

THE REPUBLIC OF UGANDA
IN THE TAX APPEALS TRIBUNAL AT KAMPALA REGISTRY
APPLICATION NO. 14 OF 2015

YENUSU KAGOLOA =====APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY =====RESPONDENT

RULING

This ruling is in respect of an application challenging a Value Added Tax (VAT) assessment of Ug. Shs. 147,420,626/= by the respondent on an application.

Briefly the fact of the application are: The applicant is engaged in the business of purchase and sale of electric appliances. The respondent carried out an audit of the applicant in October 2013 and issued a VAT additional assessment of Shs. 147,420,626/= for the period of June 2010 to July 2013. The applicant objected to the assessment and filed this application.

On the 28th January, the parties to the application are agreed that the applicant shall pay the principal of Shs. 52,462,960/= to the respondent as VAT, interest of Shs 58,199,229/= all for the period of January 2011 to March 2015. It was agreed that the interest of April 2015, the month the application was filed in the tribunal to the date of the decision of the tribunal shall be determined by the Tribunal.

The following issues were set down for resolution by the tribunal:

1. Whether the applicant is liable to pay interest from April 2015?

The applicant was represented by Mr. Kitti Norman, Mr. Kwizera Nimrod and Mr. Kenneth while the respondent, by Mr. Ronald Baluku.

The parties did not call any witness as they deemed that the matter in issue required legal interpretation. Both parties opted to file written submissions.

The applicant filed its application on the 8th April 2015. It requested that the Tribunal waive the interest from 2015 to date. The applicant submitted that since the filing of this application the respondent has been requesting for adjournments on the ground that it was compiling an audit report. The applicant agreed to pay the principal tax but requested the Commissioner General to waive the interest. The applicant contended that he has been sick for some time. The accountant took benefit of that.

The applicant further submitted that under S. 14 of the Tax Appeals Tribunal Act the Tribunal has power to review any taxation decision in respect of which an application is properly made. Under S. 19(1)(b) the Tribunal has powers and discretions that are conferred by the relevant taxing Act on the decision maker and may make a decision that may vary the decision under review or remit the matter back for reconsideration.

The applicant cited the authority of *Note Stable Ford v Liverpool General Commissioners and others* (1982) CHD 162 where a tax payer got into difficulties as result of a banking crisis and where his accountants had failed to file returns for the period in issue. Justice Vinelott considered the difficulties the taxpayer had gone through and reduced the penalties.

The respondent objected to the application. It contended that filing an application in court does not stay interest. The applicant has not shown any reasonable cause for the tribunal to waive the interest for the period from April 2015 to date. The Tribunal does not have such powers.

The respondent cited S. 65(3) of the Value Added Tax Act which provides that “A person who fails to pay tax imposed under the 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 respondent cited the case of *Airtel Uganda Limited v Commissioner General Uganda Revenue Authority* CS 457 of 2010 where the court

held that “where the statute is clear and unambiguous, there is no need to make further inferences from a tribunal or court on the payments of interest. In short therefore the defendant has the right to claim for the interest because it is provided for under the law”.

The respondent further submitted that the applicant has not shown good cause as to why it should not pay interest. The respondent also submitted that the circumstances of the case the applicant cited differed from the one in this case.

Having read the submissions of the parties the Tribunal rules as hereunder.

The applicant filed its application on the 4th May 2015 before the Tribunal. The applicant was challenging an assessment by the respondent dated 28th October 2013 for Shs. 147,420,626/=. After a number of adjournments both parties agreed to a consent arrangement or order whereby the applicant would pay interest of Shs. 52,462,960/= to the respondent as VAT for the period of January 2011 to March 2015. The applicant would pay interest of Shs. 58,199,229/= for the period from June to March 2015. The parties agreed that the interest from April 2015 to the day of the decision shall be determined by the Tribunal. No order was made as to costs.

S. 65 of the Value Added Tax Act is clear. It reads

“A person who fails to pay tax imposed under the 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. A penal tax is imposed upon a party who defaults to pay VAT on or before the due date.

From a clear reading of the above Section it should not be in dispute that when a matter is before the Tribunal penal tax is payable. However, an issue that arises is when was the due date or dates when the various VAT amounts were payable. In the consent the applicant agreed to pay the principal and interest of the period from June 2011 til March

