REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

COMMERCIAL AND TAX DIVISION

CORAM: D.S. MAJANJA J.

TAX APPEAL NO. E026 OF 2020

BETWEEN

HIGHLANDS MINERAL WATER LIMITED....................APPELLANT

AND

COMMISSIONER OF DOMESTIC TAXES.................RESPONDENT

(Being an appeal from the Judgment and Decree of the Tax Appeal Tribunal at Nairobi delivered on 31st March 2020 in Tax Appeal No. 30 of 2018)

JUDGMENT

Introduction and Background

1. The Appellant is challenging the decision of the Tax Appeals Tribunal ("the Tribunal") dated 31st March 2020 which dismissed the Appellant's appeal against the Respondent's ("the Commissioner") decision disallowing its objection and demanding Value Added Tax ("VAT") amounting to KES. 155,402,525.00 inclusive of penalties and interest.

2. The Appellant has filed a Memorandum of Appeal dated 14th April 2020. It has also filed written submissions. The Commissioner has opposed the appeal and relies on its Statement of Facts dated 17th August 2020 together with its written submissions. The parties' Advocates made brief oral submissions in support of their respective position.

3. The facts giving rise to this appeal are largely common ground. The Commissioner conducted a compliance check exercise on the Appellant's tax transactions. Thereafter, the Commissioner issued the Appellant with its findings of the exercise by its letter dated 16th November 2017. In essence, the Commissioner took the position that the Appellant filed its VAT returns late. Consequently, it disallowed input VAT in the late returns for the period of January 2014 to April 2017 claiming the input VAT was time barred in accordance with **section 17(2)** of the ***Value Added Tax Act, 2013*** ("the ***VAT Act***").

4. The Appellant opposed the findings and responded by its letter dated 30th November 2017. The Commissioner responded to the Appellant's letter by issuing a demand dated 29th December 2017. The Appellant formally objected to the demand by the Notice of Objection dated 17th January 2018. The Commissioner issued its Objection decision on 1st February 2018 where it disallowed the Appellant's input tax claims for the years of income 2014-2017 and proceeded to assess the Appellant's VAT liability inclusive of penalties and interest amounting to KES. 155,402,525.00.

5. Aggrieved by the Commissioner's decision, the Appellant lodged an appeal at the Tribunal which at the conclusion of the hearing dismissed the Appellant's appeal and confirmed the Commissioner's assessment and demand.

6. At the heart of the dispute is the interpretation and application of **section 17(1)** and **(2)** of the ***VAT Act*** which states as follows:

17. Credit for input tax against output tax

> *(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.* [Emphasis mine]

7. In its decision, the Tribunal considered whether the Commissioner was justified in disallowing input tax claimed by the Appellant due to late filing of its VAT returns and or whether payment for late submission penalty for the VAT return by the Appellant allowed it to deduct input tax beyond the prescribed time. The Tribunal held that the wording of **section 17(2)** of the ***VAT Act*** is clear and ambiguous and that where a tax payer filed its VAT return late, then the input VAT should only be allowed for deductibility to the extent that it is within 6 months at the time of filing the return. The Tribunal referred to **section 44** of the ***VAT Act*** which required the Tax payer to have filed its VAT Return not later than the twentieth day after the end of that period unless the tax payer has sought and obtained an approval from the Commissioner for an extension of time to submit the return late. The Tribunal therefore concluded that the 6-month limit would only cease to apply where the tax payer has sought and obtained the Commissioner's approval to submit a late return. The Tribunal also took the position that the payment of a penalty for late filing of a VAT return does not give a taxpayer the right to claim input tax outside the 6-month period unless the Commissioner has approved the late filing.

8. The Appellant, being dissatisfied with this decision, has now lodged this appeal.

The Appellant's Submissions

9. The thrust of the Appellant case is that the Tribunal misinterpreted **section 17(2)** of the ***VAT Act*** by holding that when a taxpayer files a VAT return late then input VAT should only be allowed for deductibility to the extent it is within 6 months at the time of filing the return. It submits that the 6-month limit under **section 17 (2)** relates to *"the tax period in which the supply or importation occurred"* which under **section 2** is, *"tax period" means one calendar month or such other period as may be prescribed in the regulations."*

10. The Appellant submits the meaning of the words of the ***VAT Act*** are clear and in interpreting them, the court must not read in or imply anything not clearly stated as was stated in ***Cape Brandy Syndicate v Inland Revenue Commissioners*** **[1921] 1 KB 64**. The Appellant therefore submits that it claimed the input VAT in the correct tax period, that is to say, in a return which was within 6 months, but the return was submitted late after the due date. By way of example, the Appellant explains that if the Input VAT in an invoice dated January 2014 was claimed in the return for January 2014, but the return was submitted in August 2014, the Input VAT was claimed in the correct tax period as prescribed by the law, notwithstanding that the return was submitted late. It contends that since there is a penalty imposed by the law for the late filing of the return, which is the only sanction imposed by law, the penalty effectively sanctified the late return.

11. The Appellant argues that the Tribunal's interpretation of **section 17(2)** of the ***VAT Act*** is to illegally impose the filing of a VAT return as a condition for deduction of input VAT which is not provided in law and is inconsistent with the language of the provision. It adds that the only conditions provided in law for a Tax payer to qualify for allowability of input VAT, which the Appellant complied with, under **section 17** of the ***VAT Act*** are threefold; First, that the input tax was incurred on a taxable supply made to or on importation made by a taxpayer at the end of the tax period. Second, that the input tax is deducted by a registered person on taxable supplies made by him and last, that the input tax is to be allowable for deduction within 6 months after the end of the tax period in which the supply or importation occurred.

12. In support of its position, the Appellant relies on ***Rabai Operation & Maintenance Limited vs Commissioner of Domestic Taxes*** **ML TA No. 7 of 2017 [2019] eKLR** where the court held that the requirement for filing VAT return was not a condition for deduction of input VAT under **section 11** of the ***VAT Act [Repealed]*** that was similar to **section 17(2)** of the ***VAT Act***. It also cites the Tribunal's own decision in ***Skyline Tower Investment v Commissioner of Domestic Taxes TAT No. 256 of 2018 (UR)*** where on similar facts, the Tribunal held that the requirement for filing VAT monthly returns was not a condition for deduction of input tax and that in the absence of clear, certain and unambiguous legal provisions requiring the Appellant to file a VAT3 return in order to claim an input tax deduction the Appellant was entitled to deduct input tax for the period under review. The Tribunal held that if the intention of the legislature required the filing of a VAT3 return before an input claim is allowed, the VAT legislation would have expressly provided so hence the Commissioner's decision to disallow deduction of input VAT amounted to an imposition of a constructive penalty not provided by law. In this respect, the Appellant submits that the Tribunal's interpretation of **section 17(2)** of the ***VAT Act*** is a strained, tortured and laboured construction contrary to established principles of interpretation of tax statutes elucidated in ***Keroche Industries Limited v Kenya Revenue Authority & 5 others*** **NRB HC Misc. Civil Appl. No. 743 of 2006 [2007] eKLR.**

13. The Appellant submits that the right of deduction of input tax is an integral part of the VAT scheme as a taxable person who makes transaction in respect of which VAT is deductible may deduct the VAT in respect of goods and services acquired by him provided that such goods and services have a direct and immediate link with the output transaction in respect of which VAT is deductible. Thus, it argues, the Tribunal's decision to disallow recovery of input VAT incurred by the Appellant implies that there were no purchases made by the Appellant in furtherance of its taxable business for the period January 2014 to April 2017 and denies it the right to deduct input VAT.

14. The Appellant further submits that the Tribunal's interpretation of **section 17(2)** of the ***VAT Act*** implies that when a taxpayer files its VAT return late; the return should not reflect the taxpayer's actual VAT transactions that would have been reflected if the VAT return had been submitted on time. That the late return will not give a true reflection of the Appellant's position and its VAT position which would be akin to disallowing a taxpayer's income tax expenses for the purpose of corporation tax for the mere reason that an income tax return is filed late. The Appellant urges that if the Tribunal's position is allowed, it would imply that input tax claimable in a return should be based not on

the tax period that the return relates to but on the date the return is submitted, leading to an absurdity.

15. The Appellant further submits that the Tribunal erred in holding that the 6-month limit for claiming input VAT under **section 17(2)** of the ***VAT Act*** would cease to apply if the taxpayer had sought and obtained the Commissioner's approval to submit a late return under **section 44(2)** of the ***VAT Act***. **Sections 44(2), (3), (4)** and **(5)** were subsequently deleted by the ***Finance Act, 2018 (Act No. 10 of 2018)***. At the time material to this case, **section 44** of the ***VAT Act*** provided as follows:

> *44.(1) Every registered person shall submit a return, in the prescribed form and manner, in respect of each tax period not later than the twentieth day after the end of that period.*
>
> *(2) A registered person may, in writing, apply to the Commissioner for an extension of time to submit a return.*
>
> *(3) An application under subsection (2) shall be made before the due date for submission of the return.*
>
> *(4) The Commissioner may, upon satisfaction that there is reasonable cause, grant an application under subsection (2) and shall serve notice of the decision on the applicant.*
>
> *(5) A person who fails to submit a return as required under this section shall be liable to a penalty of ten thousand shillings or five percent of the amount of tax payable under the return, whichever is higher.*

16. The Appellant contends that a strict reading of **sections 17** and **44** of the ***VAT Act*** does not empower the Commissioner to grant a taxpayer an extension of time to claim input tax out of the 6-month limit provided under **section 17(2)** on application for an extension of time to submit a return late under **section 44(2)** of the ***VAT Act***. It submits that the extension of time provided under **section 44(2)** absolves a taxpayer from the late payment penalty but not the right to claim the input tax as there is no nexus or relation between **section 17** and **44(2)** of the ***VAT Act***.

17. The Appellant submits that the Tribunal erred in law in finding that the payment of a penalty for late filing of a VAT return does not give a taxpayer the right to claim input tax outside the 6-month period except if the Commissioner unconditionally approves the same. It submits that **section 83(1)(c)** of the ***Tax Procedures Act, 2015*** ("the ***TPA***") which provides for a penalty for late filing of VAT returns as follows:

> *83.(1) A person who submits a tax return after the due date shall be liable to a penalty*
>
> *(c) five per cent of the amount of tax payable under the return or ten thousand shillings, whichever is the higher, if it is in relation to value added tax or excise duty.*

18. In light of the aforesaid, the Appellant argues that by allowing the Commissioner to disallow input VAT in a VAT return filed late by referring to a 6-month limit from the date of the return as opposed to the tax period of the supply, the Tribunal imposed an additional punishment for late filing of a VAT Return which is not provided for by the law.

19. On the whole therefore, the Appellant maintains that a strict reading of **section 83(1)** of the ***TPA*** and **sections 17(2)** and **44** of the ***VAT Act*** do not provide any nexus between payment of a late penalty and disallowing of input tax and does not give the Commissioner any power to approve input tax in the case of late filing. Further that, the law does not provide that when a taxpayer files a return late, the taxpayer loses the right to deduct input VAT.

The Commissioner's Response

20. The Commissioner supports the conclusion reached by the Tribunal that **section 17(2)** of the ***VAT Act*** prohibits input tax that is more than 6 months from being claimed. Its case is that the Appellant having failed to file the returns on time and its claims for deduction of Input VAT having been made beyond 6 months after the end of the tax period which supplies were made cannot be allowed.

21. The Commissioner submits that **sections 44(2)** and **(3)** of the ***VAT Act*** require every registered person to submit a return, in the prescribed form and manner, in respect of each tax period not later than the twentieth day after the end of that period. That input VAT is deductible from output VAT in accordance with provisions of **section 17 (2)** which is couched in mandatory terms and sets the criteria to be followed by a taxpayer in seeking a refund of input VAT. First, that the taxpayer must hold the documentation referred to in **section 17 (3)** and second, that input VAT *shall* be allowable for deduction *within six months after the end of the tax period* in which the supply or importation occurred or was made. The Commissioner refers to **section 2(1)** of the ***VAT Act*** which defines the tax period as, *'One calendar month or such other period as may be prescribed in the regulations.'*

22. The Commissioner contends that the upshot of the aforesaid provisions is that a claim for input tax refund can only be sustained if it is made within 6 months after the date on which the return was filed. It urges that the law strictly allows a person a duration of 6 months after a tax period in order to make an input tax refund claim and that in this case, the Appellant did not file their input tax returns within the stipulated period hence the Commissioner was entitled to disallow its deduction of Input VAT for the period 2014 – 2017. The Commissioner submits that this approach is consistent with the strict reading of the statute and consistent with the principle enunciated in ***Cape Brandy Syndicate v Inland Revenue Commissioner*** **(Supra).**

23. The Commissioner also submits that **sections 44(2) and (3)** of the ***VAT Act*** require that every registered person shall apply to the Commissioner in writing for an extension of time to submit a return which Application shall be made before the due date for submission of the return. In the Commissioner's view, it is not in contention that a taxpayer can claim input tax through filing of returns but whether the input tax was claimed in the correct tax period. The Commissioner contends that the Appellant in claiming this input tax, filed its returns

after the 6-month statutory limit. Further, it failed to seek an extension of time for filing from the Commissioner. The Commissioner therefore submits that since the Appellant filed the VAT input returns late and in an unlawful manner, it was justified in disallowing their objection and upholding the compliance check demand.

24. According to the Commissioner, the provisions of **sections 17(1)** and **(2)** of the ***VAT Act*** are express that no tax may be deducted more than six months after that the input tax becomes due and payable. Thus, **section 17(2)** expressly prohibits input tax that is more than six months and the six months starts running from the date the supply and importation occurred. The Commissioner contends that if at the date of filing the return, the period of 6 months has lapsed from the date of supply then any input tax claimed in that return is out of time and cannot be allowed and that the only way a tax payer can claim deduction of input VAT is by filing a VAT return as stipulated under **section 44(1)** of the ***VAT Act***.

25. The Commissioner maintains that the gravamen of this dispute is not whether the Appellant incurred any taxes but whether the Appellant qualifies for input VAT despite claiming for the same after 6 months contrary to the law. It affirms that the Appellant did not claim for input tax within the stipulated 6-month period from the date of supply. It invites the Court to consider whether the Appellant qualifies for input VAT and if indeed it claimed for the same within the statutory time and in this respect it urges the court to answer the issue is the negative.

26. The Commissioner submits that procedure is the handmaid of justice and the Appellant bypassed specific provisions of the ***VAT Act*** that provide for extension of time for filing late returns by the Commissioner hence such returns ought to be disallowed in their entirety. Counsel for the Commissioner cited ***Shashikant C. Patel v Oriental Commercial Bank*** **MSA HCCC No. 264 of 2005 [2005] eKLR and *Inland Beach Enterprises Ltd v Sammy Chege & 15 Others*** **MSA HCCC No. 171 of 2008 [2012] eKLR** which emphasized the importance of rules in achieving justice. It therefore states that the Appellant ought to have followed the rules of procedure by seeking an extension of time to apply for VAT Input tax refunds. In its view, the late returns being filed pertain to a certain tax period and hence deductibility of input tax is allowable where it was incurred six months prior to that tax period, regardless of when the return is filed.

27. The Commissioner submits that the decision in ***Skyline Towers Investment v Commissioner of Domestic Taxes*** **(Supra)** is different from this case in several aspects. It points out that, for instance, the appellant had not filed its returns while in the present case the Appellant filed the returns but failed to claim the input on time. Further, there is a correlation regarding the inputs claimed beyond six months in that the tax demanded relating to the inputs beyond six months was upheld and only the penalties were adjusted. As regards the input tax, Commissioner submits that in ***Skyline Towers***, the Appellant was in a credit position hence technically there was no tax due to the Commissioner, while in this case the taxpayer owed taxes.

28. The Commissioner concludes that the Appellant bears the burden of proving that it claimed for Input tax within the stipulated time lines other than through VAT3 returns. It submits that during the proceedings before the Tribunal, the Appellant did not demonstrate to the Tribunal how it claimed input tax other than filing returns and the same has not been demonstrated by the Appellant in this Court hence it failed to discharge this issue at the Tribunal and before this Court.

Analysis and Determination

29. It is clear from the parties' submissions, the main issue for determination turns on the interpretation and effect of **section 17(2)** of the ***VAT Act*** as the key finding by the Commissioner set out in its demand dated 29th December 2017 as follows:

> *You are correct in stating that input tax is allowable for deduction within 6 months after the end of the tax period in which the supply or importation occurred. A claim for input tax is contained in a return filed with the commissioner and the period of 6 months starts running from the date of supply or importation. It at the date of filing the return (claiming the input tax) the period of 6 months has lapsed from the date of supply then any input tax claimed in the return is out of time and cannot be allowed.*

30. Likewise, in the Objection Decision dated 1st February 2018 the Commissioner reiterated its position that:

> *It is in this regard that we reiterate our earlier position that if at the date of filing the return, (claiming the input tax) the period of 6 months has lapsed from the date of supply then any input tax claimed in that return is out of time and cannot be allowed…*

31. In dealing with this issue, the parties agree that court should adopt the principle that tax statutes must be interpreted strictly, leaving no room for intendment or implication. This view was summarised by Nyamu JA., in ***Stanbic Bank Kenya Limited v Kenya Revenue Authority*** **CA Civil Appeal No. 77 of 2008 [2009] eKLR** as follows:

> *In my interpretation of the law, it is quite evident that I have not sought any assistance from outside a dictionary in ordinary use. Moreover, I have not strained the meaning of the words in order to achieve any particular result. I have simply adopted the ordinary meaning of the words used in the relevant tax statute. This is because as regards tax law the issue of intention or intendment does not arise. If there is any ambiguity, and I did not detect any in my analysis, the same must be construed in favour of the tax payer. In tax law, the converse is also true that if the meaning is clear, that tax is chargeable, the issue of what was intended is not the function of the court and where tax liability is expressed and located by law the courts must uphold the taxman's position.*

32. Before I deal with the matter in issue, it is important to understand the nature of the VAT system. VAT is chargeable on supply of taxable goods or services made or provided in Kenya and on importation of taxable goods or services into Kenya. It works under the input and output tax system. Output tax refers to the VAT charged on the sales of taxable goods or services, while input tax refers to VAT charged on taxable purchases of goods and services for business purposes. The tax payable is the difference between the output tax and input tax (see ***Rabai Operation and Maintenance Limited v Commissioner of Domestic Taxes*** **(Supra)**).Thus as the Appellant submits, the right of deduction of input tax is an integral part of the VAT scheme as a taxable person who makes a transaction in respect of which VAT is deductible may deduct the VAT in respect of goods and services acquired by him provided that such goods and services have a direct and immediate link with the output transaction in respect of which VAT is deductible.

33. A reading of **section 17** of the ***VAT Act***, which I have set out at para. 6, deals with, *"Credit for input tax against output tax"* and shows that the 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 occurred, be deducted by the registered person from the tax payable by the person on supplies by him in that tax period, which under **section 2** of ***VAT Act*** means one calendar month or such other period as may be prescribed in the regulations, to the extent that the taxable supply was acquired to make taxable supplies. However, under the proviso, input tax shall be allowable for a deduction within 6 months after the end of the tax period in which the supply occurred.

34. I agree with the Appellant and I hold that the plain and unambiguous language of **section 17** of the ***VAT Act*** is clear that the only conditions provided for a Taxpayer to qualify for input VAT are:

a. That the input tax was incurred on a taxable supply made to or on importation made by a taxpayer at the end of the tax period,

b. That the input tax is deducted by a registered person on taxable supplies made by him; and

c. That the input tax is to be allowable for deduction within six months after the end of the tax period in which the supply or importation occurred.

35. It is worth noting that **section 17** aforesaid does not deal with or mention the filing or otherwise of VAT Returns. Indeed, in ***Rabai Operation and Maintenance Limited v Commissioner of Domestic Taxes*** **(Supra)**, the court construed similar provisions of section 11 of the VAT Act (Repealed) and held that, *"The requirement for VAT monthly returns was not a condition for such deduction under section 11."* The straightforward interpretation of **section 17(2)** is that the 6-month period of claiming input VAT begins to run when the supply or importation occurred and not necessarily when the return is filed. Meaning, if a taxpayer files a VAT return say, 7 months after when the supply or importation occurred, then the input tax claimed on that return cannot be allowed.

36. This leaves the question of late filing of the VAT Returns which formed the basis of the Tribunal's decision and the Commissioner's case. It is true that the proper way of claiming input tax is by filing the appropriate return. **Section 44** of the ***VAT Act***, which I have set out at para. 15 above, deals with submissions of returns and the consequences thereof. It requires every registered person to submit the VAT Return in respect of each tax period not later than the twentieth day after the end of that period. Before amendment and deletion of the subsequent sections, the Commissioner was empowered to extend time for filing the return as long as the application is made prior to submission of the return. Lastly, the law imposes a penalty on a person who fails to submit a return as required.

37. In my view, **sections 17** and **44** of the ***VAT Act*** should not be conflated as they deal with different subjects. **Section 17** falls within **PART VI** of the ***Act*** dealing with deduction of input tax and provides for, *"Credit for input tax against output tax"* while **section 44** falls under **PART XI** dealing with Invoices, Records, Returns and Assessment and provides for, *"Submissions of returns"*. Both subjects are different and I hold that **section 44** deals with submissions of returns and consequences of failure to submit such return within the time prescribed. The only power donated to the Commissioner under **section 44**, as it provided at the time, was to extend time for filing the return. I cannot locate any power donated to the Commissioner, either under **sections 17(1)** and **(2)** or **section 44**, to disallow input tax based on late filing of a return. Further, the power donated to the Commissioner to condone late filing is only in relation to the penalty for late filing and not whether the Tax payer is entitled to credit for input tax against output tax.

38. The Tribunal expressed the view that accepting the Appellant's position would create a dangerous precedent where taxpayers would no longer see the need to adhere to timelines specified under the ***VAT Act*** for submitting returns since they could always pay penalties and claim back input tax after late filings and that would render meaningless **sections 17(2)** and **44(1)** of the ***VAT Act***. This argument does not find any support in the language and scheme of the ***VAT Act***. At the material time, **section 44** penalised the late filing of VAT returns by imposing a penalty. On the other hand, **section 17** does not provide a carte blanche for claiming input tax whenever the return if filed late. A tax payer can only claim input tax within specific and prescribed period after the end of the tax period in which the supply or importation occurred. Any claim outside the 6 months is time barred and cannot be allowed under the express terms of **section 17** hence the fear that a taxpayer will make a claim merely by paying the penalty is not borne out by the express statutory language.

39. I therefore find and hold that **section 17(1)** and **(2)** of the ***VAT Act***, permits the taxpayer to claim input tax at any time provided the claim falls within 6 months from period which the supply or importation occurred notwithstanding that the VAT Return is filed late. In other words, the fact of late filing does not preclude a taxpayer from claiming input VAT and that this claim ought to be allowed as long as Return is filed and claimed within six months from the date of supply or importation. Neither **section 17** nor **section 44** of the ***VAT Act*** permit the Commissioner to disallow input VAT claim on the ground that the VAT Return was filed outside the period permitted. The Commissioner's power is limited to allowing an extension of time for filing the return upon an application whose effect is to relieve the Tax payer from the penalty or accept the return and demand the appropriate penalty.

40. In conclusion, I find that the Tribunal and the Commissioner erred by holding that any input tax claimed in a return filed by the Appellant out of time is disallowed. However, I do not find any fault in the Commissioner disallowing input VAT claims relating to purchases made outside the 6-month window period from the date of supply provided in **section 17(2)** of the ***VAT Act***.

41. I would be remiss if I did not mention the decision in ***Skyline Towers Investment v Commissioner of Domestic Taxes*** **(Supra)** where the Tribunal found that the filing for VAT returns was not a condition for deduction of input tax. The facts in that case are distinguishable from the present case. In the former, the period when the input VAT was claimed was not in dispute. In any case, this court is not bound by the decision of the Tribunal which is of subordinate jurisdiction and further, the Tribunal itself is not bound by its previous decisions (see ***SGS Kenya Limited v Energy Regulatory Commission & 2 others*** **SCK Petition No. 2 of 2019 [2020] eKLR**).

Conclusion and Disposition

42. For the reasons I have set out, I allow this appeal only to the extent that I find and hold the Commissioner has no power under **section 17** of the ***VAT Act*** to disallow an input VAT claim for the reason of late filing as long as the claim is made within 6 months after the end of the

tax period within which the supply or importation is made. Consequently, it follows that any input VAT claims by the Appellant made 6 months after end of the tax period cannot stand irrespective of late filing of the VAT Returns.

43. Each party shall bear its own costs.

SIGNED AT NAIROBI

D. S. MAJANJA

JUDGE

DATED and DELIVERED at NAIROBI this 13TH day of MAY 2021.

JOHN M. MATIVO

JUDGE

Ms Olbara instructed by Mema Advocates LLP for the Appellant.

Mr R. Koima, Advocate instructed by the Commissioner of Domestic Taxes, Kenya Revenue Authority.