

## AB v Mauritius Revenue Authority, 2007 SCJ 183, R no. 86226

### Using mark-up from a sample test to issue a VAT assessment

#### Background/Facts

AB engaged himself in restaurant and entertainment businesses. He was VAT registered and charged VAT on its supplies which were standard rated. Not being satisfied with the VAT returns submitted for the taxable periods 09/98 to 12/02, the tax authority (MRA) issued an assessment for Rs. 3, 020,015 without providing the basis upon which the assessment was issued. AB objected against the assessment contending that the computation was not based on facts and that AB was not provided with the reasons for the issue of the assessment.

#### Objection/Appeal

The MRA determined the objection by maintaining the assessment on the ground that despite the agreement by AB to submit a mark-up exercise to support his objection, such was not provided.

Being dissatisfied with the decision of the objection, AB lodged written representations to the Assessment Review Committee (ARC) on the grounds that the mark up exercise for drinks was not correct and that the basis used to estimate the taxable supplies were wrong. The ARC viewed after taking into consideration the submissions of both parties that the mark up exercise prepared by each party may be biased and decided to adopt a middle figure between the respective exercises.

AB's case before the ARC was that he had always kept proper accounting records which had been examined by qualified accountants and which have been duly submitted to the MRA. AB declared that unless the MRA had evidence which showed that the accounts were incorrect or that any invoices had not been included in the supplies declared, the MRA cannot disregard the accounts and proceed to another method of calculation where the percentage mark-up exercise had been done on drinks only and then applied the mark up to all sales including food and entrance tickets.

#### Objection/Appeal

Being aggrieved with the decision of the ARC, AB appealed to the Supreme Court. The respondent, MRA, was unable to support the finding of the ARC in the absence of any apparent basis for the adoption of the middle figure. It was found that the ARC was wrong to accept that the percentage mark-up advanced by the MRA was used

- As there was no evidence that the accounts and records of AB did not disclose the correct taxable supplies
- The method of computation used by the respondent, MRA, was substantially misconceived
- There was no basis to arrive at its percentage mark up in the absence of any evidence.

#### Conclusion

The appeal was allowed.