THE REPUBLIC OF UGANDA

IN THE TAX APPEALS TRIBUNAL AT MBALE

APPLICATION MBL 1 OF 2009

AESCEUTA COMMERCIAL ESTABLISHMENTS :::::::::::::::::::: APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY :: RESPONDENT

RULING

This ruling is in respect of two preliminary objections raised by the respondent. The first preliminary objection is that the applicant did not comply with the statutory requirement of depositing 30% of the tax assessed or the part of the tax which is not in dispute, whichever is greater. The second objection was to the effect that the application was time barred.

Briefly the facts of this application are: Sometime around the 24.10 2006 the respondent carried out an audit of the applicant and raised an assessment of Ushs. 28,713,245/= for both Value Added Tax and Income Tax. The applicant not being satisfied with the assessment raised an objection dated 9.10.2007. By a notice of objection decision dated 13.1.2009 the respondent allowed the applicant's objection in part reducing corporation tax to Shs. 720,057/= and VAT was assessed as Shs. 18,826,292/=. On the 14.8.2009 the applicant filed an application for review with the Tax Appeals Tribunal.

At the trial counsel for the respondent raised two preliminary points of law. The first one was that the applicant did not deposit 30% of the tax assessed or that part of the tax assessed not in dispute, whichever is greater. He said the tax assessed was Shs. 28,713,245/=. He contended that the requirement to deposit 30% of the tax was mandatory.

The second contention was that the application was time barred in terms of S.16 of the Tax Appeals Tribunal Act. He stated that the assessments were made on the 24.11.2006 and

19.2.2007. The objection was made on 9.10.2007. An objection decision was made on the 13.1.2009. The application for review of the objection decision was filed on the 14.8.2009. The applicant was required to make an application for review of the taxation decision within 30 days from the receipt of the objection decision. He prayed that the application be dismissed with costs.

In reply the applicant contended that it paid Shs. 250,000/= as a deposit in respect of the tax that was not in dispute. The said amount was acknowledged by the respondent in their letter dated 29.11.2007.

The applicant also contended that the landlord had locked up its premises that housed all the relevant documentation in terms of receipts, payment vouchers and analysis books. The applicant admitted that the objection decision was made on the 13.1.2009 and was received by the applicant on the 28.1.2009.

Having listened and read submissions of both parties, this is the ruling of the Tribunal.

The first objection raised by the respondent was that the applicant did not deposit the statutory requirement of 30% of the tax or the tax not in dispute, whichever is greater. The application filed was in respect of both corporation tax and Value Added Tax. S. 15 of the Tax Appeals Tribunal Act which deals with the deposit of a portion of tax pending determination of an objection states

> (1) A taxpayer who has lodged a notice of objection to an assessment shall, pending final resolution of the objection, pay 30 percent of the tax assessed or that part of the tax assessed not in dispute, whichever is greater.

This position is reiterated in S.33C of the Value Added Tax Act which reads

> (2) A person shall, before lodging an application with the Tribunal, pay to the Commissioner General, thirty percent of the tax in dispute or that part of the tax assessed not in dispute, whichever is the greater.

The Income Tax Act does not contain a similar provision. However the Tax Appeals Tribunal Act shall suffice.

In *Uganda Projects Implementation & Management Centre V Uganda Revenue Authority* Constitutional Petition 18/2007 the Constitutional Court stated that the requirement to pay 30% of the tax assessed before a tax payer files an appeal with the Tax Appeals Tribunal may be likened to an intended appeal who may be required to furnish security for the due performance of the decree before proceeding with the appeal process. To the court the payment of 30 % was mandatory.

In order to ascertain the tax in dispute the Tribunal is required to look at the pleading filed by the applicant. In its application received by the Tribunal on 8.8.2009 the applicant stated that the tax in dispute is Ushs. 28,713,245/=. However the objection decision dated 13.1. 2009, which allowed the applicant's objection in part, showed that the applicant was required to pay corporation tax of Ushs. 720,057/= and Value Added Tax of 18,826,292/=. The applicant in reply contended that it had paid Shs. 250,000/= in respect of the tax not in dispute on corporation tax. This was acknowledged by the respondent in its letter of 29.11.2007. However the said letter does not indicate whether the payment was in respect of corporation tax or value Added Tax. In fact a final reminder dated 23.4.2009 from the respondent to that applicant indicates that the corporation tax liability stood at Shs, 768,061/=. The applicant contended that the said Shs. 250,000/= amounted to the amount of tax not in dispute. The law is clear. The applicant is required to pay 30% of the tax in dispute or the tax not in dispute whichever is higher. The Tribunal notes that the said Shs. 250,000/= paid by the applicant is not greater than 30% of the tax in dispute whether it is Shs. 28,713,245 or Shs. 18, 826,292/=.

The second objection by the respondent was that the matter is time barred. The objection decision was made on the 13.1.2009. It is not clear when the said objection was served on the applicant. However in a letter dated 31.3. 2009 the applicant informed the respondent

that it was dissatisfied with the objection decision of 13.1.2009. This indicates that by the 31.3.2009 the applicant had received the objection decision. Counsel for the applicant submitted that the application was received by the applicant on the 28.1.2009. The application filed in the tribunal was on the 18.8.2009. From 28.1.2009 or 31.3.2009 to 18.8.2009 there are over 30 days.

Issues of time limits are not procedural technicalities. They go to the root of the application. In *Uganda Revenue Authority V Toro Mityana Tea* Co. Ltd H.C.C.S No. 4/2006 the court noted that time limits set by statutes are matters of substantive law and not mere technicalities and must be strictly complied with. Counsel for the applicant referred to the case of *Utex Industries V Attorney General* SCCA 52 of 1995 where it was held that in order to avoid delays, rules of court provide a timetable within which certain steps ought to be taken. For any delay to be excused it must be explained satisfactory. In *Uganda Revenue Authority V Uganda Consolidated Properties Limited* Civil Appeal 31of 2000 the Court of the Appeal held that Section 16(1) of the Tax Appeals Tribunal Act gives a mandatory requirement that the applications for review be filed within thirty days after the person making the application has been served with notice of a tax decision.

S.100 of the Income Tax Act states

> (1) A taxpayer dissatisfied with an objection decision may, at the election of the taxpayer—
> (a) appeal the decision to the High Court; or
> (b) apply for review of the decision to a tax tribunal established by Parliament by law for the purpose of settling tax disputes in accordance with article 152(3) of the Constitution.

However the Income Tax Act is silent on the period an applicant may file its application from the date of service of the objection decision. This is remedied by the Tax Appeals Tribunal Act which provides in S. 16(1) (c) that an application to a tribunal for review of a taxation decision be lodged with the tribunal within thirty days after the person making the application has been served with notice of the decision. In the circumstance the Income Tax element in the application was time barred.

On the contrary, the Value Added Tax Act also provides for time limits. It states

> 33C. (1) A person dissatisfied with an objection decision may, within thirty days after being served with notice of the objection decision, lodge an application with the Tax Appeals Tribunal for review of the objection decision and shall serve a copy of the application on the Commissioner General.

The period from 28.1.2009 and or 31.3.2009 to 18.8.2009 is more than 90 days. Therefore the application before the tribunal in respect of Value Added Tax was filed out of time.

The applicant in its submission alluded to the fact that the respondent did not make an objection decision within the time required from the date of service of the objection. In a letter dated 31.3.2009 the applicant wrote to the Tax Appeals Tribunal electing to treat the Commissioner as having allowed the objection. The said letter was written after the objection decision of 13.1.2009. S.99 of the Income Tax Act is clear on how the Commissioner should treat objections. It reads

> (5) After consideration of the objection, the commissioner may allow the objection in whole or in part and amend the assessment accordingly, or disallow the objection; and the commissioner's decision is referred to as an "objection decision".
>
> (6) As soon as is practicable after making an objection decision, the commissioner shall serve the taxpayer with notice of the decision.
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> (7) Where an objection decision has not been made by the commissioner within ninety days after the taxpayer lodged the objection with the commissioner, the taxpayer may, by notice in writing to the commissioner, elect to treat the commissioner as having made a decision to allow the objection.
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> (8) Where a taxpayer makes an election under subsection (7), the taxpayer is treated as having been served with a notice of the objection decision on the date the taxpayer's election was lodged with the commissioner.

The Commissioner is required to allow or disallow the objection in whole or in part as was in the applicant's case. S.99 is also clear on how a tax payer treats its objection when the Commissioner fails to make an objection decision in time. It states where an objection decision has not been made within 90 days the taxpayer may elect to treat the Commissioner as having allowed the objection. The applicant is required to write to the

Commissioner informing of the election. This is not the case with the applicant. In the first place the applicant wrote to the Tax Appeals Tribunal and not the Commissioner as required by law. This was after the objection decision was made. The applicant should have written after 90 days from the date it lodged the objection and not before the objection decision is made. If the 90 days expire and the applicant does not make an election it shall be deemed to have sat on its right in the event the Commissioner makes an objection decision thereafter. The law does not stop the Commissioner from making a decision 90 days from the date of service of the objection. By filing an application in the Tribunal challenging the objection decision the applicant inadvertently admits that the objection decision applies to it. The applicant's election is therefore invalid.

As regards the VAT element, S.33 B of the VAT Act states;

> (4) The Commissioner General may, within thirty days after receiving the objection, consider it and allow the objection in whole or in part and amend the assessment accordingly.
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> (5) The Commissioner General shall serve the person objecting with notice in writing of the objection decision within thirty days after receiving the objection.
>
> (6) Where the Commissioner General has not made a decision within thirty days after the lodging of the objection, the taxpayer may by notice in writing to the Commissioner General, elect to treat the Commissioner General as having made the decision to allow the objection.
>
> (7) Where a taxpayer makes an election under subsection (6), the taxpayer is treated as having been served with a notice of the objection decision on the date the taxpayer's election was lodged with the Commissioner General.

Apart from the time limits, the VAT Act is similar to the Income Tax Act. In order to avoid repetition the Tribunal shall reiterate its position that the Commissioner General did not make the objection decision in time. The Tribunal shall also reiterate its position that applicant's election was not valid as it did not comply with the VAT Act.

The applicant's attempt to rely on the doctrine of estoppel is misconceived. The applicant contends that during the audit exercise all documentation was taken by the respondent preventing it from filing an application in time. Despite that the applicant was able to lodge

an objection with the respondent. There is no evidence to show that the said documentation was ever returned to the applicant to enable it make this application before the tribunal. The Tax Appeals Tribunal Act makes provision for an aggrieved party to apply for extension of time which the applicant did not take advantage of. The doctrine of estoppel is used as a shield and not as a sword. In *Pride Exporter Limited V Uganda Revenue Authority* HCCS 503 of 2006 it was held that a statutory body like the URA when given powers under a statute cannot have those powers filtered or over ridden by estoppel or mistake.

In the circumstance the tribunal upholds both the respondent's preliminary objections. The application before the tribunal is time barred. The applicant did not pay the statutory 30% or the amount of tax not in dispute whichever is greater. The application is dismissed with costs to the respondent.

Dated at Kampala this……day of ……..2010

Asa Mugenyi	**Stephen Akabway**	**Martin Fetaa**
Chairman	**Member**	**Member**