

**THE REPUBLIC OF UGANDA**

**IN THE TAX APPEALS TRIBUNAL AT KAMPALA**

**APPLICATIONS NO. 139, 144, 240, 270 & 330, 274, 304, 312, 332, 342, 380**  
**OF 2024**

1. NYANGA OBUROFA ENTERPRISES LTD (139)
2. HARRY TRANSPORTERS LTD (144)
3. RAPADA UG LTD (240)
4. TESLA TECHNICAL SERVICES LTD (270 & 330)
5. XTREME UGANDA LTD (274)
6. GERSA HOLDINGS CO LTD (304)
7. GOLD COAST CARGO HAULIERS LTD (312)
8. NAKABIRA LOGISTICS UG LTD (332)
9. NKUUTU GENERAL CONTRACTORS LTD (342)
10. ABASI BALINDA TRANSPORTERS LTD (380) .....APPLICANTS

**VERSUS**

**UGANDA REVENUE AUTHORITY.....RESPONDENT**

**BEFORE: MS. CRYSTAL KABAJWARA, MS. GRACE SAFI,  
MR. WILLY NANGOSYAH**

**RULING**

This ruling is in respect of an application challenging the Respondent's imposition of withholding tax on the agricultural produce imported by the Applicant.

**1. Background facts**

The Applicants import agricultural goods (rice, beans, soya beans, millet, onions, groundnuts, maize, sorghum, onions, Irish potatoes) from the Republic of Tanzania. The Applicants applied for a withholding tax (WHT) exemption certificate which the Respondent granted. The Applicants contend that at the time of the importation and

declarations the Respondent charged withholding tax on all the produce even with valid and running exemption certificates. The Respondent contended that the Applicants alleged that they were denied the benefit of their WHT exemptions when the Respondent demanded WHT on the said imports, despite the Applicants holding valid WHT exemption certificates. Being dissatisfied, the Applicants filed applications before the Tax Appeals Tribunal.

Given that there were various applications filed concerning the same issue, the Tribunal guided the parties to file joint submissions so that a single decision is made. This would save time rather than resolve each application separately, and the parties agreed to this.

## **2. Issue for determination**

The issue for determination is whether the Applicants are liable to withholding tax on importation of rice and other agricultural produce.

## **3. Representation**

The Applicants were represented by Mr. Sidney Ojwee, Mr. Joseph Angura, Ms. Lynn Martha Amoding, Mr. David Amany, Mr. Allan Atwiine and Mr. Joseph Mukiibi while Mr. Barnabas Nuwaha, Mr. Sam Kwerit, Mr. Samuel Oseku, Ms. Christine Mpumwire, Mr. Donald Bakashaba and Mr. Simon Peter Orishaba appeared for the Respondent.

## **4. Submissions of the Applicants**

The Applicants submitted that they are not liable to pay the tax assessed. They stated that they imported rice, beans, ground nuts, sorghum, millet and soya beans from the Republic of Tanzania which are all agricultural produce. The Applicants submitted that Section 136 (3) of the Income Tax Act, imposes withholding tax on every import of goods into Uganda. However, subsection (5) (c) provides that the importation of agricultural products are exempt from WHT. The Applicants contended that the Respondent's attempts to impose and collect withholding tax from them is illegal.

The Applicants also cited Article 15 (1) & (2) of the Protocol on the Establishment of the East African Customs Union (the Protocol) which provides:

*"Partner States are enjoined to apply administrative measures which directly or indirectly do not discriminate against the same or like products of other Partner States or impose on each other's products any internal taxation of such a nature as to afford indirect protection to other*

*products. Further, Partner States must not impose directly or indirectly on the products of the other Partner State any internal taxation of any kind in excess of that imposed, directly or indirectly on similar domestic products."*

The Applicant submitted that the Respondent's insistence on imposing and collecting WHT on imported agricultural produce from Tanzania which is a partner state is wrong, unlawful and offends the provisions of the Protocol.

#### Exemption granted by the Respondent

The Applicants submitted that they imported the goods in issue with valid exemption certificates which the Respondent did not revoke, have not expired by the time the Applicants imported and declared the said agricultural produce to the Respondent.

Hence, the Respondent was not justified in demanding payment of withholding tax from the Applicants after it had granted withholding tax exemptions for the periods in which they imported their products from the Republic of Tanzania.

#### Legitimate expectation

The Applicants also submitted that the Respondent's actions created a legitimate expectation on the part of the Applicants that their imports would be exempt from withholding tax unless their certificates are revoked by the Respondent. To date, the Respondent has not revoked the certificates and in the absence of such revocation, the Applicants remain exempt from the payment of withholding tax for the period of the exemption.

#### Damages

The Applicants submitted that the Respondent has for over a year imposed a lot of bottle necks to the Applicants intended to fail their smooth operations. The Respondent has severally blocked the Applicants' goods from entering the country. For all the pain and suffering, the Tribunal has a duty imposed by the law to award the Applicant damages and put the Applicants in a position they should have had they not been subjected to the Respondent's illegal demands. The Applicants prayed for an award of general damages of Shs. 1,000,000,000.

The Applicants also prayed for a refund of the illegally charged and collected withholding tax which the Respondent illegally demanded them to pay as a condition

for release of their goods. The Applicants were compelled to pay 30% of the disputed entries and the goods therein to be released. The Applicants also prayed that they be awarded the costs of this application.

## **5. Submissions of the Respondent**

In reply, the Respondent made several arguments which are set out below.

### Applications are improper before the Tribunal

The Respondent submitted that some of the applications were prematurely filed before the Tribunal as the parties did not pay the mandatory 30% deposit of the tax in dispute. This applies to Xtreme Uganda Ltd, Nakabira Logistics UG Ltd, Abasi Balinda Transporters Ltd, Nkutu Contractors Ltd, Tesla Technical Services, Harry Transporters Ltd, Nyanga Oburufa Ent Ltd, Rapada Uganda Ltd, Gold Coast Ltd, Rabika Fashions Ltd and Gersa Holdings.

The Respondent submitted that these Applicants have not paid the 30% of the tax in dispute and as a result, the application is improperly before the Tribunal.

### Absence of objection decisions

Further, the Respondent submitted that the Applicants lodged the present application before the Tribunal without lodging an objection with the Commissioner customs. By the time the Applicants filed these applications, the Commissioner had not made any decision about the matter. The Applicants did not take any step to apply to the Commissioner for review when they were dissatisfied with the intention to impose or charge withholding tax on the importation.

The Respondent cited Section 229 of the East Africa Community Customs Management Act, which provides:

1. *A person directly affected by the decision or omission of the Commissioner or any other officer on matters relating to Customs shall within thirty days of the date of the decision or omission lodge an application for review of that decision or omission.*
2. *The application referred to under subsection (1) shall be lodged with the Commissioner in writing stating the grounds upon which it is lodge.*
3. *The commissioner shall, within a period not exceeding thirty days of the receipt of the application under subsection (2) and any further information the Commissioner may*

require from the person lodging the application, communicate his or her decision in writing to the person lodging the application stating reasons for the decision.

4. Where the Commissioner has not communicated his or her decision to the person lodging the application for review within the time specified in subsection (4), the Commissioner shall be deemed to have made a decision to allow the application.

The Respondent submitted that the first step to challenge any Customs issue is to appeal to the Commissioner of Customs.

Section 230 provides:

1. A person dissatisfied with the decision of the commissioner under section 229 may appeal to a tax appeals tribunal established in accordance with section 231.
2. A person intending to lodge an appeal under this section shall lodge the appeal within forty-five days after being served with the decision and shall serve a copy of the appeal on the Commissioner.

The Respondent submitted that the Applicants have not appealed to the Commissioner about the alleged notification of intention to assess and impose WHT on the Applicants' rice imports.

The Respondent cited the case of ***Imba Foods Ug Ltd v URA, Misc App No. 182 of 2024*** where the Tribunal held that in the absence of the decision from the Respondent, the Tribunal is not clothed with any jurisdiction to hear the matter.

The Respondent submitted that the Applicants have no locus before the Tribunal and as a result, their applications should be dismissed with costs to the Respondent.

#### Entries beyond the certificate

Regarding **Gersa Holdings Ltd**, the Respondent submitted that there was no proof of the purchases and that the Applicants application was frivolous. The Respondent submitted that entries as per the pleadings of the Applicant are a year beyond the WHT certificate and as such there is no cause for action.

#### Contempt of Court

The Respondent submitted that the Applicants were in contempt of court as the Applicants were directed when an interim order was issued to pay 30% of the tax in dispute which has not been complied with.

## **6. Submissions of the Applicants in rejoinder**

In rejoinder, Tesla Technical Ltd, Harry Transporters, Gersa Holdings Co. Ltd and Nyanga Oburofa submitted that the dispute is due to payment and demand of withholding tax and not customs duty whilst in possession of a withholding tax exemption. The Respondent wrongfully imposed withholding tax, yet the Applicants are clearly exempt under Section 136 of the Income Tax Act.

The Applicants submitted that withholding tax on imports is not provided for in the EACCMA, 2004 and therefore there is no need for the Respondent's continuous reliance on that law.

The Applicants submitted that Section 136 (3) of the ITA imposes withholding tax on imports in Uganda. However, Section 136 (5) exempts agricultural products from tax.

### Absence of a taxation decision

The Applicant submitted that Section 1 of the TAT Act defines a taxation decision to mean an assessment, determination, decision or notice. A taxation decision includes all determinations and decisions taken by the Respondent against the aggrieved party. The Applicants submitted that being aggrieved by the Respondent's decision rightly applied to the Tribunal for review of the taxation decision under Section 14 of the TAT Act.

### Thirty Percent deposit

The Applicants submitted that they are under no legal obligation to pay 30% of the tax assessed as the matter is purely legal in nature. The Application is challenging the imposition of withholding tax where there is clear exemption in law. The Applicants' grievance regarding the legality of the Respondent's actions is that the payment of 30% does not arise. The Applicants have no legal obligation, legal or otherwise, to pay the 30% of the tax assessed as it does not challenge the tax assessment which the Applicant does not also object to. The Applicants prayed that these applications were granted.

## 5. The determination of the issues

Having read all the submissions of both parties, this is the decision of the Tribunal.

The Applicants in this case contended that they deal in the supply of agricultural produce sourced from the Republic of Tanzania. The Applicants contended that they had valid exemptions, but the Respondent charged and imposed withholding tax on all the produce and denied them entry.

The Respondent contended that the Applicants had not paid 30% of the tax in the dispute; they had no objection to the decision from the Commissioner and hence are prematurely and improperly before the Tribunal.

The Applicants alleged that they are exempted from WHT in accordance with Section 136 (3) and (5) of the Income Tax Act, which provides:

*“(3) Every person who imports goods into Uganda is liable to pay at the time of importation on the value of the goods at the rate prescribed in Part X of Schedule 4 to this Act”.*

However, Subsection (5) provides:

*“(5) This section does not apply to-*

- (a) importations by organisations within the definition of "exempt organisation" in section 2(a)(ii) of that definition;*
- (b) a supplier or importer-*
  - i. who is exempt from tax under this Act; or*
  - ii. who the Commissioner General is satisfied has regularly complied with the obligations imposed on the supplier or importer under this Act; and*
- (c) agricultural supplies.”*

The ITA does not define the term “agricultural supplies”. Therefore, in the absence of a definition, we must defer to the ordinary or literal meaning of the term.

The term “agricultural” is an adjective that refers to things that are related to or used in farming (The term “agricultural” is an adjective that refers to things that are related to or used in farming

<https://dictionary.cambridge.org/dictionary/english/agricultural>)

The term supplies is defined to mean food or other things necessary for living

<https://dictionary.cambridge.org/dictionary/english/supplies>).

The term supply is also defined to mean to provide something that is wanted or needed, often in large quantities and over a long period of time

(<https://dictionary.cambridge.org/dictionary/english/supply>)

Therefore, the term “agricultural supplies” can be taken to mean things such as food items that are related to farming.

In the present case, the Applicants seek to import agricultural produce such as rice, beans, ground nuts, among others. These items, which constitute agricultural produce are related to or used in farming. Therefore, they are agricultural supplies within the meaning of the ITA.

The Applicants imported or sought to import supplies such as rice, beans, ground nuts, soya, sorghum and other produce into the country. These are agricultural supplies which are not subject to withholding tax as per section 136 (5) (c) of the ITA.

We therefore find that the Applicants are exempt from withholding tax in respect of the importation of agricultural produce. Therefore, the Respondent actions of imposing withholding tax on the agricultural products were unlawful.

#### Exemption Certificates

Secondly, the Applicants alleged that they had valid and running WHT exemption certificates.

The certificates are issued by the Respondent pursuant to section 136 (5) (b) of the ITA in respect of persons who the Commissioner General is satisfied have regularly complied with the obligations imposed on the supplier or importer under the ITA.

Therefore, having been satisfied with the Applicant's compliance status, the Respondent issued certificates as shown below.

	<b>Applicant</b>	<b>Commencement date of certificate</b>	<b>Expiry date of certificate</b>
1	Nyanga Oburofa Enterprises Ltd	04/07/2023	30/06/2024
2	Harry Transporters Ltd	12/07/2023	30/06/2024
3	Rapada Ug Ltd	01/07/2024	30/06/2024
4	Tesla Technical Services Ltd	01/07/2024	30/06/2024

5	Xtreme Ug Ltd	01/07/2024	30/06/2025
6	Gersa Holdings Co. Ltd	16/12/2022	30/06/2023
7	Gold Coast Cargo Hauliers Ltd	12/09/2023	30/06/2024
8	Nakabira Logistics Ug Ltd	Certificate not availed	-
9	Nkuutu General Contractors Ltd	11/06/2021	-
10	Abasi Balinda Transporters Ltd	16/07/2024	30/06/2025

Further, the Respondent has powers to revoke certificates issued by them because these Exemption certificates are benefits rather than rights for tax compliance. However, this can only be done where the taxpayer is found to be non-compliant. The exemption certificates state:

*“This certificate may be revoked in case of non-tax compliance during the period of exemption period”.*

The Respondent has not presented any evidence of non-compliance on the part of the Applicants and neither have they revoked any of the Applicant's withholding tax exemption certificates. Therefore, in the absence of such revocation, the Applicants are entitled to rely on the exemption status that was accorded to them by the Respondents.

We note that some of the Applicants presented expired WHT exemption certificates. Ordinarily, once a certificate has expired, it cannot be relied on. However, in the present case, since the goods are exempt from WHT as per section 136 of the ITA, it follows that there is no need for withholding tax exemption certificates.

#### Taxation decision

The Respondent contended that the Applicants filed these disputes without obtaining an objection decision from the Commissioner General and hence the Applicant was prematurely before the Tribunal.

Section 1(1) (K) of the Tax Appeals Tribunal Act, defines a taxation decision to include any assessment, determination, decision, or notice issued by the tax authority. Further, section 2 of the Tax Procedures Code Act defines a tax decision to mean a

tax assessment or a decision on any matter left to the discretion, judgment, direction, opinion, approval, satisfaction or determination of the Commissioner General.

In the case of ***Veeram Health Care Uganda Ltd v URA, App No. 137 of 2022***, the Tribunal ruled:

*“Section 26 of the Tax Procedures Code Act (TPCA) provides that a taxpayer may object to a taxation decision. However, not all taxation disputes require an objection decision before being brought before this Tribunal.”*

In the present case, the Respondent's denial of entry of the Applicants' products subject to the payment of withholding tax is a decision which this Tribunal has the jurisdiction to address.

### 30% deposit

Regarding thirty percent deposit, at the heart of this dispute is the legal question whether the Respondent can lawfully impose withholding tax on imports of agricultural supplies. We have concluded that under section 136 (5) of the ITA, withholding tax does not apply to imports of agricultural supplies.

In the case of ***Fuelex Uganda Limited V URA CR 3 of 2009***, it was held that the requirement to pay 30% deposit of the tax assessed does not extend to parties whose disputes are purely legal and where the question for determination before the Tribunal does not relate only to the amount of tax payable.

In the present case, the dispute is not about the quantum of the tax; it is about the legality of the tax. Therefore, the requirement to pay 30% of the tax assessed does not apply to the present application.

It is also worth noting that in the present cases, there was no assessment for the withholding tax yet the requirement for the 30% deposit is in reference to “tax assessed”. In the absence of assessments, there is no basis for determining the deposit.

### General Damages

The Applicant submitted that the Respondent for over a year imposed a lot of bottle necks, severally blocking entry of goods, intended to fail their smooth operations. For

all the pain and suffering, the Tribunal had a duty to award damages. The Applicant prayed for the award of damages of Shs.1,000,000,000.

The Tribunal notes that although the Applicant alleged bottlenecks, they have not proven how the imposition of withholding taxes has affected them or how much loss they have encountered. The Applicants have not demonstrated the extent of the loss that they have suffered, for example proof of goods purchased. Therefore, the prayer for damages is denied.

In the circumstances, we find that the Respondent's demand for withholding tax or attempts to collect withholding tax from the Applicants was unlawful. The Tribunal hereby makes the following orders:

- (i) The Applicants are not liable to pay withholding tax on the importation of agricultural products;
- (ii) The Respondent is directed to allow entry the Applicants' goods that have been denied entry on account of withholding tax;
- (iii) The Respondent is directed to refund any tax paid by the Applicants including any payments towards the 30% deposit;
- (iv) Costs are hereby awarded to the Applicants.

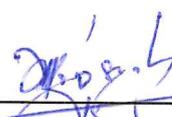
Dated at Kampala this 13<sup>th</sup> day of June 2025.



CRYSTAL KABAJWARA  
CHAIRPERSON



GRACE SAFI  
MEMBER



WILLY NANGOSYAH  
MEMBER

