THE REPUBLIC OF UGANDA

IN THE TAX APPEALS TRIBUNAL AT KAMPALA

APPLICATION NO. 259 OF 2024

RABIKA FASHIONS LIMITED..... APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY.....RESPONDENT

BEFORE: MS. PROSCOVIA REBECCA NAMBI, MS. CHRISTINE KATWE, MS. NAJJEMBA ROSEMARY.

RULING

Introduction

This ruling is in respect of an Application seeking to review the Respondent's decision to impose withholding tax on rice imported from the United Republic of Tanzania.

1. Background Facts

The Applicant is a company registered under the Laws of Uganda dealing in the importation of agricultural produce, specifically rice, from the United Republic of Tanzania. To facilitate its operations, the Applicant applied for and was granted a Withholding Tax exemption certificate for the period 08/07/2024 to 30/06/2025 by the Respondent.

The Applicant imported rice from the United Republic of Tanzania. During customs clearance, the Respondent demanded that the Applicant pays withholding tax on the rice. Consequently, to secure release of its consignments from customs, the Applicant was required to deposit 30% of the withholding tax, which it did. The Applicant wrote to the Respondent seeking a review of its decision on the grounds that it had a valid withholding tax exemption certificate and that collecting the taxes was illegal as rice, being an agricultural produce, was exempt from withholding tax. On 9th September 2024, the

Respondent wrote back maintaining its demand for withholding tax on the rice. Hence, this Application.

2. Representation

The Applicant was represented by Mr. Sydney Ojwe while the Respondent was represented by Ms. Christine Mpumwire and Mr. Agaba Edmond.

3. Issues for determination

The following issues were set down for determination:

1. Whether the Applicant is liable to pay withholding tax?
2. What remedies are available to the parties?

4. The Applicant's Submissions

The Applicant submitted that it is a Ugandan company dealing in agricultural produce sourced from Tanzania and applied for, and was granted a withholding tax exemption for the period from 7thAugust 2024 to 30 June 2025. Despite this exemption, the Respondent imposed withholding tax on the Applicant's imports, prompting the Applicant to seek redress before the Tribunal.

The Applicant contends that it is not liable for withholding tax on imported agricultural produce for three key reasons. Firstly, the Statutory Exemption Under Section 136(5)(c) of the Income Tax Act, Cap 338, explicitly exempts agricultural supplies from withholding tax. Therefore, the Respondent's tax demand lacks a legal basis and violates constitutional principles as held in **Kinyara Sugar Ltd V Commissioner General URA, HCCS No. 73 of 2011** that tax statutes must be strictly construed, and where the wording is clear, there is no need for additional interpretation.

Secondly, the principle of **National Treatment Under the EAC Customs Union, under Article 15(1) & (2) of the Protocol on the Establishment of the East African Customs Union** requires Uganda to treat imported agricultural produce from a partner state

(Tanzania) the same as domestic agricultural produce. The Respondent's taxation of imported rice grown in Tanzania violates this obligation and amounts to discrimination.

Thirdly, the Applicant submitted the Respondent, in every financial year, issues out a public notice notifying the public of an application window for withholding tax exemption. This exemption is granted to tax-compliant taxpayers and it is valid for 12 (twelve) months. the Applicant applied for a withholding tax exemption from the Commissioner General who in his wisdom found the Applicant worthy and issued them with the certificate. The Applicant submitted that they had a reasonable expectation that the exemption would apply to all its imports during this period. In **NSSF V Commissioner General URA, TAT Application No. 03 of 2019,** the Tribunal held that a legitimate expectation arises when a public authority makes a promise or follows a regular practice. Since the exemption certificate was neither revoked nor expired, the Respondent's demand is unjustified.

The Applicant seeks a refund of illegally collected taxes because the Respondent compelled the Applicant to pay 30% of the disputed tax per entry to release its goods. According to the Tribunal's decision in the case of **Canaan Sites Ltd V URA, TAT No. 228 of 2022**, taxes collected without a legal basis must be refunded.

The Applicant prays for interest on refunds and costs of litigation as provided under Section 21(5) of the Tax Appeals Tribunal Act and Section 27 of the Civil Procedure Act, where costs follow the event, meaning the successful party should recover the expenses incurred during litigation as per **Godfrey Katunda V Betty Atuhaire Bwesharjre & Another, Court of Appeal Civil Appeal No. 5 of 2006**.

The Applicant urges that the Tribunal to uphold the clear statutory exemption under the Income Tax Act, apply the principle of national treatment, and recognize the Respondent's unlawful tax demand. The Tribunal should order a refund of the taxes paid, along with interest and costs.

5. The Respondent's Submissions on Preliminary Objection

The Respondent, Uganda Revenue Authority (URA), argues that the Applicant, a registered company dealing in agricultural imports from Tanzania, failed to present its

goods for customs clearance. Despite holding a valid Withholding Tax (WHT) exemption certificate, the Applicant alleges that the Respondent unlawfully imposed WHT on its imports. The Respondent counters that the matter is improperly before the Tribunal as the Applicant has not exhausted the prescribed dispute resolution mechanisms.

The Respondent submits that the Application is premature, citing procedural requirements under the **East African Community Customs Management Act, 2004 (EACCMA).**

The first requirement is stated under Sections 229 and 230 of the EACCMA whch mandates that a taxpayer dissatisfied with a customs-related decision must first apply for review by the Commissioner Customs before appealing to the Tribunal. In ***Kawuki Mathius V Commissioner General, URA, Misc. Cause No. 14 of 2014***, the court affirmed that failure to follow this procedure renders an application premature. The Applicant did not lodge an objection with the Commissioner, thereby failing to meet the required threshold.

The second requirement is based on the lack of Jurisdiction by the Tribunal as per previous Tribunal decisions, for example, the case of ***Imba Foods (U) Ltd V URA, Misc. Application No. 182 of 2024*** and ***Mobitex Engineering Co. Works V URA, TAT Application No. 91 of 2023*** have held that without a formal objection decision from the Commissioner, the Tribunal lacks jurisdiction to entertain the matter. Since the Applicant did not file an objection, this application should be dismissed for lack of jurisdiction.

Thirdly, the failure to deposit 30% of the disputed tax as per Section 15 of the Tax Appeals Tribunal Act. In ***Uganda Projects Implementation and Management Centre V URA, SCCA No. 2 of 2009,*** the Supreme Court upheld the principle of *"pay now, argue later,"* emphasizing the necessity of tax deposit before litigation.

The Respondent prays that the Tribunal dismisses the Application with costs, citing procedural non-compliance and lack of jurisdiction. The failure to follow statutory dispute resolution channels and deposit the mandatory 30% invalidates the Applicant's case before the Tribunal.

6. The Applicant's Submissions in Rejoinder

The Applicant contends that the present dispute concerns Withholding Tax (WHT) on imports, not customs duty, and therefore falls under the Income Tax Act, Cap 338, rather than the East African Community Customs Management Act (EACCMA, 2004). The Respondent's reliance on EACCMA's procedural requirements is misplaced, as WHT disputes are governed by the Tax Appeals Tribunal Act, Cap 341, and the Tax Procedures Code Act, Cap 343.

The Applicant argues that the Tribunal has jurisdiction over taxation decisions, as defined in Section 1 of the Tax Appeals Tribunal Act, which includes assessments, determinations, and decisions made by the tax authority. The Respondent's imposition of WHT despite a valid exemption certificate constitutes a taxation decision, allowing the Applicant to seek relief from the Tribunal.

The Applicant cited the case of ***Century Bottling Company Ltd v. URA, Misc. Application No. 32 of 2020***, the Tribunal ruled that taxation decisions include determinations made at the discretion of the Respondent. Additionally, in ***Veeram Healthcare Uganda Ltd V URA, TAT Application No. 137 of 2022***, it was established that not all tax disputes require an objection decision before being brought before the Tribunal.

The Respondent argues that the Applicant has no locus to prosecute the application because it has not paid 30% of the disputed tax, as required by Section 15 of the Tax Appeals Tribunal Act. The Applicant counters that the dispute is purely legal in nature, challenging the legality of the tax imposition rather than the amount assessed.

The Applicant cited the case of ***Fuelex Uganda Ltd V URA, Constitutional Reference No. 03 of 2009***, the court held that the 30% deposit requirement does not apply where the dispute concerns tax exemptions, waivers, or improper assessments. Similarly, in ***A Better Place Uganda Ltd V URA, Civil Appeal No. 37 of 2019***, the court ruled that the deposit requirement only applies when a taxpayer objects to an assessment.

Furthermore, in ***Alpha Woolen (U) Ltd V URA, TAT No. 40 of 2023***, the Tribunal determined that where no formal assessment exists, no deposit is required. The Applicant asserts that it was not formally assessed for WHT and was instead blocked from exiting its goods due to an informal demand for tax payment. Consequently, there is no assessed tax amount triggering the deposit requirement.

The Applicant submitted that, should the Tribunal find that the Applicant must pay 30% of the tax assessed, they argue that its tax assessment was NIL, meaning 30% of zero remains zero. Additionally, as there was no formal tax assessment, the Tribunal should recognize that the demand for WHT payment was procedurally flawed.

The Applicant urges the Tribunal to recognize its jurisdiction over taxation decisions, including those concerning WHT exemptions, find that the objection requirement does not apply, as the dispute is legal rather than procedural, rule that the 30% deposit requirement is inapplicable, as there was no formal assessment to object to and, if the Tribunal insists on a deposit, acknowledge that the Applicant's tax liability was NIL, making the 30% payment effectively zero.

7. Determination of the issues

First, the Tribunal will deal with the preliminary objection raised by the Respondent regarding competency of this Application.

The Respondent argues that the Application is premature, as the Applicant failed to first seek a review from the Commissioner Customs, as required under Sections 229 and 230 of the East African Community Customs Management Act (EACCMA, 2004). The Respondent argued that there was neither a tax assessment nor an objection decision issued to the Applicant, and therefore without a formal objection decision, the Tribunal lacks jurisdiction. Additionally, the Respondent maintains that the Applicant has no locus to prosecute the application, as it has not paid 30% of the disputed tax, a statutory requirement under Section 15 of the Tax Appeals Tribunal Act, Cap 341.

Jurisdiction and premature application

Sections 229–230 of the EACCMA, 2004 govern customs duties and related appeals—and do require prior review by the Commissioner Customs. However, withholding tax is imposed under the Income Tax Act, Cap 338 not the EACCMA. Particularly, withholding tax on imports is imposed by Section 136 subsection 3 which reads-

3) Every person who imports goods into Uganda is liable to pay tax at the time of importation on the value of the goods at the rate prescribed in Part X of Schedule 4 to this Act.

Subsection (4) of the same **Section 136** merely ties the tax base to the customs-duty valuation regime, ensuring consistency between customs duty and import-tax calculations. In ***Century Bottling Co. Ltd v URA (Misc. App. No. 32 of 2020),*** the Tribunal held that WHT disputes stand apart from customs appeals. We therefore find that the procedural channel set out in the EACCMA does not apply to the present case.

Further, the scope of the Tribunal's jurisdiction is set out in **Section 14 of the Tax Appeals Tribunal Act**, cap 341. Section 14 provides:

1) *Any person who is aggrieved by a decision made under a taxing Act by the Uganda Revenue Authority may apply to the Tribunal for a review of the decision.*
2) *The Tribunal has power to review any taxation decision in respect of which an application is properly made*

Section 1(1) of the Tax Appeals Tribunal Act, Cap 341 defines a *"taxation decision"* to include *"any assessment, determination, decision or notice."*

Section 14 read together with Section 1 mandates the Tribunal to review any assessment, determination, decision or notice made under any taxing Act by the Uganda Revenue Authority. In this case, the Respondent's demand/requirement for payment of WHT on the rice imports is precisely such a taxation decision.

We therefore do not agree with the Respondent's argument that without a formal objection decision, the Tribunal lacks jurisdiction. As the Tribunal held in **Veeram Healthcare Uganda Ltd v Uganda Revenue Authority TAT Application No.137 of 2022**, not all tax disputes require an objection decision before being brought before this Tribunal. Whilst

an objection decision is required where a taxpayer is disputing as assessment, that is not case for any other taxation decision that is not based on an assessment.

30% deposit requirement

The Tribunal notes that Section 15 of the TAT Act requires a 30 percent deposit "of the tax in dispute" for most appeals. But as held by the **Supreme Court in Fuelex Uganda Ltd v URA (Const. Ref. No. 03 of 2009)** and affirmed in **A Better Place Uganda Ltd v URA (Civil App. No. 37 of 2019)**, that requirement does not apply to challenges against exemptions or where there is no formal assessment. Since no WHT assessment notice was ever issued and the Applicant is disputing the legality of subjecting rice to withholding tax – a question of law, there was nothing to deposit.

We therefore find that this Application is properly before the Tribunal. The EACCMA's review steps do not govern WHT, and no deposit was due in light of the absence of any formal assessment and the nature of the dispute.

Liability to withholding tax

We will proceed to determine whether the Applicant is liable to Withholding Tax on the imported rice. It is important to revisit the provisions of Section 136 -

> *(3) Every person who imports goods into Uganda is liable to pay tax at the time of importation on the value of the goods at the rate prescribed in Part X of Schedule 4 to this Act.*
>
> *(4) The value of goods under subsection (3) shall be the value of the goods ascertained for the purpose of customs duty under the laws relating to customs.*
>
> *(5) This Section does not apply to –*
>
> *a) ---*
>
> *b) a supplier or importer –*
>
> *i) who is exempt from tax under this Act; or*
>
> *ii) who the Commissioner General is satisfied has regularly complied with the obligations imposed on the supplier or importer under this Act; and*

c) agricultural supplies

Subsection (5) above **explicitly** removes certain categories of importers or supplies from the withholding obligation. Subsection (5)(b)(i) exempts any importer already exempt under the Act (for example, by exempt organisations). Subsection (5)(b)(ii) exempts importers who have established a track record of full compliance, at the Commissioner's discretion. Subsection (5)(c) creates a blanket exemption for "agricultural supplies."

By its express terms, subsection (5)(c) removes "agricultural supplies" from the requirement to withhold tax on importation. While *"agricultural supplies"* is not defined in the Income Tax Act but is a term of ordinary meaning: goods produced by agricultural activity (e.g., rice, maize, fruits). The parties do not dispute that rice qualifies. Rice, being an agricultural produce, falls squarely within that exemption.

As held in **Kinyara Sugar Ltd v Commissioner General URA (HCCS No. 73 of 2011)**, tax statutes must be strictly construed where their language is clear and unambiguous. **Subsection (5)(c)** uses plain language to exempt agricultural supplies from import-related withholding tax, without any further condition or administrative qualification.

Unlike the compliance-based exemption in subsection (5)(b)(ii), subsection (5)(c) imposes no procedural requirement or Commissioner discretion. Once goods are "agricultural supplies" the importer is simply not liable.

The Applicant held a specific WHT exemption certificate under section 136(5)(b)(i). That certificate reinforces the subsection (5)(c) exemption but is not strictly necessary for agricultural goods. In other words, even absent the certificate, rice imports would remain outside the withholding tax regime.

The Respondent's insistence on withholding tax therefore flatly contradicts this clear statutory mandate. In **Kinyara Sugar Ltd v Commissioner General URA (supra)** Court held that where a tax statute uses unambiguous language, there is no room for implied exceptions or administrative override. That principle applies with equal force here.

Because subsection (5)(c) speaks directly and unequivocally, the Respondent cannot rely on subsidiary regulations or internal guidelines to impose withholding tax on rice imports. If the Respondent were permitted to ignore (5)(c) on grounds of "revenue protection," it would undermine the legislative intent to promote agriculture and predictability for importers.

The Tribunal has recently issued rulings on the same subject in various cases including the case on Nyanga Oburofo Enterprises among others. The Tribunal abide by its previous decision.

We therefor find that the Applicant is not liable to pay withholding tax on imported rice, by virtue of section 136(5)(c) ITA. It is therefore not necessary for the Tribunal to address the withholding tax exemption certificate.

2. What remedies are available to the parties?

Section 21(5) of the Tax Appeals Tribunal Act (Cap 341) empowers the Tribunal, upon allowing an appeal, to order the repayment to the taxpayer of any tax paid in excess of the correct amount. In effect, the Tribunal's remedial powers include both declaration and restitution.

(a) Refund of Illegally Collected Tax

We refer to **Section 26 of the Tax Procedures Code Act (Cap 343)** further provides that "where any tax has been overpaid or wrongly collected, the Commissioner General shall refund the overpayment or wrongful collection, together with interest."

We also rely on the precedent in **CanaanSites Ltd v URA (TAT No. 228 of 2022)** where the Tribunal held that taxes collected without legal basis must be refunded in full. The Tribunal's decision in CanaanSites case emphasizes two key principles:

1. Taxing statutes must be strictly observed; any collection outside the statute is void and refundable.
2. Interest is not a penalty but compensation for the taxpayer's loss of use of funds.

The Tribunal notes that refunds of illegally collected taxes rest on the equitable principle that one should not be unjustly enriched at another's expense. By compelling payment of

WHT where no legal liability existed, the Respondent obtained funds that, in justice, belong to the Applicant. Each time the Applicant's rice shipment was held, URA demanded—and the Applicant paid—30 percent of the notional WHT to secure customs release. Since the underlying tax liability was legally zero, those payments were wrongful.

Accordingly, the Respondent must repay the aggregate of all 30 percent sums paid as WHT on rice imports covered by the exemption. That total represents monies "collected without legal basis.

(b) Interest on Refund

Section 21(5) of the TAT Act empowers the Tribunal to award interest on refunds "at such rate as the Tribunal considers just," and the prevailing practice is to apply the Central Bank's base lending rate from the date of each payment until refund.

(c) Declaration and Injunction

A declaratory order serves to clarify the law for future transactions. Coupled with an injunction, it will ensure that URA cannot lawfully demand WHT on agricultural imports so long as a valid exemption certificate remains in force.

(d) Costs

Under section 27 of the Civil Procedure Act, "costs shall follow the event," and the successful party may recover its litigation expenses. The Applicant has prevailed on every contested issue.

IT IS HEREBY ORDERED THAT:

1. The Respondent's imposition of withholding tax on imports of rice which is an agricultural supply contravenes section 136(5)(c) of the Income Tax Act, Cap 338.
2. The Respondent shall, within 30 days of this Order, refund to the Applicant the total sum of withholding tax amounts paid on imported rice
3. The Respondent shall pay interest on amounts in b above, calculated from the date of each payment was made by the Applicant until the date of actual refund, at the Central Bank of Uganda's prevailing base lending rate.

4. The Respondent is hereby restrained from imposing or demanding withholding tax on any imports of agricultural supplies unless the current legislation is amended.
5. The Respondent shall pay the costs of this Application to the Applicant.

Dated at Kampala on this ...16th... day of ...June..... 2025.

MS. PROSCOVIA R. NAMBI
CHAIRPERSON

MS. ROSEMARY NAJJEMBA
MEMBER

MRS. CHRISTINE KATWE
MEMBER