



THE REPUBLIC OF UGANDA
IN THE TAX APPEALS TRIBUNAL AT KAMPALA

APPLICATION NO. 251 OF 2022

WAP ENGINEERING LIMITED.....APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY.....RESPONDENT

**BEFORE: HON. PROSCOVIA REBECCA NAMBI, HON. WILLY NANGOSYAH,
MS. CHRISTINE KATWE**

RULING

I. Introduction

1. This application seeks to set aside a VAT assessment of Shs. 65,158,465 and all consequential interests and penalties issued for the December 2021 tax period in respect to Interim Payment Certificates for construction works for a Government Hospital, on the grounds that the assessment was premature and subsequently extinguished by full compliance upon receipt of payment from the Government hospital.

II. Background Facts

2. The Applicant is a limited liability civil engineering and construction company. During the period in question, it was contracted by the Arua Regional Referral Hospital (a Government Hospital) to construct a seven-storey staff facility. In the course of performing the civil works, the Applicant was issued Interim Payment Certificates Nos. 11 and 12 on 15 November 2021, and on 13 December 2021, respectively. Consequently, the Applicant raised e-invoices in

December 2021 totalling Shs. 431,220,635, which included the disputed VAT component.

3. By the end of the December 2021 tax period, the Government Hospital had not settled the invoices. Recognizing the pending payment status, the Hospital generated a system credit note to reverse the VAT component until funds were available. However, the Respondent declined to approve the reversal adjustment and instead issued a formal assessment for the same amount on 17 February 2022. The Applicant objected to the assessment on the ground that it had not received payment and therefore the VAT was not due for payment at the time of assessment. On 07 July 2022, the Respondent made its objection decision disallowing the Applicant's objection. The Applicant eventually received payment in December 2022 and promptly declared and remitted the principal VAT in its January 2023 return. Despite this remittance, the Respondent has maintained the original assessment, continuing to accrue interest and penalties.

III. Issues

4. The issues for determination are:
 - i. Whether the Applicant is liable to pay the tax as assessed?
 - ii. What remedies are available to the parties?

As a preliminary matter, we must also address the Respondent's objection regarding the mandatory payment of 30% of the tax in dispute.

IV. Representation

5. The Applicant was represented by Mr. John Kabandize, Ms. Allen Abitegeka, while the Respondent was represented by Mr. Simon Kamugisha, Mr. Derrick Nahumuza, Mr. Sam Kwerit, Ms. Tayahwe Sheila, Ms. Diana Mulira, Mr. Amanya Mishambi.
6. The Applicant case is supported by an Affidavit in support and an affidavit in rejoinder, both sworn by Mr. Dickson Avutia the Applicant's Managing Director

who provided detailed testimony regarding the construction works at Arua Regional Referral Hospital and the receipt of payments. The documentary evidence present to the Tribunal includes Interim Certificates Nos. 11 (Nov 15, 2021) and 12 (Dec 13, 2021), the e-invoices issued on 3 and 17 December 2021; a letter dated July 8, 2022, requesting an extension of time to remit VAT pending payment; evidence of payment of the mandatory 30% via Payment Reference Number 2230005230727; the January 2023 VAT return and ledger records showing full remittance of the principal tax after payment was received from the Hospital.

7. The Respondent relied on an affidavit in reply sworn by Mr. Oseku Samuel an officer in the Respondent's Legal Services and Board Affairs Department emphasizing the statutory timelines for tax points under the VAT Act.

V. The Applicant's Submissions

8. The Applicant argues that VAT is inherently a consumption tax borne by the final consumer, where the supplier is merely a collection agent for the Government. Citing Section 40 (1)(a) and Section 32 of the Tax Procedure Code Act, Cap 343 ("the TPC"), they argue that VAT is a debt held in trust, and it is legally untenable to demand "trust money" that hasn't been received.

9. The Applicant submitted that pursuant to section 92 of the TPC, the Applicant issued e-invoices to Arua Regional Referral Hospital ("the Government Hospital") in December 2021 totalling Shs. 431,220,635, inclusive of VAT amounting to Shs. 65,158,465. In compliance with Section 31 (1) of the VAT Act, which requires filing within fifteen days of the tax period, the Applicant duly filed its December 2021 return on 14th January 2022.

10. The Applicant contends that VAT cannot be deemed due and payable when the taxpayer has not received payment from a Government entity. The Applicant argued that they issued e-invoices but received no payment from the Government hospital. Consequently, the Hospital generated a system credit note to reverse the pending VAT. The Applicant cites Section 22(1)(e) of the

VAT Act, arguing the nature of the supply was fundamentally altered because non-payment rendered the supply incomplete. Under Section 30 of the VAT Act, the recipient is required to make corresponding input tax adjustments when a credit note is issued. The Applicant submits the Respondent unreasonably declined to approve this adjustment.

11. Acting in good faith, on 8 July 2022, the Applicant then applied for an extension of time to pay the VAT once it had received payment from the hospital under Section 31(1) of the TPC and Section 32(3) of the VAT Act, but the Respondent failed to respond. The Applicant submitted that Section 31(1) of the TPC permits a taxpayer to apply in writing to the Commissioner General for an extension of time within which to pay tax due. Similarly, Section 32(3) of the VAT Act, empowers the Commissioner General, upon a written application and where good cause is shown, to extend the time for payment of tax beyond the date on which it is due and payable, or to make such other arrangements as may be appropriate to ensure payment of the tax due.

12. Furthermore, the Applicant submitted that under Section 34(1)(a) and (2)(a) of the TPC, where a person is liable to pay tax and such tax remains unpaid, the Commissioner General is empowered, by notice in writing, to require any person who owes money to that taxpayer to pay to the Commissioner General the amount specified in the notice- being an amount not exceeding the unpaid tax. The Applicant argued that in line with Section 34(1)(a) and (2)(a) of the TPC, the Respondent should have recovered the tax directly from the Government Hospital. That way the Applicant would not be under unnecessary pressure from both Government entities being the Revenue collector and the Government hospital. The Respondent's failure to exercise this statutory power, and instead pursue the Applicant for tax that was not yet paid by its client, amounts to a misapplication of the recovery process.

13. The Applicant contended that Section 26 of the VAT Act permits accounting on a cash basis for government contracts, a principle meant to align tax liability with the actual receipt of funds. They argued that this provision recognises the unique nature of Government procurement, where payments are often delayed

beyond the time of supply. They relied on the precedent of ***Polypack Limited v URA & Multiple ICD Ltd TAT Application No. 9 of 2014*** to argue that a supplier should not be penalized when consideration on a taxable supply fails.

14. The Applicant further submitted that the assessment of interest and penalties is unjustified, as the principal tax was settled promptly upon receipt of the payment on 21 December 2022. The Applicant argued that the VAT of Shs. 65,026,028.75 (corresponding to Interim Certificate No. 11 and Interim Certificate No. 12) was duly declared and remitted in the January 2023 return, consistent with cash basis accounting.

15. The Applicant also challenged the interests and penalties imposed under Sections 39(3) and 40 of the VAT Act. Citing ***Fosroc Chemicals (India) Pvt Ltd v The State of Karnataka and CIR v Da Costa (3) SA 768 (SATC)***, the Applicant argued that penalties are discretionary and are meant to punish an intention to evade taxation, which is absent here. The Applicant maintained that the Government's failure to pay constitutes a "special circumstance".

16. The Applicant further submitted that any outstanding interest and penalties are waived by operation of law under Section 47(1) of the TPC and Section 3 of the Tax Procedures Code (Amendment) Act, 2025, as the principal tax was settled well within the statutory windows provided by these provisions.

17. The Applicant submitted that Section 47(1) of the TPC, expressly provides that any interest and penalty outstanding as at 30 June 2023 shall be waived where the taxpayer pays the principal tax by 31 December 2023. The Applicant submitted that Section 3 of the Tax Procedures Code (Amendment) Act, 2025 further extends this relief by providing that any interest and penalty outstanding as at 30 June 2024 shall be waived where the taxpayer pays the principal tax by 30 June 2026. The Applicant submitted that it remitted the entire principal VAT in January 2023, well within the statutory window for waiver under Section 47(1) TPC and Section 3 of the TPC (Amendment) Act, 2025. Consequently, the Applicant automatically qualifies for waiver of any corresponding interest and penalty.

18. The Applicant contended that the matter is not moot, as the Respondent continues to treat the Applicant as liable for the VAT assessment, causing substantial prejudice, including the loss of business opportunities and reputational damage, owing to the Respondent's persistent refusal or failure to issue Tax Clearance Certificates to the Applicant.

19. The Applicant therefore prayed for declarations that the assessment was not due, that the Applicant is discharged of further liability, and an order for the Respondent to reverse and expunge the assessment and all consequential interests and penalties from the Applicant's tax ledger on the URA portal/system. The Applicant also prayed for costs.

VI. The Respondent's Submissions

20. In reply, the Respondent submitted that the Applicant is liable for the VAT assessment in dispute, premised in the "earlier in time" principle under Section 14 of the VAT Act. The Respondent began with submitting that there is no dispute regarding the nature of the services provided by the Applicant, which is the construction of a seven-storey staff facility at Arua Regional Referral Hospital, and this constitutes a taxable supply under Section 18(1) of the VAT Act. Citing ***Uganda Revenue Authority v Total Uganda Limited HC Civil Appeal 8 of 2010***, the Respondent argued that the supply was made for valuable consideration as defined by Section 18(4), which includes payments in money or kind received directly or indirectly.

21. The Respondent argued that this application revolves around identifying the taxing point for the Applicant's supply. They submitted that the taxing point refers to the moment at which a taxpayer is legally required to account for VAT and that under Section 14(1) (c) of the VAT Act, the taxing point occurs at the earliest of three events:

- i. *Completion of the performance of services*
- ii. *payment for the goods or services is made or*
- iii. *issuance of a tax invoice*

22. The Respondent submitted that the Applicant admitted that interim payment certificates (IPCs) numbers 11 and 12 were issued on 15 November 2021 and 13 December 2021 respectively. The Respondent contends that these IPCs serve as conclusive evidence that the performance of the service was complete for that portion of the contract under Section 14(1)(c)(i). Consequently, the taxing point was triggered upon the issuance of these certificates, necessitating VAT accounting in the December 2021 period, regardless of when the Applicant actually received payment.

Validity of credit notes

23. The Respondent argued that the credit notes issued by the Applicant to offset the liability were invalid and correctly rejected. The Respondent submitted that a credit note is only valid when it is issued within the confines of the law. The Respondent went on to argue that under Sections 22(1) and 30(1) of the VAT Act, a credit note is only recognized under specific conditions. They cited to us Section 22(1) which provides:

"This section applies where, in relation to a taxable supply by a taxable person-

(a) the supply is cancelled;

(b) the nature of the supply has been fundamentally varied or altered;

(c) the previously agreed consideration for the supply has been altered by agreement with the recipient of the supply, whether due to another reason; offer of a discount or for any or

(d) the goods or services or part of the goods or services have been returned to the supplier".

24. The Respondent then argued that none of these recognizable limits were met, and therefore the Applicant had no legal basis to issue credit notes to negate its established tax liability.

25. Responding to the Applicant's primary objection that it had not yet been paid by the employer, the Respondent argued that VAT liability is strictly governed by Section 14, which does not require a taxpayer to receive payment before the obligation to account for VAT arises. The Respondent emphasized that "the law

has no equity to it," and the Tribunal is bound to apply the statutory taxing point rules as written.

26. Finally, the Respondent addressed the Applicant's reliance on the July 2022 amendment that allowed government contractors to account for VAT on a cash basis. The Respondent submitted that this amendment was enacted to address the unique nature of government contracts but is not retrospective. Citing the legal principles established in *Hon. Lukwago Elias & Others V Electoral Commission & Others Misc. Cause Application 431 of 2019* and *Uganda Revenue Authority V Whistle Blower Civil Appeal No. 30 of 2021*, the Respondent argued that an enactment does not apply retrospectively unless such intention is clearly stated in the language of the law. As the liability in question arose in late 2021, the Respondent maintained that the 2022 amendment is inapplicable.

27. Based on these submissions, the Respondent prayed that the Application be dismissed with costs.

VII. Applicant's Submissions in Rejoinder

28. In rejoinder to the Respondent's written submissions, the Applicant contends that the Respondent's presentation of facts is materially incomplete and misleading, primarily for failing to disclose that the Applicant already accounted for and declared the output VAT (Shs. 65,026,028.75) in its January 2023 return following receipt of payment from Arua Regional Referral Hospital. The Applicant maintained that the Respondent's insistence on upholding the December 2021 assessment would result in unlawful and impermissible double taxation on the same taxable supply.

29. Regarding the Respondent's preliminary objection, the Applicant asserted that it duly complied with the mandatory requirement to pay thirty percent (30%) of the tax in dispute (Shs. 19,547,540) at the time of filing. The Applicant further noted that the Respondent's own ledger reflects the subsequent remittance of

the outstanding principal tax, rendering the preliminary objection factually inaccurate.

30. The Applicant also raised the issue of evasive denial, arguing that under Order 6 Rules 8 and 10 of the Civil Procedure Rules, a party must deal specifically with each allegation of fact. They contended that the Respondent failed to directly traverse or rebut the evidence regarding the VAT declared and paid in January 2023, which in law amounts to an implied admission of those facts.

31. On the substantive legal issues, the Applicant submitted that the Respondent's reliance on the "earlier in time" principle is selective. They maintained that Section 14 is not absolute and must be read harmoniously with provisions governing cash basis accounting (Section 26) and adjustments through credit notes (Section 22). The Applicant justified the issuance of credit notes under Section 22(1)(b), arguing that non-payment by a government entity for over a year fundamentally altered the nature of the supply. They assert the credit notes were system-generated by the hospital itself and that the Respondent's refusal to recognize them was unreasonable.

32. The Applicant argued that VAT is a consumption tax collected from the consumer. Citing *Polypack Limited v URA*, they argue that VAT cannot be fairly imposed where consideration has failed or has not yet been received from a government entity.

33. The Applicant submitted that Section 26 of the VAT Act did not create a new tax but rather recognized the practicalities of delayed government payments. They argued that they complied with the spirit of this provision by paying immediately upon receipt of funds. The Applicant further submitted that the Respondent ignored its powers under Section 32(3) of the VAT Act regarding extensions of time and Section 34 of the TPC regarding recovery from third parties (the hospital).

34. Finally, the Applicant argued that interest and penalties are unjustified as there was no intent to evade tax. They further submitted that by operation of

Section 3 of the Tax Procedures Code (Amendment) Act, 2025, all interest and penalties are statutorily waived because the principal tax was fully discharged in January 2023. The Applicant therefore prayed that the Tribunal rejects the Respondent's submissions and order the reversal of the assessment.

VIII. Determination

Having carefully considered the pleadings, affidavits, documentary evidence, and the written submissions of both parties, this is the decision of the Tribunal.

Preliminary objection

35. The Respondent raised a preliminary objection that the Application is incompetent for failure to comply with the mandatory requirement to pay thirty per cent (30%) of the disputed tax prior to lodging the reference before this Tribunal.

36. The evidence on record shows payment of Shs. 19,547,540 under Payment Reference Number (PRN) 223000523072, representing 30% of the disputed VAT. Further, the record shows that the Applicant has since paid the entire principal tax. The Respondent did not substantively controvert that payment.

37. In the circumstances, the preliminary objection fails as it based on a factual inaccuracy and is hereby dismissed. The Tribunal proceeds to determine the substantive issues.

Issue 1: Whether the Applicant is liable to pay the tax as assessed

38. This dispute turns on the proper application of Section 14 of the Value Added Tax Act (Cap. 349) to the construction services supplied by the Applicant to Arua Regional Referral Hospital, a Government entity and the legal effect of the subsequent payment of the principal VAT.

(i) The tax point

39. Section 14 of the Value Added Tax Act (Cap. 349) provides, in material part, that the tax point for a supply of services occurs at the earliest of completion of

- performance of the services; payment for the services; or issuance of a tax invoice.
40. It is not in dispute that Interim Payment Certificates Nos. 11 and 12 were issued in November and December 2021 respectively, and that corresponding e-invoices were issued in December 2021. On a strict reading of section 14, the taxing point arose in December 2021. The Respondent's position is therefore that VAT became due in that tax period, irrespective of whether payment had been received.
41. In construction contracts performed in stages, performance of services is divisible and capable of certification in measurable portions. An Interim Payment Certificate (IPC) issued by the employer or supervising engineer signifies that a defined portion of the works has been completed, verified, and valued, thereby entitling the contractor to payment for that certified portion. Certification is therefore commercial and legal acknowledgment of completion of performance for that stage.
42. For purposes of Section 14(1) of the VAT Act, certification through an IPC constitutes completion of performance of services in respect of the certified works. In the present case, Interim Payment Certificates Nos. 11 and 12 were issued on 15 November 2021 and 13 December 2021 respectively. Those dates therefore marked completion of performance for the corresponding stages of the contract. Since no payment had yet been received, and the tax invoices were issued contemporaneously or thereafter, the earliest event under Section 14(1) was completion of performance upon certification. Accordingly, the tax point for IPC No. 11 arose on 15 November 2021, and for IPC No. 12 on 13 December 2021. By operation of Section 14 (1) VAT became due in the November and December 2021 tax periods respectively.
43. The Tribunal accepts that section 14 sets out the general rule governing time of supply. However, statutory interpretation requires that the Act be read as a whole, and not in isolated provisions. The Supreme Court in *Attorney General v Tinyefuza [1997] UGSC 8* affirmed that statutory provisions must be construed as a whole and in light of their purpose. Likewise, in *URA v British*

American Tobacco (U) Ltd SCCA No. 7 of 2008, the Court emphasised that tax statutes must be interpreted according to their language, but within their full statutory context.

Section 14 must therefore be read together with other provisions of the Act, including section 26.

(ii) Section 26 as amended in 2022: Cash basis accounting for Government supplies

44. The Value Added Tax (Amendment) Act, 2022 amended section 26 of the VAT Act to extend cash basis accounting to “a supplier who supplies goods or services to Government.” The effect of the amendment was to bring Government suppliers within the class of taxable persons eligible to account for VAT on a cash basis.

45. The legislative context of that amendment is material. It is common knowledge, and was acknowledged in Parliamentary debate, that Government contractors were experiencing persistent delays in payment, yet were required to remit VAT before receiving consideration. The mischief was clear: suppliers were effectively financing Government obligations while simultaneously incurring interest and penalties.

46. The amendment was therefore remedial in character. It did not create a new tax nor alter the charge to VAT. Instead it addressed the timing of accounting in a defined class of transactions. Its evident purpose was to align VAT remittance with actual receipt of consideration in Government contracts.

(iii) Temporal application and the Question of Retrospectivity

47. The Respondent argued that the amendment cannot apply to supplies made prior to its commencement. It is correct that legislation is presumed to operate prospectively unless Parliament expressly provides otherwise. However, the Tribunal is not here applying section 26 retrospectively to create or extinguish tax liability in 2021. The question before us is narrower: whether, in light of the subsequent legislative reform and the undisputed payment of the principal VAT

in January 2023, the Respondent may lawfully maintain the impugned assessment as an enforceable parallel liability.

48. The Applicant's supply was made before the amendment, but payment had not been received by the time the amendment came into force. The legislative mischief delayed Government payment, was ongoing at that time. A purposive interpretation of section 26 requires us to consider whether Parliament intended to relieve only future hardship from Government supplies, or whether it intended to address the continuing hardship faced by contractors still awaiting payment at the time of enactment.

49. Where statutory language is capable of more than one reasonable interpretation, and particularly in fiscal matters, ambiguity is resolved in favour of the taxpayer. This principle has long been recognised, including in **Cape Brandy Syndicate v IRC [1921] 1 KB 64**, which established that no tax can be imposed by inference or implication beyond clear statutory words. The Tribunal is not to create exemptions. However, where Parliament has enacted a remedial measure to correct an identified hardship, interpretation should not defeat that evident purpose.

50. The 2022 amendment to section 26 reflects a deliberate legislative response to the practical realities of Government contracting. Tax administration must give effect not only to the literal text of the statute but also to its evident purpose. Where a taxpayer has ultimately accounted for and paid the VAT due upon receipt of Government funds, continued enforcement of a parallel assessment serves no lawful revenue purpose.

(iv) Payment of the principal VAT in January 2023

51. It is common ground that upon receipt of payment from the Government Hospital in December 2022, the Applicant declared and remitted the principal in its January 2023 return. That remittance relates to the same supply and the same interim certificates that formed the basis of the December 2021 assessment.

52. An tax assessment is a tool for quantifying and securing collection of tax properly due. Once the principal VAT on the relevant supply has been fully remitted and credited to the Respondent's ledger, the principal tax assessment loses its substratum. The Respondent cannot, in law, recover the same VAT twice on a single taxable supply. Nor can it ignore a payment already received and reflected in its own system. It must be reconciled to reflect the payment already received, so that the taxpayer is not exposed to double recovery.

53. The Tribunal therefore finds that the Applicant has discharged its principal VAT liability in respect of the supply in question. The continued maintenance of the December 2021 assessment as an enforceable parallel liability, despite payment of the principal tax, is legally unsustainable.

(v) Interest and penalties

54. Interest and penalties ordinarily accrue upon late payment under the tax statutes. However, Parliament enacted Section 47 of the Tax Procedures Code Act providing that interest and penalties outstanding as at 30 June 2023 shall be waived where the principal tax is paid by 31 December 2023. This relief was subsequently extended.

The Applicant paid the principal VAT in January 2023, well within the statutory window.

55. Interest, as recognised in *URA v Rabbo Enterprises Ltd SCCA No. 1 of 2004*, is compensatory in nature. Where Parliament has expressly provided that interest and penalties shall be waived upon payment of principal within a specified period, such waiver operates by force of statute and is not discretionary.

56. To maintain or enforce interest and penalties in the face of compliance with statutory waiver conditions would defeat clear legislative command. The Tribunal therefore finds that any interest and penalties arising from the impugned assessment, to the extent that they fall within the statutory waiver regime, are extinguished by operation of law.

57. Accordingly, Issue 1 is resolved in favor of the Applicant. The Applicant is not liable to pay the tax as assessed because the principal arising from the relevant supply has already been fully accounted for and paid in the January 2023 return and therefore maintaining the assessment would result in impermissible double recovery. Further so, any related interest and penalties falling within the statutory waiver regime are extinguished by operation of law.

Issue 2: Remedies

58. For the reasons set out above, this Application succeeds. The Tribunal orders as follows:

- i. The Applicant has discharged the principal VAT liability arising from Interim Payment Certificates Nos. 11 and 12 through payment declared in the January 2023 return.
- ii. The Respondent shall reconcile the Applicant's VAT ledger to reflect that payment and shall not maintain any duplicate principal liability in respect of the same supply.
- iii. Any interest and penalties falling within the statutory waiver provisions of the Tax Procedures Code Act are extinguished and shall be removed from the Applicant's ledger.
- iv. The VAT assessment of Shs. 65,158,465 for the December 2021 period, in so far as it purports to remain enforceable after crediting the principal payment, is set aside.
- v. Costs of this Application are awarded to the Applicant.

Observations on Tax Administration

59. Before taking leave of this matter, the Tribunal observes that disputes of this nature are avoidably prolonged where ledger reconciliations are not timely undertaken after principal payment is made and where statutory waivers are not proactively applied when taxpayers meet the conditions.

60. Section 47 of the TPC is intended to operate as a clear administrative relief, not a discretionary indulgence. The Tribunal accordingly recommends that URA strengthens internal controls for prompt reconciliations. Where principal tax has been paid and statutory waiver conditions are met, it is incumbent upon the URA to promptly update its system and issue clear written communication to taxpayers on the effect of such reconciliation and waivers. Prolonged uncertainty undermines confidence in tax administration and imposes avoidable commercial prejudice.

It is so ordered.

Dated at Kampala this 24th day of February 2026.



HON. PROSCOVIA REBECCA NAMBI
CHAIRPERSON



HON. WILLY NANGOSYAH
MEMBER



MS. CHRISTINE KATWE
MEMBER