

IN THE TAX REVENUE APPEALS BOARD

AT DAR ES SALAAM

INCOME TAX APPEAL NO. 327 OF 2018

SUNSHINE GROUP LIMITED..... APPELLANT

VERSUS

COMMISSIONER GENERAL (TRA) RESPONDENT

ORDER

The Appellant through its learned counsel, prays the Board to grant an order of withdrawal of the Appeal but with leave to refile.

The Appellant’s prayer for withdrawal of the appeal is not contested by the Respondent through its learned counsel. What, the counsel for the Respondent contests is the prayer for leave to refile the appeal. The ground of objection of the prayer for leave to refile the appeal raised by the Respondent is that, the Board has no jurisdiction to entertain appeals against waiver decisions made by the Commissioner General. In her arguments she relies on the recent decision of the Court of Appeal in the

case of ***Pan African Energy Tanzania Limited versus Commissioner General, TRA Civil Appeal number 121/ 2018 (unreported)***.

The issue for determination of the Board, is whether we should grant to the Appellant leave to re-file the appeal, having granted the prayer to withdraw the same. However, we cannot resolve the issue without determining the issue whether the Board has jurisdiction to determine or entertain appeals against waiver decisions of the Commissioner General in terms of the recent decision of the Court of Appeal of Tanzania in ***the Pan African Energy Tanzania Limited case (supra)***. In our view and without making a detailed findings on the issue, the Board has jurisdiction to entertain appeals against decisions of the Commissioner General on waiver issued under the provisions of section 51 (6) of the Tax Administration Act, 2015 in terms of the provisions of section 7 of the Tax Revenue Appeals Act, Cap. 408 (R.E. 2010) read together and harmoniously with the provisions of section 53(1) of the Tax Administration Act, 2015.

The decision in the Pan African Energy Tanzania Limited case is distinguished and therefore does not apply for one good reason; the provisions of section 7 of the Tax Revenue Appeals Act Cap. 408 (RE. 2010) which confers jurisdiction to the Board, that is, sole jurisdiction in all proceedings of a civil nature in respect of disputes arising from revenue laws administered by the Tanzania Revenue Authority was not the subject

of interpretation of the Court of Appeal. In that case, the Court interpreted the provisions of section 53 (1) of the Tax Administration Act, 2015 and section 16 (1) of the Tax Revenue Appeals Act, Cap. 408.

Our detailed findings on why Pan African Energy Tanzania Limited case (Supra) is distinguished and the basis of holding that, the Board has jurisdiction to entertain appeals against waiver decisions of the Commissioner General are provided in the Board's decision in ***Consolidated Income Tax Appeals no. 304 and 306 of 2018 MEK ONE GENERAL TRADERS CO. LTD VERSUS COMMISSIONER GENERAL, TRA (Unreported) and AUDAX KIJANA KAMEJA VERSUS COMMISSIONER GENERAL, TRA, Income Tax Appeal number 119/2017 (unreported).***

It is for that reason we grant the Appellant's prayer to withdraw the appeal and subject to the provisions of Rule 21 (1) of the Tax Revenue Appeals Board Rules, GN. No. 217/2018 the appeal is marked withdrawn. We also grant leave to the Appellant to re-file the appeal in accordance with the law. It is so ordered accordingly, each party to bear his or her own costs.



Hon. G.J. Mhini, Vice Chairperson

Mrs. D.N. Minzi, Board Member.....

Ms. E.Z. Misso, Board Member

10/10/2019

Ruling/order is delivered this 10th day of October, 2019 in the presence of Dr. Hamza Ismail for the Appellant and Ms. Juliana Ezekiel for the Respondent.

Hon. G.J. Mhini, Vice Chairperson 
Mrs. D.N. Minzi, Board Member..... 
Ms. E.Z. Misso, Board Member 

10/10/2019

We certify that this is a true copy of the original.

Hon. G.J. Mhini, Vice Chairperson..... 
Mrs. D.N. Minzi, Board Member..... 
Ms. E.Z. Misso, Board Member 

10/10/2019