

**THE REPUBLIC OF UGANDA**  
**IN THE TAX APPEALS TRIBUNAL OF UGANDA AT KAMPALA**  
**APPLICATION NO. 65 OF 2021**

AGAGO UPLIFT NETWORK LIMITED ===== APPLICANT  
VERSUS  
UGANDA REVENUE AUTHORITY =====RESPONDENT

BEFORE DR. ASA MUGENYI, MR. GEORGE MUGERWA, MS. CHRISTINE KATWE

**RULING**

The applicant filed this application challenging a decision by the respondent not to grant an exemption on imports of purported bee keeping equipment.

In a letter of 7<sup>th</sup> June 2021, the applicant requested the respondent to effect a tax exemption on imported drill bits, screwdriver sets, trolley tyres, trailer lights and wood clamp accessories. On 21<sup>st</sup> June 2021, the respondent replied the applicant stating the imports were not exempt. The applicant objected and the respondent disallowed it.

The agreed issues are:

1. Whether the applicant is entitled to an exemption?
2. What remedies are available to the parties?

The applicant was represented by Mr. Godfrey Byekwaso while the respondent by Ms. Josephine Alanyo and Mr. Barnabas Nuwaha.

This dispute revolves around the applicant's claim that it is entitled to exemptions for the importation of bee keeping equipment under S. 114 and Paragraph 15 of Part B of the 5<sup>th</sup> Schedule of the East African Community Customs Management Act (EACCMA).

The applicant's first witness, Agera Oscar, a founder/promoter of it, testified that the applicant is a company limited by guarantee, a community-based organization which

boosts family incomes through promotion of bee keeping. He testified that on 30<sup>th</sup> April 2021, the applicant obtained a recommendation for a tax exemption from the Ministry of Agriculture, Animal Industry and Fisheries. It applied to the respondent to effect the exemption for a multi frame honey extraction, honey storage and bottling system and bee keeping accessories on airway bills 786460786109. and 8207871011. The respondent objected except for a safety wear for eyes. The respondent contended that the items could be used for other purposes. It contended that the applicant had previously imported space heating equipment which was exempted from tax.

The respondent's witness, Ms. Irene Ninsiima, a customs officer, testified that the applicant applied on 7<sup>th</sup> June 2021 to the Commissioner Customs for an exemption of items in Airway Bill 786460786109. On 21<sup>st</sup> June 2021, the respondent replied to the applicant that the items were not duty exempt. This was reiterated in letters of 8<sup>th</sup> July 2021, 19<sup>th</sup> July 2021, and 26<sup>th</sup> July 2021. She testified that the items were imported from the United States of America and were consigned to one Silas Labedo.

The applicant submitted that S. 114 of the East African Community Customs Management Act (EACCMA) provides for exempted imports. Paragraph 15(c) of the 5<sup>th</sup> Schedule of the EACCMA states:

"All equipment and gear in bee keeping and authorized by the director of veterinary services and subject to such conditions and limitations that the commissioner may impose"

It submitted that the general principles for interpretation of tax statutes are stated in *Mangin v Inland Revenue Commissioner* [1971] 1 ALLER 179 are:

- The words are to be given their ordinary meaning
- One has to look merely at what is clearly said
- The objectives of the construction of the statute being to ascertain the will of the legislature
- The history of an enacting and the reason which led to its being passed may be used to aid its construction."

The applicant submitted that the law is clear and unambiguous. That the determination of what constitutes an agriculture input, particularly for bee keeping is in the hands of a veterinary officer the equivalent of Commissioner of Animal Health in Uganda. The

respondent has no role to play. The applicant contended that the respondent assumed the role of the Commissioner which is not justifiable.

In reply, the respondent argued that for one to claim an exemption it must be expressly qualified by legislation. It cited Article 150 of the Constitution of Uganda 1995 and *Company Inc v Province of Laguna and Manuel E. Leycano, Jr* G.R. No. 151899 August 16, 2005, where it was stated

"The tax exemption must be expressed in the statute in clear language that leaves no doubt of the intention of the legislature to grant such exemption. And, even if it is granted, the exemption must be interpreted in *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority."

The above position was fortified in *Cape Brandy Syndicate v The Commissioners of Inland Revenue* [1921] 1 KB 64 which was cited in *Chestnut Uganda Limited v Uganda Revenue Authority* [2021] where it was stated that; "In a taxing Act, one has to look at merely what is clearly said". The respondent also cited *Uganda Revenue Authority v Kajura* [2017] UGSC 63 where the court stated that.

"Laws which permit tax exemptions must be construed *strictissimi juris* against the entity claiming the same. Thus, he who seeks to be this privileged must justify it by words too plain to be mistaken and so categorical to be misinterpreted."

The respondent also cited *Halsbury's Laws of England* 4<sup>th</sup> Edition Vol. 23 Paragraph 22, which states "If the subject is within the scope and terms of the charge, he cannot escape unless he can bring himself fairly within an express exemption conferred by the statute".

The respondent submitted that S. 110(1) of the EACCMA provides that duty shall be paid on goods at the rate and in the circumstances specified in the Protocol. S.114(1) of the same Act states the duty shall be charged on the goods listed in Part A of the Fifth Schedule when imported or purchased before clearance in Customs. S.114(2) states Duty shall not be charged on goods listed in Part B of the Fifth Schedule when imported in accordance with any condition attached. Clause (c) of Part B of the 5<sup>th</sup> Schedule provides that all equipment and gear in beekeeping as authorized by the Director of Veterinary Services and subject to such conditions and limitation that the Commissioner may impose. Clause (i) provided for inputs by persons engaged in horticulture, aquaculture, agriculture, or floriculture which the Commissioner is satisfied are for used

in the said sectors. The respondent contended that none of the imports of the applicant are listed as exempt. It contended that the items imported were not agricultural equipment. It contended further that the applicant could not qualify under the said provision as the goods were consigned to someone other than the applicant who did not provide evidence that he is engaged in agriculture. The respondent also contended that the goods were not imported from USA and not South Africa which was the country provided for. There is no evidence of proof of transfer of ownership. The respondent also submitted that permission was granted by a person not provided for in the law i.e., Director of Veterinary Services and not the Commissioner Animal Health.

Having listened to the evidence and read the submission of the parties, this is the ruling of the Tribunal.

The applicant approached the respondent for tax exemptions on imports claiming that they are tax exempt. On 30<sup>th</sup> April 2021, the applicant had written to the Ministry of Agriculture, Animal industry and Fisheries for authorization to import bee keeping equipment. On 16<sup>th</sup> June 2021, the applicant was granted the permission to import the said bee keeping equipment by the Commissioner Animal Health.

The applicant imported the following items on airway bill 786460786109, exhibit RE6, tool kits, lighting equipment, parts of motor vehicles or cycles, other articles of iron, or steel, solid or cushion tires. It wanted the said items to be exempted from import duty.

The law providing for duty exemption on imported goods is provided in the EACCMA. S. 114 of the said Act states:

"114(1) Duty shall not be charged on the goods listed in Part A of the Fifth Schedule to this Act, when imported, or purchased before clearance through the Customs, for use by the person named in that Part in accordance with any condition attached thereto as set out in that Part

(2) Duty shall not be charged on the goods listed in Part B of the Fifth Schedule to this Act when imported in accordance with any condition attached thereto as set out in that Part.

(3) The Council may by notice in the Gazette amend the Fifth Schedule."

The relevant portion on exempt agricultural equipment in Paragraph 15 of part B of the 5<sup>th</sup> schedule states:

“(c) All equipment and gear in bee keeping and authorized by the director of veterinary services and subject to such conditions and limitations that the commissioner may impose.”

Beekeeping is an agricultural activity. Importing equipment for beekeeping would be exempt under the above Paragraph.

As rightly stated by both parties, a statute should be given its literal meaning. In *Kinyara Sugar Limited v Commissioner General Uganda Revenue Authority* HCCS 73 of 2011 the court stated that:

“The general principles for interpretation of tax statutes are laid out in the case of *Mangin v Inland Revenue Commissioner* [1971] 1 All ER 179 by the Privy Council when Lord Donovan who delivered the majority opinion set out 4 principles of interpretation.

1. *Firstly “words are to be given their ordinary meaning. They are not to be given some other meaning simply because their object is to frustrate legitimate tax avoidance devices.”*
2. *Secondly, ‘... one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used.’ (Per Rowlatt J in *Cape Brandy Syndicate v Inland Revenue Comrs* ([1921] 1 KB 64 at 71), approved by Viscount Simons LC in *Canadian Eagle Oil Co Ltd v Regem*)”*
3. *Thirdly, “the object of the construction of a statute being to ascertain the will of the legislature, it may be presumed that neither injustice nor absurdity was intended. If therefore a literal interpretation would produce such a result, and the language admits of an interpretation which would avoid it, then such an interpretation may be adopted.”*
4. *Fourthly, “the history of an enactment and the reasons which led to its being passed may be used as an aid to its construction.”*

It is not in dispute that the Paragraph 15 of Part B of the 5<sup>th</sup> Schedule is clear. It empowers the Director of Veterinary Services, an officer in the Ministry of Agriculture, Animal Husbandry and Fisheries to authorize the exemption for importation of equipment and gear used in bee keeping business. However, under the Act the exemption should be authorized subject to conditions and limitations by the Commissioner. S. 2 of the

EACCMA states that "Commissioner" means Commissioner of Customs appointed under S. 5 of this Act.

It is not in dispute that the applicant wrote a letter on 30<sup>th</sup> April 2021 seeking authorization to exempt bee keeping equipment from tax on import. The said letter stated, inter alia.

"I, Silas Labedo working with Agago Uplift Network Limited (AUNL) located in Agago District Patongo subcounty, would like to import the equipment below to facilitate our efforts to improve on our current beekeeping enterprise..."

Mr. Silas Labedo is a different legal entity from the applicant. It is not clear whether he was importing the items personally. The applicant is a limited liability company.

However, in its reply, exhibit A6, the Ministry of Agriculture, Animal Industry and Fisheries gave permission to the applicant and not Silas Labedo to import bee keeping equipment from South Africa. A list of the items is stated, and conditions were set. For instance, the beekeeping equipment must be new. They must not have been in contact with live bees or bee product. The said letter was signed by the Commissioner Animal Health and not the Director of Veterinary Services. The applicant did not adduce evidence to explain why there was that discrepancy. Where a statute is clear, it should be followed to the dot. A Commissioner of Animal Health is not the same as a Director of Veterinary Services. They do not hold the same post, nor do they have the same title and are not at the same level. There is no evidence that the Director of Veterinary Service delegated the powers given to him under the Schedule. It is still debatable that once a statute gives a person, powers that such powers can be delegated. In the absence of a satisfactory explanation, such discrepancy cannot be ignored. Secondly, the Commissioner of Animal Health set down Conditions. Under the EACCMA, the conditions are supposed to be set by Commissioner of Customs. Having sought an exemption from the Ministry of Agriculture, Animal Industries and Fisheries, the applicant ought to have obtained conditions from the Commissioner of Customs which was not done.

The applicant imported items on airway bill 786460786109. The items are listed as tool kits, lighting equipment, parts of motor vehicles or cycles, other articles of iron, or steel, solid or cushion tires. It is difficult for one to understand how the said items are involved

in beekeeping. Since when are lighting equipment and parts of motor vehicles or cycles used in beekeeping? The said items do not resemble those stated in the list attached to the letter from the Ministry of Agriculture, Animal Industry and Fisheries. The items were imported from the United States of America. Though the Commissioner of Animal Health stated that the items were to be imported from South Africa, the EACCMA did not give him powers to set conditions on where the equipment should be imported from. The power to impose conditions lied with the Commissioner of Customs.

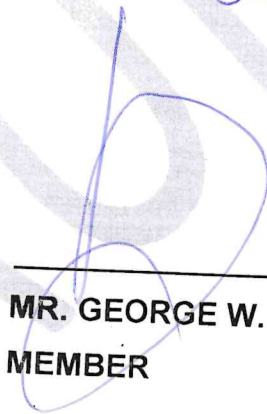
Lastly, it is noted that the purported authorization was granted to the applicant. It is not clear how the one Silas Labedo who the goods imported were consigned can be a beneficiary of the exemption. An exemption cannot be transferred without authorization from the relevant authority. Such an irregularity cannot be rectified. The exemption granted to protective goggles glasses was therefore also irregular.

Taking the above into consideration, this application is dismissed with costs to the respondent.

Dated at Kampala this 21<sup>st</sup> day of December 2022.



**DR. ASA MUGENYI**  
**CHAIRMAN**



**MR. GEORGE W. MUGERWA**  
**MEMBER**



**MS. CHRISTINE KATWE**  
**MEMBER**