

THE COMMERCIAL HIGH COURT IN KIGALI, AT ITS SEAT, DECIDES THIS CASE AT THE LEVEL OF APPEAL, AS FOLLOWS:

PARTIES DETAILS

APPELLANT

Rwanda Revenue Authority (RRA)

RESPONDENT

SITRACO Ltd, with registered address in Umwezi Village, Bibare Cell, Kimironko Sector, Gasabo District, City of Kigali

SUBJECT MATTER

- Removal of VAT equivalent to RwF 54,113,968
- Counsel fees equivalent to RwF 3,000,000

CASE SUMMARY

1. In the Case RCOM 00694/2017/TC/NYGE appealed against and decided on 26/01/2018, SITRACO Ltd filed claim with requests as described above, and based its claim on VAT, as outlined above, charged on transport services whereas it was exempted from this tax. In this Case Court declared legally grounded its claim and ordered removal of that tax. Dissatisfied with the decision, RRA appealed against this decision before the Commercial High Court arguing that SITRACO Ltd did not properly calculate the tax, this is the main issue to be examined in this case, and there will also be assessment of the issue of damages claimed.

ANALYSIS OF ISSUES CONTAINED IN THIS CASE

- **Determining whether SITRACO Ltd properly calculated Value Added Tax (VAT)**
2. Counsel representing SITRACO Ltd argues that this company had entered into contract agreement with another company of Uganda called HIMA Cement to sell its cement in Rwanda. He states that, under that contract, SITRACO Ltd secured a tender contract to sell that cement to another company in Rwanda called HORIZON Construction Ltd but this company requested SITRACO Ltd

to ensure its freighting to Rwanda. This is the reason why during tax recovery from HORIZON Construction Ltd, SITRACO Ltd separated the price of cement from the freight (transportation) price, at the time of recovering tax on transport, it omitted to recover VAT alleging it was VAT tax exempted in Rwanda.

3. Counsel representing RRA disagrees to this method of calculating tax because, the price of cement, taxable for VAT is the market price of that cement upon arrival in Rwanda, this is in contradiction with the interpretation held by the counsel representing SITRACO Ltd. He further explained that transportation of cement sold to HORIZON CONSTRUCTION Ltd was not performed by SITRACO Ltd as its representation wants to let it be understood, instead sale was realized by road haulage contractor named KAZERWA and disclosed documents in support of his claim.
4. Regarding this issue, this Court notes that counsel representing SITRACO Ltd contradicts himself in his pleadings because on one side he says he was granted by HIMA Cement exclusive representation (right to sell cement) in Rwanda. It is under this exclusive representation that HORIZON Construction Ltd suggested it to sell cement on its behalf, on the other hand wanted to let it be understood that HORIZON Construction Ltd sent it to purchase, on its behalf, cement from HIMA cement as if SITRACO Ltd was only an agent (broker), yet being a business agent and enjoying exclusive business representation are two different issues with different legal effects.
5. Based on the above, the fact that a business agent means, at law, that any act you do should be done for and on behalf of the person you represent and to perform such act solely within such limits as prescribed by him/her, whereas business representation means that a person enjoys individual right to sell a given product and remains the only person to enter into sale contract agreement with its consumers.

6. The fact that SITRACO Ltd was not an agent of HORIZON Construction Ltd but was doing business of selling, in Rwanda, cement manufactured by HIMA Cement, this Court notes that it sold for itself that cement, purchasing it from HORIZON Construction Ltd and the value of the cement upon arrival in Kigali should inevitably be including transport, therefore the fact that SITRACO Ltd wants to subtract the price of transport when calculating this tax, cannot be granted any legal consideration because this would result into a reduction in the value of the tax.
7. If the above reasons were not its real intent SITRACO Ltd could admit before this Court that it was an agent of HORIZON Construction Ltd in lieu and place of having a contract agreement entered into with it for the purpose of selling its cement in Rwanda, then if so considered, it should not have argued its case saying that it sold cement and issued invoice of the price of cement, it instead could have performed the duty of an agent and would be seeking payment for that duty and even be paying related VAT, in view of all these grounds, STRACO Ltd is liable for paying the tax which Rwanda Revenue Authority seeks to collect from it.
8. Court bases the elements detailed above on article 526 of the Civil Code, Book III which provides that agency is an activity whereby a person grants to another exclusive representation to perform for and on his behalf, a thing and this person performs it for and on behalf of the person from whom he received such representation, and article 3 of Law No. 37/2012 of 09/11/2012 on value added tax provides that Value added tax is charged (....) on table taxable imported goods and services (...) the rate of value added tax is eighteen (18%) percent for other goods and services.

Damages applied for

9. As already explained in details, the appeal lodged by RRA is legally grounded, the fact that damages applied for, as a result of unjustly being involved in Court proceedings, is legally substantiated. Court notes, however, that amount of damages worth RwF 3,000,000 applied for by its representation, is not supported by any evidence to explain such amount, and, at its sole discretion, grants to him RwF 1,200,000 of expenses incurred during Court proceedings at this level of appeal and at the first instance, and it be refunded Court fees deposited.

DECISION OF THE COURT

10. The Commercial High Court

Declares admissible the appeal lodged by RRA, examines and finds it to be legally grounded;

Rules that Value Added tax (VAT) charged on SITRACO Ltd by Rwanda Revenue Authority equivalent to RwF 54,113,968 be maintained;

Orders SITRACO Ltd to pay to Rwanda Revenue Authority the above mentioned tax and damages for expenses incurred during court proceedings equivalent to RwF 1,200,000 and to refund Court fees deposited while filing the appeal claim;

Orders that case appealed against R COM 00694/2017/TC/NYGE decided on 26/01/2018 be invalidated in all its provisions;

**SO ORDERED AND PRONOUNCED IN THE PUBLIC HEARING
ON 11/04/2019 IN THE COMMERCIAL HIGH COURT, BY
KADIGWA GASHONGORE, AS JUDGE, ASSISTED BY
NYINAWANKUSI Francine AS COURT REGISTRAR**

BENCH

KADIGWA GASHONGORE (Sé)

Judge

NYINAWANKUSI Francine (Sé)

Court Registrar

Certified true copy of the original

Issued on 21/05/2019 by Court Registrar MUKAKINANI Marie Grace

[signed and stamped]