THE REPUBLIC OF UGANDA

IN THE TAX APPEALS TRIBUNAL AT KAMPALA

APPLICATION NO. 17 OF 2024

COCA COLA BEVERAGES UGANDA LIMITED.....................................APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY..RESPONDENT

BEFORE:
HON. PROSCOVIA REBECCA NAMBI
HON. STELLA NYAPENDI CHOMBO
Ms. CHRISTINE KATWE

RULING

I. Introduction

1. This application challenges the Respondent's decision to reclassify the Applicant's imported product, Caramel Colour C-1063, from HS Code 3203.00.00 (colouring matter and preparations based thereon) to HS Code 1702.90.00 (caramel and other sugars) under the East African Community Common External Tariff (EAC-CET), and to apply a 60% import duty pursuant to the relevant EAC Gazette Notice.

II. Background facts

2. The Applicant is a Ugandan company engaged in the manufacture of non-alcoholic beverages under the Coca-Cola trademark. It imports Caramel Colour C-1063 as a raw material exclusively used as a colouring agent in beverages. At importation, the Applicant declared Caramel Colour C-1063 under HS Code 3203.30.00. Following a post-clearance audit, the Respondent reclassified the product under HS Code 1702.90.00, applied a

60% import duty rate pursuant to the relevant EAC Gazette rate, and raised additional tax assessments totaling Shs. 2,397,527,358. The Applicant objected to assessment. The objection was disallowed. Hence, this Application.

III. Issues for Determination

3. The issues for determination are:
   (i) What is the proper classification of Caramel Colour C-1063 under the EAC-CET?
   (ii) Whether the Applicant is liable to pay tax of Shs. 2,397,527,358 as assessed by the Respondent?
   (iii) What remedies are available?

IV. Representation

4. Mr. Ronald Kalema, Ms. Rhoda Nakanwagi, Mr. Edwin Sabiti and Ms. Vanessa Irene Mbekeka represented the Applicant while Ms. Diana Mulira, Ms. Ritah Nabirye and Ms. Eseza Victoria Ssendege represented the Respondent.

V. Summary of the evidence

5. The Applicant adduced both oral and documentary evidence. The Applicant relied on the testimony of AW1, Mr. Fred Chiazor (Senior Director, Technical and Regulatory Affairs for Monster Energy, EMEA), an expert in the food and beverage industry. He testified that *Caramel Colour C-1063* is manufactured through controlled heat treatment of corn-based carbohydrate sources of vegetable origin and thereafter formulated, stabilised, and standardised using food-grade acids (phosphoric, sulphuric, citric, acetic, and carbonic) to ensure colour consistency.

6. AW1 testified that the finished formulation consists of approximately 40% phosphoric acid, 30% vegetable caramel colour, 10% sulphuric acid, and smaller percentages of other acids and water. He distinguished "caramel colour" from "caramel" under Chapter 17 and maintained that the product

lacks the essential character of sugar. He testified that the product is used exclusively as a colouring agent in food and beverages; that it does not impart sweetness; that it cannot function as a sugar substitute. He further testified that, in international trade and food regulation, the product is treated as a colouring preparation rather than a sugar product.

7. AW2, Mr. Peter Obong, the Applicant's Logistics Director, testified that international customs jurisdictions uniformly classify the product under Heading 32.03. He further testified that the Applicant has historically classified the product under Heading 32.03 and that the Respondent had not previously challenged this classification prior to the audit. He also stated that the product is imported in bulk industrial form and is unsuitable for consumption as food or sugar.

8. The Applicant tendered document evidence (Exhibits A1, A3, A5, and A6) including product specification sheets, technical descriptions; regulatory materials showing treatment as a food colour; and letters from manufacturer American Fruits & Flavors.

9. The Respondent also relied on both oral and documentary evidence. RW1 (Mr. Brian Kiiza) Customs Tariff Officer with 15 years of experience in the Harmonized System and HS-related disputes) testified that the Respondent classified the product under HS Code 1702.90.00 principally because the term "caramel" appears in the wording of Heading 17.02. He testified that caramel colour is chemically derived from sugar and, on that basis, the Respondent considered Heading 17.02 applicable. He further stated that classification was influenced by the product's trade name and that the relevant Gazette references supported HS 1702.90.00.

10. Under cross-examination, he conceded that the product is not honey and that the 60% import duty was applied because HS Code 1702.90 is listed in the East African Community Gazette with rates ranging from 25% to 60%. He also conceded that the Respondent's classification was influenced by the term "caramel" appearing in the heading.

11. RW2, Ms. Justine Namusabi (Supervisor, Customs Tariffs Section) with expertise in customs matters, testified that tariff classification was based on product description and chemical identifiers. She acknowledged that classification ordinarily considers documentation, including product composition. She further acknowledged that "caramel colour" is not expressly listed under HS 1702 which instead mentions "caramel."

12. RW2 testified that the Respondent relies on the WCO Explanatory Notes to Heading 17.02, which specifically list "colouring caramel" as an item covered under that heading. Under cross-examination, she admitted that for mixtures, General Interpretative Rule (GIR) 3 is the appropriate interpretive tool; and that Heading 17.02 is reserved for sugar-based products. She further testified that the Respondent did not dispute that the product is used for colouring beverages; and that no laboratory analysis was conducted on the imported goods.

13. The Respondent pointed to previous importations by the Applicant where the same product was reportedly classified under HS 17.02. The Respondent cited international customs rulings (from Mexico and Venezuela) where caramel coloring powder produced through chemical processes was classified under HS 1702.90. The Respondent further argued that the Applicant's witnesses lacked specific in customs classification and that their evidence on tariff headings should therefore attract limited weight.

VI. Submissions of the Applicant

ISSUE 1: What is the proper classification of Caramel Colour

14. The Applicant contended that the product is a colouring matter of vegetable origin properly classifiable under HS Code 3203.30, which attracts a 0% import duty rate. The Applicant submitted that classification must be determined by the objective characteristics and properties of the goods. Caramel colour C-1063 is derived from corn-based carbohydrates through a multi-stage thermal process involving food-grade acids to create a stable brown colorant. They argued that evidence from AW1 and Exhibit A1

demonstrates that the product consists of approximately 40% phosphoric acid, 30% vegetable caramel colour, and other acids and water. It possesses no sweetness, nutritive value, or caloric content, and is used exclusively as a food additive to impart a golden-brown hue.

15. The Applicant argued that the Respondent's reliance on the word "caramel" in the product's trade name is a "superficial" application of GIR 1. They distinguish C-1063 from the "colouring caramel" contemplated under heading 17.02, which is a sugar-based product resulting from the pyrolysis of sugar. The Applicant maintained that C-1063 is an anthocyanin-based food colouring, materially distinct from sugar derivatives.

16. The Applicant submitted that since the product is a complex mixture of various components (acids, water, and vegetable matter), GIR 3(b) is the correct interpretive tool. Under this rule, classification is determined by the component that imparts the essential character, which in this case is the vegetable-origin colorant, pointing unambiguously to heading 3203. The Applicant provided numerous international rulings from jurisdictions including the UK, France, Germany, and the US, which uniformly classify similar vegetable-based food colourings under heading 3203.

The Liability for the Assessed Tax and the 60% Rate

17. The Applicant argued that the Respondent's application of a 60% duty rate is legally and factually erroneous. The Applicant submitted that the 60% duty rate in the relevant EAC Gazettes (2020-2023) is strictly reserved for "Honey-natural and artificial".

18. Relying on the principle in ***Cape Brandy Syndicate v IRC and URA v Siraje Hassan Kajura***, the Applicant argues that tax laws must be interpreted according to their plain and ordinary meaning. Since the Gazettes explicitly list "honey" in the description column, the Respondent cannot lawfully expand this rate to include caramel colour.

19. The Applicant points out that the Respondent's own witnesses, RW1 and RW2, admitted during cross-examination that caramel colour C-1063 is not honey and that the 60% rate is strictly limited to items expressly gazetted.

20. On the Burden of Proof and Procedural Fairness, the Applicant argued that while the initial burden may lie with the taxpayer, it is a dynamic "pendulum" that shifts to the Revenue Authority once the taxpayer provides credible evidence.

21. The Applicant asserted they discharged their burden by providing detailed composition data, manufacturer letters (Exhibit A3), and expert testimony. They contend the Respondent failed to produce any contrary technical evidence, relying solely on inference from nomenclature, which is insufficient to sustain a disputed classification. Citing ***Intertek Testing Services v URA HCCA 5 of 2002***, the Applicant prays the Tribunal to look at the substantive economic and chemical reality of the product rather than a narrow focus on its trade name.

22. The Applicant prayed that the Tribunal finds the product properly classifiable under HS Code 3203, sets aside the assessment, and orders a refund of any taxes paid with interest

VII. Submissions of the Respondent

23. Unlike the Applicant who submitted on 3 issues, the Respondent submitted on the 2 issues as set out in the application. That is, 1. Whether the Applicant is liable to pay the tax of Shs. 2,397,527,358 as assessed by the Respondent? 2. What remedies are available to the parties? We have summarised the Respondent's submissions as follows:

Issue 1: Whether the Applicant is liable to pay the tax of Shs. 2,397,527,358 as assessed by the Respondent?

<u>The Burden of Proof Lies Solely on the Applicant</u>

24. The Respondent submitted that in tax matters, the onus is on the taxpayer to prove that an assessment is incorrect and Section 19 of the Tax Appeals Tribunal Act explicitly imposes the burden of proof on the Applicant, Section 223 of the East African Community Customs Management Act (EACCMA) provides that the onus of proving the lawful importation or payment of duties

shall be on the person claiming such facts, and Section 101 of the Evidence Act reiterates that he who alleges must prove.

25. The Respondent also cited us the holding ***Williamson Diamonds Ltd vs. Commissioner General 4 TTLR 167*** that the burden of proving an assessment is excessive or erroneous lies on the taxpayer and in no way shifts to the revenue authority. The Respondent contended that the Applicant has failed to discharge this burden.

Mandatory Adherence to the Harmonized System (HS) and GIR 1

26. The Respondent argued that classification must follow the international standards set by the World Customs Organization (WCO) and the HS Convention, to which Uganda has been a party since 1964. They argued that under Article 3(1) of the HS Convention, contracting parties undertake to use all headings and subheadings of the Harmonized System without addition or modification and must follow its numerical sequence. They maintained that General Interpretative Rule (GIR) 1 requires that classification is determined according to the terms of the headings and any relative Section or Chapter notes.

27. To support this position, the Respondent cited the decision in ***Kenya Breweries Limited vs. Commissioner of Customs & Border Control Appeal No. 282 of 2020***, where it was held that GIR 1 is the foremost rule of classification, and other rules (like GIR 3) are only applicable if GIR 1 does not resolve the matter.

Proper Classification under Heading 17.02

28. The Respondent contends that Caramel Colour C-1063 is correctly classified under HS Code 1702.90 because the heading terms explicitly mention "Caramel". The Respondent relies on the WCO HS Explanatory Notes to Heading 17.02 (D), which specifically refer to "colouring caramel" as an item covered under this heading. They refered us to this Tribunal's ruling in ***Kikagati Power Company Limited vs. URA, TAT Application No. 55 of 2020 (citing SmithKline Beecham Plc),*** which is to the effect

that WCO Explanatory Notes are "important aids" to interpreting the scope of tariff headings.

29. The Respondent points out that the Applicant previously classified the same product under Chapter 17. Furthermore, the Respondent cited to us ***Customs Ruling CLA-2-17 (1992)*** from the United States, which classified caramel coloring powder produced from sucrose and acidulants under the residual *"other sugars... caramel"* heading.

Validity of the 60% Import Duty Rate

30. The Respondent submits that the 60% duty rate is lawfully derived from the East African Community (EAC) Gazette of 30th June 2019. While the Applicant argues the rate only applies to honey, the Respondent contends that the Gazette provides for the application of duty rates to HS codes, and since Caramel Colour falls under 1702.90, it attracts the 60% rate attached to that item. The Respondent pointed out RW1 testimony that the Gazette is used to alternate rates depending on national interests, and the inclusion of goods in the Gazette allows countries to protect those interests.

Credibility of Witness Evidence

31. The Respondent invites the Tribunal to disregard the testimonies of the Applicant's witnesses (AW1 and AW2), arguing that they lack expertise in customs classification. Conversely, they argued that the Respondent's witnesses (RW1 and RW2) are customs experts with a "firm grip" on the Harmonized System whose evidence should be given significant weight.

Issue 2: What remedies are available to the parties?

32. The Respondent submitted that because the tax levied is lawful and justified, the Applicant is not entitled to any remedies. Instead, the Respondent prays that the Tribunal directs the Applicant to pay the full assessed tax of Shs. 2,397,527,358.

33. The Respondent contended that it is entitled to the costs of the application, following the "well-known principle that costs are awarded to the successful

party". They argued that **Section 27(1) of the Civil Procedure Act** provides that costs shall be in the discretion of the court and normally "follow the event". The Respondent also cited ***Kwizera Eddif vs. Attorney General, Constitutional Appeal No. 01 of 2008***, affirming that the award of costs is within the court's discretion.

34. In conclusion, the Respondent prayed that the Tribunal finds that the classification under HS Code 1702.90 was correct and the Applicant is liable for the full assessment. They prayed that the Application is dismissed with costs to the Respondent.

VIII. Submissions of the Applicant in rejoinder

35. In rejoinder, the Applicant reiterated that the reference to "caramel" in the product name describes its color and appearance rather than its objective chemical properties. The Applicant submitted that tariff classification cannot be reduced to matching a commercial name to wording in an HS heading, as this would be "unworkable and illogical".

36. The Applicant cited ***CJEU Case 175/82, Hans Dinter GmbH v. Hauptzollamt Köln-Deutz***, establishing that the decisive criterion for classification must be the objective characteristics and properties of the goods as presented for customs clearance. The Applicant further relied on ***CJEU Case C-542/11, MikrofiKls' SIA v. Valsts ieņēmumu dienests***, which held that in the interest of legal certainty and ease of verification, the inherent character and intended use of a product are objective criteria for classification.

37. Regarding the legal scope of Heading 3203, the Applicant reiterated that the product is a colouring matter of vegetable origin. In rejoinder, the Applicant provides specific law provisions to confirm that C-1063 falls under Chapter 32. They argued that Note 3 to Chapter 32 specifies that headings 32.03, 32.04, 32.05, and 32.06 apply to preparations based on colouring matter used as ingredients in the manufacture of colouring preparations. The Applicant also argued that the *WCO Explanatory Notes* to Heading 3203 clarify that this

heading covers products extracted from materials of vegetable origin (such as roots, seeds, and flowers), and the Notes further state that these are relatively complex materials and may contain small quantities of other substances like sugars or tannins resulting from the extraction process without losing their classification.

38. Regarding the application of General Interpretative Rules (GIRs), the Applicant reiterated that if GIR 1 does not conclusively determine the heading, GIRs 2 and 3 must become operative. The Applicant cites several international jurisdictions to support the mandatory sequential application of the rules, including ***Helly Hansen Leisure Canada Inc. v. CBSA (2009 FCA 345), Agri-Pack (2005 FCA 414), Funtastic Ltd AATA 528, Nairobi Enterprises Ltd v Commissioner of Customs KETAT 720, and North Mara Gold Mine Ltd v Commissioner General (Civil Appeal No. 78 of 2015)***.

39. Relying on ***Canada (Attorney General) v. Igloo Vikski Inc., 2016 SCC 38***, the Applicant submits that Rule 2(b) must be applied in conjunction with Rule 1 to determine the prima facie classification of composite goods. If a product is prima facie classifiable under more than one heading, Rule 3(a) dictates that the most specific description (Heading 3203) prevails over a broader description (Heading 1702).

40. The Applicant reiterated that the 60% duty rate is limited to the items expressly named in the Gazette, namely honey - and does not apply to all products under HS Code 1702.90. The Applicant submitted that the Respondent sidestepped the reasoning regarding the Gazette preamble, which clarifies that measures apply only to the "**items provided under the Harmonized Community Description and Coding System**". The Applicant argued that the presence of a "**Description**" column that selectively lists only "honey" demonstrates that the 60% rate was intended for that specific item alone.

41. Regarding principles of tax statute construction, the Applicant reiterated foundational principles from ***Cape Brandy Syndicate v IRC** (supra)*, ***Russell v Scott** (supra)*, and ***URA v Siraje Hassan Kajura*** (supra), asserting that reading a product into a taxing statute by implication amounts to an unlawful usurpation of legislative power. The Applicant reiterated ***Margaret Akiiki Rwaheru & 13,945 Others v URA*** (supra), stating that any ambiguity in the Gazette must be resolved in favor of the taxpayer.

42. The Applicant also reiterated its prayer to the Tribunal to quash the Respondent's decision reclassifying the product under Heading 1702 and to declare that Caramel Colour C-1063 is properly classifiable under HS Code 3203 and not subject to the 60% sensitive duty rate. The Applicant prayed that the Tribunal orders the refund of the 30% mandatory tax deposit paid by the Applicant with interest and award costs of the application to the Applicant.

IX. The Determination of the Tribunal

43. Having carefully considered the pleadings, affidavits, documentary evidence, and written submissions of both parties, the Tribunal now gives its decision.

Legal Framework

44. Section 3(1) East African Community Customs Management Act, 2004 (EACCMA) provides:

"The classification and valuation of goods shall be in accordance with the provisions of the Harmonized System as applied in the East African Community."

45. Article 3 of the International Convention on the Harmonized Commodity Description and Coding System, 1983 obliges Contracting Parties to apply the Harmonized System in accordance with its structure and the General Rules for the Interpretation (GIR).

46. Tariff classification under the EAC-CET must therefore be undertaken in accordance with the General Rules for the Interpretation of the Harmonized System (GIR 1–3), which establish the hierarchical methodology for

determining the proper heading and subheading of goods. For context, we have reproduced that relevant rules for this dispute below.

(i) 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 ..."*

(ii) GIR 2(b): *"Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of Rule 3."*

(iii) GIR 3: "When by application of Rule 2 (b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows:

(a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

(b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3 (a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable."

47. The Tribunal is therefore bound to apply:

- GIR 1 – classification according to the terms of the headings and relevant Section or Chapter Notes;
- GIR 2(b) – for mixtures and composite goods;

- GIR 3 – where goods are prima facie classifiable under two or more headings;
- GIR 6 – apply the rules, mutatis mutandis, at the subheading level.

48. The Tribunal also recognises the persuasive and internationally authoritative value of the **WCO Explanatory Notes (ENs)** as an important guide to the scope and meaning of the relevant tariff headings. While not legally binding, they are highly persuasive and intended to promote uniform application of the HS.

49. In the present case, the tariff headings in issue are as follows:

   (i) Heading 17.02 (Chapter 17 – Sugars and sugar confectionery): "Other sugars ...; sugar syrups ...; artificial honey...; caramel."

   (ii) Heading 32.03 / tariff 3203.00.00 (Chapter 32): "Colouring matter of vegetable or animal origin ...; preparations ... based on colouring matter of vegetable or animal origin."

50. The question is whether Caramel Colour C-1063, as imported, is objectively "caramel" within the meaning of Heading 17.02 including "colouring caramel" as described in the WCO ENs, or whether it is properly characterised as, or a "colouring matter / preparation based on colouring matter of vegetable origin" within Heading 32.03.

Issue 1: Proper classification

51. The Respondent's case rests on a literal application of GIR 1, which states that classification is determined by the "terms of the headings". The Respondent contends that because Heading 17.02 specifically includes the word "caramel," the trade name "Caramel Colour" necessitates classification under Heading 17.02. However, we find this approach legally unsustainable. Classification is not determined by trade name but by objective characteristics.

52. We are guided by the decision in ***Uganda Revenue Authority v TATA Uganda Ltd (Civil Appeal No. 57 of 2021)*** where the High Court held that

classification depends on objective characteristics, not nomenclature. Similarly, in ***Shunik Limited v URA (TAT Application No. 101 of 2021)***, the Tribunal emphasized that HS interpretation must follow the structure and GIRs. Further, we find persuasive the decision in ***H.P.L. Chemicals Ltd. vs Commissioner of Central Excise*** **(2006) 5 SCC 208,** where the Supreme Court of India established that the taxing authority cannot simply rely on nomenclature, appearances, or superficial inferences. The court in that case held that the taxing authority must provide positive evidence (such as test reports, market inquiries, or scientific analysis) to justify the classification.

53. Therefore, while we agree with the Respondent that nomenclature is not irrelevant, we note that classification is not a linguistic contest. The correct approach is to identify the goods' objective characteristics (composition, form, and intended function as presented at importation) and then apply the legal text and notes.

Application of GIR1 - Heading 1702

54. The Respondent relies on the WCO Explanatory Notes (ENs) to Heading 17.02, which covers "Other sugars ...; sugar syrups ...; artificial honey...; caramel." The Notes describes caramel as "a brown product obtained by heating sugars" and state that It may be used as a colouring or flavouring matter in food and beverages. The ENs further refer to "colouring caramel."

55. However, the key question under GIR 1 remains whether the product, as presented at importation, answers to the terms of Chapter 17, which is confined to "Sugars and sugar confectionery." The Explanatory Notes emphasise that products remain classified within Chapter 17 only so long as they retain the essential character of sugar or molasses. The reference in the ENs to "colouring caramel" must therefore be understood as referring to caramelised sugar products which, although used for colouring, continue to possess the substantive character of sugar preparations. The Tribunal must therefore determine whether the Applicant's imported product retains the essential character of sugar, even if it is used for colouring.

56. Comparative jurisprudence supports this approach. The Court of Justice of the European Union has consistently held that tariff classification must be determined by the objective characteristics and properties of the goods as presented for customs clearance (***Hans Dinter GmbH v Hauptzollamt Köln-Deutz, Case 175/82; Mikroflis SIA v Valsts ieņēmumu dienests, Case C-542/11***). Similarly, the Supreme Court of India in ***H.P.L. Chemicals Ltd v Commissioner of Central Excise (2006) 5 SCC 208*** held that nomenclature or commercial description cannot prevail over scientific composition and objective characteristics. The Supreme Court of Canada in ***Canada (Attorney General) v Igloo Vikski Inc., 2016 SCC 38*** reaffirmed that the General Interpretative Rules require analysis of the essential character of goods as imported, not their historical derivation.

57. Read in that light, the EN reference to "colouring caramel" must be understood as referring to caramelised sugar products which, although used for colouring, retain the essential character of sugar preparations. Chapter 17 does not extend to products which have ceased to possess the defining characteristics of sugar.

58. The evidence before the Tribunal demonstrates that Caramel Colour C-1063 is not presented as caramelised sugar in substance. Rather, it is a stabilised industrial formulation consisting predominantly of phosphoric acid, sulphuric acid, and water, with the caramel-derived pigment incorporated within that matrix to achieve colour stability and consistency in beverage manufacture. It is not sweet, is not marketed or usable as sugar, and performs exclusively the function of a colouring input. It is imported in bulk industrial form for manufacturing input, not for consumption. In addition, RW2 conceded that the product is not honey. No chemical evidence was adduced to contradict the product's composition.

59. The Tribunal accepts that "colouring caramel" under Heading 17.02 refers to caramelised sugar products which, though used for colouring, remain fundamentally sugar derivatives. Such products are obtained by controlled heating of sugars and retain their character as sugar-based substances.

60. In the present case, however, the Tribunal finds the product before the Tribunal does not fall within that description in its imported state. It does not retain the essential character of sugar or of a sugar preparation. Its objective identity is that of a colouring preparation, not a sugar product.

61. Accordingly, the Tribunal finds that, notwithstanding the EN reference to "colouring caramel," the imported product does not retain the essential character of sugar within the meaning of Chapter 17. The Respondent's reliance on Heading 17.02 is accordingly misplaced.

Application of GIR1 - Heading 32.03

62. Heading 32.03 covers "colouring matter of vegetable origin...; preparations based on colouring matter of vegetable origin."

63. The WCO Explanatory Notes to Heading 32.03 expressly includes "*preparations based on colouring matter ... of a kind used for colouring any material or used as ingredients in the manufacture of colouring preparations.*"

64. The Tribunal finds that Caramel Colour C-1063:

- Is derived from vegetable-origin carbohydrates (corn);
- Is manufactured to generate stable brown pigment compounds;
- Is formulated with acids to ensure stability and functionality;
- Is used exclusively as a colouring input in beverage manufacture.

65. These objective characteristics correspond directly to the language of Heading 32.03. Under GIR 1, read with the relevant Chapter Notes, the Tribunal finds that Heading 32.03 more specifically and accurately describes the goods as imported.

Application of GIR 2(b) and GIR 3 (in the Alternative)

66. Even if the product were considered prima facie classifiable under both Headings 17.02 and 32.03, the technical evidence shows C-1063 is a mixture of several industrial acids and vegetable-origin pigments. In such

circumstances, GIR 2(b) directs that the classification of goods consisting of more than one material must be determined in accordance with GIR 3.

67. Under GIR 3(a), the heading providing the most specific description shall be preferred to the heading providing a more general description. Therefore, heading 32.03 specifically addresses colouring matter and preparations based thereon. Heading 17.02, by contrast, is directed to sugars and sugar products generally, with caramel included as a sugar derivative. In relation to the goods before the Tribunal, heading 32.03 provides the more specific description.

68. Further or alternatively, under GIR 3(b), composite goods are classified according to the material or component that gives them their essential character. GIR 3(b) requires the Tribunal to determine which component gives the goods their essential character. This is a practical enquiry. It is not resolved by reference to the name of the product, nor by tracing its distant chemical origin. The question is: what is the product, as imported and as used in commerce? What gives it its identity?

69. The evidence before us is clear. The product is manufactured and imported for one purpose to colour beverages. It is not sweet. It has no nutritive value. It is not bought, sold, or used as sugar. It cannot function as a sugar substitute. The acid components are not incidental; they stabilise and standardise the formulation so that it performs consistently as a colourant in industrial beverage production. The caramel-derived pigment exists within that stabilised preparation. The product, taken as a whole, is not presented to the market as caramelised sugar, but as a beverage colouring input.

70. While it is true that the pigment originates from carbohydrate sources, the Tribunal is concerned with the product in its imported state. In that state, it does not retain the character of sugar or of caramel as understood in Chapter 17. Its defining feature in composition, in function, and in commercial reality is its role as a colouring preparation.

71. We therefore find that, even on the alternative analysis of GIR 3, the essential character of Caramel Colour C-1063 is that of a colouring preparation. Classification of the product falls under Heading 32.03.

Previous Classification and International Rulings

72. The Respondent referred to previous importations allegedly classified under Chapter 17. The Tribunal notes that there can be no estoppel against the correct application of a statute. Classification must be determined according to the law and the goods as presented, not by administrative history.

73. The Respondent also relied on foreign customs rulings classifying certain caramel products under 17.02. The Tribunal has considered those authorities. However, the factual matrix in those rulings concerned sugar-based caramel products retaining sugar characteristics. The present product's composition and industrial formulation materially distinguish it.

74. The Tribunal therefore holds that Caramel Colour C-1063 is properly classifiable under Heading 32.03 / tariff 3203.00.00.

Issue 2: Whether the Applicant is liable to pay Shs. 2,397,527,358 as assessed

75. The Tribunal now turns to the applicability of the 60% import duty rate. The relevant EAC Legal Notices list HS Code 1702.90.00 with a description column specifically,

    (i) Legal Notice No. EAC/118/2021 (Item 24) for HS Code 1702.90.00 lists the description as: "Honey – Natural and artificial".
    (ii) Legal Notice No. EAC/129/2023 (Item 40) for HS Code 1702.90.00 lists the description as: "Other Sugars - artificial honey".

76. The Respondent argued that the 60% rate applies to all goods falling under HS code 1702.90. The Applicant contended that the description column limits application to the item specified.

77. Taxation must be imposed in clear and unambiguous terms. (See ***Cape Brandy Syndicate v IRC [1921] 1 KB 64***; applied in ***Commissioner General v Equity Bank Uganda Ltd, Civil Appeal No. 90 of 2018***; ***Russell v Scott (1948) 2 All ER 1***). The deliberate inclusion of a description column specifying "honey" indicates legislative intention to apply the enhanced rate to that identified item. If the rate were intended to apply to all goods under 1702.90, the specification would be unnecessary.

78. We therefore find that even if the caramel color C-1063 were classifiable under HS Code 1702 (which it is not) the 60% rate would not apply to it.

Burden of Proof

79. Section 19 of the Tax Appeals Tribunal Act places the burden of proof upon the Applicant to show that the assessment is excessive or erroneous. Section 223 of the EACCMA similarly places the burden upon the person asserting lawful importation or payment of duty.

80. The Tribunal admits that the initial legal burden rests upon the Applicant. However, it is well established in tax jurisprudence that once a taxpayer produces credible and cogent evidence challenging the factual or legal basis of an assessment, the evidential burden shifts.

81. In the present case, the Applicant adduced detailed product composition data; manufacturer specification sheets; expert testimony from AW1 explaining the manufacturing process; evidence that the product is approximately 40% phosphoric acid, 10% sulphuric acid, and additional acids and water, with approximately 30% caramel colour component; as well as evidence that the product is not sweet, not sold as sugar, and not usable as a sugar substitute. The Applicant discharged its initial burden.

82. The Respondent produced no laboratory analysis contradicting the Applicant's composition evidence. Its classification relied primarily on nomenclature. That was insufficient to discharge the evidential burden.

83. Accordingly, the Tribunal finds that the Applicant is not liable to pay Shs. 2,397,527,358 as assessed.

Issue 3: Remedies

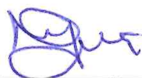
84. In light of the above findings, this application is allowed with the following orders:

   1. *Caramel Colour C-1063* is properly classifiable under HS Code 3203.
   2. The 60% import duty rate under the relevant EAC Legal Notices does not apply.
   3. The tax assessment of Shs. 2,397,527,358 is unlawful and is hereby set aside.
   4. Costs are awarded to the Applicant.

It is so ordered.

Dated at Kampala this **2nd** day of **March** 2026.

HON. PROSCOVIA REBECCA NAMBI
CHAIRPERSON



HON. STELLA NYAPENDI CHOMBO
MEMBER

Ms. CHRISTINE KATWE
MEMBER