TAX APPEALS TRIBUNAL
Justice in Taxation

THE REPUBLIC OF UGANDA

IN THE TAX APPEALS TRIBUNAL AT KAMPALA

TAT APPLICATION NO. 238 OF 2024

MCLEOD RUSSELL UGANDA LIMITED.....APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY..... RESPONDENT

BEFORE: HON. CRYSTAL KABAJWARA, HON. GRACE SAFI, MS. CHRISTINE KATWE

RULING

I. Introduction

1. This ruling arises from an application challenging tax assessments in respect of Withholding Tax (WHT) on brokerage commissions, customs duties on imported agricultural inputs, and a penalty for failure to file quarterly returns. The disputed amounts are:

   a) Shs. 434,296,272 as WHT on brokerage commissions paid to brokers in Mombasa for tea sales conducted through the Mombasa auction system;
   b) Shs. 108,985,763 as customs duties on imported agricultural inputs;
   c) Shs. 7,594,855 as a penalty for failure to file quarterly returns.

II. Background Facts

2. The Applicant is engaged in the cultivation and sale of tea. The Respondent conducted a customs post-clearance audit covering the period January 2019 to June 2023, resulting in multiple tax assessments arising from

importation, classification, and cross-border payment transactions.

3. By letter dated 28 December 2023, the Respondent raised various assessments, including VAT, WHT, customs duties, penalties, and interest arising from alleged under-declarations, misclassifications, and the failure to withhold tax from payments to non-resident service providers and brokers.

4. The Applicant objected to the assessments; the objection was disallowed, hence the present application. Following TAT-guided mediation, the Applicant narrowed its dispute to the three items set out in paragraph 1 above.

III. Issues for determination

5. The key issue for determination is whether the Applicant is liable to pay the assessed taxes and penalty in dispute.

IV. Representation and evidence

6. Mr. Bruno Kalibala and Mr. Bruno Edwin Amanya represented the Applicant, while Ms. Christine Mpumwire represented the Respondent.

7. The Tribunal directed the parties to present their evidence through sworn affidavits. The Applicant presented an affidavit deponed by **Mr Ankit Jangla**, a tax consultant for the Applicant, sworn on 17 March 2026. He stated that the Applicant is a company incorporated under the laws of Uganda and is in the business of planting and selling tea.

8. The Respondent carried out a customs post clearance comprehensive audit on the Applicant for the period January 2019 to June 2023 and made the following findings:

   (i) The Applicant had allegedly made payments to brokers and the East African Tea Association, domiciled in Kenya, and had not paid any Withholding tax on such payments. The Respondent therefore issued

an assessment of Shs. 434,296,272.

(ii) While the Applicant had an exemption under CPC 492 in relation to agricultural inputs, the Respondent stated that the items did not qualify for the exemption under CPC 492.

Brokerage Fees

9. To expand its market by selling tea for export to the world market, the Applicant subscribes to membership with the East African Tea Trade Association ("EATA") and has since complied with the provisions of the EATTA Rule Book. Under the EATTA rulebook, the Applicant can sell its tea only on the Mombasa tea auction platform through licensed brokers. The Applicant engages Kenyan-based brokerage firms, namely, Tea Brokers East Africa Limited, Africa Tea Brokers Ltd, Venus Tea Brokers Ltd, to sell its tea at EATTA Mombasa's tea auctions.

10. Under the EATTA arrangement, the brokerage services are wholly performed in Kenya, and payment for the services is made in Kenya by EATTA, and thus the income is not sourced in Uganda. The Applicant is not permitted to receive the gross proceeds and would be unable to sell its tea at the Mombasa auction if it insisted on receiving them. It only receives the net proceeds and, for accounting purposes, records the brokerage fees as an expense.

Agricultural inputs under CPC 492

11. The Applicant runs fully functional tea plantations on which it carries its own business operations. For the period of 2019 to 2023, the Applicant imported various items under CPC 492, the customs administrative code for imported replacement parts. These items included;

a. Agricultural inputs such as shear cutter harvesting trays, chain saws, TCT Pruning Blade, Tipped Saw Blades for Tea Plucking Machine, Mist Blowers, Brush Cutter, Augers-Tools. The Applicant has a fully functioning tea plantation on which the above imported items are used

in the production of tea processes.

12. Mr. Ankit Jangla further stated that the Respondent denied the Applicant's import of agricultural inputs, the import duty exemption, and imposed import duty of Shs. 108,985,763. Being dissatisfied, the Applicant filed this application before the Tribunal.

Penalty for failure to file returns

13. The witness stated that the Applicant had allegedly not filed quarterly returns and thus the Respondent levied a penalty of Shs. 7,594,855.

14. The Respondent filed an affidavit in support of the taxation decision deponed by **Ms. Florence Nalubega**, an Officer of Customs General Audit in the Customs Department of the Respondent, sworn on 5 May 2026. She stated that the Applicant is a limited liability company duly incorporated in Uganda, dealing in the planting and selling of tea. She also stated that a comprehensive audit was conducted on the Applicant for the period January 2019 to June 2023.

15. During the audit period, the Respondent established that the Applicant mainly imported machinery, packaging materials, spares and fertilisers and provided consistent information on SAD and the accompanying documents. Further, the payments sent to suppliers of imported goods were in agreement with the amounts declared in ASYCUDA. The Respondent noted consistency between the cumulative amounts declared per supplier for imported services in the VAT and WHT returns for the period, except for one supplier, for whom the amounts declared in both the VAT and WHT returns were lower than the amount paid for the software license. As a result of the said inconsistency, the Respondent computed WHT and VAT assessments, all totalling Shs. 6,305,889.

16. The Respondent also noted that the Applicant had made payments to suppliers such as East African Tea Association and James Finlay Kenya Limited as annual maintenance costs and contributions towards research;

however, no amounts were withheld from these suppliers and as such, WHT amounted to Shs. 21,222,230 was assessed.

17. Further, the Applicant sold processed tea in auctions held in Mombasa through brokers domiciled in Kenya who charged a brokerage fee for the tea sold and as per the returns, there were no amounts withheld when payments were made to these brokers, and as such, WHT amounted to Shs. 705,815,289 was assessed.

Classification and Customs Procedure Codes applied at importation

18. The Applicant imported plastic shear harvesting trays under Customs Entry Bill C14475 of 28/06/2022, but misclassified them under HS Code 8213.00 as scissors, tailor's shears, and similar shears, attracting import duty at 10% instead of HS Code 3923.90, which attracts import duty at 25%. The Applicant also imported tractor clutches under Customs Entry Bill C23527 of 11/09/2020 and misclassified them under HS Code 8431.20, attracting 0% import duty instead of 10% under HS Code 8708.93 as parts of a motor vehicle. The Respondent corrected the purported anomalies and computed the tax of Shs. 4,959,806.

19. That the Respondent established that for the period July 2019 to June 2023, the Applicant was granted exemption on the importation of worn-out industrial replacement parts under CPC492, but the Applicant had cleared some items that did not qualify as replacement parts under the CPC 492, such as capacitors for power lines, relays, circuit breakers, and generators, among others. These were corrected, and the tax amounted to Shs. 193,719,698 was assessed.

20. The Respondent also established that some items cleared under the Customs Procedure Code (CPC) 458 did not meet the VAT deferment guidelines, with some items having VAT deferred below the threshold of USD 4,000, and as such, the Respondent assessed VAT of Shs. 79,971,633.

21. The Applicant had also used CPC 472 to clear items such as plastic crates

as packaging material for packing goods for export, yet these were picking plucked tea from the farms to the factory. The plastic crates did not qualify as packaging material, and as such, taxes were computed on Shs. 8,357,073.

22. The Respondent also established that some items cleared under the Customs Procedure Code (CPC) 458 did not meet the VAT deferment guidelines, with some items having VAT deferred below the threshold of USD 4,000, and as such, the Respondent recomputed the unpaid VAT amounting to Shs. 79,971,633.

23. The Respondent further established that for the period July 2019 to June 2023, the Applicant was granted exemption on the importation of worn out industrial replacement parts under CPC492 in accordance with Section 114 of the East African Community Customs Management Act, and 5th Schedule Part B, 2 (e) and the Applicant was required to file quarterly returns for usage of the exemption but did not file returns and Respondent resolved to raise a penalty of USD 2,000 which is Shs. 7,594,855.

24. On 28 December 2023, the Respondent, through a management letter, communicated to the Applicant the audit findings and the outstanding tax payable of Shs. 34,816,267. The Applicant objected to the assessed taxes on the grounds that the tax on plastic shear harvesting trays had been paid but was included in the computation. WHT is not applicable to the sale of tea at auctions held in Mombasa through brokers domiciled in Kenya, as the income was not sourced in Uganda, and the Respondent had not taken into account the waiver regime. The Respondent reviewed the documentation provided by the Applicant and established that they could not support the grounds of objection. The Applicant's objection was disallowed, and the assessments were upheld.

25. That pursuant to TAT guided mediation, the Applicant agreed to the item and paid the assessed taxes, but did not pay the accrued interest on all the items listed in the table below:

Item	Tax Head	Amount
Under declaration in VAT and WHT on payments made to Alastair	WHT VAT	2,234,633 2,681,560
Non-declaration of Payments made to the EAC Tea Association in WHT returns, management fees	WHT	16,161,012
Misclassification of entry C2451 of 03/04/2021 and C23527 of 11/09/2020 under HSCODE 8431.20 instead of HSCODE 8708.93 Tractor clutches	Import duty	2,561,373
VAT deferment	VAT (CPC 458)	39,985,817
Packages sold to McLeod Africa	Misuse of the 5th Schedule exemption	17,625,300
Replacement parts (not disputed)	Misuse of CPC 492	81,686,797
TOTAL		**162,936,492**

26. However, the issues of WHT on commission/ brokerage fees misclassification, agricultural inputs, penal assessment for failure to file returns and accrued interest on the assessments are still pending determination before the Tribunal.

V. The Submissions of the Applicant

Withholding tax of Shs. 434,296,272 on brokerage and commission fees

27. The Applicant submitted that they participate in the East African Tea Traders Association (EATTA) tea auctions in Mombasa, Kenya and are required to use an EATTA-approved broker. The Broker facilitates the auction sales, and under EATTA rules, the brokerage fees are paid by EATTA, not the Applicant.

28. The Applicant submitted that it sells its tea through the auction system operated by the East African Tea Trade Association (EATTA) in Mombasa, Kenya. Participation in the auction is governed by mandatory EATTA rules, which require tea producers to transact through EATTA-approved brokers.

29. According to the Applicant, brokerage commissions are deducted directly by EATTA from the gross sale proceeds before the balance is remitted to the Applicant. The Applicant therefore neither receives the commission amounts nor exercises custody, possession, or control over the funds used

to settle the brokers' fees.

30. The Applicant relied on Sections 78(d)(ii), 84, and 137 of the Income Tax Act Cap 338 (ITA), contending that withholding tax obligations arise only where the payer has control over the funds and where income is Ugandan-sourced. Section 84(1) imposes a tax on every non-resident person deriving income under a Ugandan-source services contract. Further, Section 84(4) defines a Ugandan-source services contract as a contract for services whose income is sourced in Uganda.

31. The Applicant further cited Section 78(d)(ii), which states:
"Income is derived from sources in Uganda to the extent to which it is:
(d) employment income or *a fee for the provision of services*
(ii) paid by a resident person, *other than as an expenditure of a business carried on by a person outside Uganda through a permanent establishment."*

32. The Applicant also cited section 137 of the Income Tax Act, which states:
"Any person making a payment of the kind referred to in Section 82, 84 or 85 shall withhold from the payment the tax levied under the relevant Section."

33. The Applicant submitted that a proper interpretation of Sections 78(d), 84, and 137 of the Income Tax Act read together shows that the withholding tax obligation arises only where:
    (i) the payer has custody and control of the funds from which tax can be withheld; and
    (ii) the payment constitutes Ugandan-source income.

34. The Applicant argued that, when these provisions are read together, withholding tax can arise only where the income is sourced in Uganda, the taxpayer is the person effecting payment, and the taxpayer has legal and practical control over the funds from which tax is to be withheld.

35. The Applicant contended that none of these conditions is satisfied. It maintained that the brokerage services are performed entirely in Kenya, that the commissions are deducted and remitted by EATTA, and that the Applicant has no opportunity or ability to deduct tax from funds that never

come into its possession.

36. The Applicant relied on ***ABSA Bank Uganda Limited v URA, TAT Application 57 of 2021***, where the Tribunal held that the withholding obligation rests on the person who actually makes the payment and not on a person who has no control over the funds.

37. The Applicant further submitted that the brokerage income cannot be regarded as Ugandan-source income because the services are rendered wholly outside Uganda. It contended that imposing withholding tax in these circumstances would create an undue burden on Ugandan exports and would be inconsistent with the legislative objective of promoting export competitiveness. Consequently, the Applicant therefore prayed that the withholding tax assessment of Shs. 434,296,272 be set aside in its entirety.

Customs Duty of Shs. 108,985,763 on agricultural inputs imported under CPC 492

38. The Applicant submitted that it imported various tools and implements used directly in tea cultivation and field maintenance, including pruning blades, mist blowers, brush cutters, chain saws, and harvesting trays. The Applicant argued that the items were properly declared under CPC 492 and qualify as agricultural inputs exempt from customs duty under Section 114 of the EACCMA and Paragraph 15 of Part B of the Fifth Schedule thereto.

39. The Applicant maintained that the imported items are essential implements used in agricultural production and therefore fall squarely within the statutory exemption. The Applicant accordingly contended that the customs duty assessment of Shs. 108,985,763 was made in error and should be vacated.

Penalty of Shs. 7,594,855 for failure to file quarterly returns

40. The Applicant challenged the penalty of Shs. 7,594,855 imposed for alleged failure to submit quarterly returns required under the duty remission scheme. The Applicant cited Regulation 7 of the East African Community Customs Management (Duty Remission) Regulations and submitted that

the failure to submit the prescribed returns constitutes an offence punishable only upon conviction by a competent court. *"A person who fails to submit returns as required under this regulation commits an offence and shall be liable on conviction to a fine of two thousand dollars."*

41. The Applicant argued that the Respondent lacked the statutory authority to impose the penalty administratively without first instituting criminal proceedings and obtaining a conviction. The Applicant further contended that the unilateral imposition of the penalty violated Article 28 of the Constitution of the Republic of Uganda, which guarantees the right to a fair hearing.

42. The Applicant therefore submitted that the penalty was unconstitutional, procedurally irregular, and liable to be annulled.

Reliefs sought by the Applicant

43. The Applicant prayed for the following:
    (i) The WHT assessment of Shs. 434,296,272 be set aside;
    (ii) Customs duty of Shs. 108,985,763 on the importation of agricultural equipment be set aside;
    (iii) Penalty of Shs. 7,594,855 for non-filing be annulled;
    (iv) Costs be awarded to the Applicant.

VI. The submissions of the Respondent

44. The Respondent maintained that the Applicant is liable to pay withholding tax of Shs. 434,296,272 and accrued interest of Shs. 271,519,017 on the international accumulated payments of Shs. 2,895,308,480 reported by the Applicant as brokerage fees for the period 2019 to 2022.

Withholding tax of Shs. 434,296,272 on brokerage and commission fees

45. The Respondent submitted that the Applicant is liable for withholding tax arising from brokerage commissions amounting to Shs. 2,895,308,480 paid to non-resident brokers based in Kenya. The Respondent relied on

Sections 4, 15, and 17 of the Income Tax Act, arguing that as a resident company, the Applicant is taxable on its worldwide income and on all payments connected to its business operations.

46. The Respondent cited Section 4(1) of the Income Tax Act which provides:

> *"Subject to, and in accordance with this Act, a tax to be known as income tax SHALL be charged for each year of income and is imposed on every person who has chargeable income for the year of income."*

Taxation of International/ Foreign Payments

47. The Respondent submitted that Section 84 (1) of the Income Tax Act imposes withholding tax (WHT) on every non-resident individual deriving income under a Ugandan source services contract. The WHT rate is 15% as per Section 84(2) and Part V of Schedule 4 of the Income Tax Act.

48. The Respondent relied on ***Uganda Tea Corporation Ltd v URA*** and ***Rwenzori Commodities Ltd v URA, TAT Application No. 36 of 2025***, where the Tribunal held that brokerage commissions connected to the export of Ugandan goods constitute taxable income in Uganda, notwithstanding that the services are performed outside the country.

49. The Respondent further relied on **Section 78(d)(ii)** of the Income Tax Act and submitted that the brokerage commissions constitute Ugandan-source income because they were paid by a resident person in connection with the Applicant's tea business conducted in Uganda.

50. The Respondent contended that, although the brokerage services were physically performed in Kenya, they are functionally and economically connected to Uganda because they facilitate the sale and export of tea grown and processed in Uganda.

51. The Respondent argued that EATTA merely acts as an intermediary or payment conduit and does not, in substance, alter the underlying contractual relationship between the Applicant and the brokers, nor does it extinguish the Applicant's statutory obligations.

52. The Respondent argued that although the Applicant had contracted Tea Brokers East Africa Limited, Africa Tea Brokers Limited, and Venus Tea Brokers Limited to sell its tea at a commission of 0.75% of gross proceeds, the Applicant remained the payer and beneficiary of the brokerage services; EATTA was acting merely as a conduit for settlement.

53. Additionally, the Respondent contended that no evidence was adduced to show withholding tax deduction or compliance for settlement. The Respondent further submitted that under Sections 137 and 142 of the Income Tax Act, the Applicant is the statutory withholding agent and is personally liable for any failure to withhold and remit tax. Accordingly, the brokerage commissions constituted Ugandan-source service income, and the Applicant remained liable for the unpaid WHT and interest therein.

Customs classification and exemptions

54. The Respondent submitted that certain imported items were wrongly classified under CPC 492 and did not qualify as agricultural inputs exempt from customs duty. The Respondent maintained that the items fall under tariff classifications for electrical machinery and equipment rather than agricultural implements and are therefore dutiable under the EACCMA.

55. The Respondent accordingly contended that the customs duty assessment of Shs. 108,985,763 was correctly raised and should be upheld.

Penalty Shs. 7,594,855 for the failure to file quarterly returns

56. The Respondent submitted that the Applicant failed to comply with a condition of the duty remission scheme requiring the submission of quarterly returns. They argued that Regulation 7(4) of the East African Community Customs Management (Duty Remission) Regulations authorises the imposition of a penalty equivalent to USD 2,000 for such non-compliance.

57. The Respondent therefore maintained that the penalty of Shs. 7,594,855

was lawfully imposed and remains due and payable.

Accrued Interest

58. The Respondent further submitted that interest automatically accrues unpaid or admitted tax liabilities and remains payable in accordance with the relevant provisions of the Income Tax Act and the tax laws administered by the Respondent.

59. The Respondent submitted that the Applicant is therefore liable to pay the outstanding tax liability of Shs. 705,815,289, withholding tax on brokerage fees of Shs. 434,296,272 and accrued interest of Shs. 271,519,017 plus accrued interest on the disputed items where interest remains outstanding in accordance with Section 142 of the Income Tax Act.

Reliefs Sought by the Respondent

60. The Respondent prayed that the Tribunal:
    (i) Dismisses the Application in its entirety;
    (ii) Upholds the assessed tax liability together with any accrued interest; and
    (iii) Awards the costs of the application to the Respondent.

VII. The determination

61. Having examined and considered the submissions of both parties and the relevant provisions of the Income Tax Act, this is the ruling of the Tribunal.

Brokerage and commission fees

62. The Applicant submitted that imposing a withholding obligation on a party that neither receives nor pays out the funds is inconsistent with both the statutory text and the operational realities of the tea auction system. It further stated that it cannot withhold where it never receives, never controls, and never pays the brokerage fees.

63. However, the core question for determination is not one of operational mechanics of the tea auction system, but of statutory interpretation.

64. It is not in contention that the brokers and commission agents are non-resident persons. The taxation of non-resident persons is governed by sections 4, 15,17 and part IX of the Income Tax Act (ITA). Section 4 of the ITA, read together with sections 15 and 17 (2) (b) of the ITA, imposes tax on every non-resident person who derives income from sources in Uganda. The sourcing rules, which determine when a non-resident person is deemed by the ITA to have derived income from sources in Uganda, are contained in Part IX of the ITA, which deals with international taxation. Section 84 of the ITA imposes withholding tax on every non-resident person deriving income under a Ugandan source services contract.

65. Therefore, two conditions must be met for a non-resident person to be taxable under section 84:
    (i) There must be a non-resident person; and
    (ii) Who derives income under a Uganda-sourced services contract.

66. The first condition is satisfied, as the recipients of the brokerage and commission fees are residents of Kenya who operate in Kenya. The second condition is whether the income is derived under a Ugandan source services contract.

67. A Ugandan source services contract is defined by section 84 (4) to mean a contract, other than an employment contract, whose principal purpose is the performance of services which give rise to income sourced in Uganda. This means that there must be:
    (i) A contract;
    (ii) whose principal purpose/ aim/ objective is the performance of services; and
    (iii) The contract must give rise to income sourced in Uganda.

68. In the present case, there are contracts between the Applicant and the Kenyan brokerage firms for the sale of tea. Therefore, both conditions (i)

and (ii) are met. Regarding the third condition, we must determine whether the contracts give rise to income sourced in Uganda. Section 78 of the ITA lists several circumstances in which a non-resident person will be deemed to have sourced income from Uganda. One of these is contained in section 78 (d) (ii), which provides that income is derived from sources in Uganda to the extent to which it is a fee for the provision of services paid by a resident person.

69. Section 78(d)(ii) of the Income Tax Act states that:

"Income is derived from sources in Uganda to the extent to which it is:

(d) employment income or fee for the provision of services

(i) Derived from employment or services exercised or rendered in Uganda

(ii) ***paid by a resident person, other than as an expenditure of a business carried on by a person outside Uganda through a permanent establishment in Uganda.***

70. Concerning the above provision, the Applicant has argued that it would not make legal or practical sense to impose a withholding obligation on the Applicant when the sale proceeds are held by EATTA, which manages and controls all payments. The Applicant further stated that they neither have possession nor control of the brokerage/subscription fees at any stage.

71. We do not agree with this position. 1. The brokerage fees are deducted from the Applicant's income from the sale of tea. 2. The Applicant recognizes the expense in its books of account. We do not agree with the theory that withholding tax depends on the actual physical payment by a person. This would negate instances such as this where one person acts in a delegated capacity on behalf of the other. EATTA makes payments on behalf of the Applicant. These payments are made from the Applicant's income with the Applicant's full knowledge.

72. The evidence demonstrates that brokerage commissions are computed on the Applicant's tea sales, embedded within the settlement structure, and discharged as part of the transaction flow arising from those sales. The

Applicant, therefore, plays a functional role in effecting the payment, even though the operational mechanics are executed through an intermediary auction system. The fact that payments are routed through an auction settlement mechanism does not alter the legal character of the Applicant as the effective payer within the meaning of Section 137.

73. Therefore, we do not agree to a narrow territorial interpretation that confines sourcing strictly to the place of performance. Instead, Section 78 properly introduces a dual nexus test grounded in both economic connection and payment relationship. The Applicant is a resident entity whose commercial tea sales generate transactions for which brokerage services are rendered.

74. The Applicant, therefore, has a duty to ensure that they comply with Uganda's withholding tax regime. This includes remitting the withholding tax to the Respondent on behalf of the non-resident persons and seeking to recover it at a later stage from the brokers / EATTA. EATTA is not a beneficiary of the brokerage services but operates as a regulatory body establishing the framework within which the auction system functions.

75. It should also be noted that this application is on all fours with previous applications that have been determined by this Tribunal concerning withholding tax on brokerage fees. These include ***Rwenzori Commodities Limited v URA TAT Application 36 of 2025*** **and** ***Uganda Tea Corporation v Uganda Revenue Authority, TAT Application 98 of 2025.***

76. In both cases, the Tribunal found that brokerage and commission fees paid to non-resident persons are subject to withholding tax in accordance with sections 84 and 78 (d) (ii) of the ITA. The Tribunal stated:

> *"... section 78 (d) (ii)...was introduced by the Income Tax (Amendment) Act, 2015, which repealed the previous provision – section 78 (c)...which ...was narrower in scope than the current section 78 (d) (ii), as only income that arose from services rendered in Uganda was taxable on the non-resident person. Therefore, unlike the current section 78 (d) (ii), the provision would not apply where the services were rendered or performed abroad. Had this*

dispute related to brokerage fees paid before 2015, the fees would not have fallen within the source rules as they stood then...However, in 2015, the Legislature ... widened the scope of section 78 by repealing subsection (c) and replacing it with a catch-all provision. Under the new provision, section 78(d)(11), it does not matter where the services are rendered. As long as a payment originates from Uganda and it is to a non-resident person for services rendered wherever, the Ugandan resident person is required to withhold...The Tribunal cannot depart from the literal rule of interpretation in favour of the golden rule when there is a clear intention of the Legislature to depart from the very position that the Applicant would like us to adopt."

77. Similarly, in Rwenzori Commodities (supra), the Tribunal held:

"It should also be noted that while the Applicant did not have physical custody of the funds from which the brokerage fees were deducted, the funds at all material times belonged to the Applicant, who had control over them as they arose from the sale of its tea. The economic reality or true essence of a transaction is more important than its legal or superficial appearance. In other words, the Tribunal shall consider the substance of the transaction over its form. Therefore, how the Applicant chooses to settle its obligations with the brokers, whether by a direct cash payment or offset, does not dispense with its withholding tax obligations."

78. In view of the above, we find that the commissions and brokerage fees constitute income derived from sources in Uganda and are therefore liable to tax in Uganda in accordance with sections 4, 17 and 78 of the Income Tax Act.

79. Further, Section 137 of the ITA requires any person making a payment of the kind referred to in Section 82, 84 or 85 of the ITA to withhold from the payment the tax levied under the relevant Section. Having established that the payments fall under section 84 of the ITA, the Applicant was obliged to withhold tax and account for it. Further, section 142 of the ITA provides that a withholding agent who fails to withhold tax is personally liable to pay to the Commissioner General the amount of tax which has not been withheld. However, the withholding agent is entitled to recover this amount from the payee. Therefore, the Applicant should account for the withholding tax and

is free to recover the same from its brokers.

80. Accordingly, the Respondent correctly imposed the withholding tax of Shs. 434,296,272 on the brokerage commissions in issue.

Shs. 108,985,763 as total for customs duties on the importation of agricultural inputs.

81. The Applicant submitted that, as an operator of tea plantations, they imported agricultural inputs under CPC 492. Among such items are shear cutter harvesting trays, chainsaws, TCT Pruning Blade, Tipped Saw Blades for Tea Plucking Machine, Mist Blowers, Brush Cutter, and Augers- Tools.

82. The Respondent, in paragraph 4 (d) of the statement of reasons, stated that the Applicant had cleared some items that did not qualify as replacement parts under the CPC 492, such as capacitors for power lines, relays, circuit breakers, generators, among others, amounting to Shs. 193,719,698.

83. The same is also mentioned in paragraph 7.0 on page 6 of annexure R3 to the statement of reasons that they did not qualify as replacement parts. However, in light of the above statement that the Applicant cleared part of it, it is further intimated that, after mediation, this amount was reduced to Shs. 108,985,763.

84. The Applicant's position that the Respondent imposed duties totalling Shs. 108,985,763 items classified as agricultural equipment. Section 114(1) of the EACCMA provides:

> *"Duty shall not be charged on goods listed in Part B of the fifth schedule to this Act when imported or purchased before clearance through the customs, for use by the person named in that part in accordance with any condition attached thereto as set out in that part."*

85. Paragraph 15, Part B, Fifth Schedule:

"Imported inputs by persons engaged in horticulture, aquaculture, agriculture or floriculture which the Commissioner is satisfied are for use in the horticulture, agriculture or floriculture sector".

86. The Tribunal finds that harvesting trays, pruning blades, mist blowers, and chainsaws are used directly in the cultivation and harvesting of tea, and are agricultural imported inputs. According to a simple Google search:

(i) Harvest trays are rectangular containers used to hold fresh produce after it has been harvested. They are designed to be lightweight yet sturdy enough to protect delicate fruits and vegetables from damage. They often come in various materials such as plastic, wood, or metal, each offering different advantages. (*See Top 5 Best Harvest Tray (Expert Picks) of 2026)*

(ii) Pruning blades are used in gardening, horticulture, and forestry to remove dead, overgrown, or unwanted branches. They are designed to provide clean, precise cuts that promote healthy plant growth and prevent damage to trees or shrubs. *(see. What is a pruning blade used for - Search)*

(iii) Mist Blowers - A mist blower sprayer is a device designed to spray liquids in a fine mist. Mist blower sprayers are essential tools in various industries, particularly agriculture, pest control, and even industrial applications. They provide an effective way to apply liquids, such as pesticides, herbicides, and fertilisers, to crops and other surfaces. *(See - Understanding Mist Blower Sprayers: A Comprehensive Analysis)*

(iv) A **chainsaw** is a portable, handheld power saw that cuts with a set of teeth attached to a rotating chain driven along a guide bar.
Modern chainsaws are typically gasoline- or electric-powered and are used for activities such as tree felling, limbing, bucking, pruning, cutting firebreaks in wildland fire suppression, harvesting firewood, use in chainsaw art and chainsaw mills, cutting concrete, and cutting ice. *(See Chainsaw - Wikipedia)*

87. In light of Section 114(1) of the EACCMA and Paragraph 15, Part B of the Fifth Schedule, the Tribunal is satisfied that the Applicant's imported items fall within the category of agricultural inputs imported for use in the agricultural sector.

88. Therefore, customs duties amounting to Shs. 108,985,763 on the said imports was erroneous, unlawful, and inconsistent with the exemption regime under the EACCMA, and the Applicant was therefore entitled to the exemption claimed under CPC 492.

89. The Tribunal perused the annexure "C" of the Applicant's affidavit and noted that the ASYCUDA documents that were declared under the section 'Procedure" 492 have the following declarations:
    (i) C14943 had a description of Tipped saw blades for a tea pruning machine.
    (ii) C7463 had a description of circular saw blades (Slitting/slotting saw blades) with steel working.
    (iii) C14475 had a description of shear harvesting trays.
    (iv) C23527 had a description of tea machinery spare parts.

90. Furthermore, annexure "D" contains confirmation from the District Agricultural Officer in Kabarole district, who stated that the Applicant deals in Tea production, value addition and marketing of tea and related products. In the circumstances, the assessment of Shs. 108,985,763 is set aside.

Penalty for non-filing of quarterly returns

91. The Respondent submitted that the Applicant failed to comply with a condition of the duty remission scheme requiring the submission of quarterly returns. They argued that Regulation 7(4) of the East African Community Customs Management (Duty Remission) Regulations authorises the imposition of a penalty equivalent to USD 2,000 for such non-compliance.

62. However, the Applicant challenges the penalty on the basis that under Regulation 7(4), a conviction should precede the imposition of the penalty. The Regulation provides:

> *"A person who fails to submit returns as required under this regulation commits an offence and shall be liable on conviction to a fine of two thousand dollars."*

63. The term liable on conviction under this regulation requires the offending party to be prosecuted and convicted before a fine or penalty is imposed. In the present case, since there is no conviction, there is no liability. Therefore, the imposition of a fine/penalty in the absence of a conviction was irregular. In the circumstance, the penalty of Shs. 7,594,855 is set aside.

Interest

64. It was the Respondent's submission that pursuant to TAT-guided mediation, the Applicant agreed to,
    (i) VAT and WHT on payments made to Alastair;
    (ii) Non-declaration of Payments made to the EAC Tea Association in WHT returns (Management fees);
    (iii) Misclassification of entry C2451 of 03/04/2021 and C23527 of 11/09/2020 under HSCode 8431.20 instead of HSCODE 8708.93(Tractor clutches);
    (iv) VAT deferment;
    (v) VAT deferment and replacement parts, and paid the resultant taxes, but did not pay the accrued interest.

65. The Respondent maintained that the Applicant is liable to pay the accrued interest on the paid taxes, and the same are still due and payable by the Applicant. The Tribunal notes that if the Applicant admitted and paid part of the principal taxes following mediation, they should also have settled the interest, as there was an indication that they had agreed to pay the liability.

Interest imposed under the tax laws is compensatory and automatically accrues upon late payment of tax.

66. The Applicant, in its submissions, submitted that after the mediation, it only wished to dispute the following: Shs. 434,296,272 as WHT on the Commissions paid to brokers at Mombasa for the sale of tea taking place at Mombasa, Shs. 108,985,763 as total customs duties on the importation of agricultural inputs and Shs. 7,594,855 as a penalty for non-filing of quarterly returns. The Applicant did not dispute interest.

67. The Tribunal therefore finds that the accrued interest on the admitted taxes remains lawfully due and payable. The Applicant's submissions did not rebut this assertion. There is no evidence before the Tribunal that the Applicant paid the accrued interest on the admitted taxes. In the circumstances, the Tribunal finds that the said interest was payable.

68. In light of the above, this Tribunal orders as follows:
    (i) The assessment of Shs. 434,296,272 in respect of withholding tax on brokerage fees are upheld.
    (ii) The assessment of Shs. 108,985,763 in respect of agricultural inputs is set aside.
    (iii) The penalty of Shs. 7,594,855 for non-filing of quarterly returns is set aside.
    (iv) The Applicant is liable to pay interest on the principal tax paid.

Dated at Kampala this 28th day of **May** 2026.

HON. CRYSTAL KABAJWARA
CHAIRPERSON

HON. GRACE SAFI
MEMBER

MS.CHRISTINE KATWE
MEMBER