THE REPUBLIC OF UGANDA

IN THE TAX APPEALS TRIBUNAL OF UGANDA AT KAMPALA

APPLICATION NO. 7 OF 2021

AMATHEON AGRI UGANDA LIMITED..... APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY.....RESPONDENT

BEFORE: DR. ASA MUGENYI, DR. STEPHEN AKABWAY, MS. CHRISTINE KATWE.

RULING

This ruling is in respect of a rejection of input Value Added Tax (VAT) credit claimed by the applicant and a VAT assessment issued by the respondent.

The applicant is a company incorporated in Uganda. The applicant started in 2014 engaging in agro business or commercial farming. In 2014, the applicant imported various agricultural machinery and spare parts for which it claimed input VAT on imported goods totaling to Shs. 1,470,030,620. In the same year, it imported seeders and planters for which it claimed input VAT of Shs. 87,594,082. Between 2015 and 2017, the applicant further imported various agricultural machinery and spare parts for which it claimed input VAT of Shs. 541,344,739.

The respondent conducted a tax audit on the applicant for the period January 2015 to May 2020. On 29th Sept 2020, the respondent issued a tax audit management letter and a VAT assessment of Shs. 325,024,817.85.

Issues;

1. Whether the input tax claimed by the applicant is payable?
2. Whether the VAT of Shs. 325,024,817.85. is payable?
3. What remedies are available?

The applicant was represented by Mr. Latsone Gulume while the respondent by Ms. Patricia Ndagire and Ms. Diana Mulira Kagonyera.

The parties entered into a partial consent settlement order. The parties agreed that the applicant is entitled to input tax of Shs. 23,939,546 for the period July 2016 and May 2018. The tax assessed in respect of the said period was set aside. The applicant's sales for the period 2015 to May 2020 were considered VAT exclusive and therefore no liability accrued. The tax assessed of Shs. 58,393,546 in respect of unprocessed agricultural products and leasing land was set aside as they were considered exempt. The matters unresolved by the consent were referred to the Tribunal for determination on merit.

The applicant witness, Mr. Victor Waweru, its senior accountant testified that the applicant was dissatisfied with the respondent's decision disallowing a refund or offset of; (a) VAT wrongly incurred at importation of VAT exempt supplies of Shs. 1,481,404,191, (b) a refund of domestic VAT on imported goods of Shs. 541,066,971, (c) wrongly apportioned VAT paid at importation of exempt supplies of Shs. 267,394,803 and (d) input VAT disallowed on the ground that it was not in the respondent's Asycuda system of Shs. 100,934,165. The total amount denied was Shs. 2,391,800,131. Evidence in respect of the said transactions were tendered in as exhibits in the joint trail bundle.

Mr. Samuel Lwetutte, a tax officer working in the respondent's Domestic Tax department testified that the respondent carried out an audit on the applicant for the period January 2015 to May 2020. He stated that the applicant was registered for VAT effective 1st July 2015. On 29th September 2020, the respondent issued a tax audit management letter and an additional administrative VAT assessment of Shs. 323,224,818 to the applicant. The respondent disallowed the applicant's objection partially. The VAT due on apportionment was upheld. The respondent maintained its position on VAT wrongly paid on exempt supplies as it was claimed 6 months prior to the applicant's VAT registration. VAT wrongly paid on exempt supplies but not shown in the Asycuda system was maintained as the applicant reported it for August 2015 instead of 2014. The respondent partially allowed

input tax to be apportioned accordingly. The principal VAT was reduced from Shs. 323,224,818 to Shs. 283,437,890.

The applicant submitted that it erroneously paid 18% VAT on exempt imports of agricultural machinery and spare parts between 2014 and 2017 and an illegal 15% domestic VAT was paid. It submitted that under S. 20(1)(b) of the VAT Act an import of goods is an exempt import if the goods would be exempt had they been supplied in Uganda. The applicant submitted that exempt supplies in Uganda are governed by S. 19(1) and the 2nd Schedule of the VAT Act. The applicant submitted that the 2nd Schedule under Paragraph 1(s) of the VAT Act on exempt supplies provides that the following supplies are specified as exempt supplies; the supply of machinery, tools and implements suitable for use only in agriculture. For purposes of the subparagraph, "machinery, tools and implements: means agricultural tractors (including walking tractors), disk harrows, cultivators, ploughs, weeders, seeders, planters, etc. The applicant submitted that Victor Waweru referred to exhibit A7, which lists the agricultural machinery and spare parts imported by the applicant. The letter demonstrates that the incurred 18% VAT at importation was erroneously incurred.

The applicant submitted that the actions of the respondent were contrary to the right to fair treatment in the Taxpayers' Charter and breached the legitimate expectation raised by the representations and commitments made in the objection meeting of 18th December 2020 by the respondent. The applicant submitted that the respondent's Taxpayers' Charter creates a legitimate expectation that taxpayers will be treated fairly in the administration of all tax procedures and processes. The applicant cited *Haji Kaala Ibrahim v The Attorney General & The Commissioner General of URA* Miscellaneous Cause No. 23 of 2017, where Justice Ssekaana held that:

> "The principle of legitimate expectation is concerned with the relationship between public administration and the individual. It seeks to resolve the basic conflict between the desire to protect the individual's confidence in expectations raised by administrative conduct and the need for administrators to pursue changing policy objectives. The principle means that expectations raised as a result of administrative conduct may have legal consequences."

The applicant submitted that the respondent made a clear promise to guide the applicant on the refund of its money, which they neglected to fulfil to the detriment of the applicant. The respondent's conduct falls short of fair treatment.

The applicant submitted that it incurred an illegal 15% domestic VAT on imported exempt supplies of Shs. 296,856,674. It cited *Margaret Akiiki Rwaheru & 13,945 others v Uganda Revenue Authority* Civil Appeal No. 98 of 2015 where Court held that domestic VAT charged on imported goods of the appellants was illegal. The applicant submitted that whereas it was not party to the appeal, it was a victim of this illegal VAT. The respondent didn't consider the decision of the Court of Appeal. The applicant submitted that it is a settled that an illegality once brought to the attention of the court overrides all pleadings including any admissions. It cited *Makula International Limited v His Eminence Cardinal Nsubuga & another* Civil Appeal 4 of 1981. The respondent was bound to apply the guidance of the Court of Appeal on the illegality of the 15% domestic VAT on imported goods.

The applicant submitted that it disputes the respondent's demand for additional VAT payment while the latter had monies owed to the former for erroneously paid VAT at importation of exempt supplies totaling to Shs. 2,094,943,457 and the refund of the illegal domestic VAT on imported goods totaling to Shs. 296,856,674. The applicant argued that any outstanding taxes from the audit if any would be offset from the refund owed to the applicant. The applicant submitted that if the respondent were to consider the monies due, owed and refundable to the applicant it would extinguish the assessed tax of Shs. 283,437,890.

In reply, the respondent submitted that S. 16(4) of the Tax Appeals Tribunal Act limits an application to the grounds stated to a taxation objection to which the decision relates. The respondent submitted that the Tribunal is required to conduct a review of the actual objection decision. The respondent also contended that it is a well-known principle that parties are bound by their pleadings. It cited *Interfreight Forwarders (u) Ltd v East African Development Bank* Civil Appeal No. 33 of 1992.

The respondent submitted that the applicant filed an application to have the respondent's objection decision reviewed. At no point were the issues the applicant has currently submitted on actually raised. Raising of new issues at the final stage of submissions is nothing short of an attempt to mislead the Tribunal. The respondent contended that the applicant is on a frolic of its own which is not sustainable in law. The respondent also cited *Nakirya Ssekataba & Anor v AG* Civil Appeal 38 of 2003[2006] UGCA 45 *(8th Sept 2006)* where court stated that: parties are bound by their pleadings during the trial. Thus, a party cannot be seen to raise a new ground during submissions.

The respondent submitted that "input tax" is defined under S.1(1) of the VAT Act to mean: "The tax paid or payable in respect of a taxable supply to or an import of goods or services by a taxable person." It submitted that input tax is claimable by a taxable person as provided for under S. 42(1) of the VAT Act which provides that;

> "If for any tax period, a taxable person's input tax credit exceeds his or her liability for tax for that period, the Commissioner General shall refund him or her the excess".

Input tax is claimable by way of refund by the taxable person who made the supply and subsequently declares the same to the respondent. Shs. 2,094,943,457 claimed as input VAT by the applicant was broken down into the categories as stated below;

a) Input tax of Shs. 1,470,030,620 VAT paid at importation. The respondent claimed input tax was denied on the basis that it was incurred more than six months prior to VAT registration. S. 28(3)(a) of the VAT Act provides that;

> "A credit is allowed to a taxable person on becoming registered for input tax paid or payable in respect of all taxable supplies of goods (emphasis ours) including: capital assets, made to the person prior to the person becoming registered...occurred not more than six months prior to the date of registration"

The respondent submitted that the implication of this section is that any input claimed has to have been incurred within 6 months of VAT registration of the tax payer, anything beyond that period does not qualify. The applicant's certificate of registration is dated 1st July 2015. AW1 testified that the applicant was registered in 2015. The respondent submitted that VAT registration takes effect on the date stated in the certificate of

registration. It cited *Post Bank (U) Uganda Ltd v Uganda Revenue Authority* Application 18 of 2008, where the Tribunal held that;

> "S. 8(6) states that registration takes effect from the date specified in the Certificate. If Commissioner clearly stated that the certificate is effective from 1st October 2005 why should the Tribunal doubt the certificate?"

The respondent submitted that S. 28(3) *of the VAT Act* is clear, the credit can only be allowed in respect to taxable supplies for transactions made within 6 months prior to the date of registration.

b) Input VAT of Shs. 87,594, 082. The respondent submitted that it initially could not trace customs entry number C65155 in the Asycuda system. The applicant later availed support documentation and which when it was reviewed it was established that the applicant had quoted wrong dates. Under S. 2 of the East African Community Customs Management Act 2004 an entry is deemed entered when payment for the same is made. The actual date of payment on the said entry was 15th August 2014 which the applicant reported as 15th August 2015. AW 1 in his testimony confirmed that payment on the customs entry was made in 2014. The respondent communicated that the input VAT was incurred more than 6 months prior to registration and the input VAT claimed was not creditable.

The respondent cited S. 42(3) of the VAT Act which states that "A person may claim a refund of any output tax paid in excess of the amount of tax due under this Act for a tax period. S. 42(4) states that "A claim for a refund under subsection (3) shall be made in a return within 3 years after the end of the tax period in which tax was over paid. The respondent cited *Manilla North Tollways Corporation v Commissioner of Internal Revenue* C. T.A EB No. 812 of 2012, where court held that;

> "Tax refunds are in the nature of tax exemptions and are to be construed in stricissimi juris against the entity claiming the same; the law does not look with favor on tax exemptions; and he who claims an exemption must be able to point the provision of the law creating the said right and justify it."

The respondent contended that the burden to prove entitlement to a tax refund claimed rests on the applicant. The applicant in its objection letter dated 6th November 2020 made no mention of a refund.

The respondents submitted that the applicant contended that there was a meeting between themselves where the former's objection review team advised the latter to seek a refund which gave rise to a legitimate expectation on the applicant. The respondent's submitted that its role is set out in S. 3(1)(a) of the Uganda Revenue Act to include: -

> "to administer and give effect to the laws or the specified provisions of the tax laws set out in the First Schedule to the Act, and for this purpose to asses, collect and account for all revenue to which those laws apply."

The respondent contended that its mandate under the URA Act does not include offering consultancy services. It submitted that the applicant's assertion of the respondent being bound by the principle of legitimate expectation to guide on the refund is not only misleading on the roles of the respondent as per the URA Act, but also misguiding. The respondent cited *R v Inland Revenue Commissioners Ex Parte Mfk Underwriting Agents Limited [1989] STC 873,* where Court stated that;

> "Every ordinary sophisticated tax payer knows that the Revenue is a tax-collecting agency, not a tax -imposing authority. The tax payer's only legitimate expectation is, prima facie that he will be taxed according to statute, not concession or wrong view of the law... One should be taxed by law and not be untaxed by concession"

The respondent submitted that for the respondent to be bound by a decision based on a communication the person claiming must prove that the communication gave rise to a legitimate expectation. It also cited *National Social Security Fund v URA* HCCA 29 OF 2020 where the court said

> "A legitimate expectation may arise either from an express promise given on behalf of a public authority or from the existence of a regular practice which the claimant can reasonably expect to continue..."

The respondent submitted that then applicant over paid tax and is duty bound to apply for any overpaid or wrongly paid tax. It cannot abrogate its duty and sit on its rights and then turn around to blame the respondent for its inaction and negligence.

c) On domestic VAT illegally charged, the respondent submitted that the applicant never raised it in its application nor objection. RW1 testified that he was not aware of the 15% VAT charged on the applicant's imports. The respondent submitted that the applicant's

assertion that an illegality should not be ignored by court is misconceived and wrongly interpreted. The respondent cited *Attorney General v Bumero Estates Ltd,* SCCA 19 of 2019 which gives the definition of an "illegality" as;

> "Illegality is when the decision-making authority commits an error of law in the process of taking or making the act subject of the complaint. Acting without jurisdiction or ultra vires or contrary to the provisions of a law or its principles are instances of illegality"

It also cited S. 103(1) of the Evidence Act which states that;

> "The burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person"

The respondent concluded that the applicant never at any time during the objection period and process, mediation or hearing of the case lead any evidence to do with the payment of domestic VAT at importation.

On apportionment of VAT disallowed input credit of Shs. 1,692,433,735, the respondent submitted that the applicant had earlier filed an Application 50 of 2018 in which it sought to review the respondent's position on classification of cereals as exempt and not zero rated. The tribunal delivered a ruling on 28th January 2020 where the applicant's cereals were ruled to be exempt. It was on this basis of the ruling that the applicant's cereals were exempt that the respondent apportioned input VAT between taxable supplies and exempt supplies. The applicant challenged the apportionment in its application arguing that since there is a subsisting appeal, the respondent should not apportion its input VAT. The respondent submitted that the said ruling is still good law and indeed persuasive; and has not been overturned by any higher Court. The respondent submitted that the existence of an appeal in the high court that has not been determined does not negate the ruling that is still good law for all intents and purposes.

In rejoinder, the applicant submitted that *Margaret Akiiki Rwaheru & 13,945 others v URA* (supra)said decision was made after it had made after it had made its objection. It also submitted that the 15% VAT erroneously incurred at importation of exempt supplies was not an overpayment. The respondent represented to the applicant that it would guide it on the erroneously paid VAT. The representation created a legitimate expectation. The

respondent had no legal justification for retaining the VAT paid erroneously at importation of exempt goods.

Having listened to the evidence and read the submissions of the parties, this is the ruling of tribunal;

The respondent raised a preliminary objection that the applicant departed from the scheduled issues. It raised an issue on an illegal 15% VAT that were never part of the objection nor objection decision. S.16(4) of the Tax Appeals Tribunal Act states that

> "Where an application for review relates to a taxation decision that is an objection decision, the applicant is unless, the Tribunal orders otherwise, limited to the grounds stated in the taxation objection to which the decision relates".

The Tribunal has perused the objection decision of 7th May 2021 which states grounds on the objection decision as 1) VAT dues to apportionment fraction, 2) VAT wrongly paid on exempt supplies at importation, 3) VAT wrongly paid on exempt supplies but not shown in the URA Asycuda system, 4) Double claim on input tax, 5) undeclared sales. The issue of the applicant's payment of an illegal 15% was not raised in the objection nor addressed in the objection decision. Though the decision of *Margaret Akiiki Rwaheru & 13945 others v URA* (supra) was made after the objection, the applicant did not obtain leave from the Tribunal to raise it during the trial. The Tribunal is limited to the grounds raised in the objection unless it orders otherwise.

Furthermore, the said issue was not raised in the applicant's application. It was also not raised during the scheduling. In *Interfreight Forwarders (u) Ltd v East African Development Bank* Civil Appeal No. 33 of 1992; Justice Oder stated;

> "The system of pleadings is necessary in litigation. It operates to define and deliver it with clarity and precision the real matters in controversy between the parties upon which the court will be called upon to adjudicate between them. It thus serves the double purposes of informing each party what is the case of the opposite party which will govern the interlocutory proceedings before the trial and which the court will have to determine at the trial."

There was no evidence led during the trial on the said 15% VAT. Even the tax paid may still be in dispute. Since the issue of the purported illegal VAT of 15% was nor raised in

the objection, nor pleaded, not addressed during the schèduling the Tribunal will not address it.

The parties entered a partial consent settlement order. The parties agreed that the applicant is entitled to input tax of Shs. 23,939,546 for the period July 2016 and May 2018. The tax assessed in respect of the said period was set aside. The applicant's sales for the period 2015 to May 2020 were considered VAT exclusive and therefore no liability accrued. The tax assessed of Shs. 58,393,546 in respect of unprocessed agricultural products and leasing land was set aside as they were considered exempt. The matters unresolved by the consent were referred to the Tribunal for determination on merit. The parties did not clearly state which matters were not resolved. The Tribunal will therefore only address the disputes stated in the objection of 6th November 2020 and the objection decision of 7th May 2021. Any other dispute not in the objection and the objection decision that was addressed without leave of the Tribunal will not be entertained.

The applicant objected to the VAT due using the apportionment faction under the VAT Act as stated in the objection decision. The respondent disallowed the apportioned input credit used by the applicant. The respondent used an apportionment where it considered that the applicant made a mixed supply of taxable and exempt supplies resulting in a VAT liability of Shs. 1,692,433,735. S. 28(7)(b) of the VAT Act provides that;

> "(b) Where only part of the taxable person's supplies for that period are taxable supplies, the amount is calculated according to the formula specified in S. 1(f) of the 4th Schedule."

The formula provided for under S. 1(f) of the 4th Schedule of the VAT Act. It is to the effect that; "For purposes of S. 28(7)(b), the following formula shall apply – **A x B/C**..." Under S. 28(8) of the VAT Act, "Where the fraction B/C in S. 1(f) of the 4th Schedule is more than 0.05, the taxable person may credit all input tax for the period." The applicant submitted that the respondent should not have apportioned using the tribunal's decision in *Amatheon Agri Uganda Limited v Uganda Revenue Authority* Application 50 of 2018 where it was ruled that a sale of cereals is an exempt supply. The said decision has not been overturned by a higher court. The Tribunal is required to expeditiously dispose of tax matters. The said decision is still persuasive though not binding. The applicant has

not brought any grounds why the Tribunal should depart from it. This case, which is similar to the previous one, involves a mixed supply of exempt and taxable supplies, in the absence of good grounds cannot be decided differently. The applicant did not challenge the quantum. It only wanted the applicant to stay this matter pending an appeal in another matter. There is no appeal in this matter that requires the Tribunal to stay its proceeding. It will proceed to determine the matter. Since there is a mixed supply in this matter, the formula stated above does not change and an additional tax of Shs. 1,692,433,735, whose quantum was not challenged, arises and is maintained.

The applicant submitted that it erroneously paid 18% VAT of Shs.1,470,030,620. on the import of agricultural machinery and spare parts between 2014 to 2017 and is refundable. Exempt importation of agricultural products is provided for under S. 20(1)(b) of the VAT Act which provides that an import of goods is an exempt import if the goods would be exempt had they been supplied in Uganda. S. 19 of the VAT Act provides that; "A supply of goods or services is an exempt supply if it is specified in the second schedule". Paragraph 1(s) of the 2nd Schedule provides that the supply of machinery, tools and implements suitable for use only in agriculture, and for purposes of this subparagraph is exempt. It further provides what "machinery, tools and implements, means. The applicant submitted that it erroneously paid 18% VAT on importation of exempt supplies. The applicant imported various agricultural machinery and spare parts, seeders and planters for which it claimed input VAT. These imports are exempted in the VAT Act and are not subject to tax.

The respondent contended that S. 28(3) of the VAT Act provides that "a credit is allowed to a taxable person on becoming registered for input tax paid or payable in respect of taxable supplies of goods" which occurred not more than six months prior to the date of registration. The respondent contended that the applicant was registered for VAT effective 1st July 2015. The respondent cited *Post Bank (U) Limited v URA* Application 18 of 2008 where it was stated that registration takes effect from the date of the certificate. The respondent contended that the applicant cannot claim for input tax when it was not

registered. Input tax is defined under S.1(1) of the VAT Act as: "The tax paid or payable in respect of a taxable supply to or an import of goods or services by a taxable person."

The respondent deems that the applicant is claiming for input VAT. S. 1(1) defines input tax paid in respect of a taxable supply. An exempt supply is not a taxable supply. What the applicant wants is tax it paid in error Therefore, the issue of input VAT does not arise. It was merely tax paid in error. The tax claimed by the applicant of 1,470,030,620 is payable because the imports are exempted by the VAT Act.

The third dispute as stated in the objection was in respect of VAT of Shs. 87,594,082 wrongly paid on exempt supplies but not shown in the ASYCUDA system. In 2014, the applicant imported seeders and planters for which it claimed VAT of Shs. 87,594,082. The respondent contended that the applicant used a wrong entry date which was 15th August 2015. The actual entry date was 15th August 2015. The respondent contended that the supply was made beyond six months prior to the company's VAT registration. The respondent cited S. 2 of the East African Community Customs Management Act that states an entry is deemed entered when payment is made. As noted above the applicant is not claiming for input VAT as there was no taxable supply, but VAT paid in error as the import was exempt. Since it is not disputed that the import is exempt and that it was paid in error, the applicant is entitled to the VAT of Shs. 87,594,082 paid. The issue of when it was registered for VAT does not arise. The applicant's witness put the amount at Shs. 100,934,165. However, the objection and the objection decision have Shs. 87,594,082. The Tribunal will go by the amount in the objection and objection decision as they do not seem to be in dispute.

The fourth dispute in respect of the double claim of Shs. 23,939,546 was settled in the partial consent settlement order. Therefore, the Tribunal will not delve into it.

The Tribunal notes that the applicant objected to VAT of Shs. 325,024,817 on 6th November 2020. The said dispute was mentioned during scheduling. However, it was

not mentioned in the objection and the objection decision. No evidence was led on it. It is not in the applicant prayers in its submissions.

There is a dispute on a refund of domestic VAT on imported goods of Shs. 541,066,971, and wrongly apportioned VAT paid at importation of exempt supplies of Shs. 267,394,803 a. The applicant contended that it imported various agricultural machinery and spare parts for which it claimed input VAT of Shs. 541,344,739. It is not mentioned in the objection and objection decision. The applicant submitted that the parties held an objection meeting. It received no feedback from the respondent. This came out in the applicant's submission but not in the evidence during the trial. It is not clear how the doctrine of legitimate expectation arose. The applicant's witness did not testify on any communication which gave rise to legitimate expectation. Counsel for the applicant should desist from raising matters in submission which were not mentioned during the trial.

There were amounts of Shs. 283,437,890 and Shs. 1,692,433,745 which were either not in the objection, addressed during scheduling nor in the pleadings, the Tribunal will not address them. The amounts in the pleading, evidence and submissions differed making it difficult to track the disputes.

The respondent issued a tax audit management letter with a VAT assessment plus penal tax totaling to Shs. 325,024,817.85. The principal VAT was reduced from Shs. 323,224,818 to Shs. 283,437,890. The respondent did not adduce evidence as to how the said liability arose. The partial consent stated that the tax assessed for the period July 2016 and May 2018 was set aside. Maybe the said amount was resolved by the partial consent.

Taking the above into consideration, the tribunal orders that;

1. Shs. 1,692,433,735 the apportioned input tax credit is payable by the applicant.
2. The applicant is awarded Shs. 1,470,030,620 erroneously paid as VAT on exempt imports.

3. The applicant is entitled to the VAT erroneously paid of Shs. 87,594,082
4. Each party to bear its costs.

We so order

Dated this 18th day of August 2022.

DR. ASA MUGENYI	**DR. STEPHEN AKABWAY**	**MS. CHRISTINE KATWE**
CHAIRMAN	**MEMBER**	**MEMBER**