

**THE REPUBLIC OF UGANDA**  
**IN THE TAX APPEALS TRIBUNAL AT KAMAPALA**  
**APPLICATION NO. 36 OF 2021**

**BULLION REFINERY LIMITED ..... APPLICANT**

**VERSUS**

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

**BEFORE DR. ASA MUGENYI, MR. GEORGE MUGERWA, MS. CHRISTINE KATWE.**

**RULING**

This ruling is in respect of a preliminary objection by the respondent in respect of the deposit of 30% of the tax in dispute pending the disposal of an application before the Tribunal.

When the above application came up for hearing the respondent raised an objection that the applicant had not yet paid the 30% of the tax in dispute nor made a commitment to pay the tax and that it should therefore be dismissed. The tribunal ordered the parties to file submissions.

The applicant was represented by Mr. Martin Tayebwa while the respondent was represented by Ms. Diana Kagonyera Mulira.

The respondent submitted that S. 15 of the Tax Appeals Tribunal Act provides that a taxpayer who has lodged a notice of objection pending final resolution of the objection must pay 30 percent of the tax assessed or that part not in dispute, whichever is greater. The respondent contended that in *Uganda Projects Implementation and Management Centre v Uganda Revenue Authority* Constitutional Appeal 2 of 1999 the Supreme Court ruled that the requirement to pay 30% of the tax assessed, or that which is not in dispute, whichever is greater, is constitutional and did not infringe on the right to a fair hearing. The respondent contended that the Supreme Court followed with approval the South

African case of *Metchash Trading Co. Ltd. v Commissioner for South African Revenue Services and another* where it was held that a taxpayer has to pay his taxes and argue later. The importance of prompt payment of tax was emphasized in *Commissioner General Uganda Revenue Authority v Meera Investments Ltd.* Civil Appeal 22 of 2007 where Justice Kanyeihamba stated that the government needs taxes paid expeditiously, in national interest. The respondent also cited *Elgon Electronic v Uganda Revenue Authority* HCCA 11 of 2007 where Justice Geoffrey Kiryabwire held that the provisions of S. 15(1) of the Tax Appeals Tribunal Act are mandatory. It also cited *Samuel Mayanja v Uganda Revenue Authority* HCT 0017 of 2005 where Justice Egonda Ntende held that once a taxpayer has lodged an application for review under S. 15 of the Tax Appeals Tribunal Act he is obliged to deposit at least 30% of the tax assessed. The respondent contended that the tax assessed is Shs. 686,711,048. The applicant ought to have paid 30% which is Shs. 206,013,314.

The respondent contended that the applicant wishes the Tribunal to rely on *Fuelex (u) Ltd. V Uganda Revenue Authority* Constitutional reference 3 of 2009 where the former alleged that the Constitutional Court ruled that S. 15 of the Tax Appeals Tribunal Act is unconstitutional. The respondent contended that the said decision is not binding on the Tribunal. The respondent submitted that all courts below the Supreme Court are bound by its decision. The respondent argued that the Constitutional Court restricted the unconstitutionality to a situation where a taxpayer's objection is not related to an assessed amount but on legal or technical grounds. The respondent also cited *A Better Place Ltd. v URA* Civil Appeal 37 of 2019 where the High Court held that the applicant did not apply to the Tax Appeals Tribunal to enforce alternative methods of payment of the 30% tax in dispute and there dismissed the matter.

In reply to the preliminary objection, the applicant contended that the dispute before the tribunal is not about the quantum of the tax payable but about the legality of the assessment. The applicant cited *Fuelex (U) Ltd v Uganda Revenue Authority* Constitutional Petition No. 03 of 2009 where court held that S. 15 of the Tax Appeals Tribunal Act in so far as it compels an objector to a tax assessment whose challenge is

not with regard to the amount of tax payable, to pay the tax authority 30% of the tax assessed is inconsistent with Article 44 of the Constitution hence unconstitutional. The applicant stated that constitutional court noted that the facts before it were different from those of in *Uganda Projects Implementation and Management Centre v Uganda Revenue Authority* and hence it was not bound to follow it. The applicant argued that the Tribunal is bound to follow the decision of the Constitutional Court.

The applicant submitted that for the period February 2018 to June 2019 it did a self-assessment where it paid taxes of Shs 229,837,063 which the respondent does not dispute. The amount of Shs. 686,711,048 claimed by the respondent as per the objection decision is an additional assessment. The respondent wants the applicant to pay more taxes in addition to the taxes it already paid for the same period.

In alternative the applicant prayed that if the Tribunal found that it is liable to pay the deposit of 30%, it should take into consideration the money the respondent obtained from its bank account through an agency notice. The applicant also prayed that it be granted 12 months within which to pay the balance if any.

Having listened and read the submissions of both parties, this is the ruling of the tribunal.

The respondent raised a preliminary objection that the applicant has not paid 30% of the tax in dispute as required by S. 15 of the Tax Appeals Tribunal Act. S. 15(1) of the Act reads:

“a taxpayer who has lodged a notice of objection to an assessment shall, pending final resolution of the objection, pay 30 percent of the tax assessed or that part of the tax assessed not in dispute, whichever is greater.”

The requirement to pay 30% of the tax assessed or the amount not in dispute arises when a party has filed an objection and not when a taxpayer files a matter in the Tax Appeals Tribunal. Therefore a reading of the Act means that by the time a matter is filed in the Tribunal the 30% ought to have been paid. The Tax Appeals Tribunal is not an enforcement arm of the respondent. Therefore it would be odd for the respondent to raise

a preliminary objection that a taxpayer has not paid 30% and request the Tribunal to compel it to pay the 30% of the tax in dispute. Where the 30% of the tax assessed or the amount in dispute has not been paid a taxpayer loses its right to access the Tribunal as it shows it does not have any intention of paying any tax in dispute. It does not come to the Tribunal with clean hands.

In *Uganda Projects Implementation and Management Centre v Uganda Revenue Authority* Constitutional Appeal 2 of 1999 the dispute was whether S. 34(C) of the Value Added Tax (VAT) Act contravenes the 1995 Constitution of Uganda in as far as it requires a person lodging an application with the Tax Appeals Tribunal to pay the Commissioner General 30% of the tax in dispute or that part of the tax assessed not in dispute, whichever is greater. The Supreme Court ruled that the impugned section does not contravene Articles 21(1)(2) and 126 of the Constitution by completely blocking the appellants' access to court. The said decision was in respect of the VAT Act. The dispute before the Tribunal is in respect of S. 15 of the Tax Appeals Tribunal Act which was not the basis of the decision in the Supreme Court. However the Tribunal notes that the Supreme Court decision was in relation to the right to access justice or constitutionality of the impugned S. 34(C) of the VAT Act which would be similar to the right of accessibility under S. 15 of the Tax Appeals Tribunal Act. A taxpayer bringing a dispute under impugned S. 34(C) of the VAT Act would face a similar challenge with one bringing an income tax dispute under S. 15 of the Tax Appeals Tribunal Act. By deciding on the constitutionality of the VAT Act the Supreme Court was implicitly determining the constitutionality of S. 15 of the Tax Appeals Tribunal Act. It does not need a rocket scientist to see that the Supreme Court decision in respect of the constitutionality of the impugned S. 34(C) of the VAT Act applies to S. 15 of the Tax Appeals Tribunal Act. Though the Tribunal is not a court of judicature, the Supreme Court is the Highest Court and its decision is binding on the Tribunal.

The applicant contended that the dispute before the tribunal is not about the quantum of the tax payable but about the legality of the assessment. The respondent cited *Fuelex (U) Ltd v Uganda Revenue Authority* Constitutional Petition No. 03 of 2009. If the Tribunal were to refer to the decision of his Lordship Kakuru, he states that:

"I find that, Section 15 of the Tax Appeals Tribunal Act is not unconstitutional in so far as it applies only to disputes over the tax amounts assessed. Its constitutionality comes into question where its applicability is sought to extend to parties whose disputes are purely legal or technical and where the issue is for determination before the Tax Appeals Tribunal does not relate only to the amount of tax payable."

Further on, he concludes:

"Accordingly I would declare that Section 15 of the Tax Appeals Tribunal Act is unconstitutional as it is inconsistent with Article 44(c) of the Constitution so far as it subjects an objector to a tax assessment whose objection does not relate to the amount of tax payable, to pay to the authority 30 percent of the tax assessed."

Justice Egonda-Ntende and Justice Ezekiel Muhanguz agreed with the said ruling. Article 44(c) of the Constitution relates to the right of a fair hearing.

Our understanding of the constitutional court decision of *Fuelex (U) Ltd v Uganda Revenue Authority* (supra) is that it is not inconsistent with the Supreme Court decision of *Uganda Projects Implementation and Management Centre v Uganda Revenue Authority* (supra). What the Constitutional Court in the *Fuelex (U) Limited v Uganda Revenue Authority* (supra) was concerned about was the practical application of S. 15 of the Tax Appeals Tribunal Act to tax disputes. It may be applied in such a way that an unconstitutionality may arise. For instance if a party files an objection on a legal interpretation, subjecting it to pay 30% of a tax it has not objected to would be denying it a right to a fair hearing. If a party is objecting to a private ruling or the application of a practice notice why should it be required to pay 30% of an assessment it has not objected to? Situations where a party objects to a tax assessed and a new assessment increasing the tax liability would be an attempt to deny a party a right to a fair hearing. It would be tantamount to an attempt to shift goal posts in order to prevent a striker from scoring. However where a taxpayer objects to an assessment and also to a legal interpretation of a decision, the taxpayer will still be required to pay 30% of the tax assessed in the objection.

The application filed before the Tribunal shows that the applicant objected to taxes of Shs. 686,711,048. The online objections by the applicant were not attached to the

application. However the objection decisions attached show that the applicant objected to taxes assessed. There is no evidence to show that the applicant objected to only a legal interpretation of a tax dispute. In the circumstance the applicant ought to have paid 30% of the tax in dispute as assessed. This tax ought to have been paid at the stage of objecting and this was not done. Therefore this application is not properly before the Tribunal.

The applicant submitted in the alternative that it should be allowed to pay the 30% of the tax in dispute over 12 months. In *Uganda Projects Implementation and Management Centre v Uganda Revenue Authority* (supra) the Supreme Court noted that:

“Where taxpayer is unable to pay the 30% of the assessed tax before filing the appeal to the Tax Appeal Tribunal he or she should apply to the Commissioner General of the respondent.”

Though the Supreme Court dealt with S. 34(4) of the VAT Act, it has since been repealed. It was replaced by S. 28 of the Tax Procedure Code Act. A taxpayer should apply to the Commissioner under S. 28(1) of the Tax Procedure Code Act for extension of time to pay the 30% in instalments. There is no evidence that the applicant applied for extension of time before the Commissioner and it was refused. This is not an application for extension of time to pay the 30% in installments. No grounds for the extension have been stated. Therefore the Tribunal is not in a position to consider it.

In conclusion the main application is dismissed with costs for failure by the applicant to pay 30% of the tax assessed.

Dated at Kampala this 23<sup>rd</sup> day of September 2021.

**DR. ASA MUGENYI**  
**CHAIRMAN**

**MR. GEORGE MUGERWA**  
**MEMBER**

**MS. CHRISTINE KATWE**  
**MEMBER**