THE REPUBLIC OF UGANDA

IN THE TAX APPEALS TRIBUNAL AT KAMPALA

APPLICATION NO. 103 OF 2021

BRITANIA ALLIED INDUSTRIES LTD ========== APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY ========== RESPONDENT

BEFORE: MR. SIRAJ ALI, DR. STEPHEN AKABWAY MR. GEORGE W. MUGERWA.

RULING

This ruling is in respect of an application challenging assessments issued against the applicant on the ground that taxes on certain imports were short levied, having been misclassified as falling under the Duty Remission Scheme.

The applicant is engaged in the business of manufacturing fruit juices and confectionaries. The respondent conducted a system audit on imports by the applicant for the period 1st July 2020 to 15th June 2021 and the years 2017/18 to 2019/2020. The audit established that the applicant had classified mango fruit pulp and guava fruit pulp under subheadings 2009.19.00 and 2009.79.00 with an import duty rate of 10% under the Duty Remission Scheme. The respondent as a consequence issued two assessments of Shs. 221,372,758 and Shs. 1,025,013,331 against the applicant. The applicant objected to these assessments. The respondent issued an objection decision disallowing the objection.

The following issues were set down for determination.

1. Whether the applicant is liable to pay the taxes as assessed?
2. What remedies are available to the parties?

The applicant was represented by Ms. Mugisha Jennifer Ruth and Mr. Tayebwa Elijah while the respondent by Ms. Charlotte Katuutu.

The applicant`s sole witness, Mr. Peter Sessanga, its Logistics Manager testified that since 2013, the applicant has benefited from the remission of duty on imported raw materials used in the manufacture of various fruit juices. The applicant benefitted from this remission with the knowledge of the respondent. The witness testified further that the entitlement to the duty remission scheme by specified manufacturers and the classification of eligible imported raw materials and approved quantities is prescribed by the East African Council of Ministers, after thorough vetting and recommendation by the respondent, after which the goods are cleared by the respondent under the Duty Remission Scheme in accordance with the Customs Procedure Codes recommended by the respondent. The witness testified that the applicant imported goods processed under the Duty Remission Scheme based on classifications, item descriptions, approved quantities for import recommended by the Commissioner, and the import documentation showed the items being imported by the applicant. The witness testified further that the respondent issued the applicant with assessments and demand notices dated 28th June 2021 and 18th October 2021 for Shs. 221,372,752 and Shs. 1,025,013,331. alleging that taxes were short levied by the applicant on the importation of mango and guava pulp due to the misclassification of mango and guava pulp under HS Code 2009.79.00 which attracts duty at the rate of 25%. The witness testified that at all material times, the applicant used HS codes availed to it by the respondent and that the latter is bound and estopped by the communications made to the former in respect of the said classifications.

The respondent's first witness, Mr. Ayesiga Adrian, a Compliance & Business Analysis officer in its Customs Department, testified that the applicant is an Authorized Economic Operator (AEO) whose imports are cleared through the green and blue lane, implying that the imports of the applicant do not undergo any form of verification namely, physical or documentary checks at the point of importation. The witness testified that the goods of an AEO are only verified by way of document checks in customs clearance audits. The witness testified that the respondent carried out a system audit on the applicant`s imports for the period July 2017 to June 2020 and 1st July 2020 to 15th June 2021 and reviewed documents in the ASYCUDA system as submitted by the applicant including

Single Administrative Documents (SADs) and attachments such as invoices, purchase orders, bills of lading, certificates of analysis, packing lists among others. The witness testified that the audit was able to establish that the declarations in the Single Administrative Documents were silent on the exact fruit pulp and instead used general narratives such as ``juice concentrates``, ``fruit pulp`` and ``natural fruit pulp``. The witness testified that the documents attached to the SADs showed that some of the imports were actually guava pulp as well as mango pulp namely, Totapuri mango pulp (TMP) and Alphonso mango pulp (AMP). The witness testified that the audit established that the applicant declared mango and guava pulp under subheadings 2009.19.00 (which provides for orange juice) and 2009.79.00 (which provides for apple juice) with an import duty rate of 10% under the Duty Remission Scheme, instead of the residual subheading 2009.89.00 which provides for any other juice not specifically mentioned and which attracts an import duty rate of 25% causing a short levy of Shs. 221,372,758/= between 1st July 2020 to 15th June 2021. The witness testified that the Duty Remission Scheme applies specifically to items gazette by the East African Community and has the effect of lowering the applicable import duty rate. The witness testified further that on 14th October 2021, the respondent received a request from the applicant for a review of the decision in respect of the short-levied taxes of Shs. 221,372,758. The witness testified that the review revealed that the applicant did not specifically mention guava and mango fruit pulp in its letters of expression of interest, the letters of expression of interest had specific HS Codes and none of them were for guava or fruit pulp, the letters of expression of interest were specific to orange and apple and not mango pulp and that at no time did the respondent advise the applicant to import mango fruit pulp under the duty remission scheme. The witness testified that as a result of the above findings the respondent maintained its decision classifying mango pulp under the residual heading 2009.89.00 with an import duty rate of 25%. The witness testified that the respondent carried out a further review of the applicant`s imports for the period 2017-2020 and established that the applicant`s imports of mango fruit pulp and guava fruit pulp were declared as apple or orange fruit pulp under subheadings 2009.19.00 and 2009.79.00 with a tariff rate of 10% under the duty remission scheme, instead of the duty rate of 25% thereby causing a short levy of Shs.

1,025,013,331. The witness testified that the applicant`s objection to the said findings was maintained by the respondent. The witness stated that mango pulp and guava pulp are not part of the items under the duty remission scheme and that the same attracts an import duty of 25% and that accordingly the import tax liability of Shs. 221,372,758 and Shs. 1,025,013,331 was properly assessed.

The respondent`s second witness was Mr. Brian Kiiza, a customs tariff officer in its customs department testified that the applicant imported Totapuri mango pulp and Alphonso mango pulp. The witness testified further that the respondent conducted an audit which showed that the applicant had misclassified mango and guava pulp under subheadings 2009.19.00 and 2009.79, with an import duty rate of 10% under the duty remission scheme instead of the residual subheading 2009.89.00 which provides for any other juice not specifically mentioned. The witness testified that subheading 2009.19.00 falls directly under ``Orange Juice`` and specifically provides for ``other orange juice`` which is not `Frozen`` (2009.11.00) and ``Not Frozen, of a brix value not exceeding 20`` (2009.12.00). The witness testified further that subheading 2009.79.00 falls directly under `Apple Juice` and specifically provides for `other Apple Juice` not being `Apple Juice of a brix not exceeding 20` (2009.71.00). The witness testified further that mango pulp and guava pulp are supposed to be classified under subheading 2009.89.00 which provides for `Other Juice of any other single fruit or vegetable`. The witness stated that the subheadings provided for in the East African Community Duty Remission Gazettes did not include the subheading 2009.89.00 and as such the applicant`s imports of mango pulp and guava pulp should not have benefitted from the duty remission scheme.

The applicant submitted that the respondents Commissioner of Customs exercised discretionary power in accordance with S. 140 of the EACCMA and the Regulations thereunder, when approving and recommending the applicant for entitlement to duty remission, and the exercise of discretion by the Commissioner created a procedural and substantive legitimate expectation that the Commissioner is estopped from interfering with. The applicant submitted that it has benefited from the remission of duty on

imported raw materials used in that manufacture of various fruit juices since the year 2013 and that the goods imported by it were processed under the duty remission scheme based on classifications, item descriptions, approved quantities for import and Customs Procedure Codes (CPCs) approved and recommended by the Respondent's Commissioner of Customs. It was the applicant`s submission that its import documentation at all times showed that it was importing mango/guava pulp. The applicant submitted that it expressed interest for consideration under the EAC Duty Remission Scheme clearly listing the raw materials it intends to import for the Respondent's verification and consideration and the respondent's Commissioner of Customs having thoroughly reviewed and verified the said applications for duty remission, exercised his discretion and recommended the applicant as qualifying for duty remission. The applicant submitted further that it's customs entries and supporting documents for the assessed period clearly identify the taste and flavour of the goods as having characteristics of guava and mango namely, Alphonso Mango Pulp (AMP), Totapuri Mango Pulp (TMP). The applicant stated that in compliance with Duty Remission Regulations, the Applicant filed quarterly returns clearly listing the raw material names and qualities. The applicant submitted further that prior to the 2021 audit findings that gave rise to the demand notices in issue, the respondent had previously conducted two Customs Post Clearance audits covering the period from January 2013 to December 2015 and January 2016 to December 2020. Both audits did not identify any misclassification of goods by the Applicant although the stated objective of Customs Post Clearance audits is to establish whether imported goods were properly classified, and appropriate Customs Procedural Codes applied.

Relying on S. 140 of the EACCMA and Regulation 3 of the East African Community Customs Management (Duty Remission) Regulations, the applicant submitted that duty remission is a discretionary tax incentive granted by the EAC Council of Ministers upon recommendation by the respondent's Commissioner of Customs for the reason that the use of the word may has been interpreted to denote discretion as was seen in *Uganda v Lutoti and 2 Ors* HCT-04-CR-CN-20 of 2011.The applicant submitted that the respondent's Commissioner of Customs exercised discretionary power in accordance

with the law when approving and recommending the applicant for entitlement to duty remission and the exercise of discretion by the Commissioner created a procedural and substantive legitimate expectation that the Commissioner is estopped from interfering with. The applicant submitted that legitimate expectation is a principle of administrative law that envisages that if a public body, by a representation, has created a lawful expectation in some person, then it will be unfair on the part of the administration to whittle down or take away such legitimate expectation. The principle extends to an expectation of a benefit that may arise from what a person has been permitted to enjoy and which they can legitimately expect to be permitted to continue to enjoy.

It was submitted by the applicant that the respondent is mandated by Statute to administer and give effect to tax laws and to assess, collect and account for all revenues to which the said laws apply and in the course of executing the said mandate and specific function, the Respondent has the power and mandate to interpret the relevant laws. In support of this position the applicant relied on the decisions in *Ayikoru Gladys v Board of Governors of St. Mary's Ediofe Girls Secondary School*, Civil Suit No.026 of 2016, *Regina v Inland Revenue Commissioner, ex parte MFK Underwriting Agents Ltd*;(1987) 2 All ER 518; and *National Social Security Fund V Uganda Revenue Authority* Civil Appeal No.29 of 2020. The applicant submitted in this case, from the evidence adduced, the provisions of the law, and the decided cases highlighted above, the Commissioner invited the applicant as eligible manufacturer to express interest for consideration under the duty remission scheme. The invitation was accompanied by a list of raw materials to be considered for duty remission, HS Codes and specific product description as per exhibit AEX 6. The applicant expressed interest for consideration under Duty Remission and submitted its application to the respondent's Commissioner of Customs in accordance with Regulation 9, Part 2 of the Procedure Manual for Application for Duty Remission Regulations where it clearly stated the description and quantities of the raw materials it intended to import under the duty remission scheme as per exhibit AEX7. The applicant submitted that the respondent, as mandated by law, subjected the applications to a thorough review process involving verification of the applicant's manufacturing facility, raw materials and the quantities required for the

manufacture of qualifying goods in accordance with Regulation 9, Part 2 of the Procedure Manual for Application for the Duty Remission Regulations. The respondent's Commissioner of Customs received, reviewed and verified the applications for consideration under the duty remission scheme, including the accuracy of the information submitted in support of the applications in accordance with Regulation 9, Part 2 of the Procedure Manual. The Commissioner went ahead to exercise his discretionary power to recommend the applicant as qualifying for duty remission and communicated this position to the applicant by recommendation letters; the letters indicate in their body that the listed raw materials may be classified and cleared using the CPCs ascribed thereto and that those raw materials qualify for duty remission for that specified period as per exhibit AE8. Upon the Commissioner's recommendation, the applicant was ultimately granted duty remission and gazetted by the EAC Council of Ministers in accordance with Section 140 EACCMA and Regulation 3 of the Duty Remission Regulations as per exhibit RE11. The applicant submitted further that it filed quarterly returns relating to the imported raw material and no such omissions or commissions were identified by the respondent prior to the demand notices in issues and the applicant's customs entries lodged for the queried consignments were all supported with documents that clearly identified the taste and flavour of goods as having characteristics of mango/guava fruit the applicant submitted that these entries were verified, processed, and goods cleared under the procedures established for duty remission by the respondent. Further, the applicant stated that the respondent had previously subjected the Applicant to two Customs Post Clearance audits in 2016 and in January 2020 prior to the assessments in question. The respondent's findings from both audits did not identify any misclassifications or short levy of duties in respect of mango or guava pulp and it was observed during the audits that the goods were "generally well classified as per exhibit AEX10.

The applicant submitted that it's applications for duty remission complied with the law and were granted in accordance with section 140 EACCMA. The applicant submitted further that the respondent did not lead any evidence at the hearing that the grant was illegal, irregular or by mistake and that it was disingenuous and procedurally wrong to

attribute the applicant's declarations to misclassifications that resulted in short levy of duty and for irregularly benefitting from the duty remissions scheme which for all intents and purposes is discretionary and subject to ongoing verification and monitoring. The applicant submitted that the annual applications expressing interest for consideration under the EAC Duty Remission Scheme in respect of their imports of raw materials are akin to an application for advance binding administrative rulings on tariff classification as provided under Section 122 EACCMA. Such rulings are made after reviewing sufficient documentation in support of the goods to be imported by the taxpayer and are binding on the Commissioner.

It was the applicant's further submission that the applications for duty remission were supported with sufficient information to enable the Commissioner to make a decision on eligibility for duty remission, the classification of the goods, the appropriate CPCs and the quantities of goods to be imported. All such decisions, as evidenced by correspondences by the Commissioner approving specified raw materials as qualifying for duty remission under the recommended tariff classifications, are binding on the Commissioner and cannot be revoked.

Without prejudice to the foregoing, the applicant submitted that mango/guava pulp were correctly classified under HSC 2000.79.00 as being "other" fruit juice. Furthermore, even if mango/guava pulp was wrongly, erroneously, or inadvertently classified as "orange juice "or "apple juice, the classification would not alter the tax treatment, and the duty remission granted would still be valid for the reason that mango/guava pulp which has no specific description under the HSC, but which rightly falls under HSC 20.09 for fruit and vegetable juices, was classified under HSC 2009.79.00 and described as "other" in the EAC Gazettes specifically for purposes of duty remission, and not as "apple juice other" as described in the general EAC Common External Tariff (CET). Additionally, the applicant submitted that applying the ejusdem generis rule of interpretation, the word "other "as used under HSC 2009.79.00 in the EAC Gazettes means that the intention of the Council of Ministers was to provide for the classification of the officer fruit juices under 2009.79.00 for purposes of duty remission. The applicant

submitted therefore, that the use of the word "Other" under HSC 2009.79.00 in the EAC Gazettes means other fruit juices and the Gazette description which grants the duty remission is distinguishable from the description of the same HS Code in the general EAC Common External Tariff (CET).
The applicant prayed that the demand notices issued by the respondent in respect of short levied taxes of Shs. 221,372,752 and Shs.1, 025, 013.331 be set aside and the applicant be paid a refund of the tax demand and paid Shs. 221,372,752.

The respondent submitted that the treaty for the Establishment of the East African Community was signed on 30th November 1999 with Uganda as one of the partner states and on 2nd March 2004, the Protocol on the Establishment of the East African Community Customs Union was signed. The East African Community Customs External Tariff (EACCET) is Annex 1 to the Protocol on the Establishment of the East African Community Customs Union. According to Article 8(2) of the Protocol, the Partner States adopt the Harmonised Commodity Description and Coding System specified in Annex I. The respondent submitted that The EAC CET is the legal framework that manages tariff classification in the East African Community as adopted from the WCO Harmonised System.

The respondent submitted that the EAC CET is governed by 6 rules of interpretation called the General Interpretation Rules (GIR). These rules are applied in a hierarchical order. This implies that you can only apply rule 2 if you have exhausted rule 1 and the same has been found inapplicable. You can only apply GIR3 where GIR1 and GIR 2 are found inapplicable. This applies to the subsequent rules mutatis mutandis. The EAC CET is structured into four 4 categories, namely sections chapters, headings and subheadings. Chapters cover tariff classification at a 2-digit level, headings at a 4-digit level and subheadings at a 6-digit level.

The respondent submitted that it conducted a customs post-clearance system audit on the applicant for the period 2017/2018 to 2019/20 and 1st July 2020 to 15th June 2021. The respondent submitted that as per the evidence of RW1, the applicant being an

Authorised Economic Operator (AEO) has the privilege of having its good cleared through the green and blue lanes without physical verification and document checks at the point of importation. The respondent submitted that it reviewed several documents in the ASYCUDA system as submitted by the applicant and found that the applicant imported mango fruit pulp and guava fruit pulp and declared the same under duty remission, whereas the same did not qualify for duty remission. The applicant does not deny that what was imported was Mango Fruit Pulp and Guava Fruit Pulp. The respondent submitted that the documents reviewed include Single Administrative Document (SADs) and the source documents attached to the entries such as invoices, purchase orders, bills of lading, certificates of analysis, packing lists, among others. The respondent stated that contrary to the applicant`s contention that the import documentations at all times showed that the applicant was importing mango and guava pulp, a review of the documents indicated that the declarations for the consignments were silent on the exact fruit pulp and instead and instead used narratives such as "juice pulp" and "natural fruit pulp". However, the documents attached to the entries contained details which show that what was being imported was Guava pulp as well as Mango Pulp namely, Totapuri Mango Pulp (TMP) and Alphonso Mango Pulp (AMP).

The respondent submitted that it found that the applicant had declared mango and guava pulp under subheadings 2009.19.00 and 2009.79.00 with an import duty of 10% under the duty Remission Scheme, instead of the residual HSC 2009.89.00 which provides for any other juice not specifically mentioned and which attracts an import duty rate of 25%, causing a short levy of Shs. 1,246,386,089. The respondent submitted that HSC 2009.19.00 provides for orange juice while HSC 2009.79.00 provides for apple and they do not provide for mango or guava.

The respondent submitted that the applicant wrote to the respondent requesting for review of the decision in respect of the short levied taxes and the respondent found that the Applicant's letters of expression of interest never made any specific mention that they intended to import guava and mango fruit pulp. The said letters of expression of interest had specific HS Codes and none of them were for guava fruit pulp or mango

fruit pulp. There was no mention of mango or guava at all. They were specifically relating to orange and apple and not mango pulp which was imported by the Applicant. The respondent submitted that the applicant`s documents indicated that it intended to import orange concentrates of HSC 2009.19.00 and fruit concentrates of HSC 2009.79.00.
The respondent submitted that it did not at any time permit or advise the applicant to import mango fruit pulp under the duty remission scheme and maintains that mango pulp and guava pulp are not part of the items under the duty remission scheme and the same attracts an import duty rate 25%.

The respondent submitted, relying on the testimony of RW2, that subheading 2009.19.00 falls directly under "Orange Juice" and specifically provides for "other orange juice" which is not "frozen" (2009.11.00) and "Not frozen, of a brix value not exceeding 20" (2009.12.00) the respondent submitted that HSC 20.09 provided for "Fruit juices (including grape must) and vegetable juices, unfermented and not containing added spirit, whether or not containing added sugar or other sweetening matter". Under which Heading, the first fruit juice provided for under one dash is orange juice, with HSC 2009.11 for frozen orange juice, HSC 2009.12 for orange juice not frozen, of a brix value not exceeding 20, and subheading 2009.19 for Other Orange juice which refers to orange juice of brix value exceeding 20.

The respondent submitted that the other fruit juice provided for under one dash is apple juice, with subheading 2009.71 for apple of a brix value not exceeding 20 and subheading 2009.79 for other apple juice which refers to other apple juice of a brix value exceeding 20. The other fruit juices provided under one dash is Juice of any other single fruit juice or vegetable, with subheading 2009.81 for cranberry juice, subheading 2009.89 for other juices of any single fruit or vegetable, and subheading 2009.90 for mixtures of juices of any single fruit or vegetable. The respondent submitted that this clearly showed that subheadings 2009.19 refers to other orange juice of a brix value exceeding 20 and in the same vein, subheading 2009.79 refers to other apple juice of a brix value exceeding 20.

The respondent submitted that S. 140(1) of the EACCMA provides that the council may grant remission of duty on goods imported for the manufacture of goods in a partner state while S. 140(3) of the EACCMA provides that the manufacture, and the approved quantity, of the goods with respect to which remission is granted under this section shall be published by the council in the gazette.

The respondent submitted that according to the evidence of RW1, the duty remission scheme applies specifically to items gazetted by the East African Community and has the effect of lowering the applicable import duty rate. The respondent submitted that Gazettes "RE10" to "RE15" clearly indicate that the ministers approved a remission of duty on raw material and industrial inputs imported by manufacturers in Uganda for one year. The list included other orange juice, frozen or not frozen of HSC 2009.19.00 and other fruit juices of HSC 2009.79.00 relates other apple juice of a brix value exceeding 20. It was the respondent`s submission that, the EAC Gazettes clearly indicated the HS Codes for which duty remission was given, being 2009.19.00 and 2009.79.00. These HS Codes are for apple and orange. The gazettes never at any one time included the HS Code for mango and guava, namely, HSC 2009.89.00 which provides for "other juice of any other single fruit or vegetable" as such the applicant's imports of mango pulp and guava pulp should not have enjoyed the duty remission. The respondent submitted that the applicant has not discharged the burden to prove that it was entitled to duty remission on the importation of mango fruit pulp and guava fruit pulp, as such, the assessments of Shs. 221,372,758 and Shs 1,025,013,331 were lawfully issued.

The respondent submitted that the doctrine of legitimate expectation did not apply to the instant case since the respondent and the applicant at all times referred to the specific HS codes and made no mention whatsoever of mango fruit pulp and guava fruit pulp and that there was no evidence of a promise made to the applicant. The respondent submitted further that even if the said doctrine was applicable to this case, the legal principle that clear statutory words will override any contrary expectations however founded meant that the doctrine of legitimate expectation would fail in this case. The respondent relying on the decision in *Justice Kalpana Rawal v Judicial Service Commission & 3 others; Republic v Kenya Revenue Authority Exparte Shake*

Distributors limited {2016} E Klr, CA {2012} e KLR); submitted that for a promise to hold, it must be within the law. The respondent prayed that the application be dismissed with costs.

In rejoinder the applicant reiterated its earlier submissions.

Having listened to the evidence and read the submissions of the parties, this is the ruling of the tribunal.

This dispute relates to the classification of goods under the East African Community Common External Tariff and the application of the Duty Remission Scheme as provided for under S.140 of the East African Community Customs Management Act, 2004 and Regulation 3 of the East African Community Customs Management (Duty Remission) Regulations, 2008. The law applicable is set out below;

S. 140 of the East African Community Customs Management Act, 2004 (EACCMA) states:

1) The Council may grant remission of duty on goods imported for the manufacture of goods in a Partner State.
2) The council may prescribe regulations on the general administration of the duty remission under this section.
3) The manufacturer, and the approved quantity, of the goods with respect to which remission is granted under this section shall be published by the Council in the Gazette.

Regulation 3 of the East African Community Customs Management (Duty Remission) Regulations 2008 provides:

"The Council may grant remission of duty under section 140 of the Act on-

(a) goods imported for use in the manufacture of goods for export
(b) Such goods imported for use in the manufacture of approved goods for home consumption as the Council may, from time to time, by notice in the Gazette, determine."

Regulation 6 of the East African Community Customs Management (Duty Remission) Regulations 2008 provides:

1) Remission of duty granted under these Regulations shall be valid for period of twelve months from the date of the publication of the grant in the Gazette.

2) The council may on the application by a manufacturer, grant remission on such further quantity of goods to be imported by the manufacturer under these Regulations.
3) The Councilor may, on application by a manufacturer, extend the period referred to in sub-regulation (1) for a further period of six months.

Part 2 of the Procedure Manual for Application of the Duty Remission Regulations, 2008 provides:

"(9). All applications for duty remission shall be submitted to the commissioner who shall verify the accuracy of the submitted information and may call for any additional information before submitting the application to the Committee for consideration."

Regulation 7 of the East African Community Customs Management (Duty Remission) Regulations 2008 provides;

1) A manufacturer of goods for export shall-
   (a) .....
   (b) Submit returns quarterly, to the Commissioner giving relevant information as the Commissioner may require.

The applicant`s case is based on three main arguments. Firstly, that the recommendation by the respondent`s Commissioner that the applicant qualified for duty remission was an exercise of discretion which gave rise to a substantive legitimate expectation on the part of the applicant. Related to this argument is the argument that the respondent having cleared the applicant`s imports of mango and guava fruit pulp under the duty remission scheme since the year 2013, is estopped from asserting that the said imports did not fall under the said scheme.

Secondly, that the mango/guava pulp were correctly classified under HS Code 2000.79.00 as `other` fruit juice and that even if the mango/guava pulp were wrongly, erroneously, or inadvertently classified as `orange juice` or `apple juice`, the classification would not alter the tax treatment, and the duty remission granted would still be valid on the ground that mango/guava pulp falls under HSC 2009.79.00.

Thirdly, that applying the *ejusdem generis* rule, the word `other` as used under HSC 2009.79.00 in the EAC Gazettes means that the intention of the Council of Ministers was to provide for the classification of other fruit juices under 2009.79.00 for the purposes of duty remission. We will address the above arguments collectively in order to determine this application. The applicant submitted therefore, that the use of the word "Other" under HS Code 2009.79.00 in the EAC Gazettes means other fruit juices and the Gazette description which grants the duty remission is distinguishable from the description of the same HS Code in the general EAC Common External Tariff (CET).

The concept of legitimate expectation was defined in *Ayikoru Gladys v The Board of Governors of St. Mary`s Ediofe Girls Secondary School* Civil Suit No. 0026 of 2016 at the High Court of Uganda at Arua, wherein Mubiru J, stated as follows;

> `...The doctrine of legitimate expectation is a relatively new concept that has been fashioned by the Courts for the review of administrative action. A legitimate expectation is said to arise `as a result of a promise, representation, practice or policy made, adopted or announced by or on behalf of government or a public authority`. Therefore it extends to a benefit that an individual has received and can legitimately expect to continue or a benefit that he expects to receive. When such a legitimate expectation of an individual is defeated, it gives that person the locus standi to challenge the administrative decision as illegal. Thus even in the absence of a substantive right, a legitimate expectation can enable an individual to seek a judicial remedy. `

`The phrase *substantive legitimate expectations* refers to the situation in which the applicant seeks a particular benefit or commodity, such as welfare benefit, or a license. The claim to such a benefit will be founded upon governmental action which is said to justify the existence of the relevant expectation`. (See Administrative Law, 5th Edition, P.P. Craig).

It will be observed from the *Ayikoru Gladys* case above that for a legitimate expectation to obtain there must be a promise or a representation. This promise or representation must give rise to a benefit which an individual has received and can legitimately expect to continue receiving or a benefit that the individual expects to receive. Did the Commissioner`s recommendation constitute such a promise or a representation? A sample of the Commissioner`s recommendation was admitted in evidence as exhibit A8. It is dated July 7, 2014. An excerpt is reproduced below;

> `The General Manager
> Commercial /Operations
> Britania Allied Industries Ltd
> P.O Box 7518, Kampala
>
> Dear Sir,
> **RE: DUTY REMISSION ON IMPORTED RAW MATERIALS**
>
> Your letter dated 28th June 2014 on the above subject refers.
>
> We take note that your company imports raw materials for use in your facility.
> Based on the availed information, the under listed raw materials may be classified and cleared using the Customs Procedure Codes (CPCs) ascribed thereto.

	Item Description	HSC	Quantities	CPC
1.	Orange Concentrates	2009.19.00	200MT	452
2.	Fruit Concentrates	2009.79.00	2,545 MT	452

> The above mentioned raw materials qualify for duty remission for a period from 1st July 2014 to 30th June, 2015.
>
> Please note that the classification and tax treatment of the above item has been based on information that you have availed and may change at importation depending on actual physical presentation of the goods to Customs.`

A perusal of the above letter shows that the promise or representation made by the respondent to the applicant was that the applicant could import the items classified under the above Harmonized System Codes (HS) codes through the duty remission scheme. The question which arises and which forms the crux of the dispute between the parties is whether the mango fruit pulp and the guava fruit pulp imported by the applicant fall under HS codes 2009.19.00 and 2009.79.00 and could therefore be imported under the duty remission scheme. If the above question is answered in the affirmative then it is clear that a legitimate expectation was created in favour of the applicant by virtue of the above letter. If however it is shown that mango fruit pulp and guava fruit pulp do not fall under the above stated HS codes then no legitimate expectation would arise for the reason that the promise or representation given by the respondent related only to items classified under the HS codes listed in the said letter.

For the purposes of determining whether mango fruit pulp and guava fruit pulp are classified under the above HS codes, we will rely on the Harmonized Commodity Description and Coding System. The Harmonized System or HS is a goods nomenclature developed and maintained by the World Customs Organization and is governed by the International Convention on the Harmonized Commodity Description and Coding System.

The HS provides a logical structure in which over 1,200 headings are grouped into 96 Chapters, some of which are further divided into sub-Chapters. The Chapters are arranged in 21 Sections. Each heading is identified by a four-digit code, the first two digits indicating the Chapter where the heading appears, the latter two indicating the position of the heading in the Chapter. In addition most of the headings are subdivided into 1-dash subheadings which, where necessary are further subdivided into 2-dash subheadings identified by a 6-digit code (HS code). A relevant excerpt of heading 20.09, the interpretation of which forms the subject of our dispute has been reproduced below.

20.09		**Fruit juices (including grape must) and vegetable juices, unfermented and not containing added spirit, whether or not containing added sugar or other sweetening matter.**
		- Orange Juice :
2009.11,00	--	Frozen
2009.12.00	--	Not Frozen, of a brix value not exceeding 20
2009.19.00	--	Other
		- Apple Juice :
2009.71.00	--	Of a brix value not exceeding 20
2009.79.00	--	Other
		- Juice of any other single fruit or vegetable:
2009.81.00	--	Cranberry (*Vaccinium macrocarpon, Vaccinium oxycoccos, Vaccinium vitis-idaea)* juice
2009.89.00	--	Other

It will be observed from the above excerpt that heading 20.09 relates to **Fruit Juices (including grape must) and vegetable juices, unfermented and not containing added spirit, whether or not containing added sugar or other sweetening matter.** Below this heading is the subheading `Orange Juice` which has been divided into three subheadings. The first subheading is identified by HS code 2009.11.00. It specifically provides for frozen orange juice. The second subheading by HS code 2009.12.00 it specifically provides for orange juice which is not frozen and has a brix value not exceeding 20. The third subheading is identified by HS code 2009.19.00. It provides for `Other`. Unlike the first and second subheadings, the third subheading is not specific. How are we to determine the items which fall under the term `Other`?

As can be seen from the above excerpt, subheadings preceded by a single dash (-) refer to a specific item, in our case to either Orange juice, Apple Juice or Juice of any other single fruit or vegetable. Subheadings preceded by two dashes (--) indicate a subset of the subheading preceded by one dash, as can be seen with HS code 2009.11.00 which refers to Frozen orange juice or HS code 2009.12.00 which refers to

orange juice which Not frozen and is of a brix value not exceeding 20 or HS code 2009.71.00 which refers to apple juice, of a brix value not exceeding 20 and HS code 2009.81.00 which refers to Cranberry Juice.

Since the term `Other` is preceded by two dashes, it follows that it is a subset of the subheading preceded by one dash. For this reason only items which are subsets of Orange Juice can be classified under HS code 2009.19.00. The same explanation applies to Apple Juice. Since neither, mango fruit pulp or guava fruit pulp, are subsets of either Orange Juice or Apple Juice, they cannot be classified under either HS codes 2009.79.00 or HS code 2009.19.00. This means that neither mango fruit pulp nor guava fruit pulp could be imported under the duty remission scheme.

This conclusion means that the argument by the applicant that the mango/guava fruit pulp were correctly classified under HS Code 2009.79.00 as `other` fruit juice is not tenable nor is the argument that applying the *ejusdem generis* rule, the word `other` as used under HS Code 2009.79.00 in the EAC Gazette shows the intention of the Council of Ministers to provide for the classification of other fruit juices under 2009.79.00 for the purposes of duty remission. We agree with the respondent that the proper classification for mango fruit pulp and guava fruit pulp is HS code 2009.89.00 which provides for other juices of any other single fruit or vegetable.

The applicant has also argued that having permitted the importation of mango/guava fruit pulp under the duty remission scheme since 2013, the respondent is estopped from asserting that the applicant wrongly classified the above items under HS codes 2009.19.00 and 2009.79.00. The applicant`s further argument is that the respondent did not only permit the importation of the above items under the duty remission scheme for all these years but carried out two audits which verified that the applicant was correctly classifying the items being imported. Can the respondent be estopped or can it bind itself not to perform its statutory duties owing to past conduct or omissions?

In *R. v Inland Revenue Commissioners Ex p. Preston* (1985) A.C. 835, the applicant was assured by the Revenue in 1978 that it would not raise further inquiries on certain tax affairs if he agreed to forgo interest relief which he had claimed and to pay certain capital gains tax. The House of Lords held that the Revenue could not bind itself not to perform its statutory duties. It was therefore in principle entitled to go back on its assurance when it received new information about the applicant`s dealings. Relying on this decision, we take the view that the respondent was justified in raising an assessment, having established that the applicant had wrongfully imported mango/guava fruit pulp under the duty remission scheme, despite the fact that the respondent had permitted these imports in the past. This justification is based on the above principle of law that statutory bodies cannot bind themselves not to perform their statutory duties.

For the reason that neither mango/guava fruit pulp could be imported under the duty remission scheme and the fact that statutory bodies cannot bind themselves not to perform their statutory duties, the claim of legitimate expectation cannot be maintained by the applicant against the respondent.

For the above reasons this application is dismissed with costs to the respondent.

Dated at Kampala this 29th day of May 2023.

MR. SIRAJ ALI	**DR. STEPHEN AKABWAY**	**MR. GEORGE MUGERWA**
CHAIRMAN	**MEMBER**	**MEMBER**