THE REPUBLIC OF UGANDA

IN THE TAX APPEALS TRIBUNAL AT KAMPALA

TAT APPLICATION NO. 50 OF 2018

AMATHEON AGRI UGANDA LIMITED ========== APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY ========== RESPONDENT

DR. ASA MUGENYI, MR. GEORGE MUGERWA, MR. SIRAJ ALI

RULING

This ruling is in respect of an application challenging a Value Added Tax (VAT) assessment of Shs. 154,144,995 in respect of input VAT of agricultural products..

The facts briefly are: The applicant is a company engaged in the commercial production of cereals. On 14th August 2017, the applicant made an application for a VAT refund amounting to Shs. 30,012,946 in its VAT return for July 2017. On 21st June 2018, the respondent, after an audit, rejected the VAT refund application and disallowed all input tax credit claimed for the reason that the applicant had misclassified its supplies as zero-rated instead of exempt. The respondent raised assessments of Shs. 154,144,995 on the applicant who objected. In its objection decision of 22nd June 2018 the respondent maintained its position, hence this application.

The following issues were framed and set down for determination.

1. Whether the applicant's supply of cereals is a zero-rated supply or an exempt supply for value added tax purposes?
2. What remedies are available to the parties?

The applicant was represented by Mr. Bruce Musinguzi while the respondent by Ms. Patricia Ndagire.

The applicant's first witness was Mr. Victor Waweru its a senior accountant. He testified that the applicant grew cereals mainly rice and maize in Nwoya. The cereals are dried, cleaned, packaged and sold to local millers in the country. Mr. Waweru stated that since the applicant's registration

for VAT, it has been charging VAT at the rate of 0% whenever it made sales of cereals to local millers. The basis for charging VAT at 0% was that the said cereals were milled in Uganda. He contended that the two conditions to be met for the zero-rating of cereal were that the cereals are grown in Uganda and that they are milled in Uganda.

The applicant's second witness, its managing director, Mr. Herwig Tilly testified that the applicant was engaged in the commercial production of cereals, mostly rice and maize, which were mechanically harvested, cleaned, packaged and sold to local millers in Uganda. He testified that the applicant charged VAT at 0% and claimed VAT incurred on its purchases and expenses as input VAT credit.

The respondent's sole witness was Mr. Godfrey Lakor, a tax officer, in its audit section. He testified that on 14th August 2017, the applicant applied for a VAT refund of Shs. 30,012,946. Mr. Lakor testified that an audit it carried on the applicant revealed that the cereals it grew were sold before they were milled by the applicant. He contended that Paragraph 1(l) of the Third Schedule of the VAT Act, applied to tax payers who not only grew but also milled the cereals grew. The witness argued that since the applicant grew and sold the cereal before milling it, its supplies were unprocessed agricultural products which ought to be classified as exempt under Paragraph 1(a) of the Second Schedule of the VAT Act.

In its submissions the applicant asserted that its supply of cereals fell under Paragraph 1(l) of the Third Schedule of the VAT Act and were therefore zero-rated for VAT purposes. The applicant relied on S. 24(4) of the VAT Act which provides that the rate of tax imposed on taxable supplies specified in the Third schedule is zero and on Paragraph 1(l) of the Schedule which makes the supply of cereals grown and milled in Uganda zero-rated supplies. The applicant submitted that it was a cardinal rule of the interpretation of tax statutes that where words are clear and unambiguous they should be given their plain meaning. The applicant cited *Uganda Revenue Authority v Siraje Hassan Kajura* SCCA No. 09 of 2015, to support its position.

The applicant submitted that in construing the words used in Paragraph 1(l) of the Third Schedule of the VAT Act, three conditions ought to be fulfilled before a supply of cereals can qualify as a zero-rated supply. The supply has to be a supply of cereals grown and milled in Uganda. The

applicant submitted further that it was agreed that the cereals grown by the applicant were harvested, dried, cleaned, packaged and sold to local millers in Uganda. The applicant submitted that if the law makers had intended that paragraph 1(l) should apply to only the millers who grew and also milled the cereals that they had grown, the law makers would have expressly provided so. The applicant submitted that it was unnecessary to apply the purposive method of statutory interpretation because the words used under Paragraph 1(l) of the Third Schedule are clear and unambiguous.

The applicant submitted further that paragraph 1(l) of the Third Schedule took precedence over paragraph 1(a) of the Second Schedule for the reason that it specifically applied to the supply of cereals by the applicant while paragraph 1(a) of the Second Schedule was only of general application. The applicant argued further that it was an established principle of the interpretation of Statutes that the specific prevailed over the general. It cited Uganda Revenue Authority vs. Total Uganda Ltd HCCA No. 08/2010 to support its argument. In the alternative if Paragraph 1(l) of the Third Schedule is ambiguous and capable of several meanings, citing *Stanbic Bank (U) Ltd & 7 others v Uganda Revenue Authority* HCCS No. 792 of 2006 and 170 of 2007 (*consolidated)* the applicant contended that the law was fairly settled that any ambiguity in the law should be construed in favour of the tax payer.

The applicant prayed that its application be allowed and the following orders be made; declarations that a) that the supply of cereals by the applicant is a zero rated supply for VAT purposes, b) that the applicant as a VAT taxable person dealing in zero-rated supplies is entitled to the input VAT credit, c) that the additional VAT assessments raised by the respondent are not due and payable by the applicant and d) an order that the assessments raised by the respondent be vacated and that the applicant be granted the costs of the application.

In reply, the respondent submitted that the applicant's goods did not qualify to be zero-rated because they are not grown and milled in Uganda. It argued that from a reading of paragraph 1(l) of the Third Schedule it was clear that the growing and milling of cereal are to be performed together as one single transaction. The respondent relying on Black's Law dictionary 4th edition submitted that the word "and" was a conjunction connecting words or phrases expressing the idea that the latter is to be added or taken along with the first. The respondent submitted further that the

words growing and milling under paragraph 1(l) of the Third Schedule was a collection of words which meant that the activities of growing and milling had to be done together in a single transaction by the same person. The use of the word "and" denoted togetherness as opposed to the use of the word "or". The respondent cited the *Total (U) Ltd v URA* C.A No. 6/2001, where Justice Okumu Wengi stated that the word "and" did not create a third party category of a tax exemption, but was intended to be used conjunctively, connoting togetherness. The respondent submitted that since the applicant only grew and did not mill the cereals it did not fall under the provisions of paragraph 1(l) of the Third Schedule since it only carried out half of the transaction. The respondent submitted that since the applicant did not fall under paragraph 1(l) of the Third schedule there did not exist, any basis for the applicant to make a claim for an input tax credit. The respondent stated that the only logical conclusion that could be drawn under these circumstances was that the applicant's supplies being unprocessed agricultural products were exempt supplies under paragraph 1(a) of the Second Schedule of the VAT Act.

The respondent submitted that paragraph 1(a) of the Second Schedule exempts the supply of livestock, unprocessed food stuffs and unprocessed agricultural products except wheat grain. The respondent submitted further that clarification as to what constitutes the term "unprocessed" is to be found under paragraph 3 of the Second Schedule of the VAT Act, which reads; *"the term unprocessed includes low value added activity such as sorting, drying, salting, filleting, deboning, freezing, chilling, or bulk packaging, where except in the case of packaging, the value added does not exceed 5% of the total value of the supply".* The respondent submitted that there was no value addition by the applicant consequently the supplies of cereal by the applicant were unprocessed agricultural products which qualified as exempt supplies.

The respondent submitted that the applicant was wrong to rely on S.77 of the VAT Act for the submission that the Third Schedule should be given precedence over the Second Schedule. The respondent stated further that paragraph 1(l) of the Third Schedule was clear and distinct and that the applicant's activities did not fall in both schedules. The respondent submitted further that the applicant had not shown that the provisions of paragraph 1(1) are ambiguous. The respondent contended that the said provisions were clear and unambiguous and did not conflict with any other provision of the VAT Act. The respondent prayed that the application be dismissed.

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

The applicant grows cereals mainly rice and maize. It harvests, dries, cleans, packages and sells the cereals to millers. When it filed its VAT returns it claimed input tax credit which the respondent rejected and raised VAT assessments of Shs 154,144,995. While the applicant considered its supplies as zero rated, the respondent considered them as standard ones attracting VAT of 18%.

S. 4 of the VAT Act imposes a tax known as Value Added Tax. Under S. 4(a) it is imposed on every taxable supply. It is not in dispute that the applicant makes taxable supplies but what is in dispute is the rate that is applicable to it. The dispute between the parties rotates on whether the supply of the cereals by the applicant is standard rated (i.e. attracting VAT of 18%) or zero rated, or exempt.

The Section dealing with standard supplies is S.18 of the VAT Act. The relevant subsection in this application is S. 18(1) of the VAT Act which provides that:

> "(1). A taxable supply is a supply of goods or services other than exempt supply, made in Uganda by a taxable person for consideration as part of his or her business activities."

Therefore supplies are either taxable or exempt. The standard tax rate imposed is 18%. However the Act provides for situations where the rate may not be 18% but zero.

Exempt supplies are provided by S. 19 which reads: "A supply of goods or service is is an exempt supply if it is specified in the Second Schedule." Paragraph 1(a) of the Second Schedule of the Value Added Tax Act provides that;

> "The following supplies are specified as exempt supplies for the purposes of section 19;
> (a) the supply of livestock, unprocessed foodstuffs and unprocessed agricultural products, except wheat grain;

Where items are exempt from VAT it means that the suppliers do not pay VAT. However the said supplies cannot claim credit input tax. This is because exempt from the application of the VAT law.

The Section in the VAT Act dealing with zero rated supplies is S. 24(4) of the VAT Act which reads that "The rate of tax imposed on taxable supplies specified in the Third Schedule is zero". Paragraph 1(l) of the Third Schedule provides the following supplies are for the purposes of S. 24(4) considered as zero rate; (l) "The supply of cereals, where the cereals are grown and milled in Uganda. Where a taxpayer supplies goods he charges a tax rate of zero. However the said taxpayer is entitled to credit input tax as the other provisions of the VAT Act may apply to him. The applicant claims it is entitled to pay VAT at a zero rate.

While the applicant supplies cereals it grows, it does not mill them. It is its contention that Paragraph 1 of the Third Schedule provides for growing cereals as a condition for it to apply. It contends that the farming of cereal in one of the condition under the Paragraph for S, 244(4) of the VAT Act to apply. The respondent on the other hand contends that the applicant is supposed to grow and mill the cereals it grows.

We will first apply the literal rule of statutory construction to Paragraph 1(l) of the Third Schedule of the VAT Act, by giving its ordinary and plain meaning. In *St. Aubyn v Attorney General* [1951] 2 ALL ER 473 at 485 was stated that "it is a well-established rule, that the subject is not to be taxed without clear words for that purpose; and also that every Act of Parliament must be read according to the natural construction of its words.." The relevant part of the provision is as follows; "1(l) The supply of cereals, where the cereals are grown and milled in Uganda'. Applying the literal rule one cannot fail to notice that there is an ambiguity created by the use of the word "and". In its ordinary and plain sense the above provision is capable of more than one meaning. If we are to use the applicant's approach, 'growing' and 'milling' maybe considered separately. While if we are touse the respondent's interpretation, they should be considered jointly. The above approaches give different effects to the Paragraph. Using both approaches two sets of taxable persons would be entitled to a zero rate charge under the Paragraph1; the first one only growing cereals and selling it to millers and the second growing and milling at the same time. It is a well-established rule of statutory interpretation that where the words of a statute are clear and unambiguous, they should be given their plain and ordinary meaning. However, where the language of a statute, in its plain and ordinary meaning leads to a manifest contradiction of the apparent purpose of the enactment or to some inconvenience or absurdity, hardship or injustice, which can hardly have been intended,

a construction may be put upon it which modifies the meaning of the words. (See *Maxwell on Interpretation of Statutes* 12th Edition, page 228).

In *Crane Bank v Uganda Revenue Authority* HCT-00-CA-18-2010 his Lordship Kiryabwire stated that: "The position of the law is that if any doubt arises from the words used in the statute where the literal meaning yields more than one interpretation, the purposive approach may be used, to determine the intention of the law maker in enacting of the statute. This rule of construction, known as the purposive rule, encourages courts to interpret enactments in light of the purpose for which they were enacted.

One way of establishing the intention of Parliament is by looking at the Parliamentary Hansards. The respondent submitted that the objective of Government was to support farmers to grow and mill the cereals grown by them instead of selling unprocessed grain. The respondent in support of its position has relied on the Parliamentary Hansard which recorded the proceedings of the Parliamentary committee during the debate of the VAT amendment Act relating to the enactment of paragraph 1(l) of the Third Schedule of the VAT Act. Relevant excerpts of the proceedings are reproduced here;

> "The purpose of the amendment was to benefit the people of Uganda. That is why we are insisting that we should make it very clear- grown and milled in Uganda, not produced in Uganda"
>
> Let us support our own people to process these things and add value before they export; that is very important. We are saying "grown and milled in Uganda"

Therefore according to the respondent the words grown and milled should be read together

In *Pepper (Her Majesty's Inspector of Taxes) v Hart* [1992] UKHL 3, the House of Lords set out the principle that when primary legislation is ambiguous, then, in certain circumstances, the court may refer to statements made in Parliament, in an attempt to interpret the meaning of the legislation. Browne-Wilkinson noted:

> My Lords, I have come to the conclusion that, as a matter of law, there are sound reasons for making a limited modification to the existing rule [that Hansard may not be used] unless there are constitutional or practical reasons which outweigh them. In my judgment, subject to the questions of the privileges of the House of

> Commons, reference to Parliamentary material should be permitted as an aid to the construction of legislation which is ambiguous or obscure or the literal meaning of which leads to an absurdity. Even in such cases references in court to Parliamentary material should only be permitted where such material clearly discloses the mischief aimed at or the legislative intention lying behind the ambiguous or obscure words. In the case of statements made in Parliament, as at present advised I cannot foresee that any statement other than the statement of the Minister or other promoter of the Bill is likely to meet these criteria".

Agreeing with Browne-Wilkinson, Lord Griffiths also wrote, in relation to legislative interpretation, that:

> "The days have long passed when the courts adopted a strict constructionist view of interpretation which required them to adopt the literal meaning of the language. The courts now adopt a purposive approach which seeks to give effect to the true purpose of legislation and are prepared to look at much extraneous material that bears upon the background against which the legislation was enacted".

Applying the above authorities, a reading of the above proceedings of the Parliamentary committee as recorded in the Hansard shows that the overriding objective of the legislature in enacting paragraph 1(l) of the Third Schedule of the VAT Act, was to facilitate value addition by encouraging cereal farmers to not only grow but to add value to their cereals through milling. The emphasis on the words 'grown and milled in Uganda' makes it clear that the objective of the legislature was to support farmers to grow and mill their own cereals. So where a farmer grows cereals and mills it, he is entitled to VAT input credit. Since the applicant was not milling the cereals it grew, its supply cannot fall under Paragraph 1 of the Third Schedule which entitled it to zero rate VAT charge under S. 24(4) of the VAT Act.

Having found that the applicant's supply of cereals was not zero rated, a question remains were the supplies exempt or standard rated? Under S. 19 of the VAT Act, a supply is exempt if it is provided for in the Second Schedule which provides the supply of unprocessed foodstuffs and unprocessed agricultural products, except wheat grain as exempt. If one had read the whole Act together it would not be difficult to perceive that while S.24 of the VAT Act deals with processed or milled cereals by making their supply attract zero rate of VAT, S. 19 is mainly concerned with unprocessed foodstuff which it makes their supply exempt from VAT. In *Commissioner of Inland*

Revenue v Alcan New Zealand Limited {1994} 3NZLR 139 it was observed by his Lordship Mackay that:

> "…the true meaning must be consonant with the words used, having regard to their context in the Act as a whole and to the purpose of the legislation to the extent that it is discernible."

If the applicant had read the VAT Act as a whole and understood it, it would not have been difficult to discern that S. 19 deals with processing foodstuff while S.24 covers unprocessed foodstuff. The Second and Third Schedule do not conflict or contradict each other.

The applicant stated that it harvests, dries, cleans, packages and sells the cereals to millers. The only process that the applicant adds to the cereals is drying, cleaning and packaging. S. 19 of the VAT Act provides that a supply of goods and services in the Second Schedule shall be exempt. Under Paragraph 1(a) of the Schedule the supply of unprocessed foodstuff is exempt. When a farmer harvest cereals, he cannot sell them in their raw form. At times he has to clean the cereals, package them. The question is does this amount to processing. The VAT Act allows the farmers to do low activity processing to the produce in order to sell it. It does not consider this low value added activity as processing. Under Paragraph 3 of the Second Schedule the term "unprocessed" includes all value added activity such as sorting, drying or bulk packaging inter alia where the value added does not exceed 5% of the total value of the supply. The Tribunal thinks that the drying, cleaning and packaging of the cereals by the applicant is low value added activity that does not exceed 5% of the total value of the supply. At least there is no evidence to show that it exceeds 5 of the total value of the supply. Therefore the supply by the applicants of its rice and maize is an exempt supply provided for under S. 19 of the VAT Act. Therefore the respondent was wrong to consider it as standard rated and issue additional assessments of Shs. 154,144,995

Having found that the applicant's supply of cereals was not zero-rated but exempt supplies, we hold as follows: The applicant's supply of cereals was exempt and not zero-rated consequently the applicant is not entitled to input VAT credit: The assessment of Shs. 154,144,995 is set aside. Each party will bear its costs because their interpretation of the VAT Act was not correct.

Dated at Kampala this day of 2020.

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DR.ASA MUGENYI	**MR. GEORGE MUGERWA**	**MR. SIRAJ ALI**
CHAIRMAN	**MEMBER**	**MEMBER**