

THE REPUBLIC OF UGANDA
IN THE TAX APPEALS TRIBUNAL OF UGANDA AT KAMPALA
APPLICATION NO. 170 OF 2023.

TINASAH INVESTMENTS LIMITED.....APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY.....RESPONDENT

BEFORE: MS. CRYSTAL KABAJWARA, MS. KABAKUMBA MASIKO, MS. GRACE SAFI.

RULING

This ruling is in respect of VAT assessment of Shs. 86,607,469 issued by the Respondent after the Respondent denied the Applicant's claim for input tax credit on the grounds that the Applicant was engaged in invoice trading.

1. Background Facts

The Applicant company deals in the business of supplying stationery, printed materials and other general supplies. The Respondent queried the Applicant's claim for input VAT on purchases made from three companies, namely- Arnau Trading Company-SMC Ltd, TIN 1016755961, Chasteen Stationeries SMC Ltd, TIN 1016755954, and Huthart Enterprises -SMC Ltd, TIN 1016758829, on the grounds of invoice trading.

The Respondent disallowed the input VAT and issued assessments of Shs. 86,607,469 which the Applicant objected to, arguing that the disallowed input credit related to legitimate transactions. The Respondent disallowed the objection on grounds that the Applicant failed to prove the purchases from the suppliers.

2. Issues for determination

The issues for determination by the Tribunal are as follows:

- (i) Whether the Applicant is liable to pay the tax assessed?
- (ii) What remedies are available to the parties?

3. Representation

The Applicant was represented by Mr. Gerald Ndobya of M/S AF Mpanga & Company Advocates while the Respondent was represented by Ms. Christine Mpumwire, Mr. Stewart Aheebwa and Ms. Sheeba Tayahwe.

Ms. Tina Nassali Ssali the Managing Director of the Applicant, was the Applicant's sole witness. She stated that during the assessed periods, March 2021, April 2021 and September 2021, the Applicant purchased supplies including reams of paper, toners, gummy bags from various suppliers and sold the same to its customers comprising of government ministries, departments and agencies. She stated that the business at Nasser Road is heavily cash based as opposed to bank transfers. She also stated that the suppliers are mobile and move from one shop to another. The main requirement for purchases that the suppliers request is the customer's Tax Identification Numbers to process and issue EFRIS invoices.

The witness further stated that she did not know any particulars about the suppliers e.g. their directors and telephone numbers. She also explained that at times she purchases goods on credit and the suppliers are paid later.

The witness also testified that in the period in issue, the covid 19 pandemic had broken out and most shops were closed. Orders were placed via the phone or by word of mouth. She explained that the Applicant's representatives would go to the shops with cash and TIN number and the suppliers would issue EFRIS invoices.

Ms. Tina Nassali Ssali also testified that the Applicant hired the services of Mr. Muwonge Stanislaus as an Accountant to undertake tax compliance on its behalf. He was responsible for filing VAT returns; unfortunately, he passed on.

Ms. Tina Nassali Ssali stated that around March 2023, the Respondent requested the Applicant to submit flagged invoices and bank statements to support their transactions including the directors of the supplier companies. However, the Applicant was unable to trace the directors.

Ms. Tina Nassali Ssali stated that during the objection process they undertook a reconciliation and confirmed that the goods purchased in March 2020 were supplied to the Electoral Commission, National Drug Authority, and National Curriculum

Development Centre. This reconciliation was done for all months clearly indicating that all the items were purchased and delivered to the customers.

The witness also stated that the Respondent disallowed the objection on the grounds that the Applicant had not satisfied the element of purchase from the flagged suppliers which left a gap in the supply chain.

Ms. Muganzi Walda Natoolo an Officer in the Central Processing Office of Domestic Taxes Department of the Respondent was the Respondent's first witness. She stated that the Respondent conducted a compliance review and discovered that some of the companies registered for VAT were filling returns but not making payments, had no history of making domestic payments and claimed input VAT from the same network of invoice traders. The suppliers were also issuing sales and invoices with no traceable purchase history and lacked a clear supply chain.

The witness testified that all attempts to contact the three companies were futile as the telephone numbers provided were unreachable. Their physical addresses were untraceable, and the Applicant claimed to have transacted with them for the period of April 2021 to April 2022 as shown below;

	SUPPLIER NAME	AMOUNT (UGX)	VAT
1	Huthart Enterprises -SMC Ltd	213,386,441	38,409,559
2	Arnau Trading Company SMC Ltd	171,871,326	30,936,839
3	Chasteen Stationaries SMC Ltd	95,894,839	17,261,071
	TOTAL	481,152,606	86,607,469

The Respondent's witness further testified that the Applicant is liable to pay Shs. 86,607,469 since they did not demonstrate the supply chain with the flagged companies. They were involved in an invoice trading scheme and the invoices were fictitious.

Mr. Javan Ivan Sabiti, an Officer in the Independent Review of Objections Unit of the Domestic Taxes Department of the Respondent was the Respondent's second witness. He stated that the bank statements provided by the Applicant, did not relate to the payments made to the three companies. The Respondent requested for delivery

notes issued to the Applicant and was instead provided with delivery notes the Applicant issued to its customers.

During cross examination Ms. Tinah Nassali Ssali stated that she did not deal directly with the three companies/suppliers. She testified that her employee, Mr. Stanislaus Muwonge was responsible for filing returns and purchasing items from the suppliers. Mr. Muwonge has since passed on.

She also testified that she did not know the address of the suppliers. The witness also testified that her bank statements did not have reflect the payments against these invoices as all payments were cash based. She also stated that she neither had emails nor phone calls between her and the suppliers. During her testimony, she confirmed that she had no evidence to show that she knew the companies and nothing to show that Mr. Muwonge was her employee.

During re-examination, the witness stated that most of her staff are hired on a casual basis to deliver goods. She also stated that the Applicant had no contract of employment with Mr. Muwonge. She only hired him as a service provider to file tax returns.

During cross examination, Ms. Muganzi Walda Natoolo, confirmed that not all transactions went through bank statements. She stated that URA asked for bank statements, delivery notes and receipts as evidence of payments which the Applicant did not provide.

Further, during cross examination Mr. Javan Sabiiti confirmed that if the Applicant paid by cash, the transaction would not reflect on the account.

4. Submissions of the Applicant

Whether the applicant was entitled to the input credit?

The Applicant cited Section 28 of the Value Added Tax Act (VAT Act) which provides:

"... a credit is allowed to the taxable person for the tax payable in respect of all taxable supplies made to that person during the tax period."

The Applicant submitted that Section 18 of the VAT Act defines taxable supply to include a supply of goods or services, other than an exempt supply made in Uganda by a taxable person or consideration as part of his or her business activities. In ***Uganda Revenue Authority v. Enviroserv Uganda Limited (Civil Appeal No. 0018 of 2020)***, Lady Justice Susan Abinyo stated at page 8:

“For the Applicant to be entitled to the input tax credit under this section the Applicant has to prove the following:

- (1) The Applicant is a taxable person; Taxable supplies have been made to the Applicant during the tax period and*
- (a) The taxable supplies were for use in the business of the Applicant”.*

The Applicant contended that it is a taxable person by virtue of holding the certificate of registration for VAT. The taxable supplies were made to the Applicant during the tax periods in issue and were for use in its business.

Whether taxable supplies were made to the Applicant during the tax period?

The Applicant contended that whereas supplies were made to the Applicant, input VAT claimed was disallowed on the grounds of invoice trading. In ***Red Concepts Ltd Vs Uganda Revenue Authority (TAT No 36 of 2018)***, it was held that invoice trading also known as VAT fraud is the setting up of companies for one to claim input VAT by issuing fictitious invoices.

The Applicant submitted that the allegation of VAT fraud was based on statements made in the witness statements of the Respondent's witnesses; Ms. Muganzi Walda Natoolo and Mr. Javan Ivan Sabiti who noted that the suppliers were not filing returns, had no history of making domestic payments, were claiming input VAT from the network of other invoice traders such as Rhiannon Gwenyneth Traders and had been flagged for invoice trading.

The Applicant submitted that the assessment was based on their failure to provide delivery notes from the suppliers, bank statements with corresponding purchase transactions and present the Directors of the supplier's companies to the Respondent.

Burden of proof in tax fraud matters

The Applicant submitted that as a general rule, the burden of proof lies on the party who asserts the affirmative on the issue or question in dispute. Justice Ocaya in ***Uganda Revenue Authority V. Balondemu David (Civil) Appeal No. 0002/2023*** stated:

"I agree with the proposition of law that in applications for review of a taxation decision, the burden of proof is on the Applicant, in this case the Respondent. See Section 26 TPCA, Section 18 Section 101 of the Evidence Act".

This must however be distinguished from the evidential burden of proof, which shifts when a case to the requisite standard is made out by a party. The Appellant (URA) is not a static or silent participant in tax proceedings, once a party makes out an assertion to the requisite standard, the evidential burden of proof shifts to the Appellant to disprove that assertion, even though the legal burden of proof does not shift. If this wasn't so, a party applying for review would be grossly prejudiced as allegations which have then made their way into a basis for the taxation decision and objection decision need to be only dealt with by one party rather than both."

The Applicant submitted that the Respondent has the evidential burden to prove that the Applicant was invoice trading which by its nature is VAT fraud and ought to have been strictly pleaded and proved beyond a balance of probabilities but not beyond reasonable doubt.

Justice Mubiru in ***Dr. Joseph Kabuubi and Anor V Wilson Kashaya (Civil Suit No.0385 of 2020)***, noted:

"Fraud must be proved strictly. The burden of pleading and proving that fraud lies on the person alleging it, and the standard of proof is beyond the mere balance of probabilities required in ordinary civil cases though not beyond reasonable doubt as in criminal cases. Fraud is an amorphous concept which is impossible to define within strict parameters."

The Applicant submitted there is no single particularized plea of fraud by the Applicant on the face of the record submitted by the Respondent. The Applicant invited this Tribunal to look at the evidence provided to decide this matter.

The EFRIS System

The Applicant submitted that the existence of the EFRIS invoices is proof that taxable supplies were made to the Applicant and is entitled to the VAT input credit. According to the URA Gazette Notice No. 595 published on 23rd June 2020, all VAT registered taxpayers were required to issue e-invoices and e-receipts to their customers through EFRIS with effect from 1st July 2020 and expected to buy from suppliers who must issue e-invoices if the items bought include VAT.

The Applicant submitted that with the now web-based VAT returns on the URA portal that is auto filled by data from EFRIS, it is absurd that the Respondent is disputing the information feeding its system. The Applicant demanded for their EFRIS invoices which served as proof that goods were supplied to them as well as the fact that the input VAT was paid to the suppliers.

The Applicant submitted that before the introduction of EFRIS, the Respondent did not have visibility of the transactions, was neither aware the supplier existed, and the invoices issued then did not follow a format as required by the Respondent. The Applicant submitted that no evidence was submitted by the Respondent to show that the Applicant set up these companies, paid them to undertake VAT fraud on the part of the Applicant.

The Applicant submitted that before a person is registered for VAT, the Respondent conducts a physical visit and confirms the information provided by the person applying for VAT registration such as the Applicant's suppliers. By virtue of the VAT registration of the suppliers, evidenced by the issuance of EFRIS invoices, the Respondent should be estopped from denying the checks of the Applicant's suppliers.

The Applicant contended that it is absurd for the Respondent to claim that the transaction did not happen following issuance of an EFRIS Invoice. The Applicant stated that all the taxpayers must do is to ensure that they have the EFRIS invoices. The Respondent should not be allowed to collect using EFRIS when it benefits them and at the same time refuse data from their system as input claims when it does not favour them.

The Applicant submitted that no actual evidence has been led to prove that the Applicant was invoice trading. The Respondent's averments are based speculations

and, on their failure, to find the Applicant's suppliers whom they issued TINs, inspected and accorded VAT registration and added them on to the EFRIS system.

Evidence of the Applicant on the legitimacy of the transactions

The Applicant submitted that following the requests of more information, specifically bank statements and an EFRIS invoice issued as the proof of the transaction, the Applicant undertook a purchases and sales reconciliation where all the items purchased from the flagged supplier were matched back to delivery that the Applicant issued to its customers.

The Applicant cited *Quickway Property Services Limited v Uganda Revenue Authority (Application No. TAT 105 of 2021)*. The Tribunal, in dealing with a matter of a similar nature noted that the burden of proof is on the Applicant to prove on a balance of probability that the input tax credit claimed was due and payable.

The Applicant alleged that the burden had been discharged through existence of the EFRIS invoices, the input schedule of the VAT return and the reconciliation which is an account of how the goods were sourced. The Applicant submitted that the taxable supplies were made to the Applicant otherwise they would not have had items to supply to their customers. The Applicant prayed that this Tribunal finds that there was a supply of taxable supplies to the Applicant which entitled them input VAT.

Evidence of the Respondent before the Tribunal

The Applicant submitted that the evidence submitted in the Respondent's trial bundle in support of the above reasons has no proof of wrongdoing on behalf of the Applicant. Asking the Applicant to pay the assessed tax is double taxation since the tax has already been paid to the suppliers. The Applicant cited the case of *Enviroserv Limited V. Uganda Revenue Authority (TAT Application No. 24 of 2017)* where the Tribunal held:

"Where the Applicant presented evidence that invoices were issued and VAT was paid to suppliers for the Respondent to pay input VAT, it is not the duty of the taxpayer to follow up with the suppliers to declare input VAT. Taking the above decision into mind, all the Applicant is required to do, is to present the invoices and payment to the Tribunal".

The Applicant submitted that her duty was to ensure that EFRIS invoices were issued after they purchased items, file returns and claim input credit. The Applicant submitted that it is the Respondent's duty to ensure that taxes are paid and collected. The Applicant further noted that it is Respondent's duty to ensure that their tax register is up to date and any errors on it should not be visited on the taxpayer.

Regarding the argument that the Applicant was claiming input VAT from a network of other invoice traders such as Rhiannon Gwenyneth Traders; there was no evidence led to show either through EFRIS invoices or the input schedule of the Applicant's VAT return that the Applicant has ever traded with the company. Ms. Walda confirmed to the Tribunal that only the suppliers of the Applicant had traded with Rhiannon Gwenyneth Traders. The Applicant contended that the Respondent ought to have issued a public notice communicated the companies that have been flagged for invoice trading.

The Applicant further contended that the Respondent breached the right to fair administrative action required of administrative bodies under Article 42 of the Constitution which provides that every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and reasonably fair. The Applicant having confirmed the taxpayer details and TIN legitimacy of the suppliers, it had the legitimate expectation that it was trading with genuine taxpayers since no action had been taken against them by the Respondent. Allowing the Respondent to pick and choose genuine taxpayers would be a gross abuse of public law.

Regarding the Applicant's failure to support the transactions with delivery notes as indicated in the objection decision, the Respondent's witness, Mr. Javan Ivan Sabiti, confirmed that the issuance of delivery notes is not a mandatory requirement but is good business practice. He confirmed that there are businesses that do not offer delivery notes as long as the EFRIS invoice is issued. The Reconciliation undertaken by the parties during objection matching the purchased items prove the existence of the transactions.

Regarding the bank statements, the Applicant submitted that the Ugandan economy is largely a cash economy, and not all payments are made through the bank. Most transactions were made by cash as required by the suppliers.

The Applicant further submitted that the argument that the Applicant did not present its director's is absurd because the Applicant hires various people to support the business and source goods from various places. No company can be issued with a TIN without its Director being issued a TIN. The Respondent had the information to track the Directors. The Respondent knows the persons it's supposed to collect the tax from using the declarations on the EFRIS system.

The Applicant prayed that the Tribunal vacates the assessment and finds that the Applicant was entitled to the input tax credit.

5. The Submissions of the Respondent

Whether the Applicant is liable to pay the assessed tax?

The Respondent submitted that it is not in dispute that the Applicant is a taxable person, and taxable supplies were for use in the Applicant's business. What is in dispute is that the Applicant received the taxable supplies on which it seeks to claim input VAT credit.

The Respondent submitted that the Applicant claimed input VAT credit in respect of transactions with M/s Huthart Enterprises SMC Ltd, M/s Arnau Trading Company SMC Ltd and Chasteen Stationeries SMC Ltd which had been flagged as invoice traders. The Respondent's investigations revealed that the 3 companies were all dealing with Rhiannon Gweyneth Trading SMC Ltd, which is an established invoice trader. All efforts to locate or contact the three companies were futile which made the Applicant's input claim suspicious.

Proof of receipt of taxable supplies

The Respondent submitted that the Applicant has not proved that it received the taxable supplies indicated in the invoices upon which it seeks to claim input VAT credit. Section 28 (5) of the VAT Act states:

"A taxable person who is allowed tax credit on purchase of goods and services from a supplier who's designated to use the e-invoicing system, shall only claim a tax credit on expenses supported by e- invoices or e-receipts".

Section 28 (13) of the VAT Act states; an input tax credit allowed under this section may not be claimed by the taxable person until the tax period in which the taxable person has an original tax invoice for the taxable supply. Ordinarily, a tax invoice/e-invoice could be sufficient to claim input VAT credit. Unfortunately, tax authorities world over have unearthed a tax evasion/fraud scheme involving VAT termed as “**invoice trading**” through which fraudulent individuals exploit the system.

The Respondent submitted that invoice trading is a tax fraud scheme where individuals register businesses as taxable persons for VAT solely for invoicing purposes. In ***Red Concepts Ltd Versus URA TAT Application No. 36 of 2018***, the Tribunal stated:

"Invoice trading involves companies being set up to enable one claim VAT input by issuing fictitious invoices."

The Respondent submitted it requires taxpayers flagged for invoice trading to adduce proof of their purchases before they can be allowed input VAT credit on the invoices presented. The rationale for requiring a demonstration of the supply chain for goods on flagged invoices is that such taxpayers may be capable of proving one leg of the supply chain by providing proof of sales to their customers.

The Respondent submitted that in ***Osho Drappers Ltd Versus Commissioner of Domestic Taxes TAT Application No. 159 of 2018***, the Kenyan Revenue Authority had disallowed an input VAT credit claim made by the Appellant on the basis that the purchases were made by persons investigated by the Respondent and found to be involved in the tax fraud scheme of printing and selling invoices without supply of goods.

The Respondent contended that the Appellant alleged that the transactions were on a cash basis and provided the delivery notes, invoices and payment acknowledgment receipts from its suppliers. The Kenyan Tax Appeals Tribunal held that the burden of proof was on the Appellant to prove that the purchases had occurred. The above decision is good law, persuasive. The Respondent prayed that the Tribunal upholds it.

The Respondent further relied on ***Red Concepts Ltd Versus URA, TAT No 36 of 2018*** where the Respondent rejected the Applicants input VAT credit claim on purchases made from Boona General Distributors. The Tribunal noted:

"We think the duty of the Tribunal is not to determine whether the transactions between the Applicant and Boona took place but whether the Respondent was justified to deny the Applicant's VAT input claim. As a Tax Appeals Tribunal we cannot delve into contractual implications of a dispute but only look at the tax implications. The standard of proof as in all civil cases is on the balance of probabilities and the burden of proof is on the Applicant to prove that these transactions are not fictitious."

In the above case, the Tribunal found that the Applicant had not discharged its burden in as far as it did not adduce any evidence on the location of the Boona General Distributors. Its witnesses had testified that they had never visited Boona's location, none of the Directors or Employees of Boona had been called to testify on the transactions.

The Respondent submitted that in ***Leds Uganda Limited Vs URA App No. 3 of 2018*** the Applicant claimed input VAT credit on transactions allegedly executed with two companies Dongmin International Limited and Hoghai General Supplies Limited. The Respondent adduced evidence to show that the companies were not duly incorporated. The Tribunal noted:

"The burden of proof lies on the Applicant to prove the supplies. In order to determine whether the Applicant is entitled to input tax credit one has to determine whether Dongmin International Limited and Hoghai General Supplies Limited provided services to the Applicant".

The Respondent submitted that the Tribunal after agreeing with the Respondent that the companies lacked legal personality and thus any transaction, if any, with them would be illegal. The Tribunal stated:

"However, the companies being nonexistent is not the only argument that makes the issue of supply suspect. They said companies have no physical location or offices. The directors of the said companies are not known. None of the directors of the said companies testified during the hearing."

The Respondent contended that the Tribunal further took cognizance of the notion that it was not a legal requirement that parties in a transaction must meet or have offices where they transact. However, the absence of business premises makes the whole transaction suspicious. The Tribunal upheld the Respondent's decision to reject invoices with inaccurate information. The Tribunal noted:

"If the circumstantial evidence showing that a supply may not have taken place is overwhelming, the Tribunal will not ignore it.

In this case, the information in respect of the commercial name, place of business, description of goods, volume of services supplied if not missing is false. The physical location on the tax invoices and both the companies' details furnished to the respondent for registration of TIN indicated Plot 42 Africa House. Investigation by the Respondent to ascertain the companies' physical location were futile.

While the onus may be on the Respondent to ensure that VAT paid by taxpayers is remitted, taxpayers should facilitate this by giving correct information to it. If the Respondent was to reject such an invoice, the Tribunal would not find fault with it."

The Respondent submitted that in all the above cases, the assessments issued to the taxpayers therein were upheld since the taxpayers failed to prove that the transactions on the invoices relied on to claim input VAT credit happened. Once invoice trading is established, the Respondent is empowered to disallow the claimed input VAT credit and issue the Applicant with assessments.

The Respondent cited Section 47 (1) of the VAT Act which empowers the Commissioner to determine the liability of a person who has obtained a tax benefit in connection with a scheme whose sole purpose is to obtain a tax benefit.

Absence of evidence to prove purchases occurred

The Respondent submitted that the value of the transactions between the Applicant and the flagged companies amounted to Shs. 481,152,606 over a short span of time. Some of the single transactions were for a value of Shs. 25,488,000. This is a large sum of money making it unlikely that the Applicant would have such sums in cash without any paper trail. Even if the Applicant transacted on a cash basis, there would still be some paper trail (not necessarily bank statements) however minimal given the sums involved. Furthermore, in cross examination, the Applicant's witness stated that she borrowed monies from friends to fund the purchases. However, she did not adduce proof of such borrowing or receipt of borrowed funds.

No receipts or delivery notes from suppliers.

The Respondent averred that the Applicant had not availed receipts issued by the flagged companies acknowledging its cash payments nor adduced delivery notes issued upon receipt of the purchases.

No testimony from the people who dealt with or on behalf of the flagged companies

The Respondent submitted that the Applicant presented one witness, Ms. Tinah Nassali Ssali, the Managing Director, who testified that she did not personally conduct any transaction with the flagged companies. During cross examination she admitted that she had no evidence to rebut the assertion that the flagged companies were nonexistent. She is not a credible witness to testify on the occurrence of the transactions and any testimony from her is hearsay and should be disregarded.

The Respondent submitted that the Applicant did not present representatives of the flagged companies to testify. The witness claimed the Applicant was unable to trace them which only further buttresses the notion that they are nonexistent. Just like in the case of *Red Concepts Ltd Vs URA* this Tribunal has been denied the opportunity to hear the testimony of anyone with firsthand information as to whether the transactions occurred or that the invoices are not fictitious.

Incomplete supply chain

The Respondent submitted that the Applicant adduced delivery notes issued to its customers along with alleged reconciliations. There is nothing to show that the goods on the delivery notes or in the reconciliation are the same goods in the impugned invoices.

Misleading information

The Respondent submitted that the location on the tax invoices of all the three companies are false. M/s Huthart Enterprises SMC Ltd invoices indicate the company's address as Leyaz House, Katende, Kampala Nakawa Division Bukoto 1, M/s Arnau Trading Company SMC Ltd invoices as Kangu Complex B-05 Ntinda Kampala, Nakawa Division Ntinda and Chasteen Stationeries SMC Ltd as Kaluni House Shop 08 sixth street Kampala Central Division Industrial Area. However, the Respondent's investigation showed that the flagged companies were not located at

the addresses mentioned yet the Applicant's witness testified that the flagged companies operated at Nasser and Nkrumah Road.

The Respondent submitted that the dispute before the Tribunal is a tax dispute, even if fraud is involved. By virtue of Sections 28 of the TPCA and Section 19 of the TAT Act, in tax disputes, the burden is on the person objecting to the Respondent's decision to prove that the decision should not have been made or should have been made differently. the Applicant has not discharged its burden.

RW2's testimony on matching purchases and sales

The Respondent contended that RW2 stated that he could not confirm where the supplies made by the Applicant to its customers were sourced from. There is no evidence of purchases, aside from the disputed invoices, which leaves the Applicant's supply chain incomplete.

Introduction of new evidence in submissions

The Respondent submitted that it was justified to require the Applicant to substantiate its alleged purchases. The impugned invoices contain misleading information as to the physical location of the Applicant's flagged suppliers hence the Respondent's decision to reject the invoices and the Applicant's claim for input VAT credit all together. The Respondent prayed that this application is dismissed with costs.

6. Determination of the Tribunal

Having read the submissions of both parties, this is the ruling of the Tribunal.

The Applicant deals in the business of supplying stationery, printed materials and other general supplies. The Respondent queried the Applicant's claim of input VAT on purchases made from three companies, namely: Arnau Trading Company- SMC Ltd, Chasteen Stationeries SMC Ltd, and Huthart Enterprises -SMC Ltd, on the grounds of invoice trading. The Applicant objected arguing that the disallowed input credit related to legitimate transactions. The Respondent disallowed the objection on grounds that the Applicant failed to prove the purchases from the three suppliers.

The Respondent disputes whether the purchases in respect of which the Applicant seeks to claim input VAT occurred. On the other hand, the Applicant argues that the

e-invoices that were issued by the suppliers are sufficient proof that the transactions happened.

Section 28 (1) of the VAT Act allows a taxable person a credit for the tax payable in respect of all taxable supplies made to that person during the tax period.

Further, Section 28 (4) of the VAT Act stipulates:

"A taxable person who is allowed a tax credit on purchases of goods and services from a supplier who is designated to use the e-invoicing system, shall only claim a tax credit on expenses supported by e-invoices or e-receipts."

A reading of the above provisions indicates that for one to claim a credit for input VAT:

- (i) Taxable supplies should have been made to that person during the tax period;
- (ii) There should have been a purchase of goods or services to support the claim for input VAT; and
- (iii) The person should be issued with an e-invoice or receipt where goods have been purchased from a person using the e-invoicing system.

Point (iii) is not in contention as both the Applicant and Respondent are in agreement that e-invoices were issued by the suppliers.

The Respondent, however, disputes whether there were really ever any underlying purchases made, or taxable supplies received in respect of the e-invoices which the Applicant adduced as evidence of purchase.

Section 28 (4) clearly states that a *"taxable person who is allowed a tax credit on purchases of goods and services."*

Therefore, a purchase must precede a claim for input VAT. This means that it is incumbent on the Applicant to prove that a purchase did in fact happen in respect of the e-invoice presented to the Respondent.

To claim credit for input VAT, one must prove that the transactions/purchases genuinely took place. A substance over form approach must be adopted for transactions such as this and it would be very dangerous for this Tribunal to choose form over substance.

In the present case, the Applicant:

- (i) Could not name a single individual from any of the suppliers they interacted with – not any director, employee, shopkeeper, cashier etc. None.
- (ii) Did not know the suppliers' addresses;
- (iii) Did not have any receipt showing proof of cash purchases;
- (iv) Did not have any delivery notes to prove the delivery of goods by the suppliers;
- (v) Could not even bring one person to corroborate the sole witness' testimony that purchases were made. For example, the Applicant's witness claimed that deliveries were made using "boda boda" cyclists – not even a single cyclist was presented as a witness.
- (vi) Claimed that all purchases were made by a one, the Late Stanislaus Muwonge. The Applicant claimed that this person, was their Accountant. The Applicant did not adduce any evidence of having employed or contracted the Late Muwonge in any capacity.

It is also worth mentioning that the amounts involved in said "purchases" were significant. It beggars belief that one can purchase goods approximating worth Shs. 481,152,606 without any of the above corroborative evidence. According to the Respondent's witness testimony, some of the single transactions were for items worth of Shs. 25,488,000. There was no single piece of corroborative evidence adduced by the Applicant to demonstrate that the purchases shown on the e-invoices were in fact made by the three suppliers.

It is incredulous!

The Applicant's witness testified that her former Accountant, who is now deceased made all the purchases. How convenient!

Consequently, the testimony of the Applicant's witness and the absence of any corroborative evidence cast doubt on the veracity of the Applicant' claim.

The mandate of the Uganda Revenue Authority is to administer and collect the nation's taxes. However, taxpayers are not just bystanders – they are active participants in this effort.

Therefore, taxpayers should put themselves in the shoes of the tax authority.

Assuming Uganda Limited were your enterprise, would you sign off a payment of Shs. 86 million (the input VAT claim) without the pre-requisite proof? Without verifying the purchase? Without carrying out any due diligence on the payee? Without asking any questions?

In the commonly used code-mixed colloquial phrase – “omuntu agoinge wa?” – where should the Uganda Revenue Authority go? What should they do?

In other words, taxpayers should do everything possible, to ease and not frustrate the work of the Respondent.

In the case of **Red Concepts Limited v URA App No. 38 of 2018**, the Tribunal stated:

“Where a statute requires one to give information or other particulars, the said information should be accurate to enable public authorities act on it. If the information is misleading, the Tribunal cannot turn a blind eye to it as this would tantamount to condoning an illegality and perpetrating fraud.....While the onus may be on the Respondent to ensure that VAT paid by taxpayers is remitted, tax payers should facilitate that by giving correct information to it.”

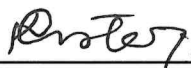
This Tribunal finds that the Applicant failed in their duty to furnish the Respondent with the requisite information to prove that the purchases did in fact occur.

Further, the Applicant failed to satisfy this Tribunal that the purchases underlying the e-invoices were made from the three suppliers.


In the circumstances, we make the following orders:

- (i) This Application is dismissed, and the Applicant is liable to pay the assessed tax of Shs. 86,607,469.
- (ii) The Applicant is not entitled to the input tax credit.
- (iii) Costs are hereby awarded to the Respondent.

Dated at Kampala this.....^{17th}.....day of January.....2025.



CRYSTAL KABAJWARA
CHAIRPERSON



KABAKUMBA MASIKO
MEMBER



GRACE SAFI
MEMBER