



THE REPUBLIC OF UGANDA
IN THE TAX APPEALS TRIBUNAL AT KAMPALA
TAT APPLICATION NO. 135 OF 2024

NILE BREWERIES LIMITED.....APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY.....RESPONDENT

**BEFORE: MRS. STELLA NYAPENDI CHOMBO, MS. PROSCOVIA R. NAMBI,
MS. CHRISTINE KATWE**

RULING

I. Introduction

1. This ruling is in respect of an application challenging additional administrative assessments for Local Excise Duty (LED) of Shs. 10,465,959,379 and Value Added Tax (VAT) of Shs. 8,043,093,350 for the period January 2022 to November 2022, issued on the grounds that the Applicant's supplies constituted local sales, not exports.

II. Background Facts

2. The Applicant is a manufacturer of alcoholic beverages, which are sold both locally in Uganda and exported to the Democratic Republic of Congo and South Sudan. The goods manufactured for export are clearly marked for export.

- (i) The Applicant does not pay Local Excise Duty and Value Added Tax on the basis that the goods are exported. The Respondent insists that the Applicant misclassified the goods as zero-rated since the Applicant does not export them and therefore local excise duty and VAT should be paid.
- (ii) On 19 March 2024, the Respondent issued several additional administrative tax assessments for Local Excise Duty of Shs.10,465,959,379, and Value Added Tax of Shs. 8,043,093,350 for the period January 2022 to November 2022. This amounts to a total of Shs. 18,509,052,729.
- (iii) The assessments were raised on the ground that the Applicant had misclassified its goods as zero-rated, yet the Applicant did not export them, but third parties - Ituri Investments Limited and Kabaco (U) Limited.
- (iv) The Applicant objected to the LED and VAT Additional assessments on the grounds that Ituri Investments Limited and Kabaco (U) Limited are the Applicant's export agents, and the Applicant did not make local sales to them. The Respondent disallowed the objection on the grounds that the Applicant made local sales. Hence, this Application.

III. Issues for Determination

3. The Tribunal framed the following issues:
 - (i) Whether some of the objection decisions are time-barred.
 - (ii) Whether the Applicant is liable to pay VAT as assessed.
 - (iii) Whether the Applicant is liable to pay Local Excise Duty as assessed.
 - (iv) What remedies are available to the parties.

IV. Representation

4. Mr. Bruce Musinguzi, Mr. Henry Agaba, Mr. Thomas Kato, and Mr. Ferdinand Tumuhaise represented the Applicant, while Ms. Gloria Twinomugisha, Ms. Charlotte Katuutu, and Ms. Victoria Eseza Ssendege represented the Respondent.

5. Mr. Hillary Nowangye (AW1) the Credit Manager of the Applicant in his witness statement stated that the Applicant contracted Ituri and Kabaco Ug Ltd as its export agents to export its beverages to South Sudan and DRC and for both local and export agents who sell products both locally and exported. He stated that Kabaco does not sell any of the beers marked for export. He further stated that once all the documents have been proven, URA confirms that all documents are in order, then the goods are transported to the port for exit.
6. He also stated that the Applicant exports the beer in accordance with the requirements and procedures guided by the Respondent. All the goods manufactured by the Applicant for export to South Sudan and DRC have at all material times exited the country.
7. During cross-examination, Mr. Hillary Nowanje confirmed that she was aware that the Applicant had a similar dispute based on identical facts in this Tribunal. He also confirmed that the sales by the Applicant to Kabaco and Ituri were made at ex-factory prices, the Applicant paid commission and that they already had a profit margin applied to the cost.
8. Mr. Hiren D. Mer (AW2), an accountant at Ituri Investments Ltd stated that Ituri acts as the Applicant's export agent under a principal-agent relationship.
9. The company exports alcoholic beverages to South Sudan, and the products are marked for export. He explained that the Applicant invoices Ituri Investments Ltd which then books the transactions in South Sudan. Ituri pays the Applicant for the beer exclusive of VAT and excise duty. Ituri charges the consumer/buyer/consignee for the beer with the mark up being the commission.
10. He further stated that the URA's customs officials stamp the sales invoices. The customs bill of entry indicates the Applicant as the exporter and the customers in South Sudan as the recipients of the said goods. In AE5, the Respondent concurred with Ituri that the transaction was in order and therefore zero-rated. Therefore, the assessments issued were unlawful.
11. Mr. Allan Atugonza (RW1), an officer in the independent Review of Objections Section of the Respondent's Domestic Taxes Department,

stated that the Respondent issued advisory assessments to the Applicant from January 2022 to December 2022. The Respondent issued a return examination utilizing the Applicant's EFRIS data for the period. They observed that the Applicant made local beer sales totaling Shs. 34,272, 267 and declared in EFRIS as zero-rated exports. However, the beer was sold domestically to Ituri Investment Ltd and Kabaco Ug Ltd. The misclassification resulted in a principal tax of Shs. 18,509,052,728 (LED and VAT).

12. He stated that on 29 September 2022, 30 September 2022, and 3 October 2022, the Applicant objected to LED assessments: LA012300060945, LA012300060822, LA012300060864, LA012300060955, LA012300060947, and LA012300060942 of Shs. 5,545,745,442 on the grounds that it did not make local sales to the agents. The Applicant further objected to VAT assessments; LA012400331870, LA012400332475, LA012400332555, LA012400332556 and LA012400332560 of Shs. 3,988,606,924.
13. He testified that on 30 October 2022, 31 October 2022, 22 November 2022 and 2 January 2023, the Respondent disallowed the objections on grounds of misclassification of local sales as exports.
14. The witness further testified that the Applicant objected to the LED and VAT assessments on the grounds that Kabaco and Ituri Investments Limited are its export agents and therefore do not make local sales to the Agents.
15. On 20 April 2024 and 11 June 2024, the Respondent disallowed the Applicant's objections on the grounds of misclassification of the sales as exports. During the objections review, the Respondent found that the goods were delivered to Kabaco (U) Ltd and Ituri Investments Limited at the Applicant's premises, and that title had passed. Kabaco was listed as the exporter on all documents.
16. During Re-examination, Mr. Atugonza stated that the Applicant made sales to Ituri and Kabaco, well knowing that they were resident persons in Uganda, and were surprised to find that they made the sales at the zero rate. The records showed that Kabaco was declaring the same as exports to Congo.

17. That since a product cannot be exported twice, the Respondent charged VAT and LED on the transactions between the Applicant and the two companies.
18. Mr. Nicholus Karyeija (RW2), an Officer in the Respondent's Large Taxpayers Office, Domestic Taxes Department, testified that the Applicant posted local sales as zero-rated export sales in the EFRIS of Shs. 34, 272, 267, 145 to Ituri and Kabaco, which ought to have attracted local excise duty and VAT at a rate of 18%.
19. Mr. Nicholus Karyeija testified that, since the Applicant issued invoices to domestic clients, charges a security deposit for every crate, and furnishes VAT returns claimed as exports, there is no agency relationship between Kabaco and Ituri. He testified that the Applicant issued invoices to Ituri Investment and Kabaco for domestic purchases; therefore, the transaction does not qualify as zero-rated. The supplies ought to have been subject to VAT and LED at a standard rate of 18%.
20. The witness testified that on the EFRIS invoice, the Applicant books the crates and bottles separately from the beverage and treats the charge (Security Deposit-SD) for the crates and bottles at no charge for VAT and LED. The charge for a security deposit is not a sale and should not be included in the invoice amount.
21. Mr. Nicholus Karyeija stated that the Respondent's decision to assess tax was informed by the Applicant issuing invoices to Ituri Investment Ltd and Kabaco Ug Ltd, wherein it classified standard-rated sales as zero-rated, invoices were fully paid, goods delivered to the two companies, NBL charges Kabaco and Kabaco exports the beer to Congo as per the documentation and declares the goods in the VAT returns as zero-rated.

V. The submissions of the Applicant

Whether the Applicant is liable to pay VAT as assessed?

22. The Applicant submitted that the Respondent assessed it for LED and VAT on the basis that the Applicant made local sales of beer that it misclassified as exports for the tax periods between January 2022 to November 2022, hence attracting excise duty and VAT at a standard rate of 18%.

23. The Applicant objected to the Assessments on grounds that it appointed Kabaco (U) Ltd and Ituri Investments Limited as export agents to export Beer, which the Applicant manufactures only for export. The Applicant could not make local sales of beer marked for export to Kabaco and Ituri.
24. The Respondent contends that the manufacturer of the beer did not export the beer but rather sold it locally, and Ituri and Kabaco then exported it.
25. The Applicant cited Section 24 of the VAT Act, which provides that the rate of tax imposed on taxable supplies specified in the Third Schedule is zero. Paragraph 1 (a) of the Third Schedule provides that: a supply of goods or services where the goods or services are exported from Uganda as part of the supply is zero-rated.
26. The Applicant cited the case of ***Uganda Revenue Authority v Total Uganda Ltd Civ. Appeal No. 08 of 2010***, where Justice Madrama quoted Paragraph 2(a) of the Third Schedule to define goods that are treated as exports for purposes of Paragraph 1(a) of the Schedule. It provides:
- "In the case of goods, the goods are delivered to, or made available at, an address outside Uganda as evidenced by documentary proof acceptable to the Commissioner General".*
27. The Applicant submitted that what is required is evidence of documentary proof that was exported, such as export documents as listed in Regulation 11 of the VAT Regulations, which provides:
- "(1) Where goods are supplied by a registered taxpayer to a person in another country and the goods are delivered by a registered taxpayer to a port of exit for export, the goods may be invoiced at a zero rate, provided the taxpayer obtains documentary proof set out in this section and the goods are removed from Uganda within 30 days of delivery to a port of exit".*
28. For an export transaction to qualify for zero-rating, a registered taxpayer shall obtain and be able to show as proof of export for every export transaction the following-
- (a) A copy of the bill of entry or export certified by the Customs authorities;

- (b) A copy of the invoices issued to the foreign purchasers with tax shown at the zero rate;
 - (c) Evidence sufficient to satisfy the Commissioner General that the goods have been exported, in the form of an order from, or signed contract with a foreign (1) purchaser, or transport documentation which identifies the goods such as-
 - (i) Transit order or consignment note issued by the Uganda Railways Corporation for goods exported by rail;
 - (ii) Copy of bill of lading for goods exported by water;
 - (iii) Copy of bill of lading for goods exported by air; or
 - (iv) Copy of a transport document for goods exported by road.
29. The Applicant submitted that the goods are delivered to or made available at an address outside Uganda by documentary proof acceptable to the Commissioner General. During the hearing of the Case, the Applicant provided evidence of the Export Agreements between itself, Ituri and between itself and Kabaco.
30. The Applicant submitted that Section 10 provides:
- “Except as otherwise provided under this Act, a supply of goods means any arrangement under which the owner of the goods parts or will part with possession of the goods...”*
31. The Applicant argued that the export agreements are therefore the arrangement by which the goods are supplied as provided under Section 10. During the hearing, the Respondent did not dispute the principal-agent relationship created between the Applicant and the two export Agents, Ituri and Kabaco, by which the Applicant exports the goods. The Respondent instead contends that it was a local sale to the Agents, who then exported.
32. The Applicant cited Section 13 of the VAT Act, which provides:
- “(1) A Supply of goods or services made by a person as agent for another person being the principal is a supply by that Principal.*
- (2) Subsection 1 does not apply to an agent supply of services as agent to the principal”.*

33. The Applicant contended that where a person is contracted as an agent to supply goods on behalf of another person who is their principal, the agent's supply is the supply of the principal. Since it was not disputed that the beer was exported by the said Kabaco and Ituri, by the same principle, the supplies/exports were made by the Applicant.
34. The Applicant submitted that the provisions of the Export Agent Agreements create a relationship of agency between Ituri, Kabaco, and the Applicant and comply with Section 10 and Section 13 of the VAT Act.
35. The Applicant submitted that Exhibits AE8 at pages 41 to 98, which were not disputed by the Respondent, are ASYCUDA export forms which indicated the exporter as the Applicant and the consignee or importer (Nectar General Trading as the purchaser of the beer in South Sudan on account of the Applicant's agent, Ituri Investments Limited).
36. The Applicant submitted that whereas the forms at 240 to 242 stated Kabaco as the exporter, it does not mean that the Applicant made local sales to Kabaco. The Applicant and Kabaco had an agency relationship. It is also an agreed fact that the beer was exported. Therefore, even if the Export forms were declared in Kabaco's name, it remained a supply of the principal who is the Applicant.
37. The Applicant further submitted that according to AE5, the Respondent concluded that analyzing the business model, they concurred that the treatment of the transactions as exports of Nile Breweries Limited is in order, and will accordingly be treated as zero rated supplies in accordance with Part 1 (a) of the third Schedule and Regulations 11(1) of the VAT Act. The Model was used until the assessments in issue were made in 2022 and 2024. The Respondent did not re-audit the model, as it did in 2014, to establish whether it was in fact breached or contrary to the position given in 2014. The Respondent was still bound by their guidance.
38. The Applicant argued that the Respondent, on the other hand, has not provided any evidence in proof of a local sale. It has not provided any evidence of leakage of the packaged beers on the market in Uganda. Neither did the question on whether the beers exited the border points (Uganda) arise. Therefore, the Applicant should not be required to prove beyond the accepted forms in Regulation 11 that they did in fact export the

goods. The Applicant submitted that it was correct to apply a zero rate of tax to the exported beer and the Respondent's assessment for VAT Shs.8,043,093,350 ought to be set aside.

Whether the Applicant is liable to pay LED as assessed?

39. The Applicant submitted that its obligation to pay Local Excise Duty (LED) hinges on whether the goods were exported, since locally manufactured goods that are exported are exempt from excise duty.

40. Section 4 of the Excise Duty Act, provides:

"(1) Subject to this Act, the excisable goods and excisable services specified in Schedule 2 shall be chargeable with the excise duty specified in that Schedule.

(2) Unless otherwise provided in this Act excise duty-

(a) In the case of manufactured excisable good is to be paid by the person manufacturing the excisable good.

(3) A manufacturer of an excisable good becomes liable to pay excise duty on that manufactured excisable good when the manufactured good is removed from the manufacturer premises".

41. The Second Schedule to the Excise duty Act includes beer as one of the excisable goods under the Excise Duty Act. However, the Act provides an exemption to payment of Excise duty under Section 10 (3a). It provides:

"The Commissioner may, if satisfied that the excisable goods have been exported, remit the excise duty chargeable on those goods".

42. Under Section 2, export is defined as:

"to take or cause to be taken out of Uganda".

43. In cross-examination, the Respondent's Witness Nicholas Karyelja testified that all the beer in question was exported, and it indeed crossed from Uganda to the respective countries of DRC and South Sudan, and that the Applicant entered into Export Agent Agreements with Ituri and Kabaco to export the beer to South Sudan and Congo. The Export Agreements are marked AE1 and AE2. The Respondent did not contest the agreements.

44. The Applicant submitted that there was no Local Excise Duty that arises in the transactions between the Applicant and its Agents, Ituri and Kabaco, since their relationship was a principal-agent relationship and the supplies/exports by the Agents were supplies of the principal. LED assessments amounting to Shs. 10,465,959,379 ought to be vacated.

What remedies are available to the Parties?

45. The Applicant prayed that the Tribunal make the following orders:
- (i) A declaration that the goods (beer) that are the subject of the Value VAT and LED assessments were exported by the Applicant through its Agents Ituri and Kabaco, and consequently, zero-rated for VAT and exempt from LED.
 - (ii) Additional Tax Assessments of Shs. 18,509,052,729 be vacated, refund of Shs. 5,552,715,820, being the 30% deposit plus interest, from the date payment was made until the refund is paid in full.
 - (iii) Costs of the suit be awarded to the Applicant.

VI. The submissions of the Respondent

Preliminary Objection

46. The Respondent contends that the Applicant is time barred from challenging some of the objection decisions. On 29 September 2022, 30 September 2022 and 3 October 2022, the Applicant objected to LED assessments of Shs. 5,545,745,442 and VAT assessments of Shs. 3,988,606,924. The objection decisions in respect of those assessments were issued on 30 October 2022, 31 October 2022 and 2 January 2023.
47. The Respondent submitted that Section 16 (1) of the Tax Appeals Tribunal Act provides that an application for review shall be made within 30 days of the taxpayer being notified of the taxation decision. Section 16 (2) of the same Act provides that the tribunal may, upon application in writing, extend the time for the making of an application to the Tribunal for review of a taxation decision.
48. Therefore, the Applicant ought to have applied to the Tribunal for the review of the objection decision by 29 November 2022, 30 November 2022 and 1

February 2023. The Applicant filed its application for review on 30 May 2024 more than 2 years later. There was no application for an extension of time. The Respondent prayed that the Applicant's challenge of the objection decisions in respect of the objection decisions be dismissed with costs to the Respondent for being time-barred.

Whether the Applicant is liable to pay the LED assessed?

49. The Respondent maintained that the Applicant made local sales to Kabaco and Ituri and, as such, is liable to LED and VAT as assessed. Section 4(a) of the VAT Act stipulates that VAT shall be charged on every taxable supply made by a taxable person.
50. Section 5(1)(a) of the VAT Act provides for the persons liable to pay VAT and stipulates that the tax payable in the case of a taxable supply is to be paid by the taxable person making the supply. The Respondent submitted that the Applicant, who is a taxable person, is liable to pay VAT if the goods sold are taxable supplies.
51. The Applicant argues that there existed an agency relationship between the Applicant and both Kabaco and Ituri, and the goods, having been exported, are zero-rated for VAT purposes. The Respondent maintained that the transactions are standard-rated for the following reasons:
 - (i) The Applicant is a taxable person who made taxable supplies;
 - (ii) The goods were supplied in Uganda for consideration;
 - (iii) The Applicant parted with title to the goods and risk passed to Kabaco;
 - (iv) The Applicant issued tax invoices to Kabaco and Ituri;
 - (v) There was no agency relationship between the Applicant and Kabaco and Ituri, neither contractually nor factually;
 - (vi) Labelling of the beers & for export & and the subsequent exportation does not imply that there was no local sale;
 - (vii) The substance over form test confirms that there were local sales;
 - (viii) The principle of legitimate expectation is not applicable; and
 - (ix) The High Court decision in *NBL V URA*, HCCA 113/2023 is on all fours with the present case and is binding on this Tribunal.

52. The Respondent submitted that Section 1 of the VAT Act provides that a taxable person has meaning in Section 6. Section 6 (1) provides that a person registered under Section 7 is a taxable person from the time the registration takes effect. It is not in dispute that the Applicant is a taxable person.

53. Section 18(1) of the VAT Act provides:

“Taxable supply is a supply of goods or services, other than an exempt supply, made in Uganda by a taxable person for consideration as part of his or her business activities”.

54. Given that the supply of alcoholic beverages is not exempt and the supply to Kabaco and Ituri was made in Uganda for consideration, then it is a taxable supply.

55. The Respondent submitted that in the case of ***Uganda Revenue Authority V Total Uganda Limited, HCCA No. 08 of 2010***, wherein Justice Madrama stated:

“I agree with the ruling of the Chairperson of the tribunal that VAT deals with value added and not consumption. The fuel is supplied at Entebbe airport and is not exported. This is based on the wording of section 15 (1) which provides that the supply of goods takes place where the goods are delivered or made available by the supplier, in this case the goods are consumed at the airport by refueling. Secondly section 14 of the VAT Act specifies the time of supply. Section 14 (1) (c) (i) is relevant”.

56. The Respondent submitted that delivery of goods and subsequent payments were made in Uganda. Section 15 of the VAT Act provides:

“Place of Supply of Goods

A supply of goods shall take place in Uganda if the goods are delivered or made available in Uganda by the supplier, or if the delivery or making available involves transportation, the goods are in Uganda when the transportation commences”.

57. The Respondent submitted that the place of delivery is Jinja or Mbarara, and goes on to add that the title of the products shall pass. That the

Applicant's transaction fits well within the instances in which it can be rightly concluded that the place of the supply was within Uganda.

58. The Respondent submitted that in ***Customs and Excise Commissioners Vs Oliver (1980) 1 ALL ER 1353:***

“Supply was defined as the passing of possession of goods pursuant to an arrangement whereunder the supplier agrees to part with possession and the recipient agrees to take possession, and by possession is meant in this context, control over the goods, in the sense of having the immediate facility for their use”.

59. The Respondent maintained that the evidence demonstrates that the Applicant parts with the possession of the goods to Ituri and Kabaco, who consequently receive the goods at the Applicant's premises in Uganda (Jinja & Mbarara) at a consideration. There was a local sale between the Applicant and Kabaco and Ituri.

60. The Respondent submitted that there was no agency relationship between the Applicant and Kabaco and Ituri for reasons that possession and title to the goods, as well as the risk in the goods, passed to Kabaco and Ituri upon the sale in Uganda. Under the Sale of Goods and Supply of Services Act, Section 2 defines a contract of sale as:

“A contract of sale of goods is a contract by which the seller transfers or agrees to transfer the property in the goods to the buyer for money consideration, called the price”.

61. The Respondent submitted that Section 14(1)(c) of the VAT Act provides that a supply occurs on the earliest of the date on which (i) the goods are delivered or made available, or the performance of the service is completed; (ii) payment for the goods or services is made; (ii) or a tax invoice is issued.

62. The Respondent submitted that Section 1 of the VAT Act states:

“Consideration in relation to a supply of goods or services, means the total amount in money or kind paid or payable for the supply by any person, directly or indirectly, including any duties, levies, fees, and charges paid or payable on, or by reason of, the supply other than tax,

reduced by any discounts or rebates allowed and accounted for at the time of the supply”.

63. The Agreement between the Applicant and Ituri Investment Ltd indicates that consideration was paid for the goods. It states:

“The purchase price for each of the products shall be at NBL's prevailing ex-factory price at the time of each order, and NBL reserves the right to change the price, subject to notifying the Agent within 3 days prior to the effective date of the price change”.

64. This clause is reproduced in the agreement between the Applicant and Kabaco (U) Ltd marked AE2 of the JTB. The payment of consideration is further evidenced by the EFRIS invoices issued by the Applicant to Ituri Investments Ltd and Kabaco (U) Ltd.

65. The Respondent submitted that in all the said invoices, Ituri and Kabaco are named as buyers. Section 1(b) of the Sale of Goods and Supply of Services Act defines a buyer as a person who buys or agrees to buy goods, or who procures or agrees to procure services. **Black's Law Dictionary, 8th Edition, at page 213**, on the other hand, defines buyer & as one who makes a purchase. It is a trite law that once risk has been transferred, ownership goes with it. This is pursuant to Section 27 of the Sale of Goods and Supply of Services Act. Since the risk passed to Kabaco upon delivery, it was the owner of the same and therefore the exporter.

66. The Respondent submitted that the Applicant issued tax invoices to Kabaco and Ituri. The person making the taxable supply is mandated to issue an original tax invoice as per Section 29 of the VAT Act, which provides:

“(1) A taxable person making a taxable supply to any person shall provide that other person, at the time of supply, with an original tax invoice for the supply”.

67. Section 29(1) has to be read in line with Section 14(1)(c) of the VAT Act, whose import is that where an invoice is issued, a supply of goods has occurred. In this case, the invoices issued by the Applicant constitute conclusive evidence that Ituri and Kabaco purchased these goods from the Applicant, rendering the sale a local one.

68. The Respondent submitted that there was no agency relationship but rather sales between the Applicant, Kabaco and Ituri. Kabaco and Ituri were given the liberty to act for themselves and deal with third parties as they saw fit, since the title to the property had been transferred to them.
69. The Respondent submitted that Section 40 of the Sale of Goods and Supply of Services Act provides that delivery to a carrier is prima facie taken to be delivery of goods to the buyer.
70. Section 26 of the Sale of Goods and Supply of Services Act provides:
- “(1) Unless otherwise agreed, the goods remain at the seller’s risk until the property in the goods is transferred to the buyer.*
- (2) Where the property in the goods is transferred to the buyer under subsection (1), the goods are at the buyer’s risk whether delivery has been made or not”.*
71. The Respondent submitted that the alleged agreements between the Applicant and Kabaco/Ituri were agreements for the sale of goods and not agency agreements as titled. The Applicant made a local sale to Kabaco and Ituri.
72. The Respondent further contended that the purchase by Ituri and Kabaco is deemed to take place upon payment of the purchase price being made to NBL by cash or electronic fund transfer and that Ituri and Kabaco were to pay for each consignment of the products from the Applicant at a price determined by the Applicant. Suppose Kabaco and Ituri were agents of the Applicant, would it not be the Applicant making a payment to the two agents for the work done, as consideration, rather than the agents paying a purchase price to the principal?
73. The Respondent further submitted that none of the agreements provided for remuneration of the agent. The agent would make a sale and be remunerated by the market, contrary to Sections 151 and 153 of the Contracts Act, which provide that an agent ought to be remunerated by the Principal.
74. The Respondent submitted that Kabaco and Ituri purchased beers at the ex-factory price. The ***Black’s Law Dictionary, 8th Edition, at page 1226,***

defines ex-factory price/ ex-works price as the price of goods as they leave the factory.

75. The Respondent submitted that the case of ***Nile Breweries Limited V URA, HCCA No. 113 of 2023***, further noted: *“the purported agents were buying at ex-factory price and not at the price for selling to the customers.”*
76. The Learned Trial Judge noted that:

“I respectfully disagree with counsel’s argument; my understanding of clause 3 is that the companies were to purchase the products at an ex-factory price set by the manufacturer, not their selling price to the customers. Clause 5(2) provides that those goods would only be available to the companies upon full settlement of the purchase order. In other words, the mere fact that the manufacturer sets the prices, does not, by itself, establish an agent-principal relationship. The critical point is that in agency arrangements, the title to goods does not pass from the principal to the agent, which distinguishes such arrangements from distributorships”.

77. The Respondent contended that labelling the beers for export does not bar a local sale. The Respondent relied on the case of ***Aviation Hangar Services Ltd V URA, TAT Application No. 21 of 2019***, the Tribunal held that VAT is not a consumption tax but a tax on transactions.
78. The Respondent submitted that AW2, who is an Accountant with Ituri Investments, confirmed in cross-examination that during the period in issue, the Applicant did not transport the goods. It is clear that there are two distinct transactions, one by the Applicant to Ituri and Kabaco and the other by Ituri and Kabaco exporting beer, a local sale subject to tax. The Applicant was liable to pay VAT on the sales made in Uganda.
79. Furthermore, under Part 2(a) of the Fourth Schedule of the VAT Act, goods are treated as exported from Uganda if the goods are delivered to or made available at an address outside Uganda. The Applicant’s goods were delivered to Ituri and Kabako in Uganda.
80. The Respondent submitted that Regulation 11 of the VAT Regulations states:

“(1) Where goods are supplied by a registered taxpayer to a person in another country and the goods are delivered by a registered taxpayer to a port of exit for export, the goods may be invoiced at the zero rate, provided the registered taxpayer obtains the documentary proof set out in this regulation and the goods are removed from Uganda within thirty days of delivery to a port of exit.

(2) For an export transaction to qualify for zero rating, a registered taxpayer shall obtain and be able to show as proof of export for every export transaction the following-

(a) a copy of the bill of entry or export certified by the customs authorities;

(b) a copy of the invoice issued to the foreign purchaser with tax shown at the zero rate; and (c) evidence sufficient to satisfy the Commissioner General that the goods have been exported, in the form of an order from, or signed contract with, a foreign purchaser, or transport documentation which identifies the goods such as-

(i) a transit order or consignment note issued by the Uganda Railways Corporation for goods exported by rail;

(ii) a copy of a bill of lading for goods exported by water,

(iii) a copy of an airway bill for goods exported by air; or

(iv) a copy of a transport document for goods exported by road”.

81. The Respondent submitted that the Applicant did not provide any invoices between itself and any foreign purchaser. Only the e-invoices issued by the Applicant to the local companies. i.e., Kabaco and Ituri have been availed to the Tribunal. Since the Applicant had already sold the goods and transferred title to Ituri and Kabako while the goods were still in Uganda, it cannot claim to have exported goods whose property and risk had already been transferred. The Respondent submitted that, due to inconsistencies in the export documents, it was justified in stating that the export was not carried out by the Applicant.

82. The Respondent submitted that it should not matter that the agreements are labelled as Export Agent Agreement, but rather the substance of the transaction, which confirms that there is no agency. The Applicant made a

taxable supply that ought to have been charged 18% as VAT accruing therefrom as per Section 21 (1) of the VAT Act, applying the rate of tax to the taxable value of the transaction as per Section 24.

83. The Respondent submitted that, according to the body of the said letter that the Applicant claims, the Respondent gave specific guidance based on the business model which the Applicant was running at the time. During cross-examination, AW2 confirmed that the Applicant no longer runs the same business model as the markets were informal at that time. It was the Respondent who submitted that the said letter be disregarded. The Respondent prayed that the Tribunal find that the doctrine of legitimate expectation is inapplicable and does not suffice to relieve the Applicant of the tax liability.

Whether the Applicant is liable to pay the LED as assessed?

84. The Respondent submitted that they reiterate the same mutatis mutandis. The Applicant entered into sale agreements with Kabaco and Ituri, under which it sold to the two companies. In the case of ***Nile Breweries Limited V URA, HCCA No. 113 of 2023***, the court held:

“The appellant made local deliveries to Ituri and Kabaco. Given that they were selling beer, an excisable good, at the time of the sale to Ituri and Kabaco, it constituted a local sale and as such the appellant should have charged the excise tax accordingly.”

85. The said goods were sold at the Applicant’s premises to the companies that are also registered taxpayers. The Applicant invoices the companies, and they pay the full amount before receiving the goods. Section 3(1) and 3(2)(b) and 3(3) of the Excise Duty Act, 2014 provide for the imposition of excise duty in respect of manufactured excisable goods. It states:

“Subject to this Act, the excisable goods and excisable services specified in Schedule 2 shall be chargeable with the excise duty specified in that schedule”.

86. Section 3(2)(b) of the Excise Duty Act, 2014 provides:

“Excise duty, in case of a manufactured excisable good, is to be paid by the person manufacturing the excisable good”.

87. The Respondent submitted that Section 3(3) of the Excise Duty Act, 2014 provides: *"A manufacturer of an excisable good becomes liable to pay excise duty on that manufactured excisable good when the manufactured good is removed from the manufacturer's premises"*.
88. It was further in the Respondent's submission that pursuant to Section 20 3(3), when manufactured goods are removed from the manufacturer's premises, excise duty arises. The title in the goods was transferred from the Applicant to both Kabaco and Ituri in line with paragraphs 3.2 of AEI in the Joint Trial Bundle. Where a sale is made locally and goods are delivered locally, they are liable to excise duty. In the circumstances, the Local Excise Duty assessments of Shs. 10,465,959,379 was lawful. The Respondent prayed that the Tribunal uphold the assessments of VAT of Shs. 8,043,093,350, LED Shs. 10,465,959,379 and costs to the Respondent.

VII. Submissions of the Applicant in rejoinder

89. In rejoinder, the Applicant objected to the Respondent's argument that the application was time-barred. The Applicant stated that the time-barred argument was never pleaded or raised in the Respondent's initial Response and was introduced in the Respondent's written submissions. Therefore, attempting to raise this ground at the submission stage is irregular, legally impermissible, improper, and prejudicial.
90. Citing the case of ***Kasese Cobalt Company Limited v URA TAT No. 28 of 2018***, the Applicant stressed that parties must plead all material facts and issues on which they rely, and submissions are not the forum for introducing new issues not disclosed in the agreed facts, response, or objection decision.
91. The Applicant prayed that the Tribunal disregard or strike out this preliminary issue as improperly raised.

Whether the Applicant is Liable to Pay Value Added Tax (VAT)

92. The Applicant rebutted the Respondent's assertion that the Applicant supplied beer locally to its agents (Kabaco and Ituri), thereby attracting 18% VAT.

93. The Applicant asserted that it did not make local taxable supplies but utilized contracted Export Agents to export the beer to foreign markets (South Sudan and DRC) and that this arrangement qualifies for the zero-rated treatment accorded to exports under Section 24(4) of the VAT Act and Paragraph 1(a) of the Fourth Schedule.
94. The Applicant reiterated that the transactions were governed by the Principal-Agent framework under Section 13(1) of the VAT Act. This section provides that supplies made by an agent on behalf of a principal are deemed to be made by the Principal (the Applicant).
95. The Applicant disagreed with the interpretation, allegedly relied upon by the Respondent, that Section 13 only applies to goods supplied within Uganda and not exports. The Applicant submitted that the general provision of Section 13 VAT regarding agents and principals applies to all persons who qualify as agents, including export agents, and excludes only the agent's supply of services to the principal.
96. The Applicant argued that the Respondent's reliance on the High Court decision (*Nile Breweries Limited vs URA, HCC No. 113 of 2023*) was flawed because the High Court allegedly misdirected itself by restricting the issue to a legal agency relationship, rather than focusing on the actual substance of the transaction.
97. The Applicant emphasized that the determination of whether the goods were zero-rated must rely on the fact that they were actually exported.
98. Critical facts supporting this include:
- (i) The beer was manufactured specifically marked "for export 'I'".
 - (ii) The beer was indeed exported and never consumed in Uganda.
 - (iii) The beer cannot be sold locally.
99. The Applicant maintained that it provided documentary evidence conforming to Regulation 11 of the VAT Regulations, which sets the requirements for zero-rating exports. This evidence showed the registered supplier (the Applicant) delivering the goods to a port of exit and included:

- (i) Copies of Bills of Entry certified by Customs, which were stamped by the URA at the ports of exit and confirmed the Applicant as the supplier and exporter.
 - (ii) Evidence that the goods were distinctly labelled for export.
 - (iii) The goods were transported via road to Nimule Border Transit Station and entered South Sudan Customs.
100. The Applicant submitted that the classification was erroneous because the export model used in 2022 was the same one the Respondent and the High Court had previously accepted in 2014, thereby creating a legitimate expectation regarding the tax treatment. The export documents confirmed that Ituri adhered to this accepted model, with Nile Breweries serving as the exporter and seller to the foreign consignee.
101. Whether the Applicant is Liable to Pay Local Excise Duty (LED). The Applicant challenged the LED assessment and criticized the Respondent's argument that the LED was due because the Applicant failed to meet the definition of "export" (since the goods were supplied to Kabaco/Ituri before being exported) as a narrow interpretation of the transaction's substance.
102. The Applicant cited Section 9(4) of the Local Excise Duty Act, 2014, which requires the Commissioner to be satisfied that excisable goods have been exported to remit the duty.
103. The Applicant provided customs entries (pages 41 to 98 of the trial bundle) that explicitly depicted the Applicant as the Exporter. This documentation offers better proof of export than any other customs entry or document.
104. Since it is an undisputed fact that the beer was manufactured for export and removed from Uganda, the LED assessments amounting to Shs. 10,465,959,379 ought to be vacated.
105. Finally, the Applicant reiterated its prayers from its initial submissions, seeking judgment in its favor.

VIII. The determination of the Tribunal

Preliminary Objection: Whether some Objection Decisions are time-barred.

106. The Respondent contended that part of the Applicant's challenge is time-barred, well outside the statutory 30-day period under Section 16(1) of the Tax Appeals Tribunal Act. The Applicant objected that this issue was improperly raised for the first time in submissions. The Tribunal has considered both arguments.

Whether a time-bar objection can be raised in submissions

107. It is a settled principle of law that jurisdictional issues including statutory limitation may be raised at any stage, even if not pleaded. A Tribunal cannot confer upon itself jurisdiction through acquiescence, waiver or omission by the parties. See *Makula International Ltd v His Eminence Cardinal Nsubuga [1982] HCB 11* - illegality cannot be waived and can be raised at any stage. *Kasirye, Byaruhanga & Co Advocates v Uganda Development Bank SCCA No. 2 of 1997* - a court must consider jurisdictional issues even if not pleaded.

108. Therefore, this Tribunal is obligated to determine whether it has jurisdiction over time-barred objections, regardless of when the issue was raised.

109. Section 16 (1) of the Tax Appeals Tribunal Act provides that an application for review shall be made within 30 days of the taxpayer being notified of the taxation decision. Section 16 (2) of the same Act provides that the tribunal may, upon application in writing, extend the time for the making of an application to the Tribunal for review of a taxation decision. The Tribunal cannot entertain matters filed outside the statutory period unless an extension of time has been lawfully sought and granted.

110. The Applicant filed its application for review on 30/05/2024. Several objection decisions were communicated in October 2022, November 2022, and January 2023. The Applicant did not apply for an extension of time for any of the disputed assessments. Accordingly, the Tribunal lacks jurisdiction over the assessments whose objection decisions fall outside the statutory filing period.

111. The parties did not provide all the objection decisions in contention. The Respondent alleged that there were specific assessments that were time-barred, but they did not indicate which particular assessments were time-barred, or provide assessment numbers. They had a duty to be clear on what time barred was instead of just saying that the objection decisions of the said dates were time barred.

112. Based on the objection decisions available in the Joint Trial Bundle, the Tribunal identifies and strikes out all assessments whose appeals filed outside the statutory period. These assessments are time-barred and improperly before the Tribunal. These are as follows:

Local Excise Duty

	Assessment No.	Disputed Amount	Objection Decision	Expected Appeal date	Late by
1	LA012300060947	1,006,261,561	22/11/ 2022	22/12/2022	1year & 6 months
2	LA012300060939	892,408,963	30/10/2022	30/11/2022	1year & 6 months
3	LA012300060945	1,142,664,535	30/10/2022	30/11/2022	1year & 6 months
4	LA012300060937	987,260,230	30/10/2022	30/11/2022	1year & 6 months
5	LA012300060955	1,051,078,742	02/01/2022	02/02/2022	2 years & 5 months
6	LA012300060942	954,191,220	30/01/2022	30/01/2022	2 years & 4 months
	Total	6, 033,865,251			

Value Added Tax

	Assessment No.	Disputed Amount	Objection Decision	Expected Appeal date	Late by
1	LA012300060822	725,720,499	31/10/2022	31/11/2022	1 year & 7 months
2	LA012300060864	665,828,884	31/10/2022	31/11/2022	1 year & 7 months
3	LA012300060893	819,841,419.18	30/10/2022	30/11/2022	1 year & 7 months
4	LA012300060874	880,468,621.76	30/10/2022	30/11/2022	1 year & 7 months
5	LA012300060886	784,884,017.65	30/10/2022	30/11/2022	1 year & 7 months
	Total	3,876,743,441.59			

113. The preliminary objection succeeds. All assessments falling outside the statutory filing period under Section 16(1) are struck out as improperly before the Tribunal. The Tribunal proceeds to determine the merits regarding the remaining valid assessments.

Whether the Applicant is liable to pay VAT as assessed

114. The central issue is whether the transactions between the Applicant and Kabaco (U) Ltd and Ituri Investments Ltd constituted:

- (i) Exports by the Applicant, qualifying for zero-rating; or
- (ii) Local taxable supplies, attracting VAT at the standard rate.

Legal framework

115. Under Section 4(a) of the VAT Act, VAT is imposed on

“every taxable supply made in Uganda by a taxable person.”

Section 18(1) defines a taxable supply as

“a supply of goods or services, other than an exempt supply, made in Uganda by a taxable person for consideration as part of his or her business activities”

Under Section 15(1) a supply takes place in Uganda-

“..if the goods are delivered or made available in Uganda by the supplier, or if the delivery or making available involves transportation, the goods are in Uganda when the transportation commences”.

116. Zero-rating applies only where goods are exported by the supplier (Section 24 and Paragraph 1(a) of the Third Schedule). Paragraph 2(a) of the Third Schedule then goes ahead to define goods that are treated as exports for purposes of Paragraph 1(a) of the Schedule. It provides:

“In the case of goods, the goods are delivered to, or made available at, an address outside Uganda as evidenced by documentary proof acceptable to the Commissioner General”.

117. Regulation 11 of the VAT Regulations prescribes mandatory proof of export.

For context, we reproduce the regulation below:

“(1) Where goods are supplied by a registered taxpayer to a person in another country and the goods are delivered by a registered taxpayer to a port of exit for export, the goods may be invoiced at the zero rate, provided the registered taxpayer obtains the documentary proof set out

in this regulation and the goods are removed from Uganda within thirty days of delivery to a port of exit.

(2) For an export transaction to qualify for zero rating, a registered taxpayer shall obtain and be able to show as proof of export for every export transaction the following-

(a) a copy of the bill of entry or export certified by the customs authorities;

(b) a copy of the invoice issued to the foreign purchaser with tax shown at the zero rate; and (c) evidence sufficient to satisfy the Commissioner General that the goods have been exported, in the form of an order from, or signed contract with, a foreign purchaser, or transport documentation which identifies the goods such as-

(i) a transit order or consignment note issued by the Uganda Railways Corporation for goods exported by rail;

(ii) a copy of a bill of lading for goods exported by water,

(iii) a copy of an airway bill for goods exported by air; or

(iv) a copy of a transport document for goods exported by road”.

118. A taxable supply occurs when goods are delivered or made available in Uganda. Zero-rating requires the supplier to export the goods and issue a zero-rated export invoice to a foreign purchaser. The legal test for an export is therefore both transactional (supply) and documentary (proof of export).

The legal character of the transactions

119. The Applicant argued that Kabaco and Ituri were export agents under Section 13(1) of the VAT Act, such that any exports by them constituted exports by the Applicant. However, Section 13 applies *only where a genuine agency relationship exists*. Thus, the Tribunal must assess whether the agreements create agency or a contract of sale.

120. We note that a genuine agent

- (i) Does not take title to the goods.
- (ii) Does not pay a purchase price.
- (iii) Earns a commission from the principal.
- (iv) Acts on behalf of the principal and binds the principal to third parties.

121. The agreements exhibit characteristics of a sale, not agency. The agreements between the Applicant and the two companies contain provisions inconsistent with agency as follows

- (i) **Transfer of title and risk (paras. 5.1 and 5.2)** - Upon payment, goods are delivered Ex-Works, and title passes to Kabaco/Ituri. This is the hallmark of a sale, not agency. Furthermore, the Tribunal also noted that the agreements had an effect that NBL determined and communicated the price to the agents as per clause 6.2.9 of the export agreement; the agents were liable for liabilities, risk, and damages which would have initially been owned by the principal as per clause 6.2.11 of the export agreement.
- (ii) **Consideration paid by Kabaco/Ituri (para. 3 & 3.2)** - the agreements require that *"A purchase ... shall be deemed to have taken place upon payment of the purchase price."* Kabaco/Ituri pay the "purchase price" at ex-factory price. Agents do not pay purchase prices, buyers do. Kabaco/Ituri are the purchasers not mere agents earning a commission.
- (iii) **Obligations to register as exporters and bear penalties-** the agreements have clauses requiring Kabaco/Ituri to register as exporters with URA and obtain export licences, as well as bear penalties for non-compliance. These are obligations borne by independent exporters, not agents.
- (iv) **Limitation on representing the Applicant (para. 8.4)-** An agent must have authority to represent a principal. The agreement expressly prohibits the companies from representing the Applicant.
- (v) **No commission structure exists** - Section 151 & 153 of the Contracts Act imply that agents are remunerated by the principal. Here, Kabaco/Ituri earns from their own resale margin, not an agency commission.

Collectively, these provisions demonstrate a contract of sale, not an agency.

Application of the law to the facts

122. Under Section 15 of the VAT Act, the supply occurred in Uganda because the goods were delivered ex-works at Jinja/Mbarara; title passed at the factory gate; consideration was paid in Uganda; and Kabaco/Ituri thereafter arranged transport and export.
123. We note from the evidence that the Applicant did not issue zero-rated invoices to foreign buyers. They also did not present export documentation in their own name for all consignments, nor did they deliver goods to a port of exit as required by Regulation 11. Kabaco/Ituri appear as exporters on the customs forms, confirming that they, not the Applicant, undertook the exportation. It follows, therefore, that the Applicant did not export the beer.
124. In *Nile Breweries Ltd v URA, HCCA No. 113 of 2023*, the High Court held that similar agreements constituted sales, not agency. The factual matrix here is not materially distinguishable. The Tribunal is bound to apply that interpretation.
125. We therefore find that the Applicant made taxable supplies in Uganda to Kabaco and Ituri. The subsequent exportation by those companies does not convert the Applicant's local supplies into exports.
126. The VAT assessments are therefore proper and lawful.

Whether the Applicant is liable to pay Local Excise Duty (LED)

127. Excise duty is imposed on locally manufactured excisable goods under Section 4 and 3(2)(b) of the Excise Duty Act. Section 4 of the Excise Duty Act provides:
- (i) *Subject to this Act, the excisable goods and excisable services specified in Schedule 2 shall be chargeable with the excise duty specified in that Schedule unless otherwise provided in this Act excise duty-*
 - (ii) *In the case of manufactured excisable good is to be paid by the person manufacturing the excisable good.*
 - (iii) *A manufacturer of an excisable good becomes liable to pay excise duty on that manufactured excisable good when the manufactured good is removed from the manufacturer premises”.*

128. Section 3(3) provides:

“A manufacturer of an excisable good becomes liable to pay excise duty on the manufactured excisable good when the manufactured good is removed from the manufacturer’s premises”.

Beer is an excisable good under Schedule 2.

129. The evidence shows that goods were removed ex-works from Jinja/Mbarara; title and risk passed to Kabaco/Ituri upon removal, and full payment was made before removal. Thus, LED became payable upon the goods leaving the factory premises, regardless of their subsequent export.

130. Remission under Section 10(3a) only applies where the manufacturer exports the goods, and the Commissioner is satisfied that the goods have been exported by that manufacturer. The Applicant did not export the goods, issue export invoices, or deliver the goods to a port of exit. Kabaco and Ituri exported the goods as independent purchasers, not as agents. The Applicant therefore does not qualify for remission.

131. Again, we refer to the precedent in ***Nile Breweries case*** (supra) where Justice Cornelia Kakooza Sabiiti stated that;

“The Appellant made local deliveries to Ituri and Kabaco. Given that they were selling beer, an excisable good, at the time of the sale to Ituri and Kabaco, it constituted a local sale as such the Appellant should have charged the excise tax accordingly. Therefore, I cannot fault the Tribunal for concluding that the supplies to the companies were local supplies and not exports and as such were subject to local excise duty”

132. The LED assessments are therefore upheld.

133. Having made the above determinations, the Tribunal orders as follows:

- (i) All objection decisions and corresponding assessments identified in this ruling as time-barred under Section 16(1) of the TAT Act are hereby struck out.

- (ii) The assessments in respect of the Applicant's supplies to Kabaco (U) Ltd and Ituri Investments Ltd were local taxable supplies, not exports. The VAT assessments are upheld in full.
- (iii) The Applicant removed excisable goods from its premises through local sales. The LED assessments are upheld in full.
- (iv) The Applicant is liable to pay the VAT and LED assessed, totaling to Shs. 18,509,052,729 (Eighteen Billion, Five Hundred Nine Million, Fifty-Two Thousand, Seven Hundred Twenty-Nine Only).
- (v) Costs of this application are awarded to the Respondent.

Dated at Kampala this 21st day of November 2025.



MRS. STELLA NYAPENDI CHOMBO
CHAIRPERSON



MS. PROSCOVIA R. NAMBI
MEMBER



MS. CHRISTINE KATWE
MEMBER