Neutral Citation number: [2025] UKUT 00415 (TCC)

UPPER TRIBUNAL
(TAX AND CHANCERY CHAMBER)

Applicant: Anandpreet Singh Powar	**Tribunal Ref: UT/2024/000108**
Respondents: The Commissioners for His Majesty's Revenue and Customs	

RECONSIDERATION OF APPLICATION FOR PERMISSION TO APPEAL FOLLOWING ORAL HEARING

DECISION NOTICE

JUDGE THOMAS SCOTT

1. The Applicant applies to the Upper Tribunal (Tax and Chancery) for permission to appeal against the decision of the First-tier Tribunal (Tax Chamber) (the "FTT") released on 17 May 2024 (the "Decision").

2. The Applicant applied to the FTT for permission to appeal but the FTT refused permission, in a decision dated 19 July 2024 (the "FTT PTA Decision"). In a decision on the papers issued on 14 October 2024 (the "Written Refusal") I also refused permission.

3. This is the decision following Mr Powar's request for an oral hearing to reconsider my decision.

When does an appeal lie?

4. An appeal to this Tribunal from a decision of the FTT can only be made on a point of law: section 11 of the Tribunals, Courts and Enforcement Act 2007. The Applicant must demonstrate that it is arguable that the FTT made an error of law in reaching its decision

which was material to that decision. "Arguable" means an argument which carries a realistic as opposed to fanciful prospect of success.

5. Findings of fact by the FTT cannot be the subject of an appeal to this Tribunal unless they are such that no person acting judicially and properly instructed as to the relevant law could have made that finding, because, for instance, the finding failed to take account of relevant evidence or took account of irrelevant evidence or was perverse: *Edwards v Bairstow* [1956] AC 14. In relation to any challenge based on *Edwards v Bairstow* the staged approach in *Georgiou v Customs & Excise Commissioners* [1996] STC 463 should be followed.

Background

6. In the Decision, the FTT dismissed Mr Powar's appeal against a personal liability notice ("PLN") issued against him by HMRC on 28 July 2017. Prior to issuing the PLN, HMRC had denied a claim by Drinks 4 Less (UK) Limited (the "Company"), a company of which Mr Powar was the sole director and shareholder, for a deduction of input tax for VAT purposes. The denial was made on the basis that the transactions in respect of which the input tax had been claimed were connected to a fraudulent loss of VAT and the Company knew or should have known of that connection (the "*Kittel* denial"). HMRC had issued an assessment against the Company and an associated penalty assessment. The Company went into liquidation and HMRC subsequently issued the PLN against Mr Powar.

The Decision

The issues in the appeal

7. At [88], the FTT set out the issues to be determined:

> 88. HMRC bear the burden of proof in respect of all of the issues in this appeal, namely:
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> (1) Whether there were inaccuracies in the Company's VAT returns – this requires HMRC to establish that the Company was not entitled to the input tax claimed, ie that the *Kittel* test is satisfied in relation to the relevant purchases. This in turn requires the following to be determined:
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> (a) was there a VAT loss;
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> (b) if so, did this loss result from the fraudulent evasion of VAT;
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> (c) if so, were the Company's purchases on which input tax have been denied connected with that fraudulent evasion; and
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> (d) if so, did the Company know or should it have known that its purchases were connected with that fraudulent evasion of VAT. HMRC's position was that both of these alternative limbs were met;
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> (2) Whether such inaccuracies were deliberate.
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> (3) If so, whether such deliberate inaccuracies were attributable to Mr Powar; and
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> (4) Whether the penalty and PLN were correctly calculated.

FTT's conclusions on those issues

8. The FTT decided in relation to Issue 1 that its findings of fact justified a finding not only of constructive knowledge but of actual knowledge:

> 96. For these reasons we consider that Mr Powar, and therefore the Company, not only should have known the transactions were connected to fraud but that it is more likely than not that Mr Powar actually knew of that connection.

9. The FTT's conclusion on Issue 2 is then set out at [98]:

> **Whether inaccuracies deliberate**
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> 98. Given our conclusion that Mr Powar knew that the VAT returns submitted to HMRC were inaccurate, it follows that the inaccuracies in those VAT were deliberate.

Grounds of appeal

10. The application to this Tribunal following the FTT's refusal of permission to appeal (the "Application") did not repeat the three grounds set out in Mr Powar's application to the FTT for permission to appeal. I agree with Judge Brooks that none of those grounds identifies any arguable error of law, for the reasons set out concisely in the PTA Decision.

11. The grounds of appeal contained in the application to this Tribunal have also been abandoned, and are no longer advanced in the skeleton argument of Mr Powar's newly instructed counsel, Ms Shanze Shah.

12. Ms Shah's skeleton argument states that the ground of appeal is now as follows:

> …the FTT erred in law under *Edwards v Bairstow*, in that no reasonable tribunal properly directed could have reached the conclusion on the evidence available to it that Mr Powar should have known or did know of the fraudulent VAT transactions.

Discussion

13. I begin with two general observations.

14. First, where an applicant wishes to seek permission to appeal on the basis of an *Edwards v Bairstow* challenge, I strongly encourage the applicant to include that challenge in its application to the FTT for permission to appeal. That is because it is the FTT which is best placed to consider and respond to challenges to its decision based on lack of evidence, failure to consider a relevant factor, consideration of an irrelevant factor, or irrationality. The FTT had all the evidence before it and had conduct of the hearing; this Tribunal does not and did not. If an *Edwards v Bairstow* challenge is raised for the first time in an application for permission to this Tribunal, neither the applicant nor this Tribunal will have had the significant advantage of a response from the fact-finding tribunal.

15. Second, the principles applicable to an *Edwards v Bairstow* challenge were summarised in *Nellasar Ltd v HMRC* [2025] UKUT 00164 (TCC) as follows:

> 101. The *Edwards v Bairstow* principle is well known and has been summarised in a number of authorities. Briggs J (as he then was) summarised the position in *Megtian Ltd (In Administration) v HMRC* [2010] STC 840 at [11]:
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> > "The question is not whether the finding was right or wrong, whether it was against the weight of the evidence, or whether the appeal court would itself have come to a different view. An error of law may be disclosed by a finding based upon no evidence at all, a finding which, on the evidence, is not capable of being rationally or reasonably justified, a finding which is contradicted by all the evidence, or an inference which is not capable of being reasonably drawn from the findings of primary fact".
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> 102. We are also referred to the well-known decision of the Court of Appeal in *Georgiou v Customs and Excise Commissioners* [1996] STC 463 ("*Georgiou*"), in relation to appeals said to involve points of law of the kind identified in *Edwards v Bairstow*. Evans LJ (with whom Saville and Morritt LJJ agreed) said at 476-478:
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> > " It is right, in my judgment, to strike two cautionary notes at this stage. There is a well-recognised need for caution in permitting challenges to findings of fact on the ground that they raise this kind of question of law. That is well seen in arbitration cases and in many others. It is all too easy for a so-called question of law to become no more than a disguised attack on findings of fact which must be accepted by the courts. As this case demonstrates, it is all too easy for the appeals procedure to the High Court to be misused in this way. Secondly, the nature of the factual inquiry which an appellate court can and does undertake in a proper case is essentially different from the decision-making process which is undertaken by the tribunal of fact. The question is not, has the party upon whom rests the burden of proof established on the balance of probabilities the facts upon which he relies, but, was there evidence before the tribunal which was sufficient to support the finding which it made? In other words, was the finding one which the tribunal was entitled to make? Clearly, if there was no evidence, or the evidence was to the contrary effect, the tribunal was not so entitled. It follows, in my judgment, that for a question of law to arise in the circumstances, the appellant must first identify the finding which is challenged; secondly, show that it is significant in relation to the conclusion; thirdly, identify the evidence, if any, which was relevant to that finding; and, fourthly, show that that finding, on the basis of that evidence, was one which the tribunal was not entitled to make. What is not permitted, in my view, is a roving selection of evidence coupled with a general assertion that the tribunal's conclusion was against the weight

> of the evidence and was therefore wrong. A failure to appreciate what is the correct approach accounts for much of the time and expense that was occasioned by this appeal to the High Court".

The FTT's findings in relation to knowledge

16. In order to understand the detailed complaints raised by the Applicant, it is necessary to set out the FTT's approach to the issue of actual or constructive knowledge.

17. The FTT set out its views on the evidence before it as follows:

> 33. In addition to two bundles comprising 10,799 and 2,153 pages respectively, we heard from HMRC Officer Jennifer Howse and Mr Powar.
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> …
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> 35. Mr Powar, by contrast, was not a wholly reliable witness. Although we very much appreciate the difficulties he faced in representing himself and have taken this into account wherever possible, this does not explain inconsistencies in his evidence and how he was able to provide detailed explanations in relation to some matters, particularly where it supported his case, but could not recall other matters which occurred around the same time that did not. For example, at the hearing he was able to recall discussions, not previously mentioned, that he had had regarding one of his suppliers and the change of its name and trade classification but could not remember why he had told HMRC during a VAT visit that the Company had a 15% mark up when in fact it was around 2% or less.
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> 36. Additionally, his evidence was inconsistent with documentary evidence. For example, in his second witness statement Mr Powar had said that he was not aware of a company, Blueray Enterprises Limited ("Blueray") even though he had exhibited to his third witness statement an invoice dated 10 June 2013 issued to the Company by Blueray for mixed alcohol at a net cost of £17,490.12. Similarly, in his second witness statement Mr Powar denied ever dealing with Mr Cash & Carry Limited ("Mr Cash & Carry") despite exhibiting to his third witness statement an invoice that was issued to the Company on 1 April 2013 by Mr Cash & Carry for the sale of mixed alcohol with a net value of £6,586.35. Mr Powar, who at the commencement of his evidence had confirmed that, having checked them, his witness statements were true to the best of his knowledge and belief, was unable to explain these inconsistencies and blamed the solicitors that had previously been acting for him, claiming that although he had trusted them to prepare his witness statements for him he now felt that they had let him down.

18. On the issue of knowledge, the FTT's conclusions were as follows:

> 92. Finally, having regard to all of the circumstances we have come to the conclusion, for the reasons explained below, that at the very least Mr Powar, and therefore the Company, should have known that the transactions in question in this case were connected to the fraudulent evasion of VAT.

93. There was no specific factor or "smoking gun" piece of evidence that led us to this conclusion. Rather, it was the overall circumstances surrounding the deals entered into by the Company and the comparative ease with which it was able to engage in transactions which, in our judgment, were "too good to be true" and bear features that we consider would concern a legitimate businessperson or trader but did not appear to have that effect on Mr Powar.

94. Firstly, it was not necessary for the Company to source its supplies. These were, on Mr Powar's evidence, offered to the Company by its suppliers seemingly without much, if any, effort by Mr Powar (see paragraph 58, above). Secondly, Mr Powar appears more often than not to have been able to find customers whose requirements exactly matched the goods the Company had been offered by its supplier (see paragraph 61(4), above). Thirdly, the Company did not add any value to the transactions and there was no commercial reason for its place in the supply chain or any explanation why the suppliers did not deal directly with the customer to which Mr Powar sold the goods on, something Mr Powar could not explain. His only response was to claim that he was running a legitimate business.

95. Additional reasons include, but are not limited to, the following (and no weight should be attached to the order in which they are listed):

(1) The absence of any commercial documentation, other than invoices, for the transactions (see paragraph 62, above);

(2) The absence of insurance on goods in transit and Mr Powar's statement that if goods were damaged he would simply tell the supplier, suggesting an improbably high level of trust in contradiction to his earlier evidence that no one trusts anyone in business;

(3) The consistency in the Company's 2% profit margin irrespective of the product sold (see paragraph 61(5), above);

(4) The payment to suppliers for goods being delayed until funds were received from customers despite invoices containing retention of title clauses (see paragraph 63, above);

(5) The absence of any documentary evidence of any due diligence before 2015 (see paragraph 70, above);

(6) The failure by Mr Powar to engage with and/or take any action in relation to issues raised in the due diligence reports prepared, on his instructions, by a third party, eg the lack of trading accounts which the due diligence report had noted were late (see paragraph 73, above) and the signed indemnity for a different company (see paragraph 74, above) notwithstanding the warning in due diligence that it was the Company's and therefore Mr Powar's responsibility to ensure he acted in accordance with the Company's due diligence policy and objectively consider any risks (see paragraph 76, above);

(7) The fact that the Company traded with AK Suppliers several months before it received a due diligence report on the business (see paragraph 78, above);

> (8) The inconsistencies in evidence and new evidence given by Mr Powar at the hearing (see paragraphs 35 and 36, above);
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> 96. For these reasons we consider that Mr Powar, and therefore the Company, not only should have known the transactions were connected to fraud but that it is more likely than not that Mr Powar actually knew of that connection.

19. Ms Shah's clear and helpful skeleton argument set out the following points, with my response given after each point:

6. The Appellant will refer to the judgment of Judge Brooks dated 17 May 2024 and identify areas where the evidence did not support the conclusions reached by the FTT.

7. **At paragraph 93 of the FTT's decision, the Tribunal notes that there was no "smoking gun", and that its conclusion relied on the overall circumstances. The Appellant submits that indeed there was no 'smoking gun', and the overall circumstances did not support the findings made.**

Comment: The FTT was fully entitled, and indeed bound, to reach a decision by reference to the overall circumstances.

8. **Paragraphs 93–94 set out the matters relied upon by the FTT. The Appellant submits that these matters were insufficient to justify the conclusion reached.**

(1) In paragraph 94, the FTT relied on the fact that Mr Powar often found customers matching stock requirements, and that the business allegedly had limited commercial value.

(a) The Appellant submits that his prior warehouse experience allowed him to build commercial connections, enabling him to act as a middleman.

(b) The FTT failed to consider that records existed only for completed transactions, and not for those which did not proceed. This was not indicative of knowledge of fraud.

Comment: The FTT's finding was rationally based on the evidence: paragraph 94 refers back to Mr Powar's own evidence at [58] and to the finding at [61(4)] that "the company was almost always able to match its customers' requirements with stock from its supplier", and also to Mr Powar's failure to provide an explanation of the commercial value added by his business. The argument regarding the absence of records for uncompleted transactions could have been raised before the FTT and cannot be raised now, but is in any event of limited relevance; it was knowledge in relation to the disputed transactions which was the issue to be determined.

9. **Paragraph 95 lists further evidential matters relied upon by the FTT.**

(1) Regarding documentary due diligence, the Appellant assumed control of Drinks 4 Less in September 2014, and documentation was available from 2015 onwards. The

Appellant submits that the absence of earlier documents was not indicative of wrongdoing.

Comment: This point is not accepted in light of the FTT's findings. At [38], the FTT states "Mr Powar was, as he confirmed in evidence, responsible for everything done by the Company, including all trading activities, from its incorporation [September 2011] until its liquidation".

(2) The Appellant intends to provide evidence of due diligence undertaken by third-party companies, which was not adequately presented before.

Comment: The Appellant had the opportunity to present evidence before the FTT, and the appeal process does not provide a second bite of the cherry. The FTT cannot have erred in law in failing to consider evidence which was not put before it.

(3) Paragraph 95(8) refers to inconsistencies in the Appellant's evidence. The Appellant was unrepresented, faced difficulties with prior solicitors, and provided statements partly in his mother tongue before translation. He seeks the opportunity to consolidate and clarify his evidence.

Comment: The FTT was aware that Mr Powar represented himself: [7]. There is no indication in the Decision that Mr Powar faced any difficulties in presenting his case. Indeed, [42]-[45], describing Mr Powar's own evidence of his prior business experience, do not suggest any general difficulties of communication. If statements which were translated were considered to be inaccurate, that could and should have been identified by the time of the hearing. To the extent that this complaint is suggesting any procedural failing, it should have been put to the FTT in the application to the FTT for permission to appeal. Again, an appeal is not a re-run of the first-instance trial: as Lewison LJ said in *FAGE UK Ltd v Chobani UK Ltd* [2014] EWCA (at [114]), "the trial is not a dress rehearsal. It is the first and last night of the show".

10. **The Appellant submits that the FTT placed weight on matters which no reasonable tribunal could have treated as evidence of knowledge.**

(1) At paragraph 64, the FTT focused on individuals convicted in a separate MTIC fraud, giving limited weight to those who were acquitted. This created evidential imbalance.

Comment: Paragraph [64] is part of the FTT's discussion of the issues on which HMRC bore the burden of proof in relation to the transactions which were the subject of the appeal, and not of the factors relevant to Mr Powar's knowledge. It is not referred to as a relevant factor at [93]-[94] in relation to knowledge.

11. **The Tribunal further remarked on due diligence reports at paragraphs 84–85. Mr Powar reasonably relied on Mr Walsh, who had HMRC experience, and that this reliance should not have been treated adversely.**

Comment: Mr Powar's reliance on advice from Mr Walsh is recorded in the Decision. The FTT draws no adverse conclusion from it. Rather, it refers (at [95(6)]) to Mr Powar's own failings in relation to due diligence as being a relevant factor.

12. **The FTT failed to give adequate reasons for rejecting the Appellant's explanations, for disregarding the clean transactions, and for treating reliance on Mr Walsh as adverse.**

Comment: I comment on the "clean transactions" assertion in the following paragraph. As regards reliance on Mr Walsh, see the preceding paragraph. In relation to "rejecting the Appellant's explanations", it is quite clear from the Decision what conclusions the FTT reached and why. Additionally, the FTT made significant findings at [35]-[36] regarding Mr Powar's reliability as a witness.

13. **At paragraph 91, the FTT noted that 45 of 179 transactions showed no fraudulent loss of VAT. The Appellant submits that these transactions should not have been disregarded and were relevant to assessing knowledge.**

Comment: Ms Shah referred to 45 "clean transactions". To be accurate, the reference at [91] is to 45 of the transaction deal chains in relation to which HMRC accepted following a review that it could not be established that they could be traced back to a fraudulent loss of tax: [5]. The FTT takes this into account at [91] by referring to a "significant number" of transactions which were connected to a fraudulent loss of VAT. Again, this statement was made not in relation to knowledge but to the status of the transactions under appeal. The 45 transactions were not "disregarded" for this purpose; they were not material. If the Appellant wished to argue that the existence of the 45 transactions was relevant to the different issue of his knowledge in relation to the remaining transactions, he could and should have argued that before the FTT. It is in any event of limited relevance.

14. **In light of the above, the Appellant submits that the FTT could not properly have found, as it did in paragraph 92, that Mr Powar should have known of the fraudulent connection, nor in paragraph 96 that he actually knew.**

15. **The Appellant submits that the FTT failed to take into account relevant evidence which supported the Appellant's case, including the clean transactions, the commercial rationale of the business, and the due diligence undertaken. This omission constitutes an error of law.**

Comment: The Application has not identified any arguable *Edwards v Bairstow* error of law in the decision regarding knowledge. As well as my comments above on the issues raised in the Application, it is important to note that of the eight additional reasons identified by the FTT at [95], no challenge is made to most of them.

Decision

20. The Applicant has not identified any arguable error of law in the Decision. Permission to appeal is refused.

Signed:

	Date: 12 December 2025
Judge Thomas Scott	
Issued to the parties on: 16 December 2025	