THE REPUBLIC OF UGANDA

IN THE TAX APPEALS TRIBUNAL OF UGANDA AT KAMPALA

APPLICATION NO. 109 OF 2020

PALLADIUM GROUP UGANDA LIMITED…… APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY…….. RESPONDENT

BEFORE: DR. ASA MUGENYI, DR. STEPHEN AKABWAY, MR. GEORGE MUGERWA

RULING

This ruling is in respect of an application challenging a Value Added Tax (VAT) assessment of Shs. 128,704,118 arising from a dispute on when the applicant ought to have been registered for it.

The applicant provides consultancy services for donor funded projects. The applicant charges a management service fee of 5% of the costs for the donor funded projects. On 15th May 2019, the applicant applied for VAT registration which was rejected by the respondent. The respondent registered the applicant for VAT effective 1st July 2016 and issued it with an assessment of Shs. 128,704,119 for the financial years June 2017 to 2019. The applicant objected to the assessment which was disallowed by the respondent.

ISSUES

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

The applicant was represented by Mr. Oscar Kamusiime while the respondent by Mr. Thomas Lumuria.

This application arises from a dispute as to whether the applicant was liable to pay VAT when it had not voluntarily registered for VAT.

The applicant's witness, Mr. Joseph Opiyo AW1, testified that the applicant provides management consultancy services for Foreign Commonwealth and Development Office (FCDO) funded projects and United States Agency for Development (USAID). It charges a management fee. Prior to 2018, the company's management service fee had not reached the VAT registration threshold of Shs. 150,000,000. At the end of 2018, its income was Shs. 180,527,249. On 15th May 2019, the applicant voluntarily applied for VAT which the respondent rejected on 4th July 2019. On 17th February 2020, the respondent instructed the applicant to apply for VAT which it did on 20th February 2020 and the respondent registered the applicant for VAT effective on 1st July 2016. On 30 and 31st March 2020, the respondent issued VAT assessments, Shs. 57,189,356 for the period June 2017, Shs. 35,800,780 for the period June 2018 and Shs. 35,623,983 for the period June 2019. The applicant objected which the respondent disallowed.

The respondent's first witness, Ms. Anne Ruth Agwang testified that the applicant provides management consultancy services on health, education, and economic social wellbeing. A return examination established that the applicant sold some furniture and fittings, but no VAT was declared. The respondent computed VAT of Shs. 4,313,135 on the disposal. It was further established that the company also earned management fees of 5% on the costs of the donor funded projects but the same had not been subjected to VAT. The witness testified that applicant applied for VAT registration in May 2019 which was rejected. It was also established that the management fees and other income was above the VAT threshold and therefore the rejection of the application for VAT was done in error. The respondent obtained third party information which indicated that the applicant made sales of Shs. 194,874,660 within the first three months of the financial year 2016/17 and this exceeded the one-quarter of the annual registration threshold set out in S. 7(2) of the VAT Act and thus the duty to register arose on 15th October 2017 and the effective date being 1st November 2017. The applicant was registered for VAT effective 1st June 2017 and was issued with VAT assessments for the periods June 2017, June 2018, and June 2019 following a return examination.

The respondent's second witness, Ms. Racheal Katende testified that the respondent conducted a return examination on the tax affairs of the applicant for the periods June

2017, June 2018, and June 2019. It established that the applicant had management fees and other income of Shs. 374,908,000 in the year 2016/2017 which attracted VAT of Shs. 57,189,456. It had management fees and other income of Shs. 207,009,000 for the year 2017/2018 attracting VAT of Shs. 31,577,644. It had fees and income of Shs. 233,535,000 for the year 2018/2019 attracting VAT of Shs. 35,633,983. The applicant was issued assessments totaling to Shs. 124,390,982 which it objected to and were disallowed by the respondent.

The applicant submitted that it is not liable to pay the tax assessed because it did not meet the VAT threshold until the end of 2018. It was assessed for the tax periods ending June 2017, June 2018, and June 2019. The applicant contended that S. 7(1)(a) of the VAT Act provides that a person who is not already registered shall apply to be registered within twenty days of the end of any period of three calendar months if during that period the person made taxable supplies, the value of which exclusive of any tax exceeded one-quarter of the annual registration threshold set out in subsection (2). Under S. 7 (2), the annual registration threshold is Shs, 150 million.

The applicant submitted that its statement of profit or loss for the period ended June 2017 clearly shows that its income for the period comprised donations of Shs. 5.3 billion and other income of Shs. 42.3 million. Since grant income is not attributable to taxable supplies it follows the Shs. 42.3 million fell below the threshold and as such the assessment is unlawful and wrong. Therefore, the applicant having met the threshold at the end of 2018 cannot be liable for VAT for the periods ended June 2017 and June 2018.

The applicant submitted that the respondent rejected its application on 4th July 2019. Having rejected its application for VAT on 4th July 2019, it cannot expect the applicant to collect VAT prior to June 2019. This is because rejection of the application implies that the applicant was not eligible for registration and as such the applicant had no right to collect VAT during the said period. The applicant cited S. 8(2) of the VAT Act which provides that the Commissioner General shall register a person who applies for registration under S.7 and issue a certificate of registration. Rejection of the applicant's

application implies that the respondent was satisfied that the applicant was not a person eligible for registration under the Act.

The applicant contended that the respondent did not consider any credit for input tax when raising the assessment. The applicant contended that S. 25(1) of the VAT Act provides that when calculating the tax payable by a taxable person for a tax period, a credit is allowed to the person for the tax paid. The applicant submitted that taxable supplies were made to it during the periods ending June 2017, June 2018, and June 2019 and as such the respondent ought to have considered credit for input tax. The applicant submitted that it incurred expenses in respect of accommodation, trainings, and workshops.

In reply, the respondent submitted that the burden lies on applicant to prove that it is not liable to pay taxes levied. It contended that S. 26 of the Tax Procedure Code Act and S. 18 of the Tax Appeals Tribunal Act place the burden on the taxpayer to prove an assessment is excessive or taxation decision should have been made differently.

The respondent submitted that S. 4 of the VAT Act imposes VAT on taxable supply, import of goods other than an exempt import, and supply of imported services. The respondent submitted that persons liable to pay VAT are provided for in S. 5 of the VAT Act. In the case of a taxable supply, VAT is to be paid by a taxable person making the supply, in case of an import of goods, it is to be paid by the importer, in case of a supply of imported services, other than an exempt service, it is to be paid by the person receiving the supply. The respondent contended that S. 18 (1) of VAT Act defines a taxable supply as a supply of goods or services, other than an exempt supply, made by a taxable person for consideration as part of his or her business activities. A supply is made as part of a person's business activities if the supply is made by him or her as part of, or incidental to, any independent economic activity he or she conducts, whatever the purposes or results of that activity.

The respondent submitted that its witness Ms. Racheal Katende testified that the applicant had management fee income and other income that were indeed above the

threshold of Shs. 150,000,000. In the financial year 2017/2018 the applicant had management fees and other incomes of Shs. 207,009,000 as reflected in its financial statement attracting VAT of Shs. 31,577,644. In the financial year 2018/2019, the applicant had management fees and other incomes of 233,535,000 as reflected in the financial statement of the applicant attracting a VAT of Shs. 35,623,983, In the financial year 2016/2017, the applicant had management fees and other incomes of Shs. 374,908,000 attracting VAT of Shs. 57,189,356. The applicant disposed of furniture and fitting worth 28,275,000 attracting VAT of 4,313,135. The respondent submitted that the total VAT in dispute is Shs. 128,704,188.

The respondent submitted that the applicant was registered for VAT as of 1st June 2017. The respondent cited *Tamale Advocates v URA*. Application 48 of 2008 where the tribunal held that "a taxable person becomes VAT liable when he obtains a certificate with effect from the date mentioned on it." The respondent submitted that the effective date of registration is 1st June 2017 as clearly indicated in the certificate of registration.

The respondent submitted that a taxpayer may be estopped from registering for VAT on several reasons as listed out in S. 8(2) of the VAT Act. These include where the person has no fixed place of abode or business; or the Commissioner General has reasonable grounds to believe that that person will not keep proper accounting records relating to any business activity carried on by that person; or will not submit regular and reliable tax returns; or is not a fit and proper person to be registered. The respondent submitted that the applicant's application may have been rejected on the above grounds and not its inability to meet the VAT threshold.

The respondent submitted that the duty for the applicant to apply for registration for VAT arose in October 2016. The respondent cited *Placer Dome Inc v Canada [1992] 2 CTC 98 at 109,* where the Canadian Supreme Court held that:

> "It is the substance of a transaction that must be looked at in order to determine the true legal rights and obligations of the parties. Similarly, it is commercial and practical nature of the transaction, the true legal rights and obligations flowing from it that must be looked at to determine its tax implications."

The respondent submitted that tax liability must be determined by considering the economic substance of a transaction, rather than looking at legal form only.

The respondent submitted that it did not consider credit for input tax as no evidence for such supplies was provided by the applicant. The respondent cited *Williamson Diamonds Ltd v Commissioner General [2008] 4 TLR 197*, where the Tax Revenue Appeals Tribunal of Tanzania held that "…the burden of proving that assessment issued by the respondent is excessive or erroneous lies on the taxpayer and in no way, can it be shifted to the respondent…". The applicant failed to discharge this burden.

In rejoinder, the applicant submitted that it has discharged the burden of proof placed on it. It also submitted that it voluntarily applied for VAT on 17th May 2019. The respondent rejected the application on 4th July 2019. It could not collect VAT when its application was rejected. The applicant submitted that the reasons for rejecting its application were not intelligible.

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

The applicant provides consultancy services for donor funded projects. The applicant charges a management service fee of 5% of the costs of the funded projects. On 15th May 2019, the applicant applied for VAT registration which was rejected by the respondent. The applicant submits that the respondent having rejected its application for VAT on 4th July 2019, it cannot expect it to collect VAT prior to June 2019 as it would not be eligible for registration. The respondent registered the applicant for VAT effective 1st July 2016 and issued it with an assessment of Shs. 128,704,119 for the financial years June 2017 to 2019 which the applicant objected to.

VAT is imposed by S. 4 of the VAT Act which states that:

> "A tax, to be known as a value added tax, shall be charged in accordance with this act on-
>
> (a) Every taxable supply made by a taxable person

(b) Every import of goods other than an exempt import; and

(c) The supply of imported services, other than an exempt service, by any person."

S. 5 of the VAT Act provides that:

"(1) except as otherwise provided in this act, the tax payable-

(a) In the case of a taxable supply, is to be paid by a taxable person making the supply

(b) In case of an import of goods, is to be paid by the importer,

(c) In case of a supply of imported services, other than an exempt service, is to be paid by the person receiving the supply".

S. 7(1) of the VAT Act provides that:

"A person who is not already registered shall apply to be registered in accordance with Section 8-

a) Within twenty days of the end of any period of three calendar months if during that period the person made taxable supplies, the value of which exclusive of any tax exceeded one-quarter of the annual registration threshold set out in subsection (2); or

b) At the beginning of any period of three calendar months where there are reasonable grounds to expect that the total value exclusive of any tax of taxable supplies to be made by the person during that period will exceed one-quarter of the annual registration threshold set out in subsection (2).

c) At the beginning of any tax period of more than three calendar months where there are reasonable grounds to expect that the total value exclusive of any tax of taxable supplies to be made by the person will exceed the annual threshold set out in subsection (2)."

S. 7 (2) of the VAT Act provides that the annual registration threshold is one hundred fifty million shillings. S. 8(2) of the VAT Act provides that:

"The Commissioner General shall register a person who applies for registration under section 7 and issue that person a certificate of registration including the VAT registration number unless the Commissioner General is satisfied that the person is not eligible for registration under this Act".

S. 7(6) of the VAT Act provides for forcible registration. It states:

"(6) The Commissioner General may register a person if there are reasonable grounds for believing that the person is required to apply for registration under section 7 but has failed to do so, and that registration shall take effect from the date specified in the certificate of registration."

The Tribunal must ask itself: what was the effect of the respondent rejecting the applicant's application for VAT. It also must ask whether the respondent acted legally when it forcibly registered the applicant for VAT.

The respondent rejected the applicant's VAT application on 4th July 2019. There was no intelligible reason given by the respondent. That meant the applicant could not collect VAT after July 2019. The VAT in issue is for tax periods ending June 2017, June 2018, and June 2019. The Tribunal does not think that the rejection of the VAT certificate on 4th July 2019 would have affected VAT collection prior to July 2019. This is because the rejection does not apply retrospectively but prospectively. It could only have applied for the period after July 2019 yet the period in issue is prior. Therefore, going into the reasons whether the respondent gave valid reasons for the rejection would only serve academic purposes.

The respondent's refusal to register a person for VAT does not mean that such applicant may not have met the threshold for paying VAT. VAT collection involves a taxpayer making a voluntary application for registration. Basing on the information given, the respondent may allow an application or reject it. What happens when the information an applicant gives is misleading or false? Where information given is inaccurate there is no law that prohibits a tax collecting body from revisiting its decision. What the law does not prohibit, it allows. Therefore, the Tribunal must ask itself is; whether the respondent was justified to issue a registration certificate to the applicant?

S. 7(6) of the VAT Act allows the Commissioner General to register a person if there are reasonable grounds for believing that it is required to apply for registration under S. 7 but has failed to do so. S. 7(2) of the VAT Act requires a person to apply for registration for a period specified in S.7 (1) of the VAT Act if it has made taxable supplies where the threshold is one hundred fifty million shillings. The financial statement for the year ended 30th June 2018 exhibit A3(a) shows that the applicant received management fee income of Shs. 180,527,000 and other income of Shs 26,487,305 for the financial year 2018 totaling to Shs. 207,014,305. For the financial year 2019 the applicant had management fees of Shs. 233,535,000 and other income of Shs. 606,531,000 making a total of Shs.

840,066,000. The incomes in both years exceed the annual threshold and therefore indicate that the applicant ought to have registered for VAT. The average monthly income exceeded the average monthly threshold to register for VAT. The duty to register for VAT arises within twenty days after three months when the average threshold to register for VAT was exceeded. By merely looking at the financial statements one cannot ascertain which period the taxable supplies exceeded the threshold under S. 7(1) of the VAT Act. Under S. 1(w) a tax period is defined as a calendar month. The Tribunal would want to know which month the obligation to register for VAT arose on the applicant. To do so it would need to look at each month's income or taxable supplies. These were not availed. The onus under S. 18 of the Tax Appeals Tribunal Act falls on the applicant to prove that a decision should have been made differently. Though it was an agreed fact that the respondent registered the applicant effective 1st July 2016, the respondent's witness stated it was 1st June 2017. The registration certificate was not adduced as an exhibit. If we are go by the agreed date of 1st July 2016 at the time of assessments the applicant was above the VAT threshold under S. 7(2) of the VAT Act. If the Tribunal were to assume that the applicant was forcibly VAT registered during the period of assessments, which does not seem to be in dispute and it was above the VAT threshold then it is liable to pay VAT.

Ms. Rachel Katende testified that she observed that the applicant disposed of fitting worth Shs. 28,275,000 attracting VAT of Shs. 4,313,135. She also testified that the applicant deals in management consultancy services. S. 18 of the VAT Act defines a taxable supply as a supply of goods or services, other than an exempt supply, made by a taxable person for consideration as part of his or her business activities. The Tribunal is not convinced the disposal of the fittings was part to the business of the applicant which is stated as provision of management consultancy services. No evidence was adduced to show that the applicant's business included disposal of fittings.

If the Tribunal were wrong to hold that the disposal of the fittings was not part of the applicant's business activities, then the applicant ought to have charged output tax. The Tribunal notes that the financial statements indicate that the applicant purchased new fittings and furniture which expense exceeded the proceeds from the sales of the fittings.

The respondent ought to have taken into consideration the input tax the applicant paid for the new furniture and fittings to arrive at its decision.

The applicant contended that the respondent did not consider it VAT input credit. S. 18 of the Tax Appeals Tribunal Act places the onus on the applicant to show the assessments were excessive by adducing evidence to show the input tax it paid. The onus was not discharged by the applicant.

The respondent issued assessments of Shs. 57,189,355.93 for June 2017, Shs. 31,577,664 for June 2018 and Shs, 35,623,983 for June 2019. However, the amount of the assessments in the agreed facts was Shs. 128,704,119 The applicant disposed of furniture and fitting worth 28,275,000 attracting VAT of 4,313,135 which we have said was not part of its business activities. This amount is removed from the VAT payable of Shs. 128,704,118. Therefore, the applicant ought to pay VAT of Shs. 124,390,983 which was the amount in the assessments. For the reasons, stated above, the applicant has not discharged the burden on which the VAT registration should have been effected. This application is dismissed with costs.

Dated at Kampala this day of 2022.

DR. ASA MUGENYI	**DR. STEPHEN AKABWAY**	**MR. GEORGE MUGERWA**
CHAIRMAN	**MEMBER**	**MEMBER**