

THE REPUBLIC OF UGANDA
IN THE TAX APPEALS TRIBUNAL AT KAMPALA
APPLICATION NO. 197 OF 2023

PENTECOSTAL ASSEMBLIES OF GOD APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY.....RESPONDENT

BEFORE: MR. SIRAJ ALI, MS. CHRISTINE KATWE, MS. ROSEMARY NAJJEMBA

RULING

This ruling is in respect of an application, challenging a VAT assessment of Shs.123,647,356, on the ground of miscomputation of VAT due on imported P&A super cereal and P&A unimix.

1. Background Facts

The Applicant is a Church and Non-governmental Organization, duly registered with the Non-Governmental Organization Board, whose principal business activity is advancing help to the needy.

The Applicant imported P&A super cereal vide entry numbers C982 dated 30th March 2017, C8264 dated 31st October 2017, C32745 dated 22nd September 2018 and C24732 dated 17th July 2018 and declared them for customs under subheading 1104.29.00 of the East African Community Common External Tariff (EAC-CET) at a VAT of 0%.

The Respondent conducted a post entry review and on 20th October 2021 wrote to the Applicant informing them of the miscomputation of VAT on P&A super cereal and P&A unimix and issued a VAT assessment of Shs.123,647,357 to the Applicant, on the grounds that VAT was payable at a rate of 18% since P&A super cereal and P&A unimix are not exempt from VAT under the Second Schedule to the VAT Act.

On 20th October 2021, the Respondent wrote to the Applicant demanding the payment of the said amount of Shs.123,647,356. The Applicant objected to this demand by letter dated 4th November 2021.

2. Issues for Determination

The issues for determination are;

- i. Whether the Applicant is liable to pay VAT of Shs.123,647,357?
- ii. What remedies are available to the parties?

3. Representation

The Applicant was represented by Mr. Joseph Angura and Ms. Achak Carol while the Respondent by Mr. George Ssenyomo and Mr. Sam Oseku.

Rev Dr. Bishop Jacky Franco, the General Secretary of the Applicant, was the Applicant's sole witness. He testified that the Applicant in April 2016, a transitional Government of National Unity was formed in Southern Sudan, between the faction of Dr. Riek Machar, and the forces loyal to President Salva Kiir, in July of 2016, the infighting flared which caused a great influx of refugees coming from South Sudan to Uganda (West Nile Sub Region). The Applicant on 17th day of October 2016, wrote to the office of the Prime Minister expressing its desire to help and equally ascertain with clarity the nature of help required to avoid duplicity.

Rev Dr. Bishop Jacky Franco also testified that the Office of the Prime Minister in a letter dated 3rd November 2016 granted the Applicant permission to carry out humanitarian intervention in West Nile specifically at the Rhino Camp Refugee settlement. The witness (AW1) testified further that they visited the Prime Minister's office and consulted Mr. Douglas Asiimwe who was acting permanent Secretary, who advised them that there is need for the Applicant to formally enter into a Memorandum of Understanding (MOU) with the government of Uganda for them to be able to fall fully under the protection of the law. AW1 testified that the Applicant on 21st July 2017, entered into its first MOU with the Government of Uganda, formally placing it as an approved Non-Governmental Organisation, duly authorised to import goods for humanitarian aid.

During cross examination, the witness submitted that he was aware that the MOU was executed after the customs entry C982 (page 201 trial bundle REX4) had been executed before the entry was entered. He further submitted that the dates on REX1 and REX3 MOU were all expired dates. He submitted that he was aware that the goods

imported vide customs C32745 and C24732 were imported and declared in Asycuda after the first MOU had expired and as such there was no valid MOU. He testified that there was no clause in the MOUs granting the Applicant an exemption in respect of the goods imported.

During re-examination the witness testified that the church began serving with the government before the MOU was signed. The Permanent Secretary of office of Prime Minister advise that they formalize the relationship by signing an MOU. The reason those entries came before was because we were already working with OPM. The first MOU came to formalize what they had already been doing. The entries that came after the expiry were because of delay from the OPM. He testified that goods they were seeking exemption for were food imported for humanitarian clause.

The Respondent's witness (RW1) Mr. Brian Kiiza an officer in the Respondent's Customs Department testified that the Applicant imported four (4) consignments of blended cereals (worked grains) vide declarations C982, C8264, C24732 & C32745 under HS Code 11042900. The witness testified that on 12th August 2019, the Applicant wrote to the Respondent requesting for VAT waiver on humanitarian food supplies. He further testified that on 6th March 2020 the Respondent wrote back to the Applicant granting the exemption to the relief items vide 59.5MT (2,380 bags of 25kgs each) loaded on truck numbers KCN 701X/ZF8389 & KCK789W/ZD2017.

The witness testified that the Respondent subsequently conducted a post entry review and on 20th October 2021 wrote to the Applicant informing them of miscomputation of VAT on worked grains and other cereals and issued a VAT assessment of Shs.123,647,357 to the Applicant. The witness testified that the assessment was issued on the basis that the Applicant declared P&A super cereal (1*25kg) and P&A unimix (1*25kg) of sub-heading 1104.29.00 of the East African Community Common External Tariff (EAC-CET) to customs at a VAT duty rate of 0% instead of VAT rate of 18%.

Mr Brian Kiiza further testified that the VAT at a rate of 18% was payable on the imported P&A super cereal (1*25kg) and P&A unimix(1*25kg) since they were not catered for under the tax exemption provisions of the Second Schedule to the VAT Act. That on 4th November 2021 the Applicant wrote to the Respondent requesting her to rescind the assessments. On 10th February 2022, the Respondent wrote to the

Applicant demanding for unpaid tax on the imported goods. That on 28th July 2023 the Respondent issued a warrant of distress against the Applicant for collection of the outstanding tax liability. The witness testified that whereas the Applicant asserts to derive its depression its exemption from the MOUs signed the first MOU was executed long after the goods vide custom entry C982 had already been captured in Asycuda and imported by the Applicant without any valid exemption. (Exhibit PEX3 at pages 4 to 28 of the Joint Trial Bundle)

Mr. Brian Kiiza further testified that whereas the Applicant asserts to derive its exemption from MOUs signed the goods vide custom entries C32745 and C24732 were captured and goods imported after the first MOU had expired on 30th May 2018 conferring no valid exemption to the Applicant. (Exhibits PEX3 & PEX4 of the Joint Trial Bundle) He testified that whereas the Applicant asserts to derive its exemption from the MOUs signed the goods vide custom entries C32745 and were C24732 were captured and goods imported before the second MOU was executed on 4th December 2019, therefore no existing exemption was in place. (Exhibit PEX4 at page 34 of the Joint Trial Bundle) The witness submitted that whereas the Applicant purports to have imported relief items pursuant to MOUs signed as a result of the conflict in Southern Sudan civil conflicts do not amount to a natural disaster for which one would qualify for exemption under the EACCMA. The witness further submitted that the MOUs the Applicant seeks to rely on did not have any clause exempting the imported goods from taxation.

During cross examination, Mr. Brian Kiiza testified that the basis of the demand in this case is the item imported, worked grain (grain with husks removed and dried) is not exempt from VAT since it is processed. He further testified that the Applicant was liable to pay VAT and WHT of which he paid the WHT tax. He testified that the according to EACCMA worked grain is classified under HSC 110429 is zero rated if its originating from Kenya and that the HSC Code applies to worked grains. He testified that humanitarian relief is not exempt from tax duty because its not listed under the exemption provision and what is exempt are goods imported for use in a natural disaster.

4. Submissions of the Applicant

The Applicant submitted that the Respondents demand for the Applicant to pay the demanded taxes is without any legal sanction, the Respondent having failed to review its decision within 45(forty-five) days from the date the Applicant applied for her to review and rescind her decision. The law therefore deems the Respondent to have allowed the Applicants Application in its entirety and no tax was therefore owing to the Respondent.

The Applicant submitted that the law that governs taxation of imports and exports in this country is the regional statute that came in force in 2004, that is the **East Africa Community Customs Management Act,2004** (*hereinafter EACCMA*). The law as therein established, prescribes strictum juris the produce that both the Applicant and the Respondent MUST adhere to, in instances where any tax dispute arises, such as in this case, the law therein equally prescribes the consequences of failing to adhere and follow to the later the strict procedures established by law.

The Applicant submitted that the law under **Section 229(1), (2), (4) & (5) of the EACCMA,2004**, strictly prescribes the procedures and the actions that are to be followed and the time lines within which any act has to be done by the Respondent and the Applicant in equal measure. In this matter, is our submission that the Respondent failed to adhere to the law which governs dispute resolution between the tax payer and the Commissioner customs. The law under S.229(1), (2), (4) & (5) of the EACCMA,2004 is that;

1. *A person directly affected by the decision or omission of the Commissioner or any other officer on matters relating to Customs shall within thirty days of the date of the decision or omission lodge an application for review for that decision or omission.*
2. *The application referred to under subsection (1) shall be lodged with the Commissioner in writing stating the grounds upon which it is lodged.*
3.
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 or the decision*

In addition, the Applicant submitted that the law in the same measure prescribed the consequence of the failure of the Commissioner failing to communicate her decision in writing in the following mandatory tone under sub section

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.

The Applicant submitted that the above provision subjected extensive interpretation by the various Courts within the East African Community, as it is regional statute, and in Uganda, Honourable Justice Mubiru in the case of **Game Discount World (U) LTD Vs URA Civil Appeal No.39 of 2021** held among others that;

Section 229(4) of The East African Community Customs Management Act, 2004 requires the Commissioner to communicate his or her decision, stating reasons for the decision in writing, to the person lodging the application, within a period not exceeding thirty (30) days of the receipt of the application.where the Commissioner does not communicate his or her decision to the person lodging the application for review within the prescribed (30) days, the Commissioner is deemed to have made a decision to allow the application. **Emphasis applied**

The Applicant submitted that words of statute are to be construed in their terms, according to the circumstances in which they occur, where the words of the statute are clear, the court has no duty to amend the intention of the legislature in construction of the statute, similarly the court cannot add words into the statute without any jurisdiction. See **Assistant Commissioner of Income Vs Ahmedabad Urban Development Civil Appeal No.21762 of 2017.**

The Applicant submitted that in this case, the words of Section 229(5) of the EACCMA are very clear and there's no need to construe or construct them, and its plainly that, the Application to rescind or vacate the demand was allowed by the Respondent, as the undisputed facts in this matter are that, the Applicant received the Respondent's demand, by letter dated 20th October 2021, (PEX6, Pg119) and she hastily objected for the Applicant to pay taxes, by a letter dated 4th November 2021 (PEX7, Pg 121). In the said response, the Applicant stated her reasons for review of the decision as follows;

"We are a Non-profit, Non-Governmental Organization and have been reliable partners with the Office of the Prime Minister in the area of addressing the plight of the refugees in Northern Uganda through the provision of Emergency Relief Food Aid.

We further wish to clarify that the items that we imported on the refenced Entry Numbers were Emergency Relief Food Aid...These items were supposed to have been tax exempted from duties and taxes in first place and therefore these taxes paid against them were paid in error as per the attached copies of letters of exemption from URA. It is from the above context that we humbly request your good office to rescind your discussion and cancel the said assessments based on the foregoing explanation." PEX7, Pg.121.

The Applicant further submitted that the Applicant's said letter dated 4th November 2021 in response to the Respondent's demand letter dated 20th October 2021 is an application for review of the Respondent's decision within the meaning of **Section 229(1) & (2) of the EACCMA,2004**. The said application was served on the Respondent within the time frame required by law.

The Applicant submitted that having received the Applicant's application for review on the 4th November 2021, the Respondent did not respond to the Applicant within the specified time frame of 30 days, from the date of receipt of the application. This was a fact conceded by counsel for the Respondent during scheduling, further to, no evidence was adduced by the Respondent to prove that a decision was ever made and communicated to the Applicant by 16th December 2021, when the 30 days lapsed in accordance with **Section 229(4) of the EACCMA,2004**.

The Applicant submitted that the Respondent having failed to make a decision and communicating it to the Applicant made a decision to allow the Application as enshrined under Section 229(5) of the EACCMA,2004. The Respondent is therefore estopped from demanding and undertaking any collection measures for the said tax whose dispute was already resolved by the law.

The Applicant in addition submitted that it acted on the Respondent's deemed decision by her deliberate refusal to pay the assessed taxes and maintaining her stand that the goods which she imported were tax exempt. As such all further discussions and correspondences shared between the Respondent and the Applicant concerning the said demand were overtaken by events because beyond 16th December 2021, there

was no further dispute between the parties concerning the said demand dated 20th October 2021 by implication of Section 229(5) of the EACCMA,2004.

The Applicant submitted that the Respondent's meeting on 9th May 2022 as evidenced by the minutes, the Respondent's demand letter dated 6th July 2023 further demanding for the payment of the said tax and the warrant of distress dated 28th July 2023 were all overtaken by events and implication of the law in Section 229(5) of the EACCMA 2004.

The Applicant submitted that **Article 17(1)(g)** of the Constitution, which impose a duty on every on every citizen of Uganda to pay taxes, it is further enshrined that, unless exempted, the obligation to pay tax is mandatory.

The Applicant submitted that whereas the Constitution impose a duty on every citizen to pay taxes, the same Constitution under Article 152(1) of the Constitution of the Republic of Uganda,1995 enjoins the tax collectors to demand and collect the taxes within the four corners of the law and it is that, "no tax is to be imposed except under the authority of an Act of Parliament." In determining the tax position, the relevant provisions of the taxing statute should be considered. Any tax imposed in a manner not authorized by an Act of Parliament is contrary to the Constitutional principles for the imposition of tax and such a tax demand MUST be set aside See **Warid Telecom (U)Ltd Vs. Uganda Revenue Authority, CS No.24 of 2011**

Guided by the apex law as above set out, it is our submission that the Applicant in this matter is not liable to VAT, as the goods she imported were exempt from duty. The Humanitarian relief imported by Applicant are tax exempt under **Section 114(2) of the EACCMA, 2004** read together with, **item 20(b) of Part B of the 5th Schedule to the Act**, which provides as follows

Section 114(2) of the EACCMA,2004 provides that

"Duty shall not be charged on the goods listed in Part B of the Fifth Schedule to this Act when imported in accordance with any condition attached thereto as set out in that part."

Item 20(b) of the 5th Schedule to the EACCMA,2004 qualifies the Applicant's imported goods for exemption from duty and it is to the effect that,

"Goods for emergency relief purposes of such quantities and within a specified period imported by government or its approved agent or a non -governmental organization or a relief agency

as authorized by the Director /Commissioner responsible for disaster management in a Partner State provided that:

(a)

(b) The goods are for use in areas where a natural disaster or calamity has occurred in Partner State, **“Emphasis ours.**

The Applicant submitted that the reading of the exemption provision portrays that, for the Applicant's imported goods to qualify to be exempt, the Applicant must meet certain conditions which are that,(1) that goods imported were for emergency relief,(2) that the goods were imported by the government or its approved agent or a non-governmental organization or a relief agency (3) that the Applicant was authorized by the Director/Commissioner responsible for disaster management,(4) that the goods were for use in areas where a natural disaster or calamity has occurred.

The Applicant submitted that on the issue whether the goods imported were for emergency relief, it is our submission that the goods were for humanitarian relief, the Applicant has led evidence in that regard through the testimony of Rev.Dr.Bishop Jacky Franco Onaga, the same is confirmed under the declarations “REX1”-“REX4”,Pg 198-201 The Respondent does not challenge that fact and concedes to it, and we pray the Tribunal be pleased to find that issue in affirmative.

The Applicant submitted that on the issue of whether the Applicant was authorised by the Director/Commissioner responsible for disaster management. It's the Applicants case as pleaded and through the evidence of Dr. Onaga Franco, that the Applicant was duly authorized by the Office of the Prime Minister, there are various Memoranda of Understanding between the Applicant and the Government of Uganda “PEX3” and “PEX4”, Pg,4-58 there is a letter dated 3rd November 2016 from the office of the Prime Minister “PEX2”, Pg 3. The Applicants witness equally testified that for the times before or after the expiry of the MOUs, the Applicant was authorized to import and distribute the relief aid. The office of the Prime Minister equally wrote a lot of letters confirming that the Applicant was her partner in providing relief aid, and further that all the aid imported was fully distributed to the refugees. See “PEX23”, Pg,184. In the letter dated 13th September 2023, “PEX14”, Pg 129, the office of the Prime Minister wrote to the Respondent clearly indicating that it authorized the Applicant to supply humanitarian relief, that;

“Office of the Prime Minister is in receipt of the letter from Pentecostal Assemblies of God, (PAG), requesting for a recommendation for tax waiver related to tax arrears that accrued on the supplementary food donation to pregnant and lactating mothers in rhino camp refugee settlement in 2017 and 2018 on the basis of our request and in accordance with the MOU signed with OPM.”

The Applicant submitted that on the issue whether goods were imported by government or its approved agent or a non-governmental organisation or a relief agency. The Applicant contends that it is a church and a charitable Non-Governmental Organisation as evidenced by its Certificate of registration “PEX1, Pg... There is no dispute that the Applicant is a non-government or charitable organization and equally an agent of the Government of Uganda, for the purpose provision and distribution of humanitarian aid.

The Applicant submitted that on the issue as to whether the goods were for use in areas where a natural disaster or calamity had occurred. It is the Applicants case that it imported goods that were supplied as humanitarian relief to the refugees at rhino camp, an area where a calamity had befallen, it is not a disputed issue as to whether the Applicant supplied humanitarian relief to the refugees. The imported humanitarian relief that was supplied to the calamity infested area is exempt from duty, within the meaning of the exemption provision. That issue is equally not in dispute, and the demand for the Applicant to pay did not arise on the basis that the goods imported were not supplied in area affected by a calamity.

The Applicant submitted that it meets all the conditions set out under the law and it follows therefore that the humanitarian aid imported by the Applicant is not liable to VAT as the Respondent imputes. The law under Section 114(2) of the EACCMA,2004 read together with item 20(b) of Part B of the 5th Schedule to the Act, is very clear and it is that, goods that are imported into the partner state by an authorized agent of the government, for use in an area affected by any calamity is exempted from duty

The Applicant submitted that the EACCMA, equally defines what duty is, under **section 2(1) of the EACCMA,2004**, to mean “any cess, levy, imposition, tax, or surtax imposed by any Act. The use of the word, any duty or tax imposed by any act, implies that, the EACCMA, exempts all taxes on goods that are imported into a partner state,

which goods are imported for the purposes set out under the terms and conditions set out under the fifth schedule.

The Applicant further submitted that the EACCMA, is a superior act, whose provisions override the provision of the VAT Act, and in its supremacy, it provides under **section 253 of the EACCMA, 2004**, that the EACCMA takes precedence over all other Partner state's laws with respect to any matter to which its provision relate. This has been reemphasized by the decision of the High Court in the case of **Kamunyu vs URA Civil Appeal No.8 of 2011**.

The Applicant submitted that the framers of the law were clear in what they were exempting, they exempted duty on all goods imported into a partner state as for long as the goods imported met the conditions set out in the law. The exemption was not for import duty or withholding or infrastructure levy, but all duty or taxes that would accrue to any goods imported into a partner state.

The Applicant submitted that the Respondent in its misapplication of the law in our humble opinion, decided to segregate the different tax heads for the goods imported by the Applicant as humanitarian relief. The Respondent in compliance with the law did not charge the Applicant import duty, and has equally not demanded the same to date, see box 31 on all the entries "REX1"- "REX4" Pgs. 198-201. Why would the Applicant liable for VAT only, when duty was exempt in its entirety"

6. Submissions of the Respondent

The Respondent submitted that the Applicant imported worked grains and declared the same under entries C982, C8262, C24732 and C32745. The Respondent upon carrying out a post entry review established the Applicant had miscomputed VAT on the same at a duty rate of 0% instead of a VAT rate of 18%. The Respondent accordingly issued a VAT assessment of Shs.123,647,357 to the Applicant.

The Respondent submitted that the Applicant on the other end contends that the goods imported were exempt from taxes.

The Respondent submitted that the crux of the dispute is therefore whether the imported goods fall under the exempt schedules of the EACCMA. They submitted that they don't and the taxes levied thereunder are due and payable for the reasons that;

- a) The goods which are subject of the dispute were imported in 2017/20 18. See REX1 TO REX4 on pages 198 to 201 of the Joint Trial bundle
- b) Whereas the Applicant asserts to derive its exemption from the MOUs, the first MOU was executed on 07/07/2017, long after the goods vide custom entry C982 had already been captured in Asycuda on 30/03/2017 and imported by the Applicant without any valid exemption. **(See exhibit PEX3 at pages 4 to 10, Exhibit REX4 at page 201 of the Joint Trial Bundle)**
- c) Whereas the Applicant asserts to derive its further exemption from the MOUs signed, the goods vide custom entries C32745 and C24732 were captured in Asycuda, imported after the first MOU had expired on 30th May 2018 conferring no valid exemption to the Applicant. **(See Exhibits PEX3 at page 10 & PEX4 34 OF THE Joint Trial Bundle)**
- d) The goods vide custom entries C32745 and C24732 were captured and imported before the second MOU was executed on 4th December 2019, therefore no existing exemption was in place. **(SEE Exhibit PEX4 at page 34 of the Joint Trial Bundle.**
- e) The impugned MOUs that the Applicant seeks to rely on did not have any clause exempting the imported goods from taxation.
- f) The goods previously exempted were items vide 59.5MT (2,380 bags of 25kgs each) loaded on truck numbers (KCN 701X/ZF8389 & KCK789W/ZD 2017), which goods are different from the suit goods weighing 194.5 metric tons and imported using truck numbers (KBR 246H, KBS 139L/ ZD9497 and KBS 859L /ZD 4089) See **(RW1 witness statement)**

The Respondent submitted that its first witness (RW1) testified with immense clarity that the basis of the assessment was that the Applicant imported worked grains (seeds to be consumed by humans and the same are not exempt from VAT in accordance with the 3rd Schedule to the VAT Act Cap 344.

The Respondent submitted that during cross examination, the witness demonstrated box 31 of the customs entry that what was imported and declared by the Applicant were worked grains. This evidence was never controverted.

The Respondent submit that the issue of the Respondent having failed to review its decision within 45days from the date of the Applicant applying for review was never pleaded by the Applicant in their Application to the tribunal.

In addition, the Respondent submitted that the Applicant did not object to the Respondent's VAT assessment issued on 10/02/2022, until the letter dated 14/09/2023, wherein the Applicant requests the Respondent to review its tax decision. The purported objection by the Applicant (PEX6) was a mere request of the Applicant to cancel the assessments issued on the basis of the mistaken belief that the goods were exempt from taxes.

The Respondent submitted that the negotiations between the Applicant and the Respondent did not amount to an objection to the assessment as purported by the Applicant. The Applicant's failure to settle its outstanding tax liability nor object to the assessments is what prompted the Respondent to enforce collection measures on the 03/11/2021 by impounding the Applicant's cars, at what point the Applicant rushed to the Tribunal seeking redress.

The Respondent submitted that the Applicant contends that the items it imported are tax exempt under Section 114(2) of the EACCMA,2004 read together with item 20(b) of part B of the 5th schedule to the Act.

Section 114(2) of the EACCMA,2004 provides that;

"Duty shall not be charged on the goods listed in Part B of the Fifth Schedule to this Act when imported in accordance with any condition attached thereto as set out in that Part."

Item 20(b) of the 5th schedule to the EACCMA,2004 provides that;

Relief goods imported for emergency use in specific areas where natural disaster /calamity has occurred in a Partner State.

Goods for emergency relief purpose of such quantities and within a specified period imported by government or its approved agent or a non-governmental organisation or

relief agency as authorised by the Director /Commissioner responsible for disaster management in a Partner State provided that:

(a) ...

(b) The goods are for use in areas where a natural disaster or calamity has occurred in Partner State.

The Respondent submitted that it is paramount to have the cardinal rules of statutory interpretation at the back of our minds as we unravel the scope and applicability of Section 114 (2) of the EACCMA,2004, read together with item 20(b) of part B of the 5th schedule to the Act to the instant facts.

The Respondent relied on **BANK OF ENGLAND V VAGILIANO BROS 1891 AC 107**, where Lord Halsbury LCJ said:

"It seems to me that, construing the statute by adding to it words which are neither found therein nor for which authority could be found in the language of the statute itself, is to sin against one of the most familiar rules of construction."

The Respondent submitted that whereas the Applicant asserts to derive its exemption from MOUs, the first MOU was executed on 07/07/2017, long after the goods vide custom entry C982 had already been captured in Asycuda on 30/03/2017 and imported by the Applicant without any valid exemption. **(See Exhibit PEX3 at pages 4 to 10, Exhibit REX4 at page 201 of the Joint Trial Bundle)**

The Respondent submitted that the Applicant asserts to derive its further exemption from MOUs signed, the goods vide custom entries C32745 and C24732 were captured in Asycuda imported after the first MOU had expired on 30th May 2018 conferring no valid exemption to the Applicant. **(See Exhibits PEX3 at page 10 & PEX4 34 of the Joint Trial Bundle)**

The Respondent submitted that the imported items purportedly being relief items for people affected by war doesn't qualify as goods imported where a natural disaster or calamity has occurred within the meaning of the Act. We accordingly pray that the tribunal rejects the submission by the Applicant. Furthermore, the agreements purporting to grant permission to the Applicant were executed after the goods had already been imported, therefore could not confer the exemption to the Applicant.

The Respondent submitted that the Applicant is misrepresenting and distorting the facts of the dispute. Suffice to note that the letter PEX9 at page 123 of the Joint Trial Bundle that the Applicant seeks to rely on for the legitimate expectation relates a separate consignment of goods amounting to 59.5 Metric tonnes loaded on truck numbers KCN 701X/ZF8389 & KCK789W/ZD2017, which consignment is totally different from the consignment which is the subject of the dispute as captured under REX5 at page 202 duly imported under custom entries C982, C32745, C8264 and C24732, with their respective truck numbers as laid out in REX5 of the Joint Trial Bundle. It is our submission that tax exemptions are specifically granted by law and cannot be presumed by parties. A tax exemption granted prior cannot be used as a precedent to presume future or subsequent exemptions.

In addition, the Respondent submitted that the letter referred to by the Applicant under PEX 14 at page 129 of the Joint Trial Bundle is merely a letter forwarding the Applicant's documents to the Respondent but does not itself amount to a tax exemption. It is also noteworthy that the letter was written way after the goods had been imported in 2017 and 2018 and cannot be said to have conferred a legitimate expectation to the Applicant.

The Respondent relied on the case of **REPUBLIC VS KENYA REVENUE AUTHORITY EX PARTE SHAKE DISTRIBUTORS LIMITED {2012} Eklr**, where court stated:

"It follows therefore that the cornerstone of legitimate expectation is a promise made to a party by a public body that will act or not act in a certain manner. For the promise to hold, the same must be made within the confines of law. A public body cannot make a promise which goes against the express letter of the law".

The Respondent submitted that in order to rely on the doctrine of legitimate expectation, the expectation has to be legal. It cannot be used to legalize an illegality.

The Respondent relied on the case of **JUSTICE KALPANA RAWAL VS JUDICIAL SERVICE COMMISSION & 3 OTHERS [2016] E KLR, CA** which enumerated the vital aspects of the doctrine of legitimate expectation as follows;

*"...Legitimate expectation is a doctrine well organized and established in administrative law. In **Commonwealth Commission of Kenya & 5 others, SC Petition Nos. 14, 14A, 14B & 14C of 2014**, the Supreme Court stated that legitimate expectation would arise when a*

body, by representation or by past practice has around an expectation that is within its power to fulfil. For an expectation to be legitimate, therefore, it must therefore be founded upon a promise or practice by a public authority that is expected to fulfil the expectation”.

The Respondent submitted that the doctrine does not apply where clear statutory words override any contrary expectations however founded. The High Court in the case of **REPUBLIC V KENYA REVENUE AUTHORITY; PROTO ENERGY LIMITED (EXPARTE) (JUDICIAL REVIEW APPLICATION E023 OF 2021) [2022] KEHC 5 (KLR)** relied on **H.W.R Wade & C.F. Forsyth as stated in administrative law, by H.W.R Wade & C.F.Forsyth as stated in Administrative Law ,by H.W.R. Wade , C.F.Forsyth, Oxford University Press,2000,at pages 449 to 450;**

“it is not enough that an expectation should exist; it must in addition be legitimateFirst of all, for an expectation to be legitimate it must be founded upon a promise or practice by the public authority that is said to be bound to fulfil the expectation.....second, clear statutory words, of course override an expectation howsoever founded....Third, the notification of a relevant change of policy destroys any expectation founded upon the earlier policy....”

“An expectation whose fulfilment requires that a decision-maker should make an unlawful decision, cannot be legitimate expectation. It is inherent in many of the decisions and express in several, that the expectation must be within the powers of the decision-maker before any question of protection arises. There are good reasons why this should be so: an official cannot be allowed in effect to rewrite Acts of Parliament by making promises of unlawful conduct or adopting an unlawful practice “(Emphasis added)

The Respondent submitted that being a public body charged with collection of tax under **Section 3 of the Uganda Revenue Act**. We are further fortified by the decision of the court in **Uganda Revenue Authority v Golden Leaves and Resorts Limited HCCS 12 of 2007** Justice Egonda Ntende cited **York Corporation v Henry Leetham & Sons Limited [1924] ALL ER 477** where it was held that:

“A body charged with statutory powers for public purpose is not capable of divesting itself of those powers or of fettering itself in their use”

Article 152(1) of the Constitution of the Republic of Uganda, 1995 (as amended), provides that, *“No tax shall be imposed except under the authority of an Act of Parliament.”*

In addition, the Respondent submitted that Uganda Revenue Authority Act Cap 196 was put in place to provide the administrative framework in which taxes under various

Acts are collected. The Respondent has no power to excuse anyone from tax but rather to collect. Applying the dictum in the case of **REPUBLIC V KENYA REVENUE AUTHORITY EX-PARTE ABERDARE FREIGHT SERVICES LTD (2004) KLR 530**, the Respondent has no power to decide that a certain type of tax will or will not be imposed. That is a preserve of parliament and as such when the Respondent makes a representation that it has no power to make, it is not precluded from asserting the correct position which is within its power to make since it is charged with the obligation of administering tax Acts. This is what the Tribunal meant by ruling that; “the expectation has to be legal. It cannot be used to legalize an illegality.”

7. Applicant’s Submission in Rejoinder

In rejoinder, the Applicant submitted that the imported goods were tax exempt under Section 20 of the VAT Act Cap 344 and 5th Schedule of the EACCMA.

The Applicant submitted that the Respondents contention that the Applicant is liable to pay the taxes demanded because the humanitarian relief imported and supplied by the Applicant was imported and supplied without the authorization of the government body responsible for disaster management is with respect lame, an afterthought and not the reason for the taxation decision, and it amounts to the from the reason for the decision, and no court of justice can allow the Revenue body to change the reasons for the assessment in court, instead of sticking to the grounds of the assessment or the reason thereof.

In rejoinder the Applicant submitted the principle of national treatment in the East African Community where the taxation regime in Uganda is mandated to treat imported products from a partner state in a similar manner to the domestic products, under **Article 15(1) & (2) of the Protocol on the Establishment of the East African Customs Union (the Protocol)**, Partner States are enjoined not to enact legislation or apply administrative measures which directly or indirectly discriminate against the same or like products of other Partner States or impose on each other’s products any internal taxation of such a nature as to afford indirect protection to other products. Further, Partner States must not impose directly or indirectly on the products of the other Partner State any internal taxation of any kind in excess of that imposed, directly or indirectly on similar domestic products.

In rejoinder, the Applicant submitted that under Section 24(4) of the Value Added Tax Act read together with paragraph 1(1) of the 3rd Schedule, the supply of cereals which are grown and milled in Uganda is zero rated. Uganda being a partner state in the East African Community is bound by the said provisions of the Protocol. The implication of the principle of natural treatment is that the Respondent is supposed to treat the goods originating from the partner state in a similar manner as those found in Uganda.

8. Determination by the Tribunal

Having read submissions of both parties, this is the decision of the Tribunal

The gist of the dispute between the parties relate to the following questions;

- i. Whether the Respondent is deemed to have allowed the Application to rescind the assessment of shs.123,647,356 under Section 229(5) of EACCMA?
- ii. Whether the imported goods namely P&A super cereal and P&A unimix, were exempt from tax by virtue of Section 114 (2) and item 20(b) of Part B of the 5th Schedule of the EACCMA,2004?

We shall start by resolving the first question

Section 229 EAC Customs Management Act states;

(1) A person directly affected by the decision or omission of the Commissioner or any other officer on matters relating to Customs shall within thirty days of the date of the decision or omission lodge an application for review of that decision or omission.

(2) The application referred to under subsection (1) shall be lodged with the Commissioner in writing stating the grounds upon which it is lodged.

(3) Where the Commissioner is satisfied that, owing to absence from the Partner State, sickness or other reasonable cause, the person affected by the decision or omission of the Commissioner was unable to lodge an application within the time specified in subsection (1), and there has been no unreasonable delay by the person in lodging the application, the Commissioner may accept the application lodged after the time specified in subsection (1).

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.

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

From the facts at hand the Applicant received a letter from the Respondent dated 20th October 2021 which demanded payment of Shs.123647356(One twenty-three million, six hundred forty-three thousand three hundred fifty-six) under Section 135 of EACCMA. By a letter dated 04th November 2021 in accordance with section 229(1) of the EACCMA the Applicant wrote requesting the Respondent to rescind or cancel the assessment. From the copy of the letter admitted in evidence as exhibit PEX7 the letter was received by the Respondent on 04th November 2021. From the evidence before the tribunal the Respondent did not communicate its decision within a period of 30 days as required under section 229(5) EACCMA.

In Republic V Commissioner of Customs Services Ex-parte Africa K Link International Ltd the court associated itself with the interpretation given to **Section 229 of the East African Community Customs Management Act** by Korir J in ***R Vs Commissioner of Customs Exparte Unilever Ltd Miscellaneous Civil Application No.181 of 2011*** in which he held that “*once an application for review is made against the Commissioner’s decision under Section 229 of the Act, the commissioner must communicate his/her decision to the tax payer within 30 days and failure to do so means that the commissioner will be deemed to have allowed the application for review by operation of the law and will be barred from demanding payment of the taxes specified in the decision subject matter of the review.*”

Further in ***Game Discount World (U) LTD Vs URA Civil Appeal No.39 of 2021*** court held inter alia that;

“Section 229(4) of The East African Community Customs Management Act, 2004 requires the Commissioner to communicate his or her decision, stating reasons for the decision in writing, to the person lodging the application, within a period not exceeding thirty (30) days of the receipt of the application.....where the Commissioner does not communicate his or her decision to the person lodging the application for review within the prescribed (30) days, the Commissioner is deemed to have made a decision to allow the application.”

In the instance case the Respondent having failed to comply with Section 229(5) of the EACCMA, 2004 as spelled out above is deemed to have allowed the assessment and is barred from demanding payment of the taxes set out in the assessment.

The above determination resolves the entire dispute, consequently there is no need to resolve the remaining issues

This application is hereby allowed with costs

Dated at Kampala this 1st day of September 2025.



MR. SIRAJI ALI
CHAIRMAN



MS. CHRISTINE KATWE
MEMBER



MS. ROSEMARY NAJJEMBA
MEMBER

RULING