



MALTA

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

Rikors Nru. 134/12VG

XXX

Vs

Kummissarju tat-Taxxa fuq il-Valur Mizjud

Illum 5 ta' Dicembru 2017

It-Tribunal,

Ra r-Rikors ipprezentat mis-socjetà XXX Co. Limited quddiem il-Bord ta' l-Appell dwar it-Taxxa fuq il-Valur Mizjud fl-4 ta' Mejju 2011, in segwitu trasferiti quddiem dan it-Tribunal, permezz ta' liema titlob li t-talba għall-ghoti ta' garanzija avanzata mill-Kummissarju tat-Taxxa fuq il-Valur Mizjud fil-konfront tagħha tigi revokata jew alternattivament ridotta ragjonevolment u dana billi: (a) ladarba Gregory Brincat già gie ppenalizzat mill-Qorti u rriżenja mill-kariga ta' Direttur, it-talba tal-Kummissarju għall-ghoti ta' garanzija ma hijiex ragjonevoli; (b) il-Kummissarju tat-Taxxa fuq il-Valur Mizjud ma segwiex il-Ligi meta ressaq it-talba tiegħu; u (c) l-ittra datata 31 ta' Awwissu 2010, intbagħtet hazin; bl-ispejjeż kontra l-Kummissarju tat-Taxxa fuq il-Valur Mizjud;

Ra d-dokumenti annessi mar-Rikors promotur senjatament l-ittri mill-Kummissarju tat-Taxxa fuq il-Valur Mizjud lis-socjetà Rikorrenti datati 25 ta' Awwissu 2010, 31 ta' Awwissu 2010 u 3 ta' Settembru 2010 u l-ittra mis-socjetà Rikorrenti lill-Kummissarju tat-Taxxa fuq il-Valur Mizjud datata 30 ta' Awwissu 2010;

Ra r-Risposta tad-Direttur Generali (Taxxa fuq il-Valur Mizjud) permezz ta' liema jopponi għat-talbiet tas-socjetà Rikorrenti u jitlob li l-istess jigu michuda, bl-ispejjeż kontra tagħha, stante li: (i) a tenur ta' l-Artikolu 66 tal-Kap.406 tal-Ligijiet ta' Malta s-socjetà għandha responsabilità solidali mal-persuna li tkun rappreżentant tagħha; (ii) fil-kaz tas-socjetà Rikorrenti, kif

inhu pubblikament maghruf, kien hemm ksur ta' l-obbligi fiskali taghha vis-à-vis il-Kummissarju tat-Taxxa fuq il-Valur Mizjud u ghalhekk illum ma tistax titqajjem id-difiza ta' l-agir in *bona fede*; (iii) huwa mexa b'mod skrupluz fl-applikazzjoni tal-Ligi, senjatament ta' l-Artikolu 63(5) tal-Kap.406 tal-Ligijiet ta' Malta, u kkomunika diversi drabi bil-miktub mas-socjetà Rikorrenti u l-legali taghha; u (iv) l-ammont ghall-garanzija mitlub minnu ma huwiex ezagerat in kwantu in verità jirappresenta 4.6% ta' l-ammont ta' taxxa ddikjarat mis-socjetà Rikorrenti stess fid-denunzji taghha ghall-perijodu bejn l-1 ta' Mejju 2004 u l-31 ta' Marzu 2012;

Ra d-dokumenti annessi mar-Risposta tad-Direttur Generali (Taxxa fuq il-Valur Mizjud) markati Dok. "A" sa' Dok. "B3" a fol. 19 sa' 24 tal-process;

Ra d-dokumenti, ossia ittra ufficjali pprezentata fil-konfront tal-Kummissarju tat-Taxxi Interni f'April 2012 u l-atti tal-proceduri fl-ismijiet "S&R Handaq Ltd, S&R (Packaging) Ltd, Brincat's Co. Ltd u Legnolack Co. Ltd v. Kummissarju tat-Taxxa fuq il-Valur Mizjud" bl-appelli Nri. 14/10, 15/10, 13/10 u 16/10 rispettivament, li gew decizi mill-Bord ta' l-Appell dwar it-Taxxa fuq il-Valur Mizjud b'decizjoni moghtija fis-26 ta' Ottubru 2011, esebiti mis-socjetà Rikorrenti permezz ta' Nota pprezentata fid-29 ta' Ottubru 2012 a fol. 26 sa' 52 tal-process;

Sema' x-xhieda ta' Roderic Sultana in rapprezentanza tad-Direttur Generali (Taxxa fuq il-Valur Mizjud) moghtija waqt is-seduta tal-5 ta' Frar 2013¹, ra d-dokumenti li juru r-riduzzjoni fil-multi li dwarhom kien xehed Roderic Sultana waqt is-seduta tal-5 ta' Frar 2013 esebiti mid-Direttur Generali (Taxxa fuq il-Valur Mizjud) permezz ta' Nota pprezentata fil-11 ta' Frar 2013 a fol. 59 sa' 61 tal-process, ra l-affidavit tal-Kummissarju tat-Taxxi u d-dokument anness mieghu, ossia vera kopja tal-*guidelines* in bazi ghal liema ntalbet il-garanzija minghand is-socjetà Rikorrenti, esebiti mill-istess Kummissarju tat-Taxxi permezz ta' Nota pprezentata fit-2 ta' Gunju 2015, ra l-affidavit ta' Joanne Hefney esebiti mill-Kummissarju tat-Taxxi permezz ta' Nota ipprezentata fl-14 ta' April 2016 a fol. 77 u 78 tal-process u sema' x-xhieda ta' Joanne Hefney moghtija waqt is-seduta tal-11 ta' Ottubru 2016²;

Sema' t-trattazzjoni orali da parte tad-difensur tas-socjetà Rikorrenti waqt is-seduta tat-2 ta' Mejju 2017³ fejn essenzjalment issottomettiet li s-socjetà Rikorrenti tirrimetti ruhha ghall-provi li hemm fl-atti izda, in kwantu rigwarda l-ispejjez tal-proceduri, dawn ma ghandhomx jigu sopportati minnha peress li biex il-Kummissarju pprezenta l-*guidelines* kellhom fil-fatt jigu istitwiti l-proceduri odjerni;

¹ Fol. 57 u 58 tal-process.

² Fol. 83 sa' 86 tal-process.

³ Fol. 89 tal-process.

Ra n-Nota ta' Sottomissjonijiet tal-Kummissarju tat-Taxxi a fol. 91 sa' 98 tal-process;

Ra l-atti kollha tal-kawza;

Ikkonsidra:

Bil-proceduri odjerni s-socjetà Rikorrenti tikkontesta d-decizjoni tal-Kummissarju tat-Taxxa fuq il-Valur Mizjud, illum Kummissarju tat-Taxxi, li jesigi minghandha garanzija bankarja fl-ammont ta' €13,126 bhala kondizzjoni sabiex tforni prodotti jew servizzi, liema decizjoni giet komunikata lilha b'ittra datata 25 ta' Awwissu 2010, in segwitu sostitwita b'ittra ohra datata 31 ta' Awwissu 2010. Is-socjetà Rikorrenti tikkontendi li tali decizjoni ghandha tigi revokata jew alternattivament l-ammont ta' garanzija mitluba jigi ridott ragjonevolment stante li: (a) ladarba Gregory Brincat già gie penalizzat mill-Qorti u rrienza minn Direttur tas-socjetà, it-talba tal-Kummissarju ghall-ghoti ta' garanzija ma hijiex ragjonevoli; (ii) il-Kummissarju ma segwiex il-Ligi, senjatament l-Artikolu 63(5) tal-Kap.406 tal-Ligijiet ta' Malta, meta ghamel it-talba tieghu; u (iii) l-ittra datata 31 ta' Awwissu 2010 inbaghtet hazin.

Id-Direttur Generali (Taxxa fuq il-Valur Mizjud), illum Kummissarju tat-Taxxi, jopponi ghat-talbiet tas-socjetà Rikorrenti u jitlob li l-istess jigu michuda stante li: (i) a tenur ta' l-Artikolu 66 tal-Kap.406 tal-Ligijiet ta' Malta s-socjetà ghandha responsabilità solidali mal-persuna li tkun rapprezentant taghha; (ii) fil-kaz tas-socjetà Rikorrenti, kif inhu pubblikament maghruf, kien hemm ksur ta' l-obbligi fiskali taghha vis-à-vis il-Kummissarju tat-Taxxa fuq il-Valur Mizjud u ghalhekk illum ma tistax titqajjem id-difiza ta' l-agir in *bona fede*; (iii) huwa mexa b'mod skrupluz fl-applikazzjoni tal-Ligi, senjatament ta' l-Artikolu 63(5) tal-Kap.406 tal-Ligijiet ta' Malta, u kkomunika diversi drabi bil-miktub mas-socjetà Rikorrenti u l-legali taghha; u (iv) l-ammont ghall-garanzija mitlub minnu ma huwiex ezagerat in kwantu in verità jirapprezenta 4.6% ta' l-ammont ta' taxxa ddikjarat mis-socjetà Rikorrenti stess fid-denunzji taghha ghall-perijodu bejn l-1 ta' Mejju 2004 u l-31 ta' Marzu 2012.

B'ittra datata 25 ta' Awwissu 2010, is-socjetà Rikorrenti giet infurmata mill-Kummissarju tat-Taxxa fuq il-Valur Mizjud li *in terms of Article 63(5) of the VAT Act (Chapter 406 of the Laws of Malta) you are required to provide as security with immediate effect a bank guarantee to the name of the Commissioner of VAT. This bank guarantee, to be made with a Maltese local commercial bank for the amount of €13,126, is to be for five years and automatically renewable after a period of one year. The Commissioner of VAT shall, during the period covered by the guarantee, have no restrictions on the part of the guarantor to encash the guarantee. Moreover, the Commissioner of VAT reserves the right to request additional guarantees if circumstances justify. You are being warned that, should you fail to provide the security being required by the Commissioner of VAT according to the*

above terms, you could be prosecuted in Court in terms of Article 76(d) of the VAT Act (Chapter 406 of the Laws of Malta)⁴. L-ittra tal-25 ta' Settembru 2010 giet segwita u effettivament sostitwita b'ittra ohra datata 31 ta' Awwissu 2010 permezz ta' liema l-Kummissarju tat-Taxxa fuq il-Valur Mizjud gharraf lis-socjetà Rikorrenti li in terms of Article 63(5) of the VAT Act (Chapter 406 of the Laws of Malta), the Commissioner of VAT may, for the protection of Government revenue, require a taxable person, as a condition for that person to supply goods or services, to give such security for that amount and in such manner as the Commissioner may determine, for the payment of any tax that is or may become due by him under the VAT Act. Therefore, you are directed to provide the Commissioner of VAT a security, by means of a bank guarantee, by not later than 30 days from the date of receipt of this letter. This bank guarantee is to be made with a local commercial bank to the amount of €13,126 and should cover a period of five years, automatically renewable after a period of one year. The guarantee shall have no restrictions on the part of the guarantor that would impede the Commissioner of VAT from requesting the guarantee payment. A model of such guarantee is being attached. You are being advised that, should you fail to provide such security while you continue to perform an economic activity, you would be in breach of the provisions of article 76(d) of the VAT Act and would be prosecuted. This letter supersedes letter dated 25th August 2010⁵.

B'ittra datata 30 ta' Awwissu 2010, is-socjetà Rikorrenti interpellat lill-Kummissarju sabiex jgharrafha on what basis and under what circumstances has the Commissioner of VAT decided that it was necessary for the protection of Government revenue to impose the requirement of a bank guarantee as a condition for our client to continue to supply goods and services? This information is being requested because prima facie the decision goes against the principles of natural justice, is discriminatory and is penalizing a company for the acts of one of it's directors [who has already been sufficiently penalized by the Courts of Law]. This information is required in terms of article 6 of Schedule 9 of Chapter 406⁶. In risposta ghal din l-ittra, b'ittra datata 3 ta' Settembru 2010, il-Kummissarju tat-Taxxa fuq il-Valur Mizjud gharraf lis-socjetà Rikorrenti li the Commissioner of VAT may, for the protection of Government revenue, require the payment of such guarantee. In view of the fact that Mr. Gregory Paul Brincat, director of XXX Co. Ltd. was found guilty, by the Court, of VAT Fraud, such guarantee is being requested as a security for the protection of revenue⁷.

L-Artikolu 63(5) tal-Kap.406 tal-Ligijiet ta' Malta fuq liema l-Kummissarju tat-Taxxa fuq il-Valur Mizjud isejjes it-talba tieghu fil-konfront tas-socjetà Rikorrent ghall-hrug ta' garanzija sabiex tforni prodotti jew servizzi, jipprovdi

⁴ Annessa mar-Rikors promotur.

⁵ Annessa mar-Rikors promotur.

⁶ Annessa mar-Rikors promotur.

⁷ Annessa mar-Rikors promotur.

li: *fejn il-Kummissarju jidhirlu li jkun hemm il-htiega biex jigi protett id-dhul tal-Gvern, huwa jista', f'kull zmien, taht il-kondizzjonijiet approvati mill-Ministru, jitlob lil persuna taxxabli bhala kondizzjoni ghal dik il-persuna biex tforni l-prodotti jew servizzi, sabiex taghmel dik il-garanzija, jew garanzija addizzjonali, ghal dak l-ammont u bil-mod li l-Kummissarju jista' jistabilixxi, ghall-hlas ta' xi taxxa li ghandha jew ikollha tithallas minnha skond dan l-Att.*

Tul is-smigh ta' dawn il-proceduri s-socjeta Rikorrenti talbet li jigu esebiti fl-atti ta' dawn il-proceduri l-kondizzjonijiet ossia *guidelines* approvati mill-Ministru tal-Finanzi li jirregolaw il-hrug tal-garanziji kontemplati fl-imsemmi Artikolu 63(5) tal-Kap.406 tal-Ligijiet ta' Malta. Tali talba giet milqugha b'Digriet moghti fil-5 ta' Frar 2013⁸, in segwitu kkonfermat mill-Qorti ta' l-Appell (Sede Inferjuri) bis-sentenza fl-ismijiet **XXX Co. Ltd. v. Kummissarju tat-Taxxa fuq il-Valur Mizjud, Appell Nru. 134/12** pronuncjata fid-29 ta' April 2015, u permezz ta' Nota pprezentata fit-2 ta' Gunju 2015 il-Kummissarju tat-Taxxi esebixxa *inter alia* l-*guidelines* in kwistjoni.

Mid-dokumenti esebiti mill-Kummissarju tat-Taxxi jirrizulta li b'ittra datata 22 ta' Mejju 2007, il-Kummissarju tat-Taxxa fuq il-Valur Mizjud talab l-approvazzjoni tal-Ministru tal-Finanzi ghas-segwent: *in terms of the provisions of Section 63(5) of the VAT Act, the Commissioner of VAT may require a taxable person to give a security referred to in this sub-article, under the conditions approved by the Minister. For this purpose you are kindly requested to approve that such security be imposed in the following circumstances: 1. The person had previously operated a business which ceased trading leaving a VAT debt; 2. The person currently runs a business that has significant VAT debts and is registering a new business for VAT; 3. The person running the business has on previous occasions been prosecuted for VAT fraud or VAT evasion; 4. Other persons concerned in the current registration of the business are connected with past defaults to pay VAT due; 5. The business is run by directors who have been officially banned to serve as directors or by persons who went bankrupt and who have not yet paid up their debts; 6. The business is viewed as having a risk of being used within a carousel fraud; 7. The person has been found to be understating the turnover in order to qualify for registration under Section 11 of the VAT Act (Small businesses scheme); 8. The person has no significant tangible assets and is carrying trade where there is demonstrable risk of a failure to pay VAT due within that trade; 9. There is reason to believe that the person has been trading without registering for VAT.* Din l-ittra tirrizulta ffirmata mill-Ministru tal-Finanzi ta' dak iz-zmien u ghalhekk il-kondizzjonijiet elenkati w esposti mill-Kummissarju tat-Taxxa fuq il-Valur Mizjud gew b'hekk approvati minnu (ossia mill-Ministru tal-Finanzi).

⁸ Fol. 55 u 56 tal-process.

Dejjem mid-dokumenti esebiti mill-Kummissarju tat-Taxxi permezz tan-Nota pprezentata fit-2 ta' Gunju 2015, tirrizulta e-mail mill-Kummissarju tat-Taxxa fuq il-Valur Mizjud lill-Ministru tal-Finanzi ta' dak iz-zmien, datata 18 ta' Mejju 2010, fejn essenzjalment il-Kummissarju gharraf u talab lill-Ministru s-segwent: *following the Court Sentences regarding cases of VAT fraud, I intend to issue a request for a bank guarantee to all sole traders and all companies whose directors have been found guilty by the Court of VAT fraud. Articles 63(5) of the VAT Act states that "Where it appears to the Commissioner that it is necessary for the protection of Government revenue, he may, at any time, under conditions approved by the Minister, require a taxable person, as a condition for that person to supply goods or services, to give such security, or further security, for that amount and in such manner as the Commissioner may determine, for the payment of any tax that is or may become due to him under this Act". The conditions where such guarantee (security) may be applied have been approved by your honourable self on the 27th May 2007 as per attached guidelines (ossia l-kondizzjonijiet/guidelines hawn appena citati). Under point 3 of the said guidelines (attached), I intend to issue a request for a bank guarantee of 50% of the amount of VAT defrauded on each VAT number. The amount would be rounded up or down. Such guarantee should be for five years and renewable every year. The highest single guarantee to be requested would be that from which would amount to The persons and VAT numbers on which such guarantee would be imposed are the following: Brincat Gregory Paul I.D. 330860M Re: Vat No. i. 1015-9123 Brincat's Co. Ltd. C5700 ii. 1008-5012 S&R Handaq Ltd C5790 iii. 1277-1803 XXX C16720 iv. 1680-7418 S&R Packaging Ltd. C31888. May I point out that if the sole trader or company fails to provide such guarantee within a reasonable time while it still carries on with its economic activity, we would then have to follow up by instituting criminal action in terms of article 76 of the VAT Act against the sole trader or the directors of the company. This would mean that if a director or a sole trader has a suspended sentence he would then become a relapser and would be condemned to imprisonment. Your approval is being sought to apply the conditions mentioned above in terms of article 63(5). Din it-talba tal-Kummissarju tat-Taxxa fuq il-Valur Mizjud giet approvata mill-Ministru tal-Finanzi fid-9 ta' Lulju 2010.*

Minn dawn id-dokumenti jirrizulta b'mod car ghalhekk li qabel ma l-Kummissarju tat-Taxxa fuq il-Valur Mizjud talab lis-socjeta' Rikorrenti tipprovdi garanzija fl-ammont ta' €13,126 ghall-perijodu ta' hames snin, awtomatikament rinovabbli kull sena, huwa ottjena l-approvazzjonijiet mehtiega minghand il-Ministru tal-Finanzi, ossia kemm tal-kondizzjonijiet infushom kif ukoll ta' l-imposizzjoni speicifika ta' tali kondizzjonijiet fir-rigward ta' socjetajiet li kien direttur taghhom Gregory Brincat, fosthom is-socjeta' Rikorrenti, hekk kif jitlob l-Artikolu 63(5) tal-Kap.406 tal-Ligijiet ta' Malta.

Mill-e-mail datata 18 ta' Mejju 2010 jirrizulta b'mod car li l-Kummissarju tat-Taxxa fuq il-Valur Mizjud talab l-ghoti ta' garanzija minghand is-socjetà Rikorrenti in bazi ghal *point 3 of the said guidelines* ossia in bazi ghall-*guideline* li tipprovdi li *the person running the business has on previous occasions been prosecuted for VAT fraud or VAT evasion*.

Fil-kaz in ezami huwa fatt inkontestat li Gregory Brincat kien instab hati ta' frodi in konnessjoni mat-taxxa fuq il-valur mizjud mwettqa fiz-zmien meta kien direttur ta', fost ohrajn, is-socjetà Rikorrenti, in forza ta' diversi sentenzi pronuncjati mill-Qrati ta' kompetenza Kriminali ossia, zewg sentenzi fl-ismijiet "Il-Pulizija v. Gregory Paul Brincat et" entrambe decizi mill-Qorti ta' l-Appell Kriminali fl-20 ta' Settembru 2012 u sentenza fl-ismijiet "Il-Pulizija v. Gregory Paul Brincat" deciza mill-Qorti ta' l-Appell Kriminali fit-13 ta' Novembru 2009 u li in segwitu ghal tali sentenzi huwa rrozenja mill-kariga ta' direttur ta', fost ohrajn, is-socjetà Rikorrenti. Huwa in bazi ghal tali rrozenja li s-socjetà Rikorrenti tikkontendi li l-Kummissarju tat-Taxxa fuq il-Valur Mizjud ma ghandux raguni valida in bazi ghal liema jitlobha taghti garanzija a tenur ta' l-Artikolu 63(5) tal-Kap.406 tal-Ligijiet ta' Malta. Madanakollu però fid-dawl tal-*guidelines* esebiti mill-Kummissarju w anke fid-dawl ta' dak li jirrizulta mill-provi prodotti mis-socjetà Rikorrenti stess, it-Tribunal huwa tal-fehma li nonostante r-rrozenja ta' Gregory Paul Brincat bhala direttur ta', fost ohrajn, is-socjetà Rikorrenti, il-Kummissarju tat-Taxxa fuq il-Valur Mizjud seta' legittimament u validament jitlob lis-socjetà Rikorrenti taghti garanzija ai termini ta' l-imsemmi Artikolu 63(5) tal-Kap.406 tal-Ligijiet ta' Malta.

Kif già osservat il-Kummissarju tat-Taxxa fuq il-Valur Mizjud jibbaza d-decizjoni tieghu ghall-ghoti ta' garanzija da parte tas-socjetà Rikorrenti in bazi ghall-*guideline* li *the person running the business has on previous occasions been prosecuted for VAT fraud or VAT evasion*. Mill-atti ta' l-appelli fl-ismijiet "S&R Handaq Limited, S&R (Packaging) Ltd., Brincat's Co. Ltd. u XXX Co. Ltd. v. Il-Kummissarju tat-Taxxa fuq il-Valur Mizjud" decizi mill-Bord ta' l-Appell dwar it-Taxxa fuq il-Valu Mizjud fis-26 ta' Ottubru 2011, esebiti mis-socjetà Rikorrenti permezz ta' Nota pprezentata fid-29 ta' Ottubru 2012⁹, jirrizulta li ghalkemm Gregory Paul Brincat kien irrrozenja bhala Direttur tas-socjetà Rikorrenti, huwa kien baqa' impjegat ta' l-istess socjetà fil-kwalità ta' General Manager. Di fatti mill-verbbal tas-seduta tat-12 ta' Ottubru 2011 fl-imsemmija proceduri quddiem il-Bord ta' l-Appelli dwar it-Taxxa fuq il-Valur Mizjud jirrizulta s-segwenti: *ic-Chairman accenna ghal dak li Dr. Vassallo kien qal fl-ewwel seduta li s-Sur Brincat "kien telaq minn direttur u sar impjegat". Huwa staqsa x'kienet il-posizzjoni tas-Sur Brincat wara r-rrozenji minn direttur. Huwa wiegeb li, wara li kien irrrozenja kif kien obligat, huwa kien baqa' jahdem fil-kumpanniji bhala General Manager, ghalkemm il-kariga ma kinitex hekk imsejha formalment*¹⁰. Fir-rigward ta' dak li jirrizulta minn tali dikjarazzjoni jibda biex jigi osservat li ai termini ta' l-Att

⁹ Fol. 28 sa' 54 tal-process.

¹⁰ Fol. 41 tal-process.

dwar il-Kumpanniji, Kap.386 tal-Ligijiet ta' Malta, *manager* jitqies li huwa ufficjal tal-kumpannija bhalma huma wkoll id-diretturi u l-*company secretary*¹¹ u ai termini ta' l-Artikolu 57 tal-Kodici tal-Kummerc, Kap.13 tal-Ligijiet ta' Malta, *l-institutur (manager) hu dak li jigi inkarigat, personalment u fil-fiss, mill-kummerc jew minn linja ta' kummerc tal-principal f'post jew f'posijiet partikolari*¹². It-test bl-Ingiliz ta' l-imsemmi provvediment tal-Ligi jipprovdi li *a manager is a person who is placed, personally and permanently, in charge of the business or of a branch of the business of the principal in one or more fixed places*¹³.

Minn dawn il-provvedimenti tal-Ligi johrog car ghalhekk li ghad illi Gregory Paul Brincat irrizenja mill-kariga ta' direttur tas-socjeta' Rikorrenti, bil-fatt li baqa' jahdem ma' l-istess socjeta' bhala General Manager huwa xorta wahda baqa' personalment u b'mod fiss inkarigat mill-kummerc tas-socjeta'. Fid-dawl ta' dawn ghalhekk jirrizulta li huwa baqa' jkopri fi hdan is-socjeta' Rikorrenti posizzjoni kontemplata fil-*guidelines* approvati mill-Ministru tal-Finanzi in bazi ghal liema l-Kummissarju tat-Taxxi, prevja l-approvazzjoni ulterjuri tal-Minsitru tal-Finanzi, seta' u ghadu jista' jesigi l-ghoti ta' garanzija minghand is-socjeta' Rikorrenti biex tforni prodotti jew servizzi a tenur ta' l-Artikolu 63(5) tal-Kap.406 tal-Ligijiet ta' Malta. Fid-dawl ta' dan ghalhekk id-decizjoni tal-Kummissarju tat-Taxxi li jesigi l-ghoti ta' garanzija minghand is-socjeta' Rikorrenti biex tforni prodotti u servizzi hija legittima, legali u ragjonevoli.

Is-socjeta' Rikorrenti tikkontendi wkoll li d-decizjoni tal-Kummissarju tat-Taxxi li jesigi garanzija minghandha biex tforni prodotti jew servizzi ma hijiex ragjonevoli ghar-raguni li Gregory Paul Brincat gia gie debitament ippenalizzat ghar-reati imwettqa minnu mill-Qrati ta' kompetenza Kriminali. Fil-fehma tat-Tribunal pero tali pretensjoni hija ghal kollox infondata fil-fatt u fid-dritt ghar-raguni li d-decizjoni tal-Kummissarju li jitlob tali garanzija minghand is-socjeta' Rikorrenti ma hijiex u ma tistax titqies bhala penali fil-konfront tas-socjeta' Rikorrenti u/jew ta' Gregory Paul Brincat. Id-decizjoni tal-Kummissarju tat-Taxxi hija mizura ta' salvagwardja ghall-erarju pubbliku fid-dawl tal-fatt li fl-ahhar mill-ahhar it-tmexxija tal-kummerc tas-socjeta' Rikorrenti ghadha u hija fdata lil jew ukoll lil Gregory Paul Brincat li huwa persuna li nstab hati ta' frodi fil-kuntest ta' taxxa fuq il-valur mizjud.

Is-socjeta' Rikorrenti tikkontendi wkoll li d-decizjoni tal-Kummissarju tat-Taxxi hija diskriminatorja izda, mill-provi prodotti tul is-smigh ta' dawn il-proceduri jirrizulta li dan ma huwiex assolutament il-kaz. Jibda biex jinghad illi din id-decizjoni hija msejsa – u dana b'mod legittimu – fuq provvediment specifiku tal-Ligi dwar it-Taxxa fuq il-Valur Mizjud, senjatament l-Artikolu 63(5) tal-Kap. 406 tal-Ligijiet ta' Malta, u tigi imposta, u minn dak li rrizulta

¹¹ Artikolu 2 tal-Kap. 386 tal-Ligijiet ta' Malta.

¹² Enfasi tat-Tribunal.

¹³ Enfasi tat-Tribunal.

mix-xhieda ta' Joanne Hefney moghtija waqt is-seduta tal-11 ta' Ottubru 2016¹⁴, effettivament giet imposta fuq dawk it-*taxpayers* kollha jew rapprezentanti taghhom li *inter alia* nstabu hatja ta' *VAT fraud or VAT evasion*.

Fid-dawl ta' dan kollu osservat it-Tribunal iqis li d-decizjoni tal-Kummissarju tat-Taxxi li jesigi minghand is-socjetà Rikorrenti l-ghoti ta' garanzija biex tforni prodotti u servizzi hija legali, legittima u ragjonevoli u ma hemm ebda raguni li ghandha twasslu biex jirrevokaha. Is-socjetà Rikorrenti in via alternattiva titlob li se mai l-*quantum* tal-garanzija jigi ridott b'mod ragjonevoli. Nonostante tali talba però ma tressqet assolutament l-ebda prova da parte tas-socjetà Rikorrenti in bazi ghal liema t-Tribunal jista' b'xi mod iqis li l-*quantum* tal-garanzija kif stabbilit mill-Kummissarju tat-Taxxa fuq il-Valur Mizjud, ossia l-ammont ta' €13,126, huwa – fic-cirkostanzi partikolari tas-socjetà Rikorrenti – ezagerat.

Fit-trattazzjoni finali d-difensur tas-socjetà Rikorrenti ssottomettiet li filwaqt li s-socjetà tirrimetti ruhha ghal dak li jirrizulta mill-atti, l-istess socjetà ma ghandhiex tigi kkundannata thallas l-ispejjez relattivi ghal dawn il-proceduri ghar-raguni li sabiex setghet tottjeni l-*guidelines* in bazi ghal liema ttiehdet id-decizjoni fil-konfront taghha, kellha tistitwixxi dawn il-proceduri. It-Tribunal qies din il-kwistjoni bir-reqqa izda mill-provvi prodotti tul is-smigh ta' dawn il-proceduri ma jirrizultalux li tali pretensjoni u konsegwenti sottomissjoni tas-socjetà Rikorrenti hija gustifikata.

Bl-ittra datata 30 ta' Awwissu 2010¹⁵ is-socjetà Rikorrenti talbet li tinghata raguni ghalfejn il-Kummissarju tat-Taxxa fuq il-Valur Mizjud kien qed jesigi minghandha l-ghoti ta' garanzija, liema raguni nghatat lilha permezz ta' l-ittra minghand il-Kummissarju tat-Taxxa fuq il-Valur Mizjud datata 3 ta' Settembru 2010¹⁶. Bil-proceduri odjerni s-socjetà Rikorrenti titlob ir-revoka ta' dik l-ittra ghaliex skontha ma hijiex ragonevoli. Imkien mill-imsemmija ittra tat-30 ta' Awwissu 2010 u mir-Rikors promotur ma jirrizulta li qabel il-ftuh ta' dawn il-proceduri s-socjetà Rikorrenti effettivament talbet b'mod specifiku l-*guidelines* in bazi ghal liema ttiehdet id-decizjoni mill-Kummissarju tat-Taxxa fuq il-Valur Mizjud u li kienet kostretta tistitwixxi dawn il-proceduri biex fil-fatt tottjeni kopja ta' tali *guidelines*. Kif già osservat dawn il-proceduri gew istitwiti mis-socjetà Rikorrenti ghar-raguni ewlenija li fil-fehma taghha l-imposizzjoni fuqha ta' ghoti ta' garanzija biex tforni prodotti u servizzi ghal nuqqasijiet ta' Gregory Brincat ma hijiex ragjonevoli, pretensjoni din li rrizultat ghal kollox infondata fil-fatt u fid-dritt.

Fid-dawl ta' dan kollu osservat jirrizulta li t-talbiet tas-socjetà Rikorrenti ma humiex gustifikati u b'hekk ma jisthoqqu li jigu milqugha.

¹⁴ Fol. 83 sa' 86 tal-process.

¹⁵ Annessa mar-Rikors promotur.

¹⁶ Annessa mar-Rikors promotur.

Ghal dawn ir-ragunijiet it-Tribunal jaqta' u jiddeciedi billi jichad it-talbiet tas-socjetà Rikorrenti u minflok jikkonferma d-decizjoni tal-Kummissarju tat-Taxxa fuq il-Valur Mizjud komunikata lis-socjetà Rikorrenti bl-ittra datata 31 ta' Awwissu 2010.

L-ispejjez ta' dawn il-proceduri ghandhom jigu sopportati interament mis-socjetà Rikorrenti.

A tenur ta' l-Artikolu 5(3) tad-Disa' Skeda tal-Kap. 406 tal-Ligijiet ta' Malta, it-Tribunal jordna li kopja ta' din id-decizjoni tigi komunikata lis-socjetà Rikorrenti u lill-Kummissarju tat-Taxxi.

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