



MALTA

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

Rikors Nru. 44/2014VG

XXX

Vs

Direttur Ĝeneral (Taxxa fuq il-Valur Miżjud)

Illum 2 ta' Lulju 2024

It-Tribunal,

Ra r-Rikors ipprezentat mis-soċjetà XXX fl-20 ta' Mejju 2014, permezz ta' liema titlob li t-Tribunal iħassar u jirrevoka l-istima maħruġa fil-konfront tagħha mid-Direttur Ĝeneral (Taxxa fuq il-Valur Miżjud) għall-perijodu ta' taxxa 01.01.08 sa' 31.12.12, inkluż is-sorte, l-imgħax u t-taxxa addizzjonali, bl-ispejjeż kontra d-Direttur Ĝeneral (Taxxa fuq il-Valur Miżjud);

Ra d-dokumenti annessi mar-Rikors promotur a fol. 3 sa' 7 tal-proċess;

Ra r-Risposta tad-Direttur Ĝeneral (Taxxa fuq il-Valur Miżjud), illum Kummissarju tat-Taxxa u Dwana, permezz ta' liema jopponi għall-appell tas-soċjetà Rikorrenti mill-istima maħruġa fil-konfront tagħha għall-perijodu ta' taxxa 01.01.08 sa' 31.12.12 u jitlob li l-istess jiġi miċħud, bl-ispejjeż kontra tagħha, u minflok l-imsemmija stima tigi kkonfermata stante li l-aggravji fuq liema s-soċjetà Rikorrenti tibbaża l-appell tagħha huma għal kollox infondati fil-fatt u fid-dritt;

Ra d-dokumenti annessi mar-Risposta tad-Direttur Ĝeneral (Taxxa fuq il-Valur Miżjud) markati Dok. "A" sa' Dok. "K2" a fol. 20 sa' 52 tal-proċess;

Ra li dawn il-proċeduri għamlu perijodu ta' zmien jistennew l-eżitu tal-proċeduri fl-ismijiet "Cove Limited v. Direttur Ĝeneral (Taxxa fuq il-Valur Miżjud)" Rik. Nru. 63/13VG li ġew finalment determinati fis-16 ta' Marzu 2018 b'sentenza tal-Qorti ta' l-Appell (Sede Inferjuri);

Sema' x-xhieda ta' Dr. Jeremy Debono mogħtija waqt is-seduti tat-22 ta' Mejju 2018¹ u tas-7 ta' April 2022² u ra d-dokument, ossia ċ-Certifikat ta' Registrazzjoni tas-soċjetà Rikorrenti, esebit minnu markat Dok. "JD1" a fol. 78 tal-proċess, ra d-dokumenti markati Dok. "X1" u Dok. "X2" esebiti mis-soċjetà Rikorrenti permezz ta' Nota pprezentata fis-16 ta' Lulju 2018 a fol. 84 sa' 87 tal-proċess, sema' x-xhieda ta' Roderick Zammit Randich, in rappreżentanza tal-Kummissarju tat-Taxxi, mogħtija waqt is-seduti tat-8 ta' Novembru 2018³, tat-28 ta' Frar 2019⁴ u tat-3 ta' Marzu 2020⁵ u ra d-dokumenti esebiti minnu markati Dok. "RZD" a fol. 89 sa' 108 tal-proċess u Dok. "R"⁶, sema' x-xhieda ta' Adrian Pisani, mogħtija waqt is-seduti ta' l-24 ta' Jannar 2019⁷ u ta' l-14 ta' Novembru 2022⁸, ra l-affidavit ta' Raymond Camilleri markat Dok. "Z2" u l-affidavit tal-Perit Joseph Attard markat Dok. "Z3", kif ukoll dokument markat Dok. "Z1", ilkoll esebiti mis-soċjetà Rikorrenti permezz ta' Nota pprezentata fis-7 ta' Mejju 2019 a fol. 125 sa' 128 tal-proċess, ra d-dokumenti markati Dok. "A" sa' Dok. "I" esebiti mis-soċjetà Rikorrenti permezz ta' Nota pprezentata fis-7 ta' April 2022 a fol. 180 sa' 211 tal-proċess, sema' x-xhieda ta' Jacqueline Grech mogħtija waqt is-seduta tas-7 ta' April 2022⁹ u x-xhieda ta' Chris Spiteri, in rappreżentanza tal-Kummissarju tat-Taxxi, mogħtija waqt is-seduta tat-2 ta' Frar 2023¹⁰;

Ra n-Nota ta' Sottomissjonijiet tas-soċjetà Rikorrenti a fol. 140 sa' 148 tal-proċess u ra n-Nota Responsiva tal-Kummissarju tat-Taxxi a fol. 149 sa' 173 tal-proċess;

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

Ra l-atti kollha tal-kawża;

Ikkonsidra:

Permezz ta' stima maħruġa mid-Direttur Ģeneral (Taxxa fuq il-Valur Miżjud) fil-konfront tas-soċjetà Rikorrenti għall-perijodu ta' taxxa 01.01.08 sa' 31.12.12, id-Direttur Ģeneral jesīġi ħlas mingħand l-imsemmija soċjetà tas-somma ta' €73,910.68 rappreżentanti taxxa, flimkien ma' l-ammonti ulterjuri ta' €14,782.14 rappreżentanti taxxa amministrattiva u €253.30 rappreżentanti imgħax, komplexivament ammontanti għal **€88,946.12**¹¹. Is-soċjetà Rikorrenti ġassitha aggravata b'din l-istima maħruġa fil-konfront tagħha w'interponiet dan l-appell minnha fejn titlob li t-Tribunal iħassar u jirrevoka l-istima in kwistjoni, inkluż is-sorte, l-imgħax u t-taxxa addizzjonal.

Is-soċjetà Rikorrenti tibbaża dan l-appell tagħha fuq is-segwenti aggravji: (i) l-istima in kwistjoni ma nħarġitx *properly, reasonably* u *fairly* u hija bbażata fuq interpretazzjoni hażina tal-liġi; (ii) l-istima hija bbażata fuq il-premessa hażina li hija

¹ Fol. 79 sa' 82 tal-proċess.

² Fol. 215 u 216 tal-proċess.

³ Fol. 109 sa' 113 tal-proċess.

⁴ Fol. 122 tal-proċess.

⁵ Fol. 133 tal-proċess.

⁶ Il-file tad-Dipartiment relativ għas-soċjetà Rikorrenti u ghall-istima mertu ta' dawn il-proċedurim liema dokument qed jinżamm fis-sigrieta.

⁷ Fol. 115 u 166 tal-proċess.

⁸ Fol. 222 u 223 tal-proċess.

⁹ Fol. 212 sa' 214 tal-proċess.

¹⁰ Fol. 225 sa' 227 tal-proċess.

¹¹ Fol. 6 tal-proċess.

ma kellhiex id-dritt tieħu tnaqqis għal VAT inkorsa meta fil-fatt hija dejjem aġixxiet ai termini tad-drittijiet komunitarji tagħha; (iii) il-kwistjoni kollha tirrivolvi madwar id-deċiżjoni tad-Direttur Ĝeneral (Taxxa fuq il-Valur Miżjud) li jċaħħadha mid-dritt li ta'gevola ruħha minn krediti għal input tax debitament dovuti lilha; (iv) bid-deċiżjoni tiegħu, id-Direttur Ĝeneral (Taxxa fuq il-Valur Miżjud) qed jikser id-Direttiva Council Directive 2006/112/EC, hekk kif imfissra fis-sentenzi tal-Qorti Ewropeja Rompelman, Lennartz, Intercommunale voor Zeewaterontzilting (INZO) (Case C-110/94) u SC Gran Via Moineşti SRL v. Agenzia Națională de Administrare Fiscală (ANAF), Administrația Finanțelor Publice București Sector 1; (v) għalkemm hija qed tiġi punita b'penali amministrattiv ta' €14,782, hija dejjem aġixxiet in buona fede u ma jeżistux l-estremi in baži għal liema għandha tbagħti xi miżuri punittivi; (vi) il-kalkoli tad-Direttur Ĝeneral (Taxxa fuq il-Valur Miżjud) huma għal kollo żabaljati u bażati fuq premessi ħażiena; (vii) ir-rapport taxxa pperikolata/multi amministrattivi w imghax punittiv jippekkaw serjament f'dak illi hija proporzjonalità.

Id-Direttur Ĝeneral (Taxxa fuq il-Valur Miżjud), illum Kummissarju tat-Taxxa u Dwana, jopponi għall-appell tas-soċjetà Rikorrenti mill-istima maħruġa fil-konfront tagħha għall-perijodu ta' taxxa 01.01.08 sa' 31.12.12 u jitlob li l-istess jiġi miċħud u minflok tiġi kkonfermata l-imsemmija stima u dana stante li: (i) a baži ta' dak provdut fir-Regolament 3(b) tal-Legislazzjoni Sussidjarja 406.12, li huwa marbut mal-provvedimenti ta' l-Artikolu 22(2)(3) tal-Kap.406 tal-Ligijiet ta' Malta, is-soċjetà Rikorrenti ma hija intitolata għal ebda kreditu għal input tax; (ii) l-input tax trid tkun relatata ma' żmien ta' taxxa partikolari li, ai termini ta' l-Artikolu 17 tal-Kap.406 tal-Ligijiet ta' Malta, huwa, sakemm mhux provdut xort' oħra, żmien ta' tliet xħur kalendarji li jibda fl-ewwel jum li jiġi minnufih wara t-tmiem taż-żmien ta' taxxa li jkun ġie qabel. B'hekk is-soċjetà Rikorrenti kellha tipprova li fil-mument li hija nkorriet it-taxxa li talbet bħala input tax, hija kienet qiegħda tinkorri tali taxxa fil-kors jew avvanz ta' l-attività ekonomika tagħha; (iii) huwa ma kisirx id-Direttiva tal-Kunsill 2006/112/EC, anzi l-agħir tiegħu jinsab ikkonfermat f'dak osservat mill-Qorti ta' l-Appell fis-sentenza fl-ismijiet “Aprilia Hotel v. Il-Kummissarju tat-Taxxa fuq il-Valur Miżjud”, Appell Nru. 2/2011, deċiża fis-27 ta' Ottubru 2011; (iv) l-attività ekonomika tas-soċjetà Rikorrenti setgħet twassal biex hija titlob lura input tax relatata mal-kiri tal-proprietà u mhux ma' l-iżvilupp u l-bejgħ tal-proprietà; (v) is-soċjetà Rikorrenti ma rregistratx mill-ewwel bħala persuna taxxabbli taħt l-Artikolu 10 tal-Kap.406 tal-Ligijiet ta' Malta u dana billi *property development* hu meqjus li huwa *outside of scope of VAT* u b'hekk wieħed ma għandux għalfejn ikun registrat għad-Dipartiment tat-Taxxa fuq il-Valur Miżjud. Intalbet regiżazzjoni b'effett retroattiv għall-1 ta' Jannar 2008 biss fid-19 ta' Settembru 2012 meta kien hemm bdil fl-intenzjoni tas-soċjetà Rikorrenti, liema bdil fl-intenzjoni però ma jagħtihiex dritt titlob kreditu għall-input tax; (vi) l-Att dwar it-Taxxa fuq il-Valur Miżjud huwa ligi fiskali u bħala tali ta' interpretazzjoni restrittiva u ma għandu jingħata ebda lok li jkunu mċaqqalqa l-goalposts a favur ta' xi waħda mill-partijiet, inkluż is-soċjetà Rikorrenti; (vii) il-Qorti Ewropea stabbilit il-parametri li bihom *taxpayer* jista' jitlob lura l-input tax. Dan jista' jsir sakemm dik il-persuna tkun “*a taxable person*” u l-ispejjeż involuti jkunu inkorsi fl-attività ekonomika tagħha *qua taxable person*. Fil-każ in eżami huwa mexa skond dawn il-principji u għalhekk ma huwiex minnu li l-istima in kwistjoni ma nhargħitx *properly, reasonably* u *fairly*; (viii) in kwantu rigwarda l-multi imposti fuq is-soċjetà Rikorrenti, *dato ma non concesso* li l-

imsemmija socjetà setgħet agixxiet in buona fede, dana l-fatt xorta waħda ma jipprekludihiex milli tkun soġgetta għall-multi kif maħsub fil-Kap.406 tal-Ligijiet ta' Malta.

Mill-Credit Control Report esebit bħala Dok. "G" a fol. 43 sa' 45 tal-proċess, tirriżulta l-baži fuq liema d-Direttur Ģenerali (Taxxa fuq il-Valur Mizjud) ġareġ l-istima mertu ta' dawn il-proċeduri fil-konfront tas-soċjetà Rikorrenti. Fih infatti jingħad is-segwenti:

Economic Activity: XXX, acquired and demolished and constructed a building with the intention to sell the property to third parties. ... After deciding to rent the property, in 2008 a vat registration was submitted under Article 10, with the business activity being rental of property. The present registration is included under nace code 6820 - rental and operation of own or leased real estate.

Conduct of Exercise: File was referred to carry out a credit control exercise for tax period: 01/01/2008 - 31/12/2012. The credit control exercise was authorised through minute 4. The above-mentioned tax period is being examined to confirm and check the exact nature of the economic activity, verify the input tax claimed and to compare the profit and loss accounts with revenue declared in the vat returns. An exit meeting was held with Ms. Jackie Grech (representing the company) at Vat Department on 10th December 2013 to discuss the nature of the business activity.

Sales Analysis: XXX Development Limited has not declared any sales as to date, and Mrs. Grech informed us that the income from rent will be entered accordingly in future vat returns. According to Mr. Jeremy Debono (director of the company) ... it is being stated that the payment for the first lease will be carried out and declared in December 2013. Copy of the lease contracts have been included at appendix 2-2b. The lease will be between two limited companies at the rate of 18% and at 7% for the remaining 4 apartments, covered by the MTA license. The commercial lease falls under the regulations of the Vat Act, Fifth Schedule, Part 2, Item 1, Part 1, while the lease for accommodation of tenants will be in line with Vat Act, Eight Schedule.

Purchases Analysis: Intra community acquisitions and supplies - No intra community acquisitions were declared in Box 3 of the Vat returns. This was also confirmed in the VIES data. Purchases for re-sale - The ledger for the tax periods under examination has been enclosed at 01/01/2008 - 31.12.2012 appendix 3 57% examined. Following the examination of the tax invoice sample, the following irregularities were identified:

	Date	Inv Ref	Description	Vat Amount	Remarks
1	2/7/2008	80703	Express Excavation & Demolition Works	3,647.70	Invoice on the name of Mr. Jeremy Debono - Vat Act, Twelfth Schedule, Item 2

2	14/7/2008	173-06A Bill 1	Perit Joseph Attard	931.89	No mention of invoice on document - Vat Act, Twelfth Schedule, Item 2
3	29/9/2008	Inv 0290	Exalta	78.30	Invoice on the name of Mr. Jeremy Debono - Vat Act, Twelfth Schedule, Item 2
4	30/3/2009	173-06A B1	Perit Joseph Attard	1,206.54	Request for payment not tax invoice - Vat Act, Tenth Schedule Item 2(2)(a)(i)
5	28/1/2008	173-06 Bill 1	Perit Joseph Attard	72.00	Request for payment not tax invoice - Vat Act, Tenth Schedule Item 2(2)(a)(i)
6	9/2/2009	173-06BZ1	Perit Joseph Attard	129.60	Certificate for payment not tax invoice - Vat Act, Tenth Schedule Item 2(2)(a)(i)
7	6/2/2009	173-06BB1	Perit Joseph Attard	1,309.21	Certificate for payment not tax invoice - Vat Act, Tenth Schedule Item 2(2)(a)(i)
8	10/4/2009	173-06BB2	Perit Joseph Attard	1,127.52	Certificate for payment not tax invoice - Vat Act, Tenth Schedule Item 2(2)(a)(i)
9	3/7/2009	173-06BB3	Perit Joseph Attard	1,602.14	Certificate for payment not tax invoice - Vat Act, Tenth Schedule Item 2(2)(a)(i)
10	8/6/2010	41	Joseph Borg	2,388.51	Invoice on Debono Flats - Vat Act, Twelfth Schedule, Item 2

11	7/1/2010	257	Rupert, Silvio, Christopher Fenech	388.62	Fiscal receipt not tax invoice - Vat Act, Tenth Schedule, Item 2(2)(a)(i)
12	30/6/2011	2010-13	Camray	28,569.74	Interim Payment application not tax invoice - Vat Act, Tenth Schedule, Item 2(2)(a)(i)

Claim of vat with reference to “change of intention” - Ms. Grech stated that on the basis of the late registration by XXX, the input tax claimed should have been released as credit payment to the company. Meanwhile, the Department considers that an operation which falls outside the scope of VAT cannot be claimed at a later stage on the premise of a “a change in intention”. It is contended that input VAT attributable to a particular taxable supply is to be claimed in the relative period where the input tax is actually being incurred. For such purpose, all the input tax claimed in the tax period under consideration will be deducted. Conclusion: In view of the above, it can be concluded that although a considerable amount of input tax was claimed on the development expenses, the original intention of XXX Developments was not that of leasing but sale of property. Therefore, provisional assessment amounting to €73,910.68 is being recommended. Meanwhile, Ms. Grech was also advised that the company should also declare vat on the lease amount at the rate of 18% in line with Vat Act, Fifth Schedule, Item 1, Part 1(d).

Mill-Credit Control Report joħrog ċar illi l-input tax kollha reklamata mis-soċjetà Rikorrenti ghall-perijodu ta' taxxa 01.01.08 sa' 31.12.12 ġiet rifjutata mid-Direttur Ĝeneral (Taxxa fuq il-Valur Mizjud) a baži tal-fatt li l-intenzjoni originali tas-soċjetà kienet li tiġġestixxi operat ta' bejgħ ta' proprjetà, ossia ta' blokk ta' appartamenti bl-isem XXX Building, Triq Gorg Borg Olivier, Mellieħa, liema operat ma huwiex suġgett għat-taxxa fuq il-valur miżjud, u li l-bdil fl-intenzjoni tagħha, ossia li flok bejgħ ta' proprjetà tmexxi attivitā ekonomika ta' kiri ta' proprjetà, attivitā din suġgetta għat-taxxa fuq il-valur miżjud, ma jagħtihiex dritt titlob l-input tax minnha inkorsa fl-iżvilupp tal-proprjetà in kwistjoni.

Għalkemm dan il-fattur jifforma wkoll il-baži fuq liema d-Direttur Ĝeneral (Taxxa fuq il-Valur Miżjud) jopponi ghall-appell tas-soċjetà Rikorrenti mill-istima maħruġa fil-konfront tagħha ghall-perijodu ta' taxxa 01.01.08 sa' 31.12.12, mir-Risposta ta' l-istess Direttur Ĝeneral u min-Nota Responsiva tiegħi, jirriżulta li huwa qed iqajjam kwistjoni oħra in baži għal liema jqis li l-appell tas-soċjetà Rikorrenti ma għandux jiġi milquġi u minnflokk l-istima in kwistjoni tīgi kkonfermat, u cioe li tul il-perijodu ta' taxxa in kwistjoni s-soċjetà Rikorrenti ma kienix a taxable person ghall-finijiet u effetti tal-Kap.406 tal-Liġijiet ta' Malta u b'hekk fi kwalunkwe każ ma kienix taqa' taħt ir-regime tat-taxxa fuq il-valur miżjud u ma setgħetx tul dak il-perijodu tibbenfika mill-provvedimenti ta' l-istess Kap.406 tal-Liġijiet ta' Malta.

It-Tribunal ser jibda billi jittratta dan l-ahħar element fuq liema d-Direttur Ģenerali (Taxxa fuq il-Valur Miżjud), illum Kummissarju tat-Taxxa u Dwana, qed jopponi għall-appell tas-soċjetà Rikorrenti mill-istima maħruġa fil-konfront tagħha għall-perijodu ta' taxxa 01.01.08 sa' 31.12.12.

Mill-atti processwali ħareġ b'mod ċar li s-soċjetà Rikorrenti akkwistat is-sit fuq liema inbena l-blokk XXX Building gewwa l-Mellieħa fl-2004¹² u x-xogħol ta' žvilupp u *finishing* sar fuq medda ta' snin u tlesta fl-2012¹³. Kien biss fid-19 ta' Settembru 2012 li s-soċjetà Rikorrenti applikat għar-registrazzjoni mad-Dipartiment tat-Taxxa fuq il-Valur Miżjud taħt l-Artikolu 10 tal-Kap.406 tal-Ligijiet ta' Malta¹⁴. L-applikazzjoni tas-soċjetà Rikorrenti però kienet kwalifikata b'mod ferm importanti u rilevanti għall-proċeduri odjerni, u cioè hija ndikat il-bidu ta' l-attività ekonomika bħala l-1 ta' Jannar 2008. B'hekk ir-registrazzjoni skond kif applikat is-soċjetà Rikorrenti għejt accettata u fil-fatt hija għejt registrata mad-Dipartiment tat-Taxxa fuq il-Valur Miżjud bin-Numru tal-VAT MT20956935 b'effett mill-1 ta' Jannar 2008, kif evidenzjat miċ-Čertifikat esebit bħala Dok. "JD1" a fol. 78 tal-proċess. Jirriżulta għalhekk li għall-finijiet u effetti kollha tal-Ligi, is-soċjetà Rikorrenti kellha u għandha titqies bħala *a taxable person* b'effett mill-1 ta' Jannar 2008 'l quddiem.

Tant id-Dipartiment tat-Taxxa fuq il-Valur Miżjud acċetta r-registrazzjoni tas-soċjetà Rikorrenti bħala *taxable person* ai termini tal-Ligi b'effett mill-1 ta' Jannar 2008, illi impona fuq l-istess soċjetà s-sanzjonijiet kollha previsti mill-Ligi għal *late registration*¹⁵ u, addirittura, fil-Credit Control Report ingħad li *in 2008 a vat registration was submitted under Article 10*¹⁶. Ladarba d-Dipartiment tat-Taxxa fuq il-Valur Miżjud acċetta l-istatus tas-soċjetà Rikorrenti bħala *taxable person* b'effett mill-1 ta' Jannar 2008, tant illi dan il-punt lanqas kien fattur fil-konsiderazzjoni jiet li saru fl-istadju tal-Credit Control u li wasslu għar-rifjut ta' l-input tax reklamata mis-soċjetà Rikorrenti għall-perijodu ta' taxxa 01.01.08 sa' 31.12.12, id-Direttur Ģenerali (Taxxa fuq il-Valur Miżjud), illum Kummissarju tat-Taxxa u Dwana, ma jistax issa jippretendi li jopponi għall-appell tas-soċjetà Rikorrenti a bażi ta' l-allegazzjoni li fiz-żmien kopert mill-istima in kwistjoni hija ma kenix *a taxable person* ai termini tal-Ligi. Il-Kummissarju ma jistax jippretendi li fejn jaqbel lilu s-soċjetà Rikorrenti kellha u għandha titqies bħala *taxable person* iżda fejn ma jaqbillux ma għandhiex u ma tikkwalifikax għal tali status.

Fil-fehma tat-Tribunal una volta li r-registrazzjoni tas-soċjetà Rikorrenti mad-Dipartiment tat-Taxxa fuq il-Valur Miżjud għiet accettata bħala li tibda b'effett mill-1 ta' Jannar 2008, l-istess soċjetà Rikorrenti għandha titqies bħala *taxable person* b'effett minn dik id-data 'l quddiem.

¹² Ittra mingħand Jeremy Debono, Direttur tas-soċjetà Rikorrenti, lill-Kummissarju tat-Taxxa fuq il-Valur Miżjud datata 13 ta' Novembru 2013, Red 11 fil-file tad-Dipartiment tat-Taxxa fuq il-Valur Miżjud dwar il-vertenza odjerna esebit bħala Dok. "R" minn Roderick Zammit Randich waqt is-seduta tat-28 ta' Frar 2019.

¹³ Dok. "Z1" a fol. 126 tal-proċess.

¹⁴ Dok. "A" a fol. 20 tal-proċess.

¹⁵ Xhieda mogħtija minn Roderick Zammit Randich, in rappreżentanza tal-Kummissarju tat-Taxxi, waqt is-seduta tat-8 ta' Novembru 2018, fol. 109 sa' 113 tal-proċess.

¹⁶ Dok. "G" a fol. 43 tal-proċess.

Trattat dan il-punt it-Tribunal ser jgħaddi biex jittratta l-kwistjoni tal-bidla fl-intenzjoni tas-soċjetà Rikorrenti li tifforma l-baži fuq liema l-input taxx reklamata minnha għall-perijodu ta' taxxa 01.01.08 sa' 31.12.12 ma ġietx aċċettata mid-Dipartiment tat-Taxxa fuq il-Valur Miżjud u b'hekk inħarġet l-istima mertu ta' dawn il-proċeduri.

Mill-provi prodotti jirriżulta li orīginarjament is-soċjetà Rikorrenti kienet akkwistat is-sit fuq liema nbena l-blokk XXX Building gewwa l-Mellieħha mertu ta' dawn il-proċeduri, bl-iskop li l-units formanti l-istess blokk jiġu mibjugħha. Dan qalu b'mod ċar ħafna Jeremy Debono, kemm lid-Direttur Ģeneral (Taxxa fuq il-Valur Miżjud) fl-ittra tiegħi datata 13 ta' Novembru 2013¹⁷, fejn appuntu ppremetta li *the site where the property in question has been erected, was purchased in 2004 with the aim of demolishing the then existing building, erecting the existing structure and dispose of it by way of sale to third parties*, kif ukoll quddiem dan it-Tribunal fix-xhieda li ta-waqt is-seduta tat-22 ta' Mejju 2018¹⁸, fejn iddikjara li c-ċirkostanzi kienu semplice illi fil-bidu konna bi ħsiebna inbiegħuhom. Din hija kumpanija li hija binja fejn hemm żewġ commercial premises, 4 flats u penthouse u basement ovvjalment. Inizjalment aħna kellna l-ħsieb illi niddisponu mill-proprietà kollha jiġifieri u fil-fatt hemm anke fl-atti ahna konna ħadna facilitajiet mill-bank illi kienet għal property development loan. B'referenza għas-sel imsemmi minn Jeremy Debono, fl-atti hemm esebita s-sanction letter relativa datata 20 ta' Awwissu 2010 - Dok. "D" a fol. 25 sa' 29 tal-proċess. Minn din is-sanction letter jirriżulta ċar li sa' dak iż-żmien l-intenzjoni tas-soċjetà Rikorrenti kienet illi tbiegh il-proprietà in kwistjoni tant illi l-iskop tas-self ġie ndikat bħala *the facilities are being granted to assist you as follows: Loan 01 Originally to construct and finish property at Gorg Borg Olivier Street, Mellieħa ... u s-self kelli jithallas mir-rikavat from the sale of each car space, from the sale of storage, from the sale of each commercial unit, from the sale of each unit; from the sale of the penthouse.*

Is-soċjetà Rikorrenti tikkontendi però li hekk kif ġie kompletat l-iżvilupp tal-proprietà in kwistjoni biddlet l-intenzjoni tagħha dwar x'kienet ser tagħmel bl-iżvilupp u d-deċidiet li minflok tbiegh l-istess proprietà, jew aħjar il-varji units formanti l-istess, tgħaddi biex tikrihom. Fid-dawl ta' tali bidla fl-intenzjoni tagħha, is-soċjetà Rikorrenti tikkontendi li anke għamlet arranġamenti mal-Bank fir-rigward tas-self orīginarjament minnha ottenut u minn self marbut mal-bejgħ tal-proprietà ġie, skonha, konvertit f'*Buy to Let Facilities*.

Fir-rigward, fl-ittra lill-Kummissarju tat-Taxxa fuq il-Valur Miżjud datata 13 ta' Novembru 2013¹⁹, Jeremy Debono għarraf lill-imsemmi Kummissarju illi *following the completion of the building, it was decided to utilise the whole block for business purposes namely by way of rental. Consequently, the financing originally obtained from HSBC for as a property development loan was converted to a Buy to Let Loan as per the attached sanction letter dated 27 October 2011. However, the deed with HSBC was published on the 29 January 2013. The commercial premises, basement and the penthouse have been rented out to a local company and the first rental payment is expected to be effected in December of this year. As for the remaining 4*

¹⁷ Fol. 24 tal-proċess.

¹⁸ Fol. 79 sa' 82 tal-proċess.

¹⁹ Fol. 24 tal-proċess.

apartments, an application has been lodged with the MTA order that these are operated on short let basis. Fix-xhieda li ta quddiem it-Tribunal waqt is-seduta tat-22 ta' Mejju 2018²⁰, Jeremy Debono tenna li *sussegwentement iddeċidejna li nużawhom għal skopijiet kummerċjali cioè li nikruhom u b'hekk għamilna l-applikazzjoni biex napplikaw u nirregistraw għall-vat retrospettivamente.*

A baži ta' tali bidla fl-intenzjoni li s-soċjetà Rikorrenti tikkontendi li fir-rigward ta' l-blokk bl-isem XXX Building, Triq Gorg Borg Olivier, Mellieħa, hija kellha d-dritt tirreklama l-input tax kollha relattiva għall-iżvilupp intier tal-blokk in kwistjoni, komplexivament ammontanti għal €73,910.68.

It-Tribunal eżamina bir-reqqa l-provi dokumentarji prodotti mis-soċjetà Rikorrenti in sostenn ta' l-affermazzjoni tagħha li malli tlesta l-iżvilupp tal-blokk XXX Building, Triq Gorg Borg Olivier, Mellieħa, hija biddlet l-intenzjoni originali tagħha li tbiegh il-units formanti dan il-blokk u minflok iddeċidiet li tikri l-istess, u frankament ma huwiex affattu konvint li kien hemm din il-bidla fl-intenzjoni kif allegat mis-soċjetà Rikorrenti, ta' l-inqas fir-rigward tal-maġgor parti tal-blokk in kwistjoni.

Jibda biex jiġi osservat li s-sanction letter datata 27 ta' Ottubru 2011²¹ relattiva għal *Buy to Let facilities*, sottomessa mis-soċjetà Rikorrenti lid-Dipartiment tat-Taxxa fuq il-Valur Miżjud bħala prova tal-bidla fl-intenzjoni originali tagħha, ma hijiex kompluta iżda għiet provduta biss l-ewwel faċċata tagħha. Tul il-kors ta' dawn il-proċeduri, is-soċjetà Rikorrenti ma ndenjatx ruħha tipprovd kopja integra ta' tali sanction letter iżda straħet biss fuq dak minnha sottomess lid-Dipartiment. Minn din l-ewwel faċċata tas-sanction letter ma tirriżulta l-ebda referenza, jew imqar menzjoni, għas-soċjetà Rikorrenti u/jew għall-blokka bl-isem XXX Building, Triq Gorg Borg Olivier, Mellieħa. In fatti l-ittra nharget lil u tagħmel referenza biss għal Dr. Jeremy & Ms. Nydian Debono. Fid-dawl ta' dawn il-fatti jew aħjar nuqqasijiet, u fid-dawl tal-fatt ukoll li Nydian Debono ma jirriżultax li għandha xi konnessjoni mas-soċjetà Rikorrenti²², it-Tribunal diffiċilment jista' jasal biex jabbina din il-faċċata minn sanction letter datata 27 ta' Ottubru 2011, u b'hekk il-facilità hemm konċessa, għall-prorjetà tas-soċjetà Rikorrenti mertu ta' dawn il-proċeduri.

Għalkemm Jeremy Debono stqarr taħt ġurament li l-blokk in kwistjoni, konsistenti skontu f'żewġ commercial premises, erba' flats, penthouse u basement, kien intiż kollu għall-kiri u fl-ittra lill-Kummissarju tat-Taxxa fuq il-Valur Miżjud datata 13 ta' Novembru 2013²³, afferma li *the commercial premises, basement and the penthouse have been rented out to a local company and the first rental payment is expected to be effected in December of this year. As for the remaining 4 apartments, an application has been lodged with the MTA order that these are operated on short let basis*, dan kollu ma ġiex sodisfaċentement ippruvat mis-soċjetà Rikorrenti.

L-uniċi żewġ kuntratti ta' lokazzjoni sottomessi mis-soċjetà Rikorrenti lid-Dipartiment tat-Taxxa fuq il-Valur Miżjud u li fuqhom tidher tistrīħ f'dawn il-

²⁰ Fol. 79 sa' 82 tal-proċess.

²¹ Dok. "E" a fol. 30 tal-proċess.

²² Vide estratt mill-website tal-Malta Business Registry, Red 8 fid-dokument markat Dok. "R".

²³ Fol. 24 tal-proċess.

proċeduri huma: wieħed datat 3 ta' Lulju 2013²⁴ bejn is-soċjetà Rikorrenti u s-soċjetà All In One Limited, rappreżentata fuq il-ftehim minn ġertu Geoffrey Callus, detentur tal-Karta ta' l-Identità bin-Numru 487671M (għalkemm fl-ahħar faċċata tal-ftehim taht il-firma ta' l-inkwilin hemm imniżżla Karta ta' l-Identità Taljana bin-Numru AK1536936), fir-rigward ta' **Flat no.2, XXX Building, Triq Gorg Borg Olivier, Mellieħa**, verso l-kera pattwita dak iż-żmien ta' €420 fix-xahar, għall-perijodu ta' ħdax-il xahar dekoribbli mit-30 ta' Ĝunju 2013 u għal skopijiet purament u esklussivament residenzjali; u l-ieħor datat 7 ta' Dicembru 2012²⁵ bejn is-soċjetà Rikorrenti u s-soċjetà J&C Debono Company Limited, fir-rigward tal-fond **Gusti Siciliani, Triq Gorg Borg Olivier, Mellieħa**, verso l-kera pattwita ta' €2,300 fix-xahar, għall-perijodu ta' għaxar snin dekoribbli mis-7 ta' Dicembru 2012 u għall-iskop li jintuża esklussivament bħala *cafeteria and convenience store*. Kwindi altru milli l-blokk kollu ġie jew kien intiż li jiġi mikri u li *the commercial premises, basement and the penthouse have been rented out to a local company*. Apparte minnhekk, is-soċjetà Rikorrenti ma ppreżentat l-ebda permess maħruġ minn, jew imqar applikazzjoni għal permess ma', l-MTA fir-rigward tar-rimanent units fil-blokk in kwistjoni.

Fid-dawl ta' dawn il-provi hekk skarni u assolutament mhux sodisfaċenti, it-Tribunal bl-ebda mod ma jista' jasal għall-konklużjoni li s-soċjetà Rikorrenti, kuntrarjament għall-intenzjoni originali tagħha, iddeċidiet li tikri l-units **kollha** formanti l-blokk bl-isem XXX Building, Triq Gorg Borg Olivier, Mellieħa. L-unika konklużjoni li jista' jasal għaliha hi li mill-blokk msemmi s-soċjetà Rikorrenti kriet **biss** il-flat no. 2 għall-perijodu ta' ħdax-il xahar mhux prorogabbli u l-fond kummerċjali bl-isem Gusti Siciliani għall-perijodu ta' għaxar snin. Fattur ieħor li serjament joħloq dubji f'mohħ it-Tribunal dwar kemm verament kien hemm tali bidla **totali** fl-intenzjoni tas-soċjetà Rikorrenti hu l-fatt li għalkemm l-imsemmija soċjetà bdiet tressaq il-provi tagħha fl-2018, ossia bejn sitt snin wara li applikat biex tirregistra mad-Dipartiment tat-Taxxa fuq il-Valur Miżjud għall-attività ta' *property rental*, hija ma resqet l-ebda prova oħra dwar kiri tal-units tal-blokk XXX Building, Triq Gorg Borg Olivier, Mellieħa, iżda għal raġunijiet li taf hi biss straħet esklussivament fuq iż-żewġ kuntratti ta' Dicembru 2012 u Lulju 2013 sottomessi lid-Dipartiment fil-kors tal-Credit Control. Dan in-nuqqas huwa ferm stramb jekk verament is-soċjetà Rikorrenti kellha l-intenzjoni li tikri l-units kollha fil-blokk XXX Building, Triq Gorg Borg Olivier, Mellieħa.

Mill-provi prodotti għalhekk jirriżulta li s-soċjetà Rikorrenti kellha bidla fl-intenzjoni originali tagħha **biss** fir-rigward ta' **żewġ units mill-blokk kollu**, ossia fir-rigward ta' Flat 2 u fir-rigward tal-fond kummerċjali Gusti Siciliani. B'hekk għad illi kien hemm bidla fl-intenzjoni tagħha, din kienet waħda limitata ħafna u mhux mifruxa fuq il-blokk kollu, punt dan li naturalment jeffettwa kemm tista' tirreklama input tax jekk tali dritt effettivament jikkompeti lilha.

In kwantu rigwarda l-kwistjoni jekk bidla fl-intenzjoni originali tat-*taxpayer* tistax twassal biex dak it-*taxpayer* jibbenfika mill-kreditu għal input tax relattiv, issir referenza għal dak osservat mill-Qorti Ewropea f'diversi deċiżjonijiet pronunċjati minnha, li kollha huma marbuta mal-principju ċentrali li *VAT should be neutral in*

²⁴ Dok. "F" a fol. 31 sa' 38 tal-proċess.

²⁵ Dok. "F1" a fol. 39 sa' 42 tal-proċess.

the sense that, generally speaking, an operator should be relieved entirely of the burden of VAT in the course of its economic activities (the right to deduct).

Issir referenza għad-deċiżjoni tal-Qorti Ewropea fl-ismijiet **Gmina Miedzyzdroje v. Minister Finansów C500/13** mogħti fil-5 ta' Ġunju 2014, fejn il-Qorti ntalbet tagħti deċiżjoni preliminari dwar is-segwenti: *Must Articles 167, 187 and 189 of [Directive 2006/112] – riflessi dawn fis-sistema legali nostrali fir-Regolamenti dwar Taxxa fuq il-Valur Miżjud (Aġġustamenti li għandhom X'jaqsmu ma' Oġgetti Kapitali), Legislazzjoni Sussidjarja 406.12 - and the principle of tax neutrality be interpreted as permitting provisions of national law such as [those at issue in the main proceedings], which provide that, in the event of a change in the purpose of capital goods from use in activities not conferring entitlement to deduct input [VAT] to use in activities which do confer such entitlement, the adjustment of deductions may not be effected on a one-off basis but must be spread over the subsequent five years, and, in the case of immovable property, over ten years [fil-kaz nostrali għoxrin sena], following the year in which the capital goods were surrendered for use?*

Id-deċiżjoni mogħtija minn dik il-Qorti tgħid hekk:

- 19. First, it should be recalled that, according to the structure of the system introduced by Directive 2006/112, input taxes on goods or services used by a taxable person for his taxable transactions may be deducted. The deduction of input taxes is linked to the collection of output taxes. Where goods or services acquired by a taxable person are used for purposes of transactions that are exempt or do not fall within the scope of VAT, no output tax can be collected or input tax deducted. However, where goods or services are used for the purposes of transactions that are taxable as outputs, deduction of the input tax on them is required in order to avoid double taxation (see, to that effect, judgment in *Uudenkaupungin kaupunki*, C-184/04, EU:C:2006:214, paragraph 24).*
- 20. The period laid down in Article 187 of Directive 2006/112 for adjustment of deductions enables inaccuracies to be avoided in the calculation of deductions and unjustified advantages or disadvantages for a taxable person where, in particular, changes occur in the factors initially taken into consideration in order to determine the amount of deductions after the declaration has been made. The likelihood of such changes is particularly significant in the case of capital goods, which are often used over a number of years, during which the purposes to which they are put may alter (see, to that effect, judgment in *Uudenkaupungin kaupunki*, EU:C:2006:214, paragraph 25).*
- 21. Article 187(1) of Directive 2006/112 thus provides for an adjustment period of five years, extendable to 20 years in the case of immovable property, with varying deductions staggered over the whole period. That provision also permits Member States to base the adjustment on a total period starting from the time at which the goods are first used.*
- 22. Article 187(2) of the directive provides that, if the adjustment period has been extended beyond five years, adjustment shall only be made for the corresponding fraction of the VAT charged on the capital goods. The same provision also states that the adjustment shall be made on the basis of the variations in the deduction entitlement in subsequent years in relation to that for the year in which the goods were acquired, manufactured or, where applicable, used for the first time.*
- 23. Article 187 of Directive 2006/112 is applicable in cases of adjustment of deductions, such as the case in the main proceedings, where goods the use of which is not eligible for deduction are then put to a use which is eligible*

(see, to that effect, judgment in *Uudenkaupungin kaupunki*, EU:C:2006:214, paragraph 30). 24. The system of adjustment of deductions is an essential element of the system introduced by Directive 2006/112 in that its purpose is to ensure the accuracy of deductions and hence the neutrality of the tax burden. Article 187 of the same directive, concerning capital goods, which are relevant to the case in the main proceedings, is moreover drafted in terms which leave no doubt as to its binding nature (see, to that effect, judgment in *Uudenkaupungin kaupunki*, EU:C:2006:214, paragraph 26). 25. In this instance, the national legislation applicable to the case in the main proceedings provides for an adjustment period of 10 years in the case of immovable property acquired as capital goods, starting from the time at which the goods are first used. Under that legislation, the annual adjustment that can be made for such goods is one tenth of the amount of tax calculated on their acquisition or manufacture. 26. It should be noted that the rules established by that national legislation clearly constitute an adequate transposition of the provisions of Article 187 of Directive 2006/112, referred to in paragraphs 21 and 22 of this order, and cannot therefore be criticised in relation to those provisions. 27. However, Article 187 is clearly binding in nature, as reiterated in paragraph 24 of this order, and so would preclude a system permitting the adjustment of deductions over a period of less than five years and therefore also preclude a system of one-off adjustment, such as the one invoked by *Gmina Międzyzdroje*, which would allow for the adjustment to be made during a single tax year. 28. Neither can the national legislation applicable to the case in the main proceedings be criticised in relation to the principle of neutrality, in that it provides for an adjustment period of 10 years in the case of immovable property acquired as capital goods, starting from the time at which the goods are first used. 29. As has been pointed out in paragraphs 20 and 24 of this order, the requirement for an adjustment period of at least five years for capital goods constitutes an essential element of the system of adjustment introduced by Directive 2006/112, in that it enables inaccuracies to be avoided in the calculation of deductions and unjustified advantages or disadvantages for a taxable person and thus seeks to ensure the neutrality of the tax burden. 30. In the light of all the foregoing considerations, the answer to the question referred is that Articles 167, 187 and 189 of Directive 2006/112, together with the principle of neutrality, must be interpreted as not precluding provisions of national law, such as those at issue in the main proceedings, which, in a case where there is a change in the purpose of immovable property acquired as capital goods from an initial use in activities not conferring entitlement to deduct VAT to a subsequent use in activities which do confer such entitlement, provide for an adjustment period of 10 years starting from the time at which the goods are first used and, therefore, do not permit a one-off adjustment during a single tax year.

Fid-decizjoni fl-ismijiet **Uudenkaupungin Kaupunki C-184/04** mogħtija mill-Qorti Ewropea fit-30 ta' Marzu 2006, il-Qorti tat-deċiżjoni preliminari fir-rigward tas-sewgħenti erba' mistoqsijiet: (1) Is Article 20 of [the Sixth Directive] – il-predeċessur għall-attwali Artikolu 187 tad-Direttiva 2006/112 – to be interpreted as meaning that the adjustment of deductions in accordance with that article is mandatory for Member States in the case of capital goods unless it follows otherwise from Article 20(5)? (2) Is Article 20 of the [Sixth] Directive to be interpreted as meaning that the adjustment of deductions in accordance with that article is applicable even where the capital goods, in this case immovable property,

were first used in non-taxable activity, in which case an initial deduction could not have been made at all, and only later in taxable activity during the adjustment period? (3) May the second subparagraph of Article 13(C) of the [Sixth] Directive be interpreted as meaning that a Member State may restrict the right to deduct for acquisitions relating to immovable property investments in the manner laid down in the Finnish Arvonlisäverolaki, where the right to deduct is excluded altogether in situations such as the present one? (4) May the second subparagraph of Article 17(6) of the [Sixth] Directive be interpreted as meaning that a Member State may restrict the right to deduct for acquisitions relating to immovable property investments in the manner laid down in the Finnish Arvonlisäverolaki, where the right to deduct is excluded altogether in situations such as the present one?

Fir-rigward ta' tieni domanda posta, pertinenti għall-proċeduri odjerni, il-Qorti Ewropea ddecidiet hekk: 36. The second question seeks to determine whether the fact that the relevant activity was originally non-taxable and deductions were therefore totally excluded has any impact on that adjustment. 37. As the Advocate General observed in points 36 and 37 of her Opinion, application of the adjustment mechanism depends on the existence of a right to deduct based on Article 17 of the Sixth Directive. 38. Pursuant to Article 17(1) of the Sixth Directive, which is entitled 'Origin and scope of the right to deduct', the right to deduct VAT arises at the time when the deductible tax becomes chargeable. Consequently, only the capacity in which a person is acting at that time can determine the existence of the right to deduct (Lennartz, paragraph 8). The Court has also held that the use to which capital goods are put merely determines the extent of the initial deduction to which the taxable person is entitled under Article 17 of the Sixth Directive and the extent of any adjustments in the course of the following periods, but does not affect whether a right to deduct arises. It follows that the immediate use of the goods for taxable supplies does not in itself constitute a condition for the application of the system of adjustment of deductions (Lennartz, paragraphs 15 and 16). 40. Lastly, contrary to what the Italian Government contends, adjustment of the deduction under Article 20 of the Sixth Directive also applies necessarily where alteration of the right to deduct depends on a deliberate choice on the part of the taxpayer, such as exercise of the option provided for in Article 13(C) of the Sixth Directive. Exercise of that option has no effect on the inception of the right to deduct, which, as stated above, is governed by Article 17(1) of the Sixth Directive. Since the letting of a property is taxable after the option to become liable to tax has been exercised, an adjustment of the deductions becomes necessary in order to avoid double taxation of the input costs, irrespective of the fact that that taxation is the consequence of a deliberate choice by the taxpayer. 41. Article 18(3) of the Sixth Directive, cited by the Italian Government, is irrelevant in this connection since that paragraph concerns a situation in which a taxpayer has not made deductions which he was entitled to make, which cannot be the case before the option provided for in Article 13(C) of the Sixth Directive has been exercised. As the extent of the initial deduction was nil, it is only after exercising that option that the taxpayer's right to deduct acquires a genuine value which may be subject to deduction. 42. The answer to the second question must therefore be that Article 20 of the Sixth Directive must be interpreted as meaning that the adjustment provided for therein is also applicable where the capital goods were first used in non-taxable activity that was not eligible for

deduction and were then used in activity, subject to VAT during the adjustment period.

Fid-dawl tal-principji ġuridiċi li joħroġu mid-decizjonijiet tal-Qorti Ewropea hawn appena citati, it-Tribunal hu tal-fehma li *taxpayer* li jibdel l-intenzjoni tiegħu dwar l-użu ta' proprjetà immobбли minn użu *outside scope of VAT* - bħal ad eżempju bejgħ ta' proprjetà - għal użu fil-kuntest ta' attivită ekonomika soġġetta għar-regime tat-taxxa fuq il-valur miżjud - bħal ad eżempju kiri ta' proprjetà - ma huwiex prekluż milli jitlob kreditu għal input tax minnu inkorsa fir-rigward ta' l-iżvilupp ta' dik il-proprjetà immobбли. Għaldaqstant fil-każ in eżami s-socjetà Rikorrenti għandha dritt għat-tħalli tħalli minnha inkorsa, iżda dana **limitatament biss** għal dawk il-units fir-rigward ta' liema tressqu provi li fil-fatt ġew minnha mikrija u mhux mibjugħha, u dana minkejja l-fatt li l-kiri effettivament beda, u b'hekk l-output tax relativa denunzjata, wara l-perijodu ta' taxxa mertu ta' dawn il-proċeduri.

Din l-osservazzjoni tat-Tribunal hija bbażata fuq is-segwenti principji enuncjati mill-Qorti Ewropea dwar l-kuncett ta' l-input tax u d-dritt għal kreditu ta' input tax:

- *According to settled case-law of the Court of Justice, the right of taxable persons to deduct the VAT due or already paid on goods purchased and services received as inputs from the VAT which they are liable to pay is a fundamental principle of the common system of VAT established by the relevant European Union legislation (Joined Cases C-80/11 and C142/11 Mahagèben and Dávid [2012] ECR, paragraph 37 and the case-law cited). The Court has repeatedly held that the right to deduct provided for in Article 167 et seq. of Directive 2006/112 is an integral part of the VAT scheme and in principle may not be limited. The right to deduct is exercisable immediately in respect of all the taxes charged on transactions relating to inputs (see, inter alia Joined Cases C-110/98 to C-147/98 Gabalfrisa and Others [2000] ECR I-1577, paragraph 43; Case C-63/04 Centralan Property [2005] ECR I-11087, paragraph 50; Joined Cases C-439/04 and C-440/04 Kittel and Recolta Recycling [2006] ECR I-6161, paragraph 47; and Mahagében and Dávid, paragraph 38). The deduction system is intended to relieve the trader entirely of the burden of the VAT payable or paid in the course of all his economic activities. The common system of VAT consequently ensures complete neutrality of taxation of all economic activities, whatever the purpose of results of those activities, provided that they are themselves subject to VAT (see Case 268/83 Rompelman [1985] ECR 655, paragraph 19; Case C-37/95 Ghent Coal Terminal [1998] ECR I-1, paragraph 15; Gabalfrisa and Others, paragraph 44; Case C-32/03 Fini H [2005] ECR I-1599, paragraph 25; Centralan Property, paragraph 51; ana Mahagében and Dávid, paragraph 39). It is clear from the wording of Article 168 of Directive 2006/112 that, to qualify for the right to deduct, first the person concerned must be a 'taxable person' within the meaning of that directive and, second the goods and services in question must be used for the purposes of his taxed transactions (see Centralan Property, paragraph 52). Under Article 9(1) of that directive a 'taxable person' is defined by reference to the term 'economic activity' (see Fini H, paragraph 19). In this regard, it should be borne in mind that an individual who acquires goods for the purposes of an economic activity within the meaning of that provision does so as a taxable person, even if the goods are not used immediately for that economic activity (see Case C-97/90 Lennartz*

[1991] ECR I-3795, paragraph 14). According to the settled case-law of the Court, the economic activity referred to in Article 9(1) of Directive 2006/112 may consist in several consecutive transactions and, among those, preparatory acts, such as the acquisition of business assets and therefore the purchase of immovable property, must be regarded as constituting economic activity (see Rompelman, paragraph 22; Lennartz, paragraph 13; Case C-110/94 INZO [1996] ECR I-857, paragraph 15; and Fini H, paragraphs 21 and 22). Any person performing such preparatory acts is consequently regarded as a taxable person within the meaning of that provision and is entitled to deduct the VAT (Fini H, paragraph 22). Furthermore, a person who incurs investment expenditure with the intention, confirmed by objective evidence, of engaging in economic activity within the meaning of Article 9(1) of Directive 2006/112 must be regarded as a taxable person. Acting in that capacity, he has therefore, in accordance with Article 167 et seq. of the directive, the right immediately to deduct the VAT payable or paid on the investment expenditure incurred for the purposes of the transactions which he intends to carry out and which give rise to the right to deduct (see, to that effect, Rompelman, paragraphs 23 and 24; INZO, paragraphs 16 and 17; Ghent Coal Terminal, paragraph 17; Gabalfrisa and Others, paragraph 47; and Case C-400/98 Breitsohl [2000] ECR I-4321, paragraph 34). Accordingly, it is the acquisition of goods by a taxable person acting as such that gives rise to the application of the VAT system and therefore of the deduction mechanism. The use to which the goods or services are put, or intended to be put, merely determines the extent of the initial deduction to which the taxable person is entitled under Article 168 of Directive 2006/112 and the extent of any adjustments in the course of the following periods, adjustments which must be made under the conditions laid down in Article 184 et seq. of that directive (see Lennartz, paragraph 15; Ghent Coal Terminal, paragraph 18; Case C-396/98 Schloßstrasse [2000] ECR-I-4279, paragraph 37; Breitsohl, paragraph 35; Centralan Property, paragraph 54; Case C-118/11 Eon Aset Menidjmunt [2012] ECR, paragraph 57; and Case C-334/10 X [2012] ECR, paragraph 17). In this context, the Court has held that, in the absence of fraud or abuse and subject to adjustments which may be made in accordance with the conditions laid down in Article 185 of Directive 2006/112, the right to deduct, once it has arisen, is retained even if the economic activity envisaged does not give rise to taxed transactions (see INZO, paragraphs 20 and 21; Ghent Coal Terminal, paragraphs 19 to 23; Schloßstrasse, paragraph 42; Case C-98/98 Midland Bank [2000] ECR I-4177, paragraph 22; and Fini H, paragraph 22)²⁶.

- The existence of a direct and immediate link between a particular input transaction and one or more output transactions giving rise to the right to deduct is, in principle, necessary before the taxable person is entitled to deduct input VAT and in order to determine the extent of such entitlement (see Midland Bank, paragraph 24; Case C-408/98 Abbey National [2001] ECR I-1361, paragraph 26; and Investrand, paragraph 23). The right to deduct VAT charged on acquisition of input goods or services presupposes that the expenditure incurred in acquiring them is part of the cost components of the taxable output transactions giving rise

²⁶ SC Gran Via Moinești SRL v. Agenția Națională de Administrare Fiscală (ANAF), Administrația Tinanțelor Publice București Sector 1, Case C-257/11, deciză fis-26 ta' Meju 2011.

to the right to deduct (see *Midland Bank*, paragraph 30; and *Abbey National*, paragraph 28). It is however also accepted that a taxable person has a right to deduct even where there is no direct and immediate link between a particular input transaction and one or more output transactions giving rise to the right to deduct, where the costs of the services in question are part of his general costs and are, as such, components of the price of the goods or services which he supplies. Such costs do, in effect, have a direct and immediate link with the taxable person's economic activity as a whole (see, to that effect, *inter alia Midland Bank*, paragraph 31, and Case C-465/03 *Kretztechnik* [2005] ECR I-4357, paragraph 36). It should, next, be noted, with regard to the nature of the 'direct and immediate link' which must exist between an input and an output transaction, that the Court has held that it would not be realistic to attempt to be more specific in that regard. In view of the diversity of commercial and professional transactions, it is impossible to give a more accurate reply as to the method of determining in every case the relationship which must exist between the input and output transactions in order for input VAT to become deductible (see, to that effect, *Midland Bank*, paragraph 25). Finally, it is apparent from the case-law that, in the context of the direct-link test, which the tax authorities and national courts are to apply, they should consider all the circumstances surrounding the transactions at issue (see, to that effect, *Midland Bank*, paragraph 25) and take account only of the transactions which are objectively linked to the taxable person's taxable activity. The obligation to take account only of the objective content of the transaction at issue is the most compatible with the aim pursued by the common system of VAT, which seeks to ensure legal certainty and to facilitate the application of VAT (see, to that effect, *BLP Group*, paragraph 24; Case C-108/99 *Cantor Fitzgerald International* [2001] ECR I-7257, paragraph 33; and Case C-29/08 *SKF* [2009] ECR I-10413, paragraph 47). The Court has, furthermore, held that it is also in the light of their objective content that it is necessary to determine whether there is a direct and immediate link between the supply of goods or services utilised and a taxable output transaction or, exceptionally a taxable input transaction (see, to that effect, *Midland Bank*, paragraph 32, and by analogy, with regard to the evidence to be taken into account so as to establish the taxable person's declared intention to allocate specific goods to a transaction subject to VAT, Case 268/83 *Rompelman* [1985] ECR 655, p.24). The view that, in order to determine whether there is a 'direct and immediate link' between a given transaction and the taxable activity as a whole for the purposes of the above-mentioned case-law, it is necessary to take account of the objective characteristics of the supply of goods or services acquired is not called into question by the fact that the Court, in paragraphs 33 and 36 of *Investrand*, held, in essence, that where the pursuit of the taxable activity is not the exclusive reason for certain fees and costs being incurred, the latter cannot be considered as having a direct and immediate link with that activity. As follows from paragraphs 25 to 34 of that judgment, it is in the light of all the circumstances in which the transactions at issue in the case which gave rise to that judgment took place and, in particular, the facts apparent from the case-file submitted to the Court, that the Court held, first, that *Investrand BV* had not performed any specific output transactions subject to VAT that gave rise to the fees at issue in the main proceedings. It held, secondly, that unless *Investrand BV* could prove that it would not have incurred those costs if it had not exercised its taxable economic activity, those costs could

not be considered as having been incurred for the purpose of the taxable activities as a whole. It is only because the Court took account, in the context of its examination, of the objective content of the transactions at issue that it was able to find, in paragraph 34 of Investrand, that the situation of Investrand BV was similar to that of a private shareholder and hold that those transactions could not be considered as falling within the scope of the sixth directive. In that regard, it should be noted that, in its judgment in Investrand, the Court did not preclude that, in the light of their content, the transactions at issue could, in other circumstances, have been related to a taxable economic activity. The Court merely held, as is in essence apparent from paragraph 33 of that judgment, that, even if Investrand BV had not exercised a taxable activity, that company would nevertheless have incurred the costs in question, and, therefore, that the latter could not be considered to have been incurred as a result of the taxable activities of that company. In those circumstances, as the German government claimed, the fact that the existence of the direct and immediate link between a supply of services and the overall taxable economic activity must be determined in the light of the objective content of that supply of services does not preclude that the exclusive reason for the transaction at issue can also be taken into account, since that reason must be considered as a criterion for determining the objective content. Where it is clear that a transaction has not been performed for the purposes of the taxable activities of a taxable person, that transaction cannot be considered as having a direct and immediate link with those activities within the meaning of the Court's case-law, even if that transaction would in the light of its objective content be subject to VAT.

Trattati dawn il-punti jeħtieg issa jiġi determinat jekk l-istima maħruġa fil-konfront tas-socjetà Rikorrenti ghall-perijodu ta' taxxa 01.01.08 sa' 31.12.12 hijiex eċċessiva jew inkella le.

It-Tribunal mill-ewwel josserva li l-maġġor parti ta' l-input tax reklamata mis-soċjetà Rikorrenti ghall-perijodu ta' taxxa 01.01.08 sa' 31.12.12 ma tistax tiġi aċċettata in vista tal-fatt li mill-blokk kollu fi Triq Gorg Borg Olivier, Mellieħa, jirriżulta mill-provi prodotti li appartament wieħed u fond kummerċjali wieħed biss ġew mikrija u huma dawk iż-żewġ units biss li jaqgħu taħt ir-regime tat-taxxa fuq il-valur miżjud.

In kwantu rigwarda l-jedd ghall-kreditu għal input tax, jiġi osservat li dan ma huwiex dritt awtomatiku tat-taxpayer iż-żda huwa dritt ben regolat mill-Ligi. L-Artikolu 22(2)(3) tal-Kap.406 tal-Ligijiet ta' Malta jipprovdi li: (2) *L-input tax ta' persuna taxxabbli hija t-taxxa li jkollha titħallas fuq - (a) provvista magħmula lilha, (b) akkwisti magħmula minnha, u (c) importazzjonijiet magħmula minna, sal-limitu li l-provvisti hekk magħmula u l-oġġetti hekk akkwistati jew importati jintużaw jew ikunu maħsuba li jintużaw kollha kemm huma fil-kors jew avvanz ta' l-attività ekonomika tagħha; (3) il-kreditu għal input tax ta' żmien ta' taxxa ta' persuna registrata taħt l-artikolu 10 huwa ammont li jkun daqsinsew għall-input tax ta' dik il-persuna li jkollu jitħallas matul dak iż-żmien li huwa attribwibbli għall-provvisti magħmula jew maħsuba li għandhom jintgħamlu minnha, li jkunu porvvisti li għalihom japplika s-subartikolu (4) - fost liema hemm il-provvisti taxxabbli. Is-subartikolu (5) ta' l-Artikolu 22 tal-Kap.406 tal-Ligijiet ta' Malta jipprovdi li: id-dritt ta' kreditu ta' input tax, l-ammont ta' kreditu u l-mod li bih l-input tax hija*

attribwibbli għall-provvisti huwa suġġett għall-kondizzjonijiet, limitazzjonijiet, reviżjonijiet u aġġustamenti mniżżla fl-Għaxar Skeda.

Minn dawn il-provvedimenti tal-Liġi joħrog ferm ċar li *taxpayer* għandu dritt għal kreditu għal input tax: (i) għal taxxa minnu mħallsa fuq provvisti, akkwisti jew importazzjoni li jintużaw jew huma intiżi li jintużaw fil-kors jew l-avvanz ta' l-attività ekonomika tiegħu - għalhekk fil-każ in eżami limitatament għall-attività ekonomika tas-socjetà Rikorrenti ta' kiri ta' prorjetà immobbli u mhux ukoll għall-operat ta' bejgħ ta' prorjetà immobbli li, kif ingħad, huwa *outside scope* tar-regime fiskali tat-taxxa fuq il-valur miżjud; u (ii) it-*taxpayer* irid josserva d-dettami previsti fl-Għaxar Skeda tal-Kap.406 tal-Liġijiet ta' Malta.

Il-Partita 1 u 2 ta' l-Ġħaxar Skeda tal-Kap. 406 tal-Liġijiet ta' Malta jiprovd li: 1. Hlief hekk kif il-Kummissarju jista' mod ieħor jippermetti ma għandu jiġi permess lil persuna ebda kreditu għal input tax għal xi żmien ta' taxxa kemm-il darba ma ssirx talba skond id-disposizzjoni relevanti ta' dan l-Att. 2 (1) Ma għandu jitqies ebda ammont bħala input tax ta' persuna kemm-il darba dik il-persuna ma ġġibx prova li dik it-taxxa kellha titħallas fuq il-provvisti ta' oġġetti u servizzi jew akkwisti intra-Komunitarji jew fuq importazzjonijiet ta' oġġetti li jkunu ġew jew ser jiġi wżati minnha fil-kors ta' l-avvanz ta' l-attività ekonomika tagħha. (2) Hlief hekk kif il-Kummissarju jista' mod ieħor jippermetti, ebda ammont ma għandu jitqies bħala input tax ta' persuna kemm-il darba: (a) ma jkunx appoġġat bi: (i) fattura ta' taxxa dwar it-taxxa li għandha x'taqsam ma' l-oġġetti jew servizzi provduti lilu; jew (ii) fattura ta' taxxa dwar it-taxxa li għandha x'taqsam ma' l-oġġetti miksuba minnu taħt akkwist intra-Komunitarju jew (iii) dokument ta' importazzjoni li jkun jindika lilha bħala importatur dwar it-taxxa fuq importazzjoni; u (b) dwar kull taxxa fuq xi provvista li skond dan l-Att għandha titħallas minn dik il-persuna jew fuq akkwist intra-Komunitarju, tkun niżzlet dik it-taxxa bħala dovuta lilha fuq id-denunzja tat-taxxa tagħha; u (c) id-dokument riferit fil-paragrafu (a) jkun miżnum minn dik il-persuna u jingħata, fuq talba, lill-Kummissarju; u (d) l-ammont tat-taxxa jkun ingħata kont tiegħu kif imiss fid-dokumentazzjoni miżnuma minn dik il-persuna sal-limitu meħtieġ għall-ġhanijiet ta' l-Att.

Ai termini tal-Partita 3 tat-Tnax-il Skeda tal-Kap.406 tal-Liġijiet ta' Malta, fattura ta' taxxa għandu jkun fiha s-segwenti partikolaritajiet: (a) *id-data tal-ħruġ*; (b) *numru sekwenzjali, bażat fuq serje waħda* jew aktar li unikament jidentifika l-fattura; (c) *l-isem u l-indirizz ta' min jagħmel il-provvista u n-numru ta' identifikazzjoni tat-taxxa fuq il-valur miżjud li taħtu jkun għamel dik il-provvista; (d) l-isem u l-indirizz tal-persuna li tkun irċeviet il-provvista u n-numru ta' identifikazzjoni tat-taxxa fuq il-valur miżjud li taħtu tkun akkwistat l-oġġetti jew is-servizzi provduti lilha; (e) *il-kwantità u n-natura ta' l-oġġetti jew il-limitu u n-natura tas-servizzi provduti; (f) id-data li fiha l-provvista tkun saref jew tkun intemmet jew id-data li fiha jkun sar il-ħlas akkont tal-provvista sa' fejn dik id-data tista' tigi stabbilita u tkun differenti mid-data tal-ħruġ tal-fattura; (g) il-valur taxxabbli skond ir-rata jew eżenzjoni, il-prezz bil-wieħed eskluż mit-taxxa u kull skont jew roħs jekk dawn ma jkunux inkluži fil-preżż bil-wieħed; (h) ir-rata ta' taxxa applikata; (i) l-ammont ta' taxxa li għandha titħallas, għajr fejn ikun applikat arranġament specjal li taħtu, b'konformità ma' dan l-Att, tali dettall ikun eskluż; (j) fejn il-persuna obbligata li tkħallas it-taxxa hija rappreżentat tat-taxxa fi Stat Membru ieħor, in-numru ta'**

identifikazzjoni tal-VAT ta' dak ir-rappreżentant tat-taxxa, flimkien ma' l-isem u l-indirizz shiħi tiegħu; (k) fejn it-taxxa ssir dovuta fil-waqt meta l-ħlas jiġi riċevut fkonformità mat-Taqsima Wieħed u t-Taqsima Tlieta ta' l-Erbatax-il Skeda, ir-referenza "Kontabilità bbażata fuq ħlasijiet"; (l) fejn il-klijent li jircievi l-provvista joħroġ il-fattura minflok il-fornitur, ir-referenza "Awtofatturazzjoni"; (m) fejn fattura ta' taxxa tkun tirreferi għal provvisti li fuqhom ma jkollha titħallas ebda taxxa, din għandha turi referenza fil-qosor għad-dispozizzjonijiet rilevanti ta' dan l-Att, jew id-dispozizzjonijiet adatti tad-Direttiva tal-Kunsill 2006/112/KE, jew kull indikazzjoni oħra li abbażi tagħhom ma jkollha titħallas ebda taxxa, u għandha ssir distinżjoni bejn: (i) provvisti magħmula barra minn Malta; (ii) provvisti eżenti bil-kreditu; (iii) provvisti eżenti bla kreditu; (n) fejn il-klijent huwa responsabbli li jħallas it-taxxa, ir-referenza "Reverse charge"; (o) fejn tiġi applikata l-iskema ta' marġini għall-aġġenti ta' l-ivvjaġġar, ir-referenza "Skema ta' marġini - Aġġenti ta' l-Ivvjaġġar"; (p) fejn jiġi applikat wieħed mill-arrangamenti specjalji applikabbli għal oġġetti użati, xogħlijiet ta' l-arti, oġġetti tal-kollezzjoni u antikitajiet, ir-referenza "Skema ta' marġini - Oġġetti Użati"; "Skema ta' marġini - xogħlijiet ta' l-arti" jew "Skema ta' marġini - oġġetti tal-kollezzjoni u antikitajiet" rispettivament; (q) fejn il-fattura tinħareġ minn persuna taxxabbli, li mhux stabbilita fl-Istat Membru fejn it-taxxa hi dovuta jew l-istabbiliment tagħha f'dak l-Istat Membru ma jintervenix fil-provvista fis-sens tal-proviso ta' l-artikolu 20(2) ta' l-Att, u li tkun qed twettaq provvista ta' oġġetti jew servizzi lil klijent li hu obbligat iħallas it-taxxa, il-persuna taxxabbli tista' thalli barra d-dettalji msemmijin fis-subparagrafi (g), (h) u (i) ta' din il-partita u minflok tindika, b'referenza għall-kwantità u l-limitu tal-oġġetti jew tas-servizzi pprovduti u n-natura tagħhom, l-ammont taxxabbli ta' dawk l-oġġetti jew servizzi; (r) fattura għall-provvista intra-Komunitarja ta' mezz ġdid ta' trasport għandu jkun fiha l-partikolaritajiet imsemmija fit-tifsira ta' "mezz ġdid ta' trasport" skond l-artikolu 2 ta' l-Att.

Għall-finijiet ta' dawn il-proċeduri, it-Tribunal iqis li huwa ferm rilevanti u pertinenti ukoll dak provdut fil-Partiti 4(2)(3), 5 u 6 ta' l-Ġħaxar Skeda tal-Kap.406 tal-Ligijiet ta' Malta: Partita 4(2) u (3): (2) fil-każ ta' proprjetà immobбли li tifforma parti mill-assi kummerċjali ta' persuna taxxabbli u użata kemm għal finijiet tan-negozju tal-persuna taxxabbli kif ukoll għal finijiet privati tal-persuna jew tal-personal tagħha, jew, b'mod aktar ġenerali, għal finijiet oħra apparti dawk tan-negozju tagħha, il-VAT fuq l-infiq relatat ma' din il-proprjetà għandu jitnaqqas fkonformità mal-principji stabbiliti f'din l-Iskeda sal-proporzjon biss ta' l-użu tal-proprjetà għal finijiet kummerċjali tal-persuna taxxabbli, liema proporzjon tagħti d-dritt għat-tnejn jidher. B'deroga mill-partita 15 tat-Tieni Skeda, bidliet fil-proporzjon ta' l-użu ta' proprjetà immobбли msemmija fil-paragrafu (1) għandhom jitqiesu fkonformità mal-principji stabbiliti fil-partita 7 ta' din l-Iskeda. (3) Id-dispozizzjonijiet tal-paragrafu (2) jaapplikaw ukoll fir-rigward tal-VAT fuq l-infiq relatat ma' oġġetti kapitali oħrajn barra minn proprjetà immobбли li joformaw parti mill-assi kummerċjali ta' persuna taxxabbli. Għall-finijiet ta' dan il-paragrafu "oġġetti kapitali" għandha t-tifsir mogħti lilha fir-Regolamenti dwar Taxxa fuq il-Valur Miżjud (Aġġustamenti li għandhom x'jaqsmu ma' Oġġetti Kapitali) (L.S. 406.12).

Il-Partita 5 ta' l-Ġħaxar Skeda tal-Kap.406 tal-Ligijiet ta' Malta tipprovdi li: (1) Kull input tax ta' persuna reġistrata taħt l-artikolu 10 għal zmien ta' taxxa li jkun

eskluživament attribwibbli għal provvisti li japplika għalihom l-artikolu 22(4) għandha tiġi permessa bħala kreditu għal dak il-perjodu. (2) Kull input tax li jkun eskluživament attribwibbli għal provvisti li ma jkunux imsemmija fil-paragrafu (1) ma għandhomx jiġi permessi bħala kreditu. (3) Kull input tax għal żmien ta' taxxa attribwibbli kemm għall-provvisti li japplika għalihom l-artikolu 22(4) kif ukoll għal provvisti oħra għandu jiġi f'shem minnu permess bħala kreditu għal dak iż-żmien ta' taxxa, liema sehem għandu jiġi stabbilit skont il-partita 6 jew 8.

Il-Partita 6 ta' l-Għaxar Skeda tal-Kap.406 tal-Ligijiet ta' Malta tipprovdi li: (1) Is-sehem ta' input tax permess bħala kreditu lil persuna skont il-partita 5(3) għandu jiġi kalkolat kif ġej: (a) il-valur totali ta' provvisti li għalihom japplika l-artikolu 22(4) magħmula minn dik il-persuna matul iż-żminijiet kollha ta' taxxa li jintemmu matul sena kalendarja huwa diviż bil-valur totali ta' provvisti magħmula minn dik il-persuna matul dawk iż-żminijiet ta' taxxa; (b) ir-rizultat miksib skont il-paragrafu (a) għandu jkun il-proporzjon definitiv għas-sena li għaliha jirreferi dak il-paragrafu u l-proporzjon provviżorju għas-sena ta' wara; (c) il-kreditu ta' dik il-persuna għal kull żmien ta' taxxa li jintem matul sena kalendarja għandu jiġi kalkolat provviżorjament billi jiġi multiplikat il-valur ta' input tax ta' dik il-persuna għal dak iż-żmien ta' taxxa bil-proporzjon provviżorju għal dik is-sena; (d) il-kreditu totali ta' input tax ta' dik il-persuna għaż-żminijiet kollha ta' taxxa li jintem matul sena kalendarja għandu jiġi kalkolat definittivament billi jiġi multiplikat l-input tax totali għal dawk iż-żminijiet bil-proporzjon definitiv għal dik is-sena; (e) id-differenza bejn it-total ta' input tax għal żmien ta' taxxa li jintem matul sena kalkolata provviżorjament taħt il-paragrafu (c) u l-kalkolu definitiv għal dik is-sena skont il-paragrafu (d) għandha tirrappreżenta t-taxxa dovuta minn dik il-persuna jew it-naqqis permissibbli ta' dik il-persuna, skont il-każ, liema taxxa jew tnaqqis għandu jingħata kont tiegħi fid-denunzja tat-taxxa għall-ewwel żmien ta' taxxa li jintem fis-sena li tiġi wara dik li fiha kien intgħamel il-kalkolu provviżorju: iżda t-taxxa jew tnaqqis dwar sena li matulha ir-registazzjoni ta' persuna taħt l-artikolu 10 kienet imħassra għandu jingħata kont tiegħi fl-ahħar żmien ta' taxxa tagħha. (2) Għall-għanijiet tal-paragrafu (1): (a) il-valur ta' provvisti mhux suġġetti għat-taxxa taħt dan l-Att għandu jiġi stabbilit bil-mod li japplika sabiex jiġi stabbilit il-valur taxxabbli ta' provvisti taxxabbli; (b) għandu jiġi eskluż mill-valur tal-provvisti magħmula minn dik il-persuna - (i) il-valur ta' kull provvista ta' ogġetti kapitali wżati fl-attività ekonomika tagħha; (ii) il-valur ta' kull provvista li dik il-persuna tagħmel lilha nnifha; (iii) il-valur ta' kull provvista li ma ssirx minn persuna taxxabbli li taġixxi bħala tali.

Dawn il-provvedimenti japplikaw għall-każ in eżami għar-raguni li filwaqt uħud mill-fatturi sottomessi mis-soċjetà Rikorrenti in sostenn tal-kreditu ta' input tax minnha reklamat jidentifikaw l-ispejjeż inkorsi u konsegwenti taxxa mħallsa għall-units formanti l-blokk in kwistjoni, b'mod individuali, hemm fatturi oħra, senjatamente dawk relatati ma' twaqqiqi tal-proprietà originali, skavar, etc, li tali distinzjoni ma jagħmluhiex.

Qabel ma jista' jgħaddi biex jiddetermina l-kreditu ta' input tax qual' volta dovut lis-soċjetà Rikorrenti skond dak kollu hawn appena osservat, it-Tribunal se jgħaddi biex jiddetermina jekk l-ewwel qabel kollox l-imsemmija soċjetà tissodisfax ir-rekwiżiti stipulati fl-Għaxar Skeda u fit-Tnax-il Skeda tal-Kap.406 tal-Ligijiet ta' Malta, fir-

rigward tal-provi minnha sottomessi in sostenn ta' tali kreditu hekk qual' volta dovut, u dana billi kif jirriżulta mill-Credit Control Report, hemm diversi dokumenti sottomessi mis-soċjetà Rikorrenti li ma ġewx aċċettati mid-Dipartiment tat-Taxxa fuq il-Valur Miżjud in kwantu ma jissodisfawx id-dettami ta' l-imsemmija żewġ Skedi tal-Kap.406 tal-Ligijiet ta' Malta.

Mid-dokument markat Dok. "R" esebit mill-Kummissarju tat-Taxxi, ossia l-file tad-Dipartiment tat-Taxxa fuq il-Valur Miżjud relativ għall-vertenza odjerna, jirriżulta *breakdown* ta' l-ammonti reklamati mis-soċjetà Rikorrenti²⁷ u l-ewwel żewġ ammonti reklamati huma dawk ta' **€3,647.70** in konnessjoni ma' xogħliljet ta' demolizzjoni esegwiti minn Express Excavation & Demolition Works u **€931.89** in konnessjoni ma' xogħliljet skavar ukoll esegwiti minn Express Excavation & Demolition Works. Dawn l-ammonti, hekk kif jirriżulta mill-Credit Control Report ma gewx aċċettati stante li: (i) il-fattura relattiva ghax-xogħolijiet ta' demolizzjoni inhārġet fuq isem Jeremy Debono u mhux is-soċjetà Rikorrenti in vjolazzjoni tat-Tnax-il Skeda tal-Kap.406 tal-Ligijiet ta' Malta; u (ii) is-soċjetà Rikorrenti issostanzjat ix-xogħliljet ta' twaqqiqi permezz ta' dokument maħruġ mill-Perit Joseph Attard u mhux permezz ta' fattura ta' taxxa maħruġa mill-fornitur tax-xogħliljet.

Għalkemm huwa minnu li l-fattura in sostenn tax-xogħliljet ta' demolizzjoni sottomessa mis-soċjetà Rikorrenti lid-Dipartiment tat-Taxxa fuq il-Valur Miżjud fl-istadju tal-Credit Control kienet fattura maħruġa fuq isem Jeremy Debono, l-istess soċjetà Rikorrenti ssottomettiet quddiem dan it-Tribunal fattura ta' taxxa korrettament maħruġa f'isimha²⁸. Bl-istess mod ghalkemm ix-xogħliljet ta' twaqqiqi gew sostanzjati mis-soċjetà Rikorrenti permezz ta' dokument maħurġ mill-Perit Joseph Attard, quddiem dan it-Tribunal hija ppreżentat fattura ta' taxxa maħruġa mill-fornitur ta' dawn ix-xogħliljet ossia minn Express Excavation & Demolition Works²⁹. Dawn il-fatturi a fol. 183 u 184 tal-proċess, issa in konformità mad-dettami ta' l-Att dwar it-Taxxa fuq il-Valur Miżjud, ma ġew bl-ebda mod kontestati u/jew imxejna mill-Kummissarju tat-Taxxi, illum Kummissarju tat-Taxxa u Dwana, u fiċ-ċirkostanzi għalhekk it-Tribunal iqis li l-istess issa għandhom jiġu aċċettati bħala prova sodisfaċenti ta' l-ispejjeż inkorsi għad-demolizzjoni u twaqqiqi tal-proprietà originali fi Triq Gorg Borg Olivier, Mellieħa. **Naturalment, dawn il-fatturi issa jridu jiġu kkunsidrati fid-dawl ta' l-attribuzzjoni li jeħtieg issir peress illi żewġ units biss mill-blokk kollu in kwistjoni jirriżultaw li ġew mikrija mis-soċjetà Rikorrenti.**

Is-soċjetà Rikorrenti talbet ukoll kreditu għal input tax relattiv għal xogħliljet esegwiti mis-soċjetà Central Asphalt Limited konsistenti f'carting away of loose material u supply of building material concrete & bricks³⁰. Ghalkemm mill-Credit Control Report ma jirriżultax li kien hemm xi kummenti avversi dwar il-fatturi in kwistjoni - VAT relattiva **€1,008** u **€906.89** rispettivament - it-Tribunal jinnota li meta dawn il-fatturi ġew esebiti lid-Dipartiment tat-Taxxa fuq il-Valur Miżjud fil-kors tal-Credit Control, kellhom nieqes kull waħda minnhom in-numru tal-VAT tas-

²⁷ Red 10a tad-dokument Dok. "R".

²⁸ Dok. "B" a fol. 183 tal-proċess.

²⁹ Dok. "B" a fol. 184 tal-proċess.

³⁰ Formanti parti mid-dokument Dok. "R".

soċjetà Rikorrenti. Dan in-nuqqas ġie sanat mis-soċjetà Rikorrenti permezz taż-żewġ fatturi pprezentati mill-ġdid quddiem it-Tribunal, din id-darba bid-debita indikazzjoni tan-numru tal-VAT tagħha - Dok. "E" fol. 187 u 188 tal-proċess. Hawn ukoll il-Kummissarju tat-Taxxi, illum Kummissarju tat-Taxxa u Dwana, ma ikkcontestax u/jew xejen dawn il-fatturi u t-Tribunal iqis li l-istess issa għandhom jiġu aċċettati bħala prova sodisfaċenti ta' l-ispejjeż inkorsi għal dawn ix-xogħlijiet partikolari esegwiti minn Central Asphalt Limited għas-socjetà Rikorrenti. **F'dan il-każ ukoll dawn il-fatturi issa jridu jiġu kkunsidrati fid-dawl ta' l-attribuzzjoni li jeħtieg issir peress illi żewġ units biss mill-blokk kollu in kwistjoni jirriżultaw mikrija mis-soċjetà Rikorrenti.**

Fattura oħra sottomessa mis-soċjetà Rikorrenti in sostenn tal-kreditu għal input tax minnha reklamat iżda mhux aċċettat mill-Kummissarju tat-Taxxi hija l-fattura mahruġa minn Exalta datata 29 ta' Settembru 2008³¹. Din il-fattura ma gietx aċċettata mid-Dipartiment peress illi nhärgħet fissem Jeremy Debono u mhux is-soċjetà Rikorrenti. Meta t-Tribunal ikkonsidra din il-fattur jidher li fuqha hemm indikat li nhärgħet fil-konfront ta' XXX Developments c/o Jeremy Debono. Huwa evidenti li il-parti "XXX Decelopments c/o" inkitbet wara li nhärgħet il-fattura iżda ma hemmx prova minn min żidied tali dettal. Fin-nuqqas ta' tali prova t-Tribunal iqis li dan id-dokument ma jistax u ma għandux jiġi aċċettat bħala prova sodisfaċenti għall-finijiet ta' kreditu għal input tax reklamat mis-soċjetà Rikorrenti.

Is-soċjetà Rikorrenti talbet ukoll kreditu għal input tax relativ għall-ispejjeż inkorsi fir-rigward ta' servizzi professjonal reżi lilha mill-Perit Joseph Attard, liema talba, li kienet għal input tax fl-ammonti ta' **€1,206.54** u ta' **€72.00**, però ma gietx aċċettata mid-Dipartiment tat-Taxxa fuq il-Valur Mīżjuda peress illi in sostenn ta' l-istess hija issottommett Request for Payment u mhux fattura ta' taxxa ai termini tal-Ligi. Tul is-smiġħ ta' dawn il-proċeduri s-soċjetà Rikorrenti ssottomettet dokumentazzjoni debitament iffirmata mill-Perit Joseph Attard - Dok. "C" u Dok. "D" a fol. 185 u 186 tal-proċess - li fil-fehma tat-Tribunal fiha l-elementi kollha meħtiega mill-Ligi għal fattura ta' taxxa. Għalkemm fuqha hemm miktub request for payment, it-Tribunal iqis li ma jistax u ma għandux għaldaqshekk biss jinjora l-elementi l-oħra kollha, inkluż in-numru tal-VAT tas-soċjetà Rikorrenti, ilkoll meħtiega u rikoxxuti mill-Ligi sabiex talba għal kreditu ta' input tax titqies debitament sostanzjata. F'dan il-każ ukoll il-Kummissarju tat-Taxxi, illum Kummissarju tat-Taxxa u Dwana, ma kkontestax u/jew xejen dawn id-dokumenti u t-Tribunal iqis li l-istess issa għandhom jiġu aċċettati bħala prova sodisfaċenti ta' l-ispejjeż inkorsi u taxxa mħallsa mis-soċjetà Rikorrenti għas-servizzi professjonal reżi lilha mill-Perit Joseph Attard. **Hawn ukoll dawn il-fatturi issa jridu jiġu ikkunsidrati fid-dawl ta' l-attribuzzjoni li jeħtieg issir peress illi żewġ units biss mill-blokk kollu in kwistjoni jirriżulta li ġew mikrija mis-soċjetà Rikorrenti.**

Is-soċjetà Rikorrenti rreklamat ukoll l-input tax relativ għal provvisti magħmula lilha minn Ballut Blocks - 06.02.2009 €1,309.21, 10.04.2009 €1,127.52 u 03.07.2009 €1,602.14 - iżda dawn ma ġewx aċċettati mid-Dipartiment tat-Taxxa fuq il-Valur Mīżjud stante li in sostenn ta' dawn l-ammonti l-imsemmija soċjetà ma issottommettx fatturi ta' taxxa iżda biss Certificates of Payment maħruġa mill-Perit

³¹ Formanti parti mid-dokument markat Dok. "R".

Joseph Attard. Bl-istess mod, ossia permezz ta' Certificate of Payment, is-soċjetà Rikorrenti ssostanzjat input tax reklamat għal provvista oħra magħmula lilha minn Central Asphalt - fattura numru 34619 b'taxxa fl-ammont ta' €129.60, liema ammont ukoll, għall-istess raġuni, ma ġiex aċċettat mid-Dipartiment tat-Taxxa fuq il-Valur Miżjud.

Fil-fehma tat-Tribunal id-Dipartiment kien korrett li fl-istadju ta' Credit Control dawn l-ammonti reklamati mis-soċjetà Rikorrenti ma gewx aċċettati iżda, jeħtieg jiġi osservat li tul is-smiġħ ta' dawn il-proċeduri s-soċjetà Rikorrenti esebiet il-fattura numru 34619 mahruġa minn Central Asphalt in sostenn tas-somma ta' **€129.60**³², liema fattura ma ġietx kontestata u/jew imxejna mill-Kummissarju tat-Taxxi, illum Kummissarju tat-Taxxa u Dwana, iżda ma esebiet xejn fir-rigward ta' l-input tax relattiv għall-provvisti magħmula minn Ballut Blocks. **Fiċ-ċirkostanzi għalhekk it-Tribunal iqis li jista' jiġi ikkunsidrat l-ammont ta' €129.60, dejjem a baži ta' l-attribuzzjoni meħtieġa f'dan il-każ, li huwa t-tax element għall-provvista ta' bricks 9" single minn Central Asphalt Limited, iżda mhux ukoll l-ammonti relattivi għal Ballut Blocks.**

Kreditu għal input tax ieħor reklamat mis-soċjetà Rikorrenti huwa dak relattiv għal xogħol ta' kostruzzjoni esegwit minn Frans Sammut kopert dan b'fatturi datati 2 ta' Jannar 2009, 13 ta' Frar 2009, 11 ta' April 2009, 15 ta' Ĝunju 2009, 6 ta' Awwissu 2009 u 17 ta' Ottubru 2009 minn liema jirriżulta li l-input tax relattiva hija fl-ammonti ta' **€6,101.69, €3,813.56, €3,813.56, €4,576.27, €5,338.98 u €4,327.22**, rispettivament. Mill-Credit Control Report ma jirriżultax li d-Dipartiment tat-Taxxa fuq il-Valur Miżjud kelli xi rimostrazzjonijiet dwar dawn l-ammonti u l-provi meħtieġa ai termini tal-Liġi. In effetti t-Tribunal ikkonsidra l-fatturi relattivi esebiti mis-soċjetà Rikorrenti tul is-smiġħ tal-proċeduri³³ u mhux kontestati u/jew imxejna mill-Kummissarju tat-Taxxi, illum Kummissarju tat-Taxxa u Dwana, li jinkludu wkoll in-numru tal-VAT ta' l-istess imsemmija soċjetà, u jqis li **dawn l-ammonti għandhom ukoll jiġu kkunsidrati għall-input tax dovuta wara li ssir l-attribuzzjoni meħtieġa skond dak già iktar 'l fuq osservat.**

Is-soċjetà Rikorrenti rreklamat ukoll kreditu għal input tax relattiv għal xogħlijiet esegwiti minn Victoria Aluminium iżda hija rreklamat l-input tax għall-appartamenti kollha u għall-penthouse formanti parti mill-blokk XXX Building, Triq Gorg Borg Olivier, Mellieħa, filwaqt illi mill-provi rrizulta li kienu biss l-appartament numru 2 u l-fond kummerċjali bl-isem "Gusti Siciliani" li ġew mikrija mis-soċjetà Rikorrenti. Fid-dawl ta' dan isegwi li s-soċjetà Rikorrenti ma tistax tīgi konċessa l-input tax kollha minnha reklamata **iżda biss l-input tax relattiva għall-appartament numru 2 li skond il-fattura sottomessa lid-Dipartiment u esebita fl-atti ta' dawn il-proċeduri tul is-smiġħ tal-proċeduri³⁴, din tammonta għal €410.04.**

Input tax ieħor reklamat mis-soċjetà Rikorrenti huwa relattiv għal *plumbing and electrical works* esegwiti minn Joseph Borg u koperti b'fattura bin-numru 41, liema input tax però ma ġietx aċċettata stante li l-fattura tghajjajt lil Debono u mhux lis-

³² Fol. 189 tal-proċess.

³³ Dok. "F" a fol. 190 sa' 195 tal-proċess.

³⁴ Dok. "G" a fol. 196 u 197 tal-proċess.

soċjetà Rikorrenti³⁵. Fil-kors ta' dawn il-proċeduri s-soċjetà Rikorrenti pprezentat fatturi oħra - ossia iktar minn waħda u b'numri u dati differenti, addirittura 'l barra mill-perijodu ta' taxxa mertu ta' dawn il-proċeduri - għal dik il-fattura unika sottomessa waqt il-Credit Control - relattivi għax-xogħlijiet allegatament esegwiti minn dan Joseph Borg fil-blokk bl-isem XXX Building, Triq Gorg Borg Olivier, Mellieħa³⁶. Fil-fehma tat-Tribunal dan l-input tax issa reklamat mis-soċjetà Rikorrenti ma jistax u ma għandux jiġi aċċettat in kwantu ma kienx ġie minnha originarjament reklamat u għaldaqstant ma jifformax parti mill-istima mahruġa fil-konfront tagħha u formanti l-mertu ta' dawn il-proċeduri. Ghalkemm il-fattura sottomessa mis-soċjetà Rikorrenti waqt il-Credit Control tindika Flat 2 u l-ammont ta' xogħol esegwit għall-valur ta' €3,036.86, it-Tribunal ma jistax jistrīħ fuq dik il-fattura li tgħajjat lil Debono Flats u lanqas jista' jqis li kienet fattura għall-immobbli mertu ta' dawn il-proċeduri meta s-soċjetà Rikorrenti stess ippreżentat fatturi differenti b'ammonti ferm differenti għal dik originarjament minnha sottomessa lid-Dipartiment.

Is-soċjetà Rikorrenti rreklamat ukoll input tax relattiv għal xogħol ta' kontra-bejt li sar iżda in sostenn ta' dan l-ammont issottomettiet u straħet biss fuq riċevuta tal-VAT book u mhux fuq fattura ta' taxxa. Fiċ-ċirkostanzi għalhekk dan l-ammont ukoll ma jistax u ma għandux jiġi kkunsidrat.

Is-soċjetà Rikorrenti rreklamat ukoll input tax relattiv għal xogħol da parte ta' Camray iżda t-talba tagħha ma ġietx aċċettata stante li d-dokument in sostenn ta' l-istess minnha sottomess waqt il-Credit Control kien Interim Payment Application u mhux fattura ta' taxxa ai termini tal-Ligi³⁷. Hawn it-Tribunal iqis li d-Dipartiment kien korrett u dan id-dokument qatt ma seta' jitqies li sodisfaċentement jissosstanzja t-talba tas-soċjetà Rikorrenti. Ghalkemm is-soċjetà Rikorrenti esebiet dokument ieħor in sostenn ta' tali talba tagħha, ossia Dok. "I" a fol. 211 tal-process, dan id-dokument ma jistax jiġi aċċettata bħala prova sodisfaċenti tat-talba tagħha għarrauni li dan id-dokument huwa datat 30 ta' April 2013, ossia data li ma taqax entro l-perijodu ta' taxxa suġġett ta' l-istima mertu ta' dawn il-proċeduri.

In fine s-soċjetà Rikorrenti rreklamat ukoll input tax relattiv għal servizzi prestati lilha minn Charles Scerri and Associates skond fattura datata 21 ta' Dicembru 2012. **Dan l-input tax għandu jiġi aċċettat mill-Kummissarju tat-Taxxa u Dwana wara li ssir l-attribuzzjoni meħtieġa skond dak già iktar 'l fuq osservat.**

Huwa evidenti għalhekk li l-uniku input tax li seta' jiġi reklamat mis-soċjetà Rikorrenti kien biss dak hawn identifikat mit-Tribunal u tali reklam seta' jsir a baži ta' attribuzzjoni ai termini tal-Ligi.

In kwantu rigwarda l-penali imposta fuqha, is-soċjetà Rikorrenti tikkontendi li hija ma għandha tkun assoġġettata għal ebda penali stante li hija aġixxiet in buona fede u ma jeżistux l-estremi in baži għal liema hija għandha tbagħti mizuri punittivi.

³⁵ Formanti parti mid-dokument markat Dok. "R".

³⁶ Dok. "H" a fol. 198 sa' 210 tal-process.

³⁷ Formanti parti mid-dokument markat Dok. "R".

It-Tribunal assolutament ma jaqbilx ma' dan l-aggravju tas-soċjetà Rikorrenti stante li l-Artikolu 37(1)(b) tal-Kap.406 tal-Ligijiet ta' Malta kjarament jiddisponi li: *bla ħsara għad-dispożizzjonijiet tas-subartikolu (2), meta d-denunzja magħmula minn persuna reġistrata taħt l-artikolu 10 għal żmien ta' taxxa ikun fiha dikjarazzjoni bin-nieqes tal-output tax jew dikjarazzjoni biż-żejjed tat-tnaqqis għal dak iż-żmien dik il-persuna tkun suġġetta għal penali amministrattiva f'ammont ekwivalenti għal għoxrin fil-mija mit-total ta' - ... (b) l-eċċess, jekk ikun hemm, tat-tnaqqis kif dikjarat fid-denunzja fuq l-ammont korrett tat-tnaqqis.*

Mid-dicitura ta' dan l-artikolu tal-Ligi huwa evidenti li t-taxxa amministrattiva ma tiġix imposta fuq baži ta' mala fede da parte *taxpayer* iżda għaliex ikun hemm dikjarazzjoni biż-żejjed ta' l-input tax reklamat, liema dikjarazzjoni biż-żejjed ta' input tax tista' tirriżulta minħabba diversi raġunijiet, fosthom għaliex id-dokumenti sottomessi in sostenn ta' l-istess ma jkunux in konformità mad-disposizzjonijiet tal-Kap.406 tal-Ligijiet ta' Malta, u mhux biss u unikament minħabba mala fede da parte ta' l-istess *taxpayer*.

Naturalment in vista tat-tnaqqis u aġġustament li jrid isir lill-istima in kwistjoni skond dak deċiż f'din is-sentenza, l-ammont ta' taxxa amministrattiva jrid jiġi rivedut 'l isfel ukoll.

Is-soċjetà Rikorrenti tikkontendi wkoll li ir-rapport taxxa pperikolata/multi amministrativi w imghax punittiv jippekkaw serjament f'dak illi hija proporzjonalità.

In kwantu rigwarda dan l-aggravju t-Tribunal huwa tal-fehma li entro l-parametri tal-kompetenza Tiegħu kif konferita bl-Artikolu 45 u bil-Partita 1 tad-Disa' Skeda tal-Kap.406 tal-Ligijiet ta' Malta, huwa jista' jikkonsidra u jiddetermina biss jekk fl-imposizzjoni tat-taxxa addizzjonal w imghaxx jippekkaw serjament f'dak illi hija proporzjonalità. Fil-każ in eżami jirriżulta li d-Direttur ġeneral (Taxxa fuq il-Valur Miżjud) qablu, mexiex skond il-provvedimenti relattivi ta' l-Att dwar it-Taxxa fuq il-Valur Miżjud, Kap.406 tal-Ligijiet ta' Malta. Fil-każ in eżami jirriżulta li d-Direttur ġeneral (Taxxa fuq il-Valur Miżjud) impona taxxa amministrattiva w imghax fuq is-soċjetà Rikorrenti a tenur ta' l-Artikoli 21(4) u 37(1)(b) tal-Kap.406 tal-Ligijiet ta' Malta, u għaldaqstant ma jirriżultax li dawn, bħala parti mill-istima mahruġa fil-konfront tas-soċjetà Rikorrenti, huma żbaljati jew eċċessivi. Jekk is-soċjetà Rikorrenti tikkontendi però li d-disposizzjonijiet tal-Ligi kif promulgati jiksru l-principju ta' proporzjonalità, it-Tribunal ma huwiex il-forum idoneju fejn tiġi trattata tali kwistjoni.

Għal dawn ir-raġunijiet it-Tribunal jaqta' u jiddeċiedi billi jilqa' *in parte* l-appell tas-soċjetà Rikorrenti mill-istima mahruġa fil-konfront tagħha għall-perijodu ta' taxxa 01.01.08 sa' 31.12.12, b'dana li tali stima għandha tiġi riveduta bil-mod segwenti:

- L-input tax relattiv għal xogħlijiet ta' demolizzjoni u skavar tas-sit fejn in segwitu inbena l-blokk XXX Building, li jinkludi l-istabbiliment Gusti Siciliani, fi Triq Gorg Borg Olivier, Mellieħa, skond fatturi esebiti a fol. 183 u 184 tal-proċess, jiġi aċċetat mill-Kummissarju tat-Taxxa u Dwana;
- L-input tax relattiv għal xogħlijiet esegwiti mis-soċjetà Central Asphalt Limited konsistenti f'carting away of loose material u supply of building material concrete

& bricks, skond fatturi esebiti a fol. 187 u 188 tal-proċess, jiġi aċċettat mill-Kummissarju tat-Taxxa u Dwana;

- L-input tax relativ għall-ispejjeż inkorsi fir-rigward ta' servizzi professjoni reżi lis-soċjetà Rikorrenti mill-Perit Joseph Attard, skond dokumenti a fol. 185 u 186 tal-proċess, jiġi aċċettat mill-Kummissarju tat-Taxxa u Dwana;
- L-input tax relativ għal provvista magħmula lis-soċjetà Rikorrenti minn Central Asphalt skond fattura a fol. 189 tal-proċess, jiġi aċċettat mill-Kummissarju tat-Taxxa u Dwana;
- L-input tax relativ għal xogħol ta' kostruzzjoni esegwit minn Frans Sammut kopert dan b'fatturi datati 2 ta' Jannar 2009, 13 ta' Frar 2009, 11 ta' April 2009, 15 ta' Ĝunju 2009, 6 ta' Awwissu 2009 u 17 ta' Ottubru 2009, jiġi aċċettat mill-Kummissarju tat-Taxxa u Dwana;
- L-input tax relativ għal servizzi prestati lis-soċjetà Rikorrenti minn Charles Scerri and Associates skond fattura datata 21 ta' Diċembru 2012, għandu jiġi aċċettat mill-Kummissarju tat-Taxxa u Dwana -

B'dana però li l-input tax li għandu jiġi aċċettat fir-rigward ta' kull provvista u/jew servizz hawn imsemmija huwa dak riżultanti wara li issir l-attribuzzjoni meħtieġa mil-Ligi in kwantu huma biss l-istabiliment **Gusti Siciliani u l-appartament Nru.2, fil-blokk XXX Building, Triq Gorg Borg Olivier, Mellieħa, illi jirrizultaw li nkrew lil terzi mis-soċjetà Rikorrenti; u**

- L-input tax relativ għal xogħol esegwit minn Victoria Aluminium fil-flat numru 2 f'XXX Building, Triq Gorg Borg Olivier, Mellieħa, skond fattura a fol. 196 u 197 tal-proċess, ammontanti għal €410.04, għandu jiġi aċċettat mill-Kummissarju tat-Taxxa u Dwana.

It-taxxa amministrattiva u l-imghax dovut għandhom ukoll jiġu varjati in segwitu għall-aġġustamenti ordnati b'din id-deċiżjoni.

Fiċ-ċirkostanzi tal-każ fejn is-soċjetà Rikorrenti essenzjalment irreklamat input tax li fil-maġġor parti tiegħu ma kienx jispetta lilha ai termini tal-Ligi, l-ispejjeż ta' dawn il-proċeduri jibqgħu a karigu ta' l-istess soċjetà Rikorrenti.

Ai termini tal-Partita 2(4) tad-Disa' Skeda tal-Kap.406 tal-Ligijiet ta' Malta, it-Tribunal jordna li kopja ta' din is-sentenza tīgi notifikata lis-soċjetà Rikorrenti.

MAĞISTRAT

DEPUTAT REGISTRATUR