

THE REPUBLIC OF UGANDA  
IN THE TAX APPEALS TRIBUNAL OF UGANDA AT KAMPALA  
APPLICATION 148 of 2020

VEGOL LIMITED .....APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY .....RESPONDENT

BEFORE: DR. ASA MUGENYI, MS. CHRISTINE KATWE, MR. SIRAJ ALI

RULING

This ruling is in respect of an application challenging the respondent's decision to disallow the applicant's claim of input Value Added Tax (VAT) credit.

The applicant is engaged in the business of manufacturing, buying, processing and selling edible oil and its by-products in Uganda. It applied for a VAT refund of Shs. 804,314,114 for March 2016 to June 2018. The respondent carried out an audit on the applicant and disallowed input VAT of Shs. 426,292,325. The respondent issued the applicant with an income tax assessment. On 6<sup>th</sup> November 2019, the applicant objected to the assessment and the disallowance of input VAT. On 18<sup>th</sup> September 2020, the respondent made an objection decision partially allowing the objection.

On 13<sup>th</sup> November 2020, the parties entered into a partial consent order where the applicant was allowed a refund of Shs. 611,639,033 from March 2016 to June 2018. An issue of the disallowed input VAT was referred to the tribunal for determination.

The following issues were agreed.

1. Whether the decision of the respondent to disallow the applicant's VAT input tax credit was lawful?
2. What remedies are available to the parties?

The applicant was represented by Mr. Tayebwa Elisha and Ms. Winnie Begumisa while the respondent by Mr. Ronald Baluku.

The applicant's witness, Mr. Sagar Malde, its general manager testified that the respondent audited the applicant for VAT for the period March 2016 to June 2018. It issued the applicant with an amended additional assessment. He testified that additional output tax was computed on the basis of undeclared sales arising from oil purportedly sold, and unaccounted for jerry cans. He stated that valid tax credit claims were disallowed on the grounds that the applicant's suppliers did not account for the corresponding output tax, variances resulting from foreign exchange rates used, wrong invoice numbers, wrong Tax Identification Numbers (TIN) and invoices seen but not allowed by the respondent.

The respondent's witness, Ms. Agnes Busingye, a tax officer in its Domestic taxes department testified that the applicant applied for a VAT refund of Shs. 804,314,114 for the period March 2016 to June 2018. Upon the respondent's refusal to grant the entire sum the applicant filed this application. She testified that the parties partially settled the dispute save for a VAT input credit of Shs. 83,003,668. She testified further that the applicant was entitled was not entitled to VAT input credit of Shs. 30,280,112 since no proof of payments had been availed. She testified further that the applicant was also not entitled to Shs. 13,393,869 for the reason that the applicant had over claimed input tax on invoice numbers 34115 and 34112.

The applicant submitted that the respondent disallowed its claim of input tax credit of Shs. 30,280,112 on the ground that it did not furnish proof of payment. It contended that the decision of the respondent was unlawful and unjustified as it had provided the proof of payment. The applicant cited *Warid Telecom Uganda Limited v Uganda Revenue Authority* Civil Appeal 24 of 2011, where it was stated that all taxable persons making taxable supplies are entitled to claim input VAT on imports and domestic purchases of goods and services on taxable supplies for use in business. It also relied on the definition of 'input tax' stated in "Domestic and International Taxation in Uganda" by Joseph O. Okuja as "the VAT incurred by a VAT registered person on account of supplies used or intended for use in the person's business."

The applicant submitted that S. 28(11) of the VAT Act requires a claim for input tax credit to be supported by an original tax invoice for the taxable supply or a bill of entry or another document prescribed under the EACCMA. Under S. 28(12), input tax credit

may be allowed where the Commissioner General is satisfied that the taxable person took all reasonable steps to acquire a tax invoice. The applicant submitted that it provided the respondent with original copies of the tax invoices and receipts as proof of payment of input tax for the period March 2016 to June, 2018. It submitted that where original invoices could not be found it submitted supplier remittances and bank statements as proof that the invoices issued by the suppliers were paid. The applicant submitted that tax invoices, VAT inclusive receipts, supplier remittances and bank statements were submitted to the respondent. The applicant cited *Enviroserv (U) Ltd v Uganda Revenue Authority* Application 24 of 2017 in support of the documents. The applicant contended that in *Target Well Control (U) Ltd v Uganda Revenue Authority* it was stated that where a taxable person made a claim for VAT and provides proof of payment it is the respondent's duty to trace the party who received the VAT as the tax payer had no access to the agent's returns and books of accounts.

The applicant submitted that the tax invoice of 29<sup>th</sup> July 2016 and a supplier remittance of 17<sup>th</sup> October 2016 were proof that input tax in respect of Total Uganda Ltd was paid. It further that tax invoice of 25<sup>th</sup> July 2016 and the corresponding payment of Shs. 1,963,500 was proof that input tax had been paid in respect of General Mouldings Uganda Ltd. In September 2016, it submitted a supplier remittance of 22<sup>nd</sup> September 2016 in respect of Waheguru Engineering Co. Ltd and was paid. It submitted further that Tax Invoice No. AU00616 of 27<sup>th</sup> January 2017 was proof of payment of input tax in respect of Avery East Africa. The applicant submitted further that in respect of Universal Galaxy Insurance Brokers Ltd it submitted a debit note to invoice No. 033111 of 21<sup>st</sup> April 2017 and debit note of 19<sup>th</sup> April, 2021 in respect of invoice No. 033031. Additionally, the applicant submitted that it provided a supplier remittance and a bank statement showing that payment on those particular invoices had been made.

In reply, the respondent submitted that the applicant had failed to discharge the burden of proof that input tax credit of Shs. 30,280,112 was erroneously disallowed. It submitted that S. 1(1) of the VAT Act defines input tax as the tax paid or payable in respect of a taxable supply to or an import of goods or services by a taxable person. It submitted further that 'input tax' in *Margaret Rwaheru Akiiki & 13945 others v URA* Civil Suit 117 of 2013, was defined as 'a cost to the importer or taxable person that generates a credit in favour of the taxable person'. Citing S. 28(11) of the VAT Act, it

submitted that for a taxable person to be granted an input tax credit, it has to provide documentation as evidence of payment of input tax. S. 28(13) requires a taxable person to submit an original tax invoice for the taxable supply or a bill of entry as evidence of input tax paid. The respondent submitted that S. 28(11) only provides for original invoices or bills of entry if the matter relates to the EACCMA, as evidence of a claim for input tax credits. S. 28(12) provides for exceptions to the requirement of original invoices. The respondent submitted that the applicant did not fall within this exception.

Citing *Enviroserv (U) Limited v URA* Application 24 of 2017 the respondent submitted that for the applicant to be entitled to the input tax credit under S. 28, the applicant had to prove that it was a taxable person, that taxable supplies had been made to it during the tax period and that the taxable supplies were for use in the applicant's business. It submitted that the applicant had not provided sufficient evidence as proof of payment for transactions including alleged payments to Total Uganda Limited, General Mouldings Uganda Limited, Waheguru Engineering Co. Ltd, Avery East Africa, Universal Galaxy Insurance Brokers Ltd, Afroplast Enterprises Ltd, BDH Laboratory supplies among others. The respondent submitted that a perusal of the exhibits showed that the amounts alleged to have been paid were different from the invoices and further the bank payments provided did not relate to the suppliers in question.

The respondent also cited *Red Concepts Ltd v Uganda Revenue Authority* Application 36 of 2018, where it was held that the standard of proof in all civil cases is on the balance of probabilities and the burden of proof is on the applicant to prove that the transactions were not fictitious. It submitted that the applicant has the burden to prove that the transactions actually occurred and that the VAT was incurred on the said transactions. It submitted further that the applicant has not shown that it took reasonable steps to obtain tax invoices nor have they shown that the failure to acquire the tax invoices was not their fault.

The respondent submitted that the issue relating to the applicant's election ought not to be considered as it was not addressed during the hearing. Without prejudice, respondent submitted that the alleged election was not valid as time was enlarged when it requested for further documentation.

In rejoinder, the applicant submitted that the supplies in dispute were for its business. It submitted that the supplies included: insurance policies, Nitrogen, IS-Uganda connectivity internet access, handling and storage services, hardware supplies and weighbridge services. It submitted further that these goods were necessary for the applicant's business of manufacturing edible oils. It submitted that it fell within the exceptions under S. 28(2) of the VAT Act. The applicant submitted that following the partial consent the issue relating to the validity of the election was excluded.

Having heard the evidence and perused the submissions of the parties, the following is the ruling of the tribunal.

On 13<sup>th</sup> November 2020, the parties entered into a partial consent where it was noted that the applicant applied for a VAT refund of Shs. 804,314,114. The respondent established that the applicant is entitled to a refund of Shs. 611,639,033 for March 2016 to June 2018. It was agreed that undeclared sales of Shs. 1,502,557,215 for the income year ended June 2018 lacked basis and were dropped. The issue of the remaining input VAT of Shs. 192,675,081 as agreed during scheduling was referred to the Tax Appeals Tribunal for determination.

During the course of the hearing the respondent having verified additional documents provided by the applicant, the amount of disallowed input tax credit was reduced to Shs. 30,280,112. The dispute between the parties has been narrowed down to whether the respondent was justified in disallowing the applicant's claim for input tax of Shs. 30,280,112.

'Input tax' has been defined under S. 1(l) of the VAT Act as 'the tax paid or payable in respect of a taxable supply to or an import of goods or services by a taxable person'.

The right to claim for input tax credit is provided for under S. 28(1) of the VAT Act, as:

"Where Section 25 applies for the purposes of calculating the tax payable by a taxable person for a tax period, a credit is allowed to the taxable person for the tax payable in respect of –

(a) All taxable supplies made to that person during the tax period;

(b) All imports of goods made by that person during the tax period,

If the supply or import is for use in the business of the taxable person.”

S. 28(11) states:

“Subject to subsection (13), 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-

- (a) An original tax invoice for the taxable supply: or
- (b) A bill of entry or other document prescribed under the East African Community Customs Management Act, 2004 evidencing the amount of input tax.”

An exception to S. 28(11) is provided for under S. 28(12) in the following terms:

“Where a taxable person does not have a tax invoice evidencing the input tax paid, the Commissioner General may allow an input tax credit in the tax period in which the credit arises where the Commissioner General is satisfied that-

- (a) The taxable person took all reasonable steps to acquire a tax invoice;
- (b) The failure to acquire a tax invoice was not the fault of the taxable person; and
- (c) The amount of input tax claimed by the taxable person is correct.”

In *Enviroserv (U) Ltd v URA* Application No. 24 of 2017, the tribunal held that for an applicant to be entitled to input tax credit under S. 25 of the VAT Act, the following had to be proved. Firstly, that the applicant is a taxable person. Secondly, that taxable supplies have been made to the applicant during the tax period and thirdly that the taxable supplies were for use in the business of the applicant. The Tribunal stated that

“Therefore 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 tax payer 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”.

It is not in dispute that the applicant is a taxable person. It is also not in dispute that the taxable supplies were for use in the business of the applicant. What is in dispute was on the documentation presented as invoices and payment. In order to determine whether payments of VAT were made by the applicant in respect of the supplies in question we will proceed to peruse the invoices and proofs of payment as submitted by the applicant in the amended matrix. Our comment on the disputed sum of Shs. 30,280,111.87 is stated in the table below.

Supplier	Invoice No.	Invoice date	Invoice Amount	Evidence adduced and checked	Comments	Verified Input VAT
Total Uganda	4035360354	29.7.16	39,798	Tax invoice, Supplier remittance	Invoice No. and amounts differ in the remittance and invoice. No receipt or proof of payment	-
General Mouldings Uganda Ltd	2392	25.7.22	299,516	Tx invoice, Bank statement of Bank of Africa	It is not easy to discern payment on bank statement. No invoice No. on invoice.	-
Waheguru Engineering Co. Ltd.	5263	21.9.16	129,600	Supplier remittance of 22.09.2016 for 849,600	No proof of payment and no invoice presented	-
Avery East Africa	00615	27.1.17	188,300	Tax invoice, Supplier remittance	No proof of payment or receipt.	-
Universal Galaxy Brokers	11-1-84	13.1.17	361,930	Supplier remittance of 6.3.17 for 14 invoices. Receipts	The invoice no. in supplier remittance differ from invoice stated but not presented. Receipts do not indicate which invoice is paid	-
Universal Galaxy Brokers	31104	20.1.17	4,137,896	Supplier remittance and receipts	The supplier remittance or receipts do prove payment of VAT of Shs. 4,137,896.49. Invoice not exhibited.	-
Universal Galaxy Brokers	7.6.90	19.4.17	159,949	Supplier remittance shows invoice 033031	Invoice in supplier remittance differs from invoice stated but not presented.	-
Universal Galaxy Brokers	02-80-90	21.4.17	167,790	Supplier remittance shows invoice 033111	Invoice in supplier remittance differs from invoice stated but not presented.	-
Universal Galaxy Brokers	23-05-93	8.6.17	271,350	Supplier remittance shows invoice 033111	Invoice in supplier remittance differs from invoice stated but not presented.	-
Afroplast Enterprises Ltd.	146294	8.6.17	9,992	Tax invoice, supplier remittance, Note of cheque book	No proof of payment or receipt was presented	-
B.D.H. Laboratory Supplies Uganda	52656	6.6.17	40,881	Tax invoice, supplier remittance	Invoice is not legible. No proof of payment.	-
KEMA EA Ltd.	3537	1.6.17	36,000	Invoice, supplier remittance	No proof of payment or receipt was presented	-
Andester General Hardware Ltd	648	4.8.17	16,200	Invoice, supplier remittance	Invoice, supplier remittance	-
Oxy Gas Ltd.	3582	12.8.17	36,000	Invoice, supplier remittance, delivery note	Supplier remittance is not legible. No proof of payment or receipt was presented	-
Internet Solutions Uganda Ltd.	ISU-100228	10.9.17	337,388	Tax invoice, supplier remittance	No proof of payment or receipt was presented	-
Advann Uganda Ltd.	18	16.11.17	3,584,745	Tax invoice, supplier remittance	Supplier remittance shows payment of Shs. 14,752,875. The amount paid is less than the VAT	-

					exclusive amount of Shs. 19,915,254
Universal Galaxy Brokers Ltd.	27-12-06	4.12.17	58,134	Supplier remittance and receipts	No proof of payment or receipt was presented Receipts do not indicate which invoice is paid
Entebbe Handling Services Ltd.	2017191448	19.3.18	41,657	Tax invoice. Third Party Payment Note	The Third-Party Payment Note of 14.10.16 for Shs. 186,752 is in respect of invoice no. 2016171559, It does not relate to the supply. No proof has been provided by
Universal Galaxy Brokers Ltd.	42588	31.3.18	64,981	Debit Note, Supplier remittance, EFT	No proof of payment or receipt was presented
Universal Galaxy Brokers Ltd.	42627	9.4.18	44,664	Debit Note, Supplier remittance, EFT, receipts	The EFT and receipts do not indicate that they paying VAT amount. No tax invoice
Universal Galaxy Brokers Ltd.	43937	12.6.18	5,591,391	Debit Note,	No proof of payment or receipt was presented
Universal Galaxy Brokers Ltd.	43952	12.6.18	461,295	Debit Note,	No proof of payment or receipt was presented
Universal Galaxy Brokers Ltd.	43935	12.6.18	14,200,650	Debit Note,	No proof of payment or receipt was presented

S. 28(11) of the VAT Act requires a taxpayer to present an invoice. A tax invoice is a demand from a supplier that indicates the tax payable, in this case VAT. The applicant presented debit notes which clearly state that they are not tax invoices. A debit note is a record showing that a customer owes money to a business and does not necessarily mean there was a taxable supply. The actual tax invoices were not presented. In the absence of tax invoices, it is not clear that the suppliers demanded for the VAT due. Under S. 28(12) a taxpayer has to satisfy the Commissioner General why it cannot present a tax invoice. The applicant did not adduce evidence to show that it satisfied the Commissioner General as to why it did not present invoices. The applicant did not give reasons why the supplier issued it with debit notes and not tax invoices.

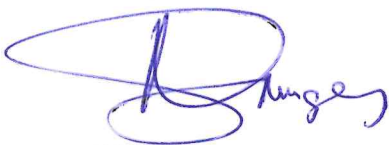
Though receipts were presented, especially in respect of Universal Galaxy Brokers they did not indicate which invoices were being paid. In some cases, the invoice numbers differed from those stated in the supplier remittances as there was mix up between those stated in the debit notes. The applicant did not present tax invoices for the Tribunal to confirm what were the actual invoice numbers or at least call a witness to clarify on the numbers.



The applicant also presented supplier remittances. A supplier remittance is made by the recipient who confirms that a good or service supplied were received. However, it is not proof of payment from the supplier who is required to remit VAT to the respondent. There is need for the supplier to confirm that it received payment. If the confirmation is genuine, the respondent does not have to revert to the taxpayer seeking a claim for input tax as the supplier has confirmed receipt of VAT. This is in line with *Target Well Control Uganda Ltd v The Commissioner General HCCS 751 of 2015* where the judge did not agree with that argument that a taxpayer should exercise due diligence to find out whether the supplier as VAT registered and also to ascertain whether it had remitted to the Revenue Authority the tax collected. The court felt that it does not make sense to require a taxable person to follow up a payment and find out whether the agent has remitted the tax so collected from him or her. A receipt stating the amount paid, supply, invoice number and address of the supplier would enable the respondent trace it. It is also a commitment from the supplier that it received the payment. A receipt bears a stamp and or signature of the supplier. It is easy to detect any fraud or forgery on it.

Taking the above in consideration, the issue referred to the Tribunal for determination under the partial consent is resolved for the respondent with costs against the applicant.

Dated at Kampala this 23rd day of September 2022.



**DR. ASA MUGENYI**  
**CHAIRMAN**



**MS. CHRISTINE KATWE**  
**MEMBER**



**MR. SIRAJ ALI**  
**MEMBER**