

**THE REPUBLIC OF UGANDA**  
**IN THE TAX APPEALS TRIBUNAL OF UGANDA AT KAMPALA**  
**APPLICATION NO. 196 OF 2023**

ROCKET PRODUCTS LIMITED.....APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY.....RESPONDENT

BEFORE: MS. CRYSTAL KABAJWARA, MR. SIRAJ ALI, MS. CHRISTINE KATWE

**RULING**

This ruling is in respect of an application challenging an assessment of Shs. 1,130,446,654 for the period January 2018 to September 2022. The assessment was raised on grounds of variances between the Applicant's bank statements and declared customs values. The Applicant alleged that the Respondent included air freight cost as well as road freight from Mombasa to Kampala in the customs value of the goods, which should not have formed part of the customs value.

**1. Background Facts**

The Applicant is engaged in the business of marketing and supply of branded promotional products. The Applicant imports goods from different suppliers mostly Mekea, a company based in China and Amrod based in South Africa.

On 24 October 2022, the Respondent carried out a post clearance audit on the Applicant for the period January 2018 to September 2022 and assessed Shs. 1,483,885,930 on the grounds that there were variances between its bank statements and declared customs values. The Applicant objected on grounds that there were errors in the Respondent's computation, and that there was no mismatch between the commercial invoices and payments made.

The Respondent stated that the incoterms between Mekea/Amrod and the Applicant were FOB (Free on board). However, the Applicant's bank statements revealed that payments to Mekea/Amrod were more than the FOB Cost.

Regarding the variances, the Applicant explained that this related to freight which was invoiced by and paid to Mekea, separately. The Applicant explained that they have a separate freight agreement with the supplier and freight costs are billed for separately from the cost of the goods to ease tracing freight costs. The Respondent disregarded this explanation on the grounds that the freight agreement did not specify the freight costs.

The Applicant disputes the assessment on the grounds that the Respondent taxed its land freight from Mombasa to Kampala and air freight to Uganda which is exempt from tax.

## **2. Issues for determination**

The main issue for determination is whether the Applicant is liable to pay the tax assessed

## **3. Representation**

The Applicant was represented by Mr. Cephas Birungyi, Ms. Linda Mugisha and Ms. Jackie Aturinda while the Respondent was represented by Mr. Goerge Ssenyomo and Ms. Susan K. Mbabazi.

Francis Lubuulwa, a Director of the Applicant, was the Applicant's sole witness (AW1). He stated that the Applicant has a freight fulfillment arrangement with Mekea who supplies the goods and also pays for freight on the Applicant's behalf. It issues separate invoices for freight and for the goods to the Applicant.

AW1 testified that the Respondent conducted a Post Clearance Audit on the Applicant for the period July 2018 to September 2022 and issued an assessment of Shs. 1,483,885,930 on the basis that there were variances between the Applicant's payments to Mekea and Amrod reflected in the bank statements and the Applicant's declared customs values.

That the Applicant objected stating that some of the payments related to freight and that there was no mismatch between the commercial invoices and payments made to the suppliers. The Respondent acknowledged that it made errors in its computation and adjusted the payments from USD 1,808,143 to 1,599,827 USD for Mekea. It however stated that the invoiced incoterms between Mekea / Amrod and the Applicant were FOB and requested the Applicant to separate the sea freight charges from the freight ledger provided or else the entire freight amount would be treated as sea freight.

AW1 further testified that on 4 August 2023, the Applicant wrote another letter to the Respondent explaining that most of the freight from Mombasa to Kampala was borne by Mekea. It also explained that the Respondent did not include some expenses that related to conveyance of goods such as samples, freight invoices from South Africa and Pre-verification of Conformity costs.

He also testified that on 23 August 2023 the Respondent reduced its liability to Shs. 1,058,324,282 but claimed that the Applicant had not provided invoices in respect to the freight ledger and evidence of payments made to the said transporters. To this effect, the Applicant provided a statement from Mekea for the period January 2022 to 30 September 2023 and informed the Respondent that Amrod's system could only go back three months which was outside the audit period.

He also testified that upon submission of the supplier statement, the Respondent rejected it on the grounds that it was not in its desired format and as such it applied 1% FOB and Insurance to the Applicant's consignments shipped by air, and added sea freight to consignments shipped by sea up to Mombasa to determine CIF Mombasa resulting into a total tax liability of Shs. 1,130,446,654.

AW 1 also testified that the Applicant disputes the assessment on the basis that the Respondent taxed land freight from Mombasa to Kampala and air freight to Uganda which is not taxable under the law. He also stated that the Respondent has not sequentially applied the alternative methods of valuation as required by the law where the transaction value is in dispute.

Ms. Suzan Kembabazi (RW1) an Officer in the Customs Department of the Respondent was the Respondent's sole witness. She stated that during the audit, the Respondent established that:

- (i) The total payments to Mekea after adjusting for opening and closing creditors amounted to USD 1,808,113 against declared customs value of USD 1,080,808 resulting in a variance of USD 727,306.
- (ii) For Amrod South Africa adjusting for opening and closing creditors amounted to USD 81,967 against declared customs value of USD 47,811 resulting in a variance of USD 34,156. The Applicant failed to account for these variances, and they therefore took this to be the value not declared to customs.

RW1 stated that they took the derived variance of USD 727,306 and USD 34,156 as customs value prorated against the goods imported to derive taxes amounting to 1,483,885,930.

The Respondent also established that the incoterms between Mekea/ Amrod and the Applicant were FOB and asked the Applicant to separate sea freight charges from the said freight ledger to enable the Respondent to conclude the audit.

She also stated that they asked the Applicant to share certified copies of supplier statements for the goods shipped and freight statements from the said agents for the period July 2018 to September 2022. She stated that the information submitted by the Applicant was insufficient to prove air freight. Further, the freight ledger had other adjustments that the Respondent did not understand and requested the Applicant to provide the supplier statement. They also needed information involved in shipping and transportation.

During cross examination, RW1 confirmed that it is not a requirement for taxpayers to have supplier statements, but they expected it from the Applicant because there was an agreement that Mekea would send a statement of outstanding funds owed.

In re-examination Ms. Suzan Kembabazi submitted that they used method one because the rule of valuation allows them to use it and if not satisfied, they use the other methods in chronological order. She stated that since the Applicant did not provide the entire supply statement for the entire period, they could not verify the costs of the freight from China to Entebbe and from Mombasa to Kampala.

#### **4. Submissions of the Applicant**

The Applicant submitted that Paragraph 2 of the 4th Schedule to the East African Community Customs Management Act, 2004 (EACCMA) provides that the customs value of imported goods shall be the transaction value which is the price actually paid or payable for the goods when sold for export to Uganda. Where a taxpayer presents genuine proof of the actual price paid or payable for an imported good, the Respondent is not allowed to deviate from it.

The Applicant contended that it is not liable to pay the tax assessed because it correctly declared the value of all its imports and paid all the taxes due. Valuation of goods is done in accordance with Section 122 of the EACCMA which provides:

*"Where imported goods are liable to import duty ad valorem then the value of such goods shall be determined in accordance with the 4th schedule and import duty shall be based on that value".*

The 4th Schedule to the EACCMA under Paragraphs 2 provides for six methods for the determination of customs value of imported goods.

##### Transaction value method

The Applicant submitted that Paragraph 2 of the 4th schedule to the EACCMA provides that the customs value of imported goods shall be the transaction value which is the price actually paid or payable for the goods when sold for export to Uganda. Where a taxpayer presents genuine proof of the actual price paid or payable for an imported good, the Respondent is not allowed to deviate from the transactional value.

In the case of *Uganda Revenue Authority V Agaba Henry Civil Appeal No.0032 of 2021*, it was held:

*"The transaction value method should be the method that is primarily used to value imported goods and that the presentation of genuine proof of the actual price paid or payable for an imported good takes away the appellant's discretion to consider other methods of customs valuation".*

The Applicant submitted that it provided the supplier contract, a freight fulfillment agreement, commercial invoices, freight invoices, airway bills and a freight reconciliation ledger that separated the cost of goods from freight cost. The supplier provided the goods and covered the freight cost at importation on behalf of the Applicant which was invoiced and paid by the Applicant. The Applicant submitted that it presented genuine proof of the actual price paid to Mekea.

#### Other valuation methods

The Applicant submitted that Paragraph 1 of the interpretative notes of the EACCMA stated that the only circumstance under which the Respondent is allowed to depart from the transaction value method of customs valuation is if the conditions prescribed by the law are not fulfilled. The Applicant fulfilled the conditions necessary to use the transaction value method and the Respondent had no legal grounds to use alternative valuation methods.

The Applicant submitted that under paragraph 2 of the 4th Schedule it provides that during customs valuation, the Respondent must sequentially apply each customs valuation method, providing evidence for why each method is not applicable, until the most suitable method is identified. The Respondent used methods alien to the law when it compared payments made by the Applicant for its goods and freight as reflected in its bank statements to its declarations in ASYCUDA, added 1% insurance and then subjected the variance to tax.

### Air Freight

The Applicant submitted that the Respondent had no legal basis to depart from the Applicant's transaction value as the Applicant provided all commercial invoices confirming the price paid for the goods and correctly declared the values as required by the law.

The Applicant submitted that the EACCMA stipulates that the customs value for air-transported goods includes only the price paid and the cost of insurance. The Respondent added the cost of freight to the Applicant's air shipments, applied a 1% insurance charge, and imposed tax on the adjusted value. The Respondent's addition of air freight cost to the Applicant's declared value was unlawful.

The Applicant submitted that the Respondent had no legal basis to depart from the transaction value. The Applicant provided sufficient evidence including commercial invoices, freight invoices, freight ledger, airway bills, bank statements and agreements with its suppliers to prove that the correct value of goods was declared and all taxes paid. Therefore, the Respondent acted unlawfully by including the Applicant's air freight cost in determining the value of goods and subjecting them to tax.

### Land freight from Mombasa to Kampala

The Applicant submitted that the Respondent unlawfully added the cost of transportation of goods from Mombasa to Kampala to the value of the imports, leading to an incorrect customs valuation.

Paragraph 9(2) of the 4th Schedule provides that in determining the customs value using the transaction value method under the provisions of paragraph 2, there shall be added to the price actually paid or payable for the imported goods: the cost of transport of the imported goods to the port or place of importation into the partner state.

The Applicant submitted that only the transportation cost up to the port of entry (Mombasa) should be included in the customs value of imports. The Applicant accurately declared the commercial invoice value, along with the insurance and freight costs from China to Mombasa and paid all applicable taxes. The Respondent's addition of freight cost to

goods transported by land freight from Mombasa to Kampala was unlawful, only the freight cost to Mombasa should be included in the customs value of goods shipped by sea.

### Incoterms

The Applicant submitted that the terms of trade with Mekea did not affect the integrity of its transaction value. The Respondent argued during the audit and at trial that, since the transactions with Mekea were F.O.B. (Free on Board), Mekea's responsibility ended once the goods were loaded onto the ship, and therefore Mekea could not be held accountable for the freight charges.

The Applicant submitted that while Mekea's obligation as a seller ceased at the point of loading the goods onto the ship, there is a separate agreement in which Mekea assumes responsibility for the freight and is compensated accordingly. The supplier invoiced separately for freight and for the supply of goods to ensure transparency and to simplify cost tracking. Therefore, the Applicant correctly declared the value of its imports using the transaction value method and paid the right taxes.

The Applicant submitted that it provided the Respondent with the supplier agreement, the freight agreement, freight reconciliation ledgers separating air and sea freight, bank statements and workings reconciling the variances the Respondent had purportedly discovered while reviewing the Applicant's bank statements and ASYCUDA declarations.

The Applicant submitted that it demonstrated that its payments to Mekea covered cost of goods, air and land freight, and expenses related to the conveyance of goods, such as samples and pre-verification of conformity costs. The Applicant proved that it paid USD 434,410 in freight charges to Mekea and matched these payments with corresponding customs entries. The Respondent was able to trace freight costs amounting to USD 80,657 and yet did not use these traced freight costs to reduce the Applicant's liability.

The Applicant submitted that the Respondent disregarded all the information provided and requested the Applicant for certified supplier statements which it later rejected on the grounds that they were not in the preferred format. There is no standard format for a

supplier statement as each supplier has their own. The Respondent disregarded these documents and illegally added back the full freight cost to all of the Applicant's declared values which included the price paid to supplier, insurance and freight. It then applied 1% insurance to arrive at its derived customs value on which it imposed the taxes assessed on the Applicant.

The Applicant submitted that the Respondent's rejection of the Applicant's transaction value was unlawful and prayed for the following orders:

- (i) A declaration that the Applicant is not liable to pay the tax assessed of Shs. 1,130,446,654.
- (ii) An order that the Respondent refunds the amount paid as 30% amounting to Shs. 339,133,996 with interest from the date it was deposited by the Applicant.
- (iii) The Applicant is awarded costs of this Application.
- (iv) The Applicant is awarded damages.

## **5. Submissions of the Respondent**

The Respondent submitted that the Applicant failed to provide sufficient information to support the variance between the payments made to the suppliers to wit; Amrod South Africa and Mekea Import and Export and the customs declarations in Ascyuda.

The Respondent cited Section 122(1) of the EACMA which provides:

*"Where imported goods are liable to import duty ad valorem, then the value of such goods shall be determined in accordance with the Fourth Schedule and import duty shall be paid on that value."*

The Respondent submitted that Paragraph 2(1) of Part (1) of the 4th Schedule of the EACCMA provides:

*"The customs value of imported goods shall be the transaction value, which is the price actually paid or payable for the goods when sold for export to the Partner State adjusted in accordance with the provisions of Paragraph 9."*

Paragraph 9(2) of Part 1 of the 4th Schedule of the EACCMA further provides:

*"In determining the value for duty purposes of any imported goods, there shall be added to the price actually paid or payable for the goods:*

*a) the cost of transport of the imported goods to the port or place of importation into the Partner State; provided that in the case of import by air no freight costs shall be added to the price paid or payable;*

*b) loading, unloading and handling charges associated with the transport of the imported goods to the port or place of importation into the Partner State; and*

*c) the cost of insurance."*

The Respondent cited the case of ***Royal Electrical Limited Versus Uganda Revenue Authority Application No. 37 of 2017*** where the Tribunal held:

*"The most reliable source of information on imports is the import documents."*

The Respondent submitted that Section 122(4) of the EACCMA provides:

*"Nothing in the fourth schedule that shall be construed as restricting the rights of the proper officer to satisfy himself or herself as to the truth and accuracy of any statement, document or declaration presented for customs valuation process."*

#### Documentary Evidence

The Respondent submitted that the Applicant provided insufficient documents. Documents like receipts were never provided.

#### Customs Documents

The Respondent submitted that the Applicant's documents to wit import declarations indicate FOB as the incoterm while those for Amrod have no incoterms. Whereas the incoterms were FOB, the Applicant had informal/indirect arrangements with their agents namely Mekea Import and Export Co. Limited. The Applicant's documents to wit; the bill of lading, commercial invoices and airway bills attached on the declarations in ASYCUDA system show that the Applicant had other shippers and middlemen involved in the transfer

of imports and did not avail any record to show how these were paid including matching correspondences on contracting and payment of freight for these other parties.

The Respondent submitted that the correspondences between the Applicant and revealed that the said agents and middlemen were paid either directly by the Applicant or indirectly by Rokasi Ltd the Applicant's parent company. The money movement from the Applicant to Rokasi Ltd in the bank statements did not clearly break down what the payment was meant for. Whereas the Applicant claimed that the money movement was a loan for the goods, the Applicant did not demonstrate how this loan was secured.

The Respondent submitted that the books of account and the Applicant's business model showed that the Applicant secured orders from its clients and made international purchases which ought to have been costed prior to making an order. The Respondent also stated that the Applicant was in a perpetual loss position even without justifiable cause. Further analysis also showed that there was no evidence to demonstrate how Rokasi Ltd, with an 80% stake in the Applicant, was deriving a benefit in the Applicant's Products.

The Respondent submitted that the Applicant's books of account do not reflect the correct position of the business and funds sent to Rokasi Ltd by the Applicant could have been proceeds of sale. The Respondent argued that the goods which are purported to have been sold by the Applicant were goods on consignment to Rokasi Ltd and not sales within the meaning of the GATT Valuation principles to qualify for transaction value method.

#### Credit Agreement

The Respondent submitted that the credit agreement between the Applicant and Mekea Import and Export Co. showed that it was silent on the incoterm yet the other documents like the proforma and commercial invoices listed FOB as the incoterm. This document could not be relied upon to support the Applicant's case that the variance is due to the air freight cost and cost of transportation from Mombasa to Kampala.

### Freight fulfillment Agreement

The Respondent contended that the freight fulfillment agreement does not state how the costs of freight would be determined.

### Supplier Statement

The Respondent submitted that the Applicant could only provide supplier statements from 1 January 2022 to 30 September 2023 for Mekea and for Amrod for only 3 months making it difficult to resolve the issue of freight. The Respondent submitted that Mekea Import and Export Co. Ltd and Amrod South Africa were supplying goods on credit terms to the Applicant. This involved the procurement of goods from manufacturers for delivery to designated ports of loading in country of origin on FOB terms. According to the credit terms, Mekea Import and Export Co. is required to share a supply statement of the goods supplied and payments received every 10<sup>th</sup> day of each month. In essence, this statement would show goods procured from various manufacturers, payments received directly from the Applicant and indirect payment by Rokasi Ltd directly to suppliers but on behalf of the Applicant trading under FOB terms.

The Respondent submitted that for transportation of goods from China to Kampala the Applicant claimed it had an informal arrangement with Mekea Import and Export Co. Ltd on premise that they would get fair rates which was also not documented. This was never provided to the Respondent either at audit or at objection.

The Respondent submitted that the Applicant never provided any receipts for the payments it made to the supplier Mekea Import and Export Co. and Amrod. The documents provided by the Applicant were not sufficient to support to Applicant's claim that the variance was due to the cost of air freight from China to Entebbe and inland transport from Mombasa to Kampala.

### Basis of the Assessment

The Respondent submitted that the Applicant failed to provide satisfactory evidence to support its argument that the variance in payments made to Mekea Import and Export Co.

Ltd and Amrod included freight from China to Kampala, and the cost of transportation from Mombasa to Kampala. Therefore, considering that the incoterms of importation were FOB, the Respondent added insurance of 1% to the listed FOB to arrive at cost and Insurance Entebbe.

The Respondent submitted that for the goods shipped by sea the Respondent added declared freight as per ASYCUDA declaration and insurance of 1% based on derived cost (FOB and freight).

The Respondent submitted that in comparing payments made by the Applicant for its goods and freight as reflected in the bank statements to its declaration in ASYCUDA was exercising its mandate as provided for under Section 122(4) of the EACCMA. Therefore, there was no deviation from the transaction value method.

## **6. Submissions of the Applicant in rejoinder**

The Applicant reiterated its submissions and submitted that it did not have any informal arrangements with its suppliers. It had two contracts, one for the supply of goods and another for the provision of freight services. The Applicant submitted that Makea's obligation ended once the goods were delivered to Kampala. It issued separate invoices for the cost of goods and cost of freight expenses. The use of FOB incoterms did not affect the declared values.

### Credit Agreements

The Applicant submitted that credit agreements are not supposed to contain incoterms as incoterms are not relevant to credit agreements.

### Freight fulfillment agreements

The Applicant submitted that it provided both credit agreement between itself and its supplier. The agreement demonstrated that it had a formal arrangement with Mekea to serve its freight fulfillment agent during the audit period. The receipts and payments confirmations are issued by the airline or shipping lines directly to the freight fulfillment agent and not the customer.

### Freight Ledger

The Applicant submitted that it invited the Respondent to conduct an onsite verification of its records so that the Applicant could explain the end of month's adjustments which was not done.

Regarding Supplier statement, the Applicant submitted that the supplier statement does not have a standard legal format and is not a primary document used in the determination of customs value.

### Receipts

The Applicant submitted that it provided a comprehensive set of supporting documents including bank statements, airway bills, freight invoices, freight fulfilment agreement and a freight ledger which establish the legitimacy of the freight costs incurred by the Applicant.

The Applicant submitted that having discharged its burden of proof to the required standard shifted the evidential burden to the Respondent to prove that it used the correct methods of customs valuation and that the Applicant did not incur air freight costs and inland freight costs to transport its goods to Uganda.

The Applicant prayed that the Tribunal finds that the Applicant is not liable to pay the tax assessed as it correctly declared the value of all its imports and paid all the taxes due to the Respondent in accordance to customs law.

## **7. The determination of the issues**

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

The Applicant is engaged in the business of marketing and supply of branded promotional products. It imports goods from different suppliers mostly MEKEA, a company based in China and AMROD based in South Africa.

The Applicant's goods enter the customs territory either via air at Entebbe or via Mombasa port in Kenya upon which they are transported to Uganda by road.

The Respondent carried out a post clearance audit on the Applicant for the period January 2018 to September 2022 to a sum of Shs. 1,483,885,930 on the basis that there were variances between its bank statements and declared customs values.

The Respondent alleged that the incoterms between MEKEA/AMROD and the Applicant were FOB (Free on board) and requested the Applicant to separate the sea freight charges in the freight ledger from other freight or else the entire freight amount would be treated as sea freight. The Respondent requested information to conclude the audit. The Applicant provided the following information to the Respondent during the course of the dispute:

- (i) Commercial invoices;
- (ii) Airway bills;
- (iii) Bills of lading;
- (iv) Freight ledger;
- (v) Supplier agreement;
- (vi) Freight fulfilment agreement;
- (vii) Supplier statement for Mekea for the period January 2022- 30 September 2023. For Amrod, the Applicant stated that the statement could only go back 3 months which was outside the audit period.
- (viii) Reconciliation of the freight costs to the entries in contention.
- (ix) a supplier statement from MEKEA for the period January 2022 to 30 September 2023 and informed the Respondent that AMROD's system could only go back three months which was outside the audit period.

The Respondent rejected the above information as insufficient and went ahead to include air freight costs and land freight costs in the customs value and taxed the same. This resulted into a total tax liability of Shs. 1,130,446,654. The Respondent claimed that the freight charges were in fact a payment for goods and not for freight.

In essence, this dispute revolves around the treatment of the freight costs and whether the information provided by the Applicant sufficiently proved the costs.

We shall now proceed to address the points in contention.

#### Transaction value method

According to the Applicant, the supplier provided the Applicant with goods but also covered the freight cost at importation on behalf of the Applicant which was later invoiced and paid by the Applicant. The Applicant fulfilled the conditions necessary to use the transaction value method and as such the Respondent had no legal basis to use alternative valuation methods since it provided sufficient evidence to prove that the correct value of goods was declared and all taxes paid.

This is supported by Section 122(4) of the EACCMA which allows a customs officer to satisfy himself or herself as to the truth and accuracy of a declaration.

Having said that, what then remains to be determined is whether the Respondent was justified in uplifting the customs value by including freight and whether the Applicant ably explained the variance.

#### Explanation of the variance

In their evidence and written submissions, the Applicant explained that the variance between the customs value and bank statements arose from freight charges which were invoiced for separately by the Applicant's suppliers.

The Applicant explained that Mekea, its Chinese supplier, supplies goods on FOB basis. FOB means that the seller's responsibility for the goods ends when the goods are placed on the ship/ carrier at the port of exit. This means that the seller's responsibility does not include freight.

However, the Applicant further stated that they entered into a separate freight arrangement with the seller for ease of tracking freight costs. Therefore, under this agreement, the Applicant contracts the seller to ship the goods to Mombasa and further on to Kampala.

In effect, the parties agreed to delineate the transaction involving the supply of goods from that for the provision of freight.

To this effect, the Applicant provided the respondent with a Freight Fulfilment Agreement between the parties which was adduced as REX 10. The agreement clearly states that Mekea shall coordinate the shipping of the goods with freight forwarders to Kampal and Entebbe on behalf of the Applicant.

The Applicant also provided hard copies of freight invoices which the Respondent acknowledged vide their letter of 5 July 2023.

The Applicant also provided a freight ledger and a reconciliation matching freight invoices to customs entry, value of the goods and dates of transaction as shown at AEX 4 (x) at page 37 of the JTB.

Therefore, on the balance of probabilities, we are satisfied that the Applicant's explanation of the variance was reasonable.

#### Air and land freight costs

Despite the above, the Respondent uplifted the customs value of the Applicant's goods by including air freight charges to Entebbe as well as land freight charges from Mombasa to Kampala.

Paragraph 2(1) of Part (1) of the 4th Schedule of the EACCMA which provides:

*"The customs value of imported goods shall be the transaction value, which is the price actually paid or payable for the goods when sold for export to the Partner State adjusted in accordance with the provisions of Paragraph 9."*

Further, Paragraph 9(2) of Part 1 of the 4th Schedule of the EACCMA provides:

*"In determining the value for duty purposes of any imported goods, there shall be added to the price actually paid or payable for the goods:*

*a) the cost of transport of the imported goods to the port or place of importation into the Partner State; provided that in the case of import by air no freight costs shall be added to the price paid or payable;*

*b) loading, unloading and handling charges associated with the transport of the imported goods to the port or place of importation into the Partner State; and*

*c) the cost of insurance."*

Based on the above, it is clear that in determining the transaction value of the goods, the following are excluded from the price paid:

- (i) Air freight; and
- (ii) By implication, road freight from Mombasa to Kampala. This is because subparagraph (a) above provides that only the cost of transport of the imported goods to the port or place of importation into the Partner State forms part of the customs value. Since the East African Community is one customs territory, it follows that importation takes place the moment the goods arrive into the territory from any of the entry points.

Therefore, from a legal standpoint, freight costs incurred in respect of air freight and land freight ought not to form part of the customs value. In addition, during cross examination, RW1 confirmed that air freight does not make up the value of goods.

However, the Respondent has argued they were justified in including the freight charges due to insufficient information. Therefore, we now turn to the information that the Applicant provided to determine whether it was sufficient or not.

#### Evidence of freight charges

The Respondent stated that the Applicant did not provide sufficient documentary evidence to show exactly what was incurred in terms of air freight costs.

We have already shown the evidence that the Applicant provided to the Applicant. However, a summary is shown below.

- (i) Freight ledger (AEX 11 at page 299-323)
- (ii) Hard copies of freight invoices and a reconciliation of the same (AEX 4 at page 29 of the joint trial bundle (JTB));
- (iii) A reconciliation matching freight invoice to customs entry, value of the goods and dates of transaction (AEX 4 (x) at page 37 of the JTB)
- (iv) Supplier statements (AEX 9 at page 163 – 173)
- (v) Bank statements (AEX 10 at pages 174 – 298)
- (vi) Freight fulfilment agreement (REX 10 at page 425)
- (vii) Credit agreement (REX 11 at page 426 of JTB).
- (viii) Airway bills (AEX 7 at pages 63 – 155 of JTB)
- (ix) Commercial invoices (AEX6 at page 59-62 of JTB)

In addition, during cross examination, RW1 stated that the Applicant separate sea freight charges from the ledger and 50% of this was found to be acceptable. However, the Respondent disregarded most of the information that was provided by the Applicant for various reasons, which we consider below.

#### Freight invoices

The Respondent stated that the invoices were not sufficient for their purposes and asked the Applicant to provide receipts to show the exact amount paid by the Applicant.

The Applicant stated that Mekea as an aggregator deals with various transporter and invoices the Applicant. The Applicant does not obtain invoices from airlines, shippers or cargo haulers. The Applicant further stated that the airway bills were adequate proof of the freight costs.

We agree with the Applicant that there was sufficient information availed to the Applicant to prove the freight costs. Further, since the Applicant does not deal directly with the transporters, as is the practice in international trade, it was unreasonable for the Respondent to insist on receipts from the airlines or transporters. This disregarded the commercial arrangements in between the Applicant and Mekea, which was contracted to handle the logistics concerning the shipment of goods to Uganda.

Further, we have also looked at the Respondent's ***Business Process Manual for The EAC - Single Customs Territory (SCT)***, which is available in their website. It states as follows on page 7:

*"Transport and freight documents these include BOL/AWB, freight and handling charges.."*

Therefore, there was no justification for rejecting the Applicant's airway bills and invoices on account of the absence of receipts.

#### Commercial invoices

Commercial invoices serve as a customs declaration and proof of sale for goods crossing borders. They detail the items being shipped, their value, and the transaction between the buyer and seller. Customs authorities use them to assess duties and taxes.

The commercial invoices showed the value of the goods purchased from the Applicant's suppliers. However, the Respondent alleges that that freight charges should have formed part of the value.

The Respondent's Business Process Manual (supra) states;

*"Commercial import and export documents include; commercial invoice, proforma invoice, packing list, insurance certificate, sales agreements/contracts etc."*

Therefore, a commercial invoice is an acceptable document for as proof of purchase and value of the goods imported.

#### Supplier statements

The Respondent rejected the supplier statements provided by the Applicant on the grounds that they were not in the right format. During cross examination, RW1 was asked whether there is a standard format for supplier statements to which she replied in the negative.

Therefore, having confirmed that there is no standard format for supplier statements, the Respondent was not justified in rejecting the Applicant's format.

### Freight fulfilment agreement

The Respondent rejected the above on the grounds that it does not state how the costs of freight would be determined.

We find this to be a frivolous reason as there was other overwhelming evidence such as invoices, freight ledgers and the airway bills which spoke to the freight costs.

### Credit agreement

The Applicant provided a credit agreement between it and Mekea which showed that the Applicant had a credit facility with Mekea. The Respondent rejected the agreement on the grounds that it did not contain incoterms. Further, the Respondent stated that Mekea did not fulfill the condition for the provision of a statement of outstanding funds owed by the 10<sup>th</sup> day of each month.

We agree with the Respondent that it is not typical for credit agreements to contain incoterms as incoterms define the responsibilities of buyers and sellers in international trade of goods. Therefore, a credit agreement would not contain incoterms.

Regarding the failure to issue monthly statements, the Respondent ought to have considered all the other information which supported the freight costs as the Applicant provided an overwhelming amount of evidence.

### Incoterms

The Applicant submitted that the terms of trade with Mekea did not affect the integrity of its transaction value. The Respondent argued that, since the transactions with Mekea were F.O.B. (Free on Board), Mekea's responsibility ended once the goods were loaded onto the ship, and therefore Mekea could not be held accountable for the freight charges. The Respondent submitted that the freight arrangement between the Applicant and Mekea was informal. The Respondent also stated that there were no incoterms used for transactions with Amrod.

The Respondent's allegation that the freight arrangements with Mekea were informal is not accurate as the Applicant provided the Respondent with the Freight Fulfilment Agreement. Further, regarding the absence of incoterms in respect of imports from Amrod, while Incoterms widely recommended and used, they are not mandatory for all international trade transactions. Incoterms will only apply or bind the parties when explicitly incorporated into a sales contract.

The International Chamber of Commerce states (<https://iccwbo.org/business-solutions/incoterms-rules/>):

*"Incoterms are .... eleven three-letter trade terms, reflecting business-to-business practice in contracts for the sale and purchase of goods."*

Therefore, while incoterms are good practice, they are not mandatory.

#### Burden of proof

On the whole, we find that the Applicant has discharged the burden of proof. They have provided sufficient information to support the freight charges. Despite the absence of receipts which the Respondent insisted in, all other documentation clearly demonstrated the freight charges.

Further, as the standard of proof in civil matters is on the balance of probabilities, we find that based on the evidence adduced by the Applicant, it is more likely than not that the freight charges disputed by the Respondent were in fact incurred and have been proved.

Therefore, there was no justification for including the air and land freight changes in the customs value of the goods. This was contrary to Paragraph 2 of the Fourth Schedule of the EACCMA.

Consequently, the Tribunal makes the following orders:

- (i) The assessment of Shs. 1,130,446,654 is hereby set aside;

- (ii) The Respondent is directed to refund the 30% deposit paid by the Applicant in accordance with section 123 (4) of the Income Tax Act; and
- (iii) Costs are hereby awarded to the Applicant.

Dated at Kampala this.....20<sup>th</sup>.....day of .....June.....2025.

*Crystal Kabajwara*  
MS. CRYSTAL KABAJWARA  
CHAIRPERSON

*Siraj Ali*  
MR. SIRAJ ALI  
MEMBER

*Christine Katwe*  
MS. CHRISTINE KATWE  
MEMBER

*RULING*

