

Court of Cassation
(Corte di Cassazione)
Section 5[^]
Decision 2013-09-20 n.21522

Judgment

- On the appeal 22858/2007 proposed by:

Italian Association ... Onlus NGO, in the person of the President representative *pro tempore*, [...] –
(Omissis).

Against

- Agenzia delle Entrate di Roma (Revenue Agency of Rome), Agenzia delle Entrate -Ufficio Locale di Perugia (Revenue Agency of Perugia);

against the judgment n. 45/2006 of the Regional Tax Commission of Perugia, on 15/09/2006;

(Omissis)

R.G. 22858/2007

FACT:

The Regional Tax Commission of Umbria, with judgment n. 45/01/06, filed on 15.9.2006, modifying the judgment of the Provincial Tax Commission of Perugia n. 117/03/2003, declared the legitimacy of the notices of the imposition of sanctions on the Italian Association ... ONLUS – NGO for the infringement of legislation on stamp duty with respect to the four appeals presented by the abovementioned Association before the Regional Administrative Court of the Region Umbria considering that the facilitative rule (article 27 bis of the annexed Table at D.P.R. 642/1972) has as object the only administrative documentation not applicable to legal acts.

The Association proposed appeal to the Supreme Court of Cassation for the following reasons:

- a) violation of the article 360, no. 5, code of civil procedural, because the justification of the Regional Tax Commission is unsuitable to justify the reasons of the decision, not having been clarified on which principles of law the “act” notion does not include also the procedural act, taking into account the list contained in the article 27 bis, Table b) D.P.R. 642/1972 and of the overall content of the special exemption law;
- b) violation of the article 360, no. 3 of code of civil procedural, for misapplication and violation of the article 27 bis, table b) D.P.R. 642/1972 and violation and misapplication of the general principles in the field of legal acts about ONLUS, including in the exemption for the payment of the stamp duty also judicial acts.

The Agenzia delle Entrate did not carry out defensive activities.

The ONLUS submitted written observations.

The appeal has been discussed at the public hearing on 6.6.2013.

Reasons for the decision

Grounds for appeal must be examined jointly.

The article 27 bis, table B) D.P.R. 642/1972 sets out the acts exempted from stamp duty.

The mentioned legislation excludes from tax *“acts, documents, instances, contracts, as well as copies even if declared compliant, extracts, certifications, declarations and certificates put in place or required by non-profit Organizations (ONLUS)”*.

The controversial issue relates to the interpretation of the word *“acts”* and more specifically if it refers itself not just to administrative acts but also to procedural documents.

The Regional Tax Commission believes that *“from the examination of the laws directly linked to the stamp duty regulation, it is clear that the article 27 bis, has as object only the administrative documentation, therefore the acts not listed but included in the stamp tariff ... cannot enjoy the benefits of exemption”*.

The systematic interpretation allows to believe that the article 27 bis, table B., D.P.R. 642/1972, where it indicates the word *“acts”*, it refers only to the administrative acts and it does not include judicial acts.

Where the legislation includes the judicial acts in the stamp duty exemption, it is expressly specified.

The word “acts” as referred to in the article 27 bis, cannot be regarded, in the lack of expressed legal reference and with no clarification on this, as wide category including both administrative and judicial acts, achieving a strict interpretation that can be justify with the same legislative term which refers to administrative acts (“*acts, documents, instances, contracts*”), with no any reference to judicial acts.

The appeal is therefore rejected .

No ruling is to be issued on expenses in the absence of defensive activities of the defendant.

For these reasons

Rejects the appeal

Decided in Rome on 6.6.2013

Deposit of the decision at the Secretary on 20.9.2013