



MALTA

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

Rikors Nru. 76/12VG

XXX

Vs

Direttur Ĝeneral (Taxxa fuq il-Valur Miżjud)

Illum 3 ta' Lulju 2020

It-Tribunal,

Ra r-Rikors ipprezentat mis-soċjetà XXX Limited fis-27 ta' April 2012 permezz ta' liema titlob li t-Tribunal iħassar u jirrevoka l-istimi maħruġa fil-konfront tagħha mill-Kummissarju tat-Taxxa fuq il-Valur Miżjud għall-perijodi ta' taxxa mill-1 ta' Novembru 2005 sat-30 ta' April 2010, bl-ispejjeż kontra l-Kummissarju tat-Taxxa fuq il-Valur Miżjud;

Ra d-dokumenti annessi mar-Rikors promotur markati Dok. "L1" sa' Dok. "L55" a fol. 3 sa' 78 tal-proċess;

Ra r-Risposta tad-Direttur Ĝeneral (Taxxa fuq il-Valur Miżjud) permezz ta' liema jopponi ghall-appell tas-soċjetà Rikorrenti mill-istimi minnu maħruġa fil-konfront tagħha u jitlob li l-istess jiġi miċħud, bl-ispejjeż kontra s-soċjetà Rikorrenti, u minflok l-istimi hekk maħruġa kontriha jiġu kkonfermati. Fl-imsemmija Risposta l-Direttur Ĝeneral (Taxxa fuq il-Valur Miżjud) jissolleva wkoll l-eċċeazzjoni a tenur ta' l-Artikolu 48(5) tal-Kap. 406 tal-Ligjiet ta' Malta u dana billi s-soċjetà Rikorrenti naqset milli tissottometti d-dokumentazzjoni lilha mitluba fil-kors ta' l-investigazzjoni;

Ra d-dokumenti annessi mar-Risposta tad-Direttur Ĝeneral (Taxxa fuq il-Valur Miżjud) markati Dok. "A" u Dok. "B" a fol. 86 sa' 109 tal-proċess;

Ra li waqt is-seduta tat-12 ta' Settembru 2012¹, id-difensur tas-soċjetà Rikorrenti iddikjara li l-provi li jingħabru f'dawn il-proċeduri għandhom jgħoddū wkoll għar-Rikorsi fl-ismijiet "XXX v. Direttur Ĝeneral (Taxxa fuq il-Valur Miżjud)" Rik. Nru.

¹ Fol. 119 tal-proċess.

77/12 u “XXX et v. Direttur Ĝenerali (Taxxa fuq il-Valur Miżjud)” Rik. Nru. 194/12, b’dana għalhekk li t-tlett Rikorsi jinstemgħu flimkien. Ra li l-partijiet kontendenti reġgħu qablu dwar dan kollu fis-seduta tat-2 ta’ Frar 2015²;

Ra t-talba tas-soċjetà Rikorrenti avvanzata waqt is-seduta tal-11 ta’ Ĝunju 2013³ sabiex fid-dawl tas-sentenza fl-ismijiet “John Geranzi Limited v. Kummissarju tat-Taxxi Interni” Appell Nru. 22/09 deċiża fit-30 ta’ Novembru 2012 u peress illi l-proċeduri odjerni jittrattaw dwar taxxa imposta bħala *punitive measure*, fejn għandu japplika l-principju ta’ l-inverżjoni tal-provi kif ukoll dak tad-dritt tas-silenzju, it-Tribunal jordna l-inverżjoni tal-provi b’dana li jibda bil-provi l-ewwel id-Direttur Ĝenerali (Taxxa fuq il-Valur Miżjud). Ra li d-Direttur Ĝenerali (Taxxa fuq il-Valur Miżjud) irrimetta ruħu għad-deċiżjoni tat-Tribunal;

Ra li b’Digriet datat 16 ta’ Lulju 2013⁴, it-Tribunal laqa’ t-talba avvanzata mis-soċjetà Rikorrenti w’ordna l-inverżjoni tal-provi, b’dana li jibda l-ewwel bil-provi d-Direttur Ĝenerali (Taxxa fuq il-Valur Miżjud);

Ra li b’Rikors ippreżentat fit-22 ta’ Lulju 2013⁵, id-Direttur Ĝenerali (Taxxa fuq il-Valur Miżjud) talab l-awtorizzazzjoni sabiex jappella mid-Digriet mogħti fis-16 ta’ Lulju 2013, liema talba però ġiet miċħuda b’Digriet mogħti fis-7 ta’ Awwissu 2013⁶;

Ra li waqt is-seduta tat-2 ta’ Frar 2015⁷, ġie dikjarat li fid-dawl ta’ l-eċċeżżjoni a tenur ta’ l-Artikolu 48(5) tal-Kap. 406 tal-Ligijiet ta’ Malta sollevata mill-Kummissarju tat-Taxxa fuq il-Valur Miżjud, it-Tribunal ser jittratta u jiddeċiedi din l-eċċeżżjoni qabel ma jittratta l-mertu ta’ l-appell tas-soċjetà Rikorrenti;

Sema’ x-xhieda ta’ Brian Debono, rappreżentant tad-Direttur Ĝenerali (Taxxa fuq il-Valur Miżjud), mogħtija waqt is-seduta tas-17 ta’ Frar 2014⁸ u x-xhieda ta’ Anton Bonnici, rappreżentant tat-Tax Compliance Unit, mogħtija waqt is-seduta tat-2 ta’ Frar 2015⁹ u ra d-dokumenti esebiti minnu a fol. 154A sa’ 154T tal-proċess, sema’ x-xhieda ta’ Jesmar Bilocca mogħtija waqt is-seduti tas-27 ta’ April 2015¹⁰ u tat-28 ta’ Mejju 2015¹¹ u x-xhieda ta’ Roberto Spiteri mogħtija waqt is-seduta tat-22 ta’ Ottubru 2015¹² u ra l-affidavit ta’ l-istess Roberto Spiteri a fol. 193 tal-proċess;

Ra li waqt is-seduta tal-5 ta’ Diċembru 2017¹³, is-soċjetà Rikorrenti talbet l-awtorizzazzjoni sabiex a tenur ta’ l-Avviż Legali 279/08 tibghat domandi lill-Awtoritajiet Esteri għall-fini li jsir l-eżami ta’ l-Ufficijali tal-Guardia di Finanza u l-awtoritajiet ġudizzjarji ta’ Ragusa. Ra n-Nota spjegattiva tas-soċjetà Rikorrenti a fol.

² Fol. 154 tal-proċess.

³ Fol. 123 tal-proċess.

⁴ Fol. 125 sa’ 131 tal-proċess.

⁵ Fol. 132 tal-proċess.

⁶ Fol. 133 tal-proċess.

⁷ Fol. 154 tal-proċess.

⁸ Fol. 144 sa’ 147 tal-proċess.

⁹ Fol. 155 sa’ 157 tal-proċess.

¹⁰ Fol. 159 sa’ 163 tal-proċess.

¹¹ Fol. 165 tal-proċess.

¹² Fol. 168 sa’ 174 tal-proċess.

¹³ Fol. 183 tal-proċess.

184 u 185 tal-proċess. Ra d-Digriet mogħti fid-19 ta' April 2018¹⁴ permezz ta' liema it-talba tas-soċjetà Rikorrenti ġiet miċħuda;

Ra n-Nota ta' Sottomissjonijiet¹⁵ tal-Kummissarju tat-Taxxi relattivament għall-eċċeżzjoni minnu sollevata a tenur ta' l-Artikolu 48(5) tal-Kap. 406 tal-Ligjiet ta' Malta u ra n-Nota Responsiva¹⁶ tas-soċjetà Rikorrenti relattivament għal din l-istess eċċeżzjoni;

Ra l-atti kollha tal-kawża;

Ikkonsidra:

Is-soċjetà Rikorrenti ġiet notifikata bi tmintax-il stima maħruġa fil-konfront tagħha mill-Kummissarju tat-Taxxi ghall-perijodi ta' taxxa 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, 01.01.08-31.01.08, 01.02.08-30.04.08, 01.05.08-31.07.08, 01.08.08-31.10.08, 01.11.08-31.01.09, 01.02.09-30.04.09, 01.05.09-31.07.09, 01.08.09-31.10.09, 01.11.09-31.01.10, 01.02.10-30.04.10 permezz ta' liema l-Kummissarju ježiġi ħlas tas-somma komplexiva ta' €626,388 bħala taxxa, flimkien mas-somma komplexiva ta' €126,119.58 bħala taxxa amministrattiva u s-somma komplexiva ta' €343,726.94 bħala imġħax¹⁷. Peress illi ġassitha aggravata bil-ħruġ ta' dawn l-istimi fil-konfront tagħha, is-soċjetà Rikorrenti interponiet appell għal quddiem dan it-Tribunal fejn titlob it-thassir u revoka ta' l-istess imsemmija stimi.

Is-soċjetà Rikorrenti tibbażza l-appell tagħha mill-istimi maħruġa fil-konfront tagħha fuq is-segwenti aggravji: (i) il-likwidazzjonijiet ta' taxxa w-avviżi ta' rifjut ma inħarġux *properly, reasonably* u *fairly*; (ii) hija ma ngħatatx smiegh xieraq fl-istadju ta' l-oġgeżzjoni; (iii) qatt ma għamlet ix-xiri u/jew bejgħ illi qed jgħid il-Kummissarju; (iv) il-kalkoli tal-Kummissarju huma għal kollox żbaljati u bbażati fuq premessi ħziena; (v) it-taxxa pperikolata/multi amministrattivi w- imġħax punittiv jippekkaw serjament f'dak li huwa proporzjonalità.

Id-Direttur Ġenerali (Taxxa fuq il-Valur Miżjud), illum Kummissarju tat-Taxxi, jopponi għall-appell tas-soċjetà Rikorrenti mill-istimi maħruġa fil-konfront tagħha għall-perijodi ta' taxxa 01.12.06-28.02.07, 01.03.07-31.05.07, 01.06.07-31.08.07, 01.09.07-30.11.07, 01.12.07-31.12.07, 01.01.08-29.02.08, 01.03.08-31.05.08, 01.06.08-31.08.08, 01.09.08-30.11.08, 01.12.08-28.02.09, 01.03.09-31.05.09, 01.06.09-31.08.09, 01.09.09-30.11.09, 01.12.09-28.02.10 u jitlob li l-istess jiġi miċħud, bl-ispejjeż kontra tagħha, u minflok l-imsemmija stimi jiġu kkonfermati. Il-Kummissarju jossolleva wkoll l-eċċeżzjoni a tenur ta' l-Artikolu 48(5) tal-Kap. 406 tal-Ligjiet ta' Malta stante li skontu *l-appellant naqas milli jipprovidi d-dokumenti hekk kif kien mitlub mid-Direttur Ġenerali. Għaldaqstant l-Onor Tribunal għandu jicħad kull talba ta' l-appellant sabiex jiproduci d-dokumenti f'dan l-istadju.*

¹⁴ Fol. 189 u 190 tal-proċess.

¹⁵ Fol. 195 sa' 208 tal-proċess.

¹⁶ Fol. 212 sa' 214 tal-proċess.

¹⁷ Fol. 61 sa' 78 tal-proċess.

It-Tribunal itenni li fid-dawl ta' l-eċċeazzjoni sollevata mill-Kummissarju tat-Taxxi a tenur ta' l-Artikolu 48(5) tal-Kap. 406 tal-Ligijiet ta' Malta, ikun opportun li tīgi tratta u deċiża din l-eċċeazzjoni qabel ma jiġi trattat u deċiż l-appell fil-mertu.

L-Artikolu 48 tal-Kap. 406 tal-Ligijiet ta' Malta jittratta dwar id-dokumentazzjoni li għandha tinżamm mit-taxpayer u s-suabartikolu (5) ta' l-imsemmi artikolu tal-Ligi jipprovd li: *il-Kummissarju jista'*, *fkull żmien matul iż-żmien specifikat fis-subartikolu (4), jeħtieg lil kull persuna li tiproduci jew jista' jeleva mingħand kull persuna, inkluż terza persuna d-dokumentazzjoni, dokumenti, konteġġi u data elettronika meħtieġa li jinżammu minnha bis-saħħha ta' dan l-artikolu, u jagħmel kopji tagħhom: Iżda, jekk ikun hemm evidenza li wara li tkun intalbet mill-Kummissarju b'avviż bil-miktub, il-persuna tkun naqset li tiproduci mingħajr skużanti raġonevoli d-dokumentazzjoni, dokumenti, konteġġi u data elettronika sa' tletin jum mid-data tan-notifika ta' dak l-avviż, hija ma tkunx tista' titħallu tiproduci dik id-dokumentazzjoni, dokumenti, konteġġi u data elettronika fi stadju aktar tard minn meta tkun inħarġet stima jew stimi provviżoġri jew quddiem it-Tribunal, jew fxi Qorti tal-Ġustizzja*¹⁸: Iżda wkoll meta titqiegħed fiduċja fuq xi persuna oħra sabiex din twettaq xi biċċa xogħol, il-fatt li jkun hemm dik il-fiduċja ma jitqiesx li hija skużanti raġonevoli għall-għanijiet ta' dan is-subartikolu.

L-eċċeazzjoni tal-Kummissarju tat-Taxxi hija appuntu bbażata fuq l-ewwel proviso tas-subartikolu (5) ta' l-Artikolu 48 tal-Kap. 406 tal-Ligijiet ta' Malta.

Mill-imsemmi provvediment tal-Ligi joħroġ ċar li biex il-Kummissarju tat-Taxxi jista' jinvoka dan l-ewwel proviso tas-subartikolu (5) ta' l-Artikolu 48 tal-Kap. 406 tal-Ligijiet ta' Malta kontra t-taxpayer, fil-każ in eżami s-soċjetà Rikorrenti, għandu l-ewwel qabel kollox jirriżulta li t-taxpayer ikun ġie mitlub jissottometti d-dokumentazzjoni, dokumenti, konteġġi u data elettronika, b'avviż bil-miktub. Kemm-il darba tali talba bil-miktub ma tirriżultax l-Artikolu 48(5) tal-Kap. 406 tal-Ligijiet ta' Malta ma japplikax.

Mill-provi prodotti u senjatament mix-xhieda ta' Anton Bonnici, rappreżentant tat-Tax Compliance Unit inkarigat mill-investigazzjoni fil-konfront tas-soċjetà Rikorrenti, u mid-dokumenti minnu esebiti jirriżulta li saru talbiet bil-miktub lis-soċjetà Rikorrenti biex tipprovdi dokumentazzjoni, dokumenti, konteġġi u d-data elettronika meħtieġa għall-finijiet ta' l-investigazzjoni fil-konfront tagħha, għal liema talbiet però s-soċjetà Rikorrenti baqgħet per lo più inadempjenti.

B'ittra datata 22 ta' Novembru 2010 is-soċjetà Rikorrenti ġiet infurmata li *the Tax Compliance Unit will be conducting a tax audit of your statutory tax declarations and, where relevant, of any related parties. In this regard, Ms. Maria Borg and Mr. Anton Bonnici will be performing this assignment, as provided under the Income Tax Acts. The tax audit will be carried out on the Income Tax declaration of basis year 2006 (Year of Assessment 2007). You are kindly requested to attend a meeting at the TCU premises in Floriana on Wednesday 1st December 2010 at 9:15a.m.*

¹⁸ Enfasi tat-Tribunal.

During this meeting you are kindly requested to provide the following documentation for basis years 2004 to 2009: Copies of audited financial statements; Copies of income tax returns not yet filed; VAT workings; Copies of bank statements of all bank accounts held; General ledger and trial balances.¹⁹ In verità hawn it-Tribunal josserva li ma hemmx prova konkreta li din l-ittra ġiet notifikata lis-soċjetà Rikorrenti stante li mill-AR Card relattiva ma tirriżulta l-ebda firma ta' l-addressee²⁰. Minkejja dan però fid-9 ta' Diċembru 2010 ġie ffirmat dokument²¹ minn Roberto Spiteri, Direttur tas-soċjetà Rikorrenti, u Anton Bonnici qua ufficjal tat-Tax Compliance Unit, minn liema jirriżulta li s-soċjetà Rikorrenti intalbet tipprovdi is-segwenti dokumentazzjoni għall-perijodu 01.01.04-31.12.09, flimkien mad-denunzji tat-taxxa sottomessi tul l-2010:

- Name and contact details of Accountant and/or Auditor;
- Bank statements and bank reconciliations;
- Copies of Audited Accounts (full set not abridged);
- Nominal ledger;
- Trial balance at year end agreeing to Audited Accounts;
- Cash book;
- Purchases and Sales Ledger;
- Purchases and Sales Invoices, receipts etc.;
- Customs documentation regarding imports and exports;
- Creditors' statements;
- Stock lists (valued) and stock take documentation at year end;
- Vat workings used to prepare VAT returns and VAT reconciliation to Audited Accounts;
- Fixed asset register;
- Debtors and Creditors Lists;
- Other debtors and other creditors lists;
- Prepayments and accruals lists;
- Audit adjustments;
- Wages and salaries documents including all FSS returns & wages reconciliation;
- Other income-rental agreements, dividends warrants etc.;
- If company has a loan or an overdraft - copy of bank sanction letter;
- Documentation regarding any major bad debts write-off;
- If company operates one or more retail outlets - all Z and other cash register readings/slips etc.;
- If accounting records are computerised - Audit Trail.

Fir-rigward tad-dokumentazzjoni, dokumenti, konteggi u data elettronika mitluba bid-dokument datat 9 ta' Diċembru 2010, Anton Bonnici²² ddikjara li minnha dik il-lista hemm ħafna dokumentazzjoni importanti li ma waslitx, per eżempju l-audited financial statements ta' certu snin aktar ricenti, tas-07,08 u 09, għada sa' illum il-ġurnata mhux filed mad-Dipartiment, jiġifieri din qatt ma waslet. Issa jekk hemm sales invoices ma waslux ta' l-ebda sena, hemm purchase invoice u expenses invoice ma waslux, vat workings ma waslux, jiġifieri impossibbli li jsir certu xogħol. Bank

¹⁹ Fol. 154Q tal-proċess.

²⁰ Dok. 154R tal-proċess.

²¹ Dok. "F" a fol. 154O tal-proċess.

²² Xhieda mogħtija waqt is-seduta tat-2 ta' Frar 2015, fol. 155 sa' 157 tal-proċess.

statements kien hemm xi ħaġa u sar certu testing, jiġifieri b'mod komplet dik l-informazzjoni li ntalbet ma waslītx. Għall-mistoqsija tat-Tribunal it-taxpayer, meta intom bqajtu tinsistu għal din id-dokumentazzjoni, takom raġuni għalfejn ma setax tiġi provduta u għalfejn ma ġietx provduta? Anton Bonnici wieġeb le, l-ebda raġuni, jekk tara l-korriſpondenza, dik hija korriſpondenza li saret biex nitolbu ddokumenti, kif ġia għedtlek iċċejsjajt lil Paul Camilleri li kien l-accountant tiegħi, imbagħad ċempiltlu u bagħatlu wkoll emails, ġabli fit dokumentazzjoni bħal ma semmejtlek, bħal bank statements u eventwalment at a certain point in time il-kuntatt inqata', minn-naħha tat-taxpayer ovvjament.

Mill-provi prodotti jirriżulta li b'email datata 13 ta' Jannar 2011²³, Anton Bonnici għarraf lil Paul Camilleri, *it-tax representative tas-soċjetà Rikorrenti għall-finijiet ta' investigazzjoni fil-konfront tagħha, li further to out meeting of 9th December 2010 in respect of XXX Ltd. please note that we are looking forward to receiving the documentation requested during the said meeting. Please do not hesitate to contact me should you envisage any problems with providing us the said documentation by the end of next week.* B'referenza għal dik l-email, Anton Bonnici jidher li għamel is-segwenti notament datat 28 ta' Frar 2011²⁴: *Paul Camilleri called to inform me that XXX provided him with some source documentation and that he would be able to provide draft financial statements for 06. 07. 08 and 09 (non-trading yr) by the end of next week. I informed him that the respective returns for income tax purposes and VAT purposes must be filed as well.*

B'ittra datata 15 ta' Ġunju 2011²⁵, liema ittra tirriżulta notifikata, is-soċjetà Rikorrenti ġiet infurmata li: *further to our letter of 22nd November 2010, whereby you were notified that the Tax Compliance Unit will be conducting a tax audit in respect of XXX Ltd. and further to our meeting of 9th December 2010 and to subsequent correspondence with your tax representative, it is noted that the returns for years of assessment 2008, 2009 and 2010 have not yet been submitted to the Inland Revenue Department, despite our several reminders and notwithstanding the fact that most of the requested documentation was never provided to us. In this regard please note that unless the above-mentioned returns and documentation are received by the Department by 30th June 2011 latest, the Tax Compliance Unit shall proceed to conclude the case with the information at its disposal by raising assessments in respect of which you have the right to object as provided under the Income Tax Management Act.*

Is-sitwazzjoni dwar liema mid-dokumentazzjoni, dokumenti, konteġġi u data elettronika mitluba mis-soċjetà Rikorrenti ġiet minnha sottomessa fl-istadju ta' l-investigazzjoni tirriżulta ben kristalizzata fit-Tax Audit Report imhejjji mit-Tax Compliance Unit²⁶.

Mis-sezzjoni *General Background*²⁷ jirriżulta li s-segwenti dokumentazzjoni, għad illi mitluba ma ġietx provduta: *copies of financial statements, Income Tax returns*

²³ Fol. 154N tal-proċess.

²⁴ Fol. 154M tal-proċess.

²⁵ Fol. 154I u 154J tal-proċess.

²⁶ Fol. 94 sa' 106 tal-proċess.

²⁷ Fol. 96 tal-proċess.

for Y/A 2008 to 2011 not filed, source documentation, including sales and purchases invoices, VAT workings. Fejn ġew biex jiddeskrivu Audit Work Done l-ufficijali tat-TCU, ossia Anton Bonnici u Maria Borg, osservaw illi: a first meeting was held on 9th December 2010 with Roberto Spiteri, the sole shareholder and sole director of XXX Ltd. and Paul Camilleri, the taxpayer's representative. During this meeting the taxpayer was requested to provide various documentation that was required to perform the tax audit. Following several reminders, the taxpayer eventually produced some of the documentation requested during the first meeting. However, most documentation was not provided, including: the financial statements and the respective income tax returns for the years of assessment 2008, 2009 and 2010. As at the date of this report, this documentation was still not submitted to the Inland Revenue Department; proper accounting records; source documentation such as purchases and sales invoices; and VAT workings. On 15th June 2011, a final letter was sent to the taxpayer, copied by email to Paul Camilleri as taxpayer's representative, informing him that unless all outstanding documentation was received by the end of June 2011, the tax audit would be concluded on the basis of the information available to the Tax Compliance Unit. Nevertheless, both the taxpayer and its representative failed to communicate with us or to provide us with any of the outstanding documentation.

Review of documentation provided -

Documentation provided by the taxpayer included summaries of sales invoices for the basis years 2006, 2007, 2008 and 2010. ... The following matters were noted during the review of the sales summaries provided by the taxpayer: The total sales figures for 2006 and 2007 as per summary provided are significantly lower than the sales figures reported for VAT purposes; The summary for 2006 includes the period 1st January 2006 to 24th May 2006 only; The details of sales invoices were listed in sequential order. Details of some sales invoices were entirely omitted from the list; The amount of most invoices was abnormally low considering the taxpayer's business as a distributor, including amounts of low double digits and even single digits; Sales invoices were not provided by the taxpayer. In view of the fact that the taxpayer terminated communication with us, no explanations were forthcoming in respect of the above issues and, consequently, the excess sales as per summaries provided where no sales were declared (i.e. for basis years 2008 and 2010 as shown in Table 3) are being deemed as undeclared sales and recommended to be assessed accordingly.

Review of bank statements provided -

The taxpayer provided bank statements for the period 2006 and 2010. The bank deposits were compared to sales declared for VAT purposes and the following discrepancies emerged ... The following issues were encountered during the work done in connection with the above reconciliation: No details were provided regarding the nature of deposits and it was therefore assumed that all bank deposits relate to sales for the company. For the purposes of the above reconciliation these deposits were adjusted for deemed VAT; Paul Camilleri, the taxpayer's representative, stated that the company did not trade during 2009. However, from bank statements provided it was noted that the taxpayer had several bank deposits meaning that the taxpayer did actually trade during that year; No adjustments for movement in debtors were made for years 2007 to 2010 as the respective financial statements were not provided by the taxpayer. As stated earlier the taxpayer did not provide explanations to the above issues as the taxpayer's representative terminated communication with us, and therefore the discrepancies between bank deposits and sales as declared for VAT purposes, as shown in Table 4, are being

*recommended to be assessed accordingly as undeclared sales (after making adjustments for undeclared sales as per summary of sales invoices which are being recommended to be assessed separately as per Table 3) as follows:... **Intra Community Transactions** - From a review of the intra community acquisitions (ICAs) declared by the taxpayer in the VAT returns, it was noted that significant discrepancies resulted when such ICAs were compared to declarations made by the taxpayer's EU suppliers according to the VAT information Exchange System (VIES)... As taxpayer was not available to explain the above discrepancies, such discrepancies shall be deemed to represent ICAs that were not declared by the taxpayer in the respective VAT returns for the purpose of downscaling its business activities and it is being recommended that such undeclared ICA be assessed accordingly. Consequently, output tax shall be charged on the ICAs not declared by the taxpayer but no input tax shall be allowed through the reverse charge deduction.*

Minn dan kollu jirriżulta għalhekk illi mid-dokumentazzjoni, dokumenti, konteggi u data elettronika lilha mitluba bil-miktub fid-9 ta' Diċembru 2010, is-soċjetà Rikorrenti sa' l-20 ta' Diċembru 2020, id-data tar-rapport tat-Tax Compliance Unit, ipprovdiet dokumentazzjoni minima u naqset milli tipprovdi dokumentazzjoni, dokumenti, konteggi u data elettronika essenzjali għall-finijiet ta' investigazzjoni li kienet qed issir fil-konfront tagħha. Huwa lampanti ad eżempju n-nuqqas ta' sottomissjoni lit-Tax Compliance Unit ta', fost oħrajn, il-financial statements u denunzji tat-taxxa fuq l-income għas-snin ta' stima 2008, 2009 u 2010, accounting records xierqa, source documentation bħala ma huma fatturi ta' l-akkwisti u tal-bejgh u VAT workings.

Stabbilit għalhekk li s-soċjetà Rikorrenti ġiet mitluba, bil-miktub, tiprovdi sensiela ta' dokumentazzjoni, dokumenti, konteggi u data elettronika u li din naqset li tagħmlu fir-rigward ta' parti sostanzjali fir-rigward ta' dak lilha mitluba, jeħtieġ issa jīġi determinat jekk l-istess soċjetà kellhiex skużanti raġjonevoli għal tali nuqqas.

Id-Dipartment tat-Taxxa fuq il-Valur Miżjud ittentā jistabilixxi jekk is-soċjetà Rikorrenti kellhiex skużanti raġjonevoli għalfejn naqset milli tipprovdi parti sostanzjali tad-dokumentazzjoni, dokumenti, konteggi u data elettronika lilha mitluba waqt l-investigazzjoni tat-Tax Compliance Unit. In effetti fl-istadju ta' Review Jesmar Bilocca, ir-Review Officer inkarigat mir-review ta' l-istimi proviżorji li kien nħargu fil-konfront tas-soċjetà Rikorrenti, kien, permezz ta' ittra datata 28 ta' Frar 2012²⁸, għarraf lill-imsemmija soċjetà li *with reference to your request for review for provisional assessments dated 24th January 2012, you are being requested to provide to the department the reasons, preferably via email, as to why not all documents required were submitted to the Tax Compliance Unit. Your email address, telephone and mobile numbers are also required...* Mill-AR Card a fol. 89 tal-proċess jirriżulta li din l-ittra kienet għiet notifikata. Permezz ta' email datata 6 ta' Marzu 2012²⁹, Paul Camilleri, tax representative tas-soċjetà Rikorrenti, kien għarraf lil Jesmar Bilocca li *I write to you on behalf of our client Mr. XXX in respect of VAT numbers MT1747-5806 and MT1652-8232. I have been advised by my client that he seems to have mislaid a lot of documents in respect of the returns in question,*

²⁸ Fol. 88 tal-proċess.

²⁹ Fol. 91 tal-proċess.

because they were stored at his warehouse. Most of the documents still in his warehouse were destroyed by mould. I have seen some of the documents but was unable to work on them due to the state of the documents. Wara din l-email, permezz ta' email datata 12 ta' Marzu 2012³⁰, Jesmar Bilocca reġa ikkomunika ma' Roberto Spiteri, Direttur tas-socjetà Rikorrenti u għarfu li *with reference to our earlier teleconversation, below please find the important documents, which were not submitted during the investigation carried out by the Tax Compliance Unit (TCU).* Important documents not provided for VAT no: 1652-8232 - Copies of financial statements; income tax returns for Y/A 2008 to 2011 not filed; Source documentation, including sales and purchase invoices; and VAT workings. Important documents not provided for VAT no: 1747-5806 - Income tax returns for Y/A 2008, 2009 and 2011; Proper accounting records; Source documentation, including sales and purchase invoices; Complete bank statements; VAT workings; and Statement of Affairs. Moreover it was reported that at one point you have failed to communicate with the TCU. The email below may show why some documents were not presented, however it is not considered as a reasonable excuse as to why you have ended your communication with the TCU, and therefore they had no explanation for certain anomalies. Kindly let me know whether you have further comments or reasons with reference to the above and whether you actually have workings and documents to provide us in order to support your arguments by not later than next Wednesday 14th March 2012.

Ir-raġunijiet mogħtija mis-socjetà Rikorrenti għalfejn naqset milli tissottometti d-dokumentazzjoni lilha mitluba mill-Uffiċjali tat-Tax Compliance Unit ma' ġewx aċċettati mir-Review Officer u l-istess socjetà Rikorrenti naqset milli tagħti spjega jew informazzjoni ulterjuri fir-rigward u għalhekk fir-Rapport³¹ tiegħi Jesmar Bilocca ikkonkluda li: *following the request for review at red 44, a letter was sent to the taxpayer on 28th February 2012 requesting reasons as to why not all documents were submitted to TCU. His representative, Mr. Paul Camilleri, replied via email, which included the following reasons: Client mislaid a lot of documents; Most documents destroyed by mould; and Some documents were seen but his representative, Mr. Paul Camilleri, was unable to work on them due to the state of the documents. The above reasons may reflect why some documents were not presented however they do not justify why the communication with the TCU has been terminated (red 48). Therefore on 12th March 2011 [recte: 2012] the taxpayer was contacted on his mobile and it was agreed that I will send him an email; email address was provided over the mobile. On the same day of the mobile call, an email was sent to the taxpayer in order to provide further comments and reasons by 14th March 2012 (red 49). During the same day that the latter email was sent, another mobile call was made to the taxpayer to confirm the email address. Mr. XXX confirmed the email address and that it had already been received by him. No reply has been received by 20th March 2012. In light of the above, it is being recommended to approve the provisional assessments in question and to take necessary action in order to issue provisional assessments for tax periods from May-10 to Sep-10 and from Oct-10 to Dec-10.*

³⁰ Fol. 90 tal-proċess.

³¹ Fol. 107 sa' 109 tal-proċess.

Meta Roberto Spiteri³², prodott mill-Kummissarju tat-Taxxi, xehed f'dawn il-proċeduri huwa ddikjara li dawn id-dokumenti mmuffati kien ipprezentahom lid-Dipartiment tat-Taxxa fuq il-Valur Miżjud iżda dawn ma ġewx minnhom aċċettati minħabba l-istat li kienu fihom. Mistoqsi *l-Vat Department lil min?* huwa wiegħeb kif tajthom lhom tawhomli lura għaliex qaluli li ma jaċċettawx f'din il-kundizzjoni. Fl-affidavit³³ tiegħu imbagħad iddikjara li: *jiena kont niġġestixxi l-business ta' importazzjoni ta' ilma tax-xorb mill-Italia u darba fost l-oħrajn kont ġejt avviċinat minn certa Pino Malandrino (li kont nafu minn qabel) sabiex ipoġġini fkuntatt ma' ‘businessmen’ minn Sqallija, fosthom kien hemm Fabio Radenza, Francesco Accardi, Salvatore Radenza. Jien kont filfatt bdejt ingiżib ix-xogħol mingħandhom u għal dan ix-xogħol kont nuža l-VAT number tal-kumpannija XXX Limited (MT 1652-8232). Kont ukoll ġejt mistoqsi minn Fabio Radenza biex nidħlu fi šhab flimkien u filfatt kont VAT number fisimna t-tnejn, però n-numru ma nafx x'inhu. Jien ukoll kelli VAT number ieħor fismi li kont nuža bil-business tal-kiri tad-DVDs, dan kelli n-numru MT 1747-5806. L-ewwel darba li skoprejt li kien hemm xi tbagħbis bin-numri tal-VAT tiegħi kien meta kont irċevejt kont eżägeratament għoli min-naħha tad-Dipartiment tal-VAT. Jien kont mort kellimt lil xi ħadd minn dak id-Dipartiment u hemmhekk skoprejt li l-VAT numbers tiegħi kienu ntużaw biex inxraw ħafna prodotti mill-Italia. Hemmhekk irrealizzajt li l-VAT number tiegħi kien ġie hijacked. Dawn il-prodotti qatt ma kont naf bihom. Wara ftit taż-żmien id-Dipartiment tal-VAT kien talabni biex intiħ id-dokumentazzjoni kollha rigward dawn l-istimi. Jien niftakar li kont mort id-Dipartiment u kont ipprezentajt id-dokumenti kollha li kelli fil-pussess tiegħi. Dawn id-dokumenti kienu jirrelataw mal-VAT returns li kont nissottometti bil-business tiegħi. Id-Dipartiment ried li nippreżenta wkoll dokumenti in sostenn ta' l-ammonti eżägerati ta' VAT li kelli fi ħdanu. Jien kont kellimt lil Fabio Radenza biex jiispiegali x'kien qed jiġri u hu qalli biex inkellem lil Guardia di Finanza peress li hu, flimkien ma' oħrajn, kien qiegħed jiġi investigat. Jien ippruvajt kemm-il darba inkellmu però qatt ma rrisponda lura. Jien ma kelli ebda informazzjoni jew dokument dwar l-ammonti li kien qiegħed jitlobni l-VAT Department u allura ma stajtx nippreżenta ebda dokument aktar minn dawk li kont ipprezentajt. Ngħid li l-informazzjoni u d-dokumenti mitluba mid-Dipartiment tal-VAT kienu jirrigwardaw attività illegali u kriminali li saret minn wara dahri bin-numri tal-VAT li jsejħu lili u jien bl-ebda ma seta jkoll din l-infomrazzjoni u/jew dokumenti, proprju għax dan kollu sar minn wara dahri. Illi din hija r-raġuni għalfejn ma stajtx nagħti ebda dokument lill-Kummissarju tal-VAT u mhux minħabba xi raġuni oħra.*

It-Tribunal eżamina bir-reqqa dak dikjarat minn Roberto Spiteri għall-fini li jagħti raġuni għalfejn ma ġewx sottomessi d-dokumentazzjoni, dokumenti, konteggi u data elettronika relattivi għas-socjetà Rikorrenti mitluba mill-Uffiċjali tat-Tax Compliance Unit u fil-fehma Tiegħu ma tirriżulta l-ebda skużanti raġonevoli li tiġġustifika n-nuqqas tas-sottomissjoni ta' dak mitlub, senjatamente tal-financial statements u denunzji tat-taxxa fuq l-income għas-snin ta' stima 2008, 2009 u 2010, *accounting records* xierqa, *source documentation* bħala ma huma fatturi ta' l-akkwisti u tal-bejgħ u *VAT workings*.

³² Xhieda mogħtija waqt is-seduta tat-22 ta' Ottubru 2015, fol. 168 sa' 174 tal-proċess.

³³ Fol. 193 tal-proċess.

A tenur ta' l-Artikolu 48(1),(2),(3) u (4) tal-Kap. 406 tal-Ligijiet ta' Malta: (1) *Kull persuna reġistrata taxxabbi stabbilita f'Malta għandha żżomm dokumentazzjoni shiħa u kif imiss tal-operazzjonijiet kollha mwettqa fil-kors jew avvanz ta' l-attività ekonomika tagħha; (2) Kull persuna li tkun suġġetta għat-taxxa fuq xi operazzjoni jew li t-identifika lilha nnifisha bħala persuna reġistrata taħt dan l-Att għall-għan ta' xi operazzjoni, għandha żżomm dokumentazzjoni shiħa u kif imiss ta' kull operazzjoni bħal dik; (3) Kull persuna taxxabbi u kull persuna legali mhux taxxabbi għanha żżomm dokumentazzjoni shiħa u kif imiss ta' l-akkwisti intra-Komunitarji kollha magħmul minnha; (4) Id-dokumentazzjoni li għaliha jirreferu s-subartikoli (1), (2) u (3) għandha tinżamm u tinħażen b'dak il-mod, ikun fiha dawk id-dettalju tkun dokumentata b'dak it-tagħrif, dokumenti u kontijiet murija fil-Ħdex-il Skeda u dik id-dokumentazzjoni, tagħrif, dokumenti u kontijiet għandhom jinżammu għal żmien ta' mill-anqas sitt snin minn tmiem is-sena li jkollhom x'jaqsmu magħha, jew dak il-perijodu ieħor jew perijodi oħra hekk kif il-Ministru jista', f'każi jiet speċjali jordna permezz ta' regolamenti...*

Fid-dawl ta' dawn il-provvedimenti tal-Ligi huwa ferm evidenti li l-iskużi avvanzati mis-soċjetà Rikorrenti waqt l-investigazzjoni fis-sens li ħafna mid-dokumenti mitluba lilha intilfu - fi kliem Paul Camilleri *he seems to have mislaid a lot of documents in respect of the returns in question* - u li l-kumplament tad-dokumenti huma inutilizzabbi għax imuffati, ma humiex u qatt ma jistgħu jiġi kkunsidrati bħala skużanti ragħjonevoli għan-nuqqas ta' sottomissjoni tad-dokumenti, dokumentazzjoni, konteggi u data elettronika mitluba fid-dokument datat 9 ta' Diċembru 2010. Apparte dan kollu, jiġi osservat li d-dokumenti allegatament immuffati lanqas biss ingābu a konjizzjoni tat-Tax Compliance Unit - fuq ir-rapport ta' min huma bbażati l-istimi maħruġa fil-konfront tas-soċjetà Rikorrenti - biex l-uffiċjali inkarigati mill-investigazzjoni setgħu jiddeterminaw huma stess kienux inutilizzabbi o meno. Għalkemm fix-xhieda li ta waqt is-seduta tat-22 ta' Ottubru 2015³⁴, Roberto Spiteri iddikjara li kien ta d-dokumenti lid-Dipartiment tat-Taxxa fuq il-Valur Miżjud - mhux it-Tax Compliance Unit - iżda dawn ġew rifjutati, meta ġie mistoqsi lil min ta dawn id-dokumenti, kull ma rrisponda kien *kif tajthom lhom tawhomli lura għaliex qaluli li ma jaċċetaw xf'din il-kundizzjoni*. Mill-email ta' Paul Camilleri lil Jesmar Bilocca datata 6 ta' Marzu 2012³⁵ jirriżulta in oltre li kien dan Paul Camilleri biss li ra dawn id-dokumenti u kien hu biss li ddetermina li kien inutilizzabbi.

In kwantu rigwarda dak allegat minn Roberto Spiteri fl-affidavit tiegħu fejn kjarament jikkontendi li hu personali u tramite s-soċjetà tiegħu XXX Limited, safa vittma ta' frodi fiskali skontu perpetrata minn Fabio Radenza w oħrajn minn wara dahru, għalkemm it-Tribunal jista' jifhem li din hija d-difiża versu l-istimi maħurġa fil-konfront tiegħu u tas-soċjetà Rikorrenti, assolutament ma jistax jifhem kif dan il-fatt jista' jiġi justifika n-nuqqas ta' sottomissjoni ta' dokumentazzjoni, dokumenti u konteggi bħala ma huma financial statements, income tax returns, sales and purchases invoices u VAT workings, partikolarment meta: (i) fis-snin taħt investigazzjoni s-soċjetà Rikorrenti kienet issottomettiet id-denunzji tagħha relativi għat-taxxa fuq il-valur miżjud, denunzji li presumibilment imtlew a baži ta'

³⁴ Fol. 168 sa' 174 tal-proċess.

³⁵ Fol. 91 tal-proċess.

informazzjoni dedotta minn din it-tip ta' dokumentazzjoni; u (ii) mid-dokumentazzjoni sottomessa minnha stess - senjatament mis-sales invoices list - irriżulta bejgh tul is-snin kollha in kwistjoni (ad eċċezzjoni tas-sena 2009 - fir-rigward ta' liema però it-Tax Compliance Unit għamlet l-osservazzjonijiet tagħha) liema sales invoices list kienet presumibilment kumpilata a baži tas-sales invoices proprja.

In kwantu rigward dokumentazzjoni pertinenti għall-Intra Community Acquisitions li Roberto Spiteri jikkontendi li ma għandux u qatt ma kellu, jsegwi li a baži ta' dak minnu stess affermat huwa issa prekluż milli jissottometti din it-tip ta' dokumentazzjoni tul is-smiġħ ta' dawn il-proċeduri.

Apparte minn dan kollu t-Tribunal josserva li l-kuntatt li Roberto Spiteri kelli mad-Dipartiment tat-Taxxa fuq il-Valur Miżjud kien ma' l-Anti Fraud Unit li mir-Rapport li jinsab esebit a fol. 50 tal-proċess fl-ismijiet "XXX et v. Direttur Ĝeneral (Taxxa fuq il-Valur Miżjud" Rik. Nru. 194/12, ittrattat il-materja ta' *force blocking* tan-numri tal-VAT ta' Roberto Spiteri u tas-soċjetà Rikorrenti. Peress li dan l-aspett kien differenti mill-investigazzjoni tat-Tax Compliance Unit, anke jekk Roberto Spiteri seta' ssottometta jew pprova jissottometti xi dokumenti, dokumentazzjoni, konteggi u data elettronika lil din il-Unit - fatt dan dwar liema t-Tribunal għandu riservi serjissimi - xorta jibqa' l-fatt li ammont sostanzjali ta' dokumenti, dokumentazzjoni, konteggi u data elettronika mitluba mit-Tax Compliance Unit baqqelu ma ġew sottomessi qatt.

Fid-dawl ta' dan kollu osservat għalhekk it-Tribunal ma jsib l-ebda skużanti raġjonevoli li tiġi justifika n-nuqqas tas-soċjetà Rikorrenti li tissottometti parti sostanzjali mid-dokumenti, dokumentazzjoni, konteggi u data elettronika lilha mitluba bid-dokument datat 9 ta' Diċembru 2010. Konsegwentement għalhekk, a tenur ta' l-Artikolu 48(5) tal-Kap. 406 tal-Liġijiet ta' Malta, id-dokumentazzjoni, dokumenti, konteggi u data elettronika lilha mitluba u li ma ġewx minnha sottomessi waqt l-investigazzjoni ma jistgħux jiġi sottomessi u pprezentati tul is-smiġħ ta' dawn il-proċeduri. Bl-istess mod dik id-dokumentazzjoni li Roberto Spiteri ddikkjara li ma hijiex fil-pussess tiegħu u skontu da parte tiegħu pratikament lanqas teżisti, ukoll ma tistax tiġi mis-soċjetà Rikorrenti esebita u sottomessa tul is-smiġħ tal-proċeduri.

Għal dawn ir-raġunijiet it-Tribunal jilqa' l-eċċezzjoni a tenur ta' l-Artikolu 48(5) tal-Kap.406 tal-Liġijiet ta' Malta sollevata mill-Kummissarju tat-Taxxi u jiddikjara li s-soċjetà Rikorrenti hija prekluża milli tul is-smiġħ ta' dawn il-proċeduri tissottometti id-dokumentazzjoni, dokumenti, konteggi u data elettronika lilha mitluba bid-dokument datat 9 ta' Diċembru 2010 u li ma ġewx minnha sottomessi tul l-investigazzjoni da parte tat-Tax Compliance Unit, kif ukoll id-dokumentazzjoni li jikkontendi li ma hijiex fil-pussess tiegħu u li skontu da parte tiegħu lanqas teżisti.

It-Tribunal jirriserva li jiddeċiedi dwar il-kap ta' l-ispejjeż fis-sentenza finali dwar il-mertu.

It-Tribunal għalhekk jordna l-prosegwiment tal-kawża fil-mertu.

A tenur tal-Partita 2(4) tal-Partita Disa' tal-Kap. 406 tal-Ligijiet ta' Malta jordna li kopja ta' din id-deċiżjoni tiġi notifikata lis-soċjetà Rikorrenti.

MAĞISTRAT

DEPUTAT REĞISTRATUR