

THE REPUBLIC OF UGANDA
IN THE TAX APPEALS TRIBUNAL AT KAMPALA
MISCELLANEOUS APPLICATION NO. 016 OF 2025
ARISING OUT OF APPLICATION NO. 224 OF 2024.

YOGI STEELS LIMITEDAPPLICANT

VERSUS

UGANDA REVENUE AUTHORITY.....RESPONDENT

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

RULING

This ruling is in respect of an application brought under Section 98 of the Civil Procedure Act and Order 52 Rules 1,2, and 3 of the Civil Procedure Rules and Section 106 and 107 of the East Africa Customs Community Management Act (EACMMA) seeking orders:

- (a) An order be issued for the provisional release of the Applicant's goods pending the final determination of the main application; and
- (b) Costs of the Application be provided for.

1. Background facts

The grounds of this application are contained in the affidavit deponed by Mr. Sanjay Kothari, the Financial Controller of the Applicant deponed on the 30 January 2025 and are laid out as follows:

- (i) The Applicant carries on the business of manufacturing steel products and was granted a Duty Remission for 15,000 MT of bars and rods (HS Code 7213.91.10) under Section 140 of the EACMMA for the 12-month period of the FY 2023/2024.
- (ii) 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 and 255 coils of Steel wire rod coils were loaded via carrier Lynux Shipping Limited headed for Mombasa from TianJin Port in China.

- (iii) On 7 June 2024, when the Applicant attempted to process the customs entry for the goods, it discovered that the duty remission had been revoked and was notified 10 June 2024, that duty remission for the items was revoked vide Legal Notice EAC/93/2024 dated 15 April 2024 and thus were unable to grant their request.
- (iv) Subsequently, the Applicant warehoused the goods in Mombasa, and later in Jinja incurring significant demurrage costs while engaging with the Respondent to resolve the issue of the revocation of duty remission.
- (v) The Applicant filed an application in the Tax Appeals Tribunal No. 224 of 2024 in August 2024 and the consignment has been warehoused for the duration of the dispute. This is affecting production lines for manufacturing of steel products as it is a fundamental raw material. Further, the Applicant continues to incur high interest costs.
- (vi) The applicant has engaged the Respondent for the provisional release of these goods with the offer to pay VAT pending the resolution of the dispute to no effect.
- (vii) That if the provisional release of the goods is not granted, the Applicant will continue to incur high interest costs, while production is significantly hindered.
- (viii) That the Respondent's rights will not be prejudiced by the provisional release as they Applicant will pay the tax in dispute should the application not be determined in their favour.

In the affidavit in reply sworn by Mr. Kenan Aruho, an Officer in the Respondent's legal services and Board Affairs Department deponed on 10 February 2025, he contended as follows:

- (i) That the Respondent has at all times dealt with the imports of the Applicant in accordance with the provisions of the EACMMA.
- (ii) That the Respondent is in no way responsible for any loss or delay of the clearance, of the Applicant's goods, the goods being subject to treatment as provided for under the law.
- (iii) That the said request has no legal basis and grant of the same would be in disregard of the provisions of the law.

- (iv) That the release of the said goods will be a gross violation of the provisions of the East African Community Customs Management Act.
- (v) That the Applicant is at liberty to provide security or bond for release and or clearance of the goods as required by law.

2. Issues

The issue for resolution by the Tribunal is whether the application for provisional release of the goods should be granted pending the determination of the main application, TAT 224 / 2024

3. Representation

The Applicant was represented by Mr. Patrick Kabagambe, Mr. Cephas Birungyi, Ms. Tracy Ainebyona while the Respondent was represented by Mr. Barnabas Nuwaha. Both parties made oral submissions.

4. Submissions of the Applicant

The Applicant submitted that this application arises out of TAT 224/2024 for an order for provisional release of the Applicant's goods pending final determination of the Application before the Tribunal. The Applicant submitted that it was granted duty remission for a 12 month period for the FY 2023 / 2024 for bars and rods under HS Codes 723.19.10 and that the remission was granted under Section 140 of the EACMMA.

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

The Applicant submitted that on 7 June 2024, the Applicant attempted to process the customs entry for the goods but discovered that the duty remission had been revoked and it was then notified on the 10 June 2024, that the duty remission for the items was revoked vide Legal Notice EAC/93/2024 dated 15 April 2024 and thus unable to grant their request.

The Applicant submitted further that it subsequently warehoused the goods in Mombasa, and later to Jinja incurring significant demurrage costs while engaging with the Respondent to resolve the issue of the duty remission revocation.

The Applicant submitted that it filed an Application in the Tax Appeals Tribunal No. 224 of 2024 in August 2024 and the consignment has been warehoused for the duration of the dispute which is affecting production lines for manufacturing of steel products. Further, the Applicant continues to incur high interest costs.

The applicant submitted that it has engaged the Respondent for the provisional release of the goods with the offer to pay the VAT liability on importation pending the resolution of the dispute to no effect. This was as per the Applicant's letter to the Respondent dated 8 January 2024 which the Respondent did not reply.

The Applicant submitted that at mediation, it offered to provide security for the goods and this was rejected. The goods have been in custody since June 2024 and the Applicant continues to incur daily charges. On that basis the Applicant brought this Application seeking provisional release of the goods. The Applicant also stated that it is willing to provide security for the release of the goods pending determination of the Application.

5. Submissions of the Respondent

The Respondent submitted that they oppose the application unless the Applicant can provide security or bond for the goods. Counsel for the Respondent submitted that they were not aware that the security was made. However, if the Applicant was willing to offer security, then they were happy to release the goods. The Respondent opposed the grant of this Application on the basis of their position contained in the affidavit in reply.

The Respondent submitted that the nature of the application being for orders that the applicant's goods be provisionally released was not provided under the East Africa Customs Management Act ("EACCMA"). The Respondent submitted that the Applicants' goods are under customs control, which is not denied by the Applicant and as such the goods should be dealt with in accordance with the provisions of the EACCMA,

The Respondent submitted that under Section 221 of EACMMA, the Applicant ought to have appealed to the Commissioner against the decision to revoke the duty remission. As such, there is no basis for granting this application as there is no objection decision.

The Respondent submitted that this application is without basis and should be dismissed with costs to the Respondent. The Respondent prayed that if the Tribunal is inclined to grant this application, the same be granted subject to the provisions of Section 106 and 107 of EACCMA.

Without prejudice to the above, the Respondent also prayed the Tribunal takes note of the government policy on imported steel, the cost of the goods before the Tribunal and the government policy to stimulate local production.

6. The Submissions of the Applicant in Rejoinder

In reply, the Applicant submitted that Counsel for the Respondent appears to suggest that the Tax Appeals Tribunal lacks jurisdiction and that the provisions of Sections 221 and 229 of the EACCMA prohibit the Tribunal from hearing this Application. However, the Respondent has already submitted to the jurisdiction of this TAT in the main application.

The Applicant submitted that when the main application was filed, the Respondent didn't challenge the issue of the jurisdiction of the Tribunal or the lack of an objection decision and the Affidavit in Reply deponed by Aruho Kenan doesn't raise the issue of jurisdiction or lack of an objection decision.

On the issues of security for the goods, the Applicant submitted that it is not in dispute that the Applicant has written to the Respondent seeking to have the goods released conditional on the payment of VAT. This effectively is the same as providing a security. The Applicant submitted that Section 106 provides for adequate security.

The Applicant submitted that the tax in dispute is Shs. 758,091,215. The VAT, which the Applicant offered to pay pending the determination of the main application amounts to Shs. 286,875,298 which is more than 30%. The Applicant submitted that since the matter has been in the Tribunal since August 2024 and there is a letter which is not replied to for more than one month, it should be enough for the Tribunal to consider this as a matter

where justice should be done without undue regard to technicalities and facilitate trade and expedite justice.

7. The Determination by the Tribunal

Having heard the submissions of both parties, this is the ruling of the Tribunal.

The Applicant is a manufacturer of steel products, and their industry is capital intensive. The goods have been held by the Respondent since June 2024. The Applicant seeks provisional release of its goods, arguing that the revocation of duty remission was unfairly applied to goods that were already in transit and that continued detention is causing financial and operational difficulties. The Respondent's non-response to the Applicant's letter requesting for the provisional release of the goods upon payment of security indicates that the Respondent is not giving the Applicant due attention.

The Respondent maintains that the revocation was lawful. They argue that releasing the goods without full duty payment would contravene the EACCMA. However, the Respondent acknowledges that the Applicant can provide security or a bond for the release of the goods as stipulated by law.

The Tribunal notes that the Legal Notice EAC/93/2024, which gave rise to the dispute came into force on 15 April 2024, the same month the goods were imported. Therefore, it is likely that there were transitional issues that contributed to the under declaration rather than willful default on the part of the taxpayer. Further, the Tribunal notes that the Applicant offered to pay the VAT of Shs. 286, 875, 298 which amounts to 37% of the tax in dispute.

Section 106 of the EACCMA provides:

“The Commissioner may require any person to give security for the due compliance by that person with this Act generally for the protection of the Customs revenue and, pending the giving of such security in relation to any goods subject to Customs control, the Commissioner may refuse to permit delivery or exportation of such goods entry in relation thereto”.

Section 107 (1) of the same provides:

“Where any security is required to be given under this Act, then that security may be given to the satisfaction of the Commissioner either;

- (a) by bond, in such sum and subject to such conditions and with such sureties as the Commissioner may reasonably require or*
- (b) by cash deposit; or*
- (c) partly by bond and partly by cash deposit”.*

Section 229 (6) of the EACCMA provides:

“During the pendency of an application lodged under this section the Commissioner may at the request of the person lodging the Application release any goods in respect of which the application has been lodged to that person upon payment of duty as determined by the Commissioner or provision of sufficient security for the duty and for any penalty that may be payable as determined by the Commissioner”.

Section 230 of the EACCMA provides:

“A person dissatisfied with the decision of the Commissioner under 229 may appeal to the Tax Appeals Tribunal in accordance with Section 231.”

The Respondent has opposed the provisional release of the goods, arguing that it would violate the EACCMA, and that the Applicant should provide a bond or security as required by law. The Tribunal notes that the payment of security serves as a safeguard against this risk. By requiring the Applicant to pay a portion of the disputed tax as security, the Respondent's interests are protected, and the revenue authority retains the ability to recover the remaining tax should the main application be determined in its favor.

The Applicant offered to pay the VAT of Shs. 286, 875, 298 which amounts to 37% of the tax in dispute. According to Section 15 (1) the Tax Appeals Tribunal Act, the security for the tax in dispute is capped at 30%, as shown below.

“(1) A taxpayer who has lodged a notice of objection to an assessment shall, pending final resolution of the objection, pay 30 percent of the tax assessed or that part of the tax assessed not in dispute, whichever is greater”.

This is further buttressed in the case of *Bullion Refinery Ltd V Uganda Revenue Authority App No. 36 of 2021* where the Tribunal held:


"However, where a taxpayer objects to an assessment and also to a legal interpretation of a decision, the taxpayer will still be required to pay 30% of the tax assessed in the objection".

The Tribunal notes that the provisional release of the goods will not hinder the Respondent's ability to pursue the main application nor enforce any subsequent orders since the Applicant is willing to pay security. The Respondent retains the right to recover the disputed tax in full should the Applicant's case be unsuccessful. The grant of this application will not prejudice the Respondent in any way. The Applicant's goods should be released immediately pending the determination of the main application.

Therefore, it is hereby ordered:

- i. The provisional release of the Applicant's goods is hereby granted.
- ii. The Applicant shall pay 30% of the disputed tax as security for the goods.
- iii. Each party shall bear its own costs.

Dated at Kampala this 13th day of February 2025.



CRYSTAL KABAJWARA
CHAIRPERSON



STELLA NYAPENDI CHOMBO
MEMBER



GRACE SAFI
MEMBER