

THE REPUBLIC OF UGANDA
IN THE TAX APPEALS TRIBUNAL OF UGANDA AT KAMPALA
APPLICATION NO. 287 OF 2022

ZEE PHARMACEUTICALS LTD.....APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY..... RESPONDENT

BEFORE: DR. ASA MUGENYI, DR. STEPHEN AKABWAY, MR. SIRAJ ALI

RULING

This ruling is in respect of a preliminary objection raised by the respondent that there is no objection and no objection decision in this matter.

The applicant is a Ugandan company that imports and distributes drugs and surgical materials. It was denied a tax clearance certificate on ground that it has an income tax ledger liability of Shs. 236,262,268 as of 22nd December 2022. This ledger is continuously auto updated on a daily basis without reconciliation with the applicant. The respondent raised a preliminary objection stating that the applicant has never objected to the respondent's refusal to issue it with a tax clearance certificate and that there is no objection decision and as such, the applicant is prematurely before the Tribunal.

Issues;

1. Whether the applicant has never objected to the respondent's refusal to issue to issue it with a tax clearance certificate?
2. What remedies are available to the parties?

The applicant was represented by Mr. Stephen Atukwase while the respondent by Ms. Eseza Victoria Sendege.

The respondent submitted that in *Musoke Mike v Kalumba* (Revision Cause 9 of 2019) Justice Basaija held that.

“Where issues of both law and of fact arise in the same suit and the court is of the opinion that the case or any part of it may be disposed of on the issues of law only, it shall try those issues first, and for that purpose may if it thinks fit, postpone the settlement of the issues of fact until after the issues of law have been determined. Therefore, the preliminary objection on a point of law shall be resolved first pursuant to the above rule”.

Therefore, its preliminary point should be heard,

The respondent submitted that S. 25 of the Tax Procedures Code Act provides for the statutory procedure for a tax payer who is aggrieved by a tax decision. S. 25(1) of the Act provides that a tax payer who is dissatisfied with an objection decision may then lodge an application in Tax Appeals Tribunal for review of the objection decision. The respondent submitted that an objection decision is a prerequisite for lodging an application for review before the Tax Appeals Tribunal and that where there is no objection decision, the taxpayer is prematurely before the tribunal as it has nothing to review. The respondent cited *Caroline Kahamutima v Commissioner Customs Uganda Revenue Authority Misc Application 51 of 2021* where the applicant filed an application for extension of time to lodge a review application with the tribunal without first objecting to the respondent's decision. The Tribunal held that.

“Therefore, the applicant by filing an application for extension of time when it had not applied to the Commissioner to review the letter of 16th June 2021, she was acting prematurely. Therefore, this application is incompetent”.

The respondent also cited *Gakou Brothers Enterprises Limited v URA Application 20 of 2020* where it was held that.

“Where a statute sets out a procedure to be followed in the event of a dispute, the said procedure should be exhausted before coming to the Tribunal”.

The respondent submitted that the applicant did not object to the assessment that gave rise to the interest. The objection decision presented at scheduling was issued in April 2022. The respondent cited *Precise Engineering Services Ltd v URA Application 84 of 2022* where the Tribunal held that coming before it without an objection decision is illegal

and should not be entertained. The respondent prayed that the tribunal allows the preliminary objection and dismisses this application with costs.

In reply, the applicant submitted that whereas under S. 24 of the Tax Procedure Code Act an aggrieved tax payer is required to lodge an objection with the Commissioner General and get an objection decision before lodging an application in the tribunal if dissatisfied with the objection decision under S. 25, the said provisions are only relevant where assessments have been made under Sections 21, 22 and 23 of the Tax Procedure Code Act. The applicant submitted that it objected to the assessments online contrary to the respondent's allegation that it never did so.

The applicant submitted that the interest was included in the applicant's income tax ledger without a prior assessment as required by Sections 21, 22, or 23 of the Tax Procedures Code Act and further that the respondent's electronic system allows objections to assessments only and not ledgers. The applicant submitted that S. 14(2) of the Tax Appeals Tribunal Act states that; "the Tribunal has power to review any taxation decision in respect of which an application is properly made". The applicant submitted that S. 1(1)(k) of the Tax Appeals Tribunal Act explicitly defines taxation decision as "any assessment, determination, decision or notice" whereas an objection decision is distinctly defined as "a taxation decision made in respect of a taxation objection in S. 1(1)(g) of the Tax Appeals Tribunal Act." Both terms are defined in S. 1 of the Tax Appeals Tribunal Act to prevent any confusion or ambiguity so as to ensure that the usage of "decision" should not encompass the meaning of an objection decision, which has clearly defined in its own right. The applicant submitted that the position was summarized in *Cable Corporation Ltd v URA Appeals 1 of 2011* where the court held that;

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

The applicant submitted that in computing the applicant's ledger, the respondent made a determination of the tax it demands from the applicant and as such, the respondent's action qualifies as a tax decision thus making it eligible for review by the tribunal. The applicant submitted that S. 14(1) of the Tax Appeals Tribunal Act allows any person who

is aggrieved by a tax decision to made by URA to apply for review of the decision and its application is not prematurely before the Tribunal.

The applicant submitted that in *Gakou Brothers Enterprises v URA (supra)*, there was an assessment and the procedure to be followed as prescribed in the East African Community Customs Management Act (EACCMA). In this case there were no assessment issued in regard to the interest included in the ledger, nor is there a procedure prescribed in any taxing Act to the object of the ledger.

The applicant submitted that whereas there is no objection decision to the ledger, what is available on court record are false income tax ledgers which the respondent computed in utter violation to Sections 21, 22, 23 of the Tax Procedures Code Act when it failed or ignored to issue assessments and serve notices on the applicant.

Having read the submissions of the parties, this is the ruling of the Tribunal;

The respondent raised a preliminary objection that this application is premature before this tribunal as there was no objection decision. The applicant did not object to the refusal to grant it a clearance certificate. The respondent did not make an objection decision thereof.

The law addressing preliminary objections is provided for under for under the Civil Procedure Rules. Order 6 Rule 28 of the Rules states that.

“Where issues both of law and of fact arise in the same suit and the court is of the opinion that the case or any part of it may be disposed of on the issues of law only, it shall try those issues first, and for that that purpose may, if it thinks fit, post pone the settlement of the issues of fact until after the issues of law have been determined”.

Order 6 Rule 28 of the Rules states that;

“Any party shall be entitled to raise by his or her pleadings any point of law, and any point so raised shall be disposed of by the court or after the hearing; except that by consent of the parties, or by order of court on the application of either party, a point of law may be set down for hearing and disposed of at any time before the hearing”.

In *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd* [1969] EA 969, Sir Charles Newbold stated that;

"A preliminary objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit".

Therefore, the Tribunal will address the preliminary objection raised.

The applicant was denied a tax clearance certificate on ground that it has an income tax ledger liability of Shs. 236,262,268. The applicant submitted that the respondent's system does not allow for an objection against the ledger but against an assessment. It is for this reason that it came before the Tribunal without an objection decision.

S. 25(1) of the Tax Procedures Code Act states that:

"A person dissatisfied with an objection decision may, within 30 days after being served with a notice of objection, lodge an application with the Tax Appeals Tribunal for review of the objection decision".

Black's Law Dictionary 10th Edition p 1241 defines and objection as; "A formal statement opposing something that has occurred, or is about to occur, in court and seeking the judges immediate ruling on the point". S. 1(g) of the Tax Appeals Tribunal Act defines an objection decision to mean the taxation decision made in respect of a taxation objection. S. 1(k) of the Act provides that; "taxation decision" means any assessment, determination, decision or notice".

It is clear that where there is no objection, there can be no objection decision. In *Desai v Wasama* (1967) EA 351 the court stated that.

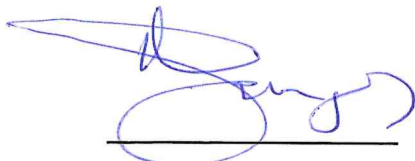
"No court can confer jurisdiction upon itself and where a court assumes jurisdiction and proceeds to hear and determine a matter not within its jurisdiction, the proceedings and the determination are nullities... lack of jurisdiction goes far beyond any error, omission, or irregularity nor can it be regarded as a mere technicality and that there is in law nothing to be reversed or altered and there is a complete absence of any material from which an appeal can be heard.....".

Where there is no objection decision or taxation decision, the Tribunal cannot have jurisdiction to entertain any dispute in relation thereto.

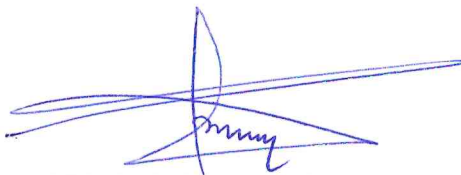
The applicant contends that the respondent denied it a clearance certificate. Where an aggrieved party is denied a clearance certificate, it ought to get the reasons why it was denied the certificate. In this case the respondent stated that the applicant had a tax liability of Shs. 236,236,268 on its tax ledger. *Black's Law Dictionary* p. 1028 defines a ledger; "as a book or series of books used for recording financial transactions in form of debts and credits". The applicant contended it cannot object to an amount in the ledger as it is not an assessment. However, the applicant did not object to the respondent's refusal to give a tax clearance certificate. In its objection decision, the respondent would have explained why it did not issue the clearance certificate, giving the applicant ground to file an application for review.

The tribunal notes that it is also not in dispute that the applicant disagreed with the figures in the ledger. However, the applicant should have written to the respondent objecting to the way the ledger was done and the latter would have responded and hence a tax decision. S 1(k) of the Tax Appeals Tribunals Act provides that; "taxation decision" means any assessment, determination, decision or notice". The explanation given by the respondent would amount to a taxation decision. The tribunal cannot proceed to hear a matter where the right steps were not followed to file this appeal. If the procedure is not followed the tribunal would have no jurisdiction. The applicant did not seek an explanation as to why its certificate was rejected and on the amount in the ledger. This preliminary objection is sustained. This main application is dismissed with costs to the respondent.

Dated at Kampala this 14th day of September 2023.



DR. ASA MUGENYI
CHAIRMAN



DR. STEPHEN AKABWAY
MEMBER



MR. SIRAJ ALI
MEMBER