



Commissioner of Domestic Taxes v Ramco Printing Works Limited (Income Tax Appeal E108 of 2020) [2022] KEHC 16062 (KLR) (Commercial and Tax) (24 November 2022) (Judgment)

Neutral citation: [2022] KEHC 16062 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
INCOME TAX APPEAL E108 OF 2020
WA OKWANY, J
NOVEMBER 24, 2022**

BETWEEN

COMMISSIONER OF DOMESTIC TAXES APPELLANT

AND

RAMCO PRINTING WORKS LIMITED RESPONDENT

JUDGMENT

1. Through a letter dated April 16, 2018, the Appellant herein, the Commissioner of Domestic Taxes, issued the Respondent with a tax demand for an alleged underpaid tax of Kshs 59,115,673.00 on the basis that no deliveries were made to the Respondent so as to entitle it to claim any input VAT. In effect, the Appellant accused the Respondent of dealing and benefitting from suspect invoices referred to as 'Missing Traders' where the Suppliers only manufactured invoices without actual delivery of goods and sold the said invoices to the Respondent for a commission. The appellant therefore demanded taxes from the Respondent with respect to wrongly claimed input VAT and underpaid Corporation Tax.
2. Through a letter dated May 30, 2018, the Respondent objected to the Appellant's tax demand while stating that it had supporting documents to show that deliveries were made for the taxable supplies which were also properly billed.
3. Upon sharing the supporting documents, to wit, tax invoices and delivery notes showing the delivery of supplies, the Appellant vacated part of the demand for input VAT it had claimed from the Respondent. The Appellant however declined to vacate the sum of Kshs 18,913,478.00 being the alleged wrongly claimed input VAT in respect of a company known Zulma Trading. This is to say that the sum of Kshs 18,913,478.00 (the Confirmed Assessment Amount) became the outstanding tax demand allegedly due to the Appellant by the Respondent.



4. Aggrieved by the said Assessment, the Respondent appealed to the Tax Appeals Tribunal. Through a decision rendered on August 21, 2020, the Tribunal allowed the Appeal and set aside the Assessment dated July 25, 2015 thus precipitating the filing of the instant appeal wherein the appellant listed the following grounds: -
- i) The Tribunal erred in law and in fact in holding that the Respondent was within its right to claim for the input VAT.
 - ii) The Tribunal erred in law and in fact in failing to consider that it is not enough to have the documentation listed under Section 17 of the *Value Added Tax Act*, 2013.
 - iii) The Tribunal erred in law and in fact in failing to consider section 30 of the *Tax Appeals Tribunal Act*.
 - iv) The Tribunal erred in law and in fact in failing to consider that the Respondent failed to provide other key documents.
 - v) The Tribunal erred in law and in fact in failing to consider the Appellant's Authorities
 - vi) The Tribunal erred in law and in fact in holding that the Respondent was within its right to claim for the input VAT.
 - vii) The Tribunal erred in law and in fact in failing to consider that it is not enough to have the documentation listed under Section 17 of the *Value Added Tax Act*, 2013.
5. Parties canvassed the appeal by way of written submissions which I have considered. The main issue for determination is whether the TAT was right in setting set aside the Assessment dated July 25, 2015.
6. The Appellant's case was that the Respondent did not demonstrate that it had purchased or received goods from legitimate suppliers so as to entitle it to claim input VAT. It argued that there were key documents that the Respondent did not provide including stock control records, sales invoices of the respective purchased goods and bank statements of the respective payment cheques, General Ledgers and Petty cash vouchers.
7. The Appellant argued that in order for the Respondent to claim input VAT, it needed to show that there was actual purchase of a taxable supply. It was submitted that it was not enough to present the documentation listed in Section 17 of the VAT Act as such documents must be supported by an underlying transaction. The Appellant contended that it requested the Respondent to provide documents, to wit, general ledgers, bank statements, petty cash vouchers supporting the payments to the supplier which the Respondent failed to provide
8. The Appellant further argued that the TAT erred in law and in fact in failing to consider the provisions of Section 30 of the *Tax Appeals Tribunal Act* which places the burden of proof on the Respondent to submit all the necessary documentation to support its case. For this argument, the Appellant relied on the decision in *Nicholson vs Morris (HM Inspector of Taxes) (1) (1973-1978) 51TC95* where it was held that:-

' Even supposing that I were myself to think that the amounts were wrong — and, as I have freely conceded, and as [Counsel for the Revenue] has freely conceded, they probably are wrong — what on earth could I or anybody else at this stage, in the total absence of evidence,



substitute for them? The answer is that it is a complete and utter impossibility; and that is why, of course, the Taxes Management Act throws upon the taxpayer the onus of showing that the assessments are wrong. It is the taxpayer who knows and the taxpayer who is in a position (or, if not in a position, who certainly should be in a position) to provide the right answer, and chapter and verse for the right answer, and it is idle for any taxpayer to say to the Revenue, 'Hidden somewhere in your vaults are the right answers: go thou and dig them out of the vaults.' That is not a duty on the Revenue. If it were, it would be a very onerous, very costly and very expensive operation, the costs of which would of course fall entirely on the taxpayers as a body. It is the duty of every individual taxpayer to make his own return and, if challenged, to support the return he has made, or, if that return cannot be supported, to come completely clean, and if he gives no evidence whatsoever he cannot be surprised if he is finally lumbered with more than he has in fact received. It is his own fault that he is so lumbered.'

9. Reference was also made to the decision in *Metcash Trading Limited vs Commissioner for the South African Revenue Service and Another Case CCT 3/2000*, where it was held that:-

' But the burden of proving the Commissioner wrong then rests on the vendor under Section 37. Because VAT is inherently a system of self-assessment based on a vendor's own records, it is obvious that the incidence of this onus can have a decisive effect on the outcome of an objection or appeal. Unlike income tax, where assessments can elicit genuine differences of opinion about accounting practice, legal interpretations or the like, in the case of a VAT assessment there must invariably have been an adverse credibility finding by the Commissioner; and by like token such a finding would usually have entailed a rejection of the truth of the vendor's records, returns and averments relating thereto. Consequently, the discharge of the onus is a most formidable hurdle facing a VAT vendor who is aggrieved by an assessment: unless the Commissioner's precipitating credibility finding can be shown to be wrong, the consequential assessment must stand. '

10. In a rejoinder, the Respondent submitted that it demonstrated to the TAT that it purchased goods from legitimate suppliers and that it also actually received the supplies through the tax invoices and delivery notes that it submitted to the Appellant. The Respondent argued that the said documentation was the basis for the Appellant's decision to vacate its tax demand totaling Kshs. 40,202,195.00 that it had wrongly claimed on account of input VAT and alleged underpaid Corporation Tax.
11. The Respondent further submitted that the Appellant's allegations on the issue of documentation is not founded in law as Section 17 (3) of the VAT Act is clear on the documentation to be provided. It highlighted the requisite documents to be an original tax invoice issued for the supply or a certified copy; a customs entry duly certified by the proper officer and a receipt for the payment of tax; 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; a credit note; or a debit note.
12. According to the Respondent, the VAT Act does not make any reference to some of the documents that the Appellant referred to such as Stock control records, sales invoices of the respective purchased goods and bank statements for the respective payment cheques, General Ledgers and Petty Cash Vouchers. The Respondent argued that it provided the said documents as well as the ones referred to in the VAT Act.
13. Section 2 of the *Value Added Tax Act* defines 'input tax' as follows: -



- (a) Tax paid or payable on the supply to a registered person of any goods or services to be used by him for the purpose of his business; and
- (b) Tax paid by a registered person on the importation of goods or services to be used by him for the purposes of his business;

The said section also states that 'tax' means the value added tax chargeable under the Act;

14. The above definition implies that for a trader to claim input VAT, there has to be supply to a person registered to pay VAT of any goods or services to be used by him for the purpose of his business. The right to claim input VAT is founded on the assumption that the taxpayer paid VAT when purchasing his supplies.
15. Section 17 (1) of the VAT Act stipulates that: -

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.
16. A simple reading of Section 17(1) of the VAT Act reveals that input tax is deductible where it is incurred when of taxable goods/services is made. This is to say that in order to deduct input tax, a trader must have made actual purchase of taxable supplies. For this reason, a tax payer is required to furnish proof of actual purchase.
17. In the instant case, the Respondent was required to prove, through the requisite documentation, that it purchased taxable goods that it eventually used for the purposes of its business and that VAT on the same paid to the suppliers. Indeed, Section 107 of the *Evidence Act* stipulates that: -

Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.
18. The question which this court has to grapple with is whether the Respondent discharged its burden of proof before the TAT.
19. A perusal of the Record of Appeal shows that the Respondent, in its Statement of Facts, availed the Commercial Invoices and Delivery Notes that the Appellant relied on to vacate the sum of Kshs 35,462,772.00 being the alleged underpaid corporation tax.
20. According to the Respondent, it was unconscionable for the Appellant to decline to also vacate the Input VAT wrongly claimed and to later use the same as the basis for the Confirmed Assessment Amount on the pretext that the Respondent ought to avail more documents.
21. I further note that the Respondent furnished additional documents before the TAT through the supplementary documents filed on February 10, 2020, to wit, Schedule of Invoices, Bank Statements and RTGS Remittance advices.
22. In its impugned judgment, the TAT noted that the Respondent duly provided the requisite documents and held that the Respondent had established that it conducted business with one Zulma Trading and was therefore within its right = to claim the input VAT in respect of Zulma Trading on account of the documentation provided.



23. My finding is that the TAT made the correct finding that the Respondent was entitled to claim input VAT upon satisfying itself that the Respondent had established its case to the required standards.
24. For the above reasons, I am not persuaded that the instant appeal is merited and I therefore dismiss it with no orders as to costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 24TH DAY OF NOVEMBER 2022.

W. A. OKWANY

JUDGE

In the presence of: -

Ms Nyakundi for Appellant

Mr. Otieno for respondent

Court Assistant- Sylvia

