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THE REPUBLIC OF UGANDA
IN THE TAX APPEALS TRIBUNAL OF UGANDA AT KAMPALA
MISC APPLICATION NO. 64 OF 2023
ARISING FROM APPLICATION NO. 48 OF 2023.

TATA UGANDA LIMITED APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY RESPONDENT

BEFORE: DR. ASA MUGENYI, DR. STEPHEN AKABWAY, MS. CHRISTINE KATWE.

RULING

This ruling is in respect of an application to allow the applicant pay 30% of the tax in dispute required under S. 15 of the Tax Appeals Tribunal Act in installments.

The applicant imports and assembles motor vehicles. The respondent carried out an audit on the applicant for the period of July 2018 to March 2022, which revealed a tax liability of Shs. 5,711,183,952. It also disclosed that the applicant was entitled to a tax refund of Shs. 621,915,246. The applicant objected. The respondent disallowed the objection. The applicant made an application to the Commissioner to be allowed to pay the 30% of the tax in dispute in installments and also use the refund to offset part of it which was disallowed.

The applicant was represented by Mr. Onesmus Mwesigwa while the respondent by Mr. Donald Bakashaba.

The applicant's application was supported by the affidavit of Ms. Christina Namaganda its Head of Accounts. She stated that the applicant imports and assembles motor vehicles. The respondent conducted a post clearance audit on the applicant for the period July 2018 to March 2022 and found it liable to pay Shs. 5,711,183,952. It was entitled to a refund of Shs. 621,915,246. The applicant objected to the tax assessed which the

respondent disallowed. It filed the above application. The applicant wrote to the respondent to allow it pay 30% of the tax assessed in installments due to cash flow restraints arising from economic difficulties caused by a slowdown in the business environment. It also requested for the tax refund of Shs. 621,915,246 be used to offset the 30% of the tax assessed. The respondent rejected that application on the ground that it did not have powers to authorize payments in installments.

In reply, Ms. Christine Mpumwire an officer in the respondent's legal department stated that the applicant has a duty to pay 30% of the tax assessed or that part not in dispute, whichever is greater. She contended that law does not provide for payment of 30% in installments. She also contended that tax is a creature of statute and the Tribunal is not clothed with discretion to grant the same.

The applicant submitted that it requested the respondent to use its refund of Shs. 621,915,246 to offset part of the mandatory 30% liability and to allow it pay the remainder in installments owing to economic difficulties. The respondent rejected its request stating it did not have the power to authorize payment in installments. The applicant submitted that it is willing to pay 30% of the tax assessed but is unable to pay it in a hefty lump sum, as it will adversely affect its liquidity and ruin its financial reputation. The applicant submitted that it filed this application seeking to review of the respondent's decision.

The applicant submitted that this Tribunal has the jurisdiction under S.14(1) of the Tax Appeals Tribunal Act which provides that person who is aggrieved by a decision made under a taxing Act by the Uganda Revenue Authority may apply to the tribunal for review of the decision. It cited *MTN V URA* Application 15 of 2018 the tribunal stated ruled that;

"Matters before it, involve a review of the decisions of the Respondent or the Commissioner and a taxpayer is entitled to challenge such decisions as long as they can be shown to be illegal, irrational or arrived at through procedural impropriety".

The applicant submitted that the respondent unjustly refused to offset its liability with the refund of Shs. 621,915,246. It submitted that it requested the respondent on 4th April 2023

to use its refund to clear part of the 30% and to pay the balance in installments. The applicant cited S. 113(3) of the Income Tax Act which provides that;

“Where a Commissioner is satisfied that tax has been over paid, the Commissioner shall apply the excess in reduction of any other tax due from the taxpayer”

The applicant further submitted that the respondent acted unlawfully and unjustly when it stated that it does not have authority under the law to accept payment of tax in installments by the applicant. It submitted that the respondent has the discretion to allow taxpayers to pay tax in installments. It cited S. 28(3) (b) of the Tax Procedure Code Act which provides that:

“Where an application has been made under this section, the Commissioner may have regard to the circumstances of the case and by notice in writing require the taxpayer to pay the tax in such installments as the Commissioner may determine “

The applicant submitted that the tax in dispute is Shs. 5,711,183,952 and 30% is Shs.1,713,355,185.6 which is a large amount. The applicant cited *Bottling Company Limited V URA* Misc. Application 32 of 2020 where the Tribunal stated that:

“We find that the decision of the Commissioner General rejecting the application to pay 30% of the tax assessed in installments was so outrageous in its defiance of logic that no sensible person who had applied his mind to the question to be decided could have arrived at it”.

The applicant submitted that the respondent's decision to reject its request to pay 30% of the tax demanded in installments was unfair, irrational and unreasonable and should be set aside.

In reply, the respondent submitted that the Tax Appeals Tribunal has no jurisdiction to grant the orders sought by the applicant. It submitted that the requirement to pay 30% of the principal tax assessed is enshrined in S. 15 of the Tax Appeals Tribunal Act which provides that;

“A taxpayer who has lodged a notice of objection pending final resolution of the objection must pay 30 percent of the tax assessed or that part not in dispute, whichever is greater”.

The respondent cited *Cape Brandy Syndicate V IRC (1921) K.B 64* where Rowlatt J held that;

"In a taxing Act, clear words are necessary in order to tax the subject. In a taxing Act, one has merely to look at what is clearly said. There is no room for an intendment. There is no equity about tax. There is no presumption as to a tax. Nothing is to be read in it, nothing is to be implied. One can only look fairly at the language used".

The respondent submitted that the wording of S.15 is clear and unambiguous. The respondent submitted that that S. 15 of the Tax Appeals Tribunal Act provides for a lump sum payment. Had the legislature intended to cushion taxpayers by providing the option of installment payments, it would have expressly stated so. The respondent submitted that the Tax Appeals Tribunal Act does not empower the Tribunal with powers to grant permission to taxpayers to pay taxes in installments or allow for a deposit of security for unpaid tax. The applicant having failed to pay the 30% of the amount assessed before lodging an application before this tribunal rendered the same premature.

This respondent submitted that the applicant failed to comply with the order of the temporary injunction issued on 6th April 2023 which amounts to contempt of a court order. It cited *Uganda Revenue Authority v Nile Breweries & 2 others* Application 58 of 2022 it was stated that:

"The 1st respondent extracted the said order which clearly indicated that "the applicant will pay 30%.... and never appealed against the said order or sought to review it"

The respondent submitted that the applicant is in contempt of the order since it is clear and it opted not to review if.

The respondent submitted that S. 28(1) of the Tax Procedures Code Act stipulates that an application by a taxpayer for extension of time within which to pay tax that is due is made to the Commissioner General. Further S. 28(3) empowers the Commissioner to grant the taxpayer an extension of time for payment of the tax or require the taxpayer to pay the tax in such installments as the Commissioner may determine. The Commissioner General is the only person vested with powers to permit payment of tax in installments or require a taxpayer to furnish security for unpaid tax and thus this Tribunal does not have jurisdiction to grant the order sought for.

The respondent further submitted that, it is clear that once a taxpayer has a confirmed refund, he/she can utilize it by offsetting any other liability. However, this is an administrative process between the taxpayer and the respondent. From the correspondences on record, the applicant has to apply to the respondent to utilize the refund due to it to offset any liability.

In rejoinder, the applicant submitted that the application is not premature as it has to pay 30% before this tribunal makes a ruling. The application is properly before the tribunal and is not in contempt of its temporary injunction as the law provides that the taxpayer should make the payment pending final resolution of the proceedings before the tribunal.

The applicant submitted that the law does not provide for a specific form in which the application for a refund should be made but only states that the applicant should apply to the respondent in writing. The respondent denied the applicant the chance to offset.

Having read the application and the submissions of the parties, this the ruling of the tribunal.

This application was for to review the Commissioner's decision disallowing the applicant's request to pay 30% of the tax in dispute in installments and to also to use its refund of Shs. 621,915,246 to offset part of the liability. The respondent rejected the applicant's request stating it did not have the power to authorize payment in installments. The applicant is willing to pay 30% of the tax assessed but is unable to pay a hefty lump sum at once, as it will adversely affect its liquidity and ruin its financial reputation. The respondent contended that the law does not provide for payment of 30% of the tax in dispute in installments.

S.15(1) of the Tax Appeals Tribunal Act provides that.

"A tax payer who has lodged a notice of objection to an assessment shall pending final resolution of the objection, pay 30% of the tax assessed or that part of the tax assessed not in dispute whichever is greater".

In *Uganda Projects Implementation and Management Centre v Uganda Revenue Authority*, Supreme Court Constitutional Appeal 2 of 1999. Court ruled that;

"The statutory requirement in the then VAT Act (similar to s.15 of the TAT Act), requiring a taxpayer who has lodged a notice of objection to an assessment to, pending final resolution of the objection, pay 30 percent of the tax assessed or that part of the tax assessed not in dispute, whichever is greater, is constitutional, and did not infringe on the right to a fair hearing, under the Constitution of Uganda and the right to equal treatment before and under the law "

The Supreme Court followed, with approval, the South African case of *Metcash Trading Co. Ltd v Commissioner for South African Revenue Services and another*, wherein it was held that pay now argue later. In *Elgon Electronic v Uganda Revenue Authority* HCCA 11 of 2007 Hon Justice Geoffrey Kiryabwire held that;

"The provisions of S. 15 (1) of the Tax Appeals Tribunal Act are mandatory. Accordingly, the requirement to pay 30% of the tax assessed or that part of the tax assessed not in dispute is a legal doctrine which is in line with the "pay now and argue later principle".

In *Bullion Refinery Limited v URA* Application 36 of 2021, this tribunal held that;

"The requirement to pay the 30% of the tax assessed or the amount not in dispute arises when a party has filed an objection and not when a tax payer files a matter in the Tax Appeals Tribunal. This means that by the time the matter is filed in the tribunal, the 30% ought to have been paid. The tribunal further stated that; where the 30 % has not been paid the tax payer loses its right to access the tribunal as it shows it does not have any intention of paying any tax in dispute. It does not come to the tribunal with clean hands."

In *A Better Place Ltd v URA* High Court Civil Appeal 37 of 2019 Justice Boniface Wamala stated that;

"My understanding of the above provision is that the requirement to pay 30% of the tax assessed or the part of the tax not in dispute, is set in motion when the taxpayer lodges with the Commissioner a notice of objection to an assessment. What this means is that the said portion of the tax is payable before resolution of the objection by the Commissioner. If the portion of the tax is collected at that level, there would not be a requirement to make a further payment when the matter comes up before the Tribunal upon an application for review of a tax decision that may have been made by the Commissioner. Where the portion of the tax was not collected at the time the objection

was considered by the Commissioner, as was the case in the instant matter, the TAT is obliged to enforce that payment.”

Therefore, the right party to address the issue of when a taxpayer wants to pay in installments would be the respondent at the time of objection. In *A Better Place Ltdv URA* the court could not grant a remedy that was not sought for. However, in this case, the applicant has sought for a remedy from the tribunal to allow it pay the 30% in installments.

S. 28(3) of the Tax Procedure Code Act provides that;

- “(3) Where an application has been made under this section, the Commissioner may, having regard to the circumstances of the case and by notice in writing—
 - (a) Grant the taxpayer an extension of time for payment of the tax; or
 - (b) Require the taxpayer to pay the tax in such installments as the Commissioner may determine.
- (4) Where tax is permitted to be paid by installments and there is default in payment of any installment, the whole balance of the outstanding tax becomes payable immediately”.

The power to allow payment of 30% is given to the Commissioner of the Uganda revenue authority.

The power to review his decisions whether or not he accepts are given to the Tax Appeals Tribunal Act under S.14(1) of the Tax Appeals Tribunal Act which states “Any person who is aggrieved by a decision made under the taxing act by the Uganda Revenue Authority may apply to the Tribunal for a review of the decision.” S. 1(k) of Act states that “Taxation decision” means any assessment, determination, decision or notice;” S.1 of the Tax Procedure Code Act provides that;

“Tax decision” means—

- (a) a tax assessment; or (b) a decision on any matter left to the discretion, judgment, direction, opinion, approval, satisfaction or determination of the Commissioner, other than a decision made in relation to a tax assessment”.

Given the fact that the decisions of the Commissioner are tax decisions this gives the tribunal the mandate to review his decisions. The tribunal will proceed to review this decision accordingly.

The applicant submitted that it is willing to pay 30% of the tax assessed but is unable to pay the hefty lump sum at once. The respondent acted irrationally and in ignorance of the law when it stated that it did not have powers to allow the applicant pay in installments. Furthermore, the applicant contended that it had a refund of Shs. 621,915,246 which it wanted to use to offset on payment of the 30%. The respondent is aware of the credit of Shs. 621,915,246 it owes to the applicant which is stated in former's letter dated 16th December 2022. A refund is monies held by the respondent due to the taxpayer. It is liquidly that has crystalized. Where a refund is not paid interest accrues. Where a taxpayer requests for an offset, the respondent is relieved from paying interest. Therefore, the refusal by the respondent to allow the applicant to use the refund was irrational. The Tribunal does not see any reason why the respondent should not use the refund to offset payment of 30% of the tax in dispute.

In the circumstances, we find that;

1. The tax refund of Shs. 621,915,246 be used to offset part of the liability.
2. The applicant is allowed to pay the 30% of the tax in 4 equal monthly installments after the offset one month after the date of this ruling.
3. Costs in the main cause.

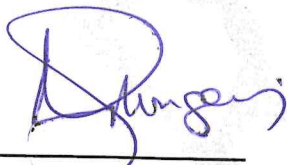
Dated at Kampala this

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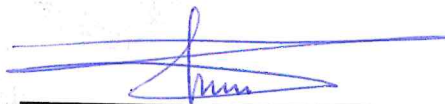
day of

June

2023.



DR. ASA MUGENYI
CHAIRMAN



DR. STEPHEN AKABWAY
MEMBER



MS. CHRISTINE KATWE.
MEMBER