

THE REPUBLIC OF UGANDA

IN THE TAX APPEALS TRIBUNAL REGISTRY AT KAMPALA

APPLICATION NO. 40 OF 2023

ALPHA WOOLEN (U) LIMITED..... APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY..... RESPONDENT

RULING

BEFORE: MS. CRYSTAL KABAJWARA, MR. SIRAJ ALI, MRS. CHRISTINE KATWE

This ruling is in respect of a preliminary objection raised by the Respondent under Section 24 (now section 26) of the Tax Procedures Code Act ("TPC") seeking:

- (i) A declaration that this application be dismissed with costs to the Respondent for being improperly filed before the Tribunal and for failure to comply with the mandatory statutory requirement of paying 30% of the tax in dispute.

1. Background Facts

The Applicant is a company incorporated under the laws of Uganda dealing in the stitching of uniforms. The Applicant made an application for grant of a Tax Clearance Certificate ("TCC") which application was rejected by the Respondent on 17th February 2023.

The application for grant of a TCC was rejected on the basis that the Applicant owed a VAT liability of Shs. 21,847,809 and an income tax liability of Shs. 31,847,809.

At the hearing, the Respondent raised a preliminary objection that the application was improperly before the Tribunal as there was no objection filed by the Applicant and no subsequent objection decision made by the Respondent. The Respondent contended

that the Applicant can only lodge an appeal before the Tribunal against an objection decision made by the Respondent.

The Applicant on the other hand claimed that between September 2010 and February 2023, it filed VAT returns of Shs. 2,136,633,905 and made payments of Shs. 2,153,375,509, income tax return of Shs. 575,043,447, and paid Shs. 635,165,248 and PAYE of Shs. 457,269,980 and paid Shs. 459,810,206 therefore meeting all its tax obligations. Therefore, it ought not to have been denied the TCC.

2. Representation

At the hearing of this application, Mr. Sydney Ojwee appeared for the Applicant while Ms. Rita Nabirye appeared for the Respondent.

3. Submissions by the Respondent

Counsel for the Respondent submitted that the Application is improperly before the Tribunal. Section 16(1)(c), Cap 345 ("TAT Act") provides that a person dissatisfied with an objection decision may, within 30 days after being served with a notice of objection, lodge an application with the Tax Appeals Tribunal for review of the objection decision.

The Respondent cited Section 14(1) of the TAT Act which states that any person aggrieved by a decision made under the taxing Act by Uganda Revenue Authority to apply to the Tribunal to review of the said decision. The Respondent went ahead to submit that the Tribunal has powers to review a decision upon an application being properly made to it.

According to its submissions, the Respondent stated that the Applicant herein applied for a TCC which was denied on grounds that the Applicant had outstanding liabilities. Accordingly, the Applicant neither objected nor sought an explanation for having been denied the same. The Respondent went ahead to state that by allowing a taxpayer to proceed outside the law, it would be difficult to know the reasons why the Respondent refused to grant the TCC to the Applicant.

The Respondent submitted that the Applicant ought to have demanded for an explanation from the Respondent as to why it denied the TCC application. The decision or explanation of the Respondent would then have given the Applicant locus to file an application for review of the Respondent's decision before of the Respondent's decision before the Tribunal.

The Respondent further submitted that it is settled Law that the statutory procedure for the taxpayer aggrieved by a tax decision is to first lodge an objection in the prescribed form with the Commissioner within 45 days after receiving Notice of the Tax Decision. Consequently, an objection decision is a prerequisite for lodging an application for the review before the Tax Appeals Tribunal.

The Respondent also cited Section 24 (now section 26) of the TPCA which states;

- 1) *A person who is dissatisfied with a tax decision may lodge an objection with the commissioner within 45 days after receiving notice of the tax decision.*
- 2) *An objection shall be in the prescribed form and shall state the grounds upon which it is made and contain sufficient evidence to support the objection.*

The Respondent submitted that this honorable Tribunal can only entertain the Application if there was an objection decision to be reviewed as per section 25 (now section 27) of the TPCA and Section 14 of the TAT Act.

The Respondent further submitted on the non-payment of 30% of the tax in dispute as stipulated in Section 15 of the TAT Act;

"A taxpayer who has lodged a notice of objection to an assessment shall pending final resolution of the objection, pay 30% of the tax assessed or that part of the tax assessed in dispute, whichever is greater;"

The Respondent cited the Supreme Court's decision in ***Uganda Projects Implementation and management Center v Uganda Revenue Authority, Supreme Court Constitutional Appeal No.2 of 1999*** which held that that the Statutory requirement in the then VAT Act (similar to S.15 of the TAT Act) requiring a taxpayer who has lodged a notice of objection to an assessment to, pending final resolution of the objection, pay 30 percent of the tax assessed or that part of the tax assessed no in

dispute, whichever is greater is constitutional and did not infringe on the right to a fair hearing, under the constitutional and right to fair treatment under the law. It additionally underscored the constitutional duty of a citizen to pay taxes under **Article 17 of the Constitution of the Republic of Uganda** and to do so promptly so that the government business can go on.

The Respondent submitted therefore that there is a tax liability against the Applicant that formed the basis for rejection of the TCC. Therefore, the Applicant ought to have paid 30% of the same before the matter is entertained before the Tribunal.

The Respondent prayed that the matter be dismissed with costs to the Respondent.

4. Submissions in reply by the Applicant

In its submissions, the Applicant cited section 1(1) (k) (now section 1) of the TAT Act which defines a taxation decision to mean any assessment, determination, decision or notice. Further, the Applicant cited the Tribunal in the case of **Century Bottling Company Limited V URA Application No. 33 of 2010** which defines a taxation decision to mean either a tax assessment or decision on any matter left to the discretion, judgment, opinion, satisfaction or determination of the Commissioner other than a decision made in relation made in relation to tax assessment.

From the above definition, the Applicant submitted that one can definitively state that a taxation decision includes all determinations and decisions taken by Respondent against an aggrieved taxpayer.

The Applicant submitted that the Respondent in its submission seemed to limit a taxation decision to only the objection decision stating that the Applicant should have first objected to its decision to deny the TCC before that decision could qualify as an objection decision. According to the Applicant's submissions, this is not true as a decision remains a decision whether one has objected to it or not.

Therefore, according to the Applicant's submissions, the Respondent's submission that an objection decision should first be objected to is unfounded and undermined the TAT Act, which cloths the Tribunal with power to review any taxation decision.

In response to the payment of 30%, the Applicant submitted that it is not under any legal obligation to make payment of 30% of the tax assessed as raised by the Respondent and this is because the tax liability being demanded by the Respondent was never assessed and objected to.

The Applicant referred to Section 15 of the TAT Act which provides:

A taxpayer who has lodged a notice of objection to an assessment shall, pending final resolution of the objection, pay 30 percent of the tax assessed or that part of the tax assessed not in dispute, whichever is greater.

It is the Applicant's submission that the implication of this provision is that for the above precondition to stand, there must be an assessed tax and the aggrieved taxpayer must have objected to the said assessment.

The Applicant contended that in the matter at hand, the Respondent was demanding a VAT liability of Shs. 21,847,809 and income tax liability of Shs. 31,847,809 which had never been assessed. The Applicant went ahead to cite the case of ***Multichoice (U) Ltd v Uganda Revenue Authority TAT 01/2000*** where the Tribunal ruled that the payment of 30% tax was only relevant where the tax payer lodges an objection with the Commissioner General, URA.

The Applicant therefore concluded its submissions by stating that it (Applicant) was rightly before the Tribunal as the Respondent as any determination or decision taken by the Respondent can be challenged on its own without necessarily requiring an objection. Therefore, the Tribunal has the powers to review any tax decision and not only an objection decision.

5. Determination the application by the Tribunal

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

A preliminary point of law was raised by the Respondent that this matter is improperly before the Tribunal on the grounds that there is no objection decision for review by the

Tribunal. The law on preliminary points of law is provided for under Order 6 Rule 28 of the Civil Procedure Rules which states:

“Any party shall be entitled to raise by his or her pleadings any point of law, and any point so raised shall be disposed of by the court at or after the hearing; except that by consent of the parties, or by order of court on the application of either party, a point of law may be set down for hearing and disposed of at any time before the hearing”.

In ***Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd, [1969] EA 696, Sir Charles Newbold***, stated:

“A preliminary objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit.”

The Tax Appeals Tribunal derives its jurisdiction from the TAT Act, which stipulates the conditions under which an appeal can be filed.

Section 14 of the TAT Act provides:

(1) Any person who is aggrieved by a decision made under a taxing Act by the Uganda Revenue Authority may apply to the tribunal for a review of the decision.

(2) The tribunal has power to review any taxation decision in respect of which an application is properly made.

(3) A tribunal shall in the discharge of its functions be independent and shall not be subject to the direction or control of any person.”

Section 1 of the TAT Act (as amended) defines a taxation decision to mean any assessment, determination, decision or notice.

The reason given by the Respondent is that the rejection by the Commissioner of the Applicant's request for grant of a TCC does not constitute a tax decision. The import of this submission, according to the Respondent, is that the Commissioner's decision does not constitute a tax decision within the meaning of section 1 of the TAT Act and section 2 of the TPCA (as amended).

It is incumbent upon the Tribunal to first determine whether the Respondent's rejection of the Applicant's application for grant of a TCC constitutes a taxation decision. The Respondent rejection of the said TCC application is set out in an email dated 17th February, 2023 Reference number DO0223012762186, marked as A.EX1 of the joint trial bundle.

The terms "Taxation decision" and "tax decision" which mean the same thing have been defined in substantially the same terms under both the TAT Act and the Tax Procedures Code Act. Section 1 of the TAT Act defines a taxation decision to mean any assessment, determination, decision, or notice, whereas section 2 of the TPC Act, "tax decision" means either a tax assessment or a decision on any matter left to the discretion, judgment, direction, opinion, approval, satisfaction or determination of the Commissioner, other than a decision made in relation to a tax assessment.

While invoking the literal rule of statutory interpretation, Section 1 of the TAT Act and Section 2 of the Tax Procedures Code Act, read together, it is apparent that the Respondent's rejection of the Applicant's application for a TCC constitutes a taxation decision. This is so because whilst not amounting to an assessment, it constitutes a determination or decision within the meaning of section 1 of the TAT Act. In addition, it is a decision that is left to the discretion, judgement, direction, opinion, approval, satisfaction or determination of the Commissioner within the meaning of section 1 of the TPC Act.

The making of the decision to reject the application involved the exercise of discretion on the part of the Commissioner. In the case of *Century Bottling Company Limited v Uganda Revenue Authority, Misc. Application No. 32 of 2020*, the Tribunal with approval cited the case of *MTN Uganda v Uganda Revenue Authority TAT Application No. 15 of 2018* and stated that the Tribunal has jurisdiction to review the exercise of discretion by the Commissioner General. The Tribunal went on to state that a taxpayer aggrieved with the exercise of decision of the Commissioner General is entitled to have the Commissioner General's decision reviewed by the Tribunal.

In view of the above, we find that the Respondent's rejection of the Applicant's application for a TCC constituted a taxation decision within the meaning of Section 1 of the TAT Act and Section 2 of the TPCA.

Non-payment of the 30% of the tax in dispute

With regard to the non-payment of 30% of the tax in dispute, *Section 15* of the *TAT Act* states as follows:

“A taxpayer who has lodged a notice of objection to an assessment shall, pending final resolution of the objection, pay 30 percent of the tax assessed or that part of the assessed not in dispute, whichever is greater.”

However, from our perusal of pleadings and or documents before us, we have found no evidence of an assessment by the Respondent and therefore there is no basis upon which the said tax liability should be paid.

Consequently, the preliminary point of law fails and is dismissed with costs to the Applicant.

Dated this 30th day of August 2024

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MS.CRYSTAL KABAJWARA	MR. SIRAL ALI	MRS.CHRISTINE KATWE
CHAIRPERSON	MEMBER	MEMBER