

Commissioner of Domestic Taxes vs Sendy Limited, (Income Tax Appeal E137 of 2024)

November 2025

Judgement Alert Issue No. 2 of 2025



Background



The Appellant (KRA) initiated an audit on the Respondent (Sendy Limited), a digital platform connecting third-party transporters to customers. KRA raised a VAT assessment of Kshs 82,248,150.74 on Sendy's gross receipts, arguing the platform was the principal supplier of transport services. Sendy argued its revenue was only the commission for providing a platform, on which it had already remitted VAT. The Tax Appeals Tribunal ruled in favor of Sendy, finding the third-party transporters were the suppliers. KRA appealed the Tribunal's decision.

Background



Brief Background

The Respondent, Sendy Limited, operates as a digital marketplace connecting third-party transporters to customers. Following an audit, KRA, herein the Appellant, issued an additional VAT assessments of Kshs 82,248,150.74 on Sendy's gross receipts, based on variances in expected income. Sendy objected, arguing that it only provided a platform service, and its revenue was limited to the commission it charged, on which VAT was already remitted. The Tax Appeals Tribunal (TAT) agreed with Sendy, finding that the actual supply of transport was made by the third-party transporters. The TAT consequently set aside KRA's assessment, leading KRA to lodge the appeal to the High Court.

Tax Procedures Act

Appellant position

The Appellant contended that the Tax Appeals Tribunal erred in law on two main fronts:

- The Tribunal failed to look beyond the contractual form of the transaction instead of the economic and commercial reality of the transaction facilitated by the Respondent.
- That the Respondent is the principal supplier of the transport service, and not a mere platform provider.
- The Respondent also exercises a high degree of control where it controls the customer relationship, dispatches the driver, determines the price, and, critically collects the full consideration for the service.
- The full consideration collected by the Respondent into its accounts constitutes a single composite taxable supply of transport services, and VAT is chargeable on that full amount, not just the commission.
- The Respondent's Request for Payments (RFPs) functioned as invoices demanding payment for the full delivery service, making the established variances chargeable to tax.

Respondent's position

The Respondent (Sendy Limited) position was that;

- The High Court should not hear the appeal, as KRA's grounds challenged the Tribunal's findings of fact, which is outside the High Court's jurisdiction on tax appeals. It is a technology company providing a digital marketplace, not a supplier of transport services, a fact proven by unchallenged evidence before the Tribunal.
- Its revenue is limited to a commission on which it has already remitted VAT. KRA was bound by its own binding private ruling (**issued June 30, 2020**), which confirmed that the third-party transporters were responsible for VAT on the transport service, and Sendy only for VAT on its commission income. KRA's attempt to disregard its own ruling was unlawful and violated Sendy's legitimate expectation.

Issues for determination & the Court's finding

1. Whether appeal is competent before the High Court.

2. Whether the Tribunal erred in law in finding that the Respondent did not provide transport services and was, therefore liable to account for VAT only on its commission and not on the gross receipts from customers.

- The High Court allowed the Appeal. The full VAT assessment of Kshs 82,248,150.74 against Sendy Limited was upheld.
- The High Court ruled that Sendy is the principal supplier of the transport service for tax purposes, not just an agent. The court looked at the economic and commercial reality (substance over form), not just the formal contract. Sendy exercises decisive control over the transaction because: It sets the rules for the job and dispatches the driver, It collects the full payment from the customer in its own name and the customer's payment obligation is to Sendy, not the individual driver.
- The customer's legal and financial relationship were with Sendy, not the individual driver. Because Sendy acted as a principal, it is deemed to have received the transport service from the third-party transporter and supplied that same service to the end customer. Therefore, VAT was due on the full value of the consideration paid by the customer, not just the commission. While the Court noted KRA's questionable conduct in disregarding its own binding private ruling, it ruled that an administrative opinion cannot override the correct judicial interpretation of the law.

Implication of the judgement

This judgement established that digital platforms with decisive control over transactions are considered principal suppliers and must account for VAT on the full transaction value, not just their commission, thereby bringing the platform economy under tax liability framework.

We note that this position is subject to change if the Taxpayer proceeds to the Court of Appeal. however we remain ready to communicate the same with our clients if the position changes.

About Us

For further discussion on this alert or any other tax concern, please contact the below.

Name: Samuel Mwaura

Title: Partner - Grant Thornton Taxation Services Limited

Email: Samuel.Mwaura@ke.gt.com

T+254 (0) 728 960 963

W grantthornton.co.ke

Name: Winnie Murugi

Title: Associate Director - Grant Thornton Taxation Services Limited

Email: winnie.murugi@ke.gt.com

T+254 (0) 728 960 963

W grantthornton.co.ke

Name: John Waihenya

Title: Senior Manager - Grant Thornton Taxation Services Limited

Email: john.waihenya@ke.gt.com

T+254 (0) 728 960 963

W grantthornton.co.ke

Name: Peter Mungai

Title: Assistant Tax Manager - Grant Thornton Taxation Services Limited

Email: peter.mungai@ke.gt.com

T+254 (0) 728 960 963

W grantthornton.co.ke



20+

Partners and Directors



330+

Employees



2 Office locations

Nairobi
Mombasa



ICPAK
Licensed firm



© 2025 Grant Thornton Taxation Services Limited . All rights reserved.

The information contained in this alert is confidential, privileged and only for the information of the intended recipient and may not be used, published or redistributed without the prior written consent of Grant Thornton. The opinions expressed are in good faith and while every care has been taken in preparing these documents, Grant Thornton makes no representations and gives no warranties of whatever nature in respect of these documents, including but not limited to the accuracy or completeness of any information, facts and/or opinions contained therein.

Grant Thornton refers to the brand under which the Grant Thornton member firms provide assurance, tax and advisory services to their clients and/or refers to one or more member firms, as the context requires. Grant Thornton International Ltd (GTIL) and the member firms are not a worldwide partnership. GTIL and each member firm is a separate legal entity. Services are delivered by the member firms. GTIL does not provide services to clients. GTIL and its member firms are not agents of, and do not obligate, one another and are not liable for one another's acts or omissions.