THE REPUBLIC OF UGANDA IN THE TAX APPEALS TRIBUNAL AT KAMPALA REGISTRY APPLICATION NO. 14 OF 2015

RULING

This ruling is in respect of an application challenging a Value Added Tax (VAT) assessment of Ug. Shs. 147,420,626/= by the respondent on an application.

Briefly the fact of the application are: The applicant is engaged in the business of purchase and sale of electric appliances. The respondent carried out an audit of the applicant in October 2013 and issued a VAT additional assessment of Shs. 147,420,626/= for the period of June 2010 to July 2013. The applicant objected to the assessment and filed this application.

On the 28th January, the parties to the application are agreed that the applicant shall pay the principal of Shs. 52,462,960/= to the respondent as VAT, interest of Shs 58,199,229/= all for the period of January 2011 to March 2015. It was agreed that the interest of April 2015, the month the application was filed in the tribunal to the date of the decision of the tribunal shall be determined by the Tribunal.

The following issues were set down for resolution by the tribunal:

1. Whether the applicant is liable to pay interest from April 2015?

The applicant was represented by Mr. Kitti Norman, Mr. Kwizera Nimrod and Mr. Kenneth while the respondent, by Mr. Ronald Baluku.

The parties did not call any witness as they deemed that the matter in issue required legal interpretation. Both parties opted to file written submissions.

The applicant filed its application on the 8th April 2015. It requested that the Tribunal waive the interest from 2015 to date. The applicant submitted that since the filing of this application the respondent has been requesting for adjournments on the ground that it was compiling an audit report. The applicant agreed to pay the principal tax but requested the Commissioner General to waive the interest. The applicant contended that he has been sick for some time. The accountant took benefit of that.

The applicant further submitted that the under S. 14 of the Tax Appeals Tribunal Act the Tribunal has power to review any taxation decision in respect of which an application is properly made. Under S. 19(1)(b) the Tribunal has powers and discretions that are conferred by the relevant taxing Act on the decision maker and may make a decision that may vary the decision under review or remit the matter back for reconsideration.

The applicant cited the authority of *Note Stable Ford v Liverpool General Commissioners and others* (1982) CHD 162 where a tax payer got into difficulties as result of a banking crisis and where his accountants had failed to file returns for the period in issue. Justice Vinelott considered the difficulties the taxpayer had gone through and reduced the penalties.

The respondent objected to the application. It contended that filing an application in court does not stay interest. The applicant has not shown any reasonable cause for the tribunal to waive the interest for the period from April 2015 to date. The Tribunal does not have such powers.

The respondent cited S. 65(3) of the Value Added Tax Act which provides that "A person who fails to pay tax imposed under the Act on or before the due date is liable to pay a penal tax on the unpaid tax at a rate specified in the fifth Schedule for the tax which is outstanding." The respondent cited the case of *Airtel Uganda Limited v Commissioner General Uganda Revenue Authority* CS 457 of 2010 where the court

held that "where the statute is clear and unambiguous, there is no need to make further inferences from a tribunal or court on the payments of interest. In short therefore the defendant has the right to claim for the interest because it is provided for under the law".

The respondent further submitted that the applicant has not shown good cause as to why it should not pay interest. The respondent also submitted that the circumstances of the case the applicant cited differed from the one in this case.

Having read the submissions of the parties the Tribunal rules as hereunder.

The applicant filed its application on the 4th May 2015 before the Tribunal. The applicant was challenging an assessment by the respondent dated 28th October 2013 for Shs. 147,420,626/=. After a number of adjournments both parties agreed to a consent arrangement or order whereby the applicant would pay interest of Shs. 52,462,960/= to the respondent as VAT for the period of January 2011 to Mach 2015. The applicant would pay interest of Shs. 58,199,229/= for the period from June to March 2015. The parties agreed that the interest from April 2015 to the day of the decision shall be determined by the Tribunal. No order was made as to costs.

S. 65 of the Value Added Tax Act is clear. It reads

"A person who fails to pay tax imposed under the Act on or before the due date is liable to pay a penal tax on the unpaid tax at a rate specified in the fifth Schedule for the tax which is outstanding."

The Fifth Schedule provides that the rate of interest chargeable as penalty shall be 2% per month compounded. A penal tax is imposed upon a party who defaults to pay VAT on or before the due date.

From a clear reading of the above Section it should not be in dispute that when a matter is before the Tribunal penal tax is payable. However, an issue that arises is when was the due date or dates when the various VAT amounts were payable. In the consent the applicant agreed to pay the principal and interest of the period from June 2011 til March 2015. When the parties filed their consent it did not indicate the due date or dates when the VAT was payable.

The Tribunal notes that when the applicant filed its application it was challenging a VAT assessment of Shs. 147,420,626/=. This VAT liability was reduced to Shs. 52,462,960/= in the consent order. The consent order did not indicate the dues dates when the VAT agreed in the consent arose. There is no assessment that were adduced before the Tribunal during the hearing after the consent order to ascertain the due dates. It would be difficult to require a tax payer to pay penal tax for periods when the dates are not known.

Since it is the respondent that is claiming penal tax, the Tribunal expected It to adduce in evidence a breakdown of the VAT that was payable and on which dates. The breakdown of how and when the VAT liability of Shs. 52,462,960/= and interest thereon ought to have been tendered in court in order to ascertain when the penal tax is due for the Tribunal to make an effective order.

In the absence of any due date in the consent order or in evidence, the Tribunal shall order that the applicant pays penal interest on the Shs. 52,462,960/= plus Shs. 58,199,229/= from the time it became due. The said tax can be deemed to have became due on the day the consent order was made, that is the 28th January 2016. Penal tax should be paid from 28th January 2016 til payment in full. No order as to costs. The Tribunal so orders.

Dated at Kampala this

day of

2016

DR. ASA MUGENYI

MR. GEORGE MUGERWA

MS. CHRISTINE KATWE