IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

(CORAM: WAMBALI, J.A., MASHAKA, J.A. And MASOUD, J.A.)

CIVIL APPEAL NO. 105 OF 2020

GEITA GOLD MINE LIMITED .....APPELLANT

VERSUS

COMMISSIONER GENERAL TRA .....RESPONDENT

(Appeal from the judgement and decree of the Tax Revenue Appeals Tribunal at Dar es salaam)

(Mjemmas, J (rtd) Chairman)

Dated the 6th day of December, 2019

in

Tax Appeal No. 26 of 2018

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JUDGMENT OF THE COURT

7th August 2024 & 16th April, 2025

WAMBALI, J.A.:

The appellant is aggrieved by the decision of the Tax Revenue Appeals Tribunal (TRAT) delivered on 6th September, 2019 in favour of the respondent. According to the record of appeal, the appellant, is a company registered in Tanzania engaged in mining activities under the Mineral Development Agreement (MDA). It is noted that, during the years 2009, 2010 and 2011, the appellant imported various services from foreign companies which were nevertheless inadvertently not accounted for in her VAT returns. Having discovered the omission, the appellant corrected by accounting for imported services in the month of

February, 2014 VAT return pursuant to the Value Added Tax (Correction of Errors) Regulations, 2000. The appellant then lodged a VAT refund claim, claiming input VAT for the month of February, 2014 and included therein the input tax for goods and services imported in the years 2009, 2010 and 2011 which were initially omitted. The claimed amount was TZS 10,221,980,312.00. The respondent did not grant the appellant's claim on the contention that the invoices on imported services were time barred.

The decision prompted the appellant to lodge Appeal No. 7 of 2014 at the Tax Revenue Appeals Board (TRAB) which, nonetheless, upheld the respondent's decision. Though the TRAB agreed that under the law, the appellant was entitled to correct the error relying on the provisions of section 16 (5) of the Value Added Tax Act, Cap 148 (the VAT Act), it held that her VAT refund claim was time barred at the time it was submitted to the respondent. It further held that, the corrected VAT return is irrelevant in considering the time for claiming refund for input tax. Still discontented, the appellant unsuccessfully appealed to the TRAT in Tax Appeal No. 26 of 2018, hence the instant appeal.

The appellant's memorandum of appeal comprises two grounds thus:

"1. That, the Tax Revenue Appeals Tribunal erred in law by upholding the Tax Revenue Appeals Board's interpretation of section 16 (4) and (5) of the Value Added Tax Act, 1997 in the circumstances of the appeal; and

2. That, the Tax revenue Appeals Tribunal erred in law in holding that the Tax Revenue Appeals Board was correct in its decision that the appellant VAT refund claim was time barred when it submitted to the respondent."

The appeal is contested by the respondent.

At the hearing of the appeal, Mr. Alan Nlawi Kileo and Mr. Norbert Mwaifwani, learned advocates who appeared for the appellant fully adopted the written submission lodged earlier in the Court. We note that, basically the thrust of the appellant's complaint in this appeal is that, in its decision, the TRAT failed to interpret correctly the provisions of section 16 (4) and (5) of the VAT Act, thereby causing injustice on her part and perpetuating collection of the tax which is, otherwise, not payable. In this regard, it is submitted for the appellant that, the VAT refund claim was wrongly interpreted by the TRAB and confirmed by the TRAT because, in terms of section 16 (4) and (5) of the VAT Act it was not time barred. It was contended that the time limit provided under

section 16 (5) of the VAT Act starts to run from the date of the relevant fiscal receipts or "other evidence". The appellant also contests the reasoning and conclusion of the TRAT relying on the ejusdem generis rule that the "other evidence" envisaged under section 16 (4) of the VAT Act does not include VAT return. That, the TRAT wrongly invoked the said rule to come to the conclusion that "other evidence" means evidence similar or evidence of type of tax invoice or tax receipt. The interpretation, it was submitted, ended in defeating the whole context of the VAT on imported service scheme. Relying on the decision in **Quazi v. Quazi** (1979) 3 ALL ER 897, it was argued that, the TRAT did not apply the ejusdem generis rule with caution and thereby took a narrow view in construing section 16 (4) of the VAT Act and as a result it defeated the intention of the Parliament.

On the other hand, relying on the decision of the Court in **Mbeya Cement Company Limited v. The Commissioner General – TRA**, Civil Appeal No. 19 of 2008 (unreported), the appellant emphasized that in VAT scheme on imported service, VAT return is a very fundamental document which assist the Commissioner General of TRA, (the Commissioner) to determine imported services received by a tax payer. Besides, it was submitted for the appellant, that a VAT return on

imported services received by a taxpayer is the "other evidence" envisaged in section 16 (4) of the VAT Act. In this regard, it was emphasized that, the corrected VAT return becomes important evidence in considering whether the taxpayer has VAT credits which is entitled to claim. To this end, it was argued for the appellant that the tax invoices, are irrelevant because the correction of errors is not mandatory.

In the circumstances, the appellant strongly contended that the time limit stipulated in section 16 (5) of the VAT Act must not be based on dates or period in which the services were imported. Rather, it should be from the date the "other evidence" was presented to the Commissioner as was the case for the VAT refund claim which was submitted in February, 2014.

In response to the appellant's submission, Mr. Hospis Maswanyia, learned Senior State Attorney assisted by Mr. Andrew Kombo, learned State Attorney who appeared for the respondent, duly adopted the written submission lodged earlier on and made brief oral submissions. The learned counsel for the respondent emphasized that, section 17 (2) of the VAT Act, describes how a taxable person is entitled to VAT refund claim. That, under the provisions, the respondent is required to remit to the taxable person an amount of input tax which stands in excess of

output tax in the period of six months, that the taxable person is entitled to the value added tax refund.

Commenting on the import of section 16 (4) of the VAT Act, it was contended by the respondent that, firstly, a taxable person is required to be in possession of tax invoice/ fiscal receipt or "other evidence" satisfactory to the Commissioner, relating to the goods or services in respect of which the tax is claimed and that, submission of tax invoice/fiscal receipt is mandatory. That, the tax invoice/fiscal receipt is issued under section 29 (1) of the VAT Act by a taxable person to another taxable person upon payment of value added tax (input tax). More importantly, it was submitted, to prove that a taxable person supplied services or goods and charged value added tax (output tax) to a taxable person she is required to issue a tax invoice/fiscal receipt. Besides, because a taxable person who has paid value added tax (input tax) to another taxable person is required to be in possession of tax invoice/fiscal receipt, then a taxable person who claims for refund is enjoined to submit tax invoice showing information about the goods and services supplied, the supplier (another taxable person), the recipient (the claimant for refund) and the value added tax (input tax) paid.

Therefore, it was argued that, tax invoice/fiscal receipt serves as primary evidence for payment of input tax or output tax.

Secondly, it was submitted that the words "other evidence satisfactory to the Commissioner" means other evidence similar or relating to the tax invoice. That, "other evidence" should not be considered as a substitute but an alternative to a tax invoice. Besides, it was submitted that, "other evidence" should provide or indicate some of the information prescribed under section 29 (1) of the VAT Act. The respondent argued further that, a tax return is not a proof of payment, rather, it is a form containing record of input tax and output tax and that a return or corrected return does not qualify as "other evidence" contemplated by the legislature as argued by the appellant.

The learned counsel for the respondent submitted further that, in terms of section 16 (4) of the VAT Act, for a fiscal receipt/tax invoice or "other evidence" to qualify for deduction or credit, it has to be related to goods or services from which the refund is claimed. In essence, it was argued, a person has to establish the connection between the "other evidence", input tax paid and goods and service supplied, and that there has to be a corresponding relationship between that evidence and the transaction involved. Therefore, the "other evidence" must be a primary

document or object issued as acknowledgement of receipt of consideration and value added tax in respect of the goods and service supplied. It was further contended for the respondent that, while a return or correction of error return is a document for recording input tax entries, payment of input tax, output tax is evidenced by fiscal receipt/tax invoice or other evidence proving payment of consideration and value added tax.

In this regard, the respondent strongly supported the application by the TRAT of the ejusdem generis rule to reason that, where a list of specific items is followed by general concluding clause, it is deemed to be limited to things of the same kind as those specified. Further, that, in enacting section 16 (4) of the VAT Act, the Parliament intended to refer to the evidence that is similar or evidence of the type of tax invoice or fiscal receipt and thus, VAT return or corrected return is not the same or similar to tax invoice or fiscal receipt. Therefore, it was submitted that, VAT return or corrected return is not evidence for purchase of service that indicates the consideration and relevant input tax or output tax.

Lastly, the respondent's counsel supported the TRAT's holding that, in terms of section 16 (5) of the VAT Act, the appellant's claims for input tax deduction were barred by limitation as the same was preferred

after more than four years from the date of tax invoice/fiscal receipt. Equally, the respondent contested the appellant's argument that, the limitation of time set under the respective provisions should be calculated from the date of lodging the correction of error return and not the date of invoice. Similarly, the respondent submitted that a correction of return does not qualify as "other evidence" referred to in section 16 (4) and (5) of the VAT Act as it is not a proof of payment of input tax because there is no corresponding relationship between goods or services supplied and the return or correction of error return as alluded to above.

In determining this appeal, we deem it appropriate to reproduce the provisions of section 16 (4) and (5) of the VAT Act hereunder:

> *"16 (4) Input tax shall not be deducted, credited or claimed unless the taxable person, at the time of lodging the return in which the deduction or credit is claimed, is in possession of a tax invoice, or other evidence satisfactory to the Commissioner, relating to the goods or services in respect of which the tax is claimed or, in the case of imported goods such documentary evidence of the payment of tax as the Commissioner may prescribe; and a person claiming input tax in contravention of this section*

shall, unless he satisfies the court to the contrary, be deemed to have taken steps for the fraudulent recovery of tax in contravention of section (47).

5) Input tax may not be deducted or credited after a period of one year from the date of the relevant tax invoice or other evidence referred to in subsection (4)".

We take note of the fact that, the time limit stipulated under subsection (5) of section 16 of the VAT Act, was reduced to six months vide the Finance Act No. 5 of 2011 which became effective on 1st July, 2011. In this regard, the claim of the appellant with respect to years 2009, 2010 and 2011 are within the limitation period of one year.

In the light of the provisions of section 16 (4) of the VAT Act, for successful input tax claim, a taxable person must be in possession of a tax invoice or other evidence satisfactory to the Commissioner, relating to the goods or services in respect of which the tax is claimed or, in the case of the imported goods such documentary evidence of the payment of tax as the Commissioner may prescribe. Indeed, in terms of section 16 (5) of the VAT Act, the claim must be made within the period prescribed therein.

In the appeal at hand, there is no doubt that the appellant claimed for VAT refund of TZS 10,221,980,312.00 for imported services during the years 2009, 2010 and 2011. It is on the record of appeal that the said claim was submitted in February, 2014 after correction of errors were made to redress the omission.

On the other hand, it is not disputed that by the time the claim was made, the appellant was not in possession of tax invoices, rather she had tax return. It was strongly contended by the appellant that, tax return is the fundamental document which assist the Commissioner to determine the imported service received by the taxpayer. Further that, tax return fall under the ambit of "other evidence" envisaged in the provision of section 16 (4) of the VAT Act. The respondent contested the submissions as revealed above.

Our perusal of the Oxford Dictionary shows that *"a tax return is defined to mean a form on which a taxpayer makes an annual statement of income and personal circumstances used by tax authorities to assess liability for tax."*

Indeed, according to Wikipedia *"a tax return is a form on which a person or organization present an account of income and circumstances*

used by the tax authorities to determine liability for tax." (www.wikipedia.org).

In this regard, in tax return, taxpayers calculate their tax liability, schedule tax payment, or request refund for overpayment of taxes. Tax return usually includes the components like income, taxable income, deductions, tax credits, payments and refund.

In the circumstances, a careful scrutiny of the provisions of section 16 (4) of the VAT Act, does not lead us to a finding and conclusion that tax return falls squarely within the category of "other evidence" contemplated therein. To this end, we do not find any justification to fault the TRAT's holding confirming the decision of the TRAB with regard to the interpretation of section 16 (4) of the VAT Act. We also find that the ejusdem generis rule was properly applied in interpreting the respective provisions to the effects that "other evidence" implies evidence of the same kind like invoice and fiscal receipt.

With regard to the second ground of appeal, having carefully considered the parties' oral and written arguments, we have no hesitation to find that the appellant's claim for refund was submitted after the lapse of the period of limitation prescribed under section 16 (5) of the VAT Act, that is, one year for the purpose of the case at hand. We

do not, with respect therefore agree with the appellant's contention that the law allows calculation of time from the date the other evidence was presented to the Commissioner. Since the appellant submitted the corrected VAT return for the years 2009, 2010 and 2011 in February, 2014, the TRAT correctly confirmed the decision of the TRAB that the claim was time barred. In the event, we dismiss the first and second grounds of appeal.

In the end, we find the appeal to have no merit, and accordingly dismiss it with costs.

DATED at **DODOMA** this 12th day of April, 2025.

F. L. K. WAMBALI
JUSTICE OF APPEAL

L. L. MASHAKA
JUSTICE OF APPEAL

B. S. MASOUD
JUSTICE OF APPEAL

The Judgment delivered this 16th day of April, 2025, in the presence of Mr. Noel Adam Mosha, learned counsel for the Appellants and Mr. Yohana Ndira, learned State Attorney, for the respondent, via Video conference from Dar es Salaam, is hereby certified as a true copy of the original.

D. P. KINYWAFU
DEPUTY REGISTRAR
COURT OF APPEAL