RRA v GIKONKO RICE

[Rwanda URUKIKO RUKURU RW'UBUCURUZI – RCOMA 00815/2018/HCC (Kayisire, P.J.) 12 Nyakanga 2019]

Amategeko agenga imisoro – Umusoro nyongeragaciro – Umuceri utonowe ntabindi binyabutabire bivanzemo – Gutakaza isura kw'ikiribwa mu gihe cy'isarura – Gutonora umuceri ukoresheje imashini, nta zindi mvange z'ubutabire ziwuhindura ikiribwa cy'ubundi bwoko, ntibitandukanye n'uko umuhinzi awukorera isuku akoresheje uburyo bwa gakondo (kuwutonora ukoresheje intoki) kugirango awugurishe – Umuceri ucurujwe muri ubwo buryo ntucibwa umusoro nyongeragaciro kuko uba udafatwa nk'ikiribwa cy'ubwoko bushya nubwo uba watakaje ishusho yawo mu isarura mu gihe cyo kuwutonora.

Incamake y'ikibazo: GIKONKO RICE yakorewe igenzura na Rwanda Revenue Authority (RRA) mu 2017 na 2018 bituma icibwa umusoro ku nyongeragaciro ungana na 232.030.192 frw. GIKONKO RICE yaregeye Urukiko rw'Ubucuruzi isaba uvanwaho maze urukiko rwemeza ko uvanwaho.

RRA yajuririye mu Rukiko Rukuru rw'Ubucuruzi ivuga ko umusoro wagombaga kugumaho kuko umuceri ucuruzwa na GIKONKO RICE uba watunganyijwe ukaba ikiribwa cy'ubwoko bushya kuko uba watonowe. Yasabye kandi ko yahabwa indishyi z'ikurikirana rubanza n'igihembo cya Avocat.

GIKONKO RICE yireguye ivuga ko ubujurire bwa RRA nta shingiro bufite kuko umuceri icuruza atari ikiribwa gishya kuko umuceri atari ikiribwa gitunganyijwe cyavuyemwo ikiribwa cy'ubundi bwoko, bityo ukaba utagomba gucibwa TVA. Yongeye yiregura ivuga ko nta ndishyi z'ikurikirana rubanza n'igihembo cya Avocat yatanga ahubwo isaba itanga ubujurire bwuririye ku bundi isaba RRA kuyishyura amafaranga y'ikurikirana rubanza n'igihembo cya Avocat.

Incamake y'icyemezo: Gutonora umuceri ukoresheje imashini, nta zindi mvange z'ubutabire ziwuhindura ikiribwa cy'ubundi bwoko, ntaho bitandukaniye n'umuhinzi uwukorera isuku akoresheje uburyo bwa gakondo (kuwutonora ukoresheje intoki) kugirango awugurishe. Bityo, umuceri ucuruzwa na GIKONKO RICE nubwo uba watakaje ishusho yawo yo mu isarura mu gihe cyo kuwutonora, ubwabyo atari byo byatuma ufatwa nk'ikiribwa cy'ubwoko bushya n'agaciro bishya kuko iby'agaciro gashya bijyana n'uko ikiribwa kiba cyahindutse icy'ubwoko bushya.

Ubujurire nta shingiro bufite.
Imikirize y'urubanza RCOM 02093/2018/TC rwaciwe ku wa 12/11/2018 n'Urukiko rw'Ubucuruzi, ntihindutse.

Amategeko yashingiweho:

Itegeko n^{o} 37/2012 ryo kuwa 09/11/2012 rishyiraho Umusoro ku Nyongeragaciro nk'uko ryahinduwe kandi rikuzuzwa kugeza ubu, ingingo ya 6 agace ka 13.

Iteka rya Minisitiri n^{0}010/16/10/TC ryo ku wa 01/11/2016 ryerekeye ibiribwa bitunganyijwe n'ibiranga ibyemezo bigabanya imyenda n'ibiyongera, ku bijyanye n'ubwoko n'agaciro bishya by'ibiribwa bitunganyijwe, ingingo ya 1, igika cya 1.

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Uru rubanza rwatangiriye mu rwego rwa mbere mu Rukiko rw'Ubucuruzi, aho GIKONKO RICE Ltd yaregaga Rwanda Revenue Authority, isaba gukurirwaho umusoro wa TVA ungana n'amafaranga 232.030.192frw, ikaba yaragaragazaga ko umusoro yaciwe udakurikije amategeko. Mu mikirize y'urubanza RCOM 02039/2018/TC, Urukiko rwemeje ko umusoro wa TVA ungana n'amafaranga 232.030.192fiw RRA yaciye GIKONKO RICE Ltd ukuweho. RRA ntiyishimiye imikirize y'urwo rubanza, irajurira.

[2] Me Twahirwa Jean Baptiste na Me Byiringiro Bajeni bahagarariye RRA bagaragaje ko umusoro wa TVA waciwe GIKONKO RICE Ltd ukwiye kugumaho, ko kandi urubanza RCOMA 0023/13/CS rwaciwe n'Urukiko rw'lkirenga rutagomba gushingirwaho muri uru rubanza.

[3] Ababuranyi muri uru rubanza basabye indishyi.

[4] Ibibazo bigomba gusuzumwa ni ukumenya niba umusoro wa TVA waciwe GIKONKO RICE Ltd ukwiye kugumaho no kumenya niba urubanza RCOMA 0023/13/CS rwaciwe n'Urukiko rw'lkirenga rutagomba gushingirwaho muri uru rubanza; kumenya niba ababuranyi muri uru rubanza bakwiye guhabwa indishyi basabye.

II. ISESENGURA RY'IBIBAZO BIRI MU RUBANZA

Ku byerekeye kumenya niba umusoro wa TVA waciwe GIKONKO RICE Ltd ukwiye kugumaho no kumenya niba urubanza RCOMA 0023/13/CS rwaciwe n'Urukiko rw'lkirenga rutagomba gushingirwaho muri uru rubanza.

[5] Me Twahirwa Jean Baptiste na Me Byiringiro Bajeni bahagarariye RRA bagaragaje ko umusoro wa TVA waciwe GIKONKO RICE Ltd ukurikije amategeko, ko utari ukwiye gukurwaho, ko ingingo ya 2 (3 ^{0}) y'itegeko nº 37/2012 ryo ku wa 09/11/2012 rishyiraho umusoro ku nyongeragaciro, iteganya ko "ibiribwa bitunganyijwe" bisobanura ibiribwa bitunganyijwe ku buryo bivamo ibiribwa by'ubundi bwoko n'agaciro bishya, nk'uko byasobanurwa n'lteka rya Minisitiri, ko iyo ngingo yahaye ububasha Iteka rya Minisitiri bwo kugena uburyo ikiribwa gitunganyijwe kikavamo ikiribwa cy'ubundi bwoko kiba kimeze.

[6] Me Twahirwa Jean Baptiste na Me Byiringiro Bajeni bakomeje bagaragaza ko Iteka rya Minisitiri nº 010/16/10/TC riteganya mu ngingo ya 1 ko ikiribwa cyose, cyaba igikomoka ku buhinzi cyangwa ku bworozi, gifatwa nk'ikiribwa cy'ubwoko bushya iyo cyatakaje ishusho yacyo yo mu isarura mu gihe bagitunganyaga, ko ikiribwa kivugwa mu gika cya mbere cy'iyo ngingo gifatwa nk'icyagize agaciro gashya iyo agaciro kacyo ku isoko kazamutse biturutse ku gikorwa cyo kugitunganya", bityo ko bigaragara ko umuceri wa GIKONKO RICE Ltd uri muri urwo rwego. Me Twahirwa Jean Baptiste na Me Byiringiro Bajeni banagaragaje kandi ko urubanza RCOMA 0023/13/CS rwaciwe n'Urukiko rw'lkirenga rutagomba gushingirwaho muri uru rubanza.

[7] Me Biseruka Frank uhagarariye GIKONKO RICE Ltd yagaragaje ko ibyo RRA isaba Urukiko gusuzuma niba umuceri wacurujwe na GIKONKO RICE Ltd atari ikiribwa gitunganyije ku buryo utari gucibwaho umusoro wa TVA, nta shingiro bifite kuko Urukiko rw'lkirenga rwabifasheho umwanzuro rwemeza ko umuceri atari ikiribwa gitunganyijwe cyavuyemwo ikiribwa cy'ubundi bwoko, bityo ukuba utagomba gucibwa TVA.

UKO URUKIKO RUBIBONA

[8] Urukiko rusanga muri uru rubanza, RRA igaragaza ko umusoro wa TVA waciwe GIKONKO RICE Ltd ukurikije amategeko, ko utari ukwiye gukurwaho kuko umuceri icuruza uba watunganyijwe, naho Me Biseruka Frank uhagarariye GIKONKO RICE Ltd akaba agaragaza ko umuceri wacurujwe na GIKONKO RICE Ltd atari ikiribwa gitunganyije, ko utari gucibwaho umusoro wa TVA.

[9] Urukiko rusanga ingingo ya 6 agace ka 13 y'ltegeko n^{o} 37/2012 ryo kuwa 09/11/2012 rishyiraho Umusoro ku Nyongeragaciro nk'uko ryahinduwe kandi rikuzuzwa kugeza ubu, ku bijyanye n'ibintu na serivisi bisonewe, iteganya ko ibikomoka ku buhinzi n'ubworozi byose bisonewe, uretse ibitunganyijwe; naho ingingo ya 2 agace ka 3 k'iryo tegeko, ku bijyanye n'ibisobanuro by'amagambo, ikaba iteganya ku bijyanye n'ibiribwa bitunganyijwe ko uretse ibiteganywa ukundi n'iryo tegeko, ibiribwa bitunganyijwe bisobanura ibiribwa bitunganyijwe ku buryo bivamo ibiribwa by'ubundi bwoko n'agaciro bishya, nk'uko byagenwa n'lteka rya Minisitiri. Na none, ingingo ya 1, igika cya 1 y'lteka rya Minisitiri n^{0}010/16/10/TC ryo ku wa 01/11/2016 ryerekeye ibiribwa bitunganyijwe n'ibiranga ibyemezo bigabanya imyenda n'ibiyongera, ku bijyanye n'ubwoko n'agaciro bishya by'ibiribwa bitunganyijwe, iteganya ko muri iryo teka, ikiribwa cyose, cyaba igikomoka ku buhinzi cyangwa ku bworozi, gifatwa nk'ikiribwa cy'ubwoko bushya iyo cyatakaje ishusho yacyo yo mu isarura mu gihe bagitunganyaga, naho mu gika cya 2, ikaba iteganya ko ikiribwa kivugwa mu gika cya mbere cy'iyi ngingo gifatwa nk'icyagize agaciro gashya iyo agaciro kacyo ku isoko kazamutse biturutse ku gikorwa cyo kugitunganya.

[10] Urukiko rusanga umusoro wa TVA, RRA yaciye GIKONKO RICE Ltd ushingiye kuri notice of assessment yo mu kwezi kwa 11 n'ukwa 12/2017 n'iyo mu kwezi kwa 1 n'ukwa 2/2018, ikaba ariyo mpamvu RRA igaragaza ko uwo musoro ukurikije amategeko, ko utari ukwiye gukurwaho kuko umuceri ucuruzwa na GIKONKO RICE Ltd uba watunganyijwe ukavamo ibiribwa by'ubundi bwoko n'agaciro bishya, hakurikijwe uko bisobanurwa mu ngingo ya 1 y'lteka rya Minisitiri ryavuzwe haruguru; bityo hashingiwe ku gisobanuro cy'ibiribwa by'ubwoko bushya nk'uko cyagaragajwe haruguru mu gika cya 9, bikaba bigaragara ko umuceri ucuruzwa na GIKONKO RICE Ltd uba watakaje ishusho yawo yo mu isarura mu gihe cyo kuwutonora.

[11] Nubwo bigaragara ko umuceri ucuruzwa na GIKONKO RICE Ltd uba watakaje ishusho yawo yo mu isarura mu gihe cyo kuwutonora, Urukiko rusanga ibyo ubwabyo atari byo byatuma ufatwa nk'ikiribwa cy'ubwoko bushya, nk'uko byemejwe mu rubanza RCOMAA 0023/13/CS rwaciwe n'Urukiko rw'lkirenga ku wa 16/01/2015, aho RRA yaburanaga na SODAR Ltd, Urukiko rw'lkirenga rukaba mu gika cya 20 mu mikirize y'urwo rubanza rwarasobanuye ko ibikorwa SODAR Ltd ikorera umuceri biba bitagamije guhindura umwimerere wawo cyangwa ngo biwugire ikiribwa cy'ubundi bwoko, naho mu gika cya 21, Urukiko rw'lkirenga rukaba rwarasobanuye ko kuba SODAR Ltd itonora umuceri ikoresheje imashini, nta zindi mvange z'ubutabire ziwuhindura

ikiribwa cy'ubundi bwoko, bitatandukanywa n'umuhinzi uwukorera isuku akoresheje uburyo bwa gakondo (kuwutonora ukoresheje intoki) kugirango awugurishe.

[12] Hashingiwe ku byasobanuwe haruguru mu gika cya 11, Urukiko rusanga umusoro wa TVA waciwe GIKONKO RICE Ltd udakwiye kugumaho kuko bigaragara ko nubwo umuceri icuruza uba watakaje ishusho yawo yo mu isarura mu gihe cyo kuwutonora, ubwabyo atari byo byatuma ufatwa nk'ikiribwa cy'ubwoko bushya n'agaciro bishya kuko iby'agaciro gashya bijyana n'uko ikiribwa kiba cyahindutse icy'ubwoko bushya; ibyasobanuwe haruguru bikaba na none bishimangira ko urubanza RCOMA 0023/13/CS rwaciwe n'Urukiko rw'lkirenga rugomba gushingirwaho muri uru rubanza, bityo ubujurire bwa RRA bukaba nta shingiro bufite kuko itashoboye kugaragariza Urukiko ko umuceri GIKONKO RICE Ltd igurisha uba wahinduwe ku buryo iwugurisha wabaye ikiribwa cy'ubwoko bushya.

Ku byerekeye kumenya niba ababuranyi muri uru rubanza bakwiye guhabwa indishyi basabye.

[13] Me Twahirwa Jean Baptiste na Me Byiringiro Bajeni bahagarariye RRA, basabye ko GIKONKO RICE Ltd yaha RRA amafaranga 2.000.000frw y'indishyi z'igihembo cya avoka n'ibyatanzwe kuri uru rubanza guhera rutangiye kuko RRA yashowe mu manza zidafite ishingiro.

[14] Me Biseruka Frank uhagarariye GIKONKO RICE Ltd yasabye ko RRA yaha GIKONKO RICE amafaranga 1.000.000 frw y' indishyi z'ikurikiranarubanza n'igihembo cya avoka.

UKO URUKIKO RUBIBONA.

[15] Urukiko rusanga indishyi zasabwe na RRA nta shingiro zifite kuko ubujurire bwayo nta shingiro bufite nk'uko byasobanuwe haruguru.

[16] Ku bijyanye n'indishyi zasabwe na GIKONKO RICE Ltd, iz'ikurikiranarubanza ntikwiye kuzihabwa kuko zitagaragarijwe ibimenyetso, naho igihembo cya avoka, ikwiye kugihabwa hashingiwe ku biteganywa n'ingingo ya 258 y'igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano, iteganya ko igikorwa cyose cy'umuntu cyangirije undi gitegeka ny'ir'ugukora ikosa rigikomokaho, kuriha ibyangiritse, bityo RRA ikaba igomba kuyiha amafaranga 500.000frw y' indishyi z'igihembo cya avoka, kuko yari ifite uyiburanira muri uru rubanza yarezwemo.

III. ICYEMEZO CY'URUKIKO

[17] Rwemeje ko ubujurire bwa RRA nta shingiro bufite.

[18] Rutegetse RRA kwishyura GIKONKO RICE Ltd amafaranga 500.000 frw y' indishyi z'igihembo cya avoka.

[19] Rwemeje ko imikirize y'urubanza RCOM 02093/2018/TC rwaciwe ku wa 12/11/2018 n'Urukiko rw'Ubucuruzi, idahindutse.