



THE ADMINISTRATIVE REVIEW TRIBUNAL

**MAGISTRATE DR.
GABRIELLA VELLA**

Sitting of the 24 th September, 2012

Rikors Number. 1/2009

**David Anthony Pollina (I.D. Card No. 31801A) as
special mandatary for Miqna Webkoo Limited, a
foreign company registered in the Republic of Cyprus
having Registration Number HE245926 and having
address 6, Avias Elenis Building, Office 43, 1060
Nicosia, Republic of Cyprus**

Vs

Authority for Transport in Malta

The Tribunal,

After having considered the Application submitted on the 22nd September 2009 by David Anthony Pollina as special mandatary for Miqna Webkoo Limited, a foreign company registered in the Republic of Cyprus having Registration Number HE245926, by means of which he requests the Tribunal: (i) to declare, by way of review of the decision by the Malta Transport Authority notified to him by letter dated 1st September 2009, that the

importation into Malta of the vehicle Peugeot 307 manufactured in 2006 and registered in the United Kingdom with Registration Number BF55-OSO, for a period of more than thirty days but not with the intention of its being used in Malta on a permanent basis, and in fact is not so used on a permanent basis, does not give rise to the obligation of payment of vehicle registration tax; (ii) to order the Malta Transport Authority to desist from requesting payment of vehicle registration tax on the above-mentioned vehicle pursuant to its importation to Malta for a period of more than thirty days but not with the intention of its being used in Malta on a permanent basis, and in fact is not so used on a permanent basis; (iii) to declare that the Malta Transport Authority is responsible for damages being incurred by Miqna Webkoo Limited as a consequence of its decision with regard to this issue; (iv) to liquidate the amount of damages suffered by Miqna Webkoo Limited as a consequence of the decision by the Malta Transport Authority; (v) to order the Malta Transport Authority to pay Miqna Webkoo Limited by way of damages the amount so liquidated by the Tribunal; and (vi) to impose any other condition the Tribunal deems so fit to impose; with legal interest in terms of Law and with costs against the Malta Transport Authority;

After having considered the documents submitted by Applicant nomine together with his Application marked as Doc. "A" to Doc. "E" at folio 4 to 9 of the records of the proceedings;

After having considered the Reply by the Malta Transport Authority wherein it contests the requests put forth by Applicant nomine and requests that his Appeal be rejected with costs against him, on the preliminary ground that the Tribunal is not competent *rationae materiae* to deal with the requests put forth by Applicant nomine since they do not fall within the provisions of Section 40 of the Authority for Transport in Malta Act, and on the merits that the contested decision is just and legal and should therefore be confirmed;

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After having considered the preliminary judgment delivered on the 11th April 2011¹;

After having heard and considered the testimony given by Applicant nomine during the sitting held on the 9th May 2011² and after having considered the documents exhibited by him during the said sitting marked as documents Doc. "DP-1" to Doc. "DP-6" at folio 31 to 45 of the records of the proceedings;

After having considered the declaration by the Respondent Authority during the sitting held on the 14th February 2012³ that in view of the legal nature of the issue in question, it does not have any factual evidence to submit;

After having heard oral submissions by the parties to these proceedings and considered their further written submissions put forth by means of Notes filed on the 13th June 2012⁴ and the 2nd July 2012⁵, respectively;

After having considered all the records of the proceedings;

Considers:

By means of these proceedings Applicant nomine is contesting the decision taken by the Malta Transport Authority to the request put forth by him on behalf of Miqna Webkoo Limited by means of a letter dated 13th August 2009, for the vehicle Peugeot 307 having UK Registration Number BF55 OSO, owned by the said company and made available to him as its Director to be used in Malta on a temporary basis with no intention of it being used on a permanent basis, to be registered with the Authority without however incurring payment of vehicle registration tax, in terms of the exemption

¹ Folio 24 to 29 of the records of the proceedings.

² Folio 46 and 47 of the records of the proceedings.

³ Folio 52 of the records of the proceedings.

⁴ Folio 55 and 56 of the records of the proceedings.

⁵ Folio 58 of the records of the proceedings.

provided for under Section 18(3) of Chapter 368 of the Laws of Malta⁶.

By letter dated 1st September 2012 the Malta Transport Authority informed Applicant nomine that *the Motor Vehicle Registration Tax Act clearly stipulates that once the motor vehicle is to remain in Malta for more than thirty (30) consecutive days, then it will have to be registered with the Malta Transport Authority and registration tax paid thereupon*⁷. Applicant nomine however contests the stand taken by the Authority and requests that by way of review of Authority's decision, the Tribunal declare that in the particular circumstances of this case the importation of the said vehicle to Malta does not give rise to payment of vehicle registration tax. Originally Applicant nomine also requested the Tribunal to declare the Malta Transport Authority responsible for damages being suffered by Miqna Webkoor Limited as a consequence of the decision taken by it and to order the Authority to pay damages as duly liquidated by the Tribunal.

The Malta Transport Authority contested the competence *rationae materiae* of this Tribunal claiming that the requests put forth by Applicant nomine do not fall within the provisions set out in Section 40 of Chapter 499 of the Laws of Malta, and it also contested the Appeal on the merits, stating that its decision is just and legal and must therefore be confirmed.

By virtue of a preliminary judgment delivered on the 11th April 2011 the Tribunal decided the preliminary plea put forth by the Malta Transport Authority and declared that *it-Tribunal ghalhekk huwa kompetenti li jittratta u jiddeciedi l-ewwel u t-tieni talbiet tar-rikorrenti nomine stante li dawn it-talbiet jaqghu taht il-gurisdizzjoni tieghu. Huwa wkoll kompetenti li jittratta u jiddeciedi is-sitt talba tar-rikorrenti nomine dejjem fil-parametri tal-kompetenza tieghu a tenur tal-Kap.490 tal-Ligijiet ta' Malta, izda ma huwiex kompetenti li jittratta u jiddeciedi it-tielet, raba' u hames talbiet tar-rikorrenti nomine in kwantu dawn jaqghu taht il-*

⁶ Letter dated 13th August 2009, Doc. "A" at folio 4 of the proceedings.

⁷ Letter dated 1st September 2009, Doc. "B" at folio 5 of the proceedings.

gurdizzjoni tal-Qrati ta' kompetenza civili a tenur ta' l-Artikolu 469A tal-Kap.12 tal-Ligijiet ta' Malta. Ghaldaqstant ghal dawn ir-ragunijiet it-Tribunal, filwaqt li jichad l-eccezzjoni preliminari ta' l-Awtorità intimata in kwantu bbazata fuq Ligi li ma tapplikax ghall-proceduri in ezami, jiddikjara li dan it-Tribunal ghandu gurdizzjoni, u b'hekk hu kompetenti, jittratta l-ewwwel, it-tieni u sitt talbiet tar-rikorrenti nomine izda jiddikjara li ma ghandux gurdizzjoni u b'hekk mhux kompetenti jittratta u jiddeciedi it-tielet, raba' u hames talbiet tar-rikorrenti nomine. L-ispejjez relattivi ghal din is-sentenza jibqghu riservati ghall-gudizzju finali.

In view of the said judgment the Tribunal must now consider and determine the first, second and sixth request put forth by Applicant nomine in the light of the plea on the merits raised by the Respondent Authority.

Prior to entering into the merits of the Appeal, the Tribunal is of the opinion that the records of the proceedings must be corrected so as to duly reflect the appropriate Respondent Authority to the requests put forth by Applicant nomine.

When Applicant nomine filed his Appeal on the 22nd September 2009, the registration of motor vehicles in Malta and the calculation and imposition of the relative vehicle registration tax fell under the competence of the Malta Transport Authority⁸ – Awtorità dwar it-Trasport ta' Malta – that is, the Authority against whom Applicant nomine filed his Appeal. However, on the coming into force of the Authority for Transport in Malta Act, Chapter 499 of the Laws of Malta, on the 1st January 2010⁹ the above-mentioned competences were, together with various other functions exercised by the Malta Transport Authority, transferred onto the newly constituted authority, the Authority for Transport in Malta. Naturally this transition made it necessary for the Legislator to provide amongst other things, for pending judicial proceedings to which the Malta Transport Authority was a party as at date

⁸ Section 4(1) of Chapter 332 of the Laws of Malta.

⁹ Legal Notice 349 of 2009.

of coming into force of Chapter 499 of the Laws of Malta. In fact, Section 38(2) of Chapter 499 of the Laws of Malta provides that: *where immediately before the date of the coming into force of this Part of this Act there are still pending any legal proceedings relating to any of the properties or undertakings, or to any right or liability, transferred to the Authority by or under this Act and to which the Government, the Malta Maritime Authority or the Malta Transport Authority or the Civil Aviation Department is or is entitled to be a party, the Authority shall, as from the date aforesaid, be substituted in such proceedings for the Government or for the aforesaid Authorities or Department, as the case may be, or shall be made a part thereto in like manner as the Government, any such Authority or Department could have become a party as aforesaid, and such proceedings shall not abate by reason of the substitution.*

From the above-mentioned provision of the Law it clearly results that to date the Malta Transport Authority has been substituted, for all intents and purposes of law and for the purposes of these proceedings, by the Authority for Transport in Malta. Even though no formal declaration has been made to this effect by the Authority, from the records of the proceedings and particularly from the Note of Submissions filed on the 13th June 2012¹⁰, it clearly results that the Authority for Transport in Malta has taken over these proceedings from and instead of the Malta Transport Authority. Thus, in the light of these circumstances the Tribunal is of the opinion that the records of the proceedings, including the "occhio" of the proceedings, must be duly corrected so that they reflect the appropriate Respondent Authority to the requests put forth by Applicant nomine. Therefore to this effect the words "Awtorità dwar it-Trasport ta' Malta" must be cancelled and substituted by the words "Awtorità ghat-Trasport f'Malta", the English translation thereto being Authority for Transport in Malta.

¹⁰ Folio 55 and 56 of the records of the proceedings.

In so far as concerns the merits of the Appeal and as already pointed out above, Applicant nomine is founding his request for registration of the vehicle Peugeot 307 having UK Registration Number BF55 OSO without however incurring payment of vehicle registration tax, on the ground that the said vehicle falls under the application of Section 18(3) of Chapter 368 of the Laws of Malta. He claims that in view of the fact that the vehicle forming the merits of these proceedings is: (i) the property of Miqna Webkoo Limited¹¹, a limited liability company registered in Cyprus¹²; (ii) registered in the United Kingdom¹³; (iii) made available to the Applicant as Director of Miqna Webkoo Limited¹⁴; (iv) has been brought into Malta¹⁵; and is (v) intended to be used in Malta for a period of three years from date of its arrival¹⁶, said vehicle is eligible for an exemption from payment of vehicle registration tax in terms of Section 18(3) of Chapter 368 of the Laws of Malta, as a vehicle temporarily brought into Malta, but must be registered with the competent Authority, in terms of the proviso to the said section of the law, since it was to remain in Malta for a period of more than thirty consecutive days. Applicant nomine argues that the interpretation given by the Respondent Authority to that provision of the Law, particularly to the proviso to Section 18(3), is incorrect since payment of vehicle registration tax on vehicles entering Malta and remaining here for more than thirty consecutive days from the date of their arrival was introduced by Act XI of 2010 which came into force on the 1st January 2010¹⁷, that is after he submitted his request on behalf of Miqna Webkoo Limited, and could therefore not be imposed on the vehicle Peugeot 307 having UK Registration Number BF55 OSO.

The Respondent Authority on the other hand argues that contrary to that claimed by Applicant nomine, the vehicle registration tax regime regarding vehicles entering Malta

¹¹ Doc. "D" at folio 7 of the records of the proceedings.

¹² Doc. "DP-1" at folio 33 of the records of the proceedings.

¹³ Doc. "DP-2" a folio 35 to 37 of the records of the proceedings.

¹⁴ Doc. "E" at folio 8 of the records of the proceedings.

¹⁵ Doc. DP-2" a folio 38 of the records of the proceedings.

¹⁶ Doc. "A" at folio 4 of the records of the proceedings.

¹⁷ Article 1(2) of Act XI of 2010.

and remaining here for a period of more than thirty consecutive days from the date of their arrival was not in any way amended by Act XI of 2010. Even prior to the coming into force of Act XI of 2010, those vehicles entering Malta and remaining here for a period of more than thirty consecutive days from the date of their arrival had to be duly registered with the Authority (at the time Malta Transport Authority) and relative vehicle registration tax paid thereon. It argues that since the vehicle Peugeot 306 having UK Registration Number BF55 OSO was to remain in Malta for a period of three years – and this as stated by Applicant nomine himself in his letter to the Malta Transport Authority dated 13th August 2009¹⁸ - it fell squarely within the application of the proviso to Section 18(3) of Chapter 368 of the Laws of Malta as in force in 2009, and payment of vehicle registration tax was due for the purposes of registration of the said vehicle.

From submissions made by the parties to these proceedings, both oral and written, it is very clear that this Appeal revolves round the correct interpretation of Section 18(3) of Chapter 368 of the Laws of Malta, particularly the proviso to that section, as introduced by Act VI of 2009. The said section of the Law as introduced by Act VI of 2009 provided that: *notwithstanding any other provision of this Act, any private motor vehicle registered in another Member State other than Malta made available to a person, whether or not resident in Malta, by a company or other legal entity established in a Member State other than Malta, in his capacity as employee, director, manager, shareholder or partner of the company or other legal entity, or where any registered motor vehicle made available to a person in his capacity as self employed person pursuing an economic activity in a Member State other than Malta, and such registered private motor vehicle is imported or brought temporarily into Malta but is not intended to be used in Malta on a permanent basis and is not in fact used in that manner, shall be exempt from registration tax: Provided that where that motor vehicle shall remain in Malta for more than thirty*

¹⁸ Doc. "A" at folio 4 of the records of the proceedings.

consecutive days from the date of its arrival in Malta, it shall be registered with the Authority in accordance with the provisions of this Act.

From the wording used by the Legislator in drafting Section 18(3) of Chapter 368 of the Laws of Malta as introduced by Act VI of 2009, it is clear that the said proviso provides for the exception to the rule set out in Section 18(3) and as such excludes the exemption from payment of vehicle registration tax in those cases where the vehicle in question though conforming to the conditions set out in Section 18(3), is to remain in Malta for a period of more than thirty consecutive days thus making it necessary from payment of vehicle registration tax in such circumstances.

Whilst the Tribunal acknowledges the fact that it was only with the amendment introduced by virtue of Act XI of 2010 that the words “and the appropriate registration tax paid thereon” were specifically added to the proviso to Section 18(3) of Chapter 368 of the Laws of Malta as introduced by virtue of Act VI of 2009, it must however emphasize that provisions of the law cannot and must never be interpreted at mere face value, as is being done by Applicant nomine in this case, but their scope and meaning must be duly determined.

Upon proper examination of the proviso to Section 18(3) of Chapter 368 of the Laws of Malta as introduced by Act VI of 2009, it clearly results that the only logical interpretation of that particular provision of the law is that those vehicles falling within the parameters of the proviso – that is whilst conforming to the conditions set out in Section 18(3) were to remain in Malta for a period of more than thirty consecutive days – required both registration with the Authority and payment of vehicle registration tax. In fact, the said proviso specifically provided that *where that motor vehicle shall remain in Malta for more than thirty consecutive days from the date of its arrival in Malta, it shall be registered with the Authority in accordance with*

the provisions of this Act¹⁹, and from the provisions of the Act – that is Chapter 368 of the Laws of Malta and relative subsidiary legislation as in force in 2009 – it results that save any exemptions granted in terms of the law, the registration of a vehicle in accordance with the provisions of the Motor Vehicles Registration and Licensing Act entailed and still entails, the payment of relative vehicle registration tax.

Section 2A of Chapter 368 of the Laws of Malta as introduced by Act VI of 2009 provided that: *(1) No person shall have in his possession or charge any motor vehicle which has not been registered with the Authority and on which the applicable registration tax has not been paid unless – (a) that person is an authorized manufacturer, agent or dealer of motor vehicles and the vehicle in his possession or charge is not being used on the road, or (b) the vehicle is the subject of an exemption under this Act. (2) No motor vehicle shall be used on the road without a circulation licence issued by the Authority unless that vehicle is the subject of an exemption under this Act.* With effect from the 1st January 2009²⁰ the registration and licensing of motor vehicles has been regulated by the Registration and Licensing of Motor Vehicles Regulations, 2009, introduced by Legal Notice 198 of 2009, with Regulation 6 providing specifically for the registration of used motor vehicles imported into Malta, which is the Regulation which must be considered within the context of these proceedings since from Doc. “DP-2” at folio 35 to 37 of the records of the proceedings it results the vehicle Peugeot 307 having UK Registration Number BF55 OSO was first registered in 2006 and acquired by Miqna Webkoo Limited on the 8th June 2009.

Regulation 6(5) of Legal Notice 198 of 2009 provided that: *the registration of an imported used motor vehicle or used motor vehicle which had been brought into Malta, or a rebuilt or amateur built motor vehicle shall be made by the Authority upon the issuing by the Authority of an*

¹⁹ Underlining by the Tribunal.

²⁰ Regulation 1(2) of Legal Notice 198 of 2009. Regulation 6(3) however came into force on the 1st August 2009.

inspection form and the payment of an inspection fee of €35 and upon the payment by the owner, importer or authorised dealer of an administrative fee of €10 payable to the Authority, and upon - (a) the presentation of the documents mentioned in sub-regulation (4) hereof and upon payment of the prescribed vehicle registration tax, if the vehicle is acquired from a Member State, or it is a rebuilt or amateur built motor vehicle, and (b) the presentation of the documents mentioned in sub-regulation (4) hereof and upon payment of the prescribed import duty under the Imports Duty Act, and the prescribed vehicle registration tax, if the vehicle is acquired from a third country.

From the above it therefore clearly results that vehicles falling within the parameters set out in the proviso to Section 18(3) of Chapter 368 of the Laws of Malta as introduced by Act VI of 2009 had to be registered with the Authority **and** relative vehicle registration tax paid thereon. Thus in view of the fact that Applicant nomine *ex admissis* declared that the vehicle Peugeot 307 having UK Registration Number BF55 OSO was to remain in Malta for periods of more than 30 consecutive days, the Authority was correct in determining that the vehicle in question had to be registered with the Authority and relative vehicle registration tax paid thereupon. Therefore, the Appeal lodged by Applicant nomine on the 22nd September 2009 from the said decision cannot be upheld.

For the above reasons the Tribunal, whilst ordering that the records of the proceedings, including the "occhio" of the proceedings, be duly corrected in the sense that the words "Awtorità dwar it-Trasport ta' Malta" be cancelled and substituted by the words "Awtorità ghat-Trasport f'Malta" so that the proceedings reflect the appropriate Respondent Authority to the requests put forth by Applicant nomine, upholds the plea on the merits raised by the Respondent Authority and rejects the first, second and sixth requests put forth by Applicant nomine.

Informal Copy of Judgement

Costs pertinent to this case, including those relative to the preliminary judgment delivered on the 11th April 2011, are to be borne entirely by Applicant nomine.

< Final Judgement >

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