



# MEMORANDUM

ZAMBIA REVENUE AUTHORITY  
**VERSUS**  
MATALLOY COMPANY LIMITED  
APPEAL NO 10 OF 2020

**Tax Law decisions  
- Supreme Court -**

**19th April 2021**

# **MEMORANDUM ON ZAMBIA REVENUE AUTHORITY VERSUS MATALLOY COMPANY LIMITED APPEAL NO 10 OF 2020**

## **BACKGROUND**

On 25th March 2021, the Supreme Court (“the Court”) rendered its judgment on the issue of the extent to which a taxpayer’s failure to produce appropriate documents will justify the Zambia Revenue Authority’s (“ZRA”) rejection to grant a tax credit/refund to a taxpayer. This judgment impeached the ruling of the Tax Appeals Tribunal (“the Tribunal”), which was given on 23rd September 2020.

The Background of this matter is that in from 4th to 12th October 2018, an audit was undertaken by the ZRA to ascertain the validity of Matalloy Company Limited’s (“Matalloy Co”) VAT refund claims for the period November 2017 to May 2018. In a letter dated 15th October 2018, Matalloy Co requested to amend typing errors in the submitted VAT returns but the ZRA declined the request stating that a request to amend cannot be entertained once an audit is underway. The audit proceeded in the absence of the amendments and it disclosed that some import VAT claims did not match import documents furnished for purposes of verification. Ultimately the VAT returns and refund claims were found to be inaccurate.

Matalloy Co accepted the audit on condition that the entries that had been disallowed on account of “typing errors” be amended. However, this request was rejected on grounds that amendment to the return could not be allowed in the midst of an audit. The ZRA proceeded to raise an assessment and disallowed local purchases and imports. In relation to local purchases, claims for a provision of invoices were disallowed because they failed to qualify for VAT refunds. For imports, the claims were disallowed because they were made on wrong bills of entry when compared with the actual documents that Matalloy Co produced



## 1. Appeal to the Tribunal

Aggrieved by the ZRA's decision Matalloy Co launched a challenge before the Tribunal.

### **Matalloy Co's position before the Tribunal**

Matalloy Co challenged the ZRA's assessment, protesting its disallowance of import VAT on the ground that it had been paid on importation and covered by bills of entry (“the three entries”) when VAT was duly paid and claimed in the May VAT return.

### **The ZRA's position before the Tribunal**

The ZRA opposed the appeal on the ground that there was a mismatch between actual import documents furnished to the ZRA and that the three entries extended to wrong suppliers and country of origin details. Further that the three entries could not be accepted for import VAT refund claims as they showed different TPINS from that of Matalloy Co which breached rule 15(1).

The ZRA relied on rule 15(1) which was made pursuant to section 18(3) of the Value Added Tax Act, Chapter 331 of Laws of Zambia (“section 18(3)”), which prescribes the nature of documents expected of an importer seeking to claim VAT credit/refunds.

#### **Rule 15(1) reads;**

*“For the purposes of subsection (3) of section eighteen of the Act, the prescribed documentary evidence for imported goods is a copy of the ASYCUDA generated Customs and Excise Entry and Declaration (CE20), 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.”*

#### **Section 18(3) reads;**

*“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 tax invoice issued from a serially numbered invoice book printed by a printer authorized for the purpose by the Commissioner General;*
- *a tax invoice printed from a computer package authorized by the Commissioner General for the purpose of invoicing taxable supplies; 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*



### **The Tribunal's decision**

The Tribunal ruled that the ZRA's approach in treating VAT refunds was fatally wrong. The Tribunal reasoned that when dealing with any tax audit, the ZRA relied on the prescribed documents and in the event of an appeal the same documents should be considered. In this case, had the ZRA based its decision on the prescribed documents which Matalloy Co had presented earlier, the import VAT would have been allowed in line with section 18 of the VAT Act. The ZRA thus erred when it failed to conclusively settle the case administratively by using the prescribed documents provided for in its own rules.

The Tribunal ultimately found that the ZRA should have allowed certain entries that had errors which could readily be identified on ASYCUDA WORLD system.

## **2. APPEAL TO THE SUPREME COURT**

Unhappy with the Tribunal's decision, the ZRA launched an appeal to the Supreme Court

### **The ZRA's case on appeal**

The crux of the ZRA's argument was that;

- the reason for disallowing the VAT refunds on the three entries was because the said entries did not meet the requirements of rule 15(1), therefore Matalloy Co's claim for tax refund/credit was properly rejected; and
- under rule 15(1), 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, filing which the refund or credit will be disallowed.
- The ZRA stated that the three entries were disallowed because they did not match Matalloy Co's details such as TPIN, Assessment Notice numbers and that the details of Matalloy Co that were furnished belonged to different taxpayers altogether.

### **Matalloy Co's case on appeal**

As Matalloy Co was not represented by legal counsel, the Court reviewed the evidence on record in order to assess whether there was error or misdirection on the part of the Tribunal. A perusal of the record of appeal showed that Matalloy Co did not deny that there were errors in the documentation that it had submitted to support the VAT refund. Its position was that the import documents that were submitted to the ZRA could easily be matched with the documents produced by Matalloy Co for audit and verification of payment of taxes.

### **Supreme Court's analysis and decision**

The overarching issue for consideration was whether the ZRA was justified to reject Matalloy Co's claim for the VAT refund on the basis that the documentation produced to support the application for a refund were wanting in some respects.

The Court held that rule 15(1) must be understood within the general framework of the law designed to curb fraud on the fiscus, as the payments of tax refunds create lucrative opportunities for fraud and corruption.

The Court held further that rule 15(1) prescribes not only the documents that ought to be produced on claiming VAT refunds on imported goods, but what those documents should contain. Matalloy Co was thus obliged to comply rule 15(1). Because there was no compliance with rule 15(1), the refund could not be sanctioned. The ZRA was thus legally justified to disallow the VAT claim based on wrong documentation.

Further, contrary to the Tribunals holding, the ZRA bore no duty to make a valid case for VAT refund for Matalloy Co which was unable to produce prescribed documents. rule, prescribe.

### **Burden of proof in an action for VAT refunds/credit**

The Court held that in any action for refund, the burden of proof is squarely on the taxpayer to establish its right to refund. In making this point the Court cited *Filminera Resources Corporation v Commissioner of Internal Revenue* (CTA case No 8528) 2014, where the Court of Tax Appeals of the Philippines 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."*

The Court further stated that what is known as the "burden of proof" in tax matters is the responsibility to prove entries, deductions, statements and payments made on taxpayers 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.

The Court concluded its judgment by stating 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

## **OUR LIMITATIONS**

Kindly note that this brief is not exhaustive and does not constitute legal advice. In the event that you would like us to render a comprehensive legal opinion, kindly contact our

- Mr. Michael M. Mundashi, SC: [mmundashi@mmlp.co.zm](mailto:mmundashi@mmlp.co.zm)
- Mr. Mulenga Chiteba: [mchiteba@mmco.co.zm](mailto:mchiteba@mmco.co.zm)

Alternatively, you may call any of the following numbers:  
Tel: +260 211 254248/50 | Direct: +260 211 254266.