

**HaTHE REPUBLIC OF UGANDA**  
**IN THE TAX APPEALS TRIBUNAL AT KAMPALA**  
**TAT APPLICATION NO.65 OF 2019**

**JUTRADE GENERAL AGENCIES LIMITED =====APPLICANT**

**V**

**1. UGANDA REVENUE AUTHORITY**

**2. EQUITY BANK =====RESPONDENT**

**BEFORE DR. ASA MUGENYI, MR. GEORGE MUGERWA, MS. CHRISTINE KATWE**

**RULING**

This ruling is in respect of preliminary objections raised by the respondents against the above application. The 1<sup>st</sup> respondent contended that the application is time barred while the 2<sup>nd</sup> respondent contended that it is a wrong party to the application.

On 30<sup>th</sup> December 2011 the 1<sup>st</sup> respondent issued the applicant with a Value Added Tax (VAT) assessment of Shs. 25,847,008 for the period September 2010 to February 2011 for non-filing of returns. On 24<sup>th</sup> July 2012 the applicant objected to the assessment which was disallowed by an objection decision of 3<sup>rd</sup> September 2012. On 10<sup>th</sup> January 2011 the 1<sup>st</sup> respondent issued the applicant with a VAT assessment of Shs. 21,895,264 for October 2010. On 24<sup>th</sup> July 2012 the applicant objected to the assessment to which the respondent disallowed it by an objection decision of 16<sup>th</sup> October 2012. On 15<sup>th</sup> June 2011 the 1<sup>st</sup> respondent issued the applicant with a VAT assessment of Shs. 14,551,462 for the period December 2010. On 24<sup>th</sup> July 2012 the applicant objected to the assessment to which the respondent disallowed by an objection decision of 21<sup>st</sup> October 2012. On 4<sup>th</sup> May 2011 the respondent issued the applicant with a VAT assessment of Shs. 22,621,213. On 24<sup>th</sup> July 2012 the applicant objected to the assessment which was disallowed by an objection decision of 19<sup>th</sup> September 2012. On 21<sup>st</sup> July 2011 the respondent issued the applicant with a VAT assessment of Shs. 980,046 for February 2011. On 24<sup>th</sup> July 2012 the applicant objected to the assessment which was disallowed

by an objection decision of 31<sup>st</sup> July 2013. The applicant did not pay the VAT on the said assessments which attracted interest. The respondent issued an agency notice of Shs. 294,448,923 on the applicant's bank, the 2<sup>nd</sup> respondent. The applicant filed this application on 5<sup>th</sup> July 2019.

The following issues arise.

1. Whether the application is time barred?
2. Whether the 2<sup>nd</sup> respondent is a right party to this application?
3. What remedies are available?

The 1<sup>st</sup> respondent raised a preliminary objection that the application ought to be dismissed because it is time barred. The respondent submitted that the objection decisions were issued in 2012 to 2013. The applicant submitted that, at that time, S. 33C of the VAT Act required a person dissatisfied with an objection decision to file an application within 30 days after the service of notice. The respondent contended that this Section have since been incorporated under S. 25(1) of the Tax Procedure Code Act which provides that a person dissatisfied with an objection decision to lodge an application before the Tax Appeals Tribunal Act within 30 days after being served with a notice of objection decision. The respondent also cited S. 16(1)(C) of the Tax Appeals Tribunal Act which provides that an application for review shall be made within 30 days after being notified of the taxation decision

The respondent cited **Prime Contractors v Public Procurement and Disposal of Public Assets Authority and others** *Misc. Application 91 of 2014* where the High Court quoted Greene MR in **Hilton Sutton Steam Laundry (1946) 1 KB 61** at 81

"But the statute of limitations is not concerned with merits. Once the axe falls, it falls and a defendant who is fortunate enough to have acquired the benefit of the statute of limitation is entitled to insist on his strict rights."

The respondent contended that the applicant's application is time barred.

The respondent contended that even if the applicant was not served the objection decision, the taxpayer did not write a notice to the Commissioner General electing to

treat that she had allowed the objection. The respondent contended that the applicant filed this application after it was served with an agency notice. The respondent contended that the application was brought without applying for extension of time.

On the other hand, the 2<sup>nd</sup> respondent submitted that it is wrongly sued. It denied any liability as it was a mere agent of the 1<sup>st</sup> respondent, which is not disputed by the applicant. The 2<sup>nd</sup> respondent submitted that an agent cannot be sued where the principal is known and disclosed. Without prejudice, the applicant argued that S. 31(9) of the Tax Procedure Code Act states that a person making a payment in accordance with a notice is treated as acting under the authority of the taxpayer. The Tax Procedure Code Act make the bank an agent of the taxpayer.

The 2<sup>nd</sup> respondent also contended that the application does not disclose a cause of action against it. The prayers sought by the applicant are not enforceable against it. The 2<sup>nd</sup> respondent submitted further that the Tribunal does not have jurisdiction to hear and determine the applicant's complaint of irregular transactions on its bank accounts as it is a civil matter. The Tribunal has powers only to review taxation decisions.

In reply to the first preliminary objection, the applicant submitted that it was not served the objection decisions before May 2019. It wrote to the respondent on the 23<sup>rd</sup> April 2019 requesting for the objection decisions. The applicant submitted that the objection decisions were availed, served and communicated in May 2019. The applicant contended that it also elected that the objections are allowed as decisions of the Commissioner under S. 99(7) of the Income Tax Act.

In response to the second preliminary objection, that applicant contended that the 2<sup>nd</sup> respondent is a financial institution and can therefore be sued. It has the burden to prove that it is innocent. The 2<sup>nd</sup> respondent did not serve, avail or communicate the agency notices to it. Therefore it has a case to answer. The applicant contended that the 2<sup>nd</sup> respondent failed to act with due care and skill in executing the duty delegated to it by the 1<sup>st</sup> respondent. The 2<sup>nd</sup> respondent did not follow the instructions of the principal.

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

It is not in dispute that the respondent issued VAT assessments on the applicant in 2011 and 2012. The applicant made objections in 2012. The respondent made objection decisions in 2012 and 2013. What seems to be contentious is that the respondent did not serve the objection decisions in 2012 and 2013. The respondent does neither deny nor admits having served the objection decisions. The respondent merely contends that in the event it did not serve objection decisions, the applicant ought to have written a notice to the Commissioner General to elect to treat that she had allowed the objections. However from the fact that the applicant filed this application in Tribunal it may be deemed it did not elect to treat that the Commissioner allowed its objection. So the dispute is still pending. An objection decision is deemed not to have been made until it has been served. In the absence of service, the taxpayer cannot be deemed to have received it. If one files an application in the Tribunal the starting point would be that he received an objection decision. It becomes difficult to challenge an objection decision one has not received.

So the Tribunal has to ask itself, when does time begins to run to file an application? S. 33C of the VAT Act requires a person dissatisfied with an objection decision to file an application within 30 days after the service of notice. This Section has since been incorporated in S. 25(1) of the Tax Procedure Code Act which provides that a person dissatisfied with an objection decision has to lodge an application before the Tax Appeals Tribunal within 30 days after being served with a notice of objection decision. S. 16(1)(C) of the Tax Appeals Tribunal Act provides that an application for review shall be made within 30 days after the tax payer has been notified of the taxation decision

The applicant wrote a letter to the respondent dated 23<sup>rd</sup> April 2019 requesting for the objection decisions. On the 30<sup>th</sup> April 2019 the respondent replied the applicant forwarding the objection decisions. The applicant in its submission and on its application

admits that it was served the objection decisions in May 2019. It does not give us the exact date it was served. Parties are bound by their pleadings.

If the Tribunal was to take 31<sup>st</sup> May 2019, it being the last day in the month, as the day the applicant was served, it ought to have filed an application within 30 days from that day. That is, the applicant ought to have filed an application in the Tribunal by 30<sup>th</sup> June 2019. This application was filed on the 5<sup>th</sup> July 2019. Therefore it is time barred. The applicant cited, which the Tribunal will uphold Greene MR in **Hilton Sutton Steam Laundry (1946) 1 KB 61** at 81:

“But the statute of limitations is not concerned with merits. Once the axe falls, it falls and a defendant who is fortunate enough to have acquired the benefit of the statute of limitation is entitled to insist on his strict rights.”

In **Uganda Revenue Authority V Toro Mityana Tea Co. Ltd HCCS 4 of 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. If a party fails to file its application within time, even by one day, the axe will fall, it no longer has any rights to access the Tribunal without applying for leave for extension of time.

In respect of the second objection by the 2<sup>nd</sup> respondent that it is not a right party to the suit, the Tribunal notes that an agency notice is an enforcement mechanism by the 1<sup>st</sup> respondent. The 2<sup>nd</sup> respondent when enforcing the agency notice is acting on the instructions of the 1<sup>st</sup> respondent. While it may look as if the 2<sup>nd</sup> respondent is an agent of the 1<sup>st</sup> respondent, the account actually belongs to the tax payer. S. 31(9) of the Tax Procedure Code Act provides that:


“A person making a payment in accordance with a notice under subsection (2) is treated as acting under the authority of the taxpayer and of all other persons concerned and is indemnified in respect of the payment despite any provisions to the contrary in any written law, contract or agreement .”

The Act makes the bank an agent of the taxpayer. The said law has never been annulled. Where a principal is known and has been disclosed, an aggrieved party cannot sue an agent. The applicant cannot sue its own agent as declared in the Tax Procedure Code Act though it was carrying out instructions by the 1<sup>st</sup> respondent to pay taxes due.

An agency notice is like a garnishee order under the Civil Procedure Act. The law compels the garnishee, or as in this case the bank, to pay the monies owed by the judgment debtor or taxpayer.

Taking all the circumstances into consideration, the preliminary objections by the respondents are upheld. The application is dismissed with costs.

Dated at Kampala this 21<sup>ST</sup> day of May 2020.



**DR. ASA MUGENYI**  
**CHAIRMAN**



**MR. GEORGE MUGERWA**  
**MEMBER**



**MS. CHRISTINE KATWE**  
**MEMBER**

**RULING**