THE REPUBLIC OF UGANDA

IN THE TAX APPEALS TRIBUNAL AT KAMPALA

TAT APPLICATION NO. 08 OF 2024

BETA HEALTHCARE UGANDA LIMITED.....APPLICANT

VERSUS

UGANDA REVENUE AUTHOURITY.....RESPONDENT

BEFORE: MS. CRYSTAL KABAJWARA, MR. SIRAJ ALI, MR. WILLY NANGOSYAH

RULING

This is a ruling in respect of an application challenging the customs classification of Cofta tablets and Cofta Syrup by the Respondent as sugar confectionary falling under the Harmonized Commodity Description and Coding system (HSC) 1704.90.00.

1. Background Facts

The Applicant deals in the importation and distribution of pharmaceutical and medical products. The Respondent carried out a customs post-clearance audit on the Applicant covering the period January 2018 to December 2022 and issued VAT assessments of Shs. 808,805,239 due to alleged misclassification of Cofta tablets and Cofta syrup sales under HS Code 3004.90.00 as a medicament instead of HS Code 1704.90.00 as a sugar confectionary. The Applicant objected and the Respondent issued its objection decision maintaining its position and informed the Applicant that Shs. 743,757,269 assessed on the Cofta tablets was due and payable.

2. Issues for determination

The issue for determination is whether the Applicant's products are medicaments falling under heading 30.04 or sugar confectionary, falling under heading 17.04.

3. Representation

The Applicant was represented by Mr. Fahad Kizito and Ms. Rhoda Nakanwagi while the Respondent was represented by Ms. Charlotte Katuutu and Mr. Kenan Aruho.

Mr. Dennis Musinguzi, the Finance Manager and Administrative Manager of the Applicant, stated that the Respondent issued a VAT liability of Shs. 808,805,239 arising from an alleged misclassification of Cofta tablets under HS Code 3004.90.00 instead of HS Code 1704.90.00. The Respondent averred that specifically cofta tablets were lozenges and ought to have been declared under HS Code 1704.90.00 as the National Drug register of Uganda-Human Medicine of August 2023-NDA/MAL/HDP/5004 clearly described Cofta tablets as oral solid ordinary lozenges.

According to the classification advice given by the secretariate of the World Customs Organization (WCO), herbal preparations in form of lozenges cannot be classified as medicaments. The Respondent further stated that, by application of the General Interpretative Rules (GIRs) 1 and 6, lozenges are classifiable under HS Code 1704.90.

The Applicant objected to the Respondent's findings and attached Cofta's initial NDA product reference and classification to support its categorization of Cofta as a medicament and informed the Respondent that it had written a letter to the NDA to rectify the anomaly in the description of the Cofta tablets as a lozenge. The NDA expeditiously responded and clarified that the Cofta tablets were indeed herbal medicaments and not lozenges. On 3 May 2024, he wrote a letter on behalf of the Applicant to the Natural Chemotherapeutics Research Institute at Wandegeya where it made a finding that the Cofta tablet had compounds that had medicinal properties. The Directorate of Government Analytical Laboratory made a finding that the Cofta tablet contained compounds characteristics of monoterpenes and sesquiterpenes as terpenoids, flavonoids with several therapeutic properties.

Mr. Chiragkumar Patel, Regional Head - Technical of the Applicant in his witness statement stated that the Cofta tablet has active and inactive ingredients and is used as a medicament for sore throat, relief of coughs as its active ingredients contain products of therapeutic and prophylactic uses. The inactive ingredients included in the Cofta tablets such as granulated sugar, brown iron oxide, liquid glucose, gelatin, aerosol and magnesium are basically for increasing palatability and ease of consumption of the Cofta tablet for people that cannot stand a bitter taste, binding purposes, coloring of the tablet and disintegration.

Mr. Daniel Subi Kulubya, the pharmacist of the Applicant, stated that the Cofta tablet was registered with the NDA on 15 October 1997 as a (herbal) drug by Glaxo Welcome Kenya Limited (GlaxoSmithKline Kenya Limited) and sold to Aspen Pharmacare Limited. While the Respondent classified the Cofta tablet as oral solid ordinary lozenges, on 8 January 2024 the NDA clarified that Cofta tablets are registered by the NDA as herbal medicine.

Mr. Anywar Godwin, a researcher, academician, entrepreneur and author, in his witness statement stated that the active ingredients listed on the Cofta tablet namely, extract of Glycyrrhiza, menthol, anise seed oil, oil of peppermint, tincture of capsicum, oil of eucalyptus are all widely known and used therapeutic compounds used in various medications for treating different diseases or health conditions and are not the typical ingredients that would be found in any confectionary but are the preserve of pharmaceutical products/medicaments and these compounds have scientifically proven therapeutic and biological activities that qualify them as drugs/medicines. During modern pharmaceutical processing, different non-active substances such as sugar, honey, colour are added and does not change their purpose

During cross examination, Dr. Godwin Anywar stated that Cofta tablet is presented as a cough drop. He stated that Glycerine extract is from a plant known as Glycerine extract a multipurpose agent also used as a flavoring agent in candies and Cigarettes. In re-examination, he stated that Glycerizer has pharmaceutical uses because it used as an antioxidant and as an anti-inflammatory agent.

Mr. Brian Kiiza, a Customs Tariff officer in the Tariff Section, under the Customs Department of the Respondent, stated that the Applicant classified cough tablets as medicaments under Heading 30.04 instead of HSC 17.04 which provides for sugar confectionery. That the Explanatory Notes to HSC 17.04 provide Heading 17.04 includes:

"Preparations put up as throat pastilles or cough drops, consisting essentially of sugars whether or not with other foodstuffs such as gelatin, starch or flour) and flavoring agents (including substances having medicinal properties such as benzyl alcohol, menthol, eucalyptol and tolu balsam). However, throat pastilles or cough drops which contain substances having medicinal properties, other than flavoring agents, fall in Chapter 30 ...".

He testified that the Applicant's Certificate of Analysis AEX1 indicates that the contents of the cofta tablets to be glycyrrhiza, menthol, oil of aniseed, peppermint, oil of eucalyptus, oil of pine pumilio, tincture of capsicum. That the Explanatory Notes in relation to the exclusions to HSC 30.04 provide that throat pastilles or cough drops containing essentially of flavoring agents including those which have medicinal properties, fall in heading 17.04. That since glycyrrhiza is a flavoring agent (with medicinal properties) and it constitutes the largest/ essential component of 35mg, the product must be classified under HSC 17.04 in accordance to paragraph 5 of heading 17.04 of the WCO Harmonized System Explanatory Notes, and GIR 1 of the East African Community Customs External Tariff. He also stated that the WCO Harmonized System (HS) Committee has ruled on classification of cough tablets.

During cross examination, Mr. Brian Kiiza stated that Cofta has medicinal properties and according to the Respondent's analysis report, it weighs 1.9 grams.

Mr. Charles Samuel Katabi, a Manager, Science Laboratories under the Tax Investigations Department of the Respondent stated that the Applicant's product labelling specifies the contents of the cofta tablets to be: Glycyrrhiza Extract(35.00mg), Menthol (9.98mg), oil of Anise (0.001ml), Oil of Peppermint (0.001ml), Tincture of Capsicum (0.020ml), Oil of Pine pumilio (0.001ml), Oil of Eucalyptus (0.002ml), Creosote (0.002ml). He testified that the largest component of the product is glycyrrhiza extract (35.00mg). Glycyrrhiza extract (also known as liquorice extract), an extract from the root of the plant glycyrrhiza glabra, is a flavouring agent with medicinal properties characterized by imparting a sweet/ sugary taste. The product therefore has to be classified under HSC 17.04.

During cross examination, Mr. Charles Samuel Katabi stated that he relied on the labelling of the product to arrive at a classification.

Ms. Maureen Kenyana, an Acting Supervisor in the Customs Office of the Respondent stated that the Audit revealed that the Applicant was classifying cofta tablets as medicine under HSC Code 3004.90.00 instead HSC Code 1704.90.00.

She stated that the Respondent sought for and received advice from the World Customs Organization to the effect that herbal preparations in form of lozenges indicated for relief of sore throats and dry cough cannot be considered as medicament and thus subject to VAT.

She further stated that on 13 December 2023, the Respondent requested the Applicant to provide samples of Cofta tablets and Cofta syrup for analysis which were provided. She stated that the samples were tested which tests revealed that the cofta tablet imported by the Applicant contains extracts pf glycyrrhiza B.P 35.00mg, menthol B.P 9.98mg, oil of Aniseed B.P 0.001ml, Oil of Peppermint B.P 0.001ml, Oil of Eucalyptus B.P 0.002ml, Oil of pine Pumillo B.P 0.001ml, Tincture of Capsicum B.P.C 0.0020ml and Creosote B.P 0.002ml. Further, that the tablet contains more than 95% sweeteners and flavoring agents.

She stated that she knows that the Secretariat of the 2019 World Customs Organisation Knowledge Academy for Customs and Trade in its decisions provides that cough tablets: Description; "Cough Tablets consisting essentially of sugars (approximately 1.9g/tablet, glycyrrhiza (liquorice) extract (35 mg/tablet), other food stuffs (e.g. starch and gelatin) and flavouring agents (e.g., menthol, peppermint oil, anise oil, eucalyptus oil, pine pumilio oil and capsicum) put up in packings for retail' fall under 1704.90 as per the General Interpretative Rules (GIR) 1 and 6. Accordingly, the Applicant was required to classify its cofta tablets under HSCode 1704.90 and to pay the resulting VAT on its said products.

During cross examination, Ms. Maureen Kenyana stated that Lozenges is a tablet different from other tablets. He stated that he concluded that Lozenge is a tablet because the explanatory notes of Chapter 30.04.90 of the Common External Tariff which exclude cough syrup and lozenges. Further, the WCO ruling clearly gives directions on cough tablets. He also submitted that advice from WCO was not sought for this matter and that the Assessment is based on the WCO ruling and advice sought from the National Drug Authority.

4. Submissions of the Applicant

The Applicant submitted that the HSC 3004, as read from the East African Community Common External Tariff 2017 (EAC CET 2017) provides as follows:

"Medicaments (excluding goods of heading 30.02, 30.05 or 30.06) consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses (including those in the form of transdermal administration systems) or in forms or packings for retail sale".

The Applicant submitted that whereas HSC 3004 mentions medicaments, this is not defined. In the case of ***Norbook Uganda Ltd V URA App No.18 of 2018*** the Tribunal noted:

"HSC 3004 and the Common External Tariff do not define medicament. The Tribunal noted that a medicament is a substance used for medical treatment, in other words, it is a medicine...."

In the same case, the Tribunal referred to the VAT Practice Note of 2007 which states:

"(c) Therefore, medicines and drugs are any substance, preparation or mixture of substances used or intended for use in diagnosing, or treating of disease, disorder or abnormal physical state or the symptoms thereof in human beings or animals.

(d) The World Customs Organization (WCO) uses the term "medicament" in reference to medicines and drugs.

(e) A medicament is an agent that promotes recovery from injury or ailment.

Medicaments are impregnated or coated with pharmaceutical substance for therapeutic and prophylactic use in medical, surgical, dental or veterinary purposes".

The Applicant submitted that, pursuant to Tribunal's observations a reference to the term "medicament" by the WCO and the HSC refers to medicines and drugs.

The Applicant submitted that the qualifications for a product to fall under HSC 3004 were highlighted in the **Explanatory Notes to the East African Community Common External Tariff 2017 (EAC CET 2017)** as:

"This heading (HSC 3004) covers medicaments consisting of mixed or unmixed products, provided they are:

(a) Put up in measured doses or in forms such as tablets, ampoules (for example, re-distilled water, in ampoules of 1.25 to 10 cm3, for use either for the direct treatment of certain diseases, e.g., alcoholism, diabetic coma or as a solvent for the preparation of injectable medicinal solutions), capsules, cachets, drops or pastilles, medicaments in the form of transdermal administration systems, or small quantities of powder, ready for taking as single doses for therapeutic or prophylactic use.

(b) In packings for retail sale for therapeutic or prophylactic use. This refers to products (for example, sodium bicarbonate and tamarind powder) which, because of their packing and, in particular, the presence of appropriate indications (statement of disease or condition for which they are to be used, method of use or application, statement of dose, etc.) are clearly intended for sale directly to users (private persons, hospitals, etc.) without repacking, for the above purposes.

This heading includes pastilles, tablets, drops, etc., of a kind suitable only for medicinal purposes, such as those based on sulphur, charcoal, sodium tetraborate, sodium benzoate, potassium chlorate or magnesia".

The Applicant submitted that in the case of ***Norbrook Uganda Ltd V URA (Supra)***, the Tribunal held:

"The burden is on the applicant to prove that the products it imported are drugs or medicines. Where the applicant states its case, the burden shifts to the respondent to controvert it. The standard of proof is on a balance of probabilities. Balance of probabilities does not mean the Tribunal has to establish the absolute truth, it merely means the party which adduces evidence with the most convincing force is successful.".

The Tribunal also noted:

"*a careful and simple reading of the said HSC 3004 means for a product to fall under its description, it ought to be a medicament for therapeutic and prophylactic uses. Therapeutic refers to healing of diseases. It is a branch of medicine concerned with treatment of diseases. Prophylactic refers to measures intended to prevent diseases. It is medicine or course of action used to prevent diseases... Therefore, a party must show that the product has therapeutic or prophylactic properties...".*

The Applicant proceeded to highlight the facts and evidence that prove that Cofta tablets meet the qualifications highlighted in the explanatory notes to the EAC CET under HSC 3004 for the classification of a medicament/ medicine under HSC 3004.

The Applicant also stated that it availed two samples of cofta tablet to the Tribunal on 5 December 2024. The Applicant contended that the cofta tablet is put up in measured doses as can be seen from the dosage labelled on the cofta tablet pack. The cofta tablet has restrictions on usage and cannot be administered to children under 10 years hence measured in doses as required by the explanatory notes to the EAT-CET.

The Applicant submitted that Cofta tablet is used for direct treatment of certain diseases. The Applicant submitted that in the laboratory analysis report on the cofta tablet from the Directorate of Government Analytical Laboratory dated 14 May 2024, it was found that the cofta tablet contains Beta-Pinene which possesses biological activities such as anti-depressant, antimicrobial, anti-inflammatory, a bronchodilator, and antibacterial properties. The Government analyst stated that the sample (Cofta) analyzed contained compounds characteristics of monoterpenes and sesquiterpenes as terpenoids, flavonoids with several therapeutic properties.

The Applicant also submitted that in the laboratory analysis report on the cofta tablet from the Natural Chemotherapeutics Research Institute dated 17 May 2024, which was marked as Applicant's ID 1 in the Joint Trial Bundle, the cofta tablet was found to possess the following groups of phytochemical compounds, reducing compounds, alkaloid salts, anthracenosides, coumarins, flavonosides and steroid glycosides which the report concluded that are known to have medicinal properties. The Applicant submitted that Cofta tablet is curative in nature and a medicament as its active ingredients contain products for therapeutic and prophylactic uses.

In packings for retail sale for therapeutic or prophylactic use

The Applicant submitted that as per the Explanatory Notes to the EAC-CET this refers to products (for example, sodium bicarbonate and tamarind powder) which, because of their packing and, in particular, the presence of appropriate indications (statement of disease or condition for which they are to be used, method of use or application, statement of

dose, etc.) are clearly intended for sale directly to users (private persons, hospitals, etc.) without repacking, for the above purposes.

The Applicant submitted that from the review of the two samples provided, cofta tablets are packed with indications on usage, prescription of dosage, methods of use/application. This is a clear indication that the cofta tablets are parked with indication that they are intended for sale directly to users without repacking.

The Applicant concluded that cofta tablet is a medicament consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses (or packings) for retail sale, and as such the Respondent classification of the Cofta tablets under HSC 1704.90 was erroneous. The Applicant submitted that it is not liable to pay Shs. 743,757, 269 as assessed and prayed that the Tribunal orders for a refund with interest of the 30% tax of Shs. 223,127,180 as well as the costs of this application.

5. Submissions by the Respondent

The Respondent submitted that **General Interpretation Rules 1 & 6 of the EAC-CET** provides:

"GIR 1. - The titles of Sections, Chapters and sub-Chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require.

GIR 6. - For legal purposes, the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related Subheading Notes and, mutatis mutandis, to the above Rules, on the understanding that only subheadings at the same level are comparable. For the purposes of this Rule the relative Section and Chapter Notes also apply, unless the context otherwise requires."

The Respondent submitted when the Harmonized System provides that a live tree shall be classified as a vegetable product, then it must be. A live tree is classified as a vegetable product under Chapter 6. This demonstrates the sui generis nature of the Harmonized System. The Respondent submitted that the **HSC 17.04 of the East Africa Common External Tariff** provides:

"Sugar confectionery (including white chocolate), not containing cocoa".

The Respondent maintains that the Cofta tablets are classifiable under heading **17.04** and not under heading 30.04. The Respondent averred that the **Explanatory Notes to** heading **17.04** provide:

"*heading **17.04** includes:*

Preparations put up as throat pastilles or cough drops, consisting essentially of sugars (whether or not with other foodstuffs such as gelatin, starch or flour) and flavouring agents including substances having medicinal properties such as benzyl alcohol, menthol, eucalyptol and tolu balsam). However, throat pastilles or cough drops which contain substances having medicinal properties, other than flavouring agents, fall in Chapter 30".

The Respondent cited the case of ***Kikagati Power Co. Ltd V URA (supra)***, where Counsel for the Applicant invited the Tribunal to disregard the Explanatory Notes. The Tribunal held that the Explanatory Notes provide a commentary on the scope of each heading and are generally indicative of the proper interpretation of the EACCET. The Tribunal noted that the EACCET is a highly technical document which cannot be implemented efficiently without the need for some explanations on the technical items. Disregarding the Explanatory Notes would be like a blind man groping in darkness without a guiding stick.

The Respondent submitted that Cofta tablet is a pastille/ cough drop- (Preparations put up as throat pastilles or cough drops). The first thing to note is that Cofta tablets are lozenges/cough drops. Therefore, the Cofta tablet matches the wording of **heading 17.04.** Cofta tablet is made up essentially of flavoring agents (Consisting essentially of sugars whether or not with other foodstuffs such as gelatin, starch or flour) and flavoring agents. It is clear from the evidence before the Tribunal that the Cofta tablet is made up essentially of sugars and flavoring agents.

a) What are the contents of the Cofta tablet?

The Respondent submitted that the label claim indicates each tablet contains: Extract of Glycyrrhiza B.P 35.00mg, Menthol (9.98mg), oil of Anise (0.001ml), Oil of Peppermint

(0.001ml), Tincture of Capsicum (0.020ml), Oil of Pine pumilio (0.001ml), Oil of Eucalyptus (0.002ml), Creosote (0.002ml).

The Respondent submitted that the largest component of the product is Glycyrrhiza extract (35.00mg). This is a flavouring agent with medicinal properties characterized by imparting a sweet/sugary taste. The glycyrrhiza/ licorice extract is used in various products including foods, drinks, cigarettes, candies and pharmaceuticals, among others.

The **Explanatory Notes to HSC 1704** in this respect is reproduced here below:

".... flavouring agents (including substances having medicinal properties such as benzyl alcohol, menthol, eucalyptol and tolu balsam) ..."

The Respondent submitted that the brackets appear immediately after the word flavoring agent, meaning that the words in the brackets are explaining and expounding on the meaning of flavoring agents.

The Respondent submitted that the Explanatory Notes recognize that a flavoring agent may have some medicinal properties. The words in the brackets mean that in considering what the product is essentially made up of, even if a flavoring agent may be a substance which has medicinal properties, the product will be classified under HSC 1704.

The Respondent submitted that this is further supported by the Explanatory Notes to Chapter 30. Even Chapter 30 excludes lozenges, and cough drops from being classified under Chapter 30.04. The Explanatory Notes in relation to the exclusions to HSC 30.04 provides:

"Preparations put up as throat pastilles or cough drops, consisting essentially of sugars whether or not with other food stuffs such as gelatin. Starch or flour) and flavoring agents (including substances having medicinal properties, such as benzyl alcohol, menthol, eucalyptol and tolu balsam) fall in heading 17.04."

What then would be classifiable under HSC 3004?

The Respondent submitted that one might wonder what throat pastille would be classified under Chapter 30. The EACCET does not say that no lozenges can be classified under

Chapter 30. Throat pastilles or cough drops which contain substances having medicinal properties, other than favouring agents, fall in Chapter 30.

The Respondent submitted that the **Explanatory Notes to HSC 30.04** also state:

"Throat pastilles or cough drops containing substances having medicinal properties, other than flavouring agents, remain classified in this heading when put up in measured doses or in forms or packings for retail sale, provided that the proportion of those substances in each pastille or drop is such that they are thereby given therapeutic or prophylactic uses."

The Respondent contended that a lozenge/ pastille/ cough drop will be classified under Chapter 30 if it is not made up of flavoring agents. As such, the questions of whether the product is put up in measured doses or whether the proportion of the substances give the product therapeutic or prophylactic uses, can only arise if the product is not made up of flavoring agents. The Respondent submitted in the present case, the product is made up of flavoring agents and therefore cannot be classified under HSC 30.04.

The active and inactive ingredients are immaterial

The Respondent submitted that the Applicant's case is based on the fact that the cofta tablet has active and inactive ingredients and that glycyrrhiza is an active ingredient. Whereas the presence of active and inactive ingredients may be of paramount importance in classification of a product by the National Drug Authority, the same does not extend to customs classification. A product will be a pharmaceutical for customs classification purposes only if the Harmonized System has said that it is a pharmaceutical. And in this case, it has not.

WCO Classification Rulings

The Respondent submitted that **Section 122 of the EACCMA** provides 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 shall be paid on the value.

The Respondent cited **Section 122(6) of the EACCMA** which provides that:

"In applying or interpreting this section and the provisions of the 4th Schedule, due regard shall be taken of the decision, rulings, opinions, guidelines and interpretations given by the Directorate, the World Trade Organization or the Customs Cooperation Council /now World Customs Organization]."

The Respondent submitted that in ***Kikagati Power Co. Ltd V URA (supra)***, the Tribunal relied on the decision in ***Solutions Medical Systems Limited V Commissioner of Customs and Border Control Appeal No. 472 of 2020*** where the Tax Appeals Tribunal of Kenya noted that though the decision of the WCO is not binding, it should be given a lot of weight because the WCO helps in regulating and setting standards in international trade. The Tribunal further noted that:

"There would be distortion in international trade if some countries were charging duties on certain imports while others are not when using the same nomenclatures. The guidance from the WCO aims at having a harmonious classification of imports by countries to avoid distortions in international trade."

The Tribunal noted that the WCO opinion was not contrary to the wording of the heading in the combined nomenclature used by Uganda and did not see any reason why it should ignore the explanatory notes.

The Respondent prayed that the Tribunal considers the WCO Ruling WCO Ref: 19NL0118-KO. The product in question was a lozenge whose largest component was Glycyrrhiza with 15mg. The WCO noted that glycyrrhiza is synonymous with "liquorice" that is used as a flavouring in pharmaceutical products.

The Respondent submitted that in the WCO advice, the Directorate referred to the decision of HSC Committee which relates to a similar product known as Cofrid cough tablets made up of glycyrrhiza (liquorice) extract (35mg/ tablet other food stuffs (e.g. starch and gelatin) and flavoring agents (e.g. menthol, peppermint oil, anise oil, eucalyptus oil, pine pumilio oil and capsicum). The advice was to classify the item under HSC 1704.

The Respondent submitted that in the classification advice of the **WCO file reference L08249EN (LETTER 03.NL.0657**), the product in question was LEMSIP, a Lozenge used as a remedy against throat pain. WCO stated:

"Cough drops can only be classified in Chapter 30, provided they contain substances having medicinal properties, other than flavouring agents (such as benzyl alcohol, menthol, eucalyptol and balsams) provided that the proportion of those substances with medicinal properties is such that the drops have therapeutic uses."

The Respondent submitted that consequently, the Secretariat classified "LEMSIP sore throat anti-bacterial citrus fruit lozenge" under heading 1704.90. The WCO noted that that the product contained Hexylresoricnol BOP (which is used as an antiseptic and anthelminitic) but went ahead to classify the product under HSC 17.04 because the product was made up essentially of sugars.

The Respondent further submitted that the mandate to handle customs classification of goods lies with the Respondent and not the National Drug Authority. In ***Shurik Limited Vs Uganda Revenue Authority, TAT 101 of 2021,*** the Tribunal noted that The NDA is established under the National Drug Policy and Authority Act with mandate to control the importation, exportation and sale of pharmaceutical products. It noted that it is clear that no power has been granted to NDA to determine the customs classification of pharmaceutical products.

The Respondent submitted that Counsel for the Applicant argued that the Cofta tablet is a medicine because the NDA would not regulate a sugar confectionery. However, what NDA considers a pharmaceutical product may not be a pharmaceutical for customs classification purposes.

The Respondent submitted that the Applicant contends that the Tribunal in the case of ***Norbrook Uganda Ltd V URA, TAT Application No. 18 of 2018*** noted that for a product to fall under HSC 3004, it ought to be a medicament for therapeutic and prophylactic uses. This is true. The Tribunal did not state that every product with therapeutic and prophylactic uses must be classified under Chapter 30. A product cannot be classified under HSC 3004 unless it is for therapeutic and prophylactic uses. The Respondent contended that Counsel for the Applicant has ignored to address the fact that the explanatory notes to

HSC 1704 are specific to the fact that a throat pastille shall be classified under the said heading if it is made up essentially of flavouring agents, even if such flavouring agents have medicinal properties.

The Respondent prayed that the Tribunal notes the established principle that statutes must be interpreted as a whole.

The Respondent also contested the Applicant's introduction of new evidence by way of submissions. The Applicant attached several documents to their submissions including two letters from NDA and a letter from the Applicant to the Respondent submitted during the TAT-guided mediation process. The said documents are not part of the exhibits tendered into evidence before the Tribunal. It is also not proper for the Applicant to present to the Tribunal information shared during mediation contrary to **Rule 18 of the Judicature (Mediation) Rules, 2013.**

The Respondent prayed that the Tribunal disregards the said documents.

6. The Applicant's Submissions in rejoinder

In rejoinder, the Applicant submitted whereas they agree to the fact the Cofta tablet is put up as a cough drop, they disagree that they should be classified under HSC 1704.90.

The Applicant submitted that the Tribunal should disregard the usage of the term "lozenge" by Counsel for the Respondent. The term "lozenge" is not stated anywhere in HSC 1704.90 and it is unfortunate to see Counsel for the Respondent referring to the Cofta tablet as a "lozenge".

Meaning of "Other than flavouring agents".

The Applicant submitted that the according to Google searches, similar words to "other than" are "apart from". "besides", "over and above", "beyond". Further, synonyms to the words "other than" include "not only that", "quite apart from this", "over and above this", "not just that" etc.

The Applicant submitted that considering its similar words and synonyms, the sentence "other than" means "in addition to", over and above this, not just that, to mention but a few.

The Active and Inactive ingredients in the Cofta tablet

The Applicant submitted that the primary determinant of the issue before the Honorable Tribunal must be whether the ingredients in the Cofta tablet have medicinal substances that are thereby given therapeutic or prophylactic uses, to be classifiable under HSC 3004.

The Applicant submitted that AExh5 in the Joint Trial Bundle is a Laboratory Analysis Report from the Directorate of Analytical Laboratory which contained remarks that:

"The sample (of Cofta tablet) analyzed contained compounds characteristic of monoterpenes and sesquiterpenes as terpenoids, flavonoids with several therapeutic properties".

WCO Classification Rulings

a) WCO Ruling WCO Ref: 19NL0118-KO.

The Applicant submitted that they do not find any reasons to believe that the WCO Secretariate made any special pronouncements that would contradict the Explanatory Notes to HSC 1704 and/or HSC 3004 that the Respondent seems to be justifying or bringing to the attention of this Tribunal.

The sugar quantum

The Applicant submitted that the WCO ruling the Respondent relies on among other evidence states a sugar quantum content per tablet for classification of products under HSC 1704 of 1.9g that is twice the weight of the entire Cofta tablet.

The Applicant submitted that the weight of the Cofta tablet highlighted above is two times (X2) less than the sugar component that must be in a product for classification under HSC 1704 as per the WCO ruling that is relied on by Counsel for the Respondent and as such, the WCO ruling is not applicable to the Cofta tablet as it does not meet the sugar quantum threshold

NDA's classification of Cofta tablet

The Applicant submitted that whereas they agree with Counsel for the Respondent that indeed NDA does not classify products for customs purposes. However, the Respondent

herself noted in the Respondent's management letter dated 30 November 2023 on page 2 that it analyzed NDA's drug register of Uganda-Human medicine of August 2023-NDA/MAL/HDP/5004 which clearly described cofta tablets as oral solid ordinary lozenges". The Applicant reiterated its submissions that Cofta tablets are classifiable under HSC 3004.90.

7. The Determination of the issues

Having listened to the evidence and read the submissions of both parties, this is the decision of the Tribunal.

The facts of this case and the gist of the dispute have been extensively laid out in the parties' respective submissions above.

The issue before this Tribunal is whether Cofta tablets are sugars confectionary or medicaments for customs classification purposes.

The Applicant submits that the primary determinant of the issue before the Tribunal is whether the ingredients in the Cofta tablet have medicinal substances that are have therapeutic or prophylactic use hence falling under heading 3004. The Respondents argument is that the Applicant's products, although having medicinal properties, are essentially made up of sugar and flavouring agents. This makes them liable to duty under heading 17.04 which covers sugar confectionaries and not 30.04 which covers medicaments.

In our view, the medicinal properties of the products are not in contention as both parties agree that the constituents of the products are medicinal. However, the contention is as to whether they should be classified under heading 17.04 owing to their other qualities, that is, sugar and flavouring agents.

<u>The role of the NDA</u>

Whilst the NDA is charged with the mandate to regulate and control the use of drugs in Uganda, it does not have the authority to classify goods for customs purposes. Moreover,

it does not follow that every product that is medicinal or pharmaceutical will be classified as such for customs purposes.

The classification of cofta tablets for customs purposes

Heading 3004 of the ***East African Community Common External Tariff 2017 (EAC CET)*** under which the Applicant classified their products provides:

HSC 3004.

"Medicaments (excluding goods of heading 30.02, 30.05 or 30.06) consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses (including those in the form of transdermal administration systems) or in forms or packings for retail sale".

Heading **17.04 of the EAC CET** provides:

"Sugar confectionery (including white chocolate), not containing cocoa".

In determining the classification of the said tablets, we have considered the explanatory notes for the respective headings. Explanatory Notes provide a commentary on the scope of each heading and are generally indicative of the proper interpretation of the Common External Tariff (***Kikagati Power Co. Ltd V URA (supra)***.

The notes to 17.04 state as follows:

"This heading covers most of the sugar preparations which are marked in a solid or semi solid form, generally suitable for immediate consumption and collectively referred to as sweetmeats, confectionary or candies. It includes inter alia:

... (5) Preparations put up as throat pastilles or cough drops, consisting essentially of sugars (whether or not with other foodstuffs such as gelatin, starch or floor) and flavouring agents (including substances having medicinal properties, such as benzyl alcohol, menthol, eucalyptol and tolu balsam). However, throat pastilles or cough drops which contain substances having medicinal properties, other than flavouring agents, fall in Chapter 30, provided that the proportion

of those substances in each pastille or drop is such that they are thereby given therapeutic or prophylactic uses."

In addition, the above explanatory note is also reproduced under heading 30.04 as follows:

"This heading includes pastilles, tablets, drops, etc. of a kind suitable only for medicinal purposes such as those based on sulphur, charcoal, sodium tetraborate, sodium benzoate, potassium chlorate or magnesia.

However, preparations put up as throat pastilles or cough drops, consisting essentially of sugars (whether or not with other foodstuffs such as gelatin, starch or floor) and flavouring agents (including substances having medicinal properties, such as benzyl alcohol, menthol, eucalyptol and tolu balsam) fall in heading 17.04. Throat pastilles or cough drops containing substances having medicinal properties, other than flavouring agents, remain classified in this heading when put up in measured doses or in the form or packings for retail sale, provided that the proportion of those substances in each pastille or drop is such that they are thereby given therapeutic of prophylactic uses."

The following can be surmised from the above:

a) Heading 30.04 includes pastilles, tablets, drops, etc. of a kind suitable only for medicinal purposes. This means that for a tablet to fall under this heading, its sole purpose must be medicinal
b) If the cough drops or tablets consist essentially of sugar and flavouring agents, the product should be classified under heading 17.04 irrespective of whether the substances have medicinal properties
c) Only cough drops containing substances having medicinal properties, other than flavouring agents, remain classified under heading 30.04.

In effect, if the substances in the product are dual purpose i.e. serving both medicinal and flavouring purposes, the product will fall under heading 17.04.

Therefore, the question that must be addressed is whether the substances in the cofta tablet consist mainly of sugar and flavouring agents so as to render them sugar confectionaries falling under heading 17.04 and not medicinal products falling under heading 30.04.

The composition of the cofta tablet

According to page 3 of the agreed documents in the JTB, the label claim for the cofta tablets lists the following:

"Each tablet contains: Extract of Glycyrrhiza B.P 35.00 MG, Menthol B.P 9.98mg, Oil of Aniseed B.P 0.001ml, oil of peppermint B.P 0.001ml, Oil of Eucalyptus B.P 0.002ml, Oil of Pine Pumilio B.P 0.001ml, Tincture of Capsicum B.P.C 0.020 ml and Creosote B.P.C 0.002 ml."

Based on the above, the dominant substances in the drug are extract of glycyrrhiza and menthol.

Extract of glycyrrhiza

According to an article by Minglei Tian, Hongyuan Yan and Kyung Ho Row titled ***Extraction of Glycyrrhizic Acid and Glabridin from Licorice,*** published in the **International Journal of Molecular Sciences** (Int J Mol Sci . 2008 Apr 16;9(4):571–577. doi: 10.3390/ijms9040571):

"Licorice, the root of the glycyrrhiza plant species, has been used medicinally for more than 4000 years. The genus glycyrrhiza consists of approximately 30 species, in which six species produce a sweet saponin glycyrrhizic acid (GA), and they are widely used in Asia countries. These medicinal plants were used as flavorings, sweeteners and as herbal medicine, and they were also used for improving health, detoxification and cures for injury."

Therefore, glycyrrhizic, the main ingredient in the cofta tablet is a flavouring agent, sweetener and medicine.

Menthol

According to the Encyclopedia Brittanica (https://www.britannica.com/science/menthol):

"Menthol, terpene alcohol with a strong minty, cooling odour and taste. It is obtained from peppermint oil or is produced synthetically by hydrogenation of thymol. Menthol is used medicinally in ointments, cough drops, and nasal inhalers. It is also used as flavouring in foods, cigarettes, liqueurs, cosmetics, and perfumes."

As shown by the above description, the two main ingredients in the cofta tablets, namely glycyrrhizic and menthol, whilst having medicinal uses also double as flavouring agents. It should also be noted that glycyrrhizic, which has the highest composition of the cough drop, is also a sweetener.

Therefore, since the Applicant's products consist essentially of sugars and flavouring agents, such products fall under heading 17.04 despite them having medicinal properties and/or uses.

We have also taken cognizance of the WCO rulings in respect of similar products, which although not binding, are persuasive. Specifically, as submitted by the Respondent, the guidance from the WCO aims at having a harmonious classification of imports by countries to avoid distortions in international trade ***(Solutions Medical Systems Limited v Commissioner of Customs and Border Control, Supra)***

We have noted that products containing substances similar to those in the Applicant's products have been the subject of WCO Rulings. Specifically, in a WCO Ruling ID4 (page 115 of the JTB), concerning a product that contains similar substances namely glycyrrhiza glabra at 15 mg and menthol at 7 mg, the WCO guided that the appropriate classification of products containing such substances, which are essentially sugars and flavouring agents is under heading 17.04 and not heading 30.04.

Therefore, we are in agreement with the Respondent's classification of the cofta tablets as sugar confectionary falling under heading 17.04 and not medicaments falling under heading 30.04.

In view of the above, the application is dismissed with costs to the Respondent.

Dated at Kampala this 12th day of March 2025.

CRYSTAL KABAJWARA	**SIRAJ ALI**	**WILLY NANGOSYAH**
CHAIRPERSON	**MEMBER**	**MEMBER**