THE REPUIBLIC OF UGANDA

IN THE TAX APPEALS TRIBUNAL AT KAMPALA

TAT APPLICATION NO. 184 OF 2023

SHURIK LIMITED .....APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY.....RESPONDENT

BEFORE: MS. CRYSTAL KABAJWARA MS. ROSEMARY NAJJEMBA MS. SAFI GRACE

RULING

This ruling is in respect of an application challenging the classification of imported medicaments under the Harmonized System Code (HSC).

1. Background facts

The Applicant imports and sells pharmaceutical products. On 08 November 2017 the Applicant sought for tax treatment of the listed items and on 13 November 2017, the Respondent wrote to the Applicant advising on the customs classification of the listed items. However, in a subsequent letter dated 1 December 2020, the Respondent wrote another letter to the Applicant changing the customs classification of the listed items.

In 2021, the Respondent conducted a spot audit on the Applicant for the period January 2021 to May 2022 and established a tax liability of Shs. 266,209,188.

On 13 September 2023, the Respondent issued a demand notice to the Applicant to pay Shs.346,071,944 being the outstanding tax plus penalties and interest.

The tax liability arose from reclassification of consignments containing medicated cold drops, menthosil cough drops and "no scar" creams declared under HS Code 3004.90.00 with a duty rate of 0% to HS Code 1704.90.00 for cold and cough drops with a duty of 25% and HS Code 3304.99.00 for the "no scar" cream with a duty rate of 25%.

The Applicant contests the liability and maintains that the products were correctly declared under the right codes.

2. The issues for determination

The following are the issues for determination:

(i) Whether the Respondent is estopped by its letter dated 13 November 2017 and 1 December 2020 from imposing an additional tax liability;

(ii) Whether the Respondent's reclassification of the Applicant's products is correct;

(iii) What remedies are available to the parties?

3. Representation

At the hearing, the Applicant was represented by Mr. Kato Wilson while the Respondent was represented by Ms. Charlotte Katuutu and Ms. Eseza Victoria Ssendege.

The Applicant's first witness was its Accountant, Mr. Alex Twesigye Mugizi Bigirwa (AW1). AW1 testified that the Applicant is in the business of importation of pharmaceutical products. He further stated that on 8 October 2017, the Applicant sought for the Respondent's position on the tax treatment of the Applicant's imports which include no scar cream, menthosil herbal cough lozenges, cold drop medicated cough drops among others. The witness submitted that on 13 November 2017, the Respondent wrote to the Applicant and classified the products as falling under HC Code 3004.90.00.

The witness further testified that in 2021, the Respondent conducted a customs post clearance audit on the Applicant and on 19th November 2021 issued the Applicant with a management letter reclassifying the Applicant's imports.

He further testified that in 2021, the Applicant filed an application in the Tax Appeal Tribunal vide Application No.101 of 2021 and challenged the Respondent's tax liability relating to misclassification of the Applicant's products to wit no scar cream, menthosil herbal cough lozenges, cold drop medicated cough drops among others.

AW1 further testified that on 4 January 2022, National Drug Authority wrote to the Applicant clarifying that Applicant's imports are herbal medicines. On 6 June 2022, the applicant objected to the demand for additional taxes. However, on 7 July 2022, the parties partially resolved the tax dispute vide Application No.101 of 2021. The

Respondent vacated the tax liability worth Shs. 433,923.141 arising from misclassification of the Applicant's listed items based on the advice from the Respondent. The parties entered into a consent which was endorsed by the Tribunal on 11 July 2022.

On 13 September 2023, the Respondent issued the Applicant a demand notice to pay Shs. 346,071,944 being the outstanding tax liability with penalties and interest. On 27 September 2023, the Applicant objected to the demand notice.

The Applicant's second witness was Mr Richard Odoi Adome a professor of pharmacy at the School of Health Sciences, Makerere University (AW2). He testified that the Applicant imports Menthosil cough drops, medicated cough drops which were wrongly classified under HC Code 1704.90.00 CPC 400 instead of 3004.90.00 and no scar cream under HC Code 3304.90.00 instead of HC Code 3004.90.00 CPC 400.

AW2 testified that the Applicant's products are registered with National Drug Authority as scheduled drug/medicine sold under prescription to treat cough and skin ailments. He also testified that Applicant's products are drugs or medicine as they do have therapeutic and prophylactic uses.

AW2 further testified that that for a product to qualify as a drug or medicine it must contain preventive or curative ingredients. He stated that the menthosil cough drops contains the following preventive or curative ingredients - mentha sylvestris, eucalyptus globulus labill, carum couticum camphora officinarum. Further, medicated cough drops contain the following preventive or curative ingredients, mentha sylvestris camphora officinarum and eucalyptus oil.

AW2 also testified that no scar cream contains the following preventive or curative ingredients - curum longa, Azadirachata indica santalumalbum linn, Ocimum santum linn, Aloe barbdensis, Rosa Centibolia Linn.

The Respondent's first witness was Mr. Francis Eyaru a Tariff Officer in the Customs Department of the Respondent (RW1). He testified that the Applicant filed TAT Application No.101 of 2021 before this Tribunal wherein the Applicant complained that the misclassification of the items in the said case arose from reliance on a classification guidance letter issued by the Respondent.

RW2 further stated that during mediation it was found out that the Respondent had issued the Applicant with a letter dated 17th November 2017 advising on classification. The HS Codes which the Applicant had been advised to use were wrong. He also stated that Respondent resolved to vacate the tax liability arising from classifications during the period in issue (April 2018 to December 2020) relating to the items in respect of which classification advice had been issued. A partial consent order was subsequently filed in the Tribunal.

Further, on 1 December 2020, the Respondent issued the Applicant with a subsequent advice letter advising the Applicant on how to classify the items under the correct HS Codes. However, the Applicant continued to classify the items under the wrong HS Codes. A spot audit carried out on the Applicant for the period January to May 2022 revealed that the Applicant misclassified consignments containing cold drops, medicated cough drops, menthosil cough drops and no scar creams under HS Code 3004.90.00 with a duty rate of 0%.

RW1 testified that the Applicant ought to have classified the cough drops and menthosil cough tablets under HS Code 1704.90.00 with a duty rate of 25% and the no scar creams under HS Code 3304.99.00 with a duty rate of 25%. This is in accordance with the advice letter of 1 December 2020. In addition, it reclassified the said consignments under the correct HS Codes and an additional tax liability of Shs.266,209,188 was established.

4. Submissions of the Applicant

The Applicant submitted that since 2017, the Applicant had been classifying the same as medicaments under HSC 3004.09 which attracts no import duty. After several years, the Respondent informed the Applicant that it ought to have classified the imports as sugar confectionary under HSC1704.90 and beauty products under 33.04.90.00 attracting import duty. This gave rise to a customs duty liability of Shs. 346,071,944.

The Applicant submitted that if the goods are, prima facie, classified under two or more headings, classification shall be effected as follows:

a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more

headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods even if one of them gives a more complete or precise description of the goods.

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

c) When goods cannot be classified by reference to 3(a) or 3(b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

The Applicant submitted that on importation of the menthosil herbal cough lozenges, cold drop medicated cough drops and no scar cream the Applicant classified them under HSC 3004.09 which reads:

"Medicaments (excluding goods of heading 30.02,30.05 or 30.06) consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured dosses (including those in the form of transdermal administration systems) or in forms of packing for retail sale."

The Applicant submitted that menthosil herbal cough lozenges, cold drop medicated cough drops and no scar creams are medicaments having therapeutic or prophylactic uses

The Applicant submitted that Heading 17.04, which the Respondent has relied on covers sugar confectionary.

The Applicant made reference to AW2 Richard Odoi Adome's evidence to the effect that the products are medicaments.

The Applicant equally stated that the evidence was not rebutted by the Respondent and the Respondent did not adduce any evidence to the contrary which shows that the Applicant's products are not medicaments.

Estoppel

The Applicant submitted that the Respondent is estopped by the doctrine of legitimate expectation from reclassifying the imports. The Respondent relied on the case of ***Republic V Kenya Authority Ex parte Universal Corporation Limited MA 460 of 2013*** where court held:

"... legitimate expectation may arise from either an express promise given on behalf of a public authority or from the existence of a regular practice."

The Applicant relied on the case of ***Tata Uganda Limited v Uganda Revenue Authority TAT No.41 of 2019*** where the Tribunal held:

"Where the taxing authority goes to sleep and as a result lulls the taxpayer into a false sense of security, that the taxes in question should not be demanded, The Respondent considered the Zecuf herbal lozenges as medicament. It should be estopped from considering them as sugar confectionaries. The Applicant relied on factual assurances from the Respondent."

The Applicant further submitted that basing on the law above and evidence, the Respondent is estopped from classifying the Applicant's imports as sugar confectionary and beauty products thereby, since the Respondent had previously advised to the contrary.

The Applicant submitted that the Respondent vacated the tax liability that had been issued against the Applicant arising from misclassification based on a letter dated 17 November 2017 vide TAT Application No. 101 of 2021. The Applicant further submitted that the TAT application No.101 of 2021 is not different from the current matter.

5. Submissions of the Respondent

In response, the Respondent raised three preliminary points of law, namely:

(i) The Applicant irregularly introduced evidence which addresses a dispute that was not addressed at objection;

(ii) The dispute was not part of the Applicant's pleadings; and

(iii) The dispute was not part of the scheduling conference.

The Respondent relied on ***Musoke Mike Vs. Kalumba James, High Court Revision Cause No.09 of 2019*** where Justice Bashaija held that a preliminary objection on a point of law can be raised at any time and can be determined first before other issues of law have been determined.

The Respondent submitted that it objects to the Applicant's introduction of evidence and arguments which were never raised in the Applicant's taxation objection but were irregularly introduced before the Tribunal during the hearing of TAT Application 184 of 2023.

The Respondent relied on **Section 16(4) of the Tax Appeals Tribunal Act** provides:

"Where an application for review relates to a taxation decision that is an objection decision, the Applicant is unless the Tribunal orders otherwise limited to the grounds stated in the taxation objection to which the decision relates."

The Respondent submitted that the Applicant's taxation objection is a letter marked 'REX5" in the Joint Trial Bundle at page 13. In the said letter the Applicant's Ground of objection was that the Applicant should not be made liable to pay taxes based on a letter with errors.

The Respondent further submitted that the Applicant did not present any grounds on the contents of the cough drops, or the no scar cream as basis of its classification of the said products. The ground and evidence supporting it was first brought to the Respondent's attention at the hearing stage of TAT Application No. 184 of 2023.

The Respondent relied on the case of ***Kasese Cobalt V URA TAT Application No. 21 of 2020***, where the Tribunal noted that to render Justice, issues should be raised at the beginning of the trial and leave sought at the beginning of the trial not the end.

The Respondent further submitted that the Applicant is bound by its pleadings and should not lead evidence or submit on a case which it has not presented in its pleadings.

The Respondent submitted that the Applicant's case as stated in its application filed on 30th October 2023 sought to challenge collection of tax by the Respondent based on a letter which the Applicant believed had errors and ought not to have been relied upon. Those facts were maintained by the Applicant in the Joint Scheduling Memorandum which was filed on 9 August 2024 and adopted by the Tribunal on the same date.

The Respondent submitted that as the parties narrowed down the dispute in the Joint Scheduling Memorandum, both parties were bound by the agreed facts and issues and the Tribunal ought to restrict itself to the agreed facts.

Estoppel

The Respondent asserted that the letter dated 1st December 2020 had no errors and the items were properly classified.

The Respondent submitted that the Applicant could not purport to rely on the 2017 advice letter and the consent settlement order relating to a previous matter. The consent arose from a compromise by the parties in a bid to achieve a win-win situation. Further, that the same was not a binding precedent capable of being relied upon in the present case.

The Respondent also submitted that the tax that was vacated in respect of the previous TAT matter related to the period April 2018 to December 2020. On the other hand, the present case related to the period January 2021 to May 2022. Further, the Respondent's subsequent advice letter of 1 December 2020 superseded the one of 2017. Therefore, the Applicant could not purport to rely on the 2017 letter.

The Respondent also submitted that the Applicant's other complaint is that the HS Codes which the Respondent advised it to use in the letter dated 1st December 2020 are non-existent and that is why the Applicant continued to use the codes in the advice letter of 17 November 2017.

The Respondent further submitted that the Applicant stated that HS Code in the advice letter of 1 December 2020 were non-existent. The Respondent maintains that the codes were correctly applied.

6. Submissions of the Applicant in Rejoinder

In rejoinder, the Applicant submitted that no new evidence was introduced that was not presented at objection or not part of the Applicant's pleadings. The dispute related to misclassification of the Applicant's imports and the same was reflected in the Joint Scheduling memorandum paragraphs 6 and 7 and the issues framed at the scheduling. Further, the Applicant submitted that this particular matter could never be resolved without addressing the aspect of the contents of the goods as there was need to establish whether goods in dispute were indeed medicaments.

7. Determination by the Tribunal

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

The Respondent raised a preliminary objection which the Tribunal will first address.

Ruling on the Preliminary Objection

The Respondent alleges that the Applicant introduced new evidence which addresses a dispute that was neither part of the Applicant's objection, their pleadings nor the scheduling conference. The Respondent submitted that the Applicant's objection was premised on the Respondent's letter dated 1 December 2020 and that the Applicant never presented any grounds on the contents of cough drops or "no scar" cream.

The Respondent relied on ***Musoke Mike v Kalumba James, High Court Revision Cause No.9 of 2019***, where Justice Bashaija stated that preliminary objections can be raised at any time.

The Respondent also relied on Section 16 (4) of the TAT Act which states:

"Where an application for review relates to a taxation decision, that is, an objection decision, the Applicant is, unless the Tribunal orders otherwise, limited to grounds stated in the taxation decision to which the decision relates."

We do not agree with the Respondent's assertions that the Applicant introduced new evidence or departed from their pleadings. This dispute has been about misclassification of the Applicant's products from the word go. The classification of the products was the subject matter of the letter dated 1 December 2020, which the Respondent wrote to the Applicant advising on the appropriate classification.

The letter cannot be looked at in isolation of its substance. Further, the parties seem to have a historical disagreement on how to appropriately classify the Applicant's products. This classification theme has consistently run through the plot of this dispute, right from the Applicant's objection letter at REX 5 which refers to the letter from *"AC Trade written to the company to change the classification of the products..."* Further, the Joint Scheduling Memorandum filed on 9 August 2024 states that the *"tax liability arose from misclassification of consignments..."*

Further, it is not in dispute that the Applicant imported certain products claiming them to be medicaments, which the Respondent disagreed with. Therefore, a pronouncement on whether the products are medicaments or mere sugar confectionaries or cosmetics depends wholly on the contents of the products. Besides, the contents are indicated on the very products that the Applicant imported

Therefore, we find that the Respondent's preliminary objection is without merit and we shall proceed to determine the matter on its merits.

The determination of the substantive application

The tax liability arose from alleged misclassification of consignments containing medicated cold drops, menthosil cough drops and no scar creams. The Applicant declared the products under HS Code 3004.90.00 with a duty rate of 0%. The Respondent contends that the correct classification is under HS 1704.90.00 which covers sugar confectionaries with a duty of 25%. Further, that the "no scar" creams ought to have been classified under HS Code 33.04.99.00 which covers cosmetics with a duty rate of 25%.

Estoppel / legitimate expectation

One of the arguments raised by the Applicant is that the Respondent is estopped from departing from the position communicated in their letter if November 2017, wherein the Respondent classified the products under chapter 30. The Applicant further argued that following this letter, the Respondent agreed to vacate an earlier assessment which was the subject matter of TAT Application 101 of 2021. This application was concluded by way of a consent settlement. The Applicant argues that the assessment in the present application should also be vacated on the same basis.

We have read both the Applicant and the Respondent's submissions concerning this point. We do not agree with the Applicant. This is because subsequent to the letter of 13 November 2017, the Respondent issued another letter dated 1 December 2020, wherein they changed the classification of the Applicant's products to fall under headings 17 and 33. This very letter is referred to in the Applicant's objection letter dated 27 September 2023 wherein they indicated that the Respondent had changed the classification of the imported products.

Therefore, in view of the letter dated 1 December 2020, no legitimate expectation was impressed upon the Applicant by the Respondent that the Respondent would maintain their earlier classification. If anything, the letter clearly communicated a change in position.

Justice Boniface Wamala, in the case of ***NSSF v Uganda Revenue Authority, Civil Appeal No. 29 of 2020***, the court held that the Authority has the right and power to

change its position on a particular interpretation. But when it does so, their new position takes effect from the time it is made and does not render the earlier position illegal or unreliable.

The Respondent changed their position on 1 December 2020. The post clearance audit that gave rise to this dispute began in 2021. By that time, the Respondent's position had changed.

Therefore, the above facts circumstances do not support the plea of estoppel or legitimate expectation.

Consent settlement

The Applicant also referred to a consent settlement that arose from concessions made by the Respondent on the basis of their letter of 13 November 2017. We agree with the Respondent that the consent settlement in respect of TAT Application No. 101 of 2021 related to different audit period, namely 2018 to 2019. The current dispute arises from a customs post clearance audit for the period January 2021 to May 2022.

Further, unless stated otherwise, consent settlements are not binding on the parties as they are entered into on a without prejudice basis.

Therefore, the Respondent is not bound to vacate the assessed taxes on the basis of an earlier consent settlement.

Whether the products should be classified under Headings 30 or Headings 17 and 33 of the HS Code

Uganda uses the Harmonized system as provided for under the East African Customs Union. Article 12(4) of the Protocol on the Establishment of the East African Customs Union provides that the Partner states shall use the Harmonized Customs Commodity Description and Coding System, specified in Annex 1 of the Protocol. This is the East African Community Common External Tariff (EAC-CET). This is used to determine the import duty payable on goods that originate from outside the Eat African Community.

The applicable version of the EAC-CET to the dispute is 2017.

We shall now proceed to consider the Chapters and headings that are in contention in the order in which they appear in the CET.

Chapter 17 which has been relied on by the Respondent to assess duty provides as follows:

"Chapter 17

Sugars and sugar confectionery

Note.

1.- This Chapter does not cover:

(a) Sugar confectionery containing cocoa (heading 18.06);

(b) Chemically pure sugars (other than sucrose, lactose, maltose, glucose and fructose) or other products of heading 29.40; or

(c) Medicaments or other products of Chapter 30."

Therefore, the above Chapter does not apply to medicaments and other products of Chapter 30.

The specific heading under Chapter 17 that the Respondent seeks to rely on is 17.04. This states:

*"**17.04 Sugar confectionery (including white chocolate), not containing cocoa.***

- *1704.10.00 – chewing gum, whether or not sugar coated – 25%*
- *1704.90.00 - other – 25%"*

Therefore, the question to be determine is, whether the Applicant's cough and cold drops are medicaments or sugar confectionary.

The Applicant contends that the products fall under Chapter 30 which covers pharmaceutical products as shown below.

"Chapter 30

Pharmaceutical products

Notes.

1.- This Chapter does not cover:

....

(e) Preparations of headings 33.03 to 33.07, even if they have therapeutic or prophylactic properties..."

Further, the specific HS Code under which the Applicant declared their imports is 3004.90.00 which states:

"30.04 Medicaments (excluding goods of heading 30.02, 30.05 or 30.06) consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses (including those in the form of transdermal administration systems) or in forms or packings for retail sale.

30.04.90.00 – Other – 0%"

Chapter 30 excludes products falling under headings 33.03 to 33.07 even where the said products have therapeutic or prophylactic properties.

The Respondent contends that the Applicant's "no scar" cream falls under HS Code 33.04.99.00, which falls within the above exclusion. It states:

"Chapter 33

Essential oils and resinoids; perfumery, cosmetic or toilet preparations...

33.04 Beauty or make-up preparations and preparations for the care of the skin (other than medicaments), including sunscreen or sun tan preparations; manicure or pedicure preparations.

3304.99.00 --Other – 25%"

An interesting observation from the above provision is that whilst the notes to Chapter 30 excludes preparations falling under headings 33.03 to 33.07 even if they have therapeutic or prophylactic properties, heading 33.04 specifically excludes preparations for the care of the skin that are medicaments.

Having looked at the chapters and headings in contention, it can be reasonably concluded that the dispute revolves around one question – whether the goods imported by the Applicant are medicaments or not.

If they are found to be medicaments, they will be classified under Chapter 30 and subject to 0% duty. If found otherwise, the goods ought to be classified under the relevant chapters and headings and subjected to the applicable import duty.

What is a medicament?

The term medicament is not defined by the HS Code. However, in the case of ***Norbook Uganda Limited v Uganda Revenue Authority, TAT 18 of 2018***, the Tribunal defined a medicament as:

"A substance used for medical treatment. In other words, it is a medicine."

Further, in ***Tata Uganda Limited v Uganda Revenue Authority, TAT 41 of 2019***, while citing the Black's Law Dictionary, 10th Edition, at page 1131, the Tribunal defined medicine to mean:

"A substance possessing or thought by professional to possess curative or remedial properties; a preparation used in treating diseases or other illnesses.

The Tribunal also defined a "drug" to mean:

"A substance intended for use in the diagnosis, cure, treatment or prevention of disease."

The Tribunal went on to state that a medicine should have therapeutic use (treatment of disease) or prophylactic use (prevention of disease).

In view of the fact that the Common External Tariff do not define a medicament, we must now establish some other legal basis for determining whether a product has medicinal properties or not.

In Uganda, the control and use of drugs and pharmaceutical products falls under the purview of the National Drug Authority ("NDA"). The NDA is established by an Act of Parliament, namely, the National Drug Authority Act, Cap 198 Section 3 of the NDA Act lists the roles of the NDA to include:

"(a) deal with the development and regulation of the pharmacies and drugs in the country;

(b) approve the national list of essential drugs and supervise the revisions of the list in a manner provided by the Minister;

(c) estimate drug needs to ensure that the needs are met as economically as possible;

(d) control the importation, exportation and sale of pharmaceuticals; (e) control the quality of drugs..."

Therefore, it is reasonable to conclude that if there is any person in Uganda who would know whether a product has medicinal, therapeutic or prophylactic uses, that person would be the NDA.

The Applicant's witness, Richard Odoi Adome, testified that the Applicant's products are registered with the NDA as scheduled medicine sold under prescription to treat

cough and the skin. Further, we have on record, a letter from the NDA to the Applicant (exhibit AEX1 at page 1 of the joint trial bundle) where the NDA states:

"This is to clarify that the products are notified by the National Drug Authority as herbal medicines...product details can be obtained from the NDA website..."

The Applicant has argued that the NDA's clarification should be sufficient to prove that the products have medicinal/prophylactic/therapeutic uses.

The Respondent on the other hand has argued that the NDA's mandate does not extend to classification. While we agree with the Respondent that the NDA is not mandated to classify imported goods for classification purposes, the purpose for relying on the NDA is not to classify the goods but to determine whether the goods are medicinal or not. This is particularly so in the absence of a definition of the term "medicament" in the CET.

Notwithstanding the above, we find the NDA's letter vague or lacking in guidance as it does not state with specificity the medicinal qualities of the products and its uses. We have also searched for the said products on the NDA website as indicated in the letter and we were unable to locate the said products on the website.

Therefore, we must now turn to other evidence, primarily, the composition of the products.

The composition of the products

The Applicant provided the Tribunal with copies of the inserts that explain the composition of the imported products. These should shed some light on what the products contain and whether the product is a medicament or not.

a) Menthosil cough lozenges

According to the inserts for this product, each lozenge contains the following ingredients:

"Mentha Sylvestris – 6.00 mg

Eucalyptus Globulus labill – 3.00 mg

Carum couticum – 0.30 mg

Sugar and liquid glucose base – Q.S

Colour sunset yellow – FCF"

The dominant ingredient at 6.00 mg is the *Mentha Sylvestris.* What is this?

According to the ***International Journal of Agriculture & Biology ISSN Print: 1560–8530; ISSN Online: 1814–9596 13S–018/2013/15–6–1313–1318 published at http://www.fspublishers.org***

"Mentha sylvestris L. (Lamiaceae), a medicinal herb is well known for many pharmacological and toxicological properties... Mentha is a small but one of the most important genus of Lamiaceae family comprising 19 species with 13 natural hybrids (Kumar et al., 2011). Since the ancient time the genus has been well-known to the researchers due to its myriad of medicinal properties (Flückiger, 1879; Blumenthal, 1998). For example, the plants are used for the treatment of wounds, swollen glands, cough, cold, fever, asthma, indigestion, influenza, vomiting, gastro-intestinal disorder (Grieve, 1931; Zhao, 2013). Mentha is also well known for its essential oil menthol, a chemical constituent widely used in pharmaceutical, flavouring and cosmetic industries (Perveen et al., 2010). Beside the medicinal properties, its oil has insecticidal, antibacterial, antifungal, anti-cancer activity (Worwood, 1993; Lee et al., 2001; Bakkali et al., 2008; Tyagi and Malik, 2010a, b). Among the species of the genus, M. sylvestris L. (synonyms of M. spicata L.), a fast growing, perennial, rhizomatous herb is native to north-eastern Africa, western Asia and southeastern Europe (Wunderlin and Hansen, 2008; USDA, 2013). The plant is the most commonly cultivated and widely used as a constituent of various drugs as well as in aromatherapy (Khan et al., 2011)."

From the above, it can be concluded that Metha sylvestris has medicinal properties and is primarily used for the treatment of several ailments. However, it can also be used as a flavouring agent.

It is also important to note that sugar composition at "qs" which stands for *quantum sufficit*, which means sufficient quantity.

Coldrop

The above product contains the following ingredients:

"Mentha sylvestris – 4.37 mg

Camphora officinarum – 0.12 mg

Eucalyptus gobulus labill – 0.15 mg

Carum couticun – 0.15 mg

Sugar and liquid glucose base – q.s

Caramel colour"

As with the lozenges, mentha sylvestris is the dominant ingredient at 4.37 mg. We have already established that this ingredient has medicinal properties and can also be used for flavouring.

No scar cream

The cream contains the following ingredients:

"Wheat germ oil (Triticum sativam lim) Sd. 2.00 ml

Huldi (Curcuma longa linn) Rz.16.00 ml

Neem (Azadirachta Indica oil) Sd. 1.00 ml

Chandan (Santalum album linn) Wd. 4.50 ml

Tulsi (Ocimum Sanctumi linn) Wp. 4.00 ml

Kunvar (Aloe barbadensis plant) Lf 1.25 ml

Gulab (Rosa Centibolia linn) Lf, 5.00 ml

Cream base Q.S"

The above list of ingredients shows that the dominant ingredient, at 16 ml is *Huldi (Curcuma longa linn) Rz.16.00 ml.* What is Curcuma Longa Linn?

According to the article, ***A Comprehensive Review on the Therapeutic Potential of Curcuma longa Linn. in Relation to its Major Active Constituent Curcumin, available on the National Library of Medicine, an official website of the United States Government*** *(https://pubmed.ncbi.nlm.nih.gov/35401176/):*

"Curcuma longa Linn. (C. longa), popularly known as turmeric, belongs to the Zingiberaceae family and has a long historical background of having healing properties against many diseases. In Unani and Ayurveda medicine, C. longa has been used for liver obstruction and jaundice, and has been applied externally for ulcers and inflammation. Additionally, it is employed in several other ailments such as cough, cold, dental issues, indigestion, skin infections, blood purification, asthma, piles, bronchitis, tumour, wounds, and hepatic disorders, and is used as an antiseptic. Curcumin, a major constituent of C. longa, is well known for its therapeutic potential in numerous disorders."

The conclusion that can be drawn from the above statement is that Curcuma longa linn, the main ingredient in the "No scar" cream, has medicinal and healing properties.

What do the above findings mean for purposes of customs classification?

a) Menthosil cough lozenges and cold drops

We have established that the main ingredient in the two products is mentha sylvestris which is used as a medicine to treat several ailments and is also used as flavouring. The menthosil cough lozenges are used to sooth sore throats and the cold drops are used to soothe irritated throat and give fast relief from cough due to cold.

Since the main ingredient can also be used as a flavouring agent, this means that the product falls under two headings.

Rule 3 (a) of the GIR provides that where goods are classified under two or more headings, classification shall be effected under the heading which provides the most specific description as compared to those which provide a more general description.

A heading refers to a specific category of goods identified by a four-digit code, which falls under a broader chapter (identified by the first two digits) and further divided into subheadings (with additional digits).

The Applicant classified the goods under heading 30.04 which covers:

"Medicaments (excluding goods of heading 30.02, 30.05 or 30.06) consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses (including those in the form of transdermal administration systems) or in forms or packings for retail sale..."

The Respondent classified the goods under 17.04. which covers:

"Sugar confectionery (including white chocolate), not containing cocoa.

In our view, heading 30.04 is specific to items containing products of therapeutic of prophylactic use such as the Applicant's products. Heading 17.04 is specific to sugar confectionaries. It appears that we have reached a deadlock. Therefore, we must dig further to determine how best to break the tie. To this end, we turned to the explanatory notes to headings 17.04 and 30.04, which provide more specific details on the items classified under the respective headings.

Explanatory notes to heading 17.04 and 30.04

We have also considered the explanatory notes to heading 17.04 as well as 30.04. The notes to 17.04 state as follows:

"This heading covers most of the sugar preparations which are marked in a solid or semi solid form, generally suitable for immediate consumption and collectively referred to as sweetmeats, confectionary or candies. It includes inter alia:

... (5) Preparations put up as throat pastilles or cough drops, consisting essentially of sugars (whether or not with other foodstuffs such as gelatin, starch or floor) and flavouring agents (including substances having medicinal properties, such as benzyl alcohol, menthol, eucalyptol and tolu balsam). However, throat pastilles or cough drops which contain substances having medicinal properties, other than flavouring agents, fall in Chapter 30, provided that the proportion of those substances in each pastille or drop is such that they are thereby given therapeutic or prophylactic uses."

In addition, the above explanatory note is also reproduced under heading 30.04 as follows:

"This heading includes pastilles, tablets, drops, etc of a kind suitable only for medicinal purposes such as those based on sulphur, charcoal, sodium tetraborate, sodium benzoate, potassium chlorate or magnesia.

However, preparations put up as throat pastilles or cough drops, consisting essentially of sugars (whether or not with other foodstuffs such as gelatin, starch or floor) and flavouring agents (including substances having medicinal properties, such as benzyl alcohol, menthol, eucalyptol and tolu balsam) fall in heading 17.04. Throat pastilles or cough drops containing substances having medicinal properties, other than flavouring agents, remain classified in this heading when put up in measured doses or in the form or packings for retail sale, provided that the proportion of those substances in each pastille or drop is such that they are thereby given therapeutic of prophylactic uses."

We have seen that the Applicant's cough drops and lozenges contain menthol as the main ingredient. Sugar is also listed as being of sufficient quantity. While, menthol is medicinal, it is also a flavouring agent. This is indicated in the article cited above which states:

"Mentha is also well known for its essential oil menthol, a chemical constituent widely used in pharmaceutical, flavouring and cosmetic industries (Perveen et al., 2010). The explanatory

notes states that where the product is a pastille or cold drop and it consists of essentially sugars and flavouring agents such as menthol, even where such flavouring agents have medicinal properties, such items fall under heading 17.04. Only pastilles or cough drops which contain substances that have medicinal properties, other than flavouring agents, fall under chapter 30.

On the balance of probabilities, we conclude that the cough drops and lozenges fall under Chapter 17 and not Chapter 30. Therefore, the tax assessed in respect of the lozenges and cold drops is hereby upheld.

b) No scar cream

While Heading 30 specifically excludes items falling under headings 33.03 – 33.07, it should be noted that heading 33.04 which the Respondent has relied on to classify the cream as a beauty product provides that preparations for the care of skin that are medicaments do not fall under 33.04.

We have established that the main ingredient in the cream, *Curcuma longa Linn. (C. longa), popularly known as turmeric* is medicinal and/or has medicinal properties, Further, heading 33.04 covers only beauty products or preparations for the care of the skin. Any skin care products that have medicinal properties used for the treatment of skin complaints such as eczema are not covered.

The insert in the 'no scar cream' product shows that it is indicated for scars, marks, blemishes including post pimple scars, stretch scars and burn scars.

However, the one-billion-dollar question that we must ask is – "Is "no scar" cream a medicament?"

Earlier on, we defined a medicament to mean:

"A substance used for medical treatment. In other words, it is a medicine."

Further, "medicine" has been defined to mean:

"A substance possessing or thought by professionals to possess curative or remedial properties; a preparation used in treating diseases or other illnesses.

What illness or disease does "no scar" cream treat. Are scars, marks and blemishes a disease or illness?

The term "scar" is defined by the Oxford Advanced Learner's Dictionary, International Student's Edition, 9th Edition, at page 1337 to mean:

"A mark that is left on the skin after a wound has healed."

Further, the American Academy of Dermatology Association states on their website https://www.aad.org/public/diseases/a-z/scars-causes concerning scars that:

"A scar forms when the body heals an injury".

From the above sources, it is quite clear that scars form after the body has undergone healing.

In view of the above, can a product be a medicament or purport to contain therapeutic (healing properties) if it is used after the healing has occurred? Most probably not.

Therefore, after careful consideration, we have reached the conclusion that the "no scar" cream is a beauty product or a preparation for the care of the skin falling under chapter 33 and not a medicament falling under chapter 30.

As a result, we find that the Respondent accorded the product the correct classification. This application is therefore dismissed with costs to the Respondent.

Dated at Kampala this..... 28 ..... day of ..... February ..... 2025.

CRYSTAL KABAJWARA	**ROSEMARY NAJJEMBA**	**SAFI GRACE**
CHAIRPERSON	**MEMBER**	**MEMBER**