

THE REPUBLIC OF UGANDA
IN THE TAX APEALS TRIBUNAL AT GULU
APPLICATION NO. 39 OF 2017

**PADER-ABIM COMMUNITY MULTI PURPOSE ELECTRIC
CO-OPERATIVE SOCIETY LTDAPPLICANT**

VERSUS

UGANDA REVENUE AUTHORITYRESPONDENT

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

RULING

This ruling is in respect of an application challenging a Value Added Tax (VAT) assessment of Shs. 99,667,445 issued by the respondent on the applicant.

The brief facts of the case are: The applicant distributes power to its customers in 7 districts in Northern Uganda. The applicant is registered for VAT. From 2010 to 2017, the applicant has been filing tax returns and paying VAT. The respondent carried out a compliance check on the applicant's tax affairs and issued an assessment of Shs. 99,667,445 for VAT alleging that the applicant had not filed and paid VAT in time.

The parties agreed on the following issues:

- 1) Whether the applicant is liable to pay shs. 99,667,445?
- 2) What remedies available?

The applicant was represented by Mr. Toolit Simon Akecha while the respondent by Mr. Donald Bakashaba.

This dispute revolves around the payment of VAT. The respondent issued an assessment on the applicant on the ground that it was not paying VAT in time which the latter denies.

The applicant's witness Mr. Ronald Yet, its Finance and Administrative Officer, testified that the applicant deals in the distribution of power. It buys power from Uganda Electricity Transmission Company Limited (UETCL). The applicant was registered for VAT in 2008. The applicant pay lump sums for previous periods at times for a few ahead. The applicant files VAT returns on the 15th of each month upon receipt of invoices from UETCL. He admitted that payment of VAT was done late due to delays in getting signatories of the cheques to pay it. The respondent did an audit on the applicant and sent them a computation of a VAT reconciliation of the applicant's account and a letter demanding VAT of Shs. 99,667,445 of which interest was Shs. 27,410,062. The respondent recovered some monies using third party agency notice.

The respondent's witness, Mr. Adolf Kyoleko a Tax Officer at its Kitgum Domestic Taxes Office testified that he was the one who raised an assessment against the applicant after it was noticed that there were inconsistencies in filing returns and payment of tax in some periods resulting in interest and penalties being charged on returns filed late and interest on tax not paid in time. The applicant filed returns but no taxes were paid in some periods. There are some periods where returns were filed late. Some interest charged on taxes was not paid in time. The respondent recovered Shs. 103,638,655 from the applicant using an agency notice to DFCU Bank, Pader branch

The applicant submitted that it carries out the business of concessionary electricity distribution service to seven districts in northern Uganda. The applicant pays VAT on goods and services it procures including electricity from UETCL. It charges VAT on its customers. The respondent carried out a compliance check on its tax compliancy for February 2010 to June 2017 and raised an assessment of 998,667,445. The applicant objected to the assessment on the ground that It had made self-assessment returns covering the period and paid taxes of Shs. 247,058,471. The respondent also did not consider excess amount paid for tax. Lastly the penal tax imposed was excessive. The penal tax exceeded the period provided in S. 32(9) of the VAT Act and S. 23(2) of the Tax Procedure Code Act 2014 where the time limit is three years after service of the notice of original assessment. The applicant also objected to the way the respondent

carried out the collection measures. The respondent issued third party agency notices when the applicant had filed an objection.

The respondent in reply, submitted that S. 34 of the VAT Act provides that tax is due and payable on the date of the return. S. 65(3) of the VAT Act provides that a person who fails to pay tax on the due date is liable to penal tax. The implication of the above provision is that failure to pay tax in time results in liability to pay interest. Further still a person who fails to furnish a tax return by the due date is liable to pay a penal tax. The respondent submitted that the applicant's tax liability arose from the self- assessments filed but no due tax fully paid. In some cases, the applicant did not file returns. In other instances there were late filing and payments. The entire tax liability arose from accumulated interest which was charged. The VAT liability was communicated to the applicant. It was issued three reminder notices. The respondent contended that the applicant ought to have applied for a refund of any excess input VAT credit which it did not.

The respondent cited **Southern Sun Hotels (Tanzania) Ltd v Commissioner General VAT Tax Appeal DSM 14 of 2005** where the Tribunal held that "the appellant being a registered taxable person who supplies taxable supplies/services to its in-house staff in the course of furthering its hotel business, in the absence of an exemption not to charge VAT on such services it is required to account for the VAT in respect of the taxable supplies when filing its VAT returns." The respondent also cited **Geita Gold Mining Limited v Commissioner General Tax Appeal MZA 8 of 2004** where the court stated that "...the onus of proof in such matters lies with the Appellant which from the aforesaid the appellant has failed to discharge..." The respondent further cited **AON v Uganda Revenue Authority HCT 00-CC-MC-66-2009** where the court held that statutory interest is payable when provided in the law like in the instant case. The respondent cited **Uganda Projects Implementation and Management Centre v Uganda Revenue Authority Constitutional Petition 18 of 2007** where it was held that "... service delivery by government is dependent upon prompt payment of taxes and taxes due and payable under the Act is considered a debt to government and that is why there is a

provision for imposing penalties if taxes are not paid in time.” In **Kasampa Kalifani v URA HCCS 579 of 2007** it was held that if a person failed to pay tax imposed under the statute on or before the due date, he was liable to pay a penal tax at the rate specified in the law.

After listening to the evidence of the witnesses, perused the exhibits and read the submissions of the parties this is the ruling of the Tribunal.

The dispute between the applicant and the respondent rotates around the payment of penalty and interest. The applicant’s witness admitted that there was late payment of VAT due to delays by signatories of the cheques signing them and late filing of returns. The applicant’s witness Mr. Ronald Yet stated that UETCL was sending invoices on the 15th of each month which is the filing and payment date. In **Geita Gold Mining Limited v Commissioner General** (supra) it was held that an invoice once issued connotes the fact that a supply has taken place and so a tax liability arises. The applicant delayed due to the directors signing the cheques late. Many VAT returns were filed after the statutory filing date. The Tribunal studied the e-tax VAT collection ledger, exhibit A1(iii) and (iv) which confirmed the late filing of returns and payment. Evidence of late payment is clearly captured in Exhibit A1(iv). This is a scrutiny of a random sampling of the applicant’s payments

PAYMENT DUE DATE	PAYMENT REGISTRATION DATE	BANK DATE	PAYMENT	REALISATION DATE
15/07/2017	21/07/2017	25/07/2017		25/07/2017
15/09/2016	15/09/2016	19/09/2016		19/09/2016
15/03/2014	16/06/2015	17/06/2015		17/06/2015
15/03/2015	17/03/2014	18/03/2014		18/03/2014
15/04/2012	20/04/2012	30/04/2012		30/04/2012

However the applicant contends that it had paid excess VAT which would have offset nonpayment of VAT. There were a few over payments in lump sums but these were not sufficient to lower the accumulating penal interest. As a result of the delays the applicant’s liability rose to Shs. 103,368,655.

The law provides for time when tax should be paid. S. 34A of the VAT Act provides that

“(1) Tax payable under this Act is due and payable –

- (a) In the case of a taxable supply by a taxable person in respect of a tax period, on the date the return of the tax period must be lodged;
- (b) In the case of an assessment issued under this Act, on the date specified in the notice of Assessment.
- (c) In any other case, on the date the taxable transaction, as determined under this Act.”

The applicant was filing returns, though some were late. S.31A provides that a taxable person shall lodge a tax return with the Commissioner General for each tax period within fifteen days after the end of the tax period. S. 2 defines a tax period to mean a calendar month. Therefore a taxpayer is required to file a tax return by the 15th day of each month as well as make payment of the tax due. The applicant was not complying with the due dates of filing and paying VAT.

The VAT ACT penalizes tax payers who pay VAT late. 65(3) of the VAT Act provides that:

“a person who fails to pay tax imposed under this Act on or before the due date is liable to pay a penal tax on the unpaid tax at a rate specified in the Fifth Schedule for the tax which is outstanding.”

The Fifth Schedule provides that the rate of interest chargeable as penalty shall be 2% per month, compounded. The applicant was filing its returns and paying taxes late, penal interest became payable. In **Informer No. TCI/002/07/06 v Uganda Revenue Authority HCCT-00-CV-CS-0579-2007** the court noted that if a person fails to pay tax imposed under the Statute on or before the due date, he was liable to pay a penal tax on the unpaid tax at the rate specified in the law. In **Uganda Project Implementation and Management Centre v Uganda Revenue Authority Constitution Petition 18 of 2007** the court noted that “Service delivery by Government is dependent upon prompt

payment of taxes and taxes due and payable under the Act is considered a debt to Government. See section 35 of the Act. In this regard the tax payers are not given a lee way to determine when they should pay their taxes. That is why there is provision for imposing penalties and interest if taxes are not paid in time.

The applicant contended that it was paying excess input VAT and that the said amount should have been used to offset future liabilities. The law only provides for refunds. S.42 (3) of the VAT Act states that a person may claim a refund of any output tax paid in excess of the amount of tax due under this Act for a tax period. The applicant's case was not one of a refund of any input tax.

S. 18 of the TAT Act places the burden of proof on the taxpayer where a taxation decision is an objection decision to prove that the assessment is excessive. The explanation given by the applicant is not sufficient to discharge the burden placed on it to prove that the tax was excessive. In **Geita Gold Mining Limited v Commissioner General Tax Appeal MZA 8 of 2004** the court stated that “...the onus of proof in such matters lies with the Appellant which from the aforesaid the appellant has failed to discharge...” The Tribunal therefore dismisses this application with costs to the respondent.

Dated at Kampala this day of 2020.

DR. ASA MUGENYI
CHAIRMAN

MR. GEORGE MUGERWA
MEMBER

MS. CHRISTINE KATWE
MEMBER