THE REPUBLIC OF UGANDA

IN THE TAX APPEALS TRIBUNAL AT KAMPALA

APPLICATION NO. 228 OF 2022

CANAAN SITES LIMITED...APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY...RESPONDENT

BEFORE: MS. PROSCOVIA R. NAMBI, MRS. CHRISTINE KATWE, MS. GRACE SAFI

RULING

This ruling is in respect of an application challenging the Respondent's decision to deny the Applicant's request for a refund of Shs 1,223,526,463. The Applicant contends that this amount was erroneously collected as Value Added Tax on the sale of unimproved land, which is categorized as an exempt supply. The Respondent argues that the Applicant is not entitled to claim this refund and that the refund should be claimed by the Applicant's customers.

1. Background facts

The Applicant, a company incorporated in Uganda, specializes in real estate. The Applicant primarily purchases large tracts of land, subdivides them into plots, and sells the plots to various customers. In March 2013, the Respondent instructed the Applicant to charge VAT on land sales and amend its returns. The Applicant contended that it was not dealing in improved land, arguing that there was no clear definition of "improved land," and therefore its supplies are not subject to VAT as per paragraph 1(e) of VAT Act, Schedule 3. Despite this, the Respondent upheld its VAT assessment of Shs. 710,120,283 and proceeded to issue agency notices to the Applicant's bankers.

On 4 March 2016, the Applicant requested clarification from the Respondent on the definition of "improved land" and explained its difficulty in charging VAT, as customers believed that sales of unimproved land were exempt from VAT. Subsequently, the

Applicant entered into a payment plan with the Respondent and paid the assessed VAT without collecting it from its customers.

On 18th April 2016, the Applicant sought a private ruling regarding the definitions of serviced, improved, and unimproved land. On 15 May 2017, the Respondent replied, confirming that after visiting one of the Applicant's properties, they clarified that the sale of land, which involved only subdivision and the provision of land titles, fell under the category of unimproved land as defined in Paragraph 1 (c) of the VAT Act's second schedule and was thus exempt from VAT.

As a result, on 11th November 2020, the Applicant applied for a refund of Shs. 1,756,651,736, which the Respondent had incorrectly collected as VAT from January 2013 to February 2017. The Respondent conducted a VAT audit, approved a refund of Shs. 533,125,273, and denied the request for Shs. 1,223,526,463 for the period from October 2013 to February 2017, arguing that this VAT had been paid by the Applicant's customers, and it is they who were entitled to claim a refund and not the Applicant. The Applicant objected on the grounds that:

i) The VAT refund claim is a result of administrative assessments issued on 5th February 2016 whereby the Applicant had to pay the tax from its coffers and the tax was not assessed based on invoices issued to customers.
ii) The Applicant was made to pay VAT on the basis that the Applicant was deemed a taxable person under Section 5(1)(a) of the VAT Act.
iii) The private ruling of 15th May 2017 confirmed that no VAT was due on transactions of the Applicant, and therefore the Respondent received a payment of money that it should not have received.
iv) Section 42 (2) of the VAT Act does not apply to the Applicant's case.
v) The Respondent did not provide proof that the VAT claimed was paid by anyone else.

On 15th August 2022, the Respondent issued an objection decision maintaining its earlier position. The Applicant seeks this Tribunal to review the Respondent's objection decision.

2. Representation

At the hearing, the Applicant was represented by Ms. Jackie Aturinda, while the Respondent was represented by Mr. Donald Bakashaba and Ms. Ritah Nabirye.

3. Issues for determination

The following issues were set down for hearing:

(i) Whether the Applicant is entitled to the refund claimed?

(ii) What remedies are available to the parties?

The Applicant called Mr. Sam Wabasa, the Managing Director, as a witness. He testified that the prices charged by the Applicant to its customers did not include VAT and confirmed that it was indeed the Applicant who paid the VAT. He stated that the VAT was paid in protest from the Applicant's profits and noted that no tax invoices were ever issued to customers, as they were not charged the tax.

The Respondent also called a witness, Mr. Paul Mubeezi Ntambi, who reiterated the background facts and testified that the Applicant had not provided evidence of refunding the VAT to its customers. He explained that the Respondent determined that the Applicant's customers were the correct parties to claim such credit since they incurred the tax.

During cross-examination, the Respondent's witness confirmed that the Applicant deals in unimproved land which is exempt from VAT. He stated that from November 2015 to February 2017, the Applicant was legally registered for VAT and reported output VAT monthly but ceased accounting for VAT following this Tribunal's decision in ***Kikambi vs Uganda Revenue Authority (TAT Application No. 31 of 2019),*** which prohibited the Respondent from collecting VAT on similar transactions. The Respondent's witness also indicated that there was no list of the Applicant's customers who paid the disputed VAT, and therefore, the Respondent has not credited any refund amounts to these customers because no refund applications have been received from them.

Both parties filed written submissions.

RULING

4. Submissions of the Applicant

The Applicant contends that it engages in the sale of unimproved land, classified as an exempt supply under the VAT Act. However, the Respondent collected VAT on these transactions. The Applicant argues that its claim for a VAT refund of Shs. 1,223,526,463 was disallowed by the Respondent on the grounds that the output tax declared was charged to various customers, implying that the refund should instead be sought by the Applicant's clients. The Applicant identifies two crucial questions: who paid the VAT in question, and whether the funds are refundable, and to whom?

Regarding the first question, the Applicant explained that after receiving the Respondent's directive to charge VAT on land sales, it communicated this requirement to its customers, who opposed it, stating that unimproved land should not attract VAT. Consequently, the Applicant was unable to impose VAT as instructed by the Respondent. To comply with the Respondent's directives and payment demands, the Applicant paid the VAT on all transactions from its own profits without collecting this tax from its customers. The Applicant referenced Exhibit A8 and A9 (VAT return and bank statements) to show that it reduced its profit margins by considering land purchase prices as VAT-inclusive while remitting the VAT to the Respondent.

Additionally, the Applicant noted that no tax invoices were issued to customers, as supported by witness testimony (AW1), customer purchase agreements and newspaper advertisements (See A6 and A7 at pages 40 to 66 of the Joint Trial Bundle). The Applicant asserts that it absorbed the VAT cost from its profits, as evident from the consistent selling prices advertised prior to the Respondent's directive and those after the directive. The Applicant argued that if it had indeed charged VAT as alleged by the Respondent, customers would have paid higher prices, which did not occur. Furthermore, the Applicant claims the Respondent provided no evidence to counter its testimony that the VAT was paid out of its own profits without being charged to customers.

On the second question, the Applicant reiterated that since they deal in unimproved land—which is an exempt supply under the Value Added Tax Act—the VAT in question was unlawfully collected by the Respondent and should therefore be refunded.

The Applicant argued that Section 34 of the VAT Act, which the Respondent cited to deny the refund claim, does not apply to this case, as the claim pertains to taxes that were illegally collected on exempt supplies, rather than overpaid VAT. The Applicant highlighted that, as defined in Section 18 of the VAT Act, a taxable supply does not include an exempt supply, and Section 34 pertains specifically to refunds related to taxable supplies. Section 34 (9) states,

> *"No refund shall be made under subsection (6) in relation to a taxable supply that has been made to a person who is not a taxable person, unless the Commissioner General is satisfied that the amount of the excess tax has been repaid by the taxable person to the recipient, whether in cash or as credit against an amount owing to the taxable person by the recipient."*

The Applicant referred to the case of ***Kikambi Gerald v. URA, TAT Application No. 31 of 2019,*** in which the Tribunal determined that the sale of unimproved land is exempt, asserting that the VAT collected was illegal since the supply was not taxable. Additionally, the Applicant cited ***Biira Udear Co. Ltd v. Commissioner General URA HCCS No. 400 OF 2015,*** where the High Court ruled that taxes collected illegally on exempt supplies must be refunded.

The Applicant maintains that VAT was unlawfully collected by the Respondent on exempt sales of unimproved land and requests a refund of the collected amounts, along with interest, costs, and any other remedies the Tribunal deems appropriate.

5. Submissions of the Respondent

The Respondent argued that the Applicant is not entitled to the claimed refund, as the Applicant has not met the burden of proof required to demonstrate that the amount is refundable. The Respondent maintains that it is the Applicant's responsibility to show that the tax assessment or decision in question is incorrect. To support this claim, the Respondent referenced Section 28 of the Tax Procedures Code Act, Cap 343, which states that:

"In any proceeding under this Act-

a) for a tax assessment, the burden is on the taxpayer to prove that the assessment is incorrect; or b) for any other tax decision, the burden is on the person objecting to the decision to prove that the decision should not have been made or should have been made differently."

Additionally, the Respondent cited Section 19 of the Tax Appeals Tribunal Act and Section 101 of the Evidence Act, as well as the case ***Williamson Diamonds Ltd vs Commissioner General 2008]4 TTLR 167***, where the Tax Revenue Appeals Tribunal of Tanzania held that *"the burden of proving that the assessment issued by the respondent is excessive or erroneous lies on the taxpayer (appellant) and in no way may it be shifted to the respondent..."* This was reechoed in the case of ***Uganda vs Gurindwa and 5 others (HCT-00- AC-0070 of 2012)*** where it was held:

"the taxpayer has the burden of proving that he does not owe the tax body money. The tax authority only bears the burden of proof in factual matters."

The Respondent therefore argued that the Applicant failed to discharge the burden of proof.

The Respondent submitted that out of the refund claimed of Shs. 1,756,651,736 for the period from January 2013 to February 2017, the Respondent only allowed Shs. 533,125,273 for the period from January 2013 to October 2015 when the Applicant was not VAT-registered. The Respondent argues that VAT refunds are akin to tax exemptions and must be construed strictissimi juris (strictly) against the entity claiming them, as established in ***Crane Bank v URA, HCCS No. 09 of 2012***, which held that the burden of proving eligibility for a refund lies with the Applicant.

The Respondent further cited ***URA vs Cowi A/S, HCCA No. 0034 of 2020***, where it was held that a tax refund is only claimable upon proof of overpayment. The Applicant must convince the Commissioner that it paid more tax than was due.

The Respondent further submitted that the claim for a refund is governed by Section 34 of the Value Added Tax Act, which outlines the conditions for a refund. Specifically:

Section 34(4) - a person may claim a refund of output tax paid in excess of the tax due for a tax period.

Section 34(5) - a claim for a refund must be made in a return within three years after the end of the tax period in which the tax was overpaid.

Section 34(6) -where a person has claimed a refund under subsection (4) and the Commissioner General is satisfied that the person paid an amount of tax in excess of the amount if tax due, the Commissioner General shall refund immediately the excess to the taxable person.

Section 34(10) - no refund shall be made under subsection (6) in relation to a taxable supply that has been made to a person who is not a taxable person, unless the Commissioner General is satisfied that the amount of the excess tax has been repaid by the taxable person to the recipient, whether in cash or as a credit against an amount owing to the taxable person by the recipient.

The Respondent argues that the Applicant has not demonstrated compliance with these procedural requirements. According to the VAT Act, when VAT is paid by customers (as end consumers), the supplier (Applicant) must provide evidence that it refunded the VAT to its customers before the Commissioner can approve the refund. The Applicant has failed to prove that it refunded the VAT to its customers.

The Respondent highlights that the burden of proof rests with the Applicant, as reinforced by the case law in ***Crane Bank vs URA, HCCS No. 09 of 2012***, wherein it was determined that the claimant must strictly prove entitlement to tax refunds. Furthermore, in ***URA vs Cowi A/S, HCCA No. 0034 of 2020***, the court noted that refunds are claimable only upon proof of overpayment, which the Respondent argues has not been established by the Applicant. Additionally, the Respondent cited ***NCBA Bank Uganda Limited vs URA, TAT App. No. 15 of 2020,*** where the Tribunal held that if a customer contributes to the VAT payment, the Applicant cannot claim an input credit for the portion of VAT paid by the customer.

The Respondent further argues that the Applicant has not substantiated that it paid the VAT from its own funds rather than from customer payments. Testimony from AW1 (Sam Wabasa) stated that the Applicant did not include VAT in the purchase price; however, the Respondent contends that since the Applicant was VAT registered, it is presumed that VAT was included in the price. The lack of explicit language in the sale agreements indicating VAT-exclusion implies the prices were VAT-inclusive.

The Respondent contends that while the Applicant asserted that the sale involved "unimproved land" (which is exempt from VAT), the Respondent determined that it was dealing with "improved land" during the relevant period. Being a VAT-registered

entity at that time, the Applicant filed VAT returns, which means the sale was classified as a taxable supply, and VAT was collected from customers. Thus, the Applicant must demonstrate compliance with Section 34(10) of the VAT Act by proving it refunded the VAT to its customers, a requirement it has not fulfilled.

Additionally, the Respondent notes that the Applicant requested costs for the suit. However, the Respondent argues that costs should be awarded to the prevailing party, as established in ***Godfrey Katunda vs Betty Atuhaire Bwesharire & Anor, Court of Appeal Civil Appeal No. 5 of 2006,*** where the court indicated that costs are discretionary but typically awarded to the successful party, as mentioned in Richard Kuloba's book on Civil Procedure, which states that costs are meant to indemnify a successful litigant for expenses incurred in litigation.

Section 27(1) of the Civil Procedure Act specifies that the costs of and incidental to all suits are at the discretion of the court. Therefore, the Respondent argues it is entitled to costs, given its compliance with applicable laws and the Applicant's failure to prove its case.

The Respondent requests that the Tribunal determine that the Applicant is not entitled to the refund of Shs. 1,223,526,463 and that the claim is time-barred under Section 34(5) of the VAT Act. The Respondent also seeks an award of costs for the suit.

6. The Applicant's submissions in rejoinder

In rejoinder, the Applicant contended that after presenting its evidence, the burden of proof shifted to the Respondent to demonstrate the legality of its actions, which the Respondent failed to do.

While the Respondent claimed that the Applicant did not establish its right to a refund of Shs. 1,223,526,463, the Applicant countered that it provided ample evidence, including proof of being forcefully registered for VAT despite only dealing in exempt supplies (unimproved land) as outlined in the 3rd Schedule of the VAT Act. The Applicant showed that the VAT burden was borne by them and not passed on to the customers, supported by consistent pricing in advertisements and contracts before and after VAT registration. The Applicant emphasized that the refund arose not from overpaid tax but from taxes unlawfully collected by the Respondent.

The Applicant maintained that it solely dealt in unimproved land, which is exempt from VAT under Paragraph 1(e) of the 3rd Schedule of the Value Added Tax Act. Despite this, the Respondent forcibly registered the Applicant for VAT and demanded payments. The Applicant highlighted the Respondent's acknowledgment in a 2017 private ruling that unimproved land is exempt from VAT, confirming that the earlier VAT demands were illegal, referencing cases such as ***Biira Udear Co. Ltd v. Commissioner General URA*** and ***Margaret Akiki v. URA***, which support the principle that illegally collected taxes must be refunded.

Regarding the Respondent's submissions on Section 34 of the Value Added Tax Act, which governs refunds of overpaid tax, the Applicant argued that Section 34 applies only to taxable persons dealing in taxable supplies and that this provision does not affect the Applicant as they exclusively deal in exempt supplies. The refund claim is based on illegally collected funds, making Section 34 inapplicable, and the Applicant cited legal precedents that distinguish between taxable persons and exempt suppliers to reinforce their position.

Regarding the Respondent's submission that the tax was paid by the Applicant's customers, the Applicant demonstrated that it did not charge VAT to its customers, supported by pricing records and uncontested testimony indicating that the VAT was paid from its own profits. The Respondent failed to prove that tax invoices were issued or that any credits were granted to customers, leading the Applicant to argue that retaining the unlawfully collected taxes constitutes unjust enrichment for the Respondent.

Further, the Respondent's assertion that the refund claim was barred by the three-year limitation period under Section 34 VAT Act was countered; the Applicant claimed that the right to recover illegally collected funds is not subject to the statutory limitations set forth in Section 34 VAT Act.

The Applicant maintained that the Respondent acted unlawfully by imposing VAT on exempt supplies and retaining the collected taxes. The Applicant illustrated that the refund claim does not fall under Section 34 VAT Act and urged the Tribunal to grant the requested remedies.

RULING

The Applicant requested a declaration that the funds collected were illegal, an order mandating the Respondent to refund Shs. 1,223,526,463, interest on the refunded amount, costs of the application, and any other relief deemed appropriate by the Tribunal.

7. Determination by the Tribunal

Having listened to the evidence and read the submissions of both parties, this is the decision of the Tribunal.

The Applicant, a company engaged in the sale of unimproved land, filed a claim for a refund of Shs. 1,756,651,736 for the period January 2013 to February 2017. The Respondent only allowed Shs. 533,125,273, covering the period January 2013 to October 2015 during which period the Applicant was not VAT-registered and rejected a claim of Shs. 1,223,526,463 for the period November 2015 to February 2017, during which the Applicant was VAT-registered and filing VAT returns. Whilst the Respondent acknowledges that the sum was wrongly collected and is refundable as it was collected on exempt supplies, the Respondent argues that the refund should be made to the Applicant's customers and not to the Applicant. The Applicant on the other hand argues that the refund be made to it as it indeed incurred the cost and not the customers.

Burden of Proof

The Tribunal acknowledges that the burden of proof lies with the Applicant to establish its claim for a refund and the standard of proof is on a balance of probabilities.

The Applicant provided credible evidence, including witness testimony (*See AW1)* and supporting documentation such as Newspaper Extracts of advertising, the land for sale, sale agreements, bank statements, affirming it did not charge VAT to its customers and instead paid the VAT from its profits in response to a directive from the Respondent.(*See Exh* ***A7,A6)*** The consistent pricing of its products before and after VAT registration further supports the claim that the VAT burden was not passed on to the customers. The Tribunal finds this testimony persuasive and consistent with previous rulings concerning the exemption status of unimproved land.

Application of Section 34

In its letter of 29 November 2021, the Respondent disallowed the Applicant's refund claim citing Section 28 of the VAT Act and arguing that the Applicant was not entitled to an input tax credit. In its objection decision of 22 August 2022, the Respondent stated that it had "*established the output tax amounting to Shs 1,223,526,463 declared by the Applicant was charged from the different customers, and the declaration of which created a tax credit to the said customer from URA".* At the hearing and in its submission, the Respondent faulted the Applicant for not following the given procedure under Section 34 of the VAT Act.

Does the Applicant's claim fall within the ambit of Section 34 of the VAT Act? Section 34 VAT Act gives the Commissioner General the mandate to make a refund or grant a credit to a taxpayer in three circumstances as follows;

i) Where the input tax credit exceeds the tax liability of the taxpayer.

ii) The taxable supplies in stock or stock in transit are lost due to theft, fire, accident or force majeure, and input tax has been paid on those goods

iii) Where any person claims a refund of any output tax paid in excess of the amount due under the VAT Act for a tax period.

The Respondent first argued that the claim represents input tax credit for the Applicant's customers. Section 2 of the VAT Act defines input tax to mean *"the tax paid or payable <u>in respect of a taxable supply</u> to or an import of goods or services by a taxable person." (emphasis is ours,* also see ***Environserve vs URA TAT 24 of 2017.)***. The same Section 2 defines a taxable supply as having meaning in Section 18 and a taxable person to have the meaning in Section 6.

As per section 6 of the VAT Act, a person who is registered for VAT is a taxable person from the time the registration takes effect. Section 18 (1) VAT Act defines a taxable supply as "*a supply of goods or services, <u>other than an exempt supply</u>, made in Uganda by a taxable person for consideration as part of his or her business activities."* Section 19 provides *that a supply of goods or services in an exempt supply if it is specified in Schedule 3 to the VAT Act*. Consequently, and logically an input tax credit cannot arise where a taxable person makes an exempt supply.

The Respondent submitted that it does not dispute the fact that the Applicant's supply of unimproved land to its clients is exempt under the VAT Act. It follows that even though the Applicant was a taxable person, an input tax credit could not have arisen since the underlying sales were not taxable supplies but rather exempt supplies. Therefore, we find that the provision in Section 34 (1) does not apply to the refund claim in this case. Since input tax did not arise, it also logically follows that the Applicant's customers cannot be entitled to an input tax credit or refund.

The Respondent also submitted that by virtue of Section 34 (10) the Applicant is not entitled to the refund. *Section 34(10)* provides that:

"no refund shall be made under subsection (6) in relation to a taxable supply that has been made to a person who is not a taxable person, unless the Commissioner General is satisfied that the amount of the excess tax has been repaid by the taxable person to the recipient, whether in cash or as a credit against an amount owing to the taxable person by the recipient."

The Tribunal agrees with the Applicant's interpretation that Section 34 of the Value Added Tax Act, which pertains to refunds for overpaid tax, is not applicable in this case. The refund claim arises from illegally collected funds on exempt supplies, and it is established that Section 34 specifically addresses overpaid taxes related to taxable supplies, which does not apply to the Applicant dealing exclusively in exempt supplies.

Should the erroneously collected taxes be refunded, and if so to whom?

Where the Respondent collects taxes that are not legally owed, it is generally expected to refund those amounts to the taxpayer. If the Respondent collects VAT that should not have been levied, —whether due to incorrect classification of goods and services as taxable or erroneous application of tax rates— it has an ethical and legal obligation to return those funds to maintain trust in the tax system. This is based on principles of fairness and legality, ensuring that only the correct amount of tax, as prescribed by law, is collected.

The Tribunal acknowledges the Applicant's references to relevant case law, including ***Biira Udear Co. Ltd v. Commissioner General URA HCCS No. 400 OF 2015*** *and* ***Kikambi Gerald v. URA***, which clearly articulate that taxes collected illegally on exempt supplies should be refunded.

There is a disagreement regarding who actually paid the VAT — whether it was the Applicant or the customers who purchased the land. The Respondent conducted an audit into the VAT affairs of the Applicant, focusing on whether the VAT expense was borne by the Applicant or its customers. We note however that even though the Applicant provided the necessary customer information to the Respondent's auditor, the auditor did not undertake the critical step of circularization, which involves reaching out to the customers to confirm payments and yet the Respondent claimed to have credited the buyers with input tax credit. Circularization is an important audit procedure where auditors confirm balances or transactions with third parties. It helps establish the authenticity of claims made by the party being audited.

As mentioned earlier, from our review of the evidence adduced by the Applicant – the VAT returns, Newspaper Extracts advertising the land for sale, sale agreements, bank statements - we are convinced that the Applicant actually paid the VAT in question from its own funds/profits. The Respondent did not present evidence to contradict the Applicant's evidence or to establish that the VAT had been paid by the Applicant's customers. The Respondent's witness testified that the Respondent had credited the input tax to the customers. However, on cross examination, the witness retracted his earlier statement and stated that the Respondent has not credited the refund amounts to the Applicant's customers because the Respondent has not received any application for a refund of the VAT in question from the customers.

The Tribunal finds no compelling evidence provided by the Respondent to substantiate their claim that the VAT was paid by the Applicant's customers and that these customers, rather than the Applicant, are entitled to the refund. The Applicant's documentation and testimony effectively demonstrate that the VAT burden was not passed onto its customers, reinforcing its claim for the refund.

Was the refund claim time barred? The Respondent submitted that the Applicant's claim was made more than 3 years after the end of the tax period in which it was over paid contrary to the requirement set out in Section 34 (5). We already found that Section 34 of the VAT Act applies to refunds that originate from overpayment of tax by a taxable person and the Applicant's refund claim does not fall within the ambit of Section 34 as it was neither input tax nor output tax overpaid. The Applicant's refund

claim arises from erroneous collection (and not overpayment of tax) and is therefore not impaired by the limitation period set out in Section 34 (5).

Unjust Enrichment: The Tribunal concludes that the Respondent's retention of the unlawfully collected VAT amounts to unjust enrichment. The absence of evidence demonstrating that the VAT was passed on to customers, or that tax invoices were issued, as well as the Respondent's witness testimony that no customer has since claimed the amounts refundable, further fortifies this conclusion.

Conclusion

Based on the analysis above, this Tribunal concludes that the Respondent's collection of VAT on the sale of unimproved land was unlawful. The Applicant has demonstrated its entitlement to the refund claimed. This Tribunal emphasizes the importance of adhering to legal frameworks surrounding taxation, particularly the treatment of exempt supplies, and affirms the rights of taxpayers to reclaim amounts unlawfully collected.

Remedies

Having found that the Applicant is entitled to the refund claimed, this Tribunal hereby set aside the Respondent's objection decision and orders the Respondent to refund the claimed funds to the Applicant.

When a taxpayer is owed a refund for erroneously collected taxes or overpayment of tax, the delay in receiving those funds means the taxpayer is unable to use that money for other purposes, such as investment or working capital. This results in an opportunity cost—the potential gains foregone due to the inability to utilize funds promptly. This requires the Respondent to pay interest on delayed refunds and by compensating taxpayers for the delay, the legislation aims to restore the economic equilibrium lost due to the late disbursement of funds.

Section 28 (2) of the Tax Appeals Tribunal Act provides:

"Where the decision maker is required to refund an amount of tax to a person as a result of a decision of a reviewing body, the tax shall be repaid with interest at the rate specified in the

RULING

relevant law on the amount of the refund for the period commencing from the date the person paid the tax refunded and ending on the last day of the month in which the refund is made."

Section 36 (1) of the Value Added Tax Act (VATA) Cap 344, provides for interest on over payments and late refunds and it states:

"(1) Where the Commissioner General is required to refund an amount of tax to a person as a result of-

(a) a decision of the Tax Appeals Tribunal; or

(b) a decision of the High Court, the Court of Appeal or the Supreme Court, he or she shall pay interest at a rate of 2% per month compounded on the tax to be refunded".

However, any such interest must be capped in accordance with Section 36 (5) which provides

"(5) Notwithstanding sub-sections (1), (2) and (4) the interest due and payable on over payments and late refunds shall not exceed the principal tax."

See also ***Commissioner General URA v Edulink Holdings Limited and 2 Others, Civil Appeal 178 of 2021***, where Hon Justice Steven Mubiru stated:

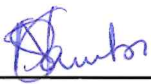
"It is not in doubt that the principle remains that a refund in case of a monthly return, is paid within thirty (30) days beyond which interest accrues. Consequently, the amount payable may be significant, sometimes higher than the actual principal tax, in cases where the appellant is required to refund an amount of tax to a person as a result of a decision of a reviewing body. The cap on interest is based on the notion that it will protect tax collection and administration from excessive interest, considering that the appellant's general policy is that the cost of collection and administration of taxes to the collecting agent should not exceed 5% (now 2%) of the tax revenue."

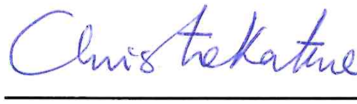
Consequently, this Tribunal finds that the Respondent should pay interest on the refundable amount at the prescribed rate of 2% per month from the date the erroneously collected the tax amount and ending on the last day of the month in which the refund is made – capped to the refundable amount.

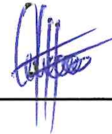
Orders:

1. Respondent is instructed to refund Shs. 1,223,526,463 to the Applicant within 30 days of this Decision.
2. The Respondent shall pay interest on the refunded amount at the prescribed rate from the date of collection until the date of payment.
3. The Respondent shall bear the costs of the Application.

Dated at Kampala this 19th day of December 2024.







MS. PROSCOVIA. R. NAMBI	**MRS. CHRISTINE KATWE**	**MS. GRACE SAFI**
CHAIRPERSON	**MEMBER**	**MEMBER**

RUL