

THE REPUBLIC OF UGANDA
IN THE TAX APPEALS TRIBUNAL AT KAMPALA
APPLICATION NO. 36 OF 2018

RED CONCEPTS LTD =====APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY =====RESPONDENT

BEFORE DR. ASA MUGENYI, DR. STEPHEN AKABWAY, MRS. CHRISTINE KATWE

RULING

This is a ruling challenging a decision of the respondent not to allow the applicant's input credit claim of Shs. 112,276,213 and the issued of additional assessments of Shs. 138,012,418.

The brief facts of the application are that the applicant deals in furnace oil. It purchases furnace oil from Boona General Distributors (hereinafter referred to as "Boona") in respect of which it paid input VAT of Shs. 112,276,213 for the period January to May 2017. The applicant thereafter made an application for an input tax credit for the said purchases. The respondent rejected the application for input tax credit and issued additional administrative assessments against the applicant in the sum of Shs. 138,012,418 for the period January to May 2017.

The following issues were framed and set down for determination;

1. Whether the applicant is entitled to input tax credit of Shs 112,267,213?
2. Whether the applicant should pay tax on the additional assessments?
3. What remedies are available to the parties?

The counsel for the applicant was Ms. Dorothy Bishagenda and the respondent by Mr. Tonny Kalungi.

The case of the applicant revolves around input VAT claimed. The respondent rejected that the claim on the grounds that the company that purportedly made the supplies was a fraudulent one.

Ms. Yasmin Kayitesi, the applicant's finance director testified that the applicant distributes furnace oil to various companies including Century Bottling Company (Coca Cola), City Oil, Crown Beverages and Madhvani Group of Companies. She testified that the applicant was approached by one, Mzee Mayanja, from Boona Electrical and General Distributors who offered to supply the applicant with furnace oil. The applicant consulted its tax consultant, Mr. Dominic Tumwesigye, who confirmed that Boona was a registered tax payer with the respondent. Ms. Kayitesi testified that the applicant made purchases of furnace oil from Boona on the basis of tax invoices issued by the said company. The applicant dealt with Boona for about four months from January to April, 2017. The applicant permitted an agent to make deliveries for them because they had no vehicles of their own. The applicant made cash payments for the said purchases and receipts were issued by Boona. The applicant also filed its returns and claimed input tax credit of Shs. 112,267,213. The application for input tax credit was rejected by the respondent and an additional administrative assessments of 138,012,420 was issued against the applicant. The applicant objected to the said assessment and provided the respondent with evidence of payments, bank statements and delivery notes to back up the returns. In April, 2018 the respondent published the names of the applicant in the newspaper as a company dealing with Boona which the respondent declared as a fraudulent company. The respondent informed the applicant that Boona could not be traced. The applicant got in touch with Mzee Mayanja who submitted copies of Boona's VAT returns to it and were forwarded to the respondent.

The applicant's second witness was Mr. Dominic Tumwesigye, its tax consultant. He confirmed that he was consulted by the applicant about Boona's tax status and that he confirmed on the respondent's web portal that Boona was registered for VAT among other tax heads under Tax Identification Number 1008815603.

The respondent's first witness was Mr. Moses Dhatemwa, its supervisor. Mr. Dhatemwa testified that the respondent investigated Boona and found that the latter did not carry out any transactions with anyone. He testified that the investigations also revealed that Boona did not exist. The witness testified further that the applicant's claim for input tax credit was disallowed because no input tax credit could accrue where no transactions have taken place nor where the company alleged to have made the supplies is non-existent.

The respondent's second witness was Mr. Tabu Godfrey Alukule, a tax investigations officer. He testified that around March 2018, he reviewed the VAT returns for the applicant and found that the applicant was declaring purchases from Boona. The witness testified that he tried to confirm whether these purchases were genuine by trying to contact Boona through their phone number but failed. He testified that the phone number on the respondent's e-tax profile for Boona was off. The witness also went to the known address of Boona at Plot 1444, Capital Plaza, Kibuye Road, Makindye but found the company was not located there. Mr. Alukule testified that after failing to locate Boona the applicant's claim for input tax credit was disallowed and additional administrative assessments were raised against the applicant.

The applicant submitted that under S. 28 of the VAT Act it is entitled to the input tax credit of Shs. 112,267,213 because it is a taxable person. The applicant relied on the testimonies of Moses Dhatemwa (RW1) and Dominic Tumwesigye (AW2) to prove that Boona was VAT registered. Ms. Yasmin Kayitesi (AW1) testified that the furnace oil purchased by the applicant was in its course of business. The applicant testified on a summary of transactions relating to its dealings with Boona which shows the invoice numbers, invoice dates, the amounts due exclusive of VAT, the VAT amount, the name of the client to whom the oil was delivered, the applicant's invoice number for such delivery, the date of delivery, the date when cash was withdrawn from the applicant's bank account for payment to Boona, the amounts withdrawn, the bank from which the said amounts were withdrawn, the sums paid to Boona, the receipt numbers for the receipts issued by Boona upon receipt of the said amounts. The applicant submitted

that sufficient proof had been adduced to show that the applicant carries on the business of supplying furnace oil, Boona is a taxable person duly registered by the respondent as its agent, Boona made a taxable supply of furnace oil to the applicant and charged VAT. The applicant paid for the furnace oil and was issued with tax invoices and receipts, the applicant supplied the furnace oil and charged output tax, Boona filed returns reflecting the said purchases.

The applicant submitted that the reasons given by the respondent for rejecting its input tax claim are not tenable and that it was not the applicant's duty to ensure that the tax was remitted by Boona to the respondent. The applicant testified further that the reasons given by the respondent for rejecting its claim for input tax credit are contradictory. In the objection decisions marked G1, G2, G3 and G4 at pages 142-148 of the amended trial bundle the reason given by the respondent for rejecting the claim for input tax credit is that investigations were ongoing while the testimony of Dhatemwa Moses, the respondent's first witness shows that the claim was rejected because the respondent's investigations showed that Boona did not exist.

The applicant submitted that the testimony of the respondent's second witness, Tabu Godfrey Alukule show that the investigations made by the respondent in trying to locate Boona were shoddy and haphazard. The investigator did not make inquiries at the address given by Boona while registering for VAT nor was any effort made by the investigations officer to trace the known contact of Boona's tax representative on the MTN network. The applicant cited **Target Well Uganda Ltd v URA HCCS. NO. 751 of 2015** submitted that it was not its duty to ensure that the money paid by it as input tax was remitted by Boona. The applicant submitted further that the respondent ought to accept its claim for input tax credit because the respondent did not challenge the output tax it filed in its returns. The applicant submitted that its returns show that it declared output VAT in the sum of Shs. 37,446,709 for February 2017, Shs. 51,825,600 for March 2017 Shs. 59,042,88 for April 2017 and Shs. 66,171,600 for May 2017. The applicant submitted that according to exhibits the said output VAT was realized from sales of furnace oil to Hwang Sung Industries Ltd, Mayuge Sugar Industries, Century

Bottling Co. Ltd, Madhvani Group Ltd, City Oil Ltd and Maxol. The applicant submitted therefore that the respondent having accepted the output VAT as declared by the applicant was bound to accept the claim for input tax credit for the input tax paid to Boona.

The applicant submitted that had proved that Boona was a duly registered VAT agent of the respondent vide TIN 1008815603 who had charged VAT for the transactions in question and had filed returns. The applicant submitted that it is not liable to pay any tax on the additional assessment and prayed that the said assessments be set aside. It prayed for a declaration that it is entitled to the input tax credit of Shs. 112, 267, 213 and the additional administrative assessments be set aside or vacated. It also prayed for general damages for the negative publicity occasioned to the applicant as a result of the portrayal of the applicant by the respondent in the newspaper as a company dealing with fraudsters. The applicant prayed for the refund of Shs. 41,403,800/= being 30% of the tax in dispute paid by it prior to filing this application with interest from 14th August, 2018 when it was paid until payment in full by the respondent. The applicant also prayed for the costs of the application.

In reply, the respondent submitted that the applicant is not entitled to the input tax credit because the transactions between the applicant and Boona are fictitious and the documentation presented by the applicant in support of the said transactions are full of contradictions and ambiguities. The respondent submitted that the fourteen transactions between the applicant and Boona show that there was inconsistency in the quantity of the furnace oil purchased from Boona and the quantity delivered to the applicant's clients. The respondent submitted that in respect of some of the transactions there was always excess furnace oil because the applicant purchased more but less was delivered to the applicant's customers. The respondent submitted that in other transactions the applicant purchased less furnace oil from Boona but more was delivered to the applicant's clients. The respondent submitted that in all transactions the documents presented by the applicant were insufficient to prove that the transactions were completed and yet the applicant used the tax invoices allegedly issued by Boona to

claim VAT refunds. The respondent submitted further that in respect of 2 transactions the calculations on the tax invoices of Boona were wrong which led to wrong computations. It was the respondent's further submissions that the applicant did not adduce evidence to explain where the excess furnace oil was delivered. The respondent submitted that in respect of all the delivery notes there is no evidence to show that the furnace oil was actually delivered by Boona to the applicant's customers. This is because the delivery notes do not indicate who delivered the furnace oil. The respondent submitted therefore that with the above inconsistencies the respondent was justified in not granting the applicant the input tax credit.

The respondent cited **Constantino Okwel Alias Magendo v Uganda SCCA no. 12 of 1990** for the proposition of the law that inconsistent evidence will usually but not necessarily result in the evidence of a witness being rejected. It cited **Aziz Kalungi Kasujja v Nauni Tebekanya Nakakande SCCA 63 of 1995** for the proposition of the law that inconsistencies in material evidence of a party are major and go to the root of the evidence leading to its rejection. The respondent submitted that the evidence adduced by the applicant is inconsistent, contradictory, ambiguous and should be disregarded.

The respondent testified further that there was no contract between the applicant and Boona Electrical and General Distributors. The respondent cited S. 10(5) of the Contracts Act, 2010 for the position of the law that a contract the subject matter of which exceeds Shs 50,000 must be in writing. The respondent cited **Kagwa v Kolin Insaat Turizm & 2 others** where it had been held that a suit to enforce an unwritten contract whose value was above shs. 50,000 was unsustainable. The respondent submitted that in the same vein the transactions between the applicant and Boona should be disregarded.

The respondent cited S. 23(2) of the Tax Procedure Code Act which provides that an additional administrative assessment may be made at any time, if fraud or any gross or willful neglect has been committed by or on behalf of a tax payer or new information has

been discovered in relation to the tax payer for a tax period. The respondent relying on the testimony of Moses Dhatemwa submitted that an investigation was carried out on Boona which revealed that Boona was non-existent.

The respondent prayed that the application be dismissed with costs and the applicant be found liable to pay the additional administrative assessments. The respondent submitted further that the applicant is not entitled to general damages because the application before the tribunal does not disclose a cause of action in defamation against the respondent. The respondent prayed that the application be dismissed with costs.

Having listened to the evidence and read the submissions of the parties this is the ruling of the Tribunal.

The applicant brought this claim seeking for input tax credit under S. 28 of the VAT Act. S. 28 provides that a credit is allowed to a taxable person for the tax payable in respect of taxable supplied made to it during the tax period. A summary of the transactions, as obtained from the invoices, receipts are stated under the table below.

Table 1

Date of transaction	Invoice No.	Receipt	Total Amount	VAT	Date of Delivery
21.1. 2017	122	645	59,634,000	9,096,703	24.1.2017
28.1.2017	124	647	21,719,670	3,313,120	30.1.2017
6.3.2017	127	651	55,755,000	8,505,000	4.3.2017
11.3.2017	128	653	59,472,000	9,072,000	11.3.2017
24.3.2017	132	656	21,358,000	3,258,000	
8.4.2017	576	661	52,569,000	8,019,000	7.4.2017
12.4.2017	578	664.	38,444,400	5,864,400	13.4.2017
18.4.2017	581	666	61,083,880	9,317,880	19.4.2017
22.4.2017	584	667	59,802,400	9,122,440	24.4.2017
26.4.2017	586	669	59,161,660	9,024,660	26.4.2017
28.4.2017	589	672	19,470,000	2,970,000	29.4.2017
7.5.2017	591	671	18,880,000	2,880,000	8.5.2017
11.5.2017	593	673	22,656,000	3,456,000	12.5.2017

13.5.2017	595	676	24,544,000	3,744,000	16.5.2017
21.5.2017	600	678	56,168,000	8,568,000	25.5.2017
23.5.2017	602	681	56,168,000	8,568,000	26.5.2017
31.5.2017	008	680	49,088,000	7,488,000	1.6.2017

The said supplies were purportedly made directly to the customers of the applicant which included Century Bottling Company Limited, Hwan Sung, Mayuge Sugar Industries, Madhvani Group Ltd, City Oil, Maxol. The above transactions constitute the applicant's input tax credit claim.

From the evidence adduced, it is not controverted that the applicant carries on business of supplying furnace oil and Boona is a taxable person duly registered by the respondent with a Tax Identification Number. What is in contention is whether Boona made taxable supplies to applicant and charged VAT. In response to the invoices, receipts and delivery notes provided by the applicant in proof of its claim the respondent has stated that the transactions are fictitious and there are inconsistencies in the evidence.

We think the duty of the Tribunal is not to determine whether the transactions actually between the applicant and Boona took place but whether the respondent was justified to deny the applicant's claim for VAT input claim. As a Tax Appeals Tribunal we cannot delve into the contractual implications of a dispute but only look at the tax implications. The standard of proof as in all civil cases is on the balance of probabilities and the burden of proof is on the applicant to prove that these transactions are not fictitious. In the Supreme Court decision of *J.K Patel vs. Spear Motors Ltd SCCA No. 4/1991* it was held that the burden of proof rests before evidence is given on the party asserting the affirmative. It then however shifts and rests after evidence is given on the party against whom judgment would be given if no further evidence is adduced.

The basis on the applicant's claim for input VAT lies on the invoices presented. S. 29(1) of the VAT Act provides that a taxable person making a taxable supply to any person shall provide that other person at the time of supply, with an original invoice for the

supply. S. 28(8) provides that a tax invoice is an invoice containing the particulars specified in Section 2 of the Fourth Schedule which provides:

- "2. A tax invoice as required by Section 29 shall, unless the Commissioner General provides otherwise, contain the following particulars –
- (a) the words "tax invoice" written in a prominent place;
 - (b) the commercial name, address, place of business, and the taxable payer identification and VAT registration numbers of the taxable person making the supply;
 - (c) the commercial name, address, place of business, and the taxpayer identification number and VAT registration number of the recipient of the taxable supply;
 - (d) the individualized serial number and the date on the tax invoice is issued;
 - (e) a description of the goods or services supplied and the date on which the supply is made;
 - (f) the quantity or volume of the goods or services supplied;
 - (g) the rate of tax for each category of goods and services described in the invoice; and
 - (h) either –
 - (i) the total amount of the tax charged, the consideration for the supply exclusive of tax and the consideration inclusive of tax; or
 - (ii) where the amount of tax charged is calculated under Section 24 (2), the consideration for the supply, a statement that it includes a charge in respect of the tax and the rate at which the tax was charged."

The invoices presented by the applicant contained all the above information. However there was one problem. The information provided in respect of the place of business of the taxable person making the supply seems to be lacking. In **Target Well Uganda Ltd v URA HCCS. NO. 751** of 2015 the court held that it is not the duty of the taxpayer to ensure that the money paid by it as input tax are remitted to the taxpayer. We agree with the said decision. It is the duty of the respondent to track the person making the taxable supply. The respondent testified that when it went to the known address of Boona i.e. Plot 1444 Capital Plaza, Kibuye Road the company was not located there. The applicant tried to contact Boona in vain. Ms. Yasmine Kaitesi during cross examination admitted that she never visited the location of Boona. Boona was

delivering the goods to the customers directly. None of the directors or employees of Boona were called to testify on the transactions. There was no evidence to adduce to show that Boona at one time had its premises on the above location. The applicant was silent on place of business of Boona. The said evidence raises a shadow of doubt in the mind of the Tribunal. Was Boona a fictitious company or did it have a physical existence? If so, were the above transactions ever made? The Tribunal cannot tell. This is because there is no evidence that was adduced show that Boona actually existed. This omission is fatal. In the absence of such evidence one cannot rule out fraud and or fictitious transactions or Invoice trading. Fraud has been described in **Black's Law Dictionary 10th edition** p. 775 as "A reckless misrepresentation made without justified belief in its truth to induce another person to act." Invoice trading involves companies being set up to enable one claim VAT input by issuing fictitious invoices. Where a statute requires one to give information or other particulars, the said information should be accurate to enable public authorities act on it. If the information is false or misleading, the Tribunal cannot turn a blind eye to it as this would be tantamount to condoning an illegality and perpetrating fraud. In most jurisdictions if not all it is a criminal offence to give false information to public officers. This may include issuing false documents. While the onus may be on the respondent to ensure that VAT paid by taxpayers is remitted, taxpayers should facilitate that by giving correct information to it.

S. 18 of the Tax Appeals Tribunal place the burden on the taxpayer to prove that an assessment was wrong or the tax authority should have decided the matter differently. The Tribunal already noted that the standard of proof in civil matters is on a balance of probabilities. Where there is doubt on the application of a law the taxpayer takes benefit of doubt because the respondent is in a position to influence changes in the law. Balance of probabilities means that the applicant has to prove its case over a 50% chance that it is true. If it is 50% the applicant would not have discharged its burden. However where there is doubt on facts before the Tribunal the respondent takes the benefit of doubt because the burden of proof is place on the applicant. In this case, there is still doubt as to the existence of Boona. The said doubt has not been cleared to

the satisfaction of the Tribunal. Having looked at all the documents adduced by the applicant we are not satisfied that the applicant has proved on a balance of probability that its transactions with Boona are not fictitious.

The respondent issued an additional assessment against the applicant of Shs. 138,012,420 for the period January, 2017 to May, 2017. S. 23(2) of the Tax Procedure Code Act provides that an additional administrative assessment may be made at any time, if fraud or any gross or willful neglect has been committed by or on behalf of a tax payer or new information has been discovered in relation to the tax payer for a tax period. As already stated S. 28 of the Tax Appeals Tribunal Act places the burden on the applicant to prove that the assessment was excessive or should not have been made. The applicant has not adduced any evidence challenging the additional assessment.

In the circumstances, this application is dismissed with costs to the respondent. The respondent's decisions to disallow the input tax credit claim and to issue additional VAT assessments worth Shs. 138,012,418 is upheld.

Dated at Kampala this 25th day of March 2020.

DR. ASA MUGENYI
CHAIRMAN

DR. STEPHEN AKABAY
MEMBER

MS. CHRISTINE KATWE
MEMBER