

THE REPUBLIC OF UGANDA
IN THE TAX APPEALS TRIBUNAL AT KAMPALA

TAT APPLICATION NO. 137 OF 2022

VEERAM HEALTHCARE (U) LIMITED.....APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY.....RESPONDENT

BEFORE: MR. SIRAJ ALI, MS. CHRISTINE KATWE, MS. KABAKUMBA MASIKO

RULING

Introduction

This ruling is in respect of a preliminary objection raised by the Respondent to the effect that the instant application is not properly before the Tribunal.

1. Background Facts

The Applicant is a Ugandan company engaged in the importation and distribution of pharmaceutical products. The Respondent conducted an audit of the Applicant's tax affairs for the period December 2013 to April 2016, assessing a PAYE liability of Shs. 337,293,887.

On 25th January 2017, the Respondent issued a third-party agency notice to recover the assessed amount from the Applicant's bankers. On March 2017, the Applicant's auditors engaged in reconciliation meetings with the Respondent's officers to resolve the dispute. During these meetings, the Applicant asserted that it had only four employees, which was confirmed by its NSSF remittances, and could not have accumulated such a high PAYE liability. Errors in the Applicant's objection process were identified, and it was agreed that the Respondent would rectify these errors through objection decision notices.

On 27th June 2017, after reconciliation, the parties agreed that the actual PAYE liability was Shs. 36,556,020, which was formalized in a Memorandum of Understanding (MoU) setting out payment installments. The Applicant complied with the MoU, making payments in accordance with the agreed schedule.

On 21st July 2017, the Respondent suspended the third-party agency notice after noting the Applicant's compliance with the MoU. On 28th March 2018, the Respondent, through the Assistant Commissioner - Compliance Management, acknowledged the reconciled payments totaling Shs. 35,463,350 and requested a top-up of Shs. 2,725,810 to finalize the PAYE liability of Shs. 38,189,160 (comprising principal tax of Shs. 28,116,000 and interest of Shs. 10,073,160). The Applicant paid the outstanding balance of Shs. 2,725,810 as required.

However, upon reviewing its PAYE ledger, the Applicant discovered that the payments made under the MoU had not been reflected in the e-tax ledger. This omission caused the same liability to continue attracting interest and penalties. Due to the Respondent's failure to update the e-tax ledger, the errors created a false liability amounting to Shs. 210,964,838, despite the reconciliation agreement.

On 25th March 2022, the Respondent issued another agency notice of Shs. 205,013,844, blocking the Applicant's bank accounts, thereby disrupting business operations, including payments to suppliers and employees. The Applicant contacted URA officials, who indicated that the agency notice would be lifted if the Applicant paid 30% of the claim and a reconciliation would follow. As a result of the Agency Notice, the Applicant failed to file the instant application.

During the hearing of the matter, the Respondent raised a preliminary objection that the instant application was not properly before the Tribunal.

2. Issues for determination

The main issue for determination is whether the instant application is properly before the Tribunal.

3. Representation

The Applicant was represented by Mr. Sydney Ojwe while Mr. Sam Kwerit appeared for the Respondent.

4. Respondent's Submissions on the preliminary objection

The Respondent submitted that the application is improperly before the Tribunal because the Applicant did not obtain an Objection Decision before filing the

application. The Respondent relied on Section 24 of the Tax Procedures Code Act (TPCA), which requires any person dissatisfied with a taxation decision—such as the Third-Party Agency Notice—to first lodge an objection with the Commissioner within 45 days.

The Respondent contended that the Applicant never objected to the Agency Notice issued on 25th March 2022 and instead proceeded directly to the Tribunal. Under Section 25 of the TPCA, the Tribunal has jurisdiction to review only Objection Decisions, not initial taxation decisions. Therefore, since no objection decision was issued in this case, the Tribunal lacks the jurisdiction to entertain the matter.

Counsel for the Respondent cited the case of **Mobitex Engineering Co. Works Ltd v URA (TAT Application No. 91 of 2023)**, where the Tribunal held that without an Objection Decision, the Tribunal has no jurisdiction to hear the case.

The Respondent's Counsel submitted that since the Applicant failed to follow the proper procedure by first lodging an objection with the Commissioner, the application is incompetent. The Respondent prayed for the dismissal of the application with costs.

5. Applicant's submissions in response to the preliminary objection

The Applicant submitted that the Respondent's failure to implement its own objection decision, refusal to enforce the Memorandum of Understanding (MOU) dated 27th June 2017, and issuance of an agency notice amounted to a taxation decision that can be challenged before the Tribunal.

The Applicant submitted that a taxation decision under Section 1(1)(K) of the Tax Appeals Tribunal Act includes "any assessment, determination, decision or notice". The Applicant relied on the decision of the Tribunal in **Century Bottling Company Ltd v URA (TAT Application No. 33 of 2010)** wherein it defined a taxation decision as "either a tax assessment or a decision on any matter left to the discretion, judgment, opinion, approval, satisfaction or determination of the Commissioner other than a decision made in relation to a tax assessment."

The Applicant submitted that the Respondent's failure to update the tax ledger, refusal to implement the MOU, and issuance of the agency notice on 25th March 2022

constituted taxation decisions. The Applicant relied on **Cable Corporation (U) Ltd v URA (Civil Appeal No. 1 of 2011)**, where the court distinguished between an objection decision and a taxation decision, stating that:

"The word 'decision' in the definition of taxation decision should be restricted as objection decision is separately and specifically defined so that it does not refer to an objection decision."

The Applicant further cited **Alpha Woolen (U) Ltd v URA (Application No. 40 of 2023)**, where the Tribunal held that:

"It is apparent that the Respondent's rejection of the Applicant's application for a TCC constitutes a taxation decision. This is because whilst not amounting to an assessment, it constitutes a determination or a decision within the meaning of Section 1 of the TAT Act. In addition, it is a decision that is left to the discretion, judgment, opinion, approval, satisfaction or determination of the Commissioner within the meaning of Section 1 of the Tax Procedures Code Act."

The Applicant argued that, similarly, failure by the Respondent to correct its tax ledger and its issuance of an agency notice amounted to a taxation decision, making this application properly before the Tribunal.

The Applicant argued that URA's failure to implement its own objection decision and MOU, and the issuance of an agency notice, were unlawful taxation decisions that the Tribunal has jurisdiction to review.

In confirmation of its position, the Applicant further referred to **Century Bottling Company Ltd v URA (TAT Application No. 33 of 2010)**, where the Tribunal ruled that:

"The Respondent's decision amounted to a decision which was made irrationally and in an unreasonable manner and that the Tribunal had the jurisdiction to review this decision."

In conclusion therefore, the Applicant maintained that the Respondent's refusal to update the tax ledger, failure to implement the MOU, and issuance of the agency notice were taxation decisions, making the application properly before the Tribunal. The Applicant prayed that the Tribunal dismisses the Respondent's preliminary objection and proceed with determining the merits of the case.

6. Respondent's Submissions in rejoinder

In rejoinder, the Respondent argued that the disputed tax liability arose from normal flow taxes and the Applicant's own tax returns. Counsel stated that during a reconciliation exercise, both parties agreed that all issues related to the Memorandum of Understanding (MOU) had been fully resolved.

The Respondent argued that while the Tax Appeals Tribunal is the forum of first instance in tax disputes, an aggrieved taxpayer must first file an objection within 45 days as required under section 24 of the TPCA. The purpose of this requirement is to ensure proper dispute resolution and prevent unnecessary congestion of the Tribunal. To support this argument, Counsel for the Respondent cited **Lotus Technologies v URA (TAT Application No. 250 of 2022)**, **Kawuki Mathias v URA (Misc. Cause No. 14 of 2015)**, and **Gakou Brothers Enterprises Ltd v URA (Application No. 29 of 2020)**, which held that a prescribed statutory procedure must be exhausted before approaching the Tribunal.

The Respondent concluded by stating that since the Applicant failed to lodge an objection with the Commissioner, the Tribunal lacked jurisdiction to hear the matter and prayed for the dismissal of the application with costs.

7. Determination Of Issues

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

The Tribunal has reviewed the arguments of the Respondent, which contends that the Applicant did not obtain an Objection Decision before filing the application, and therefore, the matter is improperly before the Tribunal. However, the Tribunal finds that this argument is misconceived due to the following reasons;

The terms "taxation decision" and "tax decision" which mean the same thing, have been defined in substantially the same terms, that is, under both the Tax Appeals Tribunal Act (TAT Act) and the Tax Procedures Code Act (TPCA). Under section 1 (k) of the TAT Act, "taxation decision" means any assessment, determination, decision or notice. Under section 1 of the TPCA, "tax decision" means either a tax assessment or a decision on any matter left to the discretion of the, judgment, direction, opinion,

approval, satisfaction or determination of the Commissioner, other than a decision made in relation to a tax assessment.

Applying the literal rule of statutory interpretation to section 1 (k) and section 1 of the TAT Act and the TPCA respectively, it is apparent, that a decision by the Commissioner General is a taxation decision. Under both sections 1(k) and section 1 above, a taxation decision includes a decision.

In the case of **Cable Corporation (U) Ltd. v Uganda Revenue Authority (Civil Appeal No. 1 of 2011) [2011] UGCommC 88**, the Court made a distinction between an "Objection Decision" and "a Taxation Decision." An objection decision is a decision in respect to a taxation objection made to the Commissioner against a notice of assessment while a "taxation decision" means any assessment, determination, decision or notice. The word *decision* in the definition of taxation decision should be restricted as *objection* decision is separately and specifically defined so that it does not refer to an *objection decision*. The word taxation decision is however loosely used under section 16 of the Tax appeals tribunal Act to encompass both kinds of decisions defined above.

In support of its reasons for the preliminary objection, the Respondent cited the case of **Mobitex Engineering Co. Works Ltd v URA (TAT Application No. 91 of 2023)**, where the Tribunal held that without an Objection Decision, the Tribunal has no jurisdiction to hear the case.

In the above case, the Respondent had issued three assessments to the Applicant but the Applicant only objected to one and appealed to the Tribunal on the remaining assessments. The Tribunal found that in absence of an objection decision, the Applicant had no locus to appear before the Tribunal nor does the Tribunal have jurisdiction to entertain any such matter. The Tribunal notes that the above case is distinguishable from the instant case because, unlike in **Mobitex Engineering Co. Works Ltd v URA** (supra), tax liability in the instant case arises from erroneous mistakes by the Respondent where it failed to correct the Applicant's tax ledgers thus, the agency notice.

The making of a decision involves the exercise of discretion. The discretion accorded to the Commissioner General, to issue an agency notice is provided for under section 29 of the TPCA.

The Commissioner General, in exercising this discretion, arrived at a decision to issue an agency notice onto the Applicant and going by the above defined legal provisions, this amounted to a taxation decision over which the Tribunal has jurisdiction. The Tribunal referred to Section 1(1)(K) of the Tax Appeals Tribunal Act, which defines a taxation decision to include any assessment, determination, decision, or notice issued by the tax authority.

Section 26 of the Tax Procedures Code Act (TPCA) provides that a taxpayer may object to a taxation decision. However, not all taxation disputes require an objection decision before being brought before this Tribunal.

In a Kenyan case of **Republic v Kenya Revenue Authority; Ex parte: Krystalline Salt Limited; Judicial Review Application No. 359 of 2018**, the Kenyan High Court found that, "an Agency Notice issued under Section 42 of the Act is an appealable decision capable of being challenged in the Tax Appeals Tribunal pursuant to section 52 of the Act. The effect of this decision is that once a decision is made in exercise of discretionary authority, it amounts to a taxation decision.

For the above reasons the Tribunal finds that the agency notice issued on 25th March 2022 constitutes a taxation decision. This preliminary objection is accordingly dismissed with costs. The Tribunal will proceed to hear the main Application on its merits.

Dated at Kampala this 1st day of April 2025.



SIRAJ ALI
CHAIRMAN



CHRISTINE KATWE
MEMBER



KABAKUMBA MASIKO
MEMBER

