Qorti tal-Magistrati (Malta)
Bhala Qorti ta' Gudikatura Kriminali
Magistrat Dr. Yana Micallef Stafrace LL.D.

Il-Pulizija

Vs

Carlo (Carmel Horace) Schembri

Illum, 19 ta`Frar, 2025

Il-Qorti,

Rat l-imputazzjonijet dedotti kontra **Carlo (Carmel Horace) Schembri** (K.I. 385274 M) imwieled fit-tnejn u ghoxrin ta' Awwissu tas-sena elf disa' mija u erbgha u sebghin (22/8/1974) gewwa Malta u residenti Crown Marina, Blk C, P/H 11, Triq l-Imradd, Ta' Xbiex, Malta akkuzata talli bhala direttur u / jew ghan-nom u in rapprezentanza ta' **CAROLINA SUITES LIMITED (C 79032)** u / jew persuna registrata mal-Kummissarju tat-Taxxi skond l-Att XXIII tal-1998 u regolamenti maghmula bis-sahha tal-istess Att, waqt spezzjoni ta' sorpriza li sehhet fil-**11 ta' Frar 2023** gewwa **Carolina's, Qawra Road, Qawra, San Pawl il-Bahar, Malta** int jew impjegati tieghek jew xi persuna ohra li kienet qed tagixxi ghan-nom tieghek, inqast li taghti jew tipproduci rcevuta fiskali permezz ta' *cash register fiskali* u / jew kotba tar-ricevuti fiskali manwali kif mahruga jew approvati mill-Kummissarju, li jikkonformaw mal-htigijiet specifikati fil-partita 10 tat-Tlettax-il Skeda li tinstab mal-Att tal-1998 dwar Taxxa fuq il-Valur Mizjud skond il-kumpens lilek imhallas ghal dik il-provvista, u u dan bi ksur tal-partititi 1, 2, 3 u 10 tat-imsemmija Skeda u l-artikoli 51 u 77(a), 81 u 82 tal-istess Att Nru. XXIII tal-1998.

Semghet ix-xhieda ta' Marylin Schembri Saliba; ta' Anton Theuma; ta' Emanuel Darmanin; tal-PL Quentin Tanti prodotti mill-prosekuzzjoni fis-seduta tas-17 ta' April 2024; u ta' Caroline Grech u Donna Zammit li xehedet bil-lingwa Ingliza prodotti mid-difiza fis-seduta tas-17 ta' April 2024.

Rat il-kunsens tal-Kummissarju tat-Taxxa u Dwana, *letter to prosecute*, ipprezentant mix-xhud Marylin Schembri Saliba konfermat bil-gurament fis-seduta tas-17 ta' April 2024;

Semghet it-trattazzjoni tal-partijiet;

Rat l-partititi 1, 2, 3 u 10 tat-Tlettax-il Skeda tal-Att tal-1998 dwar Taxxa fuq il-Valur Mizjud (Att Nru. XXIII tal-1998) u l-artikoli 51 u 77(a), 81 u 82 tal-istess Att Nru. XXIII tal-1998.

Rat id-dokumenti, x-xhieda u l-atti kollha tal-kaz.

Ikkunsidrat

Provi tal-prosekuzzjoni

Marilyn Schembri Saliba, Revenue Inspector, in rapprezentanza tal-Malta Tax and Customs Administration, xehedet fis-seduta tas-17 ta' April 2024. Ipprezentat *letters to prosecute* tal-Kummissarju tat-Taxxa u d-Dwana fil-konfront ta' Caroline Grech u ta' Carlo Schembri.

Anton Theuma, Spettur tal-VAT ghan-nom tal-MTCA xehed fis-seduta tas-17 ta' April 2024. Jixhed li waqt li kienu qed jaghmlu inspection fi Triq Qawra, il-Qawra marru fl-istabiliment Carolinas Sweets Ltd u hemm hekk raw bejgh u innutaw l l-ircevuta ma hargitx. Jixhed li kellmu ukoll lil klijent li xtara l-affarijiet minn ghandu. Prezenti kien hemm ukoll l-ispettur Emanuel Darmanin.

Raha bejgh ta' double espresso u sparkling water l-ammont ta' hames 5 ewro. Kellmu l-persuna li ghamel il-bejgh, certu Harish Chand, u staqsewh ghalfejn ma hargitx l-ircevuta u qalilhom li kien jafu ghax kien habib kien joqghod kif idur il-kantuniera. Ix-xhud jixhed li lil Harish Chand ggeghluh johrog l-ircevuta fuq inisistenza taghhom. (Dok AT).Ix-xhud jipprezenta ukoll l-X reading (Dok AT 1).

Fuq l-ircevuta li kellu l-klijent jixhed *"li kellu l-klijent li mhijiex fiskali. Meta hawn ircevuta ta' five euro. Din li hareg hu wara. At our insistence, din li kellu l-klijent li mhix fiskali."* (Dok AT 2). L-ircevuta Dok AT 2 la fih VAT number, m' ghandux address m' ghandux XO number - mhux fiskali.

In kontro-ezami mistoqsi xi xtrat il-persuna jirrispondi li mhux procedura li jsaqsuha.

Meta raha dan kollu huwa kien fuq gewwa kif taqbez il-bieb. Jixhed li raha kollox ghaliex dahal wara l-klijent.

Meta kellem lil Harish Chad ma tahx caution li ghandu dritt tal-avukat u li kull ma ha jghid ser jingieb kontrih il-Qorti.

Emanuel Darmanin, spettur tal-VAT xehed fis-seduta tas-17 ta' April 2024. Jixhed li kienu il-Carolinas il-Qawra Road, Qawa, dahlu gol-hanut u raw klijent u rcevuta ma inghatax minn Mr Chand. Ghandu in-numru tal-karta tal-identita' tal-impjegat ghaliex talabulu. Chand qalilhom li kien kien habib tieghu, qalulu min jhallsu jrid jaghti rcevuta u hareg ircevuta fuq insistenza taghhom.

Jikkonferma d-dokumenti ezebiti in atti li jikkonsistu Dok AT receipt li inharget fuq insistenza taghhom, Dok AT 2 ordni tal-computerised system u Dok AT 1 X- reading.

In kontroezami jirrispondi li rcevuta minnhom hija ordni, li gabuha minn hemmhekk dakkinhar minghand Mr Chand.

Jixhed li meta sehh l-akkadut huwa kien hdejn il-counter, x' inxtara dakkinhar ma jiftakarx. Qed jixhed minn notamenti tieghu li qed jigu ezebiti (Dok ED). Mistoqsi jekk il-fuq il-bank kienx hemm l-ircevuta jirrispondi, "*Ma kienx hemm ghax kieku kien jghidilna ara hriegtielu ahna konnha naraw."*

Mistoqsi jekk jikftakarx jekk l-ordni hargitx qabel jirrispondi li ma jiftakarx.

PL Quentin Tanti, in rapprezentanza tar-Registratur tal-Kumpaniji fi Hdan il-Business Registry xehed fis-seduta tas-17 ta' April 2024. Gew mitluba jaghtu informazzjoni dwar il-kumpanija Carolina Sweets Ltd li ggib in-numru ta' registrazzjoni C 79032 specifikament ghal jum tal-11 ta' Frar 2023. F' dik id-data d-diretturi kienu Carlo Schembri bil-karta tal-

identita' 385274 M u Caroline Grech bil-karta tal-identita' 168177M. Il-company secretary kienet Caroline Grech. Din l-informazzjoni fittixiha hu stess.

Provi prodotti mid-Difiza

Caroline Grech, xehedet fis-seduta tas-17 ta' April 2024. Tixhed li hija tmexxi l-hwienet Carolinas Sweet Café. Tispjega li s-sistema adoperata fil-hwienet taghhom hija li l-klijent jigi jhallas l-order jaghmel order mal-cash ihallas, jtuh number u imur bilqeghda. Dan in-nhar tal-inspection hija ma kienitx prezenti. Mistoqsija dwar is-sistema adoperata tirrispondi

"Avu: Dak in-nhar f' dak iz-zmien kif kontu toperaw?

Xhud: Konnha noperaw billi jidhol il-klijent jaghmel order dik ic-chitt zghira tohrog once li tohrog il-fiscal receipt tohrog maghha, jigifieri ma tistax tohrog order minghajr fiscal receipt u dik hija habba sigurta' naha taghna li ma jmurx il-barista"

Tixhed li skont is-sistema taghhom l-ewwel tohrog l-ircevuta fiskali u ezatt wara tohrog l-order chit, jekk il-kaxxier ma ma jafas cash fil-kcina ma tistax tohrog l-order biex jigi ppreparat. Din hija l-procedura adoperata fil-hwienet kollha. Is-sistema hija wahda awtomatika.

Mistoqsija l-order chit fl-liema stadju tinqata' tirrispondi

"Avu: Tista Tispjegali l-order chit f' liema stadju tinqata?

Xhud: Hi l-printer il-barista jkollu printer jew il-kcina jkollha printer il-kaxxiera jkollu l-kont, jigifieri jista' jkun ma jkunux hdejn xulxin ghandi hwienet li l-kcina qeghda post u l-cash post iehor. Pero' il-barista jekk ma jigborx il-flus lill-kaxxier ma jaghmilhiex l-order."

Dak in-nhar tal-allegat akkadut impjegati kien hemm Harish li kien *sub -contracted* u issa telaq minn Malta u Donna Zammit li kienet mieghu ukoll.

Donna Zammit, xehedet bil-lingwa Ingliza fis-seduta tas-17 ta' April 2024. Hija impjegata Carolina's Café, Qawra bhala kok. Fuq dak li gara dak innhar tixed

"At the time I was preparing food at the side and my colleague was serving a client came in he ask for a coffee my client punched it in the system in the receipt and then my colleague turned round to make the coffee gave it to the client and the client walked out and he left the receipt on the counter.

Qorti: You can see this from where you were in the kitchen?

Xhud: I wasn't in the kitchen I was next to the where we make the coffee we have a small counter where we prepare the food and I was there and then the client walked out when he was outside two men approached him and they spoke to him and they came in and they told him they asked him about if they gave him a receipt to which he told them that he left it on the counter then the agents came into the coffee shop and spoke with my colleague asking him asked him for his id card and I heard him tell him that there was no problem this just a procedure he said but next time make sure the client takes the receipt with him that's all."

Mistoqsija in kontro-ezami ghalfejn il-kollega taghha ippancja receipt ohra tirrspondi li ma tistax tirrispondi.

In rezami

Avu: Did you see this happening? Did you see how many times was this punched?

Xhud: All I remember him doing is the client coming in from coffee he punched it Into the system and gave it to the client the client rushed out after he gave him the coffee.

Qorti: Gave what to the client?

Xhud: The coffee. He gave him the coffee because we punched the system first and then we give the drinks."

Tikkonferma li hija rat lil impjegat l-iehor jaghti lil klijent l-ircevuta fiskali.

Ikkunsidrat

Il-Qorti tfakkar illi hawnhekk ninsabu fil-kamp penali u apparti li minn jallega irid jipprova, l-livell ta' prova li trid tilħaq id-difiża hija dik tal-probabbli, filwaqt li l-livell tal-Prosekuzzjoni hija livell għola u cioe' 'l hinn kull dubju dettat mir-raġuni.

Fil-kaz in ezami, l-Qorti tirrileva li hemm verzjonijiet kunfliggenti. Fil-waqt li l-Ispetturi tal-VAT xehdu li l-ircevuta li harget lil klijent kienet order u mhux ircevuta fiskali, mix-xhieda ta' Carlone Grech irrizulta li s-sistema adoperata fl-istabilimenti tal-kumpanija li hija direttrici taghhom hija li s-sistema hija awtomatika u l-order form tohrog kif tigi ippancjata l-ircevuta fiskali. Fil-fatt l-ircevuti li gew ezebiti mil-ispetturi tal-VAT juru l-istess data u hin 11 ta' Frar 2023 10:16 li jikkollabora l-verzjoni moghtija kemm minn Caroline Grech kif ukoll mix-xhud Donna Zammit, impjegata prezenti dak in-nhar

Illi fix-xhieda ta' Donna Zammit hija tghid li l-impjegat l-iehor kien taha ircevuta fiskali lil klijent li halla l-ircevuta fiskali fuq il-bank.

Illi peress li jirrizulta kunflitt ta' provi bejn il-verzjonijiet ta' l-Ispetturi tal-VAT Anton Theuma, Emanuel Darmanin u Caroline Grech u Donna Zammit ma jirrizultax il-livell ta' prova rikjesta fil-kamp penali u l-imputazzjoni ma gietx ipprovata.

Decide

Għaldaqstant l-Qorti wara li rat il-partititi 1, 2, 3 u 10 tat-Tlettax-il Skeda tal-Att tal-1998 dwar Taxxa fuq il-Valur Mizjud (Att Nru. XXIII tal-1998) u l-artikoli 51 u 77(a), 81 u 82 tal-istess Att Nru. XXIII tal-1998 issib lil imputat **Carlo (Carmel Horace) Schembri** mhux hati tal-imputazzjonijiet dedotti kontrih u tilliberah minn kull piena u htija.

DR. YANA MICALLEF STAFRACE LL.D.
MAGISTRAT

Doris Serpina Sciberras
Deputat Registratur