

RWANDA / JUDGMENT

HATEGEKIMANA v. RWANDA REVENUE AUTHORITY

R COM 0174/11/HCC

COURT

Commercial High Court

DECIDED

18 October 2011

CASE / FILE NUMBER

R COM 0174/11/HCC

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Text**Page 1**

HATEGEKIMANA v. RWANDA REVENUE AUTHORITY [Rwanda COMMERCIAL HIGH COURT- R COM 0174/11/HCC (Gatete J.) October 18, 2011] Tax laws – The type of taxable activities – Type of taxable activities are not necessary independent activities that are regularly performed by the taxpayer, they can be others activities not included in its ordinary course of business. Tax laws – Value added tax – Exemption due to purchasing – When there was no Transfer of a business ,the taxpayer cannot be exempted even though the seller and buyer were registered on value added tax– Whether valued added tax may be paid when there was no fine charged in the rectification note in the rectification note – The valued added should be paid as long as it is not provided in law that in case fine is not charged in the rectification note it will not be paid– the law n°74/2008 of 31/12/2008 modifying and complementing law n° 25/2005 of 04/12/2005 on tax procedures(art.27-law modified),article 3 – Ministerial order n° 001 of 13/01/2003 providing for Value Added Tax rules and procedure, article 15. Facts: HATEGEKIMANA MARTIN sold his house to the Quincaillerie Better Ltd and that was already registered to value added tax, in the process

of doing transfer ownership, HATEGEKIMANA was informed by the tax administration that he should pay VAT amounting to 45.762.712. He made appeal to the Commissioner General explaining that he was not registered to VAT as a seller of Houses, The Commissioner General decided that he shall pay the requested VAT in accordance to article 85, 16° of the Law n° 06/2001 implementing value added tax(TVA). HATEGEKIMANA filed a claim to the Commercial High Court saying : (i) The sale was made in course of its ordinary activities where it is exempted on VAT, that is why that tax should not be paid (ii) basing on article 15 of the ministerial order n° 001 of 13/01/2003 providing for Value Added Tax rules and procedure and Transfer of a business was made and the buyer is registered to VAT therefore that tax should not be paid (iii) The fact that he was not charged to pay fines that are provided by the law this itself it's an evidence that the taxpayer should not pay VAT. Rwanda Revenue Authority responded saying that :(i) Taxes are levied on "supplies made by the taxable supplier as part of, or incidental to, any independent economic activity of the taxable supplier, whatever the purposes that is bona fide, or results of that activity; ".(ii) The article used by HATEGEKIMANA is not related to what is being discussed in this case,(iii) No being fined it does not means that he was exempted on VAT. Held: 1. In Case the House that was sold was a commercial house which was used in the course of commercial activities of a taxpayer, tax shall be levied on that activity as well, because the law of tax is not based on independent economic activity of the taxable supplier on daily basis; a sale also which is not part on these ordinary course of business.

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2. In case "transfer of business " was not made as provided in article 15 ministerial order n° 001 of 13/01/2003 providing for Value Added Tax rules and procedure, the taxpayer cannot be exempted even though the seller and buyer were registered on value added tax
3. As long as it is not provided in the law that if the rectification note does not fined a taxpayer no valued added tax shall paid, it has to be paid. Claim has no merit; Court fees charged to the claimant. Statutes and statutory instruments referred to: The law n°74/2008 of 31/12/2008 modifying and complementing law n° 25/2005 of 04/12/2005 on tax procedures (art.27-law modified), article 3; Ministerial order n° 001 of 13/01/2003 providing for Value Added Tax rules and procedure, article 15. No Cases referred to:

Judgment

I. BACKGROUND OF THE CASE [1] Hategekimana Martin is normarilly a businessperson registered in VAT,he used owed a house in the plot n° 1453 at Muhima in Nyarugenge Distrcit-VK,on 11/09/2008 he sold it to Quincaillerie Better Ltd which was also registered in VAT. [2] During the process of doing "transfer ownership",RRA informed Hategekimana that he should pay VAT amounting to 45.762.712 Frw on that purchase prize ,he directly wrote a letter to the Commissioner General explaining that he is not registered in VAT as house seller. [3] The Commissioner General explained to him that pay the requested VAT in accordance to article 85, 16° of the Law n° 06/2001 implementing value added tax(VAT).that he why he decided to use this

Court seeking justice. II. ISSUES TO BE EXAMINED IN THE CASE AND ITS

ANALYSIS

The fact that the taxable house is not connected to the ordinary activities normally performed by Hategekimana M. [4] Me Nsengiyumva Abel is based on article 85, 16° of the Law n° 06/2001 of 20/01/2001 mentioned above(VAT),he explained that the sale of the house was not made in course of the ordinary activities that are normally persformed by Hategekimana Martin,where it is exempted on VAT, that is why on its own view that tax should not be paid.

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[5] Me Gasana Raoul, representing RRA explained what is provided in article 85,16° saying that "ordinary course of business" refers to supplies madeby the taxable supplier as part of, or incidental to, anyindependent economic activity of the taxable supplier,whatever the purposes that is bona fide, or results of thatactivity; [6] The Court finds what is being explained by Me Nsengiyumva Abel as baseless, because tax law is not based on independent economic activity of the taxable supplier on dailly basis; what should not be ignored is the fact that the house that was sold was a commercial house which was used for the benefice of ordinary course of business of Hategekimana. In the respect of the "Transfer of a business" which was made while it was exempted. [7] Based again on article 15 of the Ministerial order n° 001 of 13/01/2003 providing for Value Added Tax rules and procedure, Me Nsengiyumva that the fact that the buyer is also registered in Valued added tax. That tax should not be paid. [8] The Lawyer of RRA allege that the provision which is being used by Hategekimana is not related to the subject matte ris this case [9] The Court finds the applicant's provision is baseless, because even though the seller and buyer were both registered on VAT, there was no such "Transfer of business" provided in that provision leading to tax exemption ,because Hategekimana himself does not say that he continue to perform its activities as usual and no transfer was made to the buyer. The fact that RRA did not charge fines as provided in article 3 of the law n°74/2008 of 31/12/2008 modifying and complementing law n° 25/2005 of 04/12/2005 on tax procedures (art.27-law modified). [10] Me Nsengiyumva explained that the fact that RRA did not charged fines as provided in article 27 of the stated law,it is an irrefutable evidence that the taxpayer should not pay VAT. [11] RRA's lawyer allege that the fact that fine was not charged,did not means Hategekimana is exempted from paying VAT. [12] On that issue,The Court finds the explanations of claimant's lawyer as baseless, because there is nowhere provided in the law that in case fine is not charged in rectification note no value added tax shall be paid,despite that in French version of the article 27 stated above,it provides that charging fine can be made. III.THE DECISION OF THE COURT. The Commercial High Court, [13] Rules that the claim of Hategekimana Martin has no merit; [14] Decides that he loses the case; [15] Orders him to pay court fees amounting to 4.450.Frw.

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