THE REPUBLIC OF UGANDA

IN THE TAX APPEALS TRIBUNAL OF UGANDA AT KAMPALA

APPLICATION NO. 261 OF 2022

VEGOL LIMITED.....APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY.....RESPONDENT

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

RULING

This ruling is in respect of an application challenging an assessment of Shs. 482,998,573 on the grounds that the Respondent wrongly classified cooking fat as cooking oil for excise duty purposes.

1. Background Facts

The Applicant manufactures vegetable cooking oil and soap. The Applicant also produces a product called 18kg bakers fat that is used in baking. The Respondent carried out an audit of the Applicant for the period of July 2019 to June 2021 and classified "cooking fat" as "cooking oil" and assessed local excise duty (LED) of Shs. 482,998,573. On 9 August 2022, the Applicant objected to the additional assessments and the Respondent made a decision on 7 November 2022 maintaining the tax liability.

2. Issues to be determined

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

3. Representation

The Applicant was represented by Ms. Fatumah Ramathan Nabulya and Ms. Jenifer Ruth Mugisha while the Respondent was represented by Mr. Samuel Oseku and Ms. Rita Nabirye.

Mr. Srinivasa Rao, the Operations Manager of the Applicant, was the Applicant's first witness (AW1). He stated the process of refining crude palm oil is designed to separate crude palm oil into two fractions, Olein (liquid fraction of palm oil) and Stearin (solid fraction of palm oil). He stated that oils with a high content of stearin (solid fraction of palm oil) are sold as fat due to the public perception that in this state and quality, the solidified olein is not recommended for cooking. Therefore, the Applicant sells such products to bakeries as bakery fat.

AW1 testified that oils have a higher iodine value and lower cloud point temperature (CPT) while fats have a lower iodine value and higher cloud point temperature. If the iodine value is above 57 and cloud point temperature is between 4-6, the oil will be in liquid form and hence sold in litres as olein. If the iodine value is between a range of 42-45 and cloud point temperature is above 13 the oil will solidify at room temperature and hence sold in kilograms as cooking fat.

AW1 was asked by the Tribunal about its customers for the bakery fat in contention. The witness stated that in the period under review, they sold the bakery fat to only one customer, Ntake Bakery Limited.

Mr. Paul Erima, an Industrial Chemist employed as a Science Investigations Officer in the Respondent's Tax Investigations Department, was the Respondent's sole witness (RW1). He testified that the Respondent conducted a scientific audit on the Applicant for the period of July 2018 to June 2021 on the manufacture of vegetable oils and fats subsector.

RW1 testified that the audit revealed that there was a product sold as "Best Fry Cooking Fat 18kg" whose production process or samples were not seen by the Respondent's team during the factory visit.

He also stated that when the Respondent revisited the Applicant's factory, the Applicant highlighted that stearin from fractionation is used in the production of cooking fat and no extra olein is added.

RW1 also testified that that it observed that the Applicant uses the same production line in manufacturing the 10L and 20L jerrycan cooking oil as well as producing the Best Fry

cooking fat. Therefore, they do not have separate production equipment for each product.

RW2 also testified that the Applicant provided the Respondent with MFC Olein batch analysis reports which indicated that Fractionated High Cloud Olein was the material being analyzed. The Applicant's production data revealed that the same material "Fractionated High Cloud Olein" was issued to the same production line and packaged in 20L jerrycans. However, the resultant finished products were labeled "Best Fry Oil 20LT" and "Best Fry Cooking Fat 18kg" without any further processing to convert the Fractionated High Cloud Olein into vegetable fat.

He also testified that the scientific audit revealed the product "Best Fry Cooking Fat 18kg" was actually high cloud olein packaged in 20L jerrycans. This product is a liquid fraction from the fractionation process and is categorized as "cooking oil" and not "fat" as had been declared by the Applicant. Therefore, the Applicant is liable to pay excise duty that is applicable to cooking oil.

During cross examination, RW 1 stated that cooking oil and fat have the same composition but vary in certain aspects. For example, cooking oil has higher compositions of saturated acids.

The Tribunal summoned a representative from Ntake Bakery Limited to clarify the nature of products that were purchased from the Applicant. On 28 January 2025, the General Manager, Ms. Allen Gwokyalya Nsereko testified on behalf of Ntake Bakery Limited (TW1). She stated that the Applicant supplied cooking oil named best fry, margarine and Special Baker's Fat (SBF). She also informed the Tribunal that Ntake Bakery Limited used the Special Bakers Fat to fry mandazi and to bake cakes and bread.

She also testified that in the period in question, they purchased small quantities of Special Baker's fat as the product did not meet their quality standards. She also stated the product was weighed in kilograms and not liters.

When TW1 was asked to describe the Applicant's product, she stated that she would still describe it as oil, as it was more liquid than solid but not as solid as margarine. She also

stated that it was cloudy. She also testified that the product solidified at room temperature and would require a lot of effort to extract it from the jerrycan. This process involved placing the product in the sun for long hours or heating it to melt. She also confirmed that she would not fully classify it as normal cooking oil as that sold on supermarket shelves.

4. The Submissions of the Applicant

The Applicant submitted that they are not liable to pay the tax assessed because the product, Best Fry Cooking Fat, is a cooking fat and not cooking oil. They added that only cooking oil is taxable under the Excise Duty Act (EDA).

Section 3(1) of the Excise Duty Act provides:

"Subject to this Act, the excisable goods and excisable services in Schedule 2 to this Act shall be chargeable with the excise duty specified in that Schedule."

The Applicant submitted that under Schedule 2, Item 18 of the EDA, cooking oil is charged with an excise duty of Shs. 200 per litre. Cooking fat is not listed as an excisable good under the EDA.

The Applicant distinguished "cooking oil" from "cooking fat" as follows:

a) The physical test

According to the ***Oxford Advanced Learner's Dictionary, 10 Edition,*** the term oil is defined as *"a smooth thick liquid that is made from plants or animals and is used in cooking".*

Whereas "fat" is defined as:

"a solid substance from animals or plants, treated so that it becomes pure for use in cooking".

The Applicant submitted that a sample of its product presented in evidence, is categorized and sold as cooking fat, which at room temperature has a solid state. A sample of cooking oil was also presented in a liquid state at room temperature qualifying as cooking oil.

The Applicant submitted that its product is not subject to excise duty because it is fat at room temperature and sold in kilograms. They added that this is unlike cooking oil which is liquid at room temperature and is sold in litres due to its liquid state.

The Applicant cited ***Joseph Okuja V Uganda Revenue Authority, TAT No. 72 of 2018,*** where the Tribunal held:

"Where a provision of a statute is specific and clear, it should be given its plain meaning and application without setting new conditions for its applications."

The Applicant invited the Tribunal to find that the Applicant's product is cooking fat sold in kilograms and not taxable. Even if cooking fat is found to be chargeable, the EDA does not provide kilograms as the tax base.

b) The scientific test

The Applicant submitted that its product is cooking fat and not cooking oil because scientifically, it has an iodine value (IV) of 42-45 and its Cloud Point Temperature (CPT) is above 13.

The Applicant submitted that during his re-examination, AW1, explained that the Applicant uses the iodine value test to assess the nature of the crude palm oil, its fatty acid composition, and the percentage of saturated and unsaturated fatty acids. He clarified that saturated fatty acids are solid at room temperature, whereas unsaturated fatty acids remain liquid at room temperature. He added that when the iodine value is below 45, the crude palm oil is treated as high cloud olein, which solidifies at room temperature. This solidified form of high cloud olein is what the Applicant sells as cooking fat.

The Applicant submitted that it relied on the MFC Olein Batch Analysis Report which shows the IV and Cloud Point Temperature of various batches as manufactured by the Applicant and their categorization as either cooking oil or cooking fat. A review of AEX 7 indicates that batches with an Iodine Value of 42-45 and a Cloud Point Temperature of above 13 were classified as fat. For example:

a) Item 18 of the MFC Olein Batch Analysis Report on page 30 shows that the fractionated High Cloud Olein was classified as cooking fat because it had an Iodine Value (IV) of 45.25 and a Cloud Point Temperature (CPT) of 14;
b) Item 29 of A EX 7 on page 30 of the Joint Trial Bundle was also classified as cooking fat because its iodine value was 44.11 and had as Cloud Point Temperature of 13;

c) Item 51 of A EX 7 on page 31 of the Joint Trial Bundle was categorized as cooking fat because its iodine value was 44.1 and had a Cloud Point Temperature of 14.

The Applicant submitted that the Certificate of Analysis from Uganda Industrial Research Institute corroborates the Applicant's findings in its conclusion that the Applicant's product had an iodine vale of 32.7, which is the iodine value found in cooking fat.

The Applicant also cited the ***Perkin Elmer Palm Oil Analysis Reference Book on page 6*** which illustrates the fractionation process of palm oil, proving that this process creates two outcomes, i.e. Olein (iodine value between 56-60) which becomes cooking oil and Stearin (iodine value between 28-45) which is cooking fat.

The Applicant submitted that in addition, the Reference Book states as follows at page 3:

"After milling, various palm oil products are made using refining processes. First is fractionation with crystallization and separation processes to obtain solid (stearin) and liquid (olein) fractions... Many companies fractionate it further to produce palm olein for cooking oil or process it into other products."

The Applicant submitted that the on page 4, the ***Perkin Elmer Palm Oil Analysis Reference Book*** defines the various products obtained from palm oil as thus:

"Palm Kernel Olein is the liquid fraction derived from fractionation of palm kernel oil." "Palm Olein is the liquid fraction derived from the fractionation of palm oil... Palm Olein is fully liquid at ambient temperature..." Palm Kernel Stearin is the solid fraction derived from fractionation of palm kernel oil. Its solid fat content profile indicates it is suitable for use in confectionary facts." Palm Stearin is the high-melting fraction derived from the fractionation of palm oil. It is a useful stock for making trans-free fats...".

The Applicant submitted that the Applicant's product is cooking fat because it is solid at room temperature, has an iodine value that is below 45 and Cloud Point Temperature (CPT) above 13. These justify the Applicant's categorization of its product as cooking fat. The Applicant cited the case of ***Norbrook Uganda Limited V URA; TAT Application No. 18 of 2018***, where the Tribunal held:

"The burden is on the Applicant to prove... This burden of proof shifts. Where an Applicant states its case, the burden shifts to the Respondent to controvert it. The standard of proof is on a balance of probabilities."

The Applicant submitted that while they've ably demonstrated that their product is cooking fat and not chargeable with excise duty, the Respondent did not adduce any scientific evidence or tests to justify their re-classification of the product as cooking oil.

The Applicant prayed that the Tribunal finds that it is not liable to pay the tax assessed and awarded costs of this application.

5. The submissions of the Respondent

The Respondent submitted that the reclassification of the cooking fat to cooking oil is lawful and in accordance with Item 18 of Part 1 of Schedule 2 of the Excise Duty Act.

The Respondent addressed the following:

i) Scientific Parameters

The Respondent submitted that the tests referred to by the Applicant, namely, iodine value and cloud point temperature measure the quality of the oil and are not the basis for classifying products into oil or fat. The iodine value measures unsaturation levels, but it does not classify a product as cooking oil or cooking fat.

The Respondent submitted that the cloud point for temperatures, or the melting point can vary based on external factors such as temperature and storage conditions, making it an unreliable sole determinant of the fact that the product was fat. On supermarket shelves, several brands of oil may be cloudy at the bottom of the containers. However, this does not convert them into fats.

ii) Production Process

The Respondent submitted that the production of cooking fat typically involves hydrogenation or votation processes to alter the physical state of the oil so that it remains solid at room temperature. In this case, there is no evidence of a production process at the Applicant's factory that supports the manufacturing of cooking fat.

The Respondent submitted that the Applicant during his cross examination indicated that they only rely on the fractionation process in the production of the product they call fat and that it is only the iodine value test that determines what they would classify as fat or oil.

The Respondent submitted that during cross examination, AW1 stated that both cooking oil and cooking fat may share similar chemical compositions. The Respondent submitted that the distinction between both products should therefore be looked at in reference to the process of production and the distinction lies in their processing and intended use.

iii) Samples

The Respondent submitted that the analysis reports provided by the Applicant fell short of standards required in sample collection and testing. In the case of ***Mineral Oil Company Limited V URA TAT Application 22 of 2018*** , the Tribunal held:

"*The task of the Tribunal is accordingly to examine the process of handling the samples, their analysis and the results that formed the basis for the Respondent's decision".*

With respect to handling of samples, it was held:

"The Tribunal finds this a legitimate concern for the safety and security of the samples is important in order to prevent any possibilities of tampering with them."

"There are queries that can arise when a sample is sent for analysis without the consent and involvement of an interested party. The other party may suspect that the sample sent was not one of a finished product. Those fears can be allayed if all parties are involved".

With respect to testing of samples, it was held that; "there are concerns that affect the authenticity, credibility and legitimacy to the findings. However, if the Respondent may after obtaining third party information, decides to test a sample of the goods imported it must be obtained in a transparent and fair way. There should be a link between the sampling and the report."

The Respondent submitted that at the time of the investigative audit by the Respondent, no sample was drawn or presented at the premises. This raised concerns about the authenticity of the sample and the credibility of the lab reports adduced in evidence by the Applicant. The absence of a sample during investigation undermines the Applicant's

claim, as it fails to meet procedural standards for evidence collection. The sample presented was not drawn in the presence of both parties violating principles of fairness and transparency in evidence collection.

The Respondent submitted that the Tribunal cannot determine that the sample represents the Applicant's product without proper chain-of- custody documentation. The lack of procedural integrity in obtaining and presenting the sample casts doubt on its reliability as evidence.

The Respondent submitted that the Applicant further references a sample labeled AID2, which was reportedly analyzed by SGS Kenya Limited Laboratory Services. This sample shows significant inconsistencies in the physical appearance when compared to the one presented by the Applicant on page 57 of the trial bundle as well as the sample admitted in court. These constitute significant discrepancies in the product samples. Such samples and lab reports would mislead the Tribunal in its determination of this dispute.

The Respondent submitted that in the case of ***M-Kopa Uganda Limited V URA HC Civil Appeal No. 7 of 2021***, it was held:

"There are numerous authorities laying down the principles upon which Courts should approach contradictions in evidence. Courts will readily ignore minor contradictions which do not go to the root of a party's case and which have been satisfactorily explained away. However, major contradictions which go to the root of a party's case and which have not been satisfactorily explained away often indicate untruthfulness and, almost invariably, lead to the rejection of that evidence".

The Respondent submitted that the Tribunal should disregard the sample presented by the Applicant due to procedural flaws during its collection and testing and the contradictions in the lab test reports provided.

iv) Certificate of Analysis and Analysis Report from SGS Kenya Limited Laboratory Services

The Respondent submitted that the analysis report from SGS Kenya Limited is not applicable given the fact that Uganda has its own analytical laboratories, where the

product is manufactured. There is no evidence to show that this report has complied with Ugandan standards or regulations, which could be different from those in Kenya. The products manufactured in Uganda may be exposed to different environmental conditions (e.g., climate, storage) than those in Kenya, which could affect the product's properties and render the SGS report less relevant. The Respondent further stated that the Report relied on is neither certified by the said authority nor legitimized for use before the Tribunal.

The Respondent contended that documents AID1 and AID2 assert that samples were received on 8/05/2023 and 14/03/2023. However, during cross-examination, the Applicant testified that production of cooking fat ceased in 2021 due to the discontinuation of crude palm oil procurement. The three-year gap between the alleged production halt (2021) and the sample collection (2023) renders the origin of these samples logically implausible. If production had indeed stopped in 2021, the 2023 samples could not have originated from the Applicant's operations. The Respondent submitted that the evidentiary weight should be according to these reports and samples.

v) Applicant's Contradiction on Stearin Content

The Respondent submitted that during cross-examination of AW1, the Applicant asserted that cooking fat contains a "high content of stearin". However, an illustration of data the WIP Analysis Completion forms for Best Fry Cooking Fat a sample of M13992 on page 1 mirrors the material inputs of the same source M13992 on page 5 of the WIP Analysis Completion Form to be/ include:

a. Best Fry Label 18Kg Fat,
b. Finamul,
c. Fractionated High Cloud Olein,
d. Ep Wads with Aluminum Foil 43.4mm,
e. Vitamin A&D,
f. Caps Jerry Can Red
g. Jerry Can Empty 20LT
h. Best Fry Cooking Fat (Source M 13992) reveal no Stearin in the material inputs.

The Respondent argued that the WIP Analysis completion form on page 8 also reflects the product as cooking oil. An example is the sample source M13242 which indicates material inputs on page 11 as Best Fry Label 20LT, Finamul, Fractionated High Cloud Olein, Ep Wads with Aluminum Foil 43.4mm, Caps Jerry Can Red and Jerry Can Empty 20LT. This supports the Respondent's classification of the product as cooking oil and not cooking fat.

The Respondent contended that the Applicant sells cooking oil in both litres and kilograms and hence the unit of measure does not imply that the product in question is cooking fat. Both products share identical ingredients. Pages 8 (WIP Analysis for Cooking Fat) and Page 11 (material inputs for M13990) confirm that no stearin was used in the formulation of the production of cooking fat.

The Respondent submitted that the absence of stearin in the production process, coupled with identical inputs for both products, invalidates the distinction between "cooking fat" and "cooking oil" as alleged.

The Respondent further submitted the testimony of Ms. Gwokyalya Nsereko, the General Manager of Ntake Bakery, that the Applicant supplied them with a product that appeared excessively cloudy and contained solid white particles. This was the basis for the bakery's decision to discontinue the supply. Ms. Gwokyalya further testified that she believed the product was not fat but rather oil, directly contradicting the Applicant's claim that they sold cooking fat, which is solid at room temperature.

This assertion is further supported by the precedent set in ***Dabur Industries Ltd Vs Commissioner of Central Excise, Jamshedpur (2005) 4 SSC 9,*** where it was held that in classifying a product, reliance should not be placed solely on its scientific or technical definition. Instead, the determining factor is how the product is understood and perceived by its users. The Respondent submitted that the Applicant's assertion that they supplied cooking fat is untenable and should be dismissed with costs.

6. Submissions of the Applicant in Rejoinder

In rejoinder, the Applicant reiterated its submissions stating that iodine value and cloud point temperature are some of the identity characteristics used to differentiate cooking oil (palm olein) from cooking fat (Palm stearin). The Applicant submitted that the categorization of its product as cooking fat is supported by clear and uncontroverted evidence and internationally recognized classifications.

The Applicant further stated that the product in issue is a byproduct from the fraction process of manufacturing cooking oil. The Applicant does not set out to manufacture cooking fat as a primary product, hence the absence of an independent production line for cooking oil. The Applicant's production process involves subjecting crude palm oil through a fraction process that creates two fractions, that is Olein (Liquid Fraction/oil) and Stearin (Solid Fraction/fat). The Liquid fraction is further processed into cooking oil while the solid fraction is sold as cooking fat.

In the case of ***Bailey's Industrial Oil and Fat Products***; 6 Volume Set, page 556, the author explains hydrogenation as:

"The process most widely employed to change the physical characteristics of natural fats and oils to make them better suited for specific applications. Hydrogenation of edible fats and oils involves the addition of hydrogen, in the presence of a catalyst, to the carbon-carbon double bonds present in the fatty acid chains".

The Applicant submitted that fractionation is highlighted as one of the processing methods on page 557:

"Fractionation of edible fats and oils has become an important and a versatile oil modification process. Fractionation separates fats and oils into fractions with different melting points, Fractionated fats and oils have been used to prepare a variety of foods such as margarines, shortenings, salad oils, frying oils, and confectionery products."

The Applicant argued that the Tribunal should find that the Respondent's assertion that the Applicant was not manufacturing cooking fat due to the absence of hydrogenation at its premises, is fundamentally flawed since it fails to recognize that fractionation, which is

employed by the Applicant, produces fat as a by-product, and the fat is sold by the Applicant as Best Fry Cooking Fat 18kg.

Samples

The Applicant submitted that the evidence tendered in by the Applicant (A EX 91 and A EX 91), the Respondent is estopped from challenging the authenticity of the exhibits, long after the parties closed their cases.

The Applicant cited the case of ***Billiah Matiangi V Kisii Bottlers Ltd; Civil Appeal No. 25 of 2020***, it was held:

"When the documents are tendered in evidence as exhibits by either party and the court admits the documents in evidence, it becomes part of the judicial record of the case and constitutes evidence...".

The Applicant submitted that the Respondent's argument above is an admission that it did not carry out any scientific analysis of the Applicant's product. Accordingly, the assessment issued on grounds that the Applicant misclassified its product as cooking fat, has no legal or scientific basis.

The Applicant submitted that the Certificate of Analysis issued by the Uganda Industrial Research Institute shows that five testing parameters, namely; Moisture and Matter volatile, Peroxide Value, Acid Value, iodine value and slip melting point, were applied in classifying the Applicant's product as cooking fat.

The Applicant further submitted that the Respondent has not adduced any evidence to indicate that the SGS Report violated any Ugandan standards or regulations.

Additionally, the Applicant's product was tested by the Uganda Industrial Research Institute, a government parastatal offering analytical laboratory services in the field of industrial chemistry, (A EX 1). The iodine value and cloud point temperature are internationally recognized standards in distinguishing between what constitutes cooking fat.

The Applicant submitted that that in much as the Applicant had discontinued the importation of Crude Palm Oil, which gives off the Stearin content (Best Fry Cooking Fat

18kg), it kept samples which the Respondent refused to take during its visit to the Applicant's premises.

The Applicant contended that it sells cooking fat in kilograms, because of its solid state at room temperature. On the other hand, cooking oil is sold in litres, because of its liquid state at room temperature.

The Applicant submitted that Ms. Gwokyalya Nsereko testified that the Applicant supplied cooking fat used for baking purposes, which was delivered as a solid substance. Furthermore, when asked whether she would compare the Applicant's product to cooking oil found in supermarket shelves, she answered in the negative. A sample of the sales invoices for the 18kg fat (AEX 8) indicates that the product was sold in kilograms and bought by Ntake Bakery as cooking fat.

The Applicant submitted that Ms. Gwokyalya Nsereko did not adduce any scientific criteria that formed the basis of her conclusion on whether the Applicant's product was cooking fat or oil. The Applicant prayed that the Tribunal finds that the Applicant's product is cooking fat and not subject to the tax assessed.

7. The determination of the issues

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

The Applicant deals in the manufacturing of vegetable cooking oil and soap. The Applicant also manufactures a product called 18kg bakers fat that is used in baking. The Respondent re-classified "cooking fat" as "cooking oil" and imposed Local Excise Duty (LED). Under Schedule 2, Item 18 of the Excise Duty Act ("EDA"), cooking oil is charged with an excise duty of Shs. 200 per litre. Therefore, the question that the Tribunal must determine is whether the product in contention, that is, Best Fry Cooking Fat, is cooking oil and hence liable to excise duty.

The Applicant advanced the following arguments:

i) Tests carried out on the products, namely, iodine value and cloud point temperature, which are standard industry tests, revealed that the product is not cooking oil. The Applicant adduced evidence from several lab tests;

ii) A physical examination of the product shows that the product is fat and not oil. This is because the product is not liquid. Instead, it is solid at room temperature.

iii) The Applicant uses the fractionation manufacturing process, which processes crude palm cooking oil and separates it into liquid oil (olein) and solid fat, a by-product of the process (stearin).

The Respondent's arguments can be summarized as follows:

i) The Applicant's samples cannot be relied on as they were not obtained in the presence of the Respondent.

ii) The Respondent conducted a scientific audit on the Applicant and established that the product was cooking oil. However, the Respondent did not provide any scientific evidence that led to this conclusion.

iii) The tests carried out by the Applicant, namely iodine value and cloud point temperature measure the quality of the oil and are not the basis for classifying products into oil or fat. However, the Respondent did not present alternative scientific tests.

iv) The Applicant did not have the equipment that is ordinarily used for the manufacture of fat (stearin). Specifically, the Applicant did not have the hydrogenation manufacturing process.

We now deal with each of the above points of disagreement.

1. Admissibility of the sample

The Respondent submitted that at the time of the investigative audit by the Respondent, no sample was drawn or presented at the premises and that the sample presented was not drawn in the presence of both parties and hence should be disregarded by the Tribunal.

At the hearing of the application on 11 July 2023, the Applicant tendered in the samples and marked them as annextures A 9 (i) and A9 (II). The Respondent did not object to the admission of the samples. On the same day, the Tribunal directed the Respondent to bring the samples that were taken from the Applicant's premises that formed the basis of the assessment.

However, when the parties returned on the 19 September 2023, the Respondent did not bring the samples as promised and Mr. Kamugisha Simon, Counsel for the Respondent stated that he did not agree with the Applicant's samples. On 11 September 2024, during cross examination, RW1 was asked about the minutes of the meeting of 28 January 2022 between the Applicant and the Respondent's Tax Investigation Department wherein the record showed that the Applicant presented samples to the Respondent. RW1 stated that while the samples were presented, the Respondent did not take them. However, this is not reflected in the minutes of the meeting.

The Respondent's opposition to the samples is an afterthought aimed at throwing a spanner in the works. Firstly, RW1 stated that the Respondent carried out a "scientific audit" of the Applicant. Further, the witness stated that they visited the Applicant's factory during the audit but did not sample any products. On the other hand, the record shows that the Applicant presented samples to the Respondent on 28 January 2022. The Respondent could have obtained third party information e.g., from the Applicant's customers. This too was not done. In fact, it is against this background that the Tribunal summoned Ntake Bakery Limited, the Applicant's sole customer of the cooking fat to explain the nature of products that they purchased from the Applicant

It is important for tax audits to be carried out in a manner that ensures completeness and that any data obtained is complete and accurate. This is the Respondent's statutory duty and while the burden of proof in tax matters lies with the Applicant, this is not carte blanche for the Respondent not to be diligent with their duties.

Having been given the opportunity to provide their own samples and failed, the Respondent cannot now use that to disqualify the Applicant's case, especially after the Tribunal admitted the Applicant's samples.

2. The manufacturing process

The Respondent argued that the Applicant lacked the necessary manufacturing process used to produce cooking fat. Specifically, they stated that the Applicant did not have the hydrogenation or votation process installed at the factory. The Respondent also stated that they carried out a scientific audit which involved a review of the Applicant's manufacturing processes and there was no need for samples. On the other hand, the Applicant stated that they use fractioning to manufacture both cooking oil (olein) and fat (stearin). We examine both processes below.

Difference between Hydrogenation and Fractionization?

According to ***Bailey's Industrial Oil and Fat Products, Sixth Edition:***

"Hydrogenation is the process most widely employed to change physical characteristics of natural fats and oils to make them better suited for specific applications. Hydrogenation of edible fats and oils involves the addition of hydrogen, in the presence of a catalyst, to the carbon-carbon double bonds present in the fatty acid chains."

Bailey's (supra) goes ahead to define fractionation as follows:

"Fractionation of edible fats and oils has become an important and versatile oil modification process. Fractionation separates fats and oils into fractions with different melting points. Fractionated fats and oils have been used to prepare a variety of foods such as margarines, shortenings, salad oils, frying oils and confectionery products."

The above definitions show that hydrogenation and fractionation are separate and distinct manufacturing processes.

In addition to the above, Malaysian Palm Oil Council ("MPOC"), a government organization that is dedicated to positioning Malaysia, the leading producer of palm oil globally, states:

"...the addition of hydrogen atoms during hydrogenation can cause some oils to solidify into a texture similar to that of many oils high in saturated fats, producing trans-fats."

However, on fractionation, the MPOC states:

"Due to its semi-solid nature, palm oil can be incorporated into foods without the need for hydrogenation. Due to its semi-solid nature, there is no need for palm oil to go through hydrogenation (Mat Dian et al. , 2017). This is due to the 50% saturated fatty acids content, structure of triacylglycerols, as well as higher melting point. Palm oil can also be processed into fractions that have different melting points. Typically, palm oil has two fractions, which are liquid oil olein and hard stearin. This attribute makes palm oil a versatile vegetable oil for various food applications (Deffense ,1985)."

The above statements further supports the fact that hydrogenation and fractionation are separate and distinct processes.

Therefore, the Respondent's statement that the absence of stearin in the production process, coupled with identical inputs for both products, invalidates the distinction between "cooking fat" and "cooking oil" is inaccurate. This is because in fractionation, stearin is not a raw material; it is a byproduct of the fractionation process after the Crude Palm Oil has been separated into liquid (olein) and solid fat (stearin).

Indeed, at the hearing, the Applicant explained that they use fractionation process to separate crude palm oil into liquid oil (olein) and solid fat (stearin).

Rather than seeking to understand the Applicant's manufacturing, the Respondent instead focused on the absence of the hydrogenation process, which the Applicant does not utilize in their business. At the hearing, RW1 stated that they carried out a scientific audit which involved examining the Applicant's manufacturing processes. However, it appears that the Respondent assumed that every palm oil manufacturer uses the hydrogenation process whereas not. The Respondent ought to have evaluated the Applicant's business on its facts and circumstances.

Iodine value and Cloud Point Temperature tests

The Applicant subjected their products to iodine value and cloud point temperature tests. The Applicant argued that the above tests determine whether a product is olein (cooking oil) or stearin (cooking fat). The Respondent challenged the tests on the grounds that iodine value and cloud point temperature measure the quality of the oil and are not the

basis for classifying products into oil or fat. Further, the Respondent disputed some of the laboratories that the Applicant used for testing.

Malaysia, a global leader in palm oil production has published palm oil specification standards. ***Malaysian Standard, MS 816:2007 for Palm Olein Specification, Second Revision*** lists iodine value of 56.0 -59.1 as one pf the identity characteristics of palm olein. Others include smelting point and fatty acid composition.

In addition, according to the ***Malaysia Palm Oil Council FAQs on Palm Oil*** (*https://www.mpoc.org.my/wp-content/uploads/2024/01/QandA-Series-on-Palm-Oil-Facts-On-MPO-2016.pdf*) state as follows:

"Palm olein has a 'cloud point' of approximately 10°C. So, whenever the temperature drops to 10°C, the palm olein molecules crystallise; making the oil appears cloudy. This is a natural physical transformation of the oil at lower temperature (or in cold climate)."

In addition, the ***Palm Oil Analysis Reference Book, Palm Oil Analysis: Complete Lab Solutions from Upstream to Downstream, published by Perkin Elmer*** states:

"Palm oil...has an iodine value of about 56-59 and a cloud point of 10 degrees Celsius...palm olein is fully liquid at ambient temperature in warm climates..."

Therefore, the following conclusion can be drawn from the above studies / information:

a) Palm Olein has an iodine value range of 56.0 – 59.1. Therefore, any product that falls outside this range is not olein.
b) Palm olein has a cloud point temperate of 10 degrees Celsius. This means that it solidifies at temperatures above 10 degrees Celsius.

Having established the above standards of measurement, the next step is to determine whether the Applicant's products fall within or outside the above standards.

This summarized in the table below.

Institute	Product	Test	IV range for Palm Olein	Result	Interpretation

Uganda industrial institute	Cooking fat (Stearin)	Iodine Value	**56 – 59.1**	32.7	Below range
SGS Kenya Ltd Laboratory Services	Best Fry Refined Vegetable oil	Iodine Value	**56 – 59.1**	56.0	Within range
SGS Kenya Ltd Laboratory Services	Cooking Fat	Iodine Value	**56 – 59.1**	48.5	Below range

The above tests indicate that the iodine value of the cooking fat was below the standard range for palm olein. Therefore, it is reasonable to conclude that based on the scientific analysis, the Applicant's cooking fat was not cooking oil.

Further, the Applicant's batch analyses presented at pages 30 – 34 of the Joint Trial Bundle show several line items whose iodine value is less than 56. This indicates that based on the standard scientific specifications for palm olein, such products were not cooking oil and were cooking fat,

Further, the studies cited above show that palm olein is fully liquid at ambient temperature in warm climates. In addition, Miss Gwokyala Nsereko, who appeared for Ntake Bakery, the Applicant's customer for best fry cooking fat, stated that the Applicant's product would solidify and that they (Ntake Bakery) would place the product under the sun to liquify. Further, when asked whether the product looked like the cooking oil that is found on most supermarket shelves, she stated that it did not as it was not as liquid as the ordinary cooking oil. She also stated that upon purchase, the product was weighed in kilograms and not litres. This shows that the product was solid and not liquid.

Therefore, taking into consideration all of the above, namely, a) that palm olein is liquid at room temperature, b) Ntake bakery, upon purchase, weighed the Applicant's product in kilograms and not litres and c) combined with Uganda's very warm climate, it is more likely than not, that the Applicant's product, which required direct sun light to liquify, was not palm olein / cooking oil.

In sum, based on the all the evidence adduced, we find that the Applicant has on the balance of probabilities, discharged the burden of proof. On the other hand, the Respondent has not presented any real evidence, scientific or otherwise, to support their conclusion that the Applicant's product was cooking oil and not cooking fat.

In the circumstances the Tribunal hereby allows the application and makes the following orders:

(i) The assessment of Shs. 482,998,575 is hereby set aside.

(ii) Costs are awarded to the Applicant.

Dated at Kampala this ....16th....day of ....May....2025.

CRYSTAL KABAJWARA	**SIRAJ ALI**	**CHRISTINE KATWE**
CHAIRPERSON	**MEMBER**	**MEMBER**