



THE REPUBLIC OF UGANDA
IN THE TAX APPEALS TRIBUNAL AT KAMPALA
APPLICATION NO. 179 OF 2025.

PORTMAN SQUARE LIMITED.....APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY.....RESPONDENT

**BEFORE: HON. CRYSTAL KABAJWARA, HON. WILLY NANGOSYAH,
HON. PROSCOVIA REBECCA NAMBI.**

I. Introduction

1. This ruling is in respect of an application challenging the Respondent's decision in rejecting the Applicant's claim for a refund amounting to Shs. 4,064,860,158 purportedly paid VAT on supplies made during the construction of the Applicant's hotel project.

II. Background Facts

2. The Applicant is the proprietor of the hotel at Plot 1, Elgon Terrace, Kololo, Kampala, known as Four Points by Sheraton. Prior to the construction of the hotel, in anticipation of its investment of over USD 100 million in the construction of its hotel, the Applicant by a letter dated 24 January 2020, sought advice from the Respondent to confirm that the construction project for the hotel would benefit from the exemption regime provided for under the VAT Act as related to supplies to the project.
3. In a letter dated 23 March 2020, the Respondent advised the Applicant that under Section 19(1) and Paragraph 1(qq) of the Second Schedule to the VAT Act, the supply of services to conduct a feasibility study, design and construction, the supply of locally

produced materials for construction of premises, infrastructure, machinery and equipment or furnishings and fittings which are not available on the local market, to a hotel or tourism developer whose investment capital is USD 8,000,000, with a room capacity exceeding 100 guests, would be exempt from VAT.

4. In a letter dated 27 July 2020, the Respondent advised the Applicant's suppliers for the construction of the hotel, including Seyani Brothers Company Uganda Limited, not to charge the Applicant VAT for the supply of the construction works for the proposed four-star hotel. The Ministry of Finance, Planning and Economic Development had also previously, in a letter dated 27 August 2021, advised the Respondent that the Applicant's investments for its Four-star hotel at Plot 1, Elgon Terrace, Kololo, would be entitled to various incentives, including exemptions for VAT, Excise Duty and import duty.
5. Between 2020 and 2023, the Applicant received a supply of various services and materials for the construction of the hotel and was issued with various tax invoices by its suppliers under which it was forced to pay VAT in the amount of Shs. 4,064,860,158, the Applicant applied for a refund of the VAT paid in error on tax invoices for the supply of VAT-exempt services and goods.
6. By a letter dated 7 February 2025, the Respondent advised that where the Applicant incurred VAT on supplies with respect to the construction of the Applicant's hotel, the Applicant was not entitled to input VAT since the supplies were exempt from VAT. The Respondent further advised that Seyani Brothers and Co. (U) Ltd may issue credit notes and amend affected returns to reflect exempt supplies.
7. The Applicant objected on the grounds that the Respondent's decision requiring Seyani Brothers Co. Ltd and other suppliers to issue credit notes and amend their returns to reflect exempt

supplies is erroneous, as the Respondent's reliance on Section 22 of the VAT Act is limited to taxable supplies.

8. The Respondent disallowed the objection on grounds that the conditions were not met as provided for under Section 19(1) and Paragraph 1(af) of Schedule 3 of the VAT Act and such invoices were issued and paid, then the Applicant does not qualify for a refund of input VAT for the tax periods in accordance with Section 34 of the VAT Act as it was not a taxable person.

III. Issues

9. The issue for determination is whether the VAT incurred by the Applicant is refundable.

IV. Representation

10. Mr. Edwin Echiba, Mr. John Jet Tusabe, Mr. Benson Mayanja and Mr. Richard Bibangambah represented the Applicant while Ms. Christine Mpumwire represented the Respondent.

V. Submissions of the Applicant

11. The Applicant contended that the VAT incurred by the Applicant is refundable as having been paid wrongly and in error on exempt supplies made to it during the construction of its hotel, Four Points by Sheraton at Plot 1, Elgon Terrace, Kololo. The Respondent expressly conceded that the supplies made to the Applicant during the construction were VAT-exempt under Section 19(1) of the VAT Act with Paragraph 1(qq) of the Second Schedule.
12. The Applicant argued that this is reflected at pages 1 and 2 of the Respondent's letter to the Applicant dated 23 March 2020, annexed to the application as Annexure "A", as well as in the Respondent's correspondence addressed to Seyani Brothers Company (U) Limited, one of the Applicant's principal suppliers, annexed as Annexure "B". Further, the Ministry of Finance, Planning and Economic Development had also, by a letter dated 27 August 2021,

confirmed and advised the Respondent that the Applicant's investments in its hotel would be entitled to exemptions from Value Added Tax, Excise Duty, and import duty.

13. The Applicant cited section 19 of the VAT Act provides:

“(1) A supply of goods or services is an exempt supply if it is specified in the Second Schedule”. The following supplies are specified as exempt supplies for the purposes of section 19-

“(qq) the supply of services to conduct a feasibility study, design and construction; the supply of locally produced materials for construction of premises, infrastructure, machinery and equipment or furnishings and fittings which are not available on the local market to a hotel or tourism facility developer whose investment capital is eight million United States Dollars with a room capacity exceeding one hundred guests:”

14. The Applicant submitted that the Respondent, by a letter dated 23 March 2020 and marked as Annexure "B" to the application, expressly confirmed to the Applicant that the project was VAT-exempt. Further, in a letter dated 27 July 2020, marked as Annexure "C", the Respondent similarly confirmed to one of the Applicant's principal suppliers, M/s Seyani Brothers & Company (U) Limited, that the Applicant's project was VAT-exempt and that VAT ought not to be charged on supplies made there to. These unequivocal confirmations, made by the Respondent both to the Applicant and directly to its suppliers, confirmed that the supplies to the Applicant would be exempt from VAT in accordance with the law.

15. The Applicant contended that during the course of construction, its suppliers nonetheless charged VAT on various invoices issued to the Applicant and annexed as "Annexure D". Faced with pressing commercial realities, including strict construction timelines and debt financing milestones tied to the successful completion of the project, the Applicant reluctantly paid the VAT component in order to

maintain continuity of works and avoid disruption amounting to Shs. 4,064,860,158.

16. According to the Applicant, its application for a refund was disallowed on the basis that, since the supplies were exempt, the Applicant was not entitled to claim input VAT. The Respondent further advised that M/s Seyani Brothers & Company (U) Limited could issue credit notes and amend the affected returns to reflect exempt supplies, seemingly based on Section 22 of the Value Added Tax Act. However, this interpretation is legally flawed.

17. The Applicant cited Section 22 VAT Act, which provides:

“22. Adjustments

This section applies where, in relation to a taxable supply by a taxable person-

(a) the supply is cancelled;

(4) Subject to subsection (6), where the output tax actually accounted for exceeds the output tax properly chargeable in relation to that supply, the taxable person making the supply shall be allowed a credit for the amount of, the excess in the tax period in which the event referred to in subsection (1) occurred.

(5) The credit allowed under subsection (4) shall, for the purposes of this Act, be treated as a reduction of output tax.”

18. The Applicant contended that Section 22 of the VAT Act applies strictly to taxable supplies. The Respondent has already acknowledged, in its previous correspondence and in its tax decision, that the supplies in question were exempt. Consequently, the requirement for suppliers to issue credit notes is a misapplication of the law, as credit notes would have been relevant if VAT was lawfully charged in the first instance.

19. The Applicant submitted that in the case of ***Target Well Control Uganda Limited v. Commissioner General, Uganda Revenue Authority (Civil Suit No. 751 of 2015)***, the High Court

unequivocally held that VAT paid in error or as an overpayment is recoverable from URA, provided there is no evidence of the supplier's deregistration and the tax was unlawfully collected. The tax laws make it clear that the collection of tax is the sole responsibility of the Respondent. Where a taxable person claimed VAT, it was the Respondent's duty to take on the party that received the money from the person.

20. The Applicant submitted that it claimed VAT wrongly paid in error, entitling it to a refund under the law and specifically under section 40(3) of the Tax Procedure Code Act. The invoices, collectively marked as Annexure "D" to the application, conclusively demonstrate that the Applicant incurred and paid VAT on supplies that were exempt under the law, a position not disputed by the Respondent. The Respondent also contended that the Applicant's suppliers should claim the VAT refund, since they paid and remitted the VAT to the Respondent.
21. The Applicant's suppliers claiming a refund is not a prerequisite/condition for a VAT refund and is not provided for under the law. The Applicant has no mandate to compel its suppliers to claim a refund from the Respondent. The Respondent manages the tax ledger system, and any reconciliation or adjustments can be made on its own systems. The Applicant contended that it is entitled to a refund of VAT on the exempt supplies made during the construction of its hotel.
22. The Applicant prayed that the Tribunal order that:
 - (i) A declaration that the Applicant is entitled to a refund of the sum of Shs. 4,064,860,158 that was paid in error against invoices for the supply of VAT-exempt services and goods.
 - (ii) An order setting aside the objection decision of the Respondent, disallowing the Applicant's application for the refund of Shs. 4,064,860,158 VAT paid in error.
 - (iii) General damages.

(iv) An order that the Respondent pay the costs of this application.

VI. Submissions of the Respondent

23. The Respondent did not file written submissions.
24. However, in the Respondent's statement of reasons, the Respondent contends that the Applicant is not entitled to the relief sought. The Respondent asserted that the Applicant's VAT registration took effect on 1 May 2023. On 24 January 2020, the Applicant sought guidance from the Respondent on the VAT exemptions for construction materials, and on 23 March 2020, the Respondent provided guidance based on the law.
25. The Respondent submitted that on 27 July 2020, the Respondent provided further guidance to one of the Applicant's suppliers, Seyani Brothers and Company Uganda Ltd, advising them not to charge the Applicant VAT on the supplies in the letter marked "B". Despite the Respondent's guidance, the Applicant claims that it received taxable supplies and paid VAT to its suppliers.
26. On 12 August 2024, the Applicant applied for a refund of Shs. 4,064,860,158 VAT paid in error. On 22 May 2025, the Respondent issued an objection decision disallowing the Applicant's application for a refund on the grounds that the Applicant is not entitled to input VAT incurred on exempt supplies and the Applicant was advised to obtain credit notes from its suppliers. The Respondent further contends that the Applicant is not entitled to the claimed VAT refund.
27. The Respondent prayed for orders that:
- (i) That Applicant is not entitled to the refund claimed.
 - (ii) This application is without any merit and should be dismissed with Costs to the Respondent.

VII. The Determination

28. Having heard the evidence of the parties and read the submissions of the parties, the following is the ruling of the Tribunal.

Whether the supplies to the Applicant were exempt from VAT

29. It is not in dispute that the supplies made to the Applicant during the construction of its hotel fall within the ambit of Section 19(1) of the VAT Act, which provides that a supply is exempt if it is specified in the Second Schedule.
30. Paragraph 1(qq) of the Second Schedule to the VAT Act provides:
“The following supplies are specified as exempt supplies for the purposes of section 19-
...
(qq) the supply of services to conduct a feasibility study, design and construction; the supply of locally produced materials for construction of premises, infrastructure, machinery and equipment or furnishings and fittings which are not available on the local market, to a hotel or tourism facility developer whose investment capital is at least eight million United States dollars and with a room capacity exceeding one hundred guests.”
31. The Respondent itself, by its letters dated 23 March 2020 and 27 July 2020, expressly confirmed that the Applicant’s project qualified for VAT exemption and that suppliers ought not to charge VAT on supplies made to the Applicant. This was also an admission in the Respondent’s statement of reasons.
32. Accordingly, the Tribunal finds as a matter of fact and law that the supplies in question were exempt supplies, and no VAT was lawfully chargeable thereon.

Whether VAT paid on exempt supplies constitutes overpaid tax refundable under the law

33. However, despite the clear exemption, the undisputed evidence shows that Applicant’s suppliers charged VAT, and the Applicant paid a sum of Shs. 4,064,860,158. The legal consequence of VAT

being charged on an exempt supply is that such tax is not tax properly due under the Act, and any amount paid in respect thereof constitutes tax paid in error or overpaid tax.

34. Section 40(3) of the Tax Procedures Code Act provides:
“40 (3) Where the Commissioner General is satisfied that tax has been overpaid, the Commissioner General shall-
- (a) apply the excess in reduction of any other tax due from the taxpayer;
 - (b) apply the balance of the excess, if any, in reduction of any outstanding liability of the taxpayer; and
 - (c) refund the remainder, if any, to the taxpayer.”
35. This provision creates a statutory obligation on the Respondent to refund tax that is established to have been paid in excess of what is legally due. This statutory obligation to refund overpaid tax is not discretionary.

Whether the Applicant, as opposed to the suppliers, is entitled to claim the refund

36. The Respondent contends that the Applicant is not entitled to a refund and that the Applicant’s suppliers ought to issue credit notes and seek adjustment. We do not agree.

First, the evidence shows that the economic burden of the tax was borne by the Applicant, who paid the VAT as part of the consideration for the supplies. There is no evidence that the Applicant recovered or passed on that VAT. Secondly, the statutory framework under section 40(3) of the Tax Procedures Code Act does not restrict the right to a refund to the person who remitted the tax, but rather to the person who has overpaid tax.

37. In the case of *Commissioner General, URA v Edulink Holdings Uganda Limited & 2 Others, Civil Appeal No. 178 of 2021*, the High Court affirmed that a taxpayer who demonstrates that tax has been paid in excess of what is legally due is entitled to a refund in

accordance with the law. The court stated that:

"On the other hand, section 42 (3) to (5) of The Value Added Tax Act provides that a person may claim a refund of any output tax paid in excess of the amount of tax due under this Act for a tax period. In such cases, the taxable person is entitled to a refund immediately upon the Commissioner General being satisfied that the person has paid an amount of tax in excess of the amount due. Under this provision, the statutory right is conferred on the taxable person to get a refund of the excess tax paid upon the taxable person making a claim for refund".

The Court further stated that:

"In the Wealth of Nations, published in 1776, Adam Smith argued a tax system should have four characteristics: equity, certainty, convenience, and efficiency."

38. In this case, the Applicant has demonstrated that the supplies were exempt under the VAT Act yet charged and paid, and that such payment was in excess of any amount properly due. This was also admitted to by the Respondent in paragraphs 3 and 4 of their statement of reasons for the taxation decision.
39. Applying the reasoning in *Edulink Holdings*, once the Commissioner General is satisfied that the VAT was overpaid, as is the case here, the Applicant cannot be denied a refund on the basis that its suppliers, who acted contrary to both the law and the Respondent's own guidance, charged VAT.

Whether the Applicant's VAT registration status bars the refund

40. The Respondent further contended that the Applicant was not registered for VAT at the time the supplies were made.
41. We find that this argument is misplaced. The present claim is not one for input VAT credit under the VAT Act, which is contingent upon registration, but rather a claim for refund of tax paid in error under section 40 of the Tax Procedures Code Act.

42. In *East African Investments Ltd v Uganda Revenue Authority HC Civil Appeal No. 0051 of 2020 (Commercial Division) (Mubiru J)*, the Court addressed issues of pre-registration transactions and emphasised that entitlement to tax relief cannot be defeated solely on the basis of registration status where the statutory conditions are otherwise satisfied.
43. Accordingly, the Applicant's registration status does not extinguish its statutory right to recover tax that was not legally due. The Tribunal is guided by the principle that the tax authority ought not to retain monies that are not lawfully due. Further, As articulated in *East African Investments (supra)*, the obligation to properly administer tax rests with the Respondent, and taxpayers should not be penalised for failures within the tax collection system.
44. To deny the refund in the present case would result in the Respondent retaining tax that was charged contrary to statute, paid under compulsion of commercial necessity, and not lawfully due. Such an outcome would offend the fundamental principles of equity, legality, and fairness in taxation.
45. In the result, and for the reasons set out above, this Application succeeds. The Tribunal accordingly makes the following orders:
- (i) The objection decision of the Respondent disallowing the Applicant's claim for a refund of Value Added Tax is hereby set aside.
 - (ii) The Applicant is entitled to a refund of the sum of Uganda Shillings Four Billion Sixty-Four Million Eight Hundred Sixty Thousand One Hundred Fifty-Eight (Shs. 4,064,860,158), being Value Added Tax paid in error on exempt supplies.
 - (iii) The Respondent is hereby directed, pursuant to section 40(3) of the Tax Procedures Code Act, 2014, to refund to the Applicant the said sum of Uganda Shillings Four Billion Sixty-

Four Million Eight Hundred Sixty Thousand One Hundred Fifty-Eight (Shs. 4,064,860,158), being tax paid in excess of that legally due.

- (iv) The Respondent shall pay interest on the said refund at the rate of 2% per month compounded, in accordance with section 36(1) of the Value Added Tax Act, such interest to accrue from the date of the Applicant's application for the refund, being 12 August 2024, or from the date on which the Applicant submitted all information necessary to process the refund, whichever is later, and to run until the last day of the month in which the refund is made, subject to the provisions of section 36(5) of the Act.

- (v) The Applicant is awarded the costs of this Application.

It is so ordered.

Dated at Kampala this 29th day of April 2026.



HON. CRYSTAL KABAJWARA
CHAIRPERSON



HON. WILLY NANGOSYAH
MEMBER



HON. PROSCOVIA REBECCA NAMBI
MEMBER