THE REPUBLIC OF UGANDA

IN THE TAX APPEALS TRIBUNAL OF UGANDA AT KAMPALA

APPLICATION NO. 29 OF 2023

KADOPHRA INVESTMENTS CO. (SMS) LIMITED ..... APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY ..... RESPONDENT

CORAM. DR. ASA MUGENYI, MR. GEORGE MUGERWA, MS. CHRISTINE KATWE

RULING

This ruling is in respect of an application challenging administrative additional assessments of Shs 974,344,639 issued by the respondent on the applicant based on information received by the former from a third party.

The applicant is in the business of distribution of various liquors in Western Uganda. The respondent conducted a desk on the applicant for July 2020 to May 2022 and issued assessments of Shs 974,344,639 on 23rd September 2022. On 31st October 2022, the applicant objected to the assessments. On 10th November 2022, the respondent requested the applicant to provide documents. It invited the applicant for a tax reconciliation meeting on 15th December 2022. On the 15th November 2022, the respondent through agency notices collected Shs. 637,006,914 from the applicant's account held in Absa bank. On 23rd November 2022, the applicant protested the collection of monies from its accounts. On 11th January 2023, the respondent issued objection decisions.

Issues

1. Whether the assessments in dispute are lawful?
2. Whether the respondent lawfully collected Shs. 637,006,914 from the applicant's bank during the pendency of the objection process?
3. What remedies are available to the parties?

The applicant was represented by Mr. William Were and Ms. Hajara Namwanga while the respondent by Mr. Simon Kamugisha Muhinda and Ms. Joan Agasha.

The applicant's witness, Ms. Lorna Maria Kamau, its auditor/tax consultant testified that the applicant is in the business of purchasing and selling beer through a distributorship arrangement with Uganda Breweries Limited (UBL). She stated there is no possibility of under declaration of taxes as payment are made through a bank-to-bank arrangement. The respondent conducted a desk audit of the applicant for July 2020 to May 2022. It issued VAT assessments of Shs. 974,344,639 on the applicant. She stated that the basis of the assessments was that the applicant overclaimed tax of Shs. 271,619,944. The applicant did not include credit notes issued to the respondent in its returns. The applicant wrongly claimed input tax of Shs. 72,479,049.

She stated that the respondent accepted the applicant's sales as declared in its returns thought they had been overstated. The sales in the VAT assessment were estimated using wrong premises. The respondent used a markup of 20% which does not exist. For April and May 2021, the respondent assumed sales without information as to the costs of sale. The respondent omitted input tax resulting in an understatement of Shs. 171,881,391. For June 2021, the respondent omitted input tax resulting in an understatement of Shs. 21,970,376. She stated for July to October 2021, the respondent assumed sales without information as to the cost of sales. The respondent added items in the income tax returns of 2020 and 2021.

She further testified that the applicant objected to the assessments on 31st October 2022. On 10th November 2022, the respondent declared the objections as valid. The respondent requested information which was provided. It invited the applicant for a reconciliation meeting. On 17th November 2022, the respondent through agency notices collected Shs. 637,006,914 from the applicant's account in Absa bank. By a letter dated 23rd November 2022 the applicant demanded for the respondent to return the money collected which was ignored. On 11th January 2023, the respondent issued an objection decision. The witness stated that of the monies collected from the account included that of a loan of Shs. 500,000,000 from Absa bank where it is required to pay interest. She

stated that the applicant is seeking general damages since it has suffered to meet its working capital needs.

The respondent's witness, Mr. Ambrose Ongom testified that the applicant was registered for tax effective January 2020. The applicant deals in distributing products manufactured by Uganda Breweries Limited. On 2nd August 2022, the respondent sought a compliance review of the applicant's affairs. On 24th August 2022, the applicant amended it returns of income for the period 1st July 2020 to 30th June 2021.

The respondent reviewed that amended returns and third-party data available and established the following.

1) The company claimed excess input tax of Shs. 271,019,949 for April to October 2021.
2) There were errors relating to double claimed invoices for Shs. 70,079,634 in the returns of April, June, August and September 2021.
3) There were unverified invoices of input tax of Shs. 2,399,415
4) in the return of October 2021
5) The applicant did not declare credit notes issued for damaged and expired products for May 2021 to May 2022 for input tax of Shs. 114,209,008.
6) The applicant filed a nil return for April 2021 and yet there were purchases of Shs. 1,667,970,490.
7) There were variances in the purchases of May and June 2021 of Shs. 954,961,638 and Shs. 188,363,349 respectively.
8) The respondent subjected a margin of 5 and 10% to the variances above. This resulted in undeclared sales of Shs. 1,751,369,014 for April 2021, Shs. 1,050,457,802 for May 2021 and Shs. 207,199,839 for June 2021. The margins were below those of the applicant's 12.3% as per the income tax returns for July 2020 to June 2021.

The witness further testified that following a further review of the amended tax return it established that.

1. The applicant filed an amended income tax return for the year ended 30th June 2021 reflecting transactions for only May and June 2021. However, the purchases reported in the audited financial statements were for April to June 2021.

2. There were variances of Shs. 1,021,271,257 and Shs. 3,664,436,000 in the declared as closing and opening stock in the filed returns and audited returns
3. Whereas the purchases reported in the audited financial statements were for three months the sales were for two months.
4. Due to the inconsistencies the stock variances of Shs 448,897,315 were maintained.

He stated that the applicant claimed motor vehicle expense of Shs 103,959,300 but did not provide documents to support its claim.

Mr. Ongom stated that the respondent issued administrative assessments and a management letter communicating the assessments. On 10th November 2022, the applicant objected to the assessments and admitted that there was an oversight when capturing Fiscal Document Numbers in its returns. The company was new when it declared a nil return for April 2021. In a letter of 1st December 2022, the applicant acknowledged that there were errors in its returns. The respondent upheld the assessments of Shs. 319,028,087 and Shs. 493,499,593

The applicant submitted that the respondent did not consider its input tax. It submitted that it underclaimed VAT for the months of April to October 2021 and May 2022. The applicant submitted that the respondent relied on third party information of the supplier to come up with the assessments against the applicant. It also submitted that the respondent did not call any evidence to show that it had rejected the VAT filed by UBL arising from those Fiscal Document Number (FDN) yet it denied the applicant claim for the same input VAT.

The applicant shifted the burden of proof to the respondent to dispute the Fiscal Document Numbers (FDNs) printed from its system since it is their custodian. The applicant contended that the respondent had not brought to the Tribunal any contrary list of FDNs. The respondent's witness, RW1, gave oral evidence that contradicts a document generated by it.

The applicant drew an analysis of its alleged tax liability in a Table. The table showed the input VAT it claimed, input VAT allowed, input VAT as per third party sales, the

variances of the third-party output VAT and that of the input VAT allowed by the respondent. The applicant concluded that it claimed less input VAT.

The applicant submitted that the respondent estimated sales with no regard to cost of sales. The respondent's witness admitted that the respondent did not have stock records. RW1's testimony was contradictory on the sales assessed for VAT.

In reply, the respondent raised a preliminary objection that the application should be disallowed because it was filed out of time. It cited *Mukula International Ltd. v His Eminence Cardinal Nsubuga and another* (1982) HCB 11 where it was held that "A court cannot sanction what is illegal and an illegality once brought to the attention of court overrides all questions of pleading, including any admissions made thereon." It also cited *Musoke Mike v Kalumba James* Revision Cause 9 of 2019 where it was held that a preliminary point of law can be raised at any time in a case, including at submission stage. It also submitted that under Order 6 Rule 28 of the Civil Procedure Rules a party shall be entitled to raise by his or her pleading any point of law and if so, raised shall be disposed of by the court.

The respondent contended that under S. 16(1)(c) of the Tax Appeals Tribunal Act an application for review shall be made within 30 days of being served with the notice. It states the timeline for a person dissatisfied with a decision to apply for a review. S.16(2) of the Act provides for extension of time. The respondent contended that the main application was filed on 13th February 2022 was later refiled on 16th June 2023. The applicant filed Miscellaneous Application 96 of 2023 seeking to validate the application which was already filed out of time. The respondent cited *Essential Auto Parts Limited v Uganda Revenue Authority* Application 180 of 2022 where the Tribunal found that if the applicant was not able to file within 30 days it would still have a right to apply for extension of time and not seek validation of an existing application.

On the merits of the application, the respondent submitted that the burden of proof is on the applicant to prove that the assessment was incorrect or erroneous and that the taxation decision should not have been made or should have been made differently. The

respondent cited *Williamson Diamonds Ltd v Commissioner General* [2008] 4 TTLR 167, where the Tax Revenue Appeals Tribunal of Tanzania held that the burden of proving that an assessment issued by the respondent is excessive or erroneous lies on the taxpayer and cannot be shifted to the respondent.

The respondent cited S. 28 of the VAT Act which provides for credit for input tax. It states.

> "(1) where Section 25 applies for the purposes of calculating the tax payable by a taxable person for a tax period, a credit is allowed to the taxable person for the tax payable in respect of-
>
> a. All taxable supplies made to that person during the tax period; or
> b. All imports of goods made by that person or import of services made by a contractor or licensee or a person providing business process outsourcing services during the tax period,
>
> If the supply or import is for use in the business of the taxable person.
>
> (2) where Section 26 applies for the purposes of calculating the tax payable by a taxable person for a tax period, a credit is allowed to the taxable person for any tax paid in respect of taxable supplies to, or imports by the taxable person where the or import is for use in the business of the taxable person"

In summary, it provides that a credit is allowed to the taxable person for the tax payable in respect of all taxable supplies made to that person during the tax period. The respondent cited *Margaret Rwaheru Akiiki & 13945 others v URA* Civil Suit 117 of 2013 where the court defined input tax as "a cost to the importer or taxable person that generates a credit in favor of the taxable person."

The respondent contended that the applicant claimed input tax in excess of the amounts reflected in the FDNs from April 2021 to October 2021. It listed the tax in excess in its submissions (a) to (bbb) which the Tribunal cannot reproduce as they are lengthy. It did not indicate the VAT periods. However, the Tribunal was able to compute the amount in excess as around Shs. 216,307,105

On the double claimed invoices, the respondent submitted that the applicant admitted to errors in the VAT returns of April, June, August, September and October 2021. The related input tax credits were disallowed in the VAT and Income Tax computations. The

respondent adduced evidence of the computation of double claimed invoices. The amount of the double claimed invoices are Shs, 6,778, 983, Shs. 393,941, 5,355,085 and Shs. 6,097,119 totaling to Shs. 26,625,128

The respondent submitted that the applicant had undeclared sales for April to June 2021. However, it purchased items of Shs 1,667,970,490 as per EFRIS data provided. There were purchases for May and June 2021. The applicant filed a nil output return for April 2021. The respondent contended that in order to be entitled to input tax credit the applicant ought to have declared its sales in April 2021. The respondent applied the self-assessed margin of 10% and adjusted the computation.

The respondent contended that it lawfully collected Shs. 637,006,914 from the account of the applicant in Absa bank. It submitted that S. 31(1)(a) of the Tax Procedure Code Act provides that an agency notice can be issued where tax is unpaid. S. 3 of the Act provides for due dates of payment. The respondent cited *Commissioner General, URA v Airtel (U) Limited* SCCA 032 of 2020 where the Supreme Court held that Celtel was a defaulter for failing to file tax returns in accordance with the law. The respondent contended that the applicant was a defaulter. The respondent was justified to collect the taxes.

In rejoinder, the applicant submitted that the respondent erroneously and without evidence submitted that the applicant claimed input tax in excess of the amounts reflected in the FDNs for April 2021 to October 2021.

The applicant invited the Tribunal to disregard the respondent's explanation on the issues in question for the following reasons:

a) The respondent referred to invoices that were never tendered in evidence. The invoices were not attached to the pleadings.
b) The applicant never cross-examined the witnesses on the alleged invoices which have were not tendered as evidence. It submitted that the respondent's counsel gave evidence from the bar which ought to be ignored.

c) That the Tribunal has the monthly VAT returns in exhibits REX6 and AEX 12 which are a summary of the invoices in the applicant returns and input VAT claimed and approved by the respondent in each month.
d) That the Tribunal has the monthly local purchases, exhibit AEX3 which is a summary of the VAT incurred by the applicant for each month.
e) That the explanations in paragraphs z and aa at pages 11, uu, vv, ww, xx, yy and zz at page 12 and aaa and bbb at page 13 of the respondent's submission are repetitions meant to mislead the Tribunal.

The applicant further submitted that the respondent's witness failed to show the Tribunal how the respondent arrived at the assessments. The variances alluded confirmed that the respondent did not have any evidence on the record to prove such claim. It submitted that its agent entrusted with filing VAT returns was not knowledgeable with the newly introduced EFRIS invoicing and filing system. The respondent's witness RW1 admitted that he did not carry out stock taking. The respondent could not have ascertained the sales without stock records. The applicant in its objections informed the respondent of the errors that were in the FDNs which were not claimed. RW1 admitted that the applicant was entitled to amend the returns, an opportunity that was denied, and it is for this reason that the applicant invites this Honorable Tribunal to find that the assessments were unlawful and ought to be vacated.

The applicant submitted that it is agreed that on the 17th January 2022 through agency notices, the respondent collected Shs. 637,006,914 from the applicant's account at Absa Bank which included loan disbursements of Shs. 500,000,000. The applicant contended that the Tribunal having established that the assessments were unlawful, it ought to find the agency notices unlawful too. The applicant submitted that the facts in *Commissioner General URA v Airtel Uganda Limited* (supra) are distinguishable from the facts in this applicant as Celtel was not remitting VAT in relation to taxable supplies but had defaulted on its obligation to timely file tax returns and as a result, the Commissioner General served a tax assessment under S. 65(3) of the VAT act, which was an issue central to the appeal. The applicant contended that the action of the respondent of collecting of

Shs. 637,006,914 from its accounts through agency notices was unlawful and it is entitled to a refund.

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

The respondent raised a preliminary objection, that this application was time barred. It submitted that the tribunal lacks the power to validate an application that was filed out of time. It cited *Mukula International Ltd v His Eminence Cardinal Nsubuga & Anor* (1982) HCB 11 where it was held that, "A court of law cannot sanction what is illegal and an illegality once brought to the attention of court overrides all questions of pleading, including any admission made therein." The respondent submitted that a point of law can be raised anytime as was held in *Musoke Mike v Kalumba James* Revision Cause 9 of 2019.

In *Biscuit Manufacturing Co. Ltd v West End Distributors Ltd [*1996] EA 696 Sir Charles Newbold stated that;

> "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."

It is not in dispute that the Tribunal can entertain a preliminary objection at any stage of a hearing. Order 6 Rule 28 of the Civil Procedure Rules states that.

> "Any party shall be entitled to raise by his or her pleadings any point of law, and any point so raised shall be disposed of by the court at or after the hearing; except that by consent of the parties, or by order of court on the application of either party, a point of law may be set down for hearing and disposed of at any time before the hearing".

Therefore, the Tribunal shall address the preliminary objection first as it may dispose of the matter.

The respondent contends that the Tribunal lacks power to validate an application that was filed out of tine. The applicant filed Miscellaneous Application 96 of 2023 for extension of time. The orders it applied for were

a. The time for lodging the Application for review of the tax decision be extended.
b. TAT Application No. 29 of 2023 be validated.
c. Costs of the application be provided for.

When the above application came up for hearing, the respondent did not object, on condition that 30% of the tax in dispute was paid. The Tribunal granted the application on 19th July 2019. The issue of payment of 30% of the tax in dispute was to be raised at the hearing of the main application. Since the applicant had collected the purported tax in dispute, the issue was never raised at the hearing of the main application.

One of the orders in the application for extension of time was the validation of Application 29 of 2023. When the application was granted, the said order was also granted as the applicant did not object to the application apart from the payment of 30% of the tax in dispute. The Tribunal cannot listen to a preliminary objection which should have been raised at the time of the listening of the application for extension of time. On the disposal of the application, raising an issue of validation at this stage is res judicata. Under S. 7 of the Civil Procedure Act no court shall try any suit or issue in the matter directly and substantially was in issue in a former suit involving the same parties. The Tribunal cannot also be an appellate court on an order it has already made. Therefore, the Tribunal finds the preliminary objection misplaced. It is overruled and the Tribunal will proceed to delve into the grounds and issued raised.

The respondent conducted a desk audit on the applicant for the period July 2020 to May 2022 and issued assessments of Shs 974,344,639 on 23rd September 2022. The applicant objected to the assessments. The respondent through agency notices collected Shs. 637,006,914 from the applicant's account held in Absa bank. The applicant's main contention is the assessments issued by the respondent were unlawful as it quoted the wrong amounts and that led to understatement of input tax as well as variances in the VAT. The Tribunal will begin by looking at the evidence presented before it to establish what is the purported tax liability of the applicant

In its submission, pages 11 to 13 on items (a) to (bbb), the respondent contends that the applicant claimed excess input VAT which the Tribunal computed to be around Shs.

216,307,105. The respondent also contended that the applicant double claimed invoices totaling to Shs. 26,625,128. The respondent further submitted that the applicant had undeclared sales for April to June 2021. The applicant purchased items of Shs 1,667,970,490 as per Electronic Fiscal Receipt and Invoices System (EFRIS). The respondent contended that the applicant did not declare output VAT. Therefore, it was not entitled to input credit. The respondent also contended that the applicant had undeclared sales for May and June 2021. A self-assessed margin of 10% was applied to the variance and adjustments made in the tax computation. In its submissions, the respondent conspicuously omits to state what the variances were and what adjustments were made in the tax computation. In its submissions though the respondent argued that the applicant overclaimed input tax of Shs. 216,307,105, this was not brought out in the evidence of the former's witness. The returns and invoices leading to the input tax of Shs. 216,307,105 were not tendered in court.

The respondent's witness, Mr. Ambrose Ongom testified that the respondent reviewed that amended returns and third-party data available and established the following.

1) The applicant claimed excess input tax of Shs. 271,019,949 for April to October 2021.
2) There were errors relating to double claimed invoices for Shs. 70,079,634 in the returns of April, June, August and September 2021.
3) There were unverified invoices in the input tax claim of Shs. 2,399,415 in the return of October 2021
4) The applicant did not declare credit notes issued for damaged and expired products for the period May 2021 to May 2022 for input tax of Shs. 114,209,008.
5) The applicant filed a nil return for April 2021 and yet there were purchases of Shs. 1,667,970,490.
6) There were variances in the purchases of May and June 2021 of Shs. 954,961,638 and Shs. 188,363,349 respectively.
7) The respondent subjected a margin of 5 and 10% to the variances above. This resulted in undeclared sales of Shs. 1,751,369,014 for April 2021, Shs. 1,050,457,802 for May 2021 and Shs. 207,199,839 for June 2021. These were below the applicant's margin of 12.3% as per the income tax returns for July 2020 to June 2021.

The said evidence to a large extent is different from what the respondent submitted on. The amounts or figures differ. While in the evidence it subjected the sales to a margin of 5% and 10%, in the submissions it was 10%. The amount claimed for excess input VAT and errors in the double claimed invoices differ. No mention is made of credit notes and other items in the submissions.

In order to understand the dispute, one also needs to look at the objection decision. The objection decisions had a one liner as a reason, which mostly read

> "Objection to assessment ... disallowed in full in favour of Uganda Revenue Authority on the basis that the ground of objection is invalid."

It is not clear how a ground of an objection can be invalid. The law does not state which grounds are considered valid or invalid. It is also not clear how a taxpayer can present its case before the Tribunal when the grounds of the objection decision are vague. A perusal of the assessments show that they arose out of compliance review findings. However, the evidence adduced shows that the respondent relied on FDNS supplied by a third party namely Uganda Breweries Limited. Even when the respondent obtained information from a third party it did not avail it to the applicant for it to make adjustments in its returns or give proper explanations as to the variances. The applicant stated it made errors when making its returns as EFRIS was new to it.

The management letter, exhibit A2 from the respondent to the applicant stated its findings. It stated that the applicant overclaimed input tax. The applicant wrongly claimed invoices, issued credit notes and underdeclared sales. What is conspicuously absent is the figures or the amounts involved. The respondent recommended that the applicant pays an additional tax assessment of Shs. 988,777,799. The respondent's witness testified that it upheld the assessments of Shs. 319,028.087 and Shs. 493,499,593. When the amounts by the witness are added, they do not total to Shs. 988,77,799 but Shs. 812,527,680. At what stage did the respondent waive of the tax liability of Shs. 176,250,119? A breakdown of how the respondent arrived at the liability was not provided to the applicant nor to the Tribunal. When a taxpayer is presented with such information and varying tax liabilities, it becomes difficult for it to defend itself. This is also complicated when the respondent relies on third party information which is not

availed to the taxpayer. It is only availed at the time of the hearing the application in the Tribunal.

Coming back to the evidence presented, the Tribunal finds that the evidence of the excess input VAT claimed by the applicant had not been proved to its satisfaction. It is not clear how the respondent arrived at the excess input VAT claimed by the applicant. The figures were not stated in the management letter nor the objection decision. Therefore, the applicant could not avail information to dispute a figure it was not aware of. Though the respondent submitted on the excess input VAT, invoices and the returns were not presented in court, nor how the respondent arrived at the figures.

The applicant contends that it underclaimed VAT for April to October 2021 and May 2022. It drew an analysis of its alleged tax liability in the table below presented in its submission. The table showed the input VAT it claimed, input VAT allowed, input VAT as per third party sales, the variances of the third-party output VAT and variances with input VAT allowed by the respondent. The applicant concluded that it claimed less input VAT.

TABLE A

	INPUT CLAIMED IN RETURN	INPUT ALLOWED BY URA	INPUT PER THIRD PARTY SALES	VARIANCES OF THIRD-PARTY OUTPUT TAX WITH CLAIMED INPUT VAT	VARIANCRS OF THIRI PARTY OUT PUT TAX WITI INPUT ALLOWED BY URA
021	205,905,462.66	300,234,688.2	300,234,696	94,329,276	0
)21	162,922,613.48	162,922,613.48	334,814,004	171,881,991	171,881,991
021	240,528,615	240,528,615	262,498,999	21,970,384	21,970,384
)21	249,188,827.12	249,188,827.12	314,917,819	65,728,992	65,728,992
t 2021	306,345,637.98	306,345,637.98	379,251,171	72,905,533	72,905,533
021	310,114,715	310,114,715	393,010,255	82,895,509	82,895,509
er 2021	409,863,035.52	409,863,035.52	496,556,697	86,693,661	86,693,661
ıry 2022	351,044,654.40	351,044,654.40	351,258,214	213,560	213,560
)22	414,694,323.51	414,694,323.51	414,807,205	112,882	112,882
	2,650,617,835	2,650,617,835	3,247,349,622	596,731,787	502,402,511

The respondent relied on FDNs supplied by a third-party Uganda Breweries Limited. The applicant disputes the figures and contends that it underclaimed input VAT. By looking at the FDNs or third- party information the Tribunal cannot state that they were accurate in ascertaining the liability of the applicant. If the applicant omitted in its returns on output VAT, it is also possible that the same applied to input VAT. By looking at output

VAT and ignoring input VAT one can create a situation where a taxpayer may erroneously be found liable to pay VAT. A tribunal cannot rely on distorted information from third party to create tax liability of a taxpayer. The respondent should have availed the third-party information to the applicant to verify and enable it to adjust its returns. Where possible both parties should have sat and reconciled the information.

The respondent alleged that the applicant double claimed invoices. The said invoices were not tendered as exhibits. There is no evidence as to when and how the double claims were made.

The respondent claimed that the applicant did not declare sales for April 2021. Therefore, it was not entitled to input credit. Input VAT is claimed by a taxpayer under S. 28 of the VAT Act which reads:

(1) "Where section 25 applies for the purposes of calculating the tax payable by a taxable person for a tax period, a credit is allowed to the taxable person for the tax payable in respect of-

(a) All taxable supplies made to that person during the tax period; or

(b) All imports of goods made by that person during the tax period,

If the supply or import, is for use in the business of the taxable person."

In *Enviro Serve (Uganda) Limited v Uganda Revenue Authority* Application 24 of 2017 the applicant was entitled to input VAT as it was VAT registered. The Tribunal held that

"For the applicant to be entitled to the input tax credit under this section the applicant has to prove the following; i) The applicant is a taxable person; ii) Taxable supplies have been made to the applicant during the tax period and iii) The taxable supplies were for use in the business of the applicant. We have already stated that the applicant was registered for VAT and is a taxable person."

The respondent did not adduce evidence to show that the applicant did not meet the above requirements.

The respondent contends that the applicant had undeclared sales. The respondent did not show how the applicant underdeclared its sales. The respondent contended that since the applicant made purchases, it should have made sales. It did not explain where

it got the assumption that whenever a person purchases items it must make sales. The applicant stated that in April 2021 it had just been established. A person may purchase items which may be not be sold in a certain period. The respondent assumed sales without information as to the costs of sale.

Taking all the above into consideration, the Tribunal finds that the respondent was not justified to issue the assessments amounting to Shs 974,344,639 on the applicant. Having stated that the respondent was not justified to issue the assessments on the applicant the Tribunal has to determine whether the respondent was justified to collect Shs. 637,006,914 from the applicant's accounts in Absa bank. The respondent removed the said monies from the applicant's account even before it had made an objection decision. It was as if the respondent had already made its mind that the applicant was liable to pay taxes even before making a decision.

S. 15 of the Tax Appeals Tribunal Act requires a taxpayer to pay 30% of the tax in dispute or that not in dispute, whichever is higher at the time of objecting. 30% of Shs. 974,344,639 is Shs. 292,303,391.7. Therefore, the respondent was justified to collect Shs. 292,300,391.7. The balance is Shs. 344,706,522.3. Since the Tribunal found that the respondent was not justified to issue the assessment it means that when the respondent collected the Shs. 344,706,522.3 which was not backed by any law, the respondent was on its own frolic. The respondent did not give any justification as to why it collected the balance. There is no evidence that the applicant was attempting to evade payment of taxes, or it was leaving the country or it was going into liquidation or any other good reason. The respondent did not give any justification as to why it collected more than 30% of the tax in dispute. Under S. 21(6) of the Tax Appeals Tribunal Act, the Tribunal may make an order as to damages, interest or any other remedy against any party. Award of interest is at the discretion of the court or Tribunal. Where a taxpayer is deprived on the use of its money by a decision that is not backed by law or any justifiable reason and it suffers loss it is entitled to a remedy. The Tribunal will award interest of 2% per month to the applicant on the said balance from the date the monies were removed from the account to the date of this ruling. That is 321 days. The interest would

come to Shs. 72,956,567. Therefore, the respondent is ordered to pay interest of Shs. 72,956,567.

The applicant prayed for general damages. It contended that it suffered anguish when its monies were attached. The applicant alleged that it obtained a loan of Shs. 500,000,000 from Absa Bank. The respondent by attaching monies from the loan denied the applicant the chance of using the said monies in its business. In *Modern Art Communication Limited v Attorney General* (Civil Suit 28 of 2014) [2020] UGHCCD 193 the High Court stated that

> "... it is trite law that general damages are awarded at the discretion of court. Damages are awarded to compensate the aggrieved fairly for the inconvenience accrued as a result of the actions of the defendant. It is the duty of the claimant to plead and prove that there were damages, losses or injuries as a result of the defendant's actions.".

The purpose of general damages is to compensate an aggrieved person to the extent of the loss it suffered. The Latin phrase *restituo ad integrum* means restoration to original condition. If one obtained a loan, it would be required to pay interest. If the said loan monies are removed from a taxpayer's account, the bank would still require it to pay the loan back, plus interest. A loan of Shs. 500,000,000 would attract interest at 24% per annum of Shs. 120,000,000. Secondly, it cannot be disputed that if loan monies are removed from an account before they are put to use, the owner of the account would suffer anguish. There is no evidence that the directors of the applicant were hospitalized when the said monies were removed from the account. Nevertheless, the anguish the applicant suffered from the removal of monies cannot be measured. However, the Tribunal can estimate an amount of Shs. 30,000,000 to suffice. Therefore, the Tribunal will award general damages of Shs. 150,000,000.

The tribunal already noted that the monies the respondent collected were loan the applicant obtained from Absa bank for conducting its business. Therefore, the respondent should refund the above stated monies without using the amounts to offset any tax that is not due as on the date of this ruling. When conducting collections, the respondent should be cautious so as to avoid stifling businesses of taxpayers.

Therefore, the Tribunal finds that the respondent should pay decretal amount as follows;

a) The amount of Shs. 637,006,914 to be refunded to the applicant.
b) General damages of Shs. 150,000,000
c) Interest of Shs. 72,956,567
d) Interest of 2% per month on all the above from the date of ruling till payment in full.
e) Costs are awarded to the applicant.

Dated at Kampala this 24th day of October 2023.

DR. ASA MUGENYI	**MR. GEORGE MUGERWA**	**MS. CHRISTINE KATWE**
CHAIRMAN	**MEMBER**	**MEMBER**