

Kenya's Tax Appeals Tribunal holds taxpayer legally entitled to claim input VAT

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Executive summary

Following an appeal by *Shreeji Enterprises (K) Limited* due to the Commissioner's decision to disallow input tax claimed by the Appellant, the Tax Appeals Tribunal, on 25 March 2020, determined that the Appellant had properly discharged its duty of paying output Value-Added Tax (VAT) and supplying corresponding information to the effect that it had purchased from registered persons prior to claiming input tax. Accordingly, the taxpayer was legally entitled to claim input VAT.

This Alert summarizes the Tribunal's decision.

Detailed discussion

In this matter, the Commissioner disallowed input VAT as claimed by the Appellant and charged additional corporation tax claiming the Appellant was the beneficiary of a "missing trader"¹ fraud. The Commissioner argued that the Appellant claimed input VAT arising from local purchases made from businesses that were implicated in missing trader fraud as the said businesses only existed on paper and did not have an office. The Commissioner further claimed that the Appellant was unable to provide compelling evidence other than invoices that the purchases took place.

It was the Appellant's case that it had furnished the Respondent with adequate proof of the purchases such as invoices, acknowledgments by the Appellant of delivery of goods from the traders and Electronic Tax Register (ETR) receipts attached to invoices from the various traders from whom the goods were purchased from. The Appellant submitted that it is not required by any law to go over and beyond what is contained in ETR receipts provided by suppliers. The Appellant further argued that the Commissioner's claim that the Appellant was the beneficiary of missing trader fraud was not supported by any evidence.

Based on the submissions made by the parties, the Tribunal summarized the following issues for determination:

1. Whether the Respondent erred in its decision to disallow input VAT claimed by the Appellant.
2. Whether disallowing input VAT raised a legitimate assessment for demand for additional corporation tax.

The Tribunal's findings on these issues are summarized below:

Disallowing input VAT

The Tribunal found that a taxpayer is entitled to deduct VAT whether or not there is a missing trader in the value chain. It is irrelevant for the right to deduct input VAT whether the VAT on the earlier or later sale of goods has been paid. The Tribunal found that the Appellant had discharged its duty of paying output VAT and supplying the corresponding information to the effect that it had purchased goods from registered persons prior to claiming input tax.

The Tribunal was of the view that under the current legislation, the Appellant is only obligated to confirm that its purchases are from a VAT-registered trader who has a registered ETR register.

The Tribunal noted that it cannot have been the intention of the legislature to put the taxpayer in a position where he would be required to produce any document that the taxman

may require. In demanding documents not prescribed by legislation, the tax authority should be guided by reasonableness, the nature and circumstances of the trader. Otherwise, it would demand for information which the trader cannot produce because he does not have it.

In conclusion, the Tribunal found that the Respondent erred in disallowing input VAT claimed by the Appellant for purchases from registered VAT agents given that it did not have the capacity, duty or knowledge to enforce remittance of output tax by its suppliers.

Additional corporation tax due to disallowing input tax

The Tribunal found that it was not disputed that the transactions between the Appellant and its suppliers has been conducted within the iTax system. The Tribunal was satisfied that the Appellant claimed input VAT since the transactions were undertaken on the iTax system and supported by ETR receipts.

The Tribunal found that the Appellant lacked the means and the responsibility of ensuring that input VAT was remitted. It was upon the Respondent to pursue its lawfully registered agents to remit the VAT rather than demand it from the Appellant. Based on this reasoning, the Tribunal ordered that the demand for additional corporation tax be vacated.

Impact

This judgment confirms that taxpayers are entitled to claim input VAT in transactions where they are issued with ETR receipts and the said transactions are carried out within the iTax system. It is the responsibility of the Kenya Revenue Authority to ensure that its registered agents remit VAT.

Endnote

1. The "Missing Trader" concept involves a person who purports to be a trader selling fictitious invoices to registered taxpayers to enable the deduction of the related input VAT.

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