THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(COMMERCIAL COURT DIVISION)

CIVIL APPEAL NO. 57 OF 2020

(Arising from TAT Application No. 72 of 2018)

JOSEPH OKUJA.....APPELLANT

VERSUS

UGANDA REVENUE AUTHORITY.....RESPONDENT

BEFORE HON. MR. JUSTICE RICHARD WABWIRE WEJULI

JUDGMENT

This Judgment arises from the Ruling and Award of the Tax Appeals Tribunal (TAT) in TAT No. 72 of 2018 delivered on 15th October 2020.

The background to the Appeal is that the Appellant discovered that several companies that export goods listed as *Exempt Supplies* under the Second Schedule of the VAT Act were unlawfully claiming VAT cash refunds for input tax incurred on their business activities, and that these claims were being processed and paid to the companies by the Respondent's officials.

The Appellant prepared an Informer Disclosure brief on the unlawful VAT cash refund claims and payments, and submitted it to the Respondent as an

Informer under Section 8 of the Finance Act, 2014 (now repealed). After making several unsuccessful follow-ups with the Respondent's officials, the Appellant engaged his lawyers with instructions to take up the matter with the Respondent on his behalf. The Respondent wrote back to the Appellant under its Code Name in a letter dated 19th December, 2016 but delivered to the Appellant on 5th January 2017, informing the Appellant that investigations were ongoing and that the exercise takes some reasonable time to ensure that a thorough job is done.

On 9th March, 2017, the Respondent wrote to the Appellant's lawyers in two separate letters, one giving their interpretation of the application of the VAT Act to the disclosure, and the other informing the Appellant that the refunds were rightfully paid and that he is not entitled to any monetary reward. The Appellant contested this decision in Civil Suit No. 211 of 2017 filed by him in the High Court.

By Order of Court, the matter was referred to the Tax Appeals Tribunal for hearing. In its Ruling delivered on 15th of October 2020, the Tax Appeals Tribunal dismissed the Appellant's Application.

The Appellant being dissatisfied with the decision of the TAT lodged this Appeal on the grounds that:

1. The Honorable Members of the Tribunal erred in law when they failed to properly interpret the provisions of the **Value Added Tax Act** and arrived at a wrong conclusion, to wit, that processed foodstuffs can be considered as unprocessed where the value does not exceed 5% of the value of the supply.

2. The Honorable Members of the Tribunal erred in law when they failed to interpret the provisions of the **Value Added Tax Act** thereby arriving at a wrong conclusion that the **Third Schedule of the Value Added Tax Act** applies to exports of agricultural products or food stuffs whether processed or unprocessed.
3. The Honorable Members of the Tribunal erred in law when they misconstrued the **Second Schedule of the Value Added Tax Act** and thereby holding that the same deals with only domestic supplies of unprocessed foodstuff and agricultural produce.
4. The Honorable Members of the Tribunal erred in law in holding that export sales are not taxable supplies and that any goods once exported for consumption outside Uganda attract a VAT rate of zero.
5. The Honorable Members of the Tribunal erred in law when they failed in their duty to properly evaluate the evidence on record and thereby came to an erroneous decision.

REPRESENTATION

The Appellant was represented by Libra Advocates while the Respondent was represented by the Legal Department of URA. The parties duly filed their respective written submissions.

PRELIMINARY OBJECTIONS

In their submissions Counsel for the Respondent raised an objection to the effect that this Appeal should be dismissed based on the fact that the Appellant has amended the grounds of Appeal without leave of Court, contrary to **Order 43 Rule 1(2) of the Civil Procedure Rules**. That the Appellant has argued grounds of appeal different from those set forth in the

Notice of Appeal without leave of Court. That as such the grounds of appeal be struck out and the Appeal be dismissed with costs to the Respondent.

In reply the Appellant submitted that there was no such amendment to the Memorandum of Appeal as the Respondent alleges. That the action of the Appellant adding words in the grounds of appeal in his written submissions does not create an amendment to the Memorandum of Appeal that was already filed. That submissions are not pleadings within the meaning of the **Civil Procedure Act Cap 71 and Civil Procedure Rules S.I. 71-1**. That in event Court finds otherwise, this can be cured by **Article 126 (2) (e) of the 1995 Constitution.** That the words which were added do not bring any disadvantage or injustice to the Respondent. That the Appeal should stand and be heard and determined on its merits.

I have carefully considered the record of appeal, the written submissions of the parties and the authorities cited. This is my finding in respect to this objection;

In the instant case, the Memorandum of appeal set out the grounds of appeal as follows;

a. The Honorable Members of the Tribunal erred in law when they failed to properly interpret the Value Added Tax Act Cap. 349 (as amended), thereby arriving at a wrong conclusion that processed foodstuffs can be considered as unprocessed where the value added does not exceed 5% of the value of the supply.

b. The Honorable Members of the Tribunal erred in law when they failed to interpret the provisions of the Value Added Tax Act, thereby arriving at a wrong conclusion that the Third Schedule of the Act Cap. 349 (as amended)

applies to exports of agricultural products or foodstuffs, whether processed or unprocessed.

c. The Honorable Members of the Tribunal erred in law when they misconstrued the Second Schedule of the VAT Act Cap. 349 (as amended) and thereby holding that the same deals with domestic supplies of unprocessed foodstuff and agricultural produce.

d. The Honorable Members of the Tribunal erred in law in holding that export sales are not taxable supplies and that any goods once exported for consumption outside Uganda attracts a VAT rate of zero.

e. The Honorable Members of the Tribunal erred in law when they failed in their duty to properly evaluate the evidence on record and thereby came to an erroneous decision.

The grounds that the Respondent alleges were amended by the Applicant are bolded below;

a. The Honorable Members of the Tribunal erred in law when they failed to properly interpret **provisions of the** Value Added Tax Act **and arrived** at a wrong conclusion that processed foodstuff**s** can be considered as unprocessed where the value added does not exceed 5% of the **total** value of the supply.

b. The Honorable Members of the Tribunal erred in law when they failed to interpret the provisions of the Value Added Tax Act thereby arriving at **a** wrong conclusion that the Third Schedule of the **VAT** Act applies to exports of agricultural products or foodstuffs, whether processed or unprocessed.

c. The Honorable Members of the Tribunal erred in law when they misconstrued the Second Schedule of the Value Added Tax Act and thereby holding that the same deals with **only** domestic supplies of unprocessed foodstuff and agricultural produce.

d. The Honorable Members of the Tribunal erred in law in holding **that export sales are not taxable supplies and** that any goods once exported for consumption outside Uganda attract a VAT rate of zero.

e. The Honorable members of the Tribunal erred in law when they failed **in their duty** to properly evaluate the evidence on record and thereby came to an erroneous decision.

For an amendment to warrant leave to be sought under **Order 43 Rule (2)1 of the Civil Procedure Rules SI 71-1**, it must be one that changes the meaning or interpretation of the ground. In this particular case the bolded words that were added to the grounds in the Appellant's submissions did not in any way change the meaning of the grounds. They are words which even when dealt away with do not change or cause any effect on the grounds.

As submitted by the Appellant's Counsel the case of **Migadde Richard Lubinga & 2 Others Versus Nakibuule Sandra & 2 Others, CA No. 0053/2019** is distinguishable from the instant case. In that case the appeal was dismissed on the ground that the Appellants filed an amended Memorandum of Appeal without leave of Court.

In this instant case, no amended Memorandum of appeal has been filed without leave of Court which means that the grounds to be considered by this Court are those in the Memorandum of Appeal included in the Record of Appeal, not those in the submissions.

I am of the view therefore that the addition of words for emphasis in the grounds of appeal as stated in the Appellant's submissions does not amount to an amendment of the grounds of Appeal and can, in any case, be cured by **Article 126 (2) (e) of the 1995 Constitution** so that the Appeal is heard and determined on its merits. The preliminary objection is denied.

The Appellant also raised an objection to the effect that the Respondent's Submissions in Reply were filed five days later than Court's directed time. They did not state how this late filing prejudiced them. This was never reflected on their acknowledgement of receipt of the Respondent's submissions in reply as having been received in protest. As a matter of fact, they even filed their Affidavit in rejoinder and never raised this issue.

It is paramount that the timelines set by Court are complied with. However, in my view, given that the Respondent does not demonstrate any damage or prejudice that might have been or could be occasioned by the delays, this, in the opinion of Court, is an issue which could have been atoned for in damages had such damage or prejudice been inferred. It is also one of those procedural aspects that is curable by Article 126 (2) (e) of the 1995 Constitution in for substantive justice to be dispensed by having the Appeal heard on its merits.

Be that as it may, if only for reasons that this Court should not condone non-adherence to its directives and to its Rules of procedure and to ensure that such laxity is not encouraged, the Respondent is ordered to pay costs, if any, associated with the late filing of their submissions.

I will now address the merits of the Appeal based on the grounds stipulated by the Appellant.

GROUND 1

The Honorable Members of the Tribunal erred in law when they failed to properly interpret the provisions of the Value Added Tax Act and arrived at a wrong conclusion that processed foodstuffs can be considered as unprocessed where the value does not exceed 5% of the value of the supply.

The Appellant's Counsel submitted that the Respondent failed to define and explain the value addition process that added value above 5 percent of the total value of its supply. That Paragraph 3 of the Second Schedule of the Value Added Tax Act, as amended defines the term unprocessed for purposes of excluding the supply of unprocessed agricultural products from the scope of VAT by exempting such supplies and not the other way round. That when unprocessed agricultural products are processed, they become taxable. That the definition is inclusive and specific to foodstuffs and agricultural products which are unprocessed and not foodstuffs that are processed. That extending this definition to cover all processing activities whose value addition does not exceed 5% of the total value of processed foodstuffs would be reading into the law a meaning that has not been assigned to the term by the law.

In reply the Respondent's Counsel submitted that the VAT Act allows processed food stuff to be considered as unprocessed where there is low value-added activity which does not exceed 5 percent of the total value of the supplies. That if goods are not exempt supplies, then they are taxable supplies. That when unprocessed agricultural products are processed, they become taxable. That the definition of unprocessed provides a qualification of what amounts to unprocessed and any foodstuffs or agricultural products

which do not meet that standard are processed. That under the VAT Act a good is either processed or unprocessed. That the Honorable members of the Tribunal did not err in law in coming up with their decision. Counsel prayed that Court find no merit in this ground of Appeal and strike it out.

In rejoinder, the Appellant's Counsel submitted that Paragraph 3 of the Second Schedule of the VAT Act, Cap. 349 does not imply that processed food stuffs can be considered unprocessed where the value does not exceed 5% of their total value. That the definition of 'unprocessed', which is stated to be for the purposes of paragraph 1(a) of the Second Schedule of the VAT Act, Cap 349, is intended to distinguish specific activities which ordinarily constitute processing, but for which the activity does not change the state of the product. That it is not the percentage value addition that makes a product processed or unprocessed but rather the activity undertaken in modifying the product. That the Appellant required the Respondent to show the distinction between value addition processes that add value above five percent and which ones add value below five percent, and what criteria was used when coming up with the analysis in respect of agricultural products. Counsel cited the case of **The Cape Brandy Syndicate v The Commissioners of Inland Revenue (1) (1930) 12 TC 358** and **Uganda Revenue Authority v Total Uganda Ltd CA No. 08 of 2010.**

DETERMINATION BY COURT

In the case of **The Cape Brandy Syndicate v The Commissioners of Inland Revenue (1) (1930) 12 TC 358,** also cited by the Applicant, Court held that;

"Clear words are necessary to tax the subject and in taxation you have to look simply at what is clearly said. There is no room for any intendment; there is no equity about a tax: there is no presumption as to a tax; you read nothing in; you imply nothing, but you look fairly at what is said and at what is said clearly and that is the tax."

The above case was followed in the case of **Uganda Revenue Authority v Total Uganda Ltd, CA No. 08 of 2010** in which Justice Christopher Madrama, as he then was, in affirmation of the same principles of interpretation of tax law, held that a tax statute is to be construed as it is without presumptions, implications or trying to ascertain the intention of Parliament outside the wording of the statute. With that background in mind,

Section 19(1) of the VAT Act as amended defines an exempt supply as that specified in the Second Schedule of the Act.

Paragraph 1(a) of the 2nd schedule of the VAT Act which is the basis of the contention at hand provides as follows;

"1. The following supplies are specified as exempt supplies for the purposes of section 19—

a. *the supply of unprocessed foodstuffs, unprocessed agricultural products and livestock;"*

The above paragraph is explained by **Paragraph 3 of the 2nd schedule of the VAT Act as amended** which provides that;

"For the purposes of clause 1(a) of this Schedule, the term "unprocessed" shall include low value-added activity such as sorting, drying, salting, filleting, deboning, freezing, chilling or bulk

packaging, provided the value added does not exceed 5 percent of the total value of the supply."

The definition is inclusive and specific to foodstuffs and agricultural products which are unprocessed and not foodstuffs that are processed. In their finding on pages 47-48 of the Record of Appeal which is page 9 and 10 of their Ruling, the Tribunal was of the view that the provisions of Paragraph 1(a) of the 2nd schedule of the VAT Act are clear, which finding I also agree with. The Tribunal went on to hold that;

"However, what was clear becomes a bit murky when definition of 'unprocessed' is stated...In short, the VAT Act allows processed foodstuff to be considered as unprocessed where there is low value-added activity which does not exceed 5 percent of the total value of the supply...From the definition in Paragraph 3, it is implied that processed foodstuff and processed agricultural products are not exempt supplies."

In interpreting Paragraph 3 of the 2nd schedule of the VAT Act, the Tribunal ought to have been guided by the case of **The Cape Brandy Syndicate v The Commissioners of Inland Revenue (1) (1930) 12 TC 358** which states that in taxation you have to look simply at what is clearly said.

Paragraph 3 of the 2nd schedule of the VAT Act clearly states that the definition of "*unprocessed*" is for purposes of paragraph 1(a) of the 2nd schedule of the VAT Act. This means that Paragraph 3 is defining what "*unprocessed*" means as used in Paragraph 1(a). Paragraph 3 was in respect to Paragraph 1(a) which deals with only the supply of unprocessed foodstuffs, unprocessed agricultural products and livestock.

The Tribunal's holding that; "*from the definition in Paragraph 3, it is implied that processed foodstuff and processed agricultural products are not exempt supplies*" was an implication that the paragraph intended to cover processed products too. This is contrary to the law on interpretation of tax statutes as laid out in the cases of **Uganda Revenue Authority v Total Uganda Ltd, CA No. 08 of 2010** and of **The Cape Brandy Syndicate v The Commissioners of Inland Revenue (1) (1930) 12 TC 358** cited above. The VAT Act clearly defines what the term unprocessed means and had it been intended for it to include processed foodstuffs as well where the value does not exceed 5 percent of the total value of supply it would have clearly stated so. Extending this definition to cover all processing activities whose value addition does not exceed 5% of the total value of processed foodstuffs would amount to attribution of intendment, reading into the Act and making assumptions.

If the Tribunal had read the paragraphs in question as they are, they would have established that Paragraph 3 was explaining Paragraph 1(a) which only relates to unprocessed products that are already categorized as exempt under the 2nd schedule.

Paragraph 3 further clarified that for the unprocessed products to qualify as processed and thereby be categorized as zero rated, the value added had to exceed 5 percent of the total value of the supply.

In the case of **Wabulungu v Uganda Revenue Authority TAT Application No. 2 of 2012**, the Respondent called witnesses who explained and demonstrated to Court how to determine whether the value addition exceeds 5% or not. The Respondent being the taxing body has the mandate to define and explain the value addition process. However, much as they stated that

the supply in question had added value above 5 percent of the total value, they never explained the Value Chain Addition Analysis for Export Ready Agricultural Products that they provided yet the Tribunal's conclusion was made on the basis of the same.

Ground one of the Appeal is accordingly allowed, the Tribunal erred in law when they failed to properly interpret the provisions of the Value Added Tax Act and arrived at a wrong conclusion that processed foodstuffs can be considered as unprocessed where the value does not exceed 5% of the value of the supply.

I find Grounds two and three to be closely related and I will therefore resolve them jointly. They state as follows;

GROUND 2

The Honorable Members of the Tribunal erred in law when they failed to interpret the provisions of the Value Added Tax Act thereby arriving at a wrong conclusion that the Third Schedule of the Act applies to exports of agricultural products or food stuffs whether processed or unprocessed.

and GROUND 3

The Honorable Members of the Tribunal erred in law when they misconstrued the Second Schedule of the VAT Act, thereby holding that the same deals with only domestic supplies of unprocessed foodstuff and agricultural produce.

The Appellant's Counsel submitted that the Third Schedule of the VAT Act, as amended, only applies to taxable supplies as provided in Section 24(4),

and not to exempt supplies which are listed in the Second Schedule of the VAT Act. That since unprocessed foodstuffs and unprocessed agricultural products are supplies listed under the Second Schedule as exempt supplies, the Third Schedule of the VAT Act does not and cannot apply to them. That the Ruling of the Tax Appeals Tribunal on Page 11 under Paragraph 4 that agricultural foodstuffs and products whether processed or not, qualify to be considered as goods which once exported attract a VAT rate of zero was a misinterpretation of the provisions of the VAT Act. That the Tribunal erred when they wrongly interpreted Section 77 of the VAT Act by holding that unprocessed agricultural products which fall within the Second Schedule should be taken as falling within the Third Schedule, and yet the priority of the Third Schedule only applies when a supply of a good or service may be covered by both Schedules.

Counsel submitted that there is no doubt or ambiguity as to which schedule to use, thus this provision cannot fall within the ambit of Section 77 of the Act. That an export supply whose transportation commences in Uganda is a taxable supply made in Uganda. That the Third Schedule only deals with exports of taxable supplies as provided for under Section 24(4) of the Act, and as stated in Paragraph 1 of the Third Schedule.

In reply the Respondent's Counsel submitted that it is not automatic that unprocessed foodstuffs and unprocessed agricultural products are exempt supplies. That in a circumstance like the one in this matter where the unprocessed foodstuffs and unprocessed agricultural products are exported into Uganda the same cannot be exempt supplies in the second schedule due to the fact that the supplies in issue are not supplied in Uganda but outside Uganda. Counsel further submitted that the unprocessed foodstuffs

and unprocessed agricultural products that are listed in the Second Schedule are those supplied in Uganda. That the unprocessed foodstuffs and unprocessed agricultural products in this matter are supplied and consumed outside Uganda and the applicable schedule is the Third Schedule to the VAT Act which deals with exports. That there is no misconstruction of the law as it is not disputed that the goods in this particular matter were exported. That the Schedule which applies to exports is the Third Schedule and not the Second Schedule and the Applicable rate is zero rate. Counsel prayed that Court uphold the decision of the Tax Appeals Tribunal, find no merit in this ground of Appeal and strike it out.

In rejoinder the Appellant's Counsel submitted that the Third Schedule of the VAT Act, Cap. 349 only deals with taxable supplies that are exported from Uganda as part of the supply, and thus excludes unprocessed agricultural food stuffs and unprocessed agricultural products which are exempt supplies defined in Section 19 of the VAT Act, Cap. 349 and listed under the Second Schedule of the VAT Act, Cap. 349. Counsel submitted that exempt supplies remain exempt whether supplied in the country or outside the country and taxable supplies remain taxable supplies whether supplied in the country or outside the country. That the action of supplying the goods outside the country does not automatically transform them from exempt supplies to taxable supplies which are taxed at Zero rate. Counsel submitted that since unprocessed foodstuffs and unprocessed agricultural products are exempt supplies under section 19 and the Second Schedule to the VAT Act, Cap. 349 they cannot at the same time be taxable supplies that would be taxable at the zero rate upon export. That an export supply whose transportation commences in Uganda is a taxable supply made in Uganda.

DETERMINATION BY COURT

The products in question are unprocessed food stuffs and unprocessed Agricultural exports. By virtue of being unprocessed, the products fall under the 2nd schedule as noted in Ground One.

The contention arises over the fact that the same are exports yet exports fall under the 3rd schedule which does not expressly provide for unprocessed food stuffs and unprocessed Agricultural exports.

In the case of **Uganda Revenue Authority v Total Uganda Ltd, Civil Appeal No. 08 of 2010 at page 11,** Court found that;

> *"Once the supply of goods are excluded by section 19 as exempt supplies, it follows that such supplies are not taxable supplies and therefore there is no need to establish how much VAT is calculable on it. An exempt supply cannot be subjected to zero rates...Exemption stands in its own and a tax payer only needs to plead that the goods or services supplied are included in the 2nd schedule and therefore not taxable supply as defined by S.18 of the VAT Act...An exempt supply cannot be zero rated because it is not a taxable supply for purposes of VAT."*

The Appellant has pleaded and submitted that the supply in question falls under the 2nd schedule. The law on interpretation of tax statutes is to the effect that a tax statute is to be construed as it is, without presumptions, implications or trying to ascertain the intention of Parliament outside the wording of the statute.

Once a supply is excluded by S.19 as exempt, it means that it is not taxable and cannot therefore be subject to zero rate.

Whereas it is true the phrasing of paragraph 1(a) 3rd schedule is wide, for purposes of interpreting tax statutes, one cannot try to ascertain what the intention of Parliament was when framing the law.

I am not convinced by the Respondent's submission that where unprocessed foodstuffs and unprocessed agricultural products are exported, they shift schedule and become zero rated. In my view, this is a presumption of the intention of the framers of the law who did not expressly mention unprocessed food stuffs and unprocessed Agricultural exports in the 3rd schedule.

My finding is that the Third Schedule of the Act only applies to exports of taxable supplies and the 2nd schedule does not state that it is limited to domestic supplies of unprocessed foodstuff and unprocessed agricultural products. If the framers of the law intended that the 2nd schedule be limited to domestic supplies of unprocessed foodstuff and unprocessed agricultural products or that exported unprocessed foodstuffs and unprocessed agricultural products be zero rated, the intention would have been expressly stated as such.

In the result, Grounds 2 and 3 of the Appeal are allowed; the Honorable Members of the Tribunal erred in law when they failed to interpret the provisions of the Value Added Tax Act thereby arriving at a wrong conclusion that the Third Schedule of the Act applies to exports of agricultural products or food stuffs whether processed or unprocessed. The Honorable Members of the Tribunal further erred in law when they misconstrued the Second Schedule of the VAT Act, thereby holding that the same deals with only domestic supplies of unprocessed foodstuff and agricultural produce.

GROUND 4

The Honorable Members of the Tribunal erred in law in holding that export sales are not taxable supplies and that any goods once exported for consumption outside Uganda attract a VAT rate of zero.

The Appellant's Counsel submitted that a supply of goods or services can only be zero-rated if the goods or services are taxable supplies and it is not the process of exportation that transforms an exempt good into a taxable good subject to the zero rate of tax.

In reply the Respondent's Counsel submitted that the Respondent was justified to consider the export as a zero rated supply. That the unprocessed foodstuffs and unprocessed agricultural products in this particular matter are supplies made and consumed outside Uganda. That the Second Schedule applies to supplies made in Uganda. That once the goods are supplied and consumed outside Uganda then Third Schedule becomes applicable.

In rejoinder, the Appellant's Counsel submitted that a supply of goods and services can only be zero rated if the goods or services are taxable supplies. That a supply of a good that is ultimately exported by being delivered to, or made available at an address outside Uganda, is a supply that takes place in Uganda. That the process of exportation does not transform an exempt good into a taxable one subject to the zero rate of tax.

DETERMINATION BY COURT

I am in agreement with the Appellant's submissions that it is not the process of exportation that transforms an exempt good into a taxable good subject to the zero rate of tax.

Paragraph 1 of the Third Schedule to the VAT Act as amended clearly states that;

"The following supplies are specified for the purposes of section 24(4)".

Section 24(4) of the Value Added Tax Act, as amended provides that the rate of tax imposed on taxable supplies specified in the Third Schedule is zero.

The definition of taxable supplies is found under **Section 18(1) of the Value Added Tax Act, as amended** which defines taxable supplies as a supply of goods or services, other than an exempt supply, made in Uganda by a taxable person for consideration as part of his or her business activities.

The literal meaning of the above provisions in conjunction with each other is that no taxable supply can be an exempt supply at the same time.

Once a supply is exempt it cannot transform into a taxable supply and vice versa. If a supply is exempt and falls under the 2nd schedule, its exportation does not transform it into a zero rated supply to fall under the 3rd schedule.

Whereas export sales are generally considered taxable supplies under the VAT law of Uganda and the TAT therefore erred in finding that that export sales are not taxable supplies, that notwithstanding, the Tribunal were right in stating that such goods are only exempt from VAT if the goods are exported outside Uganda. This however is only so if the conditions stated in the Act for export exemption are met to evince that the goods are physically

exported outside Uganda in order to qualify for VAT exemption under the export provisions of the VAT Act.

The 3rd schedule deals with exports which are taxable supplies and categorized as zero rated. In this particular case, the unprocessed foodstuffs and unprocessed agricultural products which are categorized as exempt supply under paragraph 1(a) of the 2nd schedule cannot become zero rated supplies simply because they are exported from Uganda.

The Respondent's submissions that the 2nd schedule applies to supplies made in Uganda is in the opinion and interpretation of the law by this court fallacious. This is because the same was not expressly stated in the law. To find as such would amount to making presumptions on what the framers of the law intended to mean.

Export sales cannot become taxable supplies if they are already exempt supplies. Once a supply is classified as an exempt supply, it is not subject to VAT regardless of whether it is intended for export or not. As such they cannot attract a VAT rate of zero.

Be that as it may, under the VAT Act of Uganda, export sales are taxable supplies, they are however subject to zero rate of VAT upon proof that they were exported outside Uganda. This is not the same thing as not being a taxable supply.

The Tribunal therefore erred in law when they held that export sales are not taxable supplies and that any goods once exported for consumption outside Uganda attract a VAT rate of zero.

Ground 4 of the Appeal is allowed.

GROUND 5

The Honorable Members of the Tribunal erred in law when they failed in their duty to properly evaluate the evidence on record and thereby came to an erroneous decision.

The Appellant's Counsel submitted that the Honorable Members of the Tribunal in arriving at their decision on Page 13 of the Ruling, did not consider the categories of companies and products exported, and therefore came to an erroneous decision that all the unprocessed foodstuffs and unprocessed agricultural products qualified to be zero rated since they were exports and would therefore fall within the ambit of the Third schedule of the VAT Act as amended.

The Appellant prayed for orders that:

a. The Appellate Court sets aside or vary the judgment of the Tax Appeals Tribunal.
b. The Appellate Court declares that exempt supplies are out of scope for VAT purposes and that such exempt supplies, when exported do not become taxable supplies at the zero rate to merit a refund on input tax incurred on purchases.
c. The Appellate Court declares that only taxable supplies become zero rated when exported and that the taxable persons who export taxable supplies are entitled to a refund of input tax incurred.
d. The Appellate Court compels the Respondent and its officials to investigate, assess and recover the VAT unlawfully paid out to any exporters of Exempt Supplies.

e. A reward of10% of any principal tax recovered by the Respondent after investigations and audit, from VAT refunds paid out between July 2014 and April 2016 to Exporters as contained in the information provided to the Respondent in the Informer Disclosure be awarded to the Appellant.
f. Interest on late recovery and payment be paid to the Appellant.
g. General Damages be paid to the Appellant.
h. Judgment is entered in favour of the Appellant.
i. Costs of the Appeal be entered against the Respondent.

The Respondent's Counsel submitted that the Honorable members of the Tribunal evaluated the evidence on record and were able to establish the dispute between the parties and thereby came to the right conclusion. That this Appellate Court, in re-appraising the said evidence on record, should arrive at the same conclusions as those that the learned members of the Tax Appeals Tribunal (TAT) arrived at when they considered the evidence and that the Ruling by the TAT be upheld.

In rejoinder the Appellant's Counsel submitted that the duty of this Honorable Appellate Court is to reappraise the evidence on record and arrive at an independent decision based on the law.

DETERMINATION BY COURT

The duty of a first Appellate Court was outlined by Hon. Justice A. Karokora, J.S.C, as he then was, in the case of **Sanyu Lwanga Musoke versus Sam Galiwanga, SCCA No. 48/1995** where he held that;

> *"...it is settled law that a first Appellate Court is under the duty to subject the entire evidence on the record to an exhaustive scrutiny and to re-*

evaluate and make its own conclusion while bearing in mind the fact that the Court never observed the witnesses under cross-examination so as to test their veracity..."

Premised on this Court's determination of the Grounds of appeal and on its evaluation of the evidence in the record of proceedings, the Court finds that the trial Tribunal did not properly evaluate the evidence thereby reaching a wrong conclusion.

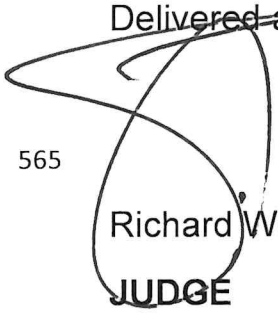
Ground 5 of the appeal is allowed.

In the result:

1. Judgment is entered for the Appellant.
2. The Judgment of the Tax Appeals Tribunal is set aside.
3. It is declared as follows;
    a. Exempt supplies are out of scope for VAT purposes.
    b. Exempt supplies, when exported do not become taxable supplies at the zero rate to merit a refund on input tax incurred on purchases.
    c. Only taxable supplies and not exempt supplies become zero rated when exported.
    d. Taxable persons who export taxable supplies are entitled to a refund of input tax incurred

4. The Respondent and its officials are directed to investigate, assess and recover the VAT hitherto unlawfully paid out to any exporters of Exempt Supplies.
5. Costs of the Appeal are entered against the Respondent.

Delivered at Kampala this 18th day of April 2023.



Richard Wejuli Wabwire

JUDGE