

Qorti tal-Appell  
(Kompetenza Inferjuri)

Imhalled Anthony Ellul

Avviz 4/2012AE

**Inserv Ltd**

**Vs**

**Il-Kummissarju tat-Taxxa Fuq il-Valur Mizjud**

It-Tlieta, 27 ta' Ottubru 2015.

B'decizjoni tal-Bord tal-Appell tat-12 ta' April 2012, cahad l-appell ta' Inserv Limited u kkonferma l-likwidazzjoni tal-istimi u penali li saru mill-Kummissarju tat-Taxxa Fuq il-Valur Mizjud , b'dan li mill-istess kellhom jitnaqqsu tmienja u tletin (38) magna *coin-counting* u elf u erbghin (1,040) *calculator*.

Inserv Limited appellat mid-decizjoni u l-appellat wiegeb.

Il-qorti rat it-traskrizzjoni tat-trattazzjoni li saret quddiem il-qorti fis-seduta tas-17 ta' Jannar 2013.

**L-ewwel Aggravju.**

L-appellanti ssostni li l-Bord ta inkarigu lid-Dipartiment tad-Dwana u lil Malta Competition and Consumer Affairs Authority, u l-persuni nominati mill-Bord ma kienux imparzjali u indipendenti peress li Joseph Muscat hu mpjegat tad-Dipartiment tad-Dwana filwaqt li l-Awtorita l-ohra taqa' taht ir-responsabbilta' ta' Ministru (ara Artikolu 12(2) tal-Kap. 510).

Wara li l-qorti rat l-atti tosserva li fir-rigward:-

- i. Ta' l-opinjoni li esprima Joseph Muscat, ufficjal fid-Dipartiment tad-Dwana, frankament hi tal-fehma li ma kienx hemm htiega tal-opinjoni tieghu sabiex il-Bord jasal ghal konkluzjoni jekk il-magni in kwistjoni jidhlux fil-grupp HS Code 8472. Quddiem il-Bord tal-Appell, l-ilment tal-appellanti kien li:

*"The appellant was informed that the assessment on goods covered by HS Code 8472 includes also a contribution on bank note counterfeit machines. The company imported bank note counterfeit detection machines but it is submitted that these are not subject to the contribution as they are not included in the description quoted above. The exclusion of these machines from the description is*

*confirmed by the fact, accepted by the department, that no contribution is payable on counterfeit checking machines” (ara dokument mehmuz mal-formola tal-appell datata 24.6.2011).*

Skond l-Ewwel Skeda tal-Kap. 473:

*"In-nomenklatura tat-Tariffa hi bbażata fuq in-nomenklatura għall-klassifikazzjoni ta' oġġetti fil-Harmonized Commodity Description and Coding System 1983 (hawn iżjed 'il quddiem imsejha Harmonized System) li teżisti fiż-żmien li tidhol fis-seħħ din l-Iskeda, kif tista' minn żmien għal żmien tiġi emendata, u għandha tiġi interpretata skont l-Explanatory Notes to the Harmonized System, pubblikati mill-Customs Co-Operation Council, Brussels:".*

Din il-Harmonized System tintuza mid-Dwana sabiex jiġi determinat id-dazju li jrid jithallas fuq oġġetti. Fis-seduta tat-18 ta' Novembru 2011, id-difensur tal-appellanti kien oggezzjona li l-Bord jikseb il-parir ta' Joseph Muscat, izda fl-istess hin iddikjara li kien jaqbel li jinstema' bhala xhud. Ix-xhud ta taghrif dwar x'ighidu l-Explanatory Notes għal-HS Code 8472:

*"As regards coin-counting, the HSEN<sup>1</sup> to heading 84.72 (5<sup>th</sup> paragraph No. (4) states that:*

*'Coin-sorting or coin-counting machines (**including banknote counting and paying-out machines**). This heading covers such machines whether or not they are fitted with a device for wrapping the coins or banknotes, or in some cases for printing the amount on the wrapping"'.*

Għalhekk l-Explanatory Notes stess tal-Harmonized System jipprovdu li HS 8472 tinkludi magni ta' *banknote counting*. Irrizulta wkoll li f'nota 3 ta' Sezzjoni XVI tal-Harmonized System Explanatory Notes, il-klassifikazzjoni għandha tiġi determinata skond il-funzjoni principali tal-magna<sup>2</sup>. Din m'hijiex opinjoni imma fatt. Zgur għalhekk li t-taghrif li ta Muscat kien rilevanti għal dak li huma fatti.

Hu minnu li Muscat esprima opinjoni. Fil-fatt f'ittra datata 23 ta' Dicembru 2011 qal:

*"Therefore before of these characteristics, I consider the detection function to be secondary to the counting function. Consequently, I*

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<sup>1</sup> *Harmonized System Explanatory Notes.*

<sup>2</sup> *"3. Unless the context otherwise requires, composite machines consisting of two or more machines fitted together to form a whole and other machines designed for the purpose of performing two or more complementary or alternative functions are to be classified as if consisting only of that component or as being that machine which performs the principal function"'.*

*confirm that the product in question is classifiable in CN Code: 8472 90 10 which provides for coin-sorting, coin counting and coin-wrapping”.*

Billi din hi materja teknika l-Bord fittex taghrif minghand id-Dipartiment li jhaddem is-sistem tal-Harmonised System. Pero' mid-decizjoni hu evidenti li l-Bord ghamel konsiderazzjonijiet indipendenti mill-fehma li esprima Joseph Muscat u wasal ghal konkluzjoni tieghu. Sahansitra jirrizulta li ezamina wkoll il-magna in kwistjoni. F'dan ir-rigward issir riferenza ghal dik il-parti tad-decizjoni ntestata **"A. Magni ghall-counting/counterfeit detection"**, fejn fost'affarijiet ohra l-Bord spjega li wasal ghal konkluzjoni li l-magni in kwistjoni huma Office machines (HS 8472) ghaliex:

- i. Mill-Binding Tariff Information tal-Unjoni Ewropeja, *"... magni biex ighoddu l-karti tal-flus u/jew minuti bi dual function ghandhom jigu klassifikati taht HS Code 8472 (Annex B mehmuza)"*.
- ii. Mid-dokumenti li l-appellanti stess ipprezentat il-magni huma deskritti bhala *"ideal for the rapid and easy counting of pre-sorted banknotes"* u *"The Rapidcount E15 additionally verifies the security features of euro banknotes"*. Inoltra l-isem stess tal-prodott (Rapidcount) jindik l-funzjoni taghha.
- iii. Il-website tal-kumpanija li timmanifattura din il-magna u wkoll l-invoices li pprezentat l-appellanti ma jhallu l-ebda dubju li l-funzjoni principali taghha hi li tghodd, filwaqt li fil-kaz tal-magni Soldi 460 m'hemmx riferenza ghal *counting*.

Il-qorti ma tara xejn hazin li l-Bord sema' lil Joseph Muscat sabiex jigbor taghrif relatat mal-*Harmonized System*. Wara kollox f'Malta din is-sistema tithaddem mid-Dipartiment tad-Dwana. F'kull kaz fir-rigward tal-opinjoni ta' Joseph Muscat, l-appellanti kieku riedet kellha kull opportunita li tressaq provi kuntrarji.

- ii. Fir-rigward tal-MCCAA fil-fehma tal-qorti kien mehtieg li l-Bord jisma' lill-ufficjali minn din l-Awtorita' gialadarba fl-HS Code 3923 tissemma Malta Standard Authority<sup>3</sup>. Sabiex il-prodott jikkwalifika ghal ezenzjoni mit-taxxa, irid ikun konformi ma' standards li jissemmew f'paragrafu (iv). Il-qorti ma taqbilx li l-Bord hatar lill-Awtorita bhala espert. Il-Bord tal-Appelli ma setax jaqbad u jiddeciedi dwar din il-materja jekk ma jigborx taghrif ta' natura teknika u li dwaru l-membri m'ghandhomx gharfien u l-anqas il-mezzi biex wahedhom jiddeterminaw jekk il-basktijiet kienux

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<sup>3</sup> MCCA h i l-Awtorita li assumiet ir-responsabbilta li qabel kienet taghmel il-Malta Standard Authority.

konformi ma' standards li jissemmew fil-ligi u b'hekk jikkwalifikaw ghall-ezenzjoni mit-taxxa tal-eko-kontribuzzjoni.

Inoltre, fir-realta' l-posizzjoni li hadet din l-Awtorita hi li ma saritx prova li l-prodott kien maghmul minn materjal *bio-degradable*. Irrizulta li l-Awtorita ma kinitx attrezzata biex taghmel testijiet fil-laboratorju biex tiddetermina jekk il-materjal tal-basktijiet kienx *bio-degradable*. Mill-ittra tal-16 ta' Awissu 2011 li l-Awtorita baghatet lill-Bord hu evidenti li ma waslitx ghal xi konklużjoni. Fil-fatt iddikjarat:

*"In view of the lack of test certificate results indicating the performance of the biodegradability of the product, no conclusion can be derived as to whether the plastic bags conform to the standards indicated in the First Schedule of the Eco-Contribution Act under exemption iv".*

Ghalhekk l-Awtorita' riedet li tinghata certifikat minn laboratorju akkreditat. L-Awtorita ma esprimitx opinjoni dwar jekk il-prodott kienx *bio-degradable*. Semplicement qalet li fid-dawl ta' dawn il-fatti ma setatx tasal ghal konklużjoni li l-basktijiet kienu *bio-degradable* skond HS Code 3923 (Raba' Skeda).

### **Tieni Aggravju.**

Il-kwistjonijiet li kien hemm quddiem il-Bord tal-Appell kienu tnejn:

- i. Jekk il-magni mpurtati kellhomx jigu klassifikati taht:

***"(HS Code) 8472:***

***Other office machines (for example, automatic banknote dispensers, coin-sorting machines, coin counting or wrapping machines), excluding items under heading 847210 and under heading 8472 20".***

L-appellanti sssostni li l-interpretazzjoni korretta hi li "... d-deskrizzjoni tal-magni ma taqax taht kategorija ta' magni li tirreferi ghalihom l-Iskeda ghall-Att dwar l-Eko-Kontribuzzjoni b'riferenza ghall-HS Code 8472". Fir-rikors tal-appell qalet li l-magni m'humiex inkluzi fil-lista ta' magni li ssemmi l-Iskeda u l-funzjoni principali taghhom hu li jidentifikaw il-genwinita' tal-karti tal-flus, u m'ghandhom l-ebda funzjoni li ghandha x'taqsam ma' muniti.

Mill-atti l-qorti fehemet li l-magni in kwistjoni huma l-mudell **Rapidcount E15**. Waqt il-proceduri quddiem il-Bord tal-Appelli, l-appellanti pprezentat *literature* ta' din il-magna. Fil-manwal tal-magna hi deskritta hekk:-

*"Dear Customer,*

thankyou for choosing **our banknote counter rapidcount E**. You made an excellent choice in purchasing a high-quality product. The rapid-count E is available in the following versions: Rapidcount E 10 (count-only) **and Rapidcount E15 (format detection, UV, magnetism and infrared detection)**".

F'dokument iehor il-magna deskritta:

"rapidcount E 10/ E 15  
Low priced basic model

The two rapidcount Es are specially **developed for low-volume counting**. **The rapidcount E 10 and E 15 models are ideal for the rapid and easy counting of pre-sorted banknotes**. Both models feature a fully variable batching function, addition function and automatic start/stop. The number of inserted banknotes is shown immediately on the display. **The rapidcount E 15 additionally verifies the security features of Euro banknotes**. On recognising counterfeit money the machine instantly stops".

Ghalkemm l-appellanti ghamlet enfazi li dan il-mudell hu magna biex jigu identifikati flus tal-karti foloz, mid-dokumenti li hi stess ipprezentat hu evidenti li dan m'huwiex minnu. Il-magna stess jisimha '**rapidcount**' u tintuza sabiex tghodd il-flus tal-karti **b'additional feature** li taghraf il-flus foloz. Minn dawn id-dokumenti ma jirrizultax dak li qal ir-rapprezentant tal-appellanti fis-seduta tat-18 ta' Novembru 2001, cjoe' li "...l-funzjoni principali hu detection". Hu veru li din it-tip ta' magna ma tissemmiex espressament fl-HS Code 8472, izda l-magni li jissemmew huma **biss ezempji** ta' *Office Machines* u ghalhekk m'hijiex lista komprensiva. Kif magna ta' *coin counting* taqa' taht HS Code 8472, m'hemm l-ebda raguni ghalfejn magna li tghodd il-flus tal-karti m'hijiex inkluzja fil-klassifika ta' *Office machines*. F'dan ir-rigward l-*Explanatory Notes*, li saret riferenza ghalihom hawn fuq, huma wkoll rilevanti. Ghalkemm id-difensur tal-appellanti argumenta li dawn in-noti m'humiex ligi, pero skond l-Ewwel Skeda tal-Kap. 473, il-*Harmonised System ghandha* tigi nterpretata skond l-*Explanatory Notes*. Mill-istess noti jirrizulta kif din il-magna ghandha tiffirma parti mill-grupp ta' *Office machines*.

- ii. Jekk il-boroz tal-plastic kienux prodott ezenti mit-taxxa, cioe' kienux jaqghu bl-eskluzjoni mit-taxxa bin-numru (iv);

**"(HS Code) 3923**

***Bags of plastics, excluding:***

***(iv) bio-degradable bags in accordance with MSA EN 13432:2000, MSA EN 14046:2003, MSA EN 14047:2003, MSA EN 14048:2003 as appropriate, and degradable plastic bags, of any dimension, including bio-degradable and degradable garbage bags***".

Hi t-tezi tal-appellanti li l-basktijiet tal-plastik huma *bio-degradable*. Fl-appell li pproponiet quddiem il-Bord tal-Appelli qalet:-

*"This assessment refers to goods falling under HS Code 3923. It is assumed that this assessment was raised on plastic bags. The plastic bags imported by the appellant were manufactured from biodegradable material as is clearly indicated on the bags, which have a d2W logo. They were manufactured by Koroza Ambalaj AS, who are authorized manufacturers of Oxo-biodegradable Technology. Therefore, they comply with the relevant MSA standards and are exempt from the contribution".*

F'ittra datata 16 ta' Awissu 2011 il-Malta Competition and Consumer Affairs Authority infurmat lill-Bord tal-Appell li:-

*"In view of the lack of test certificate results indicating the performance of the biodegradability of the product, **no conclusion can be derived as to whether the plastic bags conform to the standards indicated in the First Schedule of the Eco-Contribution Act under exemption iv**".*

L-appellanti kellha kull opportunita li taghti prova li fil-fatt il-basktijiet tal-plastik kienu *bio-degradable*. Ir-regola generali hi li basktijiet tal-plastik huma soggetti ghall-eko-kontribuzzjoni. L-oneru tal-prova kien tal-appellanti gialadarba kienet qeghda tinwoka l-ezenzjoni kontemplata fl-Att dwar Eko-Kontribuzzjoni (Kap. 473). Gie stabbilit li r-riferenza ghal MSA fl-HS Code 3923 hi Malta Standards Authority. M'hemmx prova li l-prodott in kwistjoni kienu konformi ma' '**MSA EN 13432:2000, MSA EN 14046:2003, MSA EN 14047:2003, MSA EN 14048:2003**'. Hu ghalhekk evidenti li skond il-ligi m'huwiex bizzejjed ghall-appellanti li taghti prova li l-materjal tal-basktijiet huwa *biodegradable*. Bhala dokumenti l-appellanti pprezentat dawn id-dokumenti:-

- i. certifikat mahrug minn kumpannija bl-isem ta' Symphony Environmental Ltd li tghid li Koroza Ambalaj AS *"is an authorised user of d2w oxo-Biodegradable Technology"*.
- ii. estratt ta' taghrif mill-internet dwar d2w.
- iii. brochure dwar it-teknologija d2w.
- iv. certifikat dwar d2w.
- v. dikjarazzjoni ta' dak li l-appellanti rreferiet ghalih bhala d-ditta li mmanifaturat il-prodott, li fiha jinghad li fil-process ta' manifattura ntuza materjal *oxo-biodegradable*.

Il-qorti ma tifhimx kif l-appellanti tippretendi li minn dawn id-dokumenti biss il-Bord seta' jikkonkludi li l-appellanti tat prova li l-basktijiet in kwistjoni kienu jissodisfaw l-istandards li ssemmi l-ligi. Wiehed jifhem li l-Awtorita kkoncernata kienet qeghda titlob li tinghata certifikat ta' laboratorju akkreditat. Biex tikkonferma li l-prodott hu skond *"MSA EN 13432:2000, MSA EN 14046:2003, MSA EN 14047:2003, MSA EN 14048:2003 as appropriate"*,

ic-certifikazzjoni hi *sine qua non*. Hu minn testijiet fil-laboratorju li ghandu jigi vverifikat li l-prodott hu *biodegradable* skond l-istandards li jissemew fil-ligi. Ghalkemm waqt wahda mis-seduti tal-Bord id-difensur tal-appellanti staqsa x'inhu laboratorju akkreditat, hu maghruf li dan hu laboratorju li jkun rikonoxxut minn organizazzjoni internazzjonali li topera *accreditation system*. *Accreditation* hu r-rikonoxximent ta' kompetenza li laboratorju jista' jwettaq testijiet specifici. Laboratorji li l-appellanti taf li jezistu tant li r-rapprezentant taghha ddikjara li l-ezercizzju kien ser jiswa lill-appellanti spiza ta' bejn €3,000 u €4,000. L-appellanti ma pprezentat l-ebda certifikat mahrug minn laboratorju akkreditat li l-basktijiet oggett ta' dawn il-proceduri huma *bio-degradable*. L-appellat m'ghandux joqghod biss fuq il-kelma tad-ditta li mmanifatturat il-prodott. Ghal dak li jirrigwarda c-certifikat ta' Symphony Environmental Ltd it-taghrif li hemm hu biss ta' natura generali. M'hemm l-ebda certifikat li saru testijiet fuq il-basktijiet oggett ta' dawn il-proceduri. Sahansitra c-certifikat tal-istess kumpannija hu datat 9 ta' Mejju 2008. Mill-atti jirrizulta li fl-imsemmija data l-oggetti in kwistjoni kienu diga' gew impurtati f'Malta. Ghalhekk zgur li c-certifikat ma setax jirreferi ghal basktijiet in kwistjoni. L-Awtorita kellha kull dritt li ma ticcertifikax li l-basktijiet huma *bio-degradable* "***in accordance with MSA EN 13432:2000, MSA EN 14046:2003, MSA EN 14047:2003, MSA EN 14048:2003 as appropriate***", gialadarba ma nghatatx it-taghrif mitlub. Li hu cert hu li quddiem il-Bord tal-Appelli ma kienx hemm provi li l-basktijiet kienu konformi ma' dak li titlob il-ligi. Ghalhekk l-appellanti m'ghandix dritt li tgawdi mill-ezenzjoni.

**Ghal dawn il-motivi tichad l-appell tal-appellanti bl-ispejjez kontra taghha.**

Anthony Ellul.