THE REPUBLIC OF UGANDA

IN THE TAX APPEALS TRIBUNAL AT KAMPALA

TAT APPLICATION NO. 73 OF 2023

PREMIER RECRUITMENT LIMITED .....APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY.....RESPONDENT

BEFORE; MR. SIRAJ ALI, MS. CHRISTINE KATWE, MS. GRACE SAFI

RULING

This ruling, is in respect of an application, challenging the reclassification by the Respondent, of the supply of labour recruitment services by a Ugandan based company, to foreign based clients.

1. Background

The Applicant, a company, incorporated in Uganda, specializes in labour recruitment for local and foreign clients. In the year 2022, the Applicant made a claim for a VAT refund of Shs. 191,122,281. Pursuant to the above claim, the Respondent conducted an audit on the Applicant. Following the audit the Respondent reclassified the supply of labour recruitment services by the Applicant, to its foreign-based clients, from zero-rated exports to standard rated supplies and issued a VAT assessment of Shs.1,225,954,437 which was later revised to Shs. 1,406,238,422.39. The Respondent also rejected the Applicant's Input VAT refund claim and upon objection, the Respondent disallowed it on 27 April 2023. Hence this Application.

2. Issues

At the scheduling, the following issues were set down for hearing.

1. Whether the Applicant is entitled to the VAT refund claimed?
2. Whether the Applicant is liable to pay the tax assessed?
3. What remedies are available to the parties?

3. Representation

At the hearing, the applicant was represented by Ms. Jackline Natukunda while the Respondent was represented by Mr. Donald Bakashaba and Mr. Amanya Mishambi.

Mr. Vijay Alase, the Applicant`s financial controller, testified that the Applicant had an input tax credit of Shs. 191,122,281 from its purchases. The witness stated that the recruitment services provided by the Applicant and delivered to its foreign customers are supplied and consumed outside Uganda and as such are zero-rated supplies. The witness stated that the Applicant did not charge VAT on its foreign clients for the services supplied.

The witness further testified that, the services supplied by the Applicant include advertising the jobs, specifying the skills required and receiving applications from interested workers. The Applicant also interviews the interested workers, undertakes medical tests in accordance with the Gulf Council Countries (GCC) medical assessments. The Applicant trains the workers, processes their visas and arranges for their transportation to the airport.

The witness testified that during the provision of the recruitment services, the Applicant incurs expenses, which are incidental or connected to the provision of the said services and on which VAT is charged including accommodation and meals, advertisement, office rent, cleaning services among others. The witness stated that the Applicant is ordinarily entitled to VAT refunds in respect of the above expenses.

The witness testified that in the year 2022, the Applicant made an input VAT refund claim of Shs. 191,122,281 in respect of the expenses incurred during its business operations against which VAT was charged. The witness stated that pursuant to the application for the VAT refund the Respondent conducted a VAT refund audit on the Applicant.

The witness attested that the Applicant's officials informed the Respondents officials during the audit that the recruitment services were provided to and consumed by foreign companies under an agreement and the Applicant only receives full payment for its services upon the arrival of the recruited workers in the receiving country. The witness stated that the recruitment service is considered complete only when the workers arrive at the destination. Additionally, the witness stated that since the

services in question are exported from Uganda and are consumed outside Uganda, the said services are zero-rated. The witness testified that the Applicant does not charge VAT on its clients for the recruitment service provided. The witness affirmed that the above can be verified through the Applicant's invoices.

The witness testified that after the audit, the Respondent informed the Applicant that input VAT of Shs. 30,888,924 related to purchases of Shs. 171,605,133 could not be verified through third party declarations. Consequently, the Respondent deferred the refund and requested additional information from the Applicant to prove the existence of the queried transactions. The Applicant was also notified by the Respondent of reclassification of transactions between November 2018 to July 2022, which had been declared as standard rated sales of Shs.840,856,141 relating to local recruitment services and zero-rated sales of Shs. 8,483,155,537 relating to export sales. However, the Respondent reclassified the Applicant's zero-rated export sales to standard rated sales thereby giving rise to an output VAT of Shs. 1,526,976,997.

The witness testified that the Respondent also rejected the Applicant's refund claim and withheld the undisputed input Tax credits of Shs. 160,233,357, despite only disputing Shs. 30,888,924 of the total claim of Shs.191,122,281. The witness stated that the Respondent then issued the applicant an assessment of Shs.1,406,238,422.39 which the Applicant objected to on the grounds that the recruitment service for its foreign clients was zero-rated. The Respondent disallowed all the Applicant's objections citing business policy guidance that classified the supply of recruitment services as standard rated and not zero-rated. In respect of the VAT refund claim of Shs. 30,888,924, the witness testified that it is not the duty of the Applicant to verify third party declarations- stating that the Applicant is entitled to a refund claim if it has made the purchases and VAT payment. The witness also testified that having provided proof of purchases of Shs. 171,605,133 on which it was charged VAT of Shs. 30,888,924, the Applicant is entitled to. The witness concluded his testimony stating that the Applicant is therefore entitled to the entire VAT refund claim of Shs. 191,122,281.

Ms. Winnie Nabbanja, an objections officer in the Respondent's Domestic Taxes Department testified that the Applicant is contracted by recruitment agencies located mainly in the Middle East for the purpose of recruiting domestic workers from Uganda

for the said recruitment agencies at an agreed consideration. The witness stated that the scope of the recruitment agreement includes the recruitment of domestic workers from Uganda within a specified time, conducting medical examinations on the selected workers, training and passport and visa processing. The witness stated that the labour recruitment service is performed in Uganda thereby constituting a domestic supply of services which attract a charge of VAT. The witness stated further that the labour recruitment services are domestically consumed in Uganda through passport and visa processing, accommodation, training and medical costs and examinations.

The witness stated that the Applicant applied for a VAT refund of Shs. 24,995,702 on the purchases incurred in the course of its business operations. The witness stated that a VAT refund audit conducted by the Respondent pursuant to the above application for a VAT refund established that Input VAT of Shs. 30,888,924 on purchases of Shs. 171,605, 133 could not be verified against third party declarations, between November 2018, to July 2022, the Applicant declared standard rated sales of Shs. 840, 856,141 which related to local recruitment services and zero –rated sales of Shs. 8,483,155,537 relating to export sales, the Applicant`s sales classified as exports had been reclassified into standard rated sales thus establishing output VAT of Shs. 1,526,976,997.

The witness testified that the Respondent accordingly rejected the Applicant`s claim for a refund and on 24 January 2023, issued the Applicant with a VAT assessment of Shs. 1,406238,422.39 for the period 1st November 2018 to 31 July 2022. The witness stated that on 13th February 2023, the Applicant objected to the assessment on the grounds that the recruitment of labour services for foreign entities is considered as zero-rated. The witness stated that on 27th April 2023, the Respondent issued an objection decision disallowing the Applicant's objection on the basis that the supply of labour recruitment services is standard rated.

The witness testified further that the Applicant has fixed recruitment fees with the recruitment agencies located in the Middle East and the payment of these fees is phased. The witness stated that for instance Enaya Recruitment Agency pays a recruitment fee of USD 1100, out of which USD 350 is paid upon the selection of a worker, USD 350 is paid upon receipt by them of a visa to Saudi Arabia and USD 400 is paid upon arrival of the worker in Saudi Arabia.

4. Submissions of the Applicant

The Applicant submitted that its claim for a VAT refund of Shs. 191,122,281 was based on VAT input that it incurred on administration expenses such as rent, advertisement, training costs, food, accommodation among others on which the Applicant is charged VAT and in respect of which the Applicant paid VAT. The Applicant submitted that in its letter dated 24 January 2023, the Respondent informed the Applicant that input VAT of Shs. 30,888,924 on purchases of Shs. 171,605,133 could not be verified against third party declarations and as such the refund was deferred until the declarations were made or further evidence of the existence of the said transactions were provided. The Applicant submitted that by disputing the sum of Shs. 30,888,924 the Respondent admitted to the input VAT of Shs. 160,233,357. However, inspite of this the Respondent declined to pay the said sum even after the Applicant had availed all the necessary documentation in proof of the disputed purchases.

The Applicant submitted that the testimony of Vijay Alase to the effect that the Applicant had claimed an input VAT refund of Shs. 191,122,281 on purchases incurred in its business operations was an agreed fact at scheduling and was uncontroverted during the trial.

The Applicant submitted that during the audit process it provided evidence to the Respondent to prove that it made the purchases in question and accordingly the duty to verify the third-party declarations shifted to the Respondent. In support of this argument the Applicant relied on S. 28 of the VAT Act which provides that a taxable person is entitled to a tax credit input tax paid or payable in respect of all taxable supplies or supplies of goods purchased from a supplier. The Applicant also relied on the decision of the High Court in **Target Well Control Uganda Ltd vs. Commissioner General URA HCCS No. 751 of 2015.**

The Applicant submitted that it is not in dispute that it is a taxable person nor that it supplies labour recruitment services to clients outside Uganda. the Applicant submitted that the question for the determination of the tribunal is whether the labour recruitment services supplied by the Applicant to its foreign clients are zero-rated and if so whether they can be reclassified to standard rated through the Respondent`s business policy guidance.

Relying on **S. 24 (4)** and the 4th Schedule of the **VAT Act,** the Applicant submitted that the supply of goods or services are zero-rated where the goods or services are exported from Uganda as part of the supply and services are treated as exported from Uganda where the services were supplied for use or consumption outside Uganda as evidenced by documentary proof acceptable to the Commissioner General. Relying on **Regulation 12** of the **VAT Regulations** the Applicant submitted that where services are supplied by a registered taxpayer to a person outside Uganda, the service shall qualify for zero-rating if the taxpayer shall show evidence that the services are used or consumed outside Uganda.

The Applicant submitted that it is not in dispute that it exported labour recruitment services to its clients in the Middle East and that it has furnished documentary proof to this effect such as orders from its clients, agreements, invoices and bank statements. The Applicant took the argument further by submitting that the Respondent`s own witness Winnie Nabbanja admitted that the Applicant is contracted by recruitment agencies located majorly in the Middle East to recruit domestic workers from Uganda at an agreed consideration.

The Applicant submitted that partial payment is made for the services prior to commencement of the recruitment process, a further payment is made upon obtaining visas for the workers and the final payment, is made upon the arrival of the workers in the receiving country, at which point the Applicant is deemed to have completed and delivered. The Applicant submitted that if the labour is not exported and not received by its clients abroad, the service is not complete and the agreement and instructions would not have been fully executed. The Applicant stated that both its witness and that of the Respondent admitted that the labour recruitment services were delivered to clients abroad.

The Applicant submitted that the testimony of the Respondent's witness to the effect that the services in question were performed and consumed in Uganda and as such constitute a domestic supply of services which attracts a charge of VAT is legally and factually flawed. The Applicant submitted that while it agrees that the aspect of recruitment of the workers is done in Uganda, the recruitment is not the end of the instruction for the supply of the workers abroad and does not constitute the tax point.

The Applicant submitted that the Respondent eliminated the fact that the workers are exported and that their services are consumed abroad.

Relying on the decision in **Takiya Kaswahiri & Another vs. Kajungu Dennis CACA No. 55 of 2011,** the Applicant submitted that as a general rule, the burden of proof lies on the party who asserts the affirmative of the issue in dispute. The Applicant submitted that when that party adduces evidence sufficient to raise a presumption that what he asserts is true, he is said to shift the burden of proof and his allegation is presumed to be true unless his opponent adduces evidence to rebut the presumption. Applying the above principle to the instant matter the Applicant submitted that having adduced cogent evidence that the services are rendered to consumers in the Middle East, the evidential burden shifted to the Respondent. The Applicant submitted that the Respondent`s witness made a bare statement that the services are consumed in Uganda without showing who consumes it in Uganda and without adducing evidence to show that the entities listed by the Applicant as the consumers of the services are resident and operate businesses in Uganda and not the Middle East.

The Applicant submitted that from the evidence before the Tribunal the instructions for the labour export is only deemed to be completed after the workers have been exported and received abroad. The Applicant submitted that the consumers of the Applicant`s services are its clients abroad and the Applicant would have no use of the workers if they are not exported.

The Applicant submitted that in addressing the issue of where the services are performed and consumed, the OECD International VAT/GST guidelines provide credible guidance to the effect that for consumption tax purposes internationally graded services and intangibles should be taxed according to the rules of the jurisdiction of consumption and for business to business supplies, the jurisdiction in which the customer is located has the taxing rights over internationally traded services or intangibles. In support of this argument the Applicant relied on the Kenyan decisions in **Unilever Kenya Ltd vs. The Commissioner of Income Tax, Income Tax Appeal No. 735 of 2023** and **F.H Services Kenya Ltd vs. Commissioner for Domestic Taxes Appeal No. 6 of 2012.** The Applicant also relied on the decision of the High Court of Uganda in **Allied Beverages Company Ltd vs. Commissioner Uganda**

Revenue Authority C.A No. 0039 of 2022 and the decision of the tribunal in **Tanalec Uganda Limited vs. Uganda Revenue Authority, Application No. 182 of 2023.**

The Applicant submitted that from the testimony of the Respondent`s witness it could be concluded that the Respondent was aware that the Applicant`s clients for whom the recruitment of workers was being undertaken by the Applicant in Uganda are located in the Middle East, that the recruitment of the workers was not the end of the instructions and that the Applicant is only paid upon delivery of the workers in the receiving country.

The Applicant submitted that even if the Respondent was to argue that the recruitment process is completed in Uganda and as such the supply of the recruitment service is completed in Uganda still the consumption of the services occurs in the Middle East where the Applicant`s clients are located. The Applicant submitted that consumption of the services and the tax point occur in the receiving country when the workers are received by the recruitment agencies.

The Applicant wound up its arguments by stating that the services in question were exported services within the meaning of Paragraphs 1(a) and 2(b) of the 4th Schedule to the Vat Act and as such for the supply of the said services is zero-rated and not standard rated.

The Applicant submitted that the only reason given in the objection decision for disallowing the Applicant`s objection is that the Respondent`s business policy guidance reclassified the supply of recruitment services as standard rated. The Applicant submitted that the reclassification of the supply in question from zero-rated to standard rated has no basis in law as business policy guidance cannot be the basis for the reclassification and therefore the amendment of a law. The Applicant submitted that the objection decision based on the business policy guidance clearly contravenes **Article 152(1)** and **79** of the **Constitution**. The Applicant submitted further on the authority of the decision in **Paul Mwiru vs. Hon. Igeme Nathan Nabeta Samson & 2 others (Election Petition Appeal No. 6.11) (2011) UGCA9,** that policy decisions cannot tantamount to legal or statutory requirements and therefore lack the force of law.

5. Submissions of the Respondent.

The Respondent submitted that the Applicant did not discharge its duty to disclose accurate information when it filed returns in which the sales were misclassified with the result that the information provided by the Applicant was unreliable. The Respondent submitted that owing to the above it was justified in disallowing the Applicant's claim for an input VAT refund.

The Respondent submitted that while the decision of the High Court in **Target Well Control Uganda Ltd vs. URA HCCS NO. 751 of 2015** held that it is the Respondent's duty to verify third party declarations, this duty can only be accomplished by the Respondent if the Applicant facilitates the process by proving correct and accurate information to the Respondent. In support of this position the Respondent relied on the decision of the tribunal in **Red Concepts Ltd vs. Uganda Revenue Authority TAT Application No. 36 of 2018** and **Leds Uganda Ltd vs. Uganda Revenue Authority TAT Application No. 3 of 2018.**

The Respondent submitted that based on the above decisions and in light of the Applicant's inaccurate returns in which it misclassified its sales, the Applicant is not entitled to the claim for input VAT refund.

The Respondent submitted further that the Applicant is liable to pay the tax assessed as the Applicant's supplies constituted a local supply which are standard rated.

The Respondent submitted that the Applicant's services constitute a taxable supply within the meaning of **S. 18(1)** of the **VAT Act,** which states that a 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. The Respondent cited the decision of the High Court in **URA vs. Total Uganda Ltd HCCA No. 8 of 2010,** where the court held that **S. 18** above excludes exempt supplies from what may be defined as taxable supplies.

Relying on **S.19** of the **VAT Act** and **Schedule 3** to the **VAT Act**, the Respondent submitted that unless goods or services are specifically listed under **Schedule 3** of the **VAT Act**, such goods are taxable supplies. The Respondent submitted that the Applicant has not adduced any evidence that it deals in exempt supplies nor is the supply of labour recruitment services an exempt supply under **Schedule 3** of the **VAT**

Act. the Respondent submitted therefore that the Applicant`s supply of labour recruitment services were taxable supplies.

The Respondent submitted that the Applicant receives consideration for the services supplied to its clients. The Respondent submitted that proof of such consideration can be seen from the sample invoices, proof of payment and the recruitment service agreements submitted by the Applicant. The Respondent submitted that the above documents show that the consideration for recruiting a domestic worker was **USD 1100**.

The Respondent submitted that the services in question constitute domestic supplies and not exports and are therefore standard rated. The Respondent submitted that the reliance by the Applicant on the OECD International VAT/GST guidelines as the basis for applying the destination principle is overridden by the express provisions of the VAT Act.

Relying on the provisions of **S. 16(1)** of the **VAT Act**, the Respondent submitted that the key determinant of the place of supply of services is the location of the supplier of the service. The Respondent submitted that it was not in dispute that the Applicant`s business is located in Uganda. in support of this argument the Respondent relied on the decision in **Aviation Hangar Services Ltd vs. URA TAT Application No. 21 of 2019.**

The Respondent submitted further that recruitment is a process and not an event. The Respondent submitted that while it is the Applicant`s argument that the recruitment service is offered when the domestic workers arrive in the receiving country, it is the Respondent`s contention that recruitment is a process which commences and is concluded in Uganda. The Respondent submitted that the recruitment process is different from the deployment of the workers which is done after they have been recruited. The Respondent submitted further that no other function of the recruitment process is conducted in the receiving country where the workers are to be deployed. The Respondent stated that the action of the departure and arrival of the workers in the receiving country occurs after the completion of the recruitment process. The Respondent submitted therefore that the place of supply of the recruitment service is Uganda.

The Respondent submitted further that the supply of the labour recruitment services by the Applicant is standard rated. In support of this argument the Respondent stated that the service supplied by the Applicant are not listed in the 3rd or 4th Schedules of the VAT Act. The Respondent submitted further that the Applicant receives valuable consideration for the supply. The Respondent concluded this part of its argument by stating that the tax liability of **Shs. 1,406,238,422.39** assessed on the basis of **S. 24(1)** and the **5th Schedule** of the **VAT Act** is due and owing by the Applicant.

The Respondent submitted that the OECD guidelines relied upon by the Applicant constitute mere policy without the force of law and cannot therefore oust the provisions of the VAT Act. The Respondent submitted that the correct legal provision in determining whether the supply of the labour recruitment services by the Applicant are exported services is **S. 16(1)** of the **VAT Act**.

The Respondent submitted that the objection decision was not based on the business policy guidance rather the business policy guidance merely served to provide interpretation of the law applicable in determining the objection decision and only restated the law in view of the facts of the case. The Respondent submitted that there was no imposition of tax that was not informed by an Act of Parliament and the reclassification of the Applicant`s supply was premised solely on **S. 16** of the **VAT Act**.

6. Determination of the Issues

1. Whether the Applicant is entitled to the VAT refund claimed?

In the year 2022, the Applicant made a claim to the Respondent for an input tax credit. The Respondent proceeded to audit the Applicant and on 24 January 2023, informed the Applicant that input tax credit of Shs. 30,888,924 on purchases of Shs. 171,605,133 could not be verified against third party declarations. In other words, the Respondent admitted that input tax credit of Shs. 160,233,357 was due and refundable. The input tax credit disputed by the Respondent amounted to Shs. 30,888,924. The reason given by the Respondent for declining to pay the said input tax credit of Shs. 30,888,924 is that it could not verify the said input tax credit against third party declarations. The Respondent's reason for rejecting the input tax credit of

Shs. 30,888,924 is that the parties to whom input VAT was paid by the Applicant did not remit this VAT to the Respondent.

To determine the Applicant's entitlement to the input tax credit we must resolve two questions. Firstly, whether the Respondent having admitted that the Applicant is entitled to an input credit of Shs. 160,233,357 is justified in not making a refund of the said sum to the Applicant? Secondly, whether the Respondent can lawfully reject the Applicant's input tax credit if Shs. 30,888,924 on the grounds of verified purchases against third party declarations.

In respect of the first question, obviously the Respondent having admitted that out of the Applicant's total input tax credit claim of Shs. 191,122,281 only Shs. 30,888,924 could not be verified, it follows that the sum of Shs. 160,233,357 which is the difference between the total amount of the input tax credit and the amount of the unverified input tax credit, is due and payable to the Applicant. The Respondent has provided no lawful justification whether through its witnesses or in its submissions for not paying the admitted amount. We accordingly agree with the Applicant that the sum of Shs. 160,233,357 is refundable to it by the Respondent as input tax credit.

In respect of the second question, the reason given by the Respondent for rejecting the payment of Shs. 30,888,924 is that input VAT paid by the Applicant, in respect of purchases made by it, were not declared by the parties from whom the purchases were made.

In **Target Well Control Uganda Ltd vs. Commissioner General URA HCCS No. 751 of 2015; Wangutusi J** stated as follows;

"One of the arguments of the Defendant was that the Plaintiff should have exercised due diligence to find out whether Neptune was VAT registered and also followed up to ascertain whether she had remitted to the Defendant the tax that was collected. With due respect, I do not agree with that argument for the simple reason that, it does not make sense to require a taxable person to follow up a payment and find out whether the agent has remitted the tax so collected from him or her. This would be asking the Plaintiff to do a very difficult task because, first of all, he has no access to the agent`s returns and books of accounts. Secondly, it is the Defendant who has access to the books of businessmen in the country. They are the ones who find out returns that are recklessly made or made intentionally to deceive".

We agree with the above decision that an onerous burden would be placed on the shoulders of persons applying for input tax credit if they were required to follow up and confirm that the persons to whom they paid input VAT had indeed remitted the amounts to the Respondent.

In the premises we find that the Respondent is not justified in rejecting the Applicant's input tax credit claim of Shs. 30,888,924 on the ground that the Applicant had unverified purchases against third party declarations. However, the Applicant also has an obligation to avail information when required especially if it benefits the taxpayer.

2. Whether the Applicant is liable to pay the tax assessed?

The Respondent's argument, in respect of this issue, is that the Applicant is liable to pay the sum of Shs. 1,406,238,422.39 as VAT on the supply by the Applicant of labour recruitment services to foreign clients. The reason given by the Respondent for this position is that the supply in question constituted a local supply and was therefore standard rated.

S. 4 of the **Value Added Tax Act,** which imposes Value Added Tax states as follows;

"A tax, to be known as a value added tax, shall be charged in accordance with this Act on-

a) Every taxable supply made by a taxable person;
b) Every import of goods other than an exempt import; and
c) The supply of imported services other than an exempt service by any person".

S. 4(a) above, provides that VAT shall be charged on every taxable supply made by a taxable person.

S. 6 of the **VAT Act** defines a taxable person as a person registered under section 7 and a person who is not registered but who is required to be registered or to pay tax under the Act.

S.16 (1) of the **VAT Act** provides that a supply of services shall take place in Uganda if the business of the supplier from which the services are supplied is in Uganda.

S. 18 (1) of the **VAT Act** 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.

It is important to realize, that while VAT is chargeable on every taxable supply, made by a taxable person, the rate at which VAT is charged on taxable supplies varies between the standard rate currently at 18% and a zero-rate, which as the name suggests, is at 0%. The fact that goods or services, which are not exempt have been supplied in Uganda, does not automatically make them standard rated and therefore liable to VAT at 18%. This is apparent, from a perusal of **S. 24(4)** of the **VAT Act,** which refers to zero-rated supplies under **Schedule 4** of the **VAT Act**, as taxable supplies.

In determining this issue therefore, the place of supply of services is immaterial, because a determination that the place of supply of the service in question, is Uganda, only serves to make the supply in question, a taxable supply, which as stated above is chargeable to VAT at either 18% or 0%.

The real question for our determination, is whether the services in question were exported from Uganda as part of the supply. A finding, that the services in question, were exports, would mean that the services are chargeable to VAT at the rate of zero %. On the other hand, the standard rate of 18% will apply if the services supplied are found to be local supplies and not exports.

What constitutes a supply of exported services is provided for under **Paragraph 1(a) of Schedule 4** of the **VAT Act which provides;**

"1. The following supplies are specified for the purposes of section 24(4)-

a) A supply of goods or services where the goods or services are exported from Uganda as part of the supply".

Paragraph 2(b) of **Schedule 4** states that services are treated as exported from Uganda, if the services were supplied by a person engaged exclusively in handling goods for export at a port of exit or were supplied for use or consumption outside Uganda as evidenced by documentary proof acceptable to the Commissioner General.

Further **Regulation 12** of the **VAT Regulations** provides that where services are supplied by a registered taxpayer to a person outside Uganda, the service shall qualify for zero-rating if the taxpayer shows evidence that the services are used or consumed outside Uganda.

The destination principle briefly stated is a rule of international taxation under which exports are free of VAT while imports are charged VAT at the same rates as local supplies. Under this principle, the total tax paid in relation to a supply is determined by the rules applicable in the jurisdiction of its consumption and therefore all revenue accrues to the jurisdiction where the supply to the final consumer occurs.

The destination principle has been codified into our laws through **Paragraph 2(b)** of **Schedule 4** of the **VAT Act** and **Regulation 12** of the **VAT Regulations.**

This is apparent, from the manner, in which goods or services exported for use or consumption outside Uganda have been zero-rated under **Schedule 4** of the **VAT Act**. The destination principle therefore forms an integral part of our laws.

It is not in dispute, that the workers recruited by the Applicant, were destined for the Middle East, where they would be engaged as domestic help. It is also not in dispute, that the services supplied by the Applicant, were for the benefit of their clients in the Middle East and that the services of the workers were to be consumed in the countries where the workers were received.

The Applicant has provided a copy of an order, for recruitment of workers and a Recruitment Agency Service Agreement, from Alaydi Distinguished Recruitment Office, Saudi Arabia as proof that the services of the workers are to be used or consumed outside Uganda.

Applying the provisions of **Paragraph 1(a)** and **2(b)** of **Schedule 4** to the **VAT Act**, to the facts of our case, we find that the labour recruitment services were exported services and are for that reason, zero-rated.

It is hereby **ORDERED** as follows;

1. This Application is allowed with costs.

2. The assessment of **Shs. 1,406,238,422.39** for the period **1/1/2018** to **31/07/2022** is hereby set aside.

3. The sum of **Shs. 191,122,281** being the Applicant`s claim for input tax credit, made in the year 2022, will be paid in full by the Respondent.

Dated at Kampala this ....28th... day of....March.....2025.

SIRAJ ALI	**CHRISTINE KATWE**	**GRACE SAFI**
CHAIRMAN	**MEMBER**	**MEMBER**