IN THE SUPREME COURT OF ZAMBIA **SCZ/08/016/2020**

HOLDEN AT LUSAKA **Appeal No. 10/2020**

(Civil Jurisdiction)

B E T W E E N :

ZAMBIA REVENUE AUTHORITY **APPELLANT**

AND

MATALLOY COMPANY LIMITED **RESPONDENT**

Coram: **Hamaundu, Malila and Kaoma, JJS**
On 3rd March, 2021 and 25th March, 2021

For the Appellant: Ms. M. Kapamba with Mr. M. Moonga, In-house Legal Counsel, Zambia Revenue Authority

For the Respondent: N/A

J U D G M E N T

MALILA, JS, delivered the Judgment of the Court

Cases referred to:

1. *Filminera Resources Corporation v. Commissioner of Internal Revenue (CTA case No. 8528) 2014*
2. *Atlas Consolidated Mining and Development Corporation v. Commissioner of Inlands Revenue, GR No. 145526*
3. *Intel Technology Philippines Inc v. Commissioner of Internal Revenue (27th April 2007)*
4. *Datson Siulapwa v. Failes Namasika (1885) ZR 21*
5. *Attorney General, Movement for Multiparty Democracy v. Lewanika & Others (1993 – 1994) ZR 164*

6. *Cape Brandy Syndicate v. Inland Commissioners (1921) ALL ER 64*
7. *SMT Tarulata Shyam v. Commissioner Income Tax 108 17R 345 9SC*
8. *Keshvji Ravji and Company v. Commissioner Income Tax (1990) 49 Taxman 87*
9. *Anderson v. Commissioner of Taxes (VIC) (1937) 57 CLR 233 AT 239*
10. *Amalgamated Society of Engineers v. Adelaide Steamship Co. Ltd (1920) 28 CLR at 161-162*
11. *Attorney General v. Million Juma (1984) ZR1*
12. *Mutantika & Sheil v. Kenneth Chipungu (SCZ Judgment No. 13 of 2014)*
13. *Zambia Consolidated Copper Mines Investment Holdings Plc v. Woodgate Holdings Ltd. (2011) (3) 110*
14. *Meek v. Fleming (1961) QB 366*
15. *Worldwide Enterprises Pty Ltd v. Silberman (2010) VSCA 17*
16. *Tanamerah Estates Pty Ltd v. Tibra Capital Pty Ltd (2016) NSWCA 23*
17. *Workers' Development Corporation (ZCTU) Ltd v. Davy Mkandawire (SCZ Judgment No. 19 of 1999)*
18. *Khalid Mohamed v. Attorney General (1982) ZR 49*

Legislation referred to:

1. *Value Added Tax Act, Chapter 331 of the Laws of Zambia*
2. *Customs and Excise Act, Chapter 233 of the Laws of Zambia*
3. *Value Added Tax Act General (Amendment) Rules, 2018*

1.0 INTRODUCTION AND BACKGROUND FACTS

1.1 In its legal bearing, this appeal is in truth about the extent to which a tax payer's *defectum ad producendum oported documentis* (failure to produce appropriate documents) will justify the tax authorities' rejection to grant tax credit to the tax payer.

1.2 It impeaches a ruling of the Tax Appeals Tribunal (the Tribunal) given on 23rd September, 2020 whose effect was to reverse the decision of the Commissioner General of the appellant, disallowing certain Value Added Tax (VAT) refunds

claimed by the respondent on certain imports made by the latter. The Tribunal ordered the appellant to pay the VAT withheld with interest.

1.3 The respondent tax payer is an incorporated entity which is also registered under the provision of the Value Added Tax Act, Chapter 331 of the Laws of Zambia. By virtue of such registration, the respondent is entitled to claim credit to it on VAT paid on goods such as raw materials imported by it.

1.4 In point of fact, the respondent had imported into Zambia certain goods under Bills of Entry designated as Nos. C21263, C21274 and C21279 and paid VAT on those bills in the sums of K38,843.00, K90,384.00 and K1,788.00, respectively.

1.5 It then claimed VAT refunds on the said Bills of Entry in May, 2018. This was, however, disallowed by the appellant under circumstances more fully explained in the paragraphs following.

1.6 From the 4th to the 12th October, 2018, an audit was undertaken on the respondent by the appellant's Domestic Taxes Division to ascertain the validity of the VAT refund

claims by the respondent for the period November, 2017 to May, 2018.

1.7 In a letter dated 15th October, 2018 addressed to the appellant's Assistant Director – Indirect Taxes, the respondent requested to amend what it called 'typing errors' in the VAT returns which it had submitted for November, 2017, February, 2018 and May, 2018. In response, the appellant informed the respondent that a request to amend could not be entertained once, as in this case, an audit was underway.

1.8 The audit thus proceeded in the absence of the amendment sought by the respondent. It disclosed that some import VAT claims made by the respondent in the periods November, 2017, February, 2018 and May, 2018 did not match with the actual import documents furnished for purposes of verification. Ultimately the VAT returns were found to have been inaccurate along with the refund claims relating to them.

1.9 By letter dated 5th November, 2018, the respondent notified the appellant that it accepted the result of the audit on condition that the entries that had been disallowed on account of 'typing errors' be amended. That request was rejected on

20th December, 2018 on grounds that the amendments to the return could not be allowed in the midst of an audit.

1.10 The picture that emerged, as painted, at any rate by the appellant, was as follows:

Month	**Claimed VAT Refund K**	**Adjustment**	**Corrected VAT amount**
Nov. 2017	368,427.20	103,180.72	265,246.48
Feb. 2018	83,443.68	41,941.28	41,502.40
May 2018	180,450.72	180,450.72	-
Total	**632,321.60**	**325,572.72**	**306,748.88**

1.11 Given the position as projected above, the appellant raised an assessment on disallowed local purchases and imports. In regard to local purchases, the appellant disallowed claims for a provision of invoices, and merely for failure to qualify for VAT refunds. For imports, claims were disallowed on the basis that they were made on wrong bills of entry when compared with the actual documents produced.

2.0 THE RESPONDENT COMPLAINS TO THE TRIBUNAL

2.1 The respondent was aggrieved by this turn of events and thus launched a challenge before the Tribunal. It (as appellant before the Tribunal) protested the disallowance by the

appellant of import VAT which was paid on entry numbers C21263, C21274 and C21279 that were claimed in the May VAT return.

2.2 In its notice before the Tribunal, filed on 13th September 2019, the respondent grumbled that:

> **The Commissioner General erred in law and fact by disallowing Import VAT paid on importation covered by Bill of Entries Nos. C21274, C21263 and C21279 when VAT was duly paid and claimed in May, 2018 VAT Return.**

2.3 Before the Tribunal, the appellant (as respondent in those proceedings), in its statement of case filed on 21st November, 2019, stoutly opposed the respondent's appeal.

3.0 THE APPELLANT'S POSITION BEFORE THE TRIBUNAL

3.1 Before the Tribunal, the appellant opposed the appeal on the ground that there was a mismatch between the actual import documents furnished by the respondent and the CE20 entry numbers which extended to wrong supplier and country of origin details.

3.2 The appellant placed reliance on Rule 15(1) of Government Gazette Notice No. 320 of 2014 made pursuant to section 18(3) of the Customs and Excise Act, Chapter 233 of the Laws of

Zambia, which prescribes the nature of the documents expected of an importer seeking to claim VAT credits or refunds. According to the appellant, Entry Nos. CHR C.21274, CHR C.21203 and CHR C.21279 could not be accepted for import VAT refund claims as they showed different TPINS from that of the respondent thus breaching Rule 15(1) of the Act.

4.0 THE TRIBUNAL HEARS THE APPEAL AND DECIDES

4.1 The Tribunal received evidence and representations on behalf of the parties. The evidence before the Tribunal was that on reviewing the prescribed documents presented to the appellant the port code was 'NKO' and not 'CHR' which the respondent had indicated in its appeal letter and further that the appellant confirmed that the disallowed import VAT was paid by the respondent. Additionally, the appellant did not, in verifying the claim on appeal, refer to the source documents that were verified by the Auditors.

4.2 It was also submitted that the TPIN and Assessment Notice Numbers were not for the respondent but for other Taxpayers. Counsel referred us to the record of appeal which show that entries CHR C21274, CHR C21263 and CHR C21279 were entries for Lumwana Mining, TPIN-1001828755, Kansanshi

Mining TPIN-1001602517 and Builders Warehouse International (Z), TPIN-1002223300 respectively. The respondent was registered as Match Corporation Limited and later changed to Matalloy Company Limited, TPIN-1001620992.

4.3 In a decision that has caused considerable consternation to the appellant, the Tribunal ruled that the appellant's approach in treating the respondent's application for VAT refunds was fatally wrong.

4.4 The Tribunal reasoned that when dealing with any tax audit, the appellant relies on the prescribed documents and in the event of an appeal the same documents should be considered. In this particular case, had the appellant based its decision on the prescribed documents, which the respondent had earlier presented, the import VAT would have been allowed in line with the provisions of section 18 of the Value Added Tax Act.

4.5 In the view of the Tribunal, the appellant erred when it failed to conclusively settle the case administratively by using the prescribed documents as provided for in its own rules. The appellant should have stuck to the same rules in reviewing source documents as a basis for its decision in both cases of

payment and refund of tax, adding that the appellant does not have the option of dismissing the use of prescribed documents to the disadvantage of taxpayers.

4.6 The Tribunal ultimately found that the appellant had allowed certain entries that had errors which could readily be identified on the ASYCUDA WORLD System. In the estimation of the Tribunal, the three entries amounting to K131,015.00 were not allowed because the appellant's method of verification would not readily produce the matching result.

5.0 APPEAL TO THIS COURT

5.1 Unhappy with the decision of the Tribunal, the appellant filed a notice of appeal. Three grounds were fronted couched as follows:

1. **That the Honourable Tribunal erred in law and in fact when it ruled that the reason why the three entries in question namely C21263, C21274 and C21279 were not allowed was because the appellant's method of verification could not readily produce the matching result.**

2. **That the Honourable Tribunal erred in law and in fact when it ruled that an error in designating port codes could be verified through the actual prescribed documents and ASYCUDA WORLD and should not be used to disadvantage taxpayers who have duly paid import Value Added Tax.**

3. **The Honourable Tribunal erred in law and in fact when it ruled that the Commissioner General's decision was reversed and ordered the appellant to pay the respondent the Value Added Tax withheld with interest from the time the assessment was finalised.**

5.2 The three grounds of appeal were supported by heads of argument filed by counsel for the appellant. The respondent opposed the appeal and purportedly filed heads of argument in opposition. We shall revert to this point later in this judgment.

5.3 At the hearing of the appeal, Ms. Kapamba on behalf of the appellant, intimated that she was placing reliance on the heads of argument.

6.0 THE APPELLANT'S CASE ON APPEAL

6.1 In regard to ground one of the appeal, the learned counsel for the appellant submitted that the reason VAT refund claims were disallowed on the three entries was because the said entries did not meet the requirements of rule 15(1) of the VAT Act (General) (Amendment) Rules, 2018 and, therefore, that disallowance could not, contrary to the holding of the Tribunal, be a wrongful act on the part of the respondent.

6.2 The learned counsel submitted generally on the legal provisions relating to VAT refunds and quoted quite extensively from both the VAT Act and the Rules by way of laying the background for their subsequent submissions.

6.3 More purposefully, the learned counsel submitted that in all jurisdictions, including Zambia, claims for tax refunds or tax credits are a sensitive and serious matter and any applications for refunds or credits necessarily have to undergo severe and rigorous scrutiny to ensure that only deserving applications are allowed or sustained. Rules that set out such procedures are designed to counter fraud upon the State and avert fraudulent claims upon the revenue.

6.4 Counsel quoted approvingly from the Philippines case of **Filminera Resources Corporation v. Commissioner of Internal Revenue**[1] where the Court of Tax Appeals of that country stated that:

> **In an action for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund/credit.**

6.5 The learned counsel for the appellant went on to quote the following, somewhat long but perhaps relevant, passage from the same case:

There is no record of petitioner ever submitting complete documents to substantiate its administrative claim for refund. Such is a requirement, otherwise the administrative body will have sufficient reasons to deny the claim. As held by the Honourable Supreme Court in the case of *Atlas Consolidated Mining and Development Corporation v. Commissioner of Inlands Revenue*[2], promulgated on March, 2007, the Honourable Supreme Court held:

> **Petitioner's contention that non-compliance with Revenue Regulation 3-88 could not have adversely affected its case in the CTA indicates a failure on its part to appreciate the nature of the proceeding in that court. First a judicial claim for refund or tax credit in the CTA is by no means an original action but rather an appeal by way of petition for review of a previous unsuccessful administrative claim. Therefore, as in every appeal or petition for review, a petitioner has to convince the appellate court that quasi-judicial agency a quo did not have reason to deny its claim. In this case, it is necessary for petitioner to show the CTA not only that it was entitled under substantive law to grant of its claim but, also that it satisfied all the documentary evidence and evidentiary requirements for administrative claim for refund or tax credits.**

6.6 The submission of counsel, in a nutshell, was that as the respondent had not adduced proper documentation to the appellant, it had failed to satisfy the requirements laid down by Rule 15(1) of the VAT (General) (Amendment) Rules and therefore, its claim for tax refund/credit was properly rejected.

6.7 The learned counsel quoted further passages from the Philippines case already referred to regarding, among other things, the claimant for tax credit or refund bearing of the burden of proof.

6.8 To emphasise the need for right documentation in tax credit claims, counsel also adverted to a different case from the Philippines, by way of analogy, namely **Intel Technology Philippines Inc v. Commissioner of Internal Revenue**[3] where the petitioner offered evidence to prove that it was engaged in export sales during a particular period. That evidence comprised export sales summaries, sales invoices, office receipts, airway bills, export declarations and certification of inward remittance during the period. That documentation was accepted in that case as sufficient to enable the petitioner sustain its claim for tax credit.

6.9 Rule 15(1) of the VAT Act (General) (Amendment) Rules 2018 which counsel quoted provides that:

> **For the purposes of subsection eighteen of the Act, the prescribed documentary evidence for imported goods is a copy of the ASYCUDA generated Customs and Excise Entry Declaration (CE 20) which shall carry a TPIN and assessment Notice Number at all times, and accompanied by the ASYCUDA**

generated receipt, evidencing the tax levied and paid on the goods at importation.

6.10 Counsel equally quoted section 18(3) of the VAT Act which reads as follows:

> **A supplier shall not deduct, credit, or claim input tax, unless the supplier at the time of lodging the return in which the deduction, credit or claim is made, is in possession of –**
>
> **(a) a tax invoice issued from a serially numbered invoice book printed by a printer authorized for the purpose by the Commissioner General;**
>
> **(b) a tax invoice printed from a computer package authorized by the Commissioner General for the purpose of invoicing taxable suppliers; or in the case of imported goods, import bills of entry or such documentary evidence of the payment of tax as the Commissioner General may, by administrative rule prescribe.**

6.11 It was further posited that where the words on an Act of Parliament are plain, as in the foregoing provisions, the court will not make any alteration in them because injustice may be occasioned. For this submission, counsel relied on our decision in the case of **Datson Siulapwa v. Failes Namasika**[4]. In support of the same submission counsel also quoted from the case of **Attorney General, Movement for Multiparty Democracy v. Lewanika & Others**[5].

6.12 To buttress the point they were making, counsel added that, as was held in **Cape Brandy Syndicate v. Inland Commissioners**[6], the literal rule often animates the interpretation of fiscal legislation.

6.13 The appellant's learned counsel also referred to the Indian Supreme Court judgment in **SMT Tarulata Shyam v. Commissioner Income Tax**[7] where the court observed that there is no scope for importing into a statute words which are not there.

6.14 They also quoted numerous other persuasive authorities from outside this jurisdiction including the cases of **Keshvji Ravji and Company v. Commissioner Income Tax**[8] and **Anderson v. Commissioner of Taxes**[9], all dealing with interpretation of statutes, to buttress the argument on construction of legislation in general, and tax legislation in particular. The point counsel reiterated was that under Rule 15(1) of the VAT (General) (Amendment) Rules 2018, a taxpayer's claim for refund will only be successful if the TPIN, Notice of Assessment Number and other details match those of the taxpayer claiming the refund or credit, failing which the refund or credit will be disallowed.

6.15 There is, according to counsel, no ambiguity in Rule 15 of the VAT (General) (Amendment) 2018 Rules so as to justify invoking the principle that was articulated in **Amalgamated Society of Engineers v. Adelaide Steamship Co. Ltd**[10] that where there is any ambiguity in constructing a tax statute the ambiguity should be resolved in favour of the taxpayer.

6.16 In a manner reminiscent of circumlocution and repetition, the learned counsel quoted various other case authorities in support of the same proposition. To us, counsel was belabouring a point they had already plainly made.

6.17 Counsel spent the remainder of their argument on ground one distinguishing between a statutory provision which imports a mandatory obligation and one which is merely directory. After referring to the cases of **Attorney General v. Million Juma**[11] and **Mutantika & Sheal v. Kenneth Chipungu**[12], counsel submitted that rule 15(1) is a mandatory rule as it uses the word 'shall'.

6.18 In support of ground two of the appeal, the learned counsel explained that the tax system is designed in such a manner that taxpayers input and generate the tax liability. The respondent in this case generated entries and ought to have

known which ports of entry it used to import. In counsel's submission, an error in designating a port code is crucial because the appellant has in its records entry numbers which are the same but have different port codes.

6.19 In an effort to facilitate easy apprehension by this court of the point they were laboring to articulate, the learned counsel explained the relevant acronyms in this case as follows: NKO (Nakonde), CHR (Chirundu) and KZU (Kazungula). The respondent, according to the appellant, had port entry numbers which were the same but had different port entry codes. For example, NKO 526 could also be CHR 526. According to the appellant, it can thus not give a tax refund on a port entry that the tax-payer has not claimed as the tax-payer may already have claimed on that entry and the appellant may then have to refund them twice. It is thus, in counsel's view, significant for a taxpayer to be specific with port entry codes.

6.20 Counsel explained that the port code on which the respondent was claiming was 'CHR'. Some of the entries it claimed VAT refunds on matched the details and the VAT refund claims were allowed accordingly. However, the three entries which

were disallowed did not match the respondent's details such as its TPIN, Assessment Notice numbers and details of the respondent as the details furnished belonged to different tax-payers altogether.

6.21 In buttressing the submission counsel were making on the need for specificity, they adverted to the case of **Cape Brandy Syndicate v. Inland Commissioners**[6] and quoted the following passage:

> **In a taxing Act, one has to look merely at what is said. There is no room for intendment. There is no equity about tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used.**

6.22 Turning to the respondent's position, counsel submitted that the respondent had asked for a refund under 'NKO' as is evident from its notice of appeal when it is clear that the entry numbers on which it was claiming VAT refund claims are 'CHR' and not 'NKO'. Even then the respondent had put 'CHA' rather than 'CHR'.

6.23 It was also submitted that after the audit the respondent wrote to the appellant to amend some ports of entry from 'CHA' to 'CHR'. As 'CHA' does not exist, the appellant gracefully understood the typo. This, however, did not put the

respondent's grief to rest. The port entry NKO which was being referred to by the respondent at trial was never mentioned at any time by the respondent as it requested to amend the returns. To thus expect a refund on NKO for a CHR entry is, in counsel's submission, rather irrational.

6.24 Counsel referred us to Rule 14(1) of the VAT Rules, 2018 which deals with correction of errors on over-declaration and under declaration. They submitted that as the respondent itself had argued, there was no over-declaration or under-declaration to enable it amend its return.

6.25 It was the appellant's further submission that what was at issue in this appeal was not the audit report; rather it was the disallowance of the VAT refund claims on the grounds already alluded to.

6.26 As regards the final ground of appeal, namely that the Tribunal erred when it ruled that the Commissioner General's decision was reversed, counsel submitted that the decision of the Commissioner General was in all respects sound as the entries disallowed carried not the TPIN number of the respondent but of other parties, nor were the entry numbers correct and in compliance with Rule 15(1).

6.27 Counsel submitted that the respondent failed to demonstrate that the Commissioner General erred in law when he disallowed the VAT refund claims on the entry numbers concerned which, as was demonstrated, were non-conforming with the provisions of Rule 15(1). He cited the case of **Zambia Consolidated Copper Mines Investment Holdings Plc v. Woodgate Holdings Ltd.**[13] where the court held that:

> **Where a plaintiff makes allegations, it is generally for him to prove those allegations. A plaintiff who fails to prove his case cannot be entitled to judgment. The evidence adduced must establish the issue raised to a fairly high degree of convincing clarity.**

6.28 In the present case, counsel submitted that the respondent failed to adduce evidence to establish its claims. They thus implored us to uphold all the grounds of appeal.

7.0 THE RESPONDENT'S CASE ON APPEAL

7.1 The respondent had strenuously purported to oppose the appeal and support the holding of the Tribunal in its entirety. This was in the heads of argument in opposition which were apparently signed by Matalloy Company Limited with its mobile phone number thereon indicated.

7.2 At the hearing of the appeal, a Mr. Bruno Musunga rose to his feet and sought to address us from the public gallery where he had been sitting all the while since the case was called. He introduced himself as a Tax Consultant and in the appeal, a representative of the respondent company. He also confirmed having authored the heads of argument on behalf of the respondent company.

7.3 We at once urged him to assume his seat, making it abundantly clear that we had no appetite to entertain his brave attempt for he, as an unqualified person, to represent an incorporated company in legal proceedings. The reason for our reaction is that unlike litigants in person, we do not readily countenance non-advocate representation of corporate entities.

7.4 Lay persons are unqualified to practice before the courts. The rule which bars them from practicing before the courts has been consistently applied for years and is not based on technicalities. The exception is, of course, the case of litigants in person.

7.5 To be clear, the rule that a company cannot conduct a case before our courts except by the appearance of an admitted

advocate is not based on any misguided attempt to preserve an unjustified monopoly for legal practitioners. The position is lucid. That rule exists and is observed for programmatic and sound policy reasons.

7.6 It has long been based on considerations central to the proper administration of justice and the protection of the parties to litigation. As was stressed in **Meek v. Fleming**[14], the administration of justice requires that those permitted to appear before the courts owe a responsibility to the court to ensure that the court is properly informed, not misled.

7.7 In the case of **Worldwide Enterprises Pty Ltd v. Silberman**[15] the Victorian Court of Appeal stated, among other things, that:

> **Where a lay person appears on behalf of a company, the court is deprived of the assistance it might otherwise receive, and to which it might be thought to be entitled. Also, a lay advocate is not subject to the ethical precepts that apply to legal practitioners who are entitled to address the court, but who bring with them particular responsibilities when doing so.**

7.8 We cannot stress enough the significance of having, as a representative of a company before court proceeding, a person who is not only responsible to the instructing party in the litigation, but to the court as well, being an officer of the court.

7.9 The New South Wales Supreme Court of Appeal in the recent decision in **Tanamerah Estates Pty Ltd v. Tibra Capital Pty Ltd**[16] reminds corporations once again that in almost all cases they must be legally represented in court proceedings.

7.10 In **Workers' Development Corporation (ZCTU) Ltd v. Davy Mkandawire**[17], we confirmed the legal position that a body corporate must be represented in civil litigation by an advocate unless leave has been previously obtained from the court, in the exercise of its inherent power to regulate its own proceeding, to be represented by a director or other senior person.

7.11 As stated in the **Davy Mkandawire**[17] case, we are prepared to accept that there could be a relaxation of the rule in appropriate circumstances. A superior court is entitled in terms of its inherent jurisdiction to grant such relaxation where doing so would best serve the administration of justice, though such permission would be rarely granted and the circumstances would have to be exceptional or at least unusual.

7.12 In this particular case, there has been no permission sought for the respondent as a corporate body to be represented by a lay person who is otherwise qualified as a tax expert. The urge for us to assess whether this is a proper case to consider a relaxation of the rule against lay representation of corporate bodies, did not even arise.

7.13 It was for the reasons we have articulated in the foregoing paragraphs that we formed the view that the respondent's heads of argument, drafted as they were, by an unqualified person, are liable to be discountenanced.

7.14 Having jettisoned the respondent's heads of argument we made it clear to counsel for the appellant, that even in the absence of legal representation on the part of the respondent and in the absence also of opposing arguments, the fate of the appeal was not *fait a compli.* The appeal would still be subject to the same judicious considerations as any other.

7.15 The settled position of the law, which we articulated in **Khalid Mohamed v. Attorney General**[18], namely that a plaintiff cannot automatically succeed where a defence failed, but is obliged to prove his case, applies *mutatis mutandis* to appeals before this court. There can be no automatic success of an appeal merely

because a response has collapsed or the respondent, for any other reason, fails to put up a credible opposition to the appeal.

7.16 An additional reason for us to scrutinize unopposed appeals is that in our role of providing judicial oversight over lower courts by way of correcting errors and misdirections, we are obliged to review the evidence on record and to assess whether the allegations of error or misdirection on the part of the lower court (or Tribunal) are indeed justifiable. In this way, our appellate role serves wider interests than those of the parties to the appeal.

8.0 OUR ANALYSIS AND DECISION

8.1 We have paid the closest attention to the submissions of the appellant's learned counsel. We have also perused with interest the documents on the record of appeal.

8.2 Our view is that the overarching issue for consideration in this appeal is, as intimated at the opening paragraph of this judgment, whether the appellant was justified to reject the respondent's claim for VAT refund on the basis that the documentation produced to support the application for a refund were wanting in some respects. With this projection of

the question determinative of the appeal, we shall deal with the three grounds of appeal globally.

8.3 The factual background is really not controverted. The respondent does not deny that there were errors in the documentation that it had submitted to support the VAT refund. The position the respondent takes which we, at any rate, gather from the documentation laid before the Tribunal by the respondent itself was that the import bills of entry which it submitted could easily be matched with the documents produced by the respondent for audit and verification of payment of taxes.

8.4 The respondent's position is that the appellant's officer, who conducted the physical audit, was furnished with import documents which were verified. Therefore, by not restricting its audit findings to the documents provided and going beyond those documents to find fault to justify disallowance of the VAT refunds, the appellant's action constituted palpable and overriding errors which severely prejudiced the respondent's position.

8.5 The Tribunal agreed with the respondent when it held that:

> **The respondent [now appellant] has further admitted that in verifying the claims on appeal, they did not refer to the source documents that were verified by the auditors as prescribed in the Commissioner's Administrative Rule (15) but relied on the appellant's letter....**
>
> **We find that the respondent erred when it failed to conclusively settle this case administratively by failing to use the prescribed documents as provided for in its own rules. The respondent must abide by the same rules in reviewing source documents as a basis of decision in both cases of payment of refund of tax....**

8.6 We have already comprehensively captured the arguments advanced by the appellant to support its position that the finding of the Tribunal was steeped in appealable error.

8.7 We must admit that for an importer entitled to VAT refund, it must be a bewildering and frustrating experience to be disallowed VAT refunds particularly when it is not disputed that VAT was paid on the imports.

8.8 The position of the appellant, namely that there was no compliance with rule 15 of the VAT Act General Rules for the refund to be sanctioned must be understood within the general framework of the law designed to curb fraud on the fiscus. The payment of tax refunds no doubt creates lucrative opportunities for fraud and corruption.

8.9 There is no question whatsoever that rule 15(1) of the VAT Act (General) (Amendment) Rules 2018 as we have reproduced it at paragraph 6.9 prescribes not only the documents that ought to be produced on claiming VAT refunds on imported goods, but what those documents should contain.

8.10 As the position now stands, there is no argument impeaching either the vires or the efficacy of the rules made pursuant to section 18(3) of the VAT Act. Taking the submission of the appellant's learned counsel *pro veritate*, the respondent was obliged to comply with the law as set out in rule 15(1) of the VAT (General) (Amendment) Rules.

8.11 We accept the submissions by counsel for the appellant that in any action for refund, the burden of proof is squarely on the taxpayer to establish its right to a refund. In this connection, the Philippines Tax Appeals Case of **Filminera Resources Corporation v. Commissioner of Internal Revenue**[1] which they cited, is within the ambit of the position we take.

8.12 What is known as the burden of proof in tax matters is in fact the responsibility to prove entries, deductions, statements and payments made on a taxpayer's returns. A taxpayer must be

able to demonstrate or substantiate the elements necessary for either deduction or credit by providing accurate information and all details needed. Under VAT, as with other taxes, this compliance burden is facilitated by proper record keeping by the taxpayer.

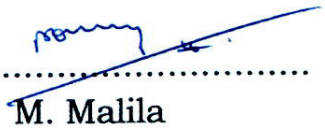
8.13 Our view is that rule 15(1) is not onerous in its requirements. It stems fraudulent VAT refunds, and this presents a fair and reasonable tradeoff between minimizing the taxpayer's compliance burden and minimizing the risk of issuing fraudulent VAT refunds which we have earlier alluded to.

8.14 That the respondent produced wrong documentation bearing wrong TPIN numbers is not in dispute. By so doing the respondent was literally the author of its own misfortune.

8.15 Our considered view is therefore that, taken in the round, the appellant was legally justified to disallow the VAT claim based on wrong documentation. The Tribunal was, accordingly, wrong to hold as it did. The appellant bore no duty to make a valid case for VAT refund for the respondent which was unable to produce prescribed documents and details. The appeal thus succeeds in its entirety.

8.16 Costs shall be to the appellant.

E. M. Hamaundu
SUPREME COURT JUDGE



M. Malila
SUPREME COURT JUDGE

R. M. C. Kaoma
SUPREME COURT JUDGE