

THE REPUBLIC OF UGANDA
IN THE TAX APPEALS TRIBUNAL AT KAMPALA

TAT APPLICATION NO. 210 OF 2024

KUKU FOODS UGANDA LIMITEDAPPLICANT

VERSUS

UGANDA REVENUE AUTHORITY.....RESPONDENT

**BEFORE: MS. CRYSTAL KABAJWARA, MS. PROSCOVIA.R. NAMBI,
MS. STELLA.N. CHOMBO**

RULING

This ruling is in respect of a preliminary objection raised by the Applicant to declare that the Respondent's objection decision was time-barred and therefore illegal.

1. Background facts

The Applicant is a limited liability company engaged in the preparation and sale of fast foods. Between January 2020 and December 2021, the Applicant imported several consignments of Hayat Brand Palm Olein Oil from Egypt as raw materials for its business. The Applicant duly declared all its imports and submitted COMESA Certificates of Origin issued by Egyptian Customs Authorities, classifying the goods under the substantial transformation criteria "V" for value addition, thereby qualifying for preferential tariff treatment under the COMESA trade regime.

On 29 May 2024, the Respondent recalled the preferential tariff treatment granted to the consignments and re-classified them under the substantial transformation criteria "X". The Respondent subsequently issued a tax liability assessment of Shs. 391,308,931.

The Applicant objected to the assessment on 11 June 2024. However, the Respondent did not issue an objection decision within the mandatory 30-day period prescribed under section 229(5) East African Community Customs Management Act (EACCMA). Consequently, on 18 July 2024, the Applicant, elected to treat their objection as having been allowed by the Respondent.

On 22 July 2024, the Respondent issued an objection decision maintaining the assessed tax liability, citing a letter dated 16 July 2024, which was dispatched to the Applicant on 22 July 2024.

The key issue before the Tribunal is whether the objection decision, issued beyond the statutory period, is valid and enforceable.

2. Issues for determination

The main issue for determination is whether the Respondent's decision was time barred.

3. Representation

The Applicant was represented by Mr. Kasamba Emmanuel and Mr. Noah Opindeni whereas Ms. Charlotte Katuutu and Ms. Rita Nabirye appeared for the Respondent.

4. Applicant's submissions on the preliminary objection

The Applicant argued that the Respondent failed to issue a decision within the mandatory 30-day period under section 229(4) of the EACCMA.

The Applicant stated that it submitted an objection on 11 June 2024, and by 12 July 2024, no decision had been communicated. On 18 July 2024, the Applicant notified the Respondent that its application was deemed allowed under Section 229(5) of the EACCMA.

Counsel for the Applicant argued that the Respondent later issued a decision on 22 July 2024, allegedly dated 16 July 2024, maintaining its tax demand. The Applicant contended that this decision was time-barred, null, and void. The Applicant cited **Wez Tyres Co. Ltd v. URA, TAT Application No. 82 of 2021**, where it was held that the

failure to decide within 30 days results in an automatic allowance of the taxpayer's application.

Additionally, the Applicant relied on the case of *Uganda Revenue Authority v. Uganda Consolidated Properties Ltd (Civil Appeal No. 31 of 2000)*, and asserted that statutory timelines must be strictly adhered to, and the Respondent was functus officio after 12 July 2024.

5. The Respondent's submissions in reply to the preliminary objection

The Respondent argued that Section 229(5) of the EACCMA was merely a deeming provision intended to prevent bureaucratic delays, not to automatically grant relief. In confirmation of its position, the Respondent relied on *Game Discount v URA (Civil Appeal No. 0039 of 2021)* and submitted that a deemed decision is only final if the Applicant acts on it before an actual decision is issued.

The Respondent contended that it issued its objection decision on 16 July 2024, before the Applicant acted on the deemed decision, therefore, the actual decision replaced any deemed decision.

Counsel for the Respondent therefore urged the Tribunal to apply a purposive interpretation of the deeming provision to avoid absurd results, as emphasized in *East End Dwellings Co Ltd v Finsbury Borough Council [1952] AC 109*.

The Respondent argued that since it has received new information from Egypt and the COMESA Secretariat (Ref: URA.CUS/CCD/9/16, dated 14th November 2024), which required reconsideration, upholding the preliminary objection would prevent the Tribunal from addressing the merits of the dispute, leading to an unjust outcome.

Counsel for the Applicant argued that courts have held that deeming provisions should not be applied if they lead to unjust, anomalous, or absurd results and cited *Inland Revenue Commissioners v Metrolands (Property Finance) Ltd [1981] 1 WLR 637* to that effect.

The Respondent therefore prayed that the Tribunal should find that the deeming provision does not apply since it issued its decision on 16 July 2024. Additionally, the

Respondent prayed that the Tribunal should consider the new facts or remit the matter to URA for reconsideration.

6. The Applicant's submissions in rejoinder

In rejoinder, the Applicant submitted that the Respondent failed to issue a decision within the statutory 30-day period stipulated under Section 229(5) of the EACCMA, thereby rendering the Applicant's objection deemed allowed. The Applicant therefore contended that the decision purportedly issued on 22 July 2024 was time-barred and thus invalid.

While emphasizing the legal effect of a deemed decision, the Applicant cited ***Game Discount World Uganda Limited v URA***, confirming that once a deemed decision comes into effect, it is final, and the Respondent loses the power to reject the objection. Counsel for the Applicant closed this point by stating that the notification on 18 July 2024 activated the deemed decision.

The Applicant stated that, unlike the Tax Procedures Code Act, Section 229(5) of the EACCMA does not require a taxpayer to take any action or make an election for the deemed decision to be effective.

The Applicant also stated that the Tribunal should depart from the position in *Game Discount World* (supra) and adopt the position set out in ***Wez Tyres Co. Ltd v URA TAT Application 82 of 2021***.

The Applicant argued that once an objection decision (whether actual or deemed) is made, the Respondent loses jurisdiction over the matter, as established in ***Cable Corporation v URA***. Therefore, the Tribunal cannot re-vest powers in the Respondent, as it no longer holds jurisdiction.

The Applicant concluded by praying that the Tribunal should rule that the Applicant's objection was deemed allowed and reject the Respondent's time-barred decision.

The Applicant therefore maintained that the Respondent's actions violated statutory provisions, rendering its demand for taxes unlawful.

7. The Determination by the Tribunal

The Applicant raised a Preliminary Objection (PO) in its submissions, contending that the Respondent's decision was time-barred and therefore null and void.

Section 229(4) of the EACCMA mandates the Commissioner to issue an objection decision within 30 days of receiving an application for review. Failure to do so results in the objection being deemed allowed under Section 229(5).

Section 229(4) states;

"(4) The Commissioner shall, within a period not exceeding thirty days of the receipt of the application under subsection (2) and any further information the Commissioner may require from the person lodging the application, communicate his or her decision in writing to the person lodging the application stating reasons for the decision".

Section 229(5) states;

"(5) Where the Commissioner has not communicated his or her decision to the person lodging the application for review within the time specified in subsection (4) the Commissioner shall be deemed to have made a decision to allow the application".

In the present case, the Respondent received the Applicant's request for review on 11 June 2024 and was required to issue a decision by 12 July 2024. No decision was communicated within this period. The decision was only conveyed on 22 July 2024, well beyond the statutory timeframe. No further information was requested from the Applicant. Further, in the intervening period between 12 July 2024 and 22 July 2024, the Applicant formally elected to treat the objection as having been allowed by the Commissioner.

The timelines prescribed in section 229(4) and (5) are mandatory. The use of the modal verb "*shall*" places a mandatory obligation or duty on the Commissioner to communicate their decision within the thirty-day timeframe. This therefore leaves no room for discretion, choice or options to either the taxpayer, the Commissioner or the Tribunal.

The Tribunal points out the necessity of adhering to timelines in customs matters, as they are crucial for facilitating efficient trade operations. Delays in customs processing can considerably disrupt the effectiveness and smooth flow of trade activities. It is against this background that the EACCMA has a shorter timeframe for making an objection decision, that is, within thirty days, unlike in domestic tax matters such as VAT and income tax where the Commissioner is given 90 days to communicate an objection decision. Similarly, while the Tax Procedure Code Act grants the taxpayer the discretion to elect or not to, the EACCMA deems an objection as having been allowed if the decision is not made within thirty days.

In the present case, the Respondent communicated their decision on 22 July 2024. The Respondent contends that they made their decision on 16 July 2024. However, the EACCMA refers to the “*communication*” of the decision and not the decision.

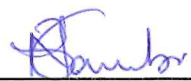
The Tribunal finds that the Respondent’s objection decision, issued outside the statutory period, is time-barred and of no legal effect. Consequently, the tax demand of Shs. 391,308,931 is unenforceable.


The Tribunal makes the following orders:

- (i) The preliminary objection is upheld.
- (ii) The Respondent’s decision dated 22 July 2024 is declared null and void.
- (iii) The tax demand of Shs. 391,308,931 is hereby set aside.
- (iv) Costs are hereby awarded to the Applicant.

Dated at Kampala this 8th day of April 2025.


CRYSTAL KABAJWARA
CHAIRPERSON


PROSCOVIA.R. NAMBI
MEMBER


STELLA.C. NYAPENDI
MEMBER