THE REPUBLIC OF UGANDA

IN THE TAX APPEALS TRIBUNAL OF UGANDA AT KAMPALA

APPLICATION NO. 15 OF 2020

NCBA BANK UGANDA LIMITED ..... APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY.....RESPONDENT

BEFORE: DR. ASA MUGENYI, MR. GEORGE MUGERWA, MS. CHRISTINE KATWE.

RULING

This application is in respect of a Value Added Tax (VAT) assessment of Shs. 2,607,323,720 and a VAT refund claim of Shs. 638,914,141

The applicant is a financial institution engaged in finance leasing. The respondent conducted a VAT review of the applicant for 2012 to February 2019. It claimed that the applicant accounted for VAT on assets it financed without considering the portion paid by clients (therein called initial contribution). It contented that the applicant should account for output tax on the total consideration of the asset. i.e., the initial consideration plus the bank's contribution. The respondent issued a VAT assessment of Shs. 2,607,323,720. The second dispute was in respect of a lease arrangement between the applicant and C&A Tours and Travels (herein known as "C& A") where it sought for a VAT refund arising from a bad debt which the respondent rejected.

Issues

1. Whether the applicant is liable to pay the output VAT assessment of Shs. 2,607,323,720?
2. Whether the applicant is entitled to a VAT refund of Shs. 638,914,141?
3. What remedies are available?

The applicant was represented by Mr. Bruce Musinguzi and Mr. Thomas Kato while the respondent by Mr. Donald Bakashaba and Mr. Alex Ssali Alideki.

The applicant's first witness, Ms. Faith Amaro, a tax manager working with PricewaterhouseCoopers stated that the dispute between the parties related to a failure by the applicant to account for the contribution made by clients towards the total purchase price of assets financed and rejection of a bad debt refund. She stated that the applicant is involved in the business of asset financing where clients identify assets, they wish the former to finance. The applicant either finances 100% or part of price of the asset. The asset is purchased in the client's names. The applicant enters into a financing agreement with the client for leasing the assets. Upon the expiry of the lease the client has the option of returning or purchasing the asset. The applicant issues monthly invoices under the leases where it charges VAT. She testified that on 7th December 2018, the applicant claimed an input VAT refund of Shs. 638,914,149. An audit was conducted on the applicant by the respondent. The respondent made a VAT assessment on the applicant for not accounting for VAT on the contribution made by its clients towards the purchase price of assets financed. The applicant objected on the grounds that since it is supplying leasing services to customers, which is the taxable supply for which consideration has been made. She stated that the respondent wants the applicant to account for an output that is not part of the consideration.

In respect of the second dispute, the witness testified that the applicant entered into a finance leasing arrangement with C&A where the latter made monthly lease payments to the former. The applicant issued invoices to C&A, but it failed to pay the amounts inclusive of VAT. The applicant had paid the VAT to the respondent and demanded it from C&A. When C&A failed to pay, the applicant sold the financed vehicles. Following the sale, C&A remained indebted to the applicant to a tune of Shs. 700,389,804. Shs. 61,475,655 was the balance on the finance lease facilities while Shs. 638,914,149 remained outstanding unpaid VAT on the finance lease facility. The applicant applied for a refund of Shs. 638,914,149 as bad debt. The respondent in its management letter stated that the applicant was only entitled to Shs. 121,609,556 as an overpayment of VAT. It rejected the claim of Shs. 517,304,593 on the basis that the applicant recovered most of its monies from the sale of the vehicles. She stated that sales of the vehicles left a huge deficit.

The applicant's second witness, Mr. Sam Ntulume, its former executive director, reiterated the evidence given by the first witness. Therefore, there is no need to repeat it. The only difference is that he tendered in some of the applicant's exhibits i.e., AE1, AE2, AE5 and AE6. He stated that the applicant did not file any cases in court to recover debts.

The respondent's witness, Mr. Hamudan Hibbombo, a supervisor in its domestic taxes department, testified that the applicant applied for a VAT refund for October 2018 and February 2019 which it attributed to a bad debt of C&A. The respondent conducted a VAT review on the applicant. It established that the applicant only accounted for VAT on the portion of the asset it financed without considering the advance payment of clients. The applicant then claimed input tax on the cost of the asset i.e., both the client's advance payment and its contribution. He stated that the applicant underdeclared its output tax as it ought to have declared both the advance payment and the contribution. A VAT assessment of Shs. 3,824,595,094 was issued for the period January 2013 to November 2016. In respect of the bad debt, he stated that the respondent established that the applicant recovered most of its the money from CNOOC and never exhausted its remedies against C&A. Therefore, the VAT refund claimable was reduced from Shs. 638,914.149 to Shs. 517,304,593. He stated that the applicant was liable to pay tax for Shs. 2,607,323,720 broken down as Shs 1,334,713,164 being principal tax and interest of Shs. 1,272,610,596

The respondent's second witness, Ms. Racheal Katende, an officer in its domestic tax department, gave evidence which was similar to the first witness. She tendered in exhibits, RE1 and RE11. She testified that the applicant applied for a VAT refund of Shs. 638,914,149 which it attributed to a bad debt by its client C&A. The respondent conducted a VAT review. It was established that the applicant under declared its output tax. It ought Ito have declared the client's advance payment and the bank's contribution. She stated that the applicant claimed full invoice value thus classifying the taxable value as the full cost of the asset yet it only accounts for output VAT on only the extent of its financing. She stated that the applicant failed to account for output tax of Shs. 1,705,334,449.

The applicant submitted that it acquires assets from vendors pays them on behalf of its clients, in this case motor vehicles. The applicant extends credit to the clients which maybe full or partial credit. It leases the asset and charges the client monthly lease installments inclusive of interest and output VAT. The applicant submitted that is clients pay input tax on advance payments on sale of financed assets, which is claimed by it. The applicant receives the asset registered in its name. The applicant submitted that it claims input tax on the invoices issued. The respondent contends that the applicant did not account for output tax on the advance payment but only on up to the extent of the financing. Therefore, it cannot claim full input VAT. The applicant contends that because the invoice for the asset is issued to it, only it can claim the input tax.

The applicant submitted that S. 28 of the VAT Act provides for a credit for input tax. It also cited S. 18(4) of the VAT Act which provides that a supply is made for consideration if the supplier directly or indirectly receives payment for the supply. It submitted further that supplies of vehicles were made but paid for by the applicant and the clients in their contributions under the financing agreements. It submitted that S. 18(4) does not alter the requirements for a claim of an input credit. In order to claim an input tax credit, it is a requirement under S. 28 (11)(a) that a person adduces an original tax invoice. It submitted that in *EnviroServe (U) Ltd v URA* Application *24 of 2017*, the Tribunal held that:

> "For the applicant to be entitled to an input tax credit under this section, the applicant has to prove the following: (i) the applicant is a taxable person; (ii) taxable supplies have been made to the applicant during the tax period; and (iii) the taxable supplies were for use in the business of the applicant."

The applicant submitted that the taxable supplies were made and invoices issued.

The applicant submitted that S. 21(1) of the VAT Act states that the taxable value of a taxable supply is the total consideration paid in money or in kind by all persons for that supply. S. 1(d) defines consideration in relation to a supply of goods or services to mean:

> "The total amount of money or kind payable for the supply by any person, directly or indirectly including any duties, levies, fees and charges paid or payable on, or by reason of the supply other than tax, reduced by any discounts, or rebates allowed and accounted for at the time of the supply."

The applicant contended that the consideration is the repayment for the financing which includes interest. Where the applicant partially finances a purchase of a motor vehicle, the consideration due to the applicant is the financing provided plus interest. This is the taxable value of the supply made by the applicant. The applicant submitted that it was only accounting for output tax on the consideration payable to it, being the monthly installments for the financing provided by the applicant to the client inclusive of interest. If it were to charge output on the total purchase price including the contribution made by the applicant, this would amount to the applicant overstating sales. It submitted that under S. 21(1) of the VAT Act, it could not legally account for output tax on consideration not paid to it and could therefore only account for output tax on sales made by it.

The applicant submitted that the respondent noted that the lease rentals to C&A were VAT inclusive. It therefore applied a VAT fraction reducing the VAT claimable from Shs. 638,914,149 to Shs. 517,304,593 resulting in overpayment of Shs. 121,609,556. The respondent contended that since the applicant already recovered most of the money owed by C&A from CNOOC and from sale of the leased vehicles, the VAT which should be considered as a bad debt for purposes of the VAT refund is an overpaid VAT of Shs. 121,609,556. The applicant contended that the respondent confirmed in its management letter that it took reasonable steps to recover debt from C&A in line with S. 24(2) of the Income Tax and S. 43(1) of the VAT Act through demand letters and lawyers but failed.

In reply, the respondent submitted that the first dispute is that the applicant failed to account for the contribution made by its customers towards the total purchase price of the asset financed and was therefore not entitled to the input tax credit claimed. It was liable to pay the taxes assessed. The second dispute is the rejection of bad debts resulting from transactions with C&A some of which could not be proved to the satisfaction of the commissioner, and other bad debts recovered by the applicant. The respondent submitted that the applicant did not exploit all the remedies available to recover the bad debts as per the VAT Act and the respondent was therefore right to reject the bad debt refund.

The respondent submitted that S. 28 of the VAT Act provides for credit for input tax. A person is entitled to an input tax credit where a taxable supply has been made to it. It contended that for a taxable person to claim input credit, it has to be incurred by that specific person and it has to be incurred to the fullest. A person cannot claim an input tax credit where it was not fully incurred by it. The respondent submitted that the term 'input tax' is defined under S.1(1) of the VAT Act as;

> "Input tax" means 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 that in *Margaret Rwaheru Akiiki & 13945 others v URA* Civil Suit 117 of 2013, the court defined input tax as "...a cost to the importer or taxable person that generates a credit in favor of the taxable person..." The input credit has to be a cost incurred by the taxable person. The respondent contended that in a scenario where a taxable person does not incur the cost or incurs part of the cost, the taxable person, in this case the applicant cannot claim the entire cost. The respondent submitted that in that case, the court went on to state that the tax payable on the goods by a supplier is input tax and is a credit under S. 28 of the VAT Act. Input tax credit has to be paid by a taxable person for it to be claimed. Where a final consumer contributes a certain portion to the input tax, then a person that pays the amount cannot claim on behalf of the final consumer who is not entitled to obtain an input tax credit.

The respondent submitted that VAT is intended to achieve neutrality as was held in *Uganda Revenue Authority v COWI* High Court Civil Appeal 34 of 2020 where Justice Stephen Mubiru stated that.

> "With VAT, tax neutrality is achieved in principle by the multi-stage payment system: each business pays VAT to its providers on its inputs and receives VAT from its customers on its outputs. To ensure that the "right" amount of tax is remitted to tax authorities, input VAT incurred by each business is offset against its output VAT, resulting in a liability to pay the net amount or balance of those two. This means that VAT normally flows through the business" to tax the final consumers. It is therefore important that at each stage, the supplier be entitled to a full right of deduction of input tax, so that the tax burden eventually rests on the final consumer rather than on the intermediaries in the supply chain. Neutrality is one of the principles that help to ensure the collection of the right amount of revenue by

governments. It is only if all economic activities that add similar value are taxed similarly that a fair and easily administrable tax can exist."

The respondent submitted that the applicant financed a leased item wholly or partially. It submitted that the applicant amortized only the percentage that it contributed to the purchase of the asset excluding the initial deposit financed by the client. The applicant over claimed VAT as the output component was only meant to be to the extent of only the percentage contributed by the applicant.

The respondent submitted that for a taxable person to be granted input tax credit, it has to show that the tax payable was in respect of all taxable supplies made to that person during the tax period. It cited S. 18(2) of the VAT Act which states that.

"A supply is made as part of a person's business activity if the supply is made to him, or her as part of, or incidental to, any independent economic activity he or she conducts, whatever the purpose or result of that activity."

The respondent submitted that the supplies in question must be actually made to the person claiming the input tax credit. The respondent submitted that S. 18(4) of the Act states that.

"a supply is made for consideration if the supplier directly or indirectly receives payments for the supply whether from the person supplied or any other person including any payment wholly or partly in money or in kind."

The respondent submitted that the section speaks of payments and not part payments. The payments that formed consideration for the leased assets were contributed to by the applicant and their customers, some at a ratio of 80:20. The applicant cannot claim input credit for 100%.

The respondent submitted that when the audit was carried out, it found that the applicant financed some of the leased assets using a portion but only accounted for VAT on the portion of the asset financed without considering the advance payment received for the leased asset from the client. This created an undisclosed taxable value of Shs. 9,474,080,273 relating to the advance payment made by the clients and culminated in a VAT output tax liability of Shs. 1,705,334,449. The respondent contended that the

applicant's argument that since the invoices were issued to it, it has a right to claim the entire input tax credit is spurious and untenable.

The respondent submitted that much as a taxable person is allowed to claim input tax credit under S. 28(11) of the VAT Act, the invoice must reflect the amount of input tax actually incurred. Under S. 1(1) an input tax credit means the tax paid by the taxable person. The applicant did not pay the entire amount but only a portion of the input tax and could not therefore claim the entire amount. The respondent submitted that the applicant under declared its output tax as it ought to have declared both the client's advance payment and the bank's contribution. Having failed to account for the contribution made by the clients towards the total purchase price of the asset financed, the applicant was not entitled to the input tax credit claimed.

The respondent submitted that during the audit, it established that the lease rentals to C&A were VAT inclusive and on application of a VAT fraction, the VAT claimable by the applicant was reduced from Shs. 638,914,149 to Shs. 517,304,593 leading to an overpayment of only Shs. 121,609,556 since the applicant had already recovered most of its money owed by C&A from CNOOC. The respondent submitted that the applicant never exhausted its remedies against C&A as stated in the Memorandum of Understanding between them and therefore could not claim a refund for bad debts. The Memorandum of Understanding indicates that the bank would recover its amounts in the event of default by declaring that the security had become enforceable, and all amounts become due and payable at that moment. The applicant exercised this obligation and sold the assets as business assets as shown in the returns.

The respondent submitted that the law on refund of tax paid on bad debts is provided for under S. 43 of the VAT Act which states that.

"(1) Where a taxable person has supplied goods or services for a consideration in money, and has-

(a) Paid the full tax on the supply to the Commissioner General, but has not within two years after the supply received payment, in whole or in part from the person to whom the goods or services are supplied and

(b) Taken all reasonable steps to the satisfaction of the Commissioner General, to pursue payment and he or she reasonably believes that he or she will not be paid, that person may seek a refund of that portion of the tax paid for which he or she has not received payment.

(2) If a refund is taken under subsection (1) and the taxable person later receives payment in whole or in part, in respect of the debt, he or she shall remit to the Commissioner General, with his or her next tax return, a sum equal to the portion of the payment that represents the tax refunded."

The respondent submitted that the requirements to be looked at include.

i) The taxpayer must have paid the full tax on supply of goods or services for consideration in money.

ii) The taxpayer must not have received any payment on the supply.

iii) The taxpayer must have taken all reasonable steps to the satisfaction of the commissioner general to pursue all payments.

iv) The taxpayer must have reasonable belief that he or she will not be paid.

The respondent submitted that however, where the person later receives payment in respect of that debt, it is supposed to remit the tax that had been refunded. The bank recovered most of the money owed by C&A from CNOOC and from the sale of the leased vehicles. The evidence on the record shows that the loaned amounts were later recovered and could therefore not constitute a bad debt within the meaning of the law.

The respondent submitted that the VAT Act does not define the term "bad debts' but *Black's Law Dictionary* states that; "Bad debt is "Generally speaking, one which is uncollectible." It submitted that the applicant recovered the owed amounts. In other words, the amounts could not be liable to a tax refund. This can be seen from the returns where the applicant disposed of business assets for the recovery of the outstanding loans. The applicant recovered the amounts and should not have claimed VAT refunds on alleged bad debts.

The respondent submitted that the applicant did not adduce any evidence to show that efforts were made to recover the bad debts to the satisfaction of the Commissioner General. This evidence can be in the form of a notice or letter addressed to the

Commissioner indicating the steps taken to recover the bad debts. The evidence by the respondent's witness indicates that the steps taken were not satisfactory and as such, the bad debts could not be allowed. The applicant did not go to courts of law to recover its debts. The respondent submitted that the Income Tax Act provides for a different yardstick from the VAT Act where a taxpayer is required to take all reasonable steps to the satisfaction of the Commissioner General. The applicant did not bother to institute foreclosure or other legal proceedings in order to recover the amounts. It is trite law that demands letters do not amount to recovery proceedings.

The respondent submitted that a tax refund is a reimbursement to a taxpayer of any excess amount paid to government. Under S. 42(1) of The Value Added Tax Act, a taxable person is entitled to a refund where the taxable person's input credit exceeds his or her liability for tax, for the tax period in issue. A tax refund arises in case of a mismatch between the tax amount paid and the actual payable amount. It is therefore claimed upon proof of overpayment. The respondent, not having proved that the amount paid exceeded the actual payable amount, is not entitled to any refund.

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

The first dispute the Tribunal will address is in regard to the VAT assessment of Shs. 2,607,323,720. The respondent conducted a VAT review of the applicant for 2012 to February 2019 and claimed that the applicant accounts for output VAT on the portion of the asset it finances without considering the portion paid by the client to the vendor. The respondent contented that the applicant should account for output tax on the total consideration of the asset. i.e., the initial consideration plus the bank's contribution. The respondent also stated that when the applicant was seeking input VAT, it claimed VAT on the initial consideration and the bank contribution. The respondent submitted that the applicant was therefore not entitled to the input tax credit claimed but was liable to pay the taxes assessed. On the other hand, the applicant submitted that it was only accounting for output tax on the consideration payable to it, being the monthly installments for the financing provided by the applicant to the customer inclusive of

interest. It stated that it is not obliged to account for output tax on the advance payment made by the customer in an asset financing lease transaction. It submitted that an invoice issued by the vendor would be for the whole purchase price with no indication of an advance payment.

VAT is imposed by the VAT Act. S. 4 of the VAT Act states

> "A tax to be known as value added tax, shall be charged in accordance with this Act on-
> (a) Every taxable supply is made by a taxable person.
> (b) Every import of good other than an exempt import' an
> (c) The supply of imported services, other than an exempt service, by any person."

S. 5(1)(a) of the VAT Act states that in case of taxable supply, the VAT is to be paid by the person making the supply. It is not in dispute that the applicant was making supplies, therefore it was liable to charge VAT for the said supplies.

The dispute is about the portion of VAT the applicant should charge. The applicant was in the business of financing leases which extended to purchase of assets. S. 18(2) of the VAT Act provides that.

> "A supply is made as part of a person's business activity if the supply is made to him, or her as part of, or incidental to, any independent economic activity he or she conducts, whatever the purpose or result of that activity."

S. 18(4) of the VAT Act which provides that:

> "(4) a supply is made for consideration if the supplier directly or indirectly receives payment for the supply, whether from the person supplied or any other person, including any payment wholly or partly in money or in kind."

S. 21(1) of the VAT Act states that:

> "(1) Except as otherwise provided under this Act, the taxable value of a taxable supply is the total consideration paid in money or in kind by all persons for that supply".

S. 1(d) defines consideration in relation to a supply of goods or services to mean:

> "The total amount of money or kind payable for the supply by any person, directly or indirectly including any duties, levies, fees and charges paid or payable on, or by reason of the supply other than tax, reduced by any discounts, or rebates allowed and accounted for at the time of the supply."

The applicant was in the business of financing leases which may have extended to outright purchase. At times there the applicant made partial contributions while the clients made advance payments or initial contributions. At other times the applicant made the whole contribution of the lease and purchase of the asset. Where there were partial contributions, the applicant ought to have charged VAT on its contribution and not the initial contribution or advance payment by a client. Where the applicant financed the whole price of the asset it was supposed to charge VAT on the whole contribution it made.

The applicant claimed input tax. S. 1(1) of the VAT Act defines input tax to mean "the tax paid or payable in respect of a taxable supply to or an import of goods or services by a taxable person." *Christine Mugume in Managing Taxation in Uganda* 2nd Edition p. 20/56 defines 'input tax' as.

> "Input tax is the VAT amount incurred and paid by taxable persons or business purchases and expenses on both local and imported items. It includes not only the VAT incurred on raw materials or goods you buy for re-sale but also the VAT incurred on procured services and on over heads..."

Words and Phrases Legally 3rd Edition p. 446 defines 'input tax. as

"Subject to subsection (4) below, "input", in relation to a taxable person, means the following tax, which is to say.

(a) Tax on the supply to him of any goods or services; and

(b) Tax paid or payable by him on the importation of any goods, being (in either case) goods or services used or to be used or to be used for the purpose of any business carried on or to be carried on by him; an "*output*" tax means tax on supplies which he makes."

S. 28 of the VAT Act states that.

"(1) 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; or

(b) all imports of goods made by that person or import of services made by a contractor or licensee or a person providing business process outsourcing services during the tax period,

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

(2) Where Section 26 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 any tax paid in respect of taxable supplies to, or imports by, the taxable person where the supply or import is for use in the business of the taxable person".

In *Warid Telecom Uganda Limited v Uganda Revenue Authority* Civil Appeal 24 of 2011 the court noted that "A credit is allowed on all taxable supplies made to the taxable person provided that supply is for use in the business of the taxable person". Therefore, the applicant was entitled to claim input VAT.

However, a person claiming input VAT has to meet certain conditions. S. 29 of the VAT Act provides that "(1) A taxable person making a taxable supply to any person shall provide that other person, at the time of supply, with an original tax invoice for the supply". Paragraph 2(e) of the 4th schedule provides that.

"A tax invoice as required by section 29 shall, unless the Commissioner General provides otherwise, contain the following particulars—

(a) The words "tax invoice" written in a prominent place.

(b) the commercial name, address, place of business and the taxpayer identification and VAT registration numbers of the taxable person making the supply.

(c) the commercial name, address, place of business and the taxpayer identification number and VAT registration number of the recipient of the taxable supply.

(d) the individualized serial number and the date on which the tax invoice is issued.

(e) a description of the goods or services supplied and the date on which the supply is made; (f) the quantity or volume of the goods or services supplied.

(g) the rate of tax for each category of goods and services described in the invoice; and

(h) either—

(i) the total amount of the tax charged the consideration for the supply exclusive of tax and the consideration inclusive of tax; or

(ii) where the amount of tax charged is calculated under section 24(2), the consideration for the supply, a statement that it includes a charge in respect of the tax and the rate at which the tax was charged.

In light of the above provisions the invoice should state the services provided by the applicant and the rate of tax and total amount of tax charged. We already stated that the applicant was in the business of financing. Therefore, the invoice should have stated the

services the applicant was providing. It was not in the business of selling assets, it was merely financing the purchase of an asset therefore the component of initial contribution or advance payment should not be included.

The respondent adduced evidence to show that when the applicant was claiming VAT refund it claimed the initial contribution or advance payment plus its contribution. The applicant did not dispute this. If the applicant was claiming input VAT on the whole amount that is the initial consideration plus its contribution, then it should have accounted likewise in the output VAT. It would mean that the applicant was financing the whole purchase of the assets that is the initial contribution plus its contribution. A supplier cannot issue an invoice of output tax of 80% of the consideration and claim input tax of 100% of it. Claiming 100% of the consideration while accounting for 80% of it does not make sense. Once can only claim credit input on what it has put in or paid as output VAT. The doctrine of estoppel comes into play. By claiming the whole output VAT as credit input meant the applicant was financing the purchase in full of the assets. Therefore, by claiming for VAT input on the initial contribution and its contribution but paying VAT only on its contribution meant that the applicant was under declaring the VAT payable. There was no initial contribution or if it was there the applicant paid for it. To dispel the suspicion that there were advance payments claimed by the applicant declared in the claim for input VAT which it is not entitled to, the taxpayer has to adduce evidence to show that it financed the purchase and lease of the asset, which was not the case. In the circumstance, the respondent was justified to issue an additional assessment. The additional assessment was of Shs. 2,607,323,720 broken down as Shs 1,334,713,164 being principal tax and interest of Shs. 1,272,610,596. S. 40C of the Tax Procedure Code Act waivered interest as at 30th June 2020. Therefore, interest of Shs. 1,272,610,596 is waivered. The applicant is ordered to pay the principal tax of Shs. 1,334,713,164

In respect to bad debts, the applicant made a refund claim of Shs. 638,914,149 which it claimed it paid as VAT in respect of lease rentals to C&A, but the latter failed to pay. The respondent contended that the lease rentals were VAT inclusive and therefore a VAT fraction was applied reducing the VAT claimable from Shs. 638,914,149 to Shs. 517,304,593 resulting in overpayment of Shs. 121,609,556. The respondent further

contended that since the applicant already recovered most of its money owed by C & A from CNOOC and also from the sale of the leased vehicles, the VAT which should be considered as a bad debt for purposes of the VAT refund is the overpaid VAT of Shs. 121,609,556.

The VAT Act allows for refunds where a party has paid full tax but has not received payment. S. 43(1) of the VAT Act provides for refund of tax for bad debts, it is to the effect that.

> "(1) where a taxable person has supplied goods or services for a consideration in money, and has—
>
> (a) paid the full tax on the supply to the Commissioner General, but has not within two years after the supply received payment, in whole or in part from the person to whom the goods or services are supplied; and
>
> (b) taken all reasonable steps to the satisfaction of the Commissioner General to pursue payment and he or she reasonably believes that he or she will not be paid, that person may seek a refund of that portion of the tax paid for which he or she has not received payment.
>
> (2) If a refund is taken under subsection (1) and the taxable person later receives payment in whole or in part, in respect of the debt, he or she shall remit to the Commissioner General, with his or her next tax return, a sum equal to the portion of the payment that represents the tax refunded".

In its letter of 25th October 2019 to the applicant the respondent notes that

> "From the verification done, it has been confirmed that the bank took reasonable steps to recover the debt from C&A in line with the provisions of S. 24 (2) of the Income Tax through various self-initiated demand letters and through the applicant's lawyers. Sebalu and Lule Advocates but still failed."

It does not make any difference if the recoverable is under the Income Tax Act of the VAT Act. A management letter is a taxation decision. The respondent cannot review its own taxation decision. The respondent has confirmed. The word confirm is defined by *Black's Law Dictionary* 10th Edition p. 362 as

> "1. To give formal approval to <confirm the bankruptcy plan>. 2. To verify or corroborate <confirm that the order was signed. 3. To make firm or certain <the judgement confirmed the plaintiff's right to possession>."

The letter further states that

> "Despite the above review of your tax matters, it does not imply that the commissioner shall not amend the same if fresh information is obtained."

There is no evidence that the respondent obtained fresh information to depart from the confirmation it gave. Therefore, the respondent's contention that the applicant did not take reasonable steps like filing a civil suit against C&A is an afterthought and an attempt to avoid paying the VAT refund to the applicant. It is already noted that the applicant recovered some of the debt from CNOOC and also from the sale of leased vehicles. This could not have been done if the applicant had not taken reasonable steps to recover the debt. The issue of applying a fraction to the VAT refund was not stated in the management letter. It was not among the recommendations. The respondent could not smuggle it in later. In the circumstances the respondent was not justified in denying the applicant the VAT refund of Shs. 638,914,149,

Taking the above into consideration, the Tribunal makes the following orders.

a) The applicant is liable to pay the VAT assessment of Shs. 1,334,713,164
b) The respondent should pay the VAT refund of Shs. 638,914,149 to the applicant
c) The applicant will pay half the costs of the application to the respondent.

Dated at Kampala this 28th day of June 2023.

DR. ASA MUGENYI
CHAIRMAN

MR. GEORGE MUGERWA
MEMBER

MS. CHRISTINE KATWE
MEMBER