URUBANZA RCOMA 0429/14/HCC RWACIWE N'URUKIKO RUKURU RW'UBUCURUZI KU WA 31/10/2014.

(RRA Vs Umusoreshwa X)

I. *INTANDARO Y'URUBANZA*

Umusoreshwa X ukorera imirimo ye y'ubucuruzi mu Karere ka …. akaba acuruza ibinyobwa bya BRALIRWA kandi akaba yanditse ku musoro ku nyongeragaciro (TVA) yakorewe igenzura ku musoro ku nyongeragaciro ujyanye no kuva mu kwezi kwa Nyakanga 2011 kugeza mu kwezi kwa Gashyantare 2013 maze acibwa umusoro ungana na 80,273,710 Frw.

Ntiyishimiye uyu musoro, maze ku itariki ya 25/2/2014 atakambira Komiseri Mukuru asaba kurenganurwa ku ngingo ijyanye no gucibwa VAT kuri "*remise*" cyangwa *"S-ship charges line discount amount"* amagambo Bralirwa yakoresheje ishaka kuvuga ikiguzi cy'ubwikorezi kingana n'amafaranga 350Frw kuri buri Kaziye cyo kuyigeza ku bakiriya bayo, bityo TVA bijyanye ikaba ingana n'amafaranga 53Frw kuri buri Kaziye.

Umusoreshwa X yakoraga imenyekanisha musoro ku nyongeragaciro abanje gukuramo amafaranga 350 yavugaga ko asonewe bityo TVA bijyanye ya 53Frw kuri buri kaziye yagurishije ntayishikirize Ikigo cy'Imisoro n'Amahoro nyamara mu kiguzi mbumbe cye cy'ikaziye gikubiyemo amafaranga 350Frw byose bikaba byabaga bibariyemo TVA**.**

Komiseri Mukuru yaje kumusubiza amubwira ko ubujurire bwe nta shingiro bufite, ko bityo akwiye kwishyura umusoro yaciwe.

Umusoreshwa X yatanze ikirego mu Rukiko rw'Ubucuruzi rwa Nyarugenge ***asaba kurenganurwa agakurirwaho umusoro wa TVA yaciwe ungana na 80.273.710Frw ujyanye n'amafaranga y'ubwikorezi angana na 350Frw kuri buri kaziye yaciwe kuko asonewe***, Urukiko rwafashe icyemezo ruvuga ko umusoro ***Umusoreshwa X*** aregera uhamyeho, hashingiwe yuko atakwigereranya na Bralirwa kuko imikorere ye atari imwe kandi inyemezabuguzi zabo zikaba zitandukanye, iya Bralirwa ikaba igaragaza amafaranga asoreshwa ndetse nay'ubwikorezi atishyurirwa TVA kuko ikora ubwikorezi ikageza ibicuruzwa byayo ku baranguzi mu gihe ***Umusoreshwa X*** we nta bwikorezi akora, bityo akaba yishyurwa TVA ku kiguzi mbumbe cy'igicuruzwa kandi ko ibicuruzwa bya Blarirwa acuruza bidasonewe.

Umusoreshwa X yajuririye imikirize y'uru rubanza R.COM 0493/14/TC/NYGE mu Rukiko Rukuru rw'Ubucuruzi avuga ko Umucamanza wa mbere atasobanukiwe ko icyaciweho umusoro cyiswe *"remise"* cyangwa *"discount*" ari ubwikorezi busonewe umusoro ku nyongeragaciro.

Asobanura iyo mpamvu avuga ko umucamanza yafashe ijambo *"remise"* arifata nko kugabanyirizwa igiciro Bralirwa yahaga abaguzi nk'uko iryo jambo risanzwe rikoreshwa mu mvugo isanzwe. Avuga ko nk'uko bigaragara mu ngingo ya 11 y'amasezerano BRALIRWA igirana n'abaranguriray o (Distributeur), Bralirwa ibagereza ibinyobwa aho bakorera, ariko ko kubera ko Bralirwa itagira amakamyo atwara ibinyobwa byayo, yumvikana n'abayafite aribo babigeza ku baranguzi, Bralirwa ikishyura ba nyiri amakamyo nta TVA ibariyemo, ikazakorera inyemezabuguzi abaranguzi(Distributeur) bayo igaragaza igiciro cy'ikaziye n'igiciro cy'ubwikorezi cya 350Frw kitabariyemo TVA bityo agasanga nawe atagombye kuyicibwa kuko yasonewe n'Itegeko.

RRA isobanura ko abagenzuzi mu guca umusoro wa TVA ***Umusoreshwa X*** hashingiwe ku nyemezabuguzi we ubwe yabaga yakoreye abafatabuguzi be kuko umusoro ugomba kubarwa haherewe ku giciro nyacyo cy'ikiguzi nk'uko biteganywa n'ingingo ya 16(a) y'itegeko n^{o} 06/2001 ryo kuwa 20/01/2001 rishyiraho umusoro ku nyongeragaciro, ryagenderwagaho mu gihe kijyanye n'igenzura ryakorwaga iteganya ko agaciro gasoreshwa ku kintu ari ikiguzi cyabyo cyishyuwe n'abaguzi mu mafaranga.

Umusoreshwa X avuga kandi ko umucamanza yashingiye ku Itegeko n^{o} 06/2001 ryashyiragaho umusoro ku nyongeragaciro nyamara iryo Tegeko rikaba ryarakuweho n'Itegeko n^{o} 37/2012 ryo kuwa 09/11/2012 rishyiraho umusoro ku nyongeragaciro. Akavuga ko igice kimwe cy'umusoro uburanwa kijyanye n'Itegeko rya kera, ni ukuvuga umusoro wo kugeza mu kwezi kwa (10) 2012, naho umusoro usigaye ukaba ugenwa n'Itegeko rishya.

RRA ivuga ko kuba hari igice kimwe cyakorewe igenzurwa hariho Itegeko n^{o} 37/2012 ryo kuwa 09/12/2012 rishyiraho umusoro ku nyongeragaciro, umucamanza yakoresheje Itegeko rijyanye n'igihe umusoro yaciwe. Bityo urega akaba ari nta musoro yaciwe ku bintu bisonewe, kuko ibicuruzwa bye ari ibinyobwa bya Bralirwa kandi bikaba bidasonewe umusoro wa TVA.

I. UMWANZURO W'URUKIKO

Rushingiye ku ngingo ya 16 y'Itegeko n^{o} 06/2001ryavuzwe haruguru, Urukiko Rukuru rw'ubucuruzi rwa Nyarugenge rwaciye urubanza rwemeza ko ***Umusoreshwa X*** yigereranya na Bralirwa kandi imikorere yabo itari imwe kubera inyemezabuguzi zabo zitandukanye, iya BRALIRWA igaragaza ibitishyurirwa umusoro ku nyongeragaciro n'umuguzi mu gihe ***iz'umusoreshwa X*** zo zishyurirwa umusoro ku nyongeragaciro ku kiguzi mbumbe, ariko agashaka kugira ibyo yisonera ku musoro ku nyongeragaciro yishyuwe n'umuguzi kandi nta bintu bisonewe acuruza bityo bikaba binyuranyije n'ibiteganywa mu ngingo ya 16 yavuzwe

haruguru aho iteganya ko agaciro gasoreshwa ku kintu ari ikiguzi cyabyo cyishyuwe n'abaguzi mu mafaranga.

Rushingiye kandi ku ngingo ya 28 y'Itegeko nº 06/2001 ryavuzwe haruguru yo ikaba iteganya ko mu iyakirwa ry'umusoro ku nyongeragaciro iteganya ko usoreshwa wiyandikishije wese wakiriye umusoro ku kiguzi urenze umusoro ku kiranguzo cyangwa indi myenda yemerewe gukurirwamo mu gihe cy'isoreshwa kizwi, agomba gushyikiriza Umuyobozi Mukuru, ikinyuranyo mu gihe cyo gutanga imenyesha cyemewe n'amategeko, ingingo ya 21 y'Itegeko nº 37/2012 ryo kuwa 09/11/2012 rishyiraho umusoro ku nyongeragaciro iteganya ko umusoro wa TVA ubarwa havanywemo umusoro ku kiranguzo wemerewe umusoreshwa.

Kubera impamvu zavuzwe ahabanza, urukiko rwemeje ko ubujurire bw' ***Umusoreshwa X*** nta shingiro bufite; bityo rwemeza ko nta gihindutse ku rubanza R.Com 0493/14/TC/Nyge rwaciwe kuwa 09/07/2014 n'Urukiko rw'Ubucuruzi rwa Nyarugenge aho rwemeje ko umusoro wa TVA waciwe ***Umusoreshwa X*** uhamyeho, ko atemerewe kuvana amafaranga ya Transport muri TVA yishyuwe n'abaguzi be.

Umusoreshwa X yarajuririrye iki cyemezo mu Rukiko rw'Ikirenga ariko ikirego nticyakwakirwa, hashingiwe ko urega yatsinzwe ku nzego ebyiri kandi ku kibazo kimwe.