THE REPUBLIC OF UGANDA

IN THE TAX APPEALS TRIBUNAL OF UGANDA AT KAMPALA

APPLICATION NO. 003 OF 2022

EASY SAVE SUPERMARKET LTD ========== APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY ========== RESPONDENT

BEFORE: DR. ASA MUGENYI, MR. STEPHEN AKABWAY, MR. SIRAJ ALI

RULING

This ruling is in respect of an application challenging an imposition of penal tax of Shs. 84,000,000 arising from the implementation of the Electronic Filing Invoice System (EFRIS).

The applicant operates a super market in Uganda. The respondent issued the applicant with a penalty of Shs. 84,000,000 for failing to use (EFRIS) for 1st November 2021 to 14th November 2021. The applicant`s objection to the penalty was disallowed by the respondent. Hence this application.

The following issues were set down for determination.

1. Whether the applicant is liable to pay penal tax of Shs. 84,000,000 assessed?
2. What remedies are available to the parties?

The applicant was represented by Mr. Simon Peter Odongoi while the respondent by Mr. Thomas Davis Lomuria.

The applicant`s sole witness, Mr. Hamis Kaheru, its director testified that the applicant operates a supermarket in Zana, Entebbe Road. He testified that the applicant has been tax compliant until the introduction by the respondent of the Electronic Fiscal Receipting and Invoicing Solution (EFRIS), which brought challenges to supermarket owners such

as the integration of its systems to the respondent`s centralized invoicing and receipting system. In October 2021, he attended a meeting convened by the respondent where it is announced that the implementation of EFRIS would begin on 1st November 2021 and a list of accredited EFRIS software integrators were provided. The applicant instructed Lotus Technologies Ltd, an EFRIS accredited software integrator to guide the applicant through the integration process. Relying on the advice of Lotus Technologies and the respondent`s technical team, the applicant applied for and placed codes on all items in the supermarket, acquired and installed software and obtained the EFRIS device from the respondent. It put in place the necessary equipment for the integration and implementation of EFRIS.

Upon installation of the necessary software and with the guidance of Lotus Technologies Ltd, the applicant wrote to the respondent requesting for authorization to integrate EFRIS with its management software. The respondent responded on 17th November 2021. The witness contended that the respondent did not act promptly in response to the applicant`s challenges despite numerous communications with its officials. The applicant also experienced system failures caused by factors beyond its knowledge and control. Further delay was caused because Lotus Technologies was overwhelmed with many clients which was brought to the attention of the respondent. The witness testified that due to the said delay the applicant could not activate EFRIS nor issue electronic receipts or invoices as required and continued to issue manual receipts. Between 1st November and 14th November 2021, the respondent`s technical team visited the applicant`s premises and confirmed that the applicant had made significant progress in integrating its system to that of the respondent.

The witness stated that on 17th November 2021, the applicant was served with two VAT penal assessments amounting to Shs. 84,000,000 for the period 1st to 14th November 2021 on the ground that it had failed to issue fiscalised invoices. The respondent issued third party agency notices against the applicant`s bankers leaving an outstanding penal tax of Shs. 75,837,054. The witness stated further that the applicant is not liable to pay

the penal tax. He admitted that the applicant has not been able to pay 30% of the tax in dispute due to the challenges caused by the effects of the Covid 19 pandemic.

The respondent`s witness, Hassan Wassajja Lukenge, a supervisor in its Domestic Taxes Department stated that the applicant was notified about the implementation of EFRIS. It participated in all the engagements and meeting leading to the integration of EFRIS. The applicant`s employees were trained on the use of EFRIS by the respondent. The witness stated that during the roll out the applicant through the Uganda Supermarket Owner`s Association continued to engage the respondent and a technical working committee was instituted to address all issues regarding the implementation of EFRIS in supermarkets. Between 1st January 2021 and 20th September 2021, there were no enforcement measures against tax payers who failed to implement EFRIS including the applicant. On 10th May 2022, the respondent notified the applicant that the respondent would withdraw the EFRIS negative stock functionality with effect from 24th May 2022. However, the applicant in contravention of the law failed to issue the EFRIS invoices and is therefore liable to pay the assessed penal tax. Lotus Technologies confirmed that the integration of the applicant's system was completed by the end of October 2021 and therefore it had no justification for not issuing EFRIS invoices from 1st November 2021.

The applicant submitted that it is not liable to pay the penal tax as assessed on two grounds. Firstly, the failure by it to use EFRIS during the period of assessment was caused by the respondent`s failure to address in time the challenges it was facing in complying with the use of EFRIS. This was in the testimony of Hamisi Kaheru and Siraj Wassaja Lukenge. Secondly, the assessment of Shs. 84,000,000 is not supported by any evidence or law. The applicant submitted that it was illegal for the respondent to issue two assessments for the same period without any justification. Two assessments of Shs. 72,000,000 and Shs. 12,000,000 were issued. No evidence was led by the respondent to justify the issuance of the two assessments. The respondent ought to have ascertained the value of the goods and the tax due on the goods for the purpose of determining what the applicant was to pay as a penalty. The applicant submitted that without evidence of the total value of goods the assessment of Shs. 84,000,000 by the respondent had no

basis in law. Citing *Embassy Supermarket (U) Ltd v Uganda Revenue* Authority Application 114 of 2021, the applicant invited the tribunal to find that it is not liable to pay the penal tax assessed. It prayed that the objection decision be reviewed and reversed and the penalty of Shs. 84,000,000 be vacated.

The respondent cited S. 73 of the Tax Procedures Code Act and *Embassy Supermarket (U) Ltd* v *Uganda Revenue Authority* (supra) and submitted that the requirement to issue invoices is mandatory and that failure to comply attracts a penalty. The EFRIS system required all supermarkets to issue EFRIS invoices. The enforcement team established that the applicant did not issue EFRIS invoices from 1st November 2021 to 14th November 2021. It issued two VAT penal assessments under S. 73B (2) of the Tax Procedures Code Act. The respondent refuted the claim by the applicant that it could not activate EFRIS nor issue electronic invoices due to the fact that Lotus Technologies Ltd who were the integrators had not completed the integration with the applicant's management software. The respondent submitted that Hassan Lukenge testified that the respondent contacted Lotus Technologies Ltd on 18th November 2022 who confirmed that despite mistakes on VAT bifurcations the integration and EFRIS configuration had been concluded by the end of October 2021. The respondent submitted that since the configuration was complete by October 2021 the applicant ought to have issued the E-receipts from 1st November 2021. The respondent cited Attorney *General v Bugisu Coffee Marketing Association Limited* 1963 EA 38 for the argument that tax statutes should be interpreted strictly.

The respondent submitted that the application ought to be dismissed for failure by the applicant to pay 30% of the tax in dispute as required under S. 15 of the Tax Appeals Tribunal Act. Citing *Uganda Projects Implementation and Management Centre v. Uganda Revenue Authority*, SCCA 2 of 1999 and *Elgon Electronic v Uganda Revenue Authority* HCCA 11 of 2007, the respondent submitted that the law on the application of S. 15 of the Tax Appeals Tribunal Act is settled. It contended that tax assessed was Shs. 84,000,000 therefore the applicant ought to have paid Shs. 25,200,000 as 30% of the tax in dispute. It prayed that the application is dismissed with costs.

In rejoinder, the applicant submitted that the respondent's contention that it did not pay 30% of the tax in dispute is an attempt to divert the tribunal from the real issues in controversy. The applicant submitted that since both parties had closed their cases it was not possible for it to adduce evidence of proof of payment of 30%. The applicant contended that the respondent is estopped from raising any issue under S. 15 of the TAT Act since it would be prejudicial and unfair for it to adduce evidence at this late stage. The applicant prayed that the tribunal disregards this issue and adopts the reasoning in *Embassy Supermarket (U) Ltd v Uganda Revenue Authority* Application 114 of 2021 where the tribunal held that the applicant was liable to pay only Shs. 6,000,000 instead Shs. 84,000,000 for failing to issue EFRIS invoices for the period 1st November 2021 to 14th November 2021.

Having listened to the evidence and read the submissions of the parties the following is the ruling of the tribunal.

In *Mukisa Biscuit Company Ltd v West End Distributors* (1969) EA 896, Law JA commented on a preliminary objection as follows.

> "So far as I am aware, a preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court, or a plea limitation, a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration."

It is trite law that a preliminary objection can be raised at any point during the trial. Since this objection if successful will dispose of the matter, we will determine it first.

The applicant submitted that non-payment of 30% of the tax is a question of fact and law which can only be resolved by presentation of evidence which cannot be presented after the parties have closed their cases. However, the applicant's witness, Hamis Kaheru, in paragraph 32 of his witness statement testified that the applicant was not able to deposit 30% of the tax in dispute because of challenges caused by the effects of the COVID19 pandemic.

In *Bullion Refinery Limited v. Uganda Revenue Authority* Application 36 of 2021, the tribunal noted.

> "In Uganda Projects Implementation and Management Centre v Uganda Revenue Authority Constitutional Appeal No. 2 of 1999, the dispute was whether S.34(C) of the Value Added Tax (VAT) Act contravenes the 1995 Constitution of Uganda in as far as it requires a person lodging an application with the Tax Appeals Tribunal to pay the Commissioner General 30% of the tax in dispute or that part of the tax assessed not in dispute, whichever is greater. The Supreme Court ruled that the impugned Section does not contravene Articles 21(1)(2) and 126 of the Constitution by completely blocking the appellant`s access to court. The said decision was in respect of the VAT Act. The dispute before the tribunal is in respect of S.15 of Tax Appeals Tribunal Act which was not the basis of the decision in the Supreme Court. However, the tribunal notes that the Supreme Court decision was in relation to the right to access justice or constitutionality of the impugned S. 34(C) of the VAT Act which would be similar to the right of accessibility under S. 15 of the Tax Appeals Tribunal Act. A taxpayer bringing a dispute under the impugned S. 34(C) of the VAT Act would be similar to the right of accessibility under S. 15 of the Tax Appeals Tribunal Act. By deciding on the constitutionality of the VAT Act the Supreme Court was implicitly determining the constitutionality of S. 15 of the Tax Appeals Tribunal Act. It does not need a rocket scientist to see that the Supreme Court decision in respect of the constitutionality of the impugned S. 34 (C) of the VAT Act applies to S. 15 of the Tax Appeals Tribunal Act. Though the Tribunal is not a court of judicature, the Supreme Court is the highest Court and its decision is binding on the Tribunal."

In *Samuel Mayanja v Uganda Revenue Authority* HCT-00-CC-MC-0017-2005, Justice Egonda Ntende stated that "Once a taxpayer has lodged an application for review under S. 15 of the Tax Appeals Tribunal Act, he is obliged to deposit at least 30% of the tax assessed".

As observed from the above decisions the provisions of S. 15 of the Tax Appeals Tribunal Act are mandatory. The applicant was not prevented from adducing proof of payment of the 30% of the tax in dispute. Its witness admitted that it failed to pay the requisite sum. The applicant ought to have paid 30% of the tax in dispute as required by S. 15 of the

Tax Appeals Tribunal Act. In the circumstances this application is not properly before the tribunal and it is accordingly dismissed with costs.

Dated at Kampala this 28th day of September 2023.

DR. ASA MUGENYI	**DR. STEPHEN AKABWAY**	**MR. SIRAJ ALI,**
CHAIRMAN	**MEMBER**	**MEMBER**