IKIGO CY'IMISORO N'AMAHORO (RRA) v. UMURUNGI UMWIZERWA

[Rwanda URUKIKO RW'IKIRENGA RCOMAA00066/2016/SC (Mukanyundo, P.J; Ngagi, J. na Rugabirwa, J.) 28 Nyakanga 2017]

Amategeko agenga imisoro – Amategeko agenga imisoreshereze ya gasutamo mu muryango w'ibihugu by'iburasirazuba bw'afurika – Imenyekanyisha rikosheje – Mu gihe hakozwe imenyekanisha ritari ryo kubera kwibeshya bigatuma hishyurwa imisoro micye, Komiseri wa za gasutamo afite ububasha bwo gusaba umusoreshwa kwishyura ikinyuranyo ku musoro yagombaga kwishyura utarishyuwe – Amategeko agenga imisoreshereze ya gasutamo mu muryango w'ibihugu by'iburasirazuba bw'Afurika 2004, ingingo ya 135.

Incamake y'ikibazo: Ikigo cy'Imisoro n'Amahoro cyakoreye igenzura Umurungi Umwizerwa ku bintu yatumije mu mahanga kuva mu mwaka wa 2010 kugera muri 2014, maze bamuca umusoro ku byaguzwe ungana na 49.636.583Frw n'umusoro ku nyongera gaciro ingana na 8.934.585Frw, iyi misoro ikaba ituruka ku mamenyekanisha akosheje Umurungi yagiye akora ubwo yatumizaga imitobe y'imbuto muri Uganda aho yishyuye umusoro ku byaguzwe ku ijanisha rya 5% aho kuba iya 39%, ibi bituma yishyura umusoro mucye ku byaguzwe n'umusoro ku nyongera gaciro nkeya, umusoro yishyuzwa wose hamwe ukaba ungana na 58.571.168Frw.

Umusoreshwa ntiyanyuzwe n'uburyo yaciwemo uyu musoro maze atanga ikirego mu Rukiko rw'Ubucuruzi rwa Nyarugenge, avuga ko ikigo k'imisoro n'amahoro cyamuciye iyi misoro mu buryo bunyuranyije n'amategeko kuko ashingiye ku itegeko rigenga imisoreshereze ya gasutamo mu bihugu byo mu muryango w'iburasirazuba bw'Afurika Komiseri wa za Gasutamo adafite ububasha bwo guca umusoro mu gihe umusoreshwa atemera icyaha cyo gukora no gukoresha ibyemezo mpimbano. Na none kandi nta n'ububasha bwo kumusubiza afite anasaba ko uwo musoro wakurwaho. Urukiko rwemeje ko Umurungi atsinzwe ku ngingo zose yaregeraga, rumutegeka kwishyura umusoro wose yaciwe, rugenera ikigo cy'imisoro n'amahoro indishyi.

Umusoreshwa yajuririye mu Rukiko Rukuru rw'Ubucuruzi, rwemeza ko imikirize y'urubanza rwajuririwe ihindutse ku ngingo zose, rutegeka ikigo cy'imisoro n'amahoro gusubiza Umusoreshwa igarama yatanze.

Ikigo cy'imisoro n'amahoro ntikishimiye imikirize y'urwo rubanza, maze kijuririra mu Rukiko rw'Ikirenga kivuga ko ibivugwa n'umusoreshwa yuko komiseri wa za gasutamo nta bububasha yari afite bwo kumuca umusoro, ashingiye ku byemejwe mu rubanza RCOMA0047/10/CS rwa Munyaneza n'ikigo k'imisoro n'amahoro rwaciwe n'urukiko rw'ikirenga mu gihe izi manza zitandukanye kuko muri urwo rubanza urukiko rwashingiye ku ngingo ya 203 y'itegeko rigenga imisoreshereze ya gasutamo mu b'ibihugu byo mu mu muryango w'iburasirazuba bw'Afurika rutegeka umusoreshwa kwishyura umusoro mu gihe uru rubanza ruburanishwa urukiko rwashingiye ku ya 135 y'iryo tegeko, bityo umusoreshwa agomba kwishyura ikinyuranyo kuko yakoze imenyekanyisha rikosheje asora umusoro muke igereranyije nuwo yagombaga gusora isoza isaba ko yahabwa indishyi. Umusoreshwa nawe yisobanura avuga ko gukora imenyekanyisha rikosheje cyangwa ritari ryo ari icyaha giteganywa n'ingingo ya 203 y'itegeko ryavuzwe hejuru kandi ko icyo cyaha kigomba kubanza gushyikirizwa inkiko zibifitiye ububasha hakagaragazwa uwakoze icyaha akanabiryozwa, akaba avuga ko kuberako atemera icyo cyaha, komiseri wa za Gasutamo nta bubasha yari afite bwo kumutegeka kwishyura uwo musoro nawe akaba abisabira indishyi.

Incamake y'icyemezo: Mu gihe hakozwe imenyekanisha ritari ryo kubera kwibeshya bigatuma hishyurwa imisoro mike, Komiseri wa za gasutamo afite ububasha bwo gusaba umusoreshwa kwishyura ikinyuranyo ku musoro yagombaga kwishyura utarishyuwe. Kuko uko kwibeshya bitandukanye no gukora icyaha cyo gukora no gukoresha ibyemezo mpimbano biteganywa mu ngingo ya 203.

Ubujurire bufite ishingiro.
Imikirize y'urubanza rwaciwe n'Urukiko Rukuru rw'Ubucuruzi irandutse.

Amategeko yashingiweho:
East African Community Customs Management Act, 2004, ingingo za 135, 203, 219 n'iya 220.

Urubanza zifashishijwe:
Munyaneza Evariste v. RRA, RCOMA0047/10/CS, rwaciwe n'Urukiko rw'Ikirenga rwaciwe kuwa 29/07/2011.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Uru rubanza rwatangiriye mu Rukiko rw'Ubucuruzi rwa Nyarugenge, Umurungi Umwizerwa arega Rwanda Revenue Authority kuba yaramuciye umusoro mu buryo bunyuranyije n'amategeko, kuko abakozi b'Ikigo cy'Imisoro n'Amahoro (Ishami rya za Gasutamo) bamukoreye igenzura ku bintu yatumije mu mahanga mu mwaka wa 2010 kugera 2014, maze bamuca umusoro ku byaguzwe (Taxe de consommation) ungana na 49.636.583Frw na TVA ingana na 8.934.585Frw, wose hamwe ukaba ungana na 58.571.168Frw.

[2] Uwo musoro yaciwe ukaba uturuka ku mamenyekanisha akosheje Umurungi Umwizerwa yagiye akora ubwo yatumizaga imitobe y'imbuto muri Uganda yishyura "taxe de consommation" ku ijanisha (rate) rya 5% aho kuba 39%, ibi bituma yishyura umusoro mucye ku byaguzwe (Taxe de consommation) na TVA nkeya. Mu Rukiko rw'Ubucuruzi rwa Nyarugenge, Umurungi yari yaregeye ingingo eshatu avuga ko Komiseri Mukuru atamushubije bityo umusoro ukaba ukwiye kuvaho, ko Komiseri wa za Gasutamo adafite ububasha bwo kumusubiza no kuba atari afite ububasha bwo guca umusoro ukomoka ku cyaha kandi icyo cyaha atacyemera.

[3] Mu rubanza RCOM1745/TC/NYGE rwaciwe ku wa 04/04/2016, Urukiko rw'Ubucuruzi rwa Nyarugenge rwemeje ko Umurungi Umwizerwa atsinzwe ku ngingo zose yaregeraga, rumutegeka kwishyura umusoro wose yaciwe ungana na 58.571.168Frw, rugenera Rwanda Revenue Authority indishyi zingana na 500.000Frw.

[4] Umurungi Umwizerwa ntiyishimiye icyemezo cy'Urukiko ku ngingo zose, ariko ajuririra Urukiko Rukuru rw'Ubucuruzi ku ngingo imwe gusa ijyanye nuko Komiseri wa za Gasutamo atari afite ububasha bwo guca umusoro ukomoka ku cyaha kandi icyo cyaha atacyemera anasaba ko n'umusoro ungana na 58.571.168Frw uhanagurwaho wose.

[5] Urukiko Rukuru rw'Ubucuruzi rwaciye urubanza RCOMA00215/2016/CHC/HCC kuwa 06/10/2016, rwemeza ko imikirize y'urubanza RCOM1745/TC/NYGE ihindutse ku ngingo zose, rutegeka Rwanda Revenue Authority kwishyura Umurungi Umwizerwa 75.000Frw y'igarama.

[6] Rwanda Revenue Authority ntiyishimiye imikirize y'urwo rubanza, ijuririra mu Rukiko rw'Ikirenga ivuga ko: (a) urubanza rwashingiweho n'urega ndetse n'Urukiko Rukuru rw'Ubucuruzi rukarushingiraho rwemeza ko Komiseri wa za Gasutamo atari afite ububasha bwo guca Umurungi Umwizerwa umusoro ntaho ruhuriye n'urwaburanwaga muri urwo Rukiko; (b) Indishyi zasabwe na Umurungi Umwizerwa nta shingiro zifite, bityo akaba atazigenerwa, ko ahubwo Urukiko rwamutegeka kwishyura Rwanda Revenue Authority indishyi zingana na 1.000.000Frw kubera izi manza yashowemo ku mahere.

[7] Urubanza rwaburanishijwe mu ruhame ku wa 11/07/2017, Rwanda Revenue Authority ihagarariwe na Me Karasira Sorezo Théogène, naho Umurungi Umwizerwa ahagarariwe na Me Nsengiyumva Abel.

II. IBIBAZO BIGIZE URUBANZA N'ISENGURWA RYABYO

1. Kumenya niba imenyekanisha ryakozwe na Umurungi Umwizerwa ryari rikosheje ku buryo Komiseri wa za Gasutamo yari afite ububasha bwo kumuca ikinyuranyo ku musoro atishyuye.

[8] Me Karasira Sorezo Théogène avuga ko urubanza rwashingiweho n'urega ndetse n'Urukiko Rukuru rw'Ubucuruzi rukarushingiraho rwemeza ko Komiseri wa Gasutamo atari afite ububasha bwo guca umusoro ntaho ruhuriye n'urwaburanishwaga muri urwo Rukiko, kubera ko muri urwo rubanza (RCOMA0047/10/CS), Munyaneza Evariste yari yaciwe umusoro hashingiwe ku biteganywa n'ingingo ya 203 ya East African Community Customs Management (EACCMA) mu gihe mu rubanza rusuzumwa ubu, Umurungi yaciwe amahoro hashingiwe ku biteganywa n'ingingo ya 135 ya EACCMA kubera ko icyo yakoresheje atari inyandiko zifite inenge (*false or incorrect documents*) nk'ibyabaye mu rubanza RCOMA0047/10/CS, ko ahubwo icyo yakoze ari imenyekanisha rikosheje ryanatumye asora make kuyo yagombaga gusora, bityo akaba agomba kwishyura ikinyuranyo, ibyo rero bikaba bitarebwa n'ingingo ya 203 ya EACCMA.

[9] Akomeza avuga ko mu rubanza RCOMA0047/10/CS (igika cya 12), Urukiko rw'Ikirenga rwasanze ingingo ya 135 ya EACCMA itashingirwaho hemezwa ko Komiseri wa za Gasutamo afite ububasha bwo kwishyuza umuntu bitabaye ngombwa kumukurikiranaho icyaha kuko iyi ngingo imaze kuvugwa ireba amafaranga umusoreshwa yishyuzwa iyo hari ikinyuranyo hagati y'amafaranga yagombaga kwishyura n'ayo yishyuye cyangwa hagati y'ayo yagombaga gusubizwa n'ayo yasubijwe.

[10] Me Nsengiyumva Abel, uburanira Umurungi Umwizerwa, avuga ko kuba Rwanda Revenue Authority ivuga ko hari gushingirwa ku ngingo ya 135 ya EACCMA atari byo, kuko ishaka kuyikoresha aho itakoreshwa. Avuga ko iyo ngingo irebana n'igihe umusoreshwa yasoze amafaranga make ugereranyije n'ayo yagombaga gusora cyangwa igihe yasubijwe amafaranga aruta ayo yagombaga gusubizwa iyo habanje kubaho imenyekanisha ry'agateganyo (*provisional entry*).

[11] Akomeza avuga ko, nk'uko bigaragara ku rupapuro rwa 11 rwa raporo ya "audit", abagenzuzi bavuga ko hakozwe "declaration" itari yo kuko "HS code" yakoreshejwe atari yo, gukora imenyekanisha ritari ryo bikaba ari icyaha giteganywa n'ingingo ya 203 y'itegeko rigenga za Gasutamo muri East Africa Community, naho ingingo ya 219 y'iri tegeko igaha Komiseri wa za Gasutamo uburenganzira bwo kwishyuza umusoreshwa iyo ubwe yiyemerera icyaha, ko kuba rero we nta cyaha yemera, bivuze ko Komiseri wa Gasutamo atari afite ububasha bwo kumutegeka kwishyura uriya musoro, ko ahubwo icyakorwa ari uko iki kibazo cyashyikirizwa inkiko zibifitiye ububasha nk'uko bivugwa mu ngingo ya 220 y'iryo tegeko hakagaragazwa uwakoze icyaha akanakiryozwa. Asoza avuga ko iyo habaye icyaha cya Gasutamo, nta bubasha bwo guca umusoro Komiseri wa Gasutamo aba afite, cyane cyane ko Umurungi Umwizerwa atanemera icyo cyaha.

UKO URUKIKO RUBIBONA

[12] Ingingo (Section) ya 135 ya East African Community Customs Management Act, 2004, ugenekereje, iteganya ko: "Iyo hakiriwe umubare muto w'amahoro cyangwa hakagira ibisubizwa bitewe no kwibeshya, icyo gihe, umuntu uzaba yatanze umubare muto cyangwa uzasubizwa amahoro yibeshye, agomba, abisabwe n'umukozi wa Gasutamo ubifitiye ububasha, kwishyura umubare uburaho cyangwa agasubiza umubare yashubijwe kubera kwibeshya, hitawe kuri buri cyiciro; kandi uwo mubare w'amahoro ugomba kugaruzwa nk'aho ari amahoro yerekeye ibicuruzwa byakiriweho amahoro macye cyangwa ibicuruzwa byasubijwe amahoro bibeshye, bitewe na buri cyiciro".

[13] Ingingo (Section) ya 203 (a) ya EACCMA iteganya ko : "aba akoze icyaha cyo gukora no gukoresha ibyemezo mpimbano (false documents) umuntu wese, mu bijyanye na gasutamo, ukoze imenyekanisha ry'ibinyoma cyangwa ritari ryo".

[14] Dosiye igaragaza ko Umurungi Umwizerwa yaciwe umusoro ungana na 49.636.583Frw na TVA ingana na 8.934.585Frw uturuka kuba yaragendaga akora imenyekanisha ritari ryo bigatuma yishyura imisoro ibariwe kuri 5% aho kuba 39%) ku bicuruzwa by'imitobe y'imbuto yatumizaga mu gihugu cya Uganda, ibi bikaba byaratumye yishyura umusoro mucye.

[15] Dosiye igaragaza na none ko mu baruwa yo ku wa 19/09/2016, Umurungi Umwizerwa yandikiye Komiseri wa Gasutamo, avuga ko yabwiwe ko yamenyekanishije "HS CODE" itari yo kuri "Joly Jus", akaba asaba ko Rwanda Revenue Authority yakwemera "HS CODE" yamenyekanishije kubera impamvu zinyuranye yagaragaje.

[16] Dosiye igaragaza, na none, ko ku wa 04/10/2016, Komiseri wa za Gasutamo yandikiye Umurungi Umwizerwa, asubiza ibaruwa ye yo ku wa 19/09/2016, amubwira ko hakurikijwe ibiteganyijwe muri "Section" ya 135 y'Itegeko Nº01/2005 ryo ku wa 01/01/2005 ry'Umuryango w'Ibihugu by'Afurika y'Iburasirazuba, yamenyekanishije muri "HS Code 2106.9010" aho kumenyekanisha muri "HS Code ya 2106.9099", bityo ko ibyemezo yamenyeshejwe kuri S.L Nº 22,23,24/CRMU/2016-2017 bidahindutse.

[17] Urukiko rurasanga, kuba Umurungi Umwizerwa yaragiye akora imenyekanisharitari ryo bigatuma yishyura imisoro micye, nta cyari kubuza Komiseri wa za Gasutamo ubifitiye ububasha gusaba ko yishyura umubare ubura ku musoro yagombaga kwishyura utarishyuwe nk'uko biteganywa n'ingingo ya 135 EACCMA imaze kuvugwa haruguru, iyi ngingo ikaba iteganya ko iyo hakiriwe umubare muto w'amahoro bitewe no kwibeshya, icyo gihe, umuntu

uzaba yatanze umubare muto yibeshye, agomba, abisabwe n'umukozi wa Gasutamo ubifitiye ububasha, kwishyura umubare uburaho kubera kwibeshya.

[18] Urukiko rurasanga, ibyo uburanira Umurungi Umwizerwa avuga ko hagomba gushingirwa ku ngingo ya 203 ya EACCMA, 2004, iteganya ko: "aba akoze icyahacyo gukora no gukoresha ibyemezo mpimbano (false documents) umuntu wese, mubijyanye na Gasutamo, ukoze imenyekanisha ry'ibinyoma cyangwa ritari ryo"; ko ibyo Umurungi yakoze byafatwa ko ari icyaha, nubwo atabyemera, bikaba bigomba kubanza gushyikirizwa Ubushinjacyaha, bitahabwa ishingiro, kuko nubwo muri iyi ngingo havugwamo gukora imenyekanisha ritari ryo cyangwa ry'ibinyoma, umutwe wayo uvuga gukora no gukoresha ibyemezo mpimbano (false documents), ibi rero bikaba binyuranyije n'ibyo Umurungi yakoze, kuko icyo yakoze ari gukoresha "HS Code" itari yo, bituma umusoro wagombaga kwishyurwa ugabanuka. Urukiko rurasanga mu nyandiko zose Komiseri wa za Gasutumo yandikiye Umurungi Umwizerwa[1], nta nahamwe yigeze avuga ko yakoze icyaha cyo gukoresha ibyemezo mpimbano (false documents) giteganywa n'ingingo ya 203 ya EACCMA, 2004, ngo noneho Rwanda Revenue Authority ibe irimo kwivuguruza ishingira ku ngingo ya 135 EACCMA.

[19] Urukiko rurasanga koko mu rubanza RCOMA0047/10/CS rwashingiweho n'urega ndetse n'Urukiko Rukuru rw'Ubucuruzi rukarushingiraho rwemeza ko Komiseri wa za Gasutamo atari afite ububasha bwo guca umusoro ntaho ruhuriye n'uru rubanza rwajuririwe, kuko muri urwo rubanza, Munyaneza Evariste yari yaciwe umusoro hashingiwe ku biteganywa n'ingingo ya 203 ya EACCMA aregwa kuba yarakoresheje inyemezabuguzi zitari iz'ukuri (*false or incorrect documents*) agamije gutubya agaciro kabarirwaho umusoro, mu gihe urubanza rusuzumwa muri uru Rukiko rurebana n'imisoro yaciwe Umurungi hashingiwe ku biteganywa n'ingingo ya 135 ya EACCMA kubera ko icyo yakoresheje atari inyandiko zifite inenge nk'ibyabaye mu rubanza RCOMA0047/10/CS, ko ahubwo ari imenyekanisha rikosheje ryanatumye asora amafaranga make kuyo yagombaga gusora, bityo akaba agombakwishyura ikinyuranyo, ibyo rero bikaba bitarebwa n'ingingo ya 203 ya EACCMA.

[20] Hashingiwe ku ngingo z'amategeko no ku bisobanuro bimaze gutangwa haruguru, Urukiko rurasanga Komiseri wa za Gasutamo yari afite ububasha bwo gutegeka Umurungi Umwizerwa kwishyura umubare w'amahoro yaburaga, mu gihe yari asanze umubare wishyuwe ari muto, bityo uyu akaba agomba gutegekwa kwishyura umusoro yaciwe.

2. Kumenya niba hari indishyi zategekwa kwishyurwa muri uru rubanza.

[21] Me Nsengiyumva Abel, uburanira Umurungi, avuga ko Rwanda Revenue Authority yategekwa kwishyura Umurungi igihembo cy'Avoka kingana na 1.000.000Frw ku rwego rw'ubujurire kubera kumushora mu manza nta mpamvu.

[22] Me Karasira Sorezo Joseph, uburanira Rwanda Revenue Authority, avuga ko indishyi Umurungi asaba nta shingiro zifite, bityo akaba atazigenerwa, ko ahubwo Urukiko ko rwamutegeka kwishyura Rwanda Revenue Authority indishyi zingana na 1.000.000Frw.

UKO URUKIKO RUBIBONA

[1] Reba urwandiko rufite Ref: 176/RRA/CCS/CED/PCA/2015 rwo ku wa 25/09/2015 n'urufite Ref: 2006/RRA/CCS/OAU/2016.

[23] Urukiko rurasanga amafaranga y'igihembo cy'Avoka Umurungi asaba ko Rwanda Revenue Authority yishyura nta shingiro afite kuko atsinzwe uru rubanza.

[24] Ku bijyanye n'indishyi zo gushorwa mu manza Rwanda Revenue Authority isaba, Urukiko rurasanga ikwiye kuzihabwa, ariko mu bushishozi bwarwo, rukaba ruyigeneye 500.000Frw yiyongera kuri 500.000Frw yahawe mu Rukiko rw'Ubucuruzi rwa Nyarugenge, kuko 1.000.000Frw isaba ari menshi ndetse ikaba nta n'ibimenyetso iyatangira.

III. ICYEMEZO CY'URUKIKO

[25] Rwemeje ko ubujurire bwa Rwanda Revenue Authority bufite ishingiro;

[26] Rwemeje ko imikirize y'urubanza RCOMA00215/2016/CHC/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku wa 06/10/2016 ihindutse;

[27] Rwemeje ko Komiseri wa za Gasutamo yaciye Umurungi Umwizerwa umusoro abifitiye ububasha;

[28] Rutegetse Umurungi Umwizerwa kwishyura umusoro wose yaciwe;

[29] Rutegetse Umurungi Umwizerwa guha Rwanda Revenue Authority 500.000Frw y'indishyi zo gushorwa mu manza, yiyongera kuri 500.000Frw yo mu Rukiko rw'Ubucuruzi rwa Nyarugenge, yose hamwe akaba 1.000.000Frw;

[30] Rutegetse Umurungi Umwizerwa gusubiza Rwanda Revenue Authority 100.000Frw y'ingwate y'amagarama yishyuye itanga ikirego.