

## CASE TRANSLATION: FRANCE

Case citation:

**Arrêt n°211 du 26 février 2013 (12-14.771)**

Name and level of the court:

**Cour de cassation – Chambre commerciale, financière et économique (French Supreme Court – Commercial, Financial and Economic division)**

Date of decision:

**26 February 2013**

Case reference:

**ECLI:FR:CCASS:2013:CO00211**

Presiding judge:

**Mr Espel**

Rapporteur:

**Mr Delbano, Legal Advisor**

Advocate General:

**Mrs Batut**

Lawyer(s):

**SCP Tiffreau, Corlay et Marlange; Me Foussard**

### ***France; tax authority; search and seizure; application of article L. 85 of the Book of Tax Procedures***

Dismissal

Plaintiff(s): HR Access solutions, a French société par actions simplifiée (simplified joint-stock company)

Defendant(s): The Director General of Public Finance

Regarding the first part of the single plea:

Whereas, according to the contested order, made by the first Presiding Judge of a Court of Appeal (Versailles, 10 February 2012, No. 11/02105), the judge of freedoms and detention of the Tribunal de Grande Instance (Court of First Instance) of Nanterre authorized the French tax authorities to perform, pursuant to article L. 16 B of the French Book of Tax Procedures, a search and seizure in the premises likely to be occupied by HR Access Solutions SAS (the company), at ... , in order to search for evidence of fraud by HR Access Solutions BV, presumed to evade the assessment and payment of corporate income tax and value added tax;

Whereas the company complains that the order rejected its application for annulment of the decision of the judge of freedoms and detention while, according to the plea, *it is assumed that the documents produced by the tax authorities to support their request for permission to search and seize must have a lawful origin; article L. 85 of the Book of Tax*

*Procedures states that ‘Taxpayers must submit to the tax authorities, at the latter’s request, the books whose content is mandated by Articles L. 123-12 to L. 123-28 of the French Commercial Code as well as all books and related documents, and documents supporting revenue and expenditure’; It results from these provisions that the right to information is limited to accounting documents; as such, the tax authorities cannot validly base their request for home searches on other documents, such as contracts or pre-orders, that have supposedly been collected within the framework of their right to information, since such documents are of illicit origin; as a result, by judging the contrary, the first Presiding Judge violated all the above texts;*

Whereas, however, by having held that the disputed documents were submitted by another company as part of the right to information provided for in articles L. 81, L. 85 and L. 102 B of the Book of Tax Procedures, and that the annexes referred to in the said article L. 85 are not only accounting documents in the strict sense, but all documents having some correlation with the commercial accounting data, which necessarily includes billings and documents attached thereto, including orders, contracts and amendments when they are, as in the case at hand, related to accounting, the first Presiding Judge correctly applied article L. 85 of the Book of Tax Procedures; the plea is unfounded;

And whereas the other complaints are not likely to enable the admission of the appeal;

**ON THESE GROUNDS:**

Dismisses the appeal;

Presiding Judge: Mr Espel

Rapporteur: Mr Delbano, Legal Advisor

Advocate General: Mrs Batut

Lawyer(s): SCP Tiffreau, Corlay and Marlange; Me  
Foussard

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