THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

COMMERCIAL DIVISION

CIVIL SUIT NO. 238 OF 2009

BANK OF BARODA LTD::PLAINTIFF

VERSUS

THE COMMISSIONER GENERAL
UGANDA REVENUE AUTHORITY::::::::::::::::::::::::DEFENDANT

BEFORE HON. LADY JUSTICE HELLEN OBURA

JUDGMENT

The plaintiff bank brought this action against the Commissioner General of Uganda Revenue Authority (URA) seeking a declaration that the defendant's assessment for the sums of Ushs. 824.987,760/= and Ushs. 672,216,243 as Value Added Tax (VAT) in respect of imported services and corporation tax respectively are erroneous and the plaintiff is not liable to pay either of the amounts assessed. It sought for orders that the said assessments be quashed and the monies collected by the defendant be refunded with interest, general damages and costs.

The assessment in dispute was made after the defendant carried out a tax audit of the plaintiff bank for the period 2004 to 2007. On 16th April 2009 the plaintiff objected to the assessment on the ground that it was entirely erroneous and demanded a review of the defendant's findings. In that regard, the defendant made a final objection decision confirming the assessment on 8th June 2009.

It was contended that the defendant had since collected from the plaintiff the sum of **Ushs 1,243,379,649.** As a result of the defendant's actions the plaintiff has suffered and continued to suffer loss and damage.

The defendant opposed the plaintiff's claim. In its written statement of defence (WSD) the defendant contended that the plaintiff was properly assessed under the Value Added Tax Act (VAT Act) and the Income Tax Act (ITA) and the tax liability of Ushs **577,491,432 (**Five Hundred Seventy Seven Million Four Hundred Ninety One Thousand Four Hundred Thirty Two Shillings) remained due and owing.

At the scheduling conference conducted on 2nd May 2012, Mr. Cephas Birungyi counsel for the plaintiff and Mr. Ali Ssekatawa counsel for the defendant informed court that during mediation a part consent settlement was entered and the main issue left for determination by this court was whether the quotation of financial services by the plaintiff was liable to VAT. They then agreed that since this issue was on a point of law they would not call witnesses but just proceed to file written submissions which they did.

The written submissions were based on the following three agreed issues that arise from the main issue:

(1) Whether the plaintiff is liable to pay VAT of Ushs. 824,987,760/= on imported services.
(2) Whether the assessed VAT on financial services by the defendant is lawful.
(3) Remedies.

Both counsel argued the 1st and 2nd issues together. This court will determine all the three issues together. The background of this suit as stated in counsel for the plaintiff's submission is that the plaintiff entered into a management agreement with Bank of Baroda India for the provision of both management services and financial services for the period January 2004 to December 2007. A total of USD 600,000 was paid per year for those services. The plaintiff deducted and remitted VAT on the management services that

had been imported but did not remit VAT on the financial services on the basis that this supply was VAT exempt.

During the audit by the defendant, VAT was computed on all services imported by the plaintiff on the grounds that under section 4 (c) of the VAT Act Cap. 349, VAT is due on any service imported by any person.

Section 4 of the VAT Act (before the 2011 amendment) provided as follows:

> ***"A tax to be known as value added tax shall be charged in accordance with this Act on:***
> ***(a) every taxable supply in Uganda made by a taxable person;***
> ***(b) every import of goods other than an exempt import; and***
> ***(c) the supply of any imported services by any person".*** **(Emphasis added).**

Section 18 of the VAT Act defines a taxable supply as *a supply of goods or services, other than an exempt supply, made by a taxable person for consideration as part of his or her business activities.*

Section 19(1) of the VAT Act states that;

> *"**A supply of goods or services is an exempt supply if it is specified in the second schedule."***

The second schedule in part 1 provides;

> ***The following supplies are specified as exempt supplies for the purposes of section 19:***
> ***(a)……***

(b)……

(c) the supply of financial services;

In this schedule

(a) ……

(b) "financial services" means –

i. granting negotiating, and dealing with loans, credit, credit guarantees, and any security for money, including managements of loans, credit, or credit guarantees by the grantor;

ii. transactions concerning deposit and current accounts, payments, transfers, debts, foreign currency sales and purchases, cheques and negotiable instruments, other than debt collection and factoring;

iii. transactions relating to shares, stocks, bonds and other securities other than custody services;

iv. management of investment funds; but does not include provision of credit facilities under a hire purchase or finance lease agreement.

Counsel for the plaintiff submitted that the words ***"shall be charged in accordance with this Act"*** as used in section 4 of the VAT Act (before the 2011 amendment) meant that whereas that section 4 was the general charging section, it was subject to other provisions of the Act. In his view therefore section 19 of the Act which provided for exempt services could not be overridden by section 4(c). He relied on the case of ***Stanbic Bank of Uganda Ltd and 3 others v Attorney General HCMA 0645 OF 2011*** for the position that Acts of Parliament should be construed according to the intent of the Parliament which passed the Act.

In that regard, counsel submitted that the legislators decided that financial and insurance services were exempt supplies without specifying whether they were domestic services or not. It was his view that section 19 and section 4 (c) of the VAT Act should be read together. According to him the second schedule does not say that imported services are excluded from exempt supplies.

In the alternative counsel for the plaintiff submitted that section 19 should have been drafted subject to the provisions of section 4 (c) which would have meant that the supplies which are exempt are only those supplied domestically. He argued that where section 19 is clear that all supplies in the second schedule are exempt from tax, there is nothing to lead to a conclusion that section 4 (c) is superior to section 19. He singled out exhibit P1 where inter alia the defendant stated that an import of services which are exempted from VAT would not be subject to VAT in Uganda on importation.

The plaintiff's counsel further submitted that all provisions of the VAT Act should be construed together so as to avoid an absurdity in law. He relied on the case of ***Stephen Seruwagi Kavuma vs Barclays Bank (U) Ltd HCMA No. 634 of 2010*** where it was held that the golden rule of statutory interpretation requires that in the construing of statutes the statute be taken as a whole, construing it all together, giving words their ordinary signification unless when so applied they produce an inconsistency or an absurdity or inconvenience so great as to convince court that the intention could not have been to use them in their ordinary signification.

On the other hand, counsel for the defendant argued that had the intention of the legislature been to exempt imported financial services from VAT, a provision stating the same would have been made explicitly, as it was done in respect to the import of goods in section 20 of the Act. Reliance was made on the case of ***Cape Brandy Syndicate v Inland Revenue Commissioners (1921) 1 K.B 64 at page 71*** where Rowlatt J stated that:

> ***"…in a taxing Act one has to look merely at what is clearly said. There is no room for any intendment; there is no equity about tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied, one can only look fairly at the language used."***

It was also submitted for the defendant, that the plaintiff was not registered for VAT when they received the invoice from the foreign supplier. Thus the plaintiff was required

to have applied for registration so they could account in accordance with sections 5, 7(1) and 8(6) of the VAT Act.

It was argued by the defendant and I am convinced by that argument, that it is not bound by the contents of Exhibit P1 because it was not issued as a private ruling. There was no application for a private ruling by the plaintiff concerning this case in line with section 80 of the VAT Act which allows the Commissioner General to make a private ruling where a tax payer applies for it in writing. I also agree that that the letter was not issued specifically in respect to the matter at hand.

Counsel for the defendant further argued that the provisions of section 4 (c) of the VAT Act before the amendment was clear and not susceptible to more than one meaning since all the conventional means of interpretation have not yet been applied to find the provision wanting and this could not be held to be ambiguous. This was based on the definition of ambiguity in a statute in the case of ***Lafarge Midwest, Inc v City of Detroit State of Michigan Court of Appeals No. 28929*** which was applied by Kiryabwire, J in his judgment in the case of ***Crane Bank v Uganda Revenue Authority HCCA No. 18 of 2010*** where it was held that a provision of the law is ambiguous only if it irreconcilably conflicts with another provision or when it is equally susceptible to more than one meaning.

I have carefully considered the submissions and the provisions of sections 4 (c) and 19 of the VAT Act which are in dispute. The crack of the dispute between the parties is interpretation of these provisions. I agree with the submission of counsel for the defendant that section 4(c) of the VAT Act before the amendment was clear and not susceptible to more than one meaning. It could not lead to an absurdity and therefore there is no need of reading more words into it.

The golden rule of interpretation of statutes is that in interpreting a statute the courts must adhere to the grammatical and ordinary sense of the words unless that adherence would lead to some manifest absurdity. Section 4(c) of the VAT Act (prior to the 2011

amendment) clearly provided that VAT shall be charged on the supply of any imported services by any person. Unlike sub-section 4 (b) of that Act which provided that VAT shall be charged on every import of goods ***other than an exempt import***, the sub-section in issue did not provide for any exemption. It is my considered view that it was the intention of the legislature not to exempt charging of VAT on imports and that is why that sub-section talked of supply of ***any imported services by any person.***

For that very reason, the Minister of Finance in her budget speech for the Financial Year 2011/2012 in paragraph 125 page 32 proposed to make clear VAT treatment on imported services. She then stated that VAT would apply to imported services where the recipient of the services was a taxable person as per the details in the VAT (Amendment Bill) which was passed into law. Consequently, section 4 (c) of the VAT (Amendment) Act 2011 now requires VAT to be charged in the supply of imported services other than an exempt service by any person. The words, ***"other than an exempt service"*** was inserted by that amendment. This means that prior to the amendment all imports including financial services were not exempt from VAT.

This court is inclined to agree with the submission of counsel for the defendant based on the decision in ***Cape Brandy Syndicate v Inland Revenue Commissioners*** (supra) that in a taxing Act one has to look merely at what is clearly said as there is no room for presumption. To my mind section 4(c) was unequivocal on the treatment of supply of imported services. Taking into account the wordings of section 4 (b) vis-a-vis that of section 4 (c), there is no doubt that the legislature did not intend to make imported services exempt from VAT. To my mind, reading sections 4 (b), 4 (c) and 19 together, the only logical conclusion would therefore be that the provision of section 19 was intended to apply to domestic supply of financial services and I find so.

I do not see any absurdity caused by the above interpretation of the sections in dispute as contended by counsel for the plaintiff. In any event, section 4 (c) of the Vat Act has since been amended and the provisions are now quite clear as indicated above.

For the above reasons, I find that the assessment done by the defendant was lawful. In the result, the declaration and orders sought by the plaintiff are denied. It is instead declared that the imported financial services were not exempt from VAT before the 2011 amendment of the VAT Act. In the premises, the plaintiff is liable to pay VAT on them and it is hereby ordered to pay the Ushs. 824,987,760/= assessed by the defendant and penal tax for late payment as per section 65 (3) of the VAT Act.

Costs of this suit are awarded to the defendant.

I so order.

Dated this 16th day of November 2012.

Hellen Obura
JUDGE

Judgment delivered in chambers at 3.00 pm in the presence of Ms. Diana Kasabiiti who was holding brief for Mr. Cephas Birungyi for the plaintiff. Both the defendant and her counsel were absent.

JUDGE
16/11/12