IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

(CORAM: WAMBALI, J.A., KOROSSO, J.A. And RUMANYIKA, J.A.)

CIVIL APPEAL NO. 192 OF 2021

COMMISSIONER GENERAL

TANZANIA REVENUE AUTHORITY ..... APPELLANT

VERSUS

GEITA GOLD MINING LIMITED ..... RESPONDENT

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

(Hassan A. Haji, Vice Chairman.)

Dated the 16th day of November, 2020

in

Tax Appeal No. 24 of 2020

.....

JUDGMENT OF THE COURT

18th July & 22nd September, 2022

WAMBALI, JA.:

The appellant, Commissioner General Tanzania Revenue Authority, issued to the respondent, Geita Gold Mining Limited a demand notice dated 23rd September, 2013 for payment of TZS. 1,208,568,508.00 for the months

of July and August, being excise duty and fuel levy on gasoil fuel consumed by persons other than the respondent. It is on record that initially the said demand notice was not received by the respondent.

In the premises, on 7th August, 2017 the appellant re-sent the same demand notice to the respondent. Upon receipt of the said demand notice the respondent instructed its bank, Ms. ECO BANK TANZANIA LIMITED to transfer the demanded sum, that is, TZS. 1,208,568,508.00 from its account number 0040015401701406 to the appellant's account held with the Bank of Tanzania.

On 22nd August, 2017 the respondent notified the appellant concerning the payment. However, later the respondent noted that through a letter dated 17th July, 2017, the appellant had informed the respondent that after the said demanded payment was delayed, she deducted the amount from her Escrow Deposit Account. It was further revealed through that letter the appellant also deducted from the said account TZS. 1,470,620,536.00 being settlement of the demand notice dated 29th April, 2014. In the circumstances, the appellant notified the respondent that since the stated transactions amounted to double payment, it was advisable to lodge a formal application for refund of TZS. 1,470.620.536.00 which was paid twice.

Noteworthy, on her letter dated 22nd August, 2017 the respondent had notified the appellant that the payment of TZS. 1,208,568,508.00 was made under protest arguing that the recovery of TZS. 1,470,620,536.00 from her Escrow Deposit Account was unjustified and amounted to double taxation. She thus demanded an immediate refund. That letter was not replied by the appellant. As a result, the respondent lodged Custom and Excise Tax Appeal No. 18 of 2017 at the Tax Revenue Appeals Board (the TRAB) at Dar es Salaam.

The grounds of appeals before the TRAB were: one, that the appellant erred in fact and law for demanding cash deposit of TZS. 1,208,568,508.00 while she had already recovered the amount from her Escrow Deposit Account. Two, that the appellant erred in law by refusing to offset the unpaid amount against the double payment. Three, that the appellant acted contrary to the law by disregarding the settled position that she is entitled from claiming remission of excise duty and fuel levy that she enjoys under the law by requesting her to pay the demanded tax and then apply for refund. Four, that the appellant acted contrary to the law to demand double taxation from the respondent.

Ultimately, the respondent prayed the TRAB to direct the appellant to offset the demanded amount against the amount already recovered from her

Escrow Deposit Account and to refund the amount that was paid under protest. The said appeal was strongly contested by the appellant who prayed that the same should be dismissed and the respondent be ordered to pay the excise duty and fuel levy previously demanded by her.

The TRAB heard arguments by the parties and in the end, it decided in favour of the respondent. Particularly, it ordered the appellant to offset the demanded amount already recovered from the respondent's Escrow Deposit Account which is TZS. 1,470,620,536.00 and refund the amount that was paid under protest by the sum of TZS. 1,208,568,508.00.

Apparently, though the appellant admitted that the respondent paid TZS. 1,208,568,508.00 on 11th August, 2017 as outstanding excise duty and fuel levy for the diverted fuel as per the demand notice dated 23rd September, 2013, she maintained that she could not offset that amount from TZS. 1,470,620,536.00 as the two amounts were distinct and the procedure for claiming refund of duplicated or overpaid taxes required the respondent to make a formal application as the law does not allow offsetting of figures in two distinct transactions. Therefore, the appellant strongly emphasized that the said amount paid by the respondent was legally justified and that it did not amount to double taxation.

Aggrieved by that decision, the appellant unsuccessfully appealed to the Tax Revenue Appeal Tribunal (the TRAT) in Appeal No. 24 of 2020 as the decision of the TRAB was upheld, hence the present appeal premised on the following grounds:

> *"1. That the Tax Revenue Appeals Tribunal erred in law by wrongly construing the Provisions of section 71 (1) and (2) of the tax Administration Act (Cap. 438), which provided for proper procedure for the taxpayer to apply for refund of any tax paid in excess to the Commissioner General.*
>
> *2. That, the Tax Revenue Appeals Tribunal erred in law in holding that the appellant should refund the amount that was settled and which was paid under protest in the absence of a formal application for refund to the Commissioner as required by law.*
>
> *3. That the Tax Revenue Appeals Tribunal erred in law in holding that the Board was correct when it held that the appellant should offset the demanded tax amount against the amount already appropriated from the respondent's escrow deposit account".*

However, during the hearing of the appeal before us, Mr. Moses Kinabo, learned Senior State Attorney who appeared for the appellant, acknowledged and conceded to the fact that the crucial matter in determining the appeal revolves around the complaint in the first ground. He therefore compressed the three grounds into one.

Submitting in support of the appeal, Mr. Kinabo contended that the decision of the TRAT is legally wrong because it did not conform with the requirement of the law. He argued that by confirming the decision of the TRAB, the TRAT utterly disregarded and misconstrued the provisions of section 71 (1) and (2) of the Tax Administration Act [Cap 438 R.E. 2022] ("Cap. 438") which sets the procedure and requirement for a taxpayer who claims refund for the amount of money paid in excess or double payment to apply formally to the Commissioner General within the prescribed time. He argued further that though the appellant does not dispute the fact that the respondent had paid the demanded amount of TZS. 1,208,568,580.00 and that TZS. 1,470,620,596.00 had also been deducted from the respondent's Escrow Deposit Account in which the earlier demanded amount was inclusive, the truth remains that the tax was paid in excess to bring the provisions of section 71 (1) and (2) into play. In essence, he submitted that following the excess payment, the respondent was bound to comply with the

requirement therein by applying to the Commissioner General for refund. He added that it was in compliance with that provisions that according to exhibit A-3 contained in the record of appeal, initially the respondent made an attempt to apply for refund of TZS. 1,470,620,596.00 from the Commissioner General on 12th July, 2018, but it was not completed on account of not being supported by tax calculations and documentary evidence as required by the law.

He added that though there is no evidence that the respondent also attempted to apply for the refund of TZS. 1,208,568,580.00, there is no way that the claimed money could be offset or refunded automatically as ordered by the TRAB and confirmed by the TRAT. This is so because, he argued, there is no law which authorizes the Commissioner General to offset the payment as his power is only to refund the excess payment of tax as provided under section 71 (1) and (2) of Cap. 438 upon application by the taxpayer showing correct calculations supported by documentary evidence.

Besides, he argued, the fact that the appellant had collected the claimed tax in excess cannot be a guarantee for an aggrieved party to disregard the clear provisions of the law requiring her to apply for refund by substantiating his claim with credible evidence.

The learned Senior State Attorney therefore submitted that in view of the clear provisions of section 71 (1) and (2) of Cap 438, the TRAT wrongly confirmed the finding and order of the TRAB that required the appellant to offset the demanded tax amount against the already appropriated amount from the respondent's Escrow Deposit Account in the absence of a formal application for refund by the respondent to the appellant. He emphasized that it is settled law that tax statutes should be strictly interpreted, citing the decision of the Court in **Commissioner General Tanzania Revenue Authority v. Ecolab East African (Tanzania) Limited,** Civil Appeal No. 35 of 2020 (unreported). In the premises, he urged us to construe the provisions of section 71 (1) and (2) of Cap. 438 strictly and thereby reverse the TRAT's decision and hold that the respondent is bound to apply for refund because it is legally improper for the appellant to proceed to offset the overpaid tax contrary to the requirement of the law. In the end, Mr. Kinabo pressed us to allow the appeal with costs.

In response, Ms. Jackline Kapinga, learned advocate who appeared for the respondent, contested Mr. Kinabo's submissions and fully supported the decision of the TRAT. She argued that the complaint of the respondent at the TRAB, whose decision was confirmed by the TRAT on appeal, was not about tax paid in excess or erroneously paid as contended by the appellant's

counsel, to necessitate the application of the provisions of section 71 (1) and (2) of Cap. 438. On the contrary, she argued, the appropriation of the respondent's money amounted to double payment of tax which is contrary to the law. In her submission, as correctly found by the TRAB and confirmed by the TRAT, the said money was illegally taken despite the fact that the demanded amount had been correctly paid by the respondent.

In this regard, she argued that the provisions of section 71 (1) and (2) of Cap. 438 cannot be invoked by the respondent to apply for refund to the Commissioner General as it only applies where the demanded tax is paid in excess, which is not the case, in the appeal at hand. She maintained that as per the evidence on record, the respondent paid the demanded tax by the appellant which was, TZS. 1,208,568,508.00 and thus the amount of TZS. 1,470,620,536.00 which the appellant admits to have appropriated from the Escrow Deposit Account cannot amount to excess payment as they were illegally taken without initial notice.

Ms. Kapinga therefore submitted that the provisions of section 71 (1) and (2) of Cap. 438 should be interpreted by its plain meaning with regard to tax paid in excess which does not include double payment as contended by Mr. Kinabo. More importantly, she argued, the decision of the Court in **Ecolab East African (Tanzania) Limited** (supra) referred by the

appellant's counsel to support his submission is distinguishable with the facts of the appeal at hand. She asserted that the facts in that appeal related to the dispute on Value Added Tax (VAT) claim and that the language used in the respective provisions under consideration is quite different with the one used under the provisions of section 71 (1) and (2) of Cap. 438.

In the circumstances, she strongly submitted that the respondent cannot be forced to apply for refund under the said provisions because her claim is not based on the amount of tax paid in excess but on illegally appropriated money. In the event, she implored the Court to uphold the decision of the TRAT and dismiss the appeal with costs.

We have carefully heard the submissions of the counsel for the parties and thoroughly scrutinized the materials in the record of appeal. We are satisfied that though the respondent responded to the demand notice from the appellant and paid TZS. 1,208,568,508.00 through its bank account, it is equally undisputed that the appellant had collected the same amount from the respondent's Escrow Deposit Account as acknowledged in her letter (exhibit A-3) dated 17th July, 2017. It is further noted from the evidence on record that in the said account, the respondent had a total deposit of TZS. 4,685,000,000.00 from which the appellant deducted TZS. 1,208,568,508.00 and TZS. 1,470,620,536.00 respectively, which brought the balance to TZS.

2,005,810,957.00. Parties are therefore not in dispute with regard to the exposed facts. However, they sharply disagree on whether the appropriated amount falls into the category of tax paid in excess to bring the provisions of section 71(1), (2) and (3) of Cap. 438 into play. For clarity, the section provides as follows:

> *"71(1) A person may apply to the Commissioner General for refund of tax paid in excess.*
> *(2) The application for refund shall be in writing, indicating the correct tax calculation and be supported by the documentary evidence to support the claim.*
> *(3) An application under this section shall, except where a tax law provides otherwise, be made within a period not exceeding three years from the date of payment of tax in excess".*

It is plainly clear from the provisions of subsection (1) of section 71 of Cap. 438 that an application for refund is for the "tax paid in excess". Admittedly, there is no definition in the statute on the meaning of tax paid in excess. Nonetheless, it is generally acknowledged among other circumstances that excess payment of taxes occurs as a result of erroneous calculations/assessment rendering the tax payer to pay excess tax against

the required tax. Moreover, according to the book on **Law and Practice: A Digital eBook,** found at www. taxmanagementindia.com; excess payment of tax refers to the situation where the taxpayer has made excess payment of tax either by mistake or by inadvertence resulting in more payment of tax than due to the Government.

Considering the above stated situation in which excess payment of tax may occur, we are of the view that the facts of the case at hand do not bring the respondent's appropriated amount by the appellant into the category of tax paid in excess.

In this regard, we are of the considered view that where the tax authority appropriates the taxpayer's money who has already paid the amount of tax as per the demand notice, as is the situation in the case at hand, that cannot constitute tax paid in excess, to trigger a formal application for refund as envisaged by the provisions of section 71 of Cap. 438. We hold this firm view because a close reading of subsection (2) of that section pre supposes that in the wake of the dispute between the taxpayer and the taxing authority with regard to tax paid in excess because of erroneous calculations/assessment, mistake or inadvertence, the applicant for the refund of the tax paid in excess must clearly indicate in the

application the correct tax calculations and support it with the requisite documentary evidence.

In the appeal at hand, parties are not in dispute concerning the correct tax calculations/assessment of the tax which was paid by the respondent at all. There is also no contention that the respondent paid the tax by mistake or inadvertence. The dispute is whether despite the settlement of the demanded payment, the respondent's appropriated funds from her Escrow Deposit Account by the appellant falls into the category of tax paid in excess as envisaged by the provisions of section 71(1) of Cap 438.

It is on record that the respondent did not dispute the correctness of the calculations/assessment of the claimed tax which she readily paid as demanded by the appellant without reservation. We are therefore of the settled view that, as the appropriated amount of funds from the Escrow Deposit Account was not the tax paid in excess by the respondent as envisaged by subsection (1) of section 71 of Cap. 438, she cannot validly apply to the Commissioner General for refund by showing correct tax calculations supported by documentary evidence as required by the provisions of subsection (2) of section 71. This is so because as per evidence on record, the respondent does not dispute the correct tax calculations/assessment which led to the demand notices from the appellant.

Basically, she has nothing to show in the application with regard to the correct tax calculations and the supporting documentary evidence as required by subsection (2) of section 71 of the same Act. It is thus not surprising that the respondent's initial attempt to apply for refund as shown by exhibit A-3 was not completed for lack of supporting correct calculation of tax and documentary evidence.

In the circumstances, considering the material on record with regard to the respondent's claim at the TRAB, we are settled that the provisions of section 71(1) (2) and (3) of Cap. 438 cannot apply in the matter at hand contrary to the appellant's contention.

We are further settled that the provisions of section 71(1), (2) and (3) is very clear on the issue of tax paid in excess and the procedure to be followed and therefore, it requires no further interpretation. On the contrary, it has to be interpreted in its plain meaning as to do otherwise may bring ambiguity, more so, when applied in the circumstances of the case at hand. To this end, we wish to reiterate what we stated in **Pan African Energy Tanzania Limited v. Commissioner General Tanzania Revenue Authority,** Civil Appeal No. 81 of 2019 (unreported) thus:

> *"...in the familiar canon of statutory construction of plain language, when the words of a statute are*

unambiguous, judicial inquiry is complete because courts must presume that a legislative says in a statute what it means and means in a statute what it says there. As such, there is no need for the interpolations, lest we stray into the exclusive preserve of the legislature under the cloak of over zeal interpretation."

Indeed, in **Ecolab East Africa (Tanzania) Limited** (supra) cited to us by Mr. Kinabo in support of his submission, the Court clearly emphasized the need of adhering to the plain meaning when it stated that:

"if the words of a taxing statute are clear, effect must be given to them irrespective of the consequences..."

From the foregoing, we are settled that the circumstances of the dispute between the parties in this appeal cannot fall squarely into the provisions of section 71(1), (2) and (3) of Cap. 438 as the appellant would like us to so hold. We are satisfied that the appropriation by the appellant of the funds amid the correct tax payment made by the respondent cannot amount to tax paid in excess envisaged under that provision.

In the end, we are settled that the appellant has not sufficiently and legally convinced us to fault the decision of the TRAT which confirmed that

of the TRAB. We therefore reject the consolidated three grounds of appeal. Consequently, we dismiss the appeal with costs.

DATED at **DAR ES SALAAM** this 16th day of September, 2022.

F. L. K. WAMBALI
JUSTICE OF APPEAL

W. B. KOROSSO
JUSTICE OF APPEAL

S. M. RUMANYIKA
JUSTICE OF APPEAL

The Judgment delivered this 22nd day of September, 2022 in the presence of Ms. Jacquiline Kapinga for the Respondent also holding brief for Mr. Moses Kinabo Senior State Attorney for the Respondent is hereby certified as a true copy of the original.

G. H. HERBERT
DEPUTY REGISTRAR
COURT OF APPEAL