THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(COMMERCIAL DIVISION)

CIVIL APPEAL No. 17 OF 2020

(ARISING FROM TAX APPEALS TRIBUNAL APPLICATION No. 50 of 2018)

AMATHEON AGRI UGANDA LIMITED ..... APPELLANT

VERSUS

UGANDA REVENUE AUTHORITY ..... RESPONDENT

BEFORE: HON. LADY JUSTICE SUSAN ABINYO

JUDGMENT

Introduction

This is an appeal from the ruling of the Tax Appeals Tribunal, following an application by the Applicant (Appellant herein) to the Respondent for a VAT refund amounting to UGX 30,012,946 in its VAT return for the month of July, 2017, which the Respondent rejected for reasons that the Company wrongly classified its supplies as zero rated which was inconsistent with the law given the fact that the supplies relate to unprocessed agricultural products, and that the supplies are classified as Exempt in accordance with paragraph 1(a) of the Second Schedule, and not Zero rated under paragraph 1(1) of the Third schedule of the Value Added Tax Act, Cap 349(hereinafter referred to as the "Act". That following the reversal of the VAT credit, the Respondent raised the assessments totalling to UGX 154,144.995, which were communicated to the Applicant, and the Applicant duly objected to VAT assessments but the Respondent in its decision disallowed the Applicant's objection. The Applicant being dissatisfied with the objection decision that maintained the VAT assessments, applied for review before the Tax Appeals Tribunal.

Background

The Appellant's case in Application No. 50 of 2018, before the Tax Appeals Tribunal was that it grows cereals like rice and maize in Nwoya, which the Appellant supplies to local millers in Uganda, and that the said cereals are milled in Uganda. Because it grows the cereals in Uganda that are milled in Uganda, it's entitled to an input tax credit. That this position was contested by the Respondent on the basis that it should be the same taxpayer growing and milling cereals, and the Appellant's supply of cereals was classified as exempt and not zero rated by the Respondent. That this disentitled the Appellant to input VAT credit; a position that was upheld by the Tribunal. The Appellant being dissatisfied with the decision of the Honourable Members of the Tax Appeals Tribunal lodged a notice of appeal under section 27(2) of the Tax Appeals Tribunal Act, Cap 345, and raised three grounds of appeal.

The grounds of appeal as stated in the Notice of Appeal are that: -

1. The Tribunal erred in law when it interpreted the ambiguity of paragraph 1(1) of the Third Schedule of the VAT Act, against the Appellant thereby making an erroneous finding, and occasioning a miscarriage of justice.
2. The Tribunal erred in law when it misdirected itself in applying the purposive approach to interpreting paragraph 1(1) of the Third Schedule of the VAT Act, thereby reaching an erroneous finding as to the purpose and objective of the legislature.
3. The Tribunal erred in law and reached an erroneous finding that the Appellant's supply of rice and maize is exempt, and the Appellant is not entitled to the input VAT credit.

Representation

The Appellant was represented by Senior Counsel Gimara Francis of M/S ALP Advocates while the Respondent was represented by Counsel Baluku Ronald Masamba jointly with Counsel Alidekki Ssali Alex of the Legal Services, and Board Affairs Department, Uganda Revenue Authority.

Counsel for the parties herein, filed written submissions as directed by this Court.

Counsel for the Appellant submitted that this appeal revolves around the interpretation of paragraph 1(1) of the Third Schedule to the Act on the classification of supply of cereals, however, Counsel preferred to argue grounds 1, 2, and 3 of the appeal consecutively.

Counsel for the Respondent followed the same approach although reluctantly; to them, the three grounds of appeal are one, and the same can be argued together.

I agree with the submission of Counsel for the Respondent that the three grounds of appeal can be narrowed down to one ground, and the same can be argued together.

This Court will therefore, consider one ground of appeal as below:

Ground 3: The Tribunal erred in law and reached an erroneous finding that the Appellant's supply of rice and maize is exempt, and the Appellant is not entitled to the input VAT credit.

Arguments by Counsel for the Appellant

Counsel submitted that the VAT Act under section 24(4) read together with paragraph 1(1) of the Third schedule to the Act, provides for the supply of cereals, where the cereals are grown and milled to be zero rated, and that on this basis, the Appellant applied for input tax credit, which was disallowed by the Respondent.

Counsel argued that the Tribunal in its ruling departed from the plain reading of the provision, and instead found ambiguity in the provision of paragraph 1(1) of the Third schedule to the Act, as susceptible to multiple interpretations, and that having found ambiguity as they did, then the Tribunal ought to have correctly applied the law on ambiguity as regards tax statutes; the effect being that such ambiguity ought to be resolved in favour of the tax payer.

Counsel relied on the case of *Stanbic Bank (U) Ltd & 7 Others Vs Uganda Revenue Authority HCCS No. 792 of 2006 and 170 of 2007(Consolidated)*, where Kiryabwire. J (as he then was) held that the law is fairly settled that the ambiguity should be construed in favour of the tax payer, and the case of *Bank of Baroda Vs Uganda Revenue Authority CACA No.71 of 2013*, which cited with approval the case of *Lafarge Midwest Inc. Vs City of Detroit, state of Michigan*, where the Court held that a finding of a statutory ambiguity is made when a provision conflicts with another provision, or when it is equally susceptible to more than a single meaning, to submit that the ambiguity ought to have been resolved in favour of the Appellant taxpayer by upholding its supply of cereals in question as zero rated.

Counsel further argued that the Tribunal erroneously treated the Appellant's supply of cereals as a supply of unprocessed food stuff under paragraph 1(a) of the second schedule of the VAT Act, and opted for a general provision in lieu of a specific provision under paragraph 1(1) of the Third schedule of the VAT Act. That this was contrary to section 77 of the VAT Act, which provides for the application of priority of schedules, and relied on the case of *Uganda Revenue Authority Vs Total Uganda Limited Civil Appeal No. 08 of 2010*, where Madrama. J (as he then was) held that section 77 leaves it open where there is doubt as to which schedule to use where a supply of goods, and services may be covered by both, that is when the provision is applicable.

Counsel further submitted that the Tribunal misapplied the Hansard as a tool and aid of statutory interpretation, and misdirected itself in the application of the purposive approach in interpreting paragraph 1(1) of the Third schedule of the VAT Act, thereby reaching an erroneous finding as to the purpose, and objective of the legislature, and relied on the case of *Rotich Samuel Kimutai Vs Ezekiel Lenyongopeta & 2 Others CA Civil Appeal No. 273 of 2003* in support of his submissions.

Arguments by Counsel for the Respondent

Counsel submitted that there is no ambiguity in the interpretation of paragraph 1(1) of the Third schedule of the VAT Act by the Tax Appeals Tribunal, and that the Appellant has not proved that the provision of paragraph 1(1) is ambiguous. That the use of the word "and" does not qualify a provision as ambiguous.

Counsel relied on the case of *Crane Bank Vs Uganda Revenue Authority HCMA No. 18 of 2010*, where Kiryabwire. J (as he then 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.

Counsel contended that in legislative drafting the use of the word "and" denotes conjunctiveness in nature and togetherness as opposed to the use of the word "or", and that from the above, applying the literal meaning of the impugned provision, the draftsman clearly stated the condition of growing and milling are activities, which have to be undertaken together, they cannot be separated especially with the use of the word and, which denotes connectiveness and togetherness, and that the Tribunal did not even need to go to other rules of statutory interpretation in order to arrive to its conclusion.

Counsel further contended that the use of the purposive rule by the Learned members of the Tribunal was not in error but a matter of principle in applying the rules of statutory interpretation, and relied on the Supreme Court case of India in *Reserve Bank of India Vs Peerless General Finance and Investment Co. Ltd and Others [1987]1 SCC 424; Sea Ford Court Estate Ltd Vs Asher [1949] K.B 481,* and *Pepper (Inspector of Taxes) Vs Hart [1992] UK HL3,* which emphasise the use of legislative history in statutory interpretation.

Counsel argued that the supply of rice and maize which are unprocessed agricultural products are exempt under the VAT Act, and as such the Tax Appeals Tribunal was correct in concluding that the supply of rice and maize, which are unprocessed foodstuff are exempt, and that once the goods are exempted, there is no need to consider them as zero- rated, and relied on the case of *Uganda Revenue Authority Vs Total Uganda Limited* (supra), where this position was well articulated.

Decision

The duty of this Court as the first appellate Court, is to re-evaluate the evidence on record, and subject it to fresh scrutiny so as to reach its own conclusion. ***(See section 80 of the Civil Procedure Act Cap 71; Fredrick Zaabwe Vs Orient Bank Ltd S.C. Civil Appeal No. 4 of 2006*** *and* ***Sanyu Lwanga Musoke Vs Sam Galiwango S.C. Civil Appeal No. 48 of 1995)***

In the exercise of that duty, this Court will therefore consider the issues that were framed for determination by the Tribunal as follows:

1. Whether the Applicant's supply of cereals is zero rated supply or an exempt supply for VAT purposes?
2. What remedies are available to the parties?

The Tribunal in its resolution of issue (1) above stated at pgs. 8-10 of the ruling that:

> *"Applying the above authorities, and a reading of the above proceedings of the Parliamentary Committee as recorded in the Hansard shows that the overriding objective of the legislature in enacting paragraph 1(1) of the Third schedule of the VAT Act, was to facilitate value addition by encouraging cereal farmers to not only grow but to add value to their cereals through milling. The emphasis on the words "grown and milled in Uganda" makes it clear that the objective of the legislature was to support*

farmers to grow and mill their own cereals. So where a farmer grows cereals and mills it, he is entitled to VAT input credit. Since the Applicant was not milling the cereals it grew, its supply cannot fall under paragraph 1 of the Third Schedule which entitled it to zero rate VAT charge under section 24(4) of the VAT Act."

The Tribunal further observed that:

"The Applicant stated that it harvests, dries, cleans, packages and sells the cereals to millers. The only process that the Applicant adds to the cereals is drying, cleaning, and packaging. Section 19 of the VAT Act provides that the supply of goods and services in the Second Schedule shall be exempt. Under paragraph 1(a) of the Second Schedule the supply of unprocessed food stuff is exempt. The VAT Act allows the farmers to do low activity processing to the produce in order to sell it. It does not consider this low value added activity as processing. Under paragraph 3 of the Second Schedule the term unprocessed includes all value added that does not exceed 5% of the total value of the supply. The Tribunal thinks that the drying, cleaning and packaging of the cereals does not exceed 5% of the total value of supply. At least there is no evidence to show that it exceeds 5% of the total value of the supply. Therefore, the supply by the Applicant of its rice and maize is an exempt supply provided for under section 19 of the VAT Act."

Section 24 of the Act provides that:

Calculation of tax payable on a taxable transaction

"(1) Subject to subsection (2), the tax payable on a taxable transaction is calculated by applying the rate of tax to the taxable value of the transaction.

(2) Where the taxable value is determined under section 21(2) or (3), the tax payable is calculated by the formula specified in section 1(a) of the Fourth Schedule.

(3) Subject to subsection (4), the rate of tax shall be as specified in section 78(2).

(4) The rate of tax imposed on taxable supplies specified in the Third Schedule is zero." (Emphasis is mine)

"Paragraph 1(1) of the Third Schedule to the Act provides for Zero-rated supplies specified for the purposes of section 24(4)-

(1) the supply of cereals, where the cereals are grown and milled in Uganda."

From the reading of the provision of section 24(4), and the impugned provision of paragraph 1(1) of the Third Schedule as above, this Court finds that there is ambiguity in the latter provision as shall be explained below. (***See Bank of Baroda Vs Uganda Revenue Authority CACA No.71 of 2013,*** on what amounts to ambiguity in a statute)

It is my understanding that the literal meaning of the wording of the provision under paragraph 1(1) of the Third Schedule, that the supply of cereals where the cereals are grown and milled in Uganda, implies that the supply of cereals by the Tax payer is due to the two activities of growing and milling, which are carried out together by the Tax payer on the one hand, and the other meaning could be that one of the two activities of growing and milling is carried out by the Tax payer, and the other activity not carried out by the Tax payer, is carried out by another person(s) but for the benefit of the Tax payer, in order for the cereals to be supplied by the Tax payer with value added.

I have taken into further consideration that the Tribunal used the purposive rule of statutory interpretation to find at pg.8 of the ruling that:

> *"... a reading of the above proceedings of the Parliamentary Committee as recorded in the Hansard shows that the overriding objective of the legislature in enacting paragraph 1(1) of the Third schedule of the VAT Act, was to facilitate value addition by encouraging cereal farmers to not only grow but to add value to their cereals through milling. "*

The above finding by the Tribunal, put in different words is that the purpose of the legislature in enacting paragraph 1(1) of the Third Schedule to the Act, was to encourage cereal farmers to grow, and also mill the cereals before sell so as to add value to it before sell. It is also my considered view that, the benefit of this was two-fold: gain market value from export, and input VAT credit.

This Court therefore, cannot fault the Tribunal for applying the purposive rule of statutory interpretation as Counsel for the Appellant wants the Court to believe.

I am fortified in my finding above, with the decision in *Pepper (Inspector of Taxes) Vs Hart* (supra), where Lord Browne – Wilkinson wrote on the subject of Hansard that:

> *"My Lords, I have come to the conclusion that, as a matter of law, there are sound reasons for making a limited modification to the existing rule [that Hansard may not be used] unless there are constitutional or practical reasons which outweigh them. In my judgment, subject to the questions of*

the privileges of the House of commons, reference to Parliamentary material should be permitted as an aid to the construction of legislation which is ambiguous or obscure or the literal meaning of which leads to an absurdity. Even in such cases, references in court to Parliamentary material should only be permitted where such material clearly discloses the mischief aimed at or the legislative intention lying behind the ambiguous or obscure words..." (Emphasis is mine)

Lord Griffiths was in agreement with Lord Browne – Wilkinson, and wrote in regard to legislative interpretation that:

> *"The days have long passed when the courts adopted a strict constructionist view of interpretation which required them to adopt the literal meaning of the language. The courts now adopt a purposive approach which seeks to give effect to the true purpose of legislation and are prepared to look at much extraneous material that bears upon the background against which the legislation was enacted."*

(See also the Supreme Court case of *India in Reserve Bank of India Vs Peerless General Finance and Investment Co. Ltd and Others (supra); and Sea Ford Court Estate Ltd Vs Asher(supra),* which explain the need for the use of legislative history in statutory interpretation.

Following the guidance in the above authorities on the purposive rule of statutory interpretation, this Court finds that the purpose of the impugned provision of paragraph 1(1) of the Third Schedule was misconstrued by the Learned members of the Tribunal.

In addition, I find that it was not proper for the Tribunal to ignore its earlier finding that section 1(1) of the Third Schedule was ambiguous, and failed to find for the Appellant. *(**See Stanbic Bank (U) Ltd & 7 Others Vs Uganda Revenue Authority(supra),*** on the proposition of the law that ambiguity should be construed in favour of the tax payer*)*

For reasons stated above, this Court finds ground 1 of the appeal successful, and ground 2 of the appeal fails.

For avoidance of doubt, paragraph 1(a) of the Second Schedule, in which the Tribunal based its finding against the Applicant provides that:

"Exempt supplies

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;" (Emphasis is mine)

Section 19 of the Act provides that:

"Exempt supply

(1) A supply of goods or services is an exempt supply if it is specified in the Second Schedule. (Emphasis is mine)

(2) Where a supply is an exempt supply under paragraph 1(k) of the Second Schedule, both the transferor and transferee shall, within twenty-one days of the transfer, notify the Commissioner General in writing of the details of the transfer."

Paragraph 3 of the Second Schedule provides that:

"3. 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."

It is my understanding that the basis of paragraph 1(a) of the Second Schedule in regard to exempt supplies, is the level of percentage of the value added to the total value of the supply; where the percentage of the value added does not exceed 5 percent of the total value of the supply, it qualifies the supply by the tax payer on foodstuffs, agricultural products and livestock as unprocessed.

For the foregoing reason, I find that the provision of section 19, and Paragraph 1(a) of the Second Schedule above, on exempt supply relates to unprocessed foodstuffs, unprocessed agricultural products, and livestock.

I am unable therefore, to agree with the finding of the Learned members of the Tribunal at pg. 9 of the ruling, that section 19 deals with processed foodstuff while section 24 covers unprocessed foodstuff.

In the result, this Court finds that this occasioned a miscarriage of justice to the Appellant as will be discussed hereunder.

The evidence adduced by AW2 the Senior Accountant for the Applicant at pg. 32 of the proceedings was that the Applicant is in the business of commercial farming mainly the growing of cereals like rice and maize on its farms located at Nwoya District, and that the cereals grown on the farms are harvested, dried, cleaned, packaged and sold to local millers in Uganda.

The evidence of AW1 the Managing Director of the Applicant, during cross examination at pg.2 of the proceedings, was that the Applicant does not mill these cereals.

In the given circumstances, this Court finds that the evidence adduced by the Applicant (Appellant herein) on the supply of cereals, in which the Applicant applied to the Respondent to assess the supply as zero – rated for purposes of input VAT credit was sufficient, to qualify the supply of cereals by the Appellant under the impugned provision of "Paragraph 1(1) of the Third Schedule to the Act, which provided for Zero-rated supplies specified for the purposes of section 24(4) of the Act as discussed above.

Consequently, this ground of appeal succeeds.

This Court finds that this appeal partially succeeds, and makes orders that:

1. The Ruling of the Tax Appeals Tribunal is set aside.
2. The ambiguity of paragraph1(1) of the Third Schedule of the VAT Act, is hereby resolved in favour of the Appellant.
3. A declaration that the Appellant's cereals grown and milled in Uganda are zero rated supplies, and the Appellant is entitled to input VAT credit.
4. Costs of this appeal, and the application before the Tribunal are granted to the Appellant.

Dated, signed and delivered electronically this 11th day of January, 2023.

SUSAN ABINYO
JUDGE
11/01/2023