



MALTA

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

Rikors Nru. 191/12VG

XXX

Vs

Kummissarju tat-Taxxa fuq il-Valur Mizjud

Illum 17 ta' Ottubru 2017

It-Tribunal,

Ra r-Rikors ipprezentat mis-socjetà XXXfid-9 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 titlob li l-istimi mahruga fil-konfront taghha mill-Kummissarju tat-Taxxa fuq il-Valur Mizjud ghall-perijodi ta' taxxa 01.03.05-31.05.05, 01.06.05-30.08.05, 01.09.05-30.11.05, 01.12.05-28.02.06, 01.03.06-31.05.06, 01.06.06-31.08.06, 01.09.06-30.11.06, 01.12.06-28.02.07, 01.03.07-31.05.07, 01.06.07-31.08.07, 01.09.07-30.11.07, 01.12.07-31.12.07, 01.01.08-29.02.08, 01.03.08-31.05.08, 01.06.08-31.08.08, 01.09.08-30.11.08, 01.12.08-28.02.09 jigu revokati *in toto* stante li l-kreditu ghall-Input Vat ghall-perijodi ta' taxxa in kwistjoni ghandu jinghata in kwantu t-taxxa effettivament giet minnha sofferta; bl-ispejjez kontra l-Kummissarju tat-Taxxa fuq il-Valur Mizjud;

Ra d-dokumenti annessi mar-Rikors promotur;

Ra r-Risposta tal-Kummissarju tat-Taxxa fuq il-Valur Mizjud permezz ta' liema jopponi ghall-appell tas-socjetà Rikorrenti mill-istimi ghall-perijodi ta' taxxa 01.03.05-31.05.05, 01.06.05-30.08.05, 01.09.05-30.11.05, 01.12.05-28.02.06, 01.03.06-31.05.06, 01.06.06-31.08.06, 01.09.06-30.11.06, 01.12.06-28.02.07, 01.03.07-31.05.07, 01.06.07-31.08.07, 01.09.07-30.11.07, 01.12.07-31.12.07, 01.01.08-29.02.08, 01.03.08-31.05.08, 01.06.08-31.08.08, 01.09.08-30.11.08, 01.12.08-28.02.09, u jitlob li l-istess jigi michud, bl-ispejjez kontra taghha, stante li l-Likwidazzjoni ta' Taxxa ghall-imsemmija perijodi ta' taxxa hija gusta u jisthoqqilha konferma;

Ra l-*Investigations Audit Report* datat 16 ta' *Mejju 2011* u ra r-*Review Report* datat 3 ta' *Ottubru 2011* annessi mar-*Risposta tal-Kummissarju tat-Taxxa fuq il-Valur Mizjud*;

Ra l-*affidavit* ta' *Catherine Abela* markat *Dok. "CB"* u l-*affidavit* ta' *Joyce Bartolo* markat *Dok. "JB"* flimkien mad-*dokumenti annessi magghom esebiti mis-socjetà Rikorrenti* permezz ta' *Nota pprezentata fit-8 ta' Jannar 2013* a fol. 15 sa' 49 tal-*process* u ra l-*affidavit* ulterjuri ta' *Catherine Abela* markat *Dok. "CA1"* u d-*dokumenti annessi mieghu esebiti mis-socjetà Rikorrenti* permezz ta' *Nota ipprezentata fid-19 ta' Frar 2014* a fol. 79 sa' 440 tal-*process*, sema' ix-xhieda ta' *Catherine Abela*¹, ta' *Joyce Bartolo*² u ta' *Roderick Vella*³ moghtija waqt is-seduta ta-17 ta' *Ottubru 2013*, sema' ix-xhieda ta' *Kevin Mifsud* moghtija waqt is-seduti tas-17 ta' *Ottubru 2013*⁴ u ta' l-24 ta' *Frar 2014*⁵ u x-xhieda ta' *Lorraine Galea* moghtija waqt is-seduti tad-9 ta' *Jannar 2014*⁶ u ta' l-24 ta' *Frar 2014*⁷;

Ra n-*Nota ta' Sottomissjonijiet tas-socjetà Rikorrenti pprezentata fid-19 ta' Awwissu 2014* a fol. 447 sa' 454 tal-*process* u ra n-*Nota Responsiva tal-Kummissarju tat-Taxxi pprezentata fl-24 ta' Ottubru 2014*, a fol. 455 sa' 464 tal-*process*;

Ra l-*atti kollha tal-kawza*;

Ikkonsidra:

Bil-*proceduri odjerni s-socjetà Rikorrenti tikkontesta l-istimi mahruqa fil-konfront taghha mill-Kummissarju tat-Taxxa fuq il-Valur Mizjud ghall-perijodi ta' taxxa 01.03.05-31.05.05, 01.06.05-31.08.05, 01.09.05-30.11.05, 01.12.05-28.02.06, 01.06.06-31.08.06, 01.09.06-30.11.06, 01.12.06-28.02.07, 01.03.07-31.05.07, 01.06.07-31.08.07, 01.09.07-30.11.07, 01.01.08-29.02.08, 01.03.08-31.05.08, 01.06.08-31.08.08, 01.09.08-30.11.08, 01.12.08-28.02.09* permezz ta' liema qed tigi mitluba thallas is-somma komplessiva ta' €215,980.61 rapprezentanti taxxa fuq il-valur mizjud, is-somma komplessiva ta' €43,196.13 rapprezentanti taxxa amministrattiva u s-somma komplessiva ta' €84,065.10 rapprezentanti imghax. Hija tikkontendi li l-*imsemmija stimi ghandhom jigu revokati in toto* in kwantu l-*kreditu ghall-Input Tax ghall-perijodi ta' taxxa* in kwistjoni ghandu jinghata stante li tali taxxa giet minnha effettivament sofferta. Il-*Kummissarju tat-Taxxa fuq il-Valur Mizjud, illum Kummissarju tat-Taxxi, jopponi ghall-appell tas-socjetà Rikorrenti mill-imsemmija stimi u jitlob li l-istess jigi michud in kwantu l-Likwidazzjoni ta' Taxxa maghmula minnu ghall-perijodi ta' taxxa* in kwistjoni hija gusta u timmerita konferma.

¹ Fol. 56 sa' 60 tal-*process* u fol. 63 u 64 tal-*process*.

² Fol. 61 u 62 tal-*process*.

³ Fol. 68 sa' 70 tal-*process*.

⁴ Fol. 65 sa' 67 tal-*process*.

⁵ Fol. 442 u 443 tal-*process*.

⁶ Fol. 72 sa' 78 tal-*process*.

⁷ Fol. 444 u 445 tal-*process*.

Mill-Investigations Audit Report datat 16 ta' Mejju 2011 anness mar-Risposta tal-Kummissarju tat-Taxxa fuq il-Valur Mizjud jirrizulta li nfethet investigazzjoni fil-konfront tas-socjetà Rikorrenti peress illi *following a credit control exercise which covered period 01.12.2009 to 28.02.2010. The findings of the said exercise were as follows: a) Sales amount declared in the above-mentioned period is too low compared with previous periods; b) Sales and purchases were not being disclosed correctly but after deducting the sub-contracting; hence the declarations do not give a fair view of the company's economic activity; c) Declared sales and declared purchases in connection with sub-contracting have been netted out in the VAT returns, thus distorting the overall picture of the financial operations of the company.*

Waqt l-investigazzjoni fil-konfront tas-socjetà Rikorrenti gie kkonstatat is-segwenti:

Sales analysis: *an exercise in connection with bank deposits was carried out. This exercise covered period from 01.12.2008 to 28.02.2009. Taxpayer produced 10 bank accounts and amounted to a gross amount of €3,157,429.68. This amount was netted to €2,675,787.86. It is to be noted that transfers from other accounts were not included. ... The total net amount declared in the vat returns amounted to €2,733,187 (not including the amount of subcontractors). Since the bank deposits were less than those declared, the exercise was not extended to other years. Another exercise was carried out to compare the declared sales against the sales recorded in the audited accounts. Taxpayer produced the audited accounts covering years 2005, 2006, 2007 and 2008. From this exercise it transpired that the discrepancy between the sales declared in the vat returns and the sales recorded in the audit accounts is attributed to the subcontracting works. In fact these were omitted from the vat returns. After adding the subcontracting work to the sales declared in the vat returns an ulterior discrepancy amounting €19,327.93 was noted. However when compared to the total turnover, this discrepancy resulting to 0.2% which is deemed to be immaterial. After verifying the company's sales records three major facts emerged: A) sales are being declared net of sub-contracting; B) the service of Sightseeing Tours is being declared as exempt with credit ...; C) school/factory transport rendered to central office (UBS) is being declared exempt with credit. ... With reference to item B) it transpired that the respective sales were being declared as exempt. Upon examining the data produced on a pen drive and burnt on CD at Red 55 in the presence of Ms. Bartolo, it transpired that the said sales were being declared net of the commission allowable to drivers. Extract of this data is inserted in the file at Reds 59a-d. With reference to item C) figures relating to exempt sales were also extracted and inserted in file at Reds 58A-f.*

Purchases analysis: *Further to the credit control exercise dated 11th May 2010, additional documentation was requested to test the input vat claimed. No discrepancy was noted in the sample taken. The invoices related to the sub-contracted work were not being declared. Ms. Joyce Bartolo produced all the afore-mentioned invoices upon the Department's request. A list of the subcontracting invoices was compiled by the Department and sorted by the*

subcontractor vat number. When this list was vouched and cross checked with the respective vat accounts several discrepancies were noted as follows: all invoices re subcontractors were raised by XXX., some invoices were showing incorrect vat number, some invoices were not signed, some invoices were bearing a deregistered vat number. ... Another list was compiled to determine that the amount of input vat that was justified (vide Red 50). Ms. Joyce Bartolo explained that 'this sector deals with bus drivers who in the majority are illiterate'. As a result the subcontractors were not issuing invoices for their services. XXX started to raise the invoices themselves and then ask the respective bus driver (subcontractor) to sign them. However, after vouching these invoices, it transpired that several invoices were not signed. This was explained to Ms. Bartolo during one of our meetings where she replied that some contractors were refusing to sign.

Audit Trail: To verify the authenticity of the invoices two vat numbers were taken as a sample – MT1127-0316 and mT1636-0310 and two audit trail exercises are being carried out accordingly. A prima facie it transpires that there is a discrepancy between the documents produced by XXX. and the declarations in the vat returns. Two separate meetings were held with Bonu Garage Ltd. and JJ Abela Ltd. and both stated that they were 'forced' to sign the invoices in November 2009 and that the invoices do not reflect the amount of work carried out by them. In this regard a random sample of invoices was selected in order to obtain the respective cheque images (vide Red 53).

Workings: A worksheet was computed to determine the vat due. The total net sales were obtained by adding the subcontracting work with the declared sales in the vat returns plus the sightseeing tours (vide Red 52). Therefore the resultant net sales have been multiplied by the vat rate of 18% to determine the output vat due. The justified input vat (column J) as per Red 50 was deducted from the output vat (column I). Thus vat due is that recorded in Column L. The justified input vat includes also the amount of €9,178.19 as per invoice at Red 51 which was omitted from the vat returns. The amount was included in vat period 01/03/2009-31/05/2009. A correction letter was submitted to include the said amount (vide Red 56).

Mir-Review Report datat 3 ta' Ottubru 2011, ukoll anness mar-Risposta tal-Kummissarju tat-Taxxa fuq il-Valur Mizjud, jirrizulta li gie kkonstatat u konkluz is-segwent:

Findings: The department's findings were the following – a. sales were being declared net of subcontracting; b. the service of sightseeing tours was being declared as exempt with credit and were being declared net of the commission allowable to drivers. According to the department sightseeing tours are not deemed to be included in the remit of Public Transport Services therefore, such service does not fall under the exemption of item 11a of Part 1 of the Fifth Schedule of the VAT Act, therefore, such service is deemed to be at taxable supply at 18% VAT. Since taxpayer was reporting sales net of subcontracting taxpayer was asked to produce the subcontracting invoices. A list was compiled by the department and sorted by the subcontractor vat number. However,

several differences were noted as follows: all the subcontractors invoices were raised by XXX., some did not have the correct vat number, some invoices were not signed, some invoices were bearing a deregistered vat number. A list was compiled by the department to determine the input vat that was justified and another list of the discrepancies noted was also put together. Ms. Bartolo explained that XXX was issuing invoices on behalf of the subcontractors since most of the bus drivers are illiterate so they started issuing the invoices themselves and asked the drivers to sign. However, some of the drivers had refused to sign. Unsigned invoices were not accepted by the department. Deemed sales were obtained by adding the subcontracting work and the sightseeing tours to the declared sales, the total of which was multiplied by the vat rate of 18%. The justified input VAT as per Red 50 was deducted from the deemed sales.

Taxpayer's views and findings:

In his request for review taxpayer objected the fact that Sightseeing Tours are vatable at the rate of 18% VAT and according to taxpayer such services fall under Part 1, Item 11 of the Fifth Schedule. However, according to the department such services do not fall under this part of the act and should be vatable at the rate of 18%. Ms. Bartolo and Ms. Abela stated that they will appeal on this issue as they disagree with the department. Ms. Bartolo stressed on the fact that the company had paid vat on all services rendered by subcontractors and said that it was not right that the department was not allowing input vat of the unsigned invoices. The company also produced invoices together with a copy of the respective payment cheque for the services rendered by subcontractors. It was however explained to Ms. Bartolo that according to article 52 a tax invoice is to be issued by the supplier. At review stage, Taxpayer submitted further signed invoices which are being attached to this report. However, on checking the invoices with those submitted at investigations stage it transpired that some were either outside the tax periods in which provisional assessments were raised whilst others had already been submitted at investigations stage. Therefore, these were not included in the reproduced list of signed invoices which is being attached to this report.

Recommendations:

With reference to the above it is being recommended that provisional assessments are adjusted with respect to input VAT only, as per attached workings.

Ghalkemm mill-imsemmija Rapportu jirrizulta li l-kwistjonijiet bejn is-socjetà Rikorrenti u d-Dipartiment tat-Taxxa fuq il-Valur Mizjud kienu essenzjalment tlieta: (i) il-fatt li s-socjetà Rikorrenti ma kenitx qed tiddikjara fil-bejgh taghha il-vjaggi u xoghol esegwit minn *subcontractors* inkarigati minnha; (ii) il-fatt li is-socjetà Rikorrenti kienet qed tqis is-sightseeing tours bhala ezenti bi kreditu; u (iii) il-fatturi prodotti relattivament ghall-vjaggi u xoghol esegwit mis-*subcontractors* inkarigati mis-socjetà Rikorrenti ma gewx kollha accettati mid-Dipartiment ghall-finijiet tal-kreditu ghall-Input Tax, bil-konsegwenza li bl-istimi

kontestati is-socjetà Rikorrenti qed tintalab thallas l-Output Tax dikjarata bin-nieqes ghall-perijodi ta' taxxa mertu ta' dawn il-proceduri, il-mertu proprio tal-proceduri odjerni jittratta dwar il-kreditu ghall-Input Tax li s-socjetà Rikorrenti tikkontendi li kellu jigi lilha koncess mill-Kummissarju tat-Taxxa fuq il-Valur Mizjud ghall-perijodi ta' taxxa in kwistjoni. In effetti fin-Nota ta' Sottomissjonijiet taghha s-socjetà Rikorrenti tissottometti li *dan huwa appell illi sar minn XXXdwar punt partikolari li tqajjem waqt investigazzjoni tad-Direttur intimat. Il-fatt partikolari jirrelata dwar il-bejgh ta' servizzi ta' XXXli kien qieghed jigi iddikjarat 'net of subcontracting'. XXXsabiex tkun tista' tlahhaq mal-volum ta' xoghol illi jkollha, kienet (u ghadha) tqabbaq lil operaturi ohrajn (permezz ta' sub-contracting) sabiex dawn jipprovdur servizz ta' trasport b'coaches. Illi l-vertenza principali materja ta' dan l-appell hija certament spjegat fl-*Investigations Audit Report ... In sintesi, id-Direttur Generali intimat ma accettax illi invoices mahrugin f'isem is-sub-contractors ta' XXXilli ma kellhomx firma fuqhom ma setghux jitqiesu ghal finijiet ta' tnaqqis ta' input VAT. Ghal din ir-raguni sar dan l-appell*⁸.*

Ir-raguni ghalfejn il-fatturi, jew ahjar numru mill-fatturi prodotti mis-socjetà Rikorrenti relattivament ghall-vjaggi u xoghol esegwit mis-sub-contractors inkarigati minnha ma gewx accettati mid-Dipartiment tat-Taxxa fuq il-Valur Mizjud giet spjegata mill-gdid mill-Ispettur Kevin Mifsud u mir-Review Officer Lorraine Galea, meta xehedu waqt is-seduti tas-17 ta' Ottubru 2013 u tad-9 ta' Jannar 2014, rispettivament.

Kevin Mifsud iddikjara li *fil-kaz tas-sub-contracting ghamilna ezami tal-financial statements tal-kumpanija versus il-VAT returns u innuttajna li kien hemm dispkrepnanza. Minn din id-diskrepanza gejna infurmati li din id-diskrepanza kienet tirrizulta minhabba s-subcontracting fejn kien qed isir netting out tas-subcontracting, fejn is-sales u purchase invoice ma kinitx qed tidhol fl-accounts tal-kumpanija, kein qed jidhol biss il-profitt fil-VAT return. F'dak il-kaz ahna tlabna l-informazzjoni kollha li kienu jirreferu ghal dan is-subcontracting. F'dak il-kaz ghamilna ezercizzju fejn ghollejna s-sales biex gew jaqblu mal-financial statements imma fl-istess hin tlabnihom invoices, l-invoices tax-xiri ta' dan is-subcontracting minghand is-subcontractors. Innuttajna li kull subcontracting invoice giet irrezjata minghand is-XXX. Kien hemm minnhom li kellhom il-VAT numbers hzienu u kien hemm minnhom li ma kienux iffirmati ghaliex wahda mir-rekwiziti biex inkunu nafu certi li gew raised, ikunu konxji min ghamel sub-contracting, li kienu jkunu ffirmati minghand is-subcontractor u kien hemm anke min kellu l-VAT number maghluq. Fil-fatt meta ghamilna l-ezercizzju zidna s-sales imma imbaggad dahhalna daww il-purchases li kienu jikkwalifikaw taht il-VAT Act u tajnihom l-Input Vat fuqu. Fin-nuqqas ta' dokumentazzjoni rilevanti dak l-Input Vat ma giex moghti. B'hekk kien hareg l-assessment imbaggad. In risposta ghall-mistoqsija jigifieri m'ghandekx amment li kien hemm batch ta' invoices u qalulkom isma, dawn lesti imma ma jridux jiffirmawhom? Kevin Mifsud iddikjara wahda mill-criteria kienet li kienu ffirmati. Fejn kien hemm il-criteria li kellna fixed, dan tajnihom l-Input Vat, jekk*

⁸ Nota ta' Sottomissjonijiet tas-socjetà Rikorrenti, fol. 447 tal-process.

ma kienux iffirmati seta' kien il-kaz li le. Imma kien hemm stadju iehor fejn gew accettati izjed invoices warajna⁹.

L-istadju l-iehor li jsemmi Kevin Mifsud huwa l-istadju tar-Review wara l-hrug ta' l-istimi provvizorji u fir-rigward tal-fatturi relattivi ghas-subcontractors ir-Review Officer Lorraine Galea xehdet illi *li kien gara fis-subcontracting huwa li XXX kienu qeghdin johorgu l-invoices huma stess, fhimt, ghan-nom tas-subcontractors. Ghax dan kif kienet spjegatli l-owner, icemplulhom iqabdu lil xi hadd u dan mhux dejjem kien johorgilhom l-invoices, allura kienu biex ikunu certi johorgu l-invoices huma stess ghan-nom taghhom. Li kien gara waqt li kienet saret l-investigation, hemm invoices mhux kollha kienu iffirmati minn, mill-persuna ghan-nom ta' min tkun harget l-invoice. Jigifieri bazikament id-Dipartiment accetta, kien dispost jaccetta l-invoices mahrugha mis-XXX ghan-nom tas-subcontractors jekk ikunu iffirmati. ... Li gara fil-fatt, meta kienu fir-review, hi kienet gabet invoices ohrajn li kienu iffirmati, plus dawk li kienet digà ipprezentat waqt l-investigazzjoni. Jiena accettajt. Le dawk accettajthom. Li ma stajtx naccetta jiena huma l-invoices li ma kienux iffirmati. ... jiena kont tajthom lill-accountant tas-XXX biex tara u tqabbel fejn jiena kont zidt u ma zidtx biex ma jkollniex diskrepanzi wara. Però, huma li komplew ukoll, li xtaqu ovvjament, li jigu accettati l-invoices kollha. Fil-fatt waqt ir-Review hi kienet ukoll gabitli provi ta' pagamenti li vera kienu saru lis-subcontracting. Però skond il-ligi jiena ma nistax naccetta jekk jiena ma ghandix l-invoices. Fhimt, jigifieri jiena imbaghad wara li jien tajt, naqqast, tajtha aktar credits u l-input zidthom. Sorry, l-input jigifieri tajtha Vat lura ta' l-invoices li gew iffirmati li ma kienux gew ikkalkulati qabel fl-investigazzjoni. In risposta ghall-mistoqsija tat-Tribunal halli niffukaw fuq li ma humiex iffirmati, li d-Dipartiment ma setax ... jaccettahom. Inti rrizultalek illi indipendentement mill-firma, kollha kellhom pagament kontrihom? Dawk l-ammonti? Lorraine Galea iddikjarat ehe, però jiena ma dhaltx daqshekk fid-dettal ghax kien hemm kazijiet, per ezempju, li jekk jiena ghandi invoice ta' mitt Euro, ghall-argument, il-pagament ma kienx mitt Euro shih. Kien bicca, bicca u bicca. Allura jien biex ezattament inqabbel dawk, suppost rajt ukoll l-account kollu. Ghax inti, ghalkemm jien ghandi l-invoice u x'pagament ghamilt mieghu, ma ghandix l-istatement ta' dak l-account kollu biex inkun naf ezatti¹⁰.*

Is-socjetà Rikorrenti ma taqbilx mal-posizzjoni adottata mill-Kummissarju tat-Taxxa fuq il-Valur Mizjud fir-rigward tal-fatturi minnha sottomessi ghall-vjaggi u xoghol esegwit mis-subcontractors inkarigati minnha u fin-Nota ta' Sottomissjonijiet taghha tissometti illi: *jekk wiehed jara bir-reqqa it-Tnax-il Skeda tal-Kap.406 tal-Ligijiet ta' Malta, wiehed jinduna b'zewg aspetti importanti: (i) illi l-Artikolu 2(3) tat-Tnax-il Skeda tal-Kap.406 jaghti lista ezawrjenti tal-partikolari li ghandhom ikun mnizzlin fuq tax invoice sabiex din tkun maghmula skond il-ligi; (ii) illi hija l-ligi stess li tghid illi huwa possibbli biex klijent (f'dan il-kaz is-socjetà appellanti hija l-klijent tas-subcontractors) johrog tax invoice huwa stess – din il-procedura tinsab fil-Provizjoni 2(4) ta' l-*

⁹ Xhieda moghtija waqt is-seduta ta-17 ta' Ottubru 2013, fol. 65 sa' 67 tal-process.

¹⁰ Xhieda moghtija waqt is-seduta tad-9 ta' Jannar 2014, fol. 72 sa' 78 tal-process.

istess Skeda. L-ewwel li ser jigi ezaminat il-kontenut ta' l-Artikolu 2(3). Din il-provizjoni toffri lista estensiva w ezawrjenti ta' partikolari li tax invoice ghandu jkollha, izda imkien ma tispecifika illi tax invoice ghandha tkun iffirmata minghand il-klijent, jew minghand l-operaturi terzi fil-kaz odjern. Anzi, imkien fil-ligi ma jinghad illi hemm bzonn firma biex tax invoice tkun accettabbli skond il-ligi. Lanqas hemm xi kazijiet specjali fejn il-fattura ghandha tigi iffirmata biex tkun accettabbli. Mela allura d-Dipartiment tat-Taxxa ma jista' qatt jghid illi dawn id-dokumenti, li huma provi tal-kontenut taghhom, u allura tal-fatt li s-socjetà appellanti dejjem segwiet il-ligi u dejjem hallset il-VAT fuq kull servizz li hija wzat, ma jistghux jigu accettati ghax il-ligi tghid li hemm bzonn firma; dan m'hu veru xejn. Ghal kull buon fini l-invoices kollha illi ma gewx iffirmati gew ezebiti flimkien ma' l-affidavit ulterjuri ta' Catherine Abela ... L-Artikolu 2(4) imbaghad jghid illi fattura tat-taxxa tista' tinhareg mill-klijent li qed jaghmel uzu ta' servizz jekk ikun hemm arrangament bejn iz-zewg persuni u jekk tezisti procedura li biha kull tax invoice li tkun inharget tista' tigi accettata mill-persuna taxxabli li qed tipprowdi s-servizz (fil-kaz odjern is-subcontractors). Issa f'dan il-kaz il-fatt illi kien hemm numru kbir ta' invoices li gew iffirmati minghajr problema juri li dawn il-fatturi kienu genwini u jirriflettu l-ammont korrett ta' VAT. Dan il-fatt huwa wkoll prova li kien hemm arrangament verbali miz-zewg nahat, u li kien possibbli biex dawn id-dokumenti jigu accettati mis-subcontractors. Wiehed ma jistax jinstenna li f'kaz bhal dan, meta hemm xufiera li huma illitterati, ser jezisti ftehim formali jew bil-miktub bejn il-persuna li qed toffri is-servizz u l-persuna li qed taghmel uzu tas-servizz. Allura l-fatt li kien hemm subcontractors li ma ffirmawx ma jistax jigi mahsub li huwa konsegwenza ta' xi nuqqas jew qerq da parti tas-socjetà appellanti; u inqas u inqas meta dawn id-dokumenti ma gewx iffirmati peress illi x-xufiera kienu illitterati w allura ma kienux f'posizzjoni li jiffirmawhom¹¹.

Il-Kummissarju tat-Taxxi jirribatti dawn is-sottomissjonijiet billi jsostni li l-ligi meta titkellem dwar fattura ta' taxxa fl-artikolu 50 tal-Kap.406 tal-Ligijiet ta' Malta, hija esplicita u ma thalli l-ebda dubbju dwar il-fornitur ta' servizz ghandu jipprovidi lill-persuna l-ohra li tkun uzufruwixxiet mis-servizz tal-providitur tas-servizz bil-fattura tat-taxxa fiz-zmien determinat skond it-Tnax-il Skeda. Illi l-artikolu 50(1) testwalment jaqra kif gej: "Kull persuna registrata taht l-artikolu 10 li taghmel provvista, barra minn provvista ezenti bla kreditu, lil pesuna ohra li tidentifika lilha nnifisha ghall-ghan ta' dik il-provvista permezz ta' numru ta' identifikazzjoni tat-taxxa fuq il-valur mizjud ghandha tipprowdi lil dik il-persuna l-ohra b'fattura ta' taxxa fiz-zmien determinat skond id-disposizzjonijiet tat-Tnax-il Skeda. Illi t-Tnax-il Skeda meta titkellem dwar l-ghamla ta' fattura ta' taxxa fil-partita 1(1) tispecifika li: "Dokument ma jikkostitwixxix fattura ta' taxxa kemm-il darba: (i) il-partikolaritajiet kollha mehtiega b'din l-Iskeda ma jkunux tnizzlu kif imiss u fis-shuhija kollha taghhom; jew (ii) il-htigijiet dwar il-fattura kif elenkati fid-Direttiva 2006/112/KE ma jigux osservati kompletament. Illi t-Tnax-il Skeda tal-Kap. 406 meta titkellem dwar il-hrug ta' fattura ta' taxxa ghal dak li jirrigwarda z-zmien li fih ghandha tinhareg l-istess, fil-partita 2(1) (a) tesigi li: "Fattura ta'

¹¹ Nota ta' Sottomissjonijiet tas-socjetà Rikorrenti, fol. 448 u 449 tal-process.

taxxa ghandha tinhareg mhux aktar tard mill-hmistax tax-xahar li jigi wara dak li fih tkun sehhet il-grajja taxxabli jew id-data li fiha jkun sar il-pagament, liema minnhom tigi l-ewwel¹². ... Illi fl-intestatura **Purchase Analysis** tar-Rapport, irrizulta lill-ispetturi illi: “The invoices related to subcontracted work were not being declared.” Illi mitluba mid-Dipartimenti sabiex tipproduci dokumentazzjoni addizzjonali (invoices), lill-ispetturi rrizultalhom illi: “When this list was vouched and cross checked with the respective vat accounts, several discrepancies were noted as follows: all invoices re subcontractors were raised by XXX. Some invoices were showing incorrect vat number. Some invoices were not signed. Some invoices were bearing a deregistered vat number. Illi mir-rapport de quo kif ukoll mix-xhieda ta’ Ms. Bartolo rrizulta illi l-appellanti harget il-fatturi hija inifsha billi allegat illi l-maggoranza tad-drivers kienu illitterati u konvenjentement ma kienux qeghdin johorgu fatturi ghas-servizzi li jaghtu lil XXX. Illi meta l-appellanti talbet lid-drivers jiffirmaw l-invoices li harget l-appellanti, kien hemm bosta li rrijjutaw jiffirmawhom. Illi meta d-dipartiment ipprova jivverifika u jawtentika l-invoices prodotti minn Ms. Bartolo taht l-intestatura tar-rapport **Audit Trail** irrizultalu li kien hemm diskrepanza bejn id-dokumenti li pproduci l-appellanti u d-dikjarazzjonijiet fil-vat returns. Illi hu sinifikanti l-fatt illi fl-ahhar paragrafju fpagna 7 tar-rapport jinghad illi nzammu “two separate meetings were held with Bonu Garage and JJ Abela Ltd. and both stated that they were ‘forced’ to sign invoices in November 2009 and that the invoices did not reflect the amount of work carried out by them”¹³ ... Illi t-tezi ta’ l-appellant illi hi ma imxietx mal-ligi peress illi accettat li thaddem drivers illi ma jissuppluwhiex b’fatturi ta’ taxxa tas-servizzi li jipprestawlha sabiex tkun allegatament tkun tista’ tlahhaq mal-volum tax-xoghol illi jkollha, ma tregix, u legalment hija monka. Illi huwa minnu illi l-ligi ma tesigix illi fattura trid per necessita’ tkun iffirmata mill-persuna li tkun ipprestat is-servizz lil dik il-persuna l-oħra, f’dan il-kaz l-appellanti, però wiehed ma jridx jinsa l-irregolaritajiet lampanti li sab id-dipartiment fir-rapport kondott minnu. Illi ma jistax wiehed hawn b’mod legger jiskarta dak li qalu Bonu Garage u JJ Abela Ltd. illi gew sforzati biex jiffirmaw il-fatturi f’Novembru 2009 u aktar illi iddikjaraw illi l-fatturi ma jirriflettux l-ammont ta’ xoghol illi pprestaw lis-socjeta’ appellanti. In vista tal-premess, l-esponenti umilment jitlob li dan l-Onorabbli Tribunal jaghti l-piz xieraq lil dan il-fatt kif ukoll tal-fatt illi s-subcontractors ma hargu l-ebda fattura lill-appellanti fil-perijodu in dizamina. ... l-appellanti kellha dejjem u konstantement timxi mal-ligi u mhux ‘kemm jista’ jkun’ kif kitbet fin-nota ta’ sottomissjonijiet taghha. Fit-tharis ta’ ligi fiskali bhal dik in ezami, l-adempiment irid ikun shih, totali u mhux a la carte. Jekk pagatur tat-taxxa jaghzel, bhalma ghazlet li taghmel liberalment l-appellanti, illi ma jimxix ad unguem mad-dettami tal-ligi, jkollu jgorr il-konsegwenzi tan-non osservanza ta’ l-sitess. Imputet sibi jekk jonqos mill-obbligi fiskali tieghu u wara meta jigi rinfaccjat mill-konsegwenzi li jiskattaw ope legis, ma jistax joqghod iwahhal fl-esponenti billi jallega, minn fuq, illi jrid icahhdilha d-dritt taghha li takkwista

¹² Para. I sa’ III ta’ l-intestatura Sottomissjonijiet Legali fin-Nota Responsiva tal-Kummissarju tat-Taxxi, fol. 459 u 460 tal-process.

¹³ Para. VII sa’ X ta’ l-intestatura Sottomissjonijiet Legali fin-Nota Responsiva tal-Kummissarju tat-Taxxi, fol. 461 tal-process.

tnaqqis li allegatament hallset ftaxxa ghas-servizzi li allegatament inghatawlha minn operaturi terzi li ma ffirmawx l-invoices. Illi l-appellanti tippretendi illi l-appellat mehud kont ta' dak li gara fil-kaz in ezami, jaghmel akrobazija legali tali illi tmur diametrikament kontra dak li tghid il-ligi sabiex jagevola lill-appellanti u jaghtiha input VAT li ma kinitx intitolata ghalih. Irrizulta b'mod car u inekwivoku illi kien hemm fatturi li nhargu fisem operaturi li kienu diregistrati, kien hemm fatturi li nhargu fuq numri hzienu, kien hemm fatturi illi nhargu fuq persuni li suppost ghamlu x-xoghol u li innegaw illi wettqu l-istess xoghol fisem l-appellanti. Illi sabiex jikkontrolla l-abbuzi li setghu jinholqu, u fil-fatt irrizultaw li dawn attwalment inholqu, l-appellat esiga illi dawn il-fatturi li fl-ahhar mill-ahhar jinghad illi ma nhargux in tempo proprio kif titlob il-ligi, u jigu ffirmati mill-individwi li allegatament ipprestaw is-servizz tagghom lill-appellanti. U minkejja l-fatti surreferiti, l-appellanti tilmenta li ma nghatatx dak li ppretendiet illi ghandha tinghata minkejja li ma kellhiex dritt ghalih. Illi l-piz tal-prova jinkombi fuq l-appellanti fil-kaz de quo u ma hemm l-ebda dubbju illi fil-fehma umili ta' l-appellat, naqset milli tiskarikah a pien sodisfazzjoni ta' dan l-Onorabbli Tribunal. Illi zgur illi fil-kaz de quo ma kienx il-kaz illi kien hemm certi mankanzi jew zvisti fejn l-inosservanza tal-ligi pura ma kinitx ser tirrizulta f'ingustizzja fil-konfront ta' l-appellanti. Illi l-esponenti fil-kaz in ezami mhux qieghed jinhela f'legalizmu ristrettiv biex jimpedixxi lill-appellanti milli tiehu dak li bi dritt seta' jappartjeni lilha. Li sehh fil-kaz de quo kien ksur lampanti tal-Kap.406 u jinghad bir-rispett illi dan mhux kaz genwin bhalma seta' kien il-kaz fil-kazijiet ikkwotati mill-appellanti fin-nota taghha, liema kazijiet huma familjari ma' l-esponenti. Illi l-esponenti appellat jaghmel referenza ghal dak li kitbet l-appellanti fin-nota taghha (pagni 4 u 5) fejn allegat illi setghet tirreka pregudizzju billi seta' kien hemm sitwazzjoni reali fejn l-input VAT fil-verità setghet thallset lis-subcontractors izda l-appellanti ma gietx permessa illi tirkupraha. Illi dan huwa inkoncepibbli peress illi daww il-fatturi li kienu in ordine gew accettati u kienu biss daww difettuzi b'mod stragrandi illi gew irrigettati. Ikun ingust u illegli illi tigi 'rkuprata' input VAT meta originarjament lanqas biss ma tkun inharget fattura! Dan li tippretendi li jaghmel maghha l-appellat?¹⁴

Wara li qies bir-reqqa s-sottomissjonijiet sollevati mill-partijiet kontendenti fid-dawl tal-provvedimenti tal-Ligi applikabbli fiz-zmien rilevanti u fid-dawl tax-xhieda prodotti tul is-smigh ta' dawn il-proceduri, it-Tribunal huwa tal-fehma li entrambe l-partijiet kontendenti jaghtu interpretazzjoni tad-disposizzjonijiet rilevanti tal-Ligi b'mod li l-iktar jaqbel lill-posizzjonijiet rispettivi tagghom, minghajr ma attwalment ipoggu l-fatti tal-kaz in ezami fil-perspettiva legali reali tagghom.

Mill-Investigations Audit Report u mix-xhieda ta' Kevin Mifsud u Lorraine Galea jirrizulta li l-firma fuq dawn il-fatturi kienet ghad-Dipartiment u kwindi ghall-Kummissarju tat-Taxxa fuq il-Valur Mizjud, rekwizit *sine qua non* ghall-accettazzjoni tagghom. It-Tribunal huwa tal-fehma però li b'dan il-modus

¹⁴ Para. XII u XIII, para. XVI sa' XIX ta' l-intestatura Sottomissjonijiet Legali tan-Nota Responsiva tal-Kummissarju tat-Taxxi, fol. 462 u 463 tal-process.

operandi l-Kummissarju tat-Taxxa fuq il-Valur Mizjud impona, u ghadu jippretendi li jimponi fuq is-socjetà Rikorrenti, *qua taxpayer*, oneru ghall-accettazzjoni ta' dawn il-fatturi partikolari li ma kienx mehtieg fil-Ligi kif applikabbli fiz-zmien rilevanti ghal dawn il-proceduri.

Id-disposizzjonijiet tal-Ligi li qed jaghmel referenza ghalihom it-Tribunal huma b'mod partikolari l-Artikolu 50(4) tal-Kap.406 tal-Ligijiet ta' Malta kif introdott bl-Att X ta' l-2003 u l-Artikolu 10 tat-Tnax-il Skeda tal-Kap.406 tal-Ligijiet ta' Malta ukoll kif introdott fl-Att X ta' l-2003. Huma dawn id-disposizzjonijiet indikati – u mhux dawk citati mis-socjetà Rikorrenti fin-Nota ta' Sottomissjonijiet taghha – li huma applikabbli fil-kaz in ezami ghar-raguni li *taxpayer* huwa soggett ghall-Output Tax u ghandu jedd ghall-kreditu ghall-Input Tax fil-perijodi ta' taxxa rilevanti u kwindi jrid jossidisa jew jista' jibbenefika mill-Ligi kif applikabbli f'dawk il-perijodi u mhux kif qual' volta tista' tkun applikabbli fiz-zmien meta tkun qed issir verifika jew investigazzjoni fil-konfront tieghu.

L-Artikolu 22(5) ta' l-Att X ta' l-2003 kien jipprovdi li *d-dritt ta' kreditu ta' input tax, l-ammont ta' kreditu u l-mod li bih l-input tax hija attribwibbli ghall-provvisti huma suggett ghall-kondizzjonijiet, limitazzjonijiet, revizzjonijiet u aggstamenti mnizzla fl-Ghaxar Skeda*. L-Artikolu 2 ta' l-Ghaxar Skeda ta' l-Att X ta' l-2003 kien jipprovdi li: (1) *ma ghandu jitqies ebda ammont bhala input tax ta' persuna kemm-il darba dik il-persuna ma ggibx prova li dik it-taxxa kellha tithallas fuq il-provvisti ta' oggetti u servizzi jew akkwisti intra-Komunitarji jew fuq importazzjonijiet ta' oggetti li jkunu gew jew ser jigu wzati minnha fil-kors ta' l-avanz ta' l-attività ekonomika taghha.* (2) *Hlief hekk kif il-Kummissarju jista' mod iehor jippermetti, ebda ammont ma ghandu jitqies bhala input tax ta' persuna kemm-il darba: (a) ma jkunx appoggat b' – (i) fattura ta' taxxa dwar it-taxxa li ghandha x'taqsam ma' l-oggetti jew servizzi provduti lilu ... (b) dwar kull taxxa fuq xi provvista li skond dan l-Att ghandha tithallas minn dik il-persuna jew fuq akkwist intra-Komunitarju, tkun nizzlet dik it-taxxa bhala dovuta lilha fuq id-denunzja tat-taxxa taghha; u (c) id-dokument riferit fil-paragrafu (a) jkun mizmum minn dik il-persuna u jinghata, fuq talba, lill-Kummissarju; u (d) l-ammont tat-taxxa jkun inghata kont tieghu kif imiss fid-dokumentazzjoni mizmuma minn dik il-persuna sal-limitu mehtieg ghall-ghanijiet ta' l-Att.*

L-Artikolu 50(1) ta' l-Att X ta' l-2003 kien jipprovdi li *kull persuna registrata taht l-Artikolu 10 li taghmel provvista, barra minn provvista ezenti bla kreditu, lil persuna ohra li tidentifika lilha nnifisha ghall-ghan ta' dik il-provvista permezz ta' numru ta' identifikazzjoni tat-taxxa fuq il-valur mizjud ghandha tipprovdi lil dik il-persuna l-ohra b'fattura ta' taxxa fi zmien wiehed u tletin jum mid-data li tigi l-aktar kmieni mid-: (a) data meta l-oggetti jigu kunsinnati jew jitwettqu s-servizzi; (b) data li fiha jsir il-hlas ghal dik il-provvista*. Is-subartikolu (4) ta' l-imsemmi artikolu tal-Ligi kien jipprovdi li *meta persuna tipprovdi lilha nnifisha b'dokument li jkun mahsub bhala fattura ta' taxxa dwar provvista taxxabli lilha maghmula minn persuna registrata taht l-artikolu 10, dak id-dokument jista', bla hsara ghad-disposizzjonijiet tat-Tnax-il Skeda, jitqies bhala l-fattura ta' taxxa mehtiega li tigi mahruga u provduta mill-*

fornitur skond dan l-artikolu. Ai termini ta' l-Artikolu 2 tat-Tnax-il Skeda ta' l-Att X ta' l-2003 bla hsara ghad-disposizzjonijiet l-ohra ta' din l-Iskeda, fattura ta' taxxa ghandu jkun fiha dawn il-partikolaritajiet li gejjin- (a) id-data tal-hrug; (b) numru sekwenzjali, bazat fuq serje wahda jew aktar li unikament jidentifika l-fattura; (c) isem u l-indirizz ta' min jaghmel il-provvista u n-numru ta' identifikazzjoni tat-taxxa fuq il-valur mizjud li tahtu jkun ghamel dik il-provvista; (d) l-isem u l-indirizz tal-persuna li tkun irceviet il-provvista u numru ta' identifikazzjoni tat-taxxa fuq il-valur mizjud li tahtu tkun akkwistat l-oggetti jew is-servizzi provduti lilha; (e) it-tip tal-provissta billi ssir riferenza ghall-kategoriji elenkati fil-partita 3 ta' din l-Iskeda; (f) deskrezzjoni li tkun bizzejjed sabiex tidentifika l-kwantità u n-natura ta' l-oggetti jew il-limitu u n-natura tas-servizzi provduti; (g) id-data li fiha l-provvista kienet maghmula jew mitmuma jew id-data li fiha sar hlas akkont tal-provvista sal-limitu li dik id-data tista' tigi stabbilita u tkun differenti mid-data tal-hrug tal-fattura; (h) il-valur taxxabli skond ir-rata jew ezenzjoni, il-prezz bil-wiehed eskluz mit-taxxa u kull skont jew rohs jekk dawn ma jkunux inkluzi fil-prezz bil-wiehed; (i) ir-rata ta' taxxa li ghandha tithallas, jekk ikun hemm, f'kull rata li hekk tithallas; (j) l-ammont totali tat-taxxa li ghandha tithallas, jekk ikun hemm. L-Artikolu 10 tat-Tnax-il Skeda ta' l-Att X ta' l-2003 kien jipprovdri meta ssir provvista ta' taxxa minn persuna u ma tinhareg ebda fattura ta' taxxa ghal dik il-provvista, dik il-persuna tista' ttipprovdri dokument lilha nnifisha dwar dik il-provvista u dak id-dokument ghandu jitqies bhala fattura ta' taxxa jekk ikun jikkonforma mal-htigijiet ta' din l-Iskeda u jkun hekk approvat mill-Kummissarju: izda ebda approvazzjoni bhal dik ma tkun mehtiega jekk dik il-persuna tkun il-persuna responsabbli ghat-taxxa fuq dik il-provvista.

Minn dawn id-disposizzjonijiet johorgu s-segwenti principji:

- Il-jedd ghall-kreditu ghall-Input Tax ma huwiex jedd awtomatiku izda jehtieg li jkun debitament pruvat u sostanzjat, *inter alia* bil-produzzjoni ta' fattura ta' taxxa;
- Fattura ta' taxxa biex tkun tikkostitwixxi prova idoneja ghall-finijiet ta' kreditu ghall-Input Tax ghandu jkun fiha l-partikolaritajiet indikati fl-Artikolu 2 tat-Tnax-il Skeda ta' l-Att X ta' l-2003;
- Fattura ta' taxxa normalment tinhareg mill-persuna li ttipprovdri s-servizz izda jekk din il-persuna ma tohrogx fattura, il-persuna li tircievi dak is-servizz tista' ttipprovdri dokument lilha nnifisha dwar dik il-provvista u dak id-dokument ghandu jitqies bhala fattura ta' taxxa jekk ikun konformi mal-partikolaritajiet elenkati fit-Tnax-il Skeda u jekk minn jipprezenta d-dokument ikun ukoll il-persuna responsabbli ghat-taxxa fuq dak id-dokument, tali dokument lanqas jehtieg l-approvazzjoni *ad hoc* tal-Kummissarju tat-Taxxa fuq il-Valur Mizjud.

Fid-dawl ta' dawn id-disposizzjonijiet tal-Ligi jirrizulta immedjatament evidenti li l-insistenza tal-Kummissarju tat-Taxxa fuq il-Valur Mizjud ghall-firma fuq il-fatturi sottomessi mis-socjetà Rikorrenti, *a prescindere* u indipendentement mill-partikolaritajiet l-ohra kollha ta' l-istess fatturi, biex dawn jigu minnu accettati ghall-finijiet tal-kreditu ghall-Input Tax ma hijiex supportata minn u ai termini

tal-Ligi applikabbli għall-kaz in ezami. B'hekk tali insistenza ma tistax għajr li titqies bhala għal kollox illegittima u bla bazi legali.

Li invece kellu jagħmel il-Kummissarju tat-Taxxa fuq il-Valur Mizjud kien illi xorta wahda jikkonsidra dawk il-fatturi li gew sottomessi mis-socjetà Rikorrenti li però ma kienux iffirmati mill-provditur tas-servizz, f'dan il-kaz il-varji *subcontractors* inkarigati mis-socjetà Rikorrenti, u kemm-il darba jirrizultalu li indipendentement mill-firma tal-provditur tas-servizz, dawn kienu in konformità ma' l-Artikolu 2 tat-Tnax-il Skeda ta' l-Att X ta' l-2003 kellu jaccettahom bhala prova sodisfacenti in sostenn tal-kreditu għall-Input Tax mitlub mis-socjetà Rikorrenti.

Applikat tali ragunament fil-kuntest ta' l-analizi tal-fatturi u cheques relattivi esebiti mis-socjetà Rikorrenti flimkien ma' l-affidavit ulterjuri ta' Catherine Abela ipprezentat fid-19 ta' Frar 2014 a fol. 79 sa' 440 tal-process, it-Tribunal hu tal-fehma li anke jekk mhux iffirmati, il-Kummissarju tat-Taxxi għandu jaccetta s-segweni fatturi, li del resto ad eccezzjoni tal-firma tas-*subcontractor*, għandhom l-istess partikolaritajiet tal-fatturi minnu già accettati, u jakkorda l-kreditu għall-Input Tax fil-perijodu ta' taxxa rilevanti:

- Fattura a fol. 86 tal-process;
- Fattura a fol. 90 tal-process;
- Fattura a fol. 92 tal-process;
- Fattura a fol. 96 tal-process;
- Fattura a fol. 102 tal-process;
- Fattura a fol. 104 tal-process;
- Fattura a fol. 115 tal-process;
- Fattura a fol. 123 tal-process;
- Fattura a fol. 137 tal-process;
- Fattura a fol. 139 tal-process;
- Fattura a fol. 152 tal-process;
- Fattura a fol. 154 tal-process;
- Fattura a fol. 167 tal-process;
- Fattura a fol. 169 tal-process;
- Fattura a fol. 175 tal-process;
- Fattura a fol. 181 tal-process;
- Fattura a fol. 183 tal-process;
- Fattura a fol. 185 tal-process;
- Fattura a fol. 191 tal-process;
- Fattura a fol. 193 tal-process;
- Fattura a fol. 195 tal-process;
- Fattura a fol. 206 tal-process;
- Fattura a fol. 208 tal-process;
- Fattura a fol. 210 tal-process;
- Fattura a fol. 219 tal-process;
- Fattura a fol. 221 tal-process;
- Fattura a fol. 223 tal-process;

- Fattura a fol. 235 tal-process;
- Fattura a fol. 244 tal-process;
- Fattura a fol. 250 tal-process;
- Fattura a fol. 252 tal-process;
- Fattura a fol. 260 tal-process;
- Fattura a fol. 262 tal-process;
- Fattura a fol. 269 tal-process;
- Fattura a fol. 271 tal-process;
- Fattura a fol. 273 tal-process;
- Fattura a fol. 279 tal-process;
- Fattura a fol. 281 tal-process;
- Fattura a fol. 283 tal-process;
- Fattura a fol. 287 tal-process;
- Fattura a fol. 289 tal-process;
- Fattura a fol. 291 tal-process;
- Fattura a fol. 295 tal-process;
- Fattura a fol. 299 tal-process;
- Fattura a fol. 301 tal-process;
- Fattura a fol. 303 tal-process;
- Fattura a fol. 307 tal-process;
- Fattura a fol. 309 tal-process;
- Fattura a fol. 311 tal-process;
- Fattura a fol. 342 tal-process;
- Fattura a fol. 343 tal-process;
- Fattura a fol. 345 tal-process;
- Fattura a fol. 347 tal-process;
- Fattura a fol. 354 tal-process;
- Fattura a fol. 358 tal-process;
- Fattura a fol. 360 tal-process;
- Fattura a fol. 363 tal-process;
- Fattura a fol. 365 tal-process;
- Fattura a fol. 372 tal-process;
- Fattura a fol. 374 tal-process;
- Fattura a fol. 382 tal-process;
- Fattura a fol. 394 tal-process;
- Fattura a fol. 396 tal-process;
- Fattura a fol. 405 tal-process;
- Fattura a fol. 410 tal-process;
- Fattura a fol. 416 tal-process;
- Fattura a fol. 430 tal-process;
- Fattura a fol. 432 tal-process;
- Fattura a fol. 437 tal-process; u
- Fattura a fol. 439 tal-process;

Ladarba dawn il-fatturi ghandhom, fil-fehma tat-Tribunal, jigu accettati ghall-finijiet ta' kreditu ghall-Input Tax, isegwi li l-Kummissarju tat-Taxxi ghandu jakkorda s-segwenti kreditu ghall-Input Tax fis-segwenti perijodi ta' taxxa:

01.03.05-31.05.05 – Lm421.27 – illum ekwivalenti ghal **€981.29**
01.06.05-30.08.05 – Lm377.06 – illum ekwivalenti ghal **€878.31**
01.09.05-30.11.05 – Lm240.04 – illum ekwivalenti ghal **€559.14**
01.12.05-28.02.06 – Lm1.13 – illum ekwivalenti ghal **€2.63**
01.03.06-31.05.06 – Lm266.08 – illum ekwivalenti ghal **€619.80**
01.06.06-31.08.06 – Lm294.19 – illum ekwivalenti ghal **€685.27**
01.09.06-30.11.06 – Lm204.60 – illum ekwivalenti ghal **€476.59**
01.12.06-28.02.07 – Lm7.78 – illum ekwivalenti ghal **€18.12**
01.03.07-31.05.07 – Lm163.71 – illum ekwivalenti ghal **€381.34**
01.06.07-31.08.07 – Lm428.14 – illum ekwivalenti ghal **€997.39**
01.09.07-30.11.07 – Lm 267.09 – illum ekwivalenti ghal **€622.15**
01.01.08-29.02.08 - **€9.78**
01.03.08-31.05.08 - **€829.99**
01.06.08 – 31.08.08 - **€2,030.52**
01.09.08-30.11.08 - **€1,070.11**
01.12.08-28.02.09 - **€359.73**

Il-fatturi l-ohra sottomessi mis-socjetà Rikorrenti u li ma gewx accettati mit-Tribunal bhala li jikkostitwixxu prova sodisfacenti ghall-finijiet ta' kreditu ghall-Input Tax huma:

- Fatturi li ghandhom wiehed jew iktar mill-partikolaritajiet elenkati fl-Artikolu 2 tat-Tnax-il Skeda ta' l-Att X ta' l-2003 neqsin, u dana b'mod partikolari ghall-VAT number tal-providtur tas-servizz;
- Fatturi fejn is-socjetà Rikorrenti b'mod ghal kollox informali u mhux debitament sostanzjat u/jew ippruvat, iggustifikat id-differenza bejn l-import tal-fattura u l-import tac-cheque rapprezentanti l-hlas bhala *deductions*;
- Fatturi li jirrigwardaw provvisti *exempt of tax* fejn allura ma thallset l-ebda taxxa da parte tas-socjetà Rikorrenti;
- Fatturi li jirreferu ghall-perijodi ta' taxxa li ma jiffurmawx parti mill-mertu ta' dawn il-proceduri, ossia perijodi ta' taxxa li jigu wara l-perijodu ta' taxxa 01.12.08-28.02.09; u
- Fatturi fejn l-import tal-fattur u l-import tac-cheque ma jaqblux bejniethom u dana bla ebda forma ta' gustifikazzjoni.

Dawn il-fatturi ma gewx accettati ghaliex minkejja dak provdut fl-Artikolu 50(4) ta' l-Att X ta' l-2003, l-Artikolu 10 tat-Tnax-il Skeda ta' l-istess imsemmi Att jipprovdi b'mod car li *meta ssir provvista ta' taxxa minn persuna u ma tinhareg ebda fattura ta' taxxa ghal dik il-provvista, dik il-persuna tista' tipprovdi dokument lilha nnifisha dwar dik il-provvista u **dak id-dokument ghandu jitqies bhala fattura ta' taxxa jekk ikun jikkonforma mal-htigijiet ta'***

din l-Iskeda¹⁵ u jkun hekk approvat mill-Kummissarju: izda ebda approvazzjoni bhal dik ma tkun mehtiega jekk dik il-persuna tkun il-persuna responsabbli ghat-taxxa fuq dik il-provvista u ghaldaqstant is-socjetà Rikorrenti ma tista' bl-ebda mod tippretendi li fatturi li ma humiex in konformità mal-Ligi jigu accettati bhala prova sodisfacenti ghall-finijiet ta' kreditu ghall-Input Tax. Naturalment in kwantu rigwarda dawk il-fatturi li jirreferu ghall-perijodi ta' taxxa mhux mertu ta' dawn il-proceduri, it-Tribunal ma jistax jippronunzja ruhu dwarhom u ma jista' jiddetermina xejn in kwantu rigwarda Input Tax relattiva ghal dak il-perijodi ta' taxxa.

F'dan il-punt it-Tribunal ihossu fid-dover jaghmel ffit kummenti fuq sottomissjoni li tant sahaq fuqha l-Kummissarju tat-Taxxi fin-Nota Responsiva tieghu u cioè li l-fatturi sottomessi mis-socjetà Rikorrenti ghandhom jigu ittrattati b'suspett u l-veracità tal-kontenut taghhom iddubitata ghaliex minn *audit trail* li sar fuq zewg VAT numbers partikolari, ossia dak relattiv ghal Bonu Garage u dak relattiv ghal JJ Abela Ltd. irrizulta li l-imsemmija zewg entitajiet kummercjali qed isostnu li ma pprovdewx xoghol fil-valur indikat mis-socjetà Rikorrenti fid-dokumentazzjoni ppreparata minnha.

Fir-rigward ta' din is-sottomissjoni tal-Kummissarju t-Tribunal ma jistax ma josservax li dak li jirrizulta mill-Investigations Audit Report – li huwa l-unika prova li tressqet fir-rigward ta' dak li l-Kummissarju jikkontendi li rrizulta mill-*audit trail* imsemmi – huwa s-segwent: *to verify the authenticity of the invoices, two vat numbers were taken as a sample – MT 1127-0316 and MT 1636-0310 and two audit trail exercises are being carried out accordingly. A prima facie*¹⁶ *it transpires that there is a discrepancy between the documents produced by XXX. and the declarations in the vat returns. Two separate meetings were held with Bonu Garage Ltd. and JJ Abela Ltd. and both stated that they were 'forced' to sign the invoices in November 2009 and that the invoices did not reflect the amount of work carried out by them. In this regard, a random sample of invoices was selected in order to obtain the respective cheque images (vide Red 53).*

Jirrizulta car li hawn l-Ispetturi tad-Dipartiment tat-Taxxa fuq il-Valur Mizjud li kienu qed imexxu l-investigazzjoni fil-konfront tas-socjetà Rikorrenti ghamlu biss osservazzjoni *prima facie* u mhux taw konkluzzjoni definittiva dwar l-veracità o meno tal-fatturi sottomessi mis-socjetà Rikorrenti. Il-Kummissarju tat-Taxxi in realtà ma ressaq l-ebda prova li b'xi mod timpingi fuq il-veracità tal-kontenut – u dan in kwantu rigwarda ammont ta' xoghol dikjarat li gie esegwit mis-*subcontractor* partikolari bil-konsegwenti valur ta' korrispettiv, inkluz l-element ta' VAT, imhallas lil dak is-*subcontractor* – tal-fatturi sottomessi mis-socjetà Rikorrenti ghall-konsiderazzjoni ta' dan it-Tribunal. Anke jekk ghall-grazzja ta' l-argument wiehed kellu jargumenta li a tenur ta' l-Artikolu 2(2) tad-Disa' Skeda tal-Kap.406 tal-Ligijiet ta' Malta, l-oneru tal-prova li l-istima mahruga mill-

¹⁵ Enfasi u sottolinear tat-Tribunal.

¹⁶ Enfasi tat-Tribunal.

Kummissarju hija eccessiva huwa fuq it-*taxpayer*¹⁷, appellant f'dawn il-proceduri, jibqa' l-fatt li una volta dak it-*taxpayer* iressaq il-provi in sostenn tal-posizzjoni tieghu, sta ghall-Kummissarju li jirribatti bi provi adegwati u sodisfacenti l-provi ta' l-appellant u ma jistax jippretendi li javvanza sottomissjonijiet tal-portata bhala dik tas-sottomissjoni hawn trattata minghajr l-icken forma ta' prova konkreta in sostenn ta' l-istess.

Fil-kaz in ezami tali prova da parte tal-Kummissarju tat-Taxxi, ossia l-prova li l-import tal-fatturi esebiti mis-socjetà Rikorrenti ma jirrispekkjax il-volum reali ta' xoghol moghti lil u esegwit mis-*subcontractors* inkarigati minnha, kienet ferm iktar mehtiega ghar-raguni li pratikament ma' kull fattura s-socjetà Rikorrenti esebiet ukoll *cheque image* tal-pagament effettwat lis-*subcontractor* koncernat. Fid-dawl ta' dan ghalhekk it-Tribunal iqis li s-sottomissjoni tal-Kummissarju tat-Taxxi bbazata fuq dak li skontu rrizulta mill-*audit trail* ghandha tigi kkunsidrata fil-lenti attwali taghha, ossia li hija sottomissjoni bla bazi probatorja, u bhala tali ghandha tigi skarata.

In fine t-Tribunal josserva li ghalkemm fl-affidavit taghha Joyce Bartolo¹⁸ tiddikjara li l-kreditu ghall-Input Tax fl-ammont ta' €9,178.19 rapprezentanti taxxa mhallsa mis-socjetà Rikorrenti ghall-akkwist ta' vettura ta' l-ghamla Mercedes Benz bin-Numru ta' Registrazzjoni IMY-401 baqa' ma inghatax lis-socjetà Rikorrenti, mill-atti processwali u senjatament mill-Investigations Audit Report u mill-istima ghall-perijodu ta' taxxa 01.03.09-31.05.09¹⁹ jirrizulta li fil-fatt tali kreditu nghata lis-socjetà Rikorrenti. Apparte minn dan il-fatt, it-Tribunal josserva wkoll li l-istima ghall-perijodu ta' taxxa 01.03.09-31.05.09 ma tifformax parti mill-mertu ta' dan l-appell, liema appell – hekk kif jirrizulta mir-Rikors tas-socjetà Rikorrenti stess – jittratta esklussivament dwar l-istimi ghall-perijodi ta' taxxa 01.03.05-28.02.09.

Ghal dawn ir-ragunijiet it-Tribunal jaqta' u jiddeciedi billi jilqa' in parte l-appell tas-socjetà Rikorrenti mill-istimi mahruqa fil-konfront taghha mill-Kummissarju tat-Taxxa fuq il-Valur Mizjud ghall-perijodi ta' taxxa 01.03.05-31.05.05, 01.06.05-30.08.05, 01.09.05-30.11.05, 01.12.05-28.02.06, 01.03.06-31.05.06, 01.06.06-31.08.06, 01.09.06-30.11.06, 01.12.06-28.02.07, 01.03.07-31.05.07, 01.06.07-31.08.07, 01.09.07-30.11.07, 01.12.07-31.12.07, 01.01.08-29.02.08, 01.03.08-31.05.08, 01.06.08-31.08.08, 01.09.08-30.11.08, 01.12.08-28.02.09 u filwaqt li jakkorda kreditu ghall-Input Tax ghall-perijodi ta' taxxa kollha hawn indikati hlief ghall-perijodu ta' taxxa 01.12.07-31.12.07, jirriduci l-istimi ghall-imsemmija perijodi ta' taxxa kollha, hlief ghall-istima ghall-perijodu ta' taxxa 01.12.07-31.12.07 fl-ammonti segwenti: (i) 01.03.05-31.05.05 - €981.29; (ii) 01.06.05-30.08.05 - €878.31; (iii) 01.09.05-30.11.05 - €559.14; (iv) 01.12.05-28.02.06 - €2.63; (v) 01.03.06-31.05.06 - €619.80; (vi) 01.06.06-31.08.06 - €685.27; (vii) 01.09.06-30.11.06 - €476.59; (viii) 01.12.06-28.02.07 - €18.12; (ix) 01.03.07-31.05.07 - €381.34; (x) 01.06.07-31.08.07 - €997.39; (xi) 01.09.07-

¹⁷ Din l-osservazzjoni qed issir bla pregudizzju ghal dak diversi drabit ritenut mit-Tribunal fir-rigward ta' tali oneru tal-prova meta t-*taxpayer* jigi rinfaccjat anke b'talba ghall-hlas ta' taxxa amministrattiva.

¹⁸ Dok. "JB" a fol. 44 tal-process.

¹⁹ Annessa mar-Rikors promotur.

30.11.07 - €622.15; (xii) 01.01.08-29.02.08 - €9.78; (xiii) 01.03.08-31.05.08 - €829.99; (xiv) 01.06.08 - 31.08.08 - €2,030.52; (xv) 01.09.08-30.11.08 - €1,070.11; u (xvi) 01.12.08-28.02.09 - €359.73.

L-ispejjez ta' dawn il-proceduri ghandhom jigu sopportati interament mill-Kummissarju tat-Taxxi.

MAGISTRAT

DEPUTAT REGISTRATUR