

THE REPUBLIC OF UGANDA
IN THE TAX APPEALS TRIBUNAL AT KAMPALA
APPLICATION NO.163 OF 2024

YOGI STEEL LIMITED.....APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY..... RESPONDENT

**BEFORE: MS. CRYSTAL KABAJWARA, MRS. STELLA NYAPENDI CHOMBO,
MS. GRACE SAFI.**

RULING

This ruling is in respect of a preliminary objection on the grounds that this application is incorrectly before this Tribunal, bearing a wrong party (the Respondent) and the Applicant has no standing before this Tribunal.

1. Background Facts

The Applicant is a registered company carrying on the business of manufacturing steel products. The Applicant was granted a duty remission for 15,000 MT of bars and rods (HS Code 7213.91.10) under Section 140 of the East African Community Customs Management Act, applicable for the 12-month period of the FY 2023/2024.

On 1 April 2024, the Applicant purchased a consignment of 255 steel wire rods in coils, with a total net weight of 527.97 MT from Indo Gulf Steel FZE, United Arab Emirates. The Applicant also purchased 255 coils of Steel wire rod coils which were loaded via carrier Lynux Shipping Limited headed for Mombasa from Tianjin Port in China.

On June 7 2024, the Applicant attempted to process the customs entry for the goods but discovered that the duty remission had been revoked. On 10 June 2024, the Applicant was notified that the duty remission for the items was revoked vide Legal Notice EAC/93/2024 dated 15 April 2024.

The Applicant subsequently warehoused the goods in Mombasa, incurring significant demurrage costs while engaging with the Respondent to resolve the issue of the duty remission revocation.

At the time of the revocation, the Applicant had utilized 1,549.260 MT of the 15,000 MT granted under the Duty Remission Scheme and no reasons were communicated for the revocation.

The Applicant wrote to the Respondent and the Ministry of Finance challenging the revocation and requested a reconsideration of the decision and was subsequently informed that the revocation was due to the government's intention to promote its industrialization agenda and to further support local manufacturers who have invested in the domestic production of wire rods with sufficient capacity.

The Applicant being dissatisfied by the Respondent's decision filed this Application before this Honourable Tribunal under Section 230 of the East African Community Customs Management Act, 2008. The Applicant subsequently filed Miscellaneous Application No. 16 of 2025 requesting the provisional release of the goods in dispute pending final determination of the substantive matter.

On 13 March 2025, the Application came up for hearing wherein the Respondent requested that security for the provisional release of the goods be provided by the Applicant basing on Sections 106 and 107 of the East Africa Customs Management Act, 2008. On 20 March, 2025 when the matter came up for conferencing, the Respondent raised a preliminary objection to the jurisdiction of the Tax Appeals Tribunal.

2. Issues for determination

The main issue for determination is whether the Applicant has standing before this Tribunal and whether the application has a legal basis.

3. Representation

The Applicant was represented by Mr. Cephaz Birungi, Mr. Patrick Kabagambe, Ms. Jackie Aturinda, Ms. Tracy Ainebyona, Ms. Linda Mugisha and Mr. Bruno Amanya while the Respondent was represented by Mr. Agaba Edmond, Mr. Nuwaha Barnabas and Ms. Ritah Nabirye.

4. The Submissions of the Respondent

The Respondent submitted that this application is incorrectly before the Tribunal, bearing a wrong party (the Respondent) and the said application having no legal basis.

The Respondent argued that it is a wrong party to this application and relied on Section 140 of the East African Community Customs Management Act (EACMA), Regulations 3, 5 and 15 of the EACMA Duty Remission Regulations 2008 which designates the Council of Ministers as having the power and responsibility to grant and or revoke duty remission. The roles of the Commissioner under the said laws do not include granting or revoking duty remission or being responsible for acts or omissions relating to duty remission and as such the Respondent has no legal obligation with regards to the claim filed by the Applicant. Sections 229, 230 of the East African Community Customs Management Act confer jurisdiction to the Tax Appeals Tribunal regarding scenarios where a person is dissatisfied with an act or omission of the Commissioner.

The Respondent submitted that the pleadings of the Applicant do not disclose which act or omission of the Respondent they seek redress against. All the acts averred are neither the responsibility nor mandate of the Respondent and as such the Respondent is a wrong party to the suit. The East African Community Customs Management Act and EACMA Duty Remission Regulations clearly set out the framework and responsibilities regarding duty remission with no designation that the Respondent take responsibility for the same or be answerable under the law.

The Respondent argued that their role is to implement the decisions of the Council of Ministers regarding duty remission and its erroneous in law and fact to hold the Respondent responsible for any discrepancy or issue regarding duty revocation unless

the same is the statutory responsibility of the Respondent and pray the Tribunal be pleased to hold accordingly.

The Respondent also submitted on cause of action/locus standi and relied on Section 229 of the East African Community Customs Management Act which is to the effect that a person affected by the decision or omission of the Commissioner shall lodge an application for review of that decision. The EACCMA does not prescribe any role or responsibility on the Respondent with regards to duty remission.

The Respondent submitted that the Applicant under paragraphs 4 and 5, seeks for remedies which are not the mandate and or preserve of the Respondent or any of the Officers of the Respondent and there is no such decision act or omission envisaged under Section 229 from the Commissioner nor any omission pleaded thereof and accordingly the Applicant has no locus standi.

The Respondent contended that for a party to seek redress against a statutory corporation, the said corporation ought to be in breach of duty expressly laid out under the law (statute recognizes the breach in the claim, the manner of its infliction, category of person and conduct amounting to breach of statute). The facts relied on by the Claimant have to fall precisely within the statute as being responsibility or omission of the Corporation and or its agents and the Respondent is a wrong party to the Application and the Applicant has no cause of action per their application against the Respondent and in the circumstances, we prayed that the Application is accordingly dismissed with costs.

5. The Submissions of the Applicant

The Applicant argued that the present matter is governed by the East African Community Customs Management Act, 2004 (EACCMA), which provides the legal framework for customs-related disputes, including disputes arising from the revocation of duty remission and that duty remission falls squarely within the ambit of Section 140 of the EACCMA, which empowers the Council to grant remission of duty on goods imported for manufacturing. This remission directly affects the rate of import duty applicable to the goods, making it a matter of customs law under the EACCMA.

The Applicant relied on Section 2 of the EACCMA which defines import duties as “customs duties and other charges of equivalent effect levied on imported goods.” The revocation of remission results in the imposition of duty, which can be reviewed and subsequently appealed within the EACCMA framework. The Applicant was granted remission for Wire Rods (HS Code 7310.19.10) at a 0% duty rate for the financial year 2023/2024. The dispute arises from the revocation of this remission and the consequent imposition of duty. This falls squarely under customs matters as defined under the EACCMA.

The Applicant submitted that the EACCMA establishes a clear dispute resolution mechanism for customs-related matters, including duty remission and relied on section 229,230,231.

The Applicant submitted on jurisdiction that Sections 106 and 107 of the EACCMA concern the provisional release of goods pending dispute resolution and allow the Tribunal to impose security conditions on the taxpayer as a condition for release. The Respondent, by invoking these provisions has recognized the Tribunal’s authority over this dispute and it is contradictory and legally untenable for the Respondent to argue that the Tribunal lacks jurisdiction while simultaneously requesting relief under the same Act.

This conduct amounts to approbation and reprobation, which is prohibited under the principle of estoppel. The maxim of “approbate and reprobate” reflects the principle whereby a person cannot both approve and reject an instrument, often more commonly described as blowing hot and cold, or having one’s cake and eating it too.

The Applicant argued that The Respondent’s conduct in this matter clearly falls within the doctrine of approbation and reprobation. Having invoked the provisions of Sections 106 and 107 of the EACCMA seeking to compel the Applicant in Application No.16 of 2025 to furnish security for the disputed taxes, the Respondent cannot now be heard to question the very jurisdiction it previously relied upon. The Respondent made a clear and unequivocal election to participate in these proceedings before this Honorable Tribunal and seeking relief under the EACCMA.

This conduct is fundamentally inconsistent with its subsequent objection to jurisdiction. The Applicant complied with the Tribunal's directions by paying 30% of the disputed tax, as security, and on this basis, the Respondent proceeded to release the goods on 15th March 2025. The Respondent's actions of requesting security, accepting the payment, and releasing the goods demonstrate unambiguous submission to the Tribunal's authority. The Respondent's belated jurisdictional objection appears to be an afterthought, designed to derail the proceedings after already seeking orders from the Tribunal under the EACCMA and such conduct should not be entertained.

The Applicant submitted that the Commissioner of Customs is not the wrong party as they are clothed with the statutory mandate to review decisions affecting a person by lodging an application for review under Section 229 of the EACCMA. A review was undertaken and the Respondent issued a decision on 1st July, 2024, declining to grant relief on account of the revocation of the duty remission via legal notice No. EAC/61/2024. It is important to note that the framers of the EACCMA were fully aware of the powers conferred on the Council of Ministers to grant or revoke duty remission under the Duty Remission Regulations. Nonetheless, they expressly provided a singular forum for the adjudication of disputes arising from such decisions, and notably, the Regulations are silent on any alternative dispute resolution avenue.

The Applicant argued that Section 230 of the EACCMA clearly vests jurisdiction in the Tax Appeals Tribunal to hear appeals arising from decisions of the Commissioner, including the letter dated 1 July 2024, in which the Respondent declined the Applicant's request. Furthermore, Section 14(1) of the Tax Appeals Tribunal Act expressly prescribes that an aggrieved party can lodge an appeal with the Tax Appeals Tribunal against the Respondent and the central issue before the Tribunal is a legal question of whether the Applicant is entitled to have its goods cleared under the duty remission scheme. This is a question that can be fully and fairly resolved with the Respondent as a party given its role in administering the EACCMA.

The Applicant also relied on Order 1 Rule 3 of the Civil Procedure Rules SI 71-1 which allows for this application to proceed on that basis alone and it goes without saying that the national policy on duty remission must align with the overarching policy of the

East African Community (EAC). Accordingly, the Council of Ministers plays an overarching oversight and administrative role, while the National Duty Remission Committee (NDRC) assumes the central role of administering and shaping duty remission policy within each Partner State. Notably, the Council of Ministers does not possess any adjudicatory authority in these matters.

The Applicant submitted that the Respondent is not a passive bystander to the relevant policy framework. As a member of the NDRC, the Respondent actively participates in vetting Applicants to the Duty Remission Scheme and is therefore privy to the policies and decisions adopted by the Government. It logically follows that the Respondent has sufficient knowledge of the factual and policy context giving rise to this Appeal and is in a position to respond meaningfully and provide the reliefs sought.

The Applicant further submitted that the Respondent's role both under the Duty Remission Regulations and as outlined in the Procedure Manual clearly demonstrates direct involvement in the administration of the remission scheme. This includes oversight of the NDRC and participation in decisions concerning specific products, such as wire rods.

The Applicant submitted that it is therefore untenable for the Respondent to disclaim knowledge or responsibility for the very policies it is mandated to implement and oversee. Such a position is inconsistent with its statutory and administrative responsibilities under the Scheme. The revocation process is initiated at the national level by the Respondent's department in conjunction with the Ministry of Finance, then escalated to the EAC Secretariat/Council of Ministers only for publication if found to be consistent with EAC agenda. The Respondent's attempt to distance itself from decisions it actively participates in is untenable. The Applicant cited Kenya (***Highlands Drinks Limited v. Commissioner of Customs, TAT No. 1364 of 2022***) and Tanzania (***Shana General Store Limited v. TRA, Civil Appeal No. 392 of 2020***), where the respective Tax Appeals Tribunals exercised jurisdiction over nearly identical remission disputes, with the revenue authorities properly participating as Respondents. These precedents confirm both the Tribunal's jurisdiction and the Respondent's proper role in these proceedings.

The Applicant stated that this dispute before the Tribunal concerns a taxation decision involving the imposition of import duty which is a matter falling squarely within the EACCMA. Given the statutory framework and precedent, it is our submission that this Tribunal has the requisite jurisdiction to entertain this Application. The revocation of duty remission constitutes a customs related dispute falling within the ambit of the EACCMA and the Applicant has exercised their right of appeal in accordance with the prescribed legal provision. The Respondent has already sought relief under Sections 106 and 107, its belated jurisdictional challenge is inconsistent and without merit. The Applicant urged the Honourable Tribunal to dismiss the objection and proceed with the hearing and determination of this matter without further prejudice to the Applicant.

6. Respondent's submission in rejoinder.

In rejoinder, the Respondent submitted on the issue of jurisdiction and relied on Sections 106 and 107, stating the same is unfounded because jurisdiction is a creature of statute. Further that the EACMA is a self-contained statute that provides for where, when the Respondent can be held accountable, what the Respondent can be held accountable for (sued) including but the scenario of the Applicant. Unfortunately, the Applicant chose to skew the provisions of the EACMA to suit their intentions.

The Respondent submitted that the Applicant stealthily seeks to rely on letters written to the Respondent as their objection, the same bringing their application under the purview of the EACMA however, this letter regards a decision/action/omission not taken by the Respondent nor one which the Respondent is statutorily bound to carry out. As such the same cannot confer jurisdiction for purposes of bring a matter under the purview of Section 229. Without being under Section 229 of the EACMA, by implication Section 230 and 231 cannot apply and as such this Application is without legal basis and it would be very unfortunate to hold it accountable and or responsible for an act and or omission that does not arise as her mandate under the EACCMA, yet they did as required by law and implemented the revocation as soon as the same was communicated by the Council of Ministers.

In conclusion, the Respondent submitted that there is no Act or omission pleaded by

the Applicant the same having supposed to be done by the Respondent under the EACMA that the Applicant complains of which would invoke section 229, 230, 231 of the EACMA. (There is no tax decision by the Respondent). The duty imposed is as a result of the Applicant capturing their entries when the duty remission was revoked. Legally the Respondent was obliged to collect duty accordingly. The Respondent did not seek relief under Section 106 and 107 in their pleadings save for the same being a 'prayer' in the alternative during the hearing of the application for provisional release.

6. The Determination by the Tribunal

Having listened to the evidence of both parties and read their submissions, this is the decision of the Tribunal. The Legal Framework relevant to this case is set out below;

Section 14(1) of the Tax Appeals Tribunal Act provides that any person who is aggrieved by a decision made under a taxing Act by the Uganda Revenue Authority may apply to the tribunal for a review of the decision.

Section 1 subsection (k) of the Tax Appeals Tribunals Act provides that "taxation decision" means *any assessment, determination, decision or notice*.

Section 229(1) of the East African Community Customs Management Act states that a person directly affected by the decision or omission of the Commissioner or any other officer on matters relating to Customs shall within thirty days of the decision or omission lodge an application for decision or omission.

Section 230(1) of the East African Community Customs Management Act states that a person dissatisfied with the decision of the commissioner under section 229 may appeal to a Tax Appeals Tribunal established in accordance with section 231.

Section 231 of the East African Community Customs Management Act states that subject to any law in force in with respect tax appeals, each Partner State shall establish a Tax Appeals Tribunal for the purpose of hearing appeals against the Commissioner made under section 229.

Section 253 of the East African Community Customs Management Act provides that the EACCMA Act shall take precedence over the Partner States' laws with respect to any matter to which its provisions relate to.

In the instant case, the Respondent contends that this application is incorrectly before the Tribunal, bearing a wrong party (the Respondent) and the said application having no legal basis while the Applicant contends that this is a tax dispute to be filed in the Tax Appeals Tribunal. The Tribunal will now delve into the merits of this case.

Whether the Respondent is the proper party

The Applicant's standing is challenged by the Respondent, who argues that the duty remission revocation was a decision by the Council of Ministers, not the Uganda Revenue Authority (URA). However, the Applicant contends that the Respondent, as the implementing body, is responsible for the revocation's enforcement.

The **Uganda Revenue Authority Act, Cap.196** creates URA as a central body for the assessment and collection of specified revenue, to administer and enforce the laws relating to such revenue and to provide for related matters. The provisions of **Section 2 (2)** of the same Act provide that the authority shall be a body corporate with perpetual succession and a common seal and shall be capable of suing and being sued in its corporate name and subject to this Act, may borrow money, acquire and dispose of property and do all such other things as a body corporate may lawfully do.

As can be discerned from its provisions, the purpose of the Act is to establish the Uganda Revenue Authority as a central body for the assessment and collection of specified revenue, to administer and enforce the laws, relating to such revenue and to provide for related matters. It is only in relation to what the law specifically provides for as its purpose and functions that the Uganda Revenue Authority may sue and be sued in its corporate name.

The Tribunal finds that the Uganda Revenue Authority, as the implementing agency of the Council of Ministers' decisions and the body that issued the contested communication dated 1 July 2024, is the appropriate Respondent in this matter.

Whether the dispute involves a taxation decision

Section 1(k) of the Tax Appeals Tribunal Act provides that a "taxation decision" includes any assessment, determination, decision, or notice. A taxation decision is distinct from an objection decision, which arises from an objection to a taxation decision.

A tax dispute involves a disagreement over a taxation decision whether an assessment, determination, decision or notice issued by the Commissioner or any authorized officer.

In this case, the Respondent conducted a review and issued a letter on 1 July 2024 with a decision declining to grant relief on account of the revocation of the duty remission via legal notice No. EAC/61/2024. This decision by the Commissioner was in conclusion of several procedures that had been carried out by the Respondent such as a review, exchange of correspondences between the Applicant and Respondent in respect of the said goods. These procedures formed an integral part of the final decision reached by the Respondent in the letter dated 1 July 2024.

In the case of *Cable corporation v URA Civil Appeal no 1 of 2011 Justice Madrama*, it was held that there was a decision embodied in the appellant's letter of 23 September 2008. The question of form of the decision cannot be raised so long as its contents amount to an objection decision.

The submission by Counsel for the Respondent that this is not a tax matter because there is no evidence to prove that there was an assessment, objection to the assessment and a taxation decision was made in respect of the objection is untenable. For the reasons stated above, the question as to whether this dispute involves a taxation decision is answered in the affirmative.

Whether this Tribunal has jurisdiction to hear and determine this dispute

The term "jurisdiction" means the authority which a court has to decide matters that are litigated before it or to take cognizance of matters presented in a formal way for its decision. The limits of this authority are imposed by statute, charter or commission under which the court is constituted, and may be extended or restricted by similar means.

The Tribunal's jurisdiction is conferred by Sections 229 and 230 of the EACCMA,

which allow for appeals against decisions or omissions by the Commissioner of Customs. Section 230 of the EACCMA clearly vests jurisdiction in the Tax Appeals Tribunal to hear appeals arising from decisions of the Commissioner. In the present case, we find that the Respondents action of declining the applicants request vide letter dated 1 July 2024 amounts to a decision and falls within the ambit of Section 230 of the EACCMA. Furthermore, Section 14(1) of the Tax Appeals Tribunal Act expressly states that an aggrieved party can lodge an appeal with the Tax Appeals Tribunal against the Respondent.

This position is augmented by regional jurisprudence such as the case of **Highlands Drinks Limited v Commissioner of Customs, TAT No. 1364 of 2022 (Kenya)**: The Kenyan Tax Appeals Tribunal exercised jurisdiction over a similar duty remission dispute, affirming the Tribunal's authority in such matters. Similarly in the case of **Shana General Store Limited v TRA, Civil Appeal No. 392 of 2020 (Tanzania)**, the Tanzanian Tax Appeals Tribunal handled a duty remission dispute, reinforcing the Tribunal's jurisdiction.

The Tax Appeals Tribunal has jurisdiction to hear this matter as it involves a customs-related dispute under the EACCMA, 2004. It therefore follows that the Applicant has standing to bring the application before the Tribunal having been aggrieved by the revocation of the duty remission. The Respondent, being the implementing body of the Council of Ministers' decisions, is a proper party to the suit.

For the reasons above, we find that the preliminary objection raised by the Respondent fails and the application is hereby dismissed.

Costs shall abide in the main suit.

Dated at Kampala this ^{16th}.....day of May 2025.



CRYSTAL KABAJWARA
CHAIRPERSON



STELLA.N. CHOMBO
MEMBER



GRACE SAFI
MEMBER