IN THE COURT OF APPEAL OF TANZANIA

AT DODOMA

(CORAM: LEVIRA, J.A., MASHAKA, J.A. And NANGELA, J.A.)

CIVIL APPEAL NO. 715 OF 2023

TPC LIMITED ..... APPELLANT

VERSUS

THE COMMISSIONER GENERAL OF

TANZANIA REVENUE AUTHORITY ..... RESPONDENT

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

(Herbert - Vice Chairperson)

dated the 6th day of July, 2023

in

Appeal No. 158 of 2021

JUDGMENT OF THE COURT

21st July & 1st August, 2025

LEVIRA, J.A.:

The appellant, TPC Limited, is a privately held company limited by shares incorporated in Tanzania and it deals with cultivation of sugarcane and sugar production. The respondent is a statutory body corporate established under section 4 of the Tanzania Revenue Authority Act (Cap 399) for the purposes of assessment and collection of taxes and other revenues. In discharging her duties, the respondent conducted an audit in respect of the appellant's tax affairs for the years of income 2016 to

2018 where a number of queries were raised. Those queries were addressed through various correspondences between the parties herein and ultimately the audit process ended with the respondent issuance of adjusted Value Added Tax (the VAT) for the years under consideration. The VAT payable was TZS. 3,312,707,755.18 in respect of insurance compensation received by the appellant.

The appellant was aggrieved with the issued adjusted assessment and subsequently lodged a notice of objection with the respondent. The respondent finally issued its final determination in which the appellant was dissatisfied and lodged his appeal before the Tax Revenue Appeals Board at Dar es Salaam (the TRAB). The appellant's main complaint was that the respondent was wrong to impose output VAT on insurance compensation received by the appellant based on an assessment made under section 77 of the VAT Act 2014 and Regulation 35 (3) (a) and (b) of the VAT (General) Regulations, 2015. According to the appellant, Regulation 35 (3) of the VAT Regulations, was in conflict with section 68 of the VAT Act 2014. However, the respondent maintained that she was correct in assessing the output VAT on insurance compensation received by the appellant but was not accounted for in VAT returns. The TRAB determined the matter in favour of the respondent. Aggrieved, the

appellant unsuccessfully appealed to the Tax Revenue Appeals Tribunal (the TRAT), hence the present appeal. The grounds of appeal are as follows:

1. *That the TRAT erred in law in failing to hoid that the TRAB has jurisdiction to declare any rule, regulation or section of revenue laws to be null and void in accordance with section 7 of the Tax Revenue Appeal Act.*
2. *That the TRAT erred in law in holding that it has no powers to determine whether Regulation 35 (3) (a) and (b) of the Value Added Tax (General) Regulations, 2015 is inconsistent with section 68 of the Value Added Tax Act.*
3. *That the TRAT erred in law in holding that the appellant was obliged to pay VAT on insurance compensation without considering that Regulation 35 (3) (b) of the Value Added Tax (General) Regulations, 2015 restricts claiming of input tax from a contact of insurance.*
4. *That the TRAT erred in law by failing to consider the purpose of section 68 (1) of the Value Added Tax Act and holding that the respondent was correct to reject the appellant's input tax claim.*
5. *That the TRAT erred in law in holding that the respondent was correct to impose interest for late payment of tax under section 76 (1) read together with section 81 (1) of the Tax Administration Act.*

At the hearing of the appeal, the appellant was represented by Mr. Wilson Kamugisha Mukebezi, learned advocate assisted by Mr. Mahmoud

Rashid Mwangia, also a learned advocate; whereas Ms. Juliana Ezekiel learned Principal State Attorney, Mr. Athuman Mruma, learned Senior State Attorney and Mr. Yohana Ndila, learned State Attorney teamed up to represent the respondent.

Addressing the Court in support of the appeal, Mr. Mukebezi first adopted the appellant's written submissions as part of his oral account. He argued the first, second and third grounds of appeal together. He faulted the TRAT for holding that the TRAB was correct in holding that it had no jurisdiction to declare any rule, regulation or section of any Act to be null and void. He contended that the TRAT misconceived the gist of the appellant's appeal and complaint against the TRAB's decision. This, he argued, is apparent on the face of record as the appellant never asked the TRAB to declare any provision of the law null and void. He went on to state that, it is on record that the respondent-imposed output tax on insurance compensation received by the appellant based on regulation 35 (3) of the Value Added Tax (General) Regulations, 2015. According to him the said regulation is inconsistent with section 68 of the VAT Act and in terms of section 36 (1) of the Interpretation of Laws Act, it is void to the extent of the inconsistency and thus the main Act prevails. In support of

his argument, he cited the High Court decision in **Charles Sugwa v. Daniel Lucas,** Commercial Case No. 10 of 2015 (unreported).

The counsel for the appellant argued further that, since the TRAT, just like the TRAB, agreed that regulation 35 (3) (a) and (b) of the Value Added Tax (General) Regulations, 2015 is inconsistent with section 68 of the VAT Act; thus, in terms of section 36 (1) of the Interpretation of Laws Act, a subsidiary law which is not consistent with its or any principal legislation is void to the extent of inconsistency. Consequently, the holding of the TRAT that it did not have jurisdiction to declare any rule or regulation to be void for being inconsistent with an Act of Parliament is nothing but an abrogation of a legal duty. Further that, the TRAT ought to have held that the said regulation is void to the extent of the inconsistency.

According to Mr. Mukebezi, such a declaration does not amount to declaring a certain provision unconstitutional which the TRAT perceived to be. He cited the decision of the Court in **The National Bank of Commence Limited v. National Chicks Corporation Limited and 4 Others** (Civil Appeal No. 129 of 2015) [2019] TZCA 345 (23 September 2019). Regarding the complaint in the third ground of appeal, he submitted that the appellant was not supposed to be subjected to output

tax and subjecting her now amounts to double taxation as she had paid premium.

In reply, having fully adopted the respondent's written submissions as part of his oral account, Mr. Ndila opposed the appeal. He supported the decision of the TRAT arguing that neither the TRAB nor TRAT has the power to declare any provision of the law null and void. According to him, the jurisdiction to do so is vested in the High Court of Tanzania by way of Judicial review under the ultra vires principle. He cited the persuasive decision of the High Court in the case of **Geofrey Watson Mwakasege v. Tanganyika Law Society and the Attorney General** (Misc Civil Case No. 23 of 2021) [2022] TZHC 11064 (19 July 2022).

Mr. Ndila referred us to page 774 of the record of appeal where the TRAT restated that position of the law. He argued that section 36 (1) of the Interpretation of Laws Act provides for a general interpretation guide and principle, but the High Court is the only court vested with power to make a declaration of such nature. However, he said, the issue as to whether or not the regulation is consistent or inconsistent was not the basis of assessment by the respondent. The fact was that the appellant did not file returns as required by the law. It was his firm argument that failure of the appellant to account for VAT does not depend on whether

or not the tax payer is restricted but the appellant was required to comply with section 77 (1) of the VAT Act. He argued further that the appellant was also required to comply with section 67 (1) (c) of the VAT Act. He fortified his argument by the decision of the Court in **Mbeya Cement Limited v. Commissioner General TRA**, Civil Appeal No. 19 of 2008 (unreported). The learned counsel insisted that, since the appellant failed to account for the tax, she cannot claim that there was no payable tax.

We have carefully considered rival arguments by the parties, grounds of appeal and the entire record of appeal. The genesis of the dispute between the parties herein can be traced from the tax assessment conducted by the respondent to the appellant's company in discharge of her duties as intimated above. In terms of section 7 of the Tax Revenue Appeals Act, Cap 408 (the TRAA), the TRAB is vested with jurisdiction to deal with all disputes of civil nature arising from revenue laws administered by the respondent. It reads:

> *"The Board shall have sole original jurisdiction in all proceedings of a civil nature in respect of disputes arising from revenue laws administered by the Tanzania Revenue Authority."*

In the present appeal, among the issues we are invited to determine are; whether it was proper for the TRAT to hold that the TRAB was correct

in holding that it had no jurisdiction to declare any rule, regulation or section of revenue laws to be null and void in accordance with section 7 of the TRAA; and that it had no powers to determine whether Regulation 35 (5) (a) and (b) of the Value Added Tax (General) Regulations, 2015 is inconsistent with section 68 of the VAT Act, hence maintaining that the appellant was obliged to pay VAT on insurance compensation. As intimated earlier, while the appellant faults the decision of TRAT, the respondent supports it. We wish to state at the outset that, whatever complication that seems to be in this matter, it is not founded on the law, but a misconception. We shall demonstrate.

At page 771 of the record of appeal, the TRAT while considering the issue regarding jurisdiction of the TRAB, the TRAT reproduced what the TRAB said which we, as well, find it apposite to reproduce as follows:

> *"It is undisputed that Regulation 35 (3) (a) of VAT (General) Regulations 2015 requires an insured person who is a taxable person to make payment of VAT on receipt of insurance compensation. Additionally,* ***Regulation 35 (3) (b) prohibits the insured person who is a taxable person to claim input tax credit in respect of purchase of a contract of insurance.***

> ***This does not contravene section 77 (1) of the Principal Act.*** *However, although it appears that Regulation 35 (3) (b) is not consistent with section 68 of the Principal Act, especially section 68 (1) (a) and section 68 (3) which deals with exceptions which prohibit the claims for input taxes, we are of the view that the authorities cited by the appellant's counsel of* ***Charles Sungwa*** *and Kenyan case of* ***Peter Saiai Mwalagaya*** *are applicable. However, much as we concur with the appellant's counsel that* ***Regulation 35 (3) (a) and (b) of the Value Added Tax (General) Regulations, 2015 is inconsistent with the enabling statute*** *(the Value Added Tax Act, 2014)* ***but the Board has no jurisdiction whatsoever to declare any rule, regulation or section of any Act to be null and void.***
>
> [Emphasis added]

We note from the record of appeal that, the issue regarding whether the TRAB has jurisdiction to declare any rule, regulation or section of the law null and void was not the center of controversy between the parties. The controversy was on the finding of the assessment done by the respondent that the appellant did not account for output tax on insurance compensation which she received out of an insurance contract. According to the record of appeal, the terms "null" and "void" complained about by

the appellant were associated with Regulation 35 (3) (a) and (b) being inconsistent with section 68 of Value Added Tax Act, 2014. This regulation together with section 77 of the VAT Act were relied upon by the respondent in assessing VAT on insurance compensation. The appellant's argument in that regard was supported by the respondent and found merited not only by the TRAB but also the TRAT.

At page 772 of the record of appeal, the TRAT had this to say:

> *"We are aware that in their submission in respect of this ground of appeal, the respondent's counsel has argued also about the issues whether the Board has jurisdiction to declare a section or provision of any Act of Parliament / Statute to be null and void. True, indeed, the Board's holding touches this aspect also but it was and is not the center of controversy in this matter. What is at stake is Regulation 35 (3) (a) and (b) of the Value Added Tax Act, 2014. The appellant's main contention is that the Board has jurisdiction to declare any regulation null and void for being inconsistent with principal legislation. She supports her submission by referring to section 7 of the Tax Revenues Act, section 36 of the Interpretation of the Laws Act and case law....* ***The respondent's posltion is the same as that of the appellant that the Board has such power to declare any Rule or***

Regulation (subsidiary Legislation) to be void to the extent of such inconsistence only. *He supports his submission by referring to section 36 (1) of the Interpretation of the Laws Act Cap 1. That section has already declared that should a subsidiary legislation found to be inconsistent with any Act of the Parliament, such subsidiary legislation shall be void to the extent of such inconsistence by operation of the law."*

[Emphasis added].

The above excerpt is very clear that the issue regarding inconsistency of the impugned provision was raised by the appellant, conceded to by the respondent and the TRAB made a firm decision that, indeed, the impugned regulation contravened the Principal Act. The said decision was upheld by the TRAT. As such, we are of the considered view that, it was superfluous for the TRAB to make further statement that it has no jurisdiction to declare any rule, regulation or section of any Act null and void having agreed that the impugned provision is inconsistent with the principal Act. Obviously, under the circumstances, the principal Act prevails – see: **The National Bank of Commerce Limited v. National Chicks Corporation Limited & 4 Others** (Civil Appeal No. 129 of 2015) [2019] TZCA 345 (23 September 2019) and **Mabula Damalu and Another v. The Republic** (Criminal Appeal No. 160 of 2015) [201] TZCA 2235 (5 April 2016).

For the sake of clarity, it is not insignificant to restate that, in terms of section 7 of the TRAA, the TRAB has jurisdiction to deal with disputes of civil nature arising out of the respondent's performance of her duties, as it was in the present matter. In **Commissioner General Tanzania Revenue Authority & Another v. Milambo Limited** (Civil Appeal No. 62 of 2022) [2022] TZCA 348 (14 June 2022) while dealing with a matter almost similar to the present one, where the High Court exercised judicial review powers on a matter relating to revenue, the Court had the following to say:

> *"The tax disputes resolving mechanism is provided for under the TAA and the Tax Revenue Appeals Act vesting exclusive jurisdiction to what can safely be referred to as tax courts namely, the Board, Tribunal and the Court of Appeal. See sections 3, 7, 16 (1) and (4) and 25 of the Tax Revenue Appeals Act.... In the case at hand, having invoked the remedy of judicial review, prior the respondent did not furnish proof that no appropriate remedy could be obtained from the Board or Tribunal from whose decisions a final appeal lies to the Court in respect of claims arising from tax disputes.... As such, the disputes were outside the competence of the High Court be it in a suit or by judicial review."*

In view of the above decision and as we have already set the position, the TRAB had jurisdiction to deal with the appellant's complaint raised in respect of the inconsistency of Regulation 35 (3) (a) and (b) of the Value Added Tax (General) Regulations, 2015 with the Principal Act as it originated from a tax dispute. Therefore, we are of the view that, both the TRAB and TRAT having made the findings regarding the impugned provision, ought not to have made further decision out of context under which the complaint was pegged. We say so because the issues before the TRAB and eventually the TRAT, was not on the legality of the law but a tax related dispute within its jurisdiction.

We now venture to determine the gist of the appellant's complaint regarding the basis of tax claimed by the respondent. Mr. Ndila submitted to the effect that the basis of the respondent's decision regarding tax claimed from the appellant was the fact that, the appellant did not file returns as required by section 77 (1) of the Value Added Tax Act. For ease of reference, this provision provides as follows:

> *"77 (1) - A taxable person shall make an increasing adjustment if -*
>
> *(a) the person receives a payment under a contract of insurance, whether or not that person is a party to the contract:*

(b) the payment related to a loss incurred

(i)in the course of the person's economic activity; or

(ii) in relation to an asset used wholly or partly in the persons economic activity; and

(c) the supply of the contract of insurance was a taxable supply.

(2) The adjustment referred to under subsection (1), shall be made in the tax period in which the payment is received and the amount of the adjustment shall be equal to the tax fraction of the amount received, or reduced to the extent that...."

The provision of the law cited above is very clear that, a taxable person shall make an increasing adjustment in the tax period if the person receives payment under a contract of insurance and the amount of adjustment shall be equal to the tax fraction of the amount received. In his submissions, the appellant conceded that she did not make increasing adjustment as required under section 77 quoted above because there was no entry. At the same time, she did not dispute that she received payment under a contract of insurance. The reason of failure to make an increasing adjustment as above, is not among the requirements or exemptions (if any) under section 77 of the VAT Act. What the appellant was required to do, was to comply with the mandatory requirement of that law as plain

as it is. We have already shown that there was no compliance on the part of the appellant.

Therefore, the existence of regulation 35 (3) of the Value Added Tax (General) Regulations, 2015 which provided that an insured person is not eligible to claim input tax credit in itself, could not justify noncompliance with the mandatory requirement of the law. Besides, the argument by the appellant that the impugned regulation is null and void for contravening the provision of the Principal Act could not discharge her from the obligation of increasing adjustment having received compensation from the insurance contract. We agree with Mr. Ndila that, the appellant ought to have accounted for in her monthly tax return, otherwise she cannot claim that there was no payable tax. We thus do not find merit on the appellant's complaint in those grounds of appeal.

Regarding the fourth ground of appeal, Mr. Mukebezi faulted the TRAT for failure to consider the purpose of section 86 (1) of the VAT Act and hold that the respondents was correct to reject the appellant's input tax claim. He added that, the electronic fiscal device (the EFD) used by the appellant could not include all the required particulars. The appellant notified the respondent, but the respondent applied the rules strictly. According to him, the respondent was supplied with invoices generated

from the EFD Machine and hand written. In the circumstances, he argued, the respondent ought to have applied purposive approach to consider the handwritten receipts because she approved the EFD used by the appellant. He referred us to page 781 of the record of appeal where the TRAT noted that there was no loss, but applied the law strictly. It was his submission that, the purposive approach could have been applied by the TRAT otherwise it was tantamount to penalizing the appellant because there was no loss.

Mr. Ndila, replied to this ground of appeal by conceding that, the appellant incurred input tax and section 68 (1) of the VAT Act provides for a right to claim for the same. However, he said, section 86 (1) (b) and (2) of the same Act sets conditions to be met before making such claim. It requires only genuine receipts to be paid. He supported his argument with the decision of the Court in **Illovo Distillers (Tanzania) Limited v. The Commissioner General, Tanzania Revenue Authority** (Civil Appeal No. 445 of 2023) [2025] TZCA 343 (08 April 2025).

He argued further that, since the appellant had failed to account for tax contrary to the law, she cannot claim that there was no payable tax. According to him, compensation is different from premium which the appellant claimed to have paid and thus assessment was done differently.

He cited sections 77 and 76 of the VAT Act. Finally, he prayed for the appeal to be dismissed with costs.

In this ground of appeal, the appellant faults the decision of the TRAT for upholding the decision of the TRAB in which the law was applied strictly. The issue for our determination is whether the TRAT was justified to do so. This issue should not detain us much. It is established principles that, if the words of statute are clear the duty of the court is to give effect to their natural ordinary meaning; and the taxing statute must be interpreted strictly. In **Commissioner General Tanzania Revenue Authority v. Ecolab East Africa (Tanzania) Limited** (Civil Appeal No. 35 of 2020) [2021] TZCA 283 (2 July 2021), the Court held that the language used in the tax statute book are to be looked at the letter of the law because there is no room for looking for the intention of the statute but what is clearly said. See also: **Commissioner General Tanzania Revenue Authority (TRA) v. Vodacom Tanzania Public Limited Company** (Civil Appeal No. 485 of 2023) [2025] TZCA 343 (08 April 2025).

We agree with the appellant and indeed, that is the position of the law that, a taxable person has a right to deduct VAT on goods purchased

and service received as input from the VAT which is liable to pay. This is according to section 68 (1) of the VAT Act which reads:

> *"68.- (1) A taxable person shall be allowed a credit for an amount of input tax incurred by the person if-*
>
> *(a) the goods, services, or immovable property on which the input tax was incurred were acquired or imported into Mainland Tanzania by the person in the course of the person's economic activity and for the purpose of making taxable supplies."*

However, the right conferred under the above provision is not automatic for one to qualify, but a taxable person has to fulfill conditions stipulated under section 86 (1) and (2) of the same Act. Among the conditions stated in that provision for input tax claim purposes, is disclosure of the name or particulars of a tax payer. For easy reference we find it apposite to reproduce the provision under consideration which reads:

> *"86.- (1) A registered person who makes a taxable supply shall, no later than the day on which value added tax becomes payable on the supply under section 15, issue a serially numbered true and correct tax invoice generated by electronic fiscal device for the supply, which shall -*

(a) be issued in the form and manner prescribed by the Minister; and

(b) include the following information-

(i) the date on which it is issued;

(ii) the name, Taxpayer Identification Number and Value Added Tax Registration Number of the supplier;

(iii) the description, quantity, and other relevant specifications of the things supplied;

(iv) the total consideration payable for the supply and the amount of value added tax included in that consideration;

(v) if the value of the supply exceeds the minimum amount prescribed in the regulations, the name, address, Taxpayer Identification Number and value added tax registration number of the customer; and

(vi) any other additional information as may be prescribed in the regulations.

(2) A tax invoice which does not comply with the requirement under subsection (1)(b)(v) shall be valid but shall not be used to support an input tax credit claim or any refund claim."

The above provision states in clear terms that an invoice which does not provide the particulars of the tax payer shall be valid but not be used

to support an input tax credit claim or any refund claim. As it can be observed, this provision is crafted in mandatory terms, meaning that for a taxable person to qualify under section 68 (1), she has to squarely meet the conditions under section 86 (1) and (2) of the VAT Act. In other words, the two provisions are interdependent. For that reason, the purposive approach suggested by the counsel of the appellant could not be applied to waive the strict condition set by the law to condone noncompliance.

In the present matter, the appellant presented a hand written invoice which did not meet the condition set by the law on account that, the EFD machine allegedly approved by the respondent which she used could not contain all the particulars required. With respect, we do not share the same view with the appellant that, a mere reason that the EFD was approved by the respondent, justifies noncompliance with the law or rather waives the conditions set by the law. We agree with the TRAT that, the TRAB was justified to apply the law strictly. This ground of appeal also fails.

The last ground of appeal is consequential. Having dismissed other grounds of appeal, we also find that the fifth ground of appeal cannot stand.

Consequently, the entire appeal is hereby dismissed. Having considered circumstances of this matter, each party shall bear own costs.

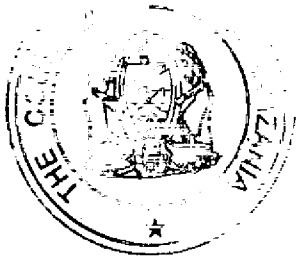
DATED at **DODOMA** this 31st day of July, 2025.

M. C. LEVIRA
JUSTICE OF APPEAL

L. L. MASHAKA
JUSTICE OF APPEAL

D. J. NANGELA
JUSTICE OF APPEAL

The Judgment delivered this 1st day of August, 2025 in the presence of Mr. Mahmoud Mwangia, learned counsel for the Appellant and Mr. Athuman Twaha Mruma, learned Senior State Attorney for the Respondent, is hereby certified as a true copy of the original.



O. H. KINGWELE
DEPUTY REGISTRAR
COURT OF APPEAL