

THE REPUBLIC OF UGANDA
IN THE TAX APPEALS TRIBUNAL OF UGANDA AT KAMPALA
APPLICATION NO. 34 OF 2022

HUB ESTABLISHMENTS LTD ===== APPLICANT
VERSUS
UGANDA REVENUE AUTHORITY ===== RESPONDENT

BEFORE: MR. SIRAJ ALI, MR. GEORGE MUGERWA, MS. CHRISTINE KATWE

RULING

This ruling is in respect of an application challenging VAT and income tax assessments arising from the disallowance of the applicant's claim for input VAT.

The applicant is engaged in the business of supplying electrical materials, installations and in building construction. The applicant made a claim for input VAT on purchases amounting to Shs. 77,395,423 with input VAT of Shs. 13,931,176 for the period September 2019 and August 2020 from Suave Engineering Ltd. In November 2021, while conducting an audit on Suave Engineering Ltd, the respondent established that certain purchases purported to have been made by the applicant were not supported by adequate documentation. The respondent as a consequence raised an assessment of Shs. 6,461,834 for income tax and Shs. 3,711,325 for VAT for the period 1st June 2019 to 30th June 2020 and from 1st January to 30th September 2019. The applicant objected to these assessments. The respondent issued an objection decision disallowing the objection.

The following issues were set down for determination.

1. Whether the applicant is liable to pay the taxes as assessed?
2. What remedies are available to the parties?

The applicant was represented by Mr. Francis Turyamuhebwa while the respondent by Mr. Stuart Aheebwa.

The applicant's sole witness, was Mr. Atwine Eliud, its Managing Director. The witness testified that on several days in the year 2019, the applicant purchased hardware materials from Suave Engineering Limited worth Shs. 82,026,600/- in respect of which Suave Engineering Ltd issued invoices worth Shs. 82,026,600/-. The witness testified that on various days between, 1st September 2019 to 27th September 2019, the applicant made payments to Suave Engineering Ltd, totaling to Shs. 82,026,600/-. The witness stated that payment vouchers were issued for the purpose of authorizing the payments in question. The witness testified that on 30th June 2020, Suave Engineering Ltd issued the applicant with a single receipt worth Shs. 82,026,599/- for all the goods purchased in the year 2019. The witness testified that some of the goods purchased were used in construction works for Bill Electrical Ltd. It was the witness' testimony that following a request by the respondent on 25th November 2020, for documents relating to the purchase of goods from Suave Engineering Ltd, it provided to the respondent all documents relating to its dealings with Suave Engineering Ltd. The witness testified further that on 1st October 2021, the respondent issued an assessment of Shs. 3,711,326 being VAT for the period 1st September 2019 and Shs. 6,461,834 being income tax for the period 1st July 2019 to 30th June 2020. The witness testified that the applicant objected to the above assessment and provided the respondent with documents showing that the purchases from Suave Engineering Ltd were genuine. The witness testified that the respondent commenced further investigations and made a report on the basis of which the objection was disallowed. The report was admitted in evidence as RE10. The witness testified that the objection was disallowed on the grounds that the applicant had only submitted tax invoices and one receipt in support of the queried transactions and that the cash book of Suave Engineering Ltd only showed a total payment of Shs. 64,797,500 yet the applicant's returns indicated a sum of Shs. 82,026,599/-. The witness testified that the respondent therefore subtracted Shs. 64,797,500 from Shs. 91,326,600 and disallowed the difference of Shs. 26,529,100. The witness testified that the purchases of Shs. 26,529,100 were disallowed due to the poor record keeping of Suave Engineering Ltd who failed to record all the purchases made by the applicant. The witness stated that the respondent intentionally ignored some genuine invoices and the receipt issued by the applicant in imposing the assessments in question.

The respondent's sole witness, was Mr. Kavuma Paul Gitta, an officer in the respondent's Tax Investigations Department. He testified that in June 2020, a VAT risk assessment was conducted by the respondent's Tax Investigations Department during which VAT returns of tax payers claiming input VAT from Suave Engineering Ltd were analyzed. The witness stated that the respondent wrote to the applicant requesting for documentary evidence namely certified copies of invoices, delivery notes and proof of payment to support purchases made from Suave Engineering Ltd in the sum of Shs. 82,026,600. The witness testified that in response to the said request the applicant provided certified copies of invoices and a receipt dated 30th June 2020 in the sum of Shs. 82,026,599 from Suave Engineering Ltd. The witness testified that on 20th May 2021, Suave Engineering Ltd, submitted a ledger account for the applicant setting out all payments made by the applicant to Suave Engineering Ltd. The witness stated that a review of Suave Engineering Ltd's cash book and the ledger account showed total payments amounting to Shs. 64,797,500 which was less than the queried purchase amount of Shs. 82,026,599. The witness testified further that a review of the applicant's receipt dated 30th June 2020, showed that it was issued ten months after the date of purchase and could not be traced in the documents of Suave Engineering Ltd. The witness testified that a review of the bank statements of Suave Engineering Ltd from Stanbic Bank Ltd and Centenary Bank Ltd did not reveal any payments from the applicant. It was the witness' further testimony that the scope of investigations was expanded to include purchases made by the applicant from Suave Engineering Ltd for the period of January to December 2020. The total amount of the queried transactions increased as a result to Shs. 91,326,600. The witness stated that a comparison of the revised purchases amounting to Shs. 91,326,600 with the ascertained payments of Shs. 64,797,500 revealed a variance of Shs. 26,529,100 which indicated that the applicant had an outstanding payment of Shs. 26,529,100 to Suave Engineering Ltd. The witness testified that based on the reviewed documents and subsequent findings, the respondent disallowed the applicant's purchases amounting to Shs. 26,529,100 and proceeded to issue a VAT assessment of Shs. 3,942,457 for the period September 2019 and an income tax assessment of Shs. 6,461,834 for the period 1st July 2019 and 30th June 2020.

The applicant submitted that it is not liable to pay the tax as assessed. The applicant submitted that it was the evidence of AW1 (Atwine Eliud) that on various days in the

year 2019, the applicant bought hard ware materials from Suave Engineering Limited worth shs 82,026,600 in respect of which Suave Engineering Limited issued the applicant with invoices worth Shs. 82,026,600. The applicant submitted that if it had not purchased the goods in question from Suave Engineering Limited, the invoices in question would not have been issued to it. The applicant submitted further that the respondent did not doubt the authenticity of the invoices. The applicant submitted that exhibit AEX8 from pages 23 to 32 of the joint trial bundle which are payment vouchers to Suave Engineering Limited for the goods that the applicant had purchased was further proof that the transaction between the applicant and Suave Engineering Ltd were genuine.

The applicant submitted that the payments were made on various days from 1st September 2019 to 27th September 2019, totaling to Shs 82,026,600 and that it was the evidence of AW1 that payment vouchers were raised internally for purposes of authorizing the payments to Suave Engineering Limited. The applicant submitted that on 30th June 2020, Suave Engineering Limited issued the applicant with a single receipt worth Shs 82,026,599/= for all goods purchased from it in 2019. The applicant submitted that the authenticity of the receipt was never in question as it was never denied by Suave Engineering Ltd.

The applicant submitted that the contention by the respondent that the receipt in question had been issued to one, Aidah is incorrect, as a scrutiny of AEX9, RE5 and RE4 of the joint trial bundle also shows that they have the same receipt number as 1160, issued by Suave Engineering Limited but to different clients, they have different dates and are in respect of different amounts. This means that the problem was with the person who designed and printed those receipts for Suave Engineering Limited. The applicant submitted that a consideration of exhibits AEX7, AEX8 and AEX9, all proved that the applicant genuinely purchased goods worth Shs. 82,026,599 from Suave Engineering Limited.

The applicant submitted further that the assessment conducted by the respondent was based on wrong findings after an investigation that was conducted by the respondent. RE10 at page 67 of the trial bundle reveals some of the findings. The respondent ignored the information availed to it by the applicant and relied on the wrong or poor records of

the Suave Engineering Limited. RW1 testified during cross examination that Suave Engineering Limited filed returns with the respondent which indicated Shs 82,026,599 worth goods sold to the applicant however in their report they only considered UGX 64,797,500 which was allegedly in the cash book of Suave Engineering Ltd which was due to their poor record keeping. The applicant submitted that it was wrong for the respondent to opt for the wrong amounts indicated in the documents of Suave Engineering Ltd since they were not even called by the respondent as their witness to deny the authenticity of the applicant's claim.

The applicant submitted further that it was wrong for the respondent to subtract Shs. 64,797,500 from the Shs. 91,326,600 VAT inclusive being the queried purchases and raise income tax and VAT on the disallowed difference of Shs. 26,529,100, as the disallowed purchases worth Shs. 26,529,100 were based on the poor record-keeping of Suave Engineering Limited, who failed to record all purchases made from it by the applicant. The applicant prayed that the assessments be set aside with costs.

The respondent submitted that the applicant is liable to pay the tax assessed.

The respondent cited S. 4 of the Value Added Tax Act, which imposes VAT on, every taxable supply made by a taxable person, every import of goods other than an exempt import; and the supply of imported services, other than an exempt service, by any person.

The respondent also cited S. 1 (y) and S. 18 of the Value Added Tax Act, which defines a taxable supply as a supply of goods or services in Uganda and S. 1(1) and S. 28(1) which provide for input tax credit.

The respondent submitted that it was not in dispute that the purchase of hardware materials was a taxable supply that attracts VAT tax, if such transaction actually took place consequently the question that needs to be answered is whether the respondent was justified in disallowing the applicant's purchases.

The respondent submitted that Mr Kavuma Paul Gitta (RW1) testified that on 17th November, 2020, a seizure of business documents was conducted at the premises of Suave Engineering Limited by the Respondent, who picked Suave's company purchases and sales records including cash books, receipt books, delivery note books among others. This followed whistle blower information to the Respondent that the said company was involved in invoice trading. That this led to an investigation into all companies that claimed input VAT from Suave Engineering Ltd which included the applicant. The respondent submitted that RW1's testimony was uncontroverted.

The respondent submitted that the applicant did not discharge its duty in explaining the variance, the lack of proof of payment, the fact that his purported receipt did not exist in the Suave Engineering Ltd's records, that the receipt Number was in favor of other clients not being the Applicant. The respondent submitted further that the applicant's witness AW1 testified that they made cash payments to Suave Engineering. However, during cross examination, AW1 confirmed that there is no evidence on record showing that the applicant's cash books were ever submitted to the Respondent. The respondent submitted that RW1 also confirmed that the applicant only presented invoices and never availed cash books, bank statements, ledgers, delivery notes and payment vouchers. Failure to avail proof of payment meant that the respondent could not confirm that the transactions indeed took place.

In support of its arguments, the respondent cited the decision of the tribunal, in *Airtel Uganda Limited v. URA*, Application. 10 of 2019 and *Rubya Investors Limited v. URA*, Application 105 of 2020, where it was held that input credit had been rightly disallowed where the applicants did not avail proof of payment. The respondent prayed that the application be dismissed with costs.

Having listened to the evidence and read the submissions of the parties, this is the ruling of the tribunal.

This dispute arises from a claim of input VAT made by the applicant in respect of purchases from Suave Engineering Ltd. The respondent instituted an investigation to confirm the purchases in question. The claim was disallowed by the respondent on the grounds that the receipt provided by the applicant as proof of payment was not genuine as it was issued 10 months after the first purchase was made in September 2019, and that Suave Engineering's cash book and ledger account only reflected payments of Shs. 64,797,500, and not Shs. 82,026,599 as claimed by the applicant.

The term '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, which states as follows:

"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) of the VAT Act states as follows:

"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."

In *Enviroserv (U) Ltd v URA* Application 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 further;

"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."


For the applicant to succeed in this application it must prove that the transactions in question took place by presenting its invoices and proof of payment. Invoices amounting to Shs. 82,026,600 were provided by the applicant and were admitted in evidence collectively as exhibit AE7 at pages 13-22 of the joint trial bundle. The proof of payment provided by the applicant is a receipt dated 30th June 2020 in the sum of Shs. 82,026,599. The receipt was issued by Suave Engineering Ltd for payments made by the applicant for the purchase of hardware materials.

In response to the assertion by the respondent that only Shs. 64,797,500 out of the total sum of Shs. 82,026,600 could be identified in Suave Engineering's cash book and ledger account, the applicant stated that the invoices, cash vouchers and the receipt submitted by it prove that the applicant genuinely purchased the goods.

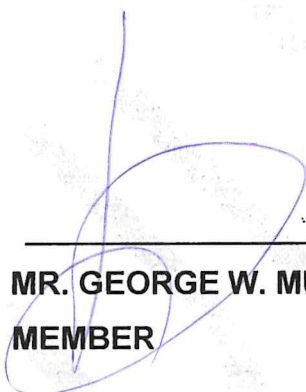
Cash receipts serve as a vital record keeping tool for businesses. They provide evidence of sales and help to track revenue which is important for preparing financial statements and tax returns. Proper receipts help in separating taxable and non-taxable income and help a business identify its actual deductions. Further, as a rule of thumb, businesses ensure that all cash receipts are deposited daily in bank accounts since no revenue can be recognized until the cash has been so deposited. All the above depend on cash receipts being issued as soon as cash has been received or a cheque has cleared. Therefore, a cash receipt issued 10 months after the purchase of goods, raises doubts as to its authenticity and credibility. Further, it is of vital importance, that a cash receipt should indicate the date when the transaction, in respect of which payment has been made took place. This is especially important in cases such as the present one, where input tax credit claims have to be made. A consolidated receipt such as that provided by the applicant makes it impossible to verify the exact point in time when payment for a particular purchase took place. This is compounded by the fact that only Shs. 64,797,500

out of Shs. 82,026,599 which was the amount of the receipt in question, could be verified as actual purchases from a review of the cash book of Suave Engineering Ltd. All the above anomalies taken together give rise to the inference that the queried transactions did not take place. The argument by the applicant that the variance was due to the poor record keeping of Suave Engineering Ltd does not explain why some purchases were found in the records of Suave Engineering Ltd while others were not. The burden of proof is on the applicant to prove on a balance of probability that the input tax credit claimed was due and payable. The applicant ought to have provided credible evidence to account for the variance above mentioned. The applicant has failed to discharge this burden. For the reasons above this application is accordingly dismissed with costs.

Dated at Kampala this 29th day of June, 2023.



**MR. SIRAJ ALI,
CHAIRMAN**



**MR. GEORGE W. MUGERWA
MEMBER**



**MS. CHRISTINE KATWE
MEMBER**