

9 September 2024



Court Pronounces Judgment on Input VAT Claim

- Entitlement to input VAT strictly interpreted
- Taxpayer's input VAT on imports denied
- Absence of business prospects & deal cancellation heavily relied upon
- Board and Tribunal's decisions upheld

Background

On 6 September 2024, the Court of Appeal of Tanzania (the Court) pronounced its judgment in Civil Appeal No. 364 of 2021. In its judgment, the Court dismissed the Appellant's appeal and upheld the decisions of the Tax Revenue Appeals Board (Board) and the Tax Revenue Appeals Tribunal (Tribunal). Specifically, the Court observed that since there was no furtherance of business or prospects of any business suggestive of creating contractual arrangements, the Appellant was not entitled to claim input VAT paid on importation of goods despite having paid VAT and not having recovered it.

In terms of the background of the matter, the Appellant filed Civil Appeal No. 364 of 2021 at the Court challenging the decision of the Tribunal regarding the interpretation of section 16 of the Value Added Tax Act, 1997.

In 2011, the Appellant negotiated a business deal with TANESCO for installation of 100MW power generators, which was executed and concluded. Subsequently, the Appellant and TANESCO engaged in unsuccessful negotiations for additional installation of 50MW emergency power generators. While the second round of negotiations was ongoing, the Appellant proceeded to import the generators and paid input VAT amounting to TZS 3.6bn.

In 2014, the Respondent (TRA) conducted a tax audit and the findings, among others, were that the Appellant had wrongly claimed input VAT, for the imported generators as they were not for business carried on or to be carried on by the Appellant. As a result, the Respondent disallowed the input VAT claimed by the Appellant. The Appellant was aggrieved by the

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Respondent's decision, hence appealed unsuccessfully to the Board and Tribunal.

In its appeal to the Court, the Appellant advanced three grounds of appeal, namely: (i) that, there is misapprehension of evidence on record by the Tribunal in holding that the generators imported by the Appellant were not for business purpose, hence do not qualify deduction as required under section 16(1)(b) of the Value Added Tax Act, 1997; (ii) that, the Tribunal erred in law in holding that the time of importation is immaterial for purposes of claiming input tax under section 16(1)(b) of the Value Added Tax Act, 1997; and (iii) that, the Tribunal erred in law in holding that the Respondent was justified to disallow input VAT claims of the Appellant.

Judgment of the Court

In its judgment, the Court strictly interpreted the provisions of section 16 of the Value Added Tax Act, 1997 and observed that since the negotiations between the Appellant and TANESCO for additional 50MW power generators did not materialize and the project was cancelled, there was no furtherance of business or prospects of any business suggestive of creating contractual arrangement between the Appellant and TANESCO regarding the importation of power generators. As such, for the Appellant to be entitled to claim input VAT paid for the importation of 50MW generators, contractual arrangements between the Appellant and TANESCO were necessary to demonstrate furtherance of business or prospects of business. Further, the Court noted that the absence of business was already in the knowledge of the Appellant, hence the input VAT paid was not for furtherance of the Appellant's business, instead it was paid as a legal obligation under the law on importation of goods. Furthermore, the Court resolved that the input VAT paid by the Appellant had no connection with the furtherance of the Appellant's business as observed by the Board and Tribunal. Finally, the Court dismissed the Appellant's appeal and confirmed the Tribunal's decision to disallow the Appellant's input VAT paid on importation of generators on the ground that the imported generators were not for furtherance of business between TANESCO and the Appellant in respect of the additional 50MW.

To read the judgment, [click here](#)

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