

IN THE SUPREME COURT OF THE UNITED KINGDOM

UKSC/2026/0011

ON APPEAL FROM THE COURT OF APPEAL

[2025] EWCA Civ. 1661

(CIVIL DIVISION)

BETWEEN: -

**THE COMMISSIONERS FOR HIS MAJESTY'S
REVENUE AND CUSTOMS**

Respondent

-and-

SINTRA GLOBAL, INC and another

Appellants

STATEMENT OF FACTS AND ISSUES

Background

1. The two taxpayers with whose affairs this appeal is directly concerned are the second appellant, Mr Parul Malde ("Mr Malde"), and the first appellant, Sintra Global Inc ("Global"). Mr Malde is a businessman resident in the UK who at all material times was actively involved in the wholesale alcohol trade. He has carried on his business through corporate entities which he controls. One such entity was a company incorporated in Belize called Sintra SA ("SA"), which the First Tier Tribunal ("FTT") expressly found Mr Malde to have controlled during the period from 2004 to 2011. In 2011, SA transferred its business to Global, which was incorporated in Panama on 16 February 2011. In view of the conclusions it

had reached on other issues, it was unnecessary for the FTT to find whether Global was also controlled by Mr Malde, but it is common ground that the FTT would inevitably have made such a finding had it needed to do so [MB, Tab 7, Pg 228].

MB, Tab
7, Pg 228

2. It has throughout been HMRC's basic case that SA and then Global were involved in the fraudulent diversion of alcohol into the UK from the EU between 2004 and 2014 inclusive, making use of a process generally known as "inward diversion fraud"; in its Statements of Case for each of the relevant appeals, HMRC pleaded that both SA and Global *"were involved in alcohol diversion fraud; selling large quantities of beer and wine in the UK without accounting for VAT and excise duty."* Inward diversion fraud is summarised by the Court of Appeal at [§6] [MB, Tab 5, Pg 115]. It has been HMRC's case that SA and Global were under the control of Mr Malde. At [§7] [MB, Tab 5, Pg 116] the Court of Appeal provided the following summary –

MB, Tab
5, Pg 115

MB, Tab
5, Pg 116

"[7] According to HMRC, after they had thoroughly investigated the activities of SA and Global, those two companies, when under the control of Mr Malde, had evaded UK VAT and excise duty on alcohol supplied in the UK by falsely declaring that the goods were either destined for other EU countries or were in duty suspension. It has always been common ground that neither company was ever registered for VAT or (with one exception) submitted any VAT returns, and that neither company ever accounted for any VAT or excise duty arising from its trade in the UK."

3. Mr Malde has throughout disputed the allegation made by HMRC that he controlled SA or Global or had any role in relation to their trading activity. He disputed having any involvement in the alleged inward diversion fraud.

Decisions and assessments

4. Between July 2015 and December 2017, HMRC issued a series of decisions and assessments to SA, Global and Mr Malde.
5. In relation to SA:

VAT

- (1) In a letter dated 16 July 2015:
 - (a) HMRC informed SA that it was liable to be registered for VAT for the period from 1 December 2004 to 26 March 2012 under section 3 of and Schedule 1 to the Value Added Tax Act 1994 (“VATA”);
 - (b) HMRC assessed the amount of VAT payable by SA in respect of that period in the amount of £11,749,664.22 by a “best judgment” assessment under section 73 VATA.

Excise Duty

- (2) In a letter dated 20 July 2015, HMRC issued an assessment to SA under section 12(1) Finance Act 1994 (“FA 1994”) in respect of unpaid excise duty for the period from 1 December 2004 to 26 March 2012 in the amount of £19,583,773.

VAT Penalty

- (3) In a letter dated 8 December 2016, HMRC informed SA that they intended to charge a civil evasion penalty under section 60 VATA [MB, Tab 25, Pg 685] in the amount of £11,162,180 as a result of SA’s dishonest failure to register for VAT and to submit VAT returns for the period from 1 December 2004 to 26 March 2012 (the “civil evasion penalty”). HMRC informed SA that they intended to recover 100% of the civil evasion penalty from Mr Malde by notice under section 61 VATA [MB, Tab 26, Pg 687]. As a result, HMRC would not be seeking to recover any of the civil evasion penalty from SA.

MB, Tab
25, Pg
685

MB, Tab
26, Pg
687

6. In relation to Global:

VAT

- (1) In a letter dated 16 July 2015:
 - (a) HMRC informed Global that it was liable to be registered for VAT between 1 April 2012 and 30 June 2015 under section 3 of and Schedule 1 to VATA;
 - (b) HMRC assessed the amount of VAT payable by Global in respect of that period in the amount of £8,921,064.64 under section 73 VATA;

Excise Duty

- (2) In a letter dated 20 July 2015, HMRC issued an assessment to Global under section 12(1) FA 1994 in respect of unpaid excise duty for the period from 1 April 2012 to 30 June 2015 in the amount of £14,184,948.

VAT Penalties

- (3) On 16 July 2015, HMRC issued a penalty assessment to Global under section 123 of and paragraph 1 of Schedule 41 to the Finance Act 2008 ("FA 2008") [MB, Tab 22, Pg 621] in the sum of £8,698,035.42 in relation to the failure of Global to notify HMRC of its liability to register for VAT for the period from 1 April 2012 to 30 June 2015 (the "registration penalty").

MB, Tab
22, Pg
621

- (4) On 11 October 2017, HMRC issued a penalty assessment to Global under Schedule 24 to the Finance Act 2007 ("FA 2007") [MB, Tab 21, Pg 542] in the sum of £8,698,035.42 in relation to an inaccurate VAT return submitted on 12 October 2016 (the "inaccuracy penalty") (this was in the alternative to the registration penalty).

MB, Tab
21, Pg
542

Excise Duty Penalty

(5) On 21 December 2017, HMRC issued a penalty assessment to Global in the sum of £13,830,324 pursuant to paragraph 4 Schedule 41 FA 2008 [MB, Tab 22, Pg 630] for handling goods subject to unpaid excise duty (the “excise duty penalty”).

MB, Tab
22, Pg
630

7. In relation to Mr Malde:

(1) HMRC issued a personal liability notice (“PLN”) to Mr Malde on 16 July 2015 pursuant to paragraph 22 Schedule 41 FA 2008 [MB, Tab 22, Pg 666], making Mr Malde liable for the registration penalty in the sum of £8,698,035.42.

MB, Tab
22, Pg
666

(2) HMRC issued a PLN to Mr Malde on 11 October 2017, pursuant to paragraph 19 of Schedule 24 to the Finance Act 2007 (“FA 2007”) [MB, Tab 21, Pg 596], in the alternative to the registration penalty, making Mr Malde liable for the inaccuracy penalty in the sum of £8,698,035.42.

MB, Tab
21, Pg
596

(3) HMRC issued a director’s liability notice (“DLN”), dated 8 December 2016, to Mr Malde pursuant to section 61 VATA [MB, Tab 26, Pg 687], making Mr Malde liable for the payment of the civil evasion penalty issued to SA in the sum of £11,162,180.

MB, Tab
26, Pg
687

(4) HMRC issued a PLN to Mr Malde on 21 December 2017, pursuant to paragraph 22 Schedule 41 FA 2008 [MB, Tab 22, Pg 666], making Mr Malde liable for the excise duty penalty in the sum of £13,830,324.

MB, Tab
22, Pg
666

8. SA did not appeal against the decision that it was liable to be registered for VAT and the related VAT assessment (at [5(1)(a)] and [5(1)(b)] above), or the excise duty assessment (at [5(2)] above), or the civil evasion penalty (at [5(3)] above) (as regards the civil evasion penalty at [5(3)] dated 8 December 2016, SA had been dissolved at the point it was issued. SA was subsequently restored and the dissolution deemed null and void).

9. Global did not appeal against the inaccuracy penalty (at [6(4)] above) or the excise duty penalty (at [6(5)] above). Global appealed to the FTT against the other decisions and assessments.
10. Mr Malde appealed to the FTT against each of the PLNs and the DLN that were issued to him.
11. Global's appeals against the VAT assessment (at [6(1)(b)] above) and the excise duty assessment (at [6(2)] above) could not be entertained by the FTT unless either Global deposited the disputed amount of tax or excise duty with HMRC or HMRC was satisfied or the FTT decided that the requirement to deposit that amount would cause Global to suffer hardship (section 83(3) and (3B) VATA and section 16(3) FA 1994). Global applied to the FTT for a decision that it would suffer hardship if it were required to deposit the tax or the duty. That application was refused by the FTT in a decision dated 26 October 2016.
12. The hardship decision can be located at neutral citation **[2016] UKFTT 0726 (TC)**.
13. As a result, the six matters before the FTT were in summary as follows:
 - (1) the appeals of Global against:
 - (a) the decision of HMRC, contained in the letter dated 16 July 2015, that Global was liable to be registered for VAT between 1 April 2012 and 30 June 2015;
 - (b) the registration penalty issued by HMRC on 16 July 2015;
 - (2) the appeals of Mr Malde against:
 - (a) the PLN issued by HMRC on 16 July 2015 in respect of the registration penalty;

(b) the PLN issued by HMRC to Mr Malde on 11 October 2017 in respect of the inaccuracy penalty (in the alternative to the PLN arising from the registration penalty);

(c) the DLN, dated 8 December 2016, issued by HMRC to Mr Malde pursuant to section 61 VATA [MB, Tab 26, Pg 687] in respect of the civil evasion penalty issued to SA; and

MB, Tab
26, Pg 687

(d) the PLN issued by HMRC to Mr Malde on 21 December 2017 in respect of the excise duty penalty.

First-tier Tribunal proceedings

14. On appeal to the FTT, Mr Malde disputed the Respondent's core allegation. He denied any personal involvement in smuggling alcohol and selling the same in the UK. Whilst he accepted creating SA and Global through a UK company formation agent, he maintained that he did so on behalf of a third party, resident abroad. He denied controlling either company or having any knowledge of their trading activity. Neither the First Appellant nor SA was registered for VAT in the UK. The only basis for the assertion that they had made taxable supplies in the UK and were therefore liable to register for VAT, and therefore the sole basis for the penalties issued by the Respondent, was the allegation of inward diversion fraud.

15. The Appellants' conjoined appeals to the FTT were heard over 3 months between 4th April and 28th June 2022.

16. Before the FTT, it was agreed that liability in the six conjoined appeals could be determined by the resolution by the FTT of two central factual issues [see §4 of the FTT Decision] [MB, Tab 7, Pg 229]:

MB, Tab
7, Pg 229

- a) *Whether Mr Malde was the controlling mind behind SA and Global; and*
- b) *Whether SA and Global diverted alcohol into the United Kingdom and sold the stock in the United Kingdom thereby giving rise to VAT and excise liabilities.*

17. The FTT's Decision, dated 5th October 2022, determined all of the appeals in favour of the taxpayers [MB, Tab 7, Pg 228] (as summarised by the Court of Appeal at §§26-35 [MB, Tab 5, Pg 119-122]). The FTT ruled, in general terms, given the nature of the appeals, that the burden of proof fell on HMRC to establish the allegations before the Tribunal and the liabilities to penalties. [FTT §§593-597] [MB, Tab 7, Pg 345-346].

MB, Tab
7, Pg 228

MB, Tab
5, Pg 119-
122

MB, Tab
7, Pg 345-
346

18. Regarding SA, the FTT found Mr Malde controlled SA (spanning 2004-2011) [FTT §§645-650] [MB, Tab 7, Pg 353-354]. It concluded that SA was the owner of alcohol that had been smuggled into and supplied in the UK and that it should therefore have been registered for VAT. [FTT §637] [MB, Tab 7, Pg 352]. With respect to quantum, however, the FTT concluded HMRC Officer Foster did not quantify the assessments in accordance with best judgement principles and set aside the whole assessment in the interests of justice. Mr Malde's appeal against the linked DLN therefore succeeded [FTT §664] [MB, Tab 7, Pg 357].

MB, Tab
7, Pg 353-
354

MB, Tab
7, Pg 352

MB, Tab
7, Pg 357

19. Regarding Global (spanning 2011- 2014) the FTT found HMRC had not discharged the burden of proving that Sintra Global was the owner of the goods that were supplied in the United Kingdom ("the place of supply issue") [FTT §644] [MB, Tab 7, Pg 353].

MB, Tab
7, Pg 353

20. The FTT decision was handed down under neutral citation [2022] UKFTT 0365 (TC).

Upper Tribunal proceedings

21. With permission granted by the FTT on 9 December 2022, the Respondent appealed to the Upper Tribunal ("UT") on six grounds, listed in the decision of the Court of Appeal at §36 [MB, Tab 5, Pg 122]. The Respondent's first Ground of

MB, Tab
5, Pg 122

Appeal asserted that the FTT had erred in law when it concluded ‘in general terms’ that the burden of proof fell on HMRC to establish the allegations before the tribunal and the liabilities to penalties.

22. The UT [§54; 129] [MB, Tab 6, Pg 177; 196] recognised that *“the question of where the burden of proof lies assumes some significance in this case. This is because of the manner in which the FTT reached its conclusion that Global was not liable to be registered for VAT in the UK...was clearly based on its decision on the burden of proof.”*

MB, Tab
6, Pg 177

MB, Tab
6, Pg 196

23. Mr Justice Edwin Johnson and Judge Greenbank heard the appeal over 5 days in July 2024 and the decision was released on 7th November 2024.

24. With respect to the quantum of the DLN arising from SA’s civil evasion penalty, the UT allowed HMRC’s appeal directing the questions of validity and quantum of the assessment be remitted to the FTT [UT §§189-229] [MB, Tab 6, Pg 210-222]. The remitted matter has been stayed at the request of the parties, pending the outcome of this appeal.

MB, Tab
6, Pg 210-
222

25. With respect to Global and the burden of proof, the UT concluded:

- a. that “unless one of the well-established exceptions applies, the burden remains on the taxpayer in tax appeals and is not reversed merely because allegations of fraud or dishonesty are involved...” [UT §78, 85, 89] [MB, Tab 6, Pg 183; 186]; and
- b. that save for the issue of quantum, the burden of proof fell on HMRC with respect to *“all relevant aspects of the penalty appeal”* [UT §91-133] [MB, Tab 6, Pg 187-197].

MB, Tab
6, Pg 183

MB, Tab
6, Pg 186

MB, Tab
6, Pg 187-
197

26. At [UT §125] [MB, Tab 6, Pg 195] the UT treated Global’s “liability to be registered” appeal as subsumed within the registration penalty appeal.

MB, Tab
6, Pg 195

27. The consequence of the UT’s decision was to dismiss HMRC’s appeals in relation to Global and the burden of proof [UT §134] [MB, Tab 6, Pg 197].

MB, Tab
6, Pg 197

28. The UT's consideration of Ground 1 and the burden of proof appears at [§§53-134] [MB, Tab 6, Pg 177-197] of its decision. The reasoning of the UT was set out by the Court of Appeal at [§38-50] [MB, Tab 5, Pg 123-130].

MB, Tab
6, Pg
177-197

MB, Tab
5, Pg
123-130

29. The UT agreed with HMRC that the FTT had erred in law in its approach to the evidence concerning Global's 'place of supply' - by compartmentalizing factors rather than examining the totality of the evidence [UT §§141-147] [MB, Tab 6, Pg 198-200] - but concluded that this error was not material to its decision on 'place of supply' [UT §§ 148-149] [MB, Tab 6, Pg 200].

MB, Tab
6, Pg
198-200

MB, Tab
6, Pg 200

30. The UT decision was handed down under neutral citation [2024] UKUT 00346 (TCC).

Court of Appeal proceedings

31. With permission granted by the UT on 17th December 2024, the Respondent pursued a second appeal to the Court of Appeal. The Respondent's Grounds 1 and 2 raised important points of principle concerning the burden of proof. The Respondent submitted that:

"[Ground 1] the UT erred in law when it determined, save for quantum, that the burden of proof fell on HMRC with respect to 'all relevant aspects of the penalty appeals'. HMRC submits that where a taxpayer challenges a Schedule 24 or 41 penalty assessment on the grounds that the underlying tax liability is wrong, save for the exceptions at [11] of HMRC's skeleton argument, the burden of proof remains on the taxpayer with respect to the underlying tax liability component of the penalty."

The exceptions allowed for in paragraph 11 of HMRC's skeleton argument in support of the appeal are where (a) "the statute expressly or impliedly provides otherwise" or (b) "the essential elements of liability involve dishonesty or fraud in which case HMRC has the burden with respect to those specific issues".

[Ground 2] the UT erred in law when it subsumed Global's "liability to be registered" appeal, which was an underlying tax liability appeal, within the registration penalty

appeal [see UT §125]. When a tax appeal is heard concurrently with a schedule 24 or 41 penalty appeal, then subject to the same exceptions in paragraph 11 of HMRC's skeleton argument "the burden is always on the taxpayer with respect to both the tax appeal and the liability component of the penalty appeal."

32. HMRC's Ground 3 challenged as an error of law the refusal of the UT to set aside the FTT Decision when the UT decided that the FTT's error of law in compartmentalising the evidence was not material to the place of supply issue.
33. Oral submissions before the Court of Appeal in relation to the issues that are the subject of the appeal occupied approximately 12 hours, spread across 3 days, between 28th and 30th October 2025.
34. The decision of the Court of Appeal was handed down on 18th December 2025. The Court of appeal allowed HMRC's appeal on all three grounds. The discussion by the Court of Appeal commences at §120 of its decision [MB, Tab 5, Pg 152].
35. The decision of the Court of Appeal is reported in Simon's Tax Cases at [2026] **STC 440**.
36. Having allowed the Respondent's appeal, the Court of Appeal directed that the case should be remitted to a fresh tribunal for a re-hearing, to be heard alongside the remitter ordered by the UT (relating to the validity and quantum of the penalty issued against PM in relation to SA).

MB, Tab
5, Pg 152

Supreme Court proceedings

37. By way of order dated 18 December 2025 [MB, Tab 4, Pg 109] the Court of Appeal refused the Appellants' application for permission to appeal to the Supreme Court.
38. Permission was granted by the Supreme Court (Lord Sales, Lord Burrows and Lady Rose) on 30th March 2026 in relation to a single Ground of Appeal, namely that:

MB, Tab
4, Pg 109

“The Court of Appeal erred in law when it declared that in penalty proceedings brought by HMRC, if the taxpayer wishes to contend in his defence that an underlying liability to tax which underpins or is reflected in the penalty was wrong, a separate legal burden rests upon the taxpayer to prove that it was wrong (in the same way as it would on an appeal by the taxpayer against the relevant assessment or decision). It is submitted that the burden of proof lies upon HMRC to establish the primary facts which need to be proved to justify the imposition of the penalty (save where statute expressly or impliedly imposes a reverse burden of proof).”

Counsel for the Appellants

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26th July 2026

ANNEX - CHRONOLOGY

Date	Event
DECISIONS / ASSESSMENTS THAT WERE APPEALED	
16 th July 2015	HMRC issued decision to Sintra Global that it was liable to be registered for VAT between 1 st April 2012 and 30 th June 2015 and an assessment in the sum of £8,921,064,64.
	HMRC issued a penalty assessment against Sintra Global, pursuant to s.123 and Schedule 41 Finance Act 2008 [MB, Tab 22, Pg 621], in the sum of £8,698,035.42 in relation to the failure of Global to notify HMRC of its liability to register for VAT for the period 1 st April 2012 to 30 th June 2015 ("the registration penalty").
	HMRC issued a Personal Liability Notice to Mr Malde in relation to the above company penalty, making him 100% liable for the registration penalty, pursuant to Schedule 41 of the Finance Act 2008 [MB, Tab 22, Pg 621].
20 July 2015	HMRC issued an assessment to Global under section 12(1) FA 1994 in respect of unpaid excise duty for the period from 1 April 2012 to 30 June 2015 in the amount of £14,184,948
26 th October 2016	FTT refused the First Appellant's application for hardship, such that Global's appeals against the assessments to VAT and excise duty could not be entertained.

MB, Tab
22, Pg 621

MB, Tab
22, Pg 621

[2016] UKFTT 0726 (TC)		
8 th December 2016	HMRC issued a Director's Liability Notice ("DLN") to Mr Malde, pursuant to s. 61 VAT Act 1994 [MB, Tab 26, Pg 687], making him 100% liable for a civil evasion penalty charged against Sintra SA, under s.60 [MB, Tab 25, Pg 685], in the sum of £11,162,180, as a result of its alleged dishonest failure to notify HMRC of its liability to register for VAT.	MB, Tab 26, Pg 687 MB, Tab 25, Pg 685
11 th October 2017	HMRC issued an alternative Personal Liability Notice to Mr Malde, pursuant to Schedule 24 of the Finance Act 2007 [MB, Tab 21, Pg 542].	MB, Tab 21, Pg 542
21 st December 2017	HMRC issued a further Personal Liability Notice, pursuant to Schedule 41 Finance Act 2008 [MB, Tab 22, Pg 621], to Mr Malde making him 100% liable for a company penalty issued against Global in the sum of £13,830,324, for the handling of goods subject to unpaid excise duty.	MB, Tab 22, Pg 621
APPEAL PROCEEDINGS		
4 th April – 28 th June 2022	First-Tier Tribunal Hearing before Tribunal Judge John Brooks and Mrs Gill Hunter – hearing six appeals brought by Sintra Global, Sintra SA and Parul Malde. Those six appeals concerned alleged liability to penalties of Mr Malde (in relation to unpaid VAT / excise duty) in the sum of £33,790,539.	

5 th October 2022 [2022] UKFTT 0365 (TC) Unreported	First-Tier Tribunal Decision handed down, allowing all six appeals [MB, Tab 7, Pg 228]. The Tribunal's approach to the issue of the Burden of Proof appears from §§593 to 598 of the Decision [MB, Tab 7, Pg 345-346].	MB, Tab 7, Pg 228 MB, Tab 7, Pg 345-346
25 th November 2022	HMRC Application to the First-Tier Tribunal for permission to appeal to the Upper Tribunal.	
9 th December 2022	First-tier Tribunal Decision granting HMRC permission to appeal to the Upper Tribunal.	
2 nd – 10 th July 2024	Upper Tribunal Hearing before Mr Justice Edwin Johnson and Judge Ashley Greenbank. The UT's approach to the issue of the Burden of Proof (HMRC's Ground 1) appears between §53-134 [MB, Tab 6, Pg 177-197].	MB, Tab 6, Pg 177-197
7 th November 2024 [2024] UKUT 00346 (TCC) Unreported	Upper Tribunal Decision handed down [MB, Tab 6, Pg 162]: (a) dismissing HMRC's appeal in relation to Global and the burden of proof; (b) allowing HMRC's appeal in relation to Global and the compartmentalisation of evidence but ruling the error was not material and so refusing to set aside the FTT's decision and (c) allowing HMRC's appeal on Grounds 4 and 5 in relation to Sintra SA and remitting to the FTT the issues concerning validity	MB, Tab 6, Pg 162

	and quantum of the assessment on Sintra SA that underlies the DLN against Mr Malde.	
2 nd December 2024	HMRC Application to the Upper Tribunal for permission to appeal to the Court of Appeal.	
17 th December 2024	Upper Tribunal Decision granting HMRC permission to appeal to the Court of Appeal on three grounds [MB, Tab 19, Pg 533].	MB, Tab 19, Pg 553
28 th – 30 th October 2025	Court of Appeal Hearing before Lord Justice Newey, Lord Justice Singh and Sir Launcelot Henderson.	
18 th December 2025 [2025] EWCA Civ. 1661 Reported at [2026] STC 440	Court of Appeal Decision handed down [MB, Tab 5, Pg 113], allowing HMRC's appeal on all three grounds and remitting the case to the FTT for re-hearing. Remitter stayed pending appeal to the Supreme Court. Court of Appeal refused permission to appeal to the Supreme Court.	MB, Tab 5, Pg 113
30 th March 2026	Permission to appeal granted by the Supreme Court.	