



MALTA

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

Rikors Nru. 132/12VG

XXX

Vs

Kummissarju tat-Taxxa fuq il-Valur Mizjud

Illum 25 ta' Gunju 2018

It-Tribunal,

Ra r-Rikors ipprezentat mis-socjetà XXX quddiem il-Bord ta' l-Appelli dwar it-Taxxa fuq il-Valur Mizjud fit-22 ta' Frar 2011, in segwitu trasferit quddiem dan it-Tribunal, permezz ta' liema titlob li t-Tribunal ihassar u jirrevoka l-istimi mahruga fil-konfront taghha mill-Kummissarju tat-Taxxa fuq il-Valur Mizjud ghall-perijodi ta' taxxa 01.05.04-31.07.04, 01.08.04-31.10.04, 01.11.04-31.01.05, 01.02.05-30.04.05, 01.01.05-31.07.05, 01.08.05-31.10.05, 01.11.05-31.01.06, 01.02.06-30.04.06, 01.05.06-31.07.06, 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; bl-ispejjez kontra l-Kummissarju tat-Taxxa fuq il-Valur Mizjud;

Ra l-istimi mahruga fil-konfront tas-socjetà Rikorrenti ghall-perijodi ta' taxxa 01.05.04-31.07.04, 01.08.04-31.10.04, 01.11.04-31.01.05, 01.02.05-30.04.05, 01.01.05-31.07.05, 01.08.05-31.10.05, 01.11.05-31.01.06, 01.02.06-30.04.06, 01.05.06-31.07.06, 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, 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 mahruga fil-konfront taghha ghall-perijodi ta' taxxa 01.05.04-31.07.04, 01.08.04-31.10.04, 01.11.04-31.01.05, 01.02.05-30.04.05, 01.01.05-31.07.05, 01.08.05-31.10.05, 01.11.05-31.01.06, 01.02.06-30.04.06, 01.05.06-31.07.06, 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 u jitlob li l-istess jigi michud, bl-ispejjez kontra taghha, stante li l-imsemmija stimi huma gusti u jisthoqqilhom konferma;

Ra l-Investigations Audit Report u d-dokumenti u workings annessi mieghu, ittra mid-Dipartiment tat-Taxxa fuq il-Valur Mizjud datata 7 ta' Jannar 2011 indirizzata lis-socjetà Rikorrenti u r-Review Report u dokumenti u workings annessi mieghu, ilkoll annessi mar-Risposta tal-Kummissarju tat-Taxxa fuq il-Valur Mizjud;

Ra l-affidavit ta' Anatole Baldacchino u d-dokumenti annessi mieghu esebiti mis-socjetà Rikorrenti permezz ta' Nota pprezentata fit-18 ta' Settembru 2012 a fol. 12 sa' 18 tal-process, sema' x-xhieda ta' Anatole Baldacchino moghtija waqt is-seduta tal-5 ta' Frar 2013¹ u x-xhieda ta' Lorraine Dimech moghtija waqt is-seduti tad-9 ta' Mejju 2013², tas-16 ta' Lulju 2013³ u tas-27 ta' Novembru 2014⁴ u ra d-dokumenti esebiti minnha a fol. 35 sa' 91 tal-process, ra d-dokumenti esebiti mis-socjetà Rikorrenti permezz ta' Nota pprezentata fis-16 ta' Lulju 2013 a fol. 100 sa' 126 tal-process, sema' x-xhieda ta' Lorraine Galea moghtija waqt is-seduti tas-16 ta' Lulju 2013⁵ u tat-2 ta' Frar 2015⁶, ra l-affidavit ta' Martin Saliba u d-dokumenti annessi mieghu esebiti mis-socjetà Rikorrenti permezz ta' Nota pprezentata fid-19 ta' Novembru 2013 a fol. 146 sa' 190 tal-process, ra l-affidavit ta' Silvio Muscat u r-rapport anness mieghu esebiti mis-socjetà Rikorrenti permezz ta' Nota pprezentata fit-23 ta' Mejju 2014 a fol. 194 sa' 202 tal-process;

Ra n-Nota ta' Sottomissjonijiet tas-socjetà Rikorrenti a fol. 219 sa' 240 tal-process u ra in-Nota Responsiva tal-Kummissarju tat-Taxxi a fol. 241 sa' 258 tal-process;

Sema' t-trattazzjoni orali finali da parte tal-partijiet kontendenti;

Ra l-atti kollha tal-kawza;

Ikkonsidra:

Bil-proceduri odjerni s-socjetà Rikorrenti titlob li l-istimi mahruga fil-konfront taghha mill-Kummissarju tat-Taxxa fuq il-Valur Mizjud ghall-perijodi ta' taxxa 01.05.04-31.07.04, 01.08.04-31.10.04, 01.11.04-31.01.05, 01.02.05-30.04.05, 01.01.05-31.07.05, 01.08.05-31.10.05, 01.11.05-31.01.06, 01.02.06-30.04.06, 01.05.06-31.07.06, 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, permezz ta' liema qed tigi mitluba thallas is-somma komplessiva ta' €207,239.51 rapprezentanti taxxa flimkien mas-somma

¹ Fol. 26 sa' 33 tal-process.

² Fol. 92 sa' 98 tal-process.

³ Fol. 127 sa' 135 tal-process.

⁴ Fol. 213 u 214 tal-process.

⁵ Fol. 136 sa' 144 tal-process.

⁶ Fol. 216 u 217 tal-process.

komplexsiva ta' €44,801.70 rapprezentanti penali amministrattivi u s-somma komplexsiva ta' €123,340.99 rapprezentanti imghax, jigu kkancellati u revokati *in toto*.

Hija tibbaza l-appell taghha mill-imsemmija stimi in bazi ghas-segweni aggravji: (i) hija pprovdiet id-dokumentazzjoni kollha in sostenn tad-dikjarazzjonijiet tat-taxxa taghha u ghalhekk ma kien hemm l-ebda bazi ghall-hrug ta' l-istimi in kwistjoni; (ii) hija pprezentat lid-Dipartiment tat-Taxxa fuq il-Valur Mizjud rapport datat 10 ta' Ottubru 2010 fejn tirribatti fil-fatt u fid-dritt l-kalkoli li saru mid-Dipartiment izda l-istess Dipartiment naqas milli jevalwa r-rapport u minflok injorah kompletament bil-hrug ta' l-istimi finali; (iii) hija rceviet diversi ittri mid-Dipartiment tat-Taxxa fuq il-Valur Mizjud minn liema jirrizulta li tghid x'tghid is-socjeta', id-Dipartiment kien se jinjora d-dokumenti li tissottometti u minflok kien se johrog stima fil-konfront taghha; (iv) kien hemm diversi *deadlines* li ma kienux realistici u d-dokumentazzjoni mitluba mid-Dipartiment giet kollha sottomessa; (v) id-difensur taghha baghat diversi ittri lid-Dipartiment tat-Taxxa fuq il-Valur Mizjud fejn ilmenta mill-agir irregolari tad-Dipartiment, liema ittri pero ma gewx indirizzati u ghalhekk l-istimi nhargu fil-konfront taghha prematurament ghaliex ma huwiex realistiku li *taxpayer* jinghata data sa' meta ghandhom jigu sottomessi certa dokumenti u fl-istess data tohrog l-istima da parte tad-Dipartiment; dan juri li l-istima fil-konfront taghha gia kienet miktuba; (vi) il-pretensjonijiet avvanzati mill-Kummissarju tat-Taxxa fuq il-Valur Mizjud permezz ta' l-istimi mertu tal-proceduri huma infondati fil-fatt u fid-dritt.

Il-Kummissarju tat-Taxxa fuq il-Valur Mizjud, illum Kummissarju tat-Taxxi, jopponi ghall-appell tas-socjeta' Rikorrenti mill-istimi mahruga fil-konfront taghha ghall-perijodi ta' taxxa 01.05.04-31.07.04, 01.08.04-31.10.04, 01.11.04-31.01.05, 01.02.05-30.04.05, 01.01.05-31.07.05, 01.08.05-31.10.05, 01.11.05-31.01.06, 01.02.06-30.04.06, 01.05.06-31.07.06, 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 u jitlob li l-istess jigi michud stante li l-istimi in kwistjoni huma gusti u jisthoqqilhom konferma.

Mill-Investigations Audit Report imhejji mill-Ispetturi tad-Dipartiment tat-Taxxa fuq il-Valur Mizjud⁷ jirrizulta li gie rakkomandat il-hrug ta' stimi fil-konfront tas-socjeta' Rikorrenti ghall-perijodi ta' taxxa 01.05.04 sa' 31.07.09 sabiex tigi rkuprata taxxa fuq il-valur mizjud fl-ammont komplexsiv ta' €209,216.73. Dan l-ammont jikkonsisti f'*over-declared Input Tax* fl-ammont ta' €112,036.18 u f'*under-declared Output Tax* fl-ammont ta' €97,180.56.

Mill-istess Rapport jirrizulta li l-Ispetturi tad-Dipartiment tat-Taxxa fuq il-Valur Mizjud wasslu ghall-figura ta' **€112,036.18 over-declared Input Tax** in bazi ghas-segweni konsiderazzjonijiet: *accounting records were presented piecemeal. Part of the requested records were presented by the authorised accountant, namely Mr. Anatole Baldacchino, (ID No. 98165M) (vide red 61). The accounting*

⁷ Anness mar-Rispota tal-Kummissarju tat-Taxxa fuq il-Valur Mizjud.

records included Financial Statements covering the years from 2003 to 2008. Also, the invoices for importations and intra-community acquisitions were presented; however, these were not accompanied by respective ledgers. A list of all the invoices was compiled by the undersigned and endorsed by Ms. Nicola Said (ID No. 287284M) who was authorised by the company Directors to temporarily collect the documents (vide app. 1). All the sales invoices for the year 2008 and January 2009 were presented as requested. The only local purchase invoices presented were those covering freight and other related charges. These were attached with the respective foreign (ICA) invoices. No local purchase invoices for goods for resale were provided. As regards to local purchases and sales ledgers, Mr. Baldacchino stated that the accounting package was 'tailor-made' (red 70 refers). These ledgers could only be assessed in electronic format. The printed ledgers presented (covering only a list of numbers and codes and no direct information as regards to clients or suppliers) could be retrieved. An explanation of the records provided was requested since we noted that the sequence number in the sales/purchases ledgers were not consecutive. Ms. Nicola Said explained that when a transaction is registered in this accounting package is it subdivided into three accounts namely, the net sales amount, the VAT account and the debtor or creditor account as applicable. She further explained that we were presented with the VAT account and therefore, this showed only 1 of the 3 numbers given to each transaction. We were also presented with an excerpt from the accounting package showing all three postings (vide app.2). **Findings:** A trading account history analysis covering years from 2003 to 2008 was carried out. This resulted in among other things and average mark-up of 41% and stock build-up of 7% (vide app.3). **Input VAT claimed - Reverse Charge:** as we were not presented with a purchases ledger covering the Intra-Community Acquisitions, it was compiled from the original documentation (vide app.4). This was subdivided by tax periods indicating also the actual intra-community acquisitions and the respective local expenses. The latter were mainly freight charges. The ICAs retrieved from original documentation were reconciled with VIES and VAT return declarations. They were found to tally. As regards to invoices covering freight charges these were found to be correct and the resultant input VAT claimed is justified (amounts to €8,295.69). However, all other input VAT claimed as regards to goods for resale, capital expenditure and services and overheads not covered by invoices will be deducted. This amounts to €112,036.18 (vide app. 5).

Il-Kummissarju tat-Taxxa fuq il-Valur Mizjud, tramite l-Ispetturi tad-Dipartiment, wasal ghal **under-declared Output Tax fl-ammont ta' €97,180.56** in bazi ghas-segwenti konsiderazzjonijiet: a weighted average mark-up exercise for the goods for resale acquired through ICAs was carried out. These goods amount to 77% of the total goods for resale, while local purchases for resale account for the remaining 23%. When the ICAs were listed we also included the article code and all other details indicated in the purchase invoice. As stated earlier Mr. Baldacchino had presented the sales invoices for 2008. By checking each cash sale/invoice presented we arrived at the actual selling prices for these items since Legnolack uses the same article code number of the suppliers. In all, we found selling prices for 74% of the goods acquired through ICAs for 2008. It is worth noting that 'pigment' is also bought through ICAs however, this material is used by Legnolack as a provision of service to its clients and therefore, it is not included in

the weighted average mark-up exercise (vide app. 6). Copies of the invoices covering the ICAs and copies of the sales invoices from which data was collated are also attached (vide app. 7). This exercise was based on all the ICA effected during the year 2008. The total number of entries for the purpose of this exercise amounts to 204. This resulted in a weighted average mark-up of 98% (vide app.8). A weighted average mark-up exercise re local expenses could not be performed due to incomplete records. Mr. Martin Saliba, Director, and Ms. Nicola Said, employee, confirmed that local purchases were all bought from either Brincat Co. Ltd. or S&R Handaq Ltd., both companies have a common Director, Mr. Brincat, and involved in the alleged VAT Fraud Case. An attempt to elevate the said purchase invoices was made, from the records provided for Brincat Co. Ltd., but to no avail. No sales invoices from Brincat Co. Ltd. to Legnolack were traced. As regards to S&R Handaq Ltd. very limited information and records were produced to the VAT Department. From these records only three invoices resulted as sales to Legnolack Ltd. (invoice nos. 12970, 13080, 3087). However, only sales records for items on invoice number 13080 were found. Whilst checking all sales records (2008) we noticed that a considerable amount of thinner was sold. This is made available to customers, both in prefilled cans with capacities ranging from 1,6 and 200 litres and as refills. Cost prices of refills were not taken into consideration as these cannot be calculated due to incomplete records.

L-Ispettur tad-Dipartiment ghattiet biex taghmel ezercizzju biex tohrog il-weighted average mark-up relattiv ghall-akkwisti lokali da parte tas-socjetà Rikorrenti u minn tali ezercizzju irrizulta mark up ta' 111%. Fir-rigward però osservat illi as the above weighted average mark-up exercise (yielding a mark up of 111% MUP) indicated as table 2, may not be treated as reliable and representative due to the limited number of invoices, sales figures were subdivided according to the resultant percentage as declared ICA and local purchases, that is, 77% and 23% respectively. ... The rationale being that if 77% of total sales represent sales coming from ICAs (€1,673,748.85) then the remaining 23% of sales result from local purchases (€499,950.96). Therefore, the difference between deemed sales (€2,173,699.81) and declared sales (€1,633,807.83) is €539,891.98 and €97,180.56 Output Vat respectively. This exercise result in a mark up of 116% on local purchases as indicated below.

Wara li s-socjetà Rikorrenti giet notifikata bl-istimi provizorji mahruqa fil-konfront taghha hija talbet ghal revizjoni ta' dawn l-istimi u fir-rigward ir-Review Officer Lorraine Galea ghamlet is-segwenti konstatazzjonijiet: Purchases - Input VAT - Taxpayer was asked whether he would be submitting evidence which was not presented prior to the issue of the provisional assessments. (R88, R89). Mr. Baldacchino stated that the Company was ready to provide any evidence requested by the department. He also stated that part of the evidence was not presented earlier due to a technical problem in the software (printing) which could not be solved. He also emphasized that since printing was not possible the company always welcomed Inspectors on premises to note any information they required. He also stated that a worker from the administration department left the company and this made things worse (R90). ... Taxpayer was also asked to submit proof of the problem in the software and printing and the action taken to resolve the problem including a declaration from an IT Specialist (Red 94). In his answer

at Red 96 Mr. Baldacchino he only forwarded the details of Mr. Noel Tanti IT Technician who did not turn up at the company's premises since September 2009. Following the above the department decided to review the mark-up exercise only. Sales - Output VAT - During the meeting held on the 21st October 2010 Mr. Baldacchino presented a covering letter and a report regarding the mark-up exercise dated 10th October 2010 (Red 98 and 98a respectively). The latter was submitted together with the covering letter on the 21st October 2010. The report mainly 6 points on which the company disagrees with the mark-up exercise. On the 12th November the department wrote to Director (Red 99) whereby he was informed that the department does not consider valid the reason given for not submitting requested documents (when 8 months were allowed) and that the department would be reviewing the mark-up exercise. Comments were also made on the points raised in the Company's report. Taxpayer was also asked to submit further documents to substantiate his case with regards to Item A i.e. the Fidelity Card System - (20% discount) and cash discounts since it had to be established on how frequent these discounts were allowed. It is imperative that together with his report taxpayer had only supplied one case whereby customer had used the fidelity card system. However no proof was given as to the frequency of such discount. In order to establish the ratio on cash discounts given taxpayer was also asked to submit workings demonstrating the case-credit ratios by the 26th November. However, these documents were never submitted even though in his letter (Red 90) Mr. Baldacchino had stated that the company is ready to submit any evidence requested. Red 105 from Dr. Vassallo simply does not agree with the department's decision and accuses the department that the company's report was not read by anyone. Furthermore, in his letter (Red 99) the department also stated that items C, E, F, G will be checked and if any irregularities are noted, necessary adjustments will be made accordingly. In fact, the latter were checked thoroughly with Ms. Lorraine Dimech, Investigations Inspector, and amended as per red 106. The resultant discrepancy affected the original 98% mark-up by 1% to 97% and the resultant under-declared VAT on sales amounted to €95,204.27 from €97,180.56. Taxpayer completed his report by stating that the department completely omitted stocks as stated in the audit reports. This is unfair and unjust, as stocks were taken into consideration as recorded in audit reports. (Annex 3 of red 71) and are also stated in Inspector's report R71 page 7. Total variance in stock as per accounts 2003 - 2008 amounted to €106,843 equal to 7% of purchases as declared in accounts, which were deducted from purchases.

In bazi ghal dawn il-konsiderazzjonijiet ir-Review Officer Lorraine Galea irrakkomandat li l-istimi provizorji mahruga fil-konfront tas-socjetà Rikorrenti jigu emendati fir-rigward ta' l-under-declared Output Tax b'dana li l-figura ta' €97,180.56 tonqos ghal €95,204.27, filwaqt li jigu kkonfermati in kwantu rigwarda l-over-declared Input Tax u l-figura tibqa' dik ta' €112,036.18 u bhala fatt l-istimi finali mahruga fil-konfront tas-socjetà Rikorrenti, hawn appellati, inhargu in linea mar-rakkomandazzjoni tar-Review Officer Lorraine Galea.

Huwa evidenti li l-kwistjoni centrali kemm waqt l-investigazzjoni kif ukoll waqt ir-Review, liema kwistjoni eventwalment wasslet ghall-hrug ta' l-istimi kontestati f'dan l-appell, tirr involvi madwar in-nuqqas tas-socjetà Rikorrenti li tipprovdi d-dokumentazzjoni kollha mitluba minghandha mill-Kummissarju tat-Taxxa fuq il-

Valur Mizjud. Fir-rigward is-socjetà Rikorrenti tikkontendi li *mir-riassunt tal-provi prodotti waqt l-andament ta' din il-kawza ... jirrizulta b'mod car u inekwivoku illi il-konkluzzjonijiet milhuqa mill-intimat fir-rapport investigattiv kif ikkonfermat anke wara r-revizjoni kienu, li kellhom jinhargu l-istess suggetti ghal dan l-appell tar-rikorrent principalment minhabba allegat nuuqas ta' produzzjoni ta' dokumenti rikjesti mill-ispetturi inkarigati mid-Dipartiment tal-VAT saibex jidderigu l-istess rapport. Dan kollu jirrizulta b'mod car mir-Rapport Investigattiv fil-parti relattiva ghal Input VAT u Output VAT. Mill-provi prodotti irrizulta b'mod konsistenti, illi l-intimat u r-rapprezentanti varji tieghu involuti fi stadji diversi ta' l-investigazzjoni, ripetutament naqqsu milli jikkunsidraw fatturi importanti rigward it-talbiet ghal dokumenti li kienu qeghdin jitolbu bir-rizultat ahhari li naqqsu li jikkunsidraw dokumenti w informazzjoni ezistenti izda li ma setghetx tingieb lilhom. Dan kien risaput mill-intimat u mill-ufficjali tieghu mhux biss ghaliex ir-rikorrenti konsistentement spjegat dawn id-diffikultajiet, izda anke ghaliex l-intimat kien qieghed jinvestiga diversi kumpaniji li huma b'xi mod jew iehor konnessi mar-rikorrenti li wkoll kellhom l-istess diffikultajiet. Jigi spjegat li ir-rikorrenti u r-rapprezentanti taghha baqghu konsistentement jistiednu lill-intimat sabiex jiehu certi mizuri li bihom seta' jassigura ruhu illi r-rikorrenti ma kienitx qieghda tonqos milli tressaq dokumenti b'mala fede imma ghaliex kellha certi diffikultajiet li ma setghetx tissorvolahom. Kif intwera aktar 'l fuq, kien hemm ukoll ammissjonijiet varji minn diversi spetturi ta' l-intimat illi huma kienu konxji tad-diffikultajiet li kellha r-rikorrenti fir-rigward tal-printing ta' certi dokumenti u li r-rikorrenti stiednet lill-intimat jacedi fl-ufficini taghha sabiex jivverifika l-informazzjoni. Madanakollu din l-istedina baqghet tigi konsistentement rifjutata mill-intimat ghar-ragunijiet mhux maghrufa tenut kont ukoll tal-fatt illi l-Artikolu 48 tal-Kapitolu 406 jippermetti sahansitra illi l-intimat jeleva dik l-informazzjoni li tkun necessarja ghall-investigazzjoni. Illi ai termini ta' dan l-istess artikolu, l-intimat seta' jibghat rapprezentanti sabiex jezaminaw l-informazzjoni mizmuma mir-rikorrenti, minflok ma kkonkluda li dawn ma gewx prezentati u li ghalhekk kellu bilfors johrog stejjem abbazi ta' dokumenti nieqsa! Illi rigward is-sistema ta' l-IT li ntuzat ghal diversi snin mir-rikorrenti, l-intimat qatt ma oggezzjona ghaliha jew ghall-informazzjoni li r-rikorrenti kienet ipprezentat fil-passat. Addirittura, l-awditur tal-kumpanija, is-Sur Emanuel Fenech, qatt ma kellu diffikoltà sabiex minnha jestrappola l-informazzjoni kollha necessarja sabiex jipprezenta l-accounts u l-financial statements tal-kumpanija lill-MFSA. ... Illi huwa ampjament car li l-intimat injora r-ragunijiet tar-rikorrenti, u mexxa bir-rapporti, kemm l-ewwel rapport investigattiv kif ukoll ir-rapport tar-review, minghajr ma ta kaz ta' informazzjoni essenzjali bil-konsegwenza li hareg u kkonferma stimi inkorretti ghaliex mahduma fuq informazzjoni inkompluta bhad-discounts u l-ammont ta' prodotti b'xejn li Legnolack kienet taghti taht il-fidelity cards taghha u dan minflok ma acceda fl-ufficini tar-rikorrenti, jiehu kull ma kellux bzonn u johrog rapport li jirrifletti r-realtà⁸.*

⁸ Nota ta' Sottomissjonijiet tas-socjetà Rikorrenti, fol. 228 u 229 tal-process.

Fir-rigward ta' din l-allegata problema li s-socjetà Rikorrenti tikkontendi u, tramite ix-xhieda ta' Anatole Baldacchino⁹ u Martin Saliba¹⁰, tishaq li kellha fir-rigward tal-produzzjoni fizika ta' certa dokumentazzjoni minhabba kwistjoni ta' natura teknika fl-*accounting system tailor made* li kienet tuza fiz-zminijiet rilevanti għall-proceduri odjerni, it-Tribunal mill-gdid josserva, hekk kif già għamel fis-sentenza fl-ismijiet **S&R Handaq Ltd. v. Kummissarju tat-Taxxa fuq il-Valur Mizjud, Rik. Nru. 192/12** deciza fis-17 ta' Ottubru 2017, li din ma hija xejn għajr skuza għal kollox inaccettabbli u b'hekk mhux sostenibbli, wisq inqas bhala aggravju in bazi għal liema stimi mahruqa fil-konfront tagħha għandhom jigu revokati *in toto*.

Ai termini tal-Hdax-il Skeda ta' l-Att dwar it-Taxxa fuq il-Valur Mizjud, Kap.406 tal-Ligijiet ta' Malta, *il-konteggi ta' l-attività ekonomika ta' kull persuna registrata taht l-artikolu 10 għandhom jinzammu b'dak il-mod li jkunu jippermettu li tigi accertata l-verifika ta' dan li gej¹¹*: (a) *il-valur totali, eskluza t-taxxa, tal-provvisti magħmula minnha matul kull zmien ta' taxxa*; (b) *il-valur totali, eskluza t-taxxa mitluba lura bhala kreditu ta' input tax, ta' l-inputs tagħha għal kull zmien ta' taxxa*; (c) *l-output tax u kull taxxa ohra li għandha tithallas minn dik il-persuna għal kull zmien ta' taxxa*; (d) *il-kreditu ta' input tax, it-tnaqqis, il-kreditu eccessiv ta' taxxa u t-taxxa li għandha tithallas lura għal kull zmien ta' taxxa*; (e) *il-kalkolazzjoni, meta l-kreditu ta' input tax huwa permissibbli skond metodu ta' attribuzzjoni parzjali, tal-kreditu provvizorju ta' input tax għal kull zmien ta' taxxa, u l-kreditu definittiv ta' input tax għal kull sena u ta' l-aggiustamenti tal-kreditu ta' input tax*; (f) *is-sub-totali, breakdowns u not ital-konteggi hekk kif ikun mehtieg biex jigi identifikat b'mod hafif is-sors tat-tagħrif muri fil-kont tat-taxxa fuq il-valur mizjud*. Fir-rigward tal-kont tat-taxxa fuq il-valur mizjud, il-Hdax-il Skeda tal-Kap.406 tal-Ligijiet ta' Malta tipprovdi li: **3(1) Il-kont tat-taxxa fuq il-valur mizjud għandu jkun kont separat li jinzamm għal kull zmien ta' taxxa minn persuna taxxabli u għandu jkun fih it-tagħrif kollu, inkluzi t-totali kollha, is-sub-totali u l-breakdowns mehtiega li jintbagħtu fid-denunzja tat-taxxa għal dak iz-zmien. (2) Il-kont tat-taxxa fuq il-valur mizjud għandu jkun fih cross reference għall-kwistjonijiet riferiti fil-partita 2 li tkun tippermetti it-tqabbil u r-rikonciljazzjoni tat-tagħrif kollu li jinsab fih¹².**

Minn dawn il-provvedimenti tal-Ligi jirrizulta b'mod car li kuntrarjament għal dak pretiz mis-socjetà Rikorrenti, id-Dipartiment tat-Taxxa fuq il-Valur Mizjud ma kellu u ma għandu l-ebda dmir u wisq inqas dover li jiccertifika u jaccetta s-sistema *tailor made* adottata minnha. L-obbligu li d-dokumentazzjoni mehtiega tinzamm b'mod korrett u b'mod tali li tista' ssir id-debita verifika ai termini tal-Ligi meta din tkun mehtiega, **jinkombi esklussivament fuq it-taxpayer, ossia fuq is-socjetà Rikorrenti**. Ghalkemm l-imsemmija socjetà targumenta li l-Ispetturi tad-Dipartiment tat-Taxxa fuq il-Valur Mizjud, għal ebda raguni valida, naqsu milli jaccedu fl-ufficini tagħha biex issir id-debita verifika, in verità irrizulta li tali verifika difficilment setghet issir nonostante tali *on site inspection*.

⁹ Affidavit ta' Anatole Baldacchino a fol. 13 sa' 17 tal-process u xhieda mogħtija waqt is-seduta tal-5 ta' Frar 2013, fol. 26 sa' 33 tal-process.

¹⁰ Affidavit ta' Martin Saliba a fol. 147 sa' 157 tal-process.

¹¹ Enfasi u sottolinear tat-Tribunal.

¹² Enfasi tat-Tribunal.

Fl-affidavit tieghu Martin Saliba, Direttur tas-socjetà Rikorrenti, iddikjara li minn ezercizzju li hu, flimkien ma' Anatole Baldacchino u Nicola Said, ghamel fir-rigward ta' spejjez inkorsi mis-socjetà Rikorrenti tul is-sena 2008 irrizulta li kien hemm €21,927.48 f'xiri minghand S&R (Handaq) Ltd., €177.02 f'xiri minghand Brincat's Co. Ltd., u invoice ta' €6,755.19 f'kera li Legnolack hallset lil Brincat's Co. Ltd. ghall-uzu tal-fabbrika li hija tikri minghand l-istess Brincat's Co. Ltd. Dawn l-ammonti ma gewx kunsidrati mid-dipartiment bhala spejjez. Lista ta' l-invoices koncernati u screen shot li turi l-istess ammonti qabel jinhadem il-VAT fuqhom qieghdin jigu pprezentati u mmarkati "A"¹³ u "B"¹⁴. **Huwa car li lista bhal dik immarkata "A" li jiena ghamilt ghas-sena 2008 ma setatx issir ghas-snin kollha koncernanti l-investigazzjoni tad-Dipartiment. Ghalhekk ahna konna stedina lid-dipartiment sabiex jacedi fl-ufficji taghna. ... kull transazzjoni ta' Legnolack tista' tinghara individwalment mis-sistema ta' l-IT taghna illi, ghalkemm issa bdilniha sabiex zgur ma jergax ikollna dawn it-tip ta' kumplikazzjonijiet mad-dipartiment, s'issa ghada tista' tinghara. Sfortunatament, bhala rapport komplut din is-sistema ta' l-IT setghet biss tohrog dak li kien gie prezentat u spjegat lid-Dipartiment, kemm minn Nicola Said kif ukoll minn Anatole Baldacchino, l-accountant imqabba mill-kumpanija sabiex jassisstha bir-rikjesti tad-dipartiment. Lid-dipartiment tajnih li stajna in printed format però, kien hemm xi affarijiet li talab li setaw biss jinqraw mill-iscreen tal-kompjuters taghna. Li nohorgu print screen ta' kull haga li d-dipartiment kien qieghed jitlob kienet impossibbli peress li l-perijodu kopert bit-talba tad-dipartiment kien ta' l fuq minn hames snin. Ghalhekk tlabna w insistejna li d-dipartiment jacedi fl-ufficji taghna fejn stajna nipprovduh b'kull ma kellu bzonn. Madanakollu, id-dipartiment baqa' jirrifjuta li jacedi l-ufficji taghna u baqa' jinsisti li ntuh id-dettalji li kien jaf li kellna izda ma stajniex naghtuh in print¹⁵.**

Fid-dawl ta' tali dikjarazzjoni tqum spontaneja l-mistoqsija: jekk ma kienx possibbli ghas-socjetà Rikorrenti stess li testrapola l-informazzjoni kollha mehtiega mill-accounting system taghha ghas-snin mertu ta' l-investigazzjoni u tissottomettihom lid-Dipartiment tat-Taxxa fuq il-Valur Mizjud, kif tista' tippretendi w addirittura tesigi li l-Ispetturi tad-Dipartiment li kienu qed imexxu l-investigazzjoni fil-konfront taghha jaghmlu l-verifiki kollha mehtiega ghas-snin in kwistjoni billi jacedu fl-ufficini taghha u jaraw x'informazzjoni hemm inputted f'tali sistema?

B'hekk f'nifs wiehed is-socjetà Rikorrenti, tramite x-xhud Martin Saliba, tikkontendi li ma huwiex possibbli ghaliha li twassal id-data mehtiega ghand il-Kummissarju izda li tali data tista' tigi, anzi ghandha tigi, migubra bil-Kummissarju jew rapprezenant tieghu direttament on site. Fil-fehma tat-Tribunal tali kuntrast fl-attitudini tas-socjetà Rikorrenti ma huwa xejn ghajr turija cara li l-istess socjetà ma reditx u ghadha ma tridx, ghal ragunijiet li taf hija biss, tikkopera mal-Kummissarju u debitament tipprova li kif minnha allegat, l-istimi mahruqa fil-konfront taghha huma eccessivi. Huwa evidenti li s-socjetà Rikorrenti naqset u ghadha tinsisti li tonqos mill-obbligu car taghha kif nascenti mill-Ligi li mhux biss li zzomm id-dokumentazzjoni bil-mod u fil-format previst fil-Ligi izda anke li jkunu jistghu jsiru cross

¹³ Fol. 158 u 159 tal-process.

¹⁴ Fol.160 sa' 163 tal-process.

¹⁵ Para. 10, 12 sa' 14 ta' l-affidavit ta' Martin Saliba, fol. 148 tal-process.

references u verifiki da parte tal-Kummissarju tat-Taxxa fuq il-Valur Mizjud kif u meta mehtieg.

Apparte minn hekk huwa evidenti li Martin Saliba u per konsegwenza s-socjetà Rikorrenti¹⁶ entrambe jikkontendu li l-Kummissarju tat-Taxxa fuq il-Valur Mizjud b'mod ingust u zbaljat ma accettax l-affermazzjoni tas-socjetà Rikorrenti li tul is-sena 2008 hija inkorriet certu ammont ta' spejjez ghal akkwisti u jew servizzi prestati lilha minn S&R (Handaq) Limited u Brincat's Company Limited. Li però qed jigi ghal kollox injorat kemm minn Martin Saliba kif ukoll mis-socjetà Rikorrenti huwa l-fatt li ghalkemm il-Kummissarju tat-Taxxa fuq il-Valur Mizjud gie **infurmat li kien hemm dawn l-ispejjez huwa baqa' ma inghatax id-dokumentazzjoni necessarja ghall-verifika ta' l-Input Tax dikjarata mis-socjetà Rikorrenti fid-denunzji tat-taxxa taghha u tal-konsegwenti kreditu pretiz minnha**. Din il-prova lanqas ma saret bil-mod opportun quddiem dan it-Tribunal ghaliex ghalkemm l-ispejjez inkorsi mis-socjetà Rikorrenti huma elenkati fid-dokumenti annessi ma' l-affidavit ta' Martin Saliba bhala Dok. "A" u Dok. "B", dawn id-dokumenti in verità ma huma xejn ghajr elenku jew lista ippreparata mis-socjetà Rikorrenti dwar spejjez allegatament inkosri minnha u fir-rigward ta' liema tippretendi li ghandha dritt ghal kreditu ghal Input Tax, li però wahedhom ma humiex bizzejjed biex jintitolaw lis-socjetà Rikorrenti ghall-kreditu ghal Input Tax kollu minnha pretiz tramite d-dikjarazzjonijiet tat-taxxa taghha.

Kuntrarjament ghal dak pretiz mis-socjetà Rikorrenti, id-dritt ghall-kreditu ghal Input Tax ma huwiex xi jedd awtomatiku tat-*taxpayer* izda huwa jedd li jitwieled u jissussisti entro parametri ben precizi imposti mill-Ligi. Di fatti oltre l-fatt li l-Artikolu 22(2) tal-Kap.406 tal-Ligijiet ta' Malta jipprovdi li: (i) *l-input tax ta' persuna taxxabli hija t-taxxa li jkollha tithallas fuq - (a) provvista maghmula lilha; (b) akkwisti maghmula minnha; u (c) importazzjonijiet maghmula minnha, sal-limitu li l-provvisti hekk maghmula u l-oggetti hekk akkwistati jew importati jintuzaw jew ikunu mahsuba li jintuzaw kollha kemm huma fil-kors jew avvanz ta' l-attività ekonomika taghha*, a tenur tas-subartikolu (5) ta' l-imsemmi artikolu tal-Ligi *d-dritt ta' kreditu ta' input tax, l-ammont ta' kreditu u l-mod li bih l-input tax hija attribwibbli ghall-provvisti huwa **suggett ghall-kondizzjonijiet, limitazzjonijiet u revizjonijiet u agjustamenti innizzla fl-Ghaxar Skeda***¹⁷.

L-Artikoli 1 u 2(1) ta' l-Ghaxar Skeda tal-Kap.406 tal-Ligijiet ta' Malta jipprovdu li: *hlief hekk kif il-Kummissarju jista' mod iehor jippermetti ma ghandu jigi permess lil persuna ebda kreditu ghal input tax ghal xi zmien ta' taxxa kemm-il darba ma issirx talba skond id-disposizzjoni relevanti ta' dan l-Att u ma ghandu jitqies ebda ammont bhala input tax ta' persuna kemm-il darba dik il-persuna ma iggibx prova li dik it-taxxa kellha tithallas fuq il-provvisti ta' oggetti u servizzi jew akkwisti intra-Komuniktarji jew fuq importazzjonijiet ta' oggetti li jkunu gew jew ser jigu wzati minnha fil-kors ta' l-avvanz ta' l-attività ekonomika taghha*. A tenur ta' l-Artikolu 2(2) ta' l-Ghaxar Skeda tal-Kap.406 tal-Ligijiet ta' Malta *hlief hekk kif*

¹⁶ Vide Nota ta' Sottomissjonijiet tas-socjetà Rikorrenti taht l-intestatura "L-intimat ma kkunsidrax l-ispejjez inkorsi mir-rikorrenti", fol. 230 tal-process.

¹⁷ Enfasi tat-Tribunal.

il-Kummissarju jista' mod iehor jippermetti, ebda ammont ma ghandu jitqies bhala input tax ta' persuna kemm-il darba: (a) ma jkunx appoggat bi: (i) fattura ta' taxxa dwar it-taxxa li ghandha x'taqsam ma' l-oggetti jew servizzi provduti lilu; jew (ii) fattura ta' taxxa dwar it-taxxa li ghandha x'taqsam ma' l-oggetti miksuba minnu taht akkwist intra-Komunitarju; jew (iii) dokument ta' importazzjoni li jkun jindika lilha bhala importatur dwar it-taxxa fuq importazzjoni; u (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 ta' taxxa jkun inghata kont tieghu kif imiss fid-dokumentazzjoni mizmuma minn dik il-persuna sal-limitu mehtieg ghall-ghanijiet ta' l-Att.

Huwa evidenti li l-kondizzjonijiet stipulati fl-Ghaxar Skeda tal-Kap.406 tal-Ligijiet ta' Malta huma kumulattivi u mhux alternattivi ghal xulxin u ghalhekk ghad illi *taxpayer* jista' jissodisfa wahda jew iktar mill-kondizzjonijiet imposti, it-talba tieghu ghall-kreditu ghal Input Tax ma tistax tigi milqugha kemm-il darba ma jkunx issodisfa l-kondizzjonijiet **kollha hemm stipulati**, bhal ma gara fil-kaz in ezami fejn is-socjeta' Rikorrenti ma pprovdietx id-dokumentazzjoni opportuna in sostenn ta' u konsegwenti verifika tal-kreditu ghal Input Tax minnha pretiz.

Din l-osservazzjoni tat-Tribunal issib konferma fis-sentenza fl-ismijiet **A.B. Limited v. Kummissarju tat-Taxxa fuq il-Valur Mizjud, Appell Nru. 15/04** deciza mill-Qorti ta' l-Appell (Sede Inferjuri) fis-16 ta' Marzu 2005, fejn fost affarijiet ohra dwar il-principji li jirregolaw it-talba ta' *taxpayer* ghall-kreditu ghal Input Tax osservat illi: *In linea generali ghandu jinghad illi meta l-kliem tal-ligi fihom infushom huma cari u l-interpretazzjoni fiha nfisha ma thalli ebda dubju m' hemmx lok ta' ebda interpretazzjoni ohra. Dan hu kanoni baziku ta' interpretazzjoni ermenewtika u hu partikolarment ta' siwi ghal ligijiet fiskali. Naturalment dan ma jfisserx li ma ghandux jigi segwit il-kriterju logiku-sistematiku meta hu rikjest li jigu konsiderati diversi disposizzjonijiet ta' l-istess ligi. Jitnissel minn dan illi fost id-diversi tifsiriet possibbli, migjuba 'l quddiem bl-applikazzjoni tal-kriterju letterali, ghandha tigi preferita dik it-tifsira li l-aktar tikkorrispondi mar-rabta tas-sinifikati rizultanti mill-konsiderazzjoni tad-diversi partijiet ta' l-istess disposizzjoni jew tal-varji disposizzjonijiet ta' l-istess ligi. Dan bl-iskop li jaghti tlahhim organiku, unitarju, u intelligibbli. ... Hi l-fehma ta' din il-Qorti, fir-raffront bejn l-Artikolu 8 (4) u l-Artikolu 3 (2) tal-Hdax-il Skeda, illi l-ligi donnha trid li ghas-soddisfaciment tal-Kummissarju d-dokumenti centrali ghall-intitolat tar-reklam ta' l-input tax huma l-fattura ta' taxxa jew id-dokument ta' importazzjoni indikanti l-hlas tat-taxxa. In effetti, anke f' varji disposizzjonijiet ohra, il-ligi espressament tirrikorri ghall-importanza tal-fattura tat-taxxa. ... Biex jaghmel sens il-precitat artikolu dan jokkorri li jigi nterpretat fil-kwadru tal-ligi kollha u in partikolari ma' l-Artikolu 3 (2) tal-Hdax-il Skeda. **Moqrija flimkien dawn iz-zewg disposizzjonijiet, ghandu naturalment jinftiehem illi l-Kummissarju mhux biss ghandu dritt li jinsisti ghall-fatturi ta' taxxa izda wkoll, li meta dawn jigu prodotti, li jridu jissodisfawh. Fil-hsieb tal-Qorti anqas jista' jinghad li***

jezisti xi dubju dwar din l-interpretazzjoni tal-ligi ghaliex l-argument kontra t-tezi tas-socjetà appellanti huma cari u jeskludu kwalunkwe dubju¹⁸.

Dan kollu appena osservat japplika wkoll ghas-sottomissjoni jew ahjar lanjanza tas-socjetà Rikorrenti li *jidher ampjament car ukoll li l-intimat lanqas ikkunsidra l-prezz tar-refills. "Cost prices of refills were not taken into consideration..."* Illi meta wiehed iqis li r-rikorrenti tbiegh iz-zebgha u l-intimat naqas li jdahhal il-prezz tar-refills, ghandu jirrizulta kjarament li r-rizultanzi huma manifestament zbaljati. Anke jekk ghall-grazzja ta' l-argument ma nstabux id-dokumenti li juru din l-ispiza, din il-kjarifika setghet saret billi l-intimat jacedi l-ufficcju, kif gew mitluba diversi drabi, u jestrapolaw ir-records mill-iscreen tal-computer. Illi ghal din ir-raguni wkoll, ladarba l-intimat ghazel li jelimina l-ispejjez ta' xiri u spejjez relatati, sabiex jasal ghal 'cost structure' l-ezercizzju gie rez difettuz¹⁹. Jigi osservat li dak kollu hawn appena osservat japplika ghal din il-lanjanza wkoll ghaliex fl-Investigations Audit Report gie osservat b'mod car hafna li *cost prices of refills were not taken into consideration as these cannot be calculated due to incomplete records*²⁰ - konsiderazzjoni din li thalliet ghal kollox barra mis-socjetà Rikorrenti fl-estratt mill-Investigations Audit Report minnha citat.

In kwantu rigwarda l-pigments utilizzati minnha fil-prodotti eventwalment mibjugha lill-klijenti taghha, is-socjetà Rikorrenti tissottometti wkoll li *l-intimat injora l-fatt ukoll li l-pigment, li huwa element essenzjali fiz-zebgha, kellu jigi meqjus bhala cost ghar-rikorrenti. Dan il-fatt ukoll ifisser li l-kalkoli ta' l-intimat kienu hzienu*²¹. Ta' min josserva però li l-konsiderazzjonijiet tal-Kummissarju tat-Taxxa fuq il-Valur Mizjud rigward il-pigments utilizzati mis-socjetà Rikorrenti kienu s-segwentanti: *When the ICAs were listed we also included the article code and all other details indicated in the purchase invoice. As stated earlier Mr. Baldacchino had presented the sales invoices for 2008. By checking each cash sale/invoice presented we arrived at the actual selling prices for these items since Legnolack uses the same article code number of the suppliers. In all, we found selling prices for 74% of the goods acquired through ICAs for 2008. It is worth noting that 'pigment' is also bought through ICAs however, this material is used by Legnolack as a provision of service to its clients and therefore, it is not included in the weighted average mark-up exercised (vide app. 6), u dan apprte l-fatt li dawn il-konsiderazzjonijiet saru fil-kuntest ta' l-element ta' Sales - Output VAT declared.*

Minn dan kollu appena osservat jirrizulta ghalhekk li **in kwantu rigwarda l-element ta' over-declared Input Tax**, is-socjetà Rikorrenti ma rnexxilhiex tipprova b'mod sodisfacenti li l-istimi mahruqa fil-konfront taghha mill-Kummissarju tat-Taxxa fuq il-Valur Mizjud ghall-perijodi ta' taxxa 01.05.04 sa' 31.07.09 huma eccessivi.

Trattat l-element ta' over-declared Input Tax, it-Tribunal ser jittratta issa l-element ta' l-istimi mahruqa fil-konfront tas-socjetà Rikorrenti rigwardanti under-declared Output Tax.

¹⁸ Enfasi tat-Tribunal.

¹⁹ Nota ta' Sottomissjonijiet tas-socjetà Rikorrenti a fol. 231 tal-process.

²⁰ Pagna 4 ta' l-Investigations Audit Report. Enfasi tat-Tribunal.

²¹ Nota ta' Sottomissjonijiet tas-socjetà Rikorrenti, fol. 231 tal-process.

Fost il-lanjanzi tas-socjetà Rikorrenti rigwardanti l-konsiderazzjonijiet, konstatazzjonijiet u konsegwenti konkluzzjonijiet tal-Kummissarju tat-Taxxa fuq il-Valur Mizjud fir-rigward ta' l-under-declared Output Tax hemm dik dwar id-decizjoni tal-Kummissarju li jahdem u jibbaza l-kalkoli tieghu - in bazi ghal liema eventwalment inhargu l-istimi fil-konfront taghha - fuq is-sena 2008. Fir-rigward is-socjetà Rikorrenti tikkontendi li *l-intimat rega' ghal darb' ohra zbalja meta iddecieda u dan minghajr raguni valida, li jqis is-sena 2008 bhala sena rapprezentattiva tas-snin l-ohra taht investigazzjoni. M'huwiex car ghaliex l-intimat, filwaqt li nsista li jinghata d-dokumenti relattivi ghas-snin 2003, 2004, 2005, 2006, 2007, 2008 u 2009, ibbaza l-investigazzjoni tieghu fuq is-sena 2008 minghajr ma kkunisdra imbaghad il-fatt li minn sena ghal sena, il-prezzijiet tal-prodotti jvarjaw u dan kif indikat fid-dokument anness ma' l-affidavit ta' Martin Saliba u mmarkat bhala Dok. "I". Illi mhux car allura kif l-intimat seta' johrog stimi li jkopru perijodu tant konsiderevoli (bejn 2003 u 2009) abbazi ta' cifri mehdua minn sena wahda biss (2008). Aktar minn hekk meta fir-Review tqajjem dan il-punt kien car li l-intimat ma kienx lest li jerga' jibda l-ezercizzju mill-gdid u jikkunisdra kull sena indipendentement. L-intimat kellu d-dokumenti tas-snin kollha relattivi ghall-investigazzjoni però biex jaghlaq ir-rapport, mexxa fuq sena wahda u meta ntebah bir-riperkussjonijiet ta' dan in-nuqqas iddecieda li kien wisq tard sabiex jerga' jikkunisdra kull sena individwalment fl-istadju tar-Review, ezercizzju li kien jirrikjedi certu xoghol. Dan gie kkonfermat minn Anatole Baldacchino fix-xhieda tieghu fejn bhala espert fil-qasam ta' l-accounting xehed li l-intimat ghazel l-ahhar sena u cioè is-sena 2008 "as a basis representative of all the years, li hija hazina kif irrizultalna fil-workings taghna li kienet hazina ghax int ma tistax taqbad l-ahhar sena, inti trid tiehu representative year, ghall-inqas tiehu the middle years, median, biex tiehu r-rapprezentazzjoni tas-snin kollha". ... Illi primarjament ghall-grazzja ta' l-argument kieku l-intimat ried jiehu l-hekk imsejha "representative fiscal year" ghas-snin 2004 - 2009, skond il-principji bazici tal-matematika, l-intimat kien messu ha l-2005 - 2006 li kienu aktar joqorbu l-average bejn l-2004 u l-2009. Illi dan ir-ragunament rigward kif ghandha tintghazel il-median year gie kkonfermat minn espert iehor fl-affidavit tieghu. Silvio Muscat certified public accountant fi hdan Noel Muscah & Co. ditta ta' accountants u awdituri, ikkonferma li fil-fatt l-intimat uza r-rizultati tas-sena 2008 bhala sena rapprezentanttiva ghas-snin l-ohra li kineu wkoll taht skrutinju mill-intimat. Muscat ikkonferma dak li qal Baldacchino li mhux gust u ekwu li wiehed juza r-rizultati ottenuti f'sena partikolari u japplikhom ghas-snin l-ohra minhabba principalment tibdiliet fis-suq li jigru minn sena ghall-ohra. Muscat ikkonferma dan billi esebixxa l-fatturi bin-numru 2442 (datata 9 ta' Settembru 2008) u bin-numru 4374 (datata 18 ta' Ottubru 2007) li juri l-prezz ta' prodott partikolari zdied b'9.2% f'temp ta' sena²².*

Nonostante dak sottomess mis-socjetà Rikorrenti, minn konsiderazzjoni akkurata tal-provi prodotti u ta' l-atti processwali jirrizulta li l-Kummissarju tat-Taxxa fuq il-Valur Mizjud **mhux ghazel** li jahdem fuq u jibbaza l-istimi mahruga fil-konfront tas-socjetà Rikorrenti fuq is-sena 2008, izda **kien kostrett** li jaghmel hekk ghar-raguni li mid-dokumenti kollha ripetutament mitluba lis-socjetà, ossia il-kotba tal-bejgh ghall-perijodu 01.11.03 sa' 31.07.09, il-kotba tax-xiri ghall-istess perijodu, ricevuti u fatturi ghall-perijodu imsemmija u Profit and Loss accounts ghal dan il-

²² Nota ta' Sottomissjonijiet tas-socjetà Rikorrenti, fol. 236 u 237 tal-process.

perijodu wkoll²³, hija sottomettiet biss il-Financial Statements ghas-snin 2003 sa' 2008, il-fatturi ghall-akkwisti u importazzjonijiet Intra-Komunitarji izda mhux ukoll il-ledgers relattivi, u sales invoices limitatament ghas-sena 2008 u ghal Jannar tas-sena 2009. Ladarba dik kienet l-informazzjoni effettivament sottomessa u provduta lill-Kummissarju tat-Taxxa fuq il-Valur Mizjud, is-socjetà Rikorrenti qajla tista' targumenta, tissottometti u tillanja li *l-intimat rega' ghal darb' ohra zbalja meta ddecieda u dan minghajr raguni valida, li jqis is-sena 2008 bhala sena rapprezentattiva tas-snin l-ohra taht investigazzjoni.*

Jigi osservat li ghalkemm fl-affidavit tieghu Anatole Baldacchino²⁴ jikkontendi li *b'referenza ghall-paragrafu "accounting records": nichad li d-dokumenti ta' l-accounts mitluba mill-VAT department gew prezentati b'mod 'piecemeal'. Ledgers gew prezentati abbazi ta' pakkett ta' software li l-kumpannija kellha ghaliha [not purchased off the shelf] li kien ikopri kemm bejgh u xiri u dan kollu skond ir-records mitluba mill-ligi tal-VAT. Peress li s-sistema kellha 'coding system' ghaliha, jien personalment spjegajt din is-sistema lir-rapprezentanti tal-VAT Lorraine Dimech u Carmel Dimech però jidher li dawn ma fehmux dak li kont qieghed nghidilhom. Kif ghidt, l-informazzjoni kollha mitluba mid-dipartiment tal-VAT dejjem giet provvista... in verità mid-dokumenti esebiti minn Lorraine Dimech waqt is-seduta tad-9 ta' Mejju 2013 a fol. 35 sa' 91 tal-process, senjatament mill-e-mails a fol. 62 sa' 90 tal-process u mir-Receipt for Original Documents Produced a fol. 42 tal-process, jirrizulta bl-iktar mod car li s-socjetà Rikorrenti effettivament issottomettiet u pprovdiet id-dokumentazzjoni mitluba minghandha b'mod 'piecemeal' u li mid-dokumentazzjoni kollha mitluba gew sottomessi biss u esklussivament *Financial Statements for the years 2003 - 2008, Sales invoices and receipts relating to tax periods 01.01.08 - 31.01.09 u ICA invoices as per sheet attached (app. 1 refers).**

Jigi ribadit li ladarba kienet is-socjetà Rikorrenti stess li naqset milli tipprovdiet lill-Kummissarju tat-Taxxa fuq il-Valur Mizjud bid-dokumentazzjoni kollha mehtiega ghall-fini li jaghmel il-verifiki u investigazzjonijiet tieghu fir-rigward tal-perijodu 01.11.03 sa' 31.07.09, liema dokumentazzjoni opportuna u sufficjenti baqghet ma gietx provduta lanqas quddiem dan it-Tribunal, izda pprovdiet biss informazzjoni u dokumentazzjoni limitata ferm, addirittura fejn jirrigwarda il-bejgh pratikament ghal sena wahda biss, illum ma tistax tippretendi li targumenta u ssostni b'success li *l-intimat rega' ghal darb' ohra zbalja meta ddecieda u dan minghajr raguni valida, li jqis is-sena 2008 bhala sena rapprezentattiva tas-snin l-ohra taht investigazzjoni.*

Kif jirrizulta ben car mill-Investigations Audit Report, il-Kummissarju tat-Taxxa fuq il-Valur Mizjud wasal ghall-figura ta' under-declared Output Tax fl-ammont ta' €97,180.56 - in segwitu mnaqqsa fl-istadju tar-Review ghal €95,204.27 - in bazi ghal : (i) weighted average mark up ta' 98% - fl-istadju tar-Review gie mnaqqas ghal 97%; (ii) *ratio* ta' 77%/23% ghal dak li jirrigwarda akkwisti u bejgh Intra Komunitarju u akkwisti u bejgh lokali; (iii) stock allowance ta' 7%; u (iv) id-

²³ Vide ittri datati 9 ta' Novembru 2009, 10 ta' Dicembru 2009 u 4 ta' Jannar 2010, fol. 36, 38 u 40 tal-process kif ukoll e-mail datata 3 ta' Frar 2010 a fol. 65 tal-process u e-mail datata 3 ta' Marzu 2010 a fol. 68 tal-process.

²⁴ Fol. 13 sa' 17 tal-process.

dikjarazzjonijiet maghmula mis-socjetà Rikorrenti fid-dikjarazzjonijiet tat-taxxa taghha ghall-perijodi ta' taxxa mertu tal-kontestazzjoni²⁵.

Dwar il-weighted average mark-up kif kalkolat mill-Kummissarju tat-Taxxa fuq il-Valur Mizjud, is-socjetà Rikorrenti tikkontendi li: *r-rizultati ta' l-intimat li l-mark up exercise kien ta' 98% huwa kontradett fir-rapport tieghu stess fejn l-intimat qal li l-average markup misjub kien ta' 41%. "A trading account history analysis covering years 2003 to 2008 was carried out. This resulted in among other things an average mark-up of 41% and stock buildup of 7%". Illi minbarra li wiehed facilment jista' jinduna li l-intimat ma kienx konsistenti fir-rigward tal-kalkoli tal-mark-up, l-istejjem kienu hziena ghaliex l-intimat innifsu ammetta li hu eskluda certa informazzjoni biex wasal ghall-konkluzzjonijiet tieghu. L-intimat fil-fatt stqarr li hu ma kkunsidrax l-ispejjez lokali meta kien qieghed jikkalkula l-mark up u dan kif jirrizulta mill-allegazzjoni "a weighted average mark up exercise re local expenses could not be performed due to incomplete records". Silvio Muscat ... fl-affidavit tieghu ddikjara li l-mod kif l-intimat hadem il-markup u wasal ghall-figura ta' 97% m'humieq realistici ... u dan ghal diversi ragunijiet li kienu: ... the workings include discounts received from suppliers but fail to take into consideration the discounts allowed by the company. The inclusion of such discounts would significantly lower the resulting mark-up percentage. ... The costs are directly related to the purchase of the goods and should be added to the costs of goods sold arriving at the gross profit and subsequently the mark up percentage. Il-kalkolu tal-unit selling price kien zbaljat. L-intimat assuma li prodotti mixtrija bi prezz partikolari gew mibjugha bl-istess prezz. Silvio Muscat prezenta l-fatturi 34160 u 34165 ma' l-affidavit tieghu, biex jipprova li l-prezz varja avolja l-prodotti kienu mixtrija bi prezz wiehed. Illi barra mix-xhieda ta' Muscat, Saliba xehed ukoll li minkejja li r-rikorrenti ipprovdiet lill-intimat bl-audited accounts, li kienu juru average mark-up ta' bejn 41% u 43% deher car però li l-intimat, li dan ma emmnu u nsista li joqghod fuq il-kalkoli tieghu. Dan jikkuntrasta bil-kbir mal-fatt li dawn l-istess audited accounts ipprezentati mir-rikorrenti, gew utilizzati mill-intimat biex hadem is-7% stock allowance. Illi mix-xhieda ta' l-esperti, kif ukoll mill-ezercizzju li sar mir-rikorrenti, huwa evidenti li l-mark up ta' 98%, milhuq mill-intimat huwa kjament inkorret u ma jirriflettix ir-realtà u l-intimat wasal biss ghalih ghaliex inter alia eskluda l-iskontijiet u l-prodott b'xejn li r-rikorrenti taghti kif ukoll gew eskluzi l-ispejjez relattivi²⁶.*

Dawn is-sottomissjonijiet u konsegwenti lanjanzi tas-socjetà Rikorrenti rigward il-kalkoli u konteggi maghmula mill-Kummissarju tat-Taxxa fuq il-Valur Mizjud huma ghal kollox gratuwiti u kompletament bla bazi, u dan apparte l-fatt li l-fatturi indikati mix-xhud Silvio Muscat ma gewx minnu esebiti u ma jinsabu imkien fl-atti processwali.

Lorraine Dimech, l-Ispettur tad-Dipartiment tat-Taxxa fuq il-Valur Mizjud li mexxiet l-investigazzjoni fil-konfront tas-socjetà Rikorrenti, spjegat b'mod car id-diskrepanza bejn l-average mark up ta' 41% kif jirrizulta mill-audited accounts tas-

²⁵ Vide wkoll Summary of Workings esebita ghala Dok. "LG3" a fol. 44 tal-process.

²⁶ Nota ta' Sottomissjonijiet tas-socjetà Rikorrenti, fol. 232 sa' 234 tal-process.

socjetà Rikorrenti u l-weighted average mark up ta' 98% (in segwitu ridott ghal 97%) kalkolat u wtilizzat mill-Kummissarju tat-Taxxa fuq il-Valur Mizjud.

In risposta ghall-mistoqsija tista' tispjega ghaliex ittiehdet is-sena 2008 bhala bazi biex jinhadem il-mark-up? Lorraine Dimech wiegbet ghaliex dik hija l-unika sena li ipprezentalna s-sales taghha. Ahna hdimna dejjem fuq id-dokumenti li gew prezentati ma stajniex nahdmu fuq dokumenti li ma gewx ipprezentati d-dipartiment. Mistoqsija issa fi klawzola 4 pagna 3 tar-rapport tieghek hemm average mark up ta' 41% mentri pagna 4 l-average mark-up huwa ta' 98%. X'inhi din id-distinzjoni? Lorraine Dimech wiegbet id-differenza hija li dik hija trading account history. Tinhadem fuq il-Financial Statements. Il-Financial Statements taghmilhom il-kumpanija w ahna ovvjament irridu nivverifikaw. Dik hija biss indikazzjoni ta' x'irrapportat il-kumpanija. Imbaghad il-98% huma bbazati fuq l-invoices li pprezentat tax-xiri u l-bejgh. Mela ahna stajna nohorgu l-actual differenza bejn il-qligh prattikament. Id-differenza bejn ix-xiri u l-bejgh²⁷.

Minn din ix-xhieda ta' Lorraine Dimech jirrizulta li ghalkemm mill-Financial Statements jirrizulta average mark-up ta' 41%, il-weighted average mark-up ta' 98% irrizulta mid-dokumenti sottomessi lid-Dipartiment tat-Taxxa fuq il-Valur Mizjud mis-socjetà Rikorrenti stess. Weighted average mark-up fir-rigward tax-xiri ma setghax isir mhux ghaliex il-Kummissarju tat-Taxxa fuq il-Valur Mizjud ghazel li ma jaghmlux jew injora l-fatti li kellu quddiemu imma ghaliex, ghal darb' ohra, is-socjetà Rikorrenti ma ssottomettietx u ma pprovdietx id-dokumentazzjoni relattiva. Ghaldaqstant bejn average mark-up ta' 41% rizultanti mill-Financial Statements tas-socjetà Rikorrenti u l-weighted average mark-up ta' 98% rizultanti mid-dokumenti sottomessi lid-Dipartiment mis-socjetà Rikorrenti stess, il-Kummissarju tat-Taxxa fuq il-Valur Mizjud kien oltre milli gustifikat li jibbaza ruhu fuq l-weighted average mark-up attwali ta' 98%, in segwitu ridott ghal 97%, ghaliex rizultanti mid-dokumentazzjoni sottomessa mis-socjetà Rikorrenti u b'hekk setghet tigi debitament ezaminata u ivverifikata minnu.

Ghalkemm is-socjetà Rikorrenti tikkontendi li l-kalkoli u konsiderazzjoniet tal-Kummissarju tat-Taxxa fuq il-Valur Mizjud huma zbaljati ghaliex ma hax in konsiderazzjoni discounts minnha moghtija lill-klijenti taghha, in verità tali discounts ma ittiehdux, jew ahjar ma setghux jittiehdu in konsiderazzjoni, mill-Kummissarju ghaliex is-socjetà Rikorrenti ma pprovdietx prova sufficjenti u sodisfacenti ta' tali discounts.

Fir-rigward is-socjetà Rikorrenti tikkontendi li *parti sostanzjali ta' l-istejjem provizorji nharget fuq aktar informazzjoni nieqsa bhal per ezempju spejjez u l-fidelity scheme ma gewx ikkunsidrati. L-intimat ipprova jiddefendi l-fatt li ma ikkunsidrax il-fidelity scheme billi allega li dokumenti li jsostnu dan ma kellux. Però irrizulta car li d-dokumenti li setghu inghataw, kienu fil-fatt provduti u l-intimat kellu kull opportunità li jivverifika dik l-informazzjoni addizzjonali li minhabba ragunijiet teknici ma setghax jissottometti. Ta' min jaghmel referenza ghall-fatt li din l-informazzjoni kienet giet sottomessa diversi drabi qabel, u l-*

²⁷ Xhieda moghtija waqt is-seduta tad-9 ta' Mejju 2013, fol. 92 sa' 98 tal-process.

intimat qatt ma qajjem oggezzjonijiet ghal mod jew ghat-tip ta' dokumenti li gew ipprezentati. Ir-rikorrenti xehdet li tali dokumenti gew esebiti u ghaldaqstant id-dikjarazzjoni ta' l-intimat f'pagna 2, paragrafu ta' qabel ta' l-ahhar tar-Review Report fejn intqal "it is imperative that together with this report, taxpayer had only supplied one case whereby customer had used fidelity card system. However no proof was given as to the frequency of such discount" m'hijiex korretta u l-intimat kien messu inkluda tali informazzjoni fil-fazi tar-Review. L-intimat kien qiegħed jinvestiga s-snin 2003 sa' l-2009 izda għamel it-talba tiegħu għad-dokumenti fl-2009. L-unici dettalji li ma nġhatawx kienu dawġ li setgħu jinqraw biss mill-iscreens tal-kompjuters. Jidher illi meta d-dipartiment sab li d-dokumentazzjoni ta' l-2008 kienet l-aktar faċli li jsegwi, huwa sejjes l-investigazzjoni tiegħu kollha fuq dik is-sena. Dan kif fil-fatt intqal minn Lorraine Dimech lil Anatole Baldacchino meta qaltu wkoll li seta' ma jgħaddix iktar dokumenti ladarba kellha dik l-informazzjoni. Is-sales invoices u l-financial statements gew prezentati għal kull sena taht investigazzjoni. Però d-dipartiment għazel li ma jikkunsidrax kollox u jieqaf fuq sena waħda sabiex ihaffeff u jredu x-xogħol investigattiv aktar sempliċi. Illi dawn il-kalkoli ta' l-intimat fuq dokumenti nieqsa rrizulta li hargu stejjem li ma jirrispekkjawx ir-realtà²⁸.

It-Tribunal ma jistax jonqos milli josserva li dawn is-sottomissjonijiet tas-socjetà Rikorrenti huma għal kollox inveritjeri u kompletament imxejna mill-provi prodotti tul is-smiġħ tal-proceduri. Jibda biex jingħad li mill-provi prodotti mill-Kummissarju tat-Taxxa fuq il-Valur Mizjud ampjament jirrizulta li ma huwiex minnu li s-socjetà Rikorrenti ssottomettiet id-dokumentazzjoni kollha lilha mitluba għas-snin taht investigazzjoni. Jigi ribadit li mir-Receipt for Original Documents Produced esebita minn Lorraine Dimech a fol. 42 tal-process jirrizulta li d-dokumenti sottomessi mis-socjetà Rikorrenti kienu biss: (i) il-Financial Statements għas-snin 2003 sa' 2008, (ii) sales invoices and receipts għall-perijodu 01.01.08-31.01.09; u (iii) ICA invoices. Apparte minn hekk, mill-gdid jigi ribadit li l-Kummissarju tat-Taxxa fuq il-Valur Mizjud mhux għazel li jibbaza l-kalkoli tiegħu fuq is-sena 2008 izda kien kostrett jibbaza ruħu fuq dik is-sena għaliex id-dokumentazzjoni provduta mis-socjetà Rikorrenti - partikolarment għal dak li jirrigwarda sales invoices - kienet limitata għas-sena 2008 biss u għal Jannar ta' l-2009.

It-Tribunal assolutament ma jemminx li s-socjetà Rikorrenti ssottomettiet id-dokumentazzjoni kollha mitluba, f'liema dokumentazzjoni kien hemm prova sufficjenti u sodisfacenti tad-discounts minnha mogħtija lill-klijenti tagħha tramite il-Fidelity Card Scheme, għar-raguni li kieku dan kien hekk zgur ma kienx ikollha problema tissottometti d-dokumentazzjoni meħtieġa meta giet mitluba tagħmel hekk mir-Review Officer Lorraine Galea.

Wara l-hrug ta' l-istimi provizorji fil-konfront tagħha s-socjetà Rikorrenti issottomettiet lill-Kummissarju tat-Taxxa fuq il-Valur Mizjud Vat Counter Report dated 10th October 2010²⁹, permezz ta' liema kkontestat u rribattiet għall-

²⁸ Nota ta' Sottomissjonijiet tas-socjetà Rikorrenti, fol. 234 u 235 tal-process.

²⁹ Dok. "C" a fol. 106 sa' 109 tal-process esebiti mis-socjetà Rikorrenti permezz ta' Nota pprezentata fis-16 ta' Lulju 2013 u mill-gdid Dok. "D" Anness ma' l-affidavit ta' Martin Saliba, fol. 165 sa' 168 tal-process.

imsemmija stimi mahruga fil-konfront taghha. Fost diversi elementi, is-socjetà Rikorrenti trattat il-kwistjoni tal-Fidelity Card System u b'reazzjoni ghal dak minnha hemm affermat, Lorraine Galea, ir-Review Officer, talbet iktar provi oltre l-fattura wahdanija sottomessa mis-socjetà Rikorrenti ma' l-imsemmi Rapport. Is-socjetà Rikorrenti minflok ma ssottomettiet il-provi mehtiega ghazlet li tallega li l-Kummissarju tat-Taxxa fuq il-Valur Mizjud injora dak ir-Rapport taghha, fatt dan li jirrizulta ghal kollox mhux minnu kemm mill-ittra tal-Kummissarju tat-Taxxa fuq il-Valur Mizjud indirizzata lilha datata 12 ta' Novembru 2010³⁰, kif ukoll mill-ittra ulterjuri datata 7 ta' Jannar 2011³¹ u mir-Review Report mahrug minn Lorraine Galea. Fid-dawl tar-reazzjoni tas-socjetà Rikorrenti ghat-talbiet tal-Kummissarju tat-Taxxa fuq il-Valur Mizjud - senjatament tar-rapprezentant tieghu Lorraine Galea - u cioè li ma ssottomettietx id-dokumentazzjoni u provi mitluba minghandha, il-Kummissarju kien korrett u gustifikat f'li ma jikkunsidrax dawn id-discounts invokati mis-socjetà Rikorrenti ghaliex - kif sewwa spjegat Lorraine Galea waqt ix-xhieda moghtija fis-seduta tas-16 ta' Lulju 2013³² - *il-loyalty card, jien ma nsitax nibbaza li ser naghmel amenda li jekk jiena kull ma naghmel invoice wahda, ezempju wiehed. Jien ma stajtx mill-affarijiet li tani hu nistablxxi l-frekwenza tad-discounts li kienu qed isiru. Jien ghatini invoice wahda u qtajt discount, jien kif ha nikkantifika over all is-sales kemm il-darba sar jekk ma taghtinix dettalji ohra? ... jien mhux ezempju biss tlabbtu, jien tlabbtu l-creditors, ippermettili naqra ha nsib l-ittra ha nghidlek ezatti, jien ghedtlu 'you are kindly requested to submit proof of such transactions, qed nitkellmu habba d-discount backed up by evidence, sales invoices, VAT detailed reports, related nominal ledgers and workings showing the cash credit sales ratio'. Jien minghajr dak ir-ratio, ma nistax nghid minn hundred percent kemm ha nnaqqas.*

Jigi osservat ukoll li ghalkemm tul is-smigh ta' dawn il-proceduri s-socjetà Rikorrenti esebiet xi fatturi biex turi li kienet taghti discounts lill-klijenti taghha, tali fatturi xorta wahda ma jistghux jigu kkunsidrati ghar-raguni li minflok ma issottomettiet dokumentazzjoni shiha ghas-snin mertu ta' dawn il-proceduri, issottometti biss dik id-dokumentazzjoni li ghogbot lilha li però bl-ebda mod ma tippermetti li ssir il-verifika mehtiega u li jinhareg ir-ratio bejn bejgh maghmul u discounts moghtija.

Is-socjetà Rikorrenti tikkontesta wkoll il-fatt li l-Kummissarju tat-Taxxa fuq il-Valur Mizjud ibbaza ruhu fuq sotck build up ta' 7%, ghad illi tali stock build up irrizulta mill-Financial Statements tas-socjetà Rikorrenti stess li gew minnha sottomessi u pprezentati lill-Kummissarju tat-Taxxa fuq il-Valur Mizjud.

Fir-rigward is-socjetà Rikorrenti tikkontendi li: *l-intimat zbalja wkoll fir-rigward tal-kalkoli ta' l-istock allowance tar-rikorrenti ghaliex unilateralment dan gie stabbilit abbazi ta' 7%. Illi kif xehed Anatole Baldacchino fl-affidavit tieghu, l-intimat seta' facilment jaghmel referenza ghall-audited accounts tas-snin in kwistjoni minn fejn kellu jirrizulta l-inventarju ta' l-istock tul iz-zminijiet li kienu*

³⁰ Doc. 2 anness mar-Rikors promotur

³¹ Anness mar-Risposta tal-Kummissarju tat-Taxxa fuq il-Valur Mizjud.

³² Fol. 136 sa' 144 tal-process.

*qeghdin jigu investigati*³³. Tali kontestazzjoni però hija ghal kollox infondata ghar-raguni li mill-Investigation Audit Report u mix-xhieda ta' Lorraine Dimech jirrizulta b'mod car li s-7% stock build up irrizulta mill-Financial Statements tas-socjetà Rikorrenti u li gew minnha sottomessi lill-Kummissarju tat-Taxxa fuq il-Valur Mizjud.

Fir-rigward u in risposta ghall-mistoqsija *ha nirriferik ghal precentagg iehor li huwa l-istock allowance ta' 7%. Biex hareg dan il-percentagg gew ikkonsultati l-audited accounts tal-kumpanija?* Lorraine Dimech wiegbet *fil-fatt minn fuqu inhadem. Ghandek il-kopja hemmhekk ta jigifieri jekk trid tara. Dik qieghda Appendix 3 wara r-rapport hemm number 3 qieghda trading account.* Mill-imsemmi Appendix 3³⁴ jirrizulta li l-Kummissarju tat-Taxxa fuq il-Valur ikkonstata - u dan mill-audited accounts tas-socjetà Rikorrenti sottomessi lilu - li kien hemm opening stock ta' €38,134 u closing stock ta' €144,977 b'dana ghalhekk li kien hemm differenza bejn opening u closing stock ta' €106,843 li jwassal ghal 7% stock build up. Dan kollu juri li d-decizjoni tal-Kummissarju tat-Taxxa fuq il-Valur Mizjud li jahdem a bazi ta' 7% stock build up ma hijiex affattu decizjoni unilaterali izda kienet konsiderazzjoni bbazata fuq l-audited accounts tas-socjetà Rikorrenti, konsiderazzjoni din li ma gietx debitament imxejna mis-socjetà Rikorrenti li ghad illi allegat li din il-figura ma hijiex korretta, anzi hija wahda ghal kollox arbitrarja, naqset milli turi l-istock build up li skontha jirrizulta mill-audited accounts taghha.

In verità s-socjetà Rikorrenti tibni l-kaz taghha fuq tghawwig tal-fatti biex tizvija lit-Tribunal mill-konsiderazzjoni centrali ta' dawn il-proceduri u cioè li hija naqset milli tissottometti u tipprezenta lill-Kummissarju tat-Taxxa fuq il-Valur Mizjud dik l-informazzjoni lilha mitluba u minnu mehtiega ghall-fini ta' l-investigazzjoni u verifika tad-dikjarazzjonijiet tat-taxxa taghha.

Kaz iehor fejn is-socjetà Rikorrenti kjarament tipprowa tizvija lit-Tribunal fil-konsiderazzjonijiet tieghu huwa fejn tissottometti li *Saliba xehed li l-kalkoli ta' l-intimat ghandhom jigu skartati wkoll minhabba l-fatt li l-intimat ta kaz ta' zewg invoices li kienu jikkoncernaw bejgh minn S&R Handaq lil zewg kumpaniji barranin, precizament Crystal Mine Nigeria (invoice numru 13896 datata 07/08.2009) u Prosperity Trading & Contg. Est, Bahrain (invoice numru 13551 datata 11/06/2008). Dawn iz-zewg invoices m'ghandhom x'jaqsmu xejn mar-rikorrenti ghaliex hi ma kienitx xtrat dan it-thinner izda kienu zewg kumpanniji barra minn xtutna li xtrawh. Illi meta giet mistoqsija mit-Tribunal ghal liema raguni gew inkluzi dawn l-invoices, Lorraine Dimech fix-xhieda taghha tas-16 ta' Lulju baqghet ma tatx twegiba*³⁵. Ghalkemm huwa veru li l-Kummissarju ikkunsidra dawn iz-zewg fatturi, li fl-ahhar mill-ahhar gew esebiti mis-socjetà Rikorrenti bhala parti mid-dokumentazzjoni li kellu jikkonsidra l-Kummissarju, mill-Investigations Audit Report³⁶ kjarament jirrizulta li fl-ahhar mill-ahhar irrizultat ta' l-ezercizzju fejn gew utilizzati tali fatturi giet skartat. In effetti r-Rapport kjarament jipprovdi li *as the above weighted average mark-up exercise (yielding a*

³³ Nota ta' Sottomissjonijiet tas-socjetà Rikorrenti, fol. 238 tal-process.

³⁴ Anness mar-Rapport tal-Kummissarju tat-Taxxa fuq il-Valur Mizjud.

³⁵ Nota ta' Sottomissjonijiet tas-socjetà Rikorrenti, fol. 237 tal-process.

³⁶ Anness mar-Risposta tal-Kummissarju tat-Taxxa fuq il-Valur Mizjud.

mark up of 111% MUP) indicated as table 2 **may not be treated as reliable and representative due to the limited number of invoices**³⁷; sales figures were subdivided according to the resultant percentage as declared ICA and local purchases, this is, 77% and 23% respectively.

Dejjem fuq l-istess tonalità ta' zvjjar, is-socjetà Rikorrenti tikkontendi li *jinghad ulterjorment illi fil-parti tar-Rapport Investigattiv saru diversi allegazzjonijiet li juru bic-car li l-intimat lanqas kien fehem principju bazilari, u cioè il-bazi ta' l-istruttura operattiva tar-rikorrenti li kellu jeffettwa mhux ftit ir-rizultat ahhari. Illi r-Rikorrenti tissottometti li l-intimat ghamel zball meta assuma li Brincat Company Limited tbiegh lil Legnolack, mentri fil-verità hija r-rikorrenti li tbiegh lil Brincat Company Limited*³⁸. Jekk allura l-intimat ma fehemx din l-istruttura ta' bejgh bejn il-kumpaniji, bilfors li wiehed jasal ghall-konkluzjoni li l-istejjem li nhadmu mill-intimat huma totalment zbaljati, u jimmeritaw li jigu annullati fl-intier taghhom³⁹.

Hawnhekk is-socjetà Rikorrenti taghmel jeferenza ghall-osservazzjoni fl-*Investigations Audit Report li Mr. Saliba, Director, and Ms. Nicola Said, employee, confirmed that local purchases were all bought from either Brincat Co. Ltd. or S&R Handaq Ltd., both companies have a common Director, Mr. Brincat, and involved in the alleged VAT Fraud Case. An attempt to elevate the said purchase invoices was made from the records provided for Brincat Co. Ltd. but to no avail. No sales invoices from Brincat Co. Ltd. to Legnolack were traced. As regards S&R Handaq Ltd. very limited information and records were produced to the VAT Department. From these records only three invoices resulted as sales to Legnolack Co. Ltd. (invoice nos. 12970, 13080, 3087). However only sales records for items on invoice number 13080 were found.*

Minn dan l-estratt tar-Rapport jirrizulta li l-informazzjoni dwar dik li s-socjetà Rikorrenti ssejhlha *l-istruttura tal-kumpaniji* nghata lill-Kummissarju tat-Taxxa fuq il-Valur Mizjud minn Martin Saliba, Direttur tas-socjetà Rikorrenti, u Nicola Said, impjegata mas-socjetà Rikorrenti u mill-affidavit ta' Martin Saliba ma jirrizultax li, kif issa allegat mis-socjetà Rikorrenti, il-Kummissarju ma fehemx sew l-istruttura tal-kumpaniji. In fatti fir-rigward Martin Saliba ddikjara li *l-istharrig taghna beda billi rajna x'kien inkluda d-dipartiment fir-rapport tieghu, imhejjija minn Lorraine Dimech, Carmel Dimech (Investigation Audit) u Lorraine Galea (Review). Flimkien ma' accounts clerk tal-kumpanija, is-sinjorina Nicola Said, jien hrigt id-dettalji koncernanti l-local purchases li saru fl-2008 mill-Legnolack minghand S&R (Handaq) Ltd. u Brincat's Ltd., zewg kumpaniji li magghom isiru transazzjonijiet ta' xiri mill-Legnolack.....*⁴⁰

Fid-dawl tax-xhieda ta' Martin Saliba fejn jiddikjara u jikkonferma li S&R Handaq Ltd. u Brincat Co. Ltd. huma zewg kumpaniji li magghom isiru transazzjonijiet ta'

³⁷ Enfasi tat-Tribunal.

³⁸ Enfasi tat-Tribunal.

³⁹ Nota ta' Sottomissjonijiet tas-socjetà Rikorrenti, fol. 237 u 238 tal-process.

⁴⁰ Affidavit ta' Martin Saliba, fol. 148 tal-process. Enfasi u sottolinear tat-Tribunal.

xiri mill-Legnolack, ossia mis-socjetà Rikorrenti, l-allegazzjoni ta' l-istess socjetà Rikorrenti li l-Kummissarju tat-Taxxa fuq il-Valur Mizjud ma fehem xejn dwar l-istruttura tal-kumpanniji, bil-konsegwenza ghalhekk li l-istimi mahruga fil-konfront taghha ghandhom jigu annullati, ma hijiex affattu kredibbli.

Is-socjetà Rikorrenti ghalhekk lanqas ma rnexxielha tipprova b'mod sodisfacenti li l-istimi mahruga fil-konfront taghha ghall-perijodu ta' taxxa 01.05.04-31.07.09 in kwantu rigwarda l-element ta' under-declared Output Tax huma eccessivi.

Fid-dawl ta' dan kollu osservat ghalhekk jirrizulta li l-appell tas-socjetà Rikorrenti mill-istimi mahruga fil-konfront taghha ghall-perijodi ta' taxxa 01.05.04-31.07.04, 01.08.04-31.10.04, 01.11.04-31.01.05, 01.02.05-30.04.05, 01.01.05-31.07.05, 01.08.05-31.10.05, 01.11.05-31.01.06, 01.02.06-30.04.06, 01.05.06-31.07.06, 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, mhux gustifikat u b'hekk ma jisthoqqx li jigi milqugh.

Ghal dawn ir-ragunijiet it-Tribunal jaqta' u jiddeciedi billi jichad l-appell tas-socjetà Rikorrenti mill-istimi mahruga fil-konfront taghha ghall-perijodi ta' taxxa 01.05.04-31.07.04, 01.08.04-31.10.04, 01.11.04-31.01.05, 01.02.05-30.04.05, 01.01.05-31.07.05, 01.08.05-31.10.05, 01.11.05-31.01.06, 01.02.06-30.04.06, 01.05.06-31.07.06, 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 u minflok jikkonferma l-istess imsemmija stimi.

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

A tenur ta' l-Artikolu 2(4) tad-Disa' Skeda tal-Kap.406 tal-Ligijiet ta' Malta, it-Tribunal jordna li kopja ta' din is-sentenza tigi notifikata lis-socjetà Rikorrenti.

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