



MALTA

**TRIBUNAL TA' REVIZJONI AMMINISTRATTIVA
MAGISTRAT DR.
GABRIELLA VELLA**

Seduta tat-30 ta' Marzu, 2015

Rikors Numru. 63/2013

Xxx Limited

Vs

Direttur Generali (Taxxa fuq il-Valur Mizjud)

It-Tribunal,

Ra r-Rikors ipprezentat mis-socjetà Xxx Limited fl-24 ta' Jannar 2012 quddiem il-Bord ta' l-Appelli dwar Taxxa fuq il-Valur Mizjud, in segwitu trasferit ghal quddiem dan it-Tribunal, permezz ta' liema titlob li l-Bord, illum it-Tribunal, jiddikjara li hija ghandha dritt ghad-deduzzjoni/kreditu/refuzjoni tal-VAT fuq l-ispejjez inkorsi fuq il-*units* kollha, ossia hames *units* mibnija fuq art sitwata fi Triq Santa Klara kantuniera ma' Triq Victoria Lines, Bahar ic-Caghaq, u konsegwentement jordna li l-Kummissarju tat-Taxxa fuq il-Valur Mizjud ghandu, fi zmien qasir u perentorju ffixsat mit-Tribunal, jhallasha s-somma ta' €120,495, rapprezentanti r-refuzjoni minnha pretiza, bl-imghax;

Ra d-dokumenti annessi mar-Rikors u senjatament ittra tal-Kummissarju tat-Taxxa fuq il-Valur Mizjud datata 5 ta' Jannar 2012 u r-risposta tal-konsulent legali tas-socjetà Rikorrenti datata 18 ta' Jannar 2012;

Ra r-Risposta tad-Direttur Generali (Taxxa fuq il-Valur Mizjud) permezz ta' liema jopponi ghat-talbiet tas-socjetà Rikorrenti u jitlob li l-istess jigu michuda, bl-ispejjez kontra taghha, u minflok tigi kkonfermata d-decizjoni tieghu kif kontenuta fl-ittra tal-5 ta' Jannar 2012;

Ra d-dokumenti annessi mar-Risposta tad-Direttur Generali (Taxxa fuq il-Valur Mizjud) markati Dok. "A" sa' Dok. "E" a fol. 14 sa' 31 tal-process;

Sema' x-xhieda ta' Kevin Decesare moghtija waqt is-seduta tat-8 ta' Ottubru 2013¹ u x-xhieda ta' Vincent Curmi moghtija waqt is-seduta tal-25 ta' Novembru 2013² u ra d-dokumenti esebiti minnu markati Dok. "VC1" a fol. 40 sa' 186 tal-process, sema' x-xhieda ta' Rachel Cordina, in rapprezentanza tad-Direttur Generali (Taxxa fuq il-Valur Mizjud) moghtija waqt is-seduta ta' l-24 ta' Frar 2014³;

Ra dak verbalizzat mid-difensuri tal-partijiet kontendenti waqt is-seduta ta' l-24 ta' Frar 2014⁴, dwar il-fatt li l-kwistjoni centrali f'dawn il-proceduri hija wahda ta' natura purament legali u kwistjonijiet ta' fatt, partikolarment dwar l-adeqwatezza tal-fatturi relattivi ghall-ispejjez inkorsi jigu ezaminati l-quddiem fil-kuntest ta' investigazzjoni da parte tad-Dipartiment tat-Taxxa fuq il-Valur Mizjud u kemm-il darba kellha tinhareg stima fil-konfront tas-socjetà Rikorrenti jsir appella minnha;

Ra n-Nota ta' Sottomissjonijiet tas-socjetà Rikorrenti pprezentata fl-24 ta' Marzu 2014 u ra n-Nota Responsiva tad-Direttur Generali (Taxxa fuq il-Valur Mizjud) ipprezentata fl-20 ta' Gunju 2014;

Ra l-atti l-ohra kollha tal-kawza;

Ikkonsidra:

Bil-proceduri odjerni s-socjetà Rikorrenti rreferiet ghal quddiem il-Bord ta' l-Appelli dwar it-Taxxa fuq il-Valur Mizjud, in segwitu trasferita ghal quddiem dan it-Tribunal, in bazi ghall-procedura stipulata fl-Artikolu 44 tal-Kap.406 tal-Ligijiet ta' Malta, il-kwistjoni li ghandha mad-Dipartiment tat-Taxxa fuq il-Valur Mizjud fir-rigward tal-pretensjoni taghha li ghandha dritt tieghu minghand id-Dipartiment deduzzjoni/kreditu/refuzjoni tal-VAT fuq il-*units* kollha minnha zviluppata fuq art di proprietà taghha, liema pretensjoni qed tigi opposta u kontestata mid-Direttur Generali (Taxxa fuq il-Valur Mizjud), illum Kummissarju tat-Taxxi⁵.

Ghal kull buon fini t-Tribunal josserva li ghalkemm illum, bis-sahha ta' Ordni ta' Assunzjoni mill-Gdid ta' Funzjonijiet ippubblikata fil-harga tal-Gazzetta tal-Gvern tat-8 ta' Awwissu 2014, il-Kummissarju tat-Taxxi ha lura id-drittijiet, dmirijiet, setghat u funzjonijiet kollha li huma vestiti fih taht l-Att dwar it-Taxxa fuq il-Valur Mizjud, u dana b'effett mis-27 ta' Gunju 2014, u ghalhekk huwa l-Kummissarju tat-Taxxi li ghandu jigi ikkunsidrat bhala l-Awtorità pubblika intimata f'dawn il-proceduri minflok id-Direttur Generali (Taxxa fuq il-Valur Mizjud), ma hemmx il-htiega li ssir korrezzjoni fl-okkju tal-proceduri in ezami stante li a tenur tar-Regolament 2 tar-Regolamenti

¹ Fol. 36 u 37 tal-process.

² Fol. 187 sa' 190 tal-process.

³ Fol. 192 u 193 tal-process.

⁴ Fol. 191 tal-process.

⁵ Artikolu 3 tal-Kap.517 tal-Ligijiet ta' Malta w Ordni ta' Assunzjoni mill-Gdid ta' Funzjonijiet ippubblikat fil-harga tal-Gazzetta tal-Gvern tat-8 ta' Awwissu 2014.

Dwar l-Ekwivalenza ta' Certi Referenzi għall-Karigi fid-Dipartimenti tat-Taxxa, Legislazzjoni Sussidjarja 517.01, l-intestaturi Kummissarju tat-Taxxa fuq il-Valur Mizjud u Direttur Generali (Taxxa fuq il-Valur Mizjud)] għandhom, f'kull att gudizzjarju jew azzjoni gudizzjarja u f'kull komunikazzjoni notifikata jew indirizzata lil xi dipartiment tat-taxxa u f'kull komunikazzjoni mibghuta minn xi dipartiment tat-taxxa, jitqies li huma ekwivalenti u li għandhom l-istess tifsira u effetti legali bhall-intestatura Kummissarju tat-Taxxi.

Puntwalizzat dan il-punt it-Tribunal se jgħaddi biex jittratta r-Referenza impressqa quddiemu mis-socjetà Rikorrenti.

Mill-provi prodotti jirrizulta li s-socjetà Rikorrenti akkwistat proprjetà gewwa Bahar ic-Caghaq, senjatament fi Triq Santa Klara kantuniera ma' Triq Victoria Lines, precizament id-dar li kellu Kevin Decesare, Managing Director ta' l-istess socjetà, bl-iskop li tagħmel zvilupp konsistenti f'hames viljel, bi tlieta minnhom jinkrew filwaqt illi r-rimanenti zewg viljel jinbieghu biex ikollha l-finanzjament mehtieg għat-tkomplija tal-progett in kwistjoni. Is-socjetà Rikorrenti kienet irregistrat mad-Dipartiment tat-Taxxa fuq il-Valur Mizjud fl-2008 u l-attività ekonomika giet deskritta bhala *letting property*⁶. Bhala fatt matul l-2008 u l-2009 is-socjetà Rikorrenti għamlet *claim* lura għal 60% tal-VAT minnha inkorsa in konnessjoni ma' dan il-progett peress illi, kif inghad, tlieta mill-hames viljel in kwistjoni kienu intizi għall-kiri. Gara però li wara xi zmien li beda l-progett is-socjetà Rikorrenti bidlet il-fehma tagħha fir-rigward tal-mod kif kellha tagħmel uzu u tiddisponi mill-viljel minnha mibnija u filwaqt li għazlet li tottjeni l-finanzjament għall-progett minn sorsi ohra, iddecidiet li z-zewg viljel originarjament intizi għall-bejgh kienet se tikrihom ukoll⁷.

Hekk kif hadet din id-decizjoni permezz ta' ittra datata 21 ta' Frar 2011⁸, is-socjetà Rikorrenti talbet lid-Dipartiment tat-Taxxa fuq il-Valur Mizjud *to make a correction to the VAT periods mentioned below* – senjatament 01/05/08 – 31/08/08, 01/09/08 – 30/11/08, 01/12/08 – 28/02/09, 01/03/09 – 31/05/09, 01/06/09 – 31/08/09, 01/09/09 – 30/11/09, 01/12/09 – 28/02/10, 01/03/10 – 31/05/10, 01/06/10 – 31/08/10, 01/09/10 – 30/11/10 – *The Company previously claimed 60% of its purchase invoices on the premise that it was going to rent out 2 [hawn kellha tghid 3] of the 5 villa's being developed. Additional funding was recently acquired and it was decided that all 5 villas will be developed for rental purposes. ...* In segwitu għal dik l-ittra sar *credit control* da parte tad-Dipartiment tat-Taxxa fuq il-Valur Mizjud fil-konfront tas-socjetà Rikorrenti⁹ u fir-rigward tat-talba tagħha għall-korrezzjoni tad-diversi perijodi ta' taxxa indikati, fejn riedet izzid l-input

⁶ Dok. "A" fol. 14 u 15 tal-process.

⁷ Vide xhieda ta' Kevin Decesare mogħtija waqt is-seduta tat-8 ta' Ottubru 2013, fol. 36 u 37 tal-process u x-xhieda ta' Vincent Curmi mogħtija waqt is-seduta tal-25 ta' Novembru 2013, fol. 187 sa' 190 tal-process.

⁸ Dok. "B" anness mar-Risposta tad-Direttur Generali (Taxxa fuq il-Valur Mizjud) a fol. 16 tal-process.

⁹ Dok. "D" a fol. 18 u 19 tal-process.

VAT originarjmanet dikjarat, gie konkluz illi *a correction letter was produced by taxpayer whereby an increase in input VAT is requested. Tax payer explained that initially, he intended to sell three of these villas. In fact, audited financial statements stated that the company is mainly engaged in the development of immovable property for lease and sale. However, he changed the intention from selling to letting of immovable property. The correction was requested to include expenses and capital incurred on the mentioned three villas as well. It is imperative to bring up file in two years time, since taxpayer should carry out apportionment exercise in line with item 6 of schedule ten of the VAT Act and provisions of LN318/04 given the nature of the economic activity.*

B'ittra datata 5 ta' Jannar 2012¹⁰, is-socjetà Rikorrenti giet infurmata bis-segwenti: *reference is made to the verification of the records of the company in caption carried out by the Department as well as the issue of whether the Company has a right to claim input VAT in respect of two housing units which initially were intended to be put up for sale. As you are aware the Department felt it prudent not to give a ruling at the time in view of the fact that a similar case was at the time 'sub judice' and a decision by the Court was expected shortly. As a matter of fact the case in question was decided by the Court of Appeal on the 27th October 2011. [Aprilia Hotel vs Commissioner of VAT dated 27th October 2011]. In its decision the Court established that no input VAT should be claimed in connection with immovable property that was not intended initially to be used to carry out taxable supplies in the scope of VAT (e.g. renting). In view of the foregoing the Department considers that on the basis of the Court of Appeal decision input VAT incurred in connection with an operation which falls outside the scope of VAT cannot be claimed at a later stage on the premise of "a change of intention". It 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, you are hereby being informed that the input VAT incurred by Xxx Ltd. related to the construction and completion of the two housing units which had initially been intended to be sold cannot be claimed.*

B'ittra datata 18 ta' Jannar 2012¹¹ is-socjetà Rikorrenti, tramite l-konsulent legali taghha, irragiet ghad-decizjoni tal-Kummissarju tat-Taxxa fuq il-Valur Mizjud fis-segwenti termini: *reference is made to your letter dated 5 January 2012 suggesting that you will be denying my client the right to deduct input VAT with respect to expenses on immovable property he intends to let out. The judgement you refer to in your letter is subject to official secrecy and is not available for public consumption and it would appear that a censored copy has, to date, not been published. Therefore, I am not in a position to comment on and analyse the judgement you cite. I do however have a number of ECJ judgements in front of me and the judgements I am reading*

¹⁰ Dok. "E" a fol. 20 tal-process.

¹¹ Annessa mar-Rikors tas-socjetà Rikorrenti.

tend to suggest that, in the circumstances, my client does have a right to claim input VAT. I refer to the ECJ's judgements in Case 25/03, Case 268/83, Case 110/94 and Case 37/95. The spirit of the ECJ case law is clear – deduction of input VAT should be allowed and the VAT refund should be issued. Please re-consider your decision and meanwhile kindly send me a censored copy of the judgement you cite. I suspect that the judgement on which you base your decision might not quite be in line with Malta's international legal obligations and my client is (because of the sums involved) prepared to escalate the matter to domestic courts and beyond.

Bhala fatt il-Kummissarju tat-Taxxa fuq il-Valur Mizjud baqa' ta' l-istess fehma u ghalhekk, kif già iktar 'l fuq osservat, is-socjetà Rikorrenti rreferiet il-kwistjoni lill-Bord ta' l-Appelli dwar it-Taxxa fuq il-Valur Mizjud, in segwitu trasferita ghal quddiem dan it-Tribunal, ai termini ta' l-Artikolu 44 tal-Kap.406 tal-Ligijiet ta' Malta. Is-socjetà tikkontendi li l-pretensjoni u konsegwenti talba taghha ghad-deduzzjoni/kreditu/refuzjoni ta' l-input VAT fuq spejjez minnha inkorsi fil-kuntest tal-progett ta' Bahar ic-Caqghaq fit-totalità tieghu ghandhom jigu kkunsidrati ghaliex *fl-imsemmija sentenza* – ossia s-sentenza Aprilia Hotel v. Kummissarju tat-Taxxa fuq il-Valur Mizjud a bazi ta' liema l-Kummissarju qed jichad it-talba taghha – *tqajmu argumenti illi mhumiex l-argumenti illi l-aktar javvaloraw it-tezi ta' l-esponent. Illi hemm ragunijiet serji li jsahhu l-argument ta' l-appellant illi ma tqajmux fil-kors tas-sentenza imsemmija. Illi ghalhekk hemm ragunijiet gravi u sufficjenti ghaliex dan l-onorabbli Bord ghandu jisma l-kaz ta' l-appellant (ghaliex l-appellant ghandu argumenti godda u differenti minn dawk ta' l-Aprilia Hotel illi jispjegaw ghaliex l-esponent ghandu jiehu l-imsemmija deduzzjoni/kreditu/refuzjoni). Illi di più l-kaz ta' l-esponent ma huwiex identiku ghal dak ta' l-Aprilia Hotel. Illi l-esponent irid igib ragunijiet u argumenti ghaliex ghandu jinghata d-dritt tieghu ghal deuzzjoni/kreditu/refuzjoni illi ma semmewx fil-kaz ta' l-Aprilia Hotel. Illi l-imsemmija ragunijiet godda huma bazati fuq sentenzi ECJ illi ma gewx citati mill-Aprilia Hotel. Illi l-kazistika Ewropea hija cara u tohrog f'kazistika dwar fattispecje analoga ghal dik ta' l-esponent. Illi jekk l-esponent jigi imcahhad mid-dritt tieghu ghal deduzzjoni/kreditu/refuzjoni jaccahadlu dritt komunitarju u Malta tonqos mill-obbligi internazzjonali taghha. Illi kif l-esponent ser jispjega fil-kors tal-kawza, il-kazistika ECJ tissugerixxi li fic-cirkostanzi d-dritt ta' deduzzjoni/kreditu/refuzjoni ghandu jinghata. Illi l-proprjetà se tintuza kollha kemm hi ghal provvisti taxxabli ghalhekk isegwi illi dritt ghal deduzzjoni/kreditu/refuzjoni ghandu jinghata totalment. Kwalsiasi argument avers huwa ripunjanti ghall-gustizzja fiskali. Illi tali kazistika ECJ ma ssemmitx fil-kaz Aprilia u ma kienitx quddiem il-Bord u Qorti ta' l-Appell meta hadet id-decizjoni taghha.*

Id-Direttur Generali (Taxxa fuq il-Valur Mizjud), illum Kummissarju tat-Taxxi, jopponi ghat-talbiet tas-socjetà Rikorrenti u jinsisti li fid-dawl ta' dak provdut fl-Artikolu 22(2) u (3) tal-Kap.406 tal-Ligijiet ta' Malta dwar input VAT jirrizulta bl-aktar mod limpidu u car illi ma hemm l-ebda dritt ghall-

input VAT dovut lis-socjetà appellanti... Illi l-Artikoli 22(2) u (3) isemmu li l-kreditu għall-input VAT għandu jkun daqsinsaw għall-input VAT ta' dik il-persuna li jkollu jithallas matul dak iz-zmien li hu attribwibbli għall-provvisti magħmula jew mahsuba li għandhom jintagħmlu minnha. Għaldaqstant isewgi li l-ligi stess trid illi l-input tax tkun relatata ma' "zmien ta' taxxa partikolari". L-Artikolu 17 tal-Kap.406 tal-Ligijiet ta' Malta jiddefinixxi z-zmien ta' taxxa u jgħid li sakemm mhux provdut xort' oħra, dan huwa zmien ta' tliet xhur kalendarji li jibda fl-ewwel jum li jigi minnufih wara t-tmiem taz-zmien ta' taxxa li jkun gie qabel. Għaldaqstant, l-appellat Direttur Generali umilment jirrileva li dak li kellha tipprova s-socjetà appellanti huwa li fil-mument li hija nkorriet it-taxxa li qieghda titlob bhala input VAT għall-provvista "fil-kors jew avanz ta' attività ekonomika tagħha" jew fil-kors jew avanz ta' attività ekonomika li mahsuba li tintuza. Illi mill-ittra ta' korrezzjoni tas-socjetà appellanti jirrizulta li l-intenzjoni tagħha ma kinitx li tikri l-proprjetà tagħha kollha imma tikri zewg viljel u tbiegh it-tlieta l-oħra. Għaldaqstant, isegwi li l-intenzjoni tas-socjetà appellanti kienet limpida u cara u cioè li fil-mument li kienet qed tibni l-viljel ma kellhiex l-intenzjoni li tiggstixxi attività ekonomika fir-rigward tat-3 viljel li kienet intenzjonata li tbiegh hekk kif deskritt mill-Artikolu 22(4) tal-Kap. 406 tal-Ligijiet ta' Malta. Tant hu hekk li s-socjetà appellanti ma talbitx ir-rifuzjoni ta' l-input VAT fir-rigward tat-3 viljel meta kienet qed tinkorri din it-taxxa filwaqt li talbet biss l-input VAT li nkorriet fir-rigward taz-zewg viljel li kienet bi hsiebha li tikri. ... l-appellanti qed tagħmel numru ta' allegazzjonijiet fosthom "illi fl-imsemmija sentenzi tqajmu argumenti ... illi l-kazistika Ewropea hija cara u thorog f'kazistika dwar fattispeċje analoga għal dik ta' l-esponenti". Illi għaldaqstant, l-appellat Direttur Generali umilment jirrileva li l-Kap.406 hija ligi fiskali u l-prova tinkombi fuq l-appellanti li min-naha tagħha kull ma ressqet kienu biss allegazzjonijiet.

Fil-fehma tat-Tribunal il-punt tat-tluq fil-kaz in ezami huwa l-principju ta' *tax neutrality* li fil-kuntest tat-taxxa fuq il-valur mizjud essenzjalment jinkorpora zewg aspetti fundamentali: (1) *the amount of VAT charged is not affected by the number of transactions that precede it in the supply chain, in other words that the length of the supply chain does not of itself affect the amount of VAT borne by the final consumer. It follows from this that VAT should be neutral in 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)*¹² – li huwa appuntu l-punt trattat f'din ir-Referenza; (2) *economic operators making similar supplies should be subject to the same VAT treatment*¹³.

A bazi ta' dan il-principju centrali għar-regime tat-taxxa fuq il-valur mizjud il-Qorti tal-Gustizzja Ewropea effettivament tirrikonoxxi d-dritt ta' persuna

¹² Enfasi tat-Tribunal.

¹³ ECJ – **Recent Developments in Value Added Tax – The Evolution of European VAT Jurisprudence and its Role on the EU Common VAT System.** Michael Lang, Pasquale Pistone, Josef Schuch, Claus Staringer, Donato Raponi, pagna 271.

taxxabli li titlob id-deduzzjoni ta' input VAT minnha inkorsa fil-kors ta' l-attività ekonomika taghha, u dana tramite talba ghall-aggustament tad-denunzi tat-taxxa sottomessi ghal dak li jirrigwarda input VAT, anke jekk din l-attività ekonomika jew parti minnha originarjament kienet ezentata u sussegwentement saret taxxabli.

F'tali rigward issir referenza ghad-Digriet tal-Qorti tal-Gustizzja Ewropea fl-ismijiet **Gmina Miedzyzdroje v. Minister Finansów C500/13** moghti fil-5 ta' Gunju 2014, fejn il-Qorti ntalbet taghti decizjoni preliminari dwar is-segweni: *Must Articles 167, 187 and 189 of [Directive 2006/112] – riflessi dawn fis-sistema legali nostrali fir-Regolamenti dwar Taxxa fuq il-Valur Mizjud (Aggustamenti li ghandhom X'jaqsmu ma' Oggetti 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 ghoxrin sena], following the year in which the capital goods were surrendered for use?*

Id-decizjoni moghtija minn dik il-Qorti tghid 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 alter¹⁴ (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*

¹⁴ Enfasi tat-Tribunal.

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**¹⁵ (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**¹⁶ (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

¹⁵ Enfasi tat-Tribunal.

¹⁶ Enfasi tat-Tribunal.

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 year¹⁷.

Fid-decizjoni fl-ismijiet **Uudenkaupungin Kaupunki C-184/04** moghtija mill-Qorti tal-Gustizzja Ewropea fit-30 ta' Marzu 2006, il-Qorti tat decizjoni preliminari fir-rigward tas-sewgenti erba' mistoqsijiet: (1) *Is Article 20 of [the Sixth Directive] – il-predecessur ghall-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?*¹⁸ (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?*

Huwa evidenti li ghall-finijiet tar-Referenza in ezami hija d-decizjoni tal-Qorti tal-Gustizzja Ewropea ghat-tieni mistoqsija posta quddiemha li hija l-iktar rilevanti u pertinenti ghall-istess. Fir-rigward ta' tieni domanda posta quddiemha dik il-Qorti ddecidiet hekk: 36. *The second question seeks to determine whether the fact that the relevant activity was originally non-*

¹⁷ Enfasi tat-Tribunal.

¹⁸ Enfasi tat-Tribunal.

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). 39. 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**¹⁹.**

Fid-dawl tad-decizjonijiet tal-Qorti tal-Gustizzja Ewropea u ta' dak provdut fl-Artikoli 167, 187 u 189 tal-Council Directive 2006/112 EC of 28 November

¹⁹ Enfasi tat-Tribunal.

2006 on the common system of value added tax, liema disposizzjonijiet [ossia l-Artikoli 187 u 189] gew riprodotti fis-sistema legali nostrali senjatament bis-sahha tar-Regolamenti dwar Taxxa fuq il-Valur Mizjud (Aggustamenti li ghandhom X'jaqsmu ma' Oggetti Kapitali), Legislazzjoni Sussidjarja 406.12, it-Tribunal hu tal-fehma li s-socjetà Rikorrenti ghandha dritt ghat-tnaqqis ta' l-input VAT minnha inkorsa in konnessjoni mal-**villel kollha**, ossia hames villel, minnha mibnija fuq il-proprjetà sitwata fi Triq Santa Klara kantuniera ma' Triq Victoria Lines, Bahar ic-Caghaq, ghalkemm originarjament tlieta biss minn dawn il-hames villel kienu intizi ghall-kiri filwaqt li r-rimanenti zewg villel kienu intizi ghall-bejgh u kien biss in segwitu li ghazlet li tikri l-villel kollha. Naturalment tali dritt ghandu jkun regolat b'dak provdut fl-imsemmija Regolamenti dwar Taxxa fuq il-Valur Mizjud (Aggustamenti li ghandhom X'jaqsmu ma' Oggetti Kapitali), Legislazzjoni Sussidjarja 406.12.

Il-Kummissarju tat-Taxxi bbaza c-cahda tieghu ghat-talba tas-socjetà Rikorrenti fuq is-sentenza fl-ismijiet "Aprilia Hotel Ltd. v. Il-Kummissarju tat-Taxxa fuq il-Valur Mizjud", Appell Nru. 2/11, pronuncjata mill-Qorti ta' l-Appell (Sede Inferjuri) fis-27 ta' Ottubru 2011²⁰, fejn dik il-Qorti cahdet l-appell tas-socjetà Aprilia Hotel Ltd. minn decizjoni tal-Bord ta' l-Appelli dwar Taxxa fuq il-Valur Mizjud li biha ma gietx milqugha l-pretensjoni taghha li in segwitu ghad-decizjoni taghha li tikri l-*units* f'zewg blocks ta' appartamenti minnha mibnija bl-iskop originali li jinbieghu kellha dritt titlob it-tnaqqista' l-input VAT fir-rigward ta' spejjez minnha inkorsi fis-snin precedenti ghal tali tabla ghall-kostruzzjoni ta' zewg *blocks* ta' appartamenti.

It-Tribunal qara l-imsemmija sentenza b'attenzjoni u bir-rispett kollu lejn il-Qorti ta' l-Appell (Sede Inferjuri) ihoss li fil-kaz in ezami ma ghandux jistrih fuq dak deciz f'dik is-sentenza, u dana ghal zewg ragunijiet fundamentali: (i) l-interpretazzjoni li l-Qorti ta' l-Appell (Sede Inferjuri) taghti tar-Regolamenti introdotti bl-Avviz Legali 318 ta' l-2004, ossia r-Regolamenti dwar Taxxa fuq il-Valur Mizjud (Aggustamenti li Ghandhom X'jaqsmu Ma' Oggetti Kapitali), ma hijiex korretta u lanqas hija in konformità mal-posizzjoni tal-Qorti ta' Gustizzja Ewropea fir-rigward ta' l-interpretazzjoni ta' l-Artikoli 167, 187 u 189 tad-Direttiva 2006/112 li kif iktar 'l fuq osservat giew trasposti fil-Ligi nostrali tramite l-imsemmija Regolamenti; u (ii) fit-tieni lok, f'dak il-kaz hemm cirkostanza fundamentali li tohloq distinzjoni netta bejn il-legittimità tat-talba tas-socjetà Aprilia Hotel Limited u l-legittimità tat-talba tas-socjetà Rikorrenti.

In kwantu rigwarda r-Regolamenti introdotti bis-sahha ta' l-Avviz Legali 318 ta' l-2004 il-Qorti ta' l-Appell osservat illi *l-Avviz Legali 318 tat-2004 jipprovidi ghal posizzjoni fl-oppost ta' dak pretiz mis-socjetà appellanti, u cioè f'kazi fejn tkun saret inizjalment u fil-perjodu relevanti tnaqqis ta' input tax fuq l-infieq kapitali, ghandha dritt li taggusta dan l-input tax f'kaz ta' uzu ta'*

²⁰ Vide ittra datata 5 ta' Jannar 2012 kif ukoll is-sentenza annessa mar-Risposta tad-Direttur Generali (Taxxa fuq il-Valur Mizjud) a fol. 21 sa' 31 tal-process.

l-istess oggett kapitali ma jibqax attribwibbli ma' provista taxxabli jew ezenti bi kreditu u fil-fatt dan jikkontemla kif propost fl-artikolu 3 li jkun hemm inizjalment tnaqqis inizjali, li certament ma kienx il-kaz fil-kaz odjern. Kif inghad mill-istess appellant f'paragrafu 9 tal-appell tieghu l-iskop ta' tali regolamenti huwa li "issir agjustament biex il-persuna taxxabli trodd lura dak l-input tax jew parti minnu". Mela allura l-istess regolament huwa intiz sabiex persuna taxxabli li tkun ibbenefikat minn tnaqqis ta' input tax fuq il-qliegħ kapitali, ghandha taggusta dak l-input tax f'kaz ta' uzu ta' oggett kapitali li ma jibqax attribwibbli ma provisti taxxabli ezenti bi kreditu jew meta jsir uzu privat ta' dak l-oggett kapitali. L-iskop ta' l-iskema qatt ma kien sabiex tippermetti persuna taxxabli li taghmel agjustament retroattiv ta' l-input tax f'kaz fejn attività ekonomika taghha mill-provisti ezenti tibqa' taghmel provisti taxxabli.

Meta dak osservat mill-Qorti ta' l-Appell jigi kkunsidrat fid-dawl ta' dak provdut mill-Qorti tal-Gustizzja Ewropea fid-decizjonijiet iktar 'l fuq citati dwar l-interpretazzjoni ta' l-Artikoli 167, 187 u 189 tad-Direttiva 2006/112, u b'mod partikolari dwar l-ahhar zewg imsemmija artikoli, mill-ewwel jirrizulta li l-interpretazzjoni tal-Qorti nostrali tar-Regolamenti introdotti bl-Avviz Legali 318 ta' l-2004 – li bihom jigi ribadit gie traspost fil-Ligi nostrali dak provdut fl-Artikoli 187 u 189 tad-Direttiva 2006/112 – ma tirriflettix l-interpretazzjoni korretta ta' dawk il-provvedimenti partikolari, fejn appuntu l-Qorti ta' Gustizzja Ewropea kkonkludiet illi *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*²¹, interpretazzjoni li kienet Minnha già applikata għall-Artikolu 20 ta' The Sixth VAT Directive, il-predecessur ta' l-Artikolu 187 tad-Direttiva 2006/112, *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*²².

Jigi osservat illi r-Regolament 4 tal-Legislazzjoni Sussidjarja 406.12 jistabilixxi dawk ic-cirkostanzi meta jista' jsir l-agjustament u fir-rigward jipprovdi: *l-agjustament isir meta, matul il-perijodu ta' referenza skond il-kaz: (a) l-oggett kapitali jintuza mill-persuna taxxabli kemm għall-finijiet privati jew għall-fini ta' attivitajiet li fir-rigward taghhom it-taxxa fuq il-valur mizjud ma tistax titnaqqas jew li għalihom it-taxxa fuq il-valur mizjud tista' titnaqqas fi proporzjon li ma jkunx dak tat-tnaqqis inizjali; (b) ikun hemm tibdil fl-elementi uzati għall-kalkolu ta' l-input tax imnaqqsa; (c) l-oggett kapitali ikun soggett għal provvista li dwarha t-taxxa fuq il-valur mizjud tista' titnaqqas, sal-limitu li jkun gie limitat id-dritt li titnaqqas l-input tax fuq dan l-oggett. F'dan il-kaz, l-ammont addizzjonali ta' input tax li jista'*

²¹ Digriet tal-Qorti tal-Gustizzja Ewropea fl-ismijiet Gmina Miedzyzdroje v. Minister Finansów C500/13 moghti fil-5 ta' Gunju 2014.

²² Uudenkaupungin Kaupunki C-184/04 moghtija mill-Qorti tal-Gustizzja Ewropea fit-30 ta' Marzu 2006.

jitnaqqas huwa limitat ghall-ammont miksub billi tigi applikata ghall-ammont taxxabli tal-provvista, ir-rata li biha l-input tax kienet kalkolata u li dwarha d-dritt tat-tnaqqis ikun aggrat; (d) l-oggett kapitali ma jibqax jezisti fi hdan il-qafas ta' l-intrapriza, sakemm ma tingiebx prova li l-oggett kapitali kien soggett ghal provvista li dwarha t-taxxa fuq il-valur mizjud setghet titnaqqas jew li l-oggett kapitali kien gie meqrud jew misruq; (e) il-persuna taxxabli ssir persuna mhux taxxabli jew twettaq biss attivitajiet li dwarhom it-taxxa fuq il-valur mizjud ma tistax titnaqqas, sakemm ma tingiebx prova li l-oggett kapitali kien soggett ghal provvista li dwarha t-taxxa fuq il-valur mizjud setghet titnaqqas.

Fil-fehma tat-Tribunal talba ghall-aggratament kif avvanzata mis-socjetà Rikorrenti taqa' taht dak provdut fir-Regolament 4(b) ossia meta *jkun hemm tibdil fl-elementi uzati ghall-kalkolu ta' l-input tax imnaqqsa*. Dan ir-Regolament però ma jindikax x'tip ta' tibdil irid ikun hemm fl-elementi biex jiskatta d-dritt ta' l-aggratament, ossia ma jghidx li tali aggratament jista' jsir biss meta b'rizultat ta' tali tibdil fl-elementi jirrizulta *unjustified advantage* favur it-taxpayer li jkun talab tnaqqis ta' input VAT iktar minn dak realment ikollu jedd ghalih. It-Tribunal ghalhekk iqis li b'rispett u b'applikazzjoni tal-principju ta' *tax neutrality* r-Regolament 4 ma ghandux jigi interpretat fis-sens restrittiv li japplika biss f'kaz ta' *unjustified advantage* favur it-taxpayer u ghalhekk ghandu japplika fil-kaz in ezami fejn l-element ghall-kalkolu ta' Input Vat li attwalment inbidel huwa l-persentagg uzat minn 60% ghal 100% u dan b'applikazzjoni tal-principju tal-*partial attribution*.

Apparte minn hekk però t-Tribunal iqis li t-talba tas-socjetà Rikorrenti taqa' wkoll taht dak provdut fir-Regolament 4(a) li jipprovdi li *l-oggett kapitali jintuza mill-persuna taxxabli kemm ghall-finijiet privati jew ghall-fini ta' attivitajiet li fir-rigward taghhom it-taxxa fuq il-valur mizjud ma tistax titnaqqas jew li ghalihom it-taxxa fuq il-valur mizjud tista' titnaqqas fi proporzjon li ma jkunx dak tat-tnaqqis inizjali*. Fil-kaz in ezami l-proprjetà hija oggett kapitali li qed jintuza biex irendi qligh mill-kiri u f'dan il-kaz kien hemm sitwazzjoni fejn parti mill-attività kienet ezanti minghajr kreditu u minhabba bidla fic-cirkostanzi, ossia fejn units li originarjament kienu intizi ghall-bejgh gew iddestinati ghall-kiri wkoll, kien hemm bidla fit-tnaqqis tal-Input VAT fi "proporzjon li ma kienx dak inizjali" u dan ghal darba ohra minhabba l-applikazzjoni tal-*partial attribution*.

Meta wiehed jara l-provvedimenti tad-Direttiva 2006/112 dwar *Adjustment of Deductions* jara li b'mod generali l-Artikolu 184 jipprovdi *the initial deduction shall be adjusted where it is higher or lower than that to which the taxable person was entitled* u l-Artikolu 185(1) jipprovdi li *adjustment shall, in particular, be made where, after the VAT return is made, some change in the factors used to determine the amount to deducted, for example where the purchases are cancelled or price reductions are obtained*. Ghalkemm hawn ukoll l-ezempji li nghataw huma ta' cirkostanzi fejn taxpayer ikun talab input VAT iktar minn dak li finalment u realment jista' jkollu jedd ghalih, dawn

huma biss ezempji u mhux cirkostanzi tassattivi u per di più esklussivi ta' sitwazzjonijiet u cirkostanzi ohra u ghalhekk it-Tribunal jirribadixxi li fil-fehma tieghu, b'rispett lejn u b'applikazzjoni tal-principju ta' *tax neutrality*, id-dritt ta' aggestament fejn jidhol tnaqqis ta' input VAT ma ghandux jigi limitat biss ghal dawk ic-cirkostanzi fejn it-taxpayer bid-dikjarazzjoni originali tieghu ikun ha *an unjustified advantage* izda ghandu japplika ukoll – kif jirrizulta mid-decizjonijiet tal-Qorti tal-Gustizzja Ewropea - f'dawk ic-cirkostanzi fejn id-dikjarazzjoni originali ta' tnaqqis ta' input VAT tehtieg tvarja minhabba *change of intention* li dak it-taxpayer kellu dwar l-uzu ta' *capital goods* anke jekk dan ikun bdil ta' uzu minn wiehed mhux taxxabli, bhalma huwa l-bejgh, ghal wiehed taxxabli, bhal ma huwa l-kiri.

Apparte l-kwistjoni ta' l-interpretazzjoni tar-Regolamenti introdotti bl-Avviz Legali 318 ta' l-2004, mill-osservazzjonijiet tal-Qorti ta' l-Appell johrog car li tul is-sena li s-socjetà Aprilia Hotel Limited ippretendiet refuzjoni ta' input tax, ossia sena 2004, l-istess socjetà ma kenitx twettaq attività ekonomika ghaliex il-lukanda in kwistjoni kienet maghluqa ghal *refurbishment* u ma effettwat ebda provvista taxxabli fuq liema hallset it-taxxa. In effetti fir-rigward il-Qorti osservat illi *kien biss fis-17 ta' Ottubru 2007 li inghad li fis-sena 2005 hija ddecidiet li minflok tvaqqa' l-hotel u tibni zewg blokok ta' flats, bl-intenzjoni kienet ghall-ewel li tbiegh l-istess flats, u allura lanqas biss thallset taxxa peress illi tali bejgh kien ezenti skond id-disposizzjonijiet tal-artikolu 1 tat-Tieni Part ital-Hames Skeda tal-Kap.406 u huwa ammess li kien biss wara li s-socjetà iddecidiet li tikri l-istess flats, haga li ghamlet skond kuntratt datat 4 ta' Gunju 2007. Minn dan jidher car fl-opinjoni tal-Qorti li ma seta' qatt kien hemm kreditu ghall-input tax fis-sena 2004, meta fil-fatt fl-istess sena lanqas kien hemm input tax ghaliex ma kienx hemm provvista taxxabli, tant li f'dik is-sena u fis-snin qabel is-sena 2007, l-istess socjetà appellant ma ddikjarat l-ebda provvista taxxabli, u wisq anqas allura ghandha dritt ghall-kreditu ta' input tax, li lanqas kien koncepibbli f'dak iz-zmien. Apparte minnhekk jirrizulta wkoll li fl-2004 is-socjetà Aprilia Hotel Limited ma kenitx registrata mad-Dipartiment tat-Taxxa fuq il-Valur Mizjud ai termini ta' l-Artikolu 10(5) tal-Kap.406 tal-Ligijiet ta' Malta u ma sottomettiet l-ebda denunzja tat-taxxa mad-Dipartiment, in effetti f'tali rigward il-Qorti ta' l-Appell osservat illi *dak li fil-verità s-socjetà appellant qed titlob ma huwiex aggestament tad-denunzja proprju ghaliex ma saret ebda denunzja fis-sena 2004, ghaliex ma kienx hemm ebda provvista taxxabli fl-istess sena. Fil-verità dak li s-socjetà appellant qed titlob huwa li jigi applikat ghalha b'mod retroattiv id-dritt ghall-kreditu ta' input tax li certament il-ligi nostrali ma tipprovdiex.**

Dawn huma fatti li joholqu distinzjoni netta bejn dak li ttentat taghmel is-socjetà Aprilia Hotel Limited u l-pretensjoni tas-socjetà Rikorrenti fil-proceduri odjerni.

Mill-atti jirrizulta li s-socjetà Rikorrenti kienet debitament registrata mad-Dipartiment tat-Taxxa fuq il-Valur Mizjud, li tul is-snin li ghalihom issa titlob

L-aggustament ghal dak li jirrigwarda input VAT kienet effettwat provisti taxxabli u halset VAT fuqhom, tul l-istess snin kienet issottomettiet id-denunzji tat-taxxa taghha u kienet qed taghmel *partial attribution* ta' l-input VAT minnha inkorsa. B'hekk kuntrarjament ghal dak li ppruvat taghmel is-socjetà Aprilia Hotel Limited, is-socjetà Rikorrenti verament qed titlob li taghmel aggustament tad-denunzji tat-taxxa taghha billi zzid input VAT minnha verament inkorsa fis-snin rilevanti b'dana li tinghata d-deduzjoni/kreditu/refuzjoni relattiva, liema talba fil-fehma tat-Tribunal hija gustifikata u ghandha tigi permessa a tenur u bil-mod kif previst fir-Regolamenti dwar Taxxa fuq il-Valur Mizjud (Aggustamenti li Ghandhom X'Jaqsma Ma' Oggetti Kapitali).

Fid-dawl ta' dan kollu osservat it-Tribunal jirribadixxi li fil-fehma tieghu l-ewwel talba tas-socjetà Rikorrenti hija gustifikata u ghaldaqstant jisthoqq li tigi milqugha.

Is-socjetà Rikorrenti titlob ukoll li t-Tribunal jordna li fi zmien qasir u perentorju ffissat minnu l-Kummissarju tat-Taxxa fuq il-Valur Mizjud, illum Kummissarju tat-Taxxi, jhallasha s-somma ta' €120,495, rapprezentanti r-refuzjoni minnha pretiza, bl-imghax. Nonostane ciò però waqt is-seduta ta' l-24 ta' Frar 2014²³, is-socjetà Rikorrenti, tramite d-difensur legali taghha, iddikjarat li l-kwistjoni centrali f'dawn il-proceduri hija wahda ta' natura purament legali u kwistjonijiet ta' fatt, partikolarment dwar l-adeqwatezza tal-fatturi relattivi ghall-ispejjez inkorsi jigu ezaminati 'l quddiem fil-kuntest ta' investigazzjoni da parte tad-Dipartiment tat-Taxxa fuq il-Valur Mizjud u kemm-il darba kellha tinhareg stima fil-konfront tas-socjetà Rikorrenti jsir appella minnha. Il-Kummissarju tat-Taxxi, tramite d-difensur leglaj tieghu, qabel ma' dak dikjarat mis-socjetà Rikorrenti u hu wkoll iddikjara li l-kwistjoni principali f'dan l-appell hija purament legali.

Fid-dawl ta' dikjarazzjonijiet ghalhekk it-Tribunal jastenji milli jiehu konjizzjoni tat-tieni talba avanzata mis-socjetà Rikorrenti.

Ghaldaqstant, ghal dawn ir-ragunijiet it-Tribunal filwaqt li jastejni milli jiehu konjizzjoni tat-tieni talba tas-socjetà Rikorrenti, jilqa' l-ewwel talba taghha u jiddikjara li hija ghandha dritt ghat-tnaqqis ta' l-input VAT minnha inkorsa in konnessjoni mal-villel kollha, ossia hames villel, minnha mibnija fuq il-proprietà sitwata fi Triq Santa Klara kantuniera ma' Triq Victoria Lines, Bahar ic-Caghaq, liema dritt ghandu jkun regolat b'dak provdut fir-Regolamenti dwar Taxxa fuq il-Valur Mizjud (Aggustamenti li ghandhom X'jaqsma ma' Oggetti Kapitali), Legislazzjoni Sussidjarja 406.12.

L-ispejjez ta' dawn il-proceduri ghandhom jigu sopportati mill-Kummissarju tat-Taxxi.

²³ Fol. 191 tal-process.

< Sentenza Finali >

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