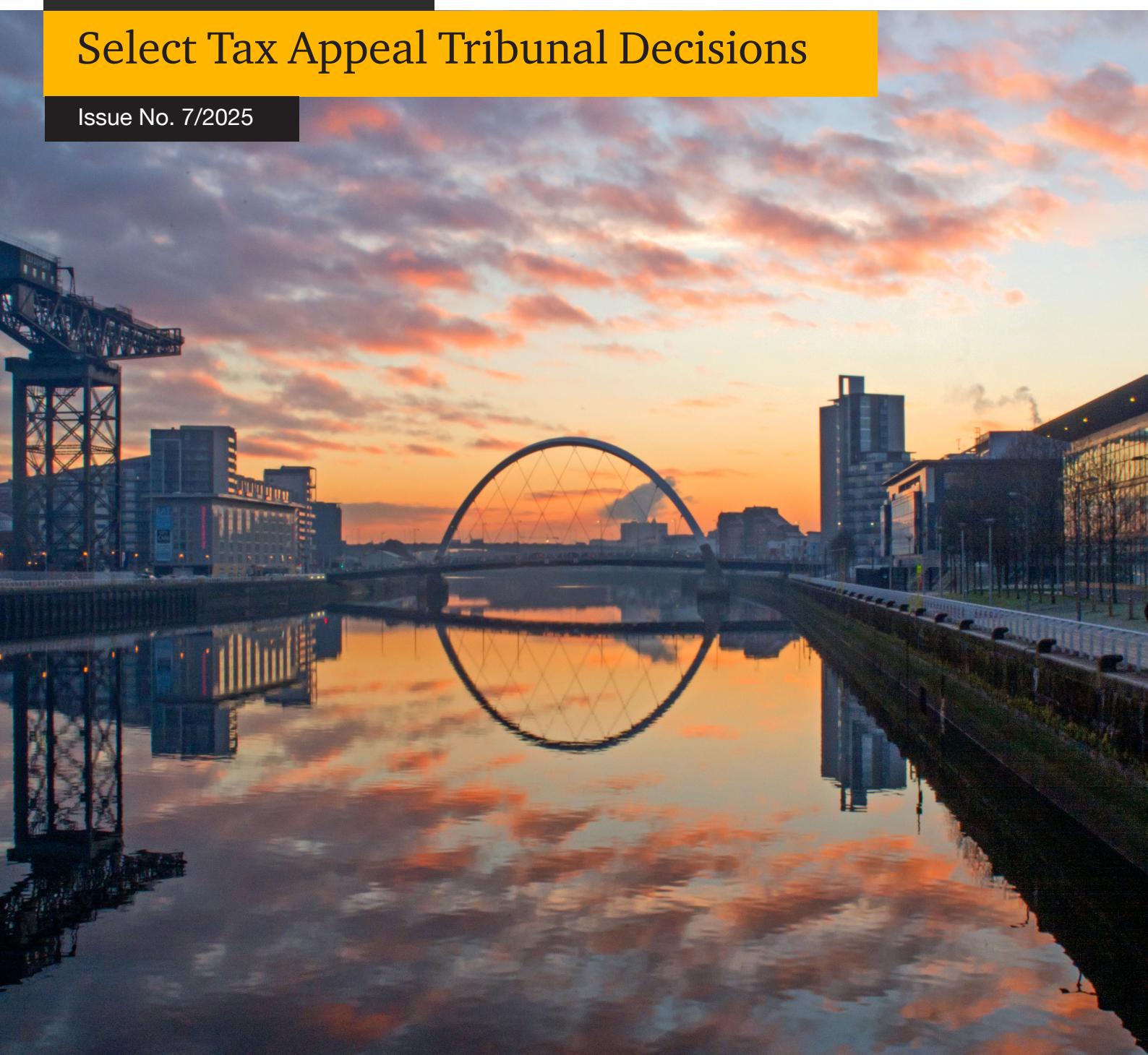
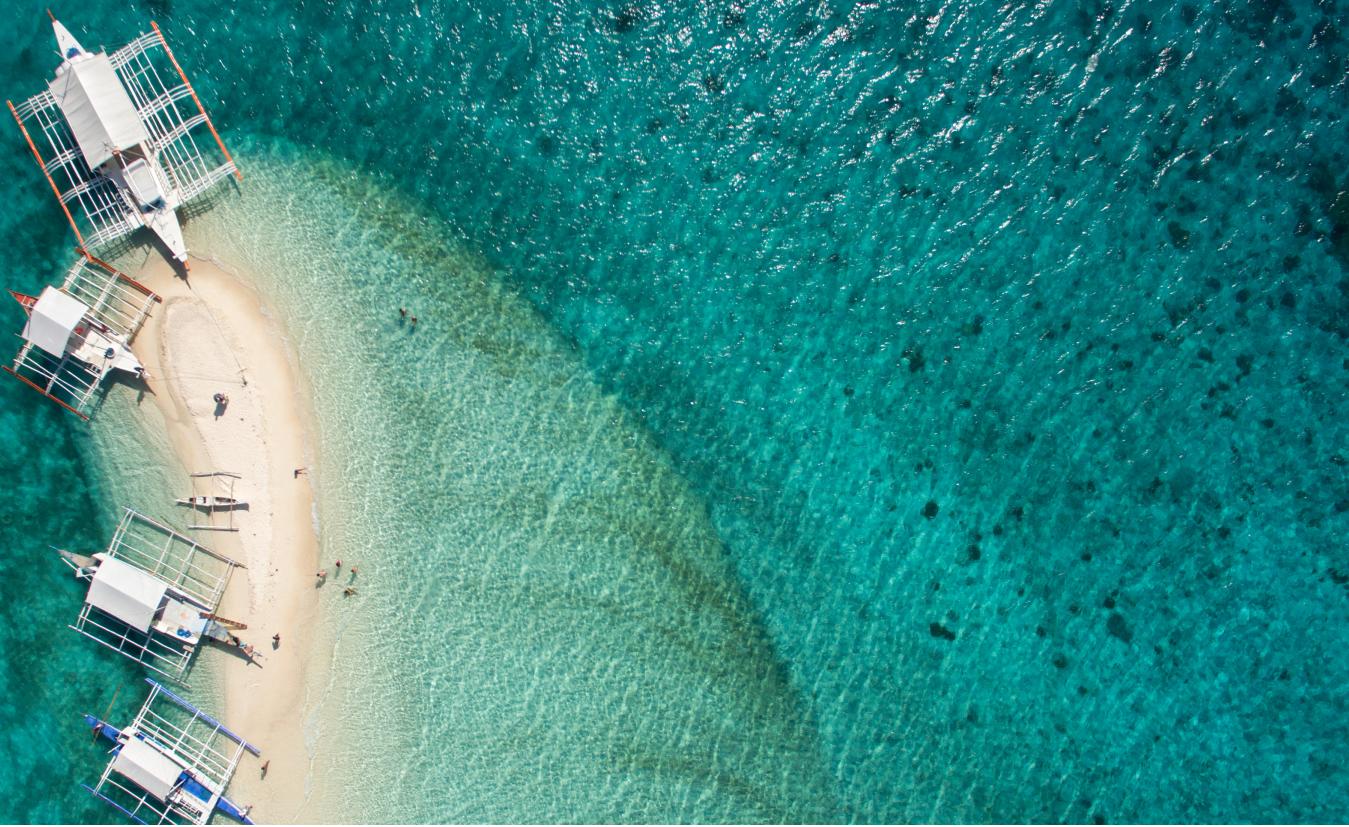


Tax Case Summaries

Select Tax Appeal Tribunal Decisions

Issue No. 7/2025





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Legal

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Preface

In this issue of tax case summaries, we continue to provide succinct summaries on the decisions issued by the TAT.

Whether you are a seasoned tax professional seeking to stay abreast of recent developments, a student delving into the intricacies of tax law, or a curious individual with a penchant for understanding the legal framework that governs our fiscal responsibilities, these case summaries provide a valuable resource.

The “Index” section highlights the key issue(s) under consideration by the TAT and is not an indication that the issue(s) highlighted are the only issues raised by the parties.

For a detailed analysis on any case and how it would affect your tax affairs, please look out for our tax alerts, reach out to your usual contacts or the following PwC tax team members.

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PwC.

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Income Tax Act

Tax Point for Capital Gains Tax

TAT e270/2024:

Paula Kendi Weru vs Commissioner of Legal Services & Board Coordination Department



Background

The Appellant, Paula Kendi Weru, a registered individual taxpayer, was issued with a notice of additional Capital Gains Tax (CGT) assessment by the Respondent, Commissioner of Legal Services & Board Coordination Department. The assessment sought to recover Kshs. 3,821,582.00 for the month of January 2023 concerning the transfer of property LR NO. 37/244/10. The Appellant objected to the additional default CGT assessment, leading to the Respondent issuing an Objection Decision. Dissatisfied with the decision, the Appellant lodged an appeal.

Issues for Determination

Whether the Respondent erred in determining the Appellant's CGT tax point for the subject Transaction.

Appellant's Argument

The Appellant argued that she was unfairly assessed on grounds that the Respondent asserted that the transfer of the property occurred on 30th January, 2023, warranting a 15% CGT. However, the Appellant maintained that the accurate transfer date is 3rd November, 2022, a crucial distinction that would subject the transaction to a lower rate of 5% as per the applicable regulations. The Appellant also raised concerns about

procedural fairness and adherence to timelines, limiting the Appellant's right to a comprehensive objection process.

Respondent's Argument

The Respondent argued that the Appellant had erroneously applied the previous CGT at the rate of 5% as opposed to the 15% that took effect on 1st January 2023. The Respondent maintained that the proper tax point in this matter was at the point when the parties to this transaction registered the transfer instrument in favour of the transferee on 30th January 2023 when the CGT rate of 15% had already been effected.

Tribunal Findings

The Tribunal found that the tax point for payment of Capital Gains Tax was as provided under the then paragraph 11A of Eighth Schedule to the Income Tax Act, which provided that the due date for tax payable in respect of property transferred shall be on or before the date of application for transfer of the property is made at the relevant Lands Office. Accordingly, the Tribunal found that the Appellant in the instant appeal discharged her CGT obligations in compliance with the then applicable law and the Respondent erred in determining the applicable tax point for the Appellant.

Tribunal's Decision

The Tribunal allowed the appeal, set aside the Objection Decision dated 25th January 2024, and ordered each party to bear its own cost.

East Africa Community Customs Management Act

Tariff Classification

TAT e274/2024:

King's Wear Limited vs Commissioner of Customs And Border Control

Background

The Appellant, King's Wear Limited, imported various bedding items between 2018 and December 2023, classifying them under tariff code 6302.39.00 which attracts import duty at 25%.

The Respondent, Commissioner of Customs and Border Control, conducted a post clearance audit on the Appellant's imports and reclassified the products under tariff code 6302.31.00 which attracts import duty at 50% and VAT at the rate of 14% or 16% depending on the importation date.

The Appellant contested the reclassification, but the Respondent sustained its decision. The Respondent then issued a notice of demand for short levied duties of Ksh 18,066,110.00. The Appellant lodged an application for review of the Respondent's decision, but the Respondent upheld the earlier reclassification and confirmed the additional duties.

Aggrieved by the Respondent's review decision, the Appellant filed its notice of appeal.

Issues for Determination

Whether the Respondent erred in reclassifying Appellant's products from tariff code 6302.39.00 to tariff

code 6302.31.00. - Whether the Respondent's review decision dated 22nd January 2022 demanding short levied duties of Ksh 18,066,110.00 was justified.

Appellant's Argument

The Appellant argued that the Respondent erred in law and fact by classifying the imported products under tariff code 6302.31.00 which covers bed linen made up of cotton. The Appellant insisted that the products were made up of a mix of two fabrics, polyester and cotton with polyester being the predominant fabric, and thus could only be classified under tariff code 6302.39.00 which covers 'other textile materials'.

The Appellant also argued that the Respondent failed to consider relevant factual records including the Kenya Bureau of Standards (KEBS) test results, certificates of origin and other supporting documents lodged by the Appellant in support of their objection.

Respondent's Argument

The Respondent argued that it had properly re-classified the products under tariff code 6302.31.00 since heading 63.02 provides for classification of 'bed linen, table linen, toilet linen and kitchen linen.'

The Respondent asserted that its reclassification was based on results of valuation and verification testing conducted by the Respondent which indicated cotton as the predominant material in the fabric.

Tribunal Findings

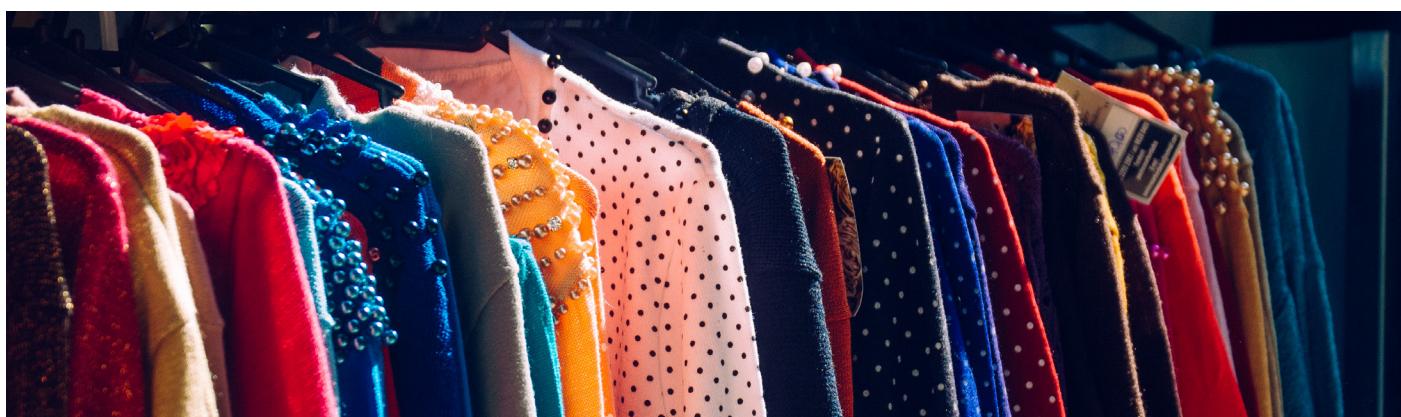
The Tribunal found that the Respondent erred in re-classifying Appellant's product from tariff code 6302.39.00 to tariff code 6302.31.00. The Tribunal noted that the Appellant adduced documentation that explained its position and basis of classification of its product under tariff code 6302.39.00.

The Respondent on the other hand made mere averments that were never substantiated with documentary evidence. 5

The Tribunal also found that the Respondent's review decision dated 22nd January 2024 demanding short levied duties of Kshs. 18,066,110.00 was not justified in the circumstances.

Tribunal's Decision

The Appeal was allowed. The Appellant's products were classifiable under tariff code 6302.39.00. The Respondent's tariff ruling dated 22nd January 2024 was set aside. Each party was to bear its own costs.



Tax Procedures Act

Documentary Burden of Proof

TAT e896/2023:

Eunice Mpinda M'rinyiru vs Kenya Revenue Authority

Background

The Appellant, a sole businesswoman trading as Milestone Supplies, was issued a VAT additional assessment by the Respondent, Kenya Revenue Authority, following a tax compliance audit for the period July 2022. The Appellant objected to the assessment, but the Respondent confirmed the assessments.

Dissatisfied with the Objection Decision, the Appellant instituted the present appeal.

Issues for Determination

Whether the Objection decision dated 8th November 2022 is proper in law.

Appellant's Argument

The Appellant argued that despite providing all requested documents, the Respondent issued an Objection

Decision that does not contain reasons contrary to the provisions of the Tax Procedure Act, 2015. The Appellant further argued that the additional assessments are unreasonable and unjustified. The Appellant claimed a full deduction of all the input tax as it was all attributable to taxable supplies.

Respondent's Argument

The Respondent argued that the Appellant did not provide all the documentation and that an analysis of the documents provided at the objection stage of the tax assessment revealed that the Appellant claimed input VAT on purchases from a company that declared nil returns.

The Respondent further argued that the Appellant bears the legal burden to demonstrate that the tax assessment by the Respondent was erroneous.

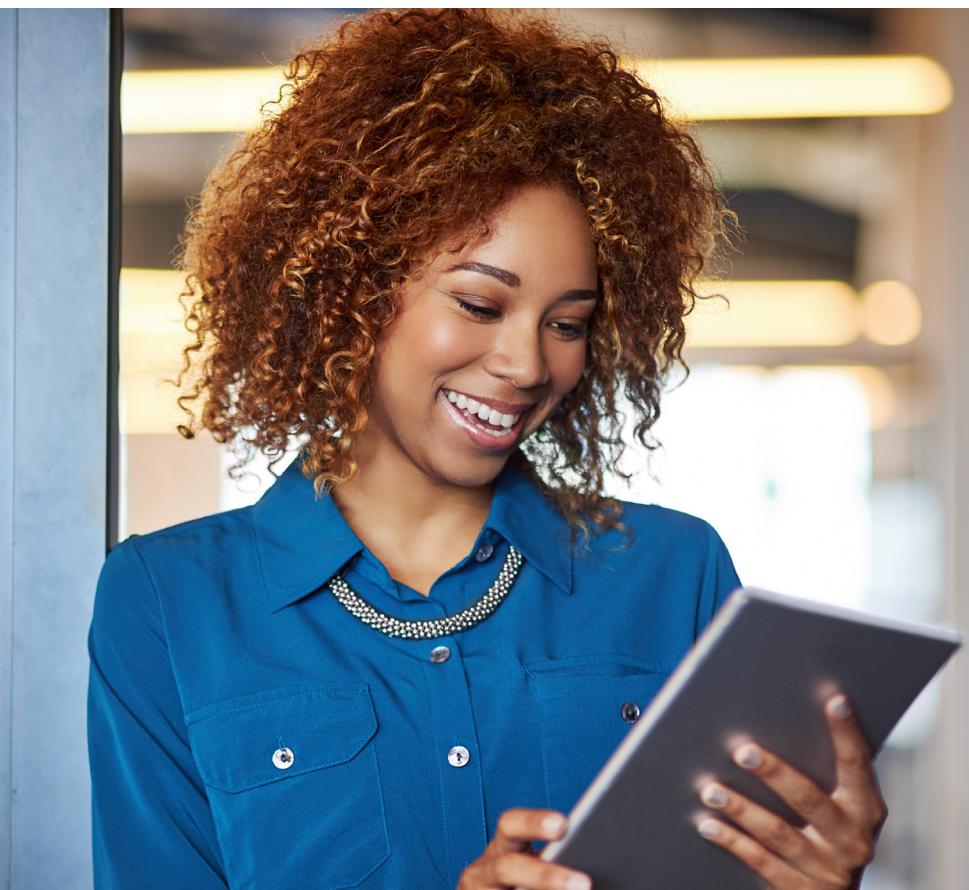
Tribunal Findings

The Tribunal found that the Appellant failed to discharge its burden of proof and therefore the Objection Decision dated 8th November 2022 is proper in law. The Tribunal noted that the Appellant's position is that it provided all the documentation to support its position that it merited deduction of input VAT.

However, the Tribunal found that the Appellant has failed to demonstrate that it provided the Respondent with all the documentations at the time of lodging the objection and that the Respondent failed to consider them.

Tribunal's Decision

The Appeal was dismissed and the Respondent's Objection Decision dated 8th November 2022 was upheld. Each party was ordered to bear its costs.



TAT e634/2023:

Noel Kagame Natome vs Commissioner of Domestic Taxes

Background

The appellant, a sole proprietor in the business of transporting petroleum products, was issued with additional VAT and income tax assessment orders by the respondent. The appellant objected to these additional assessments. The respondent confirmed the additional assessments, leading to the appellant lodging an appeal.

Issues for Determination

Whether the Appellant's Objection Application was allowed by Operation of the Law - Whether the Respondent was Justified to Confirm its Additional VAT and Income Tax Assessments against the Appellant.

Appellant's Argument

The appellant argued that the respondent erred in law and fact by confirming the assessment without

considering the cost of doing business.

The appellant also claimed that they were not made aware of the basis of the additional assessment, and that the respondent made a decision of figures strange to the appellant's objection in the month of September and October, 2021.

Respondent's Argument

The respondent contended that it conducted a review based on the information availed by the appellant and noted variances leading to adjusting the assessment to reconcile the variances.

The respondent argued that the appellant ought to submit a tax return in the approved form and manner as prescribed by the respondent.

The respondent also argued that

the onus is on the appellant to discharge its burden of proof that the tax decision is incorrect, which the appellant has failed to discharge.

Tribunal Findings

The tribunal found that the appellant's objection application was not allowed by operation of the law. The tribunal also found that the appellant did not provide relevant documents, and thus failed to discharge its burden of proof.

The tribunal held that the respondent was justified to confirm its additional VAT and income tax assessments against the appellant.

Tribunal's Decision

The appeal was dismissed, and the respondent's Objection Decision dated 31st August, 2023 was upheld. Each party was ordered to bear its costs.



Objection Decision past the statutory deadlines

TAT e923/2023:

Job Waweru Kinyanjui vs The Commissioner of Domestic Tax

Background

The Respondent assessed the Appellant's income tax for the periods 2018 and 2019. The Appellant objected to the assessment, but the Respondent rejected the objection.

The Appellant then lodged an appeal, arguing that the Respondent failed to consider all the documents he supplied in support of his objection, applied a wrong analysis in raising the assessment, failed to acknowledge the actual directors/ owners of the business, and issued its objection decision outside the statutory 60 days' period.

Issues for Determination

Whether the Objection Decision is statute time barred - Whether the Respondent's additional tax assessment is Justified and Proper in Law.

Appellant's Argument

The Appellant argued that he provided the Respondent with documents and bank statements in support of his Objection but the Respondent fully rejected the same.

He also argued that his Objection stood as allowed since the Respondent never issued him with an Objection Decision within the statutory 60 days.

The Appellant further alleged that he had paid all taxes due and therefore the Respondent had no right to claim anything from him.

Respondent's Argument

The Respondent averred that the Appellant did not submit requisite documents in support of his Notice of Objection. The Respondent also asserted that the Appellant did not discharge his burden of proof as

required under section 56 of the Tax Procedures Act.

Tribunal Findings

The Tribunal found that the Respondent failed to adhere to the provisions of Section 51(11) of the Tax Procedures Act.

The Objection Decision was statute time barred. As a result, the Appellant's Notice of Objection stood as allowed by the operation of law.

The Tribunal also held that the second issue for determination was rendered moot.

Tribunal's Decision

The appeal was allowed. The Respondent's Objection Decision dated 28th November 2022 was set aside. Each party was to bear its own cost.



Tax Appeals Tribunal Act

Preliminary objections

TAT e857/2023:

Junaina Horticulture Limited vs Commissioner of Domestic Taxes

Background

The Respondent investigated the Appellant's tax compliance for the years 2016 and 2017, resulting in an additional assessment of income tax totaling Kshs 379,067.00.

The Appellant objected to the additional assessments, arguing that the Respondent had not considered relevant considerations and had misinterpreted the law and facts relating to the Appellant's case.

The Respondent issued an Objection Decision confirming the additional assessments, leading to the Appellant's appeal.

Issues for Determination

Whether the Preliminary Objection is merited - Whether the Objection decision dated 16th October 2023 is justified.

Appellant's Argument

The Appellant argued that the Respondent failed to consider relevant factors, such as credit notes, email correspondences from KEPHIS, email correspondences from the customers rejecting the produce, normal business expenses, and standard industry ratios.

The Appellant also claimed that the Respondent failed to communicate the source of the assessment and did not comply with the provisions of Section 29 and 30 of the Tax Procedures Act when issuing the demand for additional assessment.

Respondent's Argument

The Respondent argued that it



carried out investigations into the Appellant's business for the period year 2016 and 2017 to confirm its tax compliance under income tax obligations. The Respondent stated that the investigations established that the Appellant exported agricultural produce in years 2016 and 2017 of Kshs. 6,317,780.00, but failed to declare the income earned.

The Respondent also argued that the Appellant failed to serve the appeal documents within the timelines upon the Respondent as envisaged under section 13(5) of the Tax Appeals Tribunal Act.

Tribunal Findings

The Tribunal found that the Respondent's Preliminary Objection was not merited as it did not provide

nor expound on details of the dates they were to be served with the appeal to support their assertion.

The Tribunal also found that the Appellant failed to prove that the Objection Decision issued by the Respondent was not correct and or justified.

The Appellant did not present evidence to support the objection against the assessment of KSHS 397,067.00.

Tribunal's Decision

The Appeal was dismissed and the Respondent's Objection Decision dated 16th October 2023 was upheld. Each party was ordered to bear its own costs.



Background

The case revolves around a dispute over the classification of imported goods by Azelis Kenya Limited (formerly Orkila East Africa Ltd) in 2022. The Commissioner of Customs and Border Control classified the goods in March 2022 and notified Azelis via email in July 2023.

The Commissioner later filed a motion to strike out Azelis' appeal due to lack of locus standi, arguing that the dispute was between the Commissioner and Orkila East Africa Ltd, not Azelis.

Issues for Determination

Whether Azelis Kenya Limited has locus standi to appeal the classification of the imported goods. - Whether the Commissioner of Customs and Border Control properly served Azelis Kenya Limited with the ruling on the classification of tax tariffs.

Appellant's Argument

Azelis Kenya Limited argued that it is the same entity as Orkila East Africa Ltd, having undergone a change of ownership and name in 2022. It maintained that it retained its identity, rights, and obligations, including tax obligations.

Azelis also contended that it was not properly served with the Commissioner's ruling until July 2023, more than a year after the classification was made.

Respondent's Argument

The Commissioner of Customs and Border Control argued that the appeal was fatally defective due to Azelis' lack of locus standi. The Commissioner contended that the dispute was between the Commissioner and Orkila East Africa Ltd, not Azelis.

The Commissioner also disputed Azelis' claim that it was not properly served with the ruling until July 2023.

Tribunal Findings

The Tribunal found that the Commissioner's application did not meet the threshold to strike out the appeal at a preliminary stage without going into the substance of the issues raised.

The Tribunal noted that the facts brought out by Azelis, such as the change of name, takeover of rights and obligations, maintenance of the same address, and continued communication, did not resonate well with the objection raised by the Commissioner.

Tribunal's Decision

The Tribunal disallowed the Commissioner's application to strike out Azelis' appeal. The parties were ordered to bear their own costs.

Filling additional documents

TAT 184/2023:

Rioki Estate Company (1970) Limited vs Commissioner of Domestic Taxes

Background

The appellant, Rioki Estate Company (1970) Limited, is engaged in coffee farming and property rental. The company filed tax returns for the years 2018 and 2019, which included expenses incurred in the course of business.

The respondent, Commissioner of Domestic Taxes, used annual income figures to compute the assessments and ignored the expenses. The appellant sought to admit audited reports and tax computations of the years 2018 and 2019 as primary evidence before the Tribunal renders its judgment on the appeal.

Issues for Determination

Whether the appellant incurred expenses in the year 2018 and 2019 - Whether the respondent was supposed to consider the audited financial statements of the years 2018 and 2019 before reaching the assessment - Whether there has been inordinate delay on the part of the respondent in reaching the ADR agreement - Whether the appellant

will be prejudiced if the said documents are not admitted before the Tribunal renders its judgement on the appeal.

Appellant's Argument

The appellant argued that it had incurred significant expenses in the years 2018 and 2019, which were not factored in by the respondent before arriving at the amended assessment.

The appellant also claimed that the delay in reaching the ADR agreement on the part of the respondent led to the appellant being time barred to file its written submission relating to the appeal.

Respondent's Argument

The respondent argued that the appellant's application was misconceived, bad in law, and incurably defective. The respondent also contended that the appellant had ample time to file any additional documents before the matter proceeded for hearing and that the delay in filing was inordinate and

devoid of any reasonable cause.

Tribunal Findings

The Tribunal found that the appellant's reasons for delay in filing the additional documents and the application were not sufficient.

The Tribunal noted that the ADR process had collapsed as of the 16th April 2024, and there was a period of three months prior to the hearing of the appeal during which the appellant could have filed the additional documents.

The Tribunal also found that the appellant's application, if granted, would prejudice the respondent and would amount to the re-opening of the hearing of the appeal.

Tribunal's Decision

The Tribunal dismissed the appellant's application and reserved the appeal for judgement as directed on the 16th July 2024. The timelines as provided for in law shall commence on the date of delivery of this ruling. No orders as to costs were made.



Background

The Appellant, Compagnie Nationale Air France, sought to amend its statement of facts to include new information related to the payment of disputed/assessed taxes.

The Respondent, Commissioner of Customs & Boarder Control, had conducted a post clearance audit on the Appellant's operations to assess its compliance with the Air Passenger Service Charge Act (APSC) Cap 475 for the period July 2017 to December 2022.

The audit revealed instances of under declaration of the charges collected as per the Appellant's airline passenger manifest vis-avis charges declared in the Appellant's returns.

Issues for Determination

Whether to allow the Appellant to amend its statement of facts to include new information - Whether the new information is relevant and would have an impact on the outcome of the case - Whether the Appellant had the new information at the time of filing the appeal and if not, whether it could have been obtained with reasonable diligence.

Appellant's Argument

The Appellant argued that the new information is relevant and would assist in the determination of the subject matter. They claimed that at the time of filing the appeal, the new information was not in their possession.

They also argued that the amendment would not introduce new issues that do not stem from the assessment being appealed and would not alter the course of their arguments.

Respondent's Argument

The Respondent opposed the application, arguing that the schedules provided by Kenya Airways do not correlate with the Appellant's outward passenger manifest and APSC 1 returns.

They claimed that the figures provided by the Appellant are not verifiable and are mere allegations without support. They also argued that the application is illintended and meant to forestall the ongoing proceedings at the Tribunal.

Tribunal Findings

The Tribunal found that the additional documents the Appellant seeks to adduce are critical in assisting the Tribunal towards clarifying the facts of the dispute and in helping the Tribunal in arriving at a just and fair determination.

The Tribunal also found that the documents appear to go to the crux of the Appellant's challenge to the tax assessment and thus are likely to have an influence on how the Tribunal is likely to reach its decision after the interrogation of such documents.

Tribunal's Decision

The Tribunal granted the Appellant leave to file its Supplementary Statement of Facts and to file additional documents within Fifteen (15) days of the date of delivery of the Ruling.

The Respondent was also granted corresponding leave to file and serve any 14 Supplementary Statement of Facts and additional documents within Fifteen (15) days of the date of being served by the Appellant.





Background

The appellant, KLM Royal Dutch Airlines, sought to amend its statement of facts in an ongoing tax dispute with the respondent, the Commissioner of Customs & Border Control.

The appellant claimed to have discovered new information related to the payment of disputed/assessed taxes, which was not in their possession at the time of filing the Memorandum of Appeal and the Statement of Facts.

Issues for Determination

Whether the Tribunal has jurisdiction to hear and determine the Application and Appeal - Whether the Tribunal should grant leave to the appellant to amend its statement of facts.

Appellant's Argument

The appellant argued that the

Tribunal has jurisdiction to hear the case and that the new information discovered would significantly assist in the determination of the subject matter.

The appellant also contended that the amendments do not introduce new issues that do not stem from the assessment being appealed and that no prejudice will be suffered by the respondent as these amendments will help both parties resolve the dispute.

Respondent's Argument

The respondent argued that the Tribunal lacks jurisdiction to hear the case as the appeal is premature and no Objection Decision was issued by the respondent.

The respondent also contended that the service charge under the Air Passengers Service Charge Act is not a tax statute for which an appeal to the Tax Appeals Tribunal can lie.

Tribunal Findings

The Tribunal found that the application was presented timely and the amendments do not introduce new issues to the appeal or a new cause of action.

The Tribunal also found that no prejudice will be suffered by the respondent as they will have an opportunity to review and respond to the amended Statement of Facts and additional documents.

Tribunal's Decision

The Tribunal granted the appellant leave to file and serve the Supplementary Statement of Facts and additional documents within fifteen days of the date of ruling.

The respondent was also granted corresponding leave to file and serve any Supplementary Statement of Facts and any additional documents within Fifteen days of the date of service by the appellant.

Lodging appeals outside of statutory deadlines

TAT e278/2024:

Nyasinga Transporters Ltd vs Commissioner of Domestic Taxes



Background

The Appellant, Nyasinga Transporters Ltd, claimed input VAT amounting to Ksh.9,080,000.00 and Ksh.12,600,000.00 under two invoice numbers for fuel purchased from Discount Group of Companies on 31st December 2020 and 31st October 2020.

The Respondent, Commissioner of Domestic Taxes, raised VAT additional assessments in March 2021 to which the Appellant objected on 15th March, 2021 on iTax platform.

The Respondent made its Objection Decision on 12th May, 2021, and the Appellant subsequently filed this Appeal on 7th March 2024.

Issues for Determination

Whether there is a valid Appeal on record.

Appellant's Argument

The Appellant argued that the assessment done and lodged in the iTax system was based on an error by Authority by not recognizing the input VAT filed by the Appellant.

The Appellant also claimed that the Respondent failed to vacate the assessed tax after the Appellant submitted Notice of Objection and supporting documentary evidence.

The Appellant further argued that the Respondent failed to effectively communicate with the Appellant and clarify facts on the ground before raising the additional assessment.

Respondent's Argument

The Respondent argued that it is allowed by Section 24 (2) of the TPA to assess a tax payers liability using any information available to it and to this extent, the Respondent stated

that it operated within the confines of the law by using the data available following a return review.

The Respondent also submitted that the Appeal was filed beyond the thirty days statutory period as the Objection Decision was issued on 12th May 2021 and the Appeal was lodged on 7th March 2024, which translates to 3 years lateness.

Tribunal Findings

The Tribunal found that the Notice of Appeal herein was lodged beyond the statutorily prescribed period and is therefore incompetent and untenable in law. The Appeal is therefore not validly and properly before the Tribunal.

Tribunal's Decision

The Appeal was struck out and each party was ordered to bear its costs.

Background

SNY Motors Limited, a motor vehicle dealer, was assessed by the Commissioner of Domestic Taxes for discrepancies between imports made and purchases claimed in both VAT and Income tax returns for the period January 2019 to December 2021.

The Commissioner issued additional assessments, which SNY Motors objected to. The Commissioner confirmed the total principal tax amount of Kshs 9,468,938.70, leading SNY Motors to lodge an appeal.

Issues for Determination

Whether the Appeal is incompetent for noncompliance with Section 13(b) of the TATA. - Whether Respondent's objection decision dated 8th August 2023 is justified.

Appellant's Argument

SNY Motors argued that the Commissioner was in a hurry to make assessments while the director was sick.

They also claimed that some imports were missing which led to the variance of VAT with Income tax. They requested the matter to be heard by the Alternative Dispute Resolution within the department.

Respondent's Argument

The Commissioner argued that they had given SNY Motors ample time to provide supporting documents for their objection, which they failed to do.

They also argued that the appeal was incompetent due to non-compliance with Section 13(b) of the

TATA, as it was not submitted within the required 30 days upon receipt of the Commissioner's decision.

Tribunal Findings

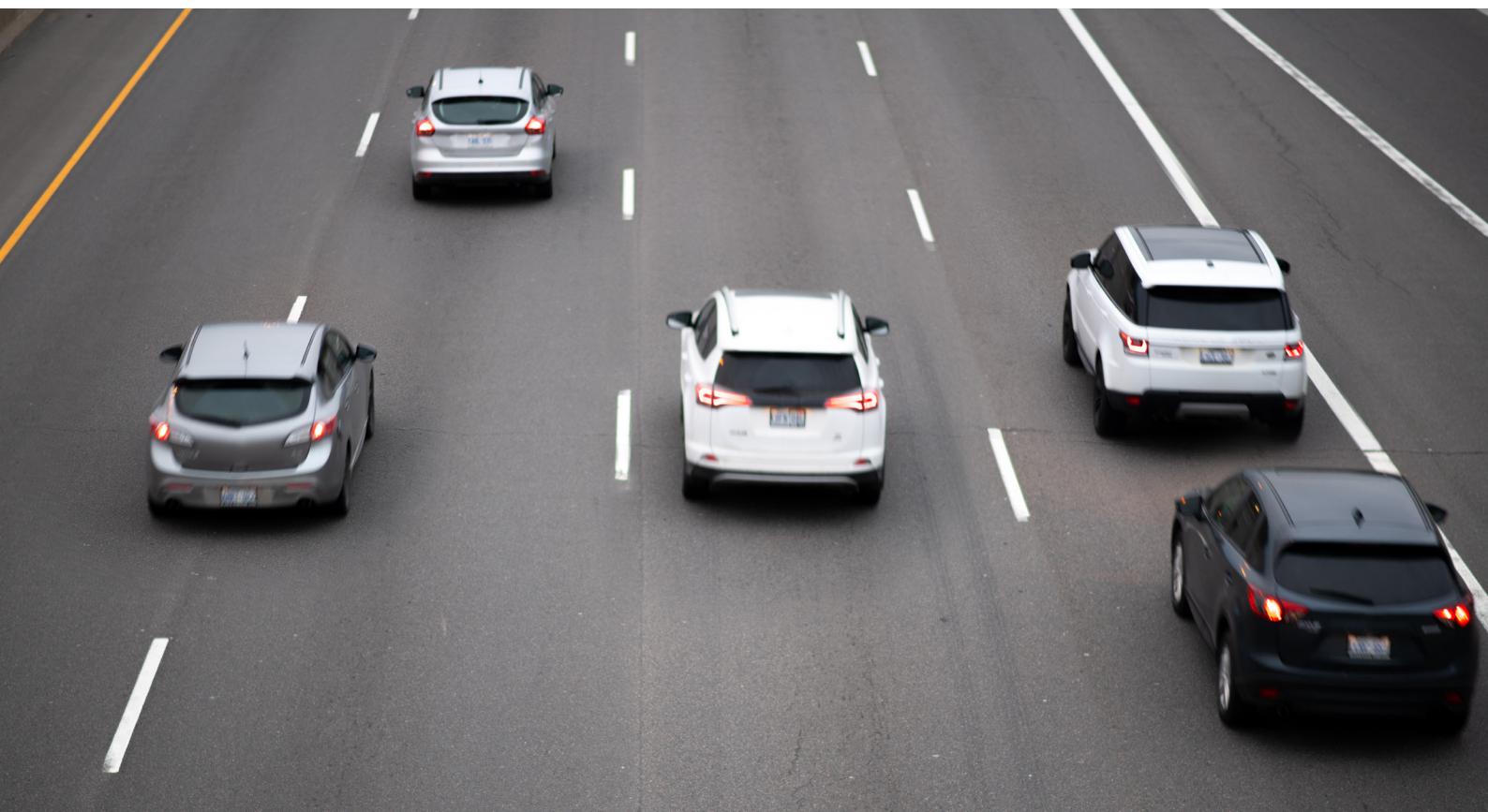
The Tribunal found that SNY Motors did not file their appeal within the required 30-day period and did not seek leave to file their appeal out of time, rendering the appeal incompetent.

As a result, the Tribunal did not consider the second issue of whether the Commissioner's objection decision was justified.

Tribunal's Decision

The Tribunal struck out the appeal and ordered each party to bear its own cost.





Background

SNY Motors Limited, a motor vehicle dealer, appealed against the Kenya Revenue Authority's (KRA) decision rejecting their objection on VAT assessments for the periods December 2019, June 2020, and August 2021.

The appellant claimed that the variance in VAT and Income tax assessments was due to some missing imports carried out in 2021 and that the KRA team was in a hurry to make assessments while the director was sick.

Issues for Determination

Whether the Appeal is incompetent for noncompliance with Section

13(b) of the Tax Appeals Tribunal Act, CAP 469A of the Laws of Kenya.

- Whether Respondent's objection decision dated 15th September 2023 was justified.

Appellant's Argument

The Appellant argued that the KRA team was in a hurry to make assessments while the director was sick.

They urged the Tribunal to nullify the assessments and the Objection Decision.

Respondent's Argument

The Respondent did not defend itself in this matter.

Tribunal Findings

The Tribunal found that the Appellant lodged its Notice of Appeal on 7th December 2023, beyond the statutorily required period of 30 days from the Respondent's objection decision dated 15th September 2023.

The Appellant did not seek leave to file its Appeal out of time, rendering the Appeal incompetent for non-compliance with section 13 (1) (b) of the Tax Appeals Tribunal Act, CAP 469A of the Laws of Kenya.

Tribunal's Decision

The Appeal was struck out, with each party to bear its own cost.

TAT e705/2023:

Ephantus Njuguna Wainaina vs Commissioner of Domestic Taxes

Background

The appellant, a sole proprietor offering transport services, was issued with additional income tax individual assessment orders by the respondent for the years 2019 to 2022. The appellant lodged an objection to these additional assessments. The respondent confirmed the additional assessments, leading to the appellant lodging an appeal.

Issues for Determination

Whether the appeal is valid - Whether the respondent's additional income tax assessment of the appellant is justified.

Appellant's Argument

The appellant argued that the respondent erred in law by assessing income tax by introducing additional incomes which were never earned in the years of income 2019, 2020, 2021 and 2022. The appellant also claimed that he filed the appeal within the prescribed timelines.

Respondent's Argument

The respondent argued that the additional assessment orders were justified as the appellant failed to provide reasons or documents to support his objection. The respondent also claimed that the appeal was lodged out of time and

without leave of the tribunal, making it invalid.

Tribunal Findings

The tribunal found that the appeal was filed out of time and was therefore invalid. The tribunal did not proceed to determine whether the respondent's additional income tax assessment of the appellant was justified, as the invalidity of the appeal rendered this issue moot.

Tribunal's Decision

The appeal was struck out, with each party to bear its own costs.



Locus Standi to act on behalf of a deceased person

MISC e060/2024::

Ali Abudullahi Mahad (Deceased) vs Commissioner of Domestic Taxes

Background

The deceased, Ali Abudullahi Mahad, was issued with assessment orders totaling Kshs. 19,597,514.05 in respect of Income Tax and VAT tax in 2018. Late objections were lodged in 2019. The deceased passed away in 2021 due to Covid-19 related complications.

In 2024, the Estate of the deceased received a demand note demanding payment of tax arrears to the tune of Kshs. 31,104,391.00 from the deceased. The Estate of the deceased sought leave from the Tribunal to file an appeal out of time.

Issues for Determination

Whether the Applicant has the locus standi to act for the deceased - Whether the delay in filing the appeal was due to reasons beyond the Applicant's control - Whether the delay is inordinate - Whether the Applicant stands to suffer irreparable loss unless the application is allowed.

Appellant's Argument

The Applicant argued that the delay in filing the appeal was due to reasons beyond their control and that they stand to suffer irreparable loss unless the application is allowed.

They also claimed to have the authority of his siblings to represent them in this Application.

Respondent's Argument

The Respondent argued that the Applicant lacks the locus standi to act for the deceased as they have failed to take out letters of administration to act on behalf of the deceased.

They also argued that the Application does not bring out any of the conditions set under Section 13 (4) of the Tax Appeals Tribunal Act, 2013 and Rule 10 (2) and 10 (3) of the Tax Appeals Tribunal (Procedure) Rules, 2015 as to invoke the discretion of the Tribunal to grant the orders sought.

Tribunal Findings

The Tribunal found that the Applicant's application is incompetent and untenable in law as there are no documents demonstrating that there exists a personal representative to the estate of Ali Abudullahi Mahad (deceased) donating capacity to enable the personal representative to move the Tribunal in the instant application.

The Tribunal also found that the personal representative of the Estate of Ali Abudullahi Mahad (deceased) ought to have procure a grant of letter of administration to enable him or her or them to be properly clothed with the capacity to invoke the jurisdiction of this Tribunal.

Tribunal's Decision

The application dated 20th June 2024 was struck out with no orders as to costs.



Contempt of TAT judgement orders

MISC e072/2024:

Multicolor Corporation Kenya Limited (Formerly Tp Kenya) vs Commissioner For Domestic Taxes & 3 Others

Background

The case revolves around a VAT refund claim of Kshs. 22,036,291.00 by Multicolor Corporation Kenya Limited (formerly TP Kenya) from the Commissioner for Domestic Taxes.

The Tribunal had previously ordered the refund to be processed within 90 days in a judgement delivered on 8th March 2024. However, the Commissioner for Domestic Taxes failed to comply with the order, leading to the current appeal.

Issues for Determination

Whether the Commissioner for Domestic Taxes was in contempt of the Tribunal's order for not processing the VAT refund within the stipulated 90 days. - Whether the Commissioner for Domestic Taxes could conduct a fresh audit before releasing the refund.

Appellant's Argument

The appellant argued that the Commissioner for Domestic Taxes

was in contempt of the Tribunal's order by failing to process the VAT refund within the stipulated 90 days. They also argued that a fresh audit was unnecessary as the claim had already been audited and a decision issued.

The appellant relied on the principle of res judicata, arguing that the matter had been conclusively settled and could not be reopened.

Respondent's Argument

The respondent argued that the refund process was governed by Section 47 of the Tax Procedures Act, which required an audit process where documents in support of the claim are reviewed.

They argued that they were not in wilful disobedience of the Tribunal's order as they were following the laid down procedure. They also argued that the appellant had not demonstrated that the respondent wilfully failed, refused or neglected to obey the court order.

Tribunal Findings

The Tribunal found that the respondent was in contempt of its order by failing to process the VAT refund within the stipulated 90 days. It held that the respondent's introduction of other conditions to the Tribunal's order was mischievous.

The Tribunal also found that a fresh audit was unnecessary as the claim had already been audited and a decision issued. It held that the respondent's actions or inaction was a deliberate and intentional violation of the Tribunal's authority and repute.

Tribunal's Decision

The Tribunal allowed the application and summoned the Commissioner of Legal Services and Board Coordinator to appear before the Tribunal to show cause why action should not be taken against him for failure to comply with the orders of the Tribunal issued on 8th March 2024. Each party was ordered to bear its own costs.



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