

RWANDA / JUDGMENT

RWANDA REVENUE AUTHORITY (RRA) v SOCIÉTÉ RWANDAISE DE DISTRIBUTION ET SERVICES LTD (SRDS LTD)

RLR V.3-2024

COURT

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RWANDA REVENUE AUTHORITY (RRA) v SOCIÉTÉ RWANDAISE DE DISTRIBUTION ET SERVICES LTD (SRDS LTD)

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Text

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RWANDA REVENUE AUTHORITY (RRA) v SOCIÉTÉ RWANDAISE DE DISTRIBUTION ET SERVICES LTD (SRDS LTD) [Rwanda SUPREME COURT-RS/INJUST/RCOM 00017/2022/SC (Mukamulisa, P.J., Cyanzayire and Hitiyaremye, J.) 22 December 2023. Overruling precedent – Value Added Tax (VAT) – VAT exemption – Transportation carried out for the purpose of distributing goods, even if done by someone who has been granted permission but is not the main activity, is considered an accessory service to that main activity of distributing goods, when that main activity is not exempt from VAT, even if the transportation itself is not exempt – The transport activity which is exempt from VAT is that carried out as a principal activity of transporting people and goods. – Law No.37/2012 of 09/11/2012 establishing the value-added tax, articles 6 and 9. This precedent overrules the one that was set in the case RCOMAA 00030/2022/CA, MAFAM LTD v. Rwanda Revenue Authority (RRA) rendered on 28/09/2018, [Reported in RLR V.4-2022] stating that all

transportation services provided by licensed person are exempted from Value Added Tax. Facts: This case originates from a certain disagreement between Rwanda Revenue Authority (RRA) and SRDS Ltd Company with regard a certain Value Added Tax that

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the company had been imposed due its' activities of distributing BRALIRWA's products. SRDS Ltd lamented that it is not subject to the payment of the above mentioned tax, arguing that such a tax relates to RURA-licensed transport services and yet such services are VAT exempt. Rwanda Revenue Authority (RRA) argues that SRDS Ltd has stealthily reduced BRALIRWA's recommended prices, and reserved the deductions for transport service cost with a malicious intent of eluding VAT, yet they have rendered no VAT exempt transport service. SRDS Ltd and RRA litigated the dispute from the Commercial Court up to the Court of Appeal, whereby for case RCOMAA 00001/2022/CA of the 25/03/2022, the Court of Appeal held that SRDS Ltd was illegally imposed for Value Added Tax, yet they were performing licenced transport services for the transportation of their customers' goods and yet this type of transport is legally VAT exempt. RRA alleged injustice and applied for the review of the above ruling; they argued that the Court of Appeal unfairly held that SRDS Ltd has been imposed for Valued Added Tax on VAT exempt activities adding that the taxed income was from the provided transport services. RRA argued that the transport fees featuring on SRDS Ltd receipts are not transportation costs, and even BRALIRWA's recommended prices prove that SRDS Ltd does not provide transport services. RRA lamented that the Court of Appeal has unfairly disfavored them when it ruled that the law on competition

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and consumer protection prohibits collusive price-fixing, and labels it as an anti-competitive practice. RRA argues that the business between BLARIRWA and SRDS Ltd is about products distribution, whereby SRDS Ltd distributes BRALIRWA's products upon a commission, and it is clear that the distributor can never trade the consigned products below the recommended prices. RRA argued that the Court of Appeal has erroneously interpreted the content of the agreement between BRALIRWA and SRDS Ltd; when it moved that the distributor has a right to negotiate the products prices due to a mere fact that the concluded agreement was referred to as « recommended price », yet such a term never meant that the prices were to be rebated, more so that the BRALIRWA's intended recommended prices were actually the minimum prices. SRDS Ltd rebutted and argued that RRA' complaint has no justification and accused them of favoritism and discriminating some taxpayers, alleging that they do not consider distributors like any other business traders since they failed to clarify about the existing traders categories to clearly prove that distributors are not traders yet they transact in the business of distributing BRALIRWA's products, on the top of transporting their clients' purchased products, and for perfecting their service delivery, for which they have the RURA's license and they are paid the transport costs for by their customers. SRDS Ltd went on and explained that « recommended prices » does not necessarily mean fixed prices, more so that article 8 of the agreement of 01/02/2015 concluded between BRALIRWA and SRDS Ltd stipulates that The

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Distributor buys the products at the price determined by Bralirwa and resells the products at the recommended distribution price, and SRDS Ltd prayed the court to determine the contextual meaning of the term « recommend » and move that the term does not imply an order, as it is more of a proposal. SRDS Ltd submits that they sell products to their clients and they provide the transportation service on a cost and that they never charge their clients for VAT due to transport VAT exemption. SRDS Ltd argues the deals it makes with its' customers incur no loss to RRA, and it also argues that distributing BRALIRWA's products is not a business that involves State-regulated prices, as prices are mutually agreed on between the seller and buyer (free market), and therefore, RRA cannot claim that the BRALIRWA's products were sold below the recommended prices. Held: 1. Transportation carried out for the purpose of distributing goods, even if done by someone who has been granted permission but is not the main activity, is considered an accessory service to that main activity of distributing goods, when that main activity is not exempt from VAT, even if the transportation itself is not exempt.

2. The transport activity which is exempt from VAT is that carried out as a principal activity of transporting people and goods. The application review has merit.

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Statutes referred to: Law N0 37/2012 of 09/11/2012 establishing Value Added Tax (VAT), articles 6, 9 and 11. No cases were referred to.

Judgment

I. BACKGROUND OF THE CASE

This case started from the Commercial Court with Société Rwandaise de Distribution et Services Ltd (hereinafter referred to as SRDS Ltd) suing Rwanda Revenue Authority (hereinafter referred to as RRA) for an imposed Value Added Tax (VAT) of 222, 316,907 Rwf, together with related fines for the years of 2015, 2016, 2017 and 2018. SRDS Ltd appealed the decision before RRA Commissioner General lamenting that it was imposed VAT for transporting BRALIRWA's products yet such transport service is VAT exempt. The Commissioner General replied that their appeal has no justification and, that is when they lodged a claim seeking the removal of the tax imposed on the exempted transport services.

RRA rebutted the claim and argued that SRDS's claim has no justification since they were taxed upon the unpaid declared income due, since the taxable value is always determined by the buyer's paid price.

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For case RCOM 0120/2020/TC of the 17/11/2021, the Commercial Court held that SRDS Ltd's claim has merit, and ordered the removal of 222,316,907 Rwf for the imposed tax and related fines for the years of 2015, 2016, 2017 and 2018, and it ordered RRA to give SRDS Ltd 700,000 Rwf for Counsel fee.

For taking the above decision, the Commercial Court considered a fact that SRDS Ltd was carrying out RURA- licensed transport services coupled with a fact that such services are VAT exempt as per the provision of article 6 of the Law n0 37/2012 of 09/12/2012 establishing Value Added Tax as so far revised and updated. The Court found no RRA's evidence for proving that SRDS Ltd has fraudulently featured unprovided transport costs on customers' receipts, and the Court reminded that it is RRA that has the burden to prove about its' allegation as article 3 of the Law n0 15/2004 of 12/06/2004 relating to Evidence and its production so provides.

RRA appealed the ruling before the Commercial High Court and prayed the Court to examine whether the income that SRDS Ltd featured on its' receipts are really for the provided transportation services, and determine whether BRALIRWA's recommended prices prove that SRDS Ltd never trades into transport services.

For case RCOMA 00869/2020/HC rendered on the 17/11/2021, the Commercial High Court held that the RRA's appeal has no merit, and moved that the ruling on case RCOM 01210/2020/TC rendered by the Commercial Court stays. The Commercial High Court ordered for the removal of the 222, 316, 907 Rwf VAT together with

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related fines that SRDS Ltd had been imposed for the years of 2015, 2016, 2017 and 2018, and it ordered RRA to give SRDS Ltd 2,000,000 Rwf for Counsel fee and 200,000 Rwf for the incurred case-related expenses adding to the charges from the previous instance, and it all totaled to 2, 940,000 Rwf.

For making the above decision, the Commercial High Court considered a fact that BRALIRWA-SRDS Ltd agreement contains no clause that prevents SRDS Ltd from charging customers for the transport services. The Court has as well found that SDRS Ltd 's submissions prove that they possess an authentic license for providing transport services, and yet such services are legally tax exempt. And the Court moved that it is RRA that had a burden to prove that the transport costs that feature on SRDS Ltd's receipts are actually not for transport services.

RRA appealed the ruling before the Court of Appeal, and it prayed the Court to examine whether SRDS Ltd's taxed income was really VAT exempt. And, for case RCOMAA 0001/2022/CA heard on the 25/03/2022, the Court of Appeal held that the RRA's appeal has no justification, and it moved that the ruling on case RCOMA 00869/2020/HCC rendered by the Commercial High Court stays. The Court of Appeal ordered RRA to give SRDS Ltd 500,000 Rwf for Counsel fee, and 200,000 Rwf for case follow-up costs, all adding to the 2,940, 000 Rwf charges from the previous courts, and it

all came to 3, 640,000 Rwf.

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For taking the above decision, the Court of Appeal considered a fact that RRA's argument by which SRDS Ltd had never traded in transport services to be a mere verbal submission with no single evidence that can rebut SRDS Ltd's proof for the provision of such transport services. The Court of Appeal has as well found with no doubt that SRDS Ltd, as a company that distributes BRALIRWA's products, would as well trade in transportation services; since it is actually absurd to think that «the distribution» can be done without transportation works. This stance is as well corroborated by the terms of BRALIRWA- SRDS Ltd agreement, whereby the agreement was concluded principally for BRALIRWA's products distribution purposes.

On the 23/04/2022, RRA petitioned the President of the Supreme Court and pleaded him for injustice related review of case RCOMAA 00001/2022/CA rendered by the Court of Appeal on the 25/03/2022. Upon the examination of a related report on the case, on the 17/11/2022, Hon. Chief Justice issued writ n0 272/CJ/2022 and ordered for the review of case RCOMAA 00001/2022/CA, and the claim was docketed as RS/INJUST/RCOM 00017/2022/SC.

In their submissions, RRA argues that SRDS Ltd had been cutting BLARIRWA's prices and receipting less amount on every product they sold, and they never paid VAT for the saved price cut as they fraudulently labelled it as tax-exempted transportation service income with a malicious intention of eluding the attached VAT, yet their services were not tax exempt. SRDS Ltd thereby argued

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that they have always abode by the law, and they convinced the Court to move that they have been taxed on VAT exempted transactions.

The case was heard in public on the 18/07/2013 with RRA represented by Counsel Twahirwa Jean Baptiste while SRDS Ltd was represented by Counsel Irazirikana Israël together with Counsel Habimana Pie. Litigants debated on the issue of whether SRDS Ltd was taxed Value Added Tax on VAT-exempted services, and they also debated about a variety of damages solicited by parties along this case. At the end of the hearing, the pronouncement of the ruling was slated on the 22/09/2023, but it kept adjourning till 22/12/2023. But close to that date, some of the judges on the bench had been replaced, and the hearing got reopened, and it was now slated on the 21/11/2023 for purposes of recomposing the new hearing jury. II. ISSUES OF THE CASE AND THEIR ANALYSIS

1. Whether SRDS was taxed Value Added tax (VAT) on tax-exempted businesses.

Counsel Twahirwa Jean Baptiste representing RRA, argues that the Court of Appeal held that RRA taxed SRDS Ltd on VAT-exempted income generated from transport services; the Counsel argued that the affirmation is no true, for SDRS Ltd was not trading in transportation services, and the amount featuring on their receipts disguised as transportation costs are actually not for

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transport services. He also underscored that even the BRALIRWA's recommended prices for the distributed products indicate that SRDS Ltd was not trading in transport businesses.

Counsel Twahirwa also submits that SRDS Ltd's defense by which they argue that the amount featuring on the receipts they drew for their customers are for transport costs contains no truth; more so that every SRDS Ltd's drawn receipt for a number of various years uniformly features a cost of 300 Rwf for the transportation of a single crate of beer or lemonades alike for any customer. He argues that this brings a question of doubting whether SRDS Ltd could uniformly provide transportation service for each and every customer as if no customer could do it by themselves. He gave an example of SRDS Ltd's receipt n0 14256/14469NS of 23/06/2015 which SRDS Ltd drew for selling BRALIRWA's beverages, the receipt indicates that SRDS Ltd sold a crate of TURBO KING beers of 50cl for 9.550 Rwf, while BRALIRWA-SDRS Ltd concluded agreement of 01/02/2015 provided that such a crate should be sold at 10,000 Rwf (distributor selling price VAT included (RWF/Crate), but SRDS Ltd chose cut the sale price by 450 Rwf, a balance they fraudulently meant for transportation cost.

He also argued that SRDS Ltd's receipt indicates that they sold a crate of PRIMUS beers of 50cl for 8,000 Rwf, yet the BRALIRWA's recommended prices were at 8,450 per a crate, and thus receipting the sale less by 450 Rwf. He also presented that SRDS Ltd sold a crate of small TURBO KING beers of 33cl for 7,550 Rwf yet the

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BRALIRWA's recommended price was at 8,000 Rwf, thus cutting the recommended sale price by 450 Rwf. He lamented that similar practice replicated on receipt n0 14259/14472 NS of 23/06/2015 whereby SRDS Ltd deceitfully recorded that a customer was charged 350 Rwf for transportation costs, yet this amount is a balance that SDRS Ltd cut on the BRALIRWA recommended price, and this balance includes VAT; arguing that such a balance contains neither VAT-exempt quota, not even a portion for transport costs as SRDS Ltd alleges it.

He also went on and disclosed about some other BRALIRWA's distributors who colluded for the above practice with a purpose of VAT evasion; and these distributors included SOVEPROA Ltd and the alike who uniformly drew receipts that featured a transportation cost of 300 Rwf for each crate of either beer or lemonades, and he questions the coincidence of such a uniform cost for two different companies; arguing that such practice contradicts the provision of article 11, 10 of the Law n0 37/2012 of 09/12/2012 establishing Valued Added Tax which provides that « the taxable value of each good or service is determined as follows: 1° except where this Law provides

otherwise, the taxable value on goods or services is the consideration paid in money by the recipient »

Counsel Twahirwa Jean Baptiste goes on to argue that the Court of Appeal has actually prejudiced RRA especially under paragraph 21 of its' ruling where the Court held that article 21 of the Law n0 36/2012 of 09/11/2012 on Competition and Consumer Protection prohibits the collusion for price-fixing as an anti-

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competitive practice, the Counsel lamented that the Court actually did not well understand the nature of the deal between SRDS Ltd and BRALIRWA since the Court took their trade for a normal business transaction whereby a person buys some products for resell in the light of the existing market conditions. Yet, for this case, the deal is different, and it is a trade whereby SRDS Ltd committed to distribute BRALIRWA's products upon « a commission payment » and this means that the distributor could not at all cut BRALIRWA's recommended prices.

He also argued that paragraph 27 of this case under review indicates that the Court of Appeal has mistakenly interpreted the content of BRALIRWA-SDRS Ltd agreement, especially where the Court moved that the distributor had a right to modify BRALIRWA's prices since those prices were termed as « recommended prices », yet this term was not meant for abating the prices, as it rather referred to price increment especially due to the standards of retailing traders (like hotels or small shops), and it is only the retailers who possess such a margin of price adjustments. Counsel argues that recommended prices meant BRALIRWA's minimum selling prices.

He concluded by submitting that article 29 of the case for review makes it clear that the Court of Appeal held that RRA has not proved that SRDS Ltd abated BRALIRWA's recommended prices, yet RRA had submitted the copy of BRALIRWA-SRDS Ltd products distribution agreement, and the very agreement contained clauses on BRALIRWA's recommended minimum

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prices; an evidence that adds on RRA's submission of SRDS's receipts featuring price cuts. And, he prayed the Court to move that a tax of 222,316,907 Rwf RRA imposed on SRDS Ltd stays.

Counsel Irazirikana Israël and Counsel Habimana Pie representing SRDS Ltd submitted that RRA's claim has no justification since they discriminate taxpayers whereby some taxpayers such as Ets FURAHA are favored with tax exemption¹ while others and SRDS Ltd included are taxed yet all taxpayers are deemed equal before the law just as article 15 of the Constitution of the Rwandan Constitution so provides .

They also argued that when RRA again inspected SRDS Ltd for the years of 2019, 2020, 2021, and 2022, it

1 SRDS Ltd filed a letter of 15/07/2022 which RRA Commissioner General wrote to Ets FURAHA in reaction to latter's appeal against the imposed tax; whereby the Commissioner General referred to article 6(50) of the Law n0 37/2012 of 09/11/2012 establishing Value Added Tax which stipulates transportation services are exempted from the payment of VAT, whereby point (d) of the paragraph provides that services of transport of goods by roads are VAT exempt, the Commissioner General has also based his decision on a fact that Ets FURAHA was taxed for the VAT yet they possessed RURA's license for trading in transport services; and he also referred to a certain judicial precedent from cases RCOMA 00190/2021/HCC and RCOMAA 00001/2022/CA between RRA and SRDS Ltd, whereby RRA lost similar cases against other BRALIRWA's distributors, and the Commissioner moved that the appeal by Ets FURAHA has justification, and he therefore removed a VAT of 77,781,312 Rwf that Ets FURAHA had been imposed on the provided transportation services.

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found that SRDS Ltd still rebated the recommended prices on each and every product they sold; whereby the cut balance was reserved for transport costs, but RRA never questioned the practice. They therefore argued that the RRA's attitude for the later inspection proves that even RRA themselves acknowledge that SRDS Ltd had unfairly been imposed VAT on exempted transportation services.

- [22] They went on and argued that RRA poorly interprets BRALIRWA's prices because (a) RRA does not consider products distributors like any other traders;
- (b) « recommended price » does not mean a fixed price; Prices agreement between BRALIRWA and SRDS Ltd have nothing to do with RRA, and the latter has no right to refer to the agreement of 01/02/2015 and raise complaints because RRA is not a party to the agreement as per the famous principle by which, an agreement can only bind its' contracting parties.

Counsel Irazirikana Israël and Counsel Habimana Pie argue that RRA does not consider products distributors like any other traders since it failed to clarify about the existing traders' categories to clearly prove that distributors are not business traders yet they trade in the business of distributing BRALIRWA's products, and on the top of transporting their customers' products, every distributor does their best to make more transactions for more income generation. It is in this line that SRDS Ltd engages in transporting the products for every customer who buys from them, coupled with the initiative of offering quality services to customers; the transport work

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for which they possess RURA's license, and they are paid for by the served customers.

They have also argued that « recommended prices » does not necessarily mean fixed prices, more so that article 8 of the agreement of 01/02/2015 concluded in English language between BRALIRWA and SRDS Ltd stipulates that The Distributor buys the products at the price determined by Bralirwa and resells the products at the recommended distribution price, and

they prayed the Court to examine the contextual meaning of the term « recommended » and move that it does not compound an order, as it is rather an advice, and the advised person has a right of choice on the advisory. And, they therefore argued that discarding BRALIRWA's recommended prices constitutes no wrong.

They also argue that a fact that SRDS Ltd sells and transports the purchased products for customers with no VAT charges on transport costs is due to a fact that transport services are VAT exempt, and the practice incurs no loss to RRA, arguing that had SRDS Ltd not transported the products for its customers, they could have been transported by any other transporter, and the latter could not pay any VAT, since transport service is VAT free.

They also argue that the taxation laws can neither inconvenience nor repeal other laws, especially the law on Competition and Consumer Protection, arguing that a mere fact that SRDS Ltd is BRALIRWA's distributor does not remove compliance with the Law no 36/2012 of 09/11/2012 on Competition and Consumer Protection.

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They argued that the observation of article 7 of the above mentioned law is not conditioned to special and particular relations between traders such as commission allowance to one of them; explaining that BRALIRWA-SRDS Ltd agreement underscored that competition laws must be abode by just as it is highlighted under article 1 (2) of the agreement which stipulates that the trader shall distribute the products in due compliance with the Rwandan statutes and other national legislations with the Competition laws inclusive.

Counsel Irazirikana Israël and Counsel Habimana Pie argue that distributing BRALIRWA's products is not a business that involves State-regulated prices, as prices are mutually agreed on between the seller and buyer (free market), and therefore, RRA cannot claim that the BRALIRWA's products were sold below the recommended prices. They also argue that even BRALIRWA-SRDS Ltd agreement itself does not compel SDRS Ltd to go by BRALIRWA's proposed prices, arguing that RRA should therefore not insist on the agreement's price-related clauses, since such content is actually legally prohibited.

They have added that RRA's evidence on SRDS Ltd's receipts such as receipt n0 14256-14469 NS whereby SRDS Ltd sold the consigned products below BRALIRWA's recommended prices should not be considered since such a practice causes no prejudice; and moreover, SRDS Ltd was not bound to abide by BRALIRWA's recommended prices. While for receipt n0 14259-14472 NS featuring that SRDS Ltd charged a

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customer with 300 Rwf for transport service, together with some other SRDS Ltd's receipts that feature 300 Rwf for products transportation costs, SRDS Ltd's attorneys argued such practices were legally conducted and SRDS Ltd had RURA's license permitting them to trade in transport services.

With regard to a report on the meeting of the 16/01/2018 that convened RRA's officials and BRALIRWA's distributors, SRDS Ltd's attorneys prayed the Court not to consider such an evidence since RRA was compelling the traders to abide by BRALIRWA's recommended prices, a practice which contradicts the provision of article 7 of the above mentioned law n0 36/2012 of the 21/09/2012, and yet such a legislation of public order.

Counsel Irazirikana Israël and Counsel Habimana Pie who represent SRDS Ltd, argued that the Supreme Court's overrule on the impugned judgement might tarnish the whole judicial system, as it might publicly convey an erroneous perception that sole the Supreme Court can render justice; and they based such an argument on the famous principle by which « Justice should not only be done, but should manifestly and undoubtedly be seen done », more especially, due to a fact that the case under review had already been decided by the Court of Appeal, and it had already been published as a referral legal precedent and overturning it might have adverse effects on the judicial apparatus as it might undermine the initiatives of resolving disputes with reference to available judicial precedents .

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They concluded by rejecting a set of precedents that RRA presented for similar cases; the jurisprudence included the case with RRA v. Ntawangwanabose, and the case between RRA and SOVEPROA, arguing that such cases cannot serve as references for this particular dispute, since they are not of the same subject matter, and they have been decided by lower courts.

DETERMINATION OF THE COURT

Paragraph one of article 11 of the Law n0 37/2012 of 09/11/2012 establishing Value Added Tax in force by the time SRDS Ltd was imposed the contested tax, provides that « except where this Law provides otherwise, the taxable value on goods or services is the consideration paid in money by the recipient ».

Paragraph 5 of article 6 of the above mentioned Law n0 37/2012 of 09/11/2012 stipulates that the transportation services provided by licensed traders are VAT exempted.

Article 9 of the same Law provides that « subject to the provisions of this Law, supply of goods or particular services as complementary goods or services of another kind is treated as part of the principal goods or services... »

Both the litigating parties concur on a fact that SRDS Ltd is one of the companies that distribute BRALIRWA's products and the possess a related license

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for providing road transportation services issued by Rwanda Utility Regulatory Agency (RURA). One issue of discord and which sparked disputes for this case is whether the transportation services that SRDS Ltd provides for the distribution of BRALIRWA's products qualify for VAT exempt services.

The Court found that the above mentioned Law n0 37/2012 of 9/11/2012 has not specified about transporters who should be exempted for VAT, and the Court moved to resolve the litigants' disputes with reference to a set of existing legal doctrines.

Delebecque Philippe, Isabelle Bon-Garbin and Maurice Bernadet agree on the difference between private and public transport. They argue that the public transport is actually carried out by professionals who provide transport services on a cost, while the private transport is not necessarily carried out by professionals, and quite often it is meant to support a certain principal activity such as trading and the alike. (Il y a une distinction entre transport pour compte propre (transports privés) et les transports pour compte d'autrui (transports publics). Les transporteurs publics sont des professionnels dont le métier consiste à exécuter des transports contre rémunération pour des clients qui sont des entreprises industrielles ou commerciales, des entreprises de services, des administrations ou encore des particuliers. Par opposition, le transport pour le compte propre n'est pas assuré par des professionnels du transport, mais par des entreprises industrielles ou commerciales qui disposent de leurs propres parcs de véhicules et de leurs

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conducteurs pour réaliser des transports liés à leur activité principale. Pour être qualifié de compte propre, un transport ne constitue qu'une activité accessoire de l'entreprise)².

Another Scholar, Jean Pierre Kesteloot, wrote in his book «Droits des Transports» and argued that from long time ago, transport contracts have always been considered as business-oriented contracts since they are associated with trade industry. He however adds that the most important aspect in the realm of transport is not the transportation cost, more so that the transport service can be provided cost free. He argues that what matters most is a fact that the transport service was provided by a professional transporter. (le contrat de transport a longtemps été considéré comme étant un contrat à titre onéreux puisqu'il s'agit d'une variété de contrat d'entreprise... l'élément constitutif à retenir n'est donc plus la rémunération en tant que telle puisqu'un contrat de transport peut être conclu à titre onéreux ou à titre gratuit, mais bien le caractère professionnel du transporteur).³

With regard to a scenario whereby the transport service has a status of a « complementary service » as enshrined in article 9 of the above mentioned Law n0 37/2012 of 09/11/2012, the Court found that the Legislator did not thereby give it an ample elaboration,

2 Delebecque Philippe, Isabelle Bon-Garcin et Maurice Bernadet, Droit des transports, 2018, Dalloz, p. 2932. 3 Kesteloot, Jean Pierre et HOC, Arnaud, Droit des transports, 2020, Larcier, p.29-30.

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and that is why the Court referred the matter to a set of legal doctrines for more clarifications. For Anon, a Complementary Service may be defined as a service that comes with a product for support. They are the services that are offered in addition to any business's core service and assist the customer in using the main service [...]).

With regard to trade supporting transport services in particular, the law scholar Jean Pierre Keresteloot argues that the sale agreement may provide that the seller shall transport any purchased item such a washing machine or a television set up to the buyer's place and such an arrangement shall not be termed as a transport contract especially due to a fact that the provided transport service is secondarily attached to the principal contract of sale, and in such a scenario, transport-related laws do not apply. (Il y a d'autres contrats que le contrat de transport qui contiennent ou peuvent contenir un élément de déplacement. Un contrat de vente peut prévoir que le vendeur déplace la marchandise pour la livrer à l'acheteur. Comme par exemple lors de la vente d'une machine à laver ou d'une télévision... Le transport par le vendeur n'est qu'un accessoire du contrat de vente. Les règles propres au contrat de transport ne s'appliquent donc pas dans les relations entre le vendeur et l'acheteur)⁴.

The above provided explanations clarified the following important issues:

⁴ Idem, p.31.

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- Sole professional transporters whose principal activity is providing transport services are exempted for VAT
- Transport activities that are primarily meant for goods distribution purposes remain secondary and included in the distribution scheme even when performed by a licensed transporter. When the principal activity is not VAT exempt, neither is the associated transport service.

With reference to the above provided clarifications and for the purpose of this particular case, the Court found that though SRDS Ltd has a license to provide transport services, the agreement they concluded with BRALIRWA proves that the main purpose of the agreement was about distributing BRALIRWA's products (distribution), while the thereby provided transport service comes in as a complementary activity that supports the main business of distributing BRALIRWA's products; and yet the distribution services are not VAT exempt. Therefore, the Court found that the transport services that SRDS Ltd provides for the distribution of BRALIRWA's products are not VAT exempt.

With regard to SDRS Ltd's complaint by which RRA discriminates the taxpayers by favoring some such as Ets FURAHA, and the argument by which RRA's inspection for the years 2019 and 2020 has never found any malpractice in SRDS Ltd's record books, and never claimed for any transport income tax, yet SRDS Ltd has

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never changed its' trading practice; arguing that such silence proves that RRA acknowledges that SRDS Ltd transport services are VAT exempt; the Court has indeed found that the file contains a letter of 15/07/2022 by which RRA exempted Ets FURAHA for VAT on transport services provided in the distribution of BRALIRWA's products, but the Court explained that the above mentioned VAT exemption case is not legally justifiable since Ets FURAHA's transport services are no different from the SRDS Ltd's, and they are equally not VAT exempt. And, the same explanation answers the question on RRA's inspection into SRDS Ltd for the years 2019 and 2020. The Court's general decision on the issue raised.

Considering all the above provided elucidations, the Supreme Court found that SRDS Ltd has not been imposed Valued Added Tax on VAT exempted activities; and therefore, RRA's application for injustice related review of case RCOMAA 00001/2022/CA rendered by the Court of Appeal on the 25/03/2022 has justification.

2. About the requested damage-compensations.

Counsel Twahirwa Jean Baptiste representing RRA referred to article 111 of the Law n0 22/2018 of 29/04/2018 relating to civil, commercial, labor and administrative procedure and requested SDRS to give RRA 3,000,000 Rwf for both representation fee, and all the so far incurred case-related expenses.

Counsel Irazirikana Israël and Counsel Habimana Pie who represented SRDS Ltd argue that RRA deserves

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no damage-compensation, arguing that it RRA that kept on initiating lawsuits, and lamented that RRA cannot be compensated for their own turpitudes

They argued that it is rather SRDS Ltd that deserves damage-compensations. They based their request on the article 34 of RBA scale of Advocates' fees, and solicited 3,000,000 Rwf for Counsel fee and 2,000,000 Rwf for the incurred case- related costs and it all totaled to 5,000,000Rwf. And they requested that the solicited amount should add on the 3,640,000 Rwf that had been ordered by the previous courts. DETERMINATION OF THE COURT

Article 111 of the Law n0 22/2018 of the 29/04/2018 relating to civil, commercial, labor and administrative procedure provides that the claim for representation fees is an incidental claim to the principal claim aiming to repay expenses incurred during judicial proceedings.

With regard to the requested damage- compensation, the Court found that the content of the preceding paragraph indicates that the losing party must refund the winning party for the incurred case-related costs, such the representation fee, and other various case follow-up expenses.

The Court held that SRDS Ltd deserves no damage-compensation since they have lost the case, and

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it held that RRA deserves damage-compensation since they won the case, and they kept on incurring expenses right away from the onset of the case till the end.

The Court found that RRA deserves some damage-compensation, but since their request of 3,000,000 Rwf is excessive and moreover unjustified, the Court allowed them 500,000 Rwf for the representation fee, and 300,000 Rwf for the incurred case related expenses. III. DECISION OF THE COURT

Holds that the RRA's application for injustice related review of case RCOMAA 00001/2022/CA rendered by the Court of Appeal on the 25/03/2022 has justification.

Holds that the ruling on case RCOMAA 0001/2022/CA rendered by the Court of Appeal on the 25/03/2022, is entirely overturned.

Orders SRDS Ltd to pay 222,331,907 Rwf for Value Added Tax, as imposed by RRA for the years 2015, 2016, 2017 and 2018.

Orders SRDS Ltd to give RRA 500,000 Rwf for the judicial representation fee and 300,000 Rwf for the incurred case related expenses, and it all sums up to 800,000 Rwf.

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