THE REPUBLIC OF UGANDA

IN THE TAX APPEALS TRIBUNAL OF UGANDA AT KAMPALA

APPLICATION NO. 83 of 2021

AGABA HENRY .....APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY .....RESPONDENT

BEFORE: DR. ASA MUGENYI, MS. CHRISTINE KATWE MR. SIRAJ ALI

RULING

This ruling is in respect of an application challenging the method used by the respondent in determining the value of an imported used vehicle for custom duty.

Around August 2021, the applicant imported a used Mercedes Benz 2010 Model E Class at Cost Insurance Freight (CIF) value of US$ 6,637. The applicant declared a transaction value of US$ 6,508 which was rejected by the respondent. The respondent citing a ruling of the East African Community Secretariat Administration instead applied the Fallback method giving a value of US$ 9,205.44. The applicant objected and the respondent disallowed the said objection. Hence this application.

The following issues were set down for determination.

1. Whether the respondent was justified in disallowing the transaction value method in computing the customs duty payable?
2. What remedies are available to the parties?

The applicant represented himself while the respondent by Mr. Sam Kwerit.

The applicant testified that in April 2021, while browsing the website of `Be Forward Co. Ltd`, he came across a used 2010 Model Mercedes Benz E-Class at a cost price of US$ 5,430 with a cost and freight value of US$ 6,637. Following negotiations, the cost price and freight was reduced to US$ 6,508. He imported the vehicle. His clearing agent declared US$ 6,508 as the transaction value of cost and freight. The applicant paid tax of Shs. 25,966,962. The applicant testified that his declaration was rejected

by the respondent. He was advised to uplift the customs value to US$ 9,205.44 in accordance with the respondent`s motor vehicle validation schedule. He objected to the above decision. On 3rd September 2021, the respondent maintained its decision that the vehicle was valued at US$ 9,205.44 CIF Mombasa under the East African Community Administrative Ruling of Valuation of Used Goods of 13th December 2013 using the Fall-Back method. The applicant paid an additional sum of Shs. 6,762,667 to ensure the release of the car in question.

The respondent`s witness, Mr. Julius Aleti, an officer in its Valuation Unit testified that the applicant`s declared value of US$ 6508 was rejected and uplifted by the respondent to US$ 9,205.44 in accordance with the East African Community Administrative Ruling of Valuation of Used Goods. Using the Ruling of 2013, the value of used articles was determined by the Fallback method.

The applicant submitted that S. 122(1) of the East African Community Customs Management Act (EACCMA) states that where imported goods are liable to import duty *ad valorem,* then the value of such goods shall be determined in accordance with the Fourth Schedule and import duty payable shall be paid on that value. He submitted that though the respondent relied on the EAC Administrative ruling which deals with the complexity of ascertaining the true value of the used goods it rejected the documents he provided which ascertain the true value of the vehicle imported. Citing *Testimony Motors v The Commissioner of Customs Uganda Revenue* Authority Civil Suit No. 212 of 2012 the applicant contended that the use of the word `shall` in S.122 of the EACCMA made it mandatory for the Commissioner of Customs to determine the customs duty payable on used motor vehicles in accordance with the Fourth Schedule and that it gave the Commissioner no discretion to rely on alternative methods without following the procedure or directives laid out in the Fourth Schedule. He submitted that alternative methods of valuation could only be applied after the failure of the primary method. He submitted further that once proper transaction documents have been submitted by an importer of used vehicles, the Commissioner cannot reject the transaction method and apply another method of valuation.

The applicant submitted that Paragraph 8 of the Fourth Schedule sets out the Fallback method to be applied when all the other methods had failed yet the respondent used

it as the first method without considering the transaction value method. He submitted that the use of the motor vehicle validation schedule by the respondent was unfair as differences in the condition of used motor vehicles made it unfeasible to have a uniform value. The applicant submitted that the respondent has the discretion to uplift the customs value using other methods in the Fourth Schedule if the transactional assessment is not supported by documents. Citing Article 7 of the General Agreement on Tariffs and Trade 1994 the applicant submitted that where the customs value of imported goods could not be determined, it is to be determined using reasonable means consistent with the principles and general provisions of the agreement and on the basis of data available in the country of importation.

The applicant prayed for a refund of Shs. 6,762,677 being duty paid by him in excess of the customs duty it ought to have paid. He also prayed for costs of the application, general damages and interest on the principal amount claimed.

The respondent submitted that the applicant`s vehicle did not qualify for the transaction value method of valuation as per the East African Community Administrative Ruling of Valuation of Used Goods. The respondent contended that S. 122(6) of the EACCMA states that in applying or interpreting it and the provisions of the Fourth schedule, due regard shall be taken of the decisions, rulings, opinions, guidelines and interpretations given by the Directorate, the World Trade Organisation, or the Customs Cooperation Council.

The respondent distinguished the facts of *Testimony Motors v The Commissioner Customs Uganda Revenue Authority* (supra) from the facts of this case. The respondent stated that in the *Testimony* case the plaintiff sought to challenge a blanket directive by the Commissioner Customs to disregard the transactional value method in favour of other methods of valuation due to practical challenges of using the transactional value method on used motor vehicles. The respondent submitted that in this case, there was no such directive. The valuation of the applicant`s used motor vehicle was carried out under S. 122(6) of the EACCMA and the Administrative Ruling of Valuation of Used Goods in the East African Community by the East African Community Secretariat of 13th December 2013 which provided for the use of the Fallback method in valuation of used items in the East African Community. The

respondent submitted therefore that it was justified in uplifting the customs value of the vehicle under S. 122(6) and the Administrative Ruling. The respondent submitted that the applicant is not entitled to any of the remedies and prayed that the application be dismissed with costs.

Having heard the evidence and perused the exhibits and read the submissions of the parties, this is the ruling of the tribunal.

The applicant imported a used vehicle. While the applicant contends that the transaction value should be used in determining the custom duty payable, the respondent insists the Fallback method is applicable.

The law relevant to this application is to be found in the East African Community Customs Management Act (EACCMA). S. 122(1) reads

> "Where imported goods are liable to import duty ad valorem, then the value of such goods shall be determined in accordance with the Fourth Schedule and import duty shall be paid on that value."

Part 2 of the Fourth Schedule of the EACCMA states as follows:

2(1) The customs value of imported goods shall be the transaction value, which is the price actually paid or payable for the goods when sold for export to the Partner State adjusted in accordance with the provisions of Paragraph 9.

3(1)(a) Where the customs value of the imported goods cannot be determined under the provisions of paragraph 2, the customs value shall be the transaction value of identical goods sold for export to the Partner State and exported at or about the same time as the goods being valued.

4(1)(a) Where the customs value of the imported goods cannot be determined under the provisions of Paragraph 2 and 3, the customs value shall be the actual value of similar goods sold for export to the Partner State and exported at or about the same time as the goods being valued.

5. Where the customs value of the imported goods cannot be determined under the provisions of paragraphs 2, 3 and 4, the customs value shall be determined under the provisions of paragraph 6 or when the customs value cannot be determined under that paragraph, under the provisions of paragraph 7 save that, at the request of the importer, the order of application of paragraphs 6 and 7 shall be reversed.

6(1)(a) Where the imported goods or identical or similar goods are sold in the Partner State in the condition as imported, the customs value of the imported goods under the provisions of this paragraph shall be based on the unit price at which the imported goods or identical or similar imported goods are so sold in the greatest aggregate quantity, at or about the time of the importation of the goods being valued, to persons who are not related to the persons from whom they buy such goods, subject to deductions for the following:

7(1) The customs value of imported goods under the provisions of this paragraph shall be based on a computed value which shall consist of the sum of: (a) the cost or value of materials and fabrication or other processing employed in producing the imported goods: (b) an amount for profit and general expenses equal to that usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to the Partner State.

8(1) Where the customs value of the imported goods cannot be determined under the provisions of paragraphs 2,3,4,5,6 and 7, inclusive, the customs value shall be determined using reasonable means consistent with the principles and general provisions of this Schedule and on the basis of data available in the Partner State."

Paragraph 2(1) deals with the transaction value which was applied by the applicant.

The respondent's case is based on the Administrative Ruling of Valuation of Used Goods in EAC made by the Directorate of Customs on 13th December 2013. The Directorate of Customs is established by the Council under the Treaty for the Establishment of the East African Community. The Council is defined in the Treaty as the Council of Ministers of the Community established by Article 9 of the Treaty. The follow are excerpts of the Administrative Ruling made by the Directorate on 13th December 2013.

"Determination of the export price for used goods poses a challenge in Customs valuation which results in failure to apply the Transaction value method on the grounds that:

1. The sale of such goods is subject to the whims and material needs and not on actual or material value of the goods, taking into account the degree of usage or non-usage of the item.
2. The degree of wear and tear of used goods is in different proportions such that their usage fails the test of identical and similar goods.

3. The failure to meet the principles of 1st, 2nd and 3rd Valuation methods automatically renders the usage of the 4th and 5th methods inapplicable."

The administrative ruling further states that

`Whereas there is a lot of challenges and complexities in applying the initial five (5) methods of valuation as specified in the Fourth Schedule of the EACCMA on used goods, Customs shall apply the Fallback Method with the following considerations.

"1. Depreciation.
2. Obsolescence.
3. Condition.
4. Risk management databases and other reliable sources.
5. Specific duties under the EAC Common External Tariff.
6. Exchange of information on valuation of used goods."

The above excerpt states that where there are challenges and complexities in using the initial five methods specified in the under Part 2 of the Fourth Schedule of the EAC CMA then customs shall use the Fallback method.

Under S.4(1)(b) of EACCMA one of the functions of the Directorate is the enforcement of the Customs law of the Community which are set out in the EACCMA. The preamble to the EACCMA Act states: `An Act of the Community to make provision for the management and administration of Customs and for related matters`. One of the functions of the Directorate of Customs therefore is to enforce the provisions of the EACCMA. One of the provisions of the EACCMA is S. 122(1) which provides for the application of the valuation methods set out under the Fourth Schedule

S. 122(5) of EACCMA provides that the Council shall publish in the Gazette judicial decisions and administrative rulings of general application giving effect to the Fourth Schedule. S. 122(6) of the EACCMA states:

> `In applying or interpreting this section and the provisions of the Fourth Schedule, due regard shall be taken of the decisions, rulings, opinions, guidelines and interpretations given by the Directorate, the World Trade Organisation, or the Customs Cooperation Council`.

A reading of the above provision shows that due regard should be made to the decisions, rulings, opinions, guidelines and interpretations given by the above-mentioned bodies.

The Directorate has to apply and interpret the provisions of S. 122 and the Fourth Schedule. The term 'apply' has been defined in *Black`s Law Dictionary* 10th Edition p. 122 inter alia as "To put, use, or refer, as suitable or relative; to co-ordinate language with a particular subject matter as to apply the words of a statute to a particular state of facts." The term 'interpret' is defined *in Black`s Law Dictionary* (supra) p. 943 as `to construe; to seek out the meaning of language; to translate orally from one tongue to another`. The requirement to have regard to the decisions and rulings of the bodies set out under S. 122(6) is limited to applying and interpreting the said section and the provisions of the Fourth Schedule and not making new laws.

The Directorate of customs issued an Administrative Ruling. Ruling is defined by *Black's Law Dictionary* 10th Edition p. 1533 as "1. Government; the act of one who governs or rules. 2. The outcome of a court's decision either on some point law or on a case as a whole." In this case, the ruling was an administrative one. The effect of an administrative ruling is it may have the force of law on the custom authorities but not on courts or tribunals. S. 122(6) of the EACCMA states that when looking at the application of the methods under Fourth Schedule due regard shall be taken of the decisions, rulings, opinions, guidelines given by the directorate. An administrative ruling should be applied with due regard to the provisions of the Fourth Schedule. Due regard means the regard that is appropriate in all the circumstances. When looking at all the circumstances, consideration should be given to all issues including discrimination, equality and fair treatment arising from cases. The Tribunal has to determine whether the ruling or opinion was appropriate to the circumstance of the case.

For customs to apply the Fallback method, it must show that there are challenges and complexities in applying the initial five methods, which the Directorate did in the administrative ruling, to be applied generally. Regard is made to the challenge in respect of transaction value, that the goods are subject to the whims and material needs of a seller. Paragraph 2 of the Fourth Schedule states that the customs value of imported goods shall be the transaction value, which is the price actually paid or payable for the goods when sold for export. "Goods" under S.2 of the EACCMA "includes all kinds of articles, wares, merchandise, livestock, and currency, and, where any such goods are sold under this Act, the proceeds of such sale". Imported goods

include used goods, which is not an exception under S. 122. It is irrelevant that the price is determined by the whims and material needs of a seller. Method 1 is concerned with the transaction value actually paid and not the degree of usage or the condition of a used vehicle or of a seller or how the seller feels. Whereas it may be difficult to apply value of identical and similar goods to used goods because the value may differ depending on factors such as depreciation and condition, it is difficult to envisage how such condition prevents customs from applying the transactional value under method 1. It may be difficult to apply other methods to used goods but not the transaction method. In this case the applicant provided proof of payment of the transaction value. There is no evidence that the proof presented a challenge or a complexity to customs. If the applicant had failed to provide evidence of payment or presented false documents or those that are not authentic or there is doubt as to the actual purchase price paid, that is a challenge the Tribunal may entertain. The directorate issued a 'one size fit all' ruling to custom authorities but in this case, it seems the shoe did not fit the applicant.

In *John Kamanyire v Uganda Revenue Authority* Application No. 7 of 2015, the tribunal in rejecting the respondent`s application of the Fallback method based on an opinion of the World Trade Organisation stated as follows:

> `In applying the fallback method under the Fourth Schedule of the EACCMA, the respondent applied the opinion of the World Trade Organisation. The respondent cited S. 122(6) which allows it to have due regard to the decisions, rulings, opinions, guidelines, and interpretations given by the Directorate, the World Trade Organisation and the Customs Cooperation Council. However, there is nothing in the said Subsection that makes the said decisions, rulings, opinions, and interpretations take precedence over the requirement to use the transaction value of the import in determining the customs value`.

In *Testimony Motors Ltd. v The Commissioner Customs, Uganda Revenue Authority* (supra) the High Court stated that.

> "...that the directive of the Commissioner Customs, Uganda Revenue Authority, suspending the operations of the transaction value method provided by section 122 and fourth schedule of the East African Community Customs Management Act 2004, was unlawful to the extent that it excluded the application of the transaction value method for the assessment of custom duty in every case of imported used motor vehicles.

The respondent was not justified in uplifting the customs value of the applicant`s motor vehicle without applying the valuation method set out in Part 2 of the Fourth Schedule when there was no challenge or complexity in using it in respect of the applicant's import.

For the above reasons this application is allowed. It is ordered as follows:

1. The respondent will refund to the applicant the sum of Shs. 6,762,677
2. The applicant is awarded the costs of the application.
3. The applicant is award interest at court rate of 6% from the date of the ruling till payment in full.

Dated at Kampala this 2nd day of August 2022.

DR. ASA MUGENYI
CHAIRMAN

MS. CHRISTINE KATWE
MEMBER

MR. SIRAJ ALI
MEMBER