IN THE COURT OF APPEAL OF TANZANIA

AT DODOMA

(CORAM: WAMBALI, J.A., FIKIRINI, J.A. And MLACHA, J.A.)

CIVIL APPEAL NO. 112 OF 2022

SERENGETI BREWERIES LIMITED ..... APPELLANT

VERSUS

COMMISSIONER GENERAL,

TANZANIA REVENUE AUTHORITY ..... RESPONDENT

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

(Ngimilanga, Vice Chairperson)

dated the 20th day of August, 2021

in

Tax Appeal No. 76 of 2020

.....

JUDGMENT OF THE COURT

13th May & 8th September, 2025

FIKIRINI, J.A.:

The Appellant, Serengeti Breweries, a limited liability company, is engaged in the sale and production of alcoholic beverages, including various types of beer. The Respondent had claimed that in the years of income 2014-2015, the Appellant had underpaid the Respondent the excise duty (beer) amounting to TZS 5,364,147.25, and demanded that the Appellant pay the same. The Appellant's appeals to the Tax Revenue

Appeals Board (the TRAB) in Tax Appeal No. 76 of 2020, as well as to the Tax Revenue Appeals Tribunal (the TRAT) in Customs and Excise Appeal No. 10 of 2018, were lost. The appeals body held the Respondent liable for the non-payment of excise duty, Value Added Tax (VAT), plus interests totalling TZS 5,364,764,147.25.

The Appellant before this Court is challenging the concurrent decision of the Tax Revenue Appeals Board (the TRAB) in Tax Appeal No. 76 of 2020 and the Tax Revenue Appeals Tribunal (the TRAT) in Customs and Excise Appeal No. 10 of 2018. Another Appellant's complaint is on the refusal of the Respondent to offset the overpaid excise duty in settling the underpaid excise duty, and on the delayed determination of the refund application.

The brief background to the disputes stems from the tax audit on the payment of excise duty compliance. The audit exercise carried out by the Respondent, the Commissioner General, Tanzania Revenue Authority (the TRA), in 2016, covered the years of income 2014 and 2015. It revealed that there was unpaid excise duty in respect of both the declared and under-declared production of beer. According to the record of appeal, the Respondent computed the excise duty using a standard input/output ratio, after considering malt as the primary ingredient in the production of alcohol. The Respondent observed an

increase in beer volume during the period in question and used it in computing the underpaid excise duty.

Dismissing the findings, the Appellant maintained that their calculation was based on daily summaries and monthly breakage evaluation reports. The actual volume of beer bottled and packed for sale and liable to payment of excise duty was calculated from the reports. The Appellant thus disputed the Respondent's findings (i) on the aspect of incorrect computation of excise duty, and (ii) on the aspect of under-declaration of VAT and excise duty due to under-declared beer production.

Despite several correspondences between the parties, as featured in Exhibit A1, no settlement was reached. The Respondent proceeded to issue a demand notice as per Exhibit A8, which irked the Appellant. Consequently, the Appellant lodged an appeal to the TRAB in disfavor of the following findings of the Respondent: -

i. *That the Respondent was correct to ignore an offset overpaid excise duty by the Appellant and acknowledged overpaid excise duty.*

ii. *That the Respondent applied the correct duty rate and the correct volume of Kibo beer in its computation.*

iii. That the Respondent correctly asserted that there was an under declaration of beer production using standard input/output computation.

iv. That the imposition of interest by the Respondent was correct.

In the decision dated 4th June, 2020, the TRAB upheld the Respondent's findings and duty demand notice on the excise duty to the tune of TZS 5,364,764,147.25 and dismissed the Appellant's claim on an offset for overpaid excise duty and imposition of interest.

The Appellant unsuccessfully appealed to the TRAT on the following grounds:

(i) That, the Board erred in law and fact in holding that the Respondent was correct to ignore an offset of overpaid excise duty by the Appellant.

(ii) The Board erred in law and fact in holding that the Respondent was correct to ignore overpaid excise duty acknowledged and established by the Respondent.

(iii) The Board erred in law and fact in holding that the Respondent applied the correct duty rate and the correct volume of Kibo beer in its computation.

(iv) The Board erred in law and fact in holding that section 47(1) of the Excise (Management and Tariff) Act does not override the Appellant's ability for under declaration [sic!] of beer produced as packing/bottling and declaration are two different things.

(v) *The Board erred in law and fact in holding that the Respondent considered all factors affecting beer production in its computation and was correct in asserting that there was under declaration of beer production using standard input/output computations.*

(vi) *The Board erred in law in holding that the Respondent was correct to impose interest.*

Disappointed by the concurrent decisions of the TRAB and TRAT, the Appellant approached the Court with nine (9) grounds couched thus:-

1. *That the Tax Revenue Appeals Tribunal erred in law in failing to hold that in the spirit of section 62 of the Excise (Management and Tariff) Act Cap 147, the Respondent was wrong to ignore an offset o overpaid excise duty by the Appellant.*
2. *That the Tax Revenue Appeals Tribunal erred in law in holding that the Respondent was justified in law to ignore overpaid excise duty acknowledged and established by the Respondent.*
3. *That the Tax Revenue Appeals Tribunal erred in law in failing to re-evaluate the evidence on record regarding the Respondent's application of incorrect duty rate and incorrect volume of Kibo beer in its computation.*
4. *That the Tax Revenue Appeals Tribunal erred in law by misdirecting itself on the evidence on record and holding that the Respondent was correct in asserting that there was under declaration of beer production using input/output computation*

as per section 124 of the Excise (Management and Tariff) Act Cap 147.

5. *That the Tax Revenue Appeals Tribunal erred in iaw by invoking section 43 of the Excise (Management and Tariff) Act Cap 147 and holding that it is a charging provision which justifies the Respondent's demand for excise duty where there is no evidence on record that the alleged underdeclared beer produced was consumed or removed from the Appellant's premises.*

6. *That the Tax Revenue Appeals Tribunal erred in law by failing to hold that the Respondent's demand for excise duty contravenes section 47(1) of the Excise (Management and Tariff) Act Cap 147.*

7. *That the Tax Revenue Appeals Tribunal erred in law in reading section 124 of the Excise (Management and Tariff) Act, Cap 147 in isolation 47 (1) of the Excise (Management and Tariff) Act Cap 147.*

8. *That the Tax Revenue Appeals Tribunal erred in law in holding that the Appellant ought to have subjected to income tax and Value Added Tax Act under section 96 of the Income Tax Act, 2004 and section 41 (1) of the Value Added Tax Act, 1997 respectively as a result of under-declared income.*

9. *That the Tribunal erred in law in holding that the Respondent was correct in imposing interest in terms of section 76 (1) as read together with section 81 (1) of the Tax Administration Act, Cap 448 [R.E 2019].*

From the listed nine (9) grounds of appeal, the Appellant coined the following issues:

1. *Issues on evidence and Statutory Interpretation (which covers grounds 4, 5 and 7) on whether the Tribunal misdirected itself on the evidence regarding under declaration of beer production using input/output computation, and whether it correctly interpreted sections 43, 47 (1), and 124 of the Excise (Management and Tariff) Act, Cap. 147.*

2. *Issues on overpaid Excise Duty (which covers grounds 1, 2 and 3) on whether the Tribunal erred in failing to hold that the Respondent was wrong to ignore an offset of overpaid excise duty and in upholding the Respondent's application of incorrect duty rates and volumes for Kibo beer.*

3. *Issues on Income Tax and VAT (which covers ground 8) on whether the Tribunal erred in holding that the Appellant ought to have been subjected to Income Tax and VAT under section 96 of the Income Tax Act, 2004 and section 41 (1) of the VAT Act, 1997.*

4. *Issue on Interest (which covers ground 9) on whether the Tribunal erred in upholding the Respondent's imposition of interest under sections 76 (1) and 81(1) of the Tax Administration Act, Cap 448.*

Parties filed their submissions as required under rule 106 (1) and (7) of the Tanzania Court of Appeal Rules, 2009 (the Rules) and a list of

authorities which were adopted in support of the counsel for the parties' submissions for or against the appeal.

At the hearing present to argue the appeal were Messrs. Alan Nlawi Kileo, Wilson Mukebezi, Norbert Mwaifwani and Mahmoud Mwangia, all learned advocates appearing for the Appellant, and Mss. Consolatha Andrew, Juliana Ezekiel, both learned Principal State Attorneys, Ms. Grace Letawo, learned Senior State Attorney and Mr. Abdillahi Mdunga, learned State Attorney, appearing for the Respondent.

Alongside their filed submissions, counsel had a few amplifications to make. Starting with Mr. Mwaifwani, on behalf of the Appellant's team, addressed the Court on the third, fourth and fifth issues on underpayment of duties and under-declaration of beer produced, contended that the Tribunal misdirected itself in interpreting the provision of section 47 (1) of the Excise (Management and Tariff) Act, Cap 147 (the Excise Duty Act). The Tribunal construed that the provision dealt with the time for determining the rate of duty and payment, rather than charging duty, an observation challenged by the Appellant. The learned Counsel's submission is that the provision refers to the taxing point when it comes to beer, specifically when the beer is bottled and packed, ready for sale. Since there was no evidence of bottled and packaged beers, the application of the provision was misconceived.

Worse is that the Tribunal relied on marginal notice, which is not the law as per section 26 of the Law on Interpretation, Cap. 1. The demand of the excise duty had thus no basis.

The learned Counsel emphasized that section 47 (1) of the Excise Duty Act, defines the taxing point as when beer is bottled and packed, not when materials are used. Therefore, reliance on input/output ratios and marginal notes was misguided. Inviting the change of outlook by the Respondent and adopting a joint reading of sections 124 (1) and 47 (1) of the Excise Duty Act, to determine the meaning of the statute, which should be plain and not ambiguous. The learned Counsel cited **Commissioner General, Tanzania Revenue Authority v. Coca-Cola Kwanza Limited**, (Civil Appeal No. 189 of 2022) [2025] TZCA 103 (26 February 2025; TANZLII) (**the Coca-Cola** case) to support the position on plain interpretation of tax statutes.

Regarding the evidence, the learned counsel conceded that the Appellant submitted the recipe table used to calculate beer production to the Respondent, asserting that there was no under-declaration as alleged by the Respondent, citing other factors, such as biological losses during production. Otherwise, the Appellant consistently kept its records in order. He thus faulted the Tribunal's conclusion that there was unpaid

excise duty on declared produced beer as well as under-declared produced beer.

On the use of marginal notes, the learned Counsel contended that the Tribunal relied on marginal notes rather than the contents in the body of the provision, regarding the interpretation of section 47 (1) of the Excise Duty Act. The marginal notes of that provision were to the effect that "time of determining rate of duty and payment and not charging duty", were, in his view, erroneous, as they do not reflect the contents in the body of the provision. Concerned with the Tribunal's decision of relying on marginal notes and other factors rather than the contents of the provision regarding the determination of duty due on beer, as provided by section 47 (1) of the Excise Duty Act, he invited us to revise the decision. He urged this on the ground that if left unattended, there is a danger of permitting the Respondent to ignore the specific provision simply by relying on marginal notes.

Underlining the application of the correct provision, he urged reading of the tax provisions jointly, such as sections 43, 47 (1) and 124 (1) of the Excise Duty Act. That way, fair application of the provisions with plain meaning ascribed to the tax liability due could be reasonably and fairly applied.

Challenging the decision further as erroneous, the learned Counsel pointed out that the conclusion by the Tribunal that the Appellant's reliance on section 47 (1) of the Excise Duty Act, meant there was an under-declaration of beer was unfounded, since the Appellant had given a reasonable explanation and evidence that there was no under-declaration. Among the reasons was the biological factor.

Based on the learned Counsel's submission, the Court asked if the Appellant's invitation was for it to re-evaluate the evidence. His answer was affirmative, that since the dispute revolves around a misinterpretation of the provisions, re-evaluation in light of the evidence is inevitable. To support his assertion, he referred the Court to the case of **Atlas Copco Tanzania Limited v. Commissioner General, Tanzania Revenue Authority**, (Civil Appeal No. 167 of 2019) [2020] TZCA 317 (17 June 2020; TANZLII). In that decision, the Court discussed the evidentiary element, which involves evaluating the trial court's conclusions based on the evidence on record. On the strength of the submissions made, the learned Counsel urged the Court to allow the appeal.

Ms. Ezekiel, responded on behalf of the Respondent's team. She prefaced her submission by raising a legal point that the preferred appeal contravened the prerequisite under section 25 (2) of the Tax

Revenue Appeal's Act, Cap. 408 Revised Laws (the TRAA), that an appeal to the Court must only be on a point of law. She argued that grounds 3 and 4 violated section 25 (2) of the TRAA, as they sought re-evaluation of evidence, which is beyond the Court's jurisdiction. She referred the Court to the cases of **Singita Trading Store (EA) Limited v. Commissioner General, Tanzania Revenue Authority,** (Civil Appeal No. 57 of 2020) [2021] TZCA 179 (6 May 2020; TANZLII), **Q-Bar Limited v. Commissioner General, Tanzania Revenue Authority**, (Civil Appeal No. 163 of 2021) [2022] TZCA 381 (16 June 2022; TANZLII) and **Atlas Copco Tanzania Limited** (supra). She implored the Court to ignore those grounds, even though they were cleverly crafted, to show that they carry a point of law worth this Court's attention.

On the interpretation of section 47 (1) of the Excise Duty Act, she firmly contends that the Tribunal was accurate, as the provision sets the timing of duty liability, not a charging mechanism. While section 43 determines when duty is due, section 124 (1) of the Excise Duty Act imposes the duty, including during production, based on raw material usage. The Appellant failed to keep accurate production records, leading the Respondent to rely on material usage 132,600 kg to compute the under-declared beer and assess the duty due.

On the offset of overpaid duty, the learned Principal State Attorney stressed that the Appellant should have followed the procedure provided in section 62 (1) of the Excise Duty Act, and that offsets can not be applied directly at the assessment stage. As for the Tribunal's comment on Income tax and VAT, she understood them to be an *obiter dictum*, not a binding judgment.

Responding to the submission on the use of marginal notes, the learned Principal State Attorney dismissed the submissions by the learned Counsel for the Appellant as not correct. She argued that what was contained in the marginal notes was precisely what was included in the body of the provision; there is therefore no reason to doubt reliance on marginal notes. She equally rejects the suggestion that reading the provisions jointly would lead to proper interpretation. The learned Principal State Attorney maintained that each provision of the law serves a unique purpose and must be interpreted independently, not conjunctively. She wound up her submission, urging the Court to dismiss the appeal for lack of merit.

In his rejoinder, learned Counsel for the Appellant insisted that grounds numbers 3 and 4, though factual, involve legal interpretation. He reaffirmed that excise duty should apply only at the bottling stage as per section 47 (1) of the Excise Duty Act. He referenced **Atlas Copco**

Tanzania Limited (supra), emphasizing the Court's power to re-evaluate misapprehended evidence where a tribunal misapplied the law or made an unreasonable decision.

The learned Counsel rejected the claim on ground number 8 that the Chairperson's remark on Income tax was merely *obiter dictum,* arguing it had prejudicial implications. Pressed on how it prejudiced the Appellant, he claimed the Respondent might use the statement for future assessments. He thus invited the Court to provide clarification.

In our deliberation, we shall first address the legal objection raised by the learned Principal State Attorney, namely that the third and fourth grounds of appeal are factual in nature and therefore fall outside the jurisdiction of this Court. Section 25 (2) of the TRAA clearly stipulates that appeals to this Court must be on points of law. The provision reads:

> *"25 (2) – Appeal to the Court of Appeal shall be on matters involving questions of law only and the provisions of the Appellate Jurisdiction Act and the rules made thereunder shall apply mutatis mutandis to appeals from the decision of the Tribunal."*

From this provision, it is evident that the Court lacks jurisdiction to re-evaluate evidence already considered by the Board and Tribunal unless a legal issue is involved. In **Atlas Copco Tanzania Limited**

(supra), a case cited by both parties, the Court elaborated on what constitutes a question of law under section 25 (2), stating:

> *"Thus, for the purpose of section 25 (2) of the TRAA, we think, a question of law means any of the following:* ***firstly,*** *an issue on the interpretation of a provision of the Constitution, a statute, subsidiary legislation or any legal doctrine on tax revenue administration.* ***Secondly,*** *a question on the application by the Tribunal of a provision of the Constitution, a statute, subsidiary legislation or any legal doctrine to the evidence on record.* ***Finally,*** *a question on a conclusion arrived at by the Tribunal where there is failure to evaluate the evidence or if there is no evidence to support it or that it is so perverse or so illegal that no reasonable Tribunal would arrive at it."*

The Court further emphasized that section 25 (2) of the TRAA must be read in conjunction with Rule 93 (1) of the Rules, which requires that the memorandum of appeal specify the grounds of law upon which the decision is challenged. The grounds must identify the point of law alleged to have been erroneously decided, and such legal issues must be apparent on the face of the memorandum.

Counsel for the Appellant urges the Court to adopt a broader interpretation of legal grounds, arguing that the Tribunal's misapprehension of evidence led to a misinterpretation of the law and an unreasonable conclusion. He relies on the third limb of the **Atlas Copco Tanzania Limited** (supra), definition, which allows for legal challenge where the Tribunal's conclusion is unsupported by evidence or is so perverse that no reasonable Tribunal could have reached it.

According to the Appellant, the Tribunals erred by failing to correctly interpret section 47 (1) of the Excise Duty Act, instead relying on section 43, which governs restrictions on consumption and removal of beer, and section 124 (1) of the Excise Duty Act, which imposes excise duty at the production stage based on raw material usage. This, he argues, was a misapplication of the law.

The context of section 25 (2) of the TRAA was painstakingly discussed in **Insignia Limited v. The Commissioner General, Tanzania Revenue Authority** (Civil Appeal No. 14 of 2007) [2011] TZCA 246 (30 May 2011; TANZLII), where the Court distinguished between questions of law and fact. A question of law involves errors in the application or interpretation of legal principles. In contrast, a question of fact pertains to the evaluation or sufficiency of evidence, which is the exclusive domain of the Tribunal.

Despite the Principal State Attorney's assertion that the third and fourth grounds were intelligently crafted to suggest legal issues, we respectfully disagree. In our view, there exists a substantive legal issue regarding the interpretation and application of sections 43, 47 (1), and 124 (1) of the Excise Duty Act. The Appellant contends that these provisions should be read collectively to form a coherent legal framework. At the same time, the Respondent maintains that each provision serves a distinct legislative purpose and should be interpreted independently.

Accordingly, we shall address the third and fourth grounds, which are alleged to be non-legal, as well as the first, second, and fifth issues concerning the interpretation of sections 43, 47 (1), and 124 (1) of the Excise Duty Act, and the imposition of interest. The central issue in the first limb is whether there was an underpayment of excise duty on declared beer production, following the Appellant's offset of previously overpaid duty.

We shall also examine whether sections 43, 47 (1), and 124 (1) of the Excise Duty Act, should be read together as proposed by the Appellant, or separately as argued by the Principal State Attorney. This analysis will address findings from the tax audit, which revealed undeclared beer production on which no excise duty was paid. The

Respondent imposed duty under section 124 (1) of the Excise Duty Act, whereas duty on beer is governed by section 47 (1) of the Excise Duty Act. We shall further consider whether any underpaid excise duty attracts interest.

Under Article 138 (1) of the Constitution of the United Republic of Tanzania, 1977, it is imperative that all taxes must be imposed strictly in accordance with the law. The Article provides:

> *"138. -(1) No tax of any kind shall be imposed save in accordance with a law enacted by Parliament or pursuant to a procedure lawfully prescribed and having the force of law by virtue of a law enacted by Parliament."*

Recognizing that the burden of proof lies with the Appellant, pursuant to section 18 (2) of the TRAA, we shall examine whether there was indeed underpayment of excise duty on declared beer. While the parties do not dispute the existence of excise duty liability, the central issue is whether the Appellant was entitled to offset its liability using previously overpaid duty. The Appellant maintains that it had overpaid duty in 2013, reported the overpayment, and applied for a refund. However, by the time the Respondent conducted its audit for 2014-2015 in 2016, the refund had not been processed. As evidenced by AW3 and acknowledged by RW1, the Appellant had already offset TZS 1.2 billion

from its 2013 excise duty liability. The Tribunal found fault with this unilateral offset, citing procedural non-compliance.

The Appellant challenges the Tribunal's decision, arguing that it erred in disregarding the offset of TZS 1,026,275,625 (January–June 2013) and TZS 131,000,000 discovered during the audit. In response, the learned Principal State Attorney, relying on section 62 (1) of the Excise Duty Act, emphasized that any claim for excise duty paid must follow the prescribed procedure. She further argued that such claims should not be made at the point of duty assessment. She, likewise, dismissed the Appellant's complaint regarding delayed refund processing as irrelevant to the present appeal.

All argued, but the fact remains that delayed tax refunds carry significant implications. For businesses, such refunds often represent essential working capital. When withheld, they disrupt operations, reinvestment, and compliance. In line with principles of good governance and progressive tax administration, the Respondent must act promptly on refund claims that meet legal requirements. It is concerning that the Respondent took a long time to determine the Appellant's refund claims, TZS 1,026,275,625 (Exhibit A-5) established by the Appellant, and TZS 131,000,000 (Exhibit A-6) confirmed by the Respondent's audit, both of which are undisputed.

Section 62 (2) of the Excise Duty Act permits refunds of overpaid duty. Just as taxpayers are expected to settle liabilities promptly, the Respondent must reciprocate by processing refunds without undue delay. Failure to do so undermines the integrity of the tax system and erodes trust between taxpayers and the tax authority.

Despite these observations, we affirm that procedural compliance is paramount. The Appellant was not entitled to unilaterally offset the overpaid duty, regardless of whether the overpayment was established by itself or by the Respondent. Such conduct, if replicated broadly, would create administrative disorder. The purpose of the refund application process is to enable verification by the Respondent. Although the law does not specify a timeframe for refund determination, the Respondent's delay of four to nine years is, in our view, unreasonable.

Accordingly, we hold that taxpayers must initiate refund claims through the prescribed process and not by offsetting liabilities on their own accord. The Respondent was justified in disregarding the Appellant's offset. We therefore affirm the Tribunal's decision to uphold the Respondent's rejection of the offset of TZS 1,026,275,625 and TZS 131,000,000, as contrary to statutory procedure.

We now turn to the issue of undeclared beer production and unpaid excise duty. Section 47 (1) of the Excise Duty Act provides that excise duty becomes payable when beer is bottled or packed for sale. However, relying solely on this provision for duty assessment without considering all relevant information risks inaccuracies. This underscores the rationale for the Respondent's audit exercise, to verify the accuracy of declared production and corresponding duty.

Excise duty is levied on goods specified in the relevant schedules, including beer produced by the Appellant at its facilities in Dar es Salaam, Moshi, and Mwanza. The present dispute arose from the Respondent's audit of the 2014–2015 period, aimed at verifying proper excise duty payment. The Appellant provided beer recipes, production materials with malt as the primary ingredient, and production records, including brew sheets.

Based on this information, the Respondent's auditor, as acknowledged by AW1 Julius Steven Nyaki, applied an input/output methodology to assess the relationship between materials used and declared output. The analysis revealed discrepancies in malt usage, with unexplained losses. This prompted the Respondent to estimate the volume of beer that should have been produced, adjusting for production losses. The Respondent applied an end-to-end loss rate of

11.7%, slightly above the industry norm of 7–11%, as evidenced by AW2. The Appellant did not challenge this finding.

Using the input/output method and the adjusted loss rate, the auditor computed the excise duty payable under section 124 (1) of the Excise Duty Act. The Appellant contests this conclusion, arguing that the assessed beer was hypothetical and that duty is only payable on beer bottled or packed for sale, per section 47 (1) of the Excise Duty Act.

It is undisputed that the Respondent relied on the Appellant's data and applied the input/output method, which revealed discrepancies. Given the complexity of beer production, affected by biological processes (mashing, fermentation, filtration) and non-biological factors (cleaning, husk removal, underfill/overfill, breakage, power fluctuations), some variance is expected. Nonetheless, even after accounting for an 11.7% end-to-end loss, discrepancies remained.

The Respondent's additional request for the Appellant to provide a stock movement breakdown of input materials and beer produced went unfulfilled. As submitted by the learned Principal State Attorney, a submission we find logical, such documentation could have enabled the Respondent to verify the materials used in producing 474,423 cases of Kibo beer during the relevant tax period, of which 92,578 cases were

confirmed to have been produced from malt, as evidenced in Exhibit A6. However, in the absence of the stock movement breakdown register, this assertion could not be substantiated.

Given these circumstances, it cannot be concluded that the Respondent applied an incorrect duty rate. Simultaneously, there was no definitive information regarding the actual materials used in the production of the beer subject to duty.

Another concern raised was a power outage. This issue was never raised during proceedings and was therefore not factored into the audit findings. AW2 admitted to that fact. Although the Appellant downplayed the significance of the 11.7% end-to-end loss applied by the Respondent, it failed to provide an alternative figure or a reasonable explanation for the discrepancy. The claim that losses could reach up to 14%, particularly at the Dar es Salaam plant, was unsupported by evidence. Similarly, the Appellant's assertion that the 11.7% loss rate could not accurately reflect losses across all three plants, while sounding plausible, lacked evidentiary backing.

The Respondent, having a statutory duty to assess, collect, and account for all revenue, could not fulfil this obligation without access to reliable information. It is therefore difficult to conclude with certainty

that the figures provided by the Appellant were sufficient to determine the proper excise duty owed, or that section 47 (1) of the Excise Duty Act should have been applied to determine the duty due. In light of the audit findings revealing unexplained discrepancies, the Respondent's conclusion that there was undeclared beer production was justified. Consequently, the imposition of excise duty was imperative.

Section 43 of the Excise Duty Act stipulates that no beer may be consumed on or removed from a brewery or licensed premises unless duty has been paid. Given that excise duty had not been imposed on the undeclared beer revealed by the audit report, we are of the considered view that the Respondent was correct to impose the demanded excise duty under section 124 (1) of the Excise Duty Act.

Section 124 (1) of the Excise Duty Act, is critical in determining liability for excise duty and provides the legal basis for its assessment and collection. The provision states:

> *"124. -(1) There shall be charged, levied and collected a duty, to be known as excise duty, in respect of goods specified in the Second, Third, Fourth and Fifth columns of the Fourth Schedule to this Act the rates specified in the fourth and fifth columns of that Schedule."*

This provision creates a statutory obligation to pay excise duty on specified goods listed in the Fourth Schedule. The goods subject to excise duty are enumerated in the Second and Third Columns, while the Fourth and Fifth Columns prescribe the applicable rates based on volume and specificity.

In this appeal, the excise duty applies to beer produced by the Appellant. We agree with the Tribunal's position that section 47 (1) of the Excise Duty Act does not apply for the reasons already discussed. While it is well established that excise duty becomes payable once beer is bottled and packaged for sale, that fact alone is insufficient to determine the correct amount of duty, particularly where a tax audit report presents conflicting findings.

Ordinarily, once all statutory requirements are met, beer that is bottled and packed for sale is considered to have satisfied excise duty compliance, and section 47 (1) of the Excise Duty Act, would apply without issue. However, in the present case, the absence of reliable documentation and the presence of audit discrepancies hindered the application of that provision.

From the discussion, we are of the view that the provisions in question, that is, sections 43, 47 (1), and 124 (1) of the Excise Duty Act,

are not ambiguous, consistent with the position advanced by the learned Principal State Attorney. Reading these provisions together is not necessary, as each serves a distinct legislative purpose. Section 124 (1) of the Excise Duty Act provides the legal basis for assessment and categorization of goods subject to excise duty; section 43 governs the control and supervision of beer removal; and section 47 (1) of the Excise Duty Act sets the operative condition for the imposition of duty on beer.

On the issue of reliance on marginal notes, we find that the Tribunal's reliance on such notes in interpreting section 47 (1) of the Excise Duty Act was improper. Section 26 (2) of the Law of Interpretation Act, Cap. 1, clarifies that marginal notes are not part of the law itself. While they may assist in understanding the provision, they do not carry legal force. For ease of reference, the provision is supplied below:

> *"26.-(2) A marginal note or footnote to a written law and, notwithstanding subsection (1), a heading to a section, regulation, rule, by-law, or clause of a written law shall be taken* ***not to be part of the written law.****"*[Emphasis added]

Reading from the provision, it categorically states that marginal notes do not form part of the law. They may offer editorial convenience but hold no binding legal force. Meaning interpretation must be confined

to substantive statutory content. For instance, in the case of **Stephens v. Cuckfield Rural District Council** [(1960) 2 Q.B. 373 at 383 (C.A.)], the Court noted:-

> *"While the marginal note to a section cannot control the language used in the section, it is at least permissible to approach a consideration of its general purpose and the mischief at which it was aimed with the note in mind."*

The learned Principal State Attorney's contention that the marginal notes carried the exact meaning is unsupported. We say so because the explanation in the body is more explicit and could have been understood differently compared to that in the marginal notes. Although the Tribunal commented on the application of section 47 (1) of the Excise Duty Act based on the marginal notes, its decision was based on a different reason.

We reaffirm our earlier conclusion that the Respondent was justified in imposing excise duty under section 124 (1) of the Excise Duty Act, based on audit findings and the absence of reliable documentation. The Appellant's failure to provide a stock movement breakdown, coupled with unsupported assertions regarding production losses, undermines its challenge. The Tribunal's decision to uphold the Respondent's assessment was legally sound and procedurally correct.

In general, tax laws impose an obligation on individuals and businesses to maintain accurate records, whether physical or digital, that provide sufficient information to enable proper assessment of tax liabilities. In the present appeal, the Appellant's failure to comply with the Respondent's request for documentation, which would have assisted in verifying production volumes, has not been satisfactorily explained to dispel the resulting doubt.

Besides disputing the underpayment of duty on both declared and under-declared beer produced, the Appellant is also disputing the imposition of interest as being unlawful. This is because she considered the underlying excise duty demanded to be invalid. On the contrary, the Respondent contends that the interest was correctly imposed under sections 76 (1) and 81 (1) of the Tax Administration Act, Cap. 438 Revised Laws after it was concluded that the Appellant was liable to pay excise duty as assessed by the Respondent.

The imposition of interest occurs where and when the taxpayer is liable to pay the charged tax and fails to comply by paying the required amount in a timely manner. Section 76 (1), illustrates that:-

> *"76-(1) Where any amount of tax imposed under a tax law remains unpaid after the due date prescribed in a tax law, the interest at the*

statutory rate compounded monthly shall be payable to the Commissioner General."

The Respondent can assess the tax due, interest and penalties when needed. The governing provision is section 81 (1) of TAA, which states:

"81.-(1) The Commissioner General shall assess the interest and penalties for which a person is liable under this Part."

Since we have concluded that there was unpaid excise duty on both the declared and undeclared beer produced, it is therefore correct for the Respondent to charge interest on the unpaid excise duty due. The first, second and third

issues are concerning the first, second, third, fourth, sixth, seventh and nineth grounds are all without merit and are dismissed.

Taking up the third issue regarding the eighth ground of appeal on the remark by the Tribunal Chairperson that the Appellant should be subjected to section 96 of the Income Tax Act, Cap. Revised Laws (the ITA) and section 41 (1) of the Value Added Tax (the VAT), the learned Principal State Attorney argued that the comment had nothing to do with the final decision. The remark was simply an *obiter dictum* and not a *ratio decidendi*, upon which the Tribunal's decision was based. Distinguishing the referred case of **Registered Trustees of Arusha**

Muslim Union v. The Registered Trustees of National Muslim Council of Tanzania alias BAKWATA, (Civil Appeal No. 300 of 2017) [2019] TZCA 301 (20 August 2019; TANZLII), stating that the statement reflected in the record of appeal, was the Chairperson's opinion and not an issue raised by parties or framed as one for determination. Consequent to that, there was no order resulting from the discussion which could be said to have prejudiced the Appellant.

Admittedly, the remark did not form part of the decision, as pointed out by the learned Principal State Attorney. However, guided by the elucidation in the case of **The Registered Trustees of National Muslim Trustees of Arusha Muslim Union** (supra), we echo their holding that bodies, including tribunals, should confine themselves to issues before them for determination and not overstretch.

Since the opinion by the Tribunal in this instance did not culminate in a decision subject to the present appeal, but merely an *obiter dictum,* we do not find any merit in the eighth ground of appeal. The ground is meritless and hence dismissed.

Finally, the Appellant's attempt to shift the burden of proof to the Respondent, arguing that reliance on desk computation was flawed and that the Respondent failed to consider bottle stock data, while sounding logical, is misplaced. Excise duty under section 124 (1) of the Excise

Duty Act does not require reference to beer bottles as a basis for assessment. The Appellant, therefore, bears responsibility for failing to produce the requested documentations.

In view of the foregoing, we find that the appeal lacks merit and is accordingly dismissed with costs.

DATED at **DODOMA** this 2nd of September, 2025.

F. L. K. WAMBALI
JUSTICE OF APPEAL

P. S. FIKIRINI
JUSTICE OF APPEAL

L. M. MLACHA
JUSTICE OF APPEAL

Judgment delivered this 8th day of September, 2025 in the presence of Mr. Norbert Mwaifwani and Ms. Elizabeth Muro, learned counsels for the Appellant, Ms. Consolatha Andrew, learned Principal State Attorney for the Respondent via virtual Court and Stephen Msila, Court Clerk; is hereby certified as a true copy of the original.

R. W. CHAUNGU
DEPUTY REGISTRAR
COURT OF APPEAL