

Decision 2016-10-11 n.1171

Regional Tax Commission of Liguria

(Section 1^)

Text:

READ the acts,

HEARD in public hearing the Judge Rapporteur, the appellant's lawyer and the Representative of T.A.R Liguria (Administrative Court of the Region of Liguria)

Running of Proceedings

... has appealed against the letter by which the Secretary of T.A.R. Liguria (Administrative Court of the Region of Liguria) demanded for payment of the tax (contributo unificato) for introducing the case no. 402/2014 before the Tribunal, having as its object the appeal against the following act:

- Decision of the Liguria Regional Government (Deliberazione della Giunta Regionale della Liguria) no. 11 of 10 January 2014 concerning “Legislative Decree 152/2006 - L.R.38/98. Joint cultivation project and environmental recovery of quarries G,G. and V.F. Positive opinion of environmental compatibility and impact with prescriptions”.

The appellant claimed, against the TAR’s different opinion, to have the right at the exemption from this payment, being a Non-profit Organization set up for the protection of environmental values, pursuant article 10 of the DPR no. 115/2002.

The Provincial Tax Commission rejected the appeal, considering the listing referred to in art. 27 - bis, Table B, annexed to the D.P.R. no. 642/1972 as strict, since the exemption referred to therein is applicable only to those acts that have a *substantial nature* and not to those of a *procedural nature*.

Appealed the taxpayer, proposing also a request for suspension, reaffirming:

- that the substantial exemption of which the Onlus (non-profit Organization) benefits, reflects on that of the tax (contributo unificato) on the judicial acts;

- omissis -

Grounds For The Decision

-omissis-

- 1) The tax (contributo unificato) is regulated by the D.P.R. 30/05/2002 no. 115 and it has taken the place of the stamps duty (imposte di bollo), the tax for introducing a claim (tassa di iscrizione a ruolo) and administrative fees (diritti di segreteria); obligation to pay this contribution has been progressively extended to the criminal, civil, administrative, accounting and tax proceedings.
- 2) The application of the stamps duty to the Onlus (Non-profit Organizations) is regulated by Article 17, Legislative Decree no. 460/1997, which has introduced article 27-bis in the Table B – Annexed to DPR no. 642/1972. This provision has enshrined the full exemption from tax for “*acts, documents, instances, contracts, as well as compliant copies, extracts, certifications, declarations and certificates put in place or required by non-profit Organizations (Onlus)*”.

According to the applicant, since the Article 10 of the DPR no. 115/2002 establishes that “*according with the legislation and without limits of competence or values, is not subject to the tax (contributo unificato) the proceeding already exempted from the stamp duty or any other expense, tax or right*” the Onlus would be excluded from the obligation to pay the tax (contributo unificato) in accessing to judicial protection.

- Omissis -

Considering that the Aarhus Convention, ratified by the Italian Republic with Law no. 108/2001, commits the Member States to provide adequate recognition and support of Organizations that promote environmental protection and to ensure that the system complies with this obligation, particularly in terms of access to justice, the denial of the exemption from the payment of tax (contributo unificato) - for acts such as judicial remedies aimed at the collective interests defense which are widespread in environmental matters - would lead to a clear contrast between domestic law and European standards, as implemented in national legislation, which clearly underline that the cost of the aforementioned court proceedings should be free or not excessively onerous.

For These Reasons

Appeal Upheld. Compensated judicial fees.