IN THE COURT OF APPEAL OF TANZANIA

AT ARUSHA

(CORAM: NDIKA, J.A., FIKIRINI, J.A., And MGEYEKWA, J.A.)

CIVIL APPEAL NO. 150 OF 2025

TANGA CEMENT PUBLIC LIMITED COMPANY ..... APPELLANT

VERSUS

COMMISSIONER GENERAL – TANZANIA

REVENUE AUTHORITY. ..... RESPONDENT

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

(Hon. R.M. Ngimilangwa, Vice Chairperson, Mr. M.S. Edward and Mr. S.H. Qamdiye, Members)

dated the 22nd day of November 2024

in

Tax Appeal No. 27 of 2024

.....

JUDGMENT OF THE COURT

7th & 28th November 2025

NDIKA, J.A.:

The appellant, Tanga Cement Public Limited Company, a producer, distributor, and vendor of cement and clinker, contests the judgment of the Tax Revenue Appeals Tribunal ("the Tribunal") dated 22nd November 2024, which upheld the decision of the Tax Revenue Appeals Board ("the Board") dated 25th August 2023 in favour of the Commissioner General of the Tax Revenue Authority, the respondent.

This dispute originates from the respondent's audit of the appellant for the years of income 2015 to 2018. On 31st August 2020, the respondent sent a Value Added Tax (VAT) assessment notice with debit number 445599548 (exhibit A1) for the specified period, totalling TZS. 4,208,249,952.00. On 13th October 2020, the appellant formally submitted an objection to the assessment (exhibit A2). First, the appellant contested the respondent's determination to reject input VAT. The appellant contended that the discrepancy between the dates on the invoices utilised to claim input VAT and the dates on the VAT returns constituted a clerical error. Secondly, the appellant disputed the discrepancy observed in the clinker production reconciliation, attributing the inaccuracy in the mining returns to the duplicate counting of certain quantities in some months. Thirdly, it was argued that the discrepancy observed in export sales between the appellant's data and that obtained from the Tanzania Customs Integrated System (TANCIS) resulted from certain export sales not being recorded in TANCIS, an issue beyond the appellant's control.

The respondent replied through a proposal dated 29th March 2021 (exhibit A3) by which it allowed part of the input VAT claim and stated that the outstanding input VAT claims were not disallowed. As regards the difference noted in the clinker production, the respondent indicated that

the appellant's concerns had been properly considered in the audit report. Thus, the respondent maintained the position in the initial assessment. In respect of the difference noted on export sales, the respondent reconciled part of the difference and subjected the remaining to VAT accordingly.

On 11th May 2021, the appellant contested the respondent's proposal through its reply to the proposal (exhibit A4). Subsequently, the respondent rendered its final determination (exhibit A5) on 12th May 2021, allowing a portion of the input VAT claim and certain discrepancy identified in the export sales. The respondent upheld its stance regarding the clinker production, as articulated in the proposal. The appellant unsuccessfully contested the said determination before the Board and on appeal to the Tribunal, prompting this appeal.

Through learned counsel Mr. Wilson K. Mukebezi, the appellant has lodged four grounds of appeal:

1. *That the Tribunal erred in law by failing to consider the requirement of rule 16 (5) of the Tax Revenue Appeals Board Rules, 2018 and that the respondent wrongly concluded that the invoices were not issued to the Commissioner General during objection.*

2. *That the Tribunal erred in law by holding that the appellant failed to prove that the invoices submitted for input VAT were not time-barred in terms of section 69 (2) of the Value Added Tax Act.*
3. *That the Tribunal erred in law by failing to analyse and evaluate the evidence on record and wrongly concluding that the appellant failed to discharge its burden of proof in terms of section 18 (2) (b) of the Tax Revenue Appeals Act to reconcile the difference noted by the respondent between export sales per VAT returns and clinker production.*
4. *That the Tribunal erred in law for holding that the respondent was correct to impose interest for late payment of tax in terms of section 76 of the Tax Administration Act.*

The respondent, through the services of learned Principal State Attorney Ms. Consolatha Andrew, who teamed up with Ms. Salome Chambai, learned Senior State Attorney, and Mr. Abdillah Mdunga, learned State Attorney, vigorously opposed the appeal.

On the first ground, Mr. Mukebezi criticised the Tribunal for upholding the Board's view that the invoices relating to Kuehne+Nagel bearing number 10023405 dated 27th July 2018, Raybuild Services Limited number 5222 and Mohamed S. Mohamed number 019 were not allowed during the determination of the objection because they were not listed amongst the invoices disallowed by the respondent during the audit and so they did not form part of the respondent's determination of the

objection. It was contended further that the Tribunal wrongly took the view that the appellant was required to bring evidence to justify the disallowed invoices and not to produce new invoices which were not used by the respondent to make the assessment.

Referring to rule 16 (5) of the Tax Revenue Appeals Board Rules, 2018 ("the Board Rules") barring production of evidence to the Board other than that "which was previously made available to the Commissioner General", Mr. Mukebezi maintained that the rejected invoices were made available to the Commissioner General during the objection stage even though they were not initially considered during the audit, which fact did not render them inadmissible. The learned counsel argued that being "previously made available" entails providing the documents at any stage before the dispute escalates for hearing at the Board. He insisted that the law does not limit production of documents to be during the audit stage alone. It was, therefore, the learned counsel's submission that the Tribunal failed to properly interpret and apply rule 16 (5) of the Board Rules in refusing to admit the invoices which were provided to the Commissioner General during the objection stage.

Submitting in reply, Ms. Chambai's argument was three-fold: first, she contended that the ground at hand raises a factual issue contrary to

section 26 (2) of the Tax Revenue Appeals Act, Cap. 408 RE 2023 ("the Tax Revenue Appeals Act"), which stipulates that appeals to this Court "shall lie on matters involving questions of law only." Citing **Insignia Limited v. Commissioner General Tanzania Revenue Authority** [2011] TZCA 246, **Singita Trading Store (EA) Limited v. Commissioner General Tanzania Revenue Authority** [2021] TZCA 179, **Atlas Copco Tanzania Ltd v. Commissioner General, Tanzania Revenue Authority** [2020] TZCA 317 and **Serengeti Breweries Limited v. Commissioner General, Tanzania Revenue Authority** [2025] TZCA 685, she urged us to desist from entertaining the complaint.

Secondly, Ms. Chambai argued that the Tribunal neither attempted an interpretation of rule 16 (5) of the Board Rules nor did it conclude that the invoices in issue were not made available to the respondent during the objection stage. Thirdly, she supported the Tribunal's conclusion that the appellant was supposed to present evidence at the objection stage showing that the respondent was wrong to disallow the invoices in the disallowance list and not new invoices not considered by the respondent in the assessment.

Rule 16 (5) of the Board Rules expressly prohibits the introduction of any evidence beyond that which was previously provided to the Commissioner General, unless authorised by the Board:

> *"(5) Except with the consent of the Board, and upon such terms and conditions as the Board may determine, the appellant shall not at the hearing rely on any ground other than the grounds stated in the appeal, and* ***shall not adduce any evidence other than the evidence which was previously made available to the Commissioner General.*** *"* [Emphasis added]

At the forefront, we agree with Ms. Chambia that the crux of the matter before the Tribunal was not the construction and application of the above provision. We also agree with her that the appellant's contention that the respondent wrongly concluded that the invoices were not made available to him during objection is misplaced. Certainly, besides the invoices in issue being part of the appellant's notice of objection, we note from the proposal and the determination of the objection (exhibits A3 and A5) that the respondent considered and found them irrelevant to the objection. In both documents he stated that:

> *"other invoices submitted were never disallowed as per the auditor's list of disallowance. Therefore,*

the evidence submitted is not relevant as the related input tax [was] not disallowed."

The Board and the Tribunal concurred with the respondent's assertion, as shown above, that the contested invoices were immaterial to the resolution of the objection, emphasising that the appellant was required to provide evidence justifying the disallowed invoices rather than introducing new ones. Consequently, the issue was not whether the invoices represented fresh evidence that had not been presented to the respondent, which, according to rule 16 (5) of the Board Rules, was inadmissible without the Board's permission. The crux of the matter, in our opinion, was the relevance of the invoices to the determination of the disputed disallowance of the input VAT.

To further our argument, we take the view that any effort at this juncture to contest the Board and Tribunal's concurrent perspective on the irrelevance of the disputed invoices would constitute a purely factual grievance, contravening the letter and spirit of section 26 (2) of the Tax Revenue Appeals Act. As detailed in **Insignia Limited** (*supra*), **Singita Trading** (*supra*), **Atlas Copco** (*supra*) and **Serengeti Breweries** (*supra*), enquiries on the evaluation of evidence are predominantly

factual. They end in the Tribunal as they are essentially not pure questions of law.

In **Atlas Copco** (*supra*), the Court affirmed, following a review of case law, that pursuant to section 26 (2) of the Tax Revenue Appeals Act, a question of law encompasses 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 is no evidence to support it or that it is so perverse or so illegal that no reasonable tribunal would arrive at it."*

Subsequently in **Serengeti Breweries** (*supra*), we emphasised that a simple assertion that the Tribunal failed to assess the evidence on record does not constitute a pure point of law. We also stressed that this Court lacks jurisdiction to adjudicate any complaint involving a combination of legal and factual concerns.

In this case, it has neither been proposed nor contended that the determination by the Tribunal regarding the irrelevance of the disputed invoices constituted a misapprehension of the evidence, or that it was so perverse, unreasonable or illegal that no rational tribunal could reach such a conclusion. Therefore, we perceive no distinct legal issue warranting our consideration. So much for the first ground of appeal.

According to the second complaint above, it is asserted that the Tribunal erred in law by deciding that the appellant failed to prove that the input VAT invoices in issue were not time-barred under section 69 (2) of the Value Added Tax Act. On this grievance, it is posited for the appellant that the respondent allowed two invoices at the objection stage but the invoices relating to Kuehne+Nagel (number 10023405), Raybuild Services Limited (number 5222) and Mohamed S. Mohamed (number 019) had been disallowed by the respondent's auditors. It is thus contended that, there were no invoices that were time-barred as held by both the respondent and the Tribunal.

We believe that Ms. Chambai adequately addressed the current complaint. This Court will not consider it since it does not raise any valid legal issues. This is because it will require the Court to go back and reassess the disputed invoices to decide that matter. No appellant should

be permitted to reopen the factual issues in pursuit of their appeal, as we noted in several cases, including **Insignia Limited** (*supra*). Indeed, in **Atlas Copco** (*supra*) we stated that a protest that the Tribunal's finding that the appellant failed to discharge his burden of proof was a question of fact. We must stress that pure issues of law should be the exclusive basis for any appeal from the Tribunal.

The third ground of appeal equally raises no pure point of law deserving this Court's attention. In our view, the claim that the Tribunal erred in law by failing to analyse and evaluate the evidence on record and wrongly concluded that the appellant failed to discharge its burden of proof in terms of section 18 (2) (b) of the Tax Revenue Appeals Act to reconcile the difference noted by the respondent between export sales per VAT returns and clinker production moves us to reassess the evidence on record. As rightly argued by Ms. Chambai, on the authority of **Serengeti Breweries** (*supra*), a claim that the evaluation of evidence on record by the Board or the Tribunal was faulty is fundamentally not a pure question of law.

As accurately observed by Mr. Mukebezi, the fourth ground of appeal is contingent upon the resolution of the preceding grounds of

complaint. Considering our decision against the appellant as aforesaid, the fourth ground necessarily fails.

We conclude that the appeal lacks merit and dismiss it with costs.

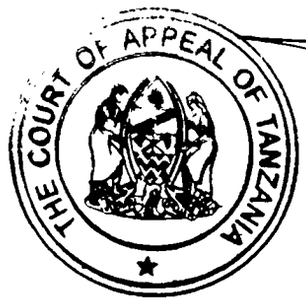
DATED at **DAR ES SALAAM** this 27th day of November 2025.

G. A. M. NDIKA
JUSTICE OF APPEAL

P. S. FIKIRINI
JUSTICE OF APPEAL

A. Z. MGEYEKWA
JUSTICE OF APPEAL

Judgment delivered this 28th day of November, 2025 in the presence of Mr. Mahmoud Mwangia, learned counsel for the Appellant, Mr. Emmanuel Ally, Mr. Andrew Kevela, both learned State Attorney for the Respondent and Janekisa Bukuku, Court Clerk is hereby certified as a true copy of the original.



J. E. FOVO
DEPUTY REGISTRAR
COURT OF APPEAL