

THE REPUBLIC OF UGANDA
IN THE TAX APPEALS TRIBUNAL OF UGANDA AT KAMPALA
APPLICATION NO. 105 OF 2021

QUICKWAY PROPERTY SERVICES LIMITED =====APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY =====RESPONDENT

BEFORE: DR. ASA MUGENYI DR. STEPHEN AKABWAY MR. SIRAJ ALI

RULING

This ruling is in respect of an application challenging Value Added Tax (VAT) and Income tax assessments for the period March to May 2020 and July to June 2020.

The applicant is a company engaged in construction and engineering services. The applicant filed VAT returns for the period March to May 2020 and claimed input tax credit on purchases made from Hard Steel Limited. of Shs. 1,482,111,300. The applicant also filed an income tax return for the period July 2019 to June 2020. The respondent disallowed the applicant's input tax credit claim and issued an additional administrative assessment of Shs. 170,218,372 in respect of VAT and Shs. 283,067,797 for Income tax on the ground that the purchases in question had not been made and that the claim for input tax credit was a VAT invoice trading scheme.

During scheduling the following issues were set down for determination.

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

The applicant was represented by Ms. Shallon Asiimwe while the respondent by Mr. Bakashaba Donald.

The applicant's first witness, Ms. Winnie Wanyetse Judith, its accountant testified that in January 2020, the applicant was awarded a contract by Capital Shoppers Limited for

the construction of residential and commercial buildings on Market Street, Kampala. The construction materials for the said contract were purchased by the applicant from Hard Steel Limited. She would receive money for the purchase of the construction materials from Mr. Muhinda Sadat, the applicant's managing director. The witness testified that the purchases were supported by purchase and sales ledgers maintained by both the applicant and Hard Steel Limited and invoices, delivery notes and a stock book showing the materials purchased. The payments for the materials purchased were made in cash and receipts were issued by Hard Steel Limited for the said payments. The witness testified that the applicant filed VAT returns for the period March to May 2020 and Income tax for the period July 2019 to June 2020 and claimed input tax credit of Shs.1,482,111,300.

The applicant's second witness, its managing director, Mr. Muhinda Sadat testified that financing for the construction contract would be received from the Managing Director of Capital Shoppers Limited, Mr. Ngabirano Ponsiano, who would sometimes make deposits into the applicant's account or the witness' personal account or would make payments in cash. He that the materials for the entire project were purchased from Hard Steel Limited and payments were made in cash. He would withdraw money for the purchase from the applicant's account in DFCU Bank and from his own account at Standard Chartered Bank and give the money to the account's office. Under cross examination, He confirmed that all payments for the purchases from Hard Steel Limited were in cash. This was the preference of the customer.

The respondent's sole witness, Mr. Caesar Kisoro, a supervisor in its tax investigations department testified that the respondent carried out a return examination on the applicant's tax affairs for the period January 2019 to October 2020. During the said examination the respondent requested the applicant to provide documents supporting purchases from Hard Steel Limited of Shs. 1,256,026,525, of which VAT constituted Shs. 226,084,775. He testified that the payments made by the applicant to Hard Steel Limited against invoices and delivery notes could not be traced in Hard Steel Limited's cash books and bank statements. The applicant's director was asked to provide proof of cash payments made to Hard Steel Limited and the documents showing the source of

funds. The applicant did not provide substantial information to prove cash payments to the supplier. He testified further that the examination established that the applicant's bank statement showed no direct payment transfer had been made by the applicant to Hard Steel Limited's bank account. Queried purchases were not reflected in Hard Steel Limited's cash books. The applicant's cash receipts did not have serial numbers and that there was a conflict between the information in the purchase ledger and the cash receipts.

The witness testified further that the respondent obtained third party information of VAT invoice trading against a customer of Hard Steel Limited. The witness testified that upon establishing the above facts he advised that the applicant's claim of input tax credit be disallowed, and an additional administrative assessment be issued against the applicant. He testified that the applicant failed to prove that the input tax credit had been incurred and the objection was disallowed. The witness stated that in meetings between the respondent and the applicant the applicant failed to provide proper evidence to support its input tax credit claim. The documents provided by the applicant failed to establish a clear trail on the input tax credit claimed since it made its payments in cash. The respondent conducted a VAT fraud investigation to confirm that whether the transactions in question were genuine. The respondent rejected the claim for input tax credit. The receipts provided by the applicant did not comply with the requirements for documentation as they did not have serial numbers and they looked like they had been generated specifically for the claim.

The applicant submitted that under S. 28 of the VAT Act, a credit is allowed to a taxable person for the tax payable for taxable supplies made during the tax period if the supply is for use in the business of the taxable person. The applicant submitted that it is not in dispute that it was engaged in the business of construction and engineering services and that it is a taxable person and that purchases were made for use in its business. What is in dispute was whether taxable supplies were made to the applicant. The applicant's witness AW1 Winnie Wanyetse Judith, testified that the applicant got a contract from Capital Shoppers for the construction of a residential and commercial estate on Market Street, Kampala. The construction materials for the said construction

were purchased from Hard Steel Limited. The purchases were supported by a purchase ledger, Sales ledger, invoices, delivery notes and receipts. The applicant submitted that payments were made in cash and receipts acknowledging payment were provided by Hard Steel Limited. The applicant submitted returns were filed. The applicant submitted that AW1`s testimony was corroborated by that of AW2. The applicant submitted that it also provided bank statements to prove the availability of funds, the contract between Capital Shoppers and the applicant, completion certificates and the stock book as proof of the materials delivered.

The applicant submitted that the respondent`s witness, Mr. Kisoro Caesar confirmed that though the tax invoices it issued were proper but lacked serial numbers. It contended that no law prohibits the settlement of debts in cash and that receipts do not need to follow a specific format. It is not a requirement of the law for receipts to have serial numbers. The applicant submitted that it adduced tax invoices, purchase ledgers, cash book, receipts and sales ledgers bearing the official stamp and signature of Hard Steel Limited, which proved that it purchased construction materials from the latter. The applicant contended that the respondent`s contention that the tax invoices and delivery notes for the months of February to May 2020 could not be traced in Hard Steel`s cash books and bank statements had no bearing on the case as the records are not maintained by the applicant nor was it the applicant`s duty to ensure that Hard Steel remitted the tax to the respondent. The applicant cited High Court in *Target Well Uganda Limited v. URA HCCS*. 751 of 2015 where the Court held that it was not the duty of the taxpayer to confirm whether an agent remitted tax collected by it to the respondent.

The applicant submitted that it was issued with a VAT assessment of Shs. 170,218,372 for the months of March to May 2020 and Shs. 283,067,797 as income tax for the period July 2019 to June 2020 and that the entire amount was objected to and disallowed. The applicant concluded that it was entitled to VAT input credit, and it was not liable to pay the total assessed tax of Shs. 453,286,169 in respect of both VAT and Income Tax.

The respondent submitted that issue before the tribunal was whether the decision to disallow the applicant's input tax credit was lawful. Citing S. 28(1) of the VAT Act, the respondent reiterated that for a taxable person to be granted an input tax credit, it must be shown that the tax payable was in respect of all taxable supplies made to that person during the tax period. It that the taxable supplies have to be actually made to that person and should not be fictitious. The respondent submitted that from the facts before the tribunal the applicant had failed to prove that the construction materials were supplied to it, that consideration was paid by the applicant for the said supply, that the said supply was used in the applicant's business or that the supply had been made. A review of the documents provided by the applicant in support of its claim for input tax credit showed that the tax invoices and delivery notes of February and March 2020 could not be traced in the applicant's bank statements. The respondent submitted that this fact raised the suspicion that the transaction relied upon by the applicant were fictitious.

The respondent submitted that the invoices by the applicant in support of its claim did not indicate the recipient's address, place of business, Tax Identification Number or VAT registration number as required by S. 29(1) and paragraph 2 of the fourth schedule. It submitted that invoices without VAT registration numbers created doubt as to whether the purchases in question were made from taxable persons and whether they arose out of genuine and not fictitious transactions. The respondent submitted that the applicant failed to provide proof of payment for the transactions in question.

The respondent submitted that an analysis of the applicant's bank statements showed that certain amounts were not supported by transfers to Hard Steel Limited. The respondent submitted that a review of the applicant's DFCU Bank account 01983591009192 did not reflect transfers of Shs. 1,113,400,000. The respondent submitted that an analysis of Hard Steel Limited's cashbooks and banking records showed no evidence of deposits made to support the cash receipts issued to the applicant on 16th March 2020 for Shs. 412,400,000, Shs. 100,000,000 on 18th May 2020, Shs. 200,000,000 on 28th April 2020 and Shs. 400,000,000 on 18th May 2020. The cashbooks did not show that any amounts had been debited. The receipts were neither

serialized nor did they indicate the applicant's TIN. The receipts were not stamped by the supplier. The respondent submitted that the failure to verify the transactions pointed to a deliberate VAT invoice trading scheme where invoices were issued by Hard Steel Limited and unsupported payments made to Hard Steel Bank accounts with no trace of related cash movement.

The respondent submitted that the evidence of its witness Caesar Kisoro was uncontroverted. The respondent contended that it was difficult to believe that in the absence of an invoice trading scheme, a prudent taxpayer duly registered for VAT would carry out transactions of amounts above Shs. 100,000,000 without backing the transactions with documentation. It cited Regulation 8 of the VAT Regulations which provides that a registered person has a mandate to keep records and accounts of all supplies received or made during its business. The respondent concluded that the applicant having failed to provide sufficient documentary evidence to prove payment for the purchases its claim for input tax credit of Shs. 1,113,400,000 was disallowed and additional assessments were lawfully issued.

In rejoinder the applicant submitted that at all material times it had made it clear that the transactions were cash transaction that were supported by tax invoices, delivery notes and receipts issued by the supplier. The applicant submitted that it had not mentioned at any point that the supplies had been paid for through the bank. They were supported by receipts issued by Hard Steel Limited. The receipts need not be serialized.

Having heard and perused the evidence of the parties and the submissions the following is the ruling of the tribunal.

The term `input tax` has been defined under S. 1(l) of the VAT Act as `the tax paid or payable in respect of a taxable supply to or an import of goods or services by a taxable *person*`. The right to claim for input tax credit is provided for under S. 28(1) of the VAT Act, which states as follows:

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:

(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.

S. 28(11) of the VAT Act states as follows:

Subject to subsection (13), an input tax credit allowed under this Section may not be claimed by the taxable person until the tax period in which the taxable person has-

(a) An original tax invoice for the taxable supply: or

(b) A bill of entry or other document prescribed under the East African Community Customs Management Act, 2004 evidencing the amount of input tax.

In *Enviroserv (U) Limited v URA* Application 24 of 2017 the tribunal held that for an applicant to be entitled to input tax credit under S. 25 of the VAT Act, the following had to be proved. Firstly, that the applicant is a taxable person, secondly. that taxable supplies have been made to the applicant during the tax period and thirdly that the taxable supplies were for use in the business of the applicant. The tribunal stated further,

Therefore where the applicant presented evidence that invoices were issued and VAT was paid to suppliers for the respondent to pay input VAT, it is not the duty of the taxpayer to follow up with the suppliers to declare input VAT. Taking the above decision into mind, all the applicant is required to do, is to present the invoices and payment to the tribunal.

In this case, for the applicant to succeed it must present its invoices and prove that it made the payments set out in the invoices. Copies of the invoices issued by the applicant's supplier Hard Steel Limited are set out in the joint trial bundle at pages 59 to 136. The invoices are in respect of various construction materials. They were all issued by Hard Steel Limited to the applicant. The supplier's address is indicated as Plot 62 Oboja Road, Jinja. The proof of payment issued by the applicant are cash receipts. Copies of these receipts are in the joint trial bundle at pages 145-154. The supplier's address is indicated as Plot 4189 Bombo Road, Bwaise, Kampala. The receipts indicate that all the payments were made in cash. The receipts have not been issued from a

receipt book and they are not sequentially numbered. It seems that they were computer generated and printed. Was this the kind of proof of payment that was envisaged in the *Enviroserve* case? The proof of payment envisaged in the *Enviroserve* case is a document that is credible and can be independently verified. Sequentially numbered documents, whether invoices, receipts or delivery notes form the basis of a robust and effective internal control system. When documents are sequentially numbered their numerical sequence can be accounted for to determine whether any transactions have not been recorded. Sequentially numbered documents allow a company to make sure that no documents are missing or duplicated. This helps in the quick detection of errors and fraud. Sequentially numbered documents are also indispensable in facilitating proper audits and examinations. Payment receipts that are not sequentially numbered such as that relied upon by the applicant are not credible as they lack the most basic feature of a cash receipting system.

Two pieces of evidence cast doubt on the applicant's claim. The first is the payment by the applicant of large sums of money in cash when a less risky and cheaper alternative was readily available. The testimony of the applicant's managing director was that he would withdraw money for the purchase of the construction materials from his or the applicant's bank account and hand them over to his accounts department at the applicant's offices at 7th Street Industrial Area. The money would then be taken in cash to the supplier's outlet at Bwaise where the materials would be purchased in cash. The receipts show purchases of Shs. 312,400,000, Shs. 100,000,000, Shs. 200,000,000, Shs. 400,000,000, Shs. 196,000,000. The risk involved in carrying such large sums of money from one end of Kampala to another is well known. It is unlikely that a purchaser would place himself in such a position merely because a supplier prefers to be paid in cash. Especially when such a purchaser could easily have made the payment for the purchases directly into the supplier's bank account. The second piece of evidence is that a business such as that of the applicant's supplier, whose monthly sales run into considerable sums of money would operate a cash receipting system lacking the most basic checks against fraud. In both the above cases, the two businesses seem to be acting against their own interests for no apparent gain. It is not in the natural order of things for businesses, whose primary motivation is the pursuit of profit, to work against

their own interests or to engage in risky behavior without the expectation of a reward. While each of the above pieces of evidence are not conclusive on their own, yet taken together, they give rise to the inference that the purchases in question did not take place.

Where an administrative body makes a decision, it can only be set aside if it is illegal, grossly unreasonable or because of procedural impropriety. In this case the decision of the respondent not to allow the invoices and receipts provided by the applicant cannot be said to be illegal, grossly unreasonable or there was procedural impropriety. As already stated, the tax invoices exhibit E did not bear any serial numbers. S. 28(8) of the VAT Act requires invoices to comply with Section 2 of the Fourth Schedule. S. 2(d) of the said Schedule requires tax invoices to bear individualized serial number. The receipts which also do not bear serial numbers, do not show which invoice was being paid. They also do not show whether VAT was actually paid and or in respect of which invoice. Whereas the tax invoice put the address of Hard Steel Limited at Plot 62 Oboja Road, Jinja the receipts put it at Plot 4189 Kampala. Bwaise. The difference in addresses was not explained, making it difficult to ascertain where the supplier was actually located and making the story of the applicant unbelievable. If the applicant was getting the invoices from one outlet why was it paying them at another? The dates of the stamps on the receipts differ making it difficult to ascertain which day they were actually made. Payments of the amounts in the receipts could not be traced in the books and statements of Hard Steel Limited. Where such serious allegations are made it does no harm for the taxpayer to call a witness from the supplier to verify the payments.

The burden of proof is on the applicant to prove on a balance of probability that the input tax credit claimed was due and payable. As has been shown above the applicant has failed to discharge this burden. This application is accordingly dismissed with costs.

Dated at Kampala this day of 2023.

DR. ASA MUGENYI
CHAIRMAN

DR. STEPHEN AKABWAY
MEMBER

MR. SIRAJ ALI
MEMBER

RULING