THE REPUBLIC OF UGANDA

IN THE MATTER OF THE TAX APPEALS TRIBUNAL

TAT APPLICATION NO. 164 OF 2022

TROPICAL HEAT (U) LIMITED..APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY..RESPONDENT

BEFORE: MS. PROSCOVIA.R. NAMBI, MS. CHRISTINE KATWE, MS. ROSEMARY NAJJEMBA

RULING

1. Introduction

This ruling is in respect to an application challenging a tax assessment arising from a customs post clearance audit for the period January 2016 to December 2020. The core dispute revolves around the customs value of imported snacks and spices purchased by the Applicant from its related parent company, Tropical Heat Limited, Kenya (THL). The Respondent rejected the Transaction Value Method (Method 1) and applied the Fallback Value Method (Method 6), resulting in the disputed assessment. The Applicant contests the Respondent's valuation methodology and the legality of resorting to Method 6.

2. Background Facts

The Applicant is a limited liability company incorporated in Uganda, and a subsidiary of Tropical Heat Limited (THL). The Applicant is engaged in the sale of food products, specifically snacks, spices, and herbs, sourced from its parent company.

The Respondent conducted a Customs Post Clearance Audit of imports made by the Applicant from January 2016 to December 2020. On 8 December 2021, the Respondent wrote to the Applicant communicating its observations. Particularly, the audit revealed that the Applicant had declared and been assessed customs taxes using the Transaction Value Method. However, the Respondent determined that the Applicant did not qualify for this method, particularly because the relationship between the Applicant and THL influenced the price. The Respondent cited reasons such as the 27.5% discount offered to the Applicant by THL, which the Respondent argued was not uniformly offered to all other customers, and failure to enforce payment terms stipulated in the trade agreement, such as penalties for late payment and shortcomings of the Applicant's Transfer Pricing policy which was also outdated.

Consequently, the Respondent applied the Fallback Value Method (Method 6) to determine the Customs value of the imported goods. Based on the value determined under Method 6, the Respondent issued a tax assessment of Shs. 1,585,917,240 for VAT on imports for the period January 2016 to December 2020.

The Applicant objected to the assessments, claiming that the Respondent misunderstood the Applicant's legal status; the Respondent used data from an inappropriate geographical region in applying transfer pricing principles; the Respondent wrongfully disallowed discounts and rebates; the relationship with its parent company did not influence the price of the imports and that the Respondent had erroneously deviated from the transaction value method of valuation as prescribed by the East African Community Customs Management Act.

On 14 June 2022, the Respondent disallowed the Applicant's objection and maintained the assessments hence this Application.

3. Issues For Determination

The following issues are before the Tribunal for determination:

(i) Whether the Applicant is liable to pay the assessed tax of UGX 1,585,917,240?

(ii) What remedies are available?

4. Representation

The Applicant was represented by Mr. Patrick Kabagambe and Mr. Linda Mugisha both of M/s Birungyi Barata & Co. Advocates, while the Respondent was represented by Eseza Victoria Sendege and Rita Nabirye both from the Legal and Board Affairs Department of the Respondent.

The **Applicant presented the testimony of Mr. Sanjay Gandhi (AW1), the Head of Finance** of the Applicant. AW1 testified that THL offers trade discounts and rebates to all its customers, both related and non-related, to promote sales and competitiveness in various markets.

AW1 testified that the Applicant traded at arm's length with its parent company, and their relationship did not grant an unfair advantage to the Applicant or influence the price of imports. He stated that similar discounts were offered to non-related parties, evidenced by the various agreements and invoices provided. He stated that the discounts given to the Applicant were wrongfully disallowed, and the transaction value method should have been applied.

AW1 maintained that the Respondent arbitrarily applied the fallback method without justifying why the other 5 valuation methods were inapplicable, contrary to legal requirements for sequential application. He also testified that the transfer pricing policy was valid and supported by benchmark data, indicating arm's length pricing.

The Respondent presented the testimony of **Cossy Nasimbwa (RW1), a Tax Auditor in the Customs Department of the Respondent.** She testified that the audit revealed that the Applicant's customs declarations were assessed using the transaction value method initially but that upon further review the applicant did not qualify for this method of valuation.

RW1 stated that a review of the Applicant's payment telegraphic transfers showed that the Applicant did not meet the terms of payment on all its purchase invoices, as stipulated in the trade agreement with the supplier. The witness added that the trade agreement specified that the supplier would charge a 3% per month penalty on all overdue accounts, which penalty the supplier did not charge to the Applicant as per the trade agreement. She testified that the Applicant received a 27.5% discount, which the Respondent deemed without basis for a related-party transaction.

RW1 maintained that a review of the Applicant's transfer pricing policy indicated that the Applicant and the supplier were not trading at arm's length, and the TP policy itself had not been updated since 2016.

5. Submissions of the Applicant

The Applicant submitted that they are not liable for the assessed tax. They argue that they correctly declared their imports and paid the tax due based on the transaction value method. They contend that the Respondent arbitrarily disallowed the discounts and rebates, which they receive as a standard and legitimate components of commercial transactions in the industry offered to stimulate sales.

The Applicant submits that the trade discounts were offered by their supplier at arm's length because similar trade discounts were offered to non-related purchasers as evidenced in contracts and invoices provided to the Respondent. They specifically cite examples of discounts given to unrelated buyers in the region, such as 20% to Akagera Business group in Rwanda, 22.5% to Harsh Distributors and Tusker Mattresses in Kenya and 15% to a company in Tanzania. They also mention higher discounts of 30% given to other unrelated buyers for similar volumes. The Applicant argued that the prices are in the same range as competitors in the Ugandan spices and snacks market, indicating no unfair advantage.

The Applicant asserts that the transaction value of their imported goods closely approximates a test value mentioned in the provisions of **Part 1, Paragraph 2(2)(b) of the EACCMA, 2004.**

The Applicant submitted that its transfer pricing policy complies with the arm's length principle. They submitted that the use of Indian companies as comparable is valid under the Uganda Transfer Pricing Regulations 2011, Practice Note on Transfer Pricing of 5th May 2012, and OECD guidelines which allow for foreign comparables when local comparables are unavailable.

The Applicant submitted that the Respondent applied the fallback method without justifying why other valuation methods were inapplicable, in contradiction of the law, and in violation of **Section 122(1) of the East African Community Customs Management Act, 2004 (EACCMA)** and **Paragraph 2 of the Fourth Schedule**.

The Applicant relied on the case of **Testimony Motors Ltd the Commissioner of Customs Uganda Revenue Authority Civil Suit No 212 Of 2012**, stating that other valuation methods are to be used only after failure of preceding methods and arguing that the Respondent illegally applied the fallback method without demonstrating the inapplicability of preceding methods in the statutory sequence.

Regarding the relationship between the buyer and seller, the Applicant submits that the relationship did not influence the price actually paid or payable. The Applicant asserts that their transaction value closely approximates a test value mentioned in **Paragraph 2(2)(b) of Part I of the Fourth Schedule to the EAC CMA, 2004**. The Applicant submits that their transfer pricing policy complies with the arm's length principle.

The Applicant maintains that they discharged their burden of proof that their imports qualified for the transaction value method. They rely on the case of **Kyotera Victoria Fishnets Ltd v Commissioner General URA & Anor (Civil Suit No. 224 of 2014)** arguing that the burden of proof lies on the party who asserts a position and the person must present evidence to support it. They contend that the Respondent had no legal basis for applying the fallback method as there were no grounds to depart from the transaction value method and that the Customs value is to be determined using the six methods in a prescribed sequential order. The Applicant cites the court case **Testimony Motors Ltd vs The Commissioner of Customs Uganda Revenue Authority Civil Suit 212 of 2012**, which held that

> *"it is abundantly clear that other methods are to be used for valuation purposes if the method prescribed by paragraph 2 fails to establish the customs value. Secondly the interpretative notes require the succeeding method to be applied sequentially that is one after the other. It is only after failure of the succeeding paragraph that the next paragraph can be applied".*

Furthermore, the Applicant relies on **Uganda Revenue Authority v Agaba Henry Civil Appeal No. 0032 of 2021,** which held that

> *"if a valid transaction value exists, it should be used as the customs value of an imported good 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".*

While acknowledging that the burden of proof often rests on the taxpayer who challenges an assessment, the Applicant argues that once they presented genuine proof of the transaction value, the Respondent's discretion to use other methods is removed. They also cite **Dow Chemical International P. Ltd v CC, Kandla 2008 (226) ELT 420**, which stated that where a lower price is obtained by a related buyer, the onus is on the related buyer to show that the relationship did not affect the price. However, the Applicant submits that they demonstrated that the relationship did not influence the price and their transfer pricing policy complies with the arm's length principle. They believe the Respondent illegally applied the fallback method.

The Applicant then asked the Tribunal should find that the Applicant is not liable to pay the taxes assessed by the Respondent under **Section 22(6) of the Tax Appeals Tribunal Act**. The Applicant prays that the application be allowed, the assessment set aside, the 30% deposit be refunded with interest, and costs be awarded.

6. Submissions of the Respondent

The Respondent submitted that the Applicant is liable to pay the assessed tax. The Respondent argued that the Applicant and its supplier are related entities as defined under the provisions of the East African Community Customs Management Act, 2004. Specifically, the Respondent stated that the Applicant's supplier owns 99% of the Applicant's shares and is the parent company of the Applicant. The Respondent contended that due to this relationship, the prices at which the Applicant purchased the goods were influenced by their relationship.

The Respondent stated that they examined the circumstances surrounding the transaction between these related parties. Consistent with valuation principles for related parties, this examination sought to determine whether the relationship influenced the price actually paid or payable. After examining the circumstances, including the method of price derivation, the Respondent concluded that the price was influenced by the relationship, leading them to reject the Applicant's declared transaction value.

The Respondent argued that the transaction value could not be used due to what they termed "unexplained discounts". They established that the Applicant received a 27.5% discount from the supplier. The Respondent contended that this discount was not extended to all the supplier's customers, and the terms of this discount were not documented in the sales contracts. They argued these discounts were not standard trade practice but were intended to uniquely benefit the Applicant, suggesting a non-arm's length arrangement. Discounts provided to unrelated buyers were found to be lower and varied (ranging from 4% to 20%). The Respondent's witness (RW1) testified that without this discount, the price would not allow the supplier to recover all costs plus a profit representative of their overall profitability.

Further supporting their conclusion that the transactions were not at arm's length, the Respondent pointed out that the Applicant failed to meet the agreed payment terms (settlement within 60 days) without incurring the stipulated penalty of 3% per month on overdue accounts.

The Respondent submitted that they followed Uganda's Transfer Pricing rules regarding transactions with related parties and the arm's length standard. The Respondent also submitted that their review of the Applicant's transfer pricing policy indicated that the parties were not trading at arm's length as specified in the policy itself. They noted the policy was drafted in 2016, had not been updated since then, and could not confirm the reliability of the comparable companies used.

Therefore, based on the determination that the relationship influenced the price, evidenced by the unexplained and disproportionate discounts, the failure to adhere to payment terms and penalties, and issues noted in the Applicant's transfer pricing policy, the Respondent maintained that the transaction value (Method 1) was not applicable.

The Respondent submitted that the burden of proof lies on the Applicant to prove that the assessments raised were incorrect or erroneous, or that the taxation decision was flawed. They cite **Section 28 of the Tax Procedures Code Act Cap 343, Section 19 of the Tax Appeals Tribunal Act Cap 341, and Section 101 of the Evidence Act** in support of this position. The Respondent asserts that the import of **Section 28 of the**

Tax Procedures Code Act Cap 343 is that in any proceeding under that Act, the burden is on the taxpayer to prove that an assessment is incorrect, or for any other tax decision, the burden is on the person objecting to the decision to prove that the decision should not have been made or should have been made differently. This is reiterated in **Section 19 of the Tax Appeals Tribunal Act Cap 341 and Section 101 of the Evidence Act**.

The Respondent further fortified this position by citing the case of **Williamson Diamonds Ltd VS. Commissioner General 4 TTLA 167,** where the Tax Revenue Appeals Tribunal held that *"...the burden of proving that the assessment issued by the Respondent is excessive or erroneous lies on the taxpayer (appellant) and in no way may it be shifted to the Respondent..."*

Furthermore, the Respondent submitted that when dealing with related parties, particularly when a lower price is obtained by a related buyer, the onus is on the Applicant to show that the relationship did not affect the price. They cited the case of **Dow Chemical International P. Ltd v CC, Kandla 2008 (226) ELT 420,** where the court held:

"The appellant is closely related to the foreign based related supplier and their indenting agent. The presumption that such a lower price to the appellant is in view of the relationship is reasonable and it is up to the appellant to have the adduced evidence that there was no reduction due to the relationship. They have not been able to explain satisfactorily the reason for the difference in price between supply made to them and another importer. Theoretically, it is possible that the price can be lower due to fluctuations in the market. But in light of the relationship between the appellant and the foreign based supplier the onus is on them to prove that the price reduction was on a genuine commercial consideration."

Applying this analogy to the instant facts, the Respondent contended that the Applicant and its supplier are related parties, and the onus was on the Applicant to show that that relationship did not affect their prices. The Respondent asserts that the Applicant failed to discharge this burden to prove that the assessments were incorrect and that it qualified for the transaction value method.

The Respondent stated they evaluated the subsequent valuation methods but concluded the Applicant did not qualify for them. The Respondent specifically submitted that the Applicant did not qualify for the deductive value method (Method 4) because their imports consisted of a mix of spices without a uniform price, making it impossible to determine the unit price at which the greatest aggregate quantity is sold, a key requirement for applying Method 4.

Therefore, the Respondent's position is that the Applicant did not qualify for the transaction value method nor the subsequent methods, and the Respondent was justified in applying the fallback value method, rendering the Applicant liable to pay the tax as assessed by the Respondent.

The Respondent prays that the application be dismissed and costs be awarded to the Respondent.

7. Submissions of the Applicant in Rejoinder

In rejoinder, the Applicant reiterated that it had discharged its burden of proof by demonstrating the correct declaration of imports using the transaction value method and therefore the evidentiary burden shifted to the Respondent, which it failed to meet.

The Applicant argued that the Respondent failed to demonstrate that it applied the correct sequential application of customs valuation methods and failed to demonstrate that the relationship influenced the price. The Applicant relied on **Uganda Revenue Authority v Agaba Henry Civil Appeal No.0032 of 2021**, arguing that where a valid transaction value exists, it should be used as the customs value.

The Applicant emphasised that the relationship between the parties did not influence the price and that similar trade discounts were offered to unrelated parties. The Applicant reiterates that the discounts were at arm's length due to similar discounts given to unrelated buyers, providing specific examples. They state their transaction value closely approximated the test values under Paragraph 2(2)(b). The Applicant submitted that it benchmarked companies outside the region because there were no local comparables to benchmark and that it complied with international best practices.

The Applicant argues that the Respondent had no legal basis to reject the transaction value if the conditions set out in Paragraph 2(1)(a)-(d) of the Fourth Schedule were fulfilled. They cite jurisprudence ***(specifically Kamanyire v URA and Agaba Henry v URA)*** which they submit supports the primacy of the transaction value method and states that genuine proof of the actual price paid or payable takes away the Respondent's discretion to consider other methods.

The Applicant contends that the Respondent arbitrarily applied the fallback method without legal basis for departing from Method 1. They dispute the Respondent's claim that they did not qualify for Method 2 (Identical Goods), agreeing that Method 3 (Similar Goods) might not apply based on the Respondent's reasoning about lack of identical goods. The Applicant maintains their transfer pricing policy is valid and supports their arm's length claim. They argue the payment terms and lack of penalty are immaterial to the Customs valuation.

8. The determination of the issues

Having heard the evidence of the parties and read the submissions of the parties, the following is the ruling of the Tribunal.

Issue 1: Whether the Applicant is liable to pay the assessed tax of UGX 1,585,917,240.

The liability for the assessed tax hinges entirely on the correct determination of the customs value of the imported goods in question. This dispute revolves around whether the Applicant was entitled to use the transaction value method (Method 1) to determine the customs value of its imported goods, particularly given the related party relationship with their supplier, THL.

The Applicant maintains that the transaction value method is acceptable despite the related party relationship. The Applicant argues that the price actually paid or payable to their related supplier, THL, which includes the trade discounts and rebates they received, should be accepted as the transaction value for customs purposes.

The Respondent disputes this, arguing the relationship influenced the price based on their analysis of the transaction circumstances, payment terms, lack of penalties, and issues with the Applicant's transfer pricing documentation.

The question for the Tribunal to answer, therefore, is whether the Respondent was justified in rejecting the transaction value method and applying the fallback method in determining the Customs value of the imported goods.

Relevant Law

The **East African Community Customs Management Act (EACCMA), 2004** is the central piece of legislation in the case, particularly governing customs procedures and valuation within the EAC Partner States. The determination of Customs value is governed by Section 122(1) and the Fourth Schedule to the East African Community Customs Management Act, 2004 (EAC CMA).

Section 122 (1) of the EACCMA,2004 states that

> *"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 law mandates a strict sequential application of the six methods of Customs valuation, starting with the Transaction Value Method (Method 1). Subsequent methods can only be used if the value cannot be determined under the preceding method. The only exception allows the order of Methods 4 (Deductive Value) and 5 (Computed Value) to be reversed upon the importer's request.

The Transaction Value Method, outlined in Paragraph 2(1) of the Fourth Schedule, is the primary method based on the price actually paid or payable for the goods sold for export. However, where the buyer and seller are related, as in this case, the transaction value is acceptable only if the importer demonstrates that the relationship did not influence the price or that the transaction value closely approximates certain test values. For completeness, we find it necessary to reproduce the relevant provisions below.

Paragraph 2 (1) of the Fourth Schedule 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 the Partner State, adjusted in accordance with the provisions of Paragraph 9, but where..."

"...d) the buyer and seller are not related, or where the buyer or seller are related, that the transaction value is acceptable for customs purposes under the provisions of subparagraph (2)."

Paragraph 2(2) of the Fourth Schedule to the EACCMA provides guidance on related-party transactions. The relevant text is as follows:

"(2) (a) In determining whether the transaction value is acceptable for the purposes of subparagraph (1), <u>the fact that the buyer and the seller are related</u> within the meaning of Paragraph (1) <u>shall not in itself be a ground for regarding the transaction value</u> as unacceptable. In such case <u>the circumstances surrounding the sale shall be examined and transaction value shall be accepted provided that the relationship did not influence the price</u>."

The provision continues to specify the procedure when the proper officer has doubts:

"If, in light of information provided by the importer or otherwise, the proper office has grounds for considering that the relationship influenced the price, he shall communicate his grounds to the importer and such importer shall be given reasonable opportunity to respond and where the importer so requests, the communication of the grounds shall be in writing."

Furthermore, sub-paragraph (2)(b) which provides an alternative means of establishing acceptability provides:

"(b) in the sale between related parties, the transacton value shall be accepted and the goods valued in accordance with the provisions of subparagraph (1) whenever the importer demonstrates that such value closely approximates to one of the following (test values) accruing at or about the same time-

(i) the transaction value in sales to unrelated buyers of identical or similar goods for export to the Partner state;

(ii) the customs value of identical or similar goods as determined under the provisions of Paragraph 6;

(iii) the customs value of identical or similar goods as determined under the provisions of Paragraph 7."

Analysis

The Tribunal begins by affirming the fundamental principle of customs valuation under the EAC CMA: the transaction value method is the primary basis, and other methods are to be applied strictly in sequence only if the preceding method cannot be used. The Tribunal observes that the burden of proof in tax proceedings generally lies on the taxpayer to show that an assessment is incorrect or excessive. This is clearly stated in **Williamson Diamonds Ltd VS. Commissioner General \[2008] 4 TTLR 167** and has been emphasised repeatedly by this Tribunal.

In this case, the Respondent rejected the transaction value primarily because of the relationship between the buyer and seller and the discounts offered. It is not in dispute that the Applicant and its supplier THL are related parties, specifically parent and subsibiary. This Tribunal thus finds that the provision in Paragraph 2(2) above outlines a clear methodology in determining the customs value of the imported goods in question. Under Paragraph 2(1)(d) read with Paragraph 2(2) of the Fourth Schedule, the existence of a relationship does not automatically disqualify the transaction value. It can be accepted if the relationship did not influence the price, or if the transaction value closely approximates a test value.

In line with this methodology, to determine whether the Respondent was justified in rejecting method 1, the Tribunal has reviewed the grounds that the Respondent's relied on to conclude that the relationship influenced the price, that is, unexplained and disproportionate discounts, the failure to adhere to payment terms and penalties, and issues noted in the Applicant's transfer pricing policy.

Discounts and Rebates

The Respondent focused on the "unexplained" nature of the discounts and the lack of detailed contracts. The Respondent argued that the supplier indeed provided discounts to unrelated buyers, but these were different from the discount given to the Applicant.

Specifically, the Respondent's witness testified during cross-examination that the supplier did not offer the same level of discounts to unrelated buyers as they did to the Applicant. While the Applicant allegedly received a 27.5% discount, the discounts offered to unrelated buyers varied significantly, with some being as low as 4%, 17%, or 20%. The Respondent considered these lower and varying discounts to unrelated parties, compared to the higher 27.5% discount given to the related Applicant, as evidence that the price paid by the Applicant was influenced by its relationship to THL.

This Tribunal notes the principle derived from case law such **as Eicher Tractors Limited Haryan v Commissioner of Customs** (referenced by the Respondent) that discounts are a recognized feature of international trade practice. According to this principle, discounts may be acceptable for customs valuation purposes as long as those discounts are uniformly available to all and based on logical commercial bases, and are not uniquely favoring a particular importer.

While discounts, such as cash discounts or quantity discounts, are generally allowed, the Fourth Schedule indicates that such discounts may not be deductible if, among other reasons, a party's relationship affects the price. Similarly, the Eicher Tractors principle notes that discounts may be disallowed if they disproportionately benefit a particular buyer. Key factors in determining whether a discount should be disallowed include whether such discounts were extended equally to all unrelated buyers.

The Applicant contended that receiving trade discounts was standard commercial practice in their industry to promote customer loyalty, manage inventory, and encourage bulk purchases, and that the availability of similar discounts to unrelated parties demonstrated that the price was not influenced by the relationship.

The Applicant contended and provided evidence, including agreements between its supplier and unrelated buyers showing similar discounts, and invoices issued to its unrelated buyers. Specific examples of discounts given to unrelated parties included a 20% discount given to Akagera Business group in Rwanda, a 22.5% discount given to Ilarsh Distributors in Kenya, a 15% discount given to Tusker Mattresses in Kenya as well as higher discounts of 30% given to both Fresenco Savoury Limited and Rafiki Murches, who reportedly had similar volumes to the Applicant. This evidence was uncontroverted.

The Tribunal finds that the Applicant's uncontroverted evidence of similar trade discounts to unrelated parties to promote the sale of Tropical Heat products in their regions directly addresses the condition from Eicher Tractors that discounts be uniformly available to all and not uniquely favoring a particular importer. It also speaks directly to the test under the Fourth Schedule for related party transactions, aiming to demonstrate that the price was not influenced by the relationship by showing comparability to prices offered to unrelated parties.

The Respondent failed to sufficiently demonstrate that these discounts were inherently non-commercial or uniquely favored the Applicant in a manner that demonstrably influenced the price beyond what would occur in an arm's length transaction. The Respondent did not provide compelling evidence to counter the Applicant's claim that their price closely approximated a test value based on sales to unrelated buyers

Therefore, relying on the principle acknowledged in Eicher Tractors that commercially based, uniformly available discounts are acceptable, and considering the Applicant's submission of evidence suggesting that similar discounts were offered to unrelated parties, the Tribunal finds that the discounts received by the Applicant were justifiable.

<u>Transfer Pricing Policy</u>

With regard to the Respondent's submission that the Applicant and its supplier were not trading at arm's length because its Transfer Pricing policy was outdated and based on comparables in India, this Tribunal notes that transfer pricing policies, while providing context to the relationship between parties, are not, in themselves, the specified 'test' values or criteria for the acceptability of a transaction value between related parties under Paragraph 2(2)(b) of the Fourth Schedule to the EACCMA.

The Fourth Schedule establishes that when a buyer and seller are related, the transaction value is acceptable if the circumstances surrounding the sale are examined and it is determined that the relationship did not influence the price. One means for the importer to demonstrate that the relationship did not influence the price is by showing that the transaction value closely approximates certain "test" values. These "test" values are defined as transaction values of identical or similar goods sold to unrelated buyers for export to the Partner State, or the customs value of identical or similar goods determined under the deductive or computed value methods.

The Applicant, conversely, submitted evidence asserting that similar trade discounts were offered by its supplier to non-related parties, citing specific examples with various discount percentages (20%, 22.5%, 15%, and even 30% in some cases). This assertion directly relates to the question of whether the price paid by the Applicant was comparable to prices offered to unrelated parties, addressing the issue of price influence.

Therefore, the crucial question before the Tribunal, when evaluating related party transactions where influence is suspected, is whether the actual price paid, factoring in any discounts received, was influenced by the relationship, as evidenced by comparisons to unrelated party transactions or other permitted test values, not solely the internal structure or perceived shortcomings of the Applicant's transfer pricing policy document itself.

In the absence of a demonstration by the Respondent, based on a comparison to the specified test values or a convincing examination of the circumstances, that the impugned discounts indicate price influence, this Tribunal cannot fault the Applicant merely for having a transfer pricing policy that the Respondent deemed unsuitable in terms of its methodology or comparables when determining the validity of the Applicant's declared price.

<u>Payment terms and Non enforcement of penalties</u>

One piece of evidence the Respondent presented for its argument that the relationship between the Applicant and its supplier THL influenced the price, was the Applicant's failure to consistently adhere to the payment terms in their trade agreement with the supplier. Specifically, the agreement stipulated invoices should be settled within 60 days, but payment records showed payments were often made days after this period. Furthermore, the agreement included a 3% monthly penalty for overdue accounts, which the supplier reportedly did not charge to the Applicant. The Respondent's witness (RW1) indicated during cross-examination that this failure to impose penalties, alongside other factors like "unexplained discounts", suggested the relationship influenced the price.

The Tribunal notes that the Applicant's submissions and witness statements focus on the discounts being comparable to those offered to unrelated parties, not the payment terms or enforcement of penalties for late payment. The Respondent too did not submit on the comparability of payment terms adherence or penalty enforcement with unrelated parties, which could have had similar occurences. Therefore, the Tribunal cannot see how such occurrences had any effect on the pricing between the two companies.

Having determined that the conditions for rejecting the transaction value under Method 1 were not met, the Tribunal finds that the Respondent was not justified in deviating from the primary means of customs valuation.

The requirement to apply the valuation methods sequentially is mandatory. If Method 1 should have been applied, the subsequent consideration and application of other methods, including the fallback method, were contrary to the law.

The Tribunal agrees with the Applicant's submission that the Respondent's actions were illegal in that they deviated from the legally mandated sequential application of valuation methods without proper justification for rejecting the transaction value.

Given this finding, the Tribunal is not required to pronounce itself on the correctness of the application of the subsequent valuation methods, as their use was predicated on an unjustified rejection of the primary method.

Issue 2: What remedies are available to the parties?

Section 22(6) of the Tax Appeals Tribunal Act grants this Tribunal broad powers to make orders regarding costs, damages, interest, or any other remedy. Given the findings above, the Tribunal finds that the Application should be allowed and the assessment set aside.

Conclusion

For the reasons outlined above, the Tribunal finds that the Respondent was not justified in rejecting the transaction value method and applying the fallback method. The Respondent failed to provide a legal basis for deviating from Method 1, particularly in light of the Applicant's evidence regarding similar discounts to unrelated parties and the approximation to test values. The assessment raised by the Respondent, being based on an unlawfully applied valuation method, cannot stand. The Application is hereby allowed.

IT IS HEREBY ORDERED THAT:

(i) The assessment based on the fallback method raised by the Respondent is hereby set aside.

(ii) The Respondent shall refund the 30% deposit paid by the Applicant in relation to the disputed assessment.

(iii) The Respondent shall pay interest, at the prescribed rate, on the refunded amount from the date of payment until the date of refund.

(iv) Costs of this Application are awarded to the Applicant.

DATED at Kampala this 30th day of May, 2025.

MS. PROSCOVIA.R. NAMBI
CHAIRPERSON

MS. CHRISTINE KATWE
MEMBER

MS. ROSEMARY NAJJEMBA
MEMBER