



REPUBLIC OF KENYA



**Commissioner of Domestic Taxes v Tribus TSG Security Limited (Income Tax Appeal E135 of 2021) [2023] KEHC 19911 (KLR) (Commercial and Tax) (30 June 2023) (Judgment)**

Neutral citation: [2023] KEHC 19911 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
INCOME TAX APPEAL E135 OF 2021**

**JWW MONG'ARE, J**

**JUNE 30, 2023**

**BETWEEN**

**COMMISSIONER OF DOMESTIC TAXES ..... APPELLANT**

**AND**

**TRIBUS TSG SECURITY LIMITED ..... RESPONDENT**

**JUDGMENT**

1. By a Memorandum of Appeal dated 19/7/2023 the Appellant, being dissatisfied with the decision of the Tax Appeals Tribunal in TAT Appeal No 581 of 2020 has filed this appeal challenging the same on the following grounds;
  - i. The Tribunal erred in law and fact by misapprehending and misapplying the provisions of Section 17(3) of the VAT Act leading to the erroneous conclusion that input VAT was correctly claimed.
2. The appeal is opposed and the Respondent filed its statement of facts dated 24/8/2021. From the Record of Appeal filed in this matter, the dispute subject matter of the appeal arose pursuant to the Appellants assessment of the Respondents VAT for the months of January to April 2018 at Kshs 3,233,244/- raised on November 15, 2019. On 3/2/2020 the Respondent raised an objection to the said assessment and upon assessment the Appellant issued an objection decision reducing the same to Kshs 999,000/-.
3. Being dissatisfied with the same, the Respondent lodged an appeal at the Tax Appeal Tribunal being case No 58 of 2020 and the tribunal allowed the appeal and set aside the Appellant's objection decision of Kshs 999,000/-. It is from this decision that the present appeal emanates.



4. The Appellant's position is that the issue before the court relates to interpretation of the tax laws. The Appellant argues that the Tribunal wrongly interpreted Section 17 of the VAT Act in setting aside its objection decision. The Appellant further argues that Section 17 has set out the documents required to sustain a claim for input VAT. The Appellant contends that in a VAT supply chain, a VAT registered business which buys and sells goods charges VAT to customers called output VAT, and that the said business is charged VAT by its suppliers which is referred to as input VAT. The business then as it remits the output VAT is allowed to withhold its output VAT.
5. The Appellant further contends that Section 62 of the VAT Act, 2013 places the burden of proving the same on the Tax Payer and the same is claimable within a period of 6 months and can only be allowed upon production of documentation to the satisfaction of the Appellant.
6. In the case before this court, the Appellant avers that the claim for input VAT by the Respondent was initially disallowed for failure by the Respondent to provide an invoice from one of its suppliers. The Appellant argues that the invoice so availed must be a tax invoice and not any other. This must be done within 6 months from when the input VAT was incurred. The Appellant further argues that the onus to provide the correct invoice was placed by the law solely on the taxpayer, the Respondent in this case. Secondly and most importantly, the claim for input VAT can only be made within 6 months for the period the same is incurred. This allows the Appellant an opportunity confirm if the same was also accounted for by the taxpayer's supplier as output VAT during the claim period.
7. On its part, the Respondent contends that the tribunal was right in setting aside the Objection decision in its ruling in that according to it, it had provided the requisite documentation required by law to sustain a claim for input VAT. The Respondent faulted the decision of the Appellant in disallowing its claim for input VAT of Kshs 999,000/-. The Respondent argued that the finding by the tribunal was based on the correct interpretation of the VAT Act and urged this court to dismiss the appeal herein.

#### **Analysis and Determination:**

8. I have considered the Memorandum of Appeal and the Record of Appeal filed by the Appellant and the Statement of Fact filed by the Respondents. I have also considered the submissions made by the parties in support of their respective positions and I find that the only issue for determination is: "Whether the Tribunal erred in law and fact in setting aside the objection decision by the Appellant". In doing so, I have looked at the provisions of Section 17 of the VAT Act on the criteria for allowing or disallowing a claim for input VAT by a Taxpayer. Alongside the said provisions of the law, I have also considered that the burden to provide documentations for sustaining the said claim is solely placed on the taxpayer by Section 62 of the VAT Act.
9. Section 17 of the VAT Act provides as follows;
  - "(1) Subject to the provisions of this section and the regulations, input tax on a taxable supply to, or importation made by, a registered person may, at the end of the tax period in which the supply or importation occurred, be deducted by the registered person, subject to the exceptions provided under this section, from the tax payable by the person on supplies by him in that tax period, but only to the extent that the supply or importation was acquired to make taxable supplies.
  - (2) If, at the time when a deduction for input tax would otherwise be allowable under subsection (1), the person does not hold the documentation referred to in subsection (3), the deduction for input tax shall not be allowed until the first



tax period in which the person holds such documentation. Provided that the input tax shall be allowable for a deduction within six months after the end of the tax period in which the supply or importation occurred.

- (3) The documentation for the purposes of subsection (2) shall be—
- (a) a) an original tax invoice issued for the supply or a certified copy;
  - (b) a customs entry duly certified by the proper officer and a receipt for the payment of tax;
  - (c) a customs receipt and a certificate signed by the proper officer stating the amount of tax paid, in the case of goods purchased from a customs auction; [Rev 2018] Value Added Tax No 35 of 2013 17
  - (d) a credit note in the case of input tax deducted under Section 16(2); or
  - (e) a debit note in the case of input tax deducted under Section 16(5).”

10. Further, Section 62 of the [VAT Act, 2013](#), states;

“The burden of proving that any tax has been paid or that any goods or services are exempt from payment of tax shall lie on the person liable to pay the tax or claiming that the tax has been paid or that the goods or services are exempt from payment of tax.”

11. I note that the Appellant argues that in one of the claim by the Respondent for input tax by its supplier, Securex, the claim was made before an invoice was issued and that in an attempt to regularize the same, the Respondent did so by availing a bank statement instead. The Appellant argues that a bank statement was not a document envisioned as a supporting document for a claim of input VAT. The argument advanced by the Appellant was that a claim for input VAT could only be allowed where it was established an actual purchase of goods took place and this should be evidenced by a production of tax invoice freedom the supplier. To prove payment for the said goods then, the taxpayer must produce, alongside the Tax Invoice, a receipt as confirmation of the payment for the said goods. The Appellant alleges in this case, this was not produced.
12. On the second case that the Appellant had rejected for the Respondent’s supplier known as Extranet, the Appellant alleged that the said supporting document did not meet the criteria of the documents envisioned under Regulation 9 of the [VAT Regulations](#). The argument by the Appellant was that in the copy of the Tax Invoice availed had glaring irregularities in that it failed to capture the KRA PIN of the supplier as required by the said regulation and as such, the failure to capture the PIN rendered it inadmissible as a document to support a claim for Input VAT.
13. The counterargument by the Respondent is that it exercised its unequivocal right to deduct the Input VAT as per by law allowed and met the conditions set by law. It was a registered taxpayer, had made purchases which was considered a taxable supply and the input VAT did not relate to excluded goods under Section 17(4) of the [VAT Act](#). The Respondent further argued that it provided adequate proof of purchase by availing its bank statements in the first claim for “Securex” and hence met the threshold set by the law. The Respondent further argues that there was no loss of revenue to the government as a result. In the second claim for input VAT which had been disallowed under the Objection decision, the



Respondents argues that the invoice met all the other requirements in that it bore a name, an address and a PIN number and hence it was a correct invoice in the circumstances.

14. Having read the findings and the reasoning by the Tax Appeals Tribunal in its decision herein, and upon consideration of the arguments put forward by both parties, I am satisfied that the tribunal correctly interpreted the provisions of the VAT Act and arrived at a proper finding that indeed the Tax Payer had discharged its obligations in providing adequate documents to support its claim for VAT as by the law required. I therefore find no reason to interfere with the said decision.
15. Subsequently, I find that the Appeal as filed has no merits and I shall dismiss the same with costs to the Respondent. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 30<sup>TH</sup> DAY OF JUNE 2023.**

.....  
**J. W. W. MONG'ARE**  
**JUDGE**

**In the Presence of: -**

- 1. Mr. Juma holding for Ms. Sega for the Appellant.**
- 2. No appearance for the Respondent.**
- 3. Sylvia- Court Assistant**

