UMURUNGI UMWIZERWA v RWANDA REVENUE AUTHORITY

[Rwanda URUKIKO RW'IKIRENGA – RS/REV/RCOM 00004/2017/SC (Cyanzayire, P.J; Rukundakuvuga na Hitiyaremye. J) 07 Kamena 2019]

Amategeko agenga Ibimenyetso n'itangwa ryabyo mu Nkiko – Ikimenyetso gishya – Ikimenyetso Avocat yaburanishije mu rundi rubanza, uwo yunganira ntiyakwitwaza ko atakimenye mu gihe bigaragara ko Avocat umuburanira yagikoresheje kuko Avocat afite inshingano zo kugira inama uwo yunganira mu buryo bwose harimo no kumenya ibimenyetso yaburanisha kugira ngo atsinde urubanza

Incamake y'Ikibazo: Umurungi Umwizerwa yareze Ikigo cy'Imisoro n'Amahôro (Rwanda Revenue Authority) mu Rukiko rw'Ubucuruzi rwa Nyarugenge kuba yaramuciye umusoro mu buryo bunyuranyije n'amategeko. Mu guca urubanza Urukiko rwemeje ko Umurungi Umwizerwa atsinzwe ku ngingo zose yaregeraga.

Umurungi Umwizerwa ntiyishimiye icyemezo cy'Urukiko ku ngingo zose, ariko ajuririra Urukiko Rukuru rw'Ubucuruzi ku ngingo imwe gusa ijyanye n'uko Komiseri wa za Gasutamo atari afite ububasha bwo guca umusoro ukomoka ku cyaha kandi icyo cyaha atacyemera, anasaba ko umusoro umuhanagurwaho wose.

Urukiko Rukuru rw'Ubucuruzi rwaciye urubanza rwemeza ko imikirize y'urubanza ihindutse ku ngingo zose, runategeka Ikigo cy'Imisoro n'Amahôro (Rwanda Revenue Authority) kwishyura Umurungi Umwizerwa amafaranga y'igarama yatanze atanga ikirego.

Ikigo cy'Imisoro n'Amahôro (Rwanda Revenue Authority) nticyishimiye imikirize y'urwo rubanza, kijuririra mu Rukiko rw'Ikirenga zimwe mu mpamvu zatumye ijurira nuko urubanza rwashingiweho n'urega nk'urwatanze umurongo kuri iki kibazo ndetse n'Urukiko Rukuru rw'Ubucuruzi rukarushingiraho ntaho ruhuriye n'urwaburanwaga muri urwo Rukiko

Muguca urubanza, Urukiko rw'Ikirenga, rwemeje ko ubujurire bw'Ikigo cy'Imisoro n'Amahôro (Rwanda Revenue Authority) bufite ishingiro rutegeka Umurungi Umwizerwa kwishyura umusoro wose yaciwe.

Umurungi Umwizerwa yatanze ikirego cyo gusubirishamo urubanza ingingo nshya avuga ko nyuma y'icibwa ry'urubanza yabonye ibimenyetso simusiga bigaragaza ko yarenganye. Ibimenyetso bishya Umurungi Umwizerwa yatanze muri uru rubanza ni; inyandikomvugo imenyesha icyaha (Statement of Customs and tax offences) N°117/PCA/2015 yo ku wa 18/12/2015 Ikigo cy'Imisoro n'Amahoro cyakoreye Auto EXPRESS n'inyandikomvugo imenyesha icyaha N° 016/PCA/2016 yo ku itariki 6/04/2016 yakorewe sosiyete yitwa DATA TRONICS;

Ikigo cy'Imisoro n'Amahôro (RRA) mu busobanuro bwacyo, kivuga ko ikirego cya Umurungi Umwizerwa kitakwakirwa kuko ibimenyetso asaba ko bishingirwaho kugira ngo urubanza rusubirwemo ingingo nshya atari bishya kuko na mbere yuko urubanza rucibwa byari bihari kuko byaburanishijwe na Avoka wa Umurungi Umwizerwa muzindi manza kuburyo rero bashoboraga kubibona mbere y'uko urubanza rusabirwa gusubirishwamo rupfundikirwa bakabiburanisha.

Incamake y'icyemezo: Ikimenyetso Avocat yaburanishije mu rundi rubanza, uwo yunganira ntiyakwitwaza ko atakimenye mu gihe bigaragara ko Avocat umuburanira yagikoresheje mu rundi rubanza kuko Avocat afite inshingano zo kugira inama uwo yunganira mu buryo bwose harimo no kumenya ibimenyetso yaburanisha kugira ngo atsinde urubanza

Ikirego gisaba gusubirishamo urubanza ingingo nshya nticyakiriwe;

Amategeko yashingiweho:
Itegeko N° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi. Ingingo ya 186 agace ka 3

Imanza zifashishijwe:
RCOMA 0047/10/CS rwaciwe ku wa 29/07/2011, igika cya 14 haburana Munyaneza na RRA
RS/REV/CIV 0001/15/CS rwaciwe kuwa 21/04/2017 haburana Nyamaswa na Mukamusoni, mu gika 22
RS/REV/Com 0001/CS rwaciwe n'Urukiko rw'Ikirenga kuwa 26/02/2016, haburana BRALIRWA Ltd na Sindikubwabo Cyprien, mu gika cya 26

Urubanza

I. IMITERERE Y'URUBANZA

[1] Umurungi Umwizerwa nk'umucuruzi watumizaga imitobe y'imbuto muri Uganda, yagiye akora amamenyekanisha y'imisoro akosheje, yishyura "taxe de consommation" ku ijanisha (rate) rya 5% aho kuba 39%[1], ibi bituma yishyura umusoro muke ku byaguzwe (*Taxe de consommation*) na TVA nkeya. Nyuma y'uko abakozi b'Ikigo cy'Imisoro n'Amahoro (Ishami rya za Gasutamo) bamukoreye igenzura ku bintu yatumije mu mahanga kuva mu mwaka wa 2010 kugera 2014, bamuciye umusoro ku byaguzwe (Taxe de consommation) ungana na 49,636,583 Frw na TVA ingana na 8,934,585 Frw, wose hamwe ukaba ungana na 58,571,168 Frw.

[2] Ibyo byatumye Umurungi Umwizerwa arega Ikigo cy'Imisoro n'Amahôro (Rwanda Revenue Authority) mu Rukiko rw'Ubucuruzi rwa Nyarugenge kuba yaramuciye umusoro mu buryo bunyuranyije n'amategeko; ibyo akabishingira ku mpamvu zikurikira:

a Kuba Komiseri Mukuru ataramusubije mu gihe giteganywa n'amategeko bityo ko umusoro ukwiye kuvaho;

b Kuba Komiseri wa za Gasutamo adafite ububasha bwo kumusubiza;

c kuba Komiseri wa za Gasutamo atari afite ububasha bwo guca umusoro ukomoka ku cyaha kandi atemera ko ibyabaye bigize icyaha;

[3] Mu rubanza RCOM 1745/TC/NYGE rwaciwe ku wa 04/04/2016, Urukiko rw'Ubucuruzi rwa Nyarugenge rwemeje ko Umurungi Umwizerwa atsinzwe ku ngingo zose yaregeraga rushingiye ku mpamvu zikurikira:

a Komiseri Mukuru yasubije ubujurire bwa Umurungi Umwizerwa mu gihe giteganywa n'itegeko kuko yasubije iminsi miringo itatu (30) itarashira; bityo gusaba gukurirwaho umusoro yaciwe bikaba nta shingiro bifite

[1] *Nk'uko biteganywa n'ingingo ya 135 ya East African Community Customs Management (EACCMA), Act, 2004*

b Impamvu y'uko Komiseri wa za Gasutamo nta bubasha yari afite bwo guca Umwizerwa Umurungi umusoro nta shingiro bifite;

c Komiseri Mukuru afite ububasha bwo gutegeka Umwizerwa Umurungi kwishyura umubare w'amahoro atishyuye mu gihe asanze yarishyuye amahôro make bitagombye kubanza kwemezwa nk'icyaha;

[4] Umurungi Umwizerwa ntiyishimiye icyemezo cy'Urukiko ku ngingo zose, ariko ajuririra Urukiko Rukuru rw'Ubucuruzi ku ngingo imwe gusa ijyanye n'uko Komiseri wa za Gasutamo atari afite ububasha bwo guca umusoro ukomoka ku cyaha kandi icyo cyaha atacyemera, anasaba ko umusoro ungana na 58,571,168 Frw umuhanagurwaho wose.

[5] Ku wa 06/10/2016, Urukiko Rukuru rw'Ubucuruzi rwaciye urubanza RCOMA 00215/2016/CHC/HCC, rwemeza ko imikirize y'urubanza RCOM 1745/TC/NYGE ihindutse ku ngingo zose, rutegeka Ikigo cy'Imisoro n'Amahôro (Rwanda Revenue Authority) kwishyura Umurungi Umwizerwa 75,000 Frw y'igarama.

[6] Ikigo cy'Imisoro n'Amahôro (Rwanda Revenue Authority) nticyishimiye imikirize y'urwo rubanza, kijuririra mu Rukiko rw'Ikirenga, gishingiye ku mpamvu zikurikira:

a urubanza rwashingiweho n'urega nk'urwatanze umurongo kuri iki kibazo[2] 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, kuko muri urwo rubanza (Nº RCOMA 0047/10/CS), Munyaneza Evariste yari yaciwe umusoro hashingiwe ku biteganywa n'ingingo ya 203 ya East African Community Customs Management Act (EACCMA) mu gihe mu rubanza rusuzumwa ubu, Umurungi yaciwe amahoro hashingiwe ku biteganywa n'ingingo ya 135 ya EACCMA. Ikigo cy'Imisoro n'Amahôro gisobanura ko icyo Umurungi Umwizerwa yakoresheje atari inyandiko zifite inenge (false or incorrect documents) nk'ibyabaye mu rubanza RCOMA 0047/10/CS, ko ahubwo icyo yakoze ari imenyekanisha rikosheje ryanatumye asora make kuyo yagombaga gusora[3], bityo akaba agomba kwishyura ikinyuranyo, ibyo rero bikaba bitarebwa n'ingingo ya 203 ya EACCMA;

b Indishyi zasabwe na Umurungi Umwizerwa nta shingiro zifite, bityo akaba atazigenerwa, ahubwo Urukiko rwamutegeka kwishyura Ikigo cy'Imisoro n'Amahôro (Rwanda Revenue Authority) indishyi zingana na 1,000,000 Frw kubera izi manza yashowemo ku maherere.

[7] Mu rubanza RCOM 00066/2016/SC - RCOMAA 0072/16/CS rwaciwe ku wa 28/07/2017, Urukiko rw'Ikirenga, rushingiye ku ngingo (Section) ya 135 n'iya (Section) ya 203 (a)[4] za East African Community Customs Management Act, 2004[5] :

a rwemeje ko ubujurire bw'Ikigo cy'Imisoro n'Amahôro (Rwanda Revenue Authority) bufite ishingiro kuko kuba Umurungi Umwizerwa yaragiye akora imenyekanisha ritari ryo bigatuma

---

[2] Urubanza RCOMA 0047/10/CS rwaciwe ku wa 29/07/2011, paragraphe 14 "Urukiko rw'Ikirenga rurasanga rero hashingiwe kuri izo ngingo, nta bubasha Ikigo cy'Igihugu gishinzwe kwinjiza imisoro n'amahoro gifite bwo kwishyuza Munyaneza imisoro, amahoro n'ihazabu bishingiye ku cyaha atemera cyo gukoresha inyandiko zitari iz'ukuri agamije gutubya agaciro kabarirwaho umusoro keretse, nk'uko byemejwe n'umucamanza wa mbere, icyaha agihamijwe n'inkiko zisanzwe ziburanisha imanza z'inshinjabyaha."

[3] Asora ku ijanisha (rate) rya 5% aho kuba 39%

[4] Ivuga 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"

[5] Ivuga 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

yishyura imisoro mike, 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; 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.

b rutegeka ko imikirize y'urubanza RCOMA 00215/2016/CHC/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku wa 06/10/2016 ihindutse,

c rutegeka Umurungi Umwizerwa kwishyura umusoro wose yaciwe ungana na 58.571.168 Frw;

d rutegeka kandi Umurungi Umwizerwa guha Rwanda Revenue Authority 500,000 Frw y'indishyi zo gushorwa mu manza, yiyongera kuri 500, 000 Frw yo mu Rukiko rw'Ubucuruzi rwa Nyarugenge, yose hamwe akaba 1,000, 000 Frw.

[8] Umurungi Umwizerwa yatanze ikirego cyo gusubirishamo urubanza RCOMAA 00066/2016/SC-RCOMAA 0072/16/CS ingingo nshya avuga ko nyuma y'icibwa ry'urubanza yabonye ibimenyetso simusiga bigaragaza ko yarenganye, ashingiye ku ngingo ya 186,3o y'Itegeko N° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi ryariho icyo gihe[6], anasaba ko amafaranga yaciwe avugwa mu gika kibanziriza iki yakurwaho. Ikigo cy'Imisoro n'Amahôro (RRA) gisaba ko ikirego cya Umurungi Umwizerwa kitakwakirwa kuko ibimenyetso asaba ko bishingirwaho kugira ngo urubanza rusubirwemo ingingo nshya atari bishya kuko bashoboraga kubibona mbere y'uko urubanza rusabirwa gusubirishwamo rupfundikirwa.

[9] Ibimenyetso bishya Umurungi Umwizerwa yatanze muri uru rubanza ni ibi bikurikira:

a inyandikomvugo imenyesha icyaha (Statement of Customs and tax offences) N°117/PCA/2015 yo ku wa 18/12/2015 Ikigo cy'Imisoro n'Amahoro cyakoreye Auto EXPRESS;

b inyandikomvugo imenyesha icyaha N° 016/PCA/2016 yo ku itariki 6/04/2016 yakorewe sosiyete yitwa DATA TRONICS;

[10] Rwanda Revenue Authority(RRA) yabanje gutanga inzitizi yo kuba Umurungi Umwizerwa yaratanze ikirego cy'ingingo nshya akererewe, ariko mu iburanisha ry'uru rubanza ryo kuwa 07/05/2019 yemera ko icyo kibazo kitakiri ngombwa ahubwo yitsitsa ku kuba ibi bimenyetso UMURUNGI Umwizerwa atanga atari bishya kuko byari bisanzwe bihari.

[11] Urukiko rwasanze mbere yo gusuzuma ibijyanye n'amafaranga Umurungi Umwizerwa yategetswe gutanga, hakwiye kubanza gusuzumwa ibijyanye n'iyakirwa ry' ikirego.

II. IKIBAZO KIGOMBA GUSUZUMWA

[12] Urukiko rurasanga muri uru rubanza hagomba kubanza gusuzumwa ibijyanye no kumenya niba inyandikomvugo zimenyesha icyaha zakorewe amasosiyete AUTO EXPRESS na DATA TRONICS ari ikimenyetso gishya ku rubanza RCOMAA 00066/2016/SC-RCOMAA 0072/16/CS;

---

[6] Iyo ngingo ivuga ko "urubanza rushobora gusubirishwamo ingingo nshya kubera imwe mu mpamvu zikurikira: … 3° kuva aho urubanza ruciriwe habonetse ibimenyetso bya kamarampaka bigaragaza neza akarengane katewe n'urubanza rusabirwa gusubirwamo; icyo kimenyetso cyaba kiri mu nyandiko zatanzwe mu rubanza ariko Urukiko ntirukibone cyangwa cyaragaragajwe nyuma

III. ISESENGURA RY'IKIBAZO KIRI MURI URU RUBANZA

[13] Me Kayitare Paul uhagarariye Umurungi Umwizerwa, asobanura ko izo nyandikomvugo ari ibimenyetso bishya kuko:

a zigaragaza ko igihe cyose hakoreshejwe HS code itari yo, haba habaye icyaha giteganywa mu ngingo ya 203 ya EACMA, ibyo akaba ari nako Ikigo cy'Imisoro n'Amahôro (RRA) cyabifashe ku ma sosiyete nka Autoxpress na DATA TRONICS nk'uko bigaragazwa n'izo nyandikomvugo zimenyesha icyaha.

b Zabonetse nyuma y'uko mu rubanza RCOMAA 00066/2016/SC-RCOMAA 0072/16/CS7, Urukiko rwemeje ko igihe habaye kwibeshya ku ngano y'umusoro ugomba gutangwa, Ikigo cy'Imisoro n'Amahoro gishobora gutegeka, nk'uko biteganywa n'ingingo ya 135 EACCMA, kwishyura umubare waburaga ku musoro ukwiye; kandi iyo Urukiko ruba rwarazibonye, rwari no kubona ko Komiseri Mukuru wa za Gasutamo atari afite ububasha bwo kumwishyuza imisoro ibura kuyo bavuga yagombaga kwishyurwa, hatabayeho ko uwishyuzwa abanza gukurikiranwaho icyo cyaha.

[14] Rwanda Revenue Authority (RRA) ntiyemera ko izi mpamvu Umurungi Umwizerwa atanga zigize ingingo nshya kuko:

a ibyo guhamya ko igihe cyose habayeho kumenyekanisha umusoro akoresheje HS Code itari yo biba ari icyaha atari byo kuko kugira ngo habeho icyaha hagomba kuba hari umugambi wo kugikora; ko ibyabaye Komiseri Mukuru yabisesenguye agasanga yarabikoze atabigambiriye, ahubwo ari ukwibeshya; bikaba rero bitari gutuma bamurega icyaha mu gihe nta bushake bwo kugikora yari afite; ariko ko ibyo bitari kumubuza gutegekwa kwishyura umusoro ubura k'uwo yagombaga kwishyura;

b Izo nyandikomvugo zari zinahari igihe hacibwaga urubanza rusabirwa gusubirishwamo ingingo nshya, icyo gihe zikaba zitaraburanishijwe ku bwende bwabo;

[15] Me Kayitare Paul uburanira Umurungi Umwizerwa avuga ko kuba izi nyandikomvugo zari zihari na mbere y'uko urubanza rusabirwa gusubirishwamo ingingo nshya rucibwa, Umurungi Umwizerwa atari kubimenya. Asobanura ko kuba zarakozwe kera ariko we akazimenya mu kwezi kwa cyenda 2017, nyuma y'icibwa ry'urubanza asabira gusubirishwamo, bitari kubuza ko abigaragariza Urukiko nk'ingingo nshya igihe asanga ibyo zavuze ku bacuruzi bari bakoze amakosa nk'aye bikitwa icyaha, hari umucyo byazanira Urukiko kugira ngo arenganurwe.

[16] Me Kayitare Paul akomeza avuga ko n'Avoka waburaniye Umurungi Umwizerwa mu rubanza rusabirwa gusubirishwamo atari kubimenya igihe atabihawe, kuko Avoka atari we ushakira umuburanyi ibimenyetso, ko ahubwo umuburanyi amuha urubanza akamuha n'ibimenyetso. Naho ku byerekeranye no kuba muri izo manza avuga hari izo Avoka wamuburaniye yigeze kuburana nk'uko Rwanda Revenue Authority ibiburanisha mu myanzuro yayo[8], Me Kayitare Paul asanga ibyo bitabuza Umurungi Umwizerwa kuzikoresha nk'ikimenyetso, kuko Umurungi Umwizerwa ari nawe nyir'urubanza atari afite ubushobozi bwo kuzigira kugira ngo azikoreshe nk'ikimenyetso mu rubanza rwe.

---

[7]Reba igika cya 6,a by'uru rubanza

[8]RCOM 00378/2017/TC/NYGE

[17] Mu gusubiza kuri iyo ngingo, Me Karasira Sorezo Théogène avuga ko inyandikomvugo zakorewe amasosiyete AUTO EXPRESS na DATA TRONICS atari ibimenyetso bishya byabonetse cyangwa bamenye nyuma y'urubanza basabira gusubirishwamo ingingo nshya, ku mpamvu zikurikira:

a Inyandikomvugo imenyesha icyaha yakorewe AUTO EXPRESS yaburanishijwe mu rubanza RCOM 00378/2017/TC/NYGE rukanajuririrwa mu Rukiko Rukuru rw'Ubucuruzi, ikirego gishingiye kuri iyo nyandikomvugo kandi urwo rubanza ruburanwa na Me Nsengiyumva Abel;

b Me Nsengiyumva Abel ni nawe wari uhagarariye Umurungi Umwizerwa mu rubanza rusabirwa gusubirishwamo, ndetse akaba ari nawe waruburanye kuva rugitangira mu Rukiko rw'Ubucuruzi. Bityo, iyo aza kubona ko iyo nyandikomvugo yari gutuma ikibazo cya Umurungi Umwizerwa gikemuka yari kuyikoresha mu rubanza asabira gusubirishwamo kimwe n'izarubanjirije, kuko atari ayobewe ko ihari.

c Inyandikomvugo imenyesha icyaha yakorewe DATA TRONICS isa n'iyakorewe AUTO EXPRESS kandi nayo yari ihari na mbere y'icibawa ry'urubanza rusabirwa gusubirishwamo, iyo ikenerwa iba yarakoreshejwe.

[18] Ibyo kuba mugenzi we avuga ko Avoka n'uwo ahagarariye batagomba kwitiranywa kuko badahuje inshingano mu byo gushaka ibimenyetso n'imanza zaciwe ngo kuko iyo nshingano ari iya nyiri urubanza, Me Karasira Sorezo Thèogene asanga atari byo kuko Avoka agomba kwita ku rubanza agiye kuburana, ko ibyari bizwi na Me Nsengiyumva Abel mu rubanza rusabirwa gusubirishwamo ingingo nshya bifatwa nk'aho n'uwo yari ahagarariye (Umurungi Umwizerwa) yari abizi. Bityo, ko nta n'uwavuga ko ibimenyetso baburanisha (izo nyandikomvugo) bitashoboraga kuboneka kuko n'uwafata ko batandukanye, bari bafite inshingano zo kuganira ku ngingo n'ibimenyetso baburanisha.

UKO URUKIKO RUBIBONA

[19] Nk'uko biteganywa n'ingingo ya 186 y'Itegeko N° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi mu gace ka 3, ryakoreshwaga mu gihe Umurungi Umwizerwa yasubirishagamo urubanza ingingo nshya, ikimenyetso kitwa gishya iyo "kuva aho urubanza ruciriwe habonetse ibimenyetso bya kamarampaka bigaragaza neza akarengane katewe n'urubanza rusabirwa gusubirwamo.

Mu gusobanura iyi ngingo, Urukiko rw'Ikirenga rwagaragaje mu manza zinyuranye ko ikimenyetso kitwa gishya iyo kitari kizwi, kitarashoboraga kuboneka kandi ari kamarampaka; ni ukuvuga ko iyo kiboneka urukiko rwari gufata icyemezo kinyuranye n'icyo rwafashe[9].

[20] Urukiko rurasanga inyandikomvugo zimenyesha icyaha (Statement of Customs and tax offences), yaba iyakorewe AUTO EXPRESS N°117/PCA/2015 yo kuwa 18/12/2015 cyangwa n'indi nyandikomvugo N° 016/PCA/2016 yo ku itariki 6/04/2016 yakorewe sosiyete yitwa DATA TRONICS, Me Kayitare Paul uhagarariye Umurungi Umwizerwa yita ibimenyetso bishya, ari ibimenyetso byari biriho mbere y'uko

---

[9]Reba urubanza Nº RS/REV/CIV 0001/15/CS rwaciwe kuwa 21/04/2017 haburana Nyamaswa na Mukamusoni, mu gika 22 aho Urukiko rw'Ikirenga rwagize ruti: "Urukiko rurasanga kandi n'iyo iyo nyandikomvugo yafatwa nk'aho atariyo yaburanishijwe ……nabwo ntiyafatwa nk'ikimenyetso gishya cyatuma urubanza RCAA 0022/12/CS rusubirishwamo ingingo nshya, kuko Nyamaswa uyiburanisha yari asanzwe azi ko ihari nyamara ntiyayisaba ngo ayifashishe akaba atanagaragaza ko bitanashobokaga kubona iyo nyandiko yita ikimenyetso gishya ngo agikoreshe mu rubanza yaburanaga igihe rwari rutaraba itegeko". Reba n'urubanza nº RS/REV/Com 0001/CS rwaciwe n'Urukiko rw'Ikirenga kuwa 26/02/2016, haburana BRALIRWA Ltd na Sindikubwabo Cyprien, mu gika cya 24 & 26

urubanza rusabirwa gusubirishwamo ingingo nshya rucibwa, kandi bigaragara ko byari bizwi cyangwa se nibura ko byashoboraga kugerwaho igihe cyose bishakiwe; ndetse akaba atari n'ibimenyetso kamarampaka:

a **Kuba byari bizwi**: Urukiko rwasanze inyandikomvugo yakorewe AUTO EXPRESS N°117/PCA/2015 yarigeze kuburanishwa na Me Abel Nsengiyumva mu rubanza RCOM 00378/2017/TC/NYGE10, uyu kandi akaba ari nawe waburanye urubanza rusabirwa gusubirishwamo ingingo nshya. Rusanga rero kuba atarayihaye agaciro ngo ayikoresheje mu iburanisha ry'urwo rubanza11, yarabikoze ku bwende bwe, bityo amategeko akaba atamwemerera kuyikoresha nk'ikimenyetso gishya. Kuvuga ko Avoka adafite inshingano zo gushakira umuburanyi ibimenyetso nk'uko bivugwa n'uburanira Umurungi Umwizerwa, Urukiko rusanga icyo gisobanuro nta shingiro gifite cyane cyane iyo ibyo bimenyetso bishingiye ku manza zaciwe12, kuko nk'uko biteganywa mu ngingo ya 130 y'Amategeko ngengamikorere y'Urugaga rw'Abavoka mu Rwanda agace ka 10113, Avoka agomba guha amakuru umukiriya we ku mahirwe afite yo gutsinda urubanza. Muri urwo rwego agomba kugenzura ibimenyetso aburanisha, akamugira inama ku byo akwiye gushaka, akanamwereka amategeko azashingiraho kugira ngo atsinde, harimo n'imanza zaciwe. Kuba rero Umurungi Umwizerwa ataragiriwe inama ku buryo bukwiye ngo umwunganira amwereke ibimenyetso n'imanza zaciwe atekereza ko byari kumufasha gutsinda urubanza kugeza ubwo ruciwe ku rwego rwa nyuma, kandi yari yamuhaye uburenganzira busesuye bwo kumuhagararira muri izo manza, ntiyahindukira ngo yitwaze ko ibimenyetso byari bifitwe n'umuhagarariye, we aribwo yari akibibona ku buryo byakwitwa ibimenyetso bishya.

Kuba byarashoboraga kuboneka:

Nk'uko byasobanuwe mu bika kibanziriza iki, inyandikomvugo imenyesha icyaha yakorewe AUTO EXPRESS yari isanzwe izwi kuko yigeze gukoreshwa n'umuburanyi mu rubanza rumwe[14], akaba ashaka no kuyitwaza nk'ikimenyetso gishya muri uru rubanza. Ikibazo cyaba kumenya niba iyakorewe DATA TRONICS yo itarashoboraga kuboneka. Kuri iki kibazo, uretse no kuba izo nyandikomvugo zari zigamije gukoreshwa zisobanura ikintu kimwe (ko imenyekanishamusoro rikosheje ari icyaha) bityo imwe ikaba yasimbura indi nk'ikimenyetso, Urukiko rusanga iyi nyandiko nayo ntacyari kuyibuza kuboneka iyo ishakwa kare kuko aho ishakiwe, n'ubwo byari impitagihe, yabonetse nta mihango yihariye bibanje gusaba cyangwa ngo bigaragare ko yari ihishe mu buryo runaka ahantu hatari gupfa kumenyekana. Ibimenyetso bishya si ibimenyetso utashatse cyangwa wibujije gushaka ku burangare cyangwa ku makosa yawe, ahubwo ni ibimenyetso wagerageje gushaka ariko ku mpamvu zigoranye kandi zumvikana ukaba utarashoboraga kubigeraho[15].

Kuba atari ibimenyetso kamarampaka:

---

[10] Reba urwo rubanza mu gika cya:11
[11] RCOM 00066/2016/SC-RCOMAA 0072/16/CS
[12] RCOM 00378/2017/TC/NYGE na RCOM 00017/2017/TC/NYGE
[13] Ingingo ya 130 y'Amategeko ngengamikorere y'Urugaga rw'Abavoka mu Rwanda agace ka 10 iteganya ko: *"Ni inshingano y'Umwavoka, nk'urugero aho agomba guha amakuru umukiriya we ku mahirwe afite yo gutsinda urubanza*
[14]RCOM 00378/2017/TC/NYGE
[15]"Le Tribunal peut réviser un jugement antérieur lorsqu'un fait nouveau est découvert, à condition que ce fait ait été

découvert trop tard pour avoir pu être invoqué dans la première procédure et **qu'il n'ait pas été possible de le découvrir, en faisant preuve de diligence, à l'époque de la procédure antérieure**." Cfrt Jugements TAOIT (Tribunal administrative de l'organisation international du Travail), jugement 3079, 112eme session, 2012, considerant 6 accessible sur le site web http://www.ilo.org/dyn/triblex/triblexmain.showList?p_lang=fr&p_keyword_id=15.

Ibi ni nabyo byemejwe mu rubanza RS/REV/CIV 0001/15/CS rwaciwe kuwa 21/04/2017 haburana Nyamaswa na Mukamusoni, mu gika 24, aho rwashimangiye ibivugwa mu rubanza "N° RS/REV/Com 0001/CS rwaciwe n'Urukiko rw'Ikirenga kuwa 26/02/2016, haburana BRALIRWA Ltd na Sindikubwabo Cyprien, mu gika cya 26 rwagize ruti: "……BRALIRWA ikaba itagaragaza icyayibujije kugana inzira yatumye ibona ibimenyetso ishingiraho ikirego cyayo cyangwa ngo igaragaze ko yabigerageje bikananirana

Urukiko rusanga izi nyandikomvugo zimenyesha icyaha zatanzwe nk'ibimenyetso bishya nta gishya zari kuzana ku rubanza, kuko ibyo zivuga (kwemeza ko gukora imenyekanisha musoro ritari ryo ari icyaha) byari byarafashweho icyemezo mu rubanza rusabirwa gusubirwamo nk'uko bigaragara mu gika cya 18 cyarwo. Muri icyo gika, Urukiko rwemeje ko "n'ubwo mu ngingo ya 203 ya EACCMA havugwamo gukora imenyekanisha ritari ryo, umutwe wayo uvuga gukora no gukoresha inyandiko mpimbano, ibi rero bikaba binyuranye n'ibyo Umurungi Umwizerwa yakoze

[21] Kuba rero nyuma haboneka inyandiko RRA yemeramo ko habaye imenyekanisha ritari ryo ikanazemezamo ko hakozwe icyaha, ntabwo byafatwa nk'ikimenyetso kamarampaka cyakoreshwa mu nzira yo gusubirishamo urubanza ingingo nshya kuko nta cyemeza ku buryo budashidikanywaho ko n'iyo Urukiko ruba rubifite rwari guhindura icyemezo rwafashe, kuko rwagishingiye ku buryo rwumva (kuri interprétation ruha) ingingo ya 203 ya EACCMA, ko "kugira ngo imenyekanishamusoro ritariryo ribe icyaha, hagomba kuba habaye inyandikompimbano„. Ntabwo Urukiko rwashingiye icyemezo cyarwo ku buryo RRA ifata imenyekanishamusoro rikoze nabi. Mu yandi magambo, ibyo bimenyetso byashoboraga no kuba byagaragajwe mu rubanza ariko Urukiko rukaguma ku cyemezo rwafashe kuko ibyo bimenyetso ubwabyo bidategeka Urukiko uburyo rugomba kumva no gusobanura ingingo ya 203 yavuzwe. Ibyo bimenyetso byakabaye kamarampaka iyo biza kuba ari nk'itegeko naryo risobanutse ku buryo budateye impaka cyangwa se icyemezo Urukiko rw'Ikirenga rwaba rwarigeze gufata ku kibazo gisa n'iki[16] kuko byo bitegeka Urukiko gukurikiza umurongo runaka iyo rusesengura itegeko; naho uburyo RRA ifata cyangwa yita imenyekanishamusoro rikoze nabi nta ngufu nk'izo (binding force) byagira ku cyemezo Urukiko rukwiye gufata.

[22] Hashingiwe ku bisobanuro byatanzwe haruguru, Urukiko rurasanga ibimenyetso Umurungi Umwizerwa agaragaza atari ibimenyetso bishya kandi bimara impaka byatuma urubanza rusubirishwamo ingingo nshya, bityo ikirego cye kikaba kidakwiye kwakirwa kuko kitujuje ibisabwa n'ingingo ya 186 y'Itegeko N° 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi ryakurikizwaga ubwo iki kirego cyatangwaga.

III. ICYEMEZO CY'URUKIKO

[23] Rwemeje ko ikirego cyatanzwe na Umurungi Umwizerwa gisaba gusubirishamo urubanza RCOMAA 00066/2016/SC-RCOMAA 0072/16/CS ingingo nshya kitakiriwe;

[24] Rutegetse ko ingwate y'amagarama y'urubanza yatanzwe na Umurungi Umwizerwa ihwanye n'ibyakozwe mu rubanza.

[16] Igihe nabyo byujuje ibindi bisabwa birebana n'iyakirwa ry'ingingo nshya byavuzwe mu bika bibanziriza iki