

**THE REPUBLIC OF UGANDA**  
**IN THE TAX APPEALS TRIBUNAL AT KAMPALA**  
**APPLICATION NO. 94 OF 2019**

**CHESTNUT UGANDA LIMITED =====APPLICANT**

**VERSUS**

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

**BEFORE: DR. ASA MUGENYI    MR. GEORGE MUGERWA    MR. SIRAJ ALI**

**RULING**

This ruling is in respect of the respondent's disallowing the applicant's claim for input Value Added Tax (VAT) of Shs. 4,388,802,707.

The applicant is the business of property development and real estate. On 31<sup>st</sup> December 2018, the applicant claimed input VAT of Shs. 4,388,802,707. The respondent rejected the claim on the ground that the applicant was not making taxable supplies.

The following issues were set down for determination.

1. Whether the applicant is entitled to the input tax claimed?
2. What remedies are available to the parties?

The applicant was represented by Ms. Belinda Nakiganda and Ms. Jackie Aturinda while the respondent by Mr. Haruna Mbeta.

The dispute revolves around whether the applicant is entitled to input VAT of Shs. 4,388,802,707. The respondent contends that the applicant does not make taxable supplies and the claim is not in respect of the applicant's business.

The applicant's first witness, Mr. Charles Odere, its director, testified that the applicant had cumulative tax credits. The respondent carried out a VAT offset verification for the

period June 2016 to February 2019 and disallowed input VAT of Shs. 4,388,802,707 on the ground that the construction of a commercial property is not a business activity but one in preparation of making future taxable supplies. He contended that the applicant is a taxable person duly registered for VAT. It owns Arena Mall and is in the business of developing, managing and exploiting it. The applicant is currently making a taxable supply in the form of renting advertising space to Outdoor Atom Limited and will provide rental space when the mall is completed. The VAT Act allows taxable persons to claim input tax credit if the supply is for use in the business of the taxable person. He testified that the respondent on 5<sup>th</sup> February 2019 attempted to cancel the applicant's VAT registration, but did not as it was making a taxable supply.

The applicant's second witness, Mr. Richard Marshall, an Associate Director (Tax) in PricewaterhouseCoopers Limited testified that the applicant had cumulative excess input VAT. The respondent carried out a verification exercise and disallowed the applicant's claim of input credit of Shs. 4,388,802,707. He reiterated the arguments raised by the first witness inter alia that the applicant was a taxable person under the VAT Act.

The respondent's first witness, Ms. Resty Kaitesi, a supervisor in its Domestic Tax Department testified that she was part of the team that carried out the VAT offset verification exercise on the applicant. The respondent established that the applicant had made a claim for input tax credit of Shs. 4,388,802,707 incurred on the construction of Arena Mall which is still under construction. The alleged taxable supplies by the applicant were not in respect of renting Arena Mall but proceeds from letting part of its land. She contended that a taxpayer cannot register for VAT if it does not make a taxable supply.

The respondent's second witness, Mr. Solomon Musoke, also a supervisor in its Domestic Tax Department, testified that the applicant is not entitled to input tax credit which was incurred on the construction of its property. The applicant is the final consumer of the goods and services in the construction of the mall. The business of renting the mall has not commenced. If the business was to commence the applicant is only entitled to input tax credit for running the rental business such as for electricity, water, and security but

not on construction of the mall. He contended that input tax credit can be claimed by a taxable person in the business of making a taxable supply. The applicant's business of letting part of its land is different one from that required to claim input tax.

In its submission, the applicant submitted that VAT input credit is provided for by S. 28(1) of the VAT Act which allows a taxable person credit for all taxable supplies made during the tax period if the taxable supply is for use in the business of the taxable person. The applicant contended that it is entitled to input tax claimed. Proof of payment is in the applicant's returns and invoices issued by the suppliers. Under S. 28(4) an input credit arises on the date the goods or services are supplied, or the date the tax is paid or on the date of registration. The applicant argued that S. 28(4) of the Act is not premised on allowing credit on taxable supplies from commercial building but on the fact that the taxable supplies were made during the tax period for use in the business. The applicant cited **Enviroserv (U) Limited v URA** TAT 24 of 2017 where it was stated that: "For persons to claim input tax they have to prove that they are a taxable person, taxable supplies have been made to the applicant during the tax period, and the taxable supplies were for the use in the business of the applicant." The Tribunal also stated that the VAT Act does not state that the person ought to have made taxable supplies.

The applicant contended that a taxable person is defined as one who is registered under S. 7 of the VAT Act as a taxable person from the time the registration takes effect. The applicant cited **Post Bank (U) Limited v URA** TAT 18 of 2008 where the Tribunal held that the effective date of registration is determined by reference to the date set out in the certificate of registration. The applicant argued that in **Enviroserv (U) Limited v URA** (supra) the Tribunal stated that as long a person is registered for VAT and his registration has not been cancelled he is deemed to be a taxable person. The applicant contended that it is a taxable person.

The applicant contended that a taxable supply is defined in S. 18 of the VAT Act as other than an exempt supply, one which is made for consideration by a taxable person as part of his or her business activities. It contended that it carries on the business of real estate,

property development and management. The taxable supplies in dispute are construction services provided by three local suppliers. The applicant submitted that it is currently constructing the Arena Mall and is renting out advertising space as part of its business. The applicant cited **East African Property Holdings (U) Ltd. V Uganda Revenue Authority** HCCS 247 of 2013 where the court held that “ a credit is allowed to a taxable supply of the building though its construction even if it was prior to the taxpayer becoming eligible by registration if the credit was obtained for commercial purposes. “

The applicant also argued that words must be given their literal meaning. It cited **URA v Siraje Hassan Kajura** CA 26 of 2013 which relied on **Cape Brandy Syndicate v IRC** (1921) KB where it was stated that one should look fairly at the language used. It also cited **Crane Bank v URA** CA 18 of 2010 where the court stated that if the words of a statute are precise and unambiguous then they should be expounded in their natural and ordinary sense.

In respect of an assessment of Shs. 307,625,525, the applicant contended that the respondent issued an objection decision withdrawing it. The respondent demanded the amount after it had made the objection decision withdrawing it.

In reply, the respondent contended that the applicant is a taxable person. It stated that under S. 4 of the VAT Act, VAT is charged on every taxable supply made by a taxable person. Under S.10 of the VAT Act, a supply of goods is defined as any arrangement under which the owner of the goods parts or will part with possession of the goods, including a lease or agreement of sale and purchase. S. 11(1)(b) defines a supply of service to include the making available of any facility or advantage. The respondent contended that the applicant did not provide any taxable supply in respect of the Arena Mall.

The respondent cited S. 28 of the VAT Act which provides that a credit is allowed to a taxable person in respect of all taxable supplies made to that person during the tax period, if the supply is for use in the business of the taxable person. S. 28(6) provides where the

credit is partly for business use and partly for another use, the credit is that part of the input tax that relates to the business use. The respondent also cited Regulation 6(1) which provides that where a taxable supply is building and construction service, the tax shall be collected at each stage of the work or when payment is received or become due, whichever is the earliest. The respondent stated that the audit it carried out revealed that Arena Mall for which the applicant is claiming input VAT credit is still under construction. The respondent also contended that the taxable supply the applicant was making related to letting part of its land for advertisement space, which is another business. The respondent argued that the VAT Act only allows credit where the supply is for use in the business of the taxable person. The respondent also argued that the VAT the applicant can claim should be in respect of running the rental business such as on electricity, water, security. The respondent argued further that the applicant is not disadvantaged since the VAT it incurred is claimable under industrial building deductions under the Income Tax Act. The respondent also submitted that the applicant is not a construction company.

The respondent contended that the VAT Act does not define business. Hence reference is made to the Income Tax Act. S. 2 of the Income Tax Act defines business to include any trade, profession, vocation, or adventure in the nature of trade but does not include employment. The respondent also cited **Black's Law Dictionary** 11<sup>th</sup> Edition. P. 247 which defines business as a commercial enterprise carried on for profit. The respondent contended that Arena Mall is still under construction hence the business of renting out the Mall has not commenced. The respondent also argued that though the applicant exhibited its Memorandum and Articles of Association which showed that its business is property development, that is mere expression of intent. Not every company that is incorporated is carrying on business. The respondent contended that since the applicant is the owner of the property and a final consumer of services, it was properly charged and cannot claim input VAT.

The respondent submitted that the tax of Shs. 307,625,525 on imported services is not in dispute before the Tribunal. The applicant's objection in respect of the assessment was allowed by the respondent.

In rejoinder, the applicant submitted that it is in the business of property development. It is currently developing the Arena Mall. This is evidenced by its Memorandum and Articles of Association. The applicant contended that property development is defined by **Collins Dictionary** as “the business of buying land, and buildings and then making improvements to them so that their selling price exceeds the price paid for them.” The applicant also contended that the respondent should consider all business activity carried out by the applicant to allow input tax incurred. The applicant also argued that the issue of apportionment was never part of the audit and objection decision.

The applicant argued that the Regulations applies to construction services. The contractors issued invoices to the applicant at each stage and form the basis of the input tax it claimed. The applicant cited **Enviroserve (U) Limited v URA** (supra) where the Tribunal stated that S. 28 stated that a taxable person is entitled to input VAT for taxable supplies made to it during the tax period. It does not state that the person ought to have made taxable supplies.

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

The applicant deals in property development. It is constructing Arena Mall. It also leases land space for advertisement. On 31<sup>st</sup> December 2018, the applicant claimed input tax of Shs. 4,388,802,707. The respondent rejected the claim on the ground that the applicant was not making taxable supplies and they were not for the business of constructing the Mall.

It is not in dispute that the applicant is a taxable person and is VAT registered. A ‘taxable person’ is defined under S. 6 of the VAT Act as “a person registered under S. 7 from the time registration takes effect”. In **Post Bank (U) Limited v URA** TAT 18 of 2008 the Tribunal held that the effective date of registration is determined by reference to the date set out in the certificate of registration. In this matter it is not in dispute that at the time the

applicant claimed input VAT it was registered. The applicant is a taxable person from the date it was registered.

Having been registered, a question arises as to whether and when the applicant was entitled to claim input VAT. The applicant submitted that it is entitled to input VAT of Shs. 4,388,802,707. The respondent contends that making taxable supplies is a pre-requisite for a person to be entitled to VAT input. A person's entitlement of VAT input after being issued a certificate is determined by S. 28 of the VAT Act which reads:

- (1) "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-
  - (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."

In **Enviroserv (U) Limited v URA** TAT 24 of 2017 the Tribunal held that for the applicant to be entitled to the input tax credit under this section the applicant has to prove the following; i) The applicant is a taxable person; ii) Taxable supplies have been made to the applicant during the tax period and iii) The taxable supplies were for use in the business of the applicant.

We have already stated that the applicant was registered for VAT and is a taxable person. What seems to be in contention is whether for the applicant to claim input VAT it must have made taxable supplies during the tax period and whether it was in its business

S. 28 of the VAT Act states that a taxable person is entitled to input VAT for taxable supplies made to it during the tax period. In **Enviroserv (U) Limited v URA** (supra) the tribunal noted "It does not state that the person ought to have made taxable supplies. The Tribunal went further to state that "In the event it did not, does this affect its claim for credit input? In **Warid Telecom Uganda Limited v Uganda Revenue Authority** Civil Appeal 24 of 2011 the court noted that a credit is allowed on all taxable supplies made to the taxable person provided that supply is for use in the business of the taxable person." Making taxable supplies is not a condition for claiming input tax. However even if the

Tribunal was wrong to state so, the applicant by letting out space for advertisement was making taxable supplies.

A tax payer is entitled to input VAT for all the taxable supplies made during a tax period if the supply or import is used for its business. In this case, the applicant was issued invoices for VAT in respect of the construction of Arena Mall which was not completed. The respondent contends that the invoices were not in respect of letting out space for advertisement, which was not the applicant's business.

The word "business" is not defined in the VAT Act. The respondent cited S. 2 of the Income Tax Act which defines business to include any trade, profession, vocation, or adventure in the nature of trade but does not include employment. That definition is for the Income Tax Act. **Black's Law Dictionary** 10<sup>th</sup> Edition p. 239 defines business as

"1. A commercial enterprise carried on for profit. A particular occupation or employment habitually engaged in for livelihood or gain."

The Dictionary's definition includes employment. So the question the Tribunal has to ask itself is: Was the leasing for the space on the land for advertisement a commercial enterprise carried on for profit? The Tribunal thinks so. In **Cape Brandy Syndicate v The Commissioners of Inland Revenue** Rowlatt J stated:

"It means this, I think it means that in taxation you have to look at simply at what is clearly said. There is no room for an intendment, there is no equity about a tax; there is no presumption as to a tax; you read nothing in, you imply nothing, but you look fairly, at what is said clearly and that is the tax."

If hiring out land space for advertisement was for gain or profit as a commercial enterprise, then it was for business purposes. It constituted part of the business of the applicant.

The business objectives of the applicant were stated in its Amended Memorandum and Articles of Association. Clause 3.1 of the said Memorandum reads:

"To carry on the business of real estate and property development, and to manage land, buildings, estates, shopping centers and other property, and to carry on the business of



real estate developers and to use or lease any part thereof of the property mentioned herein, ...”

Clause 3.2 states:

“To carry on the business of trading in properties and deal as consultants in land management, property developers, property managers, property agents or estates, apartments,, hostels, schools, plots, land management, purchaser (sic), take on lease, or in exchange, or otherwise acquire, deal in any real or personal estate and in particular to build and buy houses and develop, own and manage farms, housing...”

Under the said clauses the applicant was free to deal, lease, develop and trade in land. Dealing and leasing land includes doing it for advertisement purposes. The Amended memorandum did not restrict the business of the applicant to constructing Arena Mall. The applicant by leasing land for advertisement was carrying out other business as stated in the Amended Memorandum of Association.

There is nothing in the VAT Act that requires a taxpayer to restrict credit input tax to only one business. Therefore, for the respondent to contend that the applicant should only apply VAT input in respect of construction of the Arena mall would be confusing the terms “commercial activity” with “business” of a taxpayer. **Black’s Law Dictionary** 10<sup>th</sup> Edition 41 defines commercial activity as “An activity, such as operating a business, conducted to make profit.” While the construction of the Arena Mall was a commercial activity, it was not the business of the applicant. The business of the applicant inter alia was property development, leasing, hiring and management of property. Hiring space on land is part of property development, leasing, hiring and management of property. It was also another commercial activity of the applicant. Therefore, the respondent was not justified to state that the hiring of land for advertisement was not part of the business of the applicant.

The respondent contended that all taxpayers who are constructing may claim input tax which would always put them in VAT refundable position. It contended that this would not only wreak havoc on the concept of VAT but undermine collections of VAT. The concept of VAT input credit is to create incentives to taxpayers to pay taxes. Tax collections is not only about collecting monies, but also about subsidizing taxpayers and boosting economic activities. If there are more buildings constructed, the respondent would collect more taxes. At one time a taxpayer would collect input VAT six months before it was

registered. The respondent is responsible for registering VAT, once a taxpayer is registered it is entitled to its input VAT.

Lastly, both parties are in agreement that the applicant's objection on the VAT assessment of Shs. 307,625,525 on imported services was allowed by the respondent in the objection decision, therefore the Tribunal will not deliberate on it. The said assessment does not stand.

Having determined that the respondent was not justified to refuse the applicant's claim of input VAT of Shs. 4,388,802,707, this application is allowed with costs.

Dated at Kampala this 31<sup>st</sup> day of march 2021.

---

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

---

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

---

**MS. CHRISTINE KATWE**