THE REPUBLIC OF UGANDA

IN THE TAX APPEALS TRIBUNAL AT KAMPALA

APPLICATION NO. 249 OF 2022

SUNDAY PLASTICS UGANDA LIMITED.....APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY.....RESPONDENT

BEFORE: MS. KABAKUMBA MASIKO, MS. CHRISTINE KATWE, MR. WILLY NANGOSYAH.

RULING

This Ruling is in Respect of an application challenging a VAT assessment issued on booking fees.

1. Background Facts

The Applicant imports raisin, a raw material used in the manufacture of plastics. The Respondent examined the Applicant's VAT returns and records for the period 1 July 2021 to 30 June 2022 and purportedly established that there was a variance between the bank credits and VAT returns of Shs. 7,488,038,731.

On the 25 March 2022, the Respondent issued the Applicant with additional administrative assessments totaling to Shs. 2,477,914,367 for the period 15 July 2021 to 28 February 2022. On the 28 April 2022, the Applicant objected. On the 26 October 2022, the Respondent disallowed the objection.

2. Representation of the parties

The Applicant was represented by Mr. Sydney Ojwee while the Respondent was represented by Mr. Amanya Mushambi.

3. Issues for determination

The parties framed the following issues for determination by the Tribunal:

(i) Whether the Applicant is liable to pay the tax assessed?

(ii) What remedies are available?

Ms. Joanitah Nakaboga the Applicant's Tax Supervisor, in her witness statement stated that Applicant gather orders from a sizable number of clients. This is aimed at meeting the minimum quantity for manufacturing and the manufacturer's conditions for minimum order quantity and booking deposit before manufacturing can commence.

She further stated that after a reasonable number of clients have confirmed their orders, the Applicant places an order to the manufacturer in China and makes a payment deposit. The manufacturer upon receiving the deposit starts manufacturing the PET. The goods are then shipped to Mombasa, and VAT input taxes paid. The customers would then pay for the goods and the Applicant pays output VAT.

Ms. Joanitah Nakaboga stated that they started receiving booking orders from July 2021 up to June 2022, and received its first goods in October 2021, the second consignment of goods in November 2021, the third in December 2021, the fourth consignment was received in January 2021 and the rest of the five consignments were received in February 2021. The Respondent issued tax assessments from July to October 2021, a period in which the Applicant had not yet received the goods.

Mr. Chark Benson Muhumuza, a Domestic Taxes Officer of the Respondent in his witness statement stated that on examining the Applicant's sales ledger, bank statements and VAT returns for the period of 1 July 2021 to 30 June 2022, the Respondent established that there were unexplained variances between the bank credits and VAT sales declared and issued the Applicant with administrative assessments totaling to Shs. 2,277,914,367.55 from 1 July 2021 to 28 February 2022. Further, the witness stated that by the Applicant's own admission, the bank credits were advance payments by the Applicant's customers for the supplies, thus constitute a payment within the definition of the law. He also stated that the bank deposits amounted to partial payment for the goods and thus the Applicant should have invoiced and charged VAT.

4. Submissions by the Applicant

4.1 Whether the Applicant is liable to pay the taxes as assessed by the Respondent?
The Applicant framed three sub-issues to answer the first issue.

a) Whether the Respondent can charge VAT on bank deposits?

b) Whether booking fees amounts to payment for the Raisins?

c) Whether the Respondent can charge VAT on goods that are not yet imported into the country?

The Applicant made submissions on each of the above issues as set out below.

a) Whether URA can charge VAT on bank deposits?

The Applicant submitted that VAT cannot be charged on bank deposits, regardless of the purpose of the deposit until a product is sourced and a purchase payment made on it. He quoted Section 4 of the Value Added Tax Act that states;

"A tax, to be known as a value added tax, shall be charged in accordance with this Act on every taxable supply made by a taxable person, on every import of goods other than an exempt import and the supply of imported services, other than an exempt service, by any person".

The Applicant submitted that Section 14 (1) (b) of the VAT Act states that;

"Except as otherwise provided under this Act, a supply of goods or services occurs, in any other case, 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; or
(iii) a tax invoice is issued"

The Applicant submitted that from the above mentioned three taxing points, there was no supply of goods at the time when the Respondent raised assessments against the Applicant for VAT.

The Applicant submitted that the first taxing point of when the goods are delivered or made available cannot be met as the goods were only delivered in October of 2021. Regarding payment, the Applicant submitted that payments were received from the clients after the Raisins were delivered in Uganda in October of 2021. Regarding a tax invoice, the Applicant submitted that it was issued after the purchase and eventual sales in October of 2021. The amount of money in the account at the time when the Respondent raised the assessments could not have amounted to taxable sales.

The Applicant submitted that Section 18 of the VAT Act provides:

(1) "A taxable supply is a supply of goods or services, other than an exempt supply, made by a taxable person for consideration as part of his or her business activities.

(2) A supply is made as part of a person's business activities if the supply is made by him or her as part of, or incidental to, any independent economic activity he or she conducts, whatever the purposes or results of that activity".

The Applicant cited the case of ***Uganda Revenue Authority vs Tata (U) Ltd Civil Appeal*** No.7 of 2008, where it was held that VAT is chargeable on supply of goods in Uganda and that for imports, it should be charged at the point when imported into the country.

The Applicant relied on the case of ***Aviation Hangar Services Ltd v Uganda Revenue Authority TAT Application No.21 of 2019*** where it was observed that;

"VAT is due where there is supply of goods and services as per the VAT act".

The Applicant contended that there were no supplies made for the periods that the Respondent raised assessments. The Respondent cannot charge VAT on bookings until payment for the goods is made and after the goods have been imported into the country. An invoice is issued to the customer and VAT is charged to the Applicant's customers when they make payments to buy the Raisins.

b) Whether booking fees amount to payment for the raisins?

The booking fees found in the Applicant's bank account were stated to remain the client's money refundable to him upon making payment for the raisins when they arrive in the country. The client had the option of diverting their bookings to the sales contract or leaving it to cater for his or her next order.

The Applicant submitted that the literal meaning of a booking is payments made to a seller of a product or a service to allow the payer to participate in the eventual sale that is to take place later. A person who books but fails to eventually make payment for the goods at the time of the sale cannot sue if the product booked is sold to another person. This shows that booking cannot and does not amount to payment.

The Applicant submitted that the booking fees received by the Applicant never formed part of the purchase price by its customers although the customers were at liberty to use it to top up their purchase price, have it refunded or carried forward to the next order. The Applicant relied on the Case *of* ***The Commissioners for Her Majesty's Revenue and Customs (Respondent) v Secret Hotels Limited (formerly Med Hotels Limited) (Appellant) [2014] UKSC 16*** where it was held that, booking fee

alone does not amount to payment for purposes of VAT, the nature of contractual arrangement between the parties also needs to be considered. The Applicant submitted that the booking fees would be paid, pending payment for the goods when they arrive in the country.

The Applicant submitted that the same position was brought out in the case of ***The Commissioners for Her Majesty's Revenue and Customs v National Exhibition Centre Limited C-130/15,*** **where the Hon Mr. Justice Roth Judge Roger Berner** opined that booking fee was just part of extension of customer care support service to enable people purchase tickets but itself was not purchase price for VAT consideration.

The Applicant submitted that the deposits were an optional element of the contract between the supplier and manufacturer. Had it been a conclusive element of the contract, the position would have been contrary. The Applicant submitted that booking fees were not supposed to attract VAT as assessed by the Respondent.

c) Whether the Respondent can charge VAT on goods that are not yet imported into the country?

The Applicant submitted that Value Added tax can only be charged on imported goods at the point when importation takes place. The Applicant submitted that Section 17 of the VAT Act states;

"An import of goods takes place where customs duty is payable, on the date on which the duty is payable and or in any other case, on the date the goods are brought into Uganda".

The Applicant relied on ***Rwaheru Akiiki & Others v URA (CS No.117 of 2013)*** it was held that VAT is paid on any import of goods at the point of importation of goods to Uganda. Imported products to be subjected to VAT must have been brought into Uganda or at the point when custom duty is paid.

The Applicant relied on Section 15 (1) of the VAT Act which states that a supply of goods takes place where the goods are delivered or made available by the supplier. The goods were only delivered into the country in October of 2021. This position is emphasized in ***Uganda Revenue Authority v Total Uganda Limited Civil Appeal No.8 of 2010*** where Hon. Justice Christopher Madrama Izama held:

"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 line with the facts above, there was no delivery. In otherwards no more goods were received by the Applicant as reflected in the facts and as such, it is improper to levy tax that is nonexistent.

The Applicant submitted that the goods were delivered and made available in the month of October of 2021 and all the associated taxes were paid. The Respondent cannot charge VAT on products that have not yet been imported into the country.

The Applicant submitted that the Applicant could only have been able to pay VAT at the point of importation of the products. The Respondent was not right in charging Value Added Tax on a business that had not yet started operations. The Applicant prayed for a declaration that the Applicant is not liable to pay the additional VAT and the penal tax as assessed.

5. Submissions by the Respondent

The Respondent submitted that the Applicant received part payment for raisins from its customers, which constitutes a taxing point in accordance with Section 14 (1) (c) (ii) of the VAT Act. The Respondent used the following sub issues:

a) Whether the Applicant supplies taxable goods?
b) Whether the Applicant received valuable consideration for the goods?
c) Whether the tax liability is due and owing from the Applicant?

The Respondent submitted on each of the above issues as set out below.

a) Whether the Applicants supplies are taxable?

The Respondent submitted that Section 4 (1) of the VAT Act imposes a tax known as Value Added Tax on all taxable supplies. And Section 5 (1) (a) of the VAT Act stipulates that the taxable person making the taxable supply shall pay the tax due.

The Respondent submitted that a taxable supply is defined under Section 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 submitted that exempt supplies are provided under Section 19 of the VAT Act and the 2nd Schedule. Unless goods are specifically listed under the 2nd

Schedule of the VAT Act, such goods are taxable supplies. The goods supplied by the Applicant are taxable supplies within the meaning of the VAT Act.

Further the Respondent submitted that the Applicant admitted to having supplied items that attract a charge of VAT and prayed that the Tribunal declares that the goods supplied by the Applicant are taxable supplies in accordance with Section 16 of the Evidence Act which states that;

"An admission is a statement, oral or documentary, which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons, and in the circumstances, hereinafter mentioned".

b) Whether the Applicant received valuable consideration for the goods?

The Respondent further contended that the Applicant received valuable consideration for the goods supplied to its clients. Section 18 (4) of the VAT Act imposes a qualifying condition for taxable supplies and states that;

"A supply is made for consideration if the supplier directly or indirectly receives payment for the supply, whether from the person supplied or any other person, including any payment wholly or partly in money or kind".

The Respondent cited the case of ***MU-JHU Care Limited V URA Application No. 18 of 2018***, which cited with approval the case of Keeping ***Newcastle Warm vs. Commissioners of Customs & Excise C353/00***, for the proposition that;

"In ascertaining whether the research is outside the scope of VAT, the test is whether the funding is part of the consideration for any specific supply; does the funder receive anything for the consideration that is paid? If not, then the service is outside the scope of VAT".

The Respondent submitted that the deposits from clients constitute payment of the goods to the Applicant. This was because the Applicant did not record the said deposits as deferred income in its returns for the period which would have supported the Applicant's submission that the deposits merely constituted booking fees.

Deferred income is defined in ***Black's law dictionary*** 11th ed as *"money received at a later time than when it was earned."* The failure to record the deposits as deferred income in its returns, the Applicant acknowledged that the payments made constituted income earned.

The Respondent submitted further that during cross examination AW1 stated that when the Applicant receives orders, the clients are thereafter required to pay a deposit. AWI further testified that the booking fees paid by the clients constitute part of the overall consideration paid by the clients. Furthermore, that AW1 clarified that the Applicant issues invoices upon supply of goods to its clients, which have an amount less the deposit already paid by the client. The Respondent prayed that the Tribunal declares that the Applicant receives valuable consideration on the taxable supplies to its clients.

c) Whether the tax liability is due and owing from the Applicant?

The Respondent submitted that it is the duty of the Applicant to account for VAT at the time of receipt of deposits from the clients. The taxing point is provided for under Section 14 (1) (C) of the VAT Act which states that;

"Except as otherwise provided under this Act. a supply of goods or services occurs; (c) in any other case, 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; or*
iii. *a tax invoice is issued".*

The Respondent submitted that the tax point is the date of receipt of the booking fees/deposits in accordance with Section 14 (1) (c) of the VAT Act. The Respondent relied on the case of ***Moonraker's Guest House Ltd ([1992] STC 544),*** where it was held that;

"That the deposits represented payments in respect of a supply, the receipt of which created a tax point under section 5(1) of the VAT Act 1983 (now section 6(4) of the 1994 Act)".

The Respondent submitted that the booking fees/ deposits received by the Applicant comprises part payment for the goods to be supplied by the Applicant. The Respondent prayed that the Tribunal takes cognizance of the fact that the Applicant received part payment and the time of receipt of the same created a taxing point at which the Applicant was required by Section 14 (1), (c) (ii) of the VAT Act to account for VAT.

The Respondent prayed that this Tribunal enters judgment on admission that the booking fees received by the Applicant was a deposit for the goods to be supplied and a taxing point was created at the time of receipt of the deposit. The Applicant should have accounted for VAT on the date of receipt of deposits from its clients. The Respondent also prayed that the Tribunal finds the tax of Shs. 2,477,914,367.55 is due and payable by the Applicant and awarded costs of this application.

6. The Applicant's submissions in rejoinder

The Applicant re affirmed his earlier submission that both transactions took place in October of 2021, way after the periods considered by the Respondent, citing ***Rwaheru Akiiki & Others v URA*** (cs No. 117 of 2013). Adding that the Respondent acted prematurely on demanding VAT on taxable supplies that had not yet been purchased or sold to the final consumers. The Respondent's witness admitted that they did not have vatable transactions apart from the bank deposits.

a) Whether the Applicant received valuable consideration?

The Applicant submitted that it did not receive payments for goods as it had not supplied any goods. The Applicant reiterated that it only received booking fees, which never constituted payment and were refundable on demand. The clients only paid for the goods once they were imported into Uganda, and once such payments were made, the clients were issued with tax invoices.

The Applicant further submitted that the receipt of income has never been a taxing point for VAT until that income is either used in a sale or purchase transaction of a value-added product or service. The Applicant submitted that the booking fees received were not intended to form part of the consideration but to confirm the customer's commitment to buy once the raisins were imported into the country.

b) Whether the tax liability is due and owing from the Applicant?

The Applicant relied on Hon. Mr. Justice Christopher Madrama Izama ***in Margaret Akiiki Rwaheru And 13,945 Others Vs Uganda Revenue Authority. Civil Suit No 117 Of 2013*** held;

"VAT on taxable supplies is made on the basis of section 21 (3), the input tax being the VAT on imports is excluded from the value of the taxable supply to get the difference between the market consideration of the supply and the import value. The only difference is tax giving a

net position which does not require reconciliation since import VAT is input and VAT on taxable supplies is output. The total tax on the imported goods supplied would become 18% of the sale value of the goods.

It suffices to conclude that VAT on taxable supplies can only be made in the manner prescribed by the Value Added Tax Act upon the occurrence of the supply and not before. This cannot stop the Defendant for instance from charging VAT on the basis of tax invoices for the supply of taxable supplies comprising of goods which have been imported into the country and for which VAT on the import value have been paid. Furthermore, if subsequently any of the Plaintiffs supply the goods as taxable supplies defined under section 18 and as ascertained using other provisions of the Value Added Tax Act reviewed above, I agree that the reconciliation of the input/output tax for the person would establish the correct amount of tax the taxable person is supposed to pay".

The Applicant submitted that VAT can only be properly charged upon importation of the product to determine the relevant costs incurred, the mark up to be added and then the Value Added Tax is added. The Applicant submitted that the Respondent does not bring any proof to show that the Applicant had purchased the goods, made sales and received payment for the goods upon which VAT should have been declared.

The Applicant submitted that booking fees remained an asset of the client and a liability of the Applicant and could be refunded or used to top up on the purchase price at the discretion of the purchaser. This is not admission as it is unequivocal. Hon Justice Stephen Mubiru in ***The Board of Governors Nebbi Town S.S.S Vs Jaker Food Stores Limited (Arising from H.C.C.S. No. 0018 of 2016)*** held:

"It is a settled principle that a judgment on admission is not a matter of right but rather a matter of discretion of a Court. The admission should be unambiguous, clear, unequivocal and positive".

He went on to cite ***Industrial and Commercial Development Corporation v Daber Enterprises Ltd, [2000] 1 EA 75 and Continental Butchery Ltd v Ndhiwa, [1989] KLR 573***, *where the Court of Appeal of Kenya stated that the purpose of a judgment on admission is to enable a plaintiff to obtain a quick judgement where there is plainly no defence to the claims. To justify such a judgment, the matter must be plain and obvious and where it is not plain and obvious, a party to a civil litigation is not to be deprived of his right to have his case tried by a proper trial".*

The Applicant submitted that the booking fees never constituted the purchase price and was merely confirmation of its client's interest of participating in the purchase of raisin once they are brought it into the country. The Applicant asserted that the Respondent is not entitled to judgment on admission, cost or a declaration that the Applicant is liable to pay the tax assessed.

7. Determination of the Application by the Tribunal

Having carefully read the submissions and analyzed the evidence of both parties; this is the ruling of the Tribunal:

The Applicant started its operations in Uganda in July 2021. The company imports raisins, a raw material used in the manufacture of plastics. It received its first consignment in October 2021. The Respondent examined the Applicant's VAT returns and records for the period July 2021 to June 2022 and established a variance between the bank credits and VAT returns of the Applicant. The Respondent issued an additional administrative VAT assessment for the period July 2021 to February 2022 on the booking fees paid to the Applicant.

The Applicant submitted that the first taxing point was when the goods were made available in October of 2021. Therefore, the amount of money in the account at the time when the Respondent raised assessments could not have amounted to taxable sales.

The Tribunal notes that booking fees were kept as bank deposits. However, the issue at hand is when and on what the Applicant should have charged VAT.

Ms. Joanitah Nakaboga, the Applicant's witness, stated that after a reasonable number of clients have confirmed their orders through payment of booking fees, the Applicant would proceed to place their orders with the manufacturer in China. The manufacturer would then ship the goods to Mombasa and upon arrival, the Applicant would pay input VAT. The customers would then pay for the goods and the Applicant would account for output VAT.

The Respondent submitted that the booking fees/deposits constitute payments of the goods by the Applicant as the Applicant did not reflect them as deferred income. The relevance of recording such deposits as deferred income would support the

Applicant's submission that the deposits by the Applicant merely constituted booking fees.

The Respondent submitted that the booking fees/deposits paid by the Applicant's clients comprises part payment. The tax point is the date of receipt of the booking fees/deposits in accordance with Section 14 (1) (c) of the VAT Act. That to date, the Applicant neglected and or refused to account for VAT on the deposits received.

The Tribunal notes that it is not disputed that the Applicant made taxable supplies. The Applicant imported raisin after customers made their orders by paying booking fees. The Applicant alleged that the Respondent charged VAT on its client's booking fees before the goods were imported into the Country. The Tribunal must determine at what point VAT was chargeable.

The Tribunal relied on Section 4 of the VAT Act which provides:

"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 or: and
(c) the supply of imported services, other than an exempt service by any person".

Further, Section 5 of the VAT Act provides:

"Except as otherwise provided in this Act, the tax payable—

(a) in the case of a taxable supply, is to be paid by the taxable person making the supply;
(b) in the case of an import of goods, is to be paid by the importer;
(c) in the case of a supply of import of services, other than an exempt service, is to be paid by the person receiving the supply".

Section 18 (4) of the VAT Act provides:

"that a supply is made for consideration if the supplier directly or indirectly receives payment for the supply, either from the person supplied or any other person including any payment wholly or partly in money or kind".

Much as the Applicant insists that the booking fees never constituted the purchase price, during cross examination the Applicant's witness confirmed that the booking fees were part of the final consideration, and that the tax invoice would reflect only the balance net of the booking fees. It is clear therefore that the booking fees were part

payment of the final consideration. The taxpayer should have accounted for VAT at the first instance of payment to make the VAT traceable.

The Applicant submitted that there was no delivery of goods when the Respondent made the assessment, so the Respondent cannot charge VAT on goods that have not yet been imported into the country. The goods were only delivered and made available in October of 2021. The Tribunal relied on Section 14 (1) (c) of the VAT Act which provides:

"(1) Except as otherwise provided under this Act, a supply of goods or services occurs, ***in any other case, 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; or

(iii) a tax invoice is issued"

In the present case, the Applicant had to make orders to the manufacturer in China after the customers had confirmed their orders by paying the booking fees. The Applicant does not dispute having received the booking fees from the clients as a confirmation of their orders. The booking fees were offset against the consideration / payment for the goods.

Since payment for the goods preceded delivery or issuance of the tax invoice, the supply is deemed to have taken place at the time the booking fees were paid thus creating a taxing point.

Indeed, in the case of ***Commissioners of Customs and Excise v Moonrakers Guest House Ltd ([1992] STC 544)*** Court held that the bookings/ deposits for the accommodation represented payments in respect of a supply, the receipt of which created a tax point. The judge also considered the position where VAT has been accounted for, but the supply does not take place.

The supply of goods or services takes place when payment for the goods or services in whole or part, is received by the supplier, including an advance payment for the supply of goods. The taxpayer is expected to apply the VAT, considering the entire total consideration because this is payment in advance. This makes it easy for both parties to account and trace VAT that is payable. In cases where the customer forfeits

the part consideration/payment, what happens to the booking fees? If it is Vatable from the start, the tax is deducted.

The Tribunal finds that the Applicant should have accounted for VAT upon receipt of the booking fees as it was part of the payment.

On the issue of charging VAT on the goods that were not yet received or supplied, the Applicant contended that the Respondent should not have charged VAT for period where the Applicant had not yet imported the goods into Uganda. The Applicant in her submissions stated that the goods were first made available in October 2021.

We note that the assessment period was July 2021 to February 2022 which covers the period between October 2021 and February 2022, when the Applicant made her importations into the country.

It is not in dispute that there was a supply and booking fees/deposit/partial consideration was received. Therefore, VAT should have been accounted for at that time.

In the circumstances, this application is dismissed. Costs are hereby awarded to the Respondent.

Dated at Kampala this 28th day of August 2024.

KABAKUMBA MASIKO
CHAIRPERSON

CHRISTINE KATWE
MEMBER

WILLY NANGOSYAH
MEMBER