

THE REPUBLIC OF UGANDA
IN THE TAX APPEALS TRIBUNAL OF UGANDA AT KAMPALA
APPLICATION NO. 102 OF 2023

SKYZONE CARGO SERVICES UGANDA LIMITED APPLICANT
VERSUS
UGANDA REVENUE AUTHORITY..... RESPONDENT

BEFORE: DR. ASA MUGENYI, MR. GEORGE MUGERWA, MS. SAFI GRACE.

RULING

This ruling is in respect of a preliminary objection that the applicant had not paid 30% of the tax in dispute or that amount not in dispute, whichever is greater.

The applicant is a registered taxpayer and carries on the business of transport and logistics. On 10th May 2023, it transported 34,896 liters of gasoil fuel. On the 13th May 2023, the customs enforcement team received a call from OC Traffic Police Soroti about a fuel tank that had over turned. However, on reaching the scene of accident, the team found that compartments had been opened and emptied which could only have been done by human intervention. The respondent issued the applicant with an assessment of Shs. 39,432,480 for the fuel lost or consumed in Uganda. The penalty was waived. The applicant objected on grounds that the fuel was not consumed by it hence this application.

When this matter came up for scheduling on 10th October 2023, the respondent raised a preliminary objection that the applicant had not paid 30% of the tax in dispute.

Issue:

1. Whether the applicant has paid 30% of the tax in dispute or that not in dispute, whichever is greater?
2. What remedies are available?

The applicant was represented by Mr. Isotas Suleiman while the respondent by Ms. Christine Mpumwire.

The tribunal directed the parties to file submissions. The respondent filed its submissions while the applicant did not.

The respondent raised a preliminary point of law that Application 102 of 2023 is not properly before the Tribunal as the applicant had not paid 30% of the tax assessed or that part of the tax assessed not in dispute as required by law. The respondent cited S. 15 of the Tax Appeals Tribunal Act which states.

"A taxpayer who has lodged a notice of objection to an assessment shall pending final resolution of the objection, pay 30 percent of the tax assessed or that part of the tax assessed not in dispute, whichever is greater."

The respondent also cited *Uganda Projects Implementation and Management Centre v Uganda Revenue Authority* Constitutional Appeal 2 of 2009 where the Supreme Court, while upholding the decision of the Constitutional Court held.;

"The statutory requirement in the then VAT Act [similar to s. 15 of the TAT Act], requiring a taxpayer who has lodged a notice of objection to an assessment to, pending final resolution of the objection, pay 30 percent of the tax assessed or that part of the tax assessed not in dispute, whichever is greater, is constitutional, and did not infringe on the right to a fair hearing, under the Constitution of Uganda and the right to equal treatment before and under the law.

The Supreme Court followed, with approval the South African case of *Metcash Trading Co. Ltd v Commissioner for South African Revenue Services* and another (CCT 3/00) [2000] ZACC21 where it was held that; a taxpayer has to pay his tax and argue later. The respondent submitted that the requirement to pay 30% of the tax assessed or that part of the tax assessed not in dispute is a legal doctrine which is in line with the "pay now and argue later" principle which must be complied with before an application can be entertained by the Tribunal. The respondent submitted that the applicant was assessed Shs. 39,432,480 which is the tax in dispute where 30% translates to Shs. 11, 829,744. The respondent submitted that the applicant has a constitutional duty as a citizen to pay taxes and to do so promptly, so that government business can be carried on smoothly. The government needs taxes paid expeditiously in national interest. Failure to comply with the mandatory procedure of payment of 30% will frustrate growth and development of this country hence the need to pay and collect taxes as soon as possible. The respondent prayed that the application is dismissed with costs to the respondent.

Having read the submission on file, this is the ruling of the tribunal;

Preliminary points of law may be raised at any time of the trial. On 10th October 2023, the respondent raised a preliminary objection that the applicant had not paid 30% of the tax in dispute or which is not in dispute, whichever is greater. Order 6 rule 28 of the Civil Procedure Rules states that.

“Any party shall be entitled to raise by his or her pleading any point of law, and any point so raised shall be disposed of by the court or after the hearing; except that by consent of the parties, or by order of court on the application of either party, a point of law may be set down for hearing and disposed of at any time before the hearing”.

In *Biscuit Manufacturing Co. Ltd v West End Distributors Ltd* [1996] EA 696 Sir Charles Newbold stated that;

“A preliminary objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit”.

In this case, the preliminary point of law raised is that the applicant has not paid 30% of the tax in dispute. S. 15(1) of the Tax Appeals Tribunal Act states that;

“A tax payer who has lodged a notice of objection to an assessment shall pending final resolution of the objection, pay 30% of the tax assessed or that part of the tax assessed not in dispute whichever is greater”.

In *Uganda Projects Implementation and Management Centre v Uganda Revenue Authority*, Supreme Court Constitutional Appeal 2 of 2009. Justice C.N.B Kitumba stated that.

“It may be a hardship on the taxpayer but according to Article 17 of the Constitution, a citizen has a duty to pay taxes and to do so promptly, so that government business can go on. This is what was discussed in the *Metcash Trading Co. Ltd case*. “The principle of pay now and argue later”. The tax payer has to pay his tax then argue later. I am unable to fault the ruling of the Constitutional Court...”

Justice Boniface Wamala in *A Better place Uganda limited v URA* Civil Appeal 37 of 2019 stated that;

“.....the requirement to pay then 30% of the tax assessed or the part of the tax not in dispute, is set in motion when the taxpayer lodges with the Commissioner a notice of objection to an assessment. What this means is that the said portion of the tax is

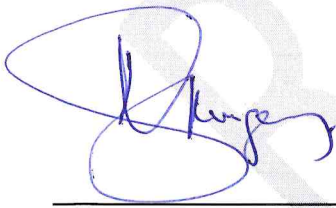
payable before resolution of the objection by the Commissioner. If the portion of the tax is collected at that level, there would not be a requirement to make a further payment when the matter comes up before the Tribunal upon an application for review of a tax decision that may have been made by the Commissioner. Where the portion of the tax was not collected at the time the objection was considered by the Commissioner, as was the case in the instant matter, the TAT is obliged to enforce that payment”.

In *Bullion Refinery limited v URA* Application 36 of 2021 this tribunal ruled that;

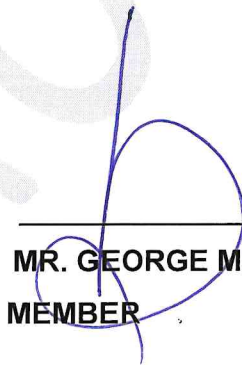
“The requirement to pay the 30% of the tax assessed or the amount not in dispute arises when a party has filed an objection and not when a tax payer files a matter in the Tax Appeals Tribunal. This means that by the time the matter is filed in the tribunal, the 30% ought to have been paid..... where the 30 % has not been paid the tax payer loses its right to access the tribunal as it shows it does not have any intention of paying any tax in dispute. It does not come to the tribunal with clean hands.”

The requirement to pay 30% is a mandatory statutory requirement. In this case, the applicant did not file any defense in its support. Since the applicant remained silent on this issue, we presume that the applicant does not wish to differ from the allegations of non-payment of 30%. In the circumstances, the preliminary objection is upheld. The application is dismissed with costs to the respondent.

Dated at Kampala this 30th day of November 2023.



DR. ASA MUGENYI
CHAIRMAN



MR. GEORGE MUGERWA
MEMBER



MS. SAFI GRACE
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