

REPUBLIC OF KENYA
IN THE TAX APPEALS TRIBUNAL
APPEAL NO. 377 OF 2021

POLLEN LIMITED.....APPELLANT

-VERSUS-

COMMISSIONER OF DOMESTIC TAXES.....RESPONDENT

JUDGMENT

BACKGROUND

1. The Appellant is a company incorporated in the Republic of Kenya whose principal business activity is to produce ornamental plant cuttings for export.
2. The Respondent is a principal officer appointed under Section 13 of the Kenya Revenue Authority Act. The Kenya Revenue Authority (KRA) is an agency of the Government for the collection and receipt of all its revenue. Further, under Section 5(2) with respect to the performance of its function under subsection (1), the Authority is mandated to administer and enforce all provisions of the written laws as set out in Part 1 & 2 of the First Schedule to the Act for the purposes of assessing, collecting and accounting for all revenues in accordance with those laws.
3. The Appellant was appointed by Syngenta Seeds B.V (Syngenta B.V), a non-resident company incorporated in the Netherlands as a non-exclusive toll producer to produce unrooted and rooted cuttings of flower varieties.
4. The Appellant also provides additional research and development services to Syngenta Crop Protection AG (“Syngenta SCP”) on seeds and flower cuttings. Syngenta SCP is a non-resident company based in Switzerland.

5. The Appellant states that it had accumulated excess input tax arising from export of taxable supplies which are subject to VAT at the rate of zero percent. The Appellant lodged several Value Added Tax (VAT) refund claims with the Respondent between the years January 2014 and March 2017 totalling Kshs. 169,526,103.00
6. The Respondent rejected the Appellant's refund application vide a letter dated 5th September 2017 citing the Toll Production Agreement (“toll agreement”) between the Appellant and Syngenta BV. The said letter stated that the Appellant was an agent of Syngenta and is reimbursed for all costs that it incurs in the production of the flower cuttings plus a 5% mark-up and therefore the reason for the VAT refund claim rejection.
7. The Respondent states further that there were glaring mis-declarations in the VAT returns of the Appellant where import entries were declared as export entries, as well as variances between values of some export entries in the VAT return as compared to the export customs values declared on exportation.
8. The Appellant stated that it wrote a letter dated 21st December 2017 setting out the background of its business models and requested the Respondent to reconsider its decision of rejecting its VAT refund. The Respondent subsequently issued its rejection of VAT refund claims vide its letter referenced KRA/DTD/AM&RD/P000632476Y/2 dated 16th January 2018 restating its position regarding the rejection and further buttressing its position by citing a *Tax Appeal Tribunal (TAT) case no. 74 of 2016 (Cofftea Agencies vs Commissioner of Domestic Taxes)* in which the Tribunal ruled that payments made by an agent on behalf of the principal should be precluded from deducting input VAT from subject payments.
9. The Appellant responded to the Respondent on 17th May 2018 stating that the Respondent had misunderstood the business model between Syngenta

B.V and the Appellant as well as the relationship between the Appellant and Syngenta, and therefore reached an erroneous position. Further, the Appellant requested the Respondent to allow the amending of the VAT 3B listings that had been inadvertently filed with mis-declared output VAT. A follow-up letter dated 4th July 2019 was sent by the Appellant to seek a resolution of the impasse. Neither letter was met with a response.

10. The Appellant's then tax advisors followed up on the matter with the Respondent's Account Manager by email and a tripartite meeting was held on 25th October 2019 between the Respondent, the Appellant's tax advisors and representatives of the Appellant. It was resolved at the meeting that the Appellant provide a comprehensive explanation of its business model which was done through a letter dated 5th November 2019.
11. According to the Appellant, engagement between both parties continued in an effort to resolve the impasse. Following further deliberations and reviews by the Respondent and the Appellant's tax advisors on 26th February 2020, it was resolved that the VAT refund claims were properly filed as Syngenta B.V did not "reimburse" the input VAT incurred by the Appellant. The Appellant further averred that the input VAT which was not reimbursed was therefore claimable based on the information provided.
12. The Respondent, through an email dated 16th March 2020, confirmed that it had written to its Policy Department seeking guidance on the technical position on the matter and how to resolve the same.
13. The Appellant wrote to the Respondent seeking a determination on 20th July 2020, and avers that it received no response.
14. The Respondent states that the Appellant wrote several correspondences seeking clarification on the reasons for rejecting the claims. The Respondent goes on to state that all the correspondences were beyond the objection

timelines and the Appellant did not ask for admission of a late objection neither did it mention or qualify as objections.

15. The Respondent states that the Appellant has not lodged a proper objection as provided under Section 51 (2) of the Tax Procedures Act (TPA) 2015.
16. The Respondent states that it wrote an email to the Appellant requesting it to lodge a late objection but the same has not been done to date.
17. The Respondent via an email dated 24th May 2021 restated the reasons for rejecting the refund claim and noted that there was no pending objection to its 2018 decision as the legal limit for raising an objection had elapsed.
18. Dissatisfied by the Respondent's rejection of its VAT refund claims, the Appellant lodged an appeal before the Tax Appeal Tribunal by filing its Notice of Appeal dated 8th July 2021. It proceeded to file its Memorandum of Appeal together with the Statement of Facts on the same date, namely, 8th July 2021.
19. Upon service, the Respondent filed its Statement of Facts on 4th August 2021.

THE APPEAL

20. The Appeal is premised on the grounds that: -
 - a) The Respondent erred in law by finding that the Appellant had incurred the input VAT, subject of the refund claims, as an agent of its non-resident customers.
 - b) The Respondent rejected the Appellant's refund claims on the basis that the input VAT in question was incurred by the Appellant in its capacity as an agent as opposed to a principal and therefore, the Appellant being an agent did not qualify for VAT refund.

- c) The Appellant refutes the above assertion and submits that its business model is one of an “Independent Contractor” and not an agent as alleged by the Respondent. The Appellant was appointed by Syngenta B.V as a non-exclusive toll producer to produce unrooted and rooted cuttings of flower varieties through a "toll agreement".
- d) Further, the Appellant was appointed by Syngenta SCP to perform research and development activities for the benefit of Syngenta SCP under a Research and Development Service Agreement ("R&D agreement").
- e) The Appellant was appointed by Syngenta B.V and Syngenta SCP because of its expertise and know-how to produce unrooted and rooted cuttings of flower varieties and conduct research and development.
- f) Under the tolling agreement, the Appellant has undertaken to ensure quality production and in the event that there are defects to the Rooted and Unrooted Cuttings the Appellant is liable to Syngenta B.V.
- g) Under Clause 7 of the R&D agreement, the Appellant also warrants to provide services to Syngenta SCP while exercising due care, skill, judgment and due diligence, in a professional manner in accordance with industry standards. These warrants by the Appellant buttress its position as an independent contractor and not an agent.
- h) In light of the foregoing, the Appellant submits that under both the toll agreement and the R&D agreement, the consideration received by the Appellant for the services rendered is calculated as the sum of costs incurred in production/research and development plus a mark-up.
- i) The Appellant thus submits that contrary to the assertions by the Respondent, the expenses it incurs are for furtherance of its business and

thus part of its “cost of sales”. The Appellant incurs each of the expenses on its own behalf to ensure compliance with the tolling and the R&D agreements. This is in accordance with the provisions of Sections 13 (1) and 13 (3) of the VAT Act, 2013 that provide:

“13. (1) Subject to this Act, the taxable value of a supply, including a supply of imported services, shall be—

(a) the consideration for the supply; or

(b) if the supplier and the recipient are related, the open market value of the supply.

13(3) Subject to subsections (4) to (6), the consideration for a supply, including a supply of imported services, shall be the total of—

(a) the amount in money paid or payable, directly or indirectly, by any person, for the supply; or

(b) the open market value at the time of the supply of an amount in kind paid or payable, directly or indirectly, by any person, for the supply; and

(c) any taxes, duties, levies, fees, and charges (other than value added tax) paid or payable on, or by reason of the supply, reduced by any discounts or rebates allowed and accounted for at the time of the supply.”

j) In light of the foregoing provisions of Section 13 of the VAT Act, 2013 the Appellant submits since it is related to both Syngenta B.V and Syngenta SCP, the remuneration for its services is calculated on an arm's-length basis in compliance with Section 13(1)(b) above as well as in compliance with the Income Tax Transfer Pricing Rules, 2006.

k) The Respondent alleges that because of the remuneration method used by the Appellant (cost plus markup), the Appellant is thus an agent of

Syngenta B.V and Syngenta SCP. To the Respondent, the costs incurred by the Appellant are incurred on behalf of Syngenta B.V and Syngenta SCP as an agent and should be excluded from the value of the supply as provided in the provision to Section 13(5) of VAT Act, 2013 that provides:

"13(5) In calculating the value of any services for the purposes of subsection (1), there shall be included any incidental costs incurred by the supplier of the services in the course of making the supply to the client:

Provided that, if the Commissioner is satisfied that the supplier has merely made a disbursement to a third party as an agent of his client, then such disbursement shall be excluded from the taxable value."

- l) The Appellant refutes this assertion and submits that indeed a cost-plus model of remuneration is simply one of the Transfer Pricing methods used to determine the consideration between two related entities, that is, at arm's length. Therefore, as per the Appellant this cost-plus model of remuneration on its own is not indicative of a principal/agency relationship, rather it is simply a method of determining the open market value consideration to be paid to the Appellant.
- m) The Appellant submits that if this were the case, all entities being remunerated on a cost-plus remuneration model would be automatically agents of their customers leading to inferred non-existent agency obligations where none were intended by the parties.
- n) Accordingly, it is the Appellant's humble submission that under the provisions of Section 13(5) of the VAT Act 2013, all costs incurred in

making a supply including incidental costs qualify to be included in the value of the supply for VAT purposes.

- o) The Appellant submits that agency is a legal relationship. A fundamental element of the agency relationship is the power the agent enjoys to alter the legal relations of their principals vis-à-vis third parties. The word “agent” is not to be used loosely. At the very least, the Respondent should have conducted a legal and factual analysis in lieu of basing its inference of agency on the means of remuneration under the tolling agreement.
- p) According to the Respondent, since the Appellant is an agent of Syngenta B.V and Syngenta SCP, all expenses incurred as inputs belong to Syngenta B.V and Syngenta SCP, not the Appellant. Therefore, as per the Respondent's assertion, it is only the Principal who may deduct input VAT incurred on supplies made to an agent on behalf of its Principal. To support the position above, the Respondent relied on the Tribunal's decision in the Cofftea case.
- q) The Appellant submits that the Respondent's assertions are baseless and the Cofftea case does not apply in this present case due to the reasons cited above. The main issue for determination was whether specific expenses incurred by Cofftea, that is, transportation and shipping expenses as an agent of the Principal were allowable for input VAT deduction purposes where the Principal reimburses the cost incurred. The Tribunal found that in making the payments to third parties, Cofftea acted as an agent of its Principal. The services were procured by Cofftea on behalf of the Principal and paid for with money from the Principal and/or subsequently reimbursed by the Principal. This precluded Cofftea from deducting input VAT as the payments were made strictly as an agent of the Principal.

- r) The facts in the Cofftea case are thus completely distinguishable from the present appeal. In the Cofftea case, it was not in dispute that Cofftea was an agent of its non-resident Principal Ballahane International. In the case at hand, Syngenta B.V and Syngenta SCP has subcontracted the Appellant as an independent contractor to produce rooted and unrooted cuttings.
- s) From the foregoing, the Appellant submits that since there is no agency relationship between the Appellant and Syngenta B.V or Syngenta SCP, the Cofftea case was not a relevant authority on which the Respondent could base its refund decision.
- t) Accordingly, the Respondent erred in law and fact by disallowing the Appellant's VAT returns claims on the misguided view that the Appellant is an agent of Syngenta B.V and Syngenta SCP. The Respondent's assertion therefore lacks any legal merit and the Appellant's refund claims are thus merited in law.
- u) The Respondent erred in law and in fact by rejecting the Appellant's refund application on the assertion that it was reimbursed for costs incurred in providing services to its non-resident customers.
- v) The Appellant submits that it bought goods and services for its own use in furtherance of its business which is the production of rooted and unrooted cuttings to the requisite standards. The cost incurred by the Appellant when supplying services to Syngenta BV and Syngenta SCP are not therefore disbursements as described in Section 13(5) of the VAT Act, 2013.
- w) In any case, when determining whether a taxpayer is entitled to a deduction of input tax it must be considered whether the expenses to which the input tax attach were incurred for the purposes of furtherance of the business the person claiming the deduction by the way of input

tax. In *Commissioners of Customs and Excise v. Redrow Group Plc [1999]* **UKHL 4**: "The matter has to be looked at from the standpoint of the person who is claiming the deduction by way of input tax. Was something done for him for which, in the course or furtherance of a business carried on by him, he has had to pay a consideration which has attracted value added tax?"

- x) Considering the above, the Appellant was provided goods and services in the course or furtherance of a business carried on by it and paid consideration (as per the copies of the invoices between the Appellant and third-party suppliers, annexed and marked as PL- 16 of the Memorandum of Appeal). The fact that the Appellant recharges expenses or costs incurred does not preclude it from being entitled to a VAT refund under Section 17(1) as read with Section 17(5) of the VAT Act.
- y) Further, from the invoices provided, it is clear that indeed the input VAT charged to the Appellant was not passed on to Syngenta B.V and Syngenta SCP in computing the cost plus mark-up consideration as these were deductible input tax in accordance with the provisions of Section 17 of the VAT Act.
- z) Accordingly, the Respondent erred in law and in fact by rejecting the Appellant's refund application on the basis that it was reimbursed for costs incurred in providing services to its non-resident customers.
- aa) The Appellant's VAT refunds claims which arose from excess input tax incurred in making of exported services taxable at zero percent are merited in law.
- bb) The Respondent also rejected the Appellant's refund application on the basis that the services by the Appellant are performed in Kenya and

according to the Respondent, the services are not exported services taxable at zero-rate.

- cc) The Appellant refutes this position and submits that it produces and exports unrooted and rooted cuttings of flower varieties for Syngenta B.V, a non-resident entity based in the Netherlands.
- dd) The Appellant also provides research and development services for Syngenta SCP, a non-resident entity in Switzerland. Under the agreement for research and development services, all research and development results vest in Syngenta SCP. No other party has rights unless specifically designated by Syngenta SCP. Thus, Syngenta SCP, a non-resident entity, is sole beneficiary and user of all research and development results generated by the Appellant.
- ee) The research and development results are sent to Syngenta SCP, in Switzerland, for further development of intellectual property necessary for its business and to aid in making informed business decisions as well as informing strategies.
- ff) These strategies informed by the research and development output from the Appellant cascade globally and are not in any way linked to the Kenyan market only.
- gg) The Appellant's services by dint of being provided for "use" and "consumption" outside Kenya by Syngenta B.V and Syngenta SCP qualify as exported services. In fact, in the case of unrooted and rooted cuttings produced for Syngenta B.V, the products are delivered outside Kenya as evidenced by export entries.
- hh) Accordingly, the Appellant requests that this Honourable Tribunal finds that the services provided by the Appellant to Syngenta B.V and Syngenta SCP amount to an export of services and thus subject to VAT at zero rate

- ii) Accordingly, the Respondent VAT refund claims arising from making zero rated exported services are duly merited in law.
 - jj) In accordance with the provisions of Section 17 (5) of the VAT Act, 2013 the Appellant is entitled to cash refunds from the Respondent relating to the excess input tax for making the zero-rated supplies which it correctly claimed.
21. In conclusion, the Appellant prays that this Tribunal finds that: -
- a) The Respondent erred in law by finding that the Appellant had incurred the input VAT, subject of the refund claims, as an agent of its non-resident customers.
 - b) The Respondent erred in law and in fact by rejecting the Appellant's refund application on the assertion that it was reimbursed for costs incurred in providing services to its non-resident customers.
 - c) The Appellant's VAT refund claims which arose from excess input tax incurred in making of exported services taxable at zero percent are merited in law.
 - d) The Appellant be paid VAT refund claims amounting to KES 169,526,103 relating to the period January 2014 to March 2017.
 - e) The costs of and incidental to this appeal be awarded to the Appellant.
 - f) Any other orders that the Tax Appeals Tribunal may deem fit.

THE RESPONSE

22. The Respondent opposed the Appeal vide its Statement of Facts dated 4th August 2021. It averred as hereunder: -

- a) The Respondent states that the Appellant lodged VAT refund claims of Kshs. 169,526,103.00 between the periods 2014 to 2017. The Respondent states that the claims were rejected on various dates as per the below schedule.

PERIOD	AMOUNT	Acknowledgment Number	Rejection Date
Q1-2014	6,052,577	KRA201506238183	28/05/2020
Q2-2014	4,332,863	KRA201506238414	16/01/2018
Q3-2014	4,499,869	KRA201506238550	20/08/2017
Q4-2014	4,461,764	KRA201506238657	30/08/2017
Q1-2015	5,589,702	KRA201505781379	14/08/2017
Q2-2015	6,716,836	KRA201504388525	14/08/2017
Q3-2015	5,395,987	KRA201506238788	05/09/2017
Q4-2015	6,431,016	KRA201601777391	22/08/2017
Q1-2016	8,514,823	KRA201608614155	21/08/2017
Q2-2016	6,359,510	KRA201608614391	03/08/2017
Q3-2016	6,304,659	KRA201702321312	10/08/2017
Q4-2016	34,713,563	KRA201702321571	04/09/2017
Q1-2017	17,202,188	KRA201707415141	28/07/2017
Q2-2017	24,158,224	KRA201711113501	25/01/2018
Q3-2017	17,529,486	KRA201807023275	31/05/2018
Q4-2017	11,263,036	KRA201807020400	05/07/2018
Total	169,526,103		

- b) The Respondent states that the claims were rejected upon review of the Toll Production Agreement. The production agreement is between the Appellant and Syngenta Netherlands for production of unrooted cuttings of its flower varieties.
- c) The Respondent states that the Appellant entered into an agreement with Syngenta where it was supposed to provide specified research and development activities.
- d) The Respondent states that the Appellant invoices Syngenta Limited for costs that it has incurred in research and development of the flower cuttings.
- e) The Respondent states that according to the Toll Production Agreement the Appellant produces on behalf and in the name of Syngenta Netherlands and is reimbursed all costs incurred plus a 5% mark up.
- f) The Respondent vide a letter dated 23rd August 2017 wrote to the Appellant informing it the reason for rejection of its refund claim.
- g) The Respondent states that the Appellant is reimbursed for all costs that it incurs in the production of the flower cuttings plus a mark-up and therefore it is not entitled to a refund from the Respondent.
- h) The Respondent states that it is only the principal who may deduct input VAT made to an agent on behalf of the principal. Section 13 (5) of the VAT Act 2013 states:

"In calculating the value of any services for the purposes of subsection (1), there shall be included any incidental costs incurred by the supplier of the services in the course of making the supply to the client: Provided that, if the Commissioner is satisfied that the supplier has

merely made a disbursement to a third party as an agent of his client, then such disbursement shall be excluded from the taxable value.”

- i) The Respondent states that the Appellant produces for, on behalf, and in the name of Syngenta BV. The product at all stages is wholly the property of the Principal.
- j) The Respondent states that in the case of Syngenta SCP, the Appellant does the research for and on behalf of the Principal whereby, all actual costs and expenses incurred are covered by the Principal.
- k) The Respondent states that the Appellant in its appeal claimed to deal in the exportation of services yet in its VAT returns have declared exportation of goods. This means that the goods exported do not qualify as a supply as per Section 13 (1) of the VAT Act 2013 which states, **“Subject to this Act, the taxable value of a supply, including a supply of imported services, shall be (a) the consideration for the supply...”**
- l) The Respondent states that from a reading of the above section the consideration received by the Appellant is for services and not goods declared in its VAT returns.
- m) The Respondent states that additionally, there were glaring mis-declarations in the VAT returns of the Appellant where import entries were declared as export entries, as well as variances between values of some export entries in the VAT return as compared to the export customs values declared on exportation.
- n) The Respondent states that the Appellant supplies a service which is remunerated vide a commission from Syngenta. Syngenta therefore controls all aspects of production including quality and safety of personnel as shown in clause 7.4 of the toll production agreement.

- o) The Respondent further states that the Appellant is reimbursed for costs that it incurs in the production of the flower cuttings and thus the person entitled to claim a refund is Syngenta Limited.
- p) The Respondent states that the Appellant is being reimbursed for a service therefore the input it is claiming is not related to the output.
- q) The Respondent states that some of the outsourced services with which the Appellant is claiming input VAT do not relate to the output and therefore was disallowed as per the provisions of Section 17 (1) of the VAT Act 2013.
- r) The Respondent states that the Appellant has not lodged a proper objection as provided under Section 51 (2) of the TPA 2015.
- s) The Respondent states that the Appellant wrote several correspondences seeking clarification on the reasons for rejecting the claims. However, all the correspondences were beyond the objection timelines and the Appellant did not ask for admission of a late objection, neither did it mention or qualify as objections.
- t) The Respondent states that it wrote an email to the Appellant requesting it to lodge a late objection but the same has not been done.
- u) As to whether it erred in law in rejecting the Appellant's refund application on the basis that it was reimbursed for costs incurred, the Respondent states that the Appellant's refund claim was rejected on the basis that it was reimbursed by its contractor for costs it incurred.
- v) Further the refund claim was disallowed on the basis that it does not relate directly to the costs incurred in research and development of flower cuttings.

w) As to whether the Respondent erred in stating that the Appellant is an agent of Syngenta Limited in claiming the VAT refund, the Respondent states that a principal-agency relationship is implied by virtue of the fact that Syngenta Limited reimburses it for all costs that it incurs in the research and development of flower cuttings.

x) The Respondent states that by virtue of this control, a relationship can be implied and thus the case of Cofftea will be applicable in this case.

23. In conclusion, the Respondent prays that this Honourable Tribunal dismisses this appeal with costs to the Respondent as the same is without merit.

ISSUES FOR DETERMINATION

24. The Tribunal has carefully studied the pleadings and documentation together with the submissions of both parties and is of the respectful view that the issues that call for its determination are as hereunder: -

a) Whether the Appellant's Objection is valid in law.

b) Whether the Respondent erred in law and fact by rejecting the Appellant's VAT refund claims.

ANALYSIS AND FINDINGS

25. It is to these issues that the Tribunal will now turn to as hereunder: -

a) Whether the Appellant's Objection is valid in law.

26. The Respondent submits that the Appellant did not lodge a proper objection as provided under Section 51(2) of the TPA which provides as follows:

“51(2) A taxpayer who disputes a tax decision may lodge a notice of objection to the decision, in writing, with the Commissioner within thirty days of being notified of the decision.”

27. In interrogating the chronology of events, the Tribunal notes that the Respondent issued a tax decision rejecting the VAT refund claims on 5th September 2017. The Appellant avers, in its Statement of Facts dated 7th July 2021, at Paragraph 7, that it objected to the Respondent’s rejection decision. It alluded that it had attached a copy of the Objection. However, the Tribunal, having perused the said document, notes that the same is not on record. Further, the Tribunal has studied the Appellant’s submissions dated 14th December 2021, at Paragraph 6, where it stated that it wrote a letter dated 21st December 2017 setting out the background of its business models and requested the Respondent to reconsider its decision of rejecting its VAT refund. This letter dated 21st December 2017 is also not on record.

28. The Respondent further cites Section 51(1) of the TPA which provides that:

“51. (1) A taxpayer who wishes to dispute a tax decision shall first lodge an objection against that tax decision under this section before proceeding under any other written law”.

29. In its rejoinder, the Appellant states that it objected to the Respondent’s tax decision, vide the letter dated 21st December 2017, by setting out its grounds of objection that encapsulated its business model which it felt the Respondent had misunderstood, amongst other considerations, in rejecting its refund claim.

30. The Appellant proceeded to cite the numerous meetings it held with the Respondent in an effort to shed further light on why it was objecting to the Respondent’s rejection of its refund claims.

31. The Appellant wrote several correspondences seeking clarification on the rejection of its refund claims. However, the Respondent avers that all those correspondences were beyond objection timelines as specified in Section 51(2) of the TPA, referenced above.
32. The Tribunal notes that the numerous email exchanges between the Appellant and the Respondent took place post the Respondent's rejection letter of the Appellant's refund claims issued on 16th January 2018.
33. The Respondent avers that it advised the Appellant via an email communication on 24th May 2021 to file a late objection pursuant to the provisions of Section 51(6) of the TPA, but the Appellant failed to do so, opting instead to file an Appeal with the Tribunal. Section 51 (6) provides: -
- “51 (6) A taxpayer may apply in writing to the Commissioner for an extension of time to lodge a notice of objection.”**
34. The Tribunal, therefore, finds no evidence adduced by the Appellant to extricate itself from the Respondent's assertions regarding the absence of a valid objection in line with Section 51(2) of the TPA provisions. Furthermore, the Appellant's several communications to the Respondent failed to meet the threshold of either a valid objection or an extension of time to lodge a notice of objection.
35. Based on the above analysis, the Tribunal is of the respectful view that the Appellant failed to follow due process prior to filing a Notice of Appeal with the Tribunal and hence rendering the purported objection not valid in law and fact. The Appellant is at liberty to seek for an extension of time to lodge a notice of objection, if it so deems necessary.
36. Consequently, the Tribunal finds the Appellant's Objection is not valid in law.

- b) Whether the Respondent erred in law and fact by rejecting the Appellant's VAT refund claims.

37. Having made a determination that the notice of objection by the Appellant is not valid, the Tribunal will not delve into issue (b) above as the same is moot.

FINAL DECISION

38. The upshot of the above is that the Appeal is incompetent. Consequently, the Tribunal makes the following orders:

- a) The Appeal is hereby struck out.
- b) Each party to bear its own costs.

39. Orders accordingly.

DATED and DELIVERED at NAIROBI on this 4th day of March, 2022.


.....
JOSEPHINE K. MAANGI
CHAIRPERSON


.....
PATRICIA M. ANAMPIU
MEMBER


.....
TANVIR ALI
MEMBER


.....
GEOFFREY KARUU
MEMBER


.....
WAMBUI NAMU
MEMBER