Taxwise

The Commissioner of Domestic Taxes v Kenya General Industries Ltd

High Court Clarifies Utilization of WHVAT Credits in Kenya General Industries Case

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The High Court upheld the Tax Appeals Tribunal's ruling, clarifying that under Section 17(5) of the VAT Act, input tax credits carried forward must be utilized before applying Withholding VAT (WHVAT) credits, emphasizing the mandatory nature of the provision.

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Background

Kenya General Industries Ltd, a steel products importer and manufacturer, applied for a refund of WHVAT under Section 17(5) of the VAT Act. KRA responded by conducting a validation exercise and issuing Credit Adjustment Vouchers, which placed the company in a continuous credit position. Despite multiple follow-ups and meetings, KRA failed to issue a formal refund decision or provide clarity on the refund process. This led the company to appeal to the Tax Appeals Tribunal, which ruled in its favour.

High Court Clarifies Utilization of WHVAT Credits in Kenya General Industries Case

In The Commissioner of Domestic Taxes v Kenya General Industries Ltd (HCCOMMITA/E177/2024), the High Court delivered a pivotal judgment on the interpretation and application of Section 17(5) of the Value Added Tax Act, 2013 (VAT Act), and Section 47 of the Tax Procedures Act, 2015 (TPA). The case revolved around the Kenya Revenue Authority's (KRA) handling of Withholding VAT (WHVAT) credits and input tax credits carried forward, and its failure to process refund claims in a timely and lawful manner.

Legal Framework and Tribunal's Findings

Section 17(5) of the VAT Act provides that where input tax exceeds output tax in a given period, the excess shall be carried forward as input tax deductible in the next tax period. It further mandates that excess input tax arising from zero-rated supplies or WHVAT must be refunded or applied against other tax liabilities. The use of the word "shall" in this provision denotes a mandatory obligation on the Commissioner.

The Tribunal found that KRA had misinterpreted this provision by prioritizing WHVAT credits over input tax credits carried forward. It held that input tax credits from previous months must be combined with current month input tax and deducted from output tax before applying WHVAT credits. The Tribunal also found that KRA's issuance of Credit Adjustment Vouchers without a formal refund decision violated Section 47 of the TPA and the taxpayer's right to fair administrative action under Article 47 of the Constitution.

High Court Appeal and Determination

KRA appealed the Tribunal's decision, arguing that Section 17(5) does not prescribe a specific order for credit utilization and that the Tribunal erred by applying the 2023 amendment to Section 47(3) of the TPA retrospectively. The High Court rejected these arguments and upheld the Tribunal's decision.

The Court emphasized that:

- Input tax credits from previous months must be utilized before WHVAT credits, as clearly stated in Section 17(5). The provision is mandatory and leaves no room for discretionary interpretation.
- Section 47 of the TPA governs the procedure for refund applications. The Commissioner must issue a written decision within 90 days of receiving a refund application. Failure to do so results in the application being deemed approved.
- The issuance of Credit Adjustment Vouchers without a formal refund decision is unlawful. The Commissioner cannot transfer refundable amounts to periods already in a credit position without justification.

Opinion and Commentary

This judgment is a significant win for taxpayers and a reaffirmation of the principle that tax laws must be interpreted strictly and in favor of the taxpayer where ambiguity exists. The High Court rightly emphasized that statutory provisions using the word "shall" impose binding obligations on tax authorities. KRA's approach, prioritizing WHVAT credits and issuing credit vouchers without formal decisions, undermines transparency and predictability in tax administration.

The Court's reliance on the doctrine of generalia specialibus non derogant, which holds that specific provisions override general ones, was particularly apt. Section 17(5) of the VAT Act outlines a specific procedure for credit utilization, which must take precedence over the general refund procedures provided under the Tax Procedures Act.

Moreover, the Court's interpretation of the 2023 amendment to Section 47(3) as clarifying a statutory lacuna rather than introducing a new obligation was both pragmatic and fair. It ensures that taxpayers are not penalized for administrative delays beyond their control.

Impact of the Decision

This ruling sets a binding precedent on the treatment of WHVAT credits and reinforces taxpayers' rights to a timely and transparent VAT refund processing.

The decision may prompt KRA to revise its refund procedures and could influence future amendments to the VAT Act and TPA. It also serves as a reminder to taxpayers to assert their rights and seek judicial redress when faced with administrative inertia or misinterpretation of tax laws.

Conclusion

The High Court's judgment in Kenya General Industries Ltd underscores the judiciary's role in safeguarding taxpayer rights and ensuring strict adherence to statutory provisions. Taxpayers are encouraged to monitor developments in VAT refund procedures and seek professional advice when navigating complex tax matters.

LET’S TALK

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