

JUSTICE LEWISON SIDES WITH TRADERS AS HMRC'S GAMBLE BACKFIRES

CTM - VAT AND EXCISE SPECIALISTS



Liban Ahmed
Director

Ipswich Office
9 Lower Brook Street
Ipswich
IP4 1AG
Tel: 0844 826 7695

liban.ahmed
@ctmltd.com

Liban worked for HM Revenue & Customs for 20 years, predominately in MTIC investigations, before being recruited by **KPMG**. He formed CTM in 2005 and now manages all Tribunal and Upper Tribunal appeals.

Overleaf:

The cost of transcribers

Good news at last? A High Court Judge interprets contra trading case law

It is now absolutely clear that exporters in contra trading appeals must be found to be part of a conspiracy, if HMRC are to be successful. The only exception it would seem, which we have not come across, would be if a trader had been warned of such a contra trading scheme before and continued to purchase from the same supplier(s).

The Tribunal had previously found that Brayfal did not know of the fraud committed by either the defaulting traders in the "dirty" supply chains, or the contra trader in their "clean" supply chains. The Tribunal made it absolutely clear that Brayfal could not have identified the fraud and was not a dishonest co-conspirator.

HMRC appealed that decision in an astonishingly risky move that had no realistic chance of success. This was the first time that a High Court Judge has had the opportunity to comment on the Mobilx Court of Appeal Judgement and it is unclear why HMRC chose to put Brayfal's extremely strong case at the centre of this.

The result was not only a defeat for HMRC, but was of great benefit to other traders who are involved in contra trading appeals and who are yet to go before the Tribunal. It provides new and genuine hope in such appeals, although the proof will be in the pudding. Other traders that are appealing Tribunal decisions are likely to succeed on a strike out Application alone, simply because they were not found to be co-conspirators.

Summary of main points:

1. The Tribunal must consider what a trader knew at the time of the transactions.
2. The burden of proof is on HMRC to evidence what indicator(s) of fraud the trader was aware of, or what he could have identified. It is not for the trader to prove that he didn't know of the fraud, or that he couldn't have found the fraud.
3. If a traders' clean chains took place before the contra traders' dirty chains, it will be difficult for HMRC to prove that a trader knew of a fraud before it had even happened.

Next Edition:

Supreme Court
Decision in Mobilx

4. It cannot be said that a trader should have known that the dirty chains were connected to its clean supply chains, unless it had been sufficiently warned of the previous contra trading connection.
5. It cannot be said that a trader had actual knowledge of the fraud of a future transaction, unless it is shown that it was part of a conspiracy with the contra trader, or the defaulting traders in the dirty chains.
6. A trader must know that its transactions are connected to fraud, not that they might be connected to fraud.
7. HMRC must advance an argument of a conspiracy, i.e. it must be pleaded in their Statement of Case.

What does it all mean?

All contra traders win? Absolutely not. HMRC have a difficult job to succeed? Definitely.

In reality, unless HMRC prove a conspiracy, they cannot succeed; the question is, what does HMRC have to do to convince a Tribunal of a conspiracy. For example, is FCIB circularity of funds sufficient to prove a conspiracy? We believe not. In the appeals of G Comms Limited and Blada Limited, for example, the Tribunal did not find that circularity of funds even proved the traders knew about the fraud, let alone a conspiracy.

The problem is, with so many traders running out of funds, and some not even turning up for their trial, the arguments will not be properly formulated and the evidence will not be sufficient. Traders will still have to fight very hard and we advise that they do not disregard one single allegation, no matter how small it might seem. Deal with everything raised by HMRC and deal with every issue that has ever been raised in any appeal, is our advice. There may be change afoot and now is not the time to prepare weak appeals; quite the opposite.

Transcribers at Trial

With traders having very little funds and some trials lasting several weeks, many of CTM's clients are opting not to pay for transcribers. HMRC, in any case, are likely to pay for transcribers, whether traders pay half, or not. We have no view on this and each trader will have to decide where best to put their limited funds. The costs for a transcriber can be near to £1,000 per day.

We can also advise on how to opt out of paying HMRC costs if unsuccessful.

If you require any further information, please contact us at any time.

CTM Limited – 9 Lower Brook Street, Ipswich IP4 1AG

----- Tel: 0844 826 7695 - Fax: 0700 585 0573 - E-mail: liban.ahmed@ctmltd.com -----