THE REPUBLIC OF UGANDA

IN THE TAX APPEALS TRIBUNAL AT KAMPALA

APPLICATION NO. 224 OF 2024

BESI UGANDA LIMITED.....APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY.....RESPONDENT

BEFORE: MS. CRYSTAL KABAJWARA, MS. CHRISTINE KATWE, MS. KABAKUMBA MASIKO

RULING

This ruling is in respect of an assessment of Shs. 3,371,768,713 issued by the Respondent against the Applicant on the following grounds:

(i) The Applicant's products are not exempt from local excise duty as they do not contain at least 30% pulp from fruits and vegetables grown in Uganda; and

(ii) The Applicant understated their sales for VAT and income tax purposes, thereby giving rise to a liability of Shs. 980,826,654 and Shs. 1,272,529,493 for VAT and income tax respectively.

1. Background Facts

The Applicant is engaged in the commercial production of fruit and vegetable juices under the name Kirungi Quality Health products. The Applicant organises local farmers and purchases fruits and vegetables from them for processing into ready to drink juice. These include include Mulondo Extra, Kombucha, Kazi Booster, Kirungi Beetroot, among others.

On the 25 May 2022, the Respondent issued the Applicant with an additional administrative assessment totaling to Shs. 3,371,768,713 for the period 2018 to 2021.

The Applicant objected to the assessment on grounds that most of their products were not excisable by law since the products were made from at least 30% of pulp from fruit

and vegetables grown in Uganda as per paragraph 5 (b) of the 2nd schedule of the Excise duty Act.

With regard to the VAT and Income Tax assessments, the Applicant contends that the Respondent considered production numbers and assumed that all production is sold. However, sales only take place once the teams in the field transfer stock to customers for a fee subject to any agreed upon discounts. The Applicant alleges that they provided the Respondent with evidence of stock in upcountry stores that matched the income tax returns, damages in the manufacturing process, promotional items, stolen stock and many others. However, the Respondent did not consider this information. Therefore, the VAT and income tax assessments are exaggerated, overstated, inconsistent with the Applicant's business reality.

The Respondent issued its objection decisions disallowing the objection on grounds that all products of the Applicant were excisable, and the Applicant did not furnish sufficient documentation to support claims of stock movement, damages, return samples and stock losses.

2. Issues

The issues for determination by the Tribunal are:

(i) Whether the applicant is liable to pay the tax assessed?

(ii) What remedies are available to the parties.

3. Representation

The Applicant was represented by Mr. Andrew Kyambadde and Mr. Ntege Trevor Mark while the Respondent was represented by Ms. Rita Nabirye, Mr. Alex Ssali Aliddeki, Mr. Kenan Aruho and Mr. Derrick Nahumuza.

Mr. Musana Gonzaga, the Chief Finance Officer of the Applicant, in his witness statement stated that the Applicant is involved in the commercial production of vegetable and fruit juices under the name of Kirungi Quality Health products. The Applicant procures fruits and vegetables from local farmers and processes them into fruit juices ready for consumption.

Mr. Musana stated that from the Respondent's own findings, the fruit and vegetable extracts and pulps used as raw material in each of the Applicant's product were found to be from fruits and vegetables grown in Uganda.

The Respondent's findings showed that the Applicant was liable to pay excise duty of Shs. 1,118,412,566 because the total amount of pulp from fruits and vegetables grown in Uganda contained in the different products manufactured by the Applicant was less than 30%. The Respondent also assessed VAT of Shs. 980,826,654 and Income Tax of Shs. 1,272,529,493 because finished goods production quantities worth Shs. 5,449,039,968 could not be accounted for.

Mr. Musana stated that the Applicant objected to the assessments on grounds that the products are made from at least 30% of pulp from fruit and vegetables grown in Uganda. However, some of the products had been damaged, stolen or used as promotional items which was inconsistent with the Respondent's findings regarding the input/ output ratio. The Respondent made a decision disallowing the Applicant's objections on grounds that the total amount of pulp from fruits and vegetables grown in Uganda contained in the different products manufactured by the Applicant was less than 30%

With regard to the VAT and Income Tax assessments, Mr. Musana Gonzaga testified that Applicant never earned any income from the Respondent's alleged sales or production worth Shs. 5,449,036,968. Further, there were no supplies made by the Applicant in that regard and no tax liability ought to have arisen.

Mr. Musana Gonzaga further testified that the period in question, namely 2017 to 2021, included a period when the country and the rest of the world were under lockdown due to the outbreak of the corona virus (2019 to 2021). This lockdown led to a near total shutdown of the economy which greatly affected the operations of the Applicant's business leading to very low sales, stock damage due to expiration in the different stores around the country due to reduced market for the products.

Mr. Musana Gonzaga also testified that during the numerous reconciliation meetings between the Applicant and the Respondent, the Respondent raised queries regarding assessments on the purported sales of Shs. 5,449,036,968. He also stated that the Applicant furnished documentation of stock damage due to expiration in the different

stores around the country, promotional or sample sales of different products and the Respondent did not consider them.

During cross examination, Mr. Musana Gonzaga confirmed that the production data and some of the raw materials data was downloaded from the Applicant's account and the raw materials production books were taken by the Respondent. He also confirmed that during the meetings, he signed the document REX4, namely, the input output ratio that shows the Respondent's input output ratio calculations.

However, during re-examination Mr. Musana stated that on the day of the meeting with the Respondent, the report was presented showing the input output ratio derived by the Respondent from the Applicant's production books. The witness alleged that whilst he signed the Respondent's report, he did not confirm the accuracy of their calculations.

The Applicant called a second witness, Ms. Sarah Asiimwe, the General Manager of the Applicant Company. In her witness statement, she stated that the Respondent invited the Applicant to avail information on the daily production records for the different products, raw material purchase documents, stock movement records for both raw materials and finished products and any other records.

She further stated that in a letter dated 25 May 2022, the Respondent wrote to the Applicant informing them that the exercise of calculating input output coefficients was finalized and their beverage products are excisable goods as they contain less than 30% pulp.

Ms. Asiimwe further testified that the Applicant objected to the assessment on grounds that the products are not excisable under the law because they contain more than 30% of pulp from locally grown fruits and vegetables.

Regarding the production and sales variances, Ms. Asiimwe testified that some of the products were damaged in the manufacturing process, some were promotional items and other items were stolen.

Ms. Asiimwe also testified that the Respondent had an obligation to examine the evidence provided by the Applicant in support of the facts in issue and a proper

understanding of the Applicant's business in totality rather than relying on inaccurate, assumptions.

The Applicant called a third witness, Ms. Irene Alure, the Applicant's Quality Controller. She testified that the fruits that the Applicant purchases from local farmers are crushed into an industrial blender to extract the pulp. The pulp is then sieved and mixed with other additives such as sodium benzoate, citric acid, stabilizers among others.

She testified that 30% of fruit or vegetable pulp is derived from the total quantity of additives mixed with the pulp. As the additives are primarily in solid or powder form and their standard measure is in kilograms, the Applicant, during production, converts the kilograms of the additives into litres to get a uniform and standard measure of mixture. She stated that a kilogram is approximately equal to one litre.

Ms. Irene Alure testified that the total quantity of pulp is divided by the combined quantity of pulp and additives to obtain the percentage of fruit and vegetable pulp in the mixture which is usually above 30%.

Mr. Paul Erima, a Science Investigations Officer of the Respondent, was the Respondent's sole witness. He stated in his witness statement that the Respondent analyzed the Applicant's information/documents obtained and established that:

i. The Company produces seven beverages under the brand names Kirungi pineapple diet drink, Kirungi beetroot and hibiscus light drink, Kirungi Aloe vera diet drink, Kirungi Kazi booster, B-power energy drink, Mulondo Extra Booster, Furaha Kituzi drink and an ointment and mouth wash.
ii. The Applicant locally sourced raw materials which included pineapple pulp, beetroot, Hibiscus, Artemesia, Aloe vera extract, Ginger, Mulondo (Mondia white), brown sugar, black tea leaves and scoby.
iii. The Applicant imported raw materials which included sodium Benzoate, Citric Acid, Stabilizer, Potassium Sorbate, Yeast, Sweetener, Sodium metabisulphite, flavours, colors, eucalyptus oil, caffeine and thickener.

Mr. Paul Erima, stated that the Respondent reviewed records from March 2018 to June 2021 and derived input output ratios based on actual raw material inputs and actual finished products outputs for each beverage product.

He further testified that the Respondent generated input-output ratios which were reconciled with the Applicant through several interparty meetings and email correspondences. The two parties agreed upon the final applicable input-output ratios and a form was signed off by both the Applicant's and Respondent's representatives.

It was established that some of the products do not contain any fruit or vegetable pulp and that a batch of 12001 of each individual product contained different aggregated amount of pulp from vegetables or fruits. The total pulp from fruits and vegetables grown in Uganda contained within different products manufactured by the Applicant was less than 30%.

4. The Submissions of the Applicant

The Applicant submitted that their goods are not excisable as per paragraph 5 (b) of the 2nd Schedule of the Excise Duty Act which provides:

"Fruit juice and vegetable juice, except juice made from at least 30% of pulp from fruit and vegetables grown in Uganda" is subject to excise duty".

The Applicant submitted that a strict interpretation of the above provision must be applied as was stated in the case ***of Cape Brandy Syndicate V CIR 12TC 366***, where Rowlatt J held:

"In tax statute, one has to look clearly at what is said. There is no room for any intendment; there is no presumption as to a tax, you read nothing in; you imply nothing; but you look fairly at what is said and that is the tax".

The Applicant submitted that it follows that for there to be an excise duty exemption, the subject matter must be fruit and vegetable juice, the fruit and vegetable juice must be made from at least 30% of pulp from fruit and vegetables grown in Uganda.

The Applicant submitted that it is not in dispute that the products are manufactured from fruit and vegetable grown in Uganda. The person is exempted from excise duty where the manufactured juice is made from at least 30% of pulp from fruit and vegetables.

The Applicant submitted that according to the Online ***Cambridge Dictionary*** the verb "made from" is used to explain how something is manufactured. In this case, the juice is manufactured from pulp".

The Applicant submitted that whereas the Excise Duty Act, does not define the noun "pulp", the rules of statutory interpretation may be applied as was reiterated in the case of ***Crane Bank V Uganda Revenue Authority (HCT-00-CC-CA-18) [2012] UGCOMMC 42*** where the learned Justice Kiryabwire stated:

"Under the rules of statutory interpretation, where the Act does not define a word or term, then the word or terms must be given their ordinary literal meaning, the Courts may have recourse to dictionaries, though with care."

The Applicant submitted that the ***Macmillan English Dictionary, 2nd Edition*** at ***Page 1201*** defines "pulp" to mean:

"a soft substance made by crushing or cooking something until it is almost liquid".

The Applicant submitted that pulp is the substance that is obtained after crushing the fruits or vegetables and does not include water added to dilute the concentrate. Once the pulp has been extracted from the fruits and vegetables grown in Uganda, a formula is used to determine the percentage of pulp in the product the Applicant intends to manufacture.

The Applicant submitted that, for instance, when manufacturing pineapple juice, the raw materials are carefully crushed to extract the total pulp. The percentage of pulp is determined using a specific formula, which accounts for all the raw materials, except water. This formula for Pineapple Juice is illustrated in the table below:

Item	**Quantity**	**Unit**
Sodium Benzoate	4	kg
Citric Acid	4	kg
Stabilizer	2	Kg
Sweetener	6	kg
Pineapple Emulsion	75	1kg
Pineapple pulp	80	1kg

Eucalyptus	60	1kg
Total	**231**	

It was the Applicant's submission that the percentage of pulp is calculated by dividing the amount of pineapple pulp by the total weight of all the raw materials used except water, as follows:

(80/231) ×100%= 34.6%.

The Applicant submitted that this shows that the Pineapple juice is made from at least 30% (34.6%) pulp from fruits and vegetables grown in Uganda. The same test was applied to other products like Aleo Vera, Beetroot and the result was more than 30% of pulp from fruits and vegetables grown in Uganda. Therefore, the Applicant's products meet the 30% requirement.

The Applicant submitted that in ***Crane Bank V URA HCT-00-CC-CA 18 of 2010***, the learned Hon. Justice Geoffrey Kiryabwire held:

"*The position of the law is that if any doubt arises from the words used in the statute where the literal meaning yields more than one interpretation, the purposive approach may be used to determine the intention of the law maker in enacting of the statute*".

The Applicant submitted that the intention of Parliament in passing the above statutory exemption can be derived from the Agro- industrialization Programme Implementation Action Plan (Agro PIAP) of 2020/21-2024/25 at Page 5 which is to encourage agro-processing and manufacturing, encourage growth of fruits, vegetables and promote the Buy Uganda Build Uganda Policy of 2014 and development strategy of 2016.

The Applicant submitted that based on the above policy, a person qualifies for an exemption where they use more local fruits and vegetables grown in Uganda and this can be determined based on the percentage of the pulp. The Respondent misinterpreted Paragraph 5 (b) of the 2nd Schedule of Local Excise Duty Act and arrived at an unlawful assessment.

The Applicant prayed for a declaration that:

(i) The Applicant's juice is made from at least 30% of pulp from fruits and vegetable pulp grown and purchased from Uganda.

(ii) The exemption in Paragraph 5(b) of the 2nd Schedule to the Excise Duty Act applies to the Applicant.

(iii) The Tribunal sets aside the Respondent's objection decision of Shs. 3,371,768,713.

(iv) The costs of this application be awarded to the Applicant.

5. The Submissions of the Respondent

The Respondent submitted that whereas the Applicant applied to the Tribunal for review of the all the assessments concerning local excise duty, VAT and income tax, the Applicant during trial only led evidence in respect of the excise duty.

The Respondent submitted that the gist of the dispute is the interpretation of paragraph 5 (b) of the Second Schedule of the Excise Duty Act.

The Respondent submitted that Section 3 (1) & 3 (2) (b) and 3(3) of the Excise Duty Act imposes excise duty on manufactured excisable goods. It states:

"Subject to this Act, the excisable goods and excisable services specified in Schedule 2 shall be chargeable with the excise duty specified in that schedule".

In ***MTN Uganda Ltd vs URA (TAT Application No. 8 of 2019),*** it was held:

"Excise duty is a tax imposed on specified imported or locally manufactured goods and services. Black's Law Dictionary 10th Edition page 684 defines excise (duty) as a tax imposed on the manufacture, sale, or use of goods (such as cigarette tax), or on an occupation or activity. As such, it may be taxed on either the manufacture, or sale or use of an item or service depending on the intention of the legislature. One needs to look at the legislature imposing the tax and determine at what point it should be taxed..."

The Respondent submitted that by virtue of paragraph 5 (b) of the Second Schedule to the Excise duty Act, the Applicant was eligible to pay excise duty. The section provides:

"Fruit juice and vegetable juice except juice made from at least 30% of pulp from fruit and vegetable grown in Uganda is liable to excise duty."

At the time of the audit, Paragraph 5(b) provided that the rate of excise duty charged on fruit juice and vegetable juice is 13% or Shs. 300 per liter, whichever is higher at the time of the audit.

The Respondent cited the case of ***Cape Brandy Syndicate vs Inland Revenue Commissioners (1921) 1 K.B 64*** at page 71, where it was stated:

"...in a taxing Act one has to look merely at what is clearly said. There is no room for any intendment; there is no equity about tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied, one can only look fairly at the language used."

The Respondent submitted that Paragraph 5 (b) sets out three conditions that must be fulfilled by the Applicant for it to qualify for an exemption from excise duty:

(i) The product should be fruit juice or vegetable juice,
(ii) It should be made of at least 30% of pulp from fruits or vegetables; and
(iii) The fruits and vegetables must be grown in Uganda.

The Respondent submitted that it is not in contention that the Applicant's products are fruit juice while others are vegetable juice, and neither is it in contention that the fruits and vegetables that form the pulp are grown in Uganda. The dispute is whether the juice is made of at least 30% of pulp from fruits or vegetables grown in Uganda.

The Respondent submitted that Paragraph 5 (b) of the Second Schedule to the Excise Duty Act is to the effect that for juice to attract 0% Excise Duty, the fruit or vegetable pulp from fruits and vegetables grown in Uganda should make at least 30% of the juice content. The provision above is clear and is not susceptible to more than one meaning and therefore unambiguous. The golden rule of interpretation of statutes is that in interpreting a statute the courts must adhere to the grammatical and ordinary sense of the words.

The Respondent relied on the case of ***Kinyara Sugar Ltd vs Commissioner General Uganda Revenue Authority HCCS No. 73 of 2011***, it was held:

"I would further mention the principles of interpretation of tax statutes that are strictly construed. If the intention of Parliament can be discerned from the wording of the statute, then there would be no need to look beyond the wording of the section".

The Respondent submitted paragraph 5(b) of the Second schedule to the Excise Duty Act as it then was, shows that for juice to be exempt, it must be made from at least 30% of pulp from fruits and vegetables. The products did not constitute 30% of pulp. It was the Respondent's evidence that the eligibility of the products for excise duty was determined based on the (Applicant's) self-declaration on IOR form 1 made by the Applicant when they were visited on 31 October 2019.

The Respondent submitted that it used scientific samples of raw materials, completed IOR Form 1, finished product analysis forms, UNBS test reports as well as process flow diagrams to determine content of pulp by using an input/output co-efficient ratio.

The formula for determining the percentage of pulp

The Respondent contended that in deriving the percentage of pulp, the Respondent carried out a review of the Applicant's own information to obtain the input/output ratio which information the Applicant agreed to during the cross examination of Mr. Musana Gonzaga. This was done by computing a scientific formula of the raw materials (inputs) vis-à-vis the products (output) to obtain the ratio of pulp added in the different products. This evidence was not controverted by the Applicant.

It was the Respondent's submission that the analysis established that the actual total production output was higher than the expected product. This provided a higher output compared to the input. The production books established that the Applicant manufactured several beverages and extracts from fruits and vegetables grown in Uganda.

The Respondent submitted that however, it was also revealed that some products did not contain any fruit or vegetable juice. The production data revealed that a batch of 1,200 Litres of each individual product contained different aggregated amounts of pulp from vegetables or fruits as indicated below:

(i) Mulondo Extra - the total production in litres was 923,700 litres whereas the pulp content was only 61,800 litres. Using the input/output co-efficient, of raw material (input) of 61,800 litres to the total production of (output) of 923,700, the total percentage of raw material (pulp) is 6.69%.

In simple terms, the pulp was obtained by calculating:

Input x 100%= Pulp Output

61,800 x 100% =6.690%
923,700

The Respondent submitted that the above computation can be used to derive the percentages of all other products as indicated above as was demonstrated by the Respondent's witness Mr. Paul Erima as sampled by the raw data material attached as the REX1 on the Supplementary Trial Bundle.

The composition of the 'total production' that was used to derive the output was all the raw materials included in the product. These included portable water, brown sugar, mulondo (pulp), potassium carbonate, caramel color, sodium benzoate, citric acid, yeast and ken sweetener.

The Respondent submitted that the Applicant's excluded water in determining the percentage of pulp and that the Applicant's percentage of pulp is calculated by dividing the amount of pulp by the total weight of all the raw materials used except water.

However, paragraph 5(b) of the Excise Duty Act, 2014 as it then was did not and neither does the new amendment provide for any exception. There is no wording in the Act which provides that the raw materials used in the computation of pulp should exclude water.

The Respondent submitted that the Tribunal ought to determine whether water is a raw material used in the production of juice. Had water not been a component to be considered as a raw material used in the production of juice, it would not have been added to the juice at all. On each of the products, the Applicant lists portable water among the components of the drink.

The Respondent submitted that there is no justification as to why the Applicant's calculation of the percentage of pulp does not include water as a raw material.

The Respondent submitted that according to ***Cambridge Dictionary***, raw materials refer to a substance in its natural state that will be used to make something else in an industrial process. From the definition, a raw material is any substance that is converted into another substance, finished product or good through an industrial process.

The Respondent submitted that the Applicant deals in the manufacture of ready-to-drink juice from fruits, vegetables, water, preservatives, sugar, colorants and flavours. The essence of this is that the Applicant's juice is produced from water as an essential ingredient in the manufacturing process.

The Respondent submitted that to qualify for an exemption under Paragraph 5(b) of the Second Schedule to the Excise Duty Act , the percentage of pulp should be determined by dividing the amount of the pulp from the fruits by the total weight of the raw materials inclusive of water.

The Respondent submitted that when the Applicant obtains the pulp from the fruits and vegetables, the pulp obtained should not be less than 30% of the entire juice. For example, if the Applicant manufactured 200 litres of juice inclusive of water, the pulp obtained after crushing of fruits and vegetables should be at least 30% of the 200 litres.

The Respondent contended that since the aggregated amount of fruit or vegetable pulp grown in Uganda contained in the Applicant' products are less than 30%, the Applicant is liable to pay excise duty. In the circumstances, the Respondent's assessments of Shs. 1,118,412,566 were lawful and payable.

Value Added Tax and Income Tax

The Respondent submitted that having found that the Applicant is liable to pay excise duty on its products, it is incumbent that the Tribunal finds that the VAT assessments were lawful and justifiable.

The Respondent averred that since the products manufactured by the Applicant are excisable, the duty obtained was added to the ex-factory price to establish the price on which to compute VAT resulting into the VAT assessment of Shs. 201,314,261.88.

The Respondent submitted that a review of the Applicant's actual daily production quantities, selling prices and daily sales records revealed that the Applicant had grossly understated the sales revenue. This resulted in additional VAT assessment of Shs. 779,512,392.12 and additional Income tax assessments of Shs. 1,272,529,493.

Therefore, the Respondent issued the Applicant with a total VAT assessment of Shs. 980,826,654 and income tax assessment of Shs. 1,272,529,493 which were lawful

and payable. The Respondent prayed that the Tribunal make orders that this application is dismissed with costs.

6. The Applicant's Submissions in Rejoinder

The Applicant submitted that they have proven the balance of probabilities that indeed their products are exempt from excise duty and that the juice products are made from at least 30% pulp from fruits and vegetables grown in Uganda.

Whether the goods in question were excisable or not?

The Applicant submitted that it concurs with the Respondent that a strict interpretation should be applied to paragraph 5 (b) of part 1 of Schedule 2 of the Excise duty Act, Cap 336 (as amended).

"Fruit juice and vegetable juice, except juice made from at least 30% of pulp from fruit and vegetables grown in Uganda, is liable to excise duty".

The Applicant submitted that the provision does not state "juice should constitute but rather juice made from".

The Applicant submitted that the phrase "should constitute" implies that the juice itself must be composed of at least 30% pulp. In contrast, the phrase "made from" refers to the raw material content for pulp used in the production process. The Respondent's interpretation conflates the statute's intent, strict and plain rule of interpretation and is an overreach of its mandate. Accordingly, the Applicant prayed that the Tribunal upholds a strict interpretation of the provision to the effect that the products must be made from at least 30% pulp and dismisses the Respondent's erroneous construction.

Whether water forms part of the raw material

The Respondent contends that paragraph 5 (b) of the Second Schedule of the **Excise Duty Act, Cap 336** does not provide for any exception and there is no wording in the Act which provides that the raw materials used in the computation of pulp, should exclude water. However, the Applicant submitted that Ms. Asiimwe, the Applicant's Quality Controller who is an expert in food and beverage production demonstrated that the percentage of pulp is calculated by dividing the amount of pulp by the total weight of all the raw materials used except water.

The Applicant submitted that in commercial juice production, additional water is added to modify the texture, concentration, and taste of the juice. This water is an external ingredient added to concentrated fruit or vegetable extracts to reconstitute the juice, bringing it back to a drinkable form and adjusting it to the desired consistency.

The Applicant therefore argued that water is a diluent that balances the concentration, and the Respondent was wrong to compute the pulp content in the Applicant's products based on water content.

7. Determination of the Tribunal

Having listened to and studied the submissions of the parties, this is the decision of the Tribunal.

The Applicant is a company incorporated in Uganda that organizes farmers local farmers, buys fruits and vegetables from them and processes the fruits and vegetables into ready to drink beverages.

On 25 May 2022, the Respondent issued the Applicant with an additional administrative assessment of Local Excise Duty of Shs. 1,118,412,566, VAT of Shs. 980,826,654 and income tax of Shs. 1,272,529,493 respectively, totaling to Shs. 3,371,768,713.

The Applicant objected to the assessment on grounds that their products were not excisable by law since the products are made from at least 30% of pulp from fruit and vegetables grown in Uganda as per paragraph 5 (b) of the Second Schedule of the Excise duty Act.

Regarding the VAT and income tax assessments, the Applicant contends that the Respondent considered production numbers and assumed that all production is sold. However, the Applicant avers that sales only take place once the teams in the fields transfer the stock to their clients for a fee subject to any discounts depending on the categories of customers. The Applicant submitted that they provided details of stock in upcountry stores that matched the income tax returns, damages in the manufacturing process, promotional items, stolen stock and many others which the Respondent ignored.

We address the respective tax heads hereunder.

1. Excise duty

The dispute regarding excise duty revolves around the interpretation of Paragraph 5 (b) of the Second Schedule of the Excise Duty Act.

It is important to state the relevant provisions of the Excise Duty Act that have a bearing on this matter.

Section 1 of the Excise Duty Act, Cap 336, defines excisable goods as:

"Goods manufactured in Uganda and imported into Uganda and specified in Schedule 2 to this Act but does not include goods exempt from duty"

The Applicant is a manufacturer of fruit and vegetable beverages. The beverages are manufactured in Uganda and based on the reading of section 1 of the Excise Duty Act, the Applicant's goods are liable to excise duty except if they are specified as exempt from duty.

Further, section 3 of the Excise Duty Act provides:

"(1) Subject to this Act, the excisable goods and excisable services specified in Schedule 2 shall be chargeable with the excise duty specified in that Schedule."

The above provision goes on to state that in the case of a manufactured excisable goods, the excise duty is payable by the person manufacturing the goods.

Therefore, unless the juice products manufactured by the Applicant are specified as exempt from excise duty, the Applicant is liable to pay excise duty on all goods that they manufacture in Uganda.

Schedule 2 of the Excise Duty Act specifies the various categories of goods that are subject to duty and the attendant rates.

We must now turn to the specific items that are manufactured by the Applicant to determine the excise duty treatment of the said items.

As submitted by both parties, the Applicant manufactures fruit and vegetable juice.

In the audit period 2018-2021, Paragraph 5 (b) of the Second Schedule of the Excise Duty Act provided as follows:

"(b) Fruit juice and vegetable juice, except juice made from at least 30% ... from fruit and vegetables locally grown - 13% or Ushs 300per litre, whichever is higher."[1]

Based on the above provision, fruit and vegetable juices are subject to excise duty; however, certain categories of fruit and vegetable juices are exempt from the excise duty. These are fruit and vegetable juices that are:

"...made from at least 30% pulp ...from fruit and vegetables grown in Uganda."

The Applicant's position is that its products meet the above criterion. The Respondent on the other hand contends that the Applicant's products do not meet the above criterion because the Applicant's final product, namely, the juice beverages, do not constitute 30% pulp.

The interpretation of this provision boils down to the plain meaning of the words used in the provision.

Both parties have cited case law which espouses the principle of strict interpretation of tax statutes. The Applicant cited the case of ***Cape Brandy Syndicate v CIR 12TC 366*** where Rowlatt J held:

"In a tax statute, one has to look clearly at what is said. There is no room for any intendment; there is no presumption as to tax; you read nothing in; you imply nothing; but you look fairly at what is said and that is the tax."

The Respondent cited the case of ***Kinyara Sugar Ltd v Commissioner General, Uganda Revenue Authority, HCCS No. 73 of 2011*** where it was stated:

"I would further mention the principles of interpretation of tax statutes that they are strictly construed. If the intention of Parliament can be discerned from the wording of the statute, then there would be no need to look beyond the wording of the section."

We agree with the authorities cited by the parties that the wording of the tax statute should be looked at fairly and if the meaning can be discerned from the wording, there is no need to look beyond the wording of the section.

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[1] The wording of the above provision has been maintained in subsequent amendments save for changes in the excise duty rate, which is currently *"10% or Shs. 150 per litre, whichever is higher."*

Therefore, we must now turn to the wording of the provision

In our view, the wording of Paragraph 5(b) can be broken down into the following elements:

(i) There should be fruit or vegetable juices
(ii) Made from
(iii) At least 30% pulp
(iv) From fruit and vegetables grown in Uganda.

The parties agree on items (i) and (iv) and since these are not in contention, our analysis will focus on (ii) and (iii).

Made from

The Excise Duty Act does not define the phrase "made from". Therefore, the Tribunal will defer to the ordinary meaning of the phrase.

The Applicant, in their submissions, relied on the definition of the phrase as per the ***Online Cambridge Dictionary*** which defines the verb "made from" as follows:

"Is used to explain how something is manufactured".

We have looked up the Online Cambridge Dictionary and it indeed states:

"Made from -

We often use made from when we talk about how something is manufactured

Plastic is made from oil

The earliest canoes were made from tree trunks."

Therefore, when the phrase "made from" is juxtaposed to the facts of this case, it would be accurate to state that the Applicant's juice beverages are made from something. Hence, the next step is to establish the "thing" from which the Applicant's products are made and whether that "thing" meets the requirements of paragraph 5 (b).

At least 30% pulp

Paragraph 5(b) provides that the fruit juices should be made from *"at least 30% pulp."*

Both parties agree that the Applicant's products are made from or contain pulp.

The Oxford Advanced Learner's Dictionary, 9th Edition, defines the word "pulp" to mean:

"a soft wet substance that is made especially by crushing something"

Ms. Aluru Irene, an Assistant Quality Controller with the Applicant, testified as follows:

"The fruits are crushed into an industrial blender to extract the pulp, which is then sieved and mixed with other additives such as sodium benzoate, citric acid and stabilisers."

Further, the Applicant's raw material book contained at pages 1-27 of the Supplementary Trial Bundle shows some of the products that are made from pulp. These include pineapple flavour juice at pages 2, 4, 5, 6,7 and 8, among others.

In addition, the Respondent, in their written submissions, state that they analysed the Applicant's product data as per the production books and established that

"*the Applicant manufactured several beverages whose contents constitute pulp and extracts from fruit and vegetables.*"

Therefore, the parties agree that the Applicant's products are manufactured from pulp However, the parties disagree on the percentage of pulp used to manufacture the Applicant's products.

The Applicant's position is that they meet the 30% requirement while the Respondent contends otherwise. There are two reasons for the differing views:

(i) As per their submissions, the Respondent interprets "made from 30% pulp" to mean that the Applicant's final product should constitute at least 30% of pulp fruit and vegetables; and
(ii) Since the final product includes water, the Respondent's position is that water should be included in the list of raw materials used and should form part of the base for computing the pulp percentage. The Applicant on the other hand does not include water in the calculation of the pulp percentage.

We have considered both approaches and our position is below.

(i) We do not agree with the Respondent. This is because the phrase used in paragraph 5 (b) is *"made from"* while the Respondent, in their submission, uses the word *"constitute"*. The two do not mean the same thing. In fact, the Respondent uses several terms interchangeably in their submissions. They refer to the amount of pulp *"contained"* within the different products or *"made of* at least 30% pulp" or *"make at least 30% of juice content."*

The ***Black's Law Dictionary, 10th Edition***, defines the term "constitute" to mean *"to make up or form"*. Further, the **Oxford Advanced Learner's Dictionary**, 9th Edition, defines the same term to mean *"to be the parts that together form something"*.

This points to the composition of a product as opposed to what the product is made or manufactured from.

Going by the terms used by the Respondent, it would mean that Paragraph 5(b) should have been framed as follows *"...except juice that constitutes / contains at least 30% of pulp."*

The above wording would indeed require one to look at overall composition of the juice including water.

However, paragraph 5(b) reads *"...made from at least 30% pulp".*

This begs the questions – what is pulp? Does pulp include portable or added water? This is addressed in the second part below.

(ii) We have already defined pulp to mean *"a soft wet substance that is made especially by crushing something."*

Ms. Aluru Irene, an Assistant Quality Controller with the Applicant, testified that the *"fruits are crushed into an industrial blender to extract the pulp."*

Hence, pulp, in the context of the Applicant's business, refers to crushed fruit or vegetables. Therefore, portable water, which the Respondent seeks to include in the determination of the 30% pulp composition, is not pulp. Portable water is merely added to the pulp. When water is added to pulp, this reconstitutes the product into a mixture of water and pulp. It ceases being pulp. It might taste or look "pulpy" but the mixture would not be pulp.

It is worth noting that the wording of the Paragraph 5(b) is potentially open to more than one interpretation as evidenced by the two opposing views presented by the parties. It is true, that on the face of it, one could interpret the phrase "made from" to mean "constitute" or vice versa.

It is a long established principle of interpretation of tax statutes that where there is any ambiguity in the legislation, the same ought to be interpreted in favour of the taxpayer.

In the case of ***Uganda Revenue Authority v. Uganda Taxi Operator and Drivers Association Civil Appeal No. 13 of 2015*** the Hon. Justice Faith Mwondha (JSC) applied this principle and held:

"It's trite that where there is any ambiguity in the legislation, the same is interpreted in favour of the taxpayer or assessee…If the Court finds that the language of the taxation provision is

ambiguous or capable of more meaning than one of them, the Court has to adopt the interpretation that favours the assessee (taxpayer)."

The above case was also cited authoritatively by the Hon. Justice Musa Sekaana in **ATC Uganda Ltd V KCCA, Civil Suit 323 of 2018, & Eaton Towers LTD V KCCA M/C 302 of 2018** where he stated:

"On the basis of this Supreme Court ruling, even if this court was in doubt as to whether towers were immovable property within the meaning of the Local Government Ratings Act, it should interpret this ambiguity in the tax legislation in favour the Plaintiff who is the taxpayer. If the legislature had meant that the rates should be levied telecom masts it would have stated so clearly and with no ambiguity."

Therefore, in the spirit of the above authorities, if the legislature had meant for the end product, namely, the juice beverages, to constitute at least 30% of pulp, it would have stated so clearly and with no ambiguity.

Policy considerations

We have also taken note of the Applicant's submission on the policy considerations for paragraph 5 (b) of the Second Schedule of the Excise Duty Act. These are important considerations as taxation does not operate in a vacuum. While taxation primarily serves as a revenue tool, it is also used to drive economic development and incentivize investment.

Industrialization and agriculture are key to achieving ***Uganda's Vision 2040*** of a ***"transformed Ugandan society from a peasant to a modern and prosperous country"*** . Vision 2040 recognises the government's commitment to supporting agriculture to trigger agro based industries, food and nutrition security.

In addition, Chapter V of the National Development Plan III (NDP III), focuses on agro industrialization as one of the country's key development strategies. Specifically, the NPD III states at page 36 as follows:

"The expansion of Uganda's manufacturing industry and the steps towards industrialization provide unmatched potential for accelerated growth by adding value to raw materials that are produced locally, rather than being exported unprocessed."

Therefore, based on our interpretation of the provision, coupled with the probability of there being more than one interpretation of the same and taking into consideration government's policy on value addition to locally produced raw materials, we find that the Applicant's products qualify for excise duty exemption as required by paragraph 5 (b) of the Second Schedule of the Excise Duty Act.

2. VAT and corporate income tax

The parties did not lead evidence regarding the above tax heads. However, in their written submissions, the Applicant submitted that they provided information to the Respondent which indicated variances between stock and sales that can explained by arising from obsolescence, damage, theft, promotional items etc., The Applicant alleged that the information was not considered by the Respondent. Moreover, the Applicant submitted that they suffered heavy losses during the COVID 19 pandemic lock-down when they experienced very low sales, stock damage due to expiration in the different stores around the country due to reduced market for the products.

The Respondent also submitted that having established that the products manufactured by the Applicant are excisable under the Paragraph 5(b) of the Excise Duty Act, 2014, the Excise duty obtained was added to the ex-factory price to establish the price on which to compute VAT resulting into the VAT assessment of Shs. 201,314,261.88.

The Respondent also submitted that a review of the Applicant's actual daily production quantities, selling prices and daily sales records revealed that the Applicant had grossly understated the sales revenue. This resulted in additional VAT assessment of Shs. 779,512,392.12 and additional Income tax assessments of Shs. 1,272,529,493. The Respondent submitted that the Applicant did not provide sufficient information to explain the variances. However, the Respondent did not explain the extent to which the information was insufficient.

For completeness, it is important for the Respondent to objectively review all information provided by the Applicant pertaining to the dispute. Therefore, the most appropriate course of action in the circumstances is to remit the VAT and income tax matters to the Respondent to correctly determine the Applicant's tax liability.

In view of the above, the Tribunal hereby makes the following orders:

(a) The assessment of local excise duty is set aside on the grounds that the Applicant's products satisfy the conditions for exemption stated in Paragraph 5 (b) of the Second Schedule of the Excise Duty Act.
(b) The assessment of VAT of Shs. 201,314,261.88 arising from the inclusion of excise duty in the base for determining VAT is hereby set aside.
(c) The dispute concerning VAT and corporate income tax arising from variances between production stock and sales volume is hereby remitted to the Respondent to reconsider the information that was provided by the Applicant. This should be done within sixty days of this ruling.

Dated at Kampala this ....13th....day of ....December....2024.

CRYSTAL KABAJWARA	**CHRISTINE KATWE**	**KABAKUMBA MASIKO**
CHAIRPERSON	**MEMBER**	**MEMBER**