

Case Brief: The Republic v. The Commissioner-General of the Ghana Revenue Authority; Ex Parte Agility Distribution Parks Ghana Ltd

Citation: Suit No. CR/0332/2021

Court: High Court of Justice, Accra (Criminal Court 1)

Date of Ruling: 12th July, 2021

Judge: Her Ladyship Justice Ruby Aryeetey

Flynote

Tax Law – Value Added Tax (VAT) – Refund of Excess Tax – Mandamus – Conflict of Laws – General vs. Specific Legislation – Whether the general refund provisions in the Revenue Administration Act, 2016 (Act 915) override the specific VAT refund rules in the Value Added Tax Act, 2013 (Act 870) – "Generalia Specialibus Non Derogant" – Conditions for refund versus tax credit.

Facts

The Applicant, a registered taxpayer engaged in renting commercial warehouses, determined it had paid excess tax totalling **GHS 12,398,000.06** between 2015 and 2019. The Applicant applied for a cash refund under **Sections 66–68 of the Revenue Administration Act, 2016 (Act 915)**.

The Commissioner-General (Respondent) refused the cash refund and instead credited the amount to the Applicant's account as a book balance to offset future liabilities. The Respondent relied on **Section 50(1)(a) of the Value Added Tax Act, 2013 (Act 870)**, arguing that cash refunds are strictly reserved for exporters meeting specific criteria, while others are only entitled to tax credits. The Applicant sought an order of **mandamus** to compel the cash refund.

Issues

1. Whether the Respondent erred in applying the VAT Act (Act 870) to grant a credit rather than a cash refund under the Revenue Administration Act (Act 915).
2. Whether Act 915 (as later general legislation) repealed the specific administrative provisions of Act 870 regarding VAT refunds.

Held (Judgment)

The High Court **dismissed the application** for mandamus.

- **Specific Law Overrides General Law:** The Court held that **Act 870 (VAT Act)** is a specific operational law, whereas **Act 915 (Revenue Administration Act)** is a general law governing revenue administration. Under the principle of *generalia specialibus non derogant*, the specific provisions of the VAT Act take precedence over the general provisions of Act 915.
- **Conditions for Refund:** Under **Section 50 of Act 870**, a cash refund is only mandatory for taxable persons whose exports exceed 25% of their total supplies. For other taxable persons (like the Applicant), excess tax must be **credited** and carried forward to offset future output tax.
- **Mandamus Denied:** Since the Respondent had already performed his legal duty by crediting the excess tax to the Applicant's account (the remedy provided by the specific law), there was no failure of duty to justify mandamus.

Relevant Legal Provisions Considered

Statutory Provisions:

- **Value Added Tax Act, 2013 (Act 870), Section 50:** Specifically governs the treatment of excess VAT input tax, distinguishing between those entitled to credits and those entitled to refunds.
- **Revenue Administration Act, 2016 (Act 915), Sections 66, 67, and 68:** General provisions regarding the application for and payment of tax refunds.
- **Interpretation Act, 2009 (Act 792), Section 13:** Regarding the use of long titles in interpreting the intent of legislation.

Case Law:

- **Republic v. Chieftaincy Secretariat Ex Parte Adansi Traditional Council:** Established the four conditions precedent for the grant of mandamus.
- **In Re Parliamentary Election for Wulensi Constituency; Zakaria v. Nyimakan:** Applied the principle that specific legislation overrides general legislation.