

## **XYZ Ltd v The ARC & The MRA, 2010 SCJ 442, R No. 97413**

### **Adopting a mark-up irrationally to make a VAT assessment**

#### **Background/Facts**

XYZ Ltd is VAT registered and imports second-hand vehicles for resale. The tax authority (MRA) was not satisfied with the company's VAT returns finding that the number of cars imported by the company was less as recorded at Customs and stating that the company failed to produce records and documents despite several requests. On 18 August 2005, the tax authority raised a VAT assessment claiming Rs.1, 805,195 for the VAT periods 02/02 to 06/05.

#### **Objection**

Not being satisfied with the assessment, XYZ Ltd lodged on 24 August 2005 an objection against the assessment on the grounds that the assessment was grossly exaggerated and that the mark-up of 30% adopted was without foundation. Subsequently, the tax authority requested detailed sales listings and audited financial statements for the relevant years. Due to discrepancies revealed from the sales listings, the tax authority determined the objection by maintaining the assessment.

#### **Representation**

On 13 March 2006, XYZ Ltd lodged written representations before the Assessment Review Committee (ARC) on the grounds that the 30% mark-up adopted by the MRA was overestimated claiming that its highest profit margin turned around 16% of the value and added that the MRA was wrong to use Customs figures rather than the deeds of sale of the cars which are official documents recognised by the National Transport Authority. The company made a working exercise showing a mark-up of 10% of the value of the goods on the market.

It was presented that the company had sent as documents the deeds of sale of the cars sold but the MRA needed instead the actual invoices or receipts that the company issued to its purchasers.

The ARC concluded that the MRA was entitled to raise an assessment on information it had available especially that the company had not produced all required documents and records.

The ARC came to the conclusion that the import value given by the company could not be relied upon, that the mark-up of 10.62 % as claimed by the company was untenable and that the revised mark-up of 27.10 % had remained unchallenged.

#### **Supreme Court**

XYZ Ltd appealed to the Supreme Court against the decision of the ARC submitting among the arguments that the MRA mark-up exercise was not carried out in a rational manner whilst failing to adduce any evidence of the information available at the time it raised the mark-up. The company is not challenging the right of the MRA to raise an assessment but rather the company is contesting the quantum.

The Court viewed that the ARC erred on its finding that at the time of the assessment, the company had not produced all required documents and records. The Court found no evidence as to what documents were requested which the company had failed to produce before the assessment was raised especially invoices and bank statements. It was further highlighted that the record of every transaction that the company had to keep under the VAT Act was never meant to include a document, like for example, the bank statement. It was thus mentioned that bank statements had to be specifically requested from a taxpayer if the MRA desires to look at those documents for the purpose of ascertaining the taxpayer's liability.

The Court found that the decision of the ARC to maintain the assessment was flawed as it was not a fair one since there was no explanation as to how the mark-up was calculated which led to a confusion regarding the actual mark-up. The Court emphasised that a mark-up exercise has to be conducted in a rational way. As conceded by counsel for MRA, there is no explanation as to how the MRA reached the mark-up of 27.10 %.

The Court quashed the decision of the ARC and remitted the case back to the ARC to be dealt with in the light of the judgment.