

IN THE COURT OF APPEAL OF TANZANIA

AT DODOMA

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

CIVIL APPEAL NO. 620 OF 2023

SUNSHARE INVESTMENT LIMITED APPELLANT

VERSUS

COMMISSIONER GENERAL

TANZANIA REVENUE AUTHORITY..... RESPONDENT

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

(Ngimilanga, Vice Chairperson)

dated the 30th day of June, 2023

in

Tax Appeal No. 120 of 2021

RULING OF THE COURT

1st & 4th July, 2025

MAIGE, J.A.:

As a result of the post clearance audit it conducted over the appellant's business affairs for a period between January 2012 and December, 2016, the respondent issued a demand note for payment of tax liability of TZS 1,737,624,037.55. arising from undervaluation of imported goods. Having unsuccessfully applied for review of the Customs Tax Assessment, the appellant appealed to the Tax Revenue Appeals Board (the board) faulting the respondent for:

One, failure to hold that the consignment sought to be imported from abroad and for which the appellant had paid, were, together with the relevant invoices the basis of the tax assessment, cancelled before importation and thus leaving nothing to declare. The invoices alleged to have been cancelled were: Invoice No KYHJ161002 (exhibit A4) which was replaced with Commercial Invoice Nos. **KYHJ170101C3** (exhibit A5) and **KYHJ 170101C4** (exhibit A6); Invoice Nos. KYTS2016010 (exhibit A7) which was replaced with Commercial Invoice Nos. KYHTS 20161C5 (exhibit A8), KYHJI61125C (exhibit A9), KYHJI6121C2 (exhibit A10) and KYHTS 201611C1 (exhibit A12); and Invoice No. KYHJ 160905 (exhibit A13) whose advance payment was allegedly utilized for clearance of Commercial Invoice No. KYMH 2017010C1 (exhibit A14).

Two, failure to hold that the difference between the CIF value posted in the appellant's foreign suppliers' ledger and that which was declared in the Tanzania Customs Integrated System (TANCIS) for the year 2016 was caused by wrong summation based on erroneous entry of amounts in the appellant's ledger.

Having taken into account that the cash advanced in respect of the invoices allegedly cancelled, were not reported in the appellant's balance sheet as of 31st December, 2016 as the accounting principles require,

the board concluded that the said invoices were not cancelled to the extent of not including the amount related to the relevant replaced invoices. The board further noted that the appellant's foreign suppliers' ledger indicated higher CIF values than those declared in TANCIS. It did not agree with the testimony by the appellant's witnesses that the said difference resulted from wrong posting of transactions into the said ledger account by a clerk while the said clerk was, for undisclosed reasons, not called to give evidence despite that the said witnesses had admitted lack of knowledge on recording of business transactions. It, therefore, treated the said testimony as a mere hearsay and drew an adverse inference for the appellant's failure to call the said clerk as a witness. It concluded, therefore that, the appellant had made under declaration. It, however, partly allowed the appeal to the extent of the difference of TZS 19,498,360.98 which arose from wrong summation.

The appellant further appealed to the Tax Revenue Appeals Tribunal (the tribunal) but without any success and henceforth the incident appeal where the concurrent decision of the board and tribunal is faulted on the following grounds:

- 1. The Tribunal erred in law by holding that the Appellant had a duty to call the maker of the Foreign Suppliers Ledger (Exhibit A1 and*

R1), which was pleaded and relied upon by the Respondent and admitted without objection.

- 2. The Tribunal, having erred in law as in Ground 1, further failed to re-evaluate evidence on record and arrived at a wrong and erroneous decision.*
- 3. The Tribunal, as the first appellate court, erred in law by failing to hold and re-anaiyze the documentary evidence properly before the Board, which could not be contradicted by oral testimony.*
- 4. The Tribunal erred in law by placing the burden of proof on the Appellant, who had asserted the negative regarding the importation of goods subject to cancelled invoices (Exhibit A4 and A7).*
- 5. The Tribunal erred in law by failing to determine the legality of the assessed taxes on the Appellant.*

Having been served with the record of appeal, the respondent thought that the appeal was not properly before the Court. It, therefore, filed a notice of preliminary objection to the effect that, the appeal at hand is incompetent for being premised on matters of evidence contrary to section 25(2) of the Tax Revenue Appeals Act (the TRAA) read together with section 5(1) (d) of the Appellate Jurisdiction Act.

At the hearing of the appeal, the appellant was represented by Mr. Edward Chuwa assisted by Ms. Anna Lugendo, both learned advocates. The respondent was represented by Ms. Consolatha Andrew learned

Principal State Attorney who teamed up with Mr. Mosses Kinabo, learned Principal State Attorney and Ms. Hadija Senzia, learned Senior State Attorney. As it is the procedure, we were bound to deal with the preliminary points first.

In support of the point of preliminary objection, Mr. Kinabo submitted, on behalf of the respondent that, contrary to the requirement of section 25(2) of the TRAA, the appeal at hand does not raise any question of law as to fall within the jurisdiction of the Court. He clarified that, while in view of the authority in **Atlas Copco Tanzania Ltd v. Commissioner General, Tanzania Revenue Authority** (Civil Appeal No. 167 of 2019) [2020] TZCA 317 (17 June 2020, TANZLII), a point of law would arise where there are specific assertions in the Memorandum of Appeal pinpointing either wrong application or interpretation of the law or principle of law or failure to evaluate evidence or misapprehension of evidence, none of the grounds of appeal in the current case raises such questions. He submitted therefore that, the appeal is incompetently before the Court and ought to be struck out with costs.

In his submission in reply, Mr. Chuwa partly conceded to the point of preliminary objection to the extent of the first and fifth grounds of

appeal but denied that the remaining grounds were factual. He submitted, therefore that, the second and third grounds insofar as they criticize the tribunal for failure to reevaluate the oral evidence of RW1 and the financial statements tendered by the appellant's witnesses, raise questions of law as per the principle in **Atlas Copco v. Commissioner General** (supra). He submitted further that, the fourth ground much as it relates to shifting of the burden of proof is as per the principle in **Insignia Limited v. the Commissioner General (TRA)**, Civil Appeal No. 14 of 2007 (unreported), a question of law.

In his brief rejoinder submission, Mr. Kinabo contended that none of the remaining grounds raise a complaint on violation of law or failure to evaluate evidence or misapprehension of evidence as all of the grounds revolve around whether the case was proved to the required standard which is a point of fact. He did not agree with Mr. Chuwa that the evidence of RW1 was not considered as her testimony was on wrong summation while the decision in controversy was based on wrong posting of figures in the ledger by the appellant's clerk. That aside, her testimony was considered in the judgment as per pages 913 -916 of the record, he further submitted. The case of **Insignia Limited v. the Commissioner General** (supra), he submitted, is distinguishable as it

relates to shifting of the evidential burden of proof in a situation where the documents which were used in the relevant tax assessment were all seized by the respondent, an element which does not feature out in the current appeal.

It is trite law under section 25(2) of TRAA that the right to appeal against a decision of the tribunal is only available if the intended appeal raises a question of law, the phrase which has been construed in **Atlas Copco v. Commissioner General** (supra) to mean any of the following:

"First, 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 was no evidence to support it or that it is so perverse or so illegal that no reasonable tribunal would arrive at it".

It is further the law, according to the above authority that, for such an appeal to pass the afore said test, the alleged points of law must not only be specific but more importantly, apparent on the face of the Memorandum of Appeal and should not be ones that invite the Court to reopen factual issues in support of the appeal.

The complaint in the first ground is that, the tribunal was wrong in holding that the appellant had a duty to call the maker of the Foreign Suppliers' Ledger despite the respective document having been pleaded and admitted into evidence without objection. The issue raised therein is whether or not the respective document is, in the absence of its maker and after the appellant's witnesses had admitted ignorance of its contents, sufficient to prove the alleged proposition. This is, as submitted by both counsel, a question of fact. Equally so, for the last ground as to the alleged failure of the board and tribunal to determine the legality of the assessed taxes whose resolution would, as rightly argued by Mr. Kinabo, depend on assessment of the evidence which is a question of fact.

The first part in the second ground is on the inference drawn by the board and tribunal for failure of the appellant to call the maker of exhibit A1, which as we said in respect of the first ground, is a point of

fact. The second aspect on the ground is on failure to reevaluate the evidence. In the respective ground, the appellant generally claims that evidence has not been reevaluated without specifying which particular evidence was not. With that, therefore, the respective ground is not, as per the principle in the authority just referred, apparent on the face of the Memorandum of Appeal.

The complaint in the third ground is that the tribunal failed to hold and re-analyse the documentary evidence that was properly before the board and which could not be contradicted by oral testimony. While before the board the appellant produced numerous documentary exhibits, the ground under discussion just makes reference of documentary evidence without specifying which documentary evidence. Besides, while the ground asserts, which is correct that, a documentary evidence can, as a general rule, not be contradicted by oral evidence, it does not specify which substance of oral evidence contradicted which substance of documentary evidence. The complaint, therefore, cannot meet the test of being apparent on the face of the Memorandum of Appeal.

In ground four, the tribunal is faulted for placing the burden of proof on the appellant who had asserted the negative as regards the

importation of the goods subjected to the cancelled invoices in exhibits A4 and A7. Mr. Chuwa submitted that under section 18(2) of the TRAA the burden of proof on that issue was on the respondent. He has, in that respect, cited **Insignia Limited v. the Commissioner General** (supra). Mr. Chuwa submitted that while the legality of assessment of tax was questioned for want of importation, the tribunal wrongly held that arrival of the goods in the country was not at issue, while at the board, it was framed as an issue. We note from the judgment of the tribunal, however that, at the board, the respective issue was dependent upon the first issue being answered affirmatively which was not the case. In the circumstances, therefore, as the tribunal confirmed the board's determination on the first issue, whether it had a duty to determine such an issue would depend on determination of the issue of cancellation of the invoices which the appellant's counsel has admitted to be a factual issue. In any event, the position of law under section 18(2) is very clear that the burden to prove that the assessment of tax was wrong is on the appellant. We read nothing to the contrary from the authority just referred.

In view of what we have discussed herein above, we find the point of preliminary objection raised with merit and it is hereby sustained. As

a result, we refrain from determining the said grounds of appeal and strike out the appeal. Considering the circumstances of the matter, we shall not give an order as to costs.

DATED at **DODOMA** this 3rd day of July, 2025.

Z. N. GALEBA
JUSTICE OF APPEAL

I. J. MAIGE
JUSTICE OF APPEAL

B. S. MASOUD
JUSTICE OF APPEAL

Judgment delivered this 4th day of July, 2025 in the presence of Ms. Anna Lugendo, learned counsel for the Appellant and Mr. Moses Kinabo, learned Principal State Attorney for the Respondent, through video link, is hereby certified as a true copy of the original.



A. S. CHUGULU
DEPUTY REGISTRAR
COURT OF APPEAL