**THE REPUBLIC OF UGANDA**

**IN THE TAX APEPALS TRIBUNAL AT KAMPALA**

**APPLICATION NO. 34 OF 2017**

**UGANDA ELECTRICITY TRANSMISSION COMPANY LIMITED ………..APPLICANT**

**VERSUS**

**UGANDA REVENUE AUTHORITY ……………………………………..RESPONDENT**

## RULING

This ruling is in respect of an application challenging an objection decision by the respondent that the applicant's claim for an input tax credit of Shs. 14,933,056,019 is time barred under S. 23(3) of the Tax Procedures Code Act 2014.

The agreed facts by the parties are: The respondent conducted a customs post clearance audit on the applicant for the years 2006 – 2009 and raised an assessment of Shs. 14,933,056,019 which was issued on the 10th March 2011. In April 2015 the applicant submitted a VAT refund claim of Shs. 16,362, 624,076 in respect of imported electricity which was later reduced to Shs. 13,434,008,451. The respondent issued a third party agency notice on Standard Chartered Bank and recovered Shs. 500,000,000. The respondent also issued an agency notice against the approved Shs. 13,043,408,451. A balance of Shs. 999,047,568 was recovered by another agency notice. The applicant claims Shs. 14,933,056,019 as import VAT/ tax credit input for the import of electricity from Kenya and Rwanda. The amount is not in dispute. The respondent does not object to the amount but contends that the claim is time barred.

The following issues were framed and set down for hearing.

1. Whether the applicant's claim for input tax credit of Shs. 14,933,056,019/= is time barred?
2. What remedies are available to the parties?

The applicant was represented by Mr. Bruce Musinguzi, Mr. Oscar Kambona and Mr. Thomas Kato. The respondent was represented by Ms. Gloria Twinomugisha.

At the hearing of the application both parties elected not call any witnesses, the matter in contention being a matter of law. The parties filed a joint trial bundle of the documents agreed by them. The parties proceeded to file written submissions.

The applicant submitted that it was not in dispute that it is entitled to input tax credit. The applicant relied on the respondent's letter dated 12th April 2017, exhibit AE8 where the latter conceded that the input tax credit due could not be credited because the former had not observed the timelines under S. 23(3) of the Tax Procedures Code Act 2014. The applicant contended that the Tax Procedures Code Act did not apply as it came into force on 1st July, 2016 whereas the dispute in question arose prior to 2016.

The applicant submitted that its claim for input tax credit was based on S. 28(1) of the Value Added Tax (VAT) Act which provided that where S. 25 of the VAT Act applied, for the purposes of calculating the tax payable by a taxable person for a tax period, a credit would be allowed to the taxable person for the tax payable in respect of all imports of goods made by that person if the import was for use in the business of the taxable person. The applicant also relied on S. 28(4) of the same Act which provides that an input tax credit under S. 28(1) of the Act arose on the date the goods or services were supplied to, or imported by the taxable person.

The applicant cited *Kinyara Sugar Ltd v The Commissioner General Uganda Revenue Authority* HCCS No. 73 of 2011 for the rules on statutory interpretation and submitted that the only reasonable interpretation that could be given to S. 28(4)(a) of the VAT Act, was that entitlement to input tax credit under S. 28(1) arose on the date the goods were imported by the taxable person. The applicant contended that S. 28 of the Act does not place any time limit when a taxable person can claim input tax credit. The applicant submitted that the only limitation on a claim of credit was provided for under S. 42(4) of the VAT Act, which was not applicable to this matter.

The applicant also cited *GEO Mineral Consult v Uganda Revenue Authority*, TAT Application No. 1 of 2004, where the Tax Appeals Tribunal held that a taxable person does not lose its rights to a refund claim simply because the application for the refund claim had been made out of time.

The applicant contended that S. 28(11) of the VAT Act provides that input tax credit may not be claimed until the tax period in which the taxable person has an original tax invoice for the taxable supply or a bill of entry or other document prescribed by the East African Customs Management Act (EACCMA) evidencing payment of input tax. The applicant contended that since the respondent issued an agency notice to recover the input VAT on imported goods, the applicant settled its tax liability and as a result the applicant is allowed to claim credit for the tax paid on the imports.

The applicant argued that the only limitation for a claim is under S. 42(4) of the Act which states that a claim for a refund shall be made in a return within three years after the end of the tax period in which the tax was overpaid. The applicant contended that the said Section does not have any bearing because it refers to refund of excess output tax that has been paid.

The applicant also submitted that S. 23(3) of the Tax Procedures Code Act did not apply to its claim because the Tax Procedures Code Act only came into operation on 1st July, 2016 while its claim had arisen before that time.

The applicant argued that S. 4(1) of the Acts of Parliament Act provides that every Act is deemed to have come into force at the date of its publication as notified in the Gazette. S. 14 (2) states that the Act shall be deemed to come into force at the first moment of the day of commencement. The applicant cited *Attorney General v Dr. James Rwanyarare*, SCCA 2 OF 2003, where the Supreme Court stated that a "law remains dormant until the day upon which it becomes enforceable and that day is the date of commencement which may be set out in the Act itself or upon publication of the Act in the Gazette". The applicant contended that the Tax Procedure Code Act states that it commenced on 1st July 2016, then that is the date that it would start to take effect.

Without prejudice, the applicant contended that the requirement to amend a return within 12 months is procedural and cannot override the substantive claim of the applicant. The applicant cited *Uganda Revenue Authority* v *Shoprite Checkers (U) Ltd* HCCS 15 of 2018 where the court stated that "the application for approval to the Commissioner General is procedural and cannot override the right given under the Act or deprive the applicant of the right under the Act." The applicant also cited *Warid Telecom v Uganda Revenue Authority* HCCA 24 of 2011 where the court stated that:

> "The question of whether the tax was due is a question of mathematics or arithmetic. It is the input versus output which would determine whether the principal was due. The fact that it was not disclosed in due time but subsequently cannot take away the mathematical equation."

The applicant submitted that it is entitled to a credit for the input tax. However the only clog to the claim for the refund is on the issue of timing. However the applicant prayed that its application be allowed on the basis of the substantive right given under the Act.

The respondent in its reply submitted that the applicant's claim for input tax credit is time barred. The respondent cited S. 28 of the VAT Act which provides that an input tax credit arises on the date the goods or services are supplied to, or imported by, the taxable person. The respondent contended that the applicant imported electricity in the period of 2006 to 2009. The tax liability of Shs. 14,433,056,019 ought to have been paid in the said period but was collected by third party agency notices in 2014, 2016 and 2017. The respondent contended that the importation in itself is not sufficient to claim for an input tax credit since VAT was not paid on the date of importation. The respondent contended that the applicant by mere fact of importation did not have a right to claim an input tax credit since no tax was paid on the date of importation as envisaged by S. 28 of the Act.

The respondent contended that the applicant ought to have filed an additional assessment under S. 23(1) of the Tax Procedure Code Act. This ought to have been done within 12 months after the date of furnishing the first return.

The respondent cited *Tolley's Value Added Tax* 1992-1993 Chapter 35 paragraph 1 page 286 which stated input tax should normally be claimed on the VAT return for the period which the supplier's tax point occurs or, for imports the period during which the date of importation takes place. The respondent submitted that the applicant should have claimed for the input tax credit in the first month of making its taxable supply which in this case is February 2006, January 2009 rather than 2017.

The respondent submitted that S. 78 of the Tax Procedure Code Act provides for transitional provisions. Under S. 78(1) of the Act a prosecution commenced before the commencement of the Act shall continue and be disposed of as if the Act had not come into force. Under S. 78(3) of the Act a tax liability that arose before the commencement of the Act may be recovered under this Act, but without prejudice to any action already taken for recovery. The respondent contended that the Act came into effect before this application was filed and taxes were recovered after the enactment of the Act. Therefore there is no basis for the assertion that the applicant is not bound by S. 23(3) of the Act which gives them only 12 months within which to amend the returns to access the input tax credit for the period 2006 to 2009.

The respondent cited *Elly B. Mugabi v Nyanza Textile Industries Ltd* [1992-1993] HCB 227 where it was stated that a cause of action arises when the right of the plaintiff is affected by the defendant's act or omissions. The respondent contended that the cause of action did not arise on 10$^{th}$ March 2011 as claimed by the applicant. The respondent argued that it recovered Shs. 500,000,000 on the 11$^{th}$ March 2104 Shs. 13,434,008,5451 on the 24$^{th}$ August 2016 and Shs. 999,047,569 in 2017. It is erroneous to impute that the Tax Procedure Code Act does not apply to the matter as the cause of action arose after its commencement.

The respondent argued that the Civil Procedure and Limitation (Miscellaneous Provisions) Act sets time limits for commencement of actions against scheduled corporations. The respondent cited S.3 of the said Act which provides that no action founded on a tort shall be brought against a scheduled corporation after the expiration of two years from the date on which the cause of action arose.

The respondent also submitted that the Tribunal can invoke the doctrine and principles of equity in instances like this. The respondent argued that where limitation period does not apply it may still rely on a laches defence. Laches or *Lasches* is an old French word for slackness, negligence or not doing an act timely. The respondent contended that applicant argues that the cause of action arose in 2011. That is a span of nearly nine years. Whereas the VAT Act does not specifically spell out time limits the Tax Procedure Code Act does. The applicant's claim for input tax credit is time barred.

In rejoinder the applicant contended that S. 23 of the Tax Procedure Code Act does not apply. S.23 of the Act deals with an additional assessment and a claim for input tax credit. This section does not apply to a tax payer who is under investigation. Secondly, where there is no error. It does not apply to the facts of this case.

The applicant contended that the only condition precedent to claiming input tax credit is evidence of payment. According to exhibit AE4 the tax was only paid when the agency notices were issued.

As regards the Civil Procedure and Limitation (Miscellaneous Provisions) Act the applicant contended that it deals with torts and contract. The matter before the Tribunal being a taxation case it did not fall under the Act. The applicant also contended that the principles and doctrines of laches does not apply.

Having perused through the joint trial bundle of the parties and read their submissions the Tribunal rules as hereunder.

It is not in dispute that the applicant imported electricity from Kenya and Rwanda from 2006 to 2009. In a letter dated 23rd March 2011 (exhibit AE2) to the Commissioner General of the Uganda Revenue Authority, PricewaterhouseCoopers Limited, the tax consultants of the applicant stated that the applicant bought power at a higher value and then sold it through government subsidies to its customers. Though provision of electricity is generally speaking a service the VAT Act considered it a good.  S. 10 (2) of the VAT Act which was repealed in 2011 provided that a supply of goods included a supply of electrical or thermal energy, heating, gas, refrigeration, air conditioning or water. The supply of electricity attracted VAT as a good..

This seems to have created a problem on how VAT would be collected on electricity. The applicant in the said letter (exhibit AE2) contended that the East African Customs Management Act (EACCMA) did not contain any guidelines on the how it should have declared the value of the power into the country for tax purposes. S. 120 of the EACCMA prescribes that import duty is payable at the entry of the goods imported into Uganda.  Likewise S. 17 of the VAT Act provides that an import of goods takes place on the date on which the duty is payable or in any case on the date the goods are brought into Uganda. The letters stated that “Because of the special way in which electric current is transmitted via electricity power lines, it is not practical to establish exactly the specific amounts of power which crosses the border from Kenya and Rwanda into Uganda.” The applicant submitted that it is clear that there was a problem of treating the supply of electricity as a supply of goods and not service under the VAT Act.

When the respondent carried out an audit on the applicant in 2011 it revealed that the latter was liable to pay Shs. 14,993,056,019 as VAT. In the minutes of a meeting (Exhibit RE5) held on the 12$^{th}$ February 2015 between officials of Ministry of Finance, Planning and Economic Development, the respondent and the applicant, the applicant made an appeal which was rejected by the respondent for VAT to be filed under a reverse mechanism which would imply there would be no tax payable. In essence the VAT output tax would be able to offset the VAT input tax or vice versa.

Consequently the respondent invoked its mechanisms to recover the VAT on the supply of the imported power. On 11$^{th}$ March 2014 the respondent collected Shs. 500,000,000 from the applicant through third party agency notices issued on Standard Chartered Bank. On 5$^{th}$ September 2016 the respondent approved a refund of Shs.

13,434,008,451 to the applicant. Using a third party agency notice issued against the applicant the respondent claimed Shs. 13,434,008,451. In 2017, the applicant claimed a refund of Shs. 7,883,510,029 which was approved but the respondent issued third party agency notices and collected Shs. 999,047,568. In total the respondent collected Shs. 14,933,056,019 from the applicant.

On the 28th September 2016 the applicant wrote to the respondent claiming for an input tax credit of Shs. 14,933,056,019 collected for the period 2006 to 2009. The respondent does not deny the input tax credit is due but contends it is not recoverable because the applicant's request is time barred.

In order to understand the nature of the dispute one has to look at the VAT Act. S. 4(b) of the VAT Act provides that a tax known as a value added tax shall be charged in accordance with this Act on every import of goods other than an exempt import. S. 5 of the Act provides that except as otherwise provided the tax payable in the case of an import of goods is to be paid by the importer. S. 10(2) of the VAT Act which was repealed provided that a supply of electrical energy was a supply of goods. It was not in dispute that the applicant was liable to pay Shs. 14,933,056,019 as VAT for the import of electricity for the period 2006 to 2009.

We already stated that the day the goods were brought into Uganda was a problem the applicant faced because of the nature of electricity being treated as a good. S. 17 of the VAT Act provides that

> "An import of goods takes place-
> (a) where customs duty is payable, on the date on which the duty is payable; or
> (b) in any other case, on the date the goods are brought into Uganda."

According to the applicant it was difficult to state with precision the exact amount of electricity bought in Uganda on a particular day. The applicant complained that there were no guidelines issued on how to handle electricity which was considered as a good. However it admits there were installed meters that measure the power used. The amount of electricity imported can be measured by the use of meters. Hence it is not difficult to measure the electricity imported within a given tax period. The respondent and applicant were able to compute the VAT payable for the electricity imported for the period 2006 to 2009. They were also able to compute the input tax credit. This confusion was one that could be resolved.

In order to understand whether and how the applicant was supposed to claim input tax credit one has to look at the method of accounting. S. 25 and 26 of the VAT Act deal with the methods of accounting and the formulas to be used. S. 25 of the VAT Act deals with invoice method of accounting while S. 26 of the VAT Act deals with cash basis accounting. S. 25 of the VAT Act provides:

> "(1) Subject to Section 26, the tax payable by a taxable person for a tax period is calculated according to the formula specified in Section 1(b) of the Fourth Schedule.

While S. 26 of the Act provides

> "(1) This Section applies to a taxable person, the annual value of whose taxable supplies does not exceed five hundred million shillings."

The annual value was previously two hundred million Shilling till the VAT Amendment Act 2015. To qualify for cash based accounting the annual value of the taxable supply should not exceed five hundred million as provided under S. 26(1) of the VAT Act. From the amounts involved in this dispute it is not difficult to discern that the applicant falls under S. 25 of the VAT Act. The Section would require the person making taxable supplies to issue invoices containing details of the supply and the VAT charged. Therefore the applicant was required to issue invoices on the importation of electricity.

The law providing for input tax credit is S. 28 of the VAT Act, before it was amended in 2012, 2015 and 2016. It provided that:

> "(1) Where Section 25 applies for the purpose of calculating the tax payable by a taxable person for a tax period, a credit is allowed to the taxable person for the tax payable in respect of –
>
> (a) all taxable supplies made to that person during the tax period; or
>
> (b) all imports of goods and services made by that person during the tax period,
>
> if the supply or import is for the use in the business of the taxable person."

> (2) Where Section 26 applies for the purposes of calculating the tax payable by a taxable person for a tax period, a credit is allowed to the taxable person for any tax paid in respect of taxable supplies to, or imports by, the taxable person where the supply or import is for use in the business of the taxable person."

The applicant is an electricity transmission company. It imported electricity for the use in its business. Hence it was entitled to a credit for the input tax.

S. 28(4) (a) of the VAT Act provides that an input tax credit under subsection (1) arises on the date the goods or services are supplied to, or imported by, the taxable person. In the letter by the applicant's tax consultant to the respondent (exhibit AE2) the applicant states that power that flows to either side is metered through installed meters which are located near the borders. Hence it is not difficult to envisage the power or electricity that is imported and compute the input tax credit. In this respect the applicant and the respondent are in agreement that the input tax credit is Shs. 14,933,056,019 for the period 2006 to 2009.

It is one thing for the input tax credit to be due and another thing to claim it. Before one may consider getting payment of input credit tax that person has to make a claim. S. 28(11) of the VAT Act provides that:

> "Subject to subsection (13) an input tax credit allowed under this Section may not be claimed by the taxable person until the tax period in which the taxable person has
>
> (a) an original tax invoice for the taxable supply; or
>
> (b) a bill of entry or other document under the East African Community Customs Management Act, 2004 (EACCMA) evidencing the amount of input tax."

A perusal of the applicant's exhibits does not show an original tax invoice for the taxable supply or a bill of entry or other document under the EACCMA. It would be difficult to get a bill of entry for electricity because though it was considered a good under the VAT Act it can only be measured by meters at the border points. As noted in the letter of 27th October 2014 (exhibit AE5) by the applicant's tax consultant to the respondent which stated that:

> "The EACCMA contains detailed guidelines on the procedures for importers importing goods into the country by land, air, rail and pipeline. The procedures for importation of electricity are not spelt out."

It was inconceivable how a bill of entry could be availed by the applicant for the importation of electricity where no guidelines were spelt out for such. However a tax invoice may be issued for electricity supplied in a tax period. Christine *Mugume "Managing Taxation in Uganda"* 1st Edition p 12/30 states that "Tax suffered can be claimed as input tax only by a taxable person if it is attributable to taxable supplies and that person has a valid tax invoice…"

Prior to 2017 the applicant was not claiming credit tax input. It seems that the applicant did not avail tax invoices to the respondent. However S. 28 (12) provides for situation where a party who has failed to provide a tax invoice may claim for an input tax credit. S. 28(12) of the VAT Act reads:

> "Where a taxable person does not have a tax invoice evidencing the input tax paid, the Commissioner General may allow an input tax credit in the tax period in which the credit arises where the Commissioner General is satisfied that –
>
> (a) the taxable person took all reasonable steps to acquire a tax invoice;
>
> (b) the failure to acquire a tax invoice was not the fault of the taxable person; and
>
> (c) the amount of input tax claimed by the taxable person is correct."

The Tribunal cannot determine whether the applicant took all reasonable steps to acquire a tax invoice, or if not whether it was not its fault. This was because no evidence to that effect was adduced. However the Commissioner allowed that an input tax credit was due to the applicant in its letter of 12th April 2017(exhibit AE8) after it had carried out a verification refund audit and the claim was reduced from Shs. 16,362,624,076 to Shs. 13,434,008,451. The respondent subsequently recovered Shs. 999,047,568 bringing the input tax credit to Shs. 14,933,056,019. This would resolve the issue of whether the Commissioner General was satisfied that the amount of input tax claimed was correct.

The respondent cited *Tolley's Value Added Tax* 1992 – 93 p. 286 which states that:

> "Input tax should normally be claimed on the VAT return for the period during which the supplier's tax point occurs or, for imported goods, the period during which the date of importation takes place. The tax point will be shown on the supplier's invoice. If unable to make a claim for input tax in the proper period (e.g. because the necessary evidence is not received in time) input tax may be claimed in a later period."

Therefore it is not in doubt that the applicant may claim input tax credit in a later period. However it appears that the applicant was not making VAT returns claiming the input tax credit at the appropriate times.

Christine Mugume in *"Managing Taxation in Uganda"* 1st Edition p 12/30 states that there is no time limit within which one should claim the input tax. A perusal of the VAT Act does not show any time limit in which one should claim input tax credit. S. 28 of the VAT Act does not place any time limit on when a taxable person can make a claim for an input tax credit. Therefore the applicant was free to claim any input tax paid at any time. The issue of input tax paid did not arise till the respondent issued third party agency notice to collect the output tax from the applicant.

The respondent contended that the applicant's claim is barred under S. 23 of the Tax Procedures Code Act which it contends that it provides a period of twelve (12) months within which to make a claim for input tax credit. The relevant parts of S. 23 read:

> "(1) The Commissioner may make an additional assessment amending a tax assessment made for a tax period to ensure that-
>
> (a) …
>
> (b) for an excess input tax credit under the Value Added Tax Act, the taxpayer is assessed in respect of the correct amount of the excess input tax credit for the period; or…"

Further S. 23(3) of the Act reads as follows:

> "(3) Subject to subsection (1), a taxpayer who has furnished a self-assessment return, other than a taxpayer whose return is being investigated, may upon discovering an error within twelve months after the date of the return, apply to the Commissioner for leave to make an additional assessment."

A close reading of the said Section clearly shows that it is concerned with filing of additional assessments. There is no evidence that the applicant made a self-assessment return and it contained an error which it discovered. While S. 23(1) allows a Commissioner General to make an additional assessment in respect of an excess input tax credit S.23 (3) deals with the time limit in which a taxpayer may apply to file an additional assessment. The respondent's argument that the applicant's claim for input tax credit is barred under S. 23(3) of the Tax Procedure Tax Code Act is misconceived as the said Section is not applicable to time limits on claims of input tax credit. It only deals with extension of time to make an additional assessment where there is an error discovered by the taxpayer. Is the respondent trying to insinuate that the applicant is not entitled to an input tax credit because it did not file an additional tax assessment return? The failure to file an additional return cannot bar a taxpayer from claiming an input tax credit where the respondent carried out an audit and verified the amount due. If the legislature had intended to provide time limits for claiming input tax credit it would have clearly stated so or expressly provided for it, taking into consideration the constitutional provisions in respect of a citizen's right to property. Once money becomes due it becomes property. A party is entitled to it.

In the circumstance it is not necessary to discuss whether S. 23(3) of the Tax Procedures Code Act applies to this matter because the applicant contended that whereas the Tax Procedures Code Act only came into operation on 1st July 2016 the applicant's claim arose between the periods 2006 to 2009. The said Section is irrelevant to time limits on input tax credit.

S. 40 of the VAT Act provides that where input tax exceeds output tax leading to a tax claimable the Commissioner General must refund the excess within one month of either the due date for the return for the tax period during which the excess arose or the date when the return was made if it was not made by the due date. That said section does not bar a taxpayer from claiming for input tax credit. It merely compels the Commissioner General to refund the excess within the period stipulated. It does not erase the obligation of the Commissioner to refund the excess. In this application there is no evidence as to when the applicant lodged in its returns. Therefore the Tribunal cannot state within which period the applicant ought to have been paid its excess input tax credit.

However there is one matter arising from the transactions of the applicant that the Tribunal has to address. This issue was not raised at the scheduling. However it became apparent from the perusal of the bundle of exhibits which were agreed on by the parties. The Tribunal like any court can address itself on any matter that comes to its attention to ensure that the ends of justice are met. Exhibit AE8, a letter to the Managing Director of the applicant from the respondent dated 12th April 2017, states that:

> "a post clearance audit carried out by the Customs Department in 2011 established unpaid VAT on imported electricity of Shs. 14,933,055,019 as result of misclassification, undervaluation and non-declaration of power imported from Kenya and Rwanda".

The said letter was not controverted in evidence as neither party called witness. It is apparent that the dispute between the applicant and the respondent arose from the confusion on how electricity should be treated as a good when it is actually a service. However the law is clear. If the law deems it a good so be it. The respondent cited S. 23(3) of the Tax Procedure Act and insinuated that the applicant ought to have filed an additional return to rectify any error. The Tribunal does not think that where one does not file a return or if so, does not do it correctly because of confusion this amounts to an error. Confusion and error are not synonymous. One cannot rely on confusion to explain ignorance of the law. In the event the applicant did not comply with the VAT Act, the law should take its course.

S. 31(1) of the VAT Act before it was amended provided that a taxable person shall lodge a tax return with the Commissioner General for each tax period within fifteen days after the end of the period. A tax period is defined under S. 2 of the Act to mean a calendar month. S. 16 of the Tax Procedure Code Act provides for the requirement for a person to furnish a return. There is no evidence that the applicant did not file returns. S. 65(6) of the VAT Act provides that:

> "A person who knowingly or recklessly-

(a) makes a statement or declaration to an official of the Uganda Revenue Authority that is false or misleading in a material particular; or

(b) omits from a statement made to an officer of the Uganda Revenue Authority any matter or thing without which the statement is misleading in a material particular, and

(i) the tax properly payable by the person exceeds the tax that was assessed as payable based on the false or misleading information;

(ii) the amount of the refund claim was false; or

(iii) the person submitted a return with an incorrect offset claim,

that person is liable to pay penal tax equal to double the amount of the excess tax, refund or claim."

The applicant may have omitted to declare input tax credit at the appropriate time but there is no evidence that the refund claim by the applicant was false. The law does not penalize failure to claim input tax credit at the appropriate time.

Having stated the law the Tribunal orders that the applicant is entitled to a refund of the input tax credit due to it. The applicant is awarded costs of this application. We so order.

Dated at Kampala this 30th day of October 2018.

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**DR. ASA MUGENYI** **CHRISTINE KATWE**

**THE REPUBLIC OF UGANDA**

**IN THE TAX APEPALS TRIBUNAL AT KAMPALA**

**APPLICATION NO. 34 OF 2017**

**UGANDA ELECTRICITY TRANSMISSION COMPANY LIMITED ………..APPLICANT**

**VERSUS**

**UGANDA REVENUE AUTHORITY …………………………………..RESPONDENT**

**RULING**

This ruling is in respect of an application challenging an objection decision by the respondent that the applicant's claim for an input tax credit of Shs. 14,933,056,019/= is time barred under the provisions of S. 23(3) of the Tax Procedures Code Act, 2014.

The facts and the arguments by the parties are as set out in the ruling of Dr. Asa Mugenyi and Mrs. Christine Katwe. The following issues were framed and set down for hearing.

1. Whether the applicant's claim for an input tax credit of Shs. 14,933,056,019/= is time barred?
2. What are the remedies available to the parties?

Resolution of Issues

1. Whether the applicant's claim for an input tax credit of Shs. 14,933,056,019/= is time barred?

The applicant's contention is that its claim for input tax credit is not time barred as S. 28 of the Value Added Tax Act did not place any time limit on when a taxable person could make a claim for an input tax credit. The applicant's further contention is that S 23(3) of the Tax Procedures Code does not apply to this matter because the Tax Procedures Code Act only came into operation on 1st July, 2016 while the applicant's claim arose prior to 1st July, 2016. The respondent on the other hand asserts that the applicant's claim is barred under S. 23(3) of the Tax Procedures Code Act which provides a period of twelve (12) months within which to make a claim for input tax credit.

Before delving into whether S. 23(3) of the Tax Procedures Code Act applies to this application it must first be determined whether the Tax Procedures Code Act applies to this matter at all. If the applicant's entitlement to the input tax credit arose before 1st July, 2016, which is the date on which the Tax Procedures Code Act came into operation then the provisions of the Tax Procedures Code Act would not apply to this matter. On the other hand if the applicant's entitlement to the input tax credit arose after 1st July, 2016, then the provisions of the Tax Procedures Code Act would apply to this matter.

The applicant has asserted that its entitlement to the input tax credit arose before the enactment of the Tax Procedures Code Act. The applicant relies on S. 28(4) (a) of the Value Added Tax which states as follows;

> "(4) An input tax credit-
>
> (a) Under subsection (1) arises on the date the goods or services are supplied to, or Imported by, the taxable person;
>
> (b) Under subsection (2) arises on the date the tax is paid; or
>
> (c) Under subsection (3) arises on the date of registration."

The applicant relying on S. 28(4) (a) above contends that it's entitlement to the input tax credit arose immediately upon the importation of the electricity from Kenya and Rwanda in the period 2006 and 2009.

The respondent has contended that under S. 28(4) (a) of the VAT Act, the importation of a good by itself is not enough to entitle a taxable person to an input tax credit if that person has not paid Value Added Tax on the date of importation. It is the respondent's argument that since the bulk of the tax in question was only collected on 24th August, 2016 and sometime in 2017, after the commencement of the Tax Procedures Code Act, the applicant's entitlement to the input tax credit arose after the commencement of the said Act.

S. 28 of the VAT, is very instructive in resolving this question. For the purposes of S. 28 it should be noted that S. 25 applies to the applicant by virtue of S. 26 of the Act, for the reason that the annual value of its taxable supplies exceed five hundred million shillings.

Section 28(1) states that :

> "Where Section 25 applies for the purposes of calculating the tax payable by a taxable person for a tax period; a credit is allowed to the taxable person for the tax payable in respect of- (emphasis added)
>
> (a) All taxable supplies made to that person during the tax period; or
>
> (b) All imports of goods made by that person during the tax period, if the supply or import is for use in the business of the taxable person."

S. 28(2) states that:

> "Where Section 26 applies for the purposes of calculating the tax payable by a taxable person for a tax period, a credit is allowed to the taxable person for any tax paid in respect of taxable supplies to, or imports by, the taxable person where the supply or import is for use in the business of the taxable person." (Emphasis added)

It will at once become apparent that under S. 28(1) above, the tax credit is allowed to a taxable person for the tax payable while under S. 28(2) the tax credit is allowed to a taxable person for the tax paid.

This distinction between the two provisions is important because it shows that under S. 28(1) a taxable person's entitlement to a tax credit is not contingent upon the payment of value added tax by the taxable person at the time of supply or importation of a good. While under S. 28(2) the law has clearly imposed a condition that a taxable person can only be entitled to a tax credit upon payment by that person of value added tax at the time of supply or importation.

Any doubts about the correctness of the above position are quickly dispelled by S. 28(4) which states as follows:

> An input tax credit-
>
> (a) Under subsection (1) arises on the date the goods or services are supplied to, or imported by, the taxable person;
>
> (b) Under subsection (2) arises on the date the tax is paid; or

(c) Under subsection (3) arises on the date of registration.

S. 28(1) read together with S. 28(4) (a) clearly show that the applicant's entitlement to the input tax credit was not contingent upon the payment by the applicant of value added tax at the time of the importation of electricity from Kenya and Rwanda. It is clear from the above provisions that the applicant's entitlement to the input tax credit arose immediately upon the importation of the electricity from the said countries between the years 2006 to 2009. This means that the applicant's entitlement to the input tax credit arose before the enactment of the Tax Procedures Code Act. As such the provisions of the Tax Procedures Code Act are not applicable to this matter at all

Even if the provisions of the Tax Procedures Code Act were applicable to this matter, S. 23(3) of the Act would still not apply to this Application. I associate myself in this regard with the decision of Dr. Mugenyi and Mrs. Katwe and I agree with the reasons that they have set out in support of that position.

Having determined as above, I hold that the Applicant's claim for an input tax credit of UGX. 14,933,056,019/= is not time barred. I accordingly order as follows;

1. The applicant's claim for input tax credit in the sum of Shs. 14,933,056,019 is not time barred.
2. The respondent is hereby ordered to refund to the applicant the said input tax credit of Shs. 14,933,056,019.
3. The applicant is awarded the costs of this application.

Dated at Kampala this 30th day of October 2018.

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**MR. SIRAJ ALI**

**MEMBER**