MALTA

Fit-Tribunal ta' Revizjoni Amministrattiva
Magistrat
Dr. Gabriella Vella B.A., LL.D.

Rikors Nru. 310/12VG

XXX

Vs

Kummissarju tat-Taxxa fuq il-Valur Mizjud

Illum 20 ta' Ottubru 2016

It-Tribunal,

Ra r-Rikorsipprezentat minn XXX fl-14 ta' Novembru 2011 quddiem il-Bord ta' l-Appelli dwar it-Taxxa fuq il-Valur Mizjud, in segwitu trasferit quddiem dan it-Tribunal, permezz ta' liema jitlob li l-istimi mahruga kontra tieghu mill-Kummissarju tat-Taxxa fuq il-Valur Mizjud ghall-perijodi ta' taxxa 01.05.05-31.07.05, 01.08.05-31.10.05, 01.11.05-31.01.06, 01.02.06-30.04.06, 01.05.006-31.07.06, 01.08.06-31.10.06, 01.11.06-31.01.07, 01.02.07-30.04.07, 01.05.07-31.07.07, 01.08.07-31.10.07, 01.11.07-31.12.07, 01.01.08-31.01.08, 01.02.08-30.04.08, 01.05.08-31.07.08, 01.08.08-31.10.08, 01.11.08-31.01.09, 01.02.09-30.04.09, 01.05.09-31.07.09, 01.08.09-31.10.09, 01.11.09-31.01.10, 01.02.10-30.04.10, 01.05.10-31.07.10, 01.08.10-31.10.10, 01.11.10-31.01.11 jigu kkancellati *in toto*;

Ra d-dokumenti annessi mar-Rikors promotur;

Ra r-Risposta tal-Kummissarju tat-Taxxa fuq il-Valur Mizjud permezz ta' liema jopponi ghat-talba tar-Rikorrent u jitlob li l-istimi mahruga minnu kontra r-Rikorrent ghall-perijodi ta' taxxa 01.05.05-31.07.05, 01.08.05-31.10.05, 01.11.05-31.01.06, 01.02.06-30.04.06, 01.05.006-31.07.06, 01.08.06-31.10.06, 01.11.06-31.01.07, 01.02.07-30.04.07, 01.05.07-31.07.07, 01.08.07-31.10.07, 01.11.07-31.12.07, 01.01.08-31.01.08, 01.02.08-30.04.08, 01.05.08-31.07.08, 01.08.08-31.10.08, 01.11.08-31.01.09, 01.02.09-30.04.09, 01.05.09-31.07.09, 01.08.09-31.10.09, 01.11.09-31.01.10, 01.02.10-30.04.10, 01.05.10-31.07.10, 01.08.10-31.10.10, 01.11.10-31.01.11 jigu kkonfermati stante

li l-likwidazzjoni ta' taxxa ghall-perijodi imsemmija huma gusti u jimmeritaw konferma;

Ra d-dokumenti annessi mar-Risposta tal-Kummissarju tat-Taxxa fuq il-Valur Mizjud;

Sema' x-xhieda ta' Silvana Spiteri[1], XXX[2] u Lorella Spiteri[3] lkoll moghtija waqt is-seduta tal-21 ta' Marzu 2013, sema' x-xhieda ta' Fabian Cardona[4] u ta' Rachel Cordina[5] moghtija waqt is-seduta ta' l-14 ta' Mejju 2013, sema' x-xhieda ta' Lorraine Galea moghtija waqt is-seduta tal-25 ta' Novembru 2013[6], ra d-dokumenti esebiti mid-Direttur Generali (Taxxa fuq il-Valur Mizjud) permezz ta' Nota pprezentata fl-24 ta' Frar 2014 a fol. 44 sa' 78 tal-process u ra d-dokumenti esebiti flimkien ma' Risposta tad-Direttur Generali (Taxxa fuq il-Valur Mizjud) ipprezentata fil-11 ta' April 2014;

Ra n-Nota ta' Sottomissjonijiet tar-Rikorrent ipprezentata fid-9 ta' Mejju 2014 u ra in-Nota Responsiva tad-Direttur Generali (Taxxa fuq il-Valur Mizjud) ipprezentata fit-23 ta' Lulju 2014;

Ra l-atti kollha tal-kawza;

Ikkonsidra:

Bil-proceduri odjerni r-Rikorrent jikkontesta stimi mahruga kontra tieghu mill-Kummissarju tat-Taxxa fuq il-Valur Mizjud ghall-perijodi ta' taxxa 01.05.05-31.07.05, 01.08.05-31.10.05, 01.11.05-31.01.06, 01.02.06-30.04.06, 01.05.006-31.07.06, 01.08.06-31.10.06, 01.11.06-31.01.07, 01.02.07-30.04.07, 01.05.07-31.07.07, 01.08.07-31.10.07, 01.11.07-31.12.07, 01.01.08-31.01.08, 01.02.08-30.04.08, 01.05.08-31.07.08, 01.08.08-31.10.08, 01.11.08-31.01.09, 01.02.09-30.04.09, 01.05.09-31.07.09, 01.08.09-31.10.09, 01.11.09-31.01.10, 01.02.10-30.04.10, 01.05.10-31.07.10, 01.08.10-31.10.10, 01.11.10-31.01.11 in forza ta' liema qed jigi mitlub ihallas is-somma komplessiva ta' €2,132.67 bhala taxxa, oltre multi amministrattivi ammontanti ghal €426.52 u imghax ammontanti ghal €765.60.

Ir-Rikorrent jikkontendi li d-Dikjarazzjonijiet ta' Taxxa tieghu ghall-perijodi ta' taxxa in kwistjoni fedelment jirrispekkjaw il-qligh li huwa ghamel tul dawn il-perijodi u li kuntrarjament ghal dak pretiz mill-Kummissarju tat-Taxxa fuq il-Valur Mizjud, il-profit mark-up tieghu ma huwiex ta' 20% izda huwa ta' 15% peress illi jrid jaghti skont ta' 5% lill-klijenti tieghu biex jibqa' jhajjarhom jixtru minghandu. In bazi ghal tali aggravju jitlob li l-istmi mahruga kontra tieghu ghall-perijodi ta' taxxa in kwistjoni jigu kkancellati *in toto*.

[1] Fol. 15 sa' 18 tal-process.
[2] Fol. 19 tal-process.
[3] Fol. 20 u 21 tal-process.
[4] Fol. 23 u 24 tal-process.
[5] Fol. 25 sa' 28 tal-process.
[6] Fol. 35 sa' 42 tal-process.

Il-Kummissarju tat-Taxxa fuq il-Valur Mizjud, illum Kummissarju tat-Taxxi, jopponi ghat-talba tar-Rikorrent u jitlob li l-istess tigi michuda stante li l-likwidazzjoni ta' taxxa maghmula ghall-perijodi in kwistjoni huma gusti u jisthoqqilhom konferma.

Mill-provi prodotti u senjatament mix-xhieda ta' Rachel Cordina, VAT Inspector mad-Dipartiment tat-Taxxa fuq il-Valur Mizjud, u mir-Rapport taghha u tal-VAT Inspector Denise Said jirrizulta li kien sar Credit Control Exercise fil-konfront tar-Rikorrent ghall-perijodu ta' taxxa 01.05.10-31.07.10. Ir-Rikorrent ghandu n-Numru tar-Registrazzjoni tal-VAT MT 1221-1127 u taht dan in-numru jiggestixxi *ironmongery* gewwa l-Gudja u jrabbi l-baqar u jbiegh il-halib. Mill-Credit Control Exercise li sar fil-konfront tar-Rikorrent lill-Kummissarju tat-Taxxa fuq il-Valur Mizjud irrizultawlu diskrepanzi fl-Input Vat u fl-Output Vat dikjarati mir-Rikorrent tul il-perijodu in kwistjoni. Dawn id-diskrespanzi kienu s-segwenti:

- *PURCHASES ANALYSIS ... since no ledgers were produced to cover the amount declared in Box 37 of the VAT return, a table of the invoices was compiled to establish the correct amount of Vat expenses. Annex A at Red 30 indicates the transaction of invoices that were found to be correct. <u>A discrepancy of €67.43 VAT was found between total at Annex A and Box 37 and as such this amount should be deducted accordingly</u>. 25% of invoices regarding purchases for resale were checked since the suppliers are almost the same. All the invoices covering Box 37 were verified as per Annex A. These expenses consisted mainly of bricks and stones, concrete and panels for the rebuilding of the farm. <u>The only irregularity found consisted of a cash sale issued by Emanuel Mifsud. The said cash sale is not numbered and consequently not in line with the provision of Schedule 12 item 2(1)(b). As such the amount of €936.02 VAT is not justified</u>[7].*

- *SALES ANALYSIS – Sales recorded in boxes 18 and 23 of the Vat returns consist of tools and other material sold from the ironmongery shop. The exempt with credit sales enclose the selling of milk processed from the farm. <u>A 13% mark up was identified from the EU global which may be considered low when compared to a mark up of 20%. (The 20% mark up was established as per previous assessments carried out on ironmongeries. Reds 36 a-c refers). As such the opening stock as at 01/01/05 and closing stock as at 31/12/10 were obtained as per Reds 34 a-b and a mark up of 20% was applied. Workings as per Red 35 refers</u>[8].*

[7] Sottolinear tat-Tribunal.
[8] Sottolinear tat-Tribunal.

In bazi ghal tali rizultanzi l-Ispetturi tad-Dipartiment li esegwew dan il-Credit Control Exercise ikkonkludew illi *provisional assessment should be issued to deduct the amount of €1,003.45 Input VAT over claimed and to recoup the amount of €2,148.61 Output tax under declared. Correction should also be carried out to adjust amounts in Boxes 3 and 10 accordingly. File is referred for approval.*

Bhala fatt inhargu stimi provvizorji fil-konfront tar-Rikorrent fejn intalab ihallas is-somma komplessiva ta' €3,068.69 bhala taxxa fuq il-perijodi ta' taxxa mill-01.05.05 sal- 31.01.11, oltre multi amministrattivi w imghax. Ir-Rikorrent talab Review ta' l-istimi provvizorji mahruga fil-konfront tieghu w in segwitu ghal laqghat li nzammu mar-Review Officer Lorraine Galea u fid-dawl ta' dokumentazzjoni li giet sottomessa lilha, l-istess Lorraine Galea kkonstatat u kkonkludiet illi: *two meetings were held at the office with Mr and Mrs Spiteri. They forwarded a copy of the invoice raised by Emanuel Mifsud. They also said that he had previously issued a cash sale as a manual fiscal receipt had already been issued as per attached and copy of note from Mr Emanuel Mifsud. Taxpayer also stressed and remarked that their mark-up is not 20%. In fact, Mrs Spiteri stated that 5% discount is given to frequent customers (usually have a vat nr). In fact, copies of such invoices were also forwarded together with the purchase invoice of respective item. Ms Spiteri also stated that they were selling cement much lower than the recommended retail price in order to attract customers. However, I advised Ms Spiteri to check the value of such invoices over a period of one year in order to enable the department arrive at the ratio of sales at 5% (sales with a discount) with that of items sold at normal retail price. Furthermore, it was noted that some of the invoices were undated. In this respect Ms. Spiteri stated that together with the invoice they always issued a fiscal receipt. Following the above Ms Spiteri called and stated that it was not possible for her to trace all the invoices. It was explained to Ms Spiteri that in the absence of such information the department could not quantify discounted sales over total sales and therefore, mark-up could not be adjusted. In view of the above, it is recommended that all provisional assessments raised with regards to output are confirmed whereas inputs are adjusted accordingly in view of the invoices presented for €936.02 VAT at review stage.* Konsegwenti ghal tali rapport inhargu l-istimi finali li qed jigu kontestati mir-Rikorrenti b'dawn il-proceduri.

Huwa evidenti ghalhekk li l-mertu ta' dawn il-proceduri jittratta unikament dwar l-Output Tax imposta mill-Kummissarju tat-Taxxa fuq il-Valur Mizjud fuq ir-Rikorrent, liema Output Tax giet determinata in bazi ghall-mark up ta' 20% li skond il-Kummissarju tat-Taxxa fuq il-Valur Mizjud huwa l-mark up generalment applikabbli ghal negozju ta' *ironmongery*.

Mix-xhieda tar-Rikorrent u ta' martu u mis-sottomissjonijiet ta' l-istess Rikorrent johrog car li l-kontestazzjoni centrali tieghu hi li l-istimi minnu kontestati ma inhargux fuq bazi legali u valida kif titlob il-Ligi stante li

kuntrarjament ghal dak pretiz mill-Kummissarju tat-Taxxa fuq il-Valur Mizjud il-mark up min-negozju tieghu ta' *ironmongery* ma huwiex ta' 20% izda ta' 15%.

Fin-Nota ta' Sottomissjonijiet tieghu r-Rikorrent jissottometti li *ghandu jigi rilevat mill-bidu ta' din in-nota illi ma irrizulta minn ebda prova mressqa illi l-esponenti qatt naqas (i) li jirrilaxxja l-VAT Fiscal Receipt tal-Cash Register ghal kull bejgh li jsir mill-hanut tieghu; u (ii) li l-Kummissarju qatt talab bil-miktub (Art. 48 tal-Kap.406) il-produzzjoni ta' xi dokument li ma giex fornut lilu mill-esponenti. Dan premess, il-Kummissarju appellat ghandu f'idejh kull bejgh li sar mill-hanut tal-esponenti (u ghalhekk it-total ta' sales) u l-invoices tal-purchases li ghamel l-esponenti; id-differenza bejniethom, wara li jsir l-aggustament relattiv ghaz-zieda jew tnaqqis fl-istock, jaghti rizultat matematiku li ma jistghax jigi kkontestat. L-Art. 32 ta' l-Att jaghti l-poter lill-Kummissarju biex ivarja d-dikjarazzjoni tal-persuna registrata u johrog stima "meta jahseb li d-denunzja ... ma jkunx fiha dikjarazzjoni shiha u korretta ...". Izda dan il-'hsieb' tal-Kummissarju jenhtieg li jkollu bazi legali u fattwali. L-esponenti jissottometti illi l-fatt illi l-Kummissarju jistabilixxi a priori u b'linja generali ghal kull persuna fl-istess linja ta' negozju (ironmongery) ma jammontax ghal bazi legali u valida li titlob il-ligi[9]. ... L-esponenti jissottometti illi l-Kummissarju kellu fil-pussess tieghu r-records kollha tal-cash register u nghata kopja tal-purchase invoices kollha kif ukoll ta' l-istock; b'din id-dokumentazzjoni, huwa seta' jasal ghall-gross profit ta' l-esponenti tul is-snin taht ezami. Ma tressqet ebda prova jew raguni biex il-Kummissarju jattakka l-veracità u korrettezza tar-records kollha tal-bejgh li sar mill-hanut mill-ircevuti tal-cash register hlif li l-accountant tieghu stabilixxa mark up ta' 20% fuq il-purchases li ghamel l-esponenti – u dan il-mark-up jghodd ghal kull ironmongery store li hawn f'Malta u Ghawdex. Ma hemm ebda ligi li tistabilixxi illi bejjiegh huwa obbligat li jbiegh bil-prezz rakkomandat mill-agent/grossista, izda l-accountant tal-Kummissarju stabbilixxa dan id-dettam u min ma josservax dan id-dettam stabbilit minnu (mhux mill-Ligi) jigi penalizzat (jew ippremjat, f'kaz li retailer irid jeccedi r-recommended retail price ta' l-agent) bil-hrug ta' stimi u multi. L-esponenti zamm il-kotba u d-dokumentazzjoni rikjesti mill-Ligi; is-sales kollha maghmula mill-hanut tieghu u l-purchases kollha jirrizultawlu mid-dokumenti già sottomessi lill-Kummissarju. Kif gie sottomess qabel f'din in-nota, sakemm il-Kummissarju ma jippruvax illi sar xi bejgh mill-hanut ta' l-esponenti li ma giex registrat fil-cash register, u/jew li xi purchase invoice mhix genwina, u/jew illi l-figuri tas-sales u dawk tal-purchases ma jikkombjacjawx mal-figuri sottomessi, il-Kummissarju jkun qed jabbuza mill-poter moghti lilu fl-Art. 32 ta' l-Att u johrog stima "ex officio". F'dan il-kaz partikolari, il-Kummissarju mhux qed jallega illi sar xi sale li mhux rregistrat fil-cash-register, la qed jallega li hemm xi purchase-invoice fazulla, u anqas qed jallega illi l-figuri rizultanti bejn ix-xiri u l-bejgh ma jikkombacjawx; il-Kummissarju ddecida illi ironmongery store ghandu*

[9] Para. 3 tan-Nota ta' Sottomissjonijiet tar-Rikorrent.

jaghmel profit gross ta' 20% u ebda sid ta' ironmongery-store ma jista jaghmel qligh inferjuri ghax hekk stabilixxa l-accountant tad-dipartiment u hi u shabha "rridu nahdmu fuqu" (fuq dan il-mark-up); ta' min jinnota illi l-accountant li stabilixxa dan il-mark-up ta' 20% ma telghax jixhed biex jispjega kif u ghaliex stabilixxa dan il-mark-up. Id-diskrezzjoni u l-poter li ghandu l-Kummissarju trid tkun wahda ibbazata fuq kriterji oggettivi u mhux kriterju soggettiv li huwa kontradett bil-gurament (u mhux kontestat) illi biex isir bejgh ragonevoli mill-hanut li jinsab fil-lokalità li jinsab, l-oggetti jinbieghu bi prezz inferjuri ghal dak rakkomandat mill-agent/grossista. Il-kriterju biex il-Kummissarju hareg stima ex-ufficio huwa wiehed minghajr bazi legali jew fattwali[10].

Wara li kkonsidra dak sottomess mir-Rikorrent kif ukoll dak sottomess mill-Kummissarju tat-Taxxa fuq il-Valur Mizjud, illum Kummissarju tat-Taxxi, u ikkonsidra l-provi minnhom rispettivament prodotti, it-Tribunal hu tal-fehma li dak affermat u pretiz mir-Rikorrent ma huwiex gustifikat u sostenibbli.

Jibda biex jinghad illi ma hemm assolutament xejn irragonevoli jew arbitrarju f'li l-Kummissarju tat-Taxxi jistabilixxi *benchmarks* bhala <u>linji gwida</u> fir-rigward tal-mark-up li jaghmlu jew ta' l-inqas li suppost jaghmlu diversi kategoriji ta' negozji bhalma huma ad ezempju *ironmongeries*. Dak li ma ghandux ikun irragonevoli jew arbitrarju huwa l-applikazzjoni tal-*benchmark* ghall-kategorija specifika ta' negozju, bhalma huwa fil-kaz in ezami n-negozju ta' *ironmongery*, ghan-negozju gestit minn *taxpayer* partikolari. Dana fis-sens illi jekk lill-Kummissarju tat-Taxxi jirrizultalu b'<u>mod sodisfacenti</u> li nonostante l-*benchmark* adottat u adoperat bhala linja gwida, *taxpayer* partikolari effettivament ghandu mark-up inqas mill-*benchmark* stabbilit, l-istess Kummissarju ma jistax u ma ghandux jibqa ghaddejj bil-*benchmark* stabbilit izda ghandu jirrikonoxxi bhala validu u korrett il-mark-up ta' dak it-*taxpayer* specifiku. Huwa proprio n-nuqqas ta' prova sodisfacenti li l-mark-up tar-Rikorrent huwa ta' 15% u mhux ta' 20% li wassal lill-Kummissarju tat-Taxxi biex jibqa jinsisti fuq il-hrug ta' stimi ghall-Output Tax skontu dikjarata bin-nieqes mir-Rikorrent ghall-perijodi ta' taxxa meritu ta' dawn il-proceduri, u li qed iwassal lil din it-Tribunal biex iqis l-appell tar-Rikorrenti mill-istimi kontestati bhala ghal kollox ingustifkat.

It-Tribunal ma jistax jonqos milli josserva li r-Rikorrent jinjora jew jiskarta fatti ferm determinanti u rilevanti ghall-meritu hawn trattat. Fl-ewwel lok ir-Rikorrent qed jinjora l-fatt li filwaqt li fil-proceduri odjerni qed jikkontendi li l-mark up tieghu min-negozju ta' l-*ironmongery* huwa ta' 15% u mhux ta' 20% kif determinat mill-Kummissarju tat-Taxxa fuq il-Valur Mizjud, mid-Denunzji tat-Taxxa minnu sottomessi ghall-perijodi ta' taxxa in kwistjoni jirrizulta li l-mark up minnu dikjarat huwa addirittura ta' 13% u mhux ta' 15% kif minnu issa affermat. Apparte minn hekk ir-Rikorrent ghal kollox jinjora certi fatti li irrizultaw mix-xhieda ta' Lorraine Galea, ir-Review Officer li hadmet fuq il-kaz

[10] Paras. 7 u 8 tan-Nota ta' Sottomissjonijiet tar-Rikorrent.

tieghu, ix-xhieda ta' min hija ferm importanti fil-kaz in ezami in kwantu mix-xhieda prodotti, senjatament ix-xhieda ta' l-istess Lorraine Galea u Rachel Cordina, irrizulta li kien fl-istadju tar-Review li r-Rikorrent inghata l-opportunità jikkontesta u jipprova jirribatti l-*benchmark* applikat ghan-negozju tieghu da parte tal-Kummissarju tat-Taxxa fuq il-Valur Mizjud.

Lorraine Galea ddikjarat li meta hija rrevediet l-istimi provvizorji mahruga fil-konfront tar-Rikorrent, hi ma strahitx biss fuq il-*benchmark* ta' 20% applikat mill-VAT Inspector Rachel Cordina izda ezaminat id-dokumentazzjoni sottomessa mir-Rikorrent, fosthom l-*invoices* tal-*purchases,* minn liema rrizulta li r-recommended sale price jaghti lin-negozjant appuntu 20% mark up. Fir-rigward hija xehdet illi *it-twenty percent mark up, dak huwa mark up li sar mid-dipartiment, ikunu accountants li hadmu diversi NACE codes, ironmongers, fhimt, saru diversi assessments biex jingieb dak il-mark up, però dak ivverifikajtu wkoll jiena ghax gabitli l-invoices is-Sinjura u jkun hemm ir-recommended retail sale price u meta tara kemm ghandha qligh not considering the frees u xejn kien twenty percent.* Fuq domanda specifika tat-Tribunal *jigifieri inti ma bqajtx fuq gwidi interni tad-Dipartiment imma però fil-kaz tas-Sinjuri?* Lorraine Galea irrispondiet *ikkonfermajthom minhabba l-five percent ukoll u kellha items li taqla' aktar fuqhom minn twenty percent u anke kien hemm xi items li tista' taqla inqas minnhom ukoll* ... u kkonfermat li hadet in konsiderazzjoni li minn fuq il-bejgh tac-cement il-mark up huwa ta' 10% izda spjegat illi *dak huwa wiehed mill-items, ghandek ragun, li fih vera inqas, hemm items ohra li fihom aktar, issa jien biex nasal meta inti tahdimhom overall jigi twenty percent. Jiena ma nistax nghid cement, jekk tmur il-hanut ghandha hafna items mhux cement biss. ...* Minn din ix-xhieda ghalhekk, liema xhieda fil-fehma tat-Tribunal ma gietx sodisfacentement kontradetta mir-Rikorrent, jirrizulta li bhala fatt in-negozju ta' ironmonger effettivament jiggenera jew ikollu mark up ta' 20%.

Dan ifisser ghalhekk li, kuntrarajament ghal dak pretiz mir-Rikorrent, il-prova li fil-kaz tieghu ma kienx japplika mark up ta' 20% izda mark up iktar baxx ta' 15% kienet effettivament tispetta lilu, prova li però baqghet ma saritx.

Ghalkemm fin-Nota ta' Sottomissjonijiet tieghu r-Rikorrent jishaqq li il-Kummissarju tat-Taxxa fuq il-Valur Mizjud kellu fil-pussess tieghu r-records kollha tal-cash register kif ukoll invoices bl-iskont ta' 5% f'ammont sufficjenti li minnhom, skontu, l-istess Kummissarju seta', anzi kellu jasal ghall-konkluzzjoni li l-mark up tieghu huwa ta' 15% u mhux ta' 20%, mix-xhieda ta' Lorraine Galea rrizulta li tali ezercizzju f'dan il-kaz ma kienx possibbli ghaliex il-cash register tar-Rikorrent ma hijiex wahda itemized u mart ir-Rikorrent kienet tirregistra il-bejgh kollu fil-cash register, inkluz dak il-bejgh li mhux suppost kien jidhol fil-cash register imma suppost gie rregistrat permezz ta' fattura, affermazzjoni din li ukoll ma gietx sodisfacentement kontradetta mir-Rikorrent, u l-invoices effettivament provduti ma kienux sufficjentement rapprezentattivi in sostenn ta' dak allegat mir-Rikorrent.

Fir-rigward Lorraine Galea in risposta ghall-mistoqsija *inti ghandek ir-roll tal-Vat, jigifieri tista' tarahom item item* irrispondiet *le, le ma nistax narahom fuq ir-roll tal-Vat. Ir-roll tal-Vat huwa gooda lanqas ghandek stipulated x'inhuma. Il-cash register li ghandha hija m'hijiex itemized allura jien le ma nistax naghmel dak l-ezercizzju li qed tghidli inti, ghandha goods at vat full percent u ma nistax naghmlu. Jien biex dak l-exercise, trid tohrog il-purchases kollha, kemm ghandek element ta' cement bit-ten percent biex imbaghad fuqu naghmlu l-mark up fuqu, kemm ghandek elementi ohrajn ta' affarijiet li ghandek twenty five percent ghax hemm affarijiet li ghandhom twenty five percent ukoll, jigifieri mhux sew li ahna insemmu affarijiet tat-ten percent biss. Issa jien tant ridt nghin u jien nifhem li anke hi, meta qalet twenty percent imma hemm certu affarijiet li ghandha inqas mark up, all right, li vera gabet l-invoices imma jien kif nista' nghid, minn twenty percent ma nistax innaqqas five percent ghax is-sales ma sarux lil dawk in-nies biss l-invoices imma saru lill-individwi wkoll. … Apparti mill-accounts, inti suppost izzomm il-kotba. Mela l-kotba tas-sales jekk is-Sinjura kienet qed tbiegh in-nies li ghandhom il-Vat number suppost dawk huma bl-invoice. Lanqas biss suppost kienu fil-cash register. Issa ghax is-Sinjura ma kinitx iggwidata sew forsi mill-accountant taghha, whoever, ha nghid, din x'kienet taghmel? Is-sales taghha kienet tirrekordjom kollha fil-cash register, allura ahna ma stajna qatt niddistingwu s-sales li huma by invoices, all right, imma jien kif ser nigi ghas-sales li huma hekk?*[11]

Dwar l-invoices, li tant jaghmel enfasi fuqhom ir-Rikorrent, Lorraine Galea iddikjarat illi: *meta tara l-invoices* (tax-xiri) *u tara r-recommended retail price u l-mark up ta' l-affarijiet kwazi kollha huma bejn twenty u twenty five percent, all right, ghax inti trid tiehu xi kultant ikollhom xi frees però c-cement veru hu element wiehed li fih inqas mark-up, apparti c-cement hi kienet taghti lill-klijenti regolari taghha five percent inqas, imma biex nikkwantifikhom trid iggibbli l-affarijiet. Ghidtilha gibli over a period of one year biex jiena nkun nista' nistabilixxi overall the total mark up kemm huwa dan l-element ha jaffettwa li int qed taghti dan id-discount fuq it-total ghax dan ma jistax ikun minn twenty jigi fifteen jew gibli x-xiri kollu tac-cemenet f'dawn l-affarijiet. … iva taghtni, imma mhumiex over a period. Jien kif ser nigi ghall-period kollu? Kif ser nigi, ghidtilha ahdimha ma' l-accountant, ghidtilha halli hekk tmur appell ikollok ezatti l-figuri. Hi taghtni imma jien ma stajtx nistabilixxi f'sena biex il-mark up minflok twenty percent, jien ma nistax nahdimha jien, hi trid tahdimha. … il-cash register johrog is-sales total jekk nghidu ghandi mitt Lira sales jiena, dawk irrekordjati kollha fil-cash register, issa minnhom xtaqt nohrog jien kemm sales kienu bl-invoices u kemm sales kienu lil the normal man in the street, issa ghidtilha gibli t-total, iz-Z readings ghandha jigifieri dik mhux problema imma mit-total over a period of one year kemm int hrigt invoices biex jiena dawk ta' l-invoices nahdmilhom bil-mark up ta' fifteen u l-ohrajn naghmilhom bil-mark up ta' twenty ghax jiena l-ohrajn ta' twnety ma kontx ser innizlu zgur, mill-invoices*

[11] Xhieda moghtija waqt is-seduta tal-25 ta' Novembru 2013, fol. 35 sa' 42 tal-process.

irrizulta dan imma ma tatnix invoices kollha over a period of one year, it-total sales, dawn kienu qed inkluzi, all right, vera fiz-Z reading però jien ridt naghmilhom subtraction biex nohrog il-wipeighted mark up. … Ma kienux sufficjenti ghax ftit minnhom ma kienux datati, bil-ftit li gabitli tant kienet minima li ma kinitx ser teffettwani[12].

Meta wiehed jikkonsidra l-invoices mahruga mir-Rikorrent, jew ahjar minn martu, lil certi klijenti taghhom minn liema jirrizulta tnaqqis ta' 5%, liema invoices tant jaghmel enfasi dwarhom ir-Rikorrent in sostenn ta' l-appell tieghu mill-istimi mertu ta' dawn il-proceduri, jirrizulta immedjatament evidenti li l-istess ma jikkostitwixxux prova sodisfacenti li minhabba tali skont ta' 5% lil certa klijenti l-profit mark up huwa ta' 15% u mhux ta' 20% kif determinat mill-Kummissarju tat-Taxxa fuq il-Valur Mizju.

Dawn l-invoices fil-fatt jikkonsistu f'23 invoice fuq medda ta' sentejn bi tlett invoices minnhom lanqas huma datati u l-invoices l-ohra in verità huma biss wahdiet li inhargu minn zmien ghal zmien tul perijodu ta' ben erbgha u ghoxrin xahar. Di fatti l-invoices esebiti huma mqassma kif gej: Sena 2009 – invoice mahruga f'Marzu, invoice mahruga f'Mejju, zewg invoices mahruga f'Gunju, invoice mahruga f'Lulju, invoice mahruga f'Awwissu, invoice mahruga f'Ottubru, zewg invoices mahruga f'Novembru u invoice mahruga f'Dicembru; Sena 2010 – invoice mahruga f'Jannar, tlett invoices mahruga fi Frar, invoice mahruga f'Marzu, invoice mahruga f'Awwissu, invoice mahruga f'Novembru u zewg invoices mahruga f'Dicembru. Certament ir-Rikorrent ma jistax jippretendi li b'dawn l-invoices, li jigi ribadit huma biss wahdiet mahruga minn zmien ghal zmien fuq medda ta' ben erbgha u ghoxrin xahar, tinsab debitament sostanzjata l-affermazzjoni tieghu illi proprio minhabba tali skont ta' 5% li jinghata lil diversi klijenti ta' l-*ironmongery* jigi effettwat, fis-sens li jonqos, il-profit mark up minn tali negozju.

Ghal kull buon fini jigi rilevat illi ghalkemm fix-xhieda li ta waqt is-seduta ta' l-14 ta' Mejju 2013[13], Fabian Cardona, l-accountant attwali tar-Rikorrent, xehed illi meta ghalaq l-accounts ta' l-2012 irrizulta gross profit margin ta' bejn 14% u 15%, in verità ix-xhieda tieghu ma hijiex rilevanti fil-kaz in ezami u dan ghar-raguni li huwa xehed dwar il-profit margin li jidher li ghamel ir-Rikorrent fl-2012 filwaqt illi l-proceduri odjerni jittrattaw dwar perijodi antecedenti u ghalkemm jghid li ra diversi invoices ta' ammonti kbar ta' kuntratturi li juri skont ta' 5%, dawn l-invoices baqghu ma gew esebiti qatt.

Fid-dawl ta' dan kollu ghalhekk huwa evidenti li r-Rikorrent ma rnexxilux jipprova b'mod sodisfacenti li l-istimi mahruga fil-konfront tieghu mill-Kummissarju tat-Taxxa fuq il-Valur Mizjud ghall-perijodi ta' taxxa 01.05.05-31.07.05, 01.08.05-31.10.05, 01.11.05-31.01.06, 01.02.06-30.04.06, 01.05.006-31.07.06, 01.08.06-31.10.06, 01.11.06-31.01.07, 01.02.07-30.04.07,

[12] Xhieda moghtija waqt is-seduta tal-25 ta' Novembru 2013, fol. 35 sa' 42 tal-process.
[13] Fol. 23 u 24 tal-process.

01.05.07-31.07.07, 01.08.07-31.10.07, 01.11.07-31.12.07, 01.01.08-31.01.08, 01.02.08-30.04.08, 01.05.08-31.07.08, 01.08.08-31.10.08, 01.11.08-31.01.09, 01.02.09-30.04.09, 01.05.09-31.07.09, 01.08.09-31.10.09, 01.11.09-31.01.10, 01.02.10-30.04.10, 01.05.10-31.07.10, 01.08.10-31.10.10, 01.11.10-31.01.11 huma eccessivi u ghaldaqstant l-appell tieghu ma jisthoqqx li jigi milqugh.

Ghal dawn ir-ragunijiet it-Tribunal jaqta' u jiddeciedi billi jichad l-appell tar-Rikorrent mill-istimi mahruga fil-konfront tieghu mill-Kummissarju tat-Taxxa fuq il-Valur Mizjud ghall-perijodi ta' taxxa 01.05.05-31.07.05, 01.08.05-31.10.05, 01.11.05-31.01.06, 01.02.06-30.04.06, 01.05.006-31.07.06, 01.08.06-31.10.06, 01.11.06-31.01.07, 01.02.07-30.04.07, 01.05.07-31.07.07, 01.08.07-31.10.07, 01.11.07-31.12.07, 01.01.08-31.01.08, 01.02.08-30.04.08, 01.05.08-31.07.08, 01.08.08-31.10.08, 01.11.08-31.01.09, 01.02.09-30.04.09, 01.05.09-31.07.09, 01.08.09-31.10.09, 01.11.09-31.01.10, 01.02.10-30.04.10, 01.05.10-31.07.10, 01.08.10-31.10.10, 01.11.10-31.01.11 u minflok jikkonferma l-istess imsemmija stimi.

L-ispejjez ta' dawn il-proceduri jibqghu a karigu tar-Rikorrent.

A tenur ta' l-Artikolu 2(4) tad-Disa' Skeda tal-Kap.406 tal-Ligijiet ta' Malta, it-Tribunal jordna li kopja ta' din id-decizjoni tigi notifikata lir-Rikorrent.

MAGISTRAT

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