

RWANDA / JUDGMENT

Quincaillerie du Nil v. Rwanda Revenue Authority

RCOMA 0029/12/CS

COURT

Supreme Court

DECIDED

9 May 2014

CASE / FILE NUMBER

RCOMA 0029/12/CS

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Quincaillerie du Nil v. Rwanda Revenue Authority

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Text

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Quincaillerie du Nil v. Rwanda Revenue Authority [Rwanda SUPREME COURT–RCOMA 0029/12/CS (Mutashya, P.J., Rugabirwa and Gakwaya, J.) May 09, 2014] Tax Laws–Income Tax–Value added tax–Taxing a corporation based on money which appears on the bank statement of the personal account of the owner of the corporation while that account is used for its business activities–Law n° 25/2005 of 04/12/2005 on Tax Procedures, Arts 28 7°, 29, 45. Facts: Rwanda Revenue Authority levied Quincaillerie du Nil (corporate) Income tax and value added tax from the year 2004 to the year 2008. Quincaillerie du Nil was not satisfied with the Income tax levied against it and filed a complaint in the Commercial High Court requesting the cancellation of Commissioner General's decision. The court ruled that the claim was without any merit and explained that the Commissioner General should eventually charge the tax based on the “bank statement” of Munyampundu Antoine because he had used it in the business activities of Quincaillerie du Nil, as evidenced in the Cash book of the Appellant. Quincaillerie du Nil appealed against this ruling in the Supreme Court saying that Quincaillerie du Nil should not be taxed based on money that

appeared on the bank statement of Munyampundu Antoine which was different from his own account. Rwanda Revenue Authority also explained that it charged the Appellant based on money that appeared on the “bank statement” of Munyampundu Antoine’s account because the Appellant failed to differentiate its account as a company from that of Munyampundu Antoine’s account as a private person. Held:1.The fact that the bank statement and cash book showed that customers paid into the personal account of Munyampundu Antoine instead of paying into the bank account of the Appellant’s and the fact that the Rwanda Revenue Authority(RRA) did not manage to get any sufficient explanations from the Appellant in this regard and the fact that the Appellant himself stated that it could not distinguish its bank account with that of Munyampundu Antoine’s, entitled the Rwanda Revenue Authority to assess it without any notice. It was held that the Rwanda Revenue Authority was entitled to assess without any notice a business person who cannot distinguish his company’s bank account from his personal bank account. Appeal without merit; The case appealed does not change; Court fees charged on the appellant. Statutes and statutory instruments referred to: Law n° 25/2005 of 04/12/2005 on Tax Procedures, Articles 28 7°,29,45; Law N° 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure, Article 9.

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No Cases referred to:

Judgment

I. BRIEF BACKGROUND OF THE CASE [1] Rwanda Revenue Authority(RRA) levied Quincaillerie du Nil, Income tax and value added tax for the year 2004 to the year of 2008 amounting to 654.158.102Rwfrs. [2] Quincaillerie du Nil, sued Rwanda Revenue Authority in the Commercial High Court requesting the annulment of the Commissioner General’s decision levying the tax as mentioned above, which it alleged should not be paid because it was illegally charged. The court ruled and considered Quincaillerie du Nil’s claim as baseless. [3] That court explained that Rwanda Revenue Authority was entitled to levy Quincaillerie du Nil the taxes mentioned above based on the money which appeared on Munyampundu Antoine’s “bank statement” because he used it in the business of Quincaillerie du Nil thereby leading customers to pay using his account as appeared in the “banks statements” and also in the “Cash books” of the company [4] Quincaillerie du Nil appealed in the Supreme Court alleging that Rwanda Revenue Authority was not supposed to tax it based on money which appeared “in the bank statement” of Munyampundu Antoine’s bank account because it was different from Quincaillerie du Nil’s bank account. [5] The case was heard in public on 01/04/2014. Quincaillerie du Nil was represented by counsel Me Hakizimana John and Rwanda Revenue Authority (RRA) was represented by counsel Me KabibiSpéciose. II. ISSUES TO BE EXAMINED IN THE CASE AND ITS

ANALYSIS

1. To determine whether the money which appeared on the “bank statement” of Munyampundu Antoine’s account was not supposed to be charged. [6] Quincaillerie du Nil’s Counsel argued that the Commercial High Court ignored its explanation to the Rwanda Revenue Authority relating to the value of money shown in the “bank statement” of Munyampundu Antoine because it was different from that of Quincaillerie du Nil since they were two different persons as Quincaillerie du Nil was a company with legal personality while Munyampundu Antoine was a private person. Quincaillerie du Nil’s Counsel argued that Rwanda Revenue Authority had to tax it following the “bank statement” of Quincaillerie du Nil. Furthermore, he argued that if Munyampundu Antoine evaded taxes as alleged by the Rwanda Revenue Authority, he ought to have been taxed as an individual and not as Quincaillerie du Nil.

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- [7] The court demanded Quincaillerie du Nil’s counsel to differentiate the money reflected on the “bank statement” of Quincaillerie du Nil and the money reflected on the “bank statement” of Munyampundu. He stated that he did not know the exact amount of money which was deposited into the bank account of Quincaillerie du Nil and that which was deposited into the bank account of Munyampundu. Furthermore, he stated that what Quincaillerie du Nil could recall was that the Rwanda Revenue Authority furnished it with a bank statement dated 17/05/2007 and another one dated 07/11/2007 but did not understand how Rwanda Revenue Authority continued to levy it with taxes equivalent to 654.158.102 Rwfrs. [8] Rwanda Revenue Authority’s counsel alleged that it was supposed to levy Quincaillerie du Nil the taxes mentioned above based on money reflected in the “bank statement” of Munyampundu’s because he did not distinguish his personal bank account from the bank account of his company. Also, at the time when Quincaillerie du Nil was assessed by the Rwanda Revenue Authority, it found that some customers had made payment using Munyampundu Antoine’s personal account. It was also found that there was some money that its employees including SENEZA Désiré deducted from the “Cash book” of Quincaillerie du Nil and paid into the bank account of Munyampundu Antoine as shown in his bank history and the cash book of Quincaillerie du Nil. COURT’S VIEW [9] Article 9 of Law N° 21/2012 of 14/06/2012 relating to civil, commercial, labour and administrative procedure states that “Every Plaintiff must prove a claim. Failure to obtain proof will result to the Defendant winning the case.” Article 28, 7° of law n° 25/2005 of 04/12/2005 on Tax Procedures states that “The Tax Administration is entitled to start the estimated assessment procedure when there are serious indications of tax fraud.” Article 29 of the above law states that “all evidences that are in the possession of the tax authority may be used at the time of assessment without any notice.” Also, Article 45 of the said law provides that “The burden of proof lies with the taxpayer when the Tax Administrator conducts a tax assessment without any notice.” [10] In respect of this case, the document concluding the assessment of 13/06/2010 showed that the Rwanda Revenue Authority wrote to Quincaillerie du Nil advising

that it had been charged taxes evaluated at 654.158.102 Rwfrs using the money that appeared on the “bank statment” of Munyampundu Antoine and the “bank statement” of Quincaillerie du Nil’s as well as the money that appeared in its “Cash book.” Rwanda Revenue Authority had taxed the money that was in Munyampundu Antoine account because at the time of assessment, Quincaillerie du Nil found that its customers had deposited money in this account. Also it was found that money was even deposited after being withdrawn from the “Cash book” of the company meanwhile Munyampundu Antoine did not receive any explanation on the source of money being deposited to his personal accounts. [11] In this file there was even evidence including the “bank statement” of account number 0005935-51 of Munyampundu Antoine at the Bank of Kigali and the “Cash book” of Quincaillerie du Nil showing that SENEZA Désiré, an employee of Quincaillerie du Nil always made payments into the above account beginning from 01/01/2007 to 31/12/2008 and that there

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was also money transferred from this account into the “Cash book” of Quincaillerie du Nil. Also there was payment made by cheque to this account by certain customers including UWIMANA Jeannine who deposited 3.000.000 Rwfrs on 11/04/2008. [12] The court found that the evidence provided by Quincaillerie du Nil contradicted what the Rwanda Revenue Authority said by stating that Munyampundu Antoine had used his personal account number 0005935-51, in the business activities that he performed at Quincaillerie du Nil. [13] Furthermore, the court found that the counsel of Quincaillerie du Nil accepted at court during the hearing that he could not differentiate Munyampundu Antoine’s bank account as mentioned above with Quincaillerie du Nil’s bank account [14] Based on the Laws and evidence mentioned above, the court found that no fault was committed by the Rwanda Revenue Authority when it levied tax against Quincaillerie du Nil without any notice based on the money that appeared on the “bank statement” of Munyampundu Antoine as mentioned above.

2. To determine whether Quincaillerie du Nil should get the money that it is requesting. [15] The Counsel of Quincaillerie du Nil alleged that the Rwanda Revenue Authority should furnish it with 10% of the money that constituted the subject matter in this dispute as well as procedural fees and attorney fees for being involved in a litigation with no substantial reasons. [16] Rwanda Revenue Authority’s Counsel denied the claim above and alleged that it would not pay Quincaillerie du Nil any money. COURT’S VIEW [17] The court found that Quincaillerie du Nil would not be paid by Rwanda Revenue Authority in respect of procedural fees and attorney’s fees because its appeal had no basis. III.DECISION OF THE COURT [18] Ruled that the appeal of Quincaillerie du Nil was without merit; [19] Ruled that the judgement in RCOM 0337/10/HCC decided by the Commercial High Court on 20/01/2012 remained unchanged ; [20] Ordered Quincaillerie du Nil to pay court’s fees evaluated at 22,150 Rwfrs including the amount of money charged in the Commercial High Court and that failure to do so within eight(8) days, would result to the amount being raised from his property by gouvernement forces.

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