

THE REPUBLIC OF UGANDA
IN THE MATTER OF THE TAX APPEALS TRIBUNAL
APPLICATION NO. TAT 8 OF 2009

UTODA ENTEBBE BRANCH LTD ::::::::::::::: APPLICANT
-VERSUS-
UGANDA REVENUE AUTHORITY ::::::::::::::: RESPONDENT

RULING

This is a ruling in respect of an application seeking to review an assessment of Value Added Tax (VAT) amounting to Shs. 42,903,680/= arising out of taxi park management services provided by the applicant. The provision of street parking services by the applicant is not a subject of this application.

Briefly the facts as agreed by the parties during the scheduling are as follows: The applicant manages the taxi park and street parking in Entebbe. The applicant is VAT registered. For the period August, 2007 to July 2008 the respondent assessed VAT on the applicant at Shs. 42,903,680/= for the management of taxi park at Entebbe based on a desk audit. The disagreed fact was that the applicant supplies passengers transport services which are exempt from VAT.

The agreed issues were:-

1. Whether the applicant is liable to pay VAT for its taxi park services?
2. What remedies are available to the parties?

The applicant called one witness Mr. Stephen Kidde the chairman of the UTODA Entebbe Branch. He stated that the applicant and the Entebbe Municipal Council entered an agreement for the management of transport services in Entebbe. He informed the Tribunal that the applicant was

responsible for the movement of taxis in Entebbe. The applicant provides management services to Entebbe Municipal Council. The applicant operated a taxi park which was rented from the Municipal Council. The applicant collects monies from the taxis. A portion of the money it collects from the park is remitted to the Council. The balance is used to meet other expenses like utilities and welfare of the drivers. The applicant obtained a license from the Transport Licensing Board. The purpose of the license is to transport passengers.

The respondent called one witness Mr. Michael Monne Olwoch a tax officer with the respondent. According to the witness the dispute between the applicant and the respondent was whether the latter was managing the taxi park or providing passenger transport services. The respondent wants to charge VAT collected on managing the park which is not a transportation service. To the respondent, managing the taxi park was not incidental to the supply of transport services. Managing the taxi park is not listed in the VAT Act Schedule of exempt services. The park is owned by Entebbe Municipal Council. The respondent contends that the applicant manages the park on behalf of Entebbe Municipal Council. The applicant pays a monthly fixed payment to the respondent.

In its submission the applicant contended that it is an association of owners and drivers of passenger transportation vehicles engaged in the business of passenger transport service and managing street parking in Entebbe Municipality. The applicant contended that the operators of taxis are the end users of the park and members are supposed to be facilitating transport business.

Counsel for the applicant submitted that under S. 11(1) VAT Act a supply of service means any supply which is not a supply of goods or money, including the performance of services for another person. Under S. 19(1) of the VAT Act a supply of goods or services is an exempt supply if it is specified in the Second Schedule. Under Paragraph 1(n) of the Second Schedule to the VAT Act

a supply of passenger transportation services (other than tour and travel operators) is an exempt supply. Paragraph 2(c) of the Second Schedule defines passenger transportation services to mean the transportation of fare paying passengers, and their personal effects by road, rail, water or air, but doesn't include passenger transport services provided by a registered tour operator. The applicant submitted that the management of taxi parks and designated parks is incidental and forms an integral part to the supply of passenger transportation services. The contract to manage the Entebbe Taxi Park is primarily to facilitate the transportation of passengers which is the primary business of the Applicant. S.12 of the VAT Act provides that a supply of services incidental to the supply of goods is part of the supply of goods and vice versa. S.16 (3) further provides that a supply of services of, or incidental to, transport takes place where the transport commences.

The respondent in reply submitted that the applicant provides taxi park management services. Under S.4 (a) of the VAT Act, VAT is charged on every taxable supply in Uganda made by a taxable person. Under S. 18(1) it is provided that a taxable supply is 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. Taxi park management services are not exempt from VAT under the Act. The Applicant does not provide transportation services nor can it do so because the Memorandum of Association does not permit it to do so. In addition taxi park management services are not incidental to passenger transportation services.

The respondent further contended that the applicant is a limited liability company, limited by guarantee. It is not an association of members. A company is distinct and separate from its members. It is not the applicant that carries on passenger transport services but another group of people i.e. the drivers and the owners. The company itself makes a supply of taxi park management services, which is not exempt. The respondent contended that to qualify under the principle of incidental supplies, they must be made by one and the same person.

Having listened to the evidence and read the submissions of both parties the ruling of the Tribunal is as stated below.

It is not disputed that the applicant is a company limited by guarantee comprised of owners and drivers of taxis. One of the objectives of the applicant as stated Article 3(q) in its Memorandum and Articles of Association is

“To enter into any arrangement or contract with any person(s), organization(s), Government National Bodies, or local authority in order to regulate, control, to design, develop or coordinate the management and standards of taxi parks/ services in Entebbe with a view to promoting the objects of the association.

One of the other objectives as stated in article 3(3) is

“To assist its members in all possible ways, in overcoming problems attendant to the operation of the business of taxis or any other related mode of public transport in Entebbe.”

It is in line with its objectives of overcoming problems related to public transport in Entebbe that the applicant entered into an agreement with Entebbe Municipal Council to run a taxi park in Entebbe.

Though the Agreement entered between the applicant and Entebbe Municipal Council dated 13.7.2007 is titled “ tenancy agreement”, it seems more than what it is. The applicant agreed to take over the management of the taxi park in Entebbe and pay rent to the Council. The rent is not stated in the agreement. However the applicant was to collect revenue that shall accrue from all commuter taxis in the park and designated taxi stages from 6.00 am to 10.00 pm. The other terms included issuing receipts and maintaining law and order in the taxi park. For the avoidance of any doubt, gate collection and loading fee in the Park was to be fixed by the Municipal Council and tenant. From the terms of the agreement it is clear that the applicant is not actually a tenant. The applicant is more of an agent of Entebbe Municipal Council with an obligation to collect revenue from taxi commuters who enjoy the facilities of Entebbe Taxi Park who are the end users. The

applicant in essence was a manager of the taxi park and not the end user. The applicant's witness Mr. Stephen Kidde confirmed this in his evidence when he testified that the applicant provides management services on behalf of Entebbe Municipal Council.

The dispute between the applicant and the respondent is captured in the testimony of the respondent's witness Michael Monne Olwoch who contended that the applicant is managing and operating a taxi park and not providing transport services. Managing the taxi park is not incidental to the supply of transport services. Managing a taxi park is not listed in the VAT Act schedule as exempt.

Section 1(f) of the VAT Act states that an "exempt supply" means the supply of goods to which Section 19 applies. Section 19 (1) of the VAT Act reads: a supply of goods or services is an exempt supply if it is specified in the Second Schedule". Paragraph 1(n) of the Second Schedule provides that the supply of passenger transport services (other than Tour and Travel operators) is an exempt supply. Paragraph 2(c) of the Second Schedule defines passenger transportation services to mean the transportation of fare paying passengers, and their personal effects by road, rail, water or air, but doesn't include passenger transport services provided by a registered tour operator.

Though paragraph 2(c) of the Second Schedule defines passenger transportation services it does not indicate what it comprises of. Is passenger transportation service limited to the actual carrying of the passengers on the taxis? What about the loading and offloading of their baggage? What about the taxi touts who inform the potential passengers which taxi to take? What about the taxi park where passengers assemble in order to get on taxis? Questions arise as to whether these services are incidental and or are part of the provision of passenger transport services.

Section 1 (t) of the VAT Act defines service to mean anything that is not goods or money. Section 11(1) of the VAT Act provides that

- (1) Except as otherwise provided under this Act, a supply of services means any supply which is not a supply of goods or money, including -
 - (a) the performance of services for another person;
 - (b) the making available of any facility or advantage; or
 - (c) the toleration of any situation or the refraining from the doing of any activity.
- (2) A supply of services made by an employee to an employer by reason of employment is not a supply made by the employee.

Counsel for the applicant referred to S.12 of the VAT Act which reads

- (1) A supply of services incidental to the supply of goods is part of the supply of goods.
- (2) A supply of goods incidental to the supply of services is part of the supply of services.
- (3) A supply of services incidental to the import of goods is part of the import of goods.
- (4) Regulations made under section 78 may provide that a supply is a supply of goods or services.

S. 12 of the VAT Act deals with mixed supplies. That is where goods are supplied with services or imports or vice versa. In the matter before the tribunal we are dealing with solely the provision of services. On the one hand, there is management of taxi parks (which is a service) and the provision of transport services on the other. Therefore S. 12 of the VAT Act is not applicable.

There is a thin line between the provision of taxi park services and provision of transport services. S. 11(b) of the VAT Act mentions that a supply of services includes the making available of any facility or advantage. The provision of taxi park services is an advantage to the provision of transport services. One wonders what inconvenience commuter taxis and passengers would go through if there were no taxi parks. The word facility is not defined in the VAT Act. Acts of parliament should be given their ordinary meaning. The Oxford Advanced Learner's Dictionary 6th Edition defines a "facility" as a special feature of a machine, service, etc that makes it possible to do something extra. What comes in mind is that the provision of a taxi park makes it possible to

provide passenger transport services. In essence the provision of a facility should be able to facilitate the provision of the supply of goods or services in question.

The applicant relied on the case of *Card Plan Limited V Commission Customs and Excise* [2001] UKHL which though persuasive is still good authority. Per Lord Slynn of Hadley

“..... every supply of a service must normally be regarded as distinct and independent and, secondly, that a supply which comprises a single service from an economic point of view should not be artificially split, so as not to distort the functioning of the VAT system, the essential features of the transaction must be ascertained in order to determine whether the taxable person is supplying the customer, being a typical consumer, with several distinct principal services or with a single service.

.... . A service must be regarded as ancillary to a principal service if it does not constitute for customers an aim in itself, but a means of better enjoying the principal service supplied: *Customs and Excise Commissioners V Madgett and Baldwin* (trading as Howden Court Hotel).

According to the above authority, the test, which we rightly state is “can the provision of the services by the taxpayer be independent of the exempted supply?” In other words can taxi parks operate independently of the provision of passenger transport services? No, they cannot. There is need for the provision of transport services in order to have a taxi park. The operation of taxi parks is incidental and ancillary to the provision of passenger transport services.

In *Aon Uganda limited V Uganda Revenue Authority* HCT-00-CC-05-04-2008, Justice Geoffrey Kiryabwire said:

“It is my finding that looking at the language of the S.19 (1) of the second schedule; it would be fair to say that insurance services inter alia, include services provided by both insurance and brokerage companies.”

The issue was whether insurance brokers provide insurance services. Using the above test one cannot have insurance brokers unless there are insurance services being provided.

In *Diamond Shipping Company Vs URA* TAT 21/2008 the applicant’s business comprised of shipping, clearing, forwarding, airfreight and tracking of containers to Uganda from various parts

of the world and vice versa. The URA contended that these did not fall under international transport services and therefore were not zero-rated supplies. The Tribunal noted as follows

Likewise it would be difficult to draw a dichotomy between the services provided by the applicant and the owners of the modes of international transport. As a matter of law and practice they both provide the service of international transport of goods..... The view of the tribunal is that the applicant, as an agent of the principal, links the importers/exporters to the principal in a continuous process of providing international transportation of goods to their destinations. In other words, the applicant contributes to the smooth and fast movement of goods. The tribunal therefore finds that the services rendered by the applicant are incidental to international transport and are therefore zero rated.

Using the above test, one cannot talk of shipping, clearing and forwarding, tracking of containers unless he is talking of the provision of international transport services.

S. 16 (3) of the VAT Act provides that a supply of services of, or incidental to, transport takes place where the transport commences. A question arises as to whether the supply of services of a taxi park is incidental to the supply of transport services. Once again the word "incidental" is not defined in the VAT Act. The Oxford Advanced Learner's Dictionary defines "incidental" as something that happens in connection with something else, but is less important. Taxis have to park in order for passengers to get on or off. The more important goal is the provision of transport i.e. the passengers getting to their destination. Therefore the provision of taxi parks is incidental to the provision of passenger transport services. Passenger Transport services commence from the place where the passengers get on taxis or other vehicles. This includes taxi parks and or taxi stages.

The respondent argued that upon incorporation of a company, it becomes a legal entity, distinct from its members. The applicant is a different entity from the owners and drivers who constitute it. What is in issue is the provision of services. The VAT Act is not concerned about the ownership or composition of the service provider. Whether the Taxi parks are owned by taxi owners/drivers or by the Entebbe Municipal Council or any other person is immaterial. What is important is whether

there is a supply of an exempted service. The applicant provides services of management of taxi parks. The taxi parks cannot operate themselves. Therefore the provision of management of taxi parks falls under the provision of passenger transport services which is an exempted service.

The tribunal is satisfied that the services provided by the applicant in respect of the management of the Taxi Park are an exempt service under the second schedule, I (n) of the VAT Act. The application is allowed with costs to the applicant.

Dated at Kampala this day of 2011.

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Mr. Asa Mugenyi
Chairman

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Mr. Martin Fetaa
Member

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Mr. Pius Bahemuka
Member