THE REPUBLIC OF UGANDA

IN THE TAX APPEALS TRIBUNAL OF UGANDA AT KAMPALA

APPLICATION NO. 80 OF 2020.

NOKIA SOLUTIONS AND NETWORKS BRANCH OPERATIONS OY... APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY..... RESPONDENT

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

RULING

This ruling is in respect of the applicant's application challenging income tax, Withholding Tax (WHT) and Value Added Tax (VAT) assessments totaling to Shs. 11,789,913,986.

The applicant has a branch in Uganda. The applicant deals in telecommunications, installation of infrastructure and maintenance service. The respondent audited the applicant for the period 2014 to 2018 for Income Tax and Value Added Tax (VAT). The audit revealed that there were inconsistences between the income tax sales, VAT sales and withholding tax (WHT) payments. It also revealed that there were inconsistences in the inventory stock reported. As a result, the respondent raised an income tax assessment of Shs. 8,394,913,765, VAT assessment of Shs. 1,000,370,363 and WHT assessment of Shs. 2,394,629,857 totaling to Shs. 11,789,913,986. The applicant objected to the assessments and the respondent disallowed the objections.

During mediation, it was agreed that interest due was waived by S. 40C of the Tax Procedure Code Act. Therefore, the income tax outstanding is Shs. 4,792,065,130, VAT of Shs. 546,501,292 and WHT of Shs. 1,236,066,943 totaling to Shs. 6,574,633,360.

Issues agreed:

1. Whether the applicant is liable to pay the tax outstanding?
2. What remedies are available?

The applicant was represented by Ms. Mbekeka Irene and Mr. Micheal Echiba while the respondent by Mr. George Ssenyomo and Mr. Tony Kalungi.

The applicant's first witness, Mr. Maurice Ngunjiri, its finance manager, testified that the applicant is duly registered Ugandan branch of a company incorporated in Finland whose core business is provision of mobile broadband services. The applicant engages in services which include installation and maintenance. The applicant does not trade in goods but services. At the beginning of a project invoices of a fixed amount are raised. The invoices include VAT and the applicant accounts for VAT at the point of issuance of a tax invoice. The applicant follows International Accounting Standards. He testified that the sales in the income tax returns are based on the sales recognized and declared in the audited financial statements while the sales in the VAT returns are based on the values of the invoices issued during each VAT period. This results in variances. Mr. Ngunjiri testified that the items that created the variances are 1) the consideration of imported sales declared in the VAT returns as sales; 2) advance billings that were not recognized as revenue because the services had not been completed; 3) Revenue accruals and 4) differences caused by foreign exchange rates

He also testified that the applicant made an excess payment of tax which it applied to be utilized. He stated that all billings have an element of advance payment. He confirmed that the applicant did not amend the error in its return because by the time it tried to amend URA had already initiated a desk audit. The applicant agreed to pay VAT and WHT on imported services.

The applicant's second witness, Ms. Grace Mwangi, its accountant testified that the applicant conducted a reconciliation between the sales declared in its VAT returns and those in the income tax returns. The applicant accounted for Shs. 1,321,174,000 in its audited financial statements for the accounting period 2016 being intercompany sales to the applicant branches in other jurisdictions. The applicant declared Shs. 851,202,500 of the total exported services in its VAT returns for the accounting period 2016. A sum of Shs. 469,971,215 relating to exported services were not declared in the VAT returns. The

exported services are zero rated according to the VAT Act and the respondent was wrong to compute and demand VAT on the undeclared exports.

The respondent's witness Mr. Elias Lubwama, confirmed that the applicant is a company dealing in telecommunication services. The respondent conducted a compliance review on the applicant's tax bases on which WHT and VAT was charged. A variance was established between the bases. There was a WHT liability of Shs. 2,394,629,857. The witness testified that the variances are caused by differences in the timing of the declarations for VAT and WHT purposes. The WHT declarations are on payment dates while the VAT transactions are on the earlier of either the payment date, invoice date or performance date.

He also testified that there is a VAT liability of Shs. 1,000,370,363. He stated that the variances were a result of VAT on imported services which was under declared. Mr. Lubwama stated that the assessed additional VAT on imported services after reconciliation of VAT submissions and payments to suppliers was because the respondent expected the VAT and the WHT submissions to match.

Mr. Lubwama also stated that there was a variance between VAT returns and income tax returns of 2016 of Shs. 2,296,045,414. The applicant sometimes receives advance payments, where the corresponding VAT is declared in the month's submission.

Mr. Lubwama testified that the applicant made an excess payment which was not utilized to offset the 2014 income tax. The company made a lump sum payment that the audit team chose to ignore. The payment of Shs. 1,564,345,320 was made early 2014 but related to 2013 and not 2014. He stated that the respondent advised the applicant to either formally apply for a refund as required by S. 113(1) of the Income Tax Act or apply for utilization of the excess payment as required by S. 113(3) of the Act and S. 37(7) of the Tax Procedure Code Act of which the applicant did not do.

The applicant submitted that it disputes the respondent's additional income tax assessment of Shs. 8,394,913,765. It submitted that variances between the turnover declared in the applicants' audited financials and the revenue declared in the VAT returns were attributable to timing differences arising from the VAT accounting under S. 14 of the VAT Act and the prescribed revenue recognition criteria under Generally Accepted Accounting Principles (GAAP).

The applicant submitted that S. 14 of the VAT Act requires that VAT should be accounted for earliest date on which the performance of service is completed, or payment for service is made, and or when tax invoice is issued. The applicant accounted for VAT at the earliest tax point which was the date of invoicing. The accounting process differs for income tax. The applicant submitted that S. 40 of the Income Tax Act provides that a taxpayer's method of accounting shall conform to Generally Accepted Accounting Principles. It submitted that at times it receives advance payments. It submitted that prepayment by a customer is treated as a liability until the full recognition criteria is met according to accepted accounting standards. International Accounting Standards (IAS) 18 defines revenue as gross inflow of economic benefits (cash, receivables, other assets) arising from the ordinary operating activities of an entity, such as sales of goods, sales of services, interest, royalties, and dividends. The applicant submitted that Recognition is defined under IAS as incorporating an item that meets the definition of revenue in the income statement when it meets the following criteria:

"a) It is probable that the future economic benefit associated with the item of revenue will flow to the entity.

b) The amount of revenue can be measured with reliability."

The applicant submitted that IAS 18 provides also the following guidance arising from rendering services. It states that:

"For revenue arising from the rendering of services, provided that all the following criteria are met, revenue should be recognized by reference to the stage of completion of the transaction at the balance sheet date (the percentage of completion methods); [IAS 18.20]

c. the amount of revenue can reliably be measured.

d. It is probable that the future economic benefits will flow to the seller.

e. the stage of completion of the balance sheet date can be measured reliably.

f. and the costs incurred, or to be incurred, in respect of the transaction can be measured reliably.

When the above criterion is not met, revenue arising from the rendering of services should be recognized only to the extent of the expenses recognized that are recoverable."

The applicant submitted that in conformity with S. 40 of the Income Tax Act its revenue recognition criteria align with the guidance of IAS 18. Using the Standards, at the end of each month, the applicant recognizes a portion of the invoiced amount in its financial accounts and defers the rest up to the point the applicant performs the service, and the customer accepts the service performed. This is because at the point of invoicing, the applicant has not fully performed the services and is not entitled to the full invoice amount. The applicant provided reconciliations between the turnover declared in the audited financial statements and the revenue declared in the VAT returns. The documentation provided included a schedule of advance billings for 2014, sample invoices relating to the advance billings for Uganda Towers included in the sales reconciliation for 2015.

The applicant also submitted that contrary to S. 113(3) of the income Tax Act the respondent disallowed the applicant's request to utilize an income tax overpayment of Shs. 1,564,345,320 accumulated in 2013 to offset against 2014 income tax liability. The applicant submitted that S. 113(3) Income Tax Act Cap 340 allows the Commissioner to apply the excess in the reduction of any tax. The applicant cited *Red Chilli Hideaway Limited v Uganda Revenue Authority* Application No. 38 of 2018 where the applicant successfully challenged the respondent's decision not to use the former's withholding tax credit and provisional tax payment for the period 2012 to 2013 to offset its tax liability of 2016. The Tribunal ruled that S. 113(3) of the Income Tax Act requires the Commissioner to make a refund if there is an overpayment after he or she has applied the excess in reduction of any tax due from the taxpayer. The applicant submitted that the Commissioner ought to apply its excess tax for the period 2012 to 2013 to reduce the tax due from the taxpayer for the period 2015 to 2016. The applicant submitted that the fact that the applicant had not applied for any refund does not stop the Commissioner from applying any tax credits and provisional payments to meet its tax liabilities.

The applicant submitted that the respondent's additional income tax assessment did not exclude the variance that is attributable to VAT on imported services which was declared in the VAT returns and was a cost to the applicant. The applicant submitted that S. 5(c) of the VAT Act specifies that the person liable to pay VAT on imported services is the recipient of the service, who is the applicant in this case. The respondent imposed an additional income tax assessment of Shs 8,394,913,765 based on its view that revenue in the VAT returns was higher than turnover as per the audited financial statements. The respondent ought to have allowed adjustment based on the declarations of VAT on imported services in the applicant's VAT returns' sales. The applicant submitted that the respondent's additional income tax assessment of Shs 8,394,913,765 inclusive of VAT on imported services amounts to double taxation.

The applicant submitted that the income tax return for 2014 mistakenly had an opening inventory of Shs 4,047,901,476 which was attributable to a human error in entering data. The applicant submitted that the respondent stated that it maintained its assessment on this matter based the on grounds that:

"a. The audit was based on information tiled in the income tax return

b. The applicant's explanation of the purported error was unsatisfactory to the respondent

c. The new audited accounts submitted to rectify the error needed to be verified through an audit.

d. The applicant did not amend its income tax returns to amend the error."

The applicant submitted that the respondent considered other documentation to verify the information in the filed returns, including the audited financial statements that were availed during the audit, but willfully disregarded the information in it where it offered clarity to the explanation provided in respect of error in the 2014 income tax return. The applicant submitted that the respondent asserted that new audited accounts should be submitted to rectify the error which needed to be verified through an audit.

The applicant further submitted that S. 23(3) of the Tax Procedures Code Act provides that a taxpayer who has furnished a self-assessment return, may upon discovering an error within three years after the date of furnishing the return, apply to the Commissioner for leave to make an additional assessment. The applicant was prevented from amending

its income tax return for 2014 to rectify the error because the return was being investigated by the Respondent. The applicant's contented that the actions of the respondent in concluding investigation without considering evidence requested for and provided by the applicant was procedurally improper, and the statutory right to amend the 2014 return had not yet lapsed. The applicant cited *Council of Civil Service Unions v Minister of Civil Service* [1985] AC 374 at page 410 which was quoted with approval in the case of *Commissioner General URA v Zain International BV* (Civil Appeal No. 0011 of 2012), Lord Diplock defined "procedural impropriety" as "failure to observe basic rules of natural Justice or failure to act with procedural fairness towards the person who will be affected by that decision." Lord Roskill in the same case replaced the "principles of natural justice" with the duty to act "fairly".

The applicant submitted that while it does not dispute the principal WHT assessment of Shs 1,236,066,943, the interest amounting to Shs 1,158,562,914 is not due as it was waived by S, 40C of the Tax Procedures Code Act, which provides that "any interest and penalty outstanding as at 30th June 2020 is waived.

In reply, the respondent agreed that interest was waived by S. 40C of the Tax Procedure Code Act, which was agreed during mediation by the parties. The respondent submitted that the applicant is still liable to pay the outstanding tax of which income tax is Shs. 4,792,065,130, VAT is Shs. 546,501,292 and WHT is Shs. 1,236,066,943 totaling to Shs. 6,574,633,360.

The respondent submitted that it advised the applicant to either apply for a refund of Shs. 1,564,345,320 as required by S. 113 (1) of the Income Tax Act or apply for utilization of the excess payment under S. 113(3) of the Act and S. 37(3) of the Tax Procedure Code Act so that it can be verified, which the applicant didn't. The applicant raised the issue of utilization at objection level and queried the respondents audit for not utilizing the excess payment. The respondent submitted that unlike in the case of *Red Chilli Hideaway Ltd v URA* Application 38 of 2018 the applicant here neither applied for a refund nor applied for utilization of the excess payments.

In respect of the opening inventory of Shs. 4,047,901,476 which was disallowed thereby increasing the chargeable income, the respondent submitted that the applicant argues that there was an error in the returns based on a draft trial balance. The respondent submitted that the applicant is a service company and therefore has no inventory. The applicant agreed that the 2014 return filed was incorrect. The respondent submitted that the assessment was based on information filed in the income tax return. It submitted further that in *M-KOPA Uganda Limited v URA* Application 23 of 2019, the tribunal relied on the *contra proferentum* rule to interpret ambiguous financial statements against the applicant who had prepared them. In the instant case, it was the applicant who filed returns based on a draft trial balance.

The respondent submitted that the applicant agreed to pay VAT and WHT on imported services. Without prejudice, the respondent submitted that it analyzed the WHT and VAT submissions and taxed the variance as underdeclared VAT on imported services. The respondent expected the VT and WHT submissions to match. The variances was caused by differences in the timing of declarations for either VAT or WHT purposes. The respondent requested a detailed reconciliation to identify WHT transactions and the VAT transactions which had been affected by the timing differences. No documentary evidence was availed hence it maintained the assessment.

The respondent submitted that in respect of the variance between the VAT returns and income tax submissions for the year 2016 of Shs. 2,296,045,414 it analyzed the applicant's submissions and noted that the latter made several adjustments to reduce the total sales declared in the VAT returns. However, these new costs/ expenses required an audit for verification. These expenses included advance billings, accrued revenue and undeclared exports. The source for all these documents was not provided and hence the assessment was maintained.

In rejoinder, the applicant submitted that it provided supporting documents in respect of VAT, income tax and WHT. The applicant submitted advance billings, contractual key performance indicators, VAT returns and other supporting documents. The applicant

further stated that the interest of Shs. 5,215,280,620.was waived by law. In respect of utilization of interest, the applicant reiterated the case of *Red Chilli* and S. 113(3) of the Income Tax Act which require the Commissioner to utilize excess taxes to settle the applicant's liability. The applicant also submitted that in respect to the correction of errors, under S. 23 (3) the time frame is twelve months, and the applicant was still within the time frame when it requested that the error be rectified. However, the right to amend was curtailed by the respondent's investigations. The applicant submitted that no additional VAT on imported services is due to the respondent. The applicant submitted that the only portion attributable to VAT on imported services is Shs. 133,213,117.

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

The applicant deals in telecommunications, installation of infrastructure and maintenance services. The respondent audited the applicant for the period 2014 to 2018 for Income Tax and Value Added Tax (VAT). The audit revealed that there were inconsistences between the income tax sales, VAT sales and withholding tax payments. It also revealed that there were inconsistences in the inventory stock reported. As a result, the respondent issued on the applicant an income tax assessment of Shs. 8,394,913,765. WHT one of Shs. 2,394,629,857 and a VAT one of Shs. 1,000,370,363, which comprised interest and penalty.

During mediation, it was agreed that interest of Shs. 5,215,280,620 was waived by S. 40C of the Tax Procedure Code Act. The Section reads that any interest and penalty outstanding as of 30th June 2020 is waivered. Therefore, the income tax outstanding is Shs. 4,792,065,130, VAT of Shs. 546,501,292 and WHT of Shs. 1,236,066,943 totaling to Shs. 6,574,633,360.

The first aspect of the dispute is in respect of the respondent refusing the applicant to use excess payment of Shs. 1, 564,345,320 made in the fiscal year 2013 to offset the income tax liability of the fiscal year 2014. The respondent advised the applicant to either apply

for a refund under S. 113(1) of the Income Tax Act or apply for utilization of the excess payment under S. 113(3) of the said Act or S. 37(3) of the Tax Procedure Code Act.

S. 113 of the Income Tax Act deals with refunds. S. 113(1) of the Act reads that:

> "A taxpayer may apply to the Commissioner for a refund, in respect of any year of income, of any tax paid by withholding, installments, or otherwise in excess of the tax liability assessed to or due by the taxpayer for that year."

S. 113(3) of the Income Tax Act provides:

> "Where the Commissioner is satisfied that tax has been over paid, the Commissioner shall
> (a) apply the excess in reduction of any other tax due from the taxpayer.
> (b) apply the balance of the excess, if any, in reduction of any outstanding liability of the taxpayer to pay other taxes not in dispute or to make provisional tax payments during the year of income in which the refund is to be made; and
> (c) refund the remainder, if any, to the taxpayer."

The applicant did not apply for a refund as it was not interested in it. It wants the respondent to utilize the excess payment of tax in the fiscal year 2013 to offset the tax liability of the fiscal year 2014. Since S. 113 of the Income Tax Act addresses a situation where a taxpayer is interested in a refund it is inadequate to address where a taxpayer wishes to utilize the excess payment.

S. 37(3) of the Tax Procedure Code Act provides that:

> "(3) Where the Commissioner is satisfied that tax has been over paid, the Commissioner shall -
> (a) apply the excess in reduction of any other tax due from the taxpayer.
> (b) apply the balance of the excess, if any, in reduction of any outstanding liability of the taxpayer to pay other taxes not in dispute or to make provisional tax payments during the year of income in which the refund is to be made; and
> (c) refund the remainder, if any, to the taxpayer."

Unlike S.113 of the Income Tax Act, S. 37(3) of the Tax Procedure Code Act allows the Commissioner to apply the excess of any tax in reduction of any other tax due from the taxpayer without the need of applying for a refund. S. 37 provides for the priority of WHT and VAT.

In *Red Chilli Hideaway Limited v Uganda Revenue Authority* TAT Application No. 38 of 2018 the Tribunal stated that:

> "Once a taxpayer has overpaid, the Commissioner does not need a taxpayer to ask for a refund before it can offset any tax liabilities arising. If we are to say so, it would be reading into the Statute what is not there. It would be an attempt to whittle down the powers granted to the Commissioner under S. 113(3) of the Income Tax Act."

Under S. 29 of the Tax Procedure Code Act, a tax payable under a tax law is a debt due to the Government of Uganda and is payable to the Commissioner in the manner and at the place determined by the Commissioner. If a tax due is a debt due to the Government, why should the Commissioner wait for taxpayer to apply to use the excess payment of tax to offset any outstanding tax liability? What if, the taxpayer never applies for a refund or for the use of the excess? This would mean the Government would be denied its entitlement to tax because a taxpayer has not applied for a refund or the utilization of the excess. The Commissioner should use his discretion and exercise the powers under S. 29 of the Tax Procedure Code Act to offset excess payments to meet any taxes due. Therefore, the Commissioner can utilize the excess payment Shs. 1, 564,345,320 by the applicant for the fiscal year 2013 to offset the tax liability for the fiscal year 2014 without the need for any application. If we are to apply the excess payment of Shs. 1, 564,345,320 to reduce the contested tax liability, it leaves an outstanding tax liability of Shs. 5,010,288,040.

The second aspect of the dispute is in respect of an inventory of Shs. 4,047,901,476 in the income tax return which the applicant claims was made in error but the respondent refused to disallow it resulting in an increase in its chargeable income. The respondent contended that the applicant deals in services and not goods therefore it cannot have an inventory. The respondent also contended that the applicant is bound by its financial statement audited financial statement. The audited financial statements how that the closing stock for the fiscal year 2013 was Shs. 5,812,000. For the fiscal year 2014 it showed that there were no finished goods as opening inventories. If statement showed that the applicant had goods of Shs. 5,812,000 as closing inventory for the fiscal year

2013, which the applicant does not deny, this implies that the applicant at one time dealt in goods hence contradicting the claim that it dealt only with services.

Financial statements are signed by directors after audit. To show that it was an error it would require the person who made it to testify how the error arose. In this case the auditor nor any directors who signed the audited statements testified. There is also need to file a fresh amended audited financial statement for the affected years as the income liability is affected.

If the inventory of Shs. 4,047,901,476 in its financial statement is deemed an error the applicant was at liberty to amend the statement and the self-assessed return. Prior to 1st July 2021, S. 23(3) of the Tax Procedure Code Act provided that:

> "Subject to subsection (1) a taxpayer who has furnished a self-assessment return, *other than a taxpayer whose return is being investigated*, may upon discovering an error within twelve months after the date of furnishing the return, apply to the commissioner for leave to make an additional assessment."

In 2021, the period to amend was enlarged from twelve months to three years. The applicant did not make an additional assessment amending the self-assessment. It ought to have filed one within twelve months after making the first one. The applicant contends that it could not make an additional assessment because it was being investigated by the respondent. A close reading of Section, emphasis put on the underlined words shows that a taxpayer who is being investigated cannot apply to the commissioner to make an additional assessment. Even if the Tribunal was wrong, the investigation into the affairs of the applicant commenced in March 2018 as per the affidavit of Maurice Ngunjiri. That is over three years after when the self-assessment was made. Therefore, the applicant is outside the prescribed time for it to take benefit of S. 23 of the Tax Procedure Code Act and rectify any error it made by amending the assessment.

The third aspect, which is respect of income tax dealt with recognition of income. The applicant submitted that the variances taxed by the respondent are attributable to timing differences in the VAT accounting under S. 14 of the VAT Act and the prescribed revenue

recognition criteria under generally accepted accounting principles. The applicant cited S. 40(1) of the Income Tax Act which states that a taxpayer's method of accounting shall conform to generally accepted accounting principles. The applicant also cited International Accounting Standard (IAS) 18 which provides for guidance for recognizing revenue from rendering services. These include where the amount of revenue can be measured with reliability, probable economic benefit, or costs incurred. The applicant argued that the standards conflicted with 14(1)(c) of the VAT Act which states that VAT should be accounted at the earliest of the date on which the performance of the service is completed, payment for the service is made or tax invoice is issued. The applicant attached a breakdown of the schedule of advance billing for 2016 of Shs. 4,585,466,699 which was not in the audited financial statement for that year.

Timing differences in payment of taxes arising from the different recognition of income methods may shift the tax liability from one fiscal year to another but do not extinguish tax liability. Whereas, the Tribunal may agree with the applicant that at times a sale under the VAT Act may not amount to income under the Income Tax Act for a specified fiscal year, it is important for the applicant to show that where the respondent considered a sale under the VAT Act as income under the Income Tax Act, that the applicant recognized it as income under the Income Tax Act but did not pay taxes for it in the specified fiscal year required by the respondent but it paid taxes for the said income in other fiscal years. If there was a variance in 2016 resulting from a mismatch between the audited financial statement and VAT declarations, the applicant needs to adduce evidence to show where it paid the taxes on the variances so as to avoid double taxation. The applicant has to show in which the years the taxes on the variances were paid. This was not done. The tax period in issue was from 2014 to 2018. So if the applicant did not pay the variances in fiscal year 2016, then which period were they paid? If the applicant was using the same recognition of income method through the period 2014 to 2018 it is not clear why only the fiscal year 2016 was affected or it had variances. It is difficult for the Tribunal to state that the applicant ever paid the taxes resulting from the variances. The effect of any delays in payment of income tax, is that they attracts interest and penalties. The Tribunal notes that the parties agreed that interest and penalty was waived by S. 40C of the Tax Procedure

Code Act. Therefore, for the Tribunal to address whether interest and penalty was due on late payment of income tax would be moot. All what was required was to show that tax was paid on the variances.

For income tax, the applicant was assessed a principal tax of Shs. 4,792,065,130. The applicant has adduced evidence to show that it is entitled to an offset of Shs. 1,564,345,320 leaving a balance of Shs. 3,227,719,810. The applicant has not discharged the burden place on it under S. 18 of the Tax Appeals Tribunal Act that the assessment of Shs. 3,227,719,81o was excessive or ought not to have been made.

The fourth aspect of the dispute was in respect of a VAT assessment of Shs. 1,000,370,363 issued as a result of the variance between the declaration between the audited financial statements and VAT declarations for the fiscal year 2016. The principal tax was Shs. 546,501,292, interest was Shs. 453,869,071. We already stated that interest was waivered. The applicant claimed that the variance was a result of advance billings made to Afrimax Uganda Limited, revenue accruals and undeclared exports in the VAT returns. The applicant contended that exported services are zero rated and the respondent was wrong to charge VAT. The respondent contended that the applicant made several adjustments in its VAT returns so as to reduce the total sales. The respondent contended that applicant did not provide the source documents but only partial contracts for a few clients.

The audited financial statements show the revenue for the fiscal year 2016 was Shs. 28,606,027,000. The total revenue for VAT was Shs. 26,309,981,586. The variance of Shs. 2,296,045,414 was brought as tax omitted for VAT purposes, which the applicant does not seem to dispute. If the variance was Shs. 2,296,045,414 then the VAT component is Shs. 413,288,174. S. 14(1)(c) of the VAT Act states the time of supply is made at the earliest date on which goods are delivered or made available; or payment of goods or services is made; or a tax invoice is issued. Where a party makes advance billing or where there is revenue accrual, and an invoice has been issued then a taxable supply has been made and VAT is due. The VAT returns for 2016 show that there was

an export of services in June 2016 of Shs. 177,569,966, July 2016 of Shs. 51,624,700.62, August of Shs. 58,211,867, September 2016 of Shs. 57,319,441, October 2016 of Shs, 50,716,035, November 2016 of Shs. 55,011,826, and December 2016 of Shs.400,748,663.95. The total value for the zero-rated sales was Shs. 851,202,500 Though the applicant attached a breakdown of the exported services and invoices to the affidavit of Grace Mwangi, no receipts or acknowledgement of payment was adduced in evidence to confirm the export of the services. There is need to show that someone outside the country paid for the services. The applicant has not provided satisfactory documentation during the hearing on the undeclared exports in the VAT returns. Therefore, the VAT liability in respect of the aforementioned variance for 2016 is Shs. 413,288,174.

The fifth aspect of the dispute was in relation to VAT on imported services. This arose from the reconciliation between VAT submissions and payments to suppliers in the WHT returns. The VAT on imported service which the applicant does not deny is Shs. 113,213,117. The applicant' witness stated that the applicant is willing to pay VAT on the imported services. If this is added to VAT liability above, the applicant's total VAT liability is Shs. 546,501,292.

The last aspect of the dispute was in respect of withholding tax of Shs. 1,236,066,943 on imported tax. The assessment arose from variances between the timing of VAT declarations and those of WHT. The WHT transactions were declared on payment dates whereas those of VAT were on the earliest of the three, payment date, invoice date or performance date. In its submissions, the applicant submitted that:

> "While the applicant does not dispute the principle withholding tax assessment of Ushs 1,236,066,943 the interest amounting to Ushs. 1,158,562,914 is not due as it was waived by Section 40(c) of the Tax Procedure Code Act..."

Since the applicant does not deny the WHT liability of Shs. 1,236,066,943, the Tribunal will order that it pays the same.

In conclusion the Tribunal makes the following orders.

i) The applicant is ordered to pay income tax of Shs. 3,227,719,810.

ii) The applicant is ordered to pay Valued Added Tax (VAT) of Shs. 546,501,292

iii) The applicant is ordered to pay Withholding Tax (WHT) of Shs. 1,236,066,943

iv) The applicant is ordered to pay half the costs of the application.

We so order

Dated at Kampala this 24th day of May 2022

DR. ASA MUGENYI
CHAIRMAN

MR. GEORGE MUGERWA
MEMBER

MS. CHRISTINE KATWE
MEMBER