TAX APPEALS TRIBUNAL
Justice in Taxation

THE REPUBLIC OF UGANDA

IN THE TAX APPEALS TRIBUNAL AT KAMPALA

APPLICATION NO. 21 OF 2023

CROWN BEVERAGES LIMITED..APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY..RESPONDENT

BEFORE: HON. CRYSTAL KABAJWARA, HON. GERALD AGABA KAKIMA, HON. CHRISTINE KATWE.

RULING

I. Introduction

1. This Application challenges a Value Added Tax (VAT) assessment amounting to Shs. 480,117,229 issued by the Respondent. The disputed assessment arises from an alleged under-declaration of VAT following the Applicant's internal accounting treatment of additional Local Excise Duty (LED) occasioned by a statutory change in the excise duty rate that took effect on 1 July 2017.

II. Background facts

2. The Applicant is a limited liability company incorporated under the laws of Uganda, whose principal business is the manufacture and distribution of non-alcoholic beverages.

3. The Respondent conducted a comprehensive tax audit on the Applicant for the period covering July 2011 to December 2016, resulting in additional tax assessments totaling Shs. 4,453,470,383 across Value Added Tax, Withholding Tax, Local Excise Duty, and Corporation Income Tax. Following the statutory objection and appeal process, the overall tax liability was revised down to Shs. 1,514,492,090, comprising VAT, Withholding Tax, and Local Excise Duty for the period spanning 2013 to 2017.

4. The revised aggregate liability of Shs. 1,514,492,090 comprised three distinct issues:

   a. The 2013 Assessment (Shs. 805,922,022): Attributable to an alleged variance and under-declaration of finished stock production in the Applicant's LED returns.
   b. The 2015 and 2016 Assessments (Shs. 50,472,562): Attributable to variances between local sales declared in the LED returns and VAT returns arising from the issuance of credit memos to distributors for promotional products.
   c. The 2017 Assessment (Shs. 658,097,506): Attributable to an alleged under-declaration of VAT resulting from the application of the amended excise duty rate (the higher of 13% or Shs. 240 per litre), as well as credit memos issued on promotional sodas.

5. During the proceedings before this Tribunal, the parties narrowed the issues through mutual concessions:

   a. The Applicant conceded to and settled the Shs. 805,922,022 liability arising from the 2013 stock production variances.
   b. The Respondent conceded to the tax liabilities stemming from the issuance of promotional credit memos across 2015, 2016, and 2017.
   c. The Applicant further conceded to and settled the liability arising from unfiled transactions in 2017 unfiled transactions in 2017.

6. Consequently, the sole remaining dispute submitted to this Tribunal for adjudication is the principal assessment of Shs. 480,117,229, which is

entirely attributable to the alleged under-declaration of VAT arising from the Applicant's treatment of additional LED under the amended excise duty regime effective 1 July 2017.

III. Issue for Determination

7. Whether the Applicant is liable to pay additional VAT amounting to Shs. 480,117,229.

IV. Representation and evidence.

8. Mr. Ronald Kalema, Ms. Vanessa Irene Mbekeka and Ms. Rhoda Nakanwagi of M/s AF Mpanga Advocates appeared for the Applicant. Ms. Charlotte Katutu and Ms. Gloria Twinomugisha appeared for the Respondent.

9. The Applicant called one witness: Mr. Simon Lubuuka (AW1), a Cost Accountant in the Applicant's Finance Department responsible for material costing, tax filings, and tax authority liaison.

10. Mr. Lubuuka (AW1) testified that effective 1st July 2017, Section 2(e) of the Excise Duty (Amendment) Act, 2017 revised the rate on non-alcoholic beverages from a flat ad valorem rate of 13% to 13% or Shs. 240 per litre, whichever is higher. Because volumetric rating yields a higher tax on certain product lines, the statutory LED payable per unit increased.

11. AW1 explained that following this statutory increase, the Applicant made a deliberate commercial decision to maintain a stable wholesale selling price to its distributors. To avoid passing the tax hike to customers, the Applicant absorbed the additional LED internally by absorbing the cost within its gross profit margin.

12. Consequently, while the excise duty component per case increased, the overall invoiced consideration (the sum of the net ex-factory price and excise duty) remained constant. As the taxable value for VAT purposes remained unchanged, the output VAT computed, reported, and remitted in the Applicant's VAT returns remained identical to pre-amendment figures.

13. AW1 demonstrated that the ex-factory price before tax comprises the Cost of Production + Gross Profit Margin. He emphasized that a supplier's profit margin is not statutorily fixed and may fluctuate based on market conditions, input costs, volume discounts, or commercial decision-making to maintain market share.

14. The witness contended that an increase in a statutory cost component (such as Local Excise Duty) does not automatically dictate an upward adjustment in the final consumer or wholesale price. Where a supplier chooses to compress its profit margin, the aggregate VAT taxable base (Ex-factory price + Excise Duty) remains unchanged.

15. The Respondent likewise called one witness: Mr. Richard Kaganda (RW1), a Supervisor in the Respondent's Legal Services and Board Affairs Department.

16. Mr. Kaganda (RW1) testified that the Respondent audited the Applicant's compliance by reconciling its LED returns against its VAT returns. The Respondent converted the quantities declared in the LED returns into monetary values using the Applicant's standard ex-factory prices, added the declared LED to establish a reconstructed VAT base, charged VAT at 18%, and treated the difference between this figure and the declared VAT as undeclared tax.

17. During cross-examination, RW1 conceded that he did not reconcile physical stock movements against sales declared in the VAT returns, explaining that the audit exercise was purely a mathematical "credibility test" to check alignment between LED and VAT returns.

V. Submissions of the Applicant

18. The Applicant submitted that its decision to absorb the incremental excise duty by reducing its gross profit margin was a lawful, bona fide commercial strategy designed to maintain price stability in a highly price-sensitive and inelastic carbonated soft drink market.

19. The Applicant argued that the Respondent's assessment is grounded in an erroneous legal and economic premise-namely, that an increase in Local Excise Duty must, as a matter of law, automatically trigger a corresponding increase in the final wholesale selling price and the overall VAT taxable base.

20. The Applicant contended that output VAT is statutory-bound to the actual consideration charged to the customer on tax invoices. Because the final tax-inclusive price charged to distributors remained constant before and after 1st July 2017, the VAT taxable base remained unchanged, resulting in zero additional VAT liability.

21. To illustrate the mathematical mechanics of its pricing structure, the Applicant provided the following comparative breakdown for a standard 300ml case (7.2 Litres):

Parameter	Pre-Amendment (13% Ad Valorem)	Post-Amendment (Shs. 240 / Litre)	Variance
Litres per Case	7.2L	7.2L	-
Production Cost	Shs. 5,917	Shs. 5,917	Shs. 0
Gross Margin	Shs. 6,457	Shs. 6,338	- Shs. 119
Net Ex-Factory Price	Shs. 12,374	Shs. 12,255	- Shs. 119
Local Excise Duty (LED)	Shs. 1,609	Shs. 1,728	+ Shs. 119
VAT taxable Value	Shs. 13,983	Shs. 13,983	Shs. 0
Output VAT (18%)	Shs. 2,517	Shs. 2,517	Shs. 0
Final Distributor Price	Shs. 16,500	Shs. 16,500	Shs. 0

22. The Applicant emphasised that, as demonstrated above, when the volumetric rate yielded a higher LED (+Shs. 119), the Applicant reduced its profit margin by the exact same amount (-Shs. 119). This absorption

ensured that the aggregate taxable value for VAT (Shs. 13,983) and the resulting output VAT (Shs. 2,517) remained unchanged.

23. The Applicant pointed out that this margin compression is corroborated by its audited financial statements for 2017, which were submitted to and accepted by the Respondent for Corporation Income Tax purposes, showing a net reduction in gross revenue from Shs. 294,763,125,175 to Shs. 291,755,334,345 directly resulting from absorbed excise costs.

24. The Applicant accordingly prayed that the Tribunal vacate the assessment of Shs. 480,117,229 in its entirety.

VI. Submissions of the Respondent

25. In opposition, the Respondent submitted that the Applicant is legally bound to pay the assessed VAT liability of Shs. 480,117,229.

26. The Respondent argued that pursuant to Section 2(e) of the Excise Duty (Amendment) Act, 2017, Parliament intended to increase the excise tax yield on non-alcoholic beverages. The statutory amendment of the tax base to the higher of 13% or Shs. 240 per litre necessitated a corresponding increase in the total composite price of the products.

27. Citing Section 46 of the Value Added Tax Act, which mandates that any advertised or quoted price for a taxable supply includes the tax payable, the Respondent submitted that VAT is an indirect consumption tax meant to be borne entirely by the end consumer.

28. The Respondent contended that the Applicant's unilateral absorption of the tax hike through margin reduction was an impermissible attempt to alter the statutory tax base, circumvent the clear effect of an Act of Parliament, and avoid tax liability.

29. Relying on the strict rule of statutory interpretation in tax matters as articulated by ***Rowlatt J. in Cape Brandy Syndicate v. IRC [1921] 1 KB 64*** and applied in ***Primarosa Flowers Ltd v. Commissioner of Income***

Tax (Appeal No. 18 of 2013), the Respondent submitted that clear words in a tax statute must be applied strictly as written without room for equitable considerations or commercial workarounds.

30. The Respondent maintained that reconstructing the VAT base by adding the newly applicable LED rates to the standard ex-factory price was lawful, proper, and necessary to preserve statutory tax revenues. The Respondent concluded that the assessment of Shs. 480,117,229 is lawful and justified, and prayed that the Application be dismissed with costs.

VII. The Determination

31. Having considered the pleadings, evidence, and submissions of both parties, the Tribunal hereby delivers its decision in this matter.

32. The central issue for determination is whether the Applicant is liable to pay an additional Value Added Tax (VAT) assessment of UGX 480,117,229, arising from its tax treatment of the increase in Local Excise Duty (LED) following amendments to the Excise Duty Act that took effect on 1 July 2017.

33. Resolution of this dispute requires the Tribunal to examine two main questions:

    a. Sub issue 1: Whether an increase in Local Excise Duty automatically increases the taxable value (VAT base) under the Value Added Tax Act.

    b. Sub issue 2: Whether the Applicant has established that the actual consideration charged for its supplies remained unchanged following the 2017 amendment to the excise duty regime.

Sub issue 1: Whether the Increase in Local Excise Duty Automatically Increased the VAT Base.

1. The statutory basis for charging VAT is set out in Section 4(a) of the Value Added Tax Act, which provides:

"A tax to be known as value added tax shall be charged in accordance with this Act on every taxable supply made by a taxable person."

34. The effect of Section 4(a) is that VAT is imposed on the taxable supply itself. Liability to tax arises because a taxable supply has been made, and must be determined strictly in accordance with the statutory provisions governing such supplies.

35. Section 5(1)(a) of the VAT Act further provides:

"Except as otherwise provided under this Act, tax payable in the case of a taxable supply is to be paid by the taxable person making the supply."

36. While Section 5(1)(a) designates the Applicant as the entity responsible for accounting for VAT, it does not prescribe the quantum of tax payable. The amount payable is determined by the statutory rules governing the value of a taxable supply.

37. The determination of taxable value is governed by Section 21(3) of the VAT Act, which states:

"Where a taxable supply is made without a separate amount of the consideration being identified as a payment of tax, the taxable value of that supply is the total amount of the consideration paid excluding the tax."

38. The operative statutory term is "consideration paid." Parliament deliberately anchored the VAT base to the consideration actually paid for the supply, rather than to the supplier's cost of production, anticipated selling price, or expected profit margin. Consequently, unless the consideration charged to the customer changes, the taxable value under the Act remains unchanged.

39. The Respondent's assessment rests on the premise that because the Applicant's excise duty liability increased following the amendment to the Excise Duty Act, the taxable value for VAT necessarily increased.

40. The Tribunal finds that this proposition cannot be derived from Section 21(3). The statute contains no provision under which increases in production costs or indirect taxes automatically alter the consideration for a supply. Had Parliament intended for every increase in excise duty to enlarge the VAT base irrespective of the consideration actually charged, it would have expressly said so.

41. The Excise Duty Act similarly provides no support for the Respondent's position. Section 3(1) provides that excisable goods specified in Schedule 2 shall be chargeable with excise duty at the prescribed rate. Section 3(2)(b) identifies the manufacturer as the person liable to account for that duty, while Section 3(3) provides that liability arises when manufactured goods are removed from the manufacturer's premises.

42. These provisions determine who is liable to pay excise duty and when that liability arises. They do not regulate the commercial price at which a manufacturer must sell its goods, nor do they mandate that increases in excise duty be passed on to purchasers. The law obliges the manufacturer to pay the prescribed duty; how the manufacturer accommodates that tax burden-whether by raising prices, reducing operating costs, or reducing profit margins-is a commercial decision left entirely to the business.

43. The Excise Duty (Amendment) Act, 2017 altered the computation method for non-alcoholic beverages by imposing duty at the higher of 13% or UGX 240 per litre. This amendment modified the excise duty regime alone; it did not alter the provisions of the Value Added Tax Act governing the determination of taxable value.

44. It is a fundamental principle of tax law that taxing statutes must be interpreted strictly. In ***Cape Brandy Syndicate v Inland Revenue Commissioners [1921] 1 KB 64, Rowlatt J***. laid down the rule:

"In a taxing Act one has merely to look at what is clearly said. There is no room for any intendment. There is no equity about a 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."

45. Similarly, in ***Partington v Attorney-General (1869) LR 4 HL 100***, Lord Cairns observed that if a person falls within the letter of the law, they must be taxed; but if the tax authority seeks to recover tax beyond the clear words of the statute, the taxpayer is entitled to succeed.
46. In summation on Sub issue 1: VAT is chargeable strictly on the consideration paid for a taxable supply. An increase in Local Excise Duty does not automatically increase the consideration charged or enlarge the VAT base.

Sub issue 2: Whether the Consideration Charged by the Applicant Remained Unchanged.

47. Having established the legal framework, the Tribunal must determine whether, as a matter of fact, the consideration charged by the Applicant to its distributors remained unchanged after 1 July 2017.

48. The Applicant presented its evidence through Mr. Simon Lubuuka(AW1), who explained that following the amendment to the Excise Duty Act, the Applicant adopted a commercial strategy to absorb the additional excise duty by reducing its gross profit margin, thereby maintaining constant selling prices to its distributors.

49. This testimony was corroborated by extensive documentary evidence, including:

    a. Price build-up schedules per Exhibits A25-A29 under the Applicant's additional Trial Bundle, Volume 6;
    b. Sample commercial invoices issued before and after 1 July 2017 per Exhibit A30 under the Applicant's additional Trial Bundle, Volume 6;
    c. Monthly VAT and Local Excise Duty (LED) returns; per Exhibits A11(i)-(vi) under the Joint Trial Bundle Index, Volume 1 and Exhibits A11(vii)-(Xii) under the Joint Trial Bundle Index, Volume 2;

d. Revenue report in 2017 Income Tax Return for the year 2017 per Exhibit A14 under the Joint Trial Bundle Index, Volume 2.

50. The Tribunal attaches significant weight to the price build-up schedules, which illustrate the price structure before and after the statutory amendment:

51. Prior to 1 July 2017: The ex-factory price comprised production costs and gross margin. Excise duty was calculated at 13% of the ex-factory price and added to it to determine the taxable value for VAT. VAT was then charged on that taxable value to arrive at the final distributor price.

52. After 1 July 2017: The volumetric rate of UGX 240 per litre yielded a higher excise duty than the 13% ad valorem rate. To avoid raising the final price, the Applicant reduced its gross margin by the exact amount of the excise duty increase (UGX 119). Consequently, the ex-factory price decreased by an equivalent amount, keeping the combined total of the ex-factory price and excise duty constant.

53. The mathematical demonstration provided to the Tribunal confirms this structure;

Component	Before Amendment	After Amendment	Change
Taxable Value for VAT	UGX 13,983	UGX 13,983	Unchanged
VAT Payable (18%)	UGX 2,517	UGX 2,517	Unchanged
Final Distributor Price	UGX 16,500	UGX 16,500	Unchanged
Applicant's Gross Margin	Baseline	Baseline – UGX 119	Reduced by UGX 119

Excise Duty Paid	Baseline	Baseline + UGX 119	Increased by UGX 119

54. These computations align directly with Section 21(3) of the VAT Act. Where a supplier absorbs cost increases internally and keeps the total consideration constant, there is no statutory basis for the Respondent to assess additional VAT simply because one internal cost component (excise duty) has increased.

55. The Applicant's position was further supported by sample invoices reflecting consistent tax-inclusive prices before and after 1 July 2017. See Exhibits A11(i)-(vi) under the Joint Trial Bundle Index, Volume 1 and Exhibits A11(vii)-(Xii) under the Joint Trial Bundle Index, Volume 2.

56. The Respondent did not produce any contrary invoices showing that higher prices were charged to distributors.

57. Furthermore, the Applicant's audited financial statements for 2017 showed a reduction in net revenue consistent with margin absorption. The Respondent did not challenge the authenticity of these audited accounts, nor did it present expert accounting evidence to disprove the Applicant's pricing model.

58. Instead, the Respondent's assessment was based on an administrative reconstruction: it added the increased excise duty declared in the LED returns to the pre-amendment ex-factory prices, assuming that the VAT base must have grown by the same amount.

59. While the Commissioner has statutory powers to re-assess tax where returns are inaccurate, such powers must be grounded in objective evidence. Assessments cannot be sustained on theoretical assumptions that contradict verified accounting records, unless those records are first proven to be false or unreliable.

60. The Respondent contended that because VAT is an indirect tax intended to be borne by the end consumer, the Applicant could not lawfully absorb excise duty without increasing VAT. The Tribunal disagrees. While economic theory positions VAT as a consumption tax, the legal liability to tax is governed by statute, not economic philosophy. The VAT Act taxes actual consideration; it does not mandate minimum profit margins or prohibit businesses from absorbing cost increases to preserve market share.

Burden of proof

61. An assessment issued by the Commissioner is presumed correct until the taxpayer proves otherwise on a balance of probabilities.

62. The Tribunal holds that the Applicant has fully discharged its burden of proof through consistent testimonial, documentary, and financial evidence showing that:

    a. The consideration charged to distributors remained unchanged after 1 July 2017; and

    b. The additional excise duty was entirely absorbed through a reduction in the Applicant's gross profit margin.

63. Conversely, the Respondent failed to adduce evidence showing that the Applicant received additional consideration or under-declared its taxable supplies. It is the Tribunal's finding that the reconstructed assessment rests on an assumption unsupported by either law or fact.

64. Regarding costs, Section 22(5) of the Tax Appeals Tribunals Act (Cap 341) grants this Tribunal full discretion to award costs of, and incidental to, proceedings before it. As a general rule of law, costs follow the event, and a successful party is entitled to recover its costs unless there are compelling reasons to depart from this principle.

65. In exercising this discretion judicially, the Tribunal takes cognisance of the procedural history of this matter. The initial tax liability under dispute when this Application was lodged stood at Shs. 1,514,492,090. Through pre-trial

reconciliations, mutual concessions, and settlements made during the course of the proceedings, the disputed sum was substantially narrowed to Shs. 480,117,229, representing approximately one-third of the original claim.

66. Considering that the dispute was substantially reduced through the mutual cooperation of the parties, and taking into account the final proportion of the claim successfully adjudicated before the Tribunal, we find it just and equitable in the circumstances to scale the cost recovery accordingly.

67. Consequently, the Applicant is hereby awarded one-third (1/3) of the taxed costs in this Application.

VIII. Orders

68. Accordingly, this Application is allowed, and the Tribunal issues the following orders:

    (i) The additional VAT assessment of UGX 480,117,229 issued against the Applicant is hereby set aside in its entirety.

    (ii) The Applicant is hereby awarded one-third (1/3) of the taxed costs in this Application.

Dated at Kampala this **20th** day of **August** 2026.

HON. CRYSTAL KABAJWARA
CHAIRPERSON

HON. KATWE CHRISTINE
MEMBER

HON. GERALD AGABA KAKIMA
MEMBER