TAX APPEALS TRIBUNAL
Justice in Taxation

THE REPUBLIC OF UGANDA

IN THE TAX APPEALS TRIBUNAL AT KAMPALA

APPLICATION NO. 242 OF 2024

AISHA TRADE INVESTMENTS LIMITED..APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY..RESPONDENT

BEFORE: HON. CRYSTAL KABAJWARA, HON. KENNETH A BAGAMUHUNDA, MS. CHRSTINE KATWE

RULING

I. Introduction

1. This ruling is in respect of an application challenging the Respondent's decision rejecting the Applicant's refund claim for import duty amounting to Shs.16,857,698 on grounds that the claim was filed outside the twelve-month statutory limitation period prescribed under Section 144(2) of the East African Community Customs Management Act (EACCMA).

II. Background facts

2. The Applicant is in the business of importing and exporting goods. In 2020, the Applicant imported a Toyota Hiace motor vehicle into Uganda.

3. Owing to financial constraints occasioned by the COVID-19 pandemic, the Applicant was unable to clear the vehicle within the prescribed period. Consequently, the vehicle remained in a bonded yard for an extended period and continued to incur storage, auction, and demurrage charges.

4. The Applicant declared and paid import duty amounting to Shs.16,857,698 on 28 March 2022.

5. During the last stage of the clearance process, the Respondent declared the motor vehicle a contraband on the grounds that it exceeded the statutory fifteen-year age limit for imported motor vehicles prescribed under Section 15 of the Traffic and Road Safety Act, Cap 347, the vehicle being sixteen years old at the time of importation.

6. Following the declaration of the vehicle as contraband, the Applicant applied to the Respondent for permission to re-export the vehicle out of Uganda. The Respondent granted the said permission. The Applicant states that whereas an initial transaction with a prospective purchaser in the Democratic Republic of Congo did not materialise, it subsequently secured a purchaser from South Sudan, and the vehicle was eventually re-exported on 16 July 2024.

7. The Applicant further contends that officers from the Respondent's Customs Audit and Refund Office represented that the import duty paid would be refundable upon successful re-exportation of the vehicle.

8. Following confirmation of the re-exportation, the Applicant applied to the Respondent for a refund on 1 August 2024.

9. The Respondent rejected the Applicant's refund claim on the ground that it had been lodged outside the twelve-month limitation period prescribed under Section 144(2) of the EACMA. The Respondent contends that, although the duty was paid on 28 March 2022, the refund application was not lodged until 1 August 2024 and was therefore statute-barred.

III. Issues for determination

10. The main issues for determination are:

    (a) Whether the Applicant is entitled to a refund of the monies originally paid as import duty.

    (b) What remedies are available to the parties

IV. Representation

11. The Applicant was represented by Mr. Edward Kasibante, Mr. Henry Chombo, Ms. Proscovia Nakiyingi, Mr. Kitakule Swaibu, Ms. Mary Nambazira

and Mr. Sekanjako Richard while Ms. Ritah Nabirye and Ms. Doreen Amutuhaire from the Legal Service and Board Affairs Department, Uganda Revenue Authority, represented the Respondent.

V. Submissions by the Applicant

12. The Applicant submitted that the twelve-month limitation period prescribed under Section 144(2) of the East African Community Customs Management Act, 2004 does not apply to the present claim. The Applicant argued that once the motor vehicle was declared contraband under the Traffic and Road Safety (Amendment) Act, 2018, it ceased to constitute "dutiable goods" within the meaning of Section 2(1) of the East African Community Customs Management Act.

13. The Applicant submitted that "dutiable goods" refers only to goods lawfully chargeable with duty and that no law authorises the imposition of import duty on contraband goods. In support of this submission, the Applicant relied on the decision in ***Uganda Revenue Authority v Siraje Kajura & Others SCCA No. 9 of 2015***, where the Supreme Court held that statutory words must be construed in their ordinary and natural meaning.

14. The Applicant further submitted that following the declaration of the vehicle as contraband and its warehousing, pending re-exportation, the legal character of the monies paid substantively changed from import duty to a customs bond or security refundable upon re-exportation, as intimated by the Respondent's Customs Audit and Refund Unit. The Applicant argued that the limitation period under Section 144(2) of the East African Community Customs Management Act applies strictly to refund claims relating to import duty and cannot govern recovery of monies held as security or bond.

15. The Applicant further submitted that officers from the Respondent's Customs Audit and Refund Office expressly represented to the Applicant that the monies paid would be refundable upon successful re-exportation of the vehicle. The Applicant argued that these representations created a legitimate expectation that the refund would be processed upon fulfilment of the re-export condition. The Applicant additionally submitted that once the purpose

for which the monies were paid failed, the Respondent held the monies on constructive trust for the Applicant.

16. The Applicant relied on the decisions in ***Barclays Bank Ltd v Quistclose Investments Ltd AC 567, Central London Property Trust v High Trees House Ltd (1947) KB 130 and National Social Security Fund v URA Civil Appeal No. 29 of 2020.***

17. The Applicant further submitted that even if the limitation period under Section 144(2) of the East African Community Customs Management Act were applicable, time could only begin to run from the date of re-exportation of the vehicle, namely 16 July 2024, being the date upon which the condition precedent for refund crystallised.

18. The Applicant further relied on Article 126(2)(e) of the Constitution and submitted that substantive justice should be administered without undue regard to technicalities.

19. The Applicant submitted that refusal to refund the monies amounts to arbitrary deprivation of property contrary to Article 26 of the Constitution and unjust enrichment on the part of the Respondent. The Applicant relied on ***East Africa Cranes Limited v URA Application No. TAT 51 of 2018*** and submitted that statutory timelines cannot be used to deprive a person of property rights unless expressly provided for in taxing legislation.

20. The Applicant further submitted that the Respondent's conduct of requiring payment of import duty, subsequently declaring the vehicle contraband and thereafter refusing refund on grounds of limitation amounted to oppressive and unfair treatment contrary to Article 24 of the Constitution and ***Part 2.1 URA Client Service Charter*** on ***"Right to fair treatment"***. In support of this submission, the Applicant relied on ***Alnoor Tiles and Ceramics Ltd v URA, Application No. 103 of 2023,*** *the preliminary objection ruling in which this Honourable Tribunal declined to enforce statutory timelines because* the Respondent had failed to comply with the Client Service Charter.

21. The Applicant further submitted that under Article 152 of the Constitution, no tax may be imposed except under the authority of an Act of Parliament and

that since no law authorises taxation of contraband goods, the collection of the duty was invalid ab initio and could not be legitimised through procedural limitation provisions. The Applicant relied on the decisions in ***Kampala Nissan v URA Civil Appeal No. 7 of 2009***, where it was held :

> *"The constitution of the Republic of Uganda firstly makes it imperative that only an Act of Parliament can authorise the imposition of a tax. It follows that the Respondent cannot impose taxes not authorised by law. To do so would be null and void and subject to a challenge on the ground that the law does not authorise it."*

22. The Applicant additionally submitted that the Respondent's continued retention of the monies constituted a continuing wrong and therefore limitation could not apply so long as the monies remained unlawfully withheld. In support of this submission, the Applicant relied on ***Canaan Sites Ltd v URA TAT No. 228 of 2022.***

23. The Applicant submitted that once the vehicle was declared contraband and/or designated for re-export, it was equally incumbent for the Respondent to effect the refund within time; legal compliance or doing the right thing or taking the right step is not for the taxpayer alone. The Applicant asserted that compliance should not be a single-lane road for taxpayers only but for the Respondent too.

24. The Applicant further submitted that allowing the State to retain monies it had no lawful right to collect or retain, in circumstances where the consideration for the payment had failed, would amount to unjust enrichment. The Applicant contended that import duty is levied on the premise that goods are lawfully imported for domestic use or consumption, and that payment of such duty is therefore contingent upon successful importation and clearance. Consequently, where a vehicle is refused entry and classified as contraband, the legal basis for the levy is extinguished, as the taxpayer derives no benefit from the payment.

25. Regarding remedies, the Applicant prayed for refund of Shs.16,857,698/= together with interest at 20% per annum from the date of re-exportation,

special damages amounting to Shs.10,576,562, general damages, and costs of the application.

26. The Applicant relied on Section 26(2) of the Civil Procedure Act, Section 22(5) of the Tax Appeals Tribunal Act and ***Uganda Revenue Authority v China Jiefang (U) Ltd Civil Appeal No. 57 of 1999*** in support of the claim for interest.

27. The Applicant further submitted that the claim for special damages arose from customs agency payments, bond fees, fuel expenses incurred during re-exportation and auction-related charges occasioned by the Respondent's refusal to allow local clearance of the vehicle, particularly as the Respondent has, on multiple occasions such as in the **Respondent's NOTICE** issued on **1 April 2022** allowed vehicles over fifteen (15) years old to be cleared. In support of the claim for special damages, the Applicant relied on ***W.M Kyambadde v Mpigi District Administration (1983) HCB 54***.

28. The Applicant further submitted that since the vehicle was already within the customs area at the time the contraband classification or time limits began to apply, the subsequent imposition of a ban on clearance would amount to a retrospective application of the law, which is generally impermissible. The Applicant contended that such application was prejudicial, as it occasioned the specific costs complained of.

29. The Applicant further relied on ***Trade Worth Establishment Limited v URA, TAT No. 338 of 2024, and Kyotera Victoria Fishnets Ltd v Commissioner General, URA, Civil Suit No. 224 of 2014***, in support of the claim for general damages. The Applicant submitted that it incurred substantial inconvenience and operational disruptions arising from repeated visits to the Respondent's offices, which significantly distracted it from other profitable and commercially important business activities, including marketing, thereby exacerbating its business losses.

VI. Submissions by the Respondent

30. The Respondent submitted that under Section 19 of the Tax Appeals Tribunal Act and Section 101 of the Evidence Act, the burden lies on the Applicant to

prove that the tax decision was excessive, erroneous or ought to have been made differently. The Respondent argued that the Applicant had failed to discharge this burden.

31. In support of its submission, the Respondent relied on ***Williamson Diamonds Ltd v Commissioner General (2008) 4 TTLR 67,*** where it was held that the burden of proving that an assessment is excessive or erroneous rests on the taxpayer.

32. The Respondent further submitted that the imported motor vehicle was sixteen years old and therefore imported contrary to Section 15 of the ***Traffic and Road Safety Act***. The Respondent argued that the vehicle was consequently properly declared contraband.

33. The Respondent submitted that the monies paid by the Applicant constituted self-assessed import duty and not a customs bond or security as alleged by the Applicant. The Respondent argued that the payment amounted to import duty paid in error within the meaning of Section 144(1)(b) of the East African Community Customs Management Act, 2004.

34. The Respondent further submitted that refund claims relating to import duty are governed by Section 144(2) of the East African Community Customs Management Act, which requires refund claims to be lodged within twelve months from the date of payment.

35. The Respondent submitted that whereas the import duty was paid on 28 March 2022, the Applicant only lodged the refund claim on 1 August 2024, more than two years after payment of the duty. The Respondent argued that the claim was therefore statute-barred.

36. The Respondent further submitted that statutory timelines are matters of substantive law and not mere procedural technicalities. The Respondent argued that Article 126(2)(e) of the Constitution cannot be invoked to defeat clear statutory provisions regarding limitation periods.

37. The Respondent relied on ***Uganda Revenue Authority v Uganda Consolidated Properties Ltd Civil Appeal No. 31 of 2000*** *and* ***Kasirye Byaruhanga & Co. Advocates v Uganda Development Bank Civil***

Application No. 2 of 1997, where the courts held that Article 126(2)(e) is not intended to cure substantive noncompliance with statutory requirements.

38. The Respondent further submitted that taxing statutes must be interpreted using the literal rule and according to their plain and ordinary meaning. In support of this submission, the Respondent relied on ***John Musisi alias Joseph Musiitwa Kabuusu v Commissioner General, Uganda Revenue Authority & Another, HCCS No. 0072 of 2005.***

39. The Respondent additionally relied on ***Kahamutima v Uganda Revenue Authority TAT Application No. 51 of 2021*** and submitted that the limitation period under Section 144(2) of the East African Community Customs Management Act admits no exception where a refund claim is filed outside the prescribed period.

Remedies

40. The Respondent submitted that since the Applicant was not entitled to a refund of the principal sum, it was equally not entitled to interest. The Respondent further submitted that entitlement to general damages must be strictly proved under Section 22(6) of the Tax Appeals Tribunal Act and that the Applicant had failed to prove any inconvenience or loss warranting an award of general damages.

41. Regarding special damages, the Respondent submitted that it was under no legal obligation to clear contraband goods and that the Applicant did not come to equity with clean hands.

42. Finally, the Respondent prayed that the application be dismissed with costs awarded to the Respondent as the successful party. In support of the claim for costs, the Respondent relied on Section 27(1) of the Civil Procedure Act and ***Donald Campbell v Pollak A.C. 732***.

VII. The Applicant's Submission in Rejoinder

43. In rejoinder, the Applicant submitted that under Section 23(2) of the Tax Appeals Tribunal Act, the Tribunal is mandated to conduct proceedings with minimum formality and technicality and to determine disputes on their substantive merits rather than procedural or evidential irregularities.

44. The Applicant further submitted that the Respondent had effectively admitted that the motor vehicle was contraband and therefore no lawful import duty could attach to it. The Applicant relied on ***Ssebanakita Godfrey v M/S Fuelex (U) Ltd, Civil Appeal No. 4 of 2016,*** and Section 17(1) of the Evidence Act regarding the evidential effect of admissions.

45. The Applicant relied on the doctrine of approbation and reprobation and cited ***R.N. Gosain v Yashpal Dhir (1992) 4 SCC 683***. The Applicant argued that the Respondent could not accept payment of import duty on a vehicle declared contraband and thereafter rely on statutory limitation provisions to deny refund of the same monies.

46. The Applicant further submitted that recovery of the monies is governed by restitutionary and equitable principles rather than the refund limitation provisions under Section 144(2) of the EACMA.

47. The Applicant relied on ***Barclays Bank Ltd v Quistclose Investments Ltd AC 567*** and argued that monies advanced for a specific purpose which subsequently fails become recoverable under a constructive trust.

48. The Applicant additionally submitted that taxes imposed without the authority of Parliament offend Article 152(1) of the Constitution. Reliance was placed on ***Warid Telecom (U) Ltd v URA, HCCS No. 24 of 2011***.

49. The Applicant further relied on ***Salanah Tea Company Ltd v Superintendent of Taxes AIR 1990 SC 772*** and submitted that taxes collected without lawful authority must be refunded because the State has no legal basis to retain such monies.

50. The Applicant also relied on ***Makula International Ltd v His Eminence Cardinal Nsubuga & Another HCB 11*** and submitted that the Tribunal cannot sanction an illegality merely because limitation periods have elapsed. The Applicant further submitted that passage of time cannot legalise an unlawful exaction and relied on ***Darby Development Company Inc. et al v United States (2022).***

51. Regarding remedies, the Applicant relied **on *Kadophra Investments Limited v Uganda Revenue Authority, TAT No. 29 of 2023***, in support of

the claim for interest. The Applicant further invited the Tribunal to take judicial notice of the operational disruption occasioned by withholding liquid business funds and relied on ***Odongtoo & 8 Others v Akumu, Civil Appeal No. 33 of 2016.***

52. The Applicant additionally relied on ***Biira Udear Co. Ltd v Commissioner General URA, HCCS No. 400 of 2015,*** and submitted that it was entitled to general damages for economic inconvenience and business disruption occasioned by the Respondent's actions.

53. Finally, the Applicant submitted that the Respondent's assertion that the Applicant did not come to equity with clean hands was vague, unsubstantiated, and unsupported by evidence.

VIII. The Determination

54. Having carefully considered the pleadings, the documentary evidence, the admissions on record, and the written submissions of both parties, this is the decision of the Tribunal

55. The burden of proof in this application is governed by Section 19 of the Tax Appeals Tribunal Act, which is to the effect that the onus rests squarely on the Applicant to prove that the Respondent's taxation decision was excessive, erroneous, or otherwise contrary to the law.

56. Consequently, the Applicant must demonstrate, on a balance of probabilities, that its claim falls outside the prohibitive parameters of the law and that it has met all prerequisites for the reliefs sought

Whether the Applicant is entitled to a refund of monies originally paid as import duty

57. The Tribunal's determination is guided by the statutory provisions relating to re-export and refund of duties paid thereof:

58. Section 15 of the Traffic and Road Safety Act provides:

> *"A person shall not import a motor vehicle which is 15 years old or more from the year of manufacture."*

Under the East African Community Customs Management Act, import means:

"to bring or cause *to be brought into the Partner States from a foreign country."*

59. The EAC Customs Union Protocol defines import as:

"to bring or cause goods to be brought into the customs territory." With the establishment of the Single Customs Territory, the first point of entry in the community is the import point.

60. The EACCMA 2004 under Section 144 (1) and (2) provides:

"(1) Subject to any regulation, the Commissioner shall refund any customs duty paid on the importation of the goods-

(a) of any duty, or part thereof, which has been paid in respect of goods which have been damaged or pillaged during the voyage or damaged or destroyed while subject to customs control

"(b) of any import duty or export duty paid in error.

(2) a refund of import or export duty or part thereof shall not be granted under subsection (1) unless the person claiming such refund presents such claim within a period of twelve months from the date of the payment of the duty."

61. The governing provision for re-export of goods is under Section 248 (1) of the EACCMA, which provides:

"(1) Goods imported into a Partner State and still under customs control may be

(a) re-exported from a Partner State

(b) destroyed

(c) abandoned"

62. Refund of duty in respect of exports (including re-exports) of goods falls under the drawback provisions of Section 138 of the EACCMA, which provides:

"138 (2) Where the owner of any goods claims, or proposes to claim, drawback in respect of goods, then as a condition to the grant of such drawback, he or she shall-

(a) enter such goods in the prescribed form and in the prescribed manner and produce such goods for examination by the proper officer before the

exportation of the goods or the performance of the conditions on which drawback is allowed;

(b) make and subscribe a declaration on the prescribed form to the effect that the conditions under which drawback may be allowed;

(c) have been fulfilled and, in the case of goods exported or put on board any aircraft or vessel for use as stores—

(i) that such goods have actually been exported or put on board for use as stores, as the case may be;

(ii) that such goods have not been re-imported and are not intended to be re-imported into the Partner State; and

(iii) that such owner at the time of the declaration of such goods for drawback was, and continues to be, entitled to drawback; and

(d) present his or her claim for drawback within a period of twelve months from the date of the exportation of the goods or the performance of the conditions on which drawback may be allowed."

63. The Vehicle in question, a Toyota Hiace, has a manufacturing date of March 2006 and was declared on T1 S57551 at Mombasa on 8 December 2020.

64. On 9 July 2020, the Applicant had requested the Respondent to warehouse the Vehicle while it was still in Mombasa, to which the Respondent allowed through a letter dated 10 July 2020 *to wit*, "Customs has noted the content of your letter and would wish to inform you that given the circumstances explained in your letter, your request to warehouse the above motor vehicle is hereby granted. However, you are notified that the motor vehicle should be cleared out of the bond two months prior to making 15 years. The Manager of Warehousing is hereby requested to facilitate the payment of taxes for the unit.

65. The vehicle reached and was sighted at Malaba on 20 December 2020 and reached Kampala CBC on 22 December 2020, upon which Entry S84602 of 24 December 2020 was entered. The Tribunal noted that by the time the vehicle reached the Bonded Warehouse in Kampala, its age was still below the 15-year threshold. According to the EACCMA, the vehicle was considered imported when it reached Mombasa Port and subsequently warehoused in Kampala.

66. On 22 October 2021, the Respondent permitted the Applicant to change the Auction Status based on the ticket no. 211075385 indicating that the vehicle had been listed for auction due to a delay in clearance from the Bonded warehouse. Although the vehicle had passed the threshold of 15 years, the Respondent demanded payment of the auction penalty fee and full taxes thereof as follows:

> *"Permission has been granted to pay 3% of the value of the unit as a change of auction status penalty and its full taxes within a grace period of 5 days from the date of this letter, or else it will be disposed of by public auction/ sale by private treaty."*

67. The issue is whether an auction of a vehicle more than 15 years old would be permissible under the law.

68. On 16 March 2022, when the vehicle was 16 years from the date of manufacture, the Respondent wrote to the Applicant reminding her to clear the motor vehicle (Entry no. S84602) from the Respondent's Customs office within a period of 14 days from the date of the letter lest the vehicle would be sold as per the public notice that was attached to the letter. At this time, the vehicle had not yet been declared contraband.

69. On 28 March 2022, the Applicant accordingly paid taxes amounting to Shs. 16,857,698 through DFCU Bank as per the Payment Registration Slip acknowledging payment. The nexus between the letter demanding vehicle clearance and payment of taxes is evident given the proximity of the actions.

70. The Tribunal finds that the vehicle was imported into the country before it had been 15 years since its manufacture date of March 2006 to March 2021. Between the time the Vehicle reached Mombasa and the time it was entered for warehousing in Kampala (21 December 2020 and March 2021 respectively), it had not yet reached 15 years. The vehicle was under Customs control and had been entered on a warehousing entry as an imported good in accordance with Section 2 (a) , (b) and (c) of the EACCMA, which provides:

"(2) *For the purposes of this Act—*

(a) *goods shall be deemed to be entered when the entry in the prescribed manner is made and lodged by the owner and any duty due or deposit required under this Act in respect of the goods has been paid, or security has been paid, or security has been given for compliance with this Act Amended by EACCM (A) A 2011 of 17th February 2011*

(b) *goods shall be deemed to be entered for home consumption when they have been declared for use in a Partner State, other than temporary use, and the provisions of paragraph (a) have been fulfilled;*

(c) *the time of importation of goods shall be deemed to be the time at which the goods come within the boundaries of the Partner States*".

71. The Respondent had earlier, in 2020, communicated to the Applicant the need to clear the vehicle before it reached 15 years of age. The Tribunal notes that the vehicle was instead paid for in March 2022.

72. The Respondent contended that URA allows all the taxpayers to declare and pay voluntarily before the Respondent comes in to verify and audit what has been declared and paid for. It is evident that the Applicant declared a Transit entry in Mombasa and a warehousing entry in Kampala in the customs system before the vehicle was 15 years old. It is also evident that the Applicant declared and paid taxes after the vehicle had passed the 15-year limit. However, the reminder dated 16 March 2022 from the Respondent to clear the vehicle within 14 days, and the immediate payment on 28 March 2022, indicate the Applicant's fulfilment of the given 14-day timeline. It would be contradictory for the Respondent to demand payment of tax when the item was considered a contraband.

73. The vehicle was consequently declared contraband after taxes had been paid and was not permitted entry into the domestic market. These facts are established by the documentary record and are not disputed by the parties.

74. Following the declaration of the vehicle as contraband, the Applicant sought and obtained permission from the Respondent to re-export the vehicle. The evidence further shows that the vehicle was eventually re-exported on 16

July 2024. The Applicant thereafter lodged an application for refund of the import duty on 1 August 2024.

75. The Respondent does not dispute the payment of the duty, the declared vehicle turned contraband, nor the subsequent re-exportation. Its objection is confined to the contention that the refund claim was lodged outside the twelve-month limitation period prescribed under Section 144(2) of the EACCMA and is therefore statute-barred.

76. The Tribunal does not consider it necessary to determine whether the payment retained the legal character of customs duty throughout the period in question. In any case, the Applicant's claim is not supported by law to automatically reclassify a tax payment as a security deposit; hence, the amount retains its character as import duty, and any refund claim remains subject to the provisions of the EACCMA. The only issue is whether the Applicant has a right to a refund under the EACCMA.

77. The evidence before the Tribunal demonstrates that the vehicle was imported into the country before it was 15 years old and duly declared for warehousing as evidently submitted by the Applicant. The Applicant had difficulty clearing and removing the vehicle from the Respondent's bond due to the COVID-19 outbreak, which left many traders unable to continue conducting business due to loss of capital. The Respondent permitted the vehicle to be re-exported outside Uganda in accordance with the EACCMA.

78. The Tribunal further look at the Statutory Framework governing re-exportation of goods. Under Section 248 of the East African Community Customs Management Act, which explicitly provides:

"(1) Goods imported into a Partner State and are still under customs control may be-

(a) re-exported from a Partner State

(b) destroyed

(c) abandoned"

79. Under this provision, which empowers customs to permit re-exportation, it is evident that Customs recognises circumstances where goods imported into a Partner State may not be entered for home consumption and are instead re-exported. This provision forms the basis under which the re-export was

permitted. In the circumstances, Customs allowed the change of the regime of the goods from home consumption to re-exportation, although the Applicant had already paid the taxes.

80. For contrast purposes, the Tribunal cast its eyes, although not a determinant issue in this matter, on the treatment of contraband in the EACCMA. "Contraband" is not a statutory term in the EACCMA. It is defined in the Oxford Advanced Learner's Dictionary **as "goods that are illegally taken into or out of a country."** The statutory terminologies used in the EACCMA, fitting within the confines of the term contraband, are **"prohibitions, restrictions and uncustomed goods"**.

81. Partner State laws prohibiting and restricting importation of specified goods as in case of Section 15 of the Traffic and Road Safety Act, Cap 347, are recognised under the prohibitions and restrictions provision of Section 18 of the EACCMA and the attendant Second Schedule thereof.. In addition, the treatment of prohibitions and restrictions is catered for under the offence provisions under Section 200 and Section 2010. The EACCMA does not give room for re-exportation of prohibitions or restrictions. The question, therefore, is whether a vehicle that was originally brought into the country without prohibition and remained a legal import for over 6 months became a prohibited good while under customs control.

82. In the present case, the fact of re-exportation is not in dispute. The Applicant demonstrated that the motor vehicle was ultimately removed from the customs territory and re-exported in accordance with the applicable customs procedures. The Tribunal observes that, within the EAC framework, a claim for refund predicated on re-exportation must be supported by clear and cogent evidence confirming that the goods in question indeed exited the country. Section 90 of the EACCMA provides that goods are deemed to have been exported overland when they physically cross the boundaries of a Partner State.

83. The Tribunal emphasises that a refund claim in such circumstances is intrinsically linked to proof of re-exportation, and that such claim can only properly arise once the goods have in fact left the jurisdiction. This statutory

context reinforces the Tribunal's earlier finding that, in circumstances where re-exportation is imposed as a condition precedent, the right to seek a refund cannot arise prior to the fulfilment of that condition. Evidence of export must be adduced in the form of export documents for confirmation. It is therefore on documentary evidence that a refund is allowed; failure to do so will result in one not being able to get the refund. The documentary evidence is a prerequisite.

84. The above is reaffirmed by the conditions specified by the Respondent in their letters dated 24 May 2024 and 3 July 2024 permitting re-export, which include a condition number 5 stating that *"Evidence of exit and entry of the unit availed to customs"*

85. In one of the Applicant's appeals on the decision of the Respondent to decline the refund, a letter to the Respondent, dated 23 August 2024, stated that:

> *"The circumstances under which the official request for a refund of duty for the Hiace drone in question was delayed was for the reason that, we earlier on were advised by officers in Customs Audit office to first re-export the vehicle out of the country for any consideration of the refund duty. We have been toiling for the last two and a half years looking for a potential buyer to take the vehicle in vain. The first buyer was from the Democratic Republic of Congo who pulled out of the deal at the last minute until after a series of struggle we luckily landed on one from South Sudan who took the vehicle after lowering the price which convinced him."*

86. The advice of the Respondent's officers that refund would be made on proof of exportation as submitted by the Applicant was not disputed by the Respondent.

87. The Tribunal finds that, in the peculiar circumstances of this case, the refund process was inextricably linked to the re-exportation of the vehicle. Until re-exportation occurred, the Applicant could not conclusively demonstrate compliance with the refund condition upon which the Respondent itself required the vehicle to be removed from the customs territory and with the evidence.

88. The Respondent cannot, on one hand, insist that the vehicle be re-exported before a refund can be considered and, on the other hand, contend that time for claiming that refund began running long before the condition precedent to

the refund was fulfilled. Such an interpretation would produce an unjust and commercially absurd result, effectively requiring the Applicant to seek a refund before the factual basis for that refund had crystallised.

89. It is a settled principle of statutory interpretation that legislation should, where possible, be construed in a manner that promotes coherence, practicality, and fairness, and avoids absurd consequences.

90. The Tribunal accordingly finds that, in the circumstances of this case, the Applicant's right to seek a refund crystallised upon fulfilment of the condition precedent, namely the re-exportation of the vehicle on 16th July 2024 and the acquisition of evidence of re-export. It was only at that point that the Applicant became capable of presenting a complete and enforceable claim for refund.

91. Consequently, the circumstances under which this transaction could be matched to Section 144(2) of the EACCMA are found to be wanting. The Tribunal finds Section 138 of the EACCMA on refund claims for export relevant to this case as evidenced by the similarity of the conditions set by the respondent to the Applicant and the ones explicitly elaborated in the provision. Accordingly, Section 138 provides:

> *"138 (2) Where the owner of any goods claims, or proposes to claim, drawback in respect of goods, then as a condition to the grant of such drawback, he or she shall-*
>
> *(e) enter such goods in the prescribed form and in the and prescribed manner and produce such goods for examination by the proper officer before the exportation of the goods or the performance of the conditions on which drawback is allowed; (b) make and subscribe a declaration on the prescribed form to the effect that the conditions under which drawback may be allowed;*
>
> *(f) have been fulfilled and, in the case of goods exported or put on board any aircraft or vessel for use as stores—*
>
> *(iv) that such goods have actually been exported or put on board for use as stores, as the case maybe;*
>
> *(v) that such goods have not been re-imported and are not intended to be re-imported into the Partner State; and*

(vi) that such owner at the time of the declaration of such goods for drawback was, and continues to be, entitled to drawback; and

(g) present his or her claim for drawback within a period of twelve months from the date of the exportation of the goods or the performance of the conditions on which drawback may be allowed".

92. Having found that the Respondent unfairly rejected the refund claim on limitation grounds, after the COVID 19 aftermath and the fact that no refund could be issued before the presentation of documentary evidence of re-export which is evidence of exit for the Uganda Territory to comply with the Road Safety Act, the Tribunal finds that the Applicant had no alternative but to look for the outside market which is not easy and simple. Neither party has complained about the timing of importing the car, which was within the time limit, that is, before the 15-year limit, though circumstances prevented the Applicant from clearing the vehicle within the quickest time to avoid the contraband bracket.

What remedies are available to the parties?

93. Under Section 22(5) of the Tax Appeals Tribunal Act, the Tribunal may award interest where appropriate.

94. The Tribunal finds that the inordinate delays in clearing the vehicle were not occasioned by the Respondents' actions. The Respondent did its best in accommodating the Applicant, storing the vehicle in the warehouse and lifting or changing the auction status of the vehicle, which was due for auction. In addition, the Respondent was patient with the Applicant's failure to meet deadlines and finally allowed the Applicant to re-export the vehicle. From the submissions, there were long spells, particularly in completing the re-exportation process. Though the Tribunal is sympathetic to the undue costs incurred by the Applicant, this burden cannot be shifted to the Respondent, who acted in a manner that enabled the Applicant to re-export the vehicle. In this regard, the claim for interest is therefore denied.

95. The Applicant also claimed special damages amounting to Shs. 10,576,562 and general damages for inconvenience and operational disruption.

96. The Tribunal is not satisfied that the special damages claimed were proved to the required legal standard or that they were wholly attributable to the Respondent's rejection of the refund claim. The claim for special damages is therefore declined.

Orders

97. The Tribunal hereby makes the following orders:

(i) The Respondent is ordered to refund to the Applicant the principal sum of Shs.16,857,698.

(ii) No interest and damages awarded.

(iii) Each party is to meet its own costs

Dated at Kampala this **15th** day of **July** 2026.

HON. CRYSTAL KABAJWARA
CHAIRPERSON

HON. KENNETH A BAGAMUHUNDA
MEMBER

MS. CHRISTINE KATWE
MEMBER