



Neutral Citation: [2024] UKFTT 001077 (TC)

Case Number: TC09368

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

Taylor House, London

Appeal reference: TC/2021/02523  
TC/2021/01974  
TC/2021/09782  
TC/2020/01613

*VAT – right to recover input tax denied on various grounds: no supply, section 26A Value Added Taxes Act, Kittel/Fini – appeals by First, Second and Third Appellants dismissed, appeal of Fourth Appellant allowed in part.*

**Heard on:** 8 – 15 November 2024  
**Judgment date:** 28 November 2024

**Before**

**TRIBUNAL JUDGE AMANDA BROWN KC  
MS JANE SHILLAKER**

**Between**

**RICH COUTURE LIMITED**

**First Appellant**

**AND**

**RICH LUXE LIMITED**

**Second Appellant**

**AND**

**SAISCO LIMITED**

**Third Appellant**

**AND**

**IDEAL SILKS LIMITED**

**Fourth Appellant**

**and**

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

**Representation:**

For the Appellant: No one appearing

For the Respondents: Ms Jenny Goldring of counsel, instructed by the General Counsel and Solicitor to HM Revenue and Customs

## DECISION

### INTRODUCTION

1. These appeals concern decisions and assessments made by HM Revenue & Customs (**HMRC**) as set out in the table below.

TC/2021/02523 Rich Couture Limited ( <b>RC</b> )	TC/2021/01974 Rich Luxe limited ( <b>RL</b> )	TC/2021/09782 Saisco Limited ( <b>Saisco</b> )	TC/2020/01613 Ideal Silks Limited ( <b>IS</b> )
23.4.20 decision to deny input tax for periods 11/16 to 11/18 £575,620	28.4.20 decision to deny input tax for periods 07/17 to 10/18 £401,718	23.4.20 decision to deny input tax for periods 06/13 to 03/19 £1,407,069	23.4.20 decision to deny input tax for periods 12/18, 03/19, 06/19 £41,962
Assessment 29.9.20 11/16 to 08/18 (£491,781 amended on review to £520,281)	Assessment 30.9.20 10/18 (£21,105)	Assessment 30.09.20 12-17 to 03-19 (£173,120)	Assessment 22.7.20 12/18 (£11,296), 03/19 (£6,745), 06/19 (£8,289)
Assessment 29.9.20 11/18 (£44,290)	Assessment 1.10.20 07/17 to 07/18 (£322,317)	Assessment 3.12.20 06/13 to 09/17 (£1,095,672)	

2. HMRC issued the decisions to deny input tax (**Decisions**) to each of RC, RL, Saisco and IS (together **Appellants**) on the basis that the claim to input tax in each period to which the Decisions related (as set out in the table above) was a claim made for fraudulent or abusive ends/on the basis that the claim was to input tax in a supply chain giving rise to a fraudulent tax loss of which the Appellant, in each case, knew or should have known.

3. The Decisions and Assessments were issued following an investigation undertaken by HMRC initially concerning input tax claims made by Saisco but expanding into the other three companies. All four companies are owned and under the management of members of the Nebhwani family. In summary, HMRC's investigation revealed a deeply concerning circular pattern of trading between the Appellants and with common counterparties where there was clear evidence of tax loss in respect of the Appellants' dealings with a number of direct counterparties who were missing traders.

4. There is a complex procedural history to the appeals as HMRC initially issued assessments which were subsequently withdrawn and replaced by those now under appeal. It is not necessary to narrate that history as we are able to determine the appeals without reference to it.

5. The Assessments sought to recover the sums due to HMRC consequent upon the Decisions i.e. to recover the whole of the input tax claimed by the Appellants and not merely the amounts repaid and in excess of the output tax declared by each of the Appellants on their VAT returns. However, HMRC sought to defend the Assessments on the grounds that the input tax claimed did not relate to supplies of goods made to the Appellants and/or for which the Appellants had paid. Before us, these arguments were run as the primary basis for the Assessments. For IS these arguments were the only arguments advanced and the Assessments were not defended on the basis of the Decision i.e. that IS was involved in a supply chain involving fraud.

6. The Appellants challenge the Decisions and Assessments by way of very lengthy grounds of appeal each of which is broadly similar, and which we summarise as follows:

(1) Each of the Appellant businesses genuinely represented an economic activity buying and selling textiles (including clothes, bedding, cushion covers, fashion accessories etc). Each of the directors developed commercial connections and networks which they shared with one another.

(2) The business model was predicated on purchasing goods from suppliers in the UK and selling to customers in Portugal and Spain aiming to take advantage of the longer summer period in the southern Mediterranean. Each supplier and customer was generally personally recommended by persons known to the Appellants (initially their accountant and subsequently through the developing network of contacts). However, the Appellants also conducted appropriate due diligence on the counterparties with whom they traded.

(3) Goods were purchased from suppliers who offered favourable credit terms and, given the credit terms, the suppliers also prepared to store the goods purchased until the Appellants' customers needed them. At which point the customer would collect the goods from the Appellants' suppliers bearing the shipping costs.

(4) Where sums due to suppliers reached an uncomfortable level the Appellants would sell goods to the suppliers (not cancel purchases from those suppliers) and offset the sums due to and from thereby reducing the credit balance.

(5) The Appellants' Portuguese customers also bought on credit and the Appellants managed their risk of default through the use of guarantors/financiers established overseas. The guarantors required to be provided with original shipping documents and would pay the Appellants' suppliers directly with fund collected from the Appellants' customers.

(6) Transactions, both purchases and sales, were also settled in cash.

(7) With hindsight it is clear to the Appellant directors that some of the counterparties with whom they dealt were participating in VAT fraud but that was a matter which was not and could not have been known to the Appellants at the time they were trading with these counterparties.

7. These grounds were repeated in summary form in a letter sent on behalf of the Appellants on 11 November 2024.

8. For the reasons set out below we dismiss the appeals brought by each of Saisco, RC and RL against the Decisions and Assessments. We allow in part the appeal by IS.

#### **ABSENCE OF THE APPELLANTS**

9. On 17 October 2024, the Appellants applied for the hearing to be postponed and/or for the appeals to be determined on the papers. I refused the applications.

10. The application to postpone was refused on 24 October 2024 on the grounds that no explanation was given as to why the directors of the Appellants were unable to attend the hearing which had been listed by reference to their availability.

11. The application to determine the appeal on the papers was refused because I did not consider it a matter suitable to be so determined. The hearing bundles ran to in excess of 20,000 pages; we had 4 witness statements from HMRC, and the vast majority of each statement had been contested by the Appellants. We also had an extensive witness statement from each of the Appellant directors much of which was disputed by HMRC. I considered the only suitable means of determining the appeal in accordance with the overriding objective was for there to be a face-to-face hearing at which the witness evidence could properly be tested.

12. The directions refusing the applications explained the burden of proof to the Appellants (as set out below) to ensure that each of the Appellants was clear as to the risks associated with non-attendance.

13. At 08:38 on the morning of the first day of the hearing (due to start at 10:30) Mr Sunil Nebhwani (**Mr SN**) emailed the Tribunal. He explained that each of the Appellant directors had been booked onto a flight from Barcelona which was due to have landed in the UK at 07:20 but that he had left his briefcase containing his passport and those of the other family members (Mr Aiswarya Nebhwani (**Mr AN**) and Mrs Sarita Nebhwani (**Mrs SN**)) on the bus on the way to the airport. They had therefore been unable to fly. An application was made for them to be permitted to attend by video and, in the alternative, the application for the appeal to be determined on the papers was renewed.

14. I refused the application for the appeals to be determined on the papers for the same reason as previously.

15. I considered the relevant case law and guidance on the circumstances in which it is appropriate to permit litigants in person to conduct an appeal by video link from abroad. In summary that case law and guidance confirms:

(1) Taking video evidence from a witness outside the jurisdiction is a matter of diplomatic concern and, in the interests of justice/in accordance with the overriding objective, permission should be sought through diplomatic channels before taking such evidence. This is so despite the conclusion that where, in error, permission is not obtained, any case determined on evidence taken from abroad is not a nullity (see *Qasim Ali Raza v Secretary of State for the Home Department* [2023] EWCA Civ 29)

(2) The diplomatic restriction is only on taking evidence from abroad. It is permissible to allow submissions and cross examination by representatives via video link abroad. However, care is required in the case of a litigant in person where the fine distinction between evidence and submission/cross examinations is less likely to be understood (see *Medhurst v HMRC* [2022] UKFTT 186 (TC)).

(3) Where it is decided that evidence cannot be taken from abroad the Tribunal should consider any witness statement prepared on behalf of the witness. The weight to be given to such statements must be assessed in the interests of justice and recognising that the other party has not be able to cross examine the witness (see *Sintra Global Inc and another v HMRC* [2022] UKFTT 00365(TC)).

16. Having carefully considered that case law I refused the application for the Appellants' directors to join the hearing by video and indicated that if the Appellants did not attend when the hearing resumed the following Monday we would proceed to hear the appeal in the Appellants' absence in accordance with the power provided in rule 33 of the Tribunal

Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 . In a written direction issued on the first day of the hearing I gave the following reasons:

“(1) The Appellants applied for a postponement of the hearing on [22] (sic it was actually 17) October 2024 which I refused providing an explanation as to why it was in the interests of justice that the Appellant directors attend to be cross examined and to put relevant cross examination to HMRC’s witnesses.

(2) The Appellants’ directors made insufficient arrangements to be in attendance at the start of the hearing of an appeal in which they substantively bear the burden of proof.

(3) There is clear guidance, which was previously provided to the Appellants by HMRC which precludes the taking of evidence from abroad unless there is permission from the foreign state. It is a matter of public record that Spain have not given such permission and no application was made in this case.

(4) The assessments under appeal are now over 3 years old. The assessments have been raised on the basis that the Appellants have claimed input tax on supplies that were never made, have not paid for the goods they purportedly purchased and knew or should have known that there was fraud in connection with the supplies if made. These are serious matters and deferral of the appeal will cause delays which may degrade memories and thereby the quality of the evidence.

(5) We are entirely satisfied that it is in the interests of justice that the matter proceed to be heard in the available listing window and on the basis of the best evidence available to us. If the Appellants are present the evidence of their directors can be fully considered. If they are not present such weight as is appropriate will be given to it.

(6) Our decision is consistent with the cases to which we were referred.”

17. Over the weekend further submissions were made by the Appellants. Following further submission from HMRC as to whether the Appellants’ directors should be permitted to make submissions or cross examine from abroad, I again determined that the application to do so should be refused. In reaching that view I considered the substantial witness statements which had been served on behalf of each of the Appellant witnesses, each running to many pages, grounds of appeal and skeleton arguments served. Each of the documents was substantially the same and demonstrated that the directors would struggle to discern the difference between evidence and submission and/or the basis on which cross examination could be conducted without the questions representing the giving of evidence.

18. The appeal therefore proceeded in the absence of the Appellants. However, and in order to ensure fairness to the Appellants, we required each of HMRC’s witnesses to specifically address the lengthy points of dispute set out by the Appellants’ directors in their witness statements, in effect giving voice to the matters on which the Appellants had indicated an intention to cross examine. We also carefully read the witness statements prepared by each director alongside the matters on which HMRC would have sought to cross examine had they been given the opportunity. Ms Goldring was also invited to ensure that any weaknesses in HMRC’s case were drawn to our attention. Contrary to the assertion made, by email, by Mr SN after having read the transcripts for day one, we were not asking HMRC to present the Appellants’ case (quite plainly that would have been a conflict of interest) we were ensuring that the Appellant’s case be fairly heard in their absence.

## RELEVANT LAW

19. The law we are required to apply in determining these appeals is uncontroversial and can be comparatively simply stated:

(1) A taxpayer is entitled to deduct as input tax the VAT incurred by it on supplies of goods or services received by it where those goods and services are used by it in the course of its business and in making taxable supplies (section 24(1) VATA).

(2) A taxpayer loses the right to claim an input tax deduction where, within six months of the date of supply to it, the taxpayer has not paid for the goods (section 26A VATA).

(3) HMRC may deny entitlement to input tax recovery where the taxpayer making the claim does not hold a valid VAT invoice in respect of the supply for which the claim is made (section 26 VATA and regulations 13 and 29 Value Added Tax Regulations 1995).

(4) They may also deny entitlement to a deduction where either:

(a) The claim is made for fraudulent or abusive ends (see *I/S Fini H v Skatteministeriet* C-32/03 paragraphs 32 - 34); or

(b) HMRC can demonstrate that the input tax has been claimed in circumstances in which:

(i) There is a tax loss in the chain of transactions leading to or from the taxpayer claiming the deduction:

(ii) The tax loss results from fraudulent evasion;

(iii) The taxpayer knew, or should have known, that the transaction to which it was a party was connected to the fraudulent evasion of VAT.

(see *Axel Kittel v Belgium, Belgium v Recolta Recycling* (C-439/04 and C-440/04 paragraphs 53 - 61)

(5) Any assessment raised by HMRC to deny input tax they consider having been inappropriately claimed for any of the above reasons must be raised within the time limits prescribed and in accordance with HMRC's best judgment (section 73(2) VATA).

(6) The time limit provisions require the assessment to be raised within 2 years of the claim to input tax having been made or within one year of evidence of fact justifying the raising of the assessment (section 73(6) VATA) and no later than 4 years of the claim to input tax unless HMRC can demonstrate that the incorrect claim was made deliberately when the longstop date is extended to 20 years (section 77 VATA).

(7) Where the extended time limit is invoked and/or the assessment relies on establishing fraudulent or abusive claims/knowledge HMRC bear the burden of establishing the facts regarding fraud/abusive behaviour or deliberately incorrect claims (see *HMRC v Sintra Global Inc and another* [2024] UKUT 346 (TCC) paragraphs 67 – 90)

(8) However, the burden of proof rests with the Appellant to show, on the evidence, that the quantum of an assessment is overstated and/or that the decision to assess is vitiated because it has been made outside HMRC's statutory powers (because it has not been made in exercise of HMRC's best judgement i.e. it does not represent a honest and genuine attempt to make a reasoned assessment of the VAT due because it is vindictive,

capricious or wholly fails to take account of relevant evidence or unjustifiably takes account of irrelevant evidence) (again see *HMRC v Sintra Global Inc and another* [2024] UKUT 346 (TCC) 194 - 197).

#### EVIDENCE AND APPROACH ADOPTED

20. The evidence available to us was principally contained in the witness statements and exhibits of the following witnesses:

(1) In respect of Saisco: Ms Olusimbo Onojighofia (**OO**), an officer of HMRC, whose statement was 112 pages with 4,492 pages of exhibits and Mr SN (director) whose statement was 104 pages with 3,178 pages of exhibits.

(2) In respect of RC: Ms Michelle Hawes (**MH**), an officer of HMRC, whose statement was 53 pages with 2,677 pages of exhibits and Mr AN (director) whose statement was 63 pages with 1,519 pages of exhibits.

(3) In respect of RL: Mr Junaid Ibrahim (**JI**), an officer of HMRC, whose witness statement was 61 pages with 1,983 pages of exhibits and Mr AN (director) whose statement was 67 pages with 1,021 pages of exhibits.

(4) In respect of IS: Mr George Moses-Ogbona (**GMO**), an officer of HMRC, whose witness statement was 36 pages with 674 pages of exhibits and Mrs SN (director) whose statement was 25 pages with 244 pages of exhibits.

21. Within the exhibits we were provided with copies of Standard Committee on Administrative Co-Operation (**SCAC**) reports obtained by HMRC from the Portuguese Tax Authorities and the terms of requests made by that authority to HMRC. As I determined in *Ancient and Modern Jewellers Ltd v HMRC* [2024] UKFTT 774 (TC) at paragraph 167 such reports represent hearsay evidence. We are not precluded from taking account of such evidence purely because it is hearsay evidence. However, we must consider what weight should appropriately be placed on such evidence as, by its nature, there can be no cross examination of it. As is apparent in our findings of fact we have taken account of the reports and have placed weight on them. We have done so because, in each case, the Portuguese Tax Authorities provided copies of prime records from the traders that supported the observations made in the reports thus providing records to evidence the conclusions reached.

22. OO, MH, JI, and GMO all also gave oral evidence during the course of which Ms Goldring for HMRC took each witness to the relevant sections of the Appellants' directors' witness statements which sought to challenge the HMRC officers' evidence and invited them to address the points raised. We found each of HMRC's witnesses to be straight forward, honest, thorough, and helpful. We accept their evidence.

23. Some critical aspects of their evidence, particularly concerning certain admissions made by the directors of businesses issuing invoices to the Appellants, represented hearsay evidence as to the truth of the statements made by the counterparties (the evidence of what was said is not hearsay). As already indicated the Tribunal is able to accept hearsay evidence but must place appropriate weight on such evidence. As a panel, we explored with each of the relevant witnesses their recollection of meetings in which admissions were made. We were entirely satisfied that that the admissions were made.

24. As indicated, we carefully read each of the witness statements prepared by Mr SN, Mr AN and Mrs SN. Ms Goldring gave us a list of the questions she would have wanted to put to each of the witnesses had they been present. This enabled us to evaluate what was contested evidence. The majority of the key evidence critical to the determination of the appeals was contested. In fairness to the Appellants, we therefore considered the documents exhibited to the Appellants' directors' statements to seek to corroborate statements made and



on which cross examination by HMRC would have been sought. However, when doing so, we had in mind the guidance provided by the Upper Tribunal in *Adelekun v HMRC* [2020] UKUT 244 (TCC) which states:

"... It cannot be assumed that just because a document appears in a hearing bundle that the tribunal panel will take account of it; if a party wants the tribunal to consider a document then the party should specifically refer the tribunal to it in the course of the hearing (see *Swift & others v Fred Olsen Cruise Lines* [2016] EWCA Civ 785 at [15]). This is not least to give the tribunal adequate opportunity to consider and evaluate the document in the light of the reliance a party seeks to place on it, but also to give the other party the opportunity to make their representations on the document. That is particularly so where, as here, there were several hearing bundles before the FTT relating to the various previous proceedings and the one containing the relevant additional documents was voluminous comprising 434 pages."

25. We were therefore only obliged to consider the documents where the statements exhibiting them gave is the context for the reliance upon them.

26. Where the evidence was uncontested by HMRC we have accepted that evidence.

#### FINDINGS OF FACT

27. In this section we set out individual findings of fact on which our decision is based and the evidence on which the finding is based. Where relevant we address and resolve conflicts of evidence.

#### Counterparties

28. Finding: in the table below we identify the counterparties with whom each of the Appellants traded identifying counterparties who made supplies to each of the Appellants, were customers of each of the Appellants and counterparties that were both in the periods covered by the Assessments.

	Saisco	RC	RL	IS
Supplier	Elena London Ltd ( <b>Elena</b> ) Hot Wings Films Ltd ( <b>HWings</b> ) Kos MFG Ltd ( <b>Kos</b> ) Supreme Imports Spark Impex PVT ( <b>Spark</b> ) The Hira Company ( <b>Hira</b> )	Elena  Kos	Elena  HWings  Kos	         Boski Ltd ( <b>Boski</b> )
Both	Boski Fashion	Boski	Boski FGSP	FGSP

	<p>Garments Services Processing Ltd (<b>FGSP</b>)</p> <p>Moonstyle Home Furnishings Ltd (<b>Moonstyle</b>)</p> <p>Fashion Moda Ltd (<b>FM</b>)</p> <p>Andivia Ltd (<b>Andivia</b>)</p> <p>Hala Textiles Ltd (<b>Hala</b>)</p> <p>Abimode Ltd(<b>Abimode</b>)</p> <p>No Names Trade Ltd</p> <p>RC</p> <p>RL</p>	<p>Moonstyle</p> <p>HWings</p> <p>Saisco</p>	<p>Saisco</p>	
Customer	<p>Gazs trading SL (<b>Gazs</b>)</p> <p>Between Fuchsia – Traiding Unipessoal LDA (<b>Fuchsia</b>)</p> <p>Index Jungle Imp Exp Unipessosal Lda (<b>Jungle</b>)</p> <p>Palavras Famosas LDA (<b>Palavras</b>)</p> <p>JSR Trading (UK) Ltd (<b>JSR</b>)</p> <p>Perimento DAS Galicias (<b>Perimento</b>)</p> <p>Mera Pind LDA (<b>MP</b>)</p>	<p>Fuchsia</p> <p>Jungle</p>	<p>Fuchsia</p> <p>Jungle</p>	Gazs

	Ricardo Valerie SA (RV)		Moonstyle	
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Evidence: analysis of VAT returns and invoices performed by HMRC

29. Finding: there were connections between the various suppliers and customers as identified in the table at paragraph 28.

<b>Companies/individual</b>	<b>Connection</b>
Madhusudan Trivedi	Cousin of Appellants' accountant (Raj S Gunnessing), director of FGSP and Moonstyle. Introduced Saisco to Mr Chaudhry and Mr Toumbas
Imran Chaudhry	Director of Boski
Andreas Toumbas	Director (or father of director) of Abimode, Andivia, Fashion Moda, HWings
Kos, Jungle	Introduced to Saisco by Andreas Toumbas, Jungle also supplier to Gazs, Elena, Kos, HWings, Ricardo Valerie
Fuchsia	Introduced to Saisco by Mr Choudhry of Boski, supplier to Gazs
Gazs, RV	Mr AN director of companies established in Spain

Evidence: analysis undertaken by HMRC from Companies House records, visits to traders and evidence of the Appellants.

30. Finding: the following traders have directly caused a tax loss as UK missing traders and/or through submission of nil returns despite having issued invoices declaring VAT (including to the Appellants): HWings, Elena, Kos, Abimode, Andivia, Fashion Moda, and No Names.

Evidence:

(1) HMRC's vision record and associated analysis in respect of each of these purported traders and a period-by-period comparison conducted between the VAT declared by each purported trader and the input tax claimed by each Appellant.

(2) A visit to the registered address of Kos revealed that the company had never traded from that premises which was occupied by another company that had never heard of Kos. That other company was also registered at the address by reference to the details held at companies house.

(3) All the directors of the Appellants accept in their witness statements that there is tax loss associated with each of these traders and that the tax loss associated with each of the Appellants understates the overall loss suffered by the Exchequer in respect of these companies

31. Finding: HMRC were entitled to conclude on the evidence available to them that Boski did not make supplies to the Appellant companies but raised invoices purporting to do so accepting the evidence of Mr Chaudhry of Boski to that effect.

Evidence:

(1) As recorded in his witness statement and by reference to a visit report, supported by detailed oral testimony of his recollection, JI visited Boski and met with Mr Chaudhry, the director of Boski. During the visit JI saw two types of invoice book maintained by Mr Chaudhry. The first was an A5 book with duplicate handwritten copy invoices. The second was an A4 book in which JI found both original and copy invoices including invoices to Saisco, RC and IS. 16 invoices in the book recorded Saisco as the customer, 8 as RC and 11 as IS within the period September to December 2018. When questioned about the A4 book Mr Chaudhry stated that Boski had not supplied the goods to the Appellants that the invoices in the A4 book indicated had been supplied. Mr Chaudhry explained that the invoices had been raised on the instruction of Mr SN.

(2) A copy email was provided by Mr Chaudhry from Mr SN in which Mr SN particularises the details of invoices to be issued by Boski to Saisco. HMRC analysed the invoices issued in the period covered by the email and such analysis shows an almost perfect correlation, certainly sufficient for us to be satisfied that the invoices issued in May, June and July 2018 were those requested by Mr SN.

(3) Mr SN did not challenge what had been recorded in the visit report as having been said by Mr Chaudhry but contended that Mr Chaudhry had lied to HMRC. Having explored the nature of the meeting with JI and the circumstances in which the admission was made by Mr Chaudhry we are satisfied that there was no reason for JI to question the authenticity of the admission.

32. Finding: Fuchsia was a business registered for VAT in Portugal which failed to fully report the trade undertaken with Saisco, RC and RL. However, it did show that items recorded as purchased on invoices from Saisco and RC were sold on to Gazs.

Evidence: SCAC report and attached documents.

33. Finding: Jungle was registered for VAT in Portugal for the period from 2 April 2017 to 13 December 2018. Prior to the visit from the Portuguese Tax Authorities prompted by HMRC's SCAC request Jungle had made no acquisition declarations. The belated declarations were verified by the Portuguese authorities and compared to declared sales by Saisco. Whilst some goods purporting to have been supplied by Saisco were evident in Jungle's warehouse, they did not match the description of goods as recorded on the invoices.

Evidence: SCAC report.

34. Finding: Not all invoices said to have been issued by Saisco were recorded by Jungle. Further invoices obtained showing Saisco as the supplier were different in format to the Saisco invoices seen in the UK. In particular the invoices showed Mrs SN as associated with Saisco and as having received payments from Jungle. Payments recorded as having been made in Jungle's records were not reported by Saisco or the other Appellants nor were they evident in the disclosed banking records.

Evidence: SCAC report, HMRC analysis of Appellant's records and comparison between the two sets of records.

35. Finding: neither Fuchsia nor Jungle held evidence of shipping of the goods said to have been purchased from any of the Appellants as both Fuchsia and Jungle stated that their suppliers (including Saisco, RC and RL) were responsible for shipping.

Evidence: SCAC reports and associated information.

36. Finding: Jungle's record of customers and suppliers included Saisco, RC, RL, Elena, HWings, Gazs and RV.

Evidence: SCAC report and associated records.

37. Finding: it was reasonable for HMRC to conclude that Moonstyle did not supply goods to the Appellant companies and invoices purporting to indicate that such supplies were made were inaccurate. We consider it more likely than not that Moonstyle provided packing services and we cannot therefore conclude that there were no supplies at all by Moonstyle to each of Saisco, RC and RL. On the basis that packing supplies were performed, the value of the supplies were likely to have been inflated/overstated (though between unconnected parties) and the invoices misrepresented the supplies made.

Evidence: copies of Moonstyle invoices, record of visit report to Moonstyle, JI's recollection of the visit, statements made by Mr Trivedi at the visit.

38. Finding: the invoices purportedly issued by Elena to Saisco do not bear the same logo as those issued to RC on the same day and the invoices are not correctly sequenced (as required to comply with regulation 13 VAT Regs), there are multiple invoices bearing the same number indicating fraudulent invoicing. These inconsistencies permit a conclusion that the invoices are fraudulent. There were other errors (including date format and change to the registered address) which support the conclusion once drawn but would not compel the conclusion itself.

Evidence: examination of the Elena invoices.

39. Finding: invoices from Elena and Kos at various points in time both use the same style of font for their corporate logo which is implausible even in light of the Appellants' assertion that the font is one available through Microsoft. We do not see this as a question of commonality of font but a blurring of the individual identity of the two companies.

Evidence: examination of invoices.

40. Finding: HWings is a company which changed hands through the period covered by the Assessments. For a period prior to the sale of the company to Mr Toumbas in August 2017 the company operated in the "cut make and trim" sector i.e. supplying manufacturing services but not supplying goods. HMRC were entitled to conclude that the invoices issued in July 2017 purporting to supply goods and relied on by Saisco to claim input tax were fraudulent invoices.

Evidence: statements made by Mr Panayis (director of HWings prior to August 2017, as recounted to JI) and format of the invoices which is inconsistent with the form used by Mr Panayis.

41. Finding: Kos did not occupy or trade from the registered office/declared principal place of business which was occupied by an unconnected third party, the director of which had never heard of Kos.

Evidence: statements made by the director of the unconnected third party as recorded in the witness statement of JI and considering companies house information on the unconnected third party.

42. Finding: Kos issued three different formats of invoices bearing different logos in the period 17/05/2017 to 05/09/2017 with the initial formats reflecting those previously used by Elena indicating, but less conclusively than for Elena, that the invoices may have been fraudulently issued.

Evidence: examination of invoices.

43. Finding: on the balance of probabilities it appears that there was likely to have been circularity of trading between the Appellants and the identified counterparties despite an inability to trace specific goods round the participants.

Evidence:

(1) The goods said to have been traded were very generically described in all invoices and were of a nature which means that each cannot be individually identified. Here the goods are clothes, cushion covers, throws etc and not for example electronic devices with unique identifiers.

(2) The connections between the Appellant companies and the counterparties as identified in paragraph 29.

(3) The proximity of purchases by one entity and the sales by that entity back to the Appellant companies.

(4) Specific deal chains identified by HMRC.

(5) Information provided in the SCAC response from the Portuguese Tax Authorities regarding Fuchsia and Jungle.

(6) Lack of commerciality in the purported supply of goods from one of the Appellant companies via other counterparties back to one of the Appellant companies, Gazs or RV.

### **General business**

44. Finding: there is very little evidence of goods being physically delivered to customers of the Appellants, but we cannot say that there were no goods moved and/or supplied.

Evidence:

(1) There were very few documents which demonstrated that goods were moved/delivered.

(2) The only documents originally supplied by Saisco, RC and RL regarding movement of goods were issued by Print in Green Ltd (**P-i-G**), these, at best represented commercial documents evidencing shipment and not the relevant authoritative proof of export.

(3) At a visit to P-i-G it was established that the premises is a coffee shop with a UPS pick-up/drop-off point with little substantive storage.

(4) The director of P-i-G told HMRC that the certificates of shipment provided to HMRC by Saisco, RC and RL had been falsely produced at the request of Mr SN as P-i-G did not supply any shipment services. P-i-G was paid £20 per certificate issued.

(5) Emails were provided by P-i-G with instructions on the certificates to be produced. The emails were sent from Raj Shah (email addressed [Rajshahthebest@gmail.com](mailto:Rajshahthebest@gmail.com)). A comparison between the certificates requested and those issued and supplied to HMRC by the Appellants bear a sufficient similarity for use to be satisfied that whatever the relationship between Raj Shah and the Appellants,

the certificates were issued for the benefit of the Appellants to provide fraudulent commercial shipping documents.

(6) Documents purporting to be CMRs (proof of export) provided by the Appellants as part of the request for review and attached as exhibits to the witness statements provided by Mr SN and Mr AR concerning Saisco, RC and RL were in the name of PW Centrum Samochodowe (**PW Centrum**), said to be a Polish shipping company. HMRC were unable to verify the identity of that company.

(7) The “CMRs” were incomplete and did not include information required in order to validly evidence export of goods, in particular they did not include port of dispatch or means (vessel) of transport. As proof of export they were therefore invalid.

(8) No payments are shown on the bank statements from Saisco, RC or RL to PW Centrum.

(9) Further, the CMRs produced showed pick up addresses including Boski’s premises, Elena’s premises, the address of Kos’s registered office and a lock up garage rented from January 2018 by Mr SN. In light of our other findings such pickups are implausible.

(10) The explanation of delivery processes provided by the Appellants were inconsistent and not supported by the documentary evidence and/or incredible and unbelievable:

(a) No explanation was provided as to why UK and/or Portuguese companies would use a Polish shipping company.

(b) Mr SN and Mr AN state that customers collected or arranged for shipping, whereas evidence from Fuchsia and Jungle was that it was the Appellants that arranged shipping.

(c) Mr SN and Mr AB also stated that UK suppliers would move goods from warehouses in Manchester, Birmingham etc to London where the goods would then be transferred into vans for onward movement to customers. There was no rational explanation given for why the suppliers would make an intermediate move, particularly in the context that it was asserted that customers arranged shipping.

(11) 6 copy delivery notes provided on behalf of Saisco indicating deliveries made by Kos and HWings to the lock up garage rented by SN from January 2018 access to which was limited.

(12) 12 copy delivery notes provided on behalf of RL by Kos, Elena and HWings to Boski’s premises when Boski states that no supplies were made.

(13) Further there is a conflict of evidence as to who in the supply chain was responsible for shipping and insurance:

(a) Fuchsia and Jungle stated it was the supplier (i.e. the Appellants).

(b) The Appellants state in their witness statement that it was the customer (i.e. the various intermediate counterparties including, on the Appellant’s case, its own suppliers as it is asserted that sales to those companies to reduce credit balances were of different goods to the ones held by the supplier on credit terms in their own warehouses).

(14) There was however documentation provided by Trafertir International Transport Ltd relating to 6 shipments, 3 for Saisco and one for each of the other Appellants.

HMRC visited Trafertir and were satisfied that they were a legitimate transport company. The shipments, in each case however showed the collection point was said to be the Trident Business Centre (serviced offices) rented by Saisco, RC and RL or a residential address but also that the Appellant in question would deliver the goods to Trafertir. The delivery addresses were variously RV and Gays in Spain (both companies of which Mr AN was the director). The export evidence provided by Trafertir to HMRC indicated that the boxes transported were open, cut with the goods exposed and in poor condition for export. It was noted that the contents were unknown.

(15) In addition there was some evidence via the SCAC reports that some goods may have been physically delivered to Fuchsia and/or Jungle with photographs though such photographs are far from conclusive as various boxes bear different supplier names (other than those of the Appellants and/or their suppliers).

45. Finding: the certificates issued by P-i-G although issued pursuant to emails sent by Raj Shah were documents created for the purposes of providing false commercial paperwork of shipment.

Evidence: sufficient similarity between the emails provided by P-i-G with instructions on the certificates (sent from Raj Shah - email address [Rajshahthebest@gmail.com](mailto:Rajshahthebest@gmail.com)) compared to the certificates issued and supplied to HMRC by the Appellants (Saisco, RL and RC).

46. Finding: there is no commercial explanation for the willingness of the series of counterparties with whom the Appellant companies assert they traded to grant credit from the outset, in significant sums alleged to have been granted and for a prolonged period.

Evidence: no terms of trade were exhibited and no financing agreements. Credit was asserted to have been granted from the outset (including from Saisco) without an established trade and in the face of the accepted position that banks would not advance credit to the Appellants.

47. Finding: there is no evidential support for the assertion that the Appellant businesses purchased on credit and stored the goods so purchased at the supplier's warehouse. The assertion is incredible and cannot be believed. Despite the security that holding the goods may have offered an unpaid supplier complex issues concerning how and by whom the goods would be insured would have arisen. How the goods would be identified within the suppliers' warehouse was not explained. Further there is no rational business reason for a supplier to bear the costs of storage and, on the Appellants' assertion, costs, or to admit the Appellants' customers to come and remove goods (which may or may not have then been paid for).

Evidence: none to support the Appellant's position in this regard.

48. Finding: there is limited evidence that the Appellants received cash payments from customers or paid suppliers in cash.

Evidence:

(1) Counterparties such as Mr Choudhry stated that payments were made using online banking.

(2) Whilst there are letters purportedly sent by customers there is no evidence as to how the cash payments were repatriated to the UK.

(3) Carrying more than £10,000 in cash into the UK must be declared at point of entry.



- (4) The entries shown for foreign exchange through KBR are all banking payments.
- (5) See further specific findings as to cash payments said to be received by Saisco below (paragraphs 64 to 66).

49. Finding: the Appellant companies did not conduct sufficient due diligence on its suppliers or customers:

Evidence:

- (1) HWings registered premises, when visited by HMRC, was a small room or office on a residential street. There was no industrial door facilitating the movement of goods in and out. Had the Appellant directors visited the premises as their statements claimed this would have been clearly apparent and a red flag.
- (2) No attempt can have been made to visit Kos as Kos did not operate from the premises recorded on the invoices it issued.
- (3) The Appellants provided no explanation for their decision to trade with multiple companies connected through a single director (i.e. the various Andrews Toumbas companies and the Madhu Trivedi) or that the companies were all trading with one another with common networks and connections.
- (4) Reasonably, the Appellants should have been concerned when receiving invoices from different companies with similar logos, and invoices in different formats from the same company.
- (5) Application forms were provided only to some customers and not suppliers.
- (6) VIES checks were performed in respect of only Elena, HWings, Jungle, Kos, Perimetro, RV, MP (Saisco), Fuchsia and Jungle (RC and RL). However only in the case of Perimetro and RV were they conducted before the first trade in the case of Saisco and apparently once by RC also used by RL.
- (7) The VIES check on Fuchsia revealed that Fuchsia's trade was on wired telecommunications and not the sale of textiles which should have been a red flag.
- (8) There is no evidence of Companies House checks being conducted which, had they been performed, would have put the Appellant companies on notice that Andivia, No Name, Elena, Kos had Companies House filing failures.

### **Saisco**

50. Finding: Saisco was incorporated on 21 August 2012 with a registered address at its accountants; the nature of the business was stated to be as agents in the sale of textiles, clothing, fur, footwear, and leather goods. Mr SN was its sole shareholder and director Mrs SN was initially the company secretary but she resigned her appointment on 21 November 2018 shortly after IS registered for VAT and commenced trading.

Evidence: Companies House registration documentation.

51. Finding: Saisco was registered for VAT on 12 September 2012; its principal place of business was not its registered office. Originally it was a residential address and subsequently serviced offices in SW17, Trident Business Centre (**Trident**). The nature of the business was described as the importation of goods from the EU for distribution within the UK. VAT returns were rendered from period 06/13 to 03/19 but not thereafter. The first transactions were however all in the UK indicating the VAT 1 was not correctly completed.

Evidence: VAT registration and return information provided from HMRC's systems, pattern of trade.

52. Finding: HMRC undertook a pre-repayment credibility check in respect of the 06/13 VAT return. They visited the Appellant at the accountant's address and also visited a warehouse at which it was claimed by Saisco that the goods in which it traded were stored. The warehouse was owned by Boski. The repayment claimed was repaid but on terms that there had been no full audit of entitlement. Saisco was not entitled to view the verification and associated repayment as a seal of approval from HMRC as to its entitlement to claim input tax unless the terms of the legislation regarding such claims were met.

Evidence: Witness statement of Mr SN and OO

53. Finding: In every period bar 09/13 the output tax declared was less than the input tax claimed. Period 09/13 was a nil return. HMRC paid the claimed repayments on all returns up to and including 09/17. Repayment claims were refused thereafter. The total input tax claimed by Saisco was £1,407,069 which when set against the smaller sums of output tax declared resulted in total repayment claims of £747,607 of which £592,456 was repaid and £155,234 was withheld.

Evidence: VAT return information as analysed by OO.

54. Finding: Saisco claimed input tax in respect of invoices received from the following counterparties to whom it also issued invoices: Boski, Fashion Garments, Fashion Moda, Andivia, Hala, Abimode, No Name Trade, Moonstyle Home Furnishing, RC, RL.

Evidence: analysis performed by OO of invoices issued to and by Saisco.

55. Finding: In periods 06/13, 06/14, 03/15 – 09/16, 03/17, 03/18 – 03/19 Saisco deliberately claimed input tax to which it was not entitled.

Evidence:

(1) By reference to the evidence referred to in paragraphs 31 and 54 and above Boski did not make any supplies of goods to Saisco. However, Saisco's VAT returns show claims to input tax on invoices received from Boski in each of those periods.

(2) Mr Chaudhry stated that the invoices issued to Saisco were prepared at the direction of Mr SN with the necessary consequence that when entering the input tax into Saisco's VAT records the claim was deliberately and incorrectly made.

56. Finding: Saisco reported a profit on trading in the financial year to 31 March 2014, 2017, 2018 and 2019; however the losses reported for the financial years ended 31 March 2015 and 2016 were so significant that when carried forward they there was no corporation tax due save in 2014.

Evidence: annual accounts.

57. Finding: in periods 06/13, 03/14 – 06/16, 09/17, and 03/19 and overall across the period from 06/13 to 03/19 the total value of outputs was lower than the total value of inputs as declared on the VAT returns indicating a trading deficit, at its maximum the deficit between total output and total inputs was £1,106,055 and at the end of the period remained at £513,530.

Evidence: VAT return data.

58. Finding: Saisco did not claim input tax and held no payment record for the payment of general overhead costs. The only payments identified were a single payment of rent for Trident of £432, tax representatives fees, the purchase of a computer, a flight, and a few items from Amazon. No evidence was available that other overheads (including the lock up garage) had been met from private sources.

Evidence: analysis of VAT returns and bank statements by HMRC.

59. Finding: over the period 06/13 – 03/19 Saisco accumulated 218,612 items of stock with a peak of stock items held in 03/17 of 351,193 items indicating that the assertion that Saisco remained competitive through selling stock and remaining on trend was wholly inaccurate. The perpetual accumulation of stock represents a wholly uncommercial business model.

Evidence: analysis of invoices undertaken by HMRC.

60. Finding: invoices issued by Saisco held by Jungle are not in the same format as other invoices issued by Saisco in the same period, and do not correspond with the copies held by Saisco itself. The invoices held by Jungle bear Mrs SN's name and different invoice numbers but with identical dates and descriptions of goods. Evidence of payment against those invoices by Jungle shows the "beneficiario" or recipient as Mrs SN and not Saisco. Taken together this is evidence of invoice manipulation and fraudulent conduct by Saisco.

Evidence: comparison of invoices.

61. Finding: Mr SN requested invoices to be issued to Saisco which did not reflect supplies made. He also appears to have been a conduit for other emails between unrelated parties.

Evidence: emails provided by Mr Chaudhry, explanations given by Mr Chaudhry, Mr Trevadi and P-i-G to HMRC as reported by JI.

62. Finding: Saisco was purportedly provided with a guarantee from each of Palavras, Perimetro, Fuchsia and Mera Pind, for various periods (though each was unsigned by Saisco or the debtor counterparty). However by period 03/19 those companies owed Saisco £273,997, £106,566, £94,474, and £519,772 respectively despite Saisco asserting that it suffered cash flow difficulties. It is to be inferred that there were no such guarantees as it is reasonably expected that they would have been called upon.

Evidence: review of copy guarantees and HMRC analysis of invoices and payments to each customer.

63. Finding: Saisco was overpaid by Jungle in the sum of £98,513 (assuming that the payments made by Jungle to Mrs SN (see paragraph 60 above) were not payments to Saisco and £198,513 if they were) and yet there is no evidence of Jungle seeking to recover the sum from Saisco. Saisco was also overpaid by RL (£109,531). Again indicating a lack of commerciality in the relationship.

Evidence: HMRC analysis of invoices and payments.

64. Finding: It is unlikely that the cash payments said to have been made by Palavras were in fact made and could not therefore have been used to pay suppliers.

Evidence:

(1) The letters notifying that the payments were received are the same as the date on which they were said to have been paid despite Palavras being established in Portugal.

(2) Palavras made payments in € through KBR Foreign Exchange (**KBR**) and yet purported to make cash payments in £.

(3) Had the full £277,000 been paid as recorded Palavras would have overpaid Saisco by £3,023 with no explanation for doing so or any evidence of looking to recover the overpaid sum

65. Finding: We consider it possible that the cash payments said to have been made by Mera Pind were in fact made.

Evidence:

- (1) The sums purportedly paid in cash are £519,664 against a total debt of £519,772.
- (2) The statements that the sums have been paid have been notarised, though there are some errors in the official translations of the notarised documents.
- (3) However, there is no evidence of how sums (each of which is greater than £10,000) was repatriated.
- (4) The evidence produced that the sums were banked is dated approximately 2 years after the date on which it was said to have been paid.

66. Finding: We can reach no considered opinion that the cash payments said to have been made by Fuchsia were in fact made.

Evidence:

- (1) There are two copies of notarised documents which list payments for the same dates, but which are different to one another, they too contain typographical errors.
- (2) Total payments shown are £87,000 on one version of the documents and £104,000 on the other as against a debt owed of £94,474.
- (3) There is no evidence of how sums (each of which is greater than £10,000) was repatriated or how it was used.
- (4) No supplier indicated that they were paid in cash.

67. Finding: Saisco was owed money by Andivia (£122), No Name (£829), JSR (£4,218), Abimode (£8,474), Kos (£158,987) RC (£96,343), RV (£152,641) either because of sums outstanding on invoices issued by Saisco or through overpayments made by Saisco but there is no evidence of Saisco seeking to collect the sums through correspondence or debt collection indicating uncommercial behaviour.

Evidence: HMRC analysis of invoices and payments.

68. Finding: Saisco invoiced Gazs a total of £201,350. There are no invoices from Gazs to Saisco in Saisco's records and yet banking information establishes that £870,579 was paid by Gazs to Saisco and £1,127,300 by Saisco to Gazs. Indicating inappropriate commercial transactions.

Evidence: HMRC analysis of invoices and payments.

69. Finding: HMRC prepared an analysis of net debt due from Saisco to its suppliers. HMRC fairly set off amounts due from those suppliers in respect of supplies purportedly made by Saisco to the supplier. HMRC did not perform an analysis of when invoices issued by suppliers were paid or offset by Saisco. However, the following sums were outstanding to suppliers on invoices issued by those suppliers at the end of the period of trading and can reasonably be concluded to have remained unpaid and therefore not paid within 6 months of the date on which the invoices were issued:

Supplier	Amount outstanding	VAT element
Boski	£1,048,651.49	£174,775
FGSP	£601,952	£100,325
FM	£13,700	£2,283
Hala	£50,001	£8,330

Moonstyle	£49,741	£8,290
Elena	£857,433	£142,905
HWings	£178,700	£29,783

Evidence: HMRC analysis of invoices issued, and payment made to each relevant supplier.

70. Finding: in the early years of trading Saisco claimed input tax in respect of goods, (specifically watches, batteries and electronic cigarette kit) which did not reflect their general pattern of business, but we are satisfied that the supplies of these items took place.

Evidence: invoices from, Supreme Imports (batteries), Hira (watches) and JSR (electronic cigarette kit) banking payments to Supreme Imports, invoices for the batteries issued to Gazs and Perimetro, watches to Palavras and Perimetro but not onward sale of electronic cigarette kits.

71. Finding: Spark appears to have legitimately supplied goods to Saisco, though Mr SN described the goods as of poor quality.

Evidence: invoices from Uneek Freight Services and commercial and customs documentation for goods supplied by Spark and customs documentation, evidence of payment.

72. Finding: the overall purpose of the establishment of Saisco and its operations was for the abusive/fraudulent purpose of making claims for VAT repayment in respect of which no output tax would be correspondingly declared. In the context of that overall purpose Saisco entered into real transactions for textiles (i.e. Spark) and potentially others in order to give the impression of legitimate trade.

Evidence: evaluative conclusion based on the findings above.

73. Finding: SN attempted to mislead HMRC once the investigation had commenced.

Evidence:

(1) SN rented a lock up garage in January 2018 shortly after the initial contact by HMRC in the present investigation.

(2) Documents provided on review (i.e. CMRs) sought to provide legitimacy of export when HMRC challenged evidence of shipment provided by P-i-G.

## **RC**

74. Finding: RC was incorporated on 3 February 2016 with its registered address as that of the company's accountant. Mr AN is the sole shareholder and director. Its business activity was said to be as for Saisco. Despite Mr SN and Mr AN explaining that this company was incorporated to give Mr AN a job and focus following a serious motorcycle accident we note that Mr AN had been the director of Gazs in Spain from 2012. There does not therefore appear to have been a need for him to establish RC to have something to do. It is more likely that the company was established to participate in the fraud in which Saisco was involved.

Evidence: Companies House documentation and results of HMRC's enquiries of company registration for Gazs.

75. Finding: RC was registered for VAT with effect from 1 September 2016. Its principal place of business was serviced offices. The business was stated to intend to purchase goods from suppliers in the EU and sell to UK established customers. This intention was supported

by documentation indicating that it had received an order from Boski. The customer was stated to be MP. In fact RC never made any purchases from MP, all invoices held for purchases were issued by UK established businesses and sales purportedly made to Boski by RC. The pattern of trade initiated immediately did not reflect the VAT 1.

Evidence: VAT registration documents and associated documentation, VAT records.

76. Finding: in every period in which it was registered, RC rendered returns showing greater input tax to be recovered than output tax declared and thereby seeking repayment from HMRC. Total input tax claimed for periods 11/16 to 11/18 was £575,620 resulting in repayments being made of £553,576 with £10,349 withheld. The first period return was subject to limited verification prior to processing the repayment.

Evidence: detail of VAT returns and associated analysis prepared by HMRC.

77. Finding: in all periods save for 11/18 and overall across the period from 11/16 – 11/18 the total value of outputs was lower than the total value of inputs as declared on the VAT returns indicating a trading deficit over the period 11/16 – 11/18 total inputs total exceeded outputs by £368,289.83.

Evidence: VAT return data.

78. Finding: RC did not claim input tax and held no payment record for the payment of general overhead costs other than tax representatives fees, the purchase of a laptop and solicitor fees. No evidence provided for the expensing of website development and, despite holding a lease for Trident requiring rental payments of £324.72 per month, no expense was claimed. Further, no evidence was available to support Mr AN's assertion that the Trident rent was met from private sources.

Evidence: Trident rental agreement, analysis of VAT returns and bank statements by HMRC.

79. Finding: over the period 11/16 – 11/18 accumulated 28,049 items of stock with a peak of stock items held in 02/18 of 136,385 items. The perpetual accumulation of stock represents a wholly uncommercial business model.

Evidence: analysis of invoices undertaken by HMRC.

80. Finding: RC was owed money by Boski (£78,208), Saisco (£97,873 converted from €) Moonstyle (£41,768) Fuchsia (circa £15,000 – precise sum not calculated through conversion of € payments) and Jungle (circa on conversion £25,000) either because of sums outstanding on invoices issued by RC or through overpayments made by RC but there is no evidence of RC seeking to collect the sums through correspondence or debt collection indicating uncommercial behaviour.

Evidence: HMRC analysis of invoices and payments.

81. Finding: HMRC prepared an analysis of net debt due from RC to its suppliers. HMRC fairly set off amounts due from those suppliers in respect of supplies purportedly made by RC to the supplier. HMRC did not perform an analysis of when invoices issued by suppliers were paid or offset by RC. However, the following sums were outstanding to suppliers on invoices issued by those suppliers at the end of the period of trading and can reasonably be concluded to have remained unpaid and therefore not paid within 6 months of the date on which the invoices were issued:

Supplier	Amount outstanding	VAT element
Elena	£72,500	£12,083

HWings	£253,624	£42,270
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Evidence: HMRC analysis of invoices issued, and payment made to each relevant supplier.

82. Finding: there is no evidence that RC was provided with financing from an independent third-party financier.

Evidence: The name of the financier was not even provided nor any loan documentation, nor evidence of receipt or repayment.

83. Finding: there is evidence that substantial sums totalling £229,000 were invested into RC from “Nebhwani Investments” with no explanation of who or what Nebhwani Investments is or the source of funds.

Evidence: RC bank statements.

## **RL**

84. Finding: RL was incorporated on 10 October 2016 with its registered address as that of the company’s accountant. Mr AN is the sole director. Its business activity was said to be as for Saisco. The trade category of RL was originally wholesale textiles. The explanation given for having multiple companies was because suppliers wanted to spread their risk. That explanation cannot be accepted as there is no spreading of risk where multiple corporate entities are under the same ownership and directorships. More likely the purpose of establishing RL was as a further participant in the VAT fraud.

Evidence: Companies House documentation, Mr AN’s witness statement.

85. Finding: RL was registered for VAT with effect from 19 May 2017. Its principal place of business was serviced offices. As with Saisco and RC the business was stated to intend to purchase goods from suppliers in the EU and sell to UK established customers. In the event the trade was buying from UK and selling to the EU and the opposite of that stated to have been intended despite trades occurring immediately from registration.

Evidence: VAT registration documents and associated documentation, VAT records.

86. Finding: in every period in which it was registered RL rendered returns showing greater input tax to be recovered than output tax declared and thereby seeking repayment from HMRC. Total input tax claimed for periods 01/19 to 10/21 was £575,620 resulting in repayments being made of £241,304 with £58,293 withheld. The first two period returns were subject to limited verification prior to processing the repayment. As with Saisco, such verification was not a full audit, and it did not give RL carte blanche to make fraudulent claims for input tax on the basis that HMRC had given it the green light to do so.

Evidence: detail of VAT returns and associated analysis prepared by HMRC, visit report and release of verified payments..

87. Finding: in periods all periods 07/17 – 10/18 the total value of outputs was lower than the total value of inputs as declared on the VAT returns indicating a trading deficit over the period 11/16 – 11/18 total inputs total exceeded outputs by £411,695.65.

Evidence: VAT return data.

88. Finding: RL did not claim input tax and held no payment record for the payment of general overhead costs other than tax representatives fees indicating a lack of commerciality and/or that such costs were not in fact incurred as would be expected for a legitimate business.

Evidence: analysis of VAT returns and bank statements by HMRC.

89. Finding: over the period 07/17 – 10/18 accumulated 56,415 items of stock. The perpetual accumulation of stock represents a wholly uncommercial business model.

Evidence: analysis of invoices undertaken by HMRC.

90. Finding: RL was purportedly provided with a guarantee from Fuchsia. However by period 04/18 Fuchsia owed RL £92,000 and Jungle owed £70,193 despite RL asserting that it suffered cash flow difficulties. There is no evidence that RL sought recovery through the guarantor. Thereby indicating that there was no legal or valid guarantee.

Evidence: review of copy guarantees and HMRC analysis of invoices and payments to each customer.

91. Finding: it was reasonable for HMRC to discount the assertion that the alleged guarantors held shipping documents precluding their being provided to HMRC in support of zero rating of supplies said to have been made to Fuchsia and/or Jungle. HMRC could find no company registration for the asserted guarantor (Leonardo Design Company); the terms of the agreement appeared to be as a factoring company which should have protected RL from non-payment by Fuchsia and/or Jungle but the role of a factor would not have required evidence of proof of delivery, original CMRs etc as asserted by the Appellant.

Evidence: review of the documents purporting to be guarantees, JI's evidence that the guarantor could not be located, judicial knowledge of the basic function and operation of guarantees/factoring, absence of any evidence of repayment or factoring receipts.

92. Finding: to the extent that the "lender" referred to by Mr AN is said to be different to the guarantor there is no evidence that RC was provided with financing from an independent third-party lender.

Evidence:

(1) The name of the financier was not provided nor any loan documentation, evidence of receipt or repayment.

(2) The two receipts purported to have been issued by Kos in respect of the alleged receipt of a payment directly from a lender dated 5/11/2017 and 21/12/2017, do not name the lender, misspell the name of the director of Kos and use a letter head format which differs from all versions of the invoices said to have been issued by Kos.

93. Finding: RL was initially funded through bank accounts apparently linked to the Nebhwani family (Nebhwani RLuxe, Nebhwani A&S Loan and a second RL bank account) the bank statements of which were never produced to HMRC or explanation provided. Indicating a source of funds other than the business, potentially and inferentially the fraudulent claims to input tax by companies controlled by members of the family.

Evidence: bank statements and HMRC analysis of same.

94. Finding: RL was owed money by Boski (£12,779), Saisco (£109,531), Moonstyle (£285), either because of sums outstanding on invoices issued by RL or through overpayments made by RL but there is no evidence of RL seeking to collect the sums through correspondence or debt collection indicating uncommercial behaviour.

Evidence: HMRC analysis of invoices and payments.

95. Finding: HMRC prepared an analysis of net debt due from RL to its suppliers. HMRC fairly set off amounts due from those suppliers in respect of supplies purportedly made by RL to the supplier. HMRC did not perform an analysis of when invoices issued by suppliers



were paid or offset by RL. However, the following sums were outstanding to suppliers on invoices issued by those suppliers at the end of the period of trading and can reasonably be concluded to have remained unpaid and therefore not paid within 6 months of the date on which the invoices were issued:

Supplier	Amount outstanding	VAT element
Elena	£285	£47
HWings	£245,435	£40,905
Kos	£319,730	£53,288
FGSP	£111,168	£18,528

Evidence: HMRC analysis of invoices issued, and payment made to each relevant supplier.

## IS

96. Finding: IS was incorporated on 7 May 2013 under the name Sartex Limited, registered at the accountant's address. It was dormant until it changed its name on 19 September 2018. It registered for VAT effective from 1 October 2018. The nature of the business reflected those of Saisco, RC and RL. However, and in contrast to the other companies, the VAT 1 indicated that IS intended to buy in the UK and sell to European businesses. The principal place of business was recorded as Mrs SN's residential address. The renaming and commencement of activities of the business are neatly timed for the intention of IS to pick up Saisco's role in the VAT fraud as HMRC began the investigation and withheld repayments.

Evidence: Companies House documentation and VAT registration records.

97. Finding: IS rendered VAT returns for periods 12/18 – 06/19. Each return claimed repayment of VAT because input tax exceeded output tax. Total input tax claimed in the three periods was £252,404. All repayments requested were withheld (£23,921).

Evidence: VAT returns rendered

98. Finding: in periods all periods 12/18 – 06/19 the total value of outputs was lower than the total value of inputs as declared on the VAT returns indicating a trading deficit over the period 12/18 – 06/19 total inputs total exceeded outputs by £120,754.

Evidence: VAT return data.

99. Finding: IS did not claim input tax and held no payment record for the payment of general overhead costs other than tax representatives fees. Indicating that such costs may not have been incurred as would be expected for a legitimate business.

Evidence: analysis of VAT returns and bank statements by HMRC.

100. Finding: over the period 12/18 – 06/19 accumulated 22,338 items of stock. The perpetual accumulation of stock represents a wholly uncommercial business model.

Evidence: analysis of invoices undertaken by HMRC.

101. Finding: IS's bank statements do not provide evidence of trading. The receipts and payments bear no resemblance to the invoices received or issued.

Evidence: bank statements and HMRC's analysis of same.

102. Finding: IS was owed money by FGSP (£34,180) by way of sums outstanding on invoices issued by IS but there is no evidence of IS seeking to collect the sums through correspondence or debt collection indicating uncommercial behaviour.

Evidence: HMRC analysis of invoices and payments.

103. Finding: HMRC prepared an analysis of net debt due from IS to its suppliers. HMRC fairly set off amounts due from those suppliers in respect of supplies purportedly made by IS to the supplier. HMRC did not perform an analysis of when invoices issued by suppliers were paid or offset by IS. However, the following sums were outstanding to suppliers on invoices issued by those suppliers at the end of the period of trading and can reasonably be concluded to have remained unpaid and therefore not paid within 6 months of the date on which the invoices were issued:

Supplier	Amount outstanding	VAT element
Boski	£190,749	£31,791

104. Finding: the Decision concerning the Appellant concerned all three periods 12/18 – 06/19 and assessments were raised for all three periods. However, HMRC withdrew the 06/19 assessment erroneously and did not reinstate it.

Evidence: testimony from GMO which we accept.

#### **DISCUSSION**

105. We have set out above the summary of the Appellants' positions in these appeals. In essence they contend that on the facts there is no basis for HMRC to have reached the conclusion that they are not entitled to recover the input tax as claimed.

106. HMRC contend that input tax should be denied in full in respect of each of the Appellants on the grounds that it can be reasonably concluded that there is insufficient evidence that goods were actually supplied. HMRC rightly contend, and it is for each of the Appellants to show, on the balance of probabilities, that there was a supply, if their appeals are to succeed. This is the "No Supply" argument.

107. In the event that we are satisfied on the balance of probabilities that goods were supplied we are then invited to deny input tax in respect of any sums unpaid by the Appellants more than 6 months after the date of supply for which we are invited to use the proxy of total unpaid sums. It is for the Appellant to show that such an assessment is overstated or inappropriate. This is the "Section 26A VATA" argument.

108. To the extent that there remains a question as to the recoverability of input tax by Saisco, RC and RL only, HMRC contend that input tax should be denied either on the basis that it has been claimed for fraudulent means (the "Fini" argument) or that there is an established tax loss of which the Appellants knew or should have known (the "Kittel" argument). It is for HMRC to establish the evidence of fraudulent behaviour and Saisco, RC and RL's complicity/knowledge of the fraud.

109. HMRC accept, following challenge by us, that as regards the Saisco Assessments for periods more than four years prior to the date of the assessment (i.e. periods 06/13 to 09/16) they must establish that Saisco deliberately overclaimed input tax even under the No Supply argument.

#### **No supply**

110. On the basis of our findings at paragraphs 31 we have concluded that it was reasonable for HMRC to conclude that there were no supplies of goods made by Boski to any of the

Appellant companies such that none of the Appellants are entitled to claim input tax deduction in relation to invoices issued by Boski. Having so concluded it was for the Appellants to establish that there were supplies made rebutting the reasonable conclusion drawn by HMRC. The Appellants have failed to do so. They assert that Mr Chaudhry lied but otherwise presented no evidence that he had. They did not permit themselves to be cross examined on this assertion. Accordingly, they have failed to meet the burden of proof which rests on them to disturb this aspect of HMRC's assessment.

111. Our conclusion on Boski could then have permitted a further conclusion that as Boski was one of the principal suppliers to each of the Appellant companies it becomes all but impossible to say which invoices subsequently issued between this network of purported traders pertained to the fictitious supplies from Boski. Such conclusion would have resulted in our denying all the input tax on no supply grounds as we were invited to do by HMRC.

112. However, we were unwilling to draw that further conclusion. As we found at paragraph 44 that there were some goods in circulation. Physical goods were seen and Trafetir certainly moved 60 boxes on 3 pallets albeit that Trafetir expressed concern as to the contents of the boxes, goods were seen at the lock up garage and there is some evidence from Portugal that goods were received. We do not therefore dismiss the appeals in their entirety on the No Supply argument.

113. By reference to our finding at paragraph 55 we are satisfied, at least in respect of the Boski invoices, that Mr SN claimed the input tax relating to them deliberately knowing that there were no goods associated with the invoices. Having so determined HMRC have satisfied us that they are entitled to raise assessments against Saisco within the extended 20-year time limit provided for in section 77 VATA.

114. Accordingly, we deny the following input tax recovery:

Saisco	£402,342.29
RC	£118,551.94
RL	£87,643.30
IS	£33,791.50

### **Section 26A VATA**

115. Pursuant to section 26A VATA a taxpayer loses their right to have claimed input tax where payment for the goods remains outstanding for more than 6 months after the date of supply.

116. Paragraphs 69, 81 and 95 set out the amounts outstanding from each of Saisco, RC and RL and the VAT element thereon (the only payments outstanding for IS were to Boski and such input tax is denied in consequence of the No Supply argument). Whilst it is likely that further sums could technically have been denied had HMRC been able to attribute payments to invoices they did not seek to do so and instead, generously, invited us to deny only the input tax on total sums outstanding at the end of the Assessment and trading periods.

117. The Appellant contends that some of these outstanding sums were not in fact outstanding because the suppliers were also paid in cash. As set out at paragraphs 64 - 66 we have, in the main, rejected Saisco's claim that that customers paid them in cash. We accept that we have reached no final conclusion as regards the possibility that cash payments were made by Fuchsia. However, even were we to accept that Fuchsia paid cash there is no evidence that case was used to pay suppliers at all or which supplier. The burden rests with

the Appellants to shown that any cash received was so used; absent evidence to that effect there is no basis on which to disturb HMRC's assessment in this regard.

118. As there is no such evidence, we determine that such input tax should be denied. As we have already denied the input tax incurred on invoices issued by Boski this aspect of the decision applies only to the outstanding amounts owed by Saisco to FGSP, FM, Hala, Moonstyle, Elena and HWings; by RC to Elena and HWings; and by RL to Elena, HWings, Kos and FGSP all of which we deny under section 26A VATA.

### **Kittel**

119. To make a Kittel denial HMRC must show, on the balance of probabilities, that there has been a tax loss of which the relevant Appellant knew or should have known. Often in Kittel cases complex evidence is required to show that the input tax in question is part of a deal chain in which there is an established tax loss. There is no such problem in this appeal. As we have found at paragraph 30 for each of HWings, Elena, Kos, Abimode, Andivia, Fashion Moda and No Names there is a tax loss identified in respect of the trade with each of Saisco, RC and RL and not simply somewhere in the chain.

120. Input tax will therefore be denied if HMRC satisfy us that Saisco, RC and RL knew or should have known of the fraudulent tax loss. These Appellants contend that they did not know, could not have known and therefore should not have known of the tax loss. We entirely reject that contention for the following reasons:

- (1) The businesses of Saisco, RC and RL were entirely uncommercial (see paragraphs 53, 54, 56 - 59, 62, 63, 67, 68, 76- 80, 82, 83, 86 - 90).
- (2) There was obvious and apparent circularity of trading (see paragraphs 43).
- (3) Limited evidence that goods were physically moved (see paragraph 44)
- (4) Relationships between Saisco, RC and RL with Fuchsia and Jungle had hallmarks of fraud (see paragraphs 32 - 36)
- (5) Invoicing discrepancies (see paragraphs 60 and 61)
- (6) The connections with the various missing traders and obvious discrepancies in inter party dealings (see paragraphs 28 - 30, 38 - 42, and 46)
- (7) Lack of due diligence (see paragraph 49)

121. Taken individually and together each of those reasons justifies a conclusion that the directors of Saisco, RC and RL knew or at least reasonably should have known of the tax loss.

122. We therefore deny input tax to each of the Appellants as follows (representing all input tax incurred on invoices from the identified suppliers less the amount already denied under section 26A VATA – see paragraphs 69, 81 and 95):

Supplier	Saisco	RC	RL
Elena	£94,217	£66,274	£12,250
HWings	£79,627	£108,786	£19,717
Kos	£141,166	£66,516	£121,507
Andivia	£42,480		
Abimode	£39,770		

Fashion Moda	£23,393		
No Name	£32,623		

### **Fini**

123. There is a significant overlap between the test to be applied in Fini and that for Kittel. The distinction between the two is that in Fini the fraudulent or abusive conduct which HMRC must establish is that of the Appellants and not merely that there has been a fraudulent loss of tax of which the Appellants were or should have been aware.

124. By our decision so far, we have concluded that the VAT said to have been incurred on supplies from Boski, Elena, HWings, Kos, Andivia, Abimode, No Name and Fashion Moda should be denied. The effect of section 26A VATA has also resulted in the denial of all VAT on invoices issued to Saisco by Hala and some of the input tax on invoices issued to Saisco by Moonstyle.

125. We must therefore consider whether the following VAT should be denied because the respective Appellant's claim to recovery was fraudulent or abusive i.e. the Appellant made the claims as HMRC contend, as part of a contrived and fraudulent scheme to facilitate VAT repayment which would result in Saisco, RC and RL being paid sums to which there was no entitlement:

Saisco	RC	RL
Moonstyle	Moonstyle	FGSP
FGSP	Saisco	Saisco
Spark Impex	RL	
Supreme Imports		
Hira Company		
RC		
RL		

126. We consider first Moonstyle and have no hesitation in concluding that the relationship between Mr SN and, by reasonable inference, Mr AN was one intended to fraudulently claim input tax. As we have found in paragraph 37 we accept the evidence of JI that Mr Trivedi told him that there were no supplies of goods. The invoices were issued on the basis that goods were supplied whereas in fact, at best goods were moved from Saisco/RC/RL, packed by Moonstyle, and then returned. In our view the invoices deliberately misrepresent the nature of any supply made by Moonstyle. Strictly, the invoices do not meet the requirements of regulation 13 VAT Regs and input tax could have been denied on that basis as the nature of the transaction is misdescribed. However, as HMRC did not plead the case by reference to regulation 13, and in the absence of the Appellant, we do not determine it on that basis.

127. However, on the basis that Mr Trivedi and Mr SN were complicit in the raising of invoices which facilitated a claim by each of Saisco and RC to input tax which did not represent VAT on a supply carried on for the purpose of a business or attributed to such a business we determine that there was no entitlement to input tax recovery on Moonstyle invoices.

128. As regards FGSP, we note that Mr Trivedi was a director of both FGSP and Moonstyle. Whilst his admission appears to have been concerning Moonstyle we reflect that the pattern of trade between Saisco/RL and FGSP reflects that with Moonstyle. Certainly, Saisco's activities from the outset involved the purported purchase of goods from and sales to FGSP all in the same period. Even had we been prepared to accept the Appellants' contention that credit balances were reduced by the sale of different goods it is highly unlikely that a line of credit would need to be reduced within a single VAT period. We consider the relationship with Mr Trivedi as a whole to have been one which is rooted in a fraudulent attempt to create a façade of trading facilitating unjustified input tax claims by the Appellant companies and as regards Saisco and RL on invoices issued by FGSP.

129. As regards the input tax incurred on invoices from Spark, Hira, and Supreme Imports we are satisfied that the transactions were undertaken, the goods supplied to Saisco and supplied by it (see paragraphs 71 and 70). HMRC have not sought to establish tax loss in connection with those supplies. However, we consider it appropriate to deny the input tax on the basis that these represented part of the legitimate façade given to a fraudulent business. We reach this view by reference to the evidence identified in respect of our Kittel decision (particularly 120.(1) - 120.(5)) together with the findings at paragraphs 45, 46, 48, 63 – 65, 71, 73.

130. Regarding the input tax incurred by each of Saisco, RC and RL as between themselves we also consider that to have been incurred as part of the fraudulent scheme embarked upon by the Nebhwani family to claim input tax to which there was no legitimate entitlement. We do so by reference to all the findings made taken as a whole and the decisions reached with regard to each of the other claims.

131. Accordingly, to the extent not covered by the other decisions set out above the remaining input tax is to be denied.

#### **DISPOSAL**

132. In the end the detailed basis on which input tax has been denied as set out in paragraphs 114, 118, 1211 and 131 result in denial of all input tax incurred by Saisco, RC and RL in all periods. The Assessments stand as issued and the appeals are dismissed.

133. However, as HMRC did not plead Fini against IS and as the only basis on which we disallowed input tax recovery on the FGSP invoices was Fini the appeal by IS in respect of the disallowed sum of £8,170 in respect of FGSP invoices must be allowed.

#### **RIGHT TO APPLY FOR PERMISSION TO APPEAL**

134. 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.

**Release date: 28<sup>th</sup> NOVEMBER 2024**