WHAT AMOUNTS TO AN EXPORT SERVICE?

KAA
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The High Court restated the conditions for a supply of services as an export to qualify to be zero VAT (value added tax) rated in Allied Beverages Co. Limited v Commissioner of Uganda Revenue Authority Civil Appeal No. 0039 of 2022.

In this case, Allied Beverages Co. Limited ("the Appellant") entered into a Service Agreement with The Coca Cola Export Corporation ("TCCEC") to provide brand marketing, market research and other related services for TCCEC, which is incorporated and located in the United States of America. The Appellant did not charge TCCEC VAT claiming that the services were export services which attract VAT at zero rate.

URA contended that the Appellant should have charged VAT at the standard rate of 18% and issued an assessment of UGX. 17,400,459,133 for a period of 2016 to 2020. URA contended that the services did not qualify as an export as the contract between the Appellant and TCCEC did not indicate a place of consumption of the service as a place outside Uganda and that the services were performed in Uganda.

The Appellant filed an Application at the Tax Appeals Tribunal challenging the assessment, however, the Tribunal ruled in favor of URA holding that the place of use and consumption of the Services was Uganda and not the United States of America, thus the Applicant ought to have charged VAT at 18%.

On appeal to the High Court, the appeal was allowed in favor of the Appellant. The High Court held that in determining whether a service is an export to qualify for zero rated, the determining factor is the location where the services supplied are finally consumed or used not where they are performed from. That the fact that the services are performed in Uganda by the Appellant, as per the invoices on record is immaterial. The Court further held that Ugandans or people in Uganda who listen or watch the adverts do not qualify as the consumers or users of the Appellant's services provided to TCCEC. That since the particular purpose of the services supplied by the Appellant to TCCEC is to enhance the sale of concentrate by its concentrate manufacturers and not the people of Uganda who listen or watch the adverts, the services were exported services that qualify to be zero rated under the VAT Act and the VAT Regulations.

The High Court further held that the contract need not expressly state that the services shall be consumed outside Uganda as long as the contract establishes the location of the consumer of the services to be outside Uganda.

The High Court also relied on the destination principle in the OECD Guidelines which emphasizes that goods and services are taxed in the jurisdiction where they are consumed. The Court further held that the Tribunal erred in law when it disregarded the destination principle without departing from its earlier decision and also given the fact that there exists a decision of a superior court applying that principle. The High Court emphasized the need to use the OECD Guidelines since they are not in conflict with Ugandan law and it was immaterial that Uganda is not a member of the OECD.

The above ruling from the High Court is an important precedent for taxpayers in Uganda offering services to persons outside Uganda. As per the above ruling, what is important is not that the services are performed in Uganda but rather that the person indicated in the Contract as the recipient and consumer of the service is outside Uganda.

It should be noted that a similar ruling was made in Kenya regarding the same facts.

We are happy to have represented Allied Beverages Company Limited and we thank the KAA tax team comprised of; Oscar Kambona, Bruce Musinguzi, Thomas Katto and Ferdinand Tumuhaise for having represented our Client and won in the High Court.

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