THE REPUBLIC OF UGANDA

IN THE TAX APEPALS TRIBUNAL AT KAMPALA

TAT APPLICATION NO. 36 OF 2019

SAMSUNG ELECTRONICS EAST AFRICA LIMITED==========APPLICANT

V

UGANDA REVENUE AUTHORITY ==========RESPONDENT

BEFORE DR. ASA MUGENYI, MR. GEORGE MUGERWA, MR. SIRAJ ALI

RULING

This ruling is in respect of an application challenging a Value Added Tax (VAT) assessment of Shs. 1,736,337,566 for work provided by a branch in Uganda.

The applicant is registered as a foreign company in Uganda but is incorporated in Kenya. It has a branch in Uganda. The branch in Uganda provides market analysis services, research on defective products under warranty as well as monitoring services. The respondent issued an assessment of Shs. 1,736,337,566 as VAT for services purportedly rendered by the branch to the head office for the period January 2013 to December 2016. The applicant objected to the assessment and Shs. 868,165,783 as capped interest.

The following issues were framed.

1. Whether the applicant is liable to pay the VAT assessed?
2. What remedies are available?

The applicant was represented by Mr. Masembe Kanyerezi and Mr. Timothy Lugayizi Kisubo while the respondent by Ms Christa Namutebi and Mr. Ronald Baluku.

The applicant is incorporated in Kenya and registered in Uganda. It has a branch in Uganda. The branch in Uganda does work for the applicant. The headquarter remits

expenses to Uganda. The dispute in this matter revolves on whether VAT should be paid for services done abroad but costs are remitted to the branch in Uganda.

The applicant's witness, Mr. Philip Karanja, its Finance Manager, testified that the applicant has a branch in Uganda where it is registered. The branch provides market analysis and reporting services, carries out research on defective products, monitors and follows up payment by the head office and provides liaison services like arranging accommodation. The respondent carried out an audit and issued an assessment of Shs. 1,736,337,566 where Shs. 868,165.783 was capped interest. The applicant objected to the assessment on the ground that the services it provided were exported services. Further that the costs charged by the branch to the head office do not constitute taxable supplies. On 9th April 2019, the respondent disallowed the applicant's objection. There was no export of services as the applicant services were for the promotion of the Samsung brand in Uganda. The witness testified that there was no contract between the branch and the head office.

The respondent's witness, Mr. Alex Lwanga testified that the applicant has a branch registered in Uganda to provide support services. The support services include research on defective products, market research analysis and reporting services. The respondent audited the applicant and issued an assessment as already stated. The applicant objected that the services it provided were export services. The respondent disallowed the objection.

The applicant submitted that though it is incorporated in Kenya it has a branch in Uganda where it is registered. It cited S.1 (p) of the VAT Act that defines a person to include a company. The applicant argued that the branch and head office are part of one and the same company. The applicant submitted that S. 4 of the VAT Act imposes VAT on every taxable supply made by a taxable person. Under S. 11(1)(a) of the VAT Act a supply of service includes the performance of service for another person. The applicant argued that there cannot be a supply between it and the head office as they

are one and the same person. The services provided by the branch to its head office cannot be said to be performance of services for another person.

The applicant argued that under the Income Tax Act the income of a branch is recognized and taxed separately from the income of its non-resident head office. However this concept does not extend to the VAT Act. The applicant submitted that the self-supply concept between a branch and its non-resident head office under Regulation 13(3) of the VAT Regulations does not extend to S. 11(1) of the VAT Act.

The applicant cited **Uganda Revenue Authority v Kajura** SCCA 9 of 2015 where the case of **Cape Brandy Syndicate v Inland Revenue Commissioners** [1920] 1 KB 64 was relied on that in a taxing act one has to merely look at what is clearly said. The applicant also cited **Vestley v Inland Revenue Commissioners** [1979] 3 ALL ER where the court held that a citizen cannot be taxed unless he is designated in clear terms by a taxing Act as a taxpayer and the amount of liability is defined.

The applicant submitted that in the event the Tribunal was to hold that the concept of self-supply applies, then the services it provided to the head office were for use and consumption outside Uganda and hence are an export. The applicant contended that Regulation 12 of the VAT Regulations defines an export of service. A service is considered exported if it is provided to a taxable person outside Uganda. The analysis and reports were sent to the head office in Kenya where the decision making is made. The applicant cited **F.H Services Kenya Limited v Commissioner of Domestic Taxes** Appeal 6 of 2012 and **Commissioner of Domestic Taxes v Total Touch Cargo Holland** Income Tax Appeal 7 o17 of 2013 where it was stated that the test of exported services is not the place of performance of the services but the location of the consumer.

In reply, the respondent submitted that S. 4 of the VAT Act imposes VAT. S. 6 of the Act provides for registration of a taxable person. It is not in contention that the applicant is a

registered taxpayer. The applicant provides market analysis, reporting services, and research. Therefore it is engaged in the supply of services.

The respondent contended that S. 16(2)(a) of the VAT Act provides that a supply of services shall take place in Uganda if the recipient of the supply is not a taxable person and the services are physically performed in Uganda by a person in Uganda at the time of supply. The respondent cited **Aviation Hangar Services Ltd. v Uganda Revenue Authority** TAT 21 of 2019 where it was stated that if the recipient is not a taxable person, and the services are physically performed in Uganda by a person in Uganda at the time of supply, the supply of service will be taxable even though it is for consumption outside Uganda. The respondent argued that the applicant is duly registered in Uganda with physical presence therein. The place of supply is outside Uganda.

The respondent contended that Under S. 24(4) of the VAT Act the rate of tax imposed on supplies specified in the Third Schedule is zero. In Part 2(b) of the Third Schedule services are treated as exports for use or consumption outside Uganda as evidenced by documentary proof acceptable to the Commissioner General. Regulation 12 of the VAT Regulations 1996 provides that the evidence can be in the form of a contract with a foreign purchaser and shall specify the place of use or consumption of service to be outside Uganda. The respondent argued that the applicant has not adduced any contract between itself and any foreign purchaser. Therefore the applicant's service do not qualify under the Third Schedule and Regulation 12 of the VAT Regulations.

In respect of the applicant's reliance on S. 1(p) of the VAT Act, that a branch is not a taxable person, the respondent cited authorities on statutory interpretation and argued that the applicant is registered in Uganda. The Tribunal should use a purposive approach in the interpretation of statutes to avoid tax avoidance as per the provisions of S. 1(p) of the VAT Act. The Tribunal should look at the substance of the transaction rather than legal form.

Having heard the evidence and read the submissions of the parties, this is the ruling of the Tribunal.

The applicant is incorporated in Kenya where its head office is situated. The applicant has a branch in Uganda where it is registered. The branch provides marketing analysis and reporting services for the head office. It carries out research on defective products, monitors and follows up payment by the head office and provides liaison services like arranging accommodation. The respondent carried an audit on the applicant and issued a VAT assessment of Shs. 1,736,337,566 which the latter objected to.

The first ground of objection was that the branch in Kampala was not a different legal entity from the head office. S. 4(a) of the VAT Act imposes VAT on "every taxable supply made by a taxable person." Under S. 1(p) of the VAT Act a person includes a company. In **Cowi AS v Uganda Revenue Authority** TAT 4 of 2019 the Tribunal noted that:

> "If one were to use the *ejusdem generis* rule of statutory construction, one would not fail to notice that the persons or specifics listed in S. 1 are legal persons. The *ejusdem generis* rule requires where a phrase lists a group of specifics, the phrase will be interpreted to include only items of the same class as those listed or the specifics. Would a branch of a company qualify to be considered as a legal person? The Tribunal does not think so."

It is trite law that a company is a different legal entity from its directors and shareholders. However a company is not a different legal entity from its head office and branch. A head office and branch are places where the company operates from. S. 11(2) of the VAT Act provides that "a supply of a service made by an employee to an employer by reason of employment is not a supply by the employee." In essence, the supply of service by employees at the branch cannot be a supply to the applicant. In the above case, the Tribunal also noted that:

> "The VAT Act is concerned with taxable person. S.1 provides that a taxable person has the meaning in S.6 which provides that a person registered under S. 7 is a taxable person from the time the registration takes effect. For a person to be taxable, it has to be registered for VAT. So the Tribunal has to ask itself: Do branches register for VAT or it is

the legal entities that register for it? S. 4(c) of the VAT Act unlike S. 4(a) deals with a person and not a taxable person."

The Tribunal notes that the respondent's decision to consider the branch in Uganda as a different entity from the head office is not grounded in law.

The respondent contended that the Tribunal should use the purposive approach in interpreting the word "company" to prevent tax avoidance. Where words are clear, they should be given their plain meaning. In **Cape Brandy Syndicate v IRC** (1921) KB 64 the court said:

> "In a taxing Act, clear words are necessary in order to tax the subject. In a taxing Act, one has merely to look at what is clearly said. There is no room for intendment. There is no equity about tax. There is no presumption as to tax. Nothing is to be read in it, nothing to be implied. One can only look fairly at the language used."

Giving words their ordinary meaning, the word "company" would not extend to a branch as this is a place where it operates from.

The applicant contended that it exports service to its head office. It cited Regulation 13(3) which provides that:

> "If a taxable person carries on a business both in and outside Uganda, and there is an internal provision from services from the part outside Uganda to the part in Uganda, then in relation to those services, the following applies for the purposes of the Value Added Tax Act and these Regulations –
>
> (a) that part of the business carried on outside Uganda is treated as if it were carried on by a person (referred to as the "overseas person") separate from the taxable person;
>
> (b) the overseas person is not a taxable person; and
>
> (c) the internal provision of services is treated as a supply of services made outside Uganda by the overseas person to the taxable person for reduced consideration."

From the said Regulations, the applicant contends that the head office would be deemed to be the overseas person while the branch in Uganda would be considered the taxable person. The respondent argued that Part 2(b) of the Third Schedule services are treated as exports for use or consumption outside Uganda as evidenced by documentary proof acceptable to the Commissioner General. Regulation 12 of the VAT

Regulations provides that the evidence can be in the form of a contract with a foreign purchaser and shall specify the place of use or consumption of service to be outside Uganda. The respondent concluded there was no documentary evidence adduced of the export of services. As the applicant's witness correctly put it there is no contact between the branch and the head office. The Tribunal does not perceive why a branch in a company should enter a contract with another branch or the head office when they are all part of the same legal entity. As already noted a company cannot be said to be exporting to itself.

Taking into consideration the above, this application is allowed with costs to the applicant.

Dated at Kampala this 30th day of November 2020.

DR. ASA MUGENYI	**MR. GEORGE MUGERWA**	**MR. SIRAJ ALI**
CHAIRMAN	**MEMBER**	**MEMBE**