THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(COMMERCIAL DIVISION)

HCT-00-CC-CA-0001 OF 2005

Arising from Tax Appeals Tribunal Application No. TAT 8 Of 2004

CELTEL UGANDA LIMITED :::::::::::::::::::::::::: APPELLANT

VERSUS

UGANDA REVENUE AUTHORITY :::::::::::::::: RESPONDENT

BEFORE: HON. JUSTICE LAMECK N. MUKASA

J U D G M E N T.

This is an appeal from a decision of the Tax Appeals Tribunal made on the 17th December 2004. The Appellant, Celtel Uganda Limited, is a Telecommunication Company incorporated in Uganda and is engaged in the business of providing mobile cellular phones and telecommunications services. The Respondent, Uganda Revenue Authority, is the revenue-collecting agency of the Government of Uganda. The facts giving rise to this appeal are that the Respondent conducted VAT and exercise audit on the Appellant for the period April 2000 to July 2003 as result of which the Respondent assessed VAT of Ug. Shs. 358,652,458/= and a penalty of Ug. Shs. 253,161,660/=. The VAT arose on airtime issued by the Appellant to its staff for us in their official duties. The Appellant

objected to the tax and the penalty and appealed to the Tribunal. The following issues were agreed upon before the Tribunal:-

1. Whether the supply of airtime by the Applicant to its staff for official use amounted to a taxable supply;
2. Whether the Applicant is liable to pay the VAT of Ug. Shs. 358,652,458/= on the airtime provided by the Applicant to its staff on their official duties and the penalty of Ug. Shs. 253,161,660/=.
3. Costs and remedies.

The Tribunal received written submissions on the above issues from both parties and after considering the submissions of each party, the Tribunal ruled as follows:-

1. Airtime is a consumable product just like gas or air conditioning and as such is goods within the context of the VAT Act, even through both the Applicant and the Respondent were of the view that airtime is in the category of services.
2. Airtime provided by mobile cellular phones, is goods and a taxable supply under sections 10 and 18 of the VAT Act.
3. Not being an exempt supply under section 20 of the said Act is liable to tax.
4. Any supply of airtime made to staff for use on official duties for free is deemed a supply made for reduced

consideration between the Applicant and its staff under sections 3 and 18(7) of VAT Act and is liable to VAT.

5. The applicant is liable to pay the VAT assessed of Ug. Shs. 358,652,458/= and the penalty of Shs. 253,161,660/=.

The Appellant has appealed against the Tribunals ruling on the following grounds.

1. The Tribunal erred in law in holding that *"airtime provided by mobile cellular phones, is goods and a taxable supply under sections 10 and 18 of the VAT Act. Not being an exempt supply under section 20 of the said Act, is liable to tax".*

2. The Tribunal erred in law in holding that *"airtime is a consumable product just like gas or air conditioning and as such is goods within the context of the VAT Act, even though both the Applicant and the Respondent were of the view that airtime is in the category of services".*

3. The Tribunal erred in law in holding that *"any supply of airtime made to staff for use on official duties for free is deemed a supply made for reduced consideration between the Applicant and its staff under sections 3 and 18(7) of the value Added Tax Act and is liable to VAT."*

4. The Tribunal erred in law in upholding the assessment of Ug. Shs. 358,652,458/= and the penalty of Ug. Shs. 253,161,660/=.

The Respondent is contention is that the supply of airtime by the Appellant to its staff purportedly for the execution of their official duties and purportedly for no consideration was a taxable supply under the VAT Act and therefore subject to VAT of 17% of the fair market value thereof. Further that the assessment for VAT and the penalty was properly made by the Respondent and should be upheld.

The main issues which arise from the grounds of appeal are whether:-

(i) The supply of airtime provided by the mobile cellular phones is a supply of goods or a supply of services; and

(ii) The supply of airtime is a taxable supply.

Section 1(h) of the Value Added Tax Act defines “goods” to include all kinds of movable and immovable property, thermal and electrical energy, heating, gas, refrigeration, airtime conditioning and water, but does not include money. And Section 10 of the Act provides:-

“ *(1) Except as otherwise provided under this Act, a supply of goods means any arrangement under which the owner of the goods parts or will part with possession*

of the goods, including an agreement of sale and purchase.

(2) *A supply of electrical or thermal energy, heating gas, refrigeration, air conditioning and water is a supply of goods.*

(3) *The application of goods to own use is a supply of goods".*

While *"Services"* are defined by section 1(t) to mean anything that is not goods or money. And section 110 if the Act provides:

" (1) Except as otherwise provided under this Act, a supply of services means any supply which is not a supply of goods or money, including -

(a) *The performance of services for another person;*

(b) *The making available of any facility or advantage; or*

(c) *The toleration of any situation or the refraining from the doing of any activity.*

(2) A supply of services made by an employee to an employer by reason of employment is not a supply made by the employee."

While section 12 provides:-

" (1) A supply of services incidental to the supply of goods as part of the supply of goods.

(2) *A supply of goods incidental to the supply of services is part of the supply of services.*

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The Tribunal in its ruling looked at the definitions of "goods" "money" and "services" in the interpretation section of the VAT Act and having found that Airtime is not defined anywhere in the Act held that airtime under the VAT Act is neither money nor services. The Tribunal employed the doctrine of ejusdem generis and interpreted the word "airtime" by relating it to the definition of the words "goods" in the Act more specifically the words embodied in the clause " thermal and electrical energy, heating, gas refrigeration, air conditioning and water." The Tribunal found that the above words give the word "airtime" colour and meaning and content. And concluded that since the definition of the word "goods" is not exhaustive, the section having proceeded the definition with the words "includes", the word "airtime" fits in the definition. The Tribunal finally held that airtime provided by mobile cellular phones is goods under section 10 of the Act.

In its statement of facts and reasons in support of the Application before the Tribunal the Appellant contended that the subject to VAT under application of own use and supplies for reduced consideration under the provisions of the VAT Act could not apply to airtime as it was services and not goods. In its statement of Reasons for the Tax Decision the Respondent contended that the Applicant/Appellant company makes taxable supplies of services as part of its business activities and

argued that the supply of airtime to staff purportedly for no consideration is an application of the services to own use and further that the taxing of a supply of goods applied to use provided for order the VAT Act can be extended to the supply of services applied to own us under the rules of statutory interpretation. The above statements in their respective statements, which formed the parties pleadings before the Tribunal, show that according to both parties airtime is in the category of services. Therefore the Tribunals holding that airtime provided by mobile cellular phones is goods under section 10 of the VAT Act was contrary to the parties pleadings which were to the effect that it is a service. The issue is whether the Tribunals holding should in the circumstances be upheld or not.

In his submissions counsel for the Appellant argued that the Tribunal erred in holding that "airtime" is "goods" for the reasons that the holding was contrary to the facts on which the parties presented the case and secondly that the Tribunal gave meaning to the word *"airtime"* which was not an issue before it as agreed upon by the parties. Counsel further contended that the Respondent had in its pleadings and submission before the Tribunal shown that the Respondent imposed the tax not on the basis that the Appellant was supplying goods but on the basis that it was supplying services in the form of airtime. Reference was made to the holding in **Pushpa d/o Raojibhai re patel Vs. The Fleet Transport Company Limited [1960] EA**

1025 where it was stated by the Court of Appeal for Eastern Africa that:-

> *"It is of course a salutary and necessary rule that a party is bound by his pleadings. If, however, particulars are give in undue detail and what is proved varies from the ways which are material, it remains the duty of the court to see that justice is done and leave to amend will be given at any stage. If, on the other hand, the particulars given have misled the defendant or led to his shaping his case in a certain way that is a very different matter."*

Counsel also referred to the holding in the case of **Esso Petroleum Co. Ltd -Vs- Southport Corporation [1955]** 3 All ER 864 quoted with approved in the above case by Lord Racliffe at page 1035 that:-

> *"To condemn a party on a ground of which us fair notice has been given may be as great a denial of justice as to condemn him on a ground on which his evidence has been improperly excluded."*

Counsel submitted that the Respondent was bound by its assertion, which assertion was accepted by the Appellant throughout, that the supply of airtime was a supply of services. Further that it is a principle of justice that the Tribunal should have proceeded on the basis of the agreed facts and should not have departed from them except by amendment and after the parties had been given an opportunity to be heard on the

amendment which the Tribunal had not done thus causing injustice to the appellant.

On the meaning of the word "*airtime"* which the Tribunal found was order a duty to give counsel argued that the question had not been posed by either party and submitted that the question was irrelevant and the Tribunal was in error to answer the question.

The main issue before the Tribunal was whether the supply of airtime by the Applicant to its staff for official use amounted to taxable supply. Section 18(1) of the VAT Act provides;-

> *" A taxable supply is a supply of goods or services, other than an exempt supply, made by a taxable person for a consideration as part to his or her business activities.*

A supply whether of goods or services, if not exempt, is taxable. Whether the supply of airtime was goods or services it was imperative upon the Tribunal to define the word airtime so as to be able to classify it whether among the taxable or exempt supplies. I note however that the Tribunal did not define "*airtime"* but only proceeded to classify it as "goods" as opposed to *"services*".

As to whether the Tribunal was justified to find that "airtime" was "*goods*" as opposed to "*services";* the general view of both parties, Counsel for the Respondent submitted that the Tribunal is mandated to make such interpretation of the Law as it deems

necessary to determine the application. That this includes making interpretations that may differ from the pleadings of either or both the parties should it be necessary in determining the application. Counsel argued that simply because the parties submitted that the supply of cellular phone airtime was a supply of services doesn't mean that the Tribunal must stick with that interpretation if it is not convinced by the arguments raised. Secondly that no new grounds were raised by any of the parties.

It is trite law that evidence must be consistent with pleadings and a Court is not permitted to reach a decision based on grounds which were not pleaded. See also **Frank Rwakijajiri -Vs- Kabayo [1992 – 93] HCB 165.** A party is bound by its pleadings. However in the instant case the Respondent did not during the trial before Tribunal make any attempt to change its pleadings or line of argument. The Tribunal on its own motion made a finding different from the view as pleaded by the Respondent. This is clearly indicated in its ruling where the Tribunal stated;

> *"... the Tribunal reaches a conclusion that airtime ... is goods within the context of the VAT Act, even though both the Applicant and the Respondent were of the view that airtime is in the category of services"*

Therefore the instant case is distiqishable from the cases cited above since there was no diversion from the pleadings by any of the parties. The issue is whether on its own the Tribunal was

justified to make such a finding, in the circumstances of this case. Taxation Appeals Tribunals are established by the Tax Appeals Tribunal Act, section 22 of which provides;-

“ 22 (1) *In any proceeding before a Tribunal, the procedure of the tribunal is, subject to this Act, within the discretion of the Tribunal.*

(2) *A proceeding before a Tribunal shall be conducted with as little formality and technicality as possible, and the Tribunal shall not be bond by the rules of evidence but may inform itself on any matter in such manner as it thinks appropriate.*

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Employing the rules of Court to the proceedings before the Tax Tribunal section 33 of the Judicature Act provides;-

“The High Court shall, in the exercise of the jurisdiction vested it by the Constitution, this Act or any written law; grant absolutely or on such terms and conditions as it thinks just, all such remedies as any of the parties to a cause or matter is entitled to in respect of any legal or equitable claim properly brought before it, so that as far as possible all matters in controversy between the parties may be completely and finally determined and all multiplicities of legal proceedings concerning any of those matters avoided. “

The main issue before the Tribunal was whether the supply of airtime was a taxable supply under the VAT Act. Under the VAT

Act there are two types of supplies, that is “goods” or “services”. It was necessary before making decision as to whether a supply is taxable to determine the category of the supply in question. Though both parties had proceeded in their respective view that the supply of airtime was a supply of services, the Tribunal was entitled on the evidence before it and the law as provided in the Value Added Tax Act to make its independent decision as to the category of the supply which finding was necessary for the purposes of finally and completely determining all the matters in controversy. That is whether the supply was a taxable supply under the Act. The issues is whether the Tribunal made a correct finding when it held that the supply of airtime was supply of goods under the VAT Act. This brings me to the second ground of appeal.

The second ground is that the Tribunal erred in law in holding that *“airtime is a consumable product just like gas or air conditioning and as such goods within the context of the VAT Act, even though both the Applicant and the Respondent were of the view that the airtime is in the category of services.”* In arriving at its decision the Tribunal considered the definition of “goods” in section 1 of the VAT Act and adopting the doctrine of ejusdem generis (Latin for “ of the same kind or class”.) This rule of general statutory interpretation is to the effect that when a general word or phrase follows a list of specific persons or things, the general word or phrase will be interpreted to include only persons or things of the same type as those listed.

Section 1 of the VAT Act provides;-

> *“ 1. In this Act, where the context otherwise requires –*
> *(h) “goods” includes all kinds of movable and immovable property, thermal and electrical energy, heating, gas, refrigeration, air conditioning and water, but does not include money.”*

The definition above by the use of the word “includes” is not limited to examples given. However it must be read together with section 10, which relates to the supply of goods. Under the section a supply of goods means any arrangement under which the owner of the goods parts or will part with possession of the goods, including an agreement of sale and purchase. There is therefore an element of the owner having possession and parting or agreeing to part with possession of the item to be supplied. The owner must have been in position to possess the item for supply. The supply of the electrical or thermal energy, heating, gas, refrigeration, air conditioning or water is specifically classified as a supply of goods under sub-section 2 of the section. The above supplies are scientifically collected or generated by the owner/supplier whereby the supplier possesses the supply and then supplies it to the consumer/buyer.

The Tribunal found that “airtime” is within the same class of supplies as the above. As already pointed out herein, the Tribunal found that it had a duty to give a meaning to the word “airtime” but had actually not executed that duty. The

Advanced Learners Dictionary 6th ed. defines “airtime” as “(1) the amount of time given to a particular subject or radio or television (2) the amount of time that is paid for when you are using a mobile phone.” Airtime is therefore the time paid for to transmit massages by airwaves on phone. The supplier in the instant case connects the buyer to the airwaves transmission. The supplier doesn’t possess the airwaves but facilitates the consumer’s connection to the airwaves for the period of time paid for. Without that element of first possession and then parting or agreeing to part with it, the supply of airtime cannot be a supply of goods under section 10 of the VAT Act. Therefore the Tribunal erroneously found that the supply of “airtime” is a supply of goods. Under section 1(t) of the Act “services” means anything that is not goods or money. I have already held that “airtime” is not “goods” under the Act and clearly it is not money as defined by para (n) of the section. The definition of “services” in the Act is exclusive, it excludes “goods” and “ money”. I accordingly find that the supply of airtime is a supply of services under section 11 of the Act.

The section provides:-

> *“11 (1) Except as otherwise provided under this Act, a supply of services means any supply which is not a supply of goods or money, including -*
>
> (a) *The performance of services for another person;*
>
> (b) *The making available of any facility or advantage; or*

(c) *The toleration of any situation or the refraining from the doing of any activity."*

The supply of airtime is making available of a facility, thus a supply of service.

The third good of appeal is that the Tribunal erred in law in holding that "any supply of airtime made to staff for use on official duties for free is deemed a supply made for reduced consideration between the Applicant and its staff under sections 3 and 18(7) of the Value Added Tax Act and is liable to VAT."

The Tribunal found that airtime provided by mobile cellular phones is a taxable supply under sections 10 and 18 of the VAT Act, it not being an exempt supply under section 20 of the Act. I have already held that the supply of airtime is not a supply of goods under section 10 but a supply of services under section 11 of the Act. As regards taxable supplies section 18(1) of the Act provides:-

> *" (1) A taxable supply is a supply of goods or services, other than an exempt supply made by a taxable person for a consideration as part of his or her business activities."*

The subsection shows that a taxable supply must have the following qualities:-

" (i) Must be a supply of either of goods or services.

(ii) It must not be an exempt supply.

(iii) Must be by a taxable person

(iv) Must be for a consideration, and

(v) Must be as part of his or her business activities.

As already held a supply of airtime is a supply of services. I must point out that it is section 19 of the Act which provides for exempt supply and not section 20. Under section 19 of the VAT Act a supply of goods or services is an exempt supply if it is specified in the second schedule to the Act Airtime is not among the supplies specified in the schedule. Sections 6 and 7 of the Act respectively define and show the process by which a person can be registered as a taxable person and it not disputed that the Appellant is a taxable person under the Act. The Appellant is in the business of selling airtime and in its normal business receives payment in form of money for the airtime sold. Therefore airtime provided by cellular phones is a taxable supply.

In the instant case the Appellant case is that the Appellant provides its staff with airtime for use in execution of their official duties. That there is no payment received or receivable by the Appellant from its staff in respect of the airtime so provided because the Appellant is the provider and user of the airtime through its staff.

Counsel for the Appellant submitted that since the Respondent had charged VAT Act on airtime as a supply of services, section

18(5) of the VAT Act prevented it from imposing VAT on the Appellant.

The subsection reads:

> *“ (5) The Application to own use by a taxable person of goods supplied to him or her for the purposes of his or her business activities shall be regarded as a supply of those goods for consideration as part of his or her business activities.”*

Counsel agued that under above subsection VAT could not be charged on a supply of services since the subsection limits itself to the supply of goods.

Subsection 6 provides:-

> *“ Where goods have been supplied to a taxable person for the purposes of his or her business activities, the supply of those goods for reduced consideration shall be regarded as a supply for consideration unless the goods are supplied or used only as trade samples”*

Counsel submitted that the airtime supplied could not be captured under the subsection since it was not a supply of goods, the Appellants staff are not VAT taxable persons during their employment with the Appellant and make no taxable supplies while working with the Appellant. As such could not be registered as taxable persons under the Act. Further that the airtime was not for the proposes of the Appellant’s staff

business activities but for the business activities of the Appellant itself.

Under the VAT Act there at two categories of supplies, the supply of goods and the supply of services. Clearly subsections 18 (5) and (6) limit themselves to only the supply of goods and could not apply where the supply was of services.

However the Tribunals holding was that any supply of airtime made to staff for use on official duties for free is deemed a supply made for reduced consideration between the Applicant and its staff under sections 3 and 18(7) of the Act. Section 18(7) provides;-

> *" (7) A supply is made for reduced consideration if the supply is made between associates for no consideration or between associates for a consideration that is less than the fair market value of the supply."*

The issue is whether the Appellant's members of staff were associates to the Appellant under the provisions of the VAT Act. An associate is defined by section 3(1) which provides;-

> *" 3(1) for the purposes of this Act "associate" in relation to a person, means any other person who acts or is likely to act in accordance with the directions, requests, suggestions or wishes of the person whether or not they are communicated to that other person."*

Then subsection (2) of the Act gives specific types of associates. Clearly there was no evidence to know, whether directly or indirectly, that the Appellant's staff qualified among any of the specified categories of associates under subsection 3(2) of the Act in their business relations with the Appellant. However, as rightly submitted by the Respondent's counsel this list is not exhaustive. Counsel for the Respondent submitted that any supply of airtime made to staff for use on official duties for free is deemed a supply made for reduced consideration between associates and thereby a supply made for consideration and liable to VAT under the VAT Act. Fair market value of a taxable supply is defined by section 2(1) of the VAT Act to mean the consideration in money which a similar supply would generally fetch if supplied in similar circumstances at that date in Uganda being a supply freely offered and made between persons who not associates. On the basis of the above definition Counsel agued that it follows that a supply of airtime to staff for less than the fair market value will be a supply for reduced consideration since it was made between a associates. That under section 2(1) parties will be associates if a relationship exists whereby the other person acts or is likely to act on the directions, requests and suggestions of the party giving them. He contended that the Appellants staff were under the master – servant relationship, not independent contractors, and as such expected on act or the Appellant's directions, requests and suggestions and therefore associates of the Appellant under the definition.

On the other hand Counsel for the Appellant agued that the staff of the Appellant were not its relatives, partners or trustees and did not constitute 50% or more of its voting power and were not in any relationship ejusden generis to any of the foregoing. He therefore submitted that they were not associates of the Appellant. Counsel further relied on the definition of the word "associate" in the Shorter Oxford English Dictionary the relevant part of which states that an " associate" is:-

> *"One who is united to another by community of interests, etc ... partner, comrade, companion,---- companion in arms, ally--- one who shares an office, or position of authority wish anther, on equal and intimate terms, a companion, mate – One who belongs to an association wish a status subordinate to that of a full member or "fellow" – A thing placed or found in conjunction with another --- "*

Counsel further submitted that a member of staff of the Appellant is a mere employee and referred to the definition of an "employee" and "employer" – in the Employment Act. Under Section 1 of the Employment Act (h) "employee" means any person employed for wages and includes an apprentice and a domestic servant.

(i) *"Employer" means any person, Company, firm or corporation, that has entered into a contract of service to employ any other person, and the agent, foreman, – manager or factor of that employer, and where a person*

has entered in to a contract of service with the Government or with any officer on behalf the Government, the Government Officer under whom that person is working shall be deemed to be his or her employer."

If guided by the above dictionary definition and the definition of an employee and employer in Employment Act the Appellants employees/staff cannot be regarded as its associates. However the VAT Act gives a specific definition of the word "associate" which gives a safer guide in the circumstance of this care. It is trite law of statutory construction (called the generalia specialibus rule) that where there is a specific legislative provision and a general provision on a particular matter or procedure, the specific provision takes precedence over the general provision. See **Sule Pharmacy Limited -Vs- The Registered Trustees of the Khoja Shia Itana Shari Jamat H.C Misc. App. No. 147 of 1999(unreported).**

The word "associate" in the VAT must be given its specific definition assigned to it in section 3 of the Act. The Appellants staff were not in any relationship ejusedem generis to the classified associates in subsection (2) of the Act but as already pointed out the list therein is not exhaustive. It does not limit the general provision in subsection (1) of the section. It provides;-

" (2) Without limits the generality of subsection (1), the following are treated as an associate of a person - --".

The Appellant's members of staff are employees of the Appellant and are thereby expected to work on the directions, reports and suggestions of the Appellant as their employer/master. In its statement of Facts and Reasons in Support Respondent - of the Application before the Tribunal the Appellant stated;

> *"Facts of the case*
>
> (i) **---** *The airtime provided is based on each staffs job communication requirements and any personal abuse of the phones or airtime provided to staff results in appropriate disciplinary action---."*

The above goes to show that the airtime provided is used by the staff upon the directions of the Appellant. This brings the Appellant's staff within the arbit of an "associate" under section 3(1) of the VAT Act.

The remaining issue is whether a supply of airtime to the Appellants staff was a supply made for reduced consideration under section 18(7) of the Act. Under section 18(1) of the Act a taxable supply is a supply of goods or services, made by a taxable person for a consideration and under subsection (4) a supply is made for a consideration if the supplier directly or indirectly receives payment for the supply; Under subsection 6 where goods have been supplied to a taxable person for the purposes of his business activities, the supply of those goods shall be regarded as a supply for consideration and under

subsection (7) a supply is made for reduced consideration if the supply is made between associates for no consideration or between associates for a consideration that is less than the fair market value of the supply. I have already held that the supply of airtime by the Appellant to its staff was a supply of services and the Appellant and its staff were associates within the provisions of section 3 of the VAT Act. Therefore it was supply of services between associates. However the Appellants case before the Tribunal was that the supply was for no consideration. The Tribunal held that any supply of airtime made to staff for use on official duties for free is deemed a supply made for reduced consideration between the Appellant and its staff under sections 3 and 18(7) of the VAT Act and is liable to VAT.

Section 18(7) of the Act makes reference to “A supply” and I have found that supplies are in two categories under the Act – “supplies of goods” and “supplies of services.” In the instant case I have already held that the supply of airtime was a supply of services.

While submitting about the provisions of subsection 7 of section 18 Counsel for the Appellant argued that subsection (7) cannot stand alone. That it must be read together with subsection 18(6) which limits itself to supply of goods. He therefore concluded that there was no supply of goods to the Appellant’s staff written the meaning of subsection 18(6) and (7) of the Act. Subsections 18(5) and (6) make specific reference to supplies

of goods. Subsection 18(6) is applicable in reference of supply of goods supplied to a taxable person for purposes of his or her business activities in which case such a supply if for a reduced consideration, shall be regarded as a supply for consideration. The issue is whether the supply in subsection 18(7) refers to supplies generally or to supplies of goods only. My considered view is that subsection 18(2), (4), (7) and (8) make provision for supply generally whether of “goods” or “services”. Under the subsection any supply whether of “goods” or services”, if made between associates for no consideration or between associates for a consideration that is less than the fair market value of the supply, is a supply made for reduced consideration. Subsection 18(7) doesn’t make any reference to the forging subsection (6) for them to be read together. All the subsections in section 18 must be read in light of subsection 18(1), which recognises the taxable supplies as being supplies either of goods or services.

I therefore find that the airtime provided by mobile cellular phone companies is a supply of services, that the supply made by the Appellant to its staff was between associates for no consideration and as such at reduced consideration under section3 and 18(7) of the VAT Act and therefore a taxable supply under section 18(1) of the VAT Act.

In view of my finding above I find that the Tribunal was correct to uphold the assessment of Ug. Shs. 358,652,458/= and the penalty of Ug. Shs. 253,161,660/=.

In the premises the appeal is dismissed with costs.

Lameck N. Mukasa

J U D G E

5/01/06