TAX APPEALS TRIBUNAL
Justice in Taxation

THE REPUBLIC OF UGANDA

IN THE TAX APPEALS TRIBUNAL AT KAMPALA

APPLICATION NO. 182 OF 2024

UNION LOGISTICS UGANDA LIMITED.....APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY.....RESPONDENT

BEFORE: HON. CRYSTAL KABAJWARA, HON. WILLY NANGOSYAH, HON. ROSEMARY NAJJEMBA

RULING

I. Introduction

1. This ruling concerns an application challenging the legality and correctness of the Value Added Tax assessment, covering the period from July 2018 to June 2023. The Respondent imposed VAT at a standard rate on amounts classified as Internal Container Depot (ICD) charges and on transit, agency, and clearing fees relating to international transport.

II. Background Facts

2. The Respondent conducted a declaration audit on the Applicant, a clearing and forwarding trading company, for the period from July 2018 to June 2023. On 29 May 2024, the Respondent issued an assessment totalling Shs. 292,682,403 (Undeclared services Shs.28,699,324, Under-declaration of services Shs.1,242,626, and undeclared VAT from services Shs.266,740,452).

3. The Applicant objected to the assessment in a letter dated 6 June 2024, resulting in a hearing on 19 June 2024 by the Customs Post Clearance Audit Objections Committee of URA. After the hearing, a revised assessment was issued on 8 July 2024, demanding Shs. 266,740,452 in respect of undeclared VAT on services.

4. Both parties agreed with the Respondents' computation for the service value of Shs.1,481,891,403 as services on which the Applicant did not charge VAT. Out of the service value, Shs. 26,443,788 is related to ICD charges, while the balance of Shs. 1,455,447,615 is related to transit clearance services.

5. The Applicant disagreed with the Respondents' charging VAT at the standard rate of 18% on transit clearing services and ICD charges on the following grounds:

   a) Transit clearing services are incidental and auxiliary to international transport, whose VAT rate is 0% as it relates to cargo moving from outside Uganda to destinations outside Uganda but passing through Uganda. Therefore, the applicable VAT rate for this clearing service ought to be 0%.

   b) ICD charges: These were invoices billed for the recovery of money paid on behalf of the Applicant's client while picking up clients' cargo from ICDs, as evidenced by sampled transaction documents attached.

III. Issues for determination

6. The following issues are before the Tribunal for determination:

   a) Whether paying money on behalf of another party is a VATable service?

   b) Whether clearing services on cross-border bound shipment/cargo are incidental services to international transportation?

   c) What remedies are available to the Applicant?

IV. Representation and evidence

7. The Applicant was represented by Mr. Kasule Frank and Mr. Hitesh Shah, while the Respondent was represented by Ms. Eseza Victoria Ssendege and Ms. Christine Mpumwire, both from the Legal and Board Affairs Department of the Respondent.

8. The Applicant presented the testimony of **Mr. Hitesh Shah**, its **Managing Director**. The witness stated that, when the Applicant was still in operation, it was an international freight-forwarding, customs-clearing, and supply chain logistics company.

9. The witness stated that the company transported cargo by road, sea, and air, mainly along the Mombasa–Kampala route and in transit to Rwanda, DR Congo, and South Sudan. The witness further stated that the Applicant handled air cargo through Entebbe International Airport. Local transportation within Uganda was minimal, accounting for less than 5% of the company's transport business.

10. The witness testified that the Applicant was registered with the Respondent as a General Customs Agent and an Approved Economic Operator (AEO) to facilitate international cargo clearance. According to the witness, the company consistently aimed to comply with tax obligations.

11. The witness further stated that the Respondent conducted a customs declaration audit for the period July 2018 to June 2023, which involved several engagements between the Applicant and the Respondent's officials to reconcile and clarify customs declarations.

12. The Respondent presented the testimony of **Ms. Nsaba Stellamaris**, an Officer in its Customs Department. She stated that the Respondent established that the Applicant had charged VAT on import and local transport services but did not charge VAT on clearing services relating to transit and export cargo.

13. According to the witness, following the reconciliation and extraction of data from the E-Tax system, the Respondent determined that clearing and agency services related to transit and export were standard-rated and subject to VAT, except for air transport and certain verification fees.

14. The witness testified that the Respondent rightly assessed VAT of Shs. 266,740,452 on these services, as well as establishing undeclared services of Shs. 28,699,324 and under-declared services of Shs. 1,242,625 based on third-party information.

V. Submissions of the Applicant

15. The Applicant submitted that they were not liable for the tax assessed. They argue that local transportation within Uganda was undertaken only on rare occasions, mainly for final delivery from Internal Container Depots (ICDs) to clients or for export cargo from pick-up zones to mobilisation points, and that such local transport accounted for less than 5% of its total transportation business.

16. The Applicant stated that, in order to facilitate international freight operations, it registered with the Respondent as a General Customs Agent to enable it to clear international cargo at border points, airports, and final clearance points in Kampala. The Applicant reported that its average annual turnover for the period 1 November 2018 to 31 October 2023 was approximately Shs. 24.7 billion, of which about 90% was derived from international freight services, while transit, agency, and clearing fees constituted approximately 5%, with other income making up the remaining 5%.

17. Regarding ICD charges, the Applicant submitted that these amounts represented disbursements made on behalf of clients to independent ICDs. It explained that, in cases where clients had not yet paid import taxes, cargo destined for Kampala was temporarily stored in bonded ICD warehouses until the taxes were settled.

18. The Applicant also submitted that in order to enable timely delivery and fulfilment of its international transport obligations, the Applicant would pay ICD charges such as storage and administration fees on behalf of clients and later recover the exact amounts from those clients. The Applicant emphasised that these payments were not consideration for services supplied by it, but were merely reimbursements of money paid on behalf of another party.

19. The Applicant relied on Section 11(1) of the Value Added Tax Act, which provides that a supply of services excludes a supply of money. It argued that the only benefit conferred on the client was the payment of money to an ICD and that no service was supplied by the Applicant in respect of warehousing. The warehousing services, it stated, were independently supplied by the ICDs themselves. Consequently, VAT ought not to have arisen on such disbursements.

20. Regarding transit, agency, and clearing fees, the Applicant submitted that clearance of cargo with the Respondent was mandatory for all inbound, outbound, and transit cargo and was inseparable from international transportation. It explained that clients engaged the Applicant primarily to transport cargo across borders, and that clearance services were not an end in themselves but a necessary means to that end. The Applicant contended that while clearing services might ordinarily be VATable, in the context of international freight, they were incidental and ancillary to international transport.

21. The Applicant relied on S.18(2) of the VAT Act, which provides that a supply is made as part of a person's business activity if it is made as part of or incidental to an independent economic activity. It argued that incidental services take the VAT character of the principal supply. Since international transportation is a zero-rated supply under the Third Schedule to the VAT Act, the related agency, clearing, and transit services should likewise be zero-rated.

22. In support of its position, the Applicant cited ***Diamond Shipping Company v Uganda Revenue Authority TAT 21 of 2008***, where the Tribunal ruled that intermediary services facilitating international transport were incidental and auxiliary to international transportation and therefore qualified for zero-rating. The Applicant also relied on ***UTODA (Entebbe Branch) Ltd v Uganda Revenue Authority, TAT 8 of 2009***, in which the Tribunal observed that services facilitating transport form part of the transport service itself.

23. The Applicant concluded that imposing VAT at 18% on clearing, agency, and transit services amounted to an artificial splitting of the international transport service contracted for by clients, contrary to established VAT principles. It therefore prayed that the Tribunal vacate the assessment of Shs.266,740,452, order a refund of Shs.80,022,136 being the 30% tax paid to lodge the appeal, and award the Applicant costs of the appeal.

VI. Submissions of the Respondent

24. The Respondent submitted that the central question before the Tribunal was whether the clearing services and related services provided by the Applicant, including export handling and border clearance, were incidental to international transportation. It was the Respondent's position that agency fees earned from clearing services relating to transit and exportation of cargo were independent services and therefore attracted VAT at the standard rate of 18%.

25. The Respondent submitted that it is a settled principle of law that information arising from failed mediation proceedings is inadmissible in subsequent court proceedings due to the doctrines of confidentiality and "without prejudice." It was argued that the Applicant improperly introduced minutes of unsuccessful mediation meetings and correspondence clearly marked "without prejudice" into the present proceedings. The Respondent prayed that the Tribunal disregard such evidence.

26. On the merits of the case, the Respondent submitted that the Applicant is liable to pay the assessed amount. The Respondent argued that the Applicant charged VAT on clearing services for the importation of cargo and on local transport services, but did not charge VAT on clearing services for the transit and exportation of cargo.

27. The Respondent submitted that the burden of proof lay squarely on the Applicant to demonstrate that the assessment was incorrect or unlawful. The Respondent cited S. 28 of the Tax Procedures Code Act, Section 19 of the Tax Appeals Tribunal Act, and Section 101 of the Evidence Act, all of which affirm that the party alleging bears the burden of proof.

28. The Respondent relied on section 4(a) of the Value Added Tax Act, which imposes VAT on every taxable supply made by a taxable person, and section 18(1) of the VAT Act, which defines a taxable supply as a supply of goods or services made in Uganda for consideration in the course of business.

29. Regarding customs clearing services, the Respondent submitted that these constituted a separate administrative service involving preparation and submission of customs documentation, carried out by a licensed customs agent acting as an intermediary between URA and importers or exporters. The Respondent relied on section 145(1) of the East African Community Customs Management Act (EACCMA), which empowers the Commissioner to license agents to transact customs business.

30. The Respondent argued that the Applicant, being licensed as a clearing agent, was legally capable of providing customs clearance services independently of logistics or transport services. It was therefore submitted that clearing services could stand alone and were an aim in themselves, rather than being incidental to transportation.

31. In support of this position, the Respondent relied on ***UTODA Entebbe Branch Ltd v URA, TAT Application No. 8 of 2009***, where the Tribunal applied the test of whether a service could be supplied independently of an exempt supply. Applying this test, the Respondent submitted that customs clearance services could be provided independently of transport services.

32. The Respondent further relied on ***Card Protection Plan Ltd v Commissioners of Customs and Excise [2001] UKHL***, where it was held that a service is ancillary only if it does not constitute an aim in itself but merely facilitates enjoyment of the principal service. It was submitted that customs clearance services were not merely facilitative but were independent supplies.

33. The Respondent distinguished the Applicant's reliance on ***Diamond Shipping Company Ltd v Uganda Revenue Authority, TAT Application No. 21 of 2008***, submitting that in that case, the Tribunal expressly noted that clearing and forwarding services were treated as standard-rated and were not in dispute. The Respondent emphasised that even though Diamond Shipping was an international transport provider, it nonetheless charged VAT on clearing services, supporting the Respondent's position in the present case.

34. With regard to ICD charges, the Respondent submitted that the assessment was based on information declared by the Applicant itself through EFRIS sales returns. The Respondent relied on sample e-invoices marked REX6, which showed that the Applicant declared ICD charges as sales made by it and categorised them as zero-rated supplies.

35. The Respondent questioned the Applicant's claim that ICD charges were mere disbursements paid on behalf of clients, arguing that if that were the case, the Applicant would not have issued EFRIS invoices indicating itself as the seller of the services. The Respondent therefore maintained that VAT was properly assessed on those charges.

36. The Respondent submitted that the Applicant was not entitled to any of the remedies sought, as the assessment was lawful and justified. It prayed that the Tribunal uphold the assessment and direct the Applicant to pay the assessed tax.

37. The Respondent therefore prayed that the Tribunal dismiss the Application with costs and find that the clearing services relating to transit and exportation of cargo were independent of international transportation.

VII. Submissions of the Applicant in rejoinder

38. In rejoinder, the Applicant maintained that it is principally engaged in international freight forwarding and customs clearing, with local transport forming only a minimal portion of its business. It reiterated that the assessment relates solely to ICD disbursements and transit/agency/clearing fees, and reaffirmed that ICD charges were merely monies paid on behalf of clients and recoverable without mark-up, falling outside the definition of a supply under section 11(1) of the VAT Act.

39. The Applicant restated that transit, agency, and clearing services were performed exclusively to facilitate international carriage of goods and could not stand as independent supplies, rendering them incidental to zero-rated international transport in accordance with section 18(2) of the VAT Act and the principles in Diamond Shipping (supra), UTODA Entebbe Branch (supra), and Card Protection Plan (supra).

40. The Applicant defended the affidavit of its Managing Director as competent in a VAT dispute and challenged the Respondent's witness statement for lack of notarisation. It further objected to the Respondent's late submissions for non-compliance with Tribunal timelines.

41. The Applicant concluded that the only issue in contention is the applicable VAT rate, not the revenue quantum, and prayed that the assessment be vacated, the 30% deposit refunded with interest, and costs awarded in its favour.

VIII. The Determination

42. Having heard the evidence and read the submissions of the parties, the following is the ruling of the Tribunal:

43. Section 4(a) of the Value Added Tax Act imposes VAT on every taxable supply made in Uganda by a taxable person and provides:

> *"A tax, to be known as a value added tax, shall be charged in accordance with this 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 any imported services by any person..."

44. In resolving the first limb of the dispute concerning ICD charges, the Tribunal is guided by the principle that VAT liability is determined by the legal and economic substance of the transaction, rather than the labels adopted by a taxpayer. While section 11(1) of the VAT Act excludes "money" from the definition of a supply, it does not exempt from tax a situation in which amounts are recovered as consideration for a service supplied by the person invoicing and declaring the transaction.

45. The evidence before the Tribunal shows that the Applicant issued EFRIS tax invoices in its own name in respect of ICD charges and declared those amounts as part of its taxable turnover. Notably, the invoices were raised by the Applicant to its clients, not by the ICD operators, and no contemporaneous agency agreements or disclosed principal documentation was produced to demonstrate that the ICD operators supplied the services directly to the Applicant's clients while the Applicant acted merely as a paying agent.

46. This mode of invoicing and declaration is legally significant. In ***Total Energies Marketing Uganda Limited v Uganda Revenue Authority, TAT Application No. 104 of 2023***, the Tribunal ruled that handling and facilitative charges connected to importation or transportation, where separately invoiced, contractually identifiable, and declared by the taxpayer as its own supplies, constitute independent taxable services, notwithstanding operational linkage to a broader transaction. Attempts to subsequently recast such charges as disbursements were rejected, and the assessments were upheld.

47. Applying that persuasive reasoning to the present matter, the Tribunal finds that the Applicant's ICD charges were not pure disbursements within the meaning of VAT law. The Applicant billed, recovered, and declared those charges as its own supplies.

Under VAT, a disbursement must reflect a situation in which the service is supplied by a third party directly to the client, with the taxpayer acting solely as a disclosed agent. That threshold has not been met on the evidence before this Tribunal.

48. Section 18(1) of the VAT Act defines a taxable supply as a supply of goods or services made in Uganda for consideration in the course of business, while section 18(2) provides that incidental services may take the VAT character of a principal supply only where they do not constitute aims in themselves. The ICD charges in issue were separately priced, separately invoiced, and economically identifiable, and therefore cannot be absorbed into another supply for VAT purposes.

49. The Tribunal is mindful of the doctrine of substance over form as articulated in ***UETCL v URA (HCCS No. 423 of 2010)***. However, substance must be derived from objective commercial reality. In the present case, the commercial reality disclosed by invoices, EFRIS declarations, and billing practices is that the Applicant held itself out as the supplier of ICD-related services. Substance over form, therefore, operates against, not in favour of, the Applicant's disbursement argument.

Transit, agency and clearing fees

50. The Tribunal acknowledges that international transport of goods is zero-rated under the Third Schedule to the VAT Act. However, whether ancillary treatment applies depends on the single economic supply test, namely, whether the services were merely means of better enjoying the principal supply, or constituted independent and commercially distinct services.

51. While clearing services may in certain factual contexts be ancillary to transport, the evidence in this matter shows that the Applicant is a licensed customs clearing agent under S.145 of the EACCMA, legally empowered to supply clearing services independently of transportation. The Applicant charged and recovered clearing, agency, and transit fees as separate consideration, and such services are capable of being, and in practice are, procured as standalone supplies.

52. The Tribunal derives further guidance from ***Total Energies (supra)***, where reliance on ***Diamond Shipping Company Ltd v Uganda Revenue Authority Tax Appeals Tribunal, Application No. 21 of 2008 and UTODA (Entebbe Branch) Ltd v Uganda Revenue Authority, TAT Application No. 8 of 2009***, was carefully distinguished. The Tribunal in Total Energies emphasised that the mere fact that services facilitate importation or transportation does not render them incidental for VAT purposes where they are separately contracted, separately priced, and commercially distinguishable.

53. While authorities such as ***Diamond Shipping and UTODA (supra)***, caution against artificial splitting of a single economic supply, they equally caution against artificial bundling of services that are, in law and fact, independent. On the evidence before this Tribunal, the transit, agency and clearing services were not inseparable from international transport, but rather constituted taxable services rendered by the Applicant in its own professional capacity.

54. Accordingly, the Tribunal finds that both the ICD charges and the transit, agency and clearing fees constituted independent taxable supplies made by the Applicant in Uganda in the course of its business. They did not qualify as disbursements, nor did they assume the VAT character of international transport.

55. Pursuant to S.28 of the Tax Procedures Code Act, the burden lay on the Applicant to demonstrate that the assessment was excessive or erroneous. That burden has not been discharged.

Conclusion

56. Having assessed the evidence and the law, the Tribunal concludes that the assessment issued by the Respondent was lawful, proper, and correctly raised. The ICD charges and the transit, agency and clearing fees constituted independent standard-rated supplies subject to VAT at 18%.

57. **IT IS HEREBY ORDERED THAT:**

    (i) The assessment of Shs.266,740,452 is upheld.

(ii) The Application is dismissed

(iii) Costs are awarded to the Respondent.

Dated at Kampala this 8th day of May 2026.

HON. CRYSTAL KABAJWARA

CHAIRPERSON

HON. WILLY NANGOSYAH

MEMBER

HON. ROSEMARY NAJJEMBA

MEMBER