

**THE REPUBLIC OF UGANDA**  
**IN THE TAX APPEALS TRIBUNAL AT KAMPALA**  
**APPLICATION NO.178 OF 2022**

KIRCHOF'S TECHNICIANS LIMITED.....APPLICANT

**VERSUS**

UGANDA REVENUE AUTHORITY.....RESPONDENT

**BEFORE: MR. SIRAJ ALI, MS. CHRISTINE KATWE, MS. STELLA NYAPENDI.**

**RULING**

This ruling is in respect of a preliminary objection raised by the Respondent that this Application is time barred.

**1. Background Facts**

The Applicant is a private Limited Company incorporated under the laws of Uganda and is engaged in the business of electrical engineering and civil works. On 7th July 2022, the Applicant lodged an application challenging various assessments issued by the Respondent. At scheduling the parties settled the issue relating to the Additional Assessment of Shs. 76,355,712, on the basis that the supply was declared by the Applicant in the subsequent tax period. When the matter came up for hearing on 2<sup>nd</sup> July 2024, the Respondent raised a preliminary objection stating that the application had been filed out of time.

**2. Issues**

The issues for determination are as follows:

- i. Whether this application is time barred?
- ii. What remedies are available?

**3. Representation**

At the hearing, the Applicant was represented by Mr. Oscar Kamusiime and Ms. Judith Ayebazibwe and Mr. Geoffrey Lule Kyeyune the Applicant's Technical Director while the Respondent was represented by Mr. Edmond Agaba and Mr. Samuel Oseku. Both parties filed written submissions.

#### 4. The Respondent's Submissions

The Respondent submitted that Section 16 (1) of the Tax Appeals Tribunal provides:

*"An Application to a tribunal for review of a taxation decision shall –  
(c) be lodged with the tribunal within thirty days after the person making the application has been served with the objection decision"*

The Respondent submitted that Section 25 (1) of the Tax Procedures Code Act provides:

*"A person dissatisfied with an objection decision may, within 30 days after being served with a notice of objection, lodge an application with the Tax Appeals Tribunal for review of the objection decision."*

The Respondent submitted that the above provisions of the law clearly set out the mandatory timelines for a person dissatisfied with the decision of the Commissioner to file an application in the Tax Appeals Tribunal.

The Respondent submitted that on Annexure "B" of the Respondent's statement of Reasons filed on 5<sup>th</sup> August 2022 indicates the objection decision was issued on 28/02/2022. The implication being that the Application had 30 days within which to file its Application in the Tax Appeals Tribunal challenging the objection decision by 28/03/2022.

The Respondent cited the case of ***Cable Corporation Ltd v Uganda Revenue Authority, High Court Civil Appeal 1 of 2021***, where the High Court noted:

*"An objection decision is a decision in respect to taxation made to the Commissioner against a notice of assessment while a "taxation decision" means any assessment, determination, decision or notice".*

The Respondent submitted that the Applicant was mandated by statute to file an application for review of the same in the Tax Appeals Tribunal latest by 28/03/2022.

The Respondent submitted that whereas Section 16 (2) of the Tax Appeals Tribunal Act provides an avenue for the Applicant to file an Application for extension of time within which to file the review Application, no such Application was made by the Applicant in this case.

The Respondent contended that the Applicant's application is not tenable, the same having been filed on 07/07/2022, over three months (90 days) after being served with the objection decision. The Respondent prayed that this application is dismissed with costs.

#### **5. The Applicant's Submissions**

The Applicant submitted that the application in question was filed within the requisite period of 30 days from the date of the receipt of the objection decisions. The Applicant stated that the application was filed on 7<sup>th</sup> July 2022, in respect of objection decisions made on 28<sup>th</sup> and 29<sup>th</sup> June 2022.

The Applicant submitted that the objection decisions are marked Exh. 3 and 4 at pages 22-34 of the joint trial bundle. The Applicant submitted that these objection decisions relate to assessments issued by the Respondent on the allegation that the Applicant had declared fictitious invoices. The Applicant submitted that being dissatisfied with the above objection decisions, it filed the instant application on 7<sup>th</sup> July 2022.

The Applicant submitted that the current dispute is about the issue of fictitious invoices and the same was agreed upon by the parties and included in the joint scheduling memorandum. The Applicant submitted that the joint scheduling memorandum filed on 22<sup>nd</sup> May 2023 shows that the parties agreed to the issue as to whether the Applicant declared fictitious invoices?

The Applicant submitted further that it was evident from the joint scheduling memorandum that it is disputed that the Respondent reversed the Applicant's input tax credit on the allegation that the invoices were fictitious. The Applicant submitted

that the objection decision relied upon by the Respondent, does not make any reference to the issue of fictitious invoices. The Applicant submitted therefore that the objection decision relied upon by the Respondent cannot be the basis of the allegation that the instant application is out of time as it is not related to the facts in issue.

The Applicant prayed that the Preliminary objection be dismissed with costs.

#### **6. Determination of the Application by the Tribunal**

We have carefully read and considered the submissions of both parties. We have also perused the authorities provided by the parties. This is the ruling of the Tribunal:

The Respondent raised a preliminary point of law that the instant application was time barred.

In *Game Discount World (Uganda) Limited V Ura App No. 25 Of 2020*, the Tribunal stated:

*"The Tribunal like any other court would first need to look at the legality of the application before it, before it can address the legality of the statement of reason".*

The issue to be determined by the Tribunal in this matter is whether this application should be dismissed on grounds that it is time barred. The Tribunal relied on Section 16 of the Tax Appeals Tribunal Act provides:

*"(1) An application to a tribunal for review of a taxation decision shall-  
(c) be lodged with the tribunal within 30 days after the person making the application has been served with notice of the decision"*

Section 25 (1) of the Tax Procedure Code Act provides;

*"A person dissatisfied with an objection decision may, within 30 days after being served with a notice of the decision, lodge an application with the Tax Appeals Tribunal for review of the objection decision."*

In *Game Discount World (Uganda) Limited V Ura (Supra)*

*"A question remains as to what then is the fate of the application. In Mukula International Limited v Cardinal Nsubuga Civil Appeal 14 of 1982 it was stated that once an illegality is brought to the attention of court it takes precedence over all pleadings. It has been brought to the attention of the Tribunal that the application filed by the Applicant is time barred. That is an illegality that the Tribunal cannot ignore".*

The Applicant contended that it filed the instant application within the period provided for under the law. The Applicant contends further that they filed the instant application in respect of the objection decisions made on 28<sup>th</sup> and 29<sup>th</sup> June 2022. The Respondent on the other hand submits that the Applicant filed the instant application on 7<sup>th</sup> July 2022, in respect of an objection decision issued on 28<sup>th</sup> February 2022.

A perusal of the instant application shows that it was filed on 7<sup>th</sup> July 2022. The statement of facts and reasons in support of the application shows that it was filed in respect of more than one objection decision (See paragraphs a-k).

Objection decision dated 28<sup>th</sup> February 2022, for Shs. 76,355,712, which forms the basis of the Respondent's preliminary objection, was vacated by consent of the parties on 22<sup>nd</sup> May 2023. The fact that the instant application is still subsisting even after the vacation of the objection decision dated 28<sup>th</sup> February 2022, shows that the instant application was filed in respect of more than one objection decision. This bears out the Applicant's argument that the instant application was also filed in respect of objection decisions issued by the Respondent on 28<sup>th</sup> and 29<sup>th</sup> June 2022, respectively.

For the reason above, we find that the Respondent has failed to sustain this preliminary objection. It is accordingly dismissed with costs.

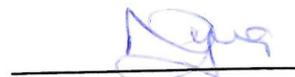
Dated this 16<sup>th</sup> day of August 2024



**ALI SIRAJ**  
CHAIRPERSON



**CHRISTINE KATWE**  
MEMBER



**STELLA NYAPENDI**  
MEMBER

