

THE REPUBLIC OF UGADA
IN THE TAX APPEALS TRIBUNAL AT KAMPALA
TAT APPLICATION NO. 338 OF 2024.

TRADE WORTH ESTABLISHMENT LIMITED.....APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY.....RESPONDENT

BEFORE: MS. CRYSTAL KABAJWARA, MS. GRACE SAFI,
MR. WILLY NANGOSYAH

RULING

This ruling is in respect of an application challenging the Respondent's rejection of a Value Added Tax (VAT) refund claim of Shs.8,426,803,106 that the Respondent collected in respect of rice imported from Tanzania.

1. Background Facts

The Applicant carries on the business of importation of agricultural produce and general trade. In the period 2018 to 2022, the Applicant imported rice from Tanzania and was charged input VAT at a rate 18%. The Applicant paid the VAT amidst several protests. The Applicant contends that the importation of rice is subject to VAT at the zero rate. This is in line with the Second Schedule of the VAT Act as it was at the time (now schedule 3) read together with the Treaty for the Establishment of the East African Community ("EAC Treaty") and Protocol on the Establishment of the East African Customs Union (the "Customs Union Protocol").

On July 2020, the Applicant along with other importers sought intervention from the Ministry of Trade and from the office of the Attorney General about the perceived unfair treatment by the Respondent. In September 2020, the Respondent forced the Applicant to amend its return to reflect the rice sales as standard rated yet the Applicant had not charged VAT on the sale of the imported rice.

On 14 June 2022 and on 1 February 2024, the Attorney General's office guided that all rice imported into the country from Partner states of East African Community should

be accorded same VAT treatment as that which is accorded to rice grown and milled in Uganda.

Internally, the Respondent also communicated the position that rice imports are zero rated as per internal memo dated 29 July 2022 and 12 April 2024 at pages 78 and 101 of the Applicant's trial bundle.

On 19 September 2023, the Applicant then wrote to the Respondent requesting a refund of the VAT that was collected on importation (Ex. PE8 at page 80 of the Applicant's trial bundle). This was followed by several other demand letters for refunds by the Applicant to the Respondent.

Following the guidance from the Honorable Attorney General, on 23 April 2024, the Respondent entered into a Memorandum of Understanding with importers of rice from Tanzania to the effect that the said claims for VAT refund would be verified and resolved.

The Respondent subsequently carried out a verification exercise to confirm the refund claims of various importers including the Applicant. With regard to the Applicant, the Respondent confirmed that the Applicant was entitled to a refund of Shs. 7,563,332,543 for period July 2017 to June 2022.

On 4 June 2024, the Applicant initiated an e-system application in addition to the letters for a refund claim dated 28 August 2023, 12 February 2024 and 9 August 2024 to the Respondent seeking refund of the VAT that was previously paid.

However, on 21 October 2024 (Ex. PE 27 at page 171 of the Applicant's trial bundle), the Respondent declined the Applicant's refund claim on the grounds that:

- (i) Out of the verified amount of Shs 7,563,332, 543, the Applicant had already recovered the input VAT paid at importation by charging output VAT on sales of Shs.7,100,420,132.

- (ii) The balance of Shs. 1,320,522,555 was verified and granted as a credit and marked up by 6% to obtain an output tax of Shs. 1,399,753,908 giving a net payable of Shs. 79,231,353.

The Respondent concluded their decision by stating:

"We regret to inform you that there is no refund payable. We accordingly consider this matter closed."

The Applicant filed this application challenging the above decision on the grounds that it was baseless, unsubstantiated and illegal.

2. Issues for determination

The following issues were set down for hearing:

- (i) Whether the Applicant is entitled to the refund claimed?
- (ii) What remedies are available to the parties?

3. Representation

At the hearing, the Applicant was represented by Ms. Sophie Dhanemwa while the Respondent was represented by Mr. Barnabas Nuwaha.

Mr. Innocent Nibert Barigye, the Managing Director of the Applicant was the Applicant's first witness (AW1). In his witness statement, he stated that the Applicant deals in the business of general trade including importation and sale of rice and agricultural produce. He also stated that he did not charge VAT on sales of the rice imported from Tanzania because a supply of rice is not subject to VAT at the standard rate. He also testified that the Respondent often used the issue of non-declaration of VAT on rice sales to deny tax clearances and as a condition to grant the 6% withholding tax exemption to remain in business. He further stated that due to pressure from the Respondent, he filed an amended monthly VAT return in which he indicated the rice sales as VAT inclusive yet supplies of rice imported from Tanzania are zero rated.

He also testified that on the 21 October 2024, the Respondent communicated their objection decision alleging that the Applicant had already recovered the VAT paid at importation by charging output tax of Shs.7, 100,420,132 out of the total claim amount of Shs. 8,426,803,106. However, AW1 stated that the Applicant did not charge any output tax when they sold the rice.

During cross examination, AW1 was asked whether Shs. 7,563,332,543 was the current amount for refund claim to which he replied it is the reconciled, verified and undisputed net amount communicated by the Respondent emanating from the total claim of Shs 8,426,803,106, However, there was a pending verification of the remaining balance of Shs 1,320,522,555. He was also asked to show evidence of the refund application to which he did show the copy of the memorandum of understanding with Respondent each with an assessment to the VAT amount paid totaling to Shs 8,426,803,106 and an e-system application of the verified amount by the Respondent's customs department.

AW1 was asked to confirm whether he charged VAT on the sale of the rice to which he responded in the negative on the basis that the supply of rice is a zero-rated supply.

The Applicant's second witness was Mr. Ronald Ssebaka a tax agent of the Applicant (AW2). He testified that he advised the Applicant that rice imported from Tanzania, a Partner State of the East African Community and supplied in Uganda is required by law to be treated the same as rice grown, milled and produced in Uganda as per the Schedule 3 of the VAT Act. Therefore, the Respondent's imposition of VAT on rice imported from Tanzania was illegal as the rice was zero rated.

He also testified that during the verification and audit, the Respondent conducted a reconciliation of VAT ledger and established a tax credit of Shs.7,563,332,543 for refund after offsetting undisputed income tax and PAYE assessments totaling to Shs.132,778,419 which position does not tally with the Applicant's VAT ledger as of 21 October which showed a credit of Shs. 7,621,737,311.

During cross examination, AW2 was asked to confirm his statement that he was advised by the Respondent to file e-system refund claims of Shs. 7,563,332,543 to align with the total reconciled position to which he responded in the affirmative. He also stated that the refund audit team included a one Mr. Joseph Mugema and Ms. Annet Muhanguzi after the verification process.

AW2 was asked to show the annexures of evidence reflecting the ledger position credit of Shs. 7,621,737,311 to which he showed annexures on Page 175-176 of the Applicant's Trial Bundle which showed a total credit of Shs 7,621,737,311.

The Respondent's sole witness was Ms. Annette Muhanguzi who works with the Respondent's Refunds Division. She reiterated the background facts and testified that during 2017 to 2022, the Applicant imported rice from Tanzania and paid VAT amounting to Shs. 8,420,442,687. She testified that the Applicant and other rice importers who had paid VAT at importation, entered a memorandum of understanding pursuant to which there would be an audit and verification of VAT refund claims by the Respondent.

During cross examination RW1 testified that she had worked with the Respondent for 25 years, was personally involved in the verification and audit exercise of the Applicant's refund claim and is knowledgeable and experienced in VAT law.

RW1 confirmed that she reviewed the Hon. Attorney General's opinion on the VAT treatment of rice imported from Tanzania but that the Respondent considered several other factors to determine the VAT status in the present case.

RW1 was asked to provide evidence relied upon to support the conclusion reached by the Respondent that the Applicant had charged output VAT of Shs. 7,100,420,132 on sales of the imported rice. She stated that she relied on an internal email directing the Applicant to amend its return to make the sales VAT inclusive at the standard rate.

She also clarified that this was an administrative decision and not one based on the law.

RW1 also testified that they assumed the rice was sold at a profit margin of 6% on cost price which was subjected to VAT at 18% to obtain output tax of Shs. 1,399,753,908. This gave rise to a net VAT payable position of Shs. 79,231,353.

RW1 testified that the VAT treatment accorded to the imported rice at that time was based on her understanding of the VAT law then however, if there is an error, it is her obligation to correct errors that are contrary to the law if brought to her attention.

4. Submissions of the Applicant

The Applicant submitted that Article 152 of the 1995 Constitution of Uganda (as amended) stipulates that no tax shall be imposed except under the authority of an Act of Parliament. The Applicant submitted that this legal position has been firmly cemented by courts of law, including in *Margret Akiki Rwaheru & 13945 & Ors V URA CACA No.98/2025*.

The Applicant submitted that Article 123(1) of the 1995 Constitution which states:

"The President or a person authorized by the President may make treaties, conventions, agreements or other arrangements between Uganda and any other country or between Uganda and any international organization or body, in respect of any matter."

That one such treaty is the Treaty for the establishment of the East African Community which entered into force on 7 July 2000. It provides in Article 2 that Contracting States shall establish an East African Customs Union and Common Market. The Applicant submitted that to address the issue of whether the applicant is entitled to the refund of the VAT that was collected from the Applicant on the rice imported, the fundamental question that needs to be answered first is - **What is the rate of VAT applicable on rice imported from Tanzania?**

The Applicant submitted that Section 4 of the VAT Act imposes a tax to be known as a value added tax to be charged in accordance with the VAT Act on:

- a) every taxable supply in Uganda made by a taxable person,
- b) every import of goods other than an exempt import.

The Applicant submitted that Section 18 (1) of the VAT Act defines a taxable supply as a supply of goods or services, other than an exempt supply, made in Uganda by a taxable person for consideration as part of his or her business activities. Section 24(4) of the VAT Act provides that the rate of tax imposed on taxable supplies specified in the Third Schedule is zero.

The Applicant submitted that the Third Schedule now fourth schedule of the VAT Act refers to zero-rated supplies for the purposes of section 24(4) – including:

(f)...the supply of cereals where the cereals are grown, milled or produced in Uganda.

The Applicant submitted that Section 76 of the VAT Act provides that to the extent that the terms of a treaty or other international agreement to which Uganda is a party are inconsistent with the provisions of this Act, apart from section 75, the terms of the treaty or international agreement prevail over the provisions of the Act.

The Applicant cited Article 75 (6) of the **Treaty for the Establishment of the East African Community** which provides:

"The Partner states shall refrain from enacting legislation or applying administrative measures which directly or indirectly discriminate against the same or like products of other Partner States".

The Applicant further cited Articles 15 (1) and (2) of the **Protocol on the Establishment of the East African Customs Union (hereinafter the Protocol)** provides:

"1. The Partner States shall not:

- a) enact legislation or apply administrative measures which directly or indirectly discriminate against the same or like products of other Partner States; or*
- b) impose on each other's products any internal taxation of such a nature as to afford indirect protection to other products.*

2. No Partner State shall impose, directly or indirectly, on the products of other Partner States any internal taxation of any kind in excess of that imposed, directly or indirectly on similar domestic products”.

The Applicant submitted that the rate of VAT imposed on the supply of cereals are grown, milled or produced in Uganda is zero. In the case of ***Okuja V Uganda Revenue Authority TAT Application No.72 of 2018***, in applying Section 24 of the VAT Act, the Tribunal held:

“If goods are not exempt, they are taxable supplies, further that taxable supplies may either be standard rated (attract VAT of 18%) or zero rated (attract VAT of 0%).”

The Applicant submitted that a cereal is defined in the **Oxford Dictionary** as a grain used for food, for example wheat, rye, rice, oats etc. Rice is by definition, a cereal. Rice from Tanzania is the same product as rice grown, milled or produced in Uganda.

The Applicant submitted that the Respondent was obligated under the Treaty for the Establishment of the East African Community Treat and the Protocol to treat cereals from member States the same as cereals grown, milled and produced in Uganda.

The Applicant further submitted that this position was re-affirmed by the guidance of the Hon. Attorney General on the VAT treatment of rice imported from Tanzania.

The Applicant also submitted that the Respondent's witness admitted that rice imported from Tanzania was zero-rated for VAT purposes and that the tax treatment of any good or supply is based on the law and not any other considerations such as tax returns. The rate of VAT imposed on the supply of rice imported from Tanzania is zero and collection of VAT of 18% from the Applicant was illegal.

Whether the Applicant is entitled to the refund sought

The Applicant submitted that in the Respondent's tax decision dated October 21, 2024, which is the subject of this appeal, it was stated:

"Pursuant to the ...MOU, you initiated a VAT refund application, following which the refunds verification process was conducted. This is therefore to communicate the refund verification findings. Whereas, you had claimed for a refund of Shs. 8,426,803,106, following verification, it was established that you had already recovered VAT paid at importation by charging output tax of Shs. 7,100,420,132".

The Applicant submitted that the Respondent's decision is not supported by any evidence of actual output VAT charged. The Applicant's Managing Director stated that he did not charge VAT on rice sales because the rice is not a standard rated supply. However, on account of the pressure from the Respondent, backed up by actions such as denying the Applicant tax clearances and threats of additional assessments, he was forced to amend the monthly VAT returns to reflect the rice sales as VAT inclusive.

The Applicant submitted that the Respondent's witness testified that there were no third party claims or third party declarations with respect to the said output tax of Shs. 7,100,420,132.

The Applicant submitted that "Output tax" is defined in S.1 (p) of the VAT Act to mean the tax chargeable under Section 4 in respect of a taxable supply. Under Section 24 (1) and 3rd Schedule 1(f) VAT Act), the rate of tax charged on supplies of cereals grown, milled and produced in Uganda is zero. Therefore, the Applicant could not have charged output tax for a product that is zero rated.

The Applicant submitted that the Respondent's actions of collecting VAT from the Applicant on rice imported from Tanzania were an illegality. Further, the findings that the Applicant had already recovered VAT paid at importation by charging output tax of Shs. 7,100,420,132 was illegal.

The Respondent's tax decision dated that the balance of Shs. 1,320,522,555 has been verified and granted as credit and marked up by 6% to obtain output tax of Shs. 1,399,753,908

The Applicant submitted that it is an admitted fact that the Applicant paid VAT to the tune of Shs. 8,420,442,687 on rice imported from Tanzania. The Respondent's witness further stated that the audit team established that the Applicant did not claim input tax incurred at importation amounting to Shs. 1,320,522,555. The sum not claimed was verified and granted as credit and marked up by 6% to obtain output tax of Shs. 1,3999,753,908.

The Applicant submitted that the Respondent does not provide any basis for the mark-up of 6%. The Applicant provided evidence that he did not charge VAT on the rice sales. The Respondent's own witness testified that there were no third party declarations for VAT paid to the Applicant on the rice sales. The Applicant was therefore entitled to the refund of VAT paid in the sum of Shs. 8,420,442,687.

In the case of **Canaan Sites Limited Vs URA TAT Application No, 228 of 2022**, it was held:

"Where the Respondent collects taxes that are not legally owed, it is generally expected to refund those amounts to the taxpayer. If the Respondent collects VAT that should not have been levied - whether due to incorrect classification of goods and services as taxable or erroneous application of tax rates - it has an ethical and legal obligation to return those funds to maintain trust in the tax system. This is based on principles of fairness and legality, ensuring that only the correct amount of tax, as prescribed by law is collected."

In conclusion, the Applicant prayed for the following:

- (i) A refund of VAT of Shs. 8,426,803,106 together with interest at a rate of 2% per month.
- (ii) General damages as the Applicant's business was almost brought to a complete standstill and that the Applicant suffered immense reputational damage and has lost good will amongst creditors on account of the Respondent's actions of refusing to refund the VAT claimed. The Applicant prayed for the award general damages of Shs. 500 million
- (iii) Costs of this application.

5. Submissions of the Respondent

The Respondent submitted that the Applicant is not entitled to the VAT refund sought, and doesn't fit within the statutory prescription regarding VAT refund. The Respondent cited the case of ***Uganda Revenue Authority v Tembo Steels Ltd Civil Appeal No 9 of 2006*** where Justice Madrama held:

"It is clear then that statutory method for arriving input/output methodology at VAT. Where the input credit is more than the VAT assessed on taxable supplies, (Y), the taxable person is entitled to a refund of that part in excess of the amount of VAT charged on the taxable supply".

In the present case, the Applicant does not come under Sections 28 of the VAT Act, nor did they lead evidence as to existence of output VAT. Without output VAT there is no basis under the VAT Act for recovery of VAT. The Respondent submitted that the Applicant's submission falls short of the above-mentioned statutory prescription and accordingly ought not to succeed.

Forceful amendment of return

The Respondent submitted that the Hon. Attorney General gave an opinion regarding VAT on rice imported from East African Community Member states however the same does not have the force of law and statutory prescription is very clear regarding tax payable.

The Respondent cited Section 24 of the VAT Act which provides;

"(1) Subject to subsection (2), the tax payable on a taxable transaction is calculated by applying the rate of tax to the taxable value of the transaction.

(2) Where the taxable value is determined under section 21(2) or (3), the tax payable is calculated by the formula specified in section 1(a) of the Fourth Schedule.

(3) Subject to subsection (4), the rate of tax shall be as specified in section 78(2).

(4) The rate of tax imposed on taxable supplies specified in the Third Schedule is zero Percent."

The Respondent submitted that the provisions above are to the effect that rice grown and milled in Uganda is what is zero rated and not rice grown and milled in Tanzania. It is not disputed that the Applicants rice is imported from Tanzania and accordingly does not warrant exemption from VAT.

Whether the Applicant is liable to pay tax as assessed?

The Respondent submitted that it is not in dispute that the Applicant agreed to a refund audit process. RW1 testified, the Applicant was found to have charged VAT to the tune of Shs. 7,100,420,132 of the Shs. 8,420,942,687 incurred as VAT by the Applicant.

The Respondent submitted that the residual Shs. 1,320,522,555 being sales of the Applicant not declared, the above sum not claimed was verified and granted as credit and marked up by 6% to obtain output tax of Shs.1,399,753,908 and a net payable of Shs. 79,231,353. The Respondent argued that the sum of Shs.79,231,353 is due and payable by the Applicant.

The Respondent submitted that there was no illegality and the Applicant is not entitled to the VAT refund. The Respondent prayed that the application be dismissed with costs.

6. Submissions of the Applicant in rejoinder

In rejoinder, the Applicant reiterated their earlier submissions. However, they added that where a taxpayer makes zero rated supplies, the law expressly allows the refund of input tax even in the absence of output VAT on the Applicant's rice sales which was precisely because the sales were zero rated. The Applicant paid VAT that should not have been paid and as such is entitled to a refund wrongfully collected by the Respondent.

Regarding the amendment of the Applicant's returns, the Applicant was coerced as can be clearly interpreted by the wording in the Respondent's email stating:

"Amend your returns to reflect the correct tax position otherwise, we shall raise additional assessments against you".

The amendments were demanded by the Respondent's officials as the condition for issuing tax clearances and withholding tax exemptions.

The Applicant argued that the Hon. Attorney General's interpretation of the law, especially where it pertains to government action, is authoritative unless overturned by a competent court. The Attorney General confirmed that VAT was wrongly imposed on the rice imported from Tanzania. The Respondent based on that same interpretation when it entered into a Memorandum of Understanding with the rice business sector. Therefore, the Respondent's rejection of the AG's guidance at this stage is dishonest.

The Applicant submitted that the argument that rice imported from Tanzania is not zero rated since it is not specifically listed under the third schedule to the VAT Act. This argument is untenable in view of Section 76 of the VAT Act which states that where there is a conflict between the VAT Act and a treaty ratified by Uganda, the Treaty shall prevail.

7. The determination of the Tribunal

Having listened to the evidence and studied the submissions of the parties, this is the decision of the Tribunal.

The main issue for determination is whether the Applicant is entitled to a refund of monies collected by the Respondent as VAT at the standard rate of 18% on rice imported by the Applicant from Tanzania.

The Applicant contends that the Respondent assessed and collected VAT at a rate of 18% for the rice imported from Tanzania amounting a sum of Shs. 8,426,803,106 which ought to have been treated as a zero rated supply. The Applicant based their arguments on the Treaty for Establishment of East African Community and Protocol on the Establishment of the East African Customs Union which require that imports from the treaty partner states are accorded the same tax treatment as that accorded domestic supplies of the same category of products.

Whether the rice imported from Tanzania is a zero rated or standard rated supply?

Section 4 of the VAT Act CAP 344 imposes a tax to be known as a value added tax to be charged in accordance with the VAT Act on:

- “(a) every taxable supply in Uganda made by a taxable person,*
- b) every import of goods other than an exempt import; and*
- c) the supply of imported services other than an exempt services by any person.”*

Section 24(4) of the VAT Act provides:

“The rate of tax imposed on taxable supplies specified in the Schedule 4 is zero”.

Schedule 4 of the VAT Act, paragraph 1 (h) provides:

“(h)...the supply of cereals where the cereals are grown, milled or produced in Uganda”.

The Tribunal sought to establish the meaning of cereals to determine whether rice is a cereal as per Schedule 4 paragraph 1(h) attracting zero tax.

According to **Britannica**, a **broad English-language encyclopedia** that offers general knowledge on a wide range of topics, a cereal is:

“a grass plant cultivated for its starchy, dry fruits (grains), which are used for human food, livestock feed, and industrial purposes”. Common examples include wheat, rice, corn (maize), and barley.”

According to the **Cambridge Dictionary**, a cereal is a type of grass that is grown to produce grain such as wheat, rice and corns among others. Rice is by definition, a cereal. It then follows that Rice whether from Tanzania or elsewhere is the same product as rice grown, milled or produced in Uganda.

Having established that rice is a cereal, we now turn to the international legislation governing imports from EAC Partner States.

Section 76 (now section 49) of the VAT Act states:

“To the extent that the terms of a treaty or other international agreement to which Uganda is a party are inconsistent with the provisions of this Act, apart from Section 47, the terms of the treaty or international agreement prevail over the provisions of this Act.”

The above provision implies that the terms of the EAC Treaty and the EAC Customs Union Protocol are binding on the Respondent.

Articles 15 (1) and (2) of the **Protocol on the Establishment of the East African Customs Union (hereinafter the Protocol)** provides:

“1. The Partner States shall not;

a) enact legislation or apply administrative measures which directly or indirectly discriminate against the same or like products of other Partner States; or

b) impose on each other's products any internal taxation of such a nature as to afford indirect protection to other products.

2. No Partner State shall impose, directly or indirectly, on the products of other Partner States any internal taxation of any kind in excess of that imposed, directly or indirectly on similar domestic products”.

In light of the above provision, it is clear that rice from Tanzania is a cereal and the Respondent should have accorded it the same VAT treatment as rice grown and milled in Uganda.

Therefore, we agree with the Applicant that the imported processed rice from the Partner state of Tanzania is a zero-rated supply. Consequently, the Respondent's decision to the imported rice as standard rate was unlawful.

In the case of ***Canaan Sites Limited Vs URA TAT Application No, 228 of 2022***, it was held:

“Where the Respondent collects taxes that are not legally owed, it is generally expected to refund those amounts to the taxpayer. If the Respondent collects VAT that should not have been levied - whether due to incorrect classification of goods and services as taxable or

erroneous application of tax rates - it has an ethical and legal obligation to return those funds to maintain trust in the tax system. This is based on principles of fairness and legality, ensuring that only the correct amount of tax, as prescribed by law is collected."

It is also worth noting at this point that the Respondent sought guidance from the Hon. Attorney General who reached the same conclusion as the one we have reached above. In his guidance stated:

"All rice imported into the country from partner states of East African Community should be accorded the same treatment as locally grown and milled rice, in compliance with the treaty for the Establishment of the East African Community and the protocol on the Establishment of the East African Customs Union."

Upon the above guidance, the Respondent proceeded to enter into a memorandum of understanding with the Applicant to the effect that previously collected VAT would be refunded. The Respondent also communicated internally the position that imports of rice from Tanzania are zero rated (See internal memos dated 29 June 2022 and 20 June 2024 at pages 78 and 163 of the Applicant's trial bundle).

While the opinion of the Hon. Attorney General is not binding on the Respondent, it is disingenuous for the Respondent to now disclaim the very opinion that they acted on.

Whether the Applicant is eligible for refund of the VAT that was unlawfully collected by the Respondent

As this Tribunal ruled in the case of ***Canaan Sites Limited Vs URA (supra)***

"Where the Respondent collects taxes that are not legally owed, it is generally expected to refund those amounts to the taxpayer. If the Respondent collects VAT that should not have been levied - whether due to incorrect classification of goods and services as taxable or erroneous application of tax rates - it has an ethical and legal obligation to return those funds to maintain trust in the tax system. This is based on principles of fairness and legality, ensuring that only the correct amount of tax, as prescribed by law is collected."

By their own admission as per the decision dated 21 October 2024, the Respondent verified the total amount due to the Applicant as being Shs. 8,426,803,106. However, the Respondent denied to refund the monies on the following grounds:

"...it was established that you had already recovered the VAT paid at importation by charging output tax of Shs. 7,100,420,132."

The second reason given was:

"The balance of Ugx 1,320,522,555 has been verified and granted as a credit and marked up by 6% to obtain output tax of UGX. 1,399,753,908, giving a net payable of UGX. 79,231,353."

Were the above valid reasons for denying the Applicant their refund?

The answer to the above question is in the negative.

During cross examination of RW1, the witness did not adduce any evidence of third-party declarations to match the supposed output tax of Shs. 7,100,420,132. She confirmed that the Respondent neither had third-party information or declarations nor tax invoices to prove that the Applicant's sales were VAT inclusive.

Secondly, it is highly improbable that the Applicant could have charged VAT at a standard rate of 18% for a supply that is designated as zero rated by the VAT Act.

Regarding the 6% mark – up, the Respondent provided no legal, economic or commercial basis for applying the mark-up. During cross examination, when asked for the basis of the Respondent's action and whether they were grounded in the VAT law, the RW1 stated that the actions of the Respondent were based on the administrative practice at the time.

On the whole, we find that the Respondent acted not only unlawfully but also with impunity and in total abuse of their powers and authority.

The Respondent had the opportunity to right the wrong they committed right from the moment they received guidance from the Hon. Attorney General. The right thing to do was to refund the monies unlawfully collected or at the very least, enter into a payment plan with the Applicant. However, rather than doing this, the Respondent orchestrated a phoney scheme to deny the Applicant their refund – a taxpayer, who is the very reason for the Respondent's existence.

Such behaviour destroys trust and discourages the very compliance that the Respondent is working hard to promote especially in a time such as this when the nation is moving towards developing sustainable domestic resource mobilisation. Compliance should not be a single lane road for taxpayers only.

In the words of *Jon Snow, the protagonist in Game of Thrones*, a drama television series:

"When enough people make false promises, words stop meaning anything."

Therefore, it is the fundamental duty of the Respondent to build trust in the tax system and lead by example by taking the right action. In the words of **George Macdonald, a famous Scottish author** - to be trusted is a greater compliment than being loved. This is what all actors in our tax system should aspire to.

Having established that the Respondent acted unlawfully, what remedies are available to the Applicant?

The Applicant prayed for the following remedies:

- (i) Interest of 2% be awarded to the Applicant
- (ii) General damages of Shs. 500 million on account of the fact that the refusal by the Applicant to refund the VAT that was unlawfully collected nearly brought the Applicant's business to a standstill and that the Applicant lost good will amongst their creditors.
- (iii) Costs of the application.

Interest

Section 28 (2) of the Tax Appeals Tribunal Act states:

“Where the decision maker is required to refund an amount of tax to a person as a result of a decision of a reviewing body, the tax shall be repaid with interest at the rate specified in the relevant law on the amount of the refund for the period commencing from the date the person paid the tax refunded and ending on the last day of the month in which the refund is made.”

Section 36 (1) of the VAT Act, provides for interest on over payments and late refunds and it states:

“(1) Where the Commissioner General is required to refund an amount of tax to a person as a result of-

(a) a decision of the Tax Appeals Tribunal; or

(b) a decision of the High Court, the Court of Appeal or the Supreme Court, he or she shall pay interest at a rate of 2% per month compounded on the tax to be refunded”.

However, section 36 (5) of the VAT Act caps interest payable to the principal tax.

The provision states:

“(5) Notwithstanding sub-sections (1), (2) and (4), the interest due and payable on over payments and late refunds shall not exceed the principal tax.”

In ***Canaan Sites Limited Vs URA (supra)***, the Tribunal stated as follows on matters concerning interest:

“When a taxpayer is owed a refund for erroneously collected taxes or overpayment of tax, the delay in receiving those funds means the taxpayer is unable to use that money for other purposes, such as investment or working capital. This results in an opportunity cost—the potential gains foregone due to the inability to utilize funds promptly. This requires the Respondent to pay interest on delayed refunds and by compensating taxpayers for the delay, the legislation aims to restore the economic equilibrium lost due to the late disbursement of funds.”

Therefore, having established that Applicant unlawfully collected VAT of Shs. 8,426,803,106 and declined to refund the same following a refund claim by the Applicant, the Applicant is hereby awarded interest at a rate of 2% per month compounded from 19 September 2023 being the first date when the Applicant formally applied for a refund from the Respondent.

General damages

General damages are awarded at the discretion of the court to restore the plaintiff to the correct position that they would have been had the injury or damage not occurred. In the case of ***Mujib and Another v Attorney General, Civil Suit 160/ 2014***, it was held:

“General damages are losses which flow naturally from the defendant’s act. Therefore, general damages are damages which the law implies and presumes to have accrued from the wrong complained of or as the immediate, direct and proximate result, or the necessary result of the wrong complained of.

The essence of damages is compensatory. It is neither to punish the defendant nor confer a windfall on the plaintiff. It is not also meant to punish the claimant and allow the defendant to go without repairing the actual loss caused to the claimant.”

The Applicant submitted that the Respondent’s actions almost brought the Applicant’s business to a standstill and the Applicant suffered immense reputational damage and lost the goodwill amongst creditors.

In light of the above, the Tribunal hereby awards the Applicant general damages of Shs. 100,000,000.

In sum, the application is allowed and the Tribunal makes the following orders:

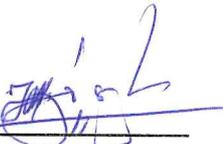
- (i) The Respondent should refund the Applicant Shs. 8,426,803,106 in respect of VAT that was unlawfully collected.
- (ii) The Respondent’s should pay the Applicant interest at rate of 2% per month compounded from 19 September 2023 when the Applicant first applied for a refund of the monies until the date of payment. This is subject to the interest capping provisions of section 36 (5) of the VAT Act.
- (iii) The assessment of Shs. 79,231,353 is hereby set aside.

- (iv) Damages of Shs. 100 million are hereby awarded to the Applicant.
- (v) Costs are hereby awarded to the Applicant.

Dated at Kampala this 26th day of September 2025.



CRYSTAL KABAJWARA
CHAIPERSON



WILLY NANGOSYAH
MEMBER



GRACE SAFI
MEMBER