THE REPUBLIC OF UGANDA

IN THE TAX APPEALS TRIBUNAL AT KAMPALA

TAT APPLICATION NO. 24 OF 2017

ENVIROSERV (U) LTD ========== APPLICANT

VERSUS

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

BEFORE 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. 1,030,625,893 arising from the respondent's decision to disallow some of the applicant's claims of input VAT

The agreed facts of the application are: The applicant is a company incorporated on 6th June 2013 and its primary business is waste management and disposal. The applicant registered for VAT on 1st October 2013. The applicant did not make taxable supplies until January 2015. At the beginning of the trial, there was a VAT refund claim of Shs. 1,304,681,817 which was in dispute

The following issues were set down for determination.

1. Whether the applicant is entitled to a VAT refund?
   i) Whether the respondent is entitled to deny the applicants VAT claim of Shs. 452,560,157?
   ii) Whether the applicant was entitled to input VAT credit of Shs. 285,972,696 for the period of October 2013?
   iii) Whether the applicant properly accounted for and declared VAT on its revenue for the period reviewed October 2013 to June 2016?
2. Whether the penalty imposed by the respondent on the declared VAT on its revenue on imported services was lawful?
3. What are the remedies available to the parties?

The applicant was represented by Mr. Ronald Kalema and Ms. Eva Nalubowa while the respondent was represented Ms. Christa Namutebi.

Before the hearing of this application, the parties reached a partial consent where out of Shs. 1,030,625,893 the respondent agreed that that the applicant is entitled to Shs. 306,348,139. A VAT assessment of Shs. 36,254,814 imposed on the variance between the sales for the year ending 30th June 2016 was vacated and the amount declared refundable to the applicant. The penalty of Shs. 131, 908,007 was vacated and the applicant was entitled to a further input VAT of Shs. 131,908,007. The remaining issues were referred to the Tribunal for trial.

From the above consent, it is clear that issue 1 was partly resolved in favour of the applicant. On sub- issue 1(i) the respondent agreed that the applicant was entitled to a refund of Shs. 306,348,139 out of Shs. 452,560,157. The applicant appears to have conceded to Shs. 146,212,139 as it admits that Shs. 90,286,003 was disallowed because the respondent needed proof that the suppliers had made returns. Sub- issue 1(ii) was not resolved and the VAT credit of Shs. 285,972,696 for the period of October 2013 remained in dispute. This dispute was in respect of the difference on opinions on the date of VAT registration and making of a taxable supply. Sub- issue 1(iii) was resolved partially in favour of the applicant. The applicant was refunded Shs. 36,254,814. Shs 123,930,226 of input VAT was disallowed because of a variance in the audited financial statements and the submitted VAT returns. Issue 2 was resolved in favour of the applicant and the penalty VAT of Shs. 131,908,007 was vacated. The sum in dispute after the said partial consent is Shs. 500,188,925.

Taking into consideration, the partial consent, the remaining amounts in dispute maybe broken down as follows:

a) Input VAT of Shs. 285,972,696, the amount disallowed by the respondent as a result of a difference in opinion as to the effective date of registration for the purposes of VAT.
b) Input VAT of Shs. 123,930,226 disallowed by the respondent because of a variance between the sales in the audited financial statements and the VAT returns for the year ended 30th June 2016.

c) Input VAT of Shs. 90,286,003 disallowed by the respondent for the reason that the applicant's suppliers did not declare VAT claimed by the applicant.

The applicant's first witness, Mr. Lawrence Saku, its financial manager, testified that the applicant was a waste management company that transports, treats and disposes waste from its customers' premises. He testified that In October 2013, the applicant registered for VAT and made a bid for contract of waste management for Total E&P which was successful. Thereafter the applicant started the construction of its landfill in Hoima. He testified that in October 2014 real operations began when it started receiving waste from Total E&P. The first invoice was sent out in January 2015. The delay was due to the business of waste management being highly regulated. It requires a license from the National Environment Management Authority (NEMA) to own and operate a waste treatment and disposal facility. The applicant was also required to get a water discharge permit from the department of water resources. Mr. Saku stated further that from the time the applicant registered for VAT in October 2013 to the time it raised its first invoice the applicant was filing monthly returns and incurring input VAT, part of which was disallowed by the respondent.

The applicant's second witness, Mr. Tusabe John Jet, a tax manager with KPMG Uganda, the applicant's tax consultant since 2013 testified that the respondent imposed VAT of Shs. 123,930,226 on the applicant because of the variance between the sales in the audited financial statements and the VAT returns for the year ended 30th June 2015. The respondent insisted that the applicant did not declare revenue in its June 2015 return because it wanted to take advantage of a change in the VAT law which came into effect on 1st July 2015. Mr. Tusabe testified that the effect of this law was that the applicant's client Total E&P Uganda B.V would be charged VAT by the applicant but the VAT would be deemed paid by Total E&P. He testified that the change in the VAT law did not benefit the applicant as it created cash flow constraints with respect to input VAT it incurred on its purchases. The witness testified that prior to the change in the VAT law, Total E&P would pay VAT to the applicant and the applicant would remit the output VAT to the respondent after deducting the input VAT incurred by it.

Mr. Julius Nsubuga from Motorcare Uganda, Mr. Mugisha Tonny Shawn from Vivo Energy, Mr. Dennis Ahimbisibwe from Jabba Engineering Ltd and Mr. Harith Kabagambe representing Lanor International Ltd, all testified that their various companies had made taxable supplies to the applicant and gave various reasons for not declaring the output VAT charged by them.

The respondent's witness Ms. Barbara Nakasolya, its tax officer compliance; Domestic Taxes Department, testified that in June 2016, the applicant filed a VAT refund of Shs. 2,361,779,615 for October 2013 to June 2016. The respondent carried out an audit that established that VAT of Shs. 447,202,522 was not verifiable because the suppliers did not declare it in their VAT returns. It also established that though the applicant voluntarily registered for VAT in September 2013 no taxable supplies were made until January 2015. VAT input for the period of October 2013 to June 2015 of Shs. 285,954,293 was disallowed. The applicant was only eligible to input credit of 6 months (July to December 2014) prior to making taxable supplies.

Ms. Nakasolya testified further that the system's return showed that there were no sales but their audited accounts revealed that they had made sales of Shs. 18,724,568,000. A comparison of the VAT returns and audited accounts gave a variance of Shs. 889,916,899 hence a VAT liability of Shs. 160,185,040. The applicant's explanation for the variance was rejected because the audited accounts are a true representation of the affairs of the company and its sales figures were considered.

The applicant submitted that it is entitled to the input VAT of Shs. 285,972,696 for October 2013 to June 2014 because it qualifies as a taxable person under the VAT Act and it incurred input VAT for the said period. The applicant cited Sections 6, 7 and 8 of the VAT Act and argued that a person becomes a taxable person from the time registration takes effect. The applicant submitted that it applied to be registered for VAT in accordance with S. 7(1) (b) of the Act because it had a reasonable expectation that it would be contracted by Total E&P Uganda B.V to transport and manage its toxic waste. That the effective date of registration was 1st October 2013. The applicant submitted that it filed monthly VAT returns from October 2013 to June 2014 without any complaint from the respondent. Its registration is valid and has never been cancelled nor has its effective date of registration been amended under S. 9(4) of the Act.

The applicant cited *Posta Bank (U) Ltd v Uganda Revenue Authority*, TAT Application Number 18/2008 to argue that the effective date of registration is determined by reference to the date set out in the certificate of registration. The applicant submitted that the date of registration appearing on its certificate of registration was 1st October 2013 and is as a taxable person from that date.

The applicant also cited S. 28(1) (a) of the VAT Act which provides for credit to a taxable person for the tax payable in respect of all taxable supplies made to that person during the tax period, if the supply is for use in the business of the taxable person. The applicant contended that under S. 28(3)(a) a credit is allowed to a taxable person on becoming registered for input tax paid or payable in respect of all taxable supplies of goods where the supply was for use in the business of the taxable person not more than six months prior to the date of registration.

The applicant also cited *Warid Telecom Uganda Ltd v Uganda Revenue Authority* Civil Appeal No. 24 of 2011 which contended that a credit is allowed on all taxable supplies if that credit was obtained for commercial purposes. The applicant submitted that the input VAT of Shs. 285,972,696 was incurred in the course of the construction of the landfill in Hoima which was for a commercial purpose. The applicant further cited *East African Property Holdings (U) Ltd v Uganda Revenue Authority Civil Suit* 247 of 2013 where the High Court held that a credit was allowable for a taxable supply of a building through its construction if that credit was obtained for commercial purposes.

In reply, the respondent submitted that the applicant applied for VAT registration in October 2013 under Sections 7(1) (b) and 8 of the Act in October 2013, for the reason that it anticipated to make taxable supplies. The applicant did not make any taxable supply until January 2015. The respondent objected to the applicant's claim for input tax credit from the time of registration on the ground that though it was a taxable person under S. 28(1) of the VAT Act, it made no taxable supplies. The respondent contended that registration for VAT under S. 7 of the Act is not sufficient to make one a taxable person under S. 6 of the Act. The respondent submitted that under Sections 7(1)(a) and 7(1)(b) of the Act, a person can only be said to be a taxable person if such a person has made taxable supplies whether before or after registration for VAT. The respondent contended that

the applicant cannot be a taxable person under 7(1) (b) of the Act, which required the applicant to make taxable supplies within three months. The respondent cited *Tullow Uganda Ltd & Anor v Uganda Revenue Authority* HCCS 445 of 2015 where it was held that the essence of the input tax credit was to decrease the cost of providing taxable supplies. The High Court also held that the plaintiff could not claim input tax credit nor could it benefit from the anomaly of being on the register for the period that it was not entitled to be on the register.

The respondent submitted that the applicant did not properly account for the VAT of Shs. 123,930,226 for 30th June 2015. RW1 Nakasolya Barbara testified that the audit discovered that the applicant's VAT return for June 2015 reflected that there were no sales but their accounts revealed that the applicant made sales of Shs. 18,724,568,000. The applicant's explanation for the variance was rejected because the audited accounts were a true representation of the affairs of any company and therefore the respondent considered the sum of Shs. 688,501,245 as the sales for June 2015.

In rejoinder, in respect to taxable supplies, the applicant stated that the VAT input was incurred in the construction of its toxic landfill which was eventually used to generate taxable supplies. The applicant submitted that it was not provided in the Act that for a taxable person to claim for input tax credit such person ought to have made taxable supplies. The applicant submitted that S. 28(8) of the VAT Act did not apply to it since all its supplies were standard-rated. The applicant stated that the provision that applied to it was section 28(7) (a) which covered standard-rated taxable supplies.

The applicant distinguished the facts of its case from those of *Tullow Uganda Limited & Anor v Uganda Revenue Authority* (supra) as follows: Firstly, Tullow applied for registration for VAT in May 2010 but was deregistered in November 2010 under S. 9(5) of the Act. The applicant submitted that in contrast the applicant has never been deregistered by the respondent. Secondly, Tullow never made a single taxable supply while in the instant case the applicant had begun disposing toxic waste by October, 2014. Thirdly, the input VAT claim by Tullow, related to input VAT that had been incurred 6 months before the re-registration by Tullow for VAT. In contrast, the input VAT incurred by the applicant in this case related to the construction of the applicant's

landfill which was in preparation and the furtherance of the expected taxable supplies which the applicant expected to make following its contract with Total E&P Uganda B.V.

The applicant submitted that while preparing its audited financial statements for the year ending 30th June 2015, it included the value of work that had been partly completed in June 2015. The applicant contended that International Accounting Standards IAS 18 stipulated that "where the outcome of a transaction involving the rendering of services can be estimated reliably, associated revenue should be recognized by reference to the stage of completion of the transaction at the end of the reporting period". The applicant submitted that because completely different rules applied to the filing of VAT returns it could not declare the value of the work partly completed in June in declaring its VAT returns for that month.

The applicant submitted S. 14(1) (c) of the VAT Act provides that a supply of goods or services are deemed to have occurred on the earliest of the date on which either payment for goods or services have been made or a tax invoice issued or the goods have been delivered or made available or the performance of the service is completed. The applicant submitted that by the end of June 2015, none of the above conditions had been met. It therefore declared the said sales in its VAT returns for July 2015. The applicant submitted further that as a result of declaring the said sales in its financial statements for the year ending 30th June 2015 and not in its VAT returns for June 2015, it created a disparity between the sales positions in the two documents. In 2016, when the respondent audited the applicant it noticed this variance between the sales in the financial statement and the VAT returns for June 2015. The variance between the sales declared in the financial statement and the VAT returns for June, 2015 amounted to Shs. 889,916,889. The respondent imposed a VAT liability of Shs. 160,185,040 because of the said variance. Of which a sum of Shs. 36,254,814 was refunded in the partial consent order leaving a balance of Shs. 123,930,226 in dispute. The applicant has submitted that the imposition of the above VAT liability by the respondent amounts to double imposition of VAT as the applicant had declared the sum of Shs. 688,501,254 in its VAT returns for July 2015.

The applicant submitted that it is entitled to a refund of input VAT of Shs. 90,286,003 under Sections 28(1) (a), 28(3) and 28(7) (a) of the VAT Act. The applicant submitted that it was not its duty to ensure that its suppliers properly account for their VAT returns.
The applicant cited *Target Well Control Uganda Ltd v The Commissioner General* HCCS No. 751 of 2015, where Justice Wangutusi held that the collection of tax was the sole responsibility of the respondent and that it was not the duty of a tax payer to confirm whether an agent had remitted to the respondent tax that it had collected on behalf of the respondent. The applicant also submitted that it called the said suppliers who testified that they had indeed made taxable supplies to the applicant and had declared the VAT in their respective returns. The applicant also adduced documentary evidence to prove its claim. These included tax invoices, bank statements, and returns.

Having listened to the evidence and read the submissions of the parties this is the ruling of the tribunal.

The first issue was: whether the applicant is entitled to an input VAT credit of Shs. 285,972,696 for the period October 2013 to June 2014? The applicant was registered in 1st October 2013. It did not make taxable supplies until January 2015. When the applicant applied for its input VAT refund for the period prior to January 2015 the respondent disallowed it on grounds that it was not a taxable person because it had not made taxable supplies. In order to resolve this issue we must first determine when registration, taxable person and entitlement to a VAT input arise.

A 'taxable person' is defined under S. 6 of the VAT Act as "a person registered under S. 7 from the time registration take effect". From the said definition it is clear that a person may be registered under S. 7 but to be a taxable person the registration has to take effect. S. 7 of the Act deals with circumstances one may apply to be registered. S.7 (1) reads a person who is not registered may apply to be registered:

(a) Within twenty days of the end of any period of three calendar months if during that period the person made taxable supplies, the value of which exclusive of any tax exceeded one-quarter of the annual registration threshold set out in subsection (2); or

(b) At the beginning of any period of three calendar months where there are reasonable grounds to expect that the total value exclusive of any tax of taxable supplies to be made by the person during that period will exceed one-quarter of the annual registration threshold set out in subsection (2).

(c) At the beginning of any tax period of more than three calendar months where there are reasonable grounds to expect that the total value exclusive of any tax of taxable supplies to be made will exceed the annual threshold set out in subsection (2)

The applicant claimed it registered under S. 7(1) (c) of the VAT Act. For an applicant to be eligible for registration under S. 7(c) it ought to have for more than three months reasonable grounds to expect that the total value of taxable supplies will exceed the annual threshold. . S. 7(2) reads that the annual registration threshold is fifty million. It is not in dispute that the applicant's annual threshold was over fifty million. It is also not in dispute that when the applicant applied to be registered for VAT it expected to make taxable supplies as it started constructing landfills for waste disposal. However for the applicant to be eligible for registration it ought for more than 3 months to have had reasonable grounds to expect that its taxable supplies will exceed the annual threshold. By the time that applicant registered for VAT in October 2013 and made taxable supplies in January 2015 it was more than one year. The Act does not limit the expectation to three months it states "more than three months". After three months the expectation is open ended. Therefore by the time the applicant registered for VAT it had an expectation of making taxable supplies for more than three months. The Act does not create any offences and or prescribe any penalties where the expectation for making supplies is more than three months. Maybe it would have been a different matter if the expectation was less than three months.

S. 7(6) of the VAT Act provides that the registration under paragraph (c) of subsection (1) shall be valid only for purposes of accessing terms and conditions of payment of tax on plant and machinery as provided for under S. 34(8) which provides that the minister shall by regulations prescribe the terms and conditions of tax on plant and machinery. It does not seem to be in dispute that the applicant was setting up a plant. The regulations by the minister are also not in dispute. What is in dispute is when the applicant was entitled to claim VAT input. .

S. 8(2) of VAT Act provides that the Commissioner General shall register a person who applies for registration under S.7 and issue to that person a certificate of registration including the VAT registration number unless the Commissioner General is satisfied that that person is not eligible for registration under this Act. There is no evidence that the Commissioner General was dissatisfied with the application of registration of the applicant and refused to grant it on the grounds that it was not eligible due to the expectation of over three months. S. 8(3) of the VAT Act provides that registration takes effect in the case of an application under S. 7(1) from the beginning of the tax period immediately following the period in which the duty to apply for registration arose. S. 1(w) of the VAT Act defines tax period to mean a calendar month. The applicant registered in October 2013. Therefore the applicant's registration took effect from November 2013. Under S. 9(4) (b) the Commissioner General may cancel registration if she is satisfied that the person is not required nor entitled under S. 7 to apply for registration. There is no evidence to show that the registration of the applicant was canceled. So for all purposes it was valid and effective from November 2013. In *Posta Bank (U) Limited v Uganda Revenue Authority* TAT 18/2008 the Tribunal stated that if commissioner clearly stated that the certificate is effective 1st October 2005 why should the Tribunal doubt the certificate. Likewise in this case the Commissioner General issued a certificate of registration which has not been cancelled. Therefore the Tribunal will not doubt it.

Having registered the applicant in October 2013 and the registration took effect in November 2013, a question arises as to whether and when the applicant was entitled to claim input VAT. The applicant submitted that it is entitled to input VAT of Shs. 285,972,696. The respondent contends that making taxable supplies is a pre-requisite for a person to be a taxable person under S. 7. S. 7 of the Act deals with registration. As long as a person is registered for VAT and his registration has not been cancelled he is deemed a taxable person. The VAT Act works like a journey with different segments. When one has completed one segment and moves to the next one he cannot be returned to the prior ones unless his journey has been cancelled. He cannot be denied credit for input VAT unless he does not fall within the provisions dealing with input VAT.

A person's entitlement of VAT input after being issued a certificate is determined by S. 28 of the VAT Act which reads:

(1) "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; or

(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."

The application of S. 25 which deals with accrual and cash basis accounting does not seem to be in contention by the parties. For the applicant to be entitled to the input tax credit under this section the applicant has to prove the following; i) The applicant is a taxable person ; ii) Taxable supplies have been made to the applicant during the tax period and iii) The taxable supplies were for use in the business of the applicant. We have already stated that the applicant was registered for VAT and is a taxable person.

What seems to be in contention is whether the applicant made taxable supplies during the tax period. S. 28 states that a taxable person is entitled to input VAT for taxable supplies made to it during the tax period. It does not state that the person ought to have made taxable supplies. In the event it did not, does this affect its claim for credit input? In *Warid Telecom Uganda Limited v Uganda Revenue Authority* Civil Appeal 24 of 2011 the court noted that a credit is allowed on all taxable supplies made to the taxable person provided that supply is for use in the business of the taxable person.

Taxable supplies are defined in S. 18(1) as a taxable supply of goods or services, other than an exempt supply, made in Uganda by a taxable person for consideration as part of his or her business activities. It is not in contention that the applicant supplied good or services which were not exempt. Taxable supplies were made to the applicant during the tax period. However a tax payer is entitled to input VAT for all the taxable supplies made during a tax period if the supply or import is used for its business. There is no contention that the supplies to the applicant were not for use in its business.

We perused the applicant's monthly VAT returns and their invoices for October 2013 to June 2014 which were in the additional trial bundle. These include:

i. Monthly rental payments to Lanor International Limited for October, 2013 to June, 2014.
ii. Printing, photocopying and telephone charges to Lanor International Ltd for December, 2013.
iii. Tax compliance fees to KPMG for the January, 2014.
iv. Tax compliance fees to KPMG for February, 2014.
v. Tax compliance fees to KPMG for March, 2014.
vi. Tax compliance fees to KPMG for April, 2014
vii. Mobile phone charges to MTN Uganda Ltd for May, 2014.
viii. Car hires charges to Mercantile Car Rentals Ltd for May, 2014.
ix. Advance payment to Epsilon Uganda Ltd for landfill works at Nyamasoga, Buseruka for May, 2014.
x. Charges for the hire of a water pump to Strategic Logistics Limited for June, 2014.
xi. Charges for the hire of a 50T crane to East African Cranes Ltd for June, 2014.

They prove that the applicant incurred input VAT of Shs. 285, 972,696 for the period October 2013 to June 2014. We are satisfied that they were for use in the applicant's business of waste disposal and management. Therefore under S. 28(1) the applicant would be entitled to input VAT for all taxable supplies made during a tax period.

The respondent objected that the applicant is not entitled to the input VAT by virtue of S. 28(8) of the VAT Act which reads:

> " Where the fraction B/C in section 1(f) of the Fourth Schedule is less than 0.05, the taxable person may not credit any input tax for the period"

S.1(f) of the Fourth Schedule reads:

> "For the purposes of section 28(7) (b), the following formula shall apply-
>
> Where,
>
> A is the total amount of input tax for the period; and
>
> B Is the total amount of taxable supplies made by the taxable person during the period; and
>
> C Is the total amount of all supplies made by the taxable person during the period other than an exempt supply under paragraph 1(k) of the second schedule."

The respondent contends that since no taxable supplies have been made by the applicant the fraction B/C under the above formula will be less than 0.05, prohibiting the applicant from claiming any input VAT for the period. The applicant contends that since it only deals in standard rated supplies S. 28(8) does not apply to it. The Tribunal agrees with applicant that S. 28(8) applies to a taxable person who deals in mixed supplies which are either both standard rated and exempt, or standard rated and zero rated or standard rated, zero rated and exempt. The applicable provision in the instant case is S. 28(7) (a) of the Act which reads; "where of the taxable person's supplies are taxable supplies, the whole of the input tax specified in Subsections (1) or (2) is considered. S. 28(8) applies to a taxable person dealing in mixed supplies. The applicant only deals in Standard rated supplies. We find that S. 28(8) is not applicable to the applicant. We therefore find that the applicant is entitled to input VAT credit of Shs .285, 972,696 for the period October 2013 to June 2014.

The second sub-issue was: Whether the applicant properly accounted for and declared VAT revenue in its audited financial statements for the year ended 30th June, 2015 amounting to Shs. 123,930,226. There was a variance between the sales in the audited financial statements and those declared in the submitted VAT returns for the year ended 30th June 2015 of Shs. 889,916,889 which resulted in the respondent disallowing the applicant's VAT refund claim of Shs. 160,185,040. Part of this variance is attributed to Shs. 688,501,254 which was recognized in the accounts or Financial Statement in June 2015. However the invoice and amount of Shs. 688,501,254 was declared in the VAT returns of July 2015. The respondent treated the amount of Shs. 688,501, 254 as undeclared and charged VAT which reduced the client's VAT refund. The other variance is attributable to the exchange rate differences used for financial reporting and VAT returns filed.

The annual income payable by a taxpayer is determined by looking at its audited financial statement. It is imperative that the audited financial statements reflect a true and proper reflection of a company's business. Under the Income Tax Act s. 1(zzz) a year of income" means inter alia as in the case of the applicant "the period of twelve months ending on 30th June. The respondent revealed a variance between the sales in the financial statement and those declared in the VAT returns.

VAT is determined by looking at the submitted VAT returns. S. 31 of the VAT Act states 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. A tax period is defined under S. 1(w) to mean a calendar month. Therefore a person who has a VAT transaction in June, he is required to lodge a tax return with fifteen days, in this case not later than 15th July. S. 34A(1)(a) of the VAT Act provides that the tax is due and payable in case of a taxable person in respect of a tax period, on the date the return of the tax period must be lodged.

The tax periods under the Income Tax Act are not synchronized with those under the VAT Act. A variance may occur where a transaction is done in June and is declared in the VAT returns filed in July. Therefore depending on the circumstance of the case the audited financial returns may not be appropriate in determining the VAT liability of a tax payer.

Coming back to the issue, the Tribunal has to determine when VAT liability of the applicant arose in respect of the tax period between June to July 2015. S. 29 of the VAT Act provides that a taxable person making a taxable supply to any person shall provide that other person at the time of supply, with an original tax invoice for the supply. S. 14 deals with time of supply. S. 14(1)(c) provides:

(1) Except as otherwise provided under this Act, a supply of goods or services occurs-

(c) In any other case, on the earliest of the date on which-

i. The goods are delivered or made available, or the performance of the service is completed;

ii. Payment for the goods or services is made; or

iii. A tax invoice is issued.

The applicant entered a contract with Total E & P for transport of drilling wastes and waste disposal. So a question arises as to when the applicant ought to have invoiced the respondent and collected VAT.

The contract between the applicant and Total E & P required the former to transport the latter's waste, treat and dispose them. Paragraph 5 of Exhibit B of the Service Contract (page 162 of the joint trial bundle) reads:

"Each truck delivering waste to the WASTE TREATMENT FACILITY will be weighed at its arrival onsite and a printed ticket provided by CONTRACTOR to COMPANY representative for each load transported. A weekly recap for the tonnages of solids and the volumes of fluids will be prepared by the CONTRACTOR and presented to COMPANY for approval. CONTRACTOR shall invoice COMPANY on a monthly basis 30% of the unit rates in 3 above for the waste transported to the treatment and disposal facility."

The clause shows that two conditions must be met before the service of transporting the waste from the Waste Consolidation site to the Waste Treatment facility could be said to be complete. Firstly, the truck carrying the waste to the waste treatment facility was to be weighed. Secondly, a printed ticket was to be provided by the contractor to the company representative for each load transported.

The applicant issued monthly invoices to Total E & P BV. Exhibit A8(a) to (d) shows the invoices issued in June to July 2015, which the applicant feels the respondent may not have considered.

Date of invoice	**Invoice No.**	**Description of service provided in respect of waste**	**Invoice Amount**	**VAT**
23/6/2015	INV00045	Transport (May - June 2015)	US$ 220,581	US$ 39,704.67
25/7/2015	INV00047	Transport (June 22- July 23)	US$259,391	US$ 46,690
24/7/2015	INV00048	Treatment ((June 22- July 23)	US$ 259,391	US$ 46,690.44
24/7/2019	INV00049	Disposal (June 22 – July 23)	US$ 345,855	US$ 62,253.92

The tracking sheets show that the transportation of each amount of waste is a separate transaction which is completed at the time the truck carrying the waste arrives at the waste treatment facility and is weighed and a weighbridge ticket issued to the applicant. The tracking sheet also shows that the waste was weighed upon arrival and a weighbridge ticket number was issued and the applicant received its own waste manifest number.

The first invoice INV00045 was in respect of transport made in May – June 2015. The invoice was properly issued in June 2015 as the transportation was done in May and June. A perusal of Exhibit A(8)(d)(i) shows the completion of transport by 30th June 2015. It should have been captured in the financial statements ending June 2015. The second invoice INV00047 was issued in July for

work partially done in June 2015. The first five trucks in the weekly waste tracking sheet exhibit 8(d)(i) transported waste in June 2015. The applicant ought to have issued an invoice for June 2015 for the work done in that month. The remaining weekly waste tracking sheet show that transportation was done in July. The third invoice INV00048 and fourth invoice INV00049 deal with the treatment and disposal of the waste. From the evidence adduced it is not possible to state when the provision of the services of treatment and disposal of the waste was completed. The provision of the said services is a continuous process. There is no evidence adduced by the respondent to show when the said services were completed. There is also no evidence to show when the applicant was paid for the provision of the said services. Therefore the Tribunal will go by S. 14(1)(c) and consider the date when the tax invoices i.e. INV00048 and INV00049 were issued.

We therefore do not agree with the applicant that the transportation of all the waste was completed in July 2015. The transportation of some waste in invoice INV00047 had been completed by 30th June 2015 and the applicant ought to have declared it in its VAT returns for June 2015 under S. 14(1)(c)(i) of the Act. We find that the applicant did not properly account for the VAT for amounting to US$ 46,690 for the year ending 30th June 2015. It ought to have severed the VAT for the transportation done in June from July 2015. Though it did not properly declare the invoices in respect of transport services the Tribunal does not find that the invoices in respect of waste treatment and disposal were not properly declared.

In its submissions the applicant stated that having failed to declare the sum of Shs. 688,501,245 as sales for June, 2015, it went on to declare the said amount as sales for July, 2015. The applicant submitted that disallowing its input tax credit for the period in question would amount to double taxation. We note from a perusal of Exhibit Ex A6 (b) that the applicant declared Shs. 688,501,245 as sales in its VAT returns for July 2015. We also note that the respondent has not denied nor has it led evidence to disprove this position. While we agree with the respondent that the applicant ought to have declared the some of its sales in June 2015, ignoring the applicant's sales declaration in July 2015 when computing Input tax refund and VAT liability would amount to double taxation. We therefore order the sales declaration of Shs. 688,501,245/= be considered by the respondent

when computing the VAT input claimed by the applicant. The respondent may charge a penalty in respect of late filing of part of the sales in INV00047.

The last issue was whether the applicant is entitled to VAT input of Shs. 90,286,003? The applicant submitted that as a taxable person it is entitled to a credit on the input VAT in accordance with S. 28 of the VAT Act. The applicant filed in its returns the VAT it had paid to its suppliers which the respondent declined. It stated that the amounts claimed by the applicant were not reflected in the returns made by the applicant's suppliers consequently the claims were disallowed under S. 42(5) of the VAT Act. The applicant argued that it was not its duty to ensure that its suppliers properly account for their VAT returns.

In *Target Well Control Uganda Ltd v The Commissioner General* HCCS No. 751 of 2015. His Lordship, Hon. Justice David Wangutus stated and we consider ourselves bound by it, that:.

> "One of the arguments of the defendant was that the plaintiff should have exercised due diligence to find out whether Neptune was VAT registered and also followed up to ascertain whether she had remitted to the defendant the tax that was collected. With due respect I do not agree with that argument for the simple reason that it does not make sense to require a taxable person to follow up a payment and find out whether the agent has remitted the tax so collected from him or her.
>
> This would be asking the plaintiff to do a very difficult task because first of all, he has no access to the agent's returns and books of accounts. Secondly, it is the defendant who has access to the books of businessmen in the country. They are the ones who find out returns that are recklessly made or made intentionally to deceive.
>
> It is clear under section 65(3) of the Value Added Tax Act, that as an agent, the collector in this case, Neptune was obliged to remit the money. The failure to declare or remit the money is punishable under section 65(6) (a) and (b)……..from this section is seen a relationship between the agent and the defendant. It is this section which enables the defendant to follow up and cause penalty using section 65(6)(a) and (b) as a sanction.
>
> The tax laws make it clear that collection of tax is the sole responsibility of the defendant. Where a taxable person claimed for VAT, it was the defendant's duty to take on the party that received the money from the person. It is as I said before could never be the duty of

the tax payer to ensure that the money was remitted. Even where the plaintiff did not do due diligence, the defendant was obliged to demand it from Neptune and the latter was obliged to hand over the tax to Uganda Revenue Authority…"

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. There is no evidence from the respondent disputing the presence of the suppliers.

At the trial the applicant adduced invoices and bank statements to show that it paid its suppliers which the Tribunal will take into consideration. The evidence is as below

Supplier	**Evidence adduced and verified**	**Verified Input VAT**
Motor Care Uganda Ltd	Witness Juius Nsubuga called	23,856,440
Kobiah Scientific Uganda	Exhibits A20(c) – (j). witness Harith Kabagambe called	20,274,427
Lanor International Ltd.	Exhibits A20(k)(i) – (ii) evidence of VAT payment missing (10,905,100)	
Balton Uganda Ltd.	Exhibits A20(n) – (o) Exhibit A21(b)	8,879,493
Jabba Engineering Ltd	Exhibits A20(q) – (r). Witness Dennis Ahimbisibwe called	6,664,680
Kazinga Channel World Ltd	Witness, Robert Makoobi called. Exhibits A20(s) – (w), A21(d)	4,053,103
Transtel Ltd	Exhibit A20(x) evidence of VAT payment missing (3,268,373)	
Dimension Data Uganda Ltd	Exhibit A20(y) evidence of VAT payment 2,963,209	
Oxy Gas Ltd	Exhibits A20(z) –(aa) evidence of VAT payment missing 2,434,271	
Jyotika Hardware Ltd	Exhibits A20(ab) – (ae) evidence of VAT payment missing 1,559,104	

Workwear Uganda Ltd	Exhibits A20(af) – (al) A19	1,554,903
Uganda Oxygen Ltd	Exhibits A20(av), Exh A21(f)	1,440,000
Alert Guards & Security Systems Ltd	Exhibits A20(ay)- (bd), Exhibit A21(b)	1,215,000
Bollore Africa Logistics	Exhibits A20(be) – (bj) evidence of VAT payment missing (1,077,620)	
Nation Media Group	Exhibit A20 (bk)	
Monitor Publications Ltd	Exhibit A20(bk), ExhA21(i)	709,322
DHL International (U) Ltd	Exhibits A20(bm) – (bn)	663,180
Terrain Plant Ltd	Exhibits A20(bo) –(bp) Not disputed	532,975
Biomedical Engineering Solutions Ltd	Exhibit A20(bq)	
Davis and Shirtliff		
DHL International (U) Ltd	Exh A20 (bm) – (bn) A21(j)	349,920
Vivo Energy Uganda	Exhibit A20(br), Exh A21(d)	346,539
Mercantile Car Rentals Ltd	Exhibit A20(bs), Exh A21	300,420
Jada International Ltd	Exhibit A20bt), Exh A21(m)	264,500
Aspire Capital Ventures Ltd	Exhibit A20(bv) No evidence to prove VAT payment 198,305	
One Solutions	Exhibit A20(bv), Exh A21(l)	69,016
VEQ Hoima Limited	Exhibit A20(bw) –(ki), ExhA21(b)	5,150,419
	Total Input VAT verified	**70,324,337**

Of the Shs. 90,286,003 the applicant invoiced, it presented evidence of payment of Shs. 49,385,230 which the Tribunal will award it. The other amount invoiced cannot be awarded because the suppliers can claim credit under S. 30 of the VAT Act, which we shall not delve it.

We accordingly hold and order as follows;

1. The applicant is entitled to a VAT refund of Shs. 285,972,696 with interest for the period October, 2013 to June, 2014.
2. That though the applicant did not properly account for the year ending June 2016 it was entitled of VAT of Shs. 123,930,226.

3. The applicant is entitled to a VAT credit of Shs. 70,324,337 being the input VAT charged to the applicant by its suppliers.
4. The applicant is awarded the costs of this application.

Dated at Kampala this 24 day of January 2020.

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