TAX APPEALS TRIBUNAL
Justice in Taxation

THE REPUBLIC OF UGANDA

IN THE TAX APPEALS TRIBUNAL OF UGANDA AT KAMPALA

TAT APPLICATION NO. 103 OF 2023

ALNOOR TILES & CERAMICS LIMITED..APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY...RESPONDENT

BEFORE: HON. REBECCA NASIMBWA NSUMBA, HON. CHRISTINE KATWE, HON. KENNETH A. BAGAMUHUNDA

I. Introduction

1. This application is in respect of an application challenging an administrative VAT assessment of Shs. 32,837,818 raised by the Respondent for the period January 2022 to July 2022 on the grounds of under-declaration of EFRIS invoices.

II. Background Facts

2. The Applicant is a limited liability company dealing in specialised construction activities and sale of ceramic tiles.

3. The Respondent analyzed the Applicant's EFRIS sales for the period January to December 2022 and established that the Applicant was selectively issuing EFRIS invoices and that some EFRIS invoices were issued as late as 11:00 pm, an indicator that it was not in real time.

4. The Respondent also established that the Applicant had not fully integrated its accounting system with the EFRIS system.

5. The Respondent issued an administrative additional VAT assessment amounting to Shs. 32,837,818 based on the under-declaration of sales made during the period January 2022 to July 2022 and the Applicant's failure to provide supporting documentation.

6. The Applicant objected to the assessments on 13 and 14 November 2022 because the assessments were based on bias and solicitation of a bribe by the assessing officer. The Respondent issued an objection decision dismissing the objection in its entirety on 2 March 2023.

7. On 1 April 2023, the Applicant sought redress in the Alternative Dispute Resolution Forum, which was rejected by the Respondent on 6 June 2023 and upheld the assessments that had been issued. Following the Objection decision, the Applicant lodged an application before the Tax Appeals Tribunal on 21st June 2023 seeking a review of the Respondent's decision

III. Issues for Determination

8. The issues for determination were:
   a) Whether the Applicant is liable to pay the tax assessed.
   b) What remedies are available to the Parties?

IV. Representation and Evidence

9. The Applicant was represented by Mr. Peter Mulongo and the Respondent was represented by Ms. Christine Mpumwire, Ms. Bridget Atukunda and Mr. Sam Kwerit from the Respondent's Legal Services and Board Affairs Department of the Respondent.

The Applicant's evidence

10. Mr. Salim Nyanzi Ssentamu, a businessman and a director of the Applicant, testified that the company deals in buying and selling tiles, among others.

11. He testified that sometime in November,2022 at about 9 pm, he received a call from a URA officer called David Mutebe inquiring whether he was the contact person for Hajjat Mirage. He stated that he was not the contact

person but instead the director of Alnoor Tiles and Ceramics. Mr. Mutebe informed him that he would visit the business premises to verify the company's offset.

12. He stated that about 2 weeks after the phone call, the officer visited their premises to carry out a spot check of their stock, which he did, but did not give them a report after the verification. About 2 days later, the officer called and demanded an inducement of Shs. 3,000,000 or else he would initiate an audit. The witness stated that he rejected the proposal of Shs. 3,000,000. and opted for the audit.

13. On the same day, the officer sent an email indicating that the verification of the offset had commenced and requested that he be availed with the bank statements and sales ledgers. Mr. Nyanzi requested that he be availed the documents the following week, which was accepted by the officer of the Respondent

14. To his surprise, after only 2 days, the officer initiated an additional assessment for VAT before the documents were availed. The basis of assessment was that the company had not issued invoices to customers without TINs.

15. They objected to the assessment on the ground that the company issues EFRIS invoices to all customers. The following day, the officer reminded him to provide more documents, to which Mr. Nyanzi responded that he would avail the documents to the objections since the officer had already issued the assessment.

16. After 30 minutes of his response, the Officer issued five more additional assessments upon which he complained to the Manager, Compliance of the Respondent, and was advised to object to the assessment with a reason that the officer was biased and solicited for a bribe.

17. The witness testified that the objections team requested documents, which he provided. On 7 February 2023, officers of the Respondent came and picked information from the company's computers. Subsequently, the Respondent informed him that the information on the computer tallied with the information he had provided. Later still, the Respondent's officer paid the Applicant an abrupt visit and informed them that the Applicant was compliant with issuing receipts to all customers.

18. The Applicant prayed that the Tribunal find that the assessments were wrongly issued and should be set aside.

<u>**The Respondent's evidence**</u>

19. **Mr. Raymond Aheereza, an Officer in the Respondent's Large Taxpayers'** Department, testified that the Respondent conducted a VAT offset verification exercise of the Applicant and requested the Applicant to provide certain information to facilitate the process. As a result of failing to provide the requested information, the Applicant was assessed for VAT based on under-declared sales made to final consumers without TINs, for the period January 2022 to July 2022.

20. The Applicant objected to the assessments because the same were raised by a biased officer whom the Applicant refused to give a bribe, hence prompting the audit. The Respondent's objections review team established that the assessment arose from an offset verification exercise, a physical stock verification, which revealed a variance of 47 boxes between the system and the physical count of tiles at the Applicant's premises.

21. The Respondent further contended that the Applicant had not fully integrated its accounting system with EFRIS and as such, they were not issuing invoices in real time as required by the law. The Applicant's failure to integrate its system with EFRIS led to selective invoicing, as the Applicant was not issuing EFRIS invoices to all its customers, and some invoices were issued as late as 11.00 pm.

22. The objections review team requested the Applicant to provide supporting documents and further invited the Applicant for a formal entry meeting to get to the bottom of the matter, which the Applicant turned down.

23. It reviewed invoices submitted by the Applicant from its QuickBooks accounting system, which, upon scrutiny, it was established there were inconsistencies in the invoice numbers, as invoice numbers 243 and 242 were discovered to be issued on 30/01/2022, yet invoices 257 and 258 were issued on 28/01/2022, which facts cast doubt on the authenticity of the QuickBooks data furnished to the Respondent.

24. Due to the Applicant's non-compliance with providing the requested documentation, on 7 February 2023, the Respondent sent a forensic team to the Applicant's premises to extract data and information to enable the matter to be thoroughly reviewed. However, the effort was frustrated because the Applicant destroyed the computers at their premises.

25. The Respondent accordingly managed to retrieve data from only one computer, from which only personal information was obtained.

26. The Respondent accordingly issued objection decisions upholding the assessments due to the Applicant's failure to provide the requested documents and offer an explanation to the variances discovered at assessment. That even if the Applicant alleged bias against the assessing officer, the assessments and objection were carefully reviewed by the independent objections team of the Respondent to their logical conclusion.

27. The Applicant further sought redress in the Alternative Dispute Resolution forum, to which the Respondent rejected it on 6 June 2023 due to the deliberate concealment of data and information from the Respondent by the Applicant.

V. The Applicant's Submission

28. The Applicant submitted that it is not liable to pay the additional tax assessed due to the manner in which it arose, whereby the officer who undertook the stock verification solicited for a bribe lest an audit would be undertaken. The Applicant opted for an audit.

29. The Applicant submitted that it is the evidence of the Respondent through Raymond Aheereza that the Respondent requested information from the Applicant. According to the Applicant, the requested information was to be provided by 11 November 2022 as per email PEX 3 at page 23 of the Trial bundle. However, on 10 November 2022, before the set date, the same officer of the Respondent who had solicited the bribe issued assessments (see REX1 at page 63 of the trial bundle). Additional assessments were issued on 14 November 2022 by the same officer of the Respondent.

30. The Applicant further submitted that the assessments were raised before the time given to the Applicant to provide the information. In cross-examination, RW1 admitted that it was not normal to raise assessments before the time given to provide the information requested.

31. The Applicant submitted that, as per the evidence of the two witnesses, TID carried out a forensic investigation of the Applicant's computers. According to the Applicant, RWI stated that the computers did not contain any data relating to the Applicant's tax affairs, yet PEX 7 at page 59 of the trial bundle is an exhibit slip from the Respondent indicating that the computer was used for data entry and EFRIS. The evidence of RW1 is therefore false.

32. The Applicant contended that from cross-examination of RW1, no name or invoice issued to a family member or staff was presented and that the alleged receipts for purchases without a corresponding entry for purchases recorded on that day were never presented. The allegations captured in the officers' minutes are false.

33. In paragraph 13 of RW1's witness statement, he stated that he upheld the assessments because the Applicant failed to provide the requested

information during review of the objection. Referring to PEX 3 at pages 24 and 26 of the trial bundle, the Applicant contended that they provided the information as requested. On cross-examination, RW1 also admitted that he never engaged with the Applicant while reviewing the objections.

34. The Applicant further argued that the reason given by the Respondent for the additional assessments was due to undeclared sales made to the final customers without TINs. In REX 2 on page 73 being minutes of the meeting between the Assessing officer and the objection team, the assessing officer stated that the justification for the assessment was that some invoices were generated at night, some were issued to clients without TINS, the Applicant used names of family members and staff and that he had receipts of purchases he made on 11 January but there were no purchases reported on that day. The Applicant, however, rebutted this allegation as untrue since the Respondent never presented any evidence of the invoices referred to in support of the claim during cross-examination and hearing.

35. The Applicant submitted that from the evidence presented as highlighted above, there was no breach of the law, fraud, gross or willful neglect on the part of the Applicant in its tax affairs. In line with Section 32(2) of the VAT Act, the assessments were erroneous, contrary to the law and issued out of bias due to the relationship between the Applicant and the assessing officer. The Applicant prayed that this Tribunal deems it fit to grant the following orders:

    (i) The assessments totaling Shs. 32,837,818 be set aside.
    (ii) Costs of the application be awarded to the Applicant.

VI. The Respondents' Submissions

36. The Respondent submitted that it conducted a VAT offset verification exercise of the Applicant and requested the Applicant to provide certain information to facilitate the process. As a result of the Applicant's failure to provide the requested information, the Respondent assessed VAT based on under-declared sales made to final consumers without TINs for the period January 2022 to July 2022.

37. The Respondent submitted that the assessment was properly made pursuant to the Commissioner's powers under Section 18 of the Tax Procedure Code Act. In the case of ***Uganda Revenue Authority vs Balondemu David, Civil Appeal No. 0002 of 2023,*** the High Court held that the burden of proof in tax matters lies with the taxpayer. The Applicant had miserably failed to satisfy that the tax assessed was unlawful and illegal, thus making them liable to pay the tax assessed.

38. The Respondent submitted further that it is prudent to note that audit meetings took place between the Applicant and Respondent. However, the Applicant failed to provide any satisfactory explanation for the inconsistencies in the purchases declared in the financial accounts and the purchases ledgers.

Failure by the Applicant to provide sufficient evidence

39. The Respondent submitted that it was as a result of failure to provide the requested information contrary to Section 56 of the Value Added Tax Act Cap 349, that the Applicant was assessed for VAT based on under-declared sales made to final consumers without TINs, for the periods January 2022 to July 2022.

40. The Respondent cited the case of Nile Breweries Ltd v Uganda Revenue Authority, TAT Application No. 15 of 2018, in which it was held that a taxpayer's failure to produce supporting evidence justifies the Uganda Revenue Authority's reliance on the best judgment method of assessment.

41. The Respondent further stated that the Applicant had not fully integrated its accounting system with EFRIS and, as such, they were not issuing invoices in real time as required by the law. The Applicant was not issuing EFRIS invoices to all its customers, and some invoices were issued as late as 11:00 pm, contrary to Section 55 of the Value Added Tax Act.

42. The Respondent submitted that the objections review team requested the Applicant to provide supporting documents and further invited the Applicant for a formal entry meeting, which request the Applicant turned down. The

Respondent's review team reviewed invoices submitted by the Applicant from its QuickBooks accounting system, which, upon scrutiny, it was established there were inconsistencies in the invoice numbers, as invoice numbers 243 and 242 were discovered to be issued on 30/01/2022, yet invoices 257 and 258 were issued on 28/01/2022, which facts cast doubt on the authenticity of the QuickBooks data furnished to the Respondent.

43. The Respondent submitted that it is prudent to note that the Applicant had not fully integrated its accounting system with EFRIS and as such, they were not issuing invoices in real time as required by the law. The Applicant's failure to integrate its system with EFRIS led to selective invoicing, as the Applicant did not issue EFRIS invoices to all its customers, and some invoices were issued as late as 11:00 pm, contrary to Section 55 of the Value Added Tax Act.

44. The Respondent submitted that regarding the scope of the audit, they lawfully considered transactions that impacted the Applicant's actual taxable position. The Applicant had sufficient opportunity to raise this issue, as it was at all material times part of the audit process leading to the assessments.

45. The Respondent submitted that S. 23(2) of the Tax Procedure Code Act allows the Commissioner to make an additional assessment where fraud or wilful neglect has been committed by, or on behalf of the taxpayer, or new information has been discovered. It quoted the definition of 'neglect' and 'wilful neglect' in ***Black's Law Dictionary 8th Edition at p. 1061*** as the omission of proper attention to a person or thing, whether inadvertent, negligent, or wilful: the act or condition of disregarding and 'intentional or reckless failure to carry out a legal duty, respectively.

On Fairness and Legality

46. The Respondent submitted that it acted within the mandate of the law and adhered to professional auditing standards. The Applicant cannot rely on its own failure to maintain proper records to defeat lawful tax assessments. The Respondent prayed for orders that;

(i) This Application is dismissed.

(ii) The Assessment totalling Shs. 32,837,818 issued by the Respondent against the Applicant are justified and payable by the Applicant.

(iii) The Applicant is liable to pay all taxes as assessed by the Respondent.

(iv) Costs of this Application be awarded to the Respondent.

VII. Determination of issues by the Tribunal

47. Having read and considered the evidence and submissions of both parties, this is the decision of the Tribunal.

48. The dispute arose out of an assessment for VAT of Shs.32,837,818. The Applicant contended that this assessment was raised out of bias by the Respondent's officer, who demanded a bribe of Shs. 3,000,000, which the Applicant refused. The Respondent, on the other hand, maintained that the assessments were properly issued based on the Applicant's failure to maintain proper records and not fully integrate its accounting system with EFRIS.

<u>Analysis</u>

49. In the email dated 9 November 2022, annexure PEX 3, at page 23 of the Joint Trial Bundle (JTB), the Respondent's officer, Mr David Mutebe, initiated a VAT offset verification and requested documents to be submitted by 11 November 2022.

50. The assessments were issued on **10 and 14 November 2022**, as seen in pages 1–12 of the JTB. The Applicant complained about this irregularity; the complaint is on page 19 of the JTB, and the Respondent's own witness, RW1, admitted in cross-examination that raising assessments before the expiry of the given period is not standard practice.

51. The objection decision was issued on **2 March 2023**, as indicated on pages 13–18 of the JTB. The Applicant's request for Alternative Dispute Resolution was declined by the Respondent as indicated on page 22 of the JTB.

52. Contrary to the Respondent's claim that the Applicant failed to provide records, the evidence shows that the Applicant submitted sales records for

July and August 2022 on **12 January 2023** as per the evidence on page 53 of the JTB, together with bank statements and supporting documents on pages 27–48 of the JTB.

53. On 7 February 2023, the Respondent notified the Applicant of its intention to review tax affairs for 2021–2022 as indicated on page 57 of the JTB. On 8 February 2023, further document requests were made under R2, page 2 of the Respondent's Supplementary Trial Bundle, and one computer was collected and receipted under PEX 7, pages 58–61 of the JTB. Forensic examination confirmed that the data retrieved matched the records already supplied by the Applicant; the second computer was found faulty as previously disclosed.

54. The allegation that the Applicant destroyed or concealed records is directly contradicted by PEX 7, the forensic findings, and the subsequent compliance verification. The claim by the Respondent that the computer was deliberately destroyed is not supported by any forensic report relating to the same.

55. Regarding the failure to provide information by the Applicant, the Tribunal's attention was drawn to the Respondent's affirmation that they reviewed invoices submitted by the Applicant from its QuickBooks accounting system, where they established inconsistencies on four invoices.

56. The claim of sales to customers without TINs was raised but never supported with tangible evidence. Although the burden of proving that the assessment is incorrect is with the taxpayer under Section 26 (a) TPCA, the Tribunal also relied on the case of ***Uganda Revenue Authority V K Files Ltd, Civil Appeal No. 28 of 20022 (2024) UGCOMMC313,*** where the High Court explained that evidential burden can shift depending on the evidence produced, and that the party alleging a fact must adduce evidence to support it. In this regard, the evidential burden shifted to the Respondent to demonstrate that the invoices were incorrect.

57. A Taxpayer Engagement and Meeting Report dated 1 September 2023, pages 61–62 of the JTB, confirmed that during surveillance on 26 August

2023, the Applicant was found generally compliant, using QuickBooks and EFRIS correctly, and issuing invoices at the time of loading goods.

Conduct of the Assessing Officer and Internal Review

58. In October 2022, Mr. Mutebe conducted a stock spot check and initially confirmed the stock was in order, but issued no formal report. He later proposed a cash inducement of Shs. 3,000,000 lest an audit would be undertaken, which the Applicant rejected. The Applicant provided evidence of email correspondence in which the officer solicited the bribe.

59. The Applicant filed a complaint against the officer, David Mutebe, as evidenced by the witness summons on page 54 of the JTB. Following the complaint, the Respondent's Compliance and Tax Investigations Department and Management Disciplinary Committee investigated the matter. The disciplinary process for the Officer's misconduct led to his dismissal, and the Respondent relied on the complaint and evidence provided by the Applicant.

60. On cross-examination, RW1 confirmed the earlier submission by the Applicant that there was no verification report on the offsets provided by the assessing officer to support the tax liability. The variance of the 47 cartons is stated in the minutes of the internal meeting between the assessing officer and the objection team. Further, there was no engagement meeting with the Applicant following the verification exercise to discuss the findings.

61. The Respondent did not rebut the Applicant's contention that the Compliance department of the Respondent advised the Applicant to object to the assessment and give the reason as "*officer sought for an inducement or bribe*". The advice was an affirmation by the Respondent of the relationship between the assessments and the solicitation of a bribe. The fact that the Respondent took disciplinary action and involved the Applicant further confirms the nexus between the two events.

62. The argument by the Respondent that the assessments and the disciplinary action are separate issues is not tenable. The officer's motive was clearly demonstrated when he threatened to undertake an audit unless a bribe of

Shs. 3,000,000 was paid and immediately thereafter demanded documents when the bribe was not forthcoming. The WhatsApp correspondence between the Assessing Officer and the Applicant, and the subsequent disciplinary action taken, prove the solicitation of the bribe.

63. The demand was made because the officer was dealing with the taxpayer's assessment and audit; hence the threat to do an audit. The assessing officer exercised a statutory power dishonestly, for an improper purpose and with a motive that was contrary to the purpose for which the tax law gives powers. The haste to issue assessments following a threat of audit before the lapse of time for the documents demanded was done in bad faith. The Tribunal therefore inferred that the assessments were not an impartial exercise of the statutory assessment powers, but rather an improper exercise for personal benefit.

64. The Tribunal also noted that the Respondent in its subsequent objection processes maintained the same amount of tax liability which arose out of a biased motive of the assessing officer. The Respondent asserted that its objection team carefully reviewed the matter and, due to failure to provide documents, the Respondent maintained the earlier assessment based on best judgement. Contrary to this assertion, the Tribunal noted email correspondence where the Applicant provided information as earlier indicated. It is also sufficient to note that the Applicant's request for ADR was rejected, which process may have resulted in an amicable settlement.

65. The Tribunal further notes that the Respondent relied on a stock variance of 47 boxes, late-issued invoices, and out-of-sequence invoice numbers. However, no conclusive evidence was presented to prove that these irregularities resulted in actual under-declaration of sales, tax loss, or concealment of income.

66. The Tribunal has considered **Section 49 of the Tax Procedure Code Act (TPCA), which provides:**

> *"(1) The Commissioner General may, for purposes of administering any provision of a tax, require a person, by notice in writing, whether or not liable for tax-*
> *(a) To furnish within the specified time in the notice any information that may be stated in the notice".*

67. In the case of ***Tembo Steels Uganda Limited v URA, TAT App No. 22 of 2022***, the Tribunal noted:

> *"Thus, for the Commissioner General to exercise his/her powers under the provision, he/she must be dissatisfied with the return, i.e. a taxpayer's report on purchases and sales. Not production, not a general survey of the industry in which a taxpayer operates and certainly not information derived from the public or from the internet, as put by RW1, would suffice to start the audit. The Commissioner must then use the best information available (of sales and purchases) upon which his/her estimates are based".*

68. The request for information was made by email on Wednesday 9th November 2022, with a deadline set for Friday 11 November 2022, as seen in PEX 3, page 23 JTB. However, the first assessment was issued on Thursday 10th November 2022, followed by further assessments on 14th November 2022.

69. The Commissioner did not wait for the requested information and proceeded to issue assessments. The Tribunal is not convinced that the Commissioner was not satisfied with what he had. This is a fundamental breach of procedure and natural justice, which alone renders the assessments irregular and invalid.

Bias and improper motive

70. The uncontested evidence of an attempt to solicit a cash settlement, the premature issuance of assessments, and the Respondent's own internal finding of misconduct against the assessing officer establish that the assessments were not made in good faith. They were tainted by bias and

improper motive, contrary to the requirement that tax assessments be fair, objective, and impartial. The Respondent alleged that the records were destroyed, yet it admitted that data was retrieved and that its own post-assessment report confirmed the Applicant's compliance.

71. In light of the above, the Tribunal makes the following orders:

a) The VAT assessment of Shs. 32,837,818 is set aside.

b) Costs to the Applicant.

Dated at Kampala this **18th** day of **August** 2026.

HON. REBECCA NASIMBWA NSUMBA
CHAIRPERSON

HON. CHRISTINE KATWE
MEMBER

HON. KENNETH A. BAGAMUHUNDA
MEMBER