

REPUBLIC OF KENYA  
IN THE TAX APPEALS TRIBUNAL  
APPEAL NO.147 OF 2017

APPLEWOOD INVESTMENTS LIMITED.....APPELLANT  
VERSUS  
COMMISSIONER OF DOMESTIC TAX.....RESPONDENT

**JUDGEMENT**

**BACKGROUND**

1. The Appellant is a Limited Liability Company registered in Kenya and is in the business of construction.
2. The Respondent is an employee of the Kenya Revenue Authority (KRA) and is established under the Kenya Revenue Act (Cap 469), charged with the mandate of assessment, collection and receipt of revenue as an agent for the Government of Kenya.
3. The Appellant was flagged out in the credit filer verification exercise and a Notice of Intention to carry out a compliance check dated 10<sup>th</sup> April, 2017 was served on the Appellant, whereupon through a letter dated 20<sup>th</sup> April, 2017 they asked for Thirty (30) days from the date of the letter to provide the documents requested for.
4. The Respondent granted the request through an email correspondence dated 4<sup>th</sup> May 2017, giving it up to 22<sup>nd</sup> 2017 to avail the documents.
5. The Respondent was to review the period between June 2015 and December 2016, covering the VAT initiative only. The verification exercise was conducted and preliminary findings presented to the Appellant on 5<sup>th</sup> July, 2017.
6. The Respondent in the findings advised the Appellant to amend the VAT returns for June 2017 to disallow input tax amounting to Kshs:7,027,885/=
7. The Appellant did not respond to the same, however, in the month of June, the VAT return was filed on 14<sup>th</sup> July 2017. An amendment was done on 26<sup>th</sup> July, 2017 on the June 2017 VAT returns to reflect the correct credit position.
8. The Appellant through its tax agent, H.W. Gichohi and company, objected to the disallowed input tax through a letter dated 3<sup>rd</sup> August 2017.

9. The Respondent after a submission to its Technical Forum ratified its findings and gave its Objection Decision which was communicated to the Appellant on 7th September, 2017.
10. Being aggrieved by the said Objection Decision, the Appellant filed the Appeal, together with its Statement of Facts on 16<sup>th</sup> October, 2017.
11. Upon service, the Respondent filed its Response to the Statement of Facts on 9<sup>th</sup> November, 2017.

#### **THE APPEAL**

12. The Appellant stated that the disallowed amount of input VAT was already remitted to KRA as per the ETR it produced. According to it, the Respondent having received the VAT payment and at the same time disallowing the same would result into double payment.
13. Furthermore, the Appellant argued that Section 17(4) of the VAT Act 2013 is in contradiction to Section 31 of the Tax Procedures Act, (TPA) and in the circumstances it is ambiguous and ought to be interpreted in its favour.
14. The Appellant concluded by stating that the Respondent's claim to amend the June 2017 Return ought to be rescinded and be Ordered to amend the Returns to allow the claim of input VAT of Ksh:7,027,855/= failing which the Appellant's business will collapse.

#### **THE RESPONSE**

15. The Respondent contended that the VAT Act, 2013, Section 17(2) is very clear on the time allowed to claim input tax which is within six (6) months after the end of the tax period in which the relevant supply or importation occurred.
16. The Respondent further submitted that the amount of input VAT claimed that was remitted to it has no relation to the time allowed by law for claiming input VAT. The Appellant claimed VAT input on invoices number 309 dated 3<sup>rd</sup> November 2014 and number 323 dated 24<sup>th</sup> January 2015 in August 2015. The Appellant was three (3) months and one (1) month out of time respectively and therefore disallowable in law.
17. According to the Respondent, there is a clear distinction between Self-assessments and Input VAT. Self-assessments are defined in the VAT Act as an assessment made by a taxpayer or his representative as under Section 28 and is drawn from incomes whereas input VAT is tax added to the price of purchase of goods or services liable to VAT. It is therefore impossible to compare the timelines given for Self-assessments to those on input VAT as they cannot be used interchangeably.

## ISSUES

18. The Tribunal having carefully considered the pleadings and submissions of the parties is of the respectful view that the issues that call for its determination herein are:-
- a) Whether the Respondent erred in disallowing input VAT that was already remitted to it by the Appellant.
  - b) Whether there is a contradiction between Section 31 of the TPA and the VAT Act, 2013.

## ANALYSIS AND FINDINGS

19. The Tribunal having considered the above issues is of the respectful view that the same are intertwined and will therefore analyze them simultaneously and make its findings thereof.
20. It is undisputed that upon conclusion of its preliminary findings, the Respondent disallowed input VAT on the Appellant's Invoices numbers 309 and 323, totaling Ksh:7,027,885/= The Appellant claimed VAT input on the said invoices dated 3<sup>rd</sup> November, 2014 and 24<sup>th</sup> July, 2015 respective fully. Section 17(2) of the VAT Act, 2013 provides for the timelines to claim Input tax, which is six (6) months after the end of the tax period in which the supply or importation occurred. The same provides as follows:-
- “If at the time when a deduction for input tax would otherwise be allowable under subsection (1), the person does not hold the documentation referred to in subsection (3), the deduction for Input tax shall not be allowed until the first tax period in which the person holds such documentation.*
- Provided that the input tax shall be allowable for a deduction within six months after the end of the tax period in which the supply or importation occurred”*
21. In view of the foregoing, it is clear that the Appellant claimed VAT input on the said invoices which were three (3) months and one (1) month out of time respectively.
22. According to the Appellant's argument, the Tax Procedures Act Section 31(4) would be his remedy. Its contention is that the TPA allows him to apply to the Respondent to make an amendment to the self-assessment returns whereupon the Respondent may amend the same within five years of self-assessment. However, the Tribunal does not agree with the said contention. The Tribunal notes that there is no provision in law that allows the extension of time to claim input VAT.
23. Section 31(4)(b) of the TPA provides as follows:
- “The Commissioner may amend an assessment-*
- (a) in the case of gross or willful neglect, evasion, or fraud by, or on behalf of, the taxpayer, at any time; or*
  - (b) in any other case, within five years of-*

- i) *for a self-assessment, the date that the self-assessment taxpayer submitted the self-assessment return to which the self-assessment relates; or*
- ii) *for any other assessment, the date the Commissioner notified the taxpayer of the assessment.”*

24. To the Tribunal’s mind, the above Section under the TPA allows taxpayers to make amendments to the Self-assessments where there is blatant error but not so that they can claim taxes. Therefore, Section 31(2) allows a taxpayer to make an amendment as in Section 31(4) (b) after an application has been made by the taxpayer and allowed by the Respondent.
25. The Appellant cannot ask the Respondent to extend the time to claim Input VAT as the Respondent cannot be compelled to perform a duty that it has no powers to do as is clearly envisaged in legislation. In **REPUBLIC -VS- KRA, EXPARTE L.A.B INTERNATIONAL (K) LTD (2011) eKLR** the Court while dealing with the issue of Section 17(2) of the VAT Act held as follows:-
- “The Commissioner cannot impose responsibility with motives outside statute. The Respondent’s hands are tied to abiding with the provision of Section 17(2) where the allowable claim time frame is six (6) months to which the Appellant did not adhere to thus the claim was validly disallowed since there is no provision in law that allows the extension of time to claim input VAT. Had the Appellant complied with the timeline, then the claim would have been considered”.*
26. Having considered the said provisions of law, namely, Section 17(2) of the VAT Act 2013 and Section 31(4) of the TPA it is clear that the Statutory timelines therein are not contradictory as Section 31 (4) of the TPA refers to timelines given for Self-assessments whereas Section 17(2) of the VAT Act refers to timelines in respect of claims for input VAT. The Tribunal finds that the Appellant has failed to demonstrate any ambiguity or contradiction as alleged.
27. In view of the foregoing, the Tribunal finds that the Respondent was right in disallowing the amount of Input VAT that was already remitted to the Respondent as per the shown ETR and further that Section 17(2) of the VAT Act, 2013 on claim of input VAT time limit is not in contradiction to Section 31 of the TPA
28. Furthermore the Tribunal finds that there is no ambiguity in the said Sections of the law that ought to be interpreted in the Appellant’s favour.
29. The upshot of the above is that the Appeal is not merited and the Tribunal makes the following ORDERS:

- a) The Respondent's Objection Decision dated 7<sup>th</sup> September, 2017 disallowing an assessment of input VAT claimed by the Appellant in the sum of Ksh:7,027,884.96 is hereby upheld.
- b) Each party to bear its costs.

30. Orders accordingly.

DATED and DELIVERED at NAIROBI this 18<sup>th</sup> day December 2019.

In the presence of:

Jonah Kariuki .....for the Appellant  
Fridah Mwangera .....for the Respondent

  
JOSEPHINE K. MAANGI  
CHAIRPERSON

  
RICHARD ROTICH  
MEMBER

  
TANVIR ALI  
MEMBER

  
GEOFFREY KARUU  
MEMBER

  
DELILAH KADZO NGALA  
MEMBER

