

THE REPUBLIC OF UGANDA
IN THE TAX APPEALS TRIBUNAL OF UGANDA AT KAMPALA
APPLICATION NO. 121 OF 2019.

ZIBA UGANDA LIMITED..... APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY.....RESPONDENT

CORAM DR. ASA MUGENYI, DR. STEPHEN AKABWAY, MS. CHRISTINE KATWE.

RULING

This ruling is in respect of an additional assessment of Shs. 376,512,530 issued by the respondent on grounds that the applicant misclassified its imports.

The applicant is a limited liability company incorporated in Uganda and engaged in the business of hydro power generation. The respondent conducted a review of the applicants past clearances and found that it misclassified its imports. The respondent subsequently issued an additional assessment of Shs. 376,512,530. The applicant objected to the said assessment and the respondent made an objection decision disallowing the objection.

Issues

1. Whether the applicant is liable to pay the tax of Shs. 376,512,530?
2. What remedies are available?

The applicant was represented by Mr. Martin Mbanza and Ms. Belinda Nakiganda while the respondent by Mr. Banabus Nuwaha.

The applicant's first witness, Mr. Lalith Hewagama, its manager- finance testified that the applicant is engaged in the business of hydro power generation. It contracted a manufacturer to design, manufacture and supply a Francis type turbine in Slovenia. Due to its enormous size the turbine was dismantled, packaged in parts from the factory for easy transportation and delivery to Uganda. The turbine was shipped in different containers. The imports were classified under HSC 84109000 as turbine which attracted

a tax rate at 0%. The respondent's officials verified the consignments and released them upon confirmation that they were captured under the right HSC. On 17th September 2019, the respondent wrote to the applicant demanding Shs. 376,512,530 on the basis that the latter misclassified valves under HSC 84109000 instead of HSC 84818000.

Mr. Lalith Hewagama stated that the assessment by the respondent was based on the commercial invoice value instead of the actual value of the valves. The actual tax would be Shs. 21,995,851.59 and not Shs. 376,512,530 as the value of the valves is only US\$. 50,000. That the erroneous findings by the respondent is a material error. Mr. Lalith Hewagama confirmed that he was not present during the verification and the when the goods were offloaded.

The respondent's witness, Mr. Brian Kiiza, working in its customs department testified that in 2018 the respondent conducted a review of the applicant's declarations. He stated that the review of the applicant's declarations revealed the following errors;

"A Entry C117333

- a. Runner Valve draft was classified as parts of machinery under subheading 8477.90 instead of sub heading 8481.90.
- b. Pipes were classified as parts of the turbine under sub heading 8410.90 instead of sub heading 7306.90.
- c. Tubes were classified as parts of the turbine under sub heading 8410.90 instead of subheading 4009.42

B. Entry C117950

- d. Relief valve was classified under sub heading 8410.90 instead of sub heading 8481.80
- e. Butterfly valve was classified under sub heading 8410.90 instead of sub heading 8481.80."

Mr. Brian Kiiza stated that the invoice declared by the applicant contained items such as unit control system auxiliary system voltage switch yard, cables which were not accounted for under their respective sub headings.

The applicant submitted that the tax assessed is unfounded and materially erroneous as it was based on incorrect invoice values. S. 101 of the Evidence Act provides that the burden of proof lies on whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he or she asserts. He/she

must prove that those facts exist. The applicant cited *Francis Lukooya Mukoome & Anor v the Editor-In-Chief of Bukedde Newspaper, The New Vision Printing & Publishing Company & Anor* Civil Suit 351 od 2007 where Justice Yorokamu Bamwine stated.

"...In law a fact is said to be proved when the court is satisfied as to its truth, and the evidence by which the result is produced is called the proof. The general rule is that the burden of proof lies on the party who asserts the affirmative of the issue or question in dispute. When that party adduces evidence sufficient to raise a presumption that what he is asserting is true, he is said to shift the burden of proof: that is, his allegation is presumed to be true, unless his opponent adduces evidence to rebut that presumption...The standard of proof is on the balance of probabilities..."

The applicant submitted that S. 223 of the EACCMA provides that;

"In any proceedings under this Act-

- a) The onus of proving the place of origin of any goods or the payment of the proper duties, or the lawful importation, landing, removal, conveyance, exportation, carriage coastwise, or transfer, of any goods shall be on the person prosecuted or claiming anything seized under this Act"

The applicant submitted that S. 16(1)(a) the EACCMA provides that;

"The following goods shall be subject to Customs control

- a) imported goods, including goods imported through the Post Office, from the time of importation until delivery for home consumption or until exportation, whichever first happens;"

S. 31(1) further provides;

"A person arriving overland in the Partner States from a foreign place, if he she has any goods in his or her possession, shall, before disposing of the goods.

- b) furnish on the prescribed form inch information as may be required concerning the goods;
- c) make and subscribe a declaration at to the truth of all particulars contained in the form;
- e) produce all consignment notes or other relevant documents demanded of him or her by the proper officer;
- f) save at otherwise provided in the Customs laws, make due entry of any such goods."

S. 34(2) of the EACCMA provides that;

"Where any entry is delivered to the proper officer, the owner shall furnish with the entry full particulars supported by documentary evidence of the goods referred is in the entry."

S. 41 of the EACCMA further provides.

"Goods entered under S. 34, may in the presence of the owner, be examined by the proper officer to like account and determine the accuracy of the entry made."

S. 122 (1) EACCMA provides:

"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."

Paragraph 2(1) of Part 1 of the 4th Schedule of the EACCMA 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- "

Paragraph 9 (2) of Part 1 of the 4th Schedule of the EACCMA further provides that,

"In determining the value for duty purposes of any imported goods, there shall be added to the price actually paid or payable for the goods.

d) the cost of transport of the imported goods to the port or place of importation into the Partner State; provided that in case of imports by air no freight costs shall be added to the price paid or payables

e) loading, unloading and handling charges associated with the transport of the imported goods to the port or place of importation into the Partner State; and

f) the cost of insurance.

Note to Paragraph 2 in Part II of the Interpretative Notes of the EACCMA further clarifies by providing that;

"1. The price actually paid or payable is the total payment made or to be made by the buyer to or for the benefit of the seller for the imported goods."

The applicant submitted that its entries were made in accordance with the provisions of the EACCMA which provide the transaction value as the first method of valuation. The value of the two sets of Butterfly Valves DN1200 PN16; and two sets of Relief Valves DN500 PN16, the total FOB value of the valves is USD.50,000. At the then prevailing exchange rate of 1US\$ is equal to Shs. 3746.22, the customs value of the valves was Shs.191,268,274.65.

The applicant submitted that it relied on the following;

1. Items 2 and 3 of the applicant's commercial invoice no. 9530001555 dated 24/09/2018 (exhibit A.EX3 page 11 of the joint trial bundle) showing the total FOB value of the valves as US\$ 50,000,
2. The applicant's URA Asycuda document attached to Exit Note 2018/X/103534 (exhibit A.EX6 pages 23 and 24 of the joint trial bundle) showing the total FOB value

of the valves as US\$ 50,000 and also showing the then exchange rate of 1US\$= Shs. 3,746.22;

The applicant submitted that the above evidence is also corroborated by the respondent's evidence summarized below,

1. The respondent's URA Asycuda document Entry C117950 of 05/12/2018 (exhibit REX3 pages 5-6 of the Supplementally Joint Trial Bundle) showing the total FOB value of the valves as US\$.50,000 and also showing the then exchange rate of 1US\$= Shs. 3,746.22; and
2. Items 2 and 3 of the respondent's commercial invoice 9530001555 dated 24th September 2018 (exhibit REX4 pages.7 to 8 of the supplementally joint trial bundle) showing the total FOB value of the valves as US\$.50,000.

The applicant submitted that the respondent's claim for the 10% import duty ought to have been Shs.19,126,827.47 and not Shs. 376,512,530 that was assessed and demanded. The issue of miscalculation was brought up right from the objections stage, to the filing the Application (Paragraph 3(1) of the Application dated 21st November 2019, and at testimonies stage (See: paragraph 20(e) of Lalith Hewagama's witness statement dated November 2021). It contended that that the respondent had ample time to revise the total tax liability to Shs. 21,995,851.59. The applicant prayed that the tribunal finds that the customs values used by the respondent to compute the import duty on the valves was therefore incorrect thereby leading to a miscalculation of taxes on the valves.

On the issue of reclassification of valves, the applicant submitted that the respondent's re-classification of the valves from HSC 8410.90 to HSC 8481.80 was erroneous and unlawful for the main reason that the Butterfly Valves DN1200 PN16 are an integral part of a hydraulic Francis turbine without which a hydraulic Francis turbine cannot function. It cited HSC 84.10 of the EAC Common External Tariff Code which states that;

"Hydraulic turbines, water wheels, and regulators thereof.

-Hydraulic turbines and water wheels:

8410.11.00- of a power not exceeding 1,000 kW 0%

8410.12.00- of a power exceeding 1,000 kW but not exceeding 10,000 kW 0%

8410.13.00- of a power exceeding 10,000 kW 0%

8410.90.00-Parts, including regulators kg 0% "

The applicant submitted that the meaning of HS Code 8410.90 implies that parts of the turbine are also subjected to 0% because the code specifies Parts" (more than one) and the word "Including". The applicant submitted that *Black's Law Dictionary* defines 'include'; "To contain as a part of something". The applicant submitted that the word "including implies that the part must have an identifiable relationship to the turbine even though it is not listed by name. Butterfly Valves DN1200 PN16 and the Relief Valves DN500 PN16 are part and parcel of the turbine as they regulate the pressure and thus qualify to be a part of the turbine taxable at the rate of 0%.

The applicant submitted that S. XVI Notes, Note 2(b) provides that;

"Other parts if suitable for use solely or principally with a particular kind of machine or with a number of machines of the same heading, are to be classified with that machine of that kind..."

The applicant submitted that Note 4 provides that;

"Where a machine (including a combination of machines) consists of individual components (whether separate or interconnected by piping, is transmission device, by electric cable or by other devices) intended to contribute together to a clearly defined function covered by one of the headings in Chapter 84 or 85, then the whole falls to be classified in the heading appropriate to that function."

The applicant submitted that the interpretation notes specify that the individual or separate devices, in this case the valves shipped together with the turbine all make up the same function of the turbine.

The applicant submitted that at the locus visit on 15th November 2023, the Tribunal and the parties were able to view, examine and take photographs of the turbine and its valves subject of the tax dispute. With the guidance of the Project Manager (Darshana Perera), it was observed that the work of the butterfly valves ON1200 PN16 and the relief valves DN500 PN16 is to open or close the water supply to the runners. It submitted that its Project Manager (Darshana Perera) testified that;

"The valves allow high water pressure to the runner. The pressure unit governs all the valves attached to the turbine system. The valves are a material part of the turbine, without which it cannot even function"

The applicant submitted that the classification of goods in the HS nomenclature are governed by General Interpretative Rules (GIR). GIR 1 provides;

"The titles of Sections, Chapters and sub-Chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the following provisions".

GIR 2(a) provides that;

"Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this Rule), presented unassembled or disassembled".

The applicant submitted that Paragraph V of the World Customs Organization (WCO) Explanatory Notes to the Harmonized System gives guidance on GIR 2(a) in respect of unassembled and disassembled goods to the effect that;

"The second part of Rule 2(a) provides that complete or finished articles presented unassembled or disassembled are to be classified in the same heading as the assembled article. When goods are so presented, it is usually for reasons such as requirements or convenience or packing, handling, or transport".

The applicant submitted that Paragraph VII of the Explanatory Note to GIR 2(a) provides that;

"For the purposes of this Rule, articles presented unassembled or disassembled means articles the components of which are to be assembled either by means of fixing devices (screws, nuts, bolts, etc.) or by riveting or welding, for example, provided only assembly operations are involved. No account is to be taken in that regard of the complexity of the assembly method. However, the components shall not be subjected to any further working operation for completion into the finished state."

The applicant submitted that in *Royal Electronics Assembling Group Limited v URA* Application 37 of 2017 the Tribunal held that;

"a machine in a disassembled/ unassembled state may be imported in several consignments over a period of time if it is necessary for convenience of trade or transport."

The applicant submitted that the applicant's Francis hydraulic turbines were imported unassembled, as the shipment was too large for one consignment. These parts were assembled in Uganda at the project site. The Applicant's payment of the taxes as assessed then were proper and lawful. The applicant prayed that the tribunal holds that the taxes paid by the applicant on the import of valves were proper and lawful.

In reply, the respondent submitted that the relief and butterfly valves imported by the applicant are subject to 10% duty being classified under heading 84.81, specifically subheadings 8481.40 and 8481.80 respectively.

The respondent submitted that the General Rules of Interpretation under Article 3(1)(a)(ii) of the Harmonised System Convention, each contracting party undertakes to apply the General Rules for the interpretation (GIRs) of the Harmonised System (HS). The decisive criterion for the customs classification of goods must be sought generally in their objective characteristics and qualities as defined in the relevant heading of the Common Customs Tariff (equivalent of CET) and in the notes to the sections or chapters. The persons importing goods and classifying the same are obliged (mandatory) to use the General Rules for Interpretation of the Harmonised system, which rules are applied in sequential order together with relevant chapter, section and explanatory notes. It cited GIR 1 and GIR 2 which have already been reproduced by the applicant. It contended that the said Rules when read together with the Common External Tariff (CET) [Harmonized Commodity Description and Coding System) show valves as imported by the applicant fall under heading 84.81, subheadings 8481.80, 8481.40 which headings and subheading clearly provides for the items in contention.

The respondent submitted that Chapter 84 is entitled mechanical appliances, nuclear reactors, boilers, machinery. Heading 84.81 of the which forms part of the above chapter provides for Taps, cocks, shells, valves tanks, and wats similar or the appliances like, valves and thermostatically controlled valves." It provides

8481.10.00 Pressure-reducing

8481.20.00 valves for oleo hydraulic or pneumatic transmissions kg 10%.

8481.30.00 Valves for oleo hydraulic pneumatic valves transmissions kg 10% 10% 10%

8481.40.00 Check (non return) valves

8481.80.00 Safety or Other relief appliances ka valves kg 10% 10%

8481.90.00-Parts

The above attract an import duty of 10%

The respondent submitted that pursuant to GIR 1, the heading of 84.81 and particularly subheadings 8481.40 covers relief valves expressly mentioned in the heading stated above and 8481.80 for butterfly valves respectively. The respondent cited Note 2 to section XVI (A Legal Note) which in very explicit terms excludes valves and is reproduced below for ease of reference: -

"2.-Subject to Note 1 to this Section, note 1 to Chapter 84 and to Note 1 to Chapter 85, parts of machines (not being parts of the articles of heading 84.84, 85.44, 85.45, 85.46 or 85.47) are to be classified according to the following rules:

- (a) Parts which are goods included in any of the headings of Chapter 84 or 85 (other than headings 84.09, 84.31, 84.48, 84.66, 84.73, 84.87, 85.03, 85.22, 85.29, 85.38 and 85.48) are in all cases to be classified in their respective headings;
- (b) Other parts, if suitable for use solely or principally with a particular kind of machine, or with a number of machines of the same heading (including a machine of heading 84.79 or 85.43) are to be classified with the machines of that kind or in heading 84.09, 84.31, 84.48, 84.66, 84.73, 85.03, 85.22, 85.29 or 85.38 as appropriate. However, parts which are equally suitable for use principally with the goods of headings 85.17 and 85.25 to 85.28 are to be classified in heading 85.17;
- (c) All other parts are to be classified in heading 84.09, 84.31, 84.48, 84.66, 84.73, 85.03, 85.22, 85.29 or 85.38 as appropriate or, failing that, in heading 84.87 or 85.48"

The respondent submitted that the above notes provide rules for classification of parts, prescribing that the same be classified under respective headings. Any part or accessory specified or described in a heading text, or whose classification in a particular heading is directed by a Section or Chapter Note, must be classified under that heading and under no other heading in the Tariff. The applicants invoice states butterfly and relief valves, which valves are catered to and for under heading 8481. subheadings 8481.40 and 8481.80 respectively attracting 10% duty.

The respondent submitted that a turbine was defined in *Voltas Ltd. v Commissioner of Central Excise: 2005 (179) ELT 234 Tri Mumbai* to mean a specific item of machinery further defined under the Oxford Dictionary as any rotary machine in which a revolving wheel, or a cylinder or disk bearing vanes, is driven by a flow of water, steam, gas, wind, etc., esp, to generate electrical power.

The respondent submitted that the explanatory notes to the Harmonised System presented at Page XVI-8410-1, define that with regards to heading 84.10, Hydraulic turbines consist of a rotor encased in a stator which directs jets of water onto the blades of the rotor; one piece cast steel rotor with large fixed helicoidal blades and a stator consisting of conduit tubing usually spiraled with large variable angle guide blades ensuring a radial flow of water around the whole periphery of the rotor and an axial water outlet.

The respondent submitted that parts of a turbine are also stated at XVI 8410-2 [Explanatory Notes] to include rotors, stators, blades and buckets for stators or rotors, casings for spiral conduits, regulators, valve needles, without mention of valves. The applicant did not provide any authority or explanation of an international definition of a turbine that covers or mentions the fact that a valve is technically part of a turbine. No technical description or definition of a Francis turbine mentions a butterfly or relief valve as one of the integral parts.

The respondent submitted that during locus visit, the valves were shown to be located away from the turbine casing with no technical similarity or proximity to the turbine casing (enclosure where turbine is found) and with different roles. The respondent submitted that the Harmonised System ought to be applied uniformly as expected of signatories to the Harmonised System Convention. The respondent submitted that in US International Trade Commission Rulings and Harmonized Tariff Schedule Ruling NY 800472, parts of a Hydraulic turbine were described to include runner blades, oil head, control tubes, stop logs and a model turbine, these parts which form part of the turbine casing were found not to be physical components of the turbine and were not classified under HS 84.10 which provides for other parts of a turbine.

The respondent submitted that International comparative data shows that the code applied is 84.81 for valves, this further buttresses the fact that ball valves as imported by the applicant are not peculiar and ought to be classified under 84.81. The respondent submitted that when an importer imports goods, parts or merchandise, the best way to identify and ascertain what is imported is by looking at the import documentation. The import information available is the invoice which clearly separates valves and the turbine

and bills separately for them. Invoice dispatched by the manufacturer is concisely clear describing the items as ball valves. A hydraulic turbine has its own independent description as a stand-alone machine and so do the valves.

The respondent submitted that the applicant did not and has not led evidence or shown that the relief valves or butterfly valves have the essential character of a Francis turbine. Even if the applicant were to claim that they are valves of a hydraulic turbine, the manufacturer clearer did not describe them as so and it's a mere attempt by the applicant to come up with their own description and nomenclature. The applicant does not qualify to have the valves treated as part of disassembled hydraulic turbine.

The respondent submitted that most importantly, according to the notes to the heading, Taps, cocks, valves etc. remain in this heading even if specialized for use on a particular machine or apparatus and a hydraulic or Francis turbine is not mentioned in the exceptions where certain machine incorporates a complete valve. The applicants witness testified that the function of valves is to allow/regulate the flow of liquid in a hydraulic turbine. The respondent submitted that the butterfly and relief valves are not parts of a turbine and are classified pursuant to GIR 1, heading 84.81, sub heading 8481.80, explanatory notes and case law.

The respondent submitted that on the issue of use of transaction value method, the respondent submitted that that the applicant never raised the same at objections. Notwithstanding the above, there is no evidence that the amount as invoiced is what was actually paid or payable. It is also noteworthy that the valves are priced way lower than valves made by the same manufacturer (invoices attached) and as such there is no sufficient evidence to fit under that method.

The respondent emphasized that the applicant never objected to the quantum of the assessment but rather objected to the classification by/of the respondent. The relief and butterfly valves imported by the applicant fall under heading 8481 subheadings 8481.40, 8481.80 respectively with resultant duty of 10%.

The respondent submitted that interest arises from an award or sum due however no such sum due was pleaded nor proved by the applicant nor was the same part of the

applicant's objection. The refund of Shs. 112,953,759 (statutory 30%) and interest is misguided and there is no legal or statutory premise for the same. The respondent prayed that this application is dismissed with costs to the respondent.

Having listened to the evidence, read submissions of both parties, this is the ruling of the Tribunal.

The applicant is a limited liability company incorporated in Uganda and is engaged in the business of hydro power Generation. The respondent conducted a review of the applicants past clearances and found that the applicant had misclassified its imports. The respondent subsequently issued an additional assessment of Shs. 376,512,530.

The applicant imported several equipment for hydroelectric generation including governor, panel boards (unit control system), oil cooler, generator, the turbine which has the valve and transformers- all which makes up a hydro electric plant. The respondent demanded Shs. 376,512,530 on the basis that the applicant had misclassified valves under HSC 84109000 instead of HSC 8481000.

The applicant contended that valves are part and parcel of the turbine as they regulate pressure and ensure that water does not affect the turbine and are thus qualified to be classified under HSC 8410.90.00. it also contended that the respondent's assessments were based on the applicant's total invoice values which was a material error. The respondent contended that the valves, unit control systems, auxiliary systems and voltage switchyard are classifiable under subheading 8481.80.00 of the EAC-CET attracting an import duty rate of 10%, the cables classified under subheading 8544.20.00 attracting an import duty rate of 25%.

From the facts, it is clear that this dispute is about reclassification of the imports. The World Customs Organization (WCO) developed international standards to assist revenue collections of members and to guide and support their customs administrations. Uganda is a member of the World Customs Organization which developed the International Convention on the Harmonized Commodity Description and Coding System to facilitate trade and information exchange by harmonizing the description, classification and coding of goods in international trade

Article 3(a) of the International Convention on the Harmonized Commodity Description and Coding System provides;

"1. Subject to the exceptions enumerated in Article 4:

(a) Each Contracting Party undertakes, except as provided in subparagraph (c) of this paragraph that from the date on which this Convention enters into force in respect of it, its Customs tariff and statistical nomenclatures shall be in conformity with the Harmonized System.

It thus undertakes that, in respect of its Customs tariff and statistical nomenclatures:

- (i) it shall use all the headings and subheadings of the Harmonized System without addition or modification, together with their related numerical codes;
- (ii) it shall apply the General Rules for the interpretation of the Harmonized System and all the Section, Chapter and Subheading Notes, and shall not modify the scope of the Sections, Chapters, headings or subheadings of the Harmonized System; and
- (iii) it shall follow the numerical sequence of the Harmonized System"

In *Export Trading Company limited v The Commissioner of Customs and Excise Income Tax Appeal 8 of 2015* it was stated that the role of a member state is to make the correct interpretation though its tax authority guided by General Interpretation Rules (GIR) of the Harmonized system (HS) and to ensure that correct classification of a product has been made. Uganda uses the Harmonized system as provided for under the East African Customs Union. Article 12(4) of the Protocol on the Establishment of the East African Customs Union provides that the Partner States shall use the Harmonized Customs Commodity Description and Coding System, specified in Annex 1 of the Protocol, that is the East Africa Community Common External Tariff (EAC-CET). This is used to determine the import duty payable on goods that originate from outside the East Africa Community (EAC). The applicable version of the EAC-CET to the dispute is the one of 2017.

The CET includes General Interpretation Rules (GIR). Some of the key rules included in the GIR relevant to this application are:

- "1. The titles of Sections, Chapters and sub-Chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the following provisions:

2. (a) Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this Rule), presented unassembled or disassembled.
- (b) Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of Rule 3.
3. When by application of Rule 2 (b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows:
 - (a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.
 - (b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.
 - (c) When goods cannot be classified by reference to 3(a) or 3(b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration."

The applicant classified it imports items under Chapter 84 heading 84.77 which reads Machinery for working rubber or plastics or for the manufacture of products from these materials, not specified or included elsewhere in this Chapter. The applicant relied on sub heading 8477.90.00 with a 0% rate.

The first dispute was in respect to valves. The applicant contended that the valves are part of the turbine. Heading 84.10 covers - Hydraulic turbines, water wheels, and

regulators therefor. The applicant under this heading relied on sub heading 410.90.00 which reads parts, including regulators with a rate of 0%.

The respondent contends the correct subheading is 8481.90 which s to the effect that;
84.81 Taps, cocks, valves and similar appliances for pipes, boiler shells, tanks, vats or the like, including pressure-reducing valves and thermostatically controlled valves.

This Chapter covers all valves. This includes;

- i. The relief valves
- ii. Runner valve draft
- iii. The butterfly valve specifically under subheading 8481.90.00 – with a 10% rate. This is because this subheading covers all the valves under this specific heading.

In *Elgon Hydro Site v Uganda Revenue Authority* (supra) the Tribunal noted

"The fact that a bulb holder holds a bulb for it to light does not make the holder a bulb. The framers of the East African Community Common External Tariff made turbines attract a custom rate of 0%. However, they did not intend to extend it to other appliances used in a hydraulic power plant. Why the framers only targeted turbines to attract no taxes, and not other parts of a plant is not our business. While valves are part of a hydraulic power plant, they are not part of a turbine. Turbine spherical valves are disassembled parts of a 'hydraulic power plant', but are not parts of a power turbine. They are auxiliaries and not accessories".

In *Rwimi EP company v Uganda Revenue Authority* Application 132 of 2022 the tribunal stated that;

"The said valves were not part of the turbine. Where The East African Community Common External Tariff provides specifically for valves, the Tribunal would be reluctant to consider them as turbines. A valve remains a valve. Therefore, the applicant is still liable to pay taxes".

The HSC dealing with valves is specific to valves. The applicant ought to use the heading which describes its imports correctly. Therefore, applicant was not right to categorize these goods to fall under a heading of parts of a turbine yet they are clearly stated in another subheading.

There was a dispute on pipes. The pipes were classified as parts of the turbine under sub heading 8410.90 instead of sub heading 7306.90.

Sub heading 8410.90.00 provides for Parts, including regulators at a rate of 0%.

While heading 73.06 t provides for;

"Other tubes, pipes and hollow profiles (for example, open seam or welded, riveted or similarly closed), of iron or steel."

Under sub heading 7306.90.00 – the rate is at 25%. This is the right heading under which the pipe should be classified. This means the applicant ought to have paid import duty on the pipes imported.

Thirdly, tubes were classified by the applicant as parts of the turbine under sub heading 8410.90. Heading 8410. 90 provides 84.10 Hydraulic turbines, water wheels, and regulators therefor. The respondent contended that the correct HSC is HSC 4009.42. which provides.;

"Tubes, pipes and hoses, of vulcanized rubber other than hard rubber, with or without their fittings (for example, joints, elbows, flanges)."

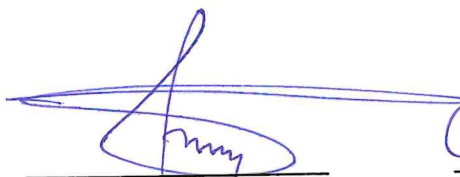
Under sub heading 4009.42.00 the rate is 10%. The respondent was right to have classified the tubes under this heading.

The applicant contended that it objected to the principal tax of Shs. 376,512,530. It argued that the respondent based the value on the commercial invoice instead of the actual values. The actual tax should be Shs. 21,995,851.59. From the communications A13 to A16 the dispute on the actual value of the imports is not stated. The applicant does not disclose how he came to arrive at the tax of Shs. 21,995,851. Though the applicant adduced invoices, evidence of payment of the actual valves like receipts were not adduced during the hearing. Under S. 15 of the Tax Appeals Tribunal Act, the burden is on the taxpayer to show that the tax in dispute was excessive. The applicant has not discharged the said burden. In the circumstances, this application is dismissed with costs to the respondent.

Dated at Kampala this 22nd day of December 2023.



DR. ASA MUGENYI
CHAIRMAN



DR. STEPHEN AKABWAY
MEMBER



MS. CHRISTINE KATWE
MEMBER