

IN THE COURT OF APPEAL OF TANZANIA

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(CORAM: GALEBA, J.A., MAIGE, J.A. And MASOUD, J.A.)

CIVIL APPEAL NO. 445 OF 2023

ILLOVO DISTILLERS (TANZANIA) LIMITED APPELLANT

VERSUS

**THE COMMISSIONER GENERAL,
TANZANIA REVENUE AUTHORITY.....RESPONDENT**

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

(Mjemmas, Chairperson)

dated the 17th day of April, 2023

in

Tax Appeal No. 160 of 2021

.....

JUDGMENT OF THE COURT

16th & 30th June, 2025

MASOUD, J.A.:

In view of the record of appeal before us, the only issue for our determination is whether the appellant's reinstatement of her input tax claim was time barred in terms of section 16 (5) of the Value Added Tax Act, 1997 as amended (the VAT Act). The issue has its genesis from the tax audit that was conducted by the respondent on the appellant covering the period from 2013 to November, 2014 and the additional VAT assessment by the respondent in which it was, among other things, alleged that the appellant had wrongly utilized input VAT as assessed in its VAT returns.

Being aggrieved by that assessment, the appellant objected it. Of relevance to the instant appeal, the respondent as per exhibit A5 confirmed the assessment in its determination of the objection. In so doing, she had it, among other things, that the input tax claim for March to August, 2013, having been withdrawn by seeking a refund, it would not legally be reinstated in the appellant's tax record of March, 2014 as the same VAT credit was time barred.

Dealing with the above issue after hearing the parties in an appeal preferred by the appellant challenging the decision by the respondent on the objection, the Tax Revenue Appeals Board (the Board) was, with particular reference to the issue at stake, of the finding that, the reinstatement by the appellant of input tax claim amounting to TZS 1,594,656,977.00 for the period of March to August, 2013 in March, 2014 VAT return as VAT credit carried forward, after withdrawing it in the first place as per exhibit A8, was time barred in terms of section 16 (5) of the VAT Act. In particular, whilst making clear reference to the rival arguments by the parties, the Board extensively reasoned and held that:

"...As per the evidence on record which is undisputed, the appellant withdrew its claim and requested the respondent to utilize it in its tax

liability in terms of section 16 of the VAT Act, 1997. According to the appellant, this amounted to reinstatement of the input VAT claim for March to August, 2013 in March, 2014 and utilized the same against future liability.

The respondent denied the appellant's input VAT claim....on ground that, reinstatement....amounts to lodging a new claim for input tax, which is beyond the limit, hence time barred.

The point of contention thusis whether reinstatement by the appellant of the balance of input VAT credit for March to August, 2013 in the March, 2014 returns amount to lodging of a new claim of input tax and whether the appellant's reinstated input VAT claim is time barred.

As it can be seen, the parties are in contention on the interpretation and applicability of the provisions of section 16 of the VAT Act on tax deductions and credits.....

In this case, the appellant claims to have timely lodged his claim of input tax for March to August, 2013. There is no dispute that, as per the appellant's evidence, the claim was withdrawn, and later he requested to utilize it in his future tax liability, which according to him, reinstated the input tax claim in March, 2014.

It is evident thus that, the appellant's reinstated input VAT claim for the period of March to August, 2013 in his March, 2014 return was contrary to the law as it was not made at the time of lodging return in which the deduction or credit is claimed.

....[Therefore], the appellant's unput tax claim for March to August, 2013, which he claims to have reinstated in the March, 2014 return falls short of invoice or evidence relating to goods or services in respect of the tax claimed. Under the circumstances, the respondent was justified to deny it and assess additional VAT against the appellant.

On the limitation for claiming input tax deduction or credit, the provisions of section 16 (5) of the VAT Act makes it clear....[that] input tax may not be deducted or credited after a period of six months from the date of the relevant tax invoice (fiscal receipt) or other evidence referred to in subsection (4).

In this case, the appellant claim input tax claim for the period of March to August, 2013 on the basis that, the input tax claim for the respective accounting period was reinstated in the March,

2014.....That being the case, the appellant's claim of input tax for the period of March to August 2013 which he adjusted (reinstated) in the March, 2014 return, goes beyond the time limit prescribed by the law, as such, it is time barred. [Emphasis added]

Dissatisfied by the Board's decision, the appellant unsuccessfully appealed to the Tax Revenue Appeals Tribunal (the tribunal). As it upheld the Board's decision, the tribunal heavily drew inspiration from the respondent's decision of the objection by the appellant which is evident in exhibit A5 at pages 270 to 273 of the record of appeal. It rejected the argument by the appellant's counsel that, what was done by the appellant was just an adjustment that reinstated the balance carried forward to the March, 2014 return and not a new claim of input tax.

Consequently, the tribunal held that, the decision of the Board was based on the correct interpretation of the law. In that regard, quoting what the respondent said in its determination of the notice of objection (exhibit A5), the tribunal approvingly stated:

"We find it relevant to refer to exhibit A5 where the respondent expressed his opinion on whether

reinstatement of balance carried forward amounts to a claim of input tax or not. He stated: 'A claim of input tax is a demand for reimbursement of tax incurred in respect of supply of goods or services by a taxable person, the same could have been achieved by processing VAT refund as in accordance with section 17 of VAT Act, 1997, or deducting the same from output tax through a VAT return. It follows then, reinstating the balance so long as [it] will have the consequence of reducing the tax payable, [it] bears the exact meaning of input claim. In line with our interpretation above, we still consider the reinstatement of the balance as lodging of a new claim of input tax which was beyond the time limit and therefore time barred.' In the upshot, we find that the trial Board looked at the relevant evidence thoroughly and correctly applied the law..."

Needless to say, exhibit A5 referred to with approval by the tribunal had it that, the options with regard to input tax available to a taxable person under section 16 (1) of the VAT Act are not automatic. As such, they are subjected to exceptions and tied up with conditions which include time limitation, a subject matter of the instant appeal.

As the appellant was still aggrieved by the decision of the tribunal, she preferred the instant appeal on a number of grounds. However, the other grounds were, with our leave, abandoned at the hearing. The exception was on the first and second grounds which were argued and which, admittedly, revolve on the issue whether the reinstatement of the input tax claim by the appellant in the VAT return of March, 2014 was, pursuant to section 16 (5) of the VAT Act, time barred as concurrently held by the Board and the tribunal.

Mr. Alan Nlawi Kileo assisted by Mr. Norbert Mwaifwani, both learned advocates appeared for the appellant at the hearing of the appeal before us. On the other hand, Ms. Grace Makoa, learned Principal State Attorney teamed up with Ms. Juliana Ezekiel, learned Principal State Attorney and Mr. John Mwacha, learned State Attorney for the respondent. Both sides had lodged their respective written submissions which they adopted to form part of their respective submissions with some oral clarifications with a bearing on the issue at stake, that is, time limitation under section 16 (5) of the VAT Act.

Thus, whereas the submission by appellant's counsel was in totality that, the reinstatement of the appellant's input tax claim following the withdrawal of her VAT refund did not constitute a new

claim and therefore not time barred under section 16 (5) of the VAT Act, the submission in reply by the respondent's counsel was to the effect that, the withdrawal of input tax refund for March to August, 2013 and seeking reinstatement of the same in March, 2014 return amounted to a new claim which was time barred. That, having withdrawn the input tax refund claim for March to August, 2013, seeking to reinstate the same in March 2014 return, the respondent's counsel argued, was beyond the time limit of six months prescribed by the law.

Mr. Kileo's submission was, in a nutshell, hinged on the arguments that, the appellant's VAT returns for the period from March to August, 2013 were filed within time and were supported with relevant evidence; and that, the holding that the reinstatement of the same in March 2014 return after her earlier claim for refund was withdrawn amounted to a new claim of input tax was unfounded. It was thus argued that, section 16 (5) of the VAT Act could not apply in the circumstances and the holding by the tribunal was a result of misinterpretation of that provision read together with section 16 (1) (b) of the same Act.

Fortifying his submission, Mr. Kileo invited us to examine the evidence on record. In so doing, we should, the learned counsel submitted, proceed to find and hold against the concurrent findings of

the two lower tribunals that the reinstatement of the input tax claim was time barred.

Firstly, he called upon us to examine exhibit A5 at page 271 of the record of appeal in order to find the basis of supporting the appellant's proposition that, the conclusion of the tribunal that reinstatement of input tax for March 2013 to August, 2013 in March, 2014 return was a new claim and therefore time barred was not supported by any evidence on record.

Secondly, while referring us to exhibits A4 and A8 at pages 262 to 263 and 220 of the same record respectively and section 16 (1) (b) and (4) of the VAT Act, Mr. Kileo wanted us to also consider the evidence that the appellant filed VAT returns for each and every month from March to August, 2013 and claimed input tax in the respective VAT returns in order to establish that the reinstatement of the input tax claim in March, 2014 return was a mere adjustment of balance carried forward with a view to utilising the same against future tax liabilities.

On her part, Ms. Makoa's submission was mainly on the following points: **One**, the reinstatement of the input VAT claim involving a sum of TZS 1,594,656,977.00 in March, 2014 VAT return amounted to a new claim; **two**, as a new claim, it was brought after six months contrary to

the above mentioned provision which requires such claim to be made within six months from the date of the relevant tax invoice, and therefore time barred; and **three**, having earlier on applied for VAT refund before the withdrawing of the same, the reinstatement of input tax claim amounted to a new claim which was as afore said time barred. Reinforcing her submission, the respondent's counsel hinged her argument on the requirements of section 16 (4) and (5) of the VAT Act which the reinstatement of the input tax claim at hand does not, in her view, conform to.

Having heard the contentious arguments from both sides, we think our determination of the issue hinges on the import of the provisions of section 16 of the VAT Act as it applies to the reinstatement of input tax claim for March – August, 2013 in March 2014. The provisions are indeed relevant to the matter before us. With regard to the provisions, the appellant's main argument, which is disputed by the respondent, is that the tribunal misinterpreted section 16 (1) (b) and (5) of the VAT Act in holding that the appellant's adjustment or reinstatement of input tax in March 2014 return was time barred. The relevant provisions read thus:

16 (1) The amount of any tax (in this Act referred to as "input tax") which is:-

(a).....N/A

(b) Paid by a taxable person on the importation, **during a prescribed accounting period**, of any goods or service used or to be used for the purposes of a business carried on or to be carried on by him, and for which the taxable person is registered; may, so far as not previously deducted and **subject to exceptions contained in or prescribed under this section**, be deducted from his tax liability or otherwise credited to him in respect of the prescribed accounting period or later accounting period.

(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 six (6) month from the date of the relevant tax invoice or other evidence referred to in subsection (4).

[Emphasis added]

From the above provisions, it is clearly discernable that they institutionalized a regime regulating input tax deductions and credits. It is beyond question that, the regime stipulated mandatory conditions that must be complied with in relation to such input tax claims. They are, in particular, as follows: **One**, the relevant taxable person must be in possession of a relevant invoice or other evidence in respect of which the tax is claimed; and **two**, the relevant input tax cannot be deducted or credited after a period of six (6) months from the date of such invoice or other evidence in respect of which the tax is claimed. Of significance also is that, the regime deems a person who does not comply with the stipulated requirements to have taken step towards fraudulently recovery of tax.

With the foregoing in mind, the argument by the appellant that the reinstatement of input tax claim for March – August 2013 in March, 2014 return was not a new claim but a mere adjustment and therefore not time barred in terms of section 16 (5) of the VAT Act above is, essentially, hinged on the undisputable evidence that the withdrawn input tax claims were originally filed within time. Yet, it was not disputed by the appellant that the evidence of tax invoices supporting the reinstatement of March – August, 2013 input tax claim in March, 2014 return is founded on the very evidence of tax invoices which was relevant to the accounting period of March – August, 2013 when the original claim was made. In our view, the reinstatement of the relevant input tax claim in March, 2014 return was truly beyond the time limit set out under section 6 (5) of the VAT Act. We say so because, having been withdrawn and reinstated in March, 2014 return, it is obvious that, it was brought back as a new claim contrary to the regime regulating input tax deductions and credits stipulated herein above.

Although the appellant argues that, what she did was a mere adjustment of her March – August, 2023 input tax claim in March, 2014 return which is, in her view, consistent with the provision of section 16 (1)(b) of the VAT Act above quoted, we do not, with respect, find any

support for such argument in the whole scheme of the provisions of section 16.

We say so because; **one**, we do not read in the provisions of section 16 of the VAT Act quoted herein above anything like or akin to authorizing adjustment or reinstatement by a taxable person of input tax claim in the manner that was done by the appellant; **two**, the provisions, in so far as they relate to a taxable person, are hinged on filing of input tax claim in the relevant accounting period that is supported by the relevant tax invoices or other evidence; **three**, the input tax claim is not automatic but subject to conditions which include time limitation which is evidently relevant to the situation we are having in the matter before us; and **four**, as pointed out herein above, given the scheme of the provisions hereinabove quoted, which envision strict compliance, we are of the view that, the manner in which the appellant dealt with her input tax for March – August, 2013 which involved "*withdrawal*" and "*reinstatement*" of the same in March 2014 return which the appellant termed us a mere "*adjustment*" is, clearly, inconsistent with what pertains in the regime at stake.

Having considered the provisions of section 16 of the VAT Act in the light of the issue at hand, we do not find any misinterpretation by

the tribunal of that provisions as alleged. We are, as a result, inclined to, as we hereby do, resolve the issue against the appellant and proceed to uphold the decision of the tribunal. In consequence thereof, the appeal is without merit and is herein dismissed with costs.

It is so ordered.

DATED at **DODOMA** this 30th day of June, 2025.

Z. N. GALEBA
JUSTICE OF APPEAL

I. J. MAIGE
JUSTICE OF APPEAL

B. S. MASOUD
JUSTICE OF APPEAL

The Judgment delivered this 1st day of July, 2025 in the presence of Ms. Caster Lufunguro learned Counsel for the appellant and John Mwacha learned State Attorney for the respondent is hereby certified as a true copy of the original.


A. S. CHUGULU
DEPUTY REGISTRAR
COURT OF APPEAL

