOB; a working business engaged in the procurement and sale of scrap metal. Vehicles shown in the photographs were connected to the Appellants' company cars, one of which was registered to Mr Hovers' partner at the time. Mr Bell also explained that a Creditsafe check was carried out on GPSE prior to trade however the document cannot be located and Creditsafe were unable to provide a copy for years pre-dating the current membership year. Mr Bell added that the creditworthiness of GPSE was irrelevant as CCL did not provide GPSE with credit but rather the company was a supplier which gave CCL credit. The due diligence undertaken showed a VAT number, a bank account, a local council licence to trade in scrap metals, a lease and the relevant permits from the

Environment Agency. Mr Bell highlighted that ultimately the decision to trade with GPSE rested with the Appellants.

105. As regards Spire, Mr McDonald had raised the fact that the director was Hungarian and could not speak or translate English. Mr Bell explained that it was Mr Hovers who had met the director and as far as he was aware there had been no language difficulties during their meeting. The visit in January 2014 after trade had commenced between the companies was a result of the Appellant's review of the due diligence in light of a change of director. Mr Bell contended that CCL would never trade with a supplier without confirmation of a valid VAT number; if this was the case it was nothing more than an oversight which was duly rectified.

106. In respect of a tax loss letter in relation to Global Metals Direct Ltd Mr Bell explained that the company ceased trading unexpectedly. He stated that one of the company's directors was Mr Christopher Hall and that the company had been trading from premises at Killamarsh on the outskirts of Sheffield in premises adjacent to JSJ Metals Ltd, a long established metals trader jointly run by Christopher Hall's father who had over 40 years experience in the metals industry. CCL had completed all due diligence of Global Metals Direct and made regular VAT validation checks at Wigan.

107. As to the penalty imposed Mr Bell disputed that there was any inaccuracy or that the only reasonable explanation for the transactions in which CCL was involved was connection to fraud. Mr Bell submitted that the transactions were commercial as CCL made a profit and the reasons for denying the input tax are baseless. Furthermore, Mr Bell contended, the Appellant's behaviour was deliberate in the sense that they believed the transactions to be genuine and there was therefore an entitlement to reclaim the VAT.

108. Mr Bell accepted that the paperwork from CCL's supplier "left a lot to be desired" but submitted that this does not demonstrate a connection with fraud. As to the assertion that Mr Bell's explanation regarding the mechanics of a deal was questionable, Mr Bell reiterated that Mr McDonald was aware that he was not responsible for arranging the purchase or receiving the materials into the yard. Mr Bell denied that the Appellants had disclosed any inaccuracies nor was any attempt made to conceal information from HMRC; there is no admission as to inaccuracies because the returns were not inaccurate. The Appellants provided more than minimal information and the actions of the liquidators should not be held against the Appellants. Mr Bell queried whether Notice 726, which does not concern trading in the scrap metals sector, is legislation that can apply to this case.

Mr Hovers

109. Mr Hovers adopted and agreed with the witness statement of Mr Bell. He added that in 2006 he and his friend Mr William Delaney decided to open a business in the scrap metals industry. Stembridge Engineering Ltd was set up in January 2007. Mr Hovers knew Mr Francis MacDonald from the local pub and upon hearing of Mr Hovers' plans, Mr MacDonald offered to become involved and provide capital. When

Mr Delaney left the business Mr Bell and Mr Hovers set up Stembridge Machinery Sales & Rentals Ltd in December 2008.

110. Mr Hovers explained that his role within the company was that of materials buyer. He travelled around the country meeting new and old suppliers and customers and buying and selling materials. He confirmed that there were never written contracts in place for transactions undertaken although a verbal agreement was reached. Mr Hovers explained that he was responsible for pricing and stock management; it was Mr Hovers' sole decision as to what stock to buy, from whom and at what price. Mr Hovers was also solely responsible for the sale of stock and negotiating the price with the customer. Mr Hovers stated that he also arranged delivery transport to CCL's onward customers; he used a number of firms including Cox Haulage and Lavery or Laverty Transport.

111. Mr Hovers stated that he had known Mr Gould for approximately 15 years and considered him a friend. He first met Mr Gould on a roofing contract where Mr Gould was the site surveyor. Mr Hovers was a little surprised by Mr Gould's move into the metals trade but he was told that Mr Gould had a number of contacts and friends in the industry. He stated that if the due diligence checks had indicated that Mr Gould was not the director of GPSE then CCL would not have traded with him. He stated that he had explained the problems with fraud in the industry to Mr Gould on several occasions and that Mr Gould had understood. Mr Hovers had been satisfied that GPSE could supply goods which were not linked to MTIC fraud; Mr Gould had been a friend for a long time and he trusted him. Mr Hovers stated that Mr McDonald had never contacted him regarding GPSE nor had he sought to clarify Mr Hovers' role in the company or the mechanics of that trading with GPSE. Mr Hovers had spoken to Mr Gould on several occasions regarding his VAT situation; Mr Gould had always advised that it was being "sorted out" and that there was not a problem. Mr Hovers trusted that Mr Gould was on top of the situation and that he was telling the truth. Mr Gould confirmed that he had carried out a credit check on GPSE prior to entering into any transactions; it confirmed that Mr Gould was the director and the existence of the company, nothing more. Mr Hovers could not explain what had happened to the document or why it was not in the due diligence file.

112. Mr Hovers had never heard of Millennium or UAA and stated that CCL had never knowingly been involved in deals linked to MTIC fraud.

113. Mr Hovers explained in oral evidence that he had been present at the meeting with HMRC officer Lil in 2016 and confirmed that Mr Bell had expressed his intention to appeal against CCL's assessment.

114. Mr Hovers was not aware that Mr Delaney was a director of Otter Consultancy Ltd, Otter Commodities or Otter Telecoms. Mr Hovers was not aware of any other businesses in which Mr Delaney was involved, only that he was renovating a public house. Mr Frank Barker and Mr Delaney had provided the funding to set the yard up and Mr Hovers carried out work on site. Mr Hovers confirmed that he knew Jason Barker, although he was not aware of his involvement as a director of Otter Telecoms.

115. Mr Hovers stated that he was not initially aware of Mr Taylor's involvement in Fonix and the Otter companies but that he would have asked about his previous employment at some point. However Mr Hovers did not know about the mobile phone trade and Mr Taylor's previous employment was irrelevant to him. He confirmed that Mr Taylor did not have any knowledge of the metals trade but explained that he was employed to keep the books and so knowledge of the trade was irrelevant. Mr Frank Barker had recommended Mr Taylor as a good bookkeeper. Mr Hovers was not aware that each of the companies for which Mr Taylor had previously worked had, at the time of his employment with CCL, gone into administration due to involvement in MTIC fraud.

116. Mr Hovers stated that he did not know the details of Mr Sidebottom's employment at Fonix; Mr Hovers did not require a CV as Mr Sidebottom was a friend of Mr Delaney.

117. Mr Hovers explained that the price of metal is determined by the LME and currency, the latter fluctuates the price on the LME. He stated that there were different systems of trading; a trader could price on a monthly or three monthly market. Mr Hovers did not agree that CCL added no value, stating that they had accounts with big companies and their customer was not necessarily the end user. However he accepted that in the deals that form the subject of this appeal CCL did not alter the goods.

118. Mr Hovers could not explain why Mr Gould did not sell directly to larger companies. Mr Hovers was asked whether he queried the substantial transaction offered by GPSE as a new trader soon after CCL had received a tax loss letter relating to Man Metals and the Appellants had been specifically warned about MTIC fraud by HMRC; he explained that Mr Gould had been a friend for 14 years and he had worked in demolition although Mr Hovers accepted that Mr Gould was not well acquainted with the scrap metal trade. Mr Hovers stated he was a little surprised at Mr Gould's move into the trade but trusted him as he knew that Mr Gould had contacts in the field.

119. As regards the records kept by CCL, Mr Hovers explained that Mr Sidebottom weighed the goods, passed the information to Mr Taylor then disposed of his records as they were irrelevant at that point and they were an internal document. He agreed that there was no record made by CCL in respect of any of the GPSE transactions which recorded the time of delivery or registration of the delivery vehicle which would demonstrate that the goods had gone through CCL. Mr Hovers clarified that CCL relied on two weights; one given by Mr Gould and one given by the customer. He stated that there had never been a discrepancy between the two and it did not cross is mind that there was no remedy if such a situation arose.

120. Mr Hovers agreed that the margins made by CCL were in the 1 – 2% range. He clarified that GPSE would have paid the haulage costs to deliver the goods to CCL and CCL's customer paid the haulage costs out of the yard. Mr Hovers did not agree that despite his visits to other traders the only consistently large transactions were carried out with GPSE; he stated that there could have been other trading partners and agreed that GPSE was CCL's main trade in value but not in the number of deals. Mr

Hovers could not recall the names of GPSE carriers used for haulage as the paint had often peeled off the vehicles and they were therefore anonymous.

121. Mr Hovers stated that he lost contact with Mr Gould in November 2013; he had tried to obtain information from Mr Gould and had stressed the importance that GPSE's return was filed. He had telephoned Mr Gould and explained the situation but decided he was "flogging a dead horse" and therefore stopped contacting Mr Gould and Mr Gould did not contact him. However, Mr Hovers contended, HMRC should have visited GPSE, they could have de-registered the company earlier if they were suspicious and therefore the blame lies with them.

122. As regards the £100,000 loss arising from a transaction with Challenge, Mr Hovers could not recall whether or not he had checked the company's website which made no reference to scrap metal. He stated that CCL had sufficient funds to pay Challenge even though the company usually worked on credit, otherwise they would not have paid. He could not comment on whether CCL's liquidation arose from the fact that CCL was not a profit making or valuable company as he is not an accountant.

123. Mr Hovers agreed that he provided the information to Mr Taylor in order to complete the company returns, but denied that he was responsible for the deliberate inaccuracy in CCL's return or that he had been aware that the relevant transactions were connected to MTIC fraud.

Mr Sidebottom

124. Mr Sidebottom did not attend to give evidence. A witness statement was provided which set out his employment history as transport manager and due diligence officer at Fonix Ltd from 2004 to 2007; a job he had been offered by Mr Jason Barker. In 2009 Mr Sidebottom went to work at Stembridge Engineering Ltd as a yard operative. In 2009 Mr Sidebottom was employed by CCL as yard manager where he remained until the company went into liquidation. Mr Sidebottom was then employed at Stembridge Machinery Sales & Rentals Ltd where he was involved with the metals trading aspect of the company which traded under the name Steel City Metals.

125. Mr Sidebottom stated that he recorded all vehicle registration details on the yellow transfer/receipt documents when stock was delivered into the yard. However, he stated, the primary purpose of the document is to record the type of material and weight being delivered. Mr Sidebottom did not agree that the receipt documents for GPSE differed to the other deals. Mr Sidebottom stated that he kept a file of internal documents for all merchants receipts until such time as he believed they were no longer needed by the office. He stated that the GPSE delivery documents were redundant because GPSE would be advised by CCL who in turn were advised by its customer about the materials and weights, which was the information upon which CCL would make payment. He stated that Mr McDonald had never asked him about the procedure for receiving stock or about the paperwork and records he kept. Mr Sidebottom stated that he regularly took photographs of the stock in case a dispute

arose as to the quality of the goods; Mr McDonald did not ask to see the photographs which are no longer available.

Mr Taylor

126. Mr Taylor explained that he met Mr Martin Massey through playing football for a local Sunday league team. Mr Massey had set up Otter Communications and he offered Mr Taylor a role in the accounts department where Mr Taylor started in January 2002. Mr Taylor then worked in the accounts department for various companies in the telecommunications industry until 2007 when he became employed by Stembridge Engineering Ltd. The opportunity arose as Mr Francis Barker, Mr Hovers and Mr Delaney needed a bookkeeper and Mr Francis Barker's son who had previously employed Mr Taylor recommended him.

127. In 2009 Mr Taylor started work for CCL. In February 2015 when the company went into liquidation he moved to Stembridge Machinery Sales & Rentals Ltd until 2016 when he was made redundant.

128. In cross-examination Mr Taylor confirmed that he was the general officer administrator and bookkeeper. Prior to his employment with CCL he worked for Otter Communications in the mobile phone trade sector. Mr Taylor could not recall the specifics but believed that the company went into liquidation or changed names and re-started as Otter Telecoms; Mr Taylor did not recall Otter Telecoms being assessed for in excess of £180,000 as a result of its mobile phone deals which were linked to MTIC fraud.

129. Mr Taylor became the bookkeeper responsible for completing VAT returns and management accounts for Fonix between 2004 and 2007; the company traded in mobile pones and went into administration. He was not aware of the assessment figure of £14,612,441, which represented the amount of the company's input tax denial, although he was aware that litigation is currently ongoing in relation to the matter. Mr Taylor stated that he did not query that the company had gone into administration and he believed the trade was legitimate. He stated that he was aware of MTIC fraud but that his knowledge was not significant and he did not see the relevance of his employment history.

130. At CCL, Mr Taylor stated that he had filled in some of the yellow transfer documents, for instance one dated 26 July 2013 which stated the material was brought in to CCL's yard by A. Hemingway & Sons Ltd on vehicle registration number R641 PDV; he explained that it was prepared at the time the metal was brought to the yard and weighed by Mr Sidebottom who filled in the weight and amount of £277.20 and passed the yellow transfer document to Mr Taylor to fill in and provide a copy to the driver. Hemingway then sent an invoice to CCL.

131. Mr Taylor was shown a the same type of document dated 19 February 2013 for a GPSE deal with a much higher value of £132,000 which did not record the time or vehicle registration as the other documents had; it was put to him that this was the position in respect of all 26 GPSE deals in 07/13. Mr Taylor stated he would not have

realised this at the time and that it was not necessarily standard procedure to record such information and that Mr Sidebottom had his own procedure; it was likely that he would have written the information down on a piece of paper, advised the customer of the amount and forwarded the information to GPSE for agreement. As far as Mr Taylor was aware the documents were internal and he did not believe there was any requirement to record the information. He was not aware of the requirements set out in the Scrap Metal Dealers Act 1964 as although he had read it in the past he had never been involved in the buying and selling of metal.

132. After he was made redundant from CCL Mr Taylor went to work for Omega which traded in mobile phones. The directors of Omega were Mr Jason Barker and Mr Marti Massey who were both also directors of Fonix and Otter Telecom.

133. Mr Taylor stated that he was not aware that Omega was assessed for £613,385.28 and compulsorily de-registered as in 2014 he returned to work for the Appellants.

134. It was highlighted to Mr Taylor that the companies he had worked for had the following in common:

- The same company officers;
- Trading in the mobile phone sector;
- The companies went into administration due to MTIC links.

135. Mr Taylor explained that he knew of no wrongdoing and it was an unlucky coincidence. As far as he was aware the companies were not de-registered due to MTIC fraud.

136. Mr Taylor clarified that yard sales and merchant-to-merchant sales differed; the former involved filling out paperwork at the time, handing it to the driver and then being paid at a later date. The merchant-to-merchant sales involved Mr Sidebottom making a note in his black diary, the metal was then sent to a customer such as Ron Hill who later produced the information which was recorded on the yellow document. The customer such as Ron Hull would call Mr Hovers and advise what the stock weighed which he would then be told to record on the yellow document and send to GPSE. He confirmed that he was provided with the information by either Mr Hovers or Mr Sidebottom and that he did not see the book in which Mr Sidebottom recorded the information.

Submissions

137. On behalf of HMRC Mr Jackson submitted that the following facts indicated that the Appellants' 04/13 and 07/13 returns were inaccurate as a result of their involvement in the MTIC sector:

(a) The repeated warnings given to the Appellants between January 2008 and November 2014 that the area in which they were trading posed risks in relation to MTIC fraud;

(b) That in spite of the warnings given and tax loss letters received, the Appellants continued to fail to conduct basic due diligence checks including a lack of any formal contracts and failing to provide any evidence to demonstrate the existence of the goods they were trading;

(c) The fact that CCL featured in a large number of deal chains with a number of companies that were compulsorily de-registered for VAT due to involvement or suspected involvement in MTIC fraud, including immediate suppliers GPSE Ltd, Global Metals Directs Ltd and Spire Recycling Limited. In addition, companies elsewhere within these deals chains were compulsorily de-registered for suspected involvement in MTIC fraud and/or misuse of their VAT registration numbers. There were 31 deals of this type over a period of 6 months which accounted in monetary value for approximately 80 – 90% of CCL's overall turnover;

(d) CCL sold the goods on before receiving the goods even when they had not yet paid for the goods;

(e) The uncommercial length of deal chains;

(f) The consistently low margins made (0.5% - 1.2%) consistent with the role of a buffer whereby goods were bought and sold without much fluctuation in price despite the Appellants' explanation of price movement being affected by the LME and currency;

(g) The absence of records relating to GPSE transactions which the Appellants had a legal duty to keep as compared with other transactions where details such as times of arrival and vehicle registration numbers were recorded;

(h) CCL did not obtain weighbridge tickets for the goods nor did transfer documents detail vehicle registrations or times of delivery;

(i) CCL was a phoenix company for Stembridge Metals and Recycling Limited of which the Appellants were former directors, a company which had been subject to a VAT debt of £158,365 which included a denial of input tax on the basis of invalid invoices;

(j) The connection of staff members to other companies involved in MTIC fraud;

(k) The lack of any formal contracts in circumstances where CCL had no remedy or redress in the event of goods being stolen or not as described;

(l) Once CCL ceased trading on or about 31 December 2014 all metals trading previously carried out by it was conducted at CCL's former PPOB by Stembridge Machinery Sales and Rentals, the directors of which were the Appellants. Staff, plant and machinery from CCL was all transferred to Stembridge Machinery Sales and Rentals.

138. HMRC submitted that the inaccuracies in the returns are attributable to the Appellants who accepted that they were responsible for sourcing the trade from GPSE Ltd, dealing with its director Mr Gould and for providing the information relating to the weights, material and prices to Mr Sidebottom and Mr Taylor which was used to compile the VAT returns.

139. As to whether the inaccuracies were deliberate Mr Jackson submitted that the Appellants knew that the GPSE transactions that generated the substantial VAT input reclaims in 04/13 and 07/13 were connected to fraud, a false representation and therefore could not be accurate. In the alternative HMRC submitted that the declarations were made either without belief in their truth or recklessly to the extent that the Appellants could have had no real belief in the truth of their contents as per the test in Jason Andrew v HMRC [2016] UKFTT 0295 (TC) at [48]:

> *"There is no evidence that he took any meaningful steps to satisfy himself on the accuracy of the information before completing and signing the return, and in our view that constitutes recklessness, which it is well-established is sufficient for these purposes: per Lord Herschell in Derry v Peek [1886-90] All ER Rep 1 at 22:*
>
> > *"... fraud is proved when it is shown that a false representation has been made (i) knowingly, or (ii) without belief in its truth, or (iii) recklessly, careless whether it be true or false. Although I have treated the second and third as distinct cases, I think the third is but an instance of the second, for one who makes a statement under such circumstances can have no real belief in the truth of what he states.""*

140. In support of his submissions Mr Jackson relied on the following characteristics of CCL's trade as compelling evidence that the returns were deliberately inaccurate:

(a) CCL appeared as a trader in 31 transactions that were part of an orchestrated scheme to defraud the Revenue;

(b) 80 – 90% of the value of trade in monetary terms traced back to fraudulent VAT losses in periods 04/13 and 07/13;

(c) CCL repeatedly appeared in chains of transactions of commercially unjustifiable length;

(d) The nature of the chains in which suppliers earlier in the chains consistently sold to other suppliers for minimal profit or losses instead of selling to an end user is commercially inexplicable;

(e) The lack of a credible profit motive;

(f) Consistent levels of low profit commensurate with the position of a buffer trader in tax loss chains;

(g) Sudden surge in trading pattern with an unknown trader, GPSE who was new to the industry;

(h) Ignoring earlier warnings of tax losses in previous deal chains;

(i) Failing to properly inspect the goods;

(j) Failing to record dates of delivery of goods and registration plates of delivery vehicles;

(k) Connection of staff to several companies involved in MTIC fraud relating to mobile phones;

(l) Connection with directors of companies involved in MTIC fraud;

(m) Failure to properly assess the commercial viability of GPSE Ltd despite high value deals;

(n) Lack of written contracts or insurance;

(o) Lack of proper due diligence;

(p) Lack of credibility of both Appellants' evidence.

141. Mr Jackson highlighted the margins made on deals in 07/13 which are not profit margins and do not account for haulage costs, staff costs, yard leasing costs and other costs associated with running a commercial business. By way of example Mr Jackson noted the following:

- Deal 9 in which CCL purchased goods at £22,149.20 and sold for £22,402.84. the margin was £253.64, the percentage margin on the purchase price was 1.145%; and

- Deal 23 in which CCL purchased goods at £96,174 and sold for £96,341.80. the margin was £167.80, the percentage margin on the purchase price was 0.17%.

142. Citing *O'Brien v Chief Constable of South Wales Police* [2005] UKHL 26 in support, Mr Jackson submitted that the relevance of CCL's trade with other companies linked to MTIC fraud beyond GPSE and personnel employed by or associated with CCL being linked to MTIC fraud is admissible and relevant evidence (at [53]):

> *"I would simply apply the test of relevance as the test of admissibility of similar fact evidence in a civil suit. Such evidence is admissible if it is potentially probative of an issue in the action."*

143. Mr Jackson submitted that the evidence in relation to CCL's association and trades in tax loss chains and the association with MTIC fraud of a number of individuals employed by or known to the Appellants is clearly probative of the issue of whether or not the Appellants knew that the 04/13 and 07/13 GPSE Ltd deals were linked to fraud.

144. In summary, HMRC submitted that the Appellants either knew that the representations contained on the 04/13 and 07/13 returns were false, did not believe that they were true or disregarded the circumstances in which the representations were

made to such a degree that they had no belief in their truth; the declarations on the returns were therefore deliberately inaccurate.

145. As regards the fact that the input tax denial decision and consequential assessments were not appealed Mr Jackson submitted that the debt to HMRC of £291,610 (the amount of the assessment) was relied upon by CCL in liquidation. Mr Jackson referred us to *HMRC v Rochdale Drinks Distributors Limited* [2011] STC 186 in which the Court of Appeal said (at [79] and [80]):

> *"A well-settled rule of practice, which has long been familiar to users of the court's winding up jurisdiction, is that a debt that is wholly disputed on substantial grounds cannot ordinarily found the basis for the making of a winding up order….*
>
> *It perhaps hardly needs to be said that the rule does not, however, entitle a company to do no more than assert that it disputes the debt…It is not sufficient for the company merely to raise a cloud of objections."*

146. The Appellants used the fact that HMRC was a significant creditor to CCL as a result of the VAT assessments to place the company into liquidation; therefore the Appellants utilised their own acceptance of the assessments for the purposes of the company's voluntary entry into liquidation which resulted in avoiding liability for CCL's debts. The Appellants now seek to dispute those debts and blame the liquidators for failing to appeal that assessment. This amounts to a contrived and impermissible mechanism by which the Appellants are attempting to challenge the PLNs.

147. Mr Jackson cited *Foneshops Ltd v HMRC* [2015] UKFTT 410 (TC) in which it was held that where a taxpayer's appeal against the decision that it could not recover income tax because the transactions were connected to MTIC fraud ("the MTIC appeal") had been struck out due to non-compliance with directions, its subsequent appeal against a VAT misdeclaration penalty was struck out as an abuse of process in so far as it raised the same arguments which it had the opportunity to raise in the MTIC appeal:

> *"38. My conclusion on the question of abuse of process is that I agree with HMRC, that, barring special circumstances, it would be an abuse of the litigation process if the appellant were able to raise in this appeal an issue that was effectively decided against it when its MTIC appeal was struck out. While the appellant complains it is unfair if all the facts are not considered in his penalty appeal, that is really the point: the facts he wants considered are the facts that ought to have been considered in the MTIC appeal. The appellant's own conduct led to that appeal being lost and in my view, based on the above binding authority in SCF, the same consequences must flow as if the hearing had taken place and the Tribunal had decided against the appellant. For true fairness, there must be finality in litigation. There is no second bite of the cherry. The MTIC appeal was the appellant's only opportunity to litigate the question of connection to fraud and*

knowledge/means of knowledge of these 181 transactions. It threw away that opportunity by failing to comply with an unless order and lost the appeal: barring special circumstances, it cannot have another opportunity now to argue the same issues, albeit the subject matter of the appeal (a £3 million penalty) is different to the subject matter of the MTIC appeal (a £25 million input tax rejection)."

148. Mr Jackson submitted that the evidence of Mr Bell that it was always the Appellants' intention to pursue the appeals against CCL's assessments was contradicted by the contemporaneous notes of HMRC officer Lil at a visit in 2016 in which she recorded the following:

"SB said the Kittel principle assumes everyone is doing something wrong. I advised if he disagrees with our decision, he has a right of appeal. SB indicated he would not be doing this, saying that it has taken too long to sort out his previous appeal and he has had enough."

149. Mr Jackson noted that CCL was a loss-making company even before taking into account the bad debts on file, including the debt to HMRC which supports the contention that the company was set up to be liquidated after running up debts to HMRC.

150. In conclusion Mr Jackson submitted that the Appellants acted deliberately when inaccurately filling out the 04/13 and 07/13 returns. Accordingly the personal liability imposed on both Appellants is appropriate and the correct level of discount has been given to each Appellant taking into account their limited co-operation and using judgment which is neither capricious or spurious.

Appellants' submissions

151. On behalf of both Appellants Mr Bell made the following submissions: there is no dispute that the Appellants were aware of MTIC fraud nor do they dispute the factual evidence which demonstrates that there were tax losses in CCL's supply chain. However, the Appellants contend, none of the companies with which CCL traded exhibited features of MTIC traders. By way of example Mr Bell highlighted that CCL traded with Man Metals since 2008 and Spire had a trading history; these companies did not appear out of the blue and go missing with VAT debts within a short period of time. The Appellants took every precaution reasonable in the circumstances and were unaware of the tax losses in CCL's transaction chains.

152. The Appellants did not agree with Mr McDonald that a third party credit check is the most important due diligence check to carry out nor that a higher level of due diligence is required for transactions of high value. The Appellants would not have changed their decision to trade with GPSE; due diligence was carried out including a credit check although the document cannot be located, furthermore Mr Gould was known to Mr Hovers as a friend.

153. The Appellants submitted that although the records kept differed for the higher value transactions, no comparison should be made as there were a limited number of

companies involved and the vehicle registrations could be obtained from the onward customer.

154. On the issue of margins the Appellants explained that they did not set the market price and their focus was on the price per tonne as opposed to the price per transaction. The low margins achieved were representative of the fixed margins in the trade in that period; the Appellants cannot comment on prices paid by other parties and low margins does not equate to a lack of commerciality. The transactions were carried out at market value making a small profit from a supplier known to the Appellants; in those circumstances there was no reason to believe that they were linked to fraud.

155. The Appellants submitted that Mr McDonald's recollection of the creditor's meeting was misleading and his explanation in oral evidence was poor. Mr Bell highlighted that the Appellants had been told that the notes of HMRC officer Morgan-Grey were lost only to later discover that HMRC later found them. Mr Bell noted that his own recollection reflected that set out in the notes (and minutes of meeting) but differed from that of Mr McDonald. Mr McDonald's credibility is undermined by his misrepresentation of the meeting and other aspects of his evidence demonstrate a bias towards HMRC and an unbalanced view.

156. Both Appellants maintained that it had always been their intention to appeal the assessment issued to CCL and that this had been indicated to HMRC and the liquidator. After they were duped by Challenge the Appellants sought professional advice; the liquidator them that it was not in the interests of the creditors to appeal as there were no funds to do so.

157. Mr Bell submitted that the issue of the PLNs should not be viewed in isolation; consideration must be given as to whether it was right to raise an assessment against CCL. The Appellants should not be disadvantaged by the fact that the liquidator chose not to appeal CCL's assessment in circumstances where that choice was outside of the Appellants' control. In relation to the amount of the penalty Mr Bell submitted that the burden of proof rests with HMRC to show it is due on the balance of probabilities; HMRC have failed to discharge the burden of proof and, in the alternative, the penalty reduction does not sufficiently reflect the disclosure and cooperation given by the Appellants. The Appellants dispute the assertion that the only reasonable explanation for CCL's transactions with GPSE is a connection to fraud and contend that there is no basis to conclude that the Appellants either knew or should have known of the fraud.

Discussion and decision

Preliminary matters

158. HMRC contended that in terms of trying to raise the MTIC appeal issue in their appeal against the PLNs, the Appellants' situation is analogous to that in *Foneshops Ltd v HMRC* [2015] UKFTT 0410 (TC) in which Judge Mosedale stated at [38]:

"…barring special circumstances, it would be an abuse of the litigation process if the appellant were able to raise in this appeal an issue that was effectively decided against it when its MTIC appeal was struck out. While the appellant complains it is unfair if all the facts are not considered in his penalty appeal, that is really the point: the facts he wants considered are the facts that ought to have been considered in the MTIC appeal. The appellant's own conduct led to that appeal being lost and in my view, based on the above binding authority in SCF, the same consequences must flow as if the hearing had taken place and the Tribunal had decided against the appellant. For true fairness, there must be finality in litigation. There is no second bite of the cherry. The MTIC appeal was the appellant's only opportunity to litigate the question of connection to fraud and knowledge/means of knowledge... It threw away that opportunity by failing to comply with an unless order and lost the appeal: barring special circumstances, it cannot have another opportunity now to argue the same issues, albeit the subject matter of the appeal (a £3 million penalty) is different to the subject matter of the MTIC appeal (a £25 million input tax rejection)."

159. The same issue was also considered in *Jason Andrew v HMRC* [2016] UKFTT 0295 (TC) in which Judge Kempster stated at [35] – [38]:

"*We have considered carefully whether the wording on appeal rights in sch 24 entitles the officer to challenge the company penalty – at least insofar as aspects relevant to the personal liability notice which he or she is appealing. Our concern is that where a company penalty has crystallised without any challenge by the company, that may be not because the company has actively considered the matter and decided not to appeal to the Tribunal but simply because events such as liquidation or dissolution overtake the company, or because the issue of personal liability notice(s) totalling the entire company penalty render the company with no remaining interest in contesting the company penalty (because para 19(2) prevents double recovery of penalties). Any officer of the company who faces an apportionment of that penalty (by way of a personal liability notice) would, on HMRC's analysis, be faced with an unchallengeable company penalty. We think that (at least in cases more complicated than the current appeal) that could give rise to problems for the Tribunal in achieving a fair and just result on the officer's appeal against the personal liability notice.*

36. The provisions of sch 24 FA 2007 replaced for VAT purposes (with effect from 1 April 2008) the former legislation on civil evasion penalties in ss 60-61 VAT Act 1994 (ss 60-61 are preserved for certain limited purposes not relevant to this appeal). Section 61 was the equivalent of para 19 sch 24 in that it allowed HMRC to apportion part or all of the company penalty (called by s 61 the basic penalty) to a named officer of the company. Section 61(5) stated the appeal rights of both the company and the named officer. Section 61 was itself the successor legislation to s 14 Finance Act 1996, and was in identical form. Section 14(5) & (6) provided:

> *"(5) No appeal shall lie against a notice under this section as such but—*
>
> *(a) where a body corporate is assessed as mentioned in subsection (4)(a) above, the body corporate may appeal against the Commissioners' decision as to its liability to a penalty and*

against the amount of the basic penalty as if it were specified in the assessment; and

(b) where an assessment is made on a named officer by virtue of subsection (3) above, the named officer may appeal against the Commissioners' decision that the conduct of the body corporate referred to in subsection (1)(b) above is, in whole or part, attributable to his dishonesty and against their decision as to the portion of the penalty which the Commissioners propose to recover from him.

(6) For the purposes of the Value Added Tax Act 1983, any appeal brought by virtue of subsection (5) above shall be treated as an appeal under s 40 of that Act; and the reference in subsection (1A) of that section to an amount assessed by way of penalty includes a reference to an amount assessed by virtue of subsection (3) or subsection (4)(a) above."

37. Section 14 Finance Act 1996 was considered by the VAT Tribunal in Nazif & anor v CCE (1995) (LON/92/70P). Although that case concerned predecessor legislation, and in any event is not binding on this Tribunal, we agree with the conclusions stated by the VAT Tribunal in that case, and it is necessary to quote a lengthy passage:

"Subsection (5) of s 14 expressly rules out any appeal against a notice under that section 'as such' but does confer separate rights of appeal upon the company, if it is assessed under subsection (4)(a), and upon a named officer who has been assessed under subsection (3). Where the company is assessed, because it is not proposed to recover the whole of the penalty from one or more named officers, the company may appeal against the decision 'as to its liability to a penalty as if it were specified in the assessment.' A named officer who is assessed may appeal against the decision that the conduct of the company is in whole or in part, attributable to his dishonesty' and also against the decision 'as to the portion of the penalty which the Commissioners prepare to recover from him.' There is no doubt but that subsection (5) does itself create free standing rights of appeal, that is to say rights independent of any right of appeal under s 40(1) of the Value Added Tax Act 1983. That is made clear by the first limb of subsection (6) of s 14.

Mr Pleming [counsel for Customs] suggested that subsection (5) confers only limited rights of appeal and the named officer's rights of appeal are confined to the matters therein mentioned. I do not accept that submission. The result would be to curtail the named officer's rights so much, not just ruling out the kind of questions raised by Miss Lonsdale [taxpayer's counsel] but also effectively excluding any substantive challenge to the basis of the penalty itself, that it cannot, in my view, have been Parliament's

intention. It is not a conclusion to be reached without some very clear directions that that is the effect.

Where the named officer is assessed part or the whole of the company's liability is in effect transferred. That portion, whether it be the whole or a part, is under s 14 made recoverable from the named officer 'as if he were personally liable under s 13 of [the 1985 Act] to a penalty which corresponds to that portion.' Neither of the matters in respect of which he is given an express right of appeal under subsection (5)(b) of s 14 refers in terms to the amount of the penalty. But paragraph (p) of s 40(1) of the 1983 Act gives a right of appeal against a decision with respect to the amount of any penalty specified in an assessment under s 21 of the 1985 Act. Nowhere in s 14 is there any provision excluding an appeal under s 40(1)(p). The hypothesis upon which the named officer is assessed in respect of the portion of the basic penalty is that he is personally liable to a penalty under s 13 of that amount. If, notwithstanding that that is the basis upon which he is to be regarded as liable and so assessed, the Legislature did not offend him to be able to challenge on appeal the amount of the penalty, and its make-up, one would have expected to find that spelt out in s 14. On the contrary, the second limb of s 14(6) appears to confirm the existence of such a right. Subsection (1A) of s 40 of the 1983 Act provides that, without prejudice to s 13(4) of the 1985 Act (which empowers the Commissioners or, on appeal, the Tribunal to reduce the penalty under that section where the taxpayer has given co-operation) '... nothing in subsection (1)(p) above shall be taken to confer on a Tribunal any power to vary an amount assessed by way of penalty, interest or surcharge except insofar as it is necessary to reduce it to the amount which is appropriate under ss 13 to 19 of that Act.' Section 14(6) directs that the reference in s 40(1A) to an amount assessed by way of penalty includes a reference to an amount assessed by virtue of s 14(3) on a named officer or by virtue of s 14(4)(a) on the company. Indeed it would be an astonishing result if the officer were to be unable to question the amount of the basic penalty when the company has that right, so long as some portion however small is not being recovered from the officer, and when the company is unlikely to have the interest to pursue any such right, assuming it has one which is very doubtful, where the whole basic penalty has been assessed upon that officer.

By similar reasoning, in my judgment, the right of appeal with respect to a decision with respect to any liability to a penalty by virtue of s 13 which is given by s 40(1)(o) of the 1983 Act is available to a named officer assessed under subsection (3) of s 14. Whilst there is nothing elsewhere in the section to confirm the existence of that right, as in my view there is with regard to

the right of appeal under s 40 (1) (p), the draftsman has not sought to exclude it expressly. In Ch II of the 1985 Act, which includes ss 13 and 21, there are examples of rights of appeal being given in respect of specific matters in the sections dealing with particular penalties and surcharges which sit alongside and do not entrench upon the general rights of appeal under s 40(1)(o) and (p). That appears in regard to the right under s 19(6) of the 1985 Act - see the analysis in Dollar Land(Feltham) Ltd v Customs and Excise Commissioners [1995] STC 414, which Mr Pleming referred to as a very recent reminder of how the Tribunal's powers are circumscribed."

38. Our view is that those same concerns and considerations apply to the appeal rights provisions in sch 24 FA 2007. The effect of a para 19(1) notice (ie a personal liability notice) is in effect to transfer part or all of the liability for the company penalty to the officer and make that portion recoverable from the officer; para 15 provides a general right of appeal against a penalty (imposition or amount); para 19(5) applies those rights "as if HMRC had decided that a penalty of the amount of the specified portion is payable by the officer"; and there is no express exclusion of the ability of the officer to question the amount of the company penalty. We agree with the conclusion of the VAT Tribunal in Nazif that if "the Legislature did not offend him to be able to challenge on appeal the amount of the penalty, and its make-up, one would have expected to find that spelt out in [sch 24]". We conclude that the Tribunal has jurisdiction to consider relevant points concerning the company penalty in an appeal against a personal liability notice that apportions part or all of that company penalty to an officer."

160. We carefully considered the submissions of both parties on this issue. We bore in mind that CCL was in liquidation and the decision as to whether or not to appeal was that of the liquidator and not the Appellants. The penalty therefore crystallised without challenge and the Appellants were deemed to have no legal standing. The Appellants contended that they had indicated their wish to appeal but the Liquidator took the view that there were insufficient funds to do so. Whatever the case may be, we agree with Judge Kempster's analysis and the conclusion that it cannot have been the intention behind the legislation to leave an unchallengeable company penalty. We have concluded that the over-riding objective and interests of justice require us to consider the company penalty in order to achieve a fair conclusion on the PLNs.

161. An issue arose at the hearing regarding the notes of the creditors meeting which HMRC had believed to be lost. Mr Bell had requested disclosure of the notes made by Officer Morgan-Grey and the notebook of Mr McDonald. After further investigations it transpired that the notes were not lost and HMRC were able to produce both Officer Morgan-Grey's notes and Mr McDonald's notebook. Whilst we were sympathetic to Mr Bell's frustration at having been told incorrectly that the notes were lost, his recollection of the meeting accorded with that in Officer Morgan-Grey's notes and we were therefore satisfied that the issue had been resolved without prejudice to the Appellants.

162. As regards the evidence of Mr Sidebottom, we took the view that we should attach no weight to the witness statement as Mr Sidebottom did not attend the hearing and his evidence was untested by cross-examination.

Challenge and creditors meeting

163. We found that the Appellants evidence relating to the losses arising from the transactions with Challenge and the subsequent liquidation of CCL was relevant to their credibility.

164. The only financial information relating to Carwood is included within the documentation made available to creditors at the Creditors Meeting held on 2 February 2015. In the year ended 31 January 2012 there was a loss of £28,160 on a turnover of £6.97m. The shareholders funds (excess of assets over liabilities) were £75,701 at the 31 January 2012. Current Assets were £287,423 and current liabilities of £196,340.

165. In the year ended 31 January 2013 the losses were £131,818 on a slightly reduced turnover of £6.89m. Shareholders funds showed a deficiency of £56,117 (excess of liabilities over assets). Current assets were £408,270 and current liabilities £446,746. In the year ended 31 January 2014 the company just about broke even with a profit of £210 on a much-reduced turnover of £5.26m. Current assets had risen to £1.89m with current liabilities of £1.96m. Shareholders funds showed a deficiency of £63,957. The deficiency in shareholders funds and the excess of current liabilities over current assets are indicators that the company may have been under financial pressure.

166. From the information provided it is not possible to identify the profit or loss from trading activities for the period 1 February 2014 to 2 February 2015 as this is part of a figure of £264,510 described as "trading and other losses". From the Statement of Affairs it can be seen that the book value of the current assets was £112,573 (including "cash at bank" £838) and that the trade creditors was £38,580 at the date of liquidation.

167. The unsecured non-preferential creditors shown on the Statement of Affairs total £466,808 of which the sum shown as owing to HMRC amounted to £378,000 (around 81% of the total). The funds shown as being available to unsecured creditors will easily be absorbed by costs and it is reasonable to say, that based on the Statement of Affairs, no funds will be available to the unsecured non preferential creditors.

168. In the "Directors Statement of Company History" with the documentation presented at the creditors meeting, Mr Bell states that in September 2014 Mr Hovers was introduced to Challenge. Challenge claimed that it could supply large quantities of copper from UK sources at current market prices. Two loads of copper were paid for in advance and delivered. £100,000 was paid for a third delivery that was not delivered.

169. In his statement Mr McDonald states that Challenge was incorporated on 23 July 2014 and registered for VAT on 15 August 2014. CCL purchased copper from Challenge on 24 and 26 September 2014. The net of VAT total of each of these invoices are £92,354.36 (number CW-001) and £86,582.74 (number CW-002) respectively. On 2 October 2014 CCL paid £100,000 to Challenge; this was said to be a payment in advance for a supply of copper that was never delivered. Challenge did not declare output tax in relation to the sales to CCL.

170. Officers of HMRC visited the principal place of business of Challenge on 3 March 2015. This was an unoccupied terrace house in Leeds. On 20 March 2015 contact was made with the "company manager" who explained that business was in a "niche market" buying redundant stock from liquidators, mostly electrical items like machinery and computers.

171. In a letter to HMRC dated 3 March 2017 solicitors for the liquidators of Challenge supplied additional information on that company. Challenge was placed into compulsory liquidation on 8 December 2015. The solicitors make reference to the fact that three consignments of copper were paid for but only two were delivered. They say that " the money appears to have been paid to another company: Lordgate Limited, which has been struck of the register at Companies House".

172. The solicitors say that Challenge's former website made no reference to metal trading and indicates that it is a provider of HR and payroll services.

173. We inferred that CCL started the trading year 2014/15 under some financial pressure, as we have identified. During the 2013/14 year its relationship with its principal purported supplier GPSE was ended by the cancellation of that company's VAT registration from 18 June 2013, so the directors were probably looking for other revenue producing opportunities.

174. In September 2014 Mr Hovers found Challenge, a newly formed company whose main business activity was either as a provider of HR and payroll services or the purchase and sale of mainly electrical items from liquidators. We found the evidence vague as to how Mr Hovers found Challenge or his reasons for entering into high value transactions with the company. CCL bought two large consignments of copper in quick succession. Contrary to CCL's usual practice of not paying for large purchases until its customer had paid, these purchases were paid for "up front". CCL then paid £100,000 purportedly for a consignment of copper that was not delivered. Payments to Challenge were diverted to another company.

175. We cannot find anything in the short involvement that CCL had with Challenge that would indicate a normal commercial relationship between the two companies. We found that it is more likely than not that these transactions were contrived and artificial. Although there was a loss to HMRC of VAT on the two sales, we concluded that the main purpose of the two purported sales was to give some credibility to transactions with Challenge to mask the real purpose of diverting funds (by at least the final £100,000 payment which found its way to a company other than Challenge) before the directors started the process that ended with the liquidation of CCL.

Assessments against CCL and company penalty

176. The penalty imposed on CCL for inaccurate returns in 04/13 and 07/13 arose as a result of assessments issued to CCL on 8 December 2014 and 5 January 2015 in which HMRC denied input tax on the grounds that the relevant (GPSE) transactions were connected to the fraudulent evasion of tax and that the Appellants knew or should have known of that connection to fraud.

177. For the reasons set out at [160] – [162] above we take the view that the basis of the PLNs issued to the Appellants, namely the denial of input tax resulting in the company penalty, should be considered as part of the determination of the appeal against the PLNs and we will address this issue first.

178. The denial of input tax raises the following questions:

- Were the Appellants' transactions with GPSE connected to a fraudulent tax loss; and
- If so, the Appellants know or should they have known of such a connection.

179. There was also some reluctance on the part of Mr Hovers to accept that the chains were connected to fraud, although Mr Bell appeared to accept this with, as he stated, the benefit of hindsight. For the avoidance of doubt our findings on this issue are set out below.

180. In general we found the Mr McDonald on behalf of HMRC reliable and credible. There was no substantial challenge to the factual evidence presented and the Appellant's submissions regarding minor inaccuracies in his evidence did not in our view undermine it to any material extent. The main criticisms levelled at Mr McDonald were that he had omitted the trainee from the list of persons present at the Creditor's Meeting and that the assessment raised against the company contained errors. Mr McDonald accepted and rectified his error in respect of the trainee; we were satisfied that this was an innocent error and not designed to mislead. There was no evidence before us that caused us to doubt the amount of the assessment. In those circumstances we were satisfied that the complaints raised in respect of Mr McDonald's evidence did not go to the issues to be determined and lacked sufficient significance as to undermine the evidence as a whole.

181. We were wholly satisfied that HMRC had accurately traced the chains of transactions as far as possible and that the tracing of those chains demonstrated that the Appellants' transactions with GPSE were connected to fraud. The tracing was carried out by using the available records of traders in the chains which showed that all of the transactions with GPSE led to a tax loss. GPSE was the defaulting trader in the 07/13 period tax losses having failed to render the relevant VAT return. In period 04/13 the tax losses were traced to UAA and Millennium; UAA was compulsorily de-registered on 2 May 2013 following Regulation 25 action by HMRC due to misuse of its VAT registration number and was assessed for £4,163,004 in relation to undeclared sales of scrap metal to Millennium. Millennium was de-registered on 24

September 2013 with a VAT debt of £9,815,489.95. We were satisfied that the relevant transactions were connected to a tax loss and we concluded that the actions of the defaulting traders taken together with the circumstances of the transactions and outstanding liabilities demonstrated that the tax loss was fraudulent.

182. We then went on to consider whether the Appellants knew or should have known of the connection to fraud.

183. Mr Bell has been in the scrap metal business for approximately 20 years. Our impression of him was that he was intelligent and astute and has a deep understanding of the business environment in which he worked. We found that Mr Hovers presented as very experienced and knowledgeable of the industry and its dynamics. He told us that he spent much of his time visiting suppliers and customers and monitoring market prices. He also explained the importance of personal relationships in executing transactions.

Awareness of MTIC Fraud

184. It was accepted by the Appellants to varying degrees that they were aware of fraud within the trade sector. Mr Bell told officers he was aware of MTIC fraud and was present on a number of occasions when HMRC officers visited CCL and discussed fraud. On Mr Bell's own admission he did not want the officers to repeat this information at each and every visit and he had indicated that to them. Mr Hovers' evidence was that he had explained to Mr Gould the problems with fraud in the industry and the need to check the integrity of suppliers as a result. For those reasons we were satisfied that both Appellants were fully aware of the general prevalence and characteristics of fraud within their industry, and it was against this background that we assessed the nature of the Appellants' trading.

185. We should note that Mr Bell queried whether Notice 726 is legislation that applies to this appeal as the Notice is not concerned with trading in the scrap metals sector. Notice 726 is HMRC's published guidance on joint and several liability for unpaid VAT. It does not have the force of law but rather it is designed to assist traders in avoiding MTIC fraud. Whilst we accept that scrap metal is not referred to in the Notice, it is clear that it applies to VAT registered traders generally and we were satisfied that the relevance of the Notice to CCL's trade was made clear by HMRC during the various visits to CCL from 2010 onwards, the issuing of tax loss letters and Notice 726 to the company and the discussions relating to MTIC fraud generally.

Experience of the trade sector and Roles in the Company

186. We formed the impression that although Mr Bell was not involved in the day-to-day activities in the yard, he was an experienced businessman who had a general awareness of the trades that CCL conducted. We found that Mr Bell tried at times to distance himself from knowledge of the running of the company, for instance he contended that it was Mr Hovers who convinced him that GPSE was trading legitimately and that CCL could trust Mr Gould. He also contended that he was not responsible for arranging the purchase or receiving goods into the yard. Nevertheless

we were satisfied that Mr Bell was aware of CCL's trading partners and deals in respect of the high value transactions, as it was clear from his evidence that he was fully aware of details such as Mr Gould's move into scrap metals without any previous trading history and CCL's manner of trade was discussed with HMRC at various meetings. Mr Bell also accepted that as a director he, together with Mr Hovers, bore the ultimate responsibility for the company.

187. We had no doubt that Mr Hovers was aware of CCL's transactions with GPSE as he was the contact between the CCL and Mr Gould. Mr Hovers carried out the due diligence on GPSE and made the decision to trade with the company notwithstanding his surprise by Mr Gould's move into the scrap metal industry.

Due Diligence

188. In our view the due diligence carried out by the Appellant on GPSE lacked any substance. The documents obtained such as the VAT registration number and licence to trade, confirmed little more than the company's existence. There was no evidence to support the Appellants' contention that an independent credit check had been carried out. Moreover we found the Appellants' evidence on this issue contradictory; the Appellants contended that a credit check had been carried out which would indicate their understanding of the relevance of such information yet Mr Bell's evidence was that GPSE's creditworthiness was irrelevant as GPSE extend credit to CCL. We concluded that the documents obtained by the Appellants provided no information from which the Appellants could have made any meaningful assessment as to the legitimacy of GPSE.

189. We found the evidence of Mr Hovers vague as to how the friendship with Mr Gould had come about and why, other than the length of time he had known Mr Gould, this provided the basis for trusting GPSE in high value deals particularly when viewed in the context of Mr Gould's lack of experience in the trade sector and the surprise expressed by Mr Hovers when Mr Gould began trading in scrap metal. We concluded that the superficial nature of the due diligence undertaken demonstrated that the Appellants, at the very least, were not concerned as to whether the trades with GPSE were legitimate. We found that this attitude was also reflected by the Appellants' unwillingness to recognise chains of supply despite the numerous warnings received outlining tax losses found in their chains of supply.

Contracts

190. There were no written agreements or notes of terms agreed regarding delivery or redress in the event of goods, for instance, being stolen. The Appellants traded without any agreed terms and conditions with GPSE, PPX or TME. We rejected Mr Hovers' evidence that agreements were reached orally; we would have expected some evidence to support such an assertion or some records of negotiations with trading partners. Mr Hovers' evidence as to how he decided who to trade with and pricing was vague and unconvincing. In our view, any legitimate business involved in transactions of such high value would have recorded any terms agreed in order to protect it from potential liabilities. We concluded that the actions of the Appellants

were not those of a legitimate trader seeking to minimise exposure to risk and we found that this indicated the Appellants' knowledge that there was no risk because the deals were contrived.

Back-to-Back deals and chains of supply

191. The transactions took place on a back-to-back basis and the Appellants were never left with unsold stock. Mr Bell's evidence that the offers were matched to the supply was unconvincing; there was no evidence of the difficulties that we would have expected in normal commercial trading of matching the exact quantity of goods in such a short period with such apparent ease. We were satisfied that the back-to-back instant purported sales that covered the exact quantities bought with no paperwork involved indicated the contrived nature of the deals by featuring characteristics that would not appear in transactions at arms length carried out by legitimate businesses in the normal course of trade.

Nature of trade

192. There was no evidence to support the Appellants' assertions that the goods were inspected at customers' premises. We found it more likely than not that CCL accepted the weight of the goods as stated by its customer. We found that fact that CCL paid its supplier on the weight given by its customer wholly implausible as a legitimate or commercial manner in which to trade; we concluded that CCL and its supplier were content to conduct transactions in this manner because they knew the deals to be contrived.

193. We noted that CCL engaged in the deals and made profits without adding any value to the goods. There was also a failure to assess properly the commercial viability of trading partners. In our view these features demonstrated a lack of commerciality and indicated the Appellants' knowledge that the deals were contrived.

194. We found it notable that the documents in CCL's high value transactions with GPSE differed from documentation relating to yard sales. We found the Appellants evidence pertaining to the statutory requirements under the Scrap Metal Dealers Act 1964 unconvincing; Mr Hovers asserted that he was unaware of the requirements and Mr Bell contended that he thought the requirements only applied to yard sales. Given the extensive experience of both men in the industry we rejected this evidence as unpersuasive. Moreover there was no cogent explanation as to why CCL treated the transactions with GPSE differently to lower value deals. Mr Hovers' evidence as to who delivered the goods and the vehicles used was vague and unconvincing. We did not accept the evidence that Mr Sidebottom kept records of the relevant transactions; this had never been raised before despite the repeated meetings with HMRC at which CCL's transactions were discussed. Furthermore the Appellants had taken no steps to obtain this evidence prior to Mr Sidebottom going missing, for instance at the time when Mr Bell obtained a witness statement from him, nor was Mr Sidebottom at the hearing to have this evidence tested.

Activities after DDJ

195. We did not take into account the activities of CCL after the period with which this appeal is concerned. The test is whether, at the time of entering into the transactions the Appellants knew or should have known that its transactions were connected to the fraudulent evasion of VAT. On that basis, we concluded that any trading activity which took place after those with GPSE did not assist us in determining the issues.

Mr Taylor

196. We found Mr Taylor's naivety surprising to say the least; despite the link between the companies which employed him through the company officers and the associations with MTIC fraud, Mr Taylor maintained that the fact he had worked as a bookkeeper at CCL, Fonix and Otter was an unlucky coincidence. However Mr Taylor was not a company officer at CCL and we do not need to make any findings as to his knowledge of connection to fraud. In any event, having considered Mr Taylor's evidence we did not find that it assisted us on the issue of knowledge; we were satisfied that Mr Taylor's role was limited; he had no involvement in the transactions other than to record figures as advised by Mr Hovers and Mr Sidebottom without question.

Conclusion on knowledge

197. We did not focus unduly any feature individually and we took into account all of the surrounding circumstances in reaching our decision that the Appellants knew that each of its transactions were part of an artificial scheme. In doing so, we concluded that the Appellants had actual knowledge that the transactions were connected to fraud and that, by its purchases, CCL was taking part in transactions connected with the fraudulent evasion of VAT. We were also satisfied that the factors identified above would also support a finding of means of knowledge. We found that some reasons carried more weight than others and we did not base our decision solely on one reason but rather the cumulative effect of our findings viewed in totality.

198. We considered the Appellants' reliance on *Pacific Computers Ltd v HMRC* [2015] UKFTT 26 (TC) in which the Ft-T concluded that HMRC had not established knowledge or means of knowledge of fraud on the part of the Appellants. Each case must be considered on its own facts and the decision in *Pacific* is not binding upon us. We also note that the decision of the Ft-T was subsequently set aside.

199. The Appellants also referred us to a similar decision of the Ft-T in *Privin Corporation Ltd v HMRC* [2015] UKFTT 99 (TC). Again, we were satisfied that the Tribunal reached its decision on the facts before it and the non-binding decision did not assist us in applying the law to the facts of this appeal.

200. Accordingly we found that the decision of HMRC to deny the Appellant's input tax was correct.

Conclusions on the Company Penalty and Personal Liability Notices

201. The Appellants relied on the fact that the relevant returns submitted were arithmetically correct and accurately represented the transactions with GPSE which were made during the relevant period.

202. This draws the distinction between a claim which was based on, for instance, wholly made-up figures as opposed to one which was arithmetically correct but later refused, for example on the basis of knowledge of fraud. We found this argument misconceived; the Appellants acted deliberately by claiming input tax credits which they knew to be false as a result of artificially contrived transactions which were connected to fraudulent tax losses. We therefore agree with HMRC that the inaccuracies were deliberate but not concealed.

203. As to whether the deliberate inaccuracies in CCL's 04/13 and 07/13 VAT returns "were attributable to" the Appellants, Mr Bell and Mr Hovers were directors at the relevant time and as such bear responsibility for the accuracy of the returns submitted.

204. We did not accept the Appellants' argument that the Statement of Account dated 17 August 2015 showed that no sums were due to HMRC and therefore the Appellants are not liable for the PLNs. As CCL was in liquidation the VAT liability is subject to the Insolvency Act 1986; as an unsecured creditor HMRC submitted a proof of debt in the sum of £561,196 on 1 March 2016 which included the deliberate inaccuracy penalty. We were satisfied that the PLNs were validly issued and remain due.

205. The Appellants grounds of appeal contended that the penalty calculations were arbitrary and unfair. We do not agree; we considered the evidence of Mr McDonald who reduced the penalty to allow for the information and explanations provided by the Appellants and we see no reason to interfere with that calculation. We were also satisfied that the attribution of 50% of the Company Penalty against each Appellant is appropriate.

206. The appeal is dismissed.

207. 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.

JUDGE DEAN
TRIBUNAL JUDGE

RELEASE DATE: 18 December 2017