

**IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT
OF JUSTICE ACCRA, CRIMINAL COURT 1, ACCRA PRESIDED OVER
BY HER LADYSHIP JUSTICE RUBY ARYEETEEY, AND DELIVERED ON
12TH JULY, 2021**

SUIT NO. CR/0332/2021

THE REPUBLIC

VS

**THE COMMISSIONER GENERAL OF
THE GHANA REVENUE AUTHORITY : RESPONDENT**

**EX PARTE: ABILITY DISTRIBUTION
PARKS GHANA LTD : APPLICANT**

RULING:

The applicant is a private limited liability company and a registered taxpayer in Ghana and the Respondent on the other hand is a public official responsible for the day-to-day administration of the affairs of the GRA. The applicant engages in the construction of commercial warehouses which it rents to tenants.

In its application for judicial review filed on 18th March, 2021, the Applicant seeks amongst others, an order of mandamus directed at the Respondent to compel him to refund to it the total amount of GH¢12,398,000.06 determined by the Respondent to be excess tax paid by the Applicant between the years 2015 and 2019 together with interest at the applicable rate.

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..... REGISTRAR
HIGH COURT, ACCRA
GENERAL JURISDICTION, LCC-ACCRA

The main legal basis of the Applicant for his pleading of an order of Mandamus for refund are anchored on Sections 66, 67 and 68 of the Revenue Administration Act, 2016 (Act 915) which Act it submits is the general Law governing revenue administration in the country. The Applicant as a taxpayer has a right under section 66 of Act 915 to apply to the Respondent for refund of tax paid by it in excess of its tax liability within three years of the relevant date. As the public officer responsible for administering and giving effect to the tax laws of Ghana, the Respondent was commanded in the Revenue Administration Act, 2016 (Act 915) to, upon an application made by a taxpayer under section 66 of Act 915, and upon being satisfied that the taxpayer has paid excess tax, apply the excess in reduction of any outstanding tax liability of the taxpayer and make a refund of the remainder to the taxpayer within ninety days of making the decision.

Again the Applicant submitted that as adopted in the case of *REPUBLIC (No. 2) v NATIONAL HOUSE OF CHIEFS, EX PARTE AKROFAKRUKOKO II (ENIMIL VI INTERESTED PARTY)* [2010] SCGLR 134 @ 165, the precondition to the grant of mandamus is that there must be a demand and a refusal. Thus a demand was made on the Respondent to refund the excess tax paid by the Applicant per a letter dated 9th December, 2020 as shown in Exhibit 'EB2'. No response to the demand made has been received from the Respondent and no reason has been proffered by the Respondent for his refusal to discharge his statutory duty to refund to the Applicant the sum determined to be excess tax paid by it. Mandamus should therefore lie against the Commissioner because if it was as a result of inadvertence that he did not make the refund to the Applicant, Exhibit 'EB2' served as a reminder to him to do so.

Thirdly, it was argued by the Applicant to put in simple terms that the mandatory provisions of Act 915 on the refund of excess tax paid by a taxpayer takes precedence over section 50 (1) (a) of the Value Added Tax Act, 2013 (Act 870) relied on by the Respondent in crediting the excess tax paid by the Applicant to it. The Applicant submitted that the Respondent erred when he relied on section 50 (1(a) in crediting the said sum to the Applicant instead of refunding same. This is because section 50 of the VAT Act being an earlier enactment on administrative matters relating to VAT would be considered repealed by the provisions of the later Revenue Administration Act which deals specifically with the administration of tax laws in Ghana. Thus, from the express language used in section 68 of Act 915, which addresses the particular point of excess tax refunds, it has revoked or abrogated any provision in a prior law on granting tax credits instead of refunds. The Applicant supported its argument with the long titles of both legislation and submitted that being part of the Act per section 13 of the Interpretation Act, 2009 (Act 792), the VAT Act was intended to “revise and consolidate the law in relation to the imposition of the value added tax and to provide for related matters”. The long title of the Revenue Administration Act, was promulgated subsequent to the VAT Act and intended to “provide for the administration and collection of revenue by the Ghana Revenue Authority and for related matters”

The Respondent vehemently opposed the application for judicial review for an order for mandamus directed at the Respondent. They argued that the Ghana Revenue Authority is governed not only by the general Act of the Revenue Administration Act, 2016 (Act 915) but also specific operational laws which laws are applied daily for specific operational issues. Thus

there is the Ghana Revenue Authority Act 2009 (Act 791), the Value Added Tax Act, 2013 (Act 870), the Customs Act 2015 (Act 891), the Income Tax Act, 2015 Act (896).

They submitted that the Applicant aptly applied the section in Act 870 to deal with the claim for refund because it is VAT input tax in excess of VAT output tax which resulted in the excess tax. However, it is not entitled to any refund in respect of excess VAT credit under the Value Added Tax Act, 2013 (Act 870) because under that Act it is only persons who engage in exports and whose exports exceed 25% of their total supplies and the total export proceeds have been repatriated and satisfy other conditions prescribed under section 50(1) (b) and those specified under section 50 (3) and 51 who qualify for refund of excess tax credit. In addition, under section 50(1)(a) of Act 870, any taxable person other than those engaged in export of goods who have excess tax credit within a tax period is required to carry forward the excess to offset any future output tax due and not entitled to a refund of the excess of the credit.

Thus section 68 of the Revenue Administration Act, 2016 (Act 915) relied on by the Applicant is applicable to other taxes other than the Value Added Tax, Act 870. Furthermore, Act 915 is a general provision which does not override the specific provision being Act 870, the Value Added Act, 2013. In addition, Act 870 has set conditions and those who qualify for refund of VAT in case of excess tax credit such that where there is conflict between a specific law and a general law as is in this case, the specific law takes precedence over the general law. They referred to the decision in *IN RE PARLIAMENTARY ELECTION FOR WULENSI CONSTITUENCY; ZAKARIA VS*

NYIMAKAN [2003-2004] 1SCGLR @ 3 PER Twum JSC among others to buttress their case.

DECISION

The crux of this application and the issue to be determined by this court is twofold; whether the Respondent erred when he relied on section 50 (1) (a) of the **VALUE ADDED TAX ACT, 2013**, (Act 870) and credited a VAT amount of GH¢ 12,197,887.60 to the Applicant rather than a refund for which an order of mandamus should lie and whether section 50 of the VAT Act being an earlier enactment on administrative matters relating to VAT would be considered repealed by the provision of the later Revenue Administration Act, 2016 (Act 915) which deals specifically with the administration of tax laws in Ghana and therefore takes precedence over the VAT Act.

In the case of *The Republic v Chieftaincy Secretariat Ex Parte Adansi Traditional Council*, the court set out the condition's precedent to the grant of Mandamus as follows;

“...But before a court would make such an order of mandamus the applicant must satisfy four main conditions, namely:(a) that there was a duty imposed by the statute upon which he relied, (b) that the duty was of a public nature, (c) that there was a right in the applicant to enforce the performance of the duty and (d) that there had been a demand and a refusal to perform that public duty enjoined by statute”.

For ease of reference, I have reproduced section 50 of the VAT Act below:

Where the amount of input tax which is deductible exceeds the amount of output tax due in respect of the tax period,

(a) the excess amount shall be credited by the Commissioner-General to the taxable person, and

(b) in the case of the portion of the excess attributable to exports, the Commissioner -General may refund the excess credit to the taxable person where that person's exports exceed twenty-five per cent of the total supplies within the tax period and the total export proceeds have been repatriated by the importers' banks to the taxable person's authorised dealer banks in the country.

(2) A taxable person may apply for a refund under subsection (1)(b) where the credit for the excess amount remains outstanding for a continuous period of three months or more, except that where the Commissioner-General orders an audit of the claim for refund, for purposes of section 51, the application shall be treated as received on the date that the audit is concluded.

(3) Subject to section 45, where the amount of tax paid by a person, other than in the circumstances specified in subsections (1) and (2), was in excess of the amount properly subject to tax under this Act, the amount of the excess shall be treated in the manner provided for under subsection (5) to (9).

(4) Where a person has overpaid tax in the circumstances specified under subsection (3), the person may apply in writing to the Commissioner -General for a refund of the excess amount of tax, accompanied by documentary proof of payment of the excess amounts.

(5) Subject to this section, where the Commissioner-General is satisfied that a person who has made an application under subsection (4) has overpaid tax, the Commissioner- General shall

(a) first apply the amount of the excess against the liability of that person for any tax, levy, interest or penalty administered by the Commissioner -General, and

(b) repay any amount remaining to the person within thirty days of being satisfied that the person has overpaid tax.

(6) Subject to subsection (8), a claim for a refund under subsection (4) shall be made within six months after the date on which the excess arose.

(7) The Commissioner-General shall serve on a person claiming a refund, a notice in writing of the decision in respect of the claim.

(8) Subject to subsections (3) and (4) of section 19, where the registration of a taxable person is cancelled and the person has excess credits that were not recovered as provided in this section, the excess credits may be treated in the manner prescribed under subsection (3) to (7) of this section.

(9) For the purpose of this section, a-taxable person applying for a refund shall submit to the Commissioner-General a completed Refund Claim Form together with the relevant tax invoices or, in the case of imported goods, the relevant customs document for tax paid.

(10) Where the Commissioner-General rejects the claim for a refund, the Commissioner-General may recover in accordance with this Act any tax previously refunded.

(11) In addition to a Refund Claim Form, the Commissioner- General may direct the claimant to submit other documents.

(12) The Commissioner-General may specify the manner in which documents under subsection (11) may be submitted.

(13) Except as otherwise provided in this section, a credit under subsection (1) shall be carried forward to the next tax period.

(14) A person who makes a claim for refund which that person is not entitled to under this section is liable to a penalty of double the original amount of the refund plus interest.

I have also reproduced section 68 of the Revenue Administration Act below:

(1) Where the Commissioner-General is satisfied that a person has paid excess tax, either on application for a refund by that person, or by reason of an order of a court or tribunal, the Commissioner-General shall

(a) apply the excess in reduction of any outstanding tax liability of the person; and

(b) refund the remainder to the person within ninety days of making the decision.

(2) Where the Commissioner-General accepts to refund part of the excess tax applied for by a person, the Commissioner-General shall refund the amount accepted, irrespective of whether the person files an objection against, the decision of the Commissioner-General.

(3) Where, the Commissioner-General fails to refund the excess tax to the person within ninety days as specified in subsection (1)(b), the Commissioner-General is liable to pay interest on the amount.

(4) The interest is calculated as fifty per cent of the statutory rate and is for the period

(a) commencing on the earlier of

(i) the date the Commissioner-General makes a refund decision under section 67; and

(ii) the day the person files an objection against the tax decision that gave rise to payment of the excess tax; and

(c) **ending on the day the refund is made.**

Indeed section 68 (1) of Act 915 provides for the refund of overpaid tax under the Act. The Act which is called the Revenue Administration Act prescribes a common approach to administering the various tax legislations in Ghana. Prior to the enactment of the Revenue Administration Act, each tax legislation prescribed its own administrative rules, and these frequently differed from those of other tax laws and regulations.

The Value Added Tax Act on the other hand is an Act to revise and consolidate the law relating to the imposition of the value added tax and to provide for related matters. It means that both legislations relate to tax. Section 97 (1) of Act 915 is headed "Relationship between tax laws," and provides that: ***This Act shall be read as one with each of the other tax laws.*** The general law in this case is therefore Act 915 and it is meant to be an addition to the already existing tax laws as provided in section 97 of same.

Legislations are either repealed expressly or impliedly by another legislation. Express repeal of legislation is where there are clear words indicating that an enactment was made to repeal the enactment which was hitherto in existence. Implied repeal of legislation does not expressly say that the existing enactment has repealed an enactment but a careful consideration of the two enactments would reveal that one has repealed the other. There would be a conflict in the two enactments which cannot be reconciled. In this instant case Section 109 of Act 915 provides for consequential amendments and repeals, the provision provides in the third schedule that sections 57, 66(3) and the sixth schedule in Value Added Tax Act, 2013 (Act 870) respectively have been repealed. The provision does not mention section 50(1) (a) which provides for tax refunds for Value Added tax. It follows therefore that the provisions in the Act which were not specifically mentioned are still operative and have the force of law.

Tax statutes like any other legislation are subject to the general rules to statutory interpretation. However, the special position of the statutes as part of the tax statutes as part of fiscal legislation has led to the development of some special rules for their interpretation; See Rawlinson “Tax legislation and the Hansard Rule [1983] BTR 274. Tax legislation are therefore supposed to be interpreted in plain language. ‘nothing is to be read in and read out’. Tax laws are supposed to be interpreted rigidly.

I therefore agree with the Respondent’s argument that, section 68 of the Revenue Administration Act, 2016 (Act 915) is applicable to other taxes apart from the VAT Act meaning that Act 915 is a general law and the VAT law is a specific law. It is trite that special provisions override general ones this is captured in the Latin maxim “Generalia specialibus non derogant”. The Courts have applied this legal principle in the following cases;

In Re Parliamentary Election for Wulensi Constituency; Zakaria vrs Nyimakan [2003-2004] 1 SCGLR

Republic vrs High Court Accra Ex Parte PPE and Juric (Unique Trust Financial Services) [2007-2008]

The general law in this case is Act 915, the Revenue Administration Act, 2016 and is meant to be an addition to the already existing tax laws as provided in section 97 of same.

Thus section 50 of the VAT Act being an earlier enactment on administrative matters relating to VAT would not be considered repealed by the provision of the later Revenue Administration Act, 2016 (Act 915) because the Revenue Administration Act is a general legislation with the administration

of tax laws in Ghana and therefore does not take precedence over the VAT Act.

From the foregoing, it is clear that the arguments of the applicant cannot be sustained because even though the Revenue Administration Act, 2016 (Act 915) creates a right in the plaintiff and places a duty on The Commissioner General for tax refunds, the avenue for Value Added Tax refunds has been specifically provided for under Section 50 of The Value Added Tax Act, 2013. The legal principle that specific laws will override the general provisions will therefore apply in this instance.

It is my considered opinion that the application for an order of mandamus should fail as the respondent has performed the duty placed on him by crediting the excess tax to the applicant as a book balance this being the remedy provided by law in The Value Added Tax Act.

The application is refused and therefore dismissed.

(SGD.)
H/L RUBY ARYEETAY (MS)
(JUSTICE OF THE HIGH COURT)

COUNSEL:

1. MAAME EKUA ASAAM holding for KIZZITA MENSAH BRIEF (For the Applicant)
2. GILBERT AMISSAH with IBRAHIM MOHAMMED (For the Respondent)

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