

Dependent

THE REPUBLIC OF UGANDA
IN THE TAX APPEALS TRIBUNAL OF UGANDA AT KAMPALA
APPLICATION NO. 099 OF 2021

LATITUDE ZERO DEGREES LIMITEDAPPLICANT
VERSUS
UGANDA REVENUE AUTHORITY RESPONDENT

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

RULING

On 7th March 2022, when this application came up for a scheduling conference, the following preliminary issues were raised for determination by the tribunal.

1. Whether the applicant objected in time?
2. Whether the election by the applicant was valid?
3. Whether the applicant is liable to pay the penal tax assessed?
4. What remedies are available?

The parties opted to file written submissions, the above issues being purely legal and not requiring further evidence.

The facts of the application briefly are: The applicant carries on the business of a hotel, bar and restaurant. In March 2021, while conducting field operations to ascertain the usage of the Digital Tax Solution (DTS), the respondent found the applicant in possession of unstamped gazetted products. On 29th April 2021, the respondent raised a penal tax assessment of Shs. 50,293,600 against the applicant under S. 19B(3) of the Tax Procedures Code Act (TPCA). On 10th May 2021, the respondent notified the applicant of the said penal assessment. On 18th May 2021, the applicant filed an online penalty reversal application which was rejected by the respondent on 12th July 2021. On 28th June 2021, the applicant objected to the penal assessment. On 12th October 2021, the applicant served the respondent with a Notice of Election under S. 24(7) of the TPCA. On 15th October 2021, the respondent rejected the applicant's notice of election on the

grounds that it had already been rejected by an online objection decision notice of 12th July 2021.

The applicant was represented by Mr. Fabian Omara while the respondent by Ms. Charlotte Katuutu and Ms. Patricia Ndagire.

The applicant argued that the Notice of Assessment of 29th April 2021 had no legal basis because it was issued under the wrong law. The applicant argued that the respondent ought to have issued the said Notice under S. 53 of the TPCA and not Sections. 21 or 23. The applicant submitted that the Notice was not a tax assessment. It cited S.3 of the TPCA, where an assessment is defined as '*a self-assessment, default assessment, advance assessment or additional assessment*'. The applicant argued that S.21 of the TPCA deals with default assessment while S. 23 deals with additional assessment. The applicant argued that the respondent could not issue a Notice of Assessment as a default assessment and or additional assessment for a penalty tax under S. 19B(1) of the TPCA. The said Notice of Assessment was merely a demand for payment of penal tax in accordance with S.53 of the TPCA. The applicant submitted therefore that the objection could not have been raised against an illegal, invalid and or unlawful tax assessment issued under inapplicable provisions of the law.

The applicant submitted that the respondent erred when it issued the Notice of Assessment in the absence of a tax assessment and the procedure it adopted was incompatible with S. 53(5) of the TPCA when the applicant applied for a waiver of the penal tax on 18th May 2021. The applicant submitted that its application for a waiver of the penal tax was made under S.53 (5) of the TPCA and accordingly there was no legal requirement by the applicant to object at that stage as that there was no legal tax assessment to object to. The applicant submitted that the rejection of the waiver of penal tax was a tax decision because it was a decision of the Commissioner General.

The applicant argued that the Rejection Notice required the applicant to object to the decision within 45 days. The time within which to object started running from 12th July

2021 when a tax decision rejecting the application for waiver of the penal tax was made. The applicant submitted that it lodged a formal objection on 28th June 2021 and that the respondent was under a duty under S. 24 (5) of the TPCA to make an objection decision under S. 24(6) of the TPCA within 90 days of receipt i.e. from 12th July 2021 to 10th October 2021.

The applicant contended that its election was valid. The applicant submitted that the time within which to respond to the objection started running on 12th July 2021. The respondent did not invoke its right under S. 24(9) of the TPCA to waive the time limit for making an objection decision. The respondent's letter dated 15th October 2021 made no mention of the formal objection dated 28th June 2021 in spite of the fact that the applicant had expressly referred to it when it made the election on 11th October 2021. The applicant submitted that it was only required to make an objection to the Rejection Notice which was a tax decision and not against a purported assessment. The online Rejection Notice could not have been a tax decision and an objection decision at the same time. The applicant submitted that the election was made within the stipulated time and was valid under the TPCA. The applicant submitted that once it notified the respondent of its election the latter was barred by S. 24 (8) of the TPCA from challenging the competence of the objection as the respondent was deemed to have allowed the objection. The applicant cited *Game Discount World Uganda Ltd v Uganda Revenue Authority* Civil Appeal No. 39 of 2021 and *Photon Technologies Ltd v The Commissioner General of Uganda Revenue Authority*, Misc. Cause No. 14 of 2016. The applicant submitted that its objection was filed within the statutory timelines under S. 24(1) of the TPCA.

The applicant submitted it was wrong for the respondent to refer to the applicant's online penalty reversal application dated 18th May 2021 as its objection decision. The rejection of its application for a waiver did not amount to an objection decision.

The applicant submitted that the instant application was not time barred. It was served with the respondent's letter rejecting the election notice on 20th October 2021 at 12.30 pm and the instant application was filed 21 days later on 19th November 2021. The

respondent's letter declining the applicant's notice of election was written on 15th October 2021. The applicant submitted that the respondent's letter dated 15th October 2021 was received on 20th October 2021 at 12.30 pm. The applicant submitted that under S. 25 (1) of the TPCA and S. 16(1)(c) of the Tax Appeals Tribunal Act, it had 30 days from 20th October 2021 to lodge the instant application. 20th November 2021 was the last day for filing the instant application. The instant application was filed on 19th November 2021 within the stipulated time of 30 days.

In its reply, the respondent abandoned the third preliminary objection and submitted that the instant application was bad in law for the reason that the applicant had not paid 30% of the tax in dispute as required by the law and prayed that the instant application be dismissed with costs.

The respondent submitted that the applicant did not file its objection in time. It contended that S. 24 (1) of the TPCA provides that a person dissatisfied with a tax decision may lodge an objection with the Commissioner within 45 days after receiving notice of the tax decision. The respondent submitted that it issued a penal tax assessment against the applicant on 29th April 2021 under S.19B of the TPCA for being in possession of unstamped gazetted goods. The respondent submitted that the 45 days for lodging an objection expired on 13th June 2021. The respondent rejected the argument by the applicant that the assessment issued of 29th April 2021 was not a tax assessment. The respondent submitted that the applicant's assertion that the assessment ought to have been issued under S. 53 (1) of the TPCA was untenable as the said provision deals with penal tax.

In the alternative, the respondent submitted that the penalty being issued under a wrong law is not a ground for invalidating it. S. 68 of the TPCA provides that the validity of a tax decision, a notice of a tax decision, or any other document purporting to be made or executed under a tax law is not affected by reason that any provisions of the tax law under which it was made have not been complied with. The respondent submitted that it operates an electronic and automated system under which assessments to tax payers

are directly received by them electronically on the basis of their Tax Identification Numbers. The respondent submitted that the time for the filing of the objection starts to run the moment the electronic message is received by the applicant. The respondent contended that the time within which the objection ought to have been filed expired on 13th June 2021. The respondent submitted further that even if the date of the communication of the assessment was 10th May 2021, the time within which the objection ought to have been filed by the applicant would have expired on 24th June 2021, consequently the objection of 28th June 2021 would still have been filed out of time.

The respondent submitted that the election in question was not valid as there was no valid objection. It cited *Cable Corporation (U) Ltd v Uganda Revenue Authority*, HCCA No. 1 of 2011 where Madama J, stated that it was explicitly provided under S.1 (g) of the Tax Appeals Tribunal Act that there had to be a taxation objection before an objection decision can be made. Citing further S. 24(7) of the TPCA the respondent submitted that in order for an election to be valid, the objection itself must be valid, the Commissioner should not have served an objection decision within the stipulated 90 days and the tax payer ought to have served the Commissioner with a notice in writing electing to treat the Commissioner as having allowed the objection. The respondent submitted that it issued its objection decision on 12th July 2021 through the notice rejecting the application for reversal of penalty. The respondent submitted that a tax payer issued with a penalty assessment had the option of either objecting by an online penalty reversal or by manually through a letter. The respondent submitted that on 18th May 2021, the applicant made an application for a waiver of penalty and followed it with a letter seeking a review of the decision to impose a penal tax.

The respondent submitted that S. 24(5) of the TPCA provides that the Commissioner may make a decision on an objection to a tax assessment, affirming, reducing, increasing, or otherwise varying the assessment to which the objection relates, or to any other tax decision, affirming, varying or setting aside the decision. The objection decision under S. 24(6) of the TPCA is to be served on the person making the objection within 90 days from the date of the receipt of the objection. The respondent submitted that the objection

decision was issued on 12th July 2021 by rejecting the application for penalty reversal thus in effect affirming the decision to issue a penalty assessment against the applicant. The respondent submitted therefore that the applicant cannot purport to elect where a valid objection subsisted.

In the alternative, the respondent submitted that the applicant cannot purport to elect in respect of an objection which was clearly out of time. The respondent submitted that in order to elect, a tax payer ought to have complied with all the requirements set out under S. 24 of the TPCA including the requirement under subsection (1) that the objection be made within 45 days after receiving the notice of the tax decision. The respondent submitted that since the assessment was issued on 20th April 2021, the applicant ought to have objected by 13th June 2021 and that even if the date of the communication of the assessment is taken as 10th May 2021 still the applicant was required to have filed its objection by 24th June 2021. The respondent submitted therefore that the election in question was invalid for the reason that the respondent had already issued an objection decision within the stipulated period. The respondent reiterated its submissions that there can be no valid election where there is no objection. The respondent argued that the tax decision was the rejection of penalty reversal which was issued on 12th July, 2021. The respondent submitted that the contention by the applicant that it had already objected to this tax decision by its letter dated 28th June 2021 is untenable as there can be no objection where there is no tax decision. The respondent submitted that an objection cannot precede a tax decision and that as such there was not objection to the rejection of the penalty reversal in the instant case.

Having read the submissions of both parties this is the ruling of the tribunal

The applicant in a letter dated 4th April 2022 indicated that it had paid 30% of the tax in dispute. A payment receipt was attached to the said letter as proof of payment. This being the case we will make no further mention of the objection relating to the applicant's failure to pay the 30% of the tax in dispute.

Further, at the start of its submissions the respondent indicated that it had abandoned the third preliminary objection which was in respect of: Whether the applicant is liable to pay the penal tax assessed? So the issues remaining are whether the applicant objected in time and whether the election by the applicant was in time?

The application filed by the applicant shows that it was in relation to a digital stamp tax penalty. It was in respect of Assessment MA022100955924. The amount of tax in dispute or objected to is Shs. 50,293,600. Paragraph 3(m) of the application states that on the 10th May 2021, the respondent penalized the applicant under S. 19B(3) of the TPCA for the possession of unstamped gazzetted goods. The applicant prayed for inter alia that the penal tax assessment against the penalty is a nullity and an immediate vacation of the penal tax assessment. The major purpose of the application was to set aside the penal tax assessment rather than the rejection of the online penalty reversal application which was rejected by the respondent on 12th July 2021.

S. 24(1) of the Tax Procedure Code Act (TPCA) provides that:

“A person who is dissatisfied with a tax decision may lodge an objection with the Commissioner within forty five days after receiving notice of the tax decision.”

In order to resolve the issue whether the applicant filed its objection in time we need to determine whether the Notice of Assessment issued by the respondent on 29th April 2021 was a tax decision? S. 2 of the Tax Appeals Tribunal Act defines a taxation decision to mean any assessment, determinations, decision or notice. S. 3 of the TPCA defines a tax decision as follows:

“(a) a tax decision; or

(b) a decision on any matter left to the discretion, judgment direction, opinion, approval, satisfaction or determination of the Commissioner, other than a decision made in relation to a tax assessment.”.

The Notice of Assessment issued on the applicant of Shs. 50,293,600 was for the period 1st April 2021 to 30th April 2021 as a penalty because of the applicant's failure to affix a tax stamp on prescribed goods, locally produced or imported. It was issued under S. 19B (1) of the TPCA which provides that:

“A taxpayer who fails to affix a tax stamp on goods prescribed under section 19A(3) is liable to pay a penal tax equivalent to double the tax due on goods or fifty million shillings, whichever is higher.

The Assessment was a tax decision under S. 2 of the Tax Appeals Tribunal Act and S. 3 of the TPCA.

Under S. 24(1) the applicant ought to have lodged an objection with the Commissioner within forty five days after receiving the notice. It is not in dispute that on 10th May 2021 the respondent notified the applicant of the said penal assessment. Therefore the applicant ought to have objected by 25th June 2021. It is not in dispute that the applicant did not object to the assessment. If the Tribunal were take the objection to refusal to the reversal of the application of penal tax on 28th June 2021 it is still outside the prescribed time by law.

The principle argument by the applicant against the validity of the above assessment is that it was brought under the wrong provision of the law. The applicant argues that it ought to have been brought under S.53 of the TPCA and not S. 19B. S. 53(1) of the TPCA states that *‘liability for penal tax is calculated separately in respect of each section dealing with penal tax’*. While S. 53(2) states that:

‘a person is liable for penal tax if the Commissioner serves notice on the person of a demand for the penal tax setting out the amount of penal tax payable and the due date for payment being a date that is not less than twenty-eight days from the date of service of the notice’.

On the other hand S. 19A directs a person dealing in goods whether locally manufactured or imported to affix a tax stamp on such goods as gazetted by the Minister. S. 19 (1) (c) (iii) of the Tax Procedures Code (Tax Stamps) Regulations 2018 grants the Commissioner discretionary powers to seize tax stamps, equipment or goods, as the case may be, where the goods do not bear tax stamps. S. 19B(3) of the TPCA provides that a person found in possession of goods prescribed under S. 19A(3), on which a stamp is not affixed, is liable to pay penal tax equivalent to double the tax due on the goods or fifty million shillings, whichever is higher. A perusal of the above provisions show that the

Notice of Assessment ought to have been brought under S. 19B (3) of the TPCA and not under S. 53 of the TPCA for the reason that S.53 relates to penalties generally while S. 19B (3) relates specifically to a penalty due for failure to affix tax stamps as required under S. 19A. However even if the applicant was correct in its contention, S. 68 of the TPCA ensures that the failure to issue a document under the correct provision of the law does not invalidate such document.

We accordingly find that the Notice of Assessment issued by the respondent on 29th April 2021 was a valid assessment and the applicant was under an obligation to object to it. This the applicant failed to do. The applicant's failure to object to the assessment in question means that the question of an election does not even arise. The effect of the applicant's failure to file an objection to the Notice of Assessment dated 29th April, 2021 is that the instant application is not supported by a valid objection decision. In these circumstances the question relating to the validity of an election does not arise for the reason that the instant application is incurably defective. Since the application was not about the rejection of the application online reversal of the penalty the Tribunal cannot address it. For the reasons above this application is dismissed with costs.

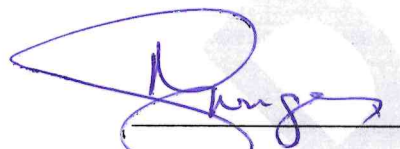
Dated this

21st

day of

April

2022.



DR. ASA MUGENYI
CHAIRMAN



MR. GEORGE MUGERWA
MEMBER



MR. SIRAJ ALI
MEMBER