IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM

(CORAM: SEHEL, J.A., RUMANYIKA, J.A. And ISMAIL, J.A.)

CIVIL APPEAL NO. 75 OF 2024

GEITA GOLD MINING LIMITED..... APPELLANT

VERSUS

COMMISSIONER GENERAL,
TANZANIA REVENUE AUTHORITY (TRA)..... RESPONDENT

(Appeal from the Judgment and Decree of the Tax Revenue Appeals Tribunal at Dar-es-salaam)

(Ngimilanga, Vice Chairperson)

dated the 30th June, 2023
in

Tax Appeal No. 87 of 2021

.....

JUDGMENT OF THE COURT

6th & 14th November, 2025

SEHEL, J.A

This appeal is against the decision of the Tax Revenue Appeals Tribunal at Dar es Salaam (the Tribunal) in Tax Appeal No. 87 of 2021 which upheld the decision of the Tax Revenue Appeals Board at Dar es Salaam (the Board) in Appeal No. 92 of 2020. Before the Board, Geita Gold Mining Limited, the appellant, appealed against the output tax for the period of 2012-2013 amounting to TZS. 4,218,010,000.00.

Briefly, the facts relevant to the present appeal are such that; the appellant is a company registered in Tanzania dealing with exploration, prospecting and mining of gold in Geita region and a holder of a Mining Development Agreement (MDA). It is on record that, for the years 2012-2013, the appellant imported various services from non-resident companies but not included in the Value Added Tax (VAT) returns. Out of this omission, the respondent, the Commissioner General of the Tanzania Revenue Authority (the TRA) who has a mandate, among others, to administer tax laws and enforce revenue collection, issued an additional assessment for the VAT demanding payment of output tax amounting TZS. 4,218,010,000.00.

The appellant objected to the assessment arguing that it was relieved from payment of VAT pursuant to section 11 read together with item 8 of the Third Schedule to VAT Act of 1997; that importation by or supply to a registered and licensed explorer or prospector of goods to be used exclusively for exploitation or prospecting activities has a special relief of 100% from paying the VAT. The respondent maintained that the VAT relief was not automatic as there were procedures to be followed before one is entitled for such relief; not all importation by or supply to a registered and licenced expiorer or prospector of goods or services was eligible for VAT relief.

Accordingly, the respondent confirmed the additional assessment of VAT on imported services for years 2012-2013. Aggrieved, the appellant appealed to the Board which ruled in favour of the respondent that VAT relief was not automatic as the recipient had to obtain approval from the respondent to enjoy it. Correspondingly, its appeal to the Tribunal was dismissed as it upheld the decision of the Board.

Undeterred, the appellant has come to this Court challenging the concurrent findings of the Board and the Tribunal on the following two grounds of appeal:

> *"1. The Tax Revenue Appeals Tribunal erred in law in failing to properly interpret the provisions of section 11 and paragraph 8 of the Third Schedule to the Value Added Tax Act, 1997 in holding that the Tax Revenue Appeals Board was correct to hold that the appellant was not entitled special Value Added Tax reliefs granted to the appellant for want of procedures by the Minister of Finance.*
>
> *2. In alternative, the Tax Revenue Appeals Tribunal erred in law in failing to properly interpret provisions of section 43 (1) of the Value Added Tax Act, 1997 in holding that the Tax Revenue Appeals Board was correct to hold that the appellant was required to*

account for Value Added Tax under section 26 of the Value Added Tax Act, 1997 failure of which attracts VAT on imported services."

On the date when the appeal was placed before us for hearing, Mr. Robert Mwaifwani, learned advocate, appeared for the appellant, whereas, Ms. Gloria Achimpota, learned Principal State Attorney, assisted by Messrs. Emmanuel Mwingwa and Samwel Kaaya, learned State Attorneys, appeared for the respondent.

Upon taking the floor, Mr. Mwaifwani adopted the written submissions filed in this Court on 8th April, 2024 and rested his case. He had nothing to amplify or add to the written submissions.

In the written submissions, concerning the first ground of appeal, the appellant faulted the Tribunal's holding that the appellant was required to apply for the special reliefs from the respondent. It was submitted that section 11 of the VAT Act, 1997 grants reliefs to persons and organizations listed in the Third Schedule to the Act within the limits and conditions prescribed in the Schedule and subject to procedures which may be prescribed by the Minister of Finance. Relying on section 53 of the Interpretation of Laws Act, the appellant contended the Minister had

discretion to prescribe procedures which would be followed by a person entitled to relief from VAT. It was further contended that such procedures, whether in place or not, did not take away a right to relief from VAT to persons or organizations listed in the Third Schedule and who have complied with the conditions and were within the limits prescribed in the Schedule. It is the law which granted the entitlements to VAT reliefs to persons listed in the Third Schedule to the Act and not the Minister. To fortify its submission, the appellant gave an example that throughout the period from 1984 to 1995, the fundamental rights were enshrined in the Constitution of the United Republic of Tanzania (the Constitution) and were enforced despite the absence of procedural guidelines which came later through enactment of the Basic Rights and Duties Enforcement Act in 1995.

With the above submissions, the appellant urged the Court to depart from its previous decision in the case of **Etablissments Maurel & Prom v. Commissioner General, Tanzania Revenue Authority** [2021] TZCA 629, that the relief provided under section 11 of the VAT Act, 1997 was not automatic but subject to procedure to be prescribed by the Minister which were not in place.

In the end, the appellant's learned counsel stressed that, by virtue of being a licenced prospector and a holder of an MDA, the appellant qualified for the reliefs under section 11 read together with item 8 of the Third Schedule to the VAT Act, 1997. Accordingly, Mr. Mwaifwani urged the Court to allow the appeal with costs.

In her reply submission, Ms. Achimpota adopted the respondent's written submissions filed to this Court on 8th May, 2024 to form part and parcel of her oral submissions and highlighted that the prayer for Court's departure from its previous decisions was made in contravention of rule 4A of the Rules which mandates the Chief Justice to compose a full bench comprised of five or more Justices of Appeal to deal with the departure. That, the Court sitting on appeal comprised of three Justices of Appeal has no jurisdiction to depart from its previous decision. She added that there was no basis for this Court to depart from its previous decision.

Responding to the first ground of appeal that section 11 read together with item 8 of the Third Schedule to the VAT Act, 1997 granted relief to the appellant, Ms. Achimpota acknowledged that the cited provisions allowed special relief on importation or supply by a registered and licensed explorer or prospector of goods and services but was quick to add that such relief was

pegged to exclusive use of goods and services in exploration or prospecting activities. Elaborating, she argued that not all importation by or supply to a registered and licensed explorer or prospector of goods or services were eligible for VAT relief; only goods and services imported or supplied for exclusive use in exploration or prospecting activities were eligible. Therefore, before granting VAT relief, the respondent ought to verify the importation or supply in order to be satisfied of its use. Accordingly, Ms. Achimpota beseeched us to dismiss the appeal with costs.

Mr. Mwaifwani rejoined that the appellant complied with rule 106 (4) of the Rules which required it to draw to the attention of the Court and state the reasons for departure in the submissions; it was upon the Chief Justice to compose a full bench comprised with five Justices of Appeal to deal with the appellant's request for departure of its previous decision.

We have carefully considered the rival arguments by the parties in this ground of appeal, the impugned decision of the Tribunal and the entire record of appeal. It is on the record of appeal and not disputed by the parties that the appellant was a registered explorer and a licensed holder of the MDA. The issue which stands for our determination is whether, by virtue of being registered and licensed holder of the MDA, the appellant was entitled

to automatic VAT relief on the importation of services made during the period of 2012-2013 under section 11 (1) read together with item 8 of the Third Schedule to the VAT Act, 1997. In order to adequately respond to this issue, we had to revisit section 11 (1) of the VAT Act, 1997 which provides that:

> *"The persons and organizations listed in the Third Schedule to this Act shall be entitled to relief from VAT* ***within the limits and conditions prescribed in that Schedule subject to procedures which may be prescribed by the Minister.***" [Emphasis added]

Our close reading of the above provision of the law was that, persons and organizations listed in the Third Schedule were entitled to tax credit within the limits and conditions prescribed in the Third Schedule and subject to procedures to be set out by the Minister of Finance.

Yet again, item 8 of the Third Schedule to the VAT Act, 1997 which was relevant to the case of the appellant provides that:

> *"The importation by or supply to a registered and licensed explorer or prospector of goods or services to be used exclusively for exploration or prospecting activities."*

It follows that the relief granted was contingent to three cumulative limitations and conditions, namely; i) the persons and organizations must be registered and licensed as explorer or prospector ii) there must be importation by or supply to, and iii) such importation or supply must be for exclusive use in the exploration or prospecting activities. It should be noted that such a relief does not apply to supply by registered and licensed explorers or prospectors – see the case of **Geita Gold Mining Limited v. Commissioner General, Tanzania Revenue Authority** [2021] TZCA 626. Similarly, the relief does not apply to importation to the registered and licensed explorer or prospector because the words used in the law were "*importation by*" and "*supply to.*" Meaning that, not all importation or supply of goods or services to a registered and licensed explorer or prospector were entitled to VAT relief as correctly held by the Board and the Tribunal.

Having found that the relief was subject to limitations and conditions, the ensuing question is who had an obligation to establish the importation by or supply to a registered and licensed explorer or prospector was for exclusive use in the exploration or prospecting activities. The law envisaged that the Minister of Finance would have put in place the administrative procedures. However, at the time the appellant imported the services, the

procedures applicable were not yet put in place. The counsel for the appellant argued that the relief was automatic even though there was no procedure in place and gave an example of the basic rights enshrined in the Constitution.

Fortunately, this is not a virgin territory. We were faced with a similar issue in the case of **Etablissments Maurel & Prom v. Commissioner General, Tanzania Revenue Authority** (supra). In that, it was argued that since the appellant was listed in item 9 of the Third Schedule to the VAT Act, 1997, in terms of section 11 of the VAT Act, it was automatically entitled to be relieved from paying any tax unless the same was limited by specific conditions issued by the Minister of Finance. That, in the absence of such conditions, the appellant was entitled by law to enjoy the special relief. Rejecting the appellant's argument, the Court held that:

> *"The issue is straightforward and should not detain us, as pursuant to section 11 of the Act, the relief provided to the appellant was not automatic but subject to the procedures to be prescribed by the Minister of Finance which were yet in place. In the circumstances, and in the absence of those procedures or conditions for enjoying special VAT relief, the Tribunal correctly upheld the finding of the Board that the respondent is justified to issue the*

additional assessment as ***the appellant was still required to comply with the conditions for special relief attached to the taxable person under the Act.*** "[Emphasis added].

From the above, we are of a strong view that the absence of the administrative procedures did not invalidate the law which limited some importation by and supply to goods and services for exclusive use in exploration or prospecting activities. The respondent who had the mandate to administer tax law, had an obligation to enforce the provisions of the VAT Act, 1997, in the same manner, as suggested by the counsel for the appellant, as it were for the basic rights. To imply an automatic entitlement where prerequisites were clearly stated would be to read words into the statute, negating the principles of giving full effect to the language of the law – see the case of **Pan African Energy T. Ltd v. Commissioner General, Tanzania Revenue Authority** [2020] TZCA 54. Accordingly, we find no merit to the first ground of appeal and we dismiss it.

Having dismissed the first ground of appeal, we now have to deal with the second ground of appeal which was argued in the alternative. The appellant submitted that, according to section 26 (1) of the VAT Act, 1997, "*imported services*" are not listed as items which must be included in the VAT

return. Elaborating, Mr. Mwaifwani contended that the section mentioned specifically the entries to be included in the VAT return to be 'supply of good, supply of services, importation of goods, tax deductions, tax credits and any other matter concerning his business'.

It was asserted that the use of comma marks slight break between different parts of a sentence thus the legislator purposefully put it between each phrase to show that each stood alone. It was further asserted that if the draftsman intended to include 'imported services', he would have done so. Referring to the common law principle for construing legislation that expression "*unius est exclusion alterius*" meaning "*the expression of one thing is the exclusion of the other*" and urged us to depart from our previous decisions in the case of **Etablissments Maurel & Prom v. Commissioner General, Tanzania Revenue Authority** (supra) where the Court held that the tax payer has to file returns on VAT for imported services under section 26 (1) of the VAT Act, 1997 failure of which attracts VAT on such importation. Further, relying on section 6 of the interpretation of Laws Act, the appellant stressed that a written law should be applied according to its spirit, intent and meaning.

The appellant also faulted the Tribunal's decision that the appellant violated regulations 5 and 6 (1) of the VAT (Imported Services) Regulations, 2001, for its failure to record imported services in the VAT returns. It was submitted that the appellant complied with the dictates of the law which mandatorily required a taxable person to account for VAT on imported services at the time of the supply by recording in the VAT account the tax due on imported services as output tax and then claim the accounted tax as input tax. It was asserted that 'VAT account' and 'VAT returns' were two distinct documents since VAT account helps a taxable person to prepare a VAT return at the end of the month.

In the end, the appellant concluded that section 43 and regulation 3 (1) of the VAT Act, 1997, were not applicable to the appellant whose liability for VAT transactions on imported services was nil or zero. For the reasons submitted, the appellant urged the Court to allow the alternative ground of appeal.

On its part, the respondent strongly opposed it. It was argued that VAT was chargeable on imported services by virtue of section 3 (1) of the VAT Act, 1997 and that a '*reverse charge*' which was introduced by regulation 3 (1) of the VAT (Imported Services) Regulations, 2001 only arise after a

taxable person has complied with regulations 5 and 6 of the VAT (Imported Services) Regulations, 2001. The respondent referred us to the case of **Mbeya Cement Company Limited v. Commissioner General, Tanzania Revenue Authority** (supra) in asserting that the appellant was required to record in the VAT account the output tax in order to claim the tax input.

On the argument that there was no legal requirement to record '*imported services*' in the VAT return, respondent briefly replied that, as per the wording of section 26 (1) of the VAT Act, 1997 which required a taxable person to include in the return any other matter concerning the person's business, and given that, imported services concern a person's business, the appellant was required by the law to include in the VAT return the imported services. The respondent referred us to the case of **Etablissments Maurel & Prom v. Commissioner General, Tanzania Revenue Authority** (supra) where the Court firmly held that a taxable person was required to record VAT on imported services in the VAT returns.

The respondent asserted that failure by the appellant to account for imported services justified the respondent to issue the additional VAT assessment in terms of section 43 of the VAT Act, 1997 and VAT was payable

on omission to account VAT on imported services. In the end, Ms. Achimpota urged us to dismiss the ground of appeal.

Two issues arose from this ground of appeal. **One**, whether the appellant was required to record imported services in the VAT return, and **two**, whether VAT is payable on omission of accounting for imported services.

To start with, the appellant admitted not to have included in the VAT returns the imported services in the years 2012-2013 arguing that they were not subject to VAT and that, in any event, the accounting itself does not result into tax, in other words, the VAT was nil or zero. It should be noted that the imposition and liability of VAT is provided for under Part II of the VAT Act, 1997 and the relevant provision in respect of the appeal before us is section 3 of the VAT Act, 1997 which provides:

> *"There shall be charged in accordance with the provisions of this Act, a tax known as the Value Added Tax on the supply of goods and services in Mainland Tanzania and* ***on the importation of goods or services*** *from any place outside Mainland Tanzania on and after the 1st day of July, 1998."* [Emphasis added].

Consequently, we find that VAT is chargeable on the importation of goods and services by virtue of section 3 (1) of the VAT Act, 1997.

In addition, for the respondent to be able to decide whether VAT is due to be collected or not, in terms of section 26 (1) of the VAT Act, 1997, a taxable person is mandatorily required to file tax returns to the respondent. For ease of reference, we reproduce hereunder section 26 (1) of the VAT Act, 1997 which provides:

> *"Every taxable person shall, in respect of each prescribed accounting period, lodge with the Commissioner a tax return, in a form approved by Commissioner containing any information which the form requires in relation to the supply by and to him of goods or services, the importation of goods, tax deductions or credits and any other matter concerning his business."*

We deduce from the above provision of the law three things, namely; **one**, every taxable person who is registered for tax, for each official accounting period, must submit a tax return to the Commissioner, **two**, the return must be in the format approved by the Commissioner and it must include all the information required by that form and **three** most specifically, the form should cover; goods or services the person has supplied (sold),

goods or services the person has received (purchased), goods the person has imported, any tax deductions or credits and any other relevant business matters.

In that respect, although we agree with the counsel for the appellant that imported services are not specifically mentioned to be included in the tax form, we are of the strong view that, in its legislative purpose and plain statutory reading of the first part of section 26 (1) of the VAT Act, 1997, a taxable person has an obligation to submit a tax return to the respondent. Besides, the imported services fall under category of any other business of the taxable person which means that even in the tax form the appellant was required to include imported services. Moreover, reading through section 14 of the VAT Act which directs on how a taxable value of imported services should be determined, we are increasingly of the firm view that the taxable person has obligation to declare the VAT output in the tax Form and may claim input tax credit, if any.

Admittedly, regulation 3 (1) of the VAT (Imported Services) Regulations, 2001 introduced a reverse charge on imported services in that the importer of the services is treated as the supplier of the said services and the supply as taxable supply leading to the same consequences of how a

taxable supply is treated under the Act. Nonetheless, regulations 5 and 6 of the same Regulations, require a taxable person such as the appellant to account for VAT on imported services at the time of the supply by recording in the VAT account the tax due on the imported services as output tax and then claim the accounted tax as input tax, if any.

In an akin situation, in the case of **Mbeya Cement Company Limited v. Commissioner General, Tanzania Revenue Authority** (supra), the Court observed that:

> *"...**without having duly filed the proper tax returns that were required under the law, the appellant cannot validly contend that there was no tax due and payable** by seeking shelter under regulations 5 and 6. Given that there was admittedly no recording in the VAT account of the output tax in respect of imported services and of any tax claimed as input tax, one cannot readily argue that the net effect of all that is that there is no tax due or payable."* [Emphasis added].

See also the case of **Etablissments Maurel & Prom v. Commissioner General, Tanzania Revenue Authority** (supra) where we reiterated the above position of the law.

In the similar vein, given that the appellant did not include imported services in the VAT returns, it cannot be assumed that there is no tax due or payable as claimed by the appellant. After recording in the VAT account on the imported services as required by regulations 5 and 6 of the VAT (Imported Services) Regulations, 2001, the appellant was further mandatorily required by virtue of section 26 (1) of the VAT Act, 1997 to file VAT returns for such imported services. Accordingly, we find that failure by the appellant to record the imported services in the VAT returns, there is nothing to fault the concurrent findings of the Board and the Tribunal that the appellant contravened the mandatory provisions of section 26 (1) of the VAT Act, 1997.

Next for our consideration is whether the omission to record in the VAT account entitled the respondent to invoke section 43 of the VAT Act, 1997. On this we shall be very brief because section 43 (1) is loud and clear and requires no further interpolation that:

> *"(1) Where, in the opinion of the Commissioner, taxable person has failed to pay any of the tax payable by him by reason of –*
>
> *(a) his failure to keep proper books of account, records or documents as required under this Act,*

or the incorrectness or inadequacy of the books, records or documents; or

(b) his failure to make, or delay in making, any return required under this Act or the incorrectness or indecency of any returns,

the Commissioner may assess the tax due and any interest payable on that tax both of which shall be due for payment within one month of the date of the assessment, unless a longer period is allowed by the Commissioner or elsewhere in this Act."

It follows that, the respondent was entitled to raise an assessment of the tax due as the appellant, a taxable person, had failed to pay any tax payable by it on the imported services by reason of failure to make any returns – see the case of **Mbeya Cement Company Limited v. Commissioner General, Tanzania Revenue Authority** (supra). For the reasons stated, we find that this alternative ground of appeal has no substance and proceed to dismiss it.

Lastly, we wish to address on the prayer that we should depart from our previous decisions. In view of what we have endeavoured to discuss, we do not find any basis for us to depart from our previous decision. Besides, pursuant to rule 4A of the Rules, this panel of three Justices which was duly

composed by the Chief Justice has no jurisdiction to depart from its previous decision.

For the foregoing reasons, we uphold the decision of the Tribunal and dismiss the appeal with costs.

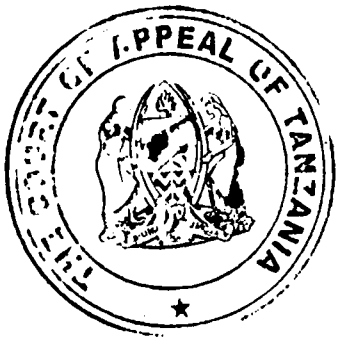
DATED at **Dar es Salaam** this 13th day of November, 2025.

B. M. A. SEHEL
JUSTICE OF APPEAL

S. M. RUMANYIKA
JUSTICE OF APPEAL

M. K. ISMAIL
JUSTICE OF APPEAL

Judgment delivered this 14th day of November, 2025 in the presence of Ms. Maria Nkuhi, learned counsel for the appellant, Mr. Samwel Kaaya, learned State Attorney for the respondent and Mr. Issa, Court Clerk; is hereby certified as a true copy of the original.



O. H. KINGWELE
DEPUTY REGISTRAR
COURT OF APPEAL