

## **CASE NO: 1**

### **CONSTITUTIONAL CASE. EXPENDITURE LEVY. WHETHER APPEAL RULES VIOLATED THE CONSTITUTION OR THE EUROPEAN CONVENTION ON HUMAN RIGHTS**

The taxpayer was served with ex officio assessments regarding the now defunct Expenditure Levy and he appealed to the relative Appeals Board. Here he wanted to produce as witness an employee of the Department concerned who, he claimed, had advised him that no levy was due on his sales. This could not be done, because the appeal rules laid down that: "any person other than the Accountant General who has or has had any official duty, or is or has been employed in the administration of this Act, shall not be called to give evidence or to be examined in connection with any official matter concerning the assessment under appeal except at the request of the Accountant General".

Taxpayer claimed that this provision went against the rules of "fair hearing" and "equality of arms" entrenched in the Constitution of Malta and the European Convention on Human Rights, which formed part of the Laws of Malta. The present case was therefore instituted before the Constitutional Court.

The Court rejected the application on the grounds that Human Rights were only protected by the Constitution and the European Convention in so far as they concerned "the determination of a criminal charge" or "civil rights and/or obligations". The Court quoted extensively from decisions regarding the European Convention. Fiscal issues and matters referring to public law were not covered by the Convention. The Court considered that once the case before the Appeals Board concerned the amount of tax payable, this was eminently and exclusively a fiscal issue on which it could not intervene.

Apparently the Court did not consider that infringement of the rights of "fair hearing" and "equality of arms" emerged sufficiently from the Appeal Rules concerning the pecuniary dispute to constitute "civil rights" as contemplated by the European Court of Justice.

(Note: the same provision re-appears in the Appeals Rules regarding other fiscal legislation.)

(DECISION DATED 11 MAY 1998)

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## **CASE NO: 2**

### **APPEALS AGAINST ASSESSMENTS RAISED. WHETHER THE PROCEDURES CONTAINED IN THE VAT LEGISLATION OR THE NORMAL PROCEDURES UNDER THE CODE OF ORGANISATION AND CIVIL PROCEDURE WERE TO BE FOLLOWED.**

This was an appeal from a decision of the Magistrates' Court in Gozo (Superior Jurisdiction) filed by the Commissioner for VAT. The

taxpayer had claimed before the Magistrates' Court that a demand made upon him for the payment of tax had not been made in accordance with the procedures set out in the Code of Organisation and Civil Procedures for Heads and Public Departments to enforce their claims for payment. The VAT Department contested that the matter was regulated by the special provisions contained in the VAT legislation to the exclusion of general provisions in the COCP.

The Gozo Court accepted the taxpayer's view, on the grounds that the COCP provisions post-dated those of the VAT legislation and contained no reservation for the VAT processes. The Court also remarked that the requirement for the payment of 25% of the contested tax for a valid appeal to be made under the VAT system was dangerous, and it could not, therefore, deny the right of the taxpayer to proceed under normal law.

The Court of Appeal disagreed. It pointed out that it was not open for the lower court to enter into matters which bordered on constitutional rights. Furthermore, the COCP provisions mentioned actually predated the VAT legislation, so that the lower Court's reasoning in this regard was entirely wrong. Only an amendment not relevant to the present case had been made after the promulgation of the VAT law. Finally, it was an accepted principle that the procedures contained in special laws had to be given priority over those of the normal laws, precisely because of their special nature.

The taxpayer's method of contestation of the VAT department's demand was therefore declared to be null and void.

(DECISION DATED 6 OCTOBER 2000.)

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### **CASE NO: 3**

#### **POINTS OF FACT AND LAW, PRINCIPLES OF NATURAL JUSTICE, TRADE RECORDS, FORM OF APPEAL.**

The VAT Department noticed that the taxpayer had reported an exaggerated build-up of stocks which had led to his claiming a tax credit over three consecutive tax periods. An estimated assessment had therefore been raised on the basis of sales reported plus a mark up of 20%. Taxpayer claimed before the VAT Appeals Board, as assisted by his auditor, that turnover during the relative basis period was unusual and unlikely to repeat itself. The Board decided the case by reducing the VAT assessment by 20%.

Taxpayer appealed on the grounds that he had not been given a fair hearing, that the Board had dealt with the case in a superficial manner and that he had not been given the chance to set out his case in detail. Moreover, he claimed that the Board had not carried out a detailed analysis of his trade records, as should have been done. The VAT Department rejected these claims and suggested that the appeal was null and void as it was technically defective.

The Court of Appeal rejected all claims and counter claims. As regards the claim by the taxpayer that there had been an infringement of natural justice, the Court stated that the records showed that the Board had conducted the case with the utmost rectitude and that, if anything, any shortcomings had been on the part of the taxpayer. As regards turnover and examination of trade records in detail, or otherwise, this was a matter of fact which the Board was competent at law to determine with finality. There was nothing to show that the Board had not done its job properly. As regards the Department's assertions of technical defects in the appeal, the Court ruled that one should not be too finicky and that the motives of the appeal emerged clearly.

(DECISION DATED 6 OCTOBER 2000.)

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#### **CASE NO: 4**

#### **POINTS OF FACT AND LAW. AUDITED ACCOUNTS, ONUS OF PROOF. DECISION OF THE APPEALS BOARD TO BE MOTIVATED.**

The appellant had a turnover of between Lm60,000 and Lm70,000 per annum. Seeing that he only paid Lm12 VAT, an audit was carried out by the Department and an estimated assessment raised. The results of the audit are not known. On appeal, the taxpayer contended that the small amount of VAT payable was caused by the stocks which he had to purchase to satisfy certain market trends. He also submitted audited accounts, and various reconciliation statements. In later tax periods, VAT was paid at the expected levels.

The Board's decision was: "The Board appreciates the professionalism with which the trade books have been prepared by appellant, but it is of opinion that he has not brought forward sufficient proof to reduce or cancel the estimate made by the Department. The appeal is therefore rejected".

The Court ruled that the appeal made to it from the decision of the Board referred only to a point of fact and that it could not therefore disturb the decision of the Board. The comments made by the Court are however relevant:-

1. The Board's decision must be motivated, that is to say, it must give reasons for its decision. The Court ruled against the Department's claim that the Board does not need to give any reasons for its decisions. No elaborate motivation need be given, but the Board had to give the basic reasons for its decisions so that taxpayers can be satisfied that at least the basic rules of natural justice have not been infringed.
2. In the present case, the Court felt that the Board's decision was sufficiently motivated.
3. The onus of proving that the assessment is excessive lay on the appellant. The Board had specifically stated that this onus had not

been satisfied, and the Court felt that it had done its homework before so deciding.

4. The Court made some rather shaky remarks about auditors and their work, without in any way commenting on what had been produced in the present case, and apparently ignored by the Appeals Board.

(DECISION DATED 6 October 2000.)

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#### **CASE NO: 5**

##### **POINT OF FACT AND LAW. PROCEDURE BEFORE THE BOARD MOTIVATION OF THE BOARD'S DECISION.**

In this complicated case, the Appeals Board, after setting out the issues involved, had come to the conclusion that it was extremely difficult to come to a just conclusion. However, the Board stated that it felt that an ex officio assessment raised by the VAT Department was rather high, and reduced the amount thereof by 25%.

The taxpayer appealed against the Board's decision on the ground that the procedure followed during this hearing was not appropriate and that the necessary proof had not been satisfactorily obtained. The taxpayer also complained that the Board had decided more on the basis of the parties' submissions than on actual facts.

The Court was of the opinion that the appeal was unfounded, frivolous, vexatious and gratuitous. The records of the case showed that the appellant had been given full possibilities to expound upon his case, and that he had been helped all along by his accountant, who had a detailed debate with the Department's own accountant.

The Court stated that the Board's decision had been satisfactorily motivated. As the questions involved in the appeal were only points of fact, the Court rejected the appeal.

(DECISION DATED 6 OCTOBER 2000.)

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#### **CASE NO: 6**

##### **CIVIL CASE. RANKING OF CREDITORS, EXPENDITURE LEVY AND VALUE ADDED TAX.**

This was a bankruptcy case, and the decision related to the ranking of creditors, among whom were the Accountant General for the purposes of the Expenditure Levy, and the Commissioner for Value Added Tax. No technical points under the two laws were involved.

The Court ruled that the expenditure Levy Act did not grant the Accountant General any particular privilege, and the Government's dues in this respect had to be ranked with other credits. On the other

hand, the VAT legislation put the Department's dues before any other liabilities, in fact even before the privileged amounts due to employees. This emerged from the fact that although both laws stated that the respective debts were privileged over all others, the VAT legislation was enacted after the relative provisions in the Conditions of Employment (Regulations) Act, and the VAT rule therefore took precedence.

The Court did not accept the argument that once amounts collected as Expenditure Levy, but not yet paid to Government, were given immunity from garnishee orders, the Accountant General's debts likewise enjoyed privilege over other debts. The two matters were entirely separate and distinct.

(DECISION DATED: 13 NOVEMBER 2000.)

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**CASE NO: 7**

**OFFICIAL SECRECY. WHETHER EMPLOYEES OF THE VAT DEPARTMENT CAN BE REQUIRED TO GIVE EVIDENCE IN CERTAIN PRIVATE CASES WHERE THE DEPARTMENT WAS NOT DIRECTLY INVOLVED.**

Like most other fiscal legislation, the VAT law contains provisions regarding official secrecy. These include the prohibition on persons having an official capacity from being required to produce in any court etc any document, or to divulge any matter coming under his notice in the performance of his duties, except as may be lawfully required for the purpose of carrying into effect the provisions of the Act.

In this case, a person commenced court proceedings against another claiming that he had not been provided with a fiscal receipt in respect of VAT paid on a construction project. The respondent claimed that he had not received any payment for VAT because plaintiff had refused to pay the tax. Plaintiff seems to have proved that he had paid the tax, and he called upon a departmental employee to give evidence regarding the matter. The department claimed immunity from giving evidence under the above provision. The Courts (both of first instance and on appeal) rejected the plea.

The provision whereby evidence could only be required to be given to give effect to the provisions of the law could not be restricted to cases where the VAT department was itself party to the case. This was a case between two private individuals where one was seeking protection in respect of the other's actions. He was obviously seeking to safeguard his own tax position, but it was also clear that the respondent was essentially being accused of tax evasion. The evidence of the departmental official was therefore "required for the purpose of carrying into effect the provisions of this Act".

The Court also examined the provisions of the Code of Organisation and Civil Procedure regarding privileged documents within the public

service and similar issues, and concluded that these provisions could not be invoked to prevent the required evidence being given.

The Courts pointed out that the VAT legislation was one which concerned public order and that they, therefore, had the duty to safeguard its requirements.

(DECISION DATED: 1 DECEMBER 2000.)

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**CASE NO: 8**

**ESTIMATED ASSESSMENTS ONUS OF PROOF. "FAIR HEARING" BEFORE APPEALS BOARD. POINTS OF FACT AND LAW.**

In this case, inspections by the VAT Department personnel indicated that the appellant company had been misusing its cash register, issuing stubs as fiscal receipts. As a result, part of its sales had not been reported. Estimated assessments were raised on the company, against which an appeal was filed to the Appeals Board. The Board did not accept the excuses brought forward by the company, and confirmed the estimated assessments, but reduced the amount of VAT payable to 65% of that assessed. This was done because the Department had worked out its calculations on the basis of turnover on Sundays when it was proved that that turnover on that day was way above the average.

On appeal to the Court, the company contented that it had not been given fair hearing before the Board. The Court did not find any such default in the proceedings and that, consequently, there was no point of law on which an appeal could be pursued.

(DECISION DATED: 9 FEBRUARY 2001.)

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**CASE NO: 9**

**CLASSIFICATION OF MOTOR VEHICLE: WHETHER DESIGNED MAINLY FOR THE CARRIAGE OF GOODS OR OF PASSENGERS. POINT OF FACT OR LAW. RULES OF INTERPRETATION.**

Appellant company bought a van which it immediately stripped down to two seats and used solely for the transport of goods, including transfers between Malta and Gozo. After reviewing the facts, the Appeals Board agreed with the Commissioner for VAT that the van was intended mainly for the carriage of passengers pointing out, inter alia, that the alterations made to the van were not permanent and that the van had glass windows. No input tax was therefore allowed as a deduction.

The Court of Appeal disagreed. Although this was prima facie a point of fact, the Appeals Board had taken into account irrelevant points and issues. This had transformed the case into a legal matter and the Court felt entitled to review the facts. The conclusion of the Court was

that the van had been designed mainly for the carriage of goods, and that input tax in its respect had therefore to be allowed as a deduction.

Although with some reservations, the Court also approved the practice of quoting foreign cases to help the understanding of how VAT principles were evolving. The Court also insisted on a rigorous application of the wording of the law so that both the Revenue and the taxpayers were safeguarded and obtained their rightful dues. Finally, the Court enunciated the important principle that where there were reasonable doubts, the interpretation which most favoured the taxpayer had to be preferred.

(DECISION DATED: 9 FEBRUARY 2001.)

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**CASE NO: 10**

**PRINCIPLES OF “PARITY OF ARMS” AND OF “AUDI ALTERAM PARTEM”. POINT OF FACT OR LAW. ETHICAL CONSIDERATIONS.**

The case originated in a claim for refund regarding stocks. An auditor entrusted by the Department with examining the case reported unfavourably on various aspects of the taxpayer’s records and issue of fiscal receipts. This report was only made available to the taxpayer after insistence by the company’s adviser during the course of the appeal. The Court confirmed that this had to be done in the interests of “parity of arms” and the general principle of “audi alteram partem”. None of the reasons brought forward by the Department against the production of this report, based on general law and the provisions of the VAT legislation, were accepted by the Court.

The Board had decided to vacate the Department’s estimated assessments on the grounds that these were based on normal “mark-ups” in the company’s trade, while the period in question referred to that time of the year where seasonal sales were rampant. The Court ruled that this was a pure matter of fact on which no appeal lay.

During the hearing of the case before the Board serious allegations of unethical behaviour were raised. Both the Board and the Court of Appeal refused to enter into the matter, but exhorted all concerned, particularly the administrators of the law, to deal with all matters concerning their duties with the utmost rigour and a high sense of ethics.

(DECISION DATED: 30 MARCH 2001.)

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**CASE NO: 11**

**ONUS OF PROOF. CONDUCT BY BOARD OF APPEALS OF CASE. TAXPAYER’S RIGHT OF PRODUCING EVIDENCE AND INSISTING ON ITS EXAMINATION**

This was a case where it was proved that the department's estimated assessment had been wrongly computed, and the Board of Appeals in fact reduced substantially the amount of tax imposed. The taxpayer had however insisted upon producing all his books and other trade records which he was sure would prove that the assessment was wrong in its entirety. The Board refused to accept the request and worked on the basis of random samplings.

The Court rejected pleas by the taxpayer that the Board had shown prejudice against him, and by the Department that this was a matter of fact and not law. The Court accepted that the Board was entitled to deal with cases before it in its own way, but it held that, as a point of law, the Board could not refuse to examine evidence brought before it when there was no question that the taxpayer was filing a frivolous request. The fact that the evidence was voluminous and that clearly the Board felt unable to cope with the request, was irrelevant.

The case was therefore remitted back to the Board so that it could, at the taxpayer's expense, conduct an independent examination of the relevant evidence brought forward by the taxpayer, and judge the merits of the case afresh.

(DECISION DATED: 9 APRIL 2001.)

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**CASE NO: 12**

**EXPENDITURE LEVY ACT. SNACK BAR IN A COMPLEX OF CATERING ESTABLISHMENTS NOT COVERED BY A LICENCE ISSUED BY THE HOTEL AND CATERING ESTABLISHMENTS BOARD, ALTHOUGH OTHER OUTLETS IN THE SAME COMPLEX WERE COVERED.**

The appellant company ran a complex of catering establishments, one of which was a snack bar which, at the time in question, did not require a licence by the Hotels and Catering Establishments Board under Cap 197 of the Laws of Malta. Other units in the complex were regularly licensed by the said Board.

The Expenditure Levy Act, at the relevant period, charged tax on the turnover of certain catering establishments which were licensed by the Board. Appellant's short point was that once the snack bar was not so licensed, its turnover was not subject to the Levy. The Board of Appeals under that Act and the Civil Court, First Hall, agreed with the Accountant General that Levy was due. The Court of Appeal held that, by so doing, both tribunals were appropriating to themselves functions which at law belonged to the HCEB. It could, perhaps, be argued that appellant's whole establishment was one unit and that the licences on other outlets should cover the snack bar as well, but the Chairman of the Board gave evidence that the Hotel and Catering Establishments Board had not licensed the snack bar and, at the relative time, there was no requirement to do so. The Court, therefore, cancelled the estimated assessment raised

(DECISION DATED: 23 APRIL 2001.)

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**CASE NO: 13**

**REFUND ON STOCKS. RELEVANT FORMS FILED OUTSIDE ESTABLISHED TIME LIMIT. EXTENUATING CIRCUMSTANCES.**

The taxpayer's business was selected by the VAT Department to carry out a pilot exercise regarding stock refunds on the introduction of the VAT legislation. A firm of auditors appointed by the Department carried out a detailed examination of taxpayer's stocks, and when the taxpayer asked whether he had to do anything else, he was told: "...nothing... you can simply stay put...".

Eventually, the taxpayer asked the Department why he had not received any refund, and he was advised that none could be granted as he had not filed the prescribed forms in time. The Board of Appeal considered that in this particular case, the taxpayer had been clearly misled, although unwittingly, by the Department. Moreover, it appeared that the refund was actually due. The Board ruled that taxpayer should be allowed to file the relative forms after the established time limit, and that the Department should process the claim in the normal way.

The Court of Appeal agreed. Fine points of procedure were ignored and the Court found the Board's decision that this was a particular case which merited special consideration, to be a point of fact against which no appeal lay. The fact that the relevant information was all along in the hands of the Department also weighed heavily with the Court. This was also a transitory period where some elbow room was justified.

(DECISION DATED: 27 APRIL 2001.)

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**CASE NO: 14**

**REFUND ON STOCKS. APPEAL AND "INCIDENTAL" APPEAL. POINT OF FACT AND LAW.**

The taxpayer put in a claim for refund of customs duty in connection with stocks. This was refused by the Department on the grounds that the company had not reduced prices as required by law. The Appeals Board granted a refund on only one half of the stocks, as prices on the other half had not been reduced.

The taxpayer appealed, insisting on the entire refund. In filing its answer to this appeal, the Department made use of the procedure of filing an "incidental appeal" under the Code of Organisation and Civil Procedure, to claim that the Board should not have granted any refund once prices had not been reduced across the board.

The Court rejected the incidental appeal, firstly because the correct procedure had not been used. Secondly, during the course of the appeal, new departmental policy had led to the grant of a higher refund than as fixed by the Board. The Court rejected the taxpayer's appeal as the decision of the Appeals Board had not involved any point of law.

(DECISION DATED: 6 JUNE 2001.)

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**CASE NO: 15**

**STOCK REFUND. POINT OF FACT AND LAW. POWERS OF THE APPEALS BOARD.**

This was another case of stock refunds. The VAT Department refused to grant the refund claimed on the basis that prices had not been reduced as required by law. On appeal, and following a change in the relevant Legal Notice, the Department concluded, during the appeal stage, that it could grant a refund of 65% of the original claim. The Board of Appeals was not satisfied that the Department had been totally convincing in its arguments, and added a further refund of Lm2000.

The Department had recourse to the Court of Appeal on the grounds that the Board had to decide on the facts as proved to it, and on the proved facts the Board could not go beyond 65% of the claim. The Court did not accept the Department's reasoning. Clearly the Department was claiming that the facts were those which it had put forward, but the Board had made it clear that it not agree. This was a pure matter of fact on which no appeal could be made. The appeal was therefore rejected.

(DECISION DATE: 11 JUNE 2001.)

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**CASE NO: 16**

**"GROSS MIS-REPORTING" IN CLAIMS FOR STOCK REFUNDS. LATE FILING OF CLAIM THROUGH AMENDMENTS MADE. POINT OF FACT AND LAW.**

This case concerned a claim for stock refunds on the re-introduction of VAT. Taxpayer was advised by the inspecting auditor that actually he could make a claim for higher figures. A departmental official confirmed this fact and told taxpayer to submit an amendment. The full claim was eventually refused, partly because the amendment had been received late, and partly because there had been gross mis-reporting. The latter was said to emerge from the fact that taxpayer had claimed on certain stock which was affected by ETI, and should have therefore been eliminated.

The Board adjusted figures as appropriate, basically ignoring both departmental claims. An appeal was filed in respect of the mis-reporting issue.

The Court of Appeal rejected the appeal, but also rejected taxpayer's claim that the issue concerned solely a point of fact. The Court held that in determining the real meaning of "gross mis-reporting" it was considering a point of law. The Court made an extensive and important review as to how "gross mis-reporting" issues were to be considered. The department was wrong in restricting this phrase to pure arithmetical differences. In any case, there was no indication in the law itself as to what differences should be considered as constituting "gross mis-reporting". The phrase had a wide meaning and had to be interpreted on a case by case basis both by the Commissioner for VAT and the Appeals Board. All the relevant factors had to be taken into account, including the intentions of the taxpayer concerned. Certainly, the Commissioner for VAT could not set rigid tests in terms of arithmetical differences. Actually, the Court felt that even minor differences could constitute "gross mis-reporting". There was also no need for the mis-reporting to be tantamount to a criminal act for it to be so classified.

In this case, the Board had examined all the relevant facts and came to the conclusion that there had not been "gross mis-reporting". The Court could not interfere with this decision once the Board had not erred on any point of Law.

(DECISION DATED: 11 JUNE 2001.)

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## **CASE NO: 17**

### **DECISIONS OF THE APPEALS BOARD HAVE TO BE MOTIVATED ON PAINS OF BEING DECLARED NULL AND VOID AT LAW.**

The Board membership was changed during the course of the appeal. The Board, as newly constituted, obtained the parties' approval of the minutes of the previous Board's sittings. The parties declared that they had nothing to add, but the Department stated that previous doubts expressed by it regarding possible double claims for refunds within a group of companies of which appellant was a member, had proved groundless. The Board decided the case by rejecting the appeal, giving no reasons for its decisions, simply stating that nothing had changed since the previous Board's sittings, and submissions then made.

The appellant requested that the Board's decision be over-ruled, *inter alia*, because it was in no way motivated. In actual fact, the Board had noted the Department's above mentioned admission, but still had simply upheld the estimated assessment. The Court of Appeal held that the decision of the Board was null and void at law, since every decision had to contain at least the basic reasons why it was so given. The Court refused to accept that the Board had only decided on a point of fact: they might well have done so, but the taxpayer must at

least be told what were the reasons behind the decision. In actual fact, the wording used by the Board was tantamount to its saying, that the submissions made to the differently constituted Board were the decision itself. The Court therefore referred the case back to the Board for a proper decision to be delivered.

(DECISION DATED: 13 JULY 2001.)

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**CASE NO: 18**

**METHOD OF RAISING AND REVISING ESTIMATED ASSESSMENTS. POWERS OF THE APPEALS BOARD. POINT OF FACT AND LAW.**

The case concerned the first ever VAT period. In raising an estimated assessment, the Department worked on the basis of results for the first ten periods, and drew certain conclusions regarding profitability. These were then applied to the first VAT period. The Board basically followed suit, but gave a 20% discount on the tax raised as this was the first VAT period during which there could have been stock piling.

The taxpayer appealed to the Court on the grounds that the powers given to the Department to raise estimated assessments were to be exercised for specific tax periods. The Department should not bring in considerations relevant to other tax periods. The Court did not accept the Department's plea that the Board's decision concerned only a point of fact. The point raised concerned the interpretation of the powers given to the Department to raise estimated assessments.

The Court accepted in principle that the tax periods had to be considered on their own, but it agreed that the general context of the trade had to be taken into account. The final decision, however, had to be taken on the facts of the relevant tax period. There was some confusion in the Court's mind, as to what the Board had actually done, and the case was therefore sent back to the Board to sort out matters in the light of the principles enunciated by the Court.

(DECISION DATED: 13 JULY 2001.)

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**CASE NO: 19**

**STOCK REFUND. POWERS OF THE APPEALS BOARD. SUBMISSION OF DEPARTMENTAL AUDITOR'S REPORT.**

The taxpayer company made a claim for a stock refund which was refused on the grounds that there had not been a commensurate reduction in prices. During the course of the appeal, and following the issue of a new Legal Notice, the Department admitted 70% of the claim, but the company insisted on the full amount.

The Board did not require the Department to submit the internal auditor's report as requested by the appellant. It was eminently clear

and the company had more or less accepted, that the prices had not been reduced as required by law for the benefit the public. The appellant's suggestion that issues had become mixed up by the transitory C.E.T. legislation was discarded.

The Court reiterated that the principle of "parity of arms" generally required that the internal auditor's report should be made available to the taxpayer so that he could prepare his defence properly. In the present case, however, it was clear that the Board had decided that prices had not been reduced as required, and this was something which had been accepted by the taxpayer. No arguments could be brought forward in an attempt to prove what was essentially not provable. The appeal was therefore rejected.

(DECISION DATED: 5 OCTOBER 2001.)

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**CASE NO: 20**

**STOCK REFUND. RESTRICTIVE INTERPRETATION OF RELATIVE LEGAL NOTICE. PROPER REVISION DUE BOTH FOR AND AGAINST DEPARTMENT.**

In another case of stock refund when VAT was first introduced, it was fairly clear that the taxpayer's contention regarding the amounts to be refunded were correct. The Department, however, took a restrictive view of the relative Legal Notice, stating that the main provision had to be read in the light of other provisions of the L.N.

Both the Appeals Board and the Court of Appeal took the view that once it was manifestly clear that the taxpayer's figures were correct, the main provision, which laid down that it was to apply "notwithstanding any other provision of these regulations", had to be applied and that the full refund was to be granted. In any case, justice required that proper adjustments had to be made both for and against the Department.

(DECISION DATED: 5 OCTOBER 2001.)

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