[2020] UKFTT 328 (TC)

TC07808

PROCEDURE - Appellant's application for further and better particulars - Rule 5 - Observations on the role of HMRC's Statement of Case - Application refused - HMRC's application to strike out the Appeal - Rule 8(3) - Observations on the role of a witness statement - Application refused

FIRST-TIER TRIBUNAL
TAX CHAMBER

Appeal numbers: TC/2018/07448 (Igen)
TC/2018/06659 (Mr Qureshi)

BETWEEN

(1) IGEN DISTRIBUTION LIMITED (IN LIQUIDATION)

(2) MR ADIL QURESHI **Appellants**

-and-

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

TRIBUNAL: JUDGE CHRISTOPHER MCNALL

Sitting on 8 July 2020, and hearing representations by telephone, and considering further written representations from Mr Nawaz dated 9 July 2020

No appearance by or on behalf of the First Appellant, Igen Distribution Ltd

Taher Nawaz MBA FCA, of T Nawaz & Co Ltd, Chartered Accountants, for the Second Appellant

Lewis MacDonald, Counsel, instructed by General Counsel and Solicitor to HMRC, for the Respondents

DECISION

BACKGROUND

1. These are case management decisions following a telephone hearing on 8 July 2020. That hearing came before me by virtue of directions given by Judge Robin Vos released on 12 May 2020.

2. The First Appellant, Igen Distribution Ltd ('Igen'), dealt (amongst other things) in 'SanDisk' memory cards. The Second Appellant, Mr Qureshi, was Igen's sole director and shareholder. In December 2017, HMRC denied Igen its claim for repayment of input tax for several accounting periods in 2015 and 2016, amounting to £124,106, on the basis that Igen knew or should have known that its transactions were connected with the fraudulent evasion of VAT.

3. There are 15 transactions in issue, all involving memory cards, which are said to trace back to three defaulting traders: Eco Voice Ltd (Deal 1); BJWP Ltd (Deals 2-5); and UHA Wholesale Ltd (Deals 6-15):

    (1) In relation to Deal 1, there is an intermediate trader (Global ATM Solutions) between the Appellant and the defaulter;

    (2) In relation to Deals 2-5 the Appellant purchased directly from the defaulter; and

    (3) In relation to Deals 6-15, there is an intermediate trader (Positive Connect) between the Appellant and the defaulter.

4. On 29 June 2017, Igen was deregistered for VAT, on the basis that Igen had used its VAT Registration Number solely or principally for fraudulent purposes. The deregistration letter set out the reasons: all the transactions relating to SanDisk memory cards led to fraudulent tax loss, and other elements of the transactions were said to lack commerciality such as to throw doubt on their legitimacy. As far as I am aware, the deregistration decision was not challenged; and is not subject to this appeal.

5. On 22 December 2017, HMRC issued a decision letter denying Igen its input tax.

6. On 21 June 2018, HMRC issued a penalty assessment against Igen pursuant to Schedule 24 of the Finance Act 2007 in the sum of £71,670 (which was adjusted at departmental review on 5 October 2018 to £65,153). This was on the footing that the behaviour of Igen was deliberate but not concealed.

7. On that same day, HMRC issued a Personal Liability Notice against Mr Qureshi for 100% of Igen's liability. The sum of that notice was also adjusted to £65,153 (by way of increasing some of the Reductions for Disclosure: from 0% to 5% for 'telling', and from 10% to 20% for 'helping').

8. The Appellants filed a single Notice of Appeal dated 24 October 2018, and the Tribunal created one appeal for each Appellant, and then directed that the appeals be joined. The Grounds of Appeal, in summary, and insofar as relevant for present purposes, say:

    (1) When Mr Qureshi was told that he should not deal with a particular supplier, he has stopped;

    (2) Mr Qureshi was not told to stop dealing with any of the suppliers in issue here;

    (3) There is no evidence of culpability and HMRC need to define fraudulent activity, and how HMRC say that Mr Qureshi knew or ought to have known of such fraudulent activity.

THE POSITION OF THE FIRST APPELLANT

9. On 14 February 2019, HMRC presented a petition in the High Court to wind-up Igen Distribution Ltd ('Igen'). A winding up order was made on 5 June 2019. The Official Receiver, as Igen's liquidator, became the Appellant. On 2 June 2020, HMRC made the Official Receiver aware of Igen's appeal. On 29 June 2020, the Deputy Officer Receiver wrote to withdraw Igen's appeal, pursuant to Rule 17 of the Tribunal's Rules, and that withdrawal was communicated to the Tribunal on 1 July 2020. At the time of writing, HMRC have not objected to the withdrawal.

10. HMRC had applied for Igen's appeal to be struck-out, but, given the withdrawal, I need say little further about the substance of Igen's appeal. Igen was not represented at the hearing before me.

THE APPLICATIONS

11. On 12 November 2019 HMRC applied to strike-out the appeals of both Appellants pursuant to Rule 8(3)(c) of the Tribunal's Rules. Insofar as the application affects Igen, it now falls away, in the circumstances already described.

12. On 20 December 2019, the Appellants (strictly speaking, only Mr Qureshi) formally responded to HMRC's application. This document was signed by Mr Qureshi's representative, Mr Nawaz:

> (1) "No issue" was taken with tax loss. There was a (guarded) acceptance that BJWP (from which Igen purchased directly) 'may have been non-compliant', but the Appellant asked "*How does this become the responsibility of [the Appellants]? The loss is, quite simply, a bad debt;"*
>
> (2) The Appellant took issue with fraud or collusion with others in fraud, and Mr Nawaz says "Despite a voluminous witness statement, it is not clear how exactly the transactions constitute fraud... [...] HMRC are asked to provide Further and Better Particulars of such evidence of such knowledge "*instead of such wishy-washy verbiage that they have produced in voluminous witness statements*";
>
> (3) The Appellant accepts that there is a connection, as purchases have been made, but asks "*Does this mean the Appellants are responsible for any and all misdemeanours their suppliers might have committed? Surely this is not possible and hopefully this is not being alleged*;"
>
> (4) The Appellant takes issue with knowledge. It is denied that 'ought to to have known' answers to the requirement for knowledge. Criticism of HMRC is advanced that HMRC "*were in and out of the offices of BJWP and others and took no action to notify traders involved such as IGEN and others that they should not trade with BJWP and others if they suspected wrongdoing*."

13. On 7 January 2020, HMRC responded to that document, treating it as containing an application for Further and Better Particulars.

14. On 7 January 2020, Mr Qureshi further articulated his position as HMRC as such:

> "What is required here is reference to precise documents that prove knowledge on the part of the Appellant. Instead of offloading office dustbins into witness statements, with respect, it would be far more helpful to provide direct references to documents that prove knowledge on the part of the appellant and this might require no more than a handful of documents."

15. Mr Nawaz comments:

> "I have learnt that little useful purpose would be served by making a FABP applications on the basis of Statements of Case. Inevitably judges suggest that the appellant should wait for the witness statements and then approach the Tribunal for FABP which is now being done."

16. The two applications are to some extent inter-dependent:

(1) HMRC apply to strike-out Mr Qureshi's appeal on the footing that there is no reasonable prospect of his case succeeding (principally, due to what HMRC says are inadequacies of his witness statement);

(2) Mr Qureshi says that he cannot properly deal with HMRC's case until 'Further and Better Particulars' are given.

17. I have decided to dismiss both applications, for the reasons set out in more detail below.

18. Although I have dismissed HMRC's application, I am nonetheless giving directions in relation to evidence, and I record that unless those directions (under separate cover) are complied with, Mr Qureshi's appeal will stand as automatically struck-out, without further order.

THE FACTS

19. These are the relevant features:

(1) On 12 February 2019, HMRC served a Statement of Case. It accepts (Paragraph 16) that HMRC bears the burden of proving:

(a) That the VAT returns were inaccurate, and that such inaccuracies amounted to, or led to, a false or inflated claim to repayment of tax;

(b) That such inaccuracies were deliberate but not concealed;

(c) That the deliberate but not concealed inaccuracies were attributable to Mr Qureshi;

(d) That the penalty amounts are correct.

(2) On 14 June 2019, Mr Nawaz wrote that the Statement of Case '*is so pathetic that it is not even worth bothering with*'. He aimed particular criticism at HMRC's defining of *'the so-called dishonesty/crime in the vaguest possible terms. The appellant is left guessing as to what precisely it is that he is being accused of ... there is no attempt at all at dealing with the issues being raised'*;

(3) On 15 July 2019, HMRC filed its witness statements (six) and over 300 related exhibits of material, including deal packs in relation to each of the 15 deals;

(4) Mr Qureshi's witness statement was filed on 4 November 2019.

DISCUSSION

THE APPLICATION FOR FURTHER AND BETTER PARTICULARS

20. Although Mr Qureshi's application is made second in time, it seems to me logical to deal with it first.

21. I decline to order that HMRC provide further and better particulars.

HMRC's Statement of Case

22. It seems to me any such order would be one requiring HMRC to amend its Statement of Case, or to require HMRC to provide information: Rules 5(3)(c) and (d). In either event, these

are discretionary powers should only be exercised when in accordance with the overriding objective: Rule 2.

23. The starting point must be to examine HMRC's Statement of Case. In short, I do not accept Mr Nawaz's criticism of HMRC's Statement of Case. I consider that the Statement of Case complies with Rule 25, in that it sets out the Respondents' position in relation to the case: Rule 25(2)(b).

24. In my view, the Statement of Case gives the Appellant sufficient information to know the case which he has to meet. This is not a case of challenging complexity - whether factual, or legal. It traverses familiar legal ground, and the facts and circumstances which led HMRC to make its decision as against these taxpayers is set out clearly and intelligibly.

25. I reject criticism made as to the length of the Statement of Case. Rule 25(2)(a) provides that a Statement of Case must "state the legislative provisions under which the decision under appeal was made". This one does. Perhaps those professional representatives (like Mr Nawaz) who are familiar with litigation in this Tribunal find the extensive setting-out of the relevant legislation in the body of a Statement of Case unduly repetitious, but (apart from the Rule) this is done for the good reason that not all taxpayers are (or remain) represented, and it is important for an appellant taxpayer to have set out, in one document, the law which HMRC relies on and which HMRC will call upon the Tribunal to consider and apply.

26. Paragraph 33 of the Statement of Case refers to the decision letter dated 22 December 2017. That is the root of the decision appealed from. The Appellant has had the decision letter. Paragraph 33 sets out 12 elements (numbered (i)-(xii)) as to why HMRC had decided what it had. In Paragraph 33, each is a short summary: (i) asserts that all the deals traced to fraudulent tax loss; (ii)-(v) and (vii)-(xii) address different aspects of alleged absence of commerciality - e.g., back to back basis; no marketing; ease of matching buyer and seller; non-carrying of excess stock; no written contracts; no insurance; no records; no capital; extremely minimal (sic) due diligence; pattern of diversity. (vi) refers to an MTIC warning letter.

27. Paragraphs 35, 36, and 37 set out the circumstances of each of the three defaulters. All are now deregistered. Eco Voice Ltd is said to owe HMRC £95,000; BJWP is said to owe £1.46m; and UA is said to owe £115,000. All assessments are said to 'remain unpaid'. Mr Nawaz challenges those statements. But if that situation, as described at the date of the Statement of Case (19 February 2019), were to change (or has already changed) then it would be incumbent on HMRC to inform the appellant taxpayer and the Tribunal. HMRC are alleging a tax loss by virtue of the facts and matters set out in relation to each of the three defaulters in the Statement of Case.

28. Contrary to what Mr Nawaz has said is his understanding of the Tribunal's approach to applications of the kind which he has made, I am not aware of any practice in this Tribunal where judges routinely refuse to order HMRC to provide further and better particulars, and instead require Appellants to wait until the witness statements emerge. The fact that this happened in this case is not indicative of any general practice. Judges engaged in case management have a broad discretion, and bespoke directions sought by any party from the Tribunal (by 'bespoke', I mean by way of varying standard directions) would always have to be viewed in the context of the circumstances of the individual case.

29. Taking a step back and looking at this in the round: in my view, the Appellant already knows, full well, and/or has been furnished with the means of knowledge, on the basis of the decision letter and the Statement of Case (and leaving on one side, for the moment, anything which is said in the witness statements) the case which HMRC is advancing (and on which HMRC bears the burden) and the case which the Appellants have to meet.

30. Even if all the foregoing were entirely wrong, and neither the Decision Letter nor HMRC's Statement of Case did set out, in an intelligible form, the case which Mr Qureshi has to meet, that case has now been set out, intelligibly and fully, in HMRC's witness statements. Mr Qureshi and his representatives have now had those for 13 months.

HMRC'S APPLICATION TO STRIKE-OUT

31. I dismiss HMRC's application, and I decline to strike-out Mr Qureshi's appeal.

32. On 2 May 2019, the Tribunal gave directions for witness statements to be exchanged by 12 July 2019. Statements were to come 'from all witnesses on whose evidence they intend to rely at the hearing setting out what that evidence will be'. Except for timing, neither party applied for that direction to be varied or set aside.

33. The directions were accompanied by a 'Notes to appellants', which, in relation to witness statements, said:

> "In order to ensure that the parties can prepare properly for the hearing, it is important that they know in advance the case that the other side will put at the hearing. For this reason the Tribunal requires both parties to submit in advance written statements ... to give evidence about what happened... The witness statement should be written by the witness setting out the true facts in so far as he knows them ... setting out his own version of events."

34. The 12 July 2019 date was extended by the Tribunal, on application by the Appellants.

35. On 15 July 2019, HMRC served its own statements on the Appellant's representatives.

36. On 19 August 2019, the Tribunal wrote to the parties that, if the Appellants did not serve their witness statements within 14 days, then either Appellant might be in jeopardy of having its appeal struck-out.

37. On 23 August 2019, the Appellants wrote and asked for a (further) extension to 19 September 2019. On 11 September 2019, the Tribunal (Judge Cannan) granted that application. That further extended timescale was not adhered to by the Appellants.

38. On 15 October 2019, HMRC applied for an unless order, in default of which the appeal would be struck-out. On 30 October 2019, the Tribunal made an unless order. Witness statements were to be served by 14 November 2019.

Mr Qureshi's witness statement

39. On 4 November 2019, a witness statement from Mr Qureshi was served. Significant criticism has been levied by HMRC at that witness statement:

(1) It is extremely short (being 4 pages, with only two pages containing anything substantive);

(2) It is very vague - for example, "I carried out what checks I could in terms of Companies House information and also VAT registration", but it does not set out any information or detail at all as to what those were;

(3) It does not discuss any of the 15 deals in issue at all;

(4) It does not really engage with, or address, any of the 12 matters set out in the Decision Letter, or in Paragraph 33(i)-(xii) of the Statement of Case: see above;

(5) It does not attach, exhibit, or even refer to any documents.

40. Instead, and contrary to (i) the Tribunal's Direction, (ii) the Notes to Appellants, and (iii) the well-known practice of the Tribunal, Mr Qureshi instead chooses to direct his fire in a different direction:

> "In the instant case there is no evidence of criminal wrongdoing and the Commissioners need to define the fraudulent activity and demonstrate how precisely I or the company were aware of or could have suspected any fraudulent activity."

41. Mr Qureshi ends by saying, as part of his evidence, that he had been presented with three boxes of documents, but had just not had enough time to go through all the statements "but feel that the foregoing general comments could deal with such matters."

Discussion

42. Rule 8(3) gives me a discretion. Rule 8, like all the Tribunal's Rules, must be read and interpreted subject to Rule 2, and in particular the requirement to deal with cases fairly and justly. The Rules give no further guidance as to what is fair and just. The Tribunal's assessment of what is fair and just in each individual case often involves weighing-up countervailing features (here, the prejudice to HMRC if Mr Qureshi's appeal is not struck-out, against the prejudice to Mr Qureshi if it is) and seeing which way the balance comes down. This is a familiar exercise. If Mr Qureshi's appeal is not struck out, then in continues and HMRC must continue to prepare for a hearing. But the amount of further preparation is limited because HMRC has already served its witness statements. If Mr Qureshi's appeal is struck out, then he must pay the amount of the Personal Liability Notice.

43. I must also bear in mind:

> (1) Striking-out is the most potent weapon in the Tribunal's case-management arsenal. In the somewhat antiquated expression, it 'drives a litigant from the judgment seat'. In similarly antiquated language, it is 'Draconian';
>
> (2) Care should therefore be taken in deciding whether it is an appropriate instrument to deploy, in the circumstances of the individual case. Before striking-out, I should consider whether there is any other procedural tool which could be used - justly, fairly and proportionately - to allow this case to be managed fairly and justly;
>
> (3) History of non-compliance may also be important in this overall evaluative exercise.

44. I must also be astute to stand back from the parties' enthusiasm for procedural skirmishing, and to ensure that this does not stand in the way of the Tribunal's ability to deal with this appeal fairly and justly.

45. In my view, much of HMRC's criticism of Mr Qureshi's witness statement is well-placed. It is a manifestly poor, eleventh-hour, effort by Mr Qureshi to fend off the consequence of the unless order, had nothing at all been filed.

Was this even a witness statement?

46. Although there has been formal compliance with the unless order, in the narrow sense that a document described as a witness statement was filed, it is much more doubtful whether this document could in substance genuinely be described as a witness statement. I am bound to say (and although HMRC do not rely on this feature in support of their application) that this witness statement comes very near to being something which is not a witness statement at all.

47. A witness statement is a form of evidence. Its purpose is plain from the directions and the Notes to Appellants. It is to give evidence. Evidence is about facts and things which happened. This witness statement does not deal - in other than the most vague and perfunctory

way - with facts and things which happened. At times, and regardless of its heading, it reads rather more like a type of submission or a skeleton argument. In my view, that approach (with respect to Mr Qureshi, because this is his document, with his name at the top and his signature at the bottom) is not the right one. Mr Qureshi must have useful evidence to give as to what was done, when, why, and how. The time and place for him to do that is in his witness statement.

48. Mr Qureshi says that he had not, as at 4 November 2019, read HMRC's witness statements and the accompanying documents. He gives some reasons for that although he has not filed any supporting evidence. But, for present purposes, I am taking those reasons at face value. But, whatever the position on 4 November 2019, Mr Qureshi has now had ample time - a further 9 months - in which to do so.

49. Mr Nawaz told me that he had received, but not looked, at HMRC's witness statements or exhibits before Mr Qureshi's witness statement was drawn because statements were supposed to be exchanged, and he (Mr Nawaz) did not wish to take unfair advantage. Again, I take that at face value, although HMRC point out (both accurately and fairly) that this stance is not readily consistent with Mr Nawaz's strongly expressed views, in an email of 14 June 2019, that witness statements should be sequential, with HMRC first, and that Mr Qureshi should not have to answer HMRC's evidence until he had seen it and considered it. Nor is is consistent with some of the criticisms which Mr Nawaz advances in correspondence as to the content of HMRC's witness statements, which give the impression that Mr Nawaz had read and considered the witness statements. But again, and regardless of that, Mr Nawaz has now had time to consider the materials and to discuss them with his client.

50. Mr Nawaz accepted that Mr Qureshi's witness statement was not perhaps all it could be. He did not seek to dissuade me, as an alternative to striking out Mr Qureshi's appeal, from affording Mr Qureshi a further opportunity from engaging with what HMRC has said, now that there has been time to consider the documents, and now that Mr Nawaz no longer regards himself as being under any obligation to keep HMRC's documents under seal, as it were.

What is to be done?

51. I have to ask where all this takes me.

52. At the end of the day, the case which Mr Qureshi is called upon to meet, arising from the decision which he has chosen to challenge by appealing to this Tribunal, is a serious one with serious consequences - both financially (there are tens of thousands of pounds at stake) and personally. I consider that it would not be fair or just to shut him out (at least, at this stage) from a last chance at engaging with HMRC's case.

53. In my view, there is a middle way which is still (just about) available which fairly and justly addresses (i) HMRC's legitimate concerns about the evidential adequacy of Mr Qureshi's evidence and (ii) the fact that this is a penalty appeal in which HMRC bears the burden. It is a middle way because it falls short of striking out the appeal, here and now, but it comes to more than the Tribunal simply leaving the evidence as it stands and letting the appeal unfold. It gives Mr Qureshi a last chance to put his house in order. It is squarely down to him whether he does so.

54. To address the deficiencies in Mr Qureshi's witness statement, I am going to hand down some 'Fairford-type' directions, coupled with an unless order, with the sanction being striking-out.

55. In *Fairford Group plc and another v HMRC* [2014] UKUT 329 (TCC) the First-tier Tribunal had refused to strike-out an MTIC appeal even where the Appellant had not filed any

evidence at all. One reason was that the burden was still on HMRC to prove its case - as it would be here. HMRC appealed. At Paragraph [48] the Upper Tribunal remarked as follows:

> "An appellant who advances a positive case will be required, by virtue of other customary directions, to set it out in witness statements or, if that is not practicable, in a response or a letter, or in some similar way. Accordingly, an appellant putting a positive case must disclose his hand in advance; we see no reason why one merely putting HMRC to proof should be in a better position. If there is a real challenge to HMRC's evidence it should be identified; if there is not, the evidence should be accepted. We see no reason why an appellant who does not advance a positive case should be entitled to require HMRC to produce witnesses for cross-examination when their evidence is not seriously disputed. Such a course is wasteful not only of HMRC's resources but also of the resources of the FTT, since it increases the length of hearings and adds to the delays experienced by other tribunal users."

56. The peremptory sanction is appropriate and proportionate in this case. There has already been one unless order. HMRC appears to accept it was complied with, but I am not sure HMRC is right about that. But it is clear that Mr Qureshi has now had long enough to engage with HMRC's case. I have already found that case to be intelligibly articulated.

The tax loss

57. A further reason to take a Fairford-type approach is to deal with a potentially disputed point which now seems to have arisen. This is whether the appellant accepts that there is a tax loss or not. I have already set out what Mr Nawaz said about this in his response of 20 December 2019. At first blush, I had read that as intimating to HMRC and the Tribunal, in formal terms, that Mr Qureshi did accept that there was a tax loss ("no issue"), and in consequence did not require HMRC to call a series of officers to give oral evidence as to the tax loss arising from the defaulters. But the appellant's acceptance (if that is indeed what it was) as I have already remarked was guarded, and express reference is made only to one of the defaulters.

58. It now seems to me that the true position may have been different, and that the appellant perhaps now does not accept that there was a tax loss capable of generating a liability on his part in relation to any of the defaulters. It seems to me important that the appellant's position is clearly established before the substantive hearing.

59. I am bound to add the cautionary note that I am not convinced that the Appellant's approach to the issue of what is a relevant tax loss is, as a matter of law (and divorced from the circumstances of this appeal) correct. The Appellant is placing a great deal of weight on whether HMRC have recovered and/or attempted to recover from other participants in the chains (including the Appellant's own customers) and has intimated that he wishes to argue that there cannot lawfully be any recovery from him (and/or denial of input tax repayment to him) if this amounts to double recovery (or some greater multiple). There are suggestions by Mr Nawaz that this would amount to misconduct in public office or an actionable species of unjust enrichment: see my comments on 'The Further Information' below.

60. It seems to me that the Appellant's argument is one which finds no support in, and indeed is rejected by, the Court of Appeal in *Mobilx Ltd and others v HMRC* [2010] EWCA Civ 517 (clarifying the test in the leading case in the European Court of Justice in the joint appeals of *Axel Kittel v Belgium; Belgium v Recolta Recycling SPRL* (C-439/04 and C-440/04). *Mobilx* made it clear that there has to be a VAT loss which can be attributed to a defaulting trader, but a transaction may still be treated as sufficiently 'connected' with a VAT fraud to permit denial of a claim to input tax even if that VAT fraud does not occur in the same chain of supply of

goods and services, but occurs in another chain of supply. It has been clear law for over 10 years now that there may still be a relevant tax loss even if there is no tax loss at all in the relevant chain (as in contra-trading): see (for example) the decision of the VAT and Duties Tribunal in *Blue Sphere Global Ltd v HMRC* [2008] UKVAT V20901 (Judge John Clark and John M Brown CBE FCA CTA) at Para [91] upheld on appeal: see [2009] EWHC 1150 (Ch) at Para [59] and following, per Sir Andrew Morritt C.

The Further Information

61. On 9 July 2020 (i.e., after the hearing) Mr Nawaz wrote to the Tribunal and HMRC and set out an extensive series of matters in respect of which he considered the Tribunal should order HMRC to give further information or evidence.

62. This was not done by way of formal application. I have nonetheless read and considered his letter de bene esse.

63. In some respects, the Appellant seeks to repeat points already made, and which I have now in this Decision dismissed. In others, these go beyond the further and better particulars which were sought and which, for the reasons already given, have been dismissed. HMRC (at least, as far as I am aware) have not responded to Mr Nawaz's email of 9 July 2020.

64. I have concluded that the facts and matters which were sought on 9 July 2020 should not stand in the way of Mr Qureshi being able to comply with the directions as to his witness evidence which I am giving, and that it is still fair and just to make the directions which I make, including the imposition of a peremptory sanction.

65. I do not see why Mr Qureshi's state of information or belief (i) as to whether tax losses have been incurred or recoveries made from other participants in the chains, (ii) the action (if any) taken by HMRC against others in the chains (including the Appellant's own customers) and (iii) whether other penalty assessments or Personal Liability Notices have been issued, is necessary or germane to Mr Qureshi being able to meet HMRC's case.

66. The underlying concern, articulated by Mr Nawaz, is whether HMRC "are entitled to recover tax losses from all traders in such chains regardless of whether there had been recoveries in other cases ... The information required here, to ensure that recovery is not sought from the Appellant in cases where the losses have already been recovered."

67. But in my view (and acknowledging that I have not heard detailed argument on the point) the arguments now advanced by the Appellant were addressed, and dismissed, by the ECJ in *Kittel*, the Court of Appeal in *Mobilx*, the High Court in *Calltel Telecom v HMRC* [2009] EWHC 1081 (Ch) at [97]-[99] and this Tribunal on several occasions including *Pars Technology Ltd* [2011] UKFTT 9 (TC) (Judge Barbara Mosedale and Sharwar Sadeque) and *Digi Trade Ltd* [2011] UKFTT 566 (TC) (Judge Guy Brannan and Andrew Perrin FCA) at [604] et seq. I do not consider that this Tribunal has jurisdiction to re-open this long-established, well-settled, and (insofar as it comes from superior courts of record) binding law.

The extent of Mr Qureshi's permissible participation in the trial, should he avoid the peremptory sanction

68. I should add that I do not agree with Paragraph 41 of HMRC's Statement of Case which suggests that Mr Qureshi 'cannot litigate the matters that [Igen] could and should have appealed if [Igen] had taken issue with the underlying decision to deny it its input tax.

69. In my view, and all other things being equal, and if Mr Qureshi's appeal is not struck-out, he could still seek to put Igen's underlying liability in issue, at least insofar as aspects relevant to the Personal Liability Notice which he is disputing: see (for example) *Jason Andrew*

v HMRC [2016] UKFTT 295 (TC) (Judge Peter Kempster and Mrs Beverley Tanner). But that will be a matter for the Tribunal called upon to hear the substantive appeal.

OTHER OBSERVATIONS ON CASE MANAGEMENT

70. HMRC's VAT Litigation Team wrote to the Tribunal that the hearing of this appeal would take 10 days. I disagree. This seems a significant over-estimate. This is an appeal of the kind and complexity which, from my experience of hearing them, can conventionally be heard, comfortably, in no more than 2-3 days, even if that hearing has to take place using remote means.

OUTCOME

71. The Appellant's application is dismissed.

72. The Respondents' application is dismissed.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

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

Dr Christopher McNall
TRIBUNAL JUDGE

Release date: