IN THE SUPREME COURT FOR ZAMBIA **APPEAL NO. 187/2008**

# **HOLDEN AT LUSAKA** SCZ/8/11/2008

*(Civil Jurisdiction)*

**B E T W E EN :**

**AGRO FUEL INVESTMENT LIMITED APPELLANT**

**AND**

**ZAMBIA REVENUE AUTHORITY RESPONDENT**

**CORAM: Chibesakunda, Silomba, Mwanamwambwa, J.J.S.**

***On 7th April 2009 and 16TH March 2012***

## *For The Appellant: Mr. M. Mundashi of Messrs Mulenga, Mundashi and Company*

*For the Respondent: Mr. G. Locha, In House Counsel, Zambia Revenue Authority.*

JUDGMENT

**Mwanamwambwa, JS, delivered the Judgment of the Court.**

***Cases Referred to:***

1. **Eastern Co-operative Union v Yamene Transport Limited [1988 -1989] Z.R. 126.**
2. **Kapembwa v Maimbolwa & Attorney General [1981] Z.R. 127.**
3. **Zulu v Avondale Housing Project Limited [1982] Z.R. 182.**
4. **Vestey v I.R.C. [1980] STG 18.**
5. **Canada Sugar Refining Company v R [1898] A.C. 735.**
6. **Lewanika v Attorney General [1993-1994] Z.R. 164.**
7. **Nzowa v Attorney General [2004] Z.R. 159.**
8. **State v Petros & Another [1985] L.R.C. 699.**
9. **Rafiu Rabiuv S [1981] 2 NCLR 293.**
10. **Attorney General v Dow [1994] B.C.L.R 1.**
11. **South Dakota v North Carolina [1940] 192 USA 268:48 ED448 AT 465.**

***Legislation referred to:***

1. **The Value Added Tax Act, CAP 331 of the Laws of Zambia. Section 15 (2), the Second Schedule thereto, paragraph 2 (a) (b) & (c).**
2. **The Interpretation and General Provisions Act., CAP 2 Section 9.**

The delay in delivering this appeal is deeply regretted. It is due to a heavy workload. When we heard this appeal, Hon. Mr. Justice S. S. Silomba was part of the Court. He has since retired. Therefore, this Judgment is by the majority.

This is an appeal against a Judgment of the High Court of 3rd April 2008, sitting as an appellate Court, in an appeal against the Ruling of the Revenue Tribunal, on assessment of Tax by the Zambia Revenue Authority, the Respondent. By that Judgment the High Court refused to set aside the Tax assessment of K581,407,886 and referred the matter back to the Revenue Tribunal, for re-hearing denovo. In doing so, the High Court ordered the Tribunal to examine the Registers at Mpulungu Port and/or Kasumbalesa Port or any other Register or documents, relevant to the transit cargo in question, to determine whether or not the Form CE20, in respect of the transist cargo in question was acquitted.

The Appellant’s case is that it carries on business in import and export of merchandise. It also transports goods within Zambia and to destinations outside Zambia. That Congolese merchants bought various items, mainly fish, from Tanzania, and transported them by ship to Mpulungu. The merchants then contracted the Appellant to transport the consignment by road, from Mpulungu to Kasumbalesa Border Post, onward movement to Congo. The goods were transiting through Zambia. That in clearing the cargo, the owners of the cargo engaged clearing agents, who processed the necessary documents with the Respondent, at both Mpulungu and Kasumbalesa Borders. Copies of the documents were given by the Respondent to the Appellant’s Driver, for signing, at Kasumbalesa, when the goods exited. These documents are called Customs Acquittal Form CE20. The originals of the Customs Acquittal documents were handed over to the clearing agents of the Congolese merchants. The agents surrendered these to the Respondent at Mpulungu Port. The Appellant also kept copies of the Acquittal documents. The assessment of K581,407,886 the subject of the appeal, was on the basis that the Appellant had failed to produce the acquittal documents, to show that the goods had merely transited through Zambia to a foreign country. That the Appellant’s inability to produce the Customs Acquittal documents led to the inference by the Respondent that the goods had not exited Zambia; but had been consumed locally, thereby making the transportation of those goods by the Appellant, as a taxable service. The reason the Appellant failed to produce the custom acquittal documents, Form CE20, to show that the transit cargo transported exited at Kasumbalesa and actually exported, was because the Respondent lost or misplaced the same documents. That was after the Respondent collected the customs acquittal form from the Appellant’s premises, together with other documents, for inspection.

The Respondent’s case is that the transit cargo was not exported. It did not leave Zambia for Congo. That the cargo was disposed of in Zambia. And, therefore, tax on it ought to be collected, from the Appellant. Ordinarily, this particular service is zero rated – i.e. it is not taxable, under Section 2 (a) of the Second Schedule to the VAT Act. There was evidence that if the cargo exited at Mokambo Border, details of the customs acquittal form CE20, was entered into at least three (3) registers. These are the transporter’s register, the clearing agent’s register and the Respondent’s register at the port of entry and exit. The issue before the Tribunal and the High Court, was whether the sum of K581,407,886 assessed by the Respondent is due and payable, on account of the fact that the Appellant failed to provide documentation to support its position that the goods which are the subject of the assessment, were transit goods.

By a Ruling dated 15th November 2006, the Revenue Tribunal dismissed the Appellant’s appeal. In doing so, it said:-

**“On a preponderance of probabilities, we are not persuaded by the Appellant’s assertion that the acquittals were lost while in the Respondent’s custody. We find it strange that the Appellant is now claiming that the Respondent lost these documents evidencing the acquittal. If the Respondent had them all along why did they not show them to the Respondent as they did with other documents?**

**We find it odd that out of all these copies, the Appellant could fail to keep at least one record of this very important document, knowing very well that failure to keep such proper record would result into a huge tax liability. In the circumstances, we have no difficulty in holding that the Appellant has failed to discharge its burden, and the assessment issued by the Respondent should be upheld.”**

There are three (3) grounds of appeal. These read as follows:-

1. **The learned trial Judge erred in law and fact by not holding that the Appellant, as tax payer, had discharged its burden of proof required to discharge an assessment issued on it as a tax payer.**
2. **Having found that the testimony of the Appellant’s witnesses was more credible than that of the Respondent, the learned trial Judge erred in law and fact by not holding that the Appellant had not discharged its burden of proof and instead ordered a rehearing for further evidence to be adduced.**
3. **The learned trial Judge erred in law and fact in not considering the provisions of Section 15 (2) of the Value Added Tax Act, the second Schedule of the Act and Rule 18 (1) of Gazette Notice No. 87 of 1996 in the context of the evidence that was before the Court.**

On behalf of the Appellant, Mr. Mundashi fused 1st ground with the second one, to form ground one. In effect, what was initially ground three (3) is now ground 2. He points out that having evaluated the evidence, the learned Judge in the Court below made the following findings:-

**“After careful consideration of the above, I make the following observation. Firstly, the evidence from the record of appeal clearly demonstrates that the Respondents removed a huge amount of documents from the Appellant’s premises.... The evidence also reveals that the Respondent did not return the documents in the order they were collected....**

**The above raises a real possibility that the Respondent could have possibly lost, or misplaced the disputed documents.....**

**Therefore, from the evidence on record, it is probable that the copy of the Form CE20, which was in possession of the Appellant, was misplaced or lost during the investigations by the Respondent, when it removed the documents from the premises and custody of Appellant to the premises and custody of the Respondent.”**

He submits that it is the Appellant’s position that initially, it had the necessary customs documents which it could have used to prove that the goods it transported had merely passed through Zambia. But the documents had been collected and not returned by the Respondent.

He submits that when the Revenue Authority assess Tax, the burden of proof lies on the Tax payer. But that burden is on the balance of probability. That to discharge that burden, all what the Appellant, as Tax payer, had to do is to lead evidence *“given on oath or affirmation or by sworn evidence to demonstrate that the assessment ought to be reduced or set aside.”*  In support of this argument he referred to paragraph 1677 of Volume 34 of the 4th Edition of **Halsbury’s Laws of England**. He adds that the findings of the Judge in the Court below, as set out above, are correct. That in the face of the evidence on record and the Judge’s conclusions thereon, there was no need to call for further evidence and/or send the matter for re-hearing. That the learned trial Judge ought to have allowed the appeal against the Revenue Appeal’s Tribunal on that basis.

In response on behalf of the Respondent, on this ground, Mr. Locha makes lengthy submissions. The gist of his submissions is that the burden of proof in tax matters, where an assessment was made against a Tax paper, lies squarely on the Tax payer. That it is up to the Tax payer to discharge the burden, on the balance of probability, and show that the assessment is wrong or that it has not been properly made. As authority, he also referred us to paragraph 1677 of Volume 34 of the 4th Edition of **Halsbury’s Laws of England.** He submits that the Appellant’s Managing Director, A.W.1, failed to give sufficient evidence to discharge the burden, to prove that the goods which were entered and declared as transit goods, actually exited Zambia, through the customs border post at Kasumbalesa, on the way to Congo Democratic Republic. That the Respondent clearly failed to produce even a single customs acquittal document to show that the goods which the Respondent had moved under declaration as transit goods, indeed did exit Zambia. He adds that parties to an action should bring all relevant evidence available to them in order for the Court to adequately deal with the matter. It is unsafe to leave to the Court to start making guesses in respect of certain evidence. In support of the submission, he referred us to **Eastern Co-operative Union v Yamene Transport Limited (1)**.

He refers to the evidence of Dennis Mwikisa, a Customs Officer who was subpoenaed by the Appellant, to testify on its behalf. He points out that, this witness testified, inter alia, that acquittal details and records are recorded in three Registers. That one Register at the Customs Port of Entry, one at the Customs Port of Exit, one Register belonging to the Clearing Agent. That customs acquittal Form CE20, which is called the transit document, is prepared by the Respondent and usually has 15 copies. The Respondent retains only 4 copies. The rest are distributed amongst the clearing Agent, the transporter and the importer.

He submits that from the findings of fact by both the Revenue Appeals Tribunal and the High Court, with regard to the evidence of Dennis Mwikisa, it is abundantly clear that the evidence which was tendered was insufficient and of less help. He points out that the witness talked about Registers, which he failed to produce before the Tribunal. He argues that it was incumbent on the Appellant, and very cardinal to its case, to have advised him to produce the Registers and indeed to subpoena him for the second time, to produce the Registers, to prove the availability of the customs acquittal records in favour of the Appellant. That testimony with supporting documents, in the form of Registers, would have helped the Tribunal to establish the burden of proof in favour of the Appellant. He points out that information on acquittals of transit goods can be obtained not only from the Appellant but also from the Importer, the clearing Agent, the Port of Entry as well as the Respondent’s Head Office. He submits that in the circumstances, the assertions by the Appellant that its documents were taken away by the Respondent is so insufficient that it cannot assist the Appellant to discharge the burden of proof, in order to have the assessment of Tax set aside.

He points out that the learned Judge in the Court below, sat as an appellate Court, and not as a trial Court. That the appeal was by way of record. That the Judge’s conclusion under this ground, was based on the evidence on record, together with the findings made by the Tribunal. That the High Court, sitting as an appellate Court, could not easily interfere with the findings of the trial Tribunal. As authority for this submission, he cites **Kapembwa v Maimbolwa and A.G. (2)**. Therefore, he submits that the learned Judge on appeal cannot be faulted, as she analyzed the record of appeal and equally made findings of fact from the record, that the evidence tendered was not sufficient and accordingly made the order on record.

We have examined the Judgment and case record in the Court below and have considered the submissions by Counsel on this ground. In our view, actual production of the customs acquittal documents by the Appellant, is the effective way of proving that the consignment in question was merely on transit and exited Zambia, through Kasumbalesa border post, into Congo Democratic Republic. Such production is the effective way of discharging the burden by the Appellant that the assessment of K581,407,886 by the Respondent, is wrong and ought to be set aside. From the record, we accept that Respondent collected the Appellant’s customs acquittal documents and may have lost them, together with other documents. But as correctly pointed out by Mr. Locha, information on acquittals of transit goods in this case, can be obtained not only from the Appellant but from four other sources as well. These sources are the importer, the clearing agent, the port of entry, and the Respondent’s head office. In short, on the evidence, documentary proof that the goods in question were merely on transit and did exit Zambia, could have been, and can be, obtained from four alternative sources. This evidence is in the form of Custom acquittal Form CE20 and/or the Registers. We agree with Mr. Locha, that mere verbal assertions that the goods in question were in transit and did exit Zambia, was not sufficient to enable the appellant to discharge the burden of proof cast on it. We hold that the learned Judge in the lower Court was correct in referring the case back to the Revenue Tribunal, for re-hearing. Accordingly, we dismiss ground one of appeal.

On ground two, Mr. Mundashi makes lengthy submissions. The gist of his submissions is that had the learned Judge in the Court below, considered the full effect of the provisions of the Act, the schedule and the Gazette Notice, she would have come to the conclusion that the Appellant’s supply of service, in the form of transportation of goods in transit, was zero rated – i.e. not taxable, even in the absence of customs acquittal documents, which appears to have been the main base of her decision. He submits that the service supplied, which was the basis of the assessment, was zero rated. As to what constitutes zero rating, he submits that the source of law in respect thereof is found in **Section 15** of **Value Added Tax Act,** **Chapter 331** of the Laws of Zambia *(hereinafter referred to as “The Act).* Section 15 (2) provides:-

**“A supply of goods or services that is described in the Second Schedule shall, unless it is an exempt supply, be a zero rated supply.”**

Paragraph 2 of the second schedule, has a heading called *“exports”,* which reads as follows:-

**“(a) Export of goods from Zambia by or on behalf of a taxable supplier, where such evidence of exportation is produced as the Commissioner-General may, by administrative rule require.**

**(b) The supply of services, including transport and ancillary service, which are directly linked to the export of goods under Sub- Item 1.**

**(c) The supply of freight transport services from or to Zambia, including transhipment and ancillary services that are directly linked to transit of goods through Zambia to destination outside Zambia.”**

He then submits that from these provisions, there are three categories of activities that are zero rated under sub heading *“export”,* under paragraph 2 of the second schedule. That though grouped together under “*export”,* these three activities should be treated as distinct separate activities. He says that the first activity is the export of goods from Zambia by or on behalf of a taxable supplier, where such evidence of exportation is produced to the Commissioner General may, by administrative rule require. He submits that under this activity, a registered taxable supplier may export goods and on production of such evidence, may have that supply zero rated. He submits that the Appellant never sought relief under the first activity.

He says that the second activity is the supply of services, including transport and ancillary services, which are directly linked to the export of goods. He submits that any service, including transport and ancillary service, which is directly linked to sub Item 1 (*meaning that service that facilitates export of goods as above)*, is zero rated. He argues that it appears that the learned Judge in the Court below, without expressly stating so, impliedly assumed that the Appellant’s service fell under this sub paragraph (b). That had she considered the totality of the Appellant’s submissions on the law before her, as per pages 417-426 of this record of Appeal, it would have been clear that the activity that forms the basis of the assessment and this appeal actually fell under 2 of the Schedule. That it would have inevitably led to a conclusion that there was no need for customs acquittal documents to be produced as a condition to prove zero rating and hence set aside the assessment. He says that the third activity is the supply of transport services from or to Zambia, including transhipment and ancillary services that are directly linked to the transit of good through Zambia, to destinations outside Zambia. That this is a separate item on its own and is catered for under sub-paragraph (c) of the schedule.

He submits that the Appellant supplied the services that falls under (c). That this provision does not have similar conditions as in Sub-paragraph (a), that for zero rating to be proved, there must be such evidence as the *“Commissioner-General may by administrative rule require”.* That, therefore, the Appellant’s burden of proof should be considered in the context of paragraph 2 (c) of the schedule. He submits that the second schedule, including the paragraphs thereunder, are part of the Act and would be treated as if they were Sections of the Act.

He submits that the assessment, which is the subject of this appeal, is not related to exports made by the Appellant. So, unlike sub-paragraph (a), the burden of proof placed on the Appellant should not be viewed in the context of the requirements under Rule 18 (1) of the Gazette Notice. These requirements are as follows:-

**“(a) Copies of documents for goods, bearing a certificate of**

**shipment provided by the authority.**

**(b) Copies of import documents for goods, bearing a certi-**

**ficate of importation into the country of destination provided**

**by the authority of the country.**

**(c) Proof of payment by the customer for the goods.**

**(d) Such other documentary evidence as the authorised**

**officer may reasonably require.”**

He argues that the learned Judge in the Court below did not consider this particular issue, notwithstanding that it was argued before her. On this alleged misdirection, he refers us to **Zulu v Avondale Housing Project Limited (3),** which holds that:-

**“the trial Court has a duty to adjudicate upon every aspect of the suit between the parties so that every matter in controversy is determined in finality.”**

He points out that Rule 18 (1) applies to *“exports”* under paragraph 2 (a) of the second schedule. But that Rule 18 (2), on the other hand, is specifically designed to cover transport service linked to *“exports”.* Rule 18 (2) provides as follows:-

**“Unless the Commissioner General shall otherwise allow, a taxable supplier claiming that a supply is zero rated under the schedule the Act on the grounds that the supply is directly linked to exportation of goods from Zambia, shall produce to an authorised officer :-**

1. **The copies referred to paragraph (a) and (b) of Sub-Rule (1) concerned (*the same documents under Rule 18 (1),* which deals with export paragraph 2 (a) of the schedule.**
2. **Proof of payment by the customer for the goods and services concerned; and**
3. **Such other documentary evidence as the authorised officer may reasonably require; and**
4. **If so required by an authorised officer, copies of import documents for the goods bearing a certificate of importation into the country of destination provided by the customs authority of that country.”**

He submits that the combined effect of Rule 18 (1) and Rule 18 (2) is that for activities in sub-paragraph (a) and sub-paragraph (b) of the second schedule to be zero rated, certain documents must be made available to the Respondent. He further submits that for the activities that fall under sub paragraph (c), there is no corresponding requirement to provide that documentation.

Coming back to this case, he submits that the activity that the Appellant carried out was freight of goods in transit, that fall under paragraph 2 (c) of the second schedule. That this particular paragraph does not place an obligation on the Appellant to provide documents. That in delving into the issue whether the Appellant had produced acquittal documents, the learned Judge implicitly accepted a wrong position that the Appellant was obliged to provide such documentation, without considering whether there was an obligation to provide that documentation. That the second schedule and Gazette Notice do not create an obligation to produce the documents which the learned Judge thought should be produced and examined at the re-hearing of the matter before the Revenue Appeal Tribunal. That the position taken by the learned Judge that the Appellant was required to produce documents is akin to reading into sub-paragraph (c), the requirements set out in Rule 18 (1) and/or Rule 18 (2) of Gazette Notice. That the approach does not accord with the accepted cannons of interpreting fiscal legislation. As authority for this argument, he referred us to the dictum of Rowlatt J., that:-

**“In a taxing Act, one has to look at what is clearly said. There is no equity about a tax. There is no presumption as to tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used.” *(See Cape Brandy Syndicate v I.R.C.* 1 K.B. 64).**

He argues that it was grave error to have taken the view that as part of the Appellant’s burden of proof, it has to produce evidence as required by Rule 18 (1) and Rule 18 (2) of the Gazette Notice. That there is a distinct possibility that a finding can be made that the Appellant is not entitled to zero rating and hence liable to tax if for any reason copies of the acquittal documents are not found. That this could lead to taxation on unclear and imprecise law. That it is a principle of interpretation of fiscal legislation that a citizen has to be taxed on clear law. In this respect, he referred us to the observation of Lord Wilberforce to the effect that:

**“A citizen is not to be taxed unless he is designated in clear terms by the taxing Act as a tax payer and the amount of his liability clearly defined….” *(See Vestey v I.R.C. [1980] STC,at page 18).***

He concludes that the learned Judge’s implicit finding that if the acquittal documents are not available, the assessment will stand is tantamount to imposing a tax on the basis of an obligation not intended by the law.

In response, on behalf of the Respondent, Mr. Locha submits that the learned Judge in the Court below did not err in law because she considered Section 15 (2) of **the Value Added Tax Act, CAP 331** of the Laws of Zambia, together with the second schedule to the Act **and Rule 18** of the **Gazette Notice No. 87** of **1996**; which deal with zero rating. He submits that when considering the law on zero rating, Section 15 of the Act should be read together with the schedules, Regulations and notes thereto. That doing so is in accord with Section 9 of the Interpretation and General Provisions Act, CAP 2 of the Laws of Zambia. He submits that Rule 18 of Gazette Notice No. 87 of 1996, sets out the Rules and what should be done, for any taxable supplier to qualify for zero rating. He emphasizes that the said Rules should be considered and read in total and not in isolation. That this is in order to maintain consistency in interpretation and application. As authority for this principle he cites **Canada Sugar Refining Company v R (5),** where it was said that:

**“Every Clause of a statute should be construed with reference to the context and other clauses of the Act, so far as possible, to make a consistent enactment of the whole statute or series of statutes relating the subject matter.”**

He submits that following that principle, the intention, behind the provision of Rule 18 was to apply to all taxable suppliers, who claim that a particular supply is zero rated. That the requirements in that particular Rule applies to all such suppliers. To argue that the Rule does not apply to sub-paragraph (c) of the schedule is highly erroneous, given that the other Sections and Clauses in the Act would result in an inconsistent interpretation of the whole legislation related to this subject matter. He adds that where as an accepted principle is that when interpreting fiscal Legislation one has to look at what is said in the Act, that, however, does not entail that Clauses within the same Section or Sections within the same statute should be read in isolation from the others, as suggested by the Appellant in its submissions. That reading Sections or Clauses in isolation would be overstretching the principle and could lead to serious inconsistencies.

We have examined the Judgment in the Court below and have looked at Section15 of the Act, the 2nd schedule thereto and Regulation18 (1) & (2). Section 15 of the Act deals with exemptions and zero ratings. In so far as relevant, it provides as follows:-

**“15 (1) A supply of goods or services, or an importation of goods, that is described in the first schedule shall be exempt from taxation.**

**(2) A supply of goods or services that is described in the second schedule shall, unless it is an exempt supply, be a zero-rated supply.**

Of interest to us is the second schedule. The second schedule, as it stand now, is as set out above at page 10 hereof. The issue on ground two is mainly interpretation of Section 15 (2) of the Act, the second schedule thereto and Rule 18 (1) and (2). These are already set out above. We do not wish to reproduce them again.

The gist of Mr. Mundashi’s submission is that sub-paragraphs (a) (b) and (c) of paragraph 2 of the second schedule are separate and distinct from each other. And so are activities in each sub-paragraph. He invites us to interpret them separately. And on the authority of **Cape Brandy Syndicate v I.R.C., (12)** he urges us to interpret them using the literal or plain meaning Rule of interpretation. With this approach, he wants us to find that sub-paragraph (c) of paragraph 2 of the second schedule, under which the service the Appellant supplied falls, does not create an obligation under Rule 18 (2) of the Gazette Notice, to produce customs acquittal documents, for its service to be zero-rated. In short, he argues that the service is automatically zero-rated; there is no legal obligation to produce documentary evidence that the consignment exited Zambia into Congo D.R.

On the other hand, Mr. Locha urges us to interpret the sub-paragraphs in question, Regulation 18 (2) and Section 15 (2) of the Act, together and hold that there is an obligation on the Appellant to produce documentary evidence to show that the goods it transported in transit exited Zambia, into Congo D.R., for its service to be zero-rated.

According to decided cases, the duty of the Courts in the interpretation of statutes is to give effect to the intention of the Legislature. And the primary rule of interpretation of Statutes is that the meaning of any enactment is to be found in the literal and plain meaning of the words used, unless this would result in absurdity, in which case the Court’s authority to cure the absurdity is limited. The Court is entitled to depart from the literal rule of interpretation to purposive approach, in order to promote the legislative purpose underlying the provision. Whenever the strict interpretation of a Statute gives rise to unreasonable and unjust situation, Judges can and should, use their common sense to remedy – that is by reading words if necessary – so as to do what Parliament would have done, had they had the situation in mind. The essence of purposive interpretation of the Statute is to give effect to its foundational values and objects: **See the following:-**

1. **Lewanika v Attorney General (6).**
2. **Nzowa v Able Construction Limited (7)**.

Further, to give effect to the object or purpose of the Statute, all the provisions bearing on a particular subject ought to be brought into view and interpreted together: **See:-**

1. **State v Petrus & Another (8)**
2. **Rafiu Rabiv v S. (9).**
3. **Attorney General v Dow (10).**
4. **South Dakota v North Carolina (11).**

In the present case, we agree with Mr. Locha that Section 15 (2) of the Act should be read and interpreted together with sub-paragraphs (a), (b) and (c) of paragraph 2 of the second schedule to the Act and Regulation 18 (1) and (2) of Gazette Notice No. 87 of 1996. We do so following the several authorities referred to above. The subject in this case is zero-rating. And sub-paragraphs (a), (b), (c) and Rule 18 deal with zero-rating. We accept the submission by Mr. Locha that the intention of Rule 18 of Gazette Notice No. 87 of 1996 was to apply to all taxable suppliers who claim that a particular supply is zero-rated. Rule 18 (1) and (2) state what should be done for any taxable supplier to qualify for zero-rating. It requires production of documents. Now, reading and interpreting together sub paragraphs (a), (b), (c) and Regulation 18 (1) and (2), we hold that for the Appellant’s supply of freight services of goods in transit in Zambia to an outside destination, to qualify for zero-rating under sub paragraph (c) of paragraph 2 of the second schedule to the Value Added Tax Act, there must be production of customs acquittal Form CE 20, that the goods in question exited Zambia, at Mokambo border post, into Congo D.R. We do not accept the submission by Mr. Mundashi that sub paragraph (c) should be read in isolation and literally interpreted that the freight service the Appellant supplied in this matter is automatically zero rated; and does not need production of custom acquittal documents showing exiting Zambia, into Congo D.R. Such an interpretation would produce absurd result, encourage and promote tax evasion. The objective of the Value Added Tax is to impose tax on the supply of goods and services in Zambia and the importation of goods into Zambia. To give the Value Added Tax Act an interpretation that will allow a supplier of services to evade tax, would defeat the objectives of the Act.

**For the foregoing reasons, ground two of appeal fails. In effect, we dismiss the appeal. We award costs to the Respondent, to be taxed in default of agreement.**

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**L. P. CHIBESAKUNDA**

**SUPREME COURT JUDGE**

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**S.S. SILOMBA**

**SUPREME COURT JUDGE**

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**M. S. MWANAMWAMBWA**

**SUPREME COURT JUDGE**