



within the meaning of the Value Added Tax Act (Act No. 7 of 2005) and is therefore tax exempt under the Act. The defendant, the tax authority in Malawi, does not agree and has refused to grant tax exemption to the plaintiff in respect of the business of guided tours. After a series of correspondence and discussion between them, at times involving the Ministry of Finance, the plaintiff has taken this action seeking a court declaration that its business of guided tours is educational service within the meaning of the Act and that therefore income from that business qualifies for tax exemption. I heard the matter in chambers on 5<sup>th</sup> March, 2008, and adjourned for judgment.

Section 20 of the Act exempts goods and services of certain categories or description specified in the First Schedule to the Act from the tax under the Act; and paragraph 16 of the Schedule lists “Educational services” among services that are tax exempt. The plaintiff has argued that to the extent that the guided tours make people taken on the tours become aware of the animals and the sanctuary in the Park, the tours are an educational service and eligible for tax exemption. This is the only legal ground advanced by the plaintiff for claiming tax exemption in respect of its business at the camp of guided tours. It is a ground of statutory or legal interpretation.

In my judgment I do not find it necessary that this Court be drawn to give a statutory or legal interpretation of what is educational service within the meaning of the Act. However, it must be obvious that the category of “educational services” within the meaning of the Act must be a closed one (as with other services prescribed in the Act as being tax exempt); and on the ground alone advanced by the plaintiff, I cannot imagine that there would be any limit to this category of services and what else would not be educational. It cannot be that every type of service that exposes people or any group of people to some knowledge about any thing or brings awareness to them

about any thing becomes an educational service. In administering a statute that has policy dimensions or implications, it is not unreasonable for the implementing agency to establish the scope of implementation of the law under the statute and over time to establish accepted practice of implementation that best achieves the objectives of the statute and to follow such practice in applying the law under the statute. It is thus within the authority of the Defendant to apply the tax exemption provision in accordance with the reasonable scope or practice established for purposes of implementing the statute.

I am content to hold that the plaintiff has not provided plausible grounds why the guided tours offered at the camp are distinctly an educational service separate from the rest of the business at the camp. I find the plaintiff's claim to be without merit and I dismiss the plaintiff's action.

On the question of costs for this action, I decline within my judicial discretion to award costs against the plaintiff taking into consideration that the plaintiff has already suffered payment of a penalty for holding back payment of the tax on account of the plaintiff's own claim for tax exemption as advanced in this action, and I would consider that an order of costs for this action might be a further burden on the plaintiff's ability to pay the taxes that may be due.

**MADE** in chambers at Lilongwe District Registry this 20<sup>th</sup> day of March, 2008.

E.M. SINGINI, SC  
**J U D G E**

20/03/08