

THE REPUBLIC OF UGANDA
IN THE TAX APPEALS TRIBUNAL AT KAMPALA
APPLICATION NO. 79 OF 2022

NAMUTEBI DAMALIE ===== APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY ===== RESPONDENT

BEFORE: MR. SIRAJ ALI, MR. GEORGE MUGERWA, MS. CHRISTINE KATWE

RULING

This ruling is in respect of an application challenging the sale by the respondent of the applicant's goods on the ground of abandonment.

On 26th June 2014, the applicant imported into the country assorted goods which were warehoused at Multiple ICD vide warehousing entry number S27256. On 24th June 2015, upon payment of taxes the goods were exited out of customs vide Exit Note Number 2015/X/63386. On the same day the applicant sought to have the goods released but the respondent declined on the grounds that the applicant had not cleared her dues to the shipping line. In March 2019, the applicant went to Multiple ICD to retrieve the said goods. She found the respondent in advanced stages of selling off the goods on the ground that they had been abandoned. The parties agreed to suspend the sale if the applicant would take the goods by 18th March 2019. The goods were subsequently sold to one, Sserugera Obeed by private treaty. On 15th May 2019, the applicant wrote to the Commissioner appealing against the said sale. On 16th March 2022, through her lawyers, the applicant wrote informing the respondent that owing to its failure to respond to the applicant's appeal, the respondent was deemed to have allowed the appeal under S.229 (5) of the East African Community Customs Management Act, 2004. By letter dated 23rd March 2022, the respondent rejected the election as being premature and having no basis in law.

The following issues were set down for determination.

1. Whether the respondent acted lawfully in disposing of the applicant's goods?
2. Whether the applicant's election to treat the appeal of 15th May 2019 as allowed is valid?
3. Whether the respondent's decision of 31st March 2022 is valid?
4. What remedies are available to the parties?

The applicant was represented by Ms. Dorothy Bishagenda and Ms. Lydia Namungoma while the respondent was represented by Mr. Alideki Ssali Alex, Mr. Donald Bakashaba and Ms. Rita Nabirye.

The applicant's first witness was Mr. Kintu Steven, the applicant's husband and business partner. The witness testified that he travelled to Japan in the year 2009 and worked there until the year 2014. The witness testified that before his return he purchased assorted goods such as exercise equipment, used clothes, gymnastics articles and used bicycles from Japan on behalf of the applicant. The witness stated further that he personally cleared all the relevant taxes in respect of the consignment on behalf of the applicant and the consignment was exited vide exit note number 2015/X/63386. The witness testified that in the year 2019, he went to Multiple ICD to follow up on the consignment's release but one of the officers informed him that the consignment had been auctioned off. The witness stated that he tried to follow up with the respondent on the applicant's behalf to find out why the consignment had been auctioned off but he received no response from the respondent. The witness testified further that the respondent did not give the applicant any form of notice, whether oral or written in respect of the auction.

The applicant testified that in the year 2014, she imported assorted goods such as used clothing and exercise equipment into Uganda valued at Shs. 120,000,000. The applicant stated that she cleared all the relevant taxes after which she warehoused the goods in Multiple ICD in the year 2015. The witness stated that the goods had been exited by the respondent vide exit note number 2015/X/63386. The witness testified that she kept following up with the warehouse concerning her consignment and in March 2019, during

one of her trips, she found out that the respondent had auctioned the goods without her knowledge. The witness stated that neither the respondent nor her agents informed her that the consignment would be auctioned nor was she given a formal written notice in respect of the said sale. The applicant testified that on 15th May 2019, she appealed to the respondent against the illegal auction of the goods in question and requested that the value of the consignment be reimbursed. The applicant stated further that the respondent did not make a decision in respect of her appeal and issued a taxation decision dated 23rd March 2022, to the effect that my election to treat the appeal as allowed was premature and had not basis in law. The applicant stated that she has suffered as a result of the respondent's action and her business has come to a standstill as a consequence.

The respondent's first witness was Mr. Okoya Alfred, a supervisor in the Legal and Bonds, Customs department of the respondent. The witness testified that the applicant imported assorted goods vide entry T1-D54928 of 8th June 2014. The witness testified that the said goods were later warehoused vide entry S27256 of 26th June 2014. The witness stated further that after almost a year later, the said goods were declared for home consumption vide entry number C44719 on 20th June 2015, released and later exited from the system vide exit note number 2015/X/63386 of 23rd June 2015. The witness stated that the said declaration was made in respect of only 4 out of 16 items or 70 packages out of 205 and a total payment in customs duties of Shs. 2,637,674 was paid by the applicant. The witness stated that upon receipt of the exit note the applicant disappeared and did not take the goods which remained in the customs gazette area beyond the statutory period of 14 days and were then offered for disposal by the Commissioner in accordance with the law. The witness stated that five years later during a routine stock taking the said goods were found to have over stayed and were considered as abandoned and were included on the Want of Entry list and offered for sale. The witness stated that upon the receipt of an application from Mr. Sserugera Obeed to purchase the goods five items on the list of abandoned goods were offered for purchase to him vide offer letter referenced CUS/FS/3/45. The witness stated that the purchaser duly made a declaration in respect of the said goods as the new owner vide form C499 dated 14th March 2019 and the goods were released to him and exited on 15th March 2019 after payment of taxes. The witness

stated that at the time the goods were being exited by the said Sserugera Obeed, the applicant appeared and requested to take the goods which deterred the new buyer. The witness stated that as a result the respondent scheduled a meeting between the applicant and the Manager warehousing sector B, where it was agreed that the applicant would take her goods by 18th March 2019. The witness stated that the applicant however failed to take the goods within the time allotted and as a result Mr. Sserugera Obeed who had paid for the goods was allowed to take them. The witness stated that the goods were treated as abandoned since the goods had stayed in the customs gazette area for a period of more than three years after their exit from the system.

The respondent's second witness, was Ms. Ahimbisibwe Prossy, an officer in the respondent's Customs Audit Division. The witness testified that in the year 2019 she was deployed at Multiple ICD Bond where the goods in question were warehoused. The witness stated that while on duty she received instructions from the Manager warehousing to take stock and identify unaccounted for goods. The witness stated that during the stock taking exercise she was able to identify the goods in question as goods that had stayed in the customs bonded warehouse for more than five years. The witness stated that further investigation revealed that the goods belonged to the applicant and that they had been entered under IM7 No. S27256 OF 26th June 2014 and later ex-warehoused under IM4 No. C44719 of 2015 vide Exit Note No. 2015/X/63385. The witness testified that from the respondent's observation the goods had been exited but were still in the warehouse. As a result the respondent considered them to be abandoned and included them on the Want of Entry list and offered them for auction. The witness stated further that in the process of verifying the abandoned cargo, the purported owner of the goods, a person different from the applicant came to the respondent's office and laid a claim to the goods. The witness stated that she insisted on meeting with the applicant, who was the consignee of the goods. The witness stated that subsequently a meeting was held between the applicant and the respondent's officials during which it was agreed that the applicant should pick the goods from the warehouse within a period of seven days. The witness stated that the applicant failed to pick the goods within the agreed period and they were consequently disposed of by the Commissioner in accordance with the law.

The applicant submitted that an importer has six months within which to remove his or her consignment from a warehouse except where they receive written permission from the Commissioner to re-warehouse the consignment for a further period of three months. In support of this position the applicant cited S. 57(1) and (2) of the East African Community Customs Management Act (EACCMA), 2014. The applicant submitted that where the goods have not been re-warehoused in accordance with the above stated law, then the Commissioner may sell them by public auction. The applicant submitted that she was frustrated by the respondent from removing her goods within the prescribed period as evidenced by the testimonies of AW1 and RW2. The applicant submitted that the evidence before the tribunal proves that she imported goods worth Shs. 120,000,000/, paid all the taxes, had the goods released but the respondent refused to hand over the consignment to her from the year 2015 when the applicant first tried to secure their release to the year 2019 when she discovered that the goods had been auctioned. In the alternative the applicant submitted that the issuance of the exit note shows that the respondent had released the consignment and had no further authority over it and removes the applicant from the ambit of S. 57 of EACCMA. The applicant submitted therefore that the sale of the applicant's consignment was illegal because the respondent had already released the consignment by the issuance of the exit note. In the further alternative, the applicant submitted that the respondent did not give her notice of the auction of the consignment as required by S. 57 (2) of EACCMA nor was she informed of the sale of her goods. The applicant submitted further that the goods were sold by private treaty and not by public auction as admitted by the respondent during scheduling. The applicant submitted that its goods were not perishable therefore they ought not to have been sold by private treaty and without the requisite notice provided for under the law. In support of these arguments the applicant cited the decision in *Akiphar Pharmaceuticals v. Commissioner Customs URA*, Civil Suit No. 366 of 2012, where the High Court held that S. 57 of the EACCMA makes it mandatory for the respondent to sell goods by public auction after a month's notice. Relying on the above decision the applicant submitted that the respondent's sale of the applicant's consignment was illegal because the applicant's efforts to have the goods handed over to her were frustrated by the respondent, the

applicant's consignment was exited on 23rd June 2015 vide exit note number 2015/X/63386, the respondent did not give the applicant the requisite notice provided for under the law and the respondent in breach of the law sold the goods by private treaty instead of public auction. The applicant submitted that the above acts of the respondent were illegal and she stated that the tribunal ought not to sanction an illegality. The applicant cited the decision in *Makula International Ltd v. His Eminence Cardinal Nsubuga & Anor, Civil Appeal No. 04 of 1981*.

The applicant submitted that its election to treat the appeal of 15th May 2019 as allowed is valid. The applicant submitted that S. 229(4) of EACCMA provides that the Commissioner is required to make a decision within 30 days of the receipt of an application. The applicant submitted further that its appeal against the illegal auction of her consignment dated 15th May 2019 was received by the respondent on 16th May 2019 and the respondent has to date not made a decision in respect of the said appeal despite several follow ups by the applicant. The applicant cited S. 229(5) of EACCMA which provides that where the Commissioner has not communicated his or her decision to the person lodging the application for review within the time specified the Commissioner shall be deemed to have allowed the application. The applicant submitted that since the Commissioner has never communicated a decision, the Commissioner is deemed to have made a decision allowing the said application. The applicant cited the decision in *Photon Technologies Ltd v. The Commissioner General URA Misc. Cause No. 14 of 2016*. The applicant submitted that on the basis of S. 229(5) of EACCMA, she notified the respondent on 16th March 2022, that her appeal against the illegal auction of her goods had been allowed.

The applicant submitted that the respondent's decision dated 31st March stating that the applicant's election was premature was invalid. The applicant submitted that the election was not premature as it was written thirty days after the appeal was made and the applicant's appeal against the illegal auction dated 15th May 2019 was delivered to the Respondent on 16th May 2019.

The applicant prayed that the respondent be ordered to pay general damages of Shs. 50,000,000/-. The applicant submitted that she imported the goods in question for the

purpose of making profit however owing to the respondent's actions she has suffered loss as her business has come to a standstill. The applicant cited the decision in *Robert Coussens v. Attorney General Civil Appeal No. 08 of 1999*, in support of her claim for general damages.

The respondent submitted that S. 60(1) and (3) of EACCMA requires that all goods entered for home consumption be removed within 14 days after the lodging of an entry otherwise the goods are forfeited to the State and may be destroyed or disposed of as the Commissioner may direct. The respondent submitted that the applicant entered the goods for home consumption vide entry no. C44719 of 20/6/2015, paid partial taxes, obtained an exit note through which the goods were released but she failed to remove them from Multiple ICD W0078 for close to 5 years from 2015 to 2019. The respondent submitted that having failed to remove the goods from the warehouse the applicant was deemed to have abandoned them therefore the respondent lawfully disposed of the same in accordance with S. 60(1) and (3) of EACCMA.

In response to the submission by the applicant that under S. 57 of EACCMA goods warehoused in a bonded warehouse should not exceed 6 months except with the permission of the Commissioner, the respondent submitted that the goods in question were warehoused in June 2014 and entered for home consumption in June 2015. The respondent submitted that there was no evidence on record to show that the applicant applied for extension of the 6 months period nor was there evidence that such extension had been granted by the Commissioner. The respondent submitted that there was therefore no further re-warehousing of the goods in question as provided for under the law. The respondent submitted that the law clearly stipulates how to treat goods that have been entered for home consumption under S. 60(1) and (3) of EACCMA. The respondent submitted that the law gives the Commissioner the powers to deal with the goods as the Commissioner deems fit therefore there was no requirement for the Commissioner to deal with the goods only through a public auction. The respondent submitted therefore that the it lawfully disposed of the goods.

The respondent submitted that the applicant's election was invalid for the reason that the application for review was not filed within the thirty days period provided for under S.

229(1) of EACCMA. The respondent submitted that the applicant challenged the decision of the Commissioner in the year 2019 yet the goods in question had been exited by customs in the year 2015. The respondent submitted that the testimony of AW1 wherein she stated that she kept following up with the warehouse concerning the goods in question was proof that she ought to have been aware of the respondent's actions and ought to have instantly lodged an application for review. The respondent relying on S. 229(3) of EACCMA submitted that no reason justifying the delay by the applicant in lodging the application for review had been given. Relying on the decision in *Game Discount World Uganda Ltd v. URA Civil Appeal No. 0039 of 2021*, the respondent submitted that the word 'deem' must be construed in the entire context of the Statute concerned and the court must ascertain the purpose of the statutory provision and should not apply the deeming provision so far as to produce unjust, absurd or anomalous results unless the court is required to, by clear language. The respondent submitted therefore that it would be absurd for the tribunal to hold that the applicant was right to elect as the sale of the goods in question was carried out in accordance with the law.

The respondent submitted that its decision dated 31st March 2022 was valid. The respondent submitted that a deemed decision is activated by the applicant acting upon it and it constitutes a final decision if acted upon. The respondent submitted further that until it is acted upon, a deemed decision to a tax objection is replaceable by an actual decision that allows the objection only in part, or imposes conditions which do not have the effect of rejecting the application. The respondent submitted further that where an actual decision is made before the objector had acted to its detriment in reliance on the deemed decision, the deemed decision would no longer be of effect as the actual decision is substituted for the deemed decision.

In rejoinder, the applicant reiterated its earlier submissions and stated that S. 57 of EACCMA is applicable to the instant case since the goods were warehoused. The applicant submitted that proof that the testimony of all the witnesses showed that the goods had been warehoused. The applicant stated further that S. 60 of EACCMA does not apply to the instant application. The applicant submitted further that S. 60 of EACCMA conflicts with S. 57 of the same Act. The applicant relied on the decision of the Court of

Appeal in *Bank of Baroda Uganda Ltd v URA*, Civil Appeal No.71 of 2013, for the proposition of the law that ambiguity in a Statute should be construed in favour of the tax payer. The applicant submitted therefore that the ambiguity between S. 57 and S. 60 of EACCMA should be construed in favour of the applicant with the result that the respondent should sold the goods in question after having given the requisite notice set out under S. 57.

The applicant submitted further that the application for review was made within the prescribed time. The applicant submitted that it lodged an appeal against the illegal auction of the goods in a letter dated 15th May 2019. The applicant clarified that its appeal was against the illegal auction of the goods and not against the goods being exited.

The applicant submitted further that the respondent lost the power to refuse the application for review when the applicant notified it of its election to treat the appeal dated 15th May 2019 as allowed.

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

1. Whether the respondent acted lawfully in disposing of the applicant's goods?

In resolving this issue, we will rely on the following definitions and provisions of the East African Community Customs Management Act, 2004. S. 2 (1) defines the following terms as follows;

"Bonded warehouse" means any warehouse or other place licensed by the Commissioner for the deposit of dutiable goods on which import duty has not been paid and which have been entered to be warehoused".

"warehoused" means deposited in a government or bonded warehouse with the authority of the person in charge of that warehouse".

S.2(2)(a) states that

- "a) Goods shall be deemed to be entered when the entry, made and signed by the owner in the prescribed manner, is accepted and signed by the proper officer and any duty due or deposit required under this Act in respect of the goods has been paid, or security has been given for compliance with this Act;

- (b) Goods shall be deemed to be entered for home consumption when they have been declared for use in a Partner State, other than temporary use, and the provisions of paragraph (a) have been fulfilled."

S. 57(1) states that

- "(1) All warehoused goods which have not been removed from a warehouse in accordance with this Act within six months from the date on which they were warehoused may, with the written permission of the Commissioner, be re-warehoused for a further period of three months:

Provided that in the case of –

- (a) Wines and spirits in bulk warehoused by licensed manufacturers of wines and spirits; or
 - (b) Goods in a duty-free shop; or
 - (c) New motor vehicles warehoused by approved motor assemblers and dealers;
- The Commissioner may, in addition to the period of re-warehousing permitted in this subsection, allow for further period of re-warehousing permitted in this subsection, allow for further period of re-warehousing as he or she may deem appropriate.
- (2) Where any goods required to be re-warehoused under subsection (1) are not so re-warehoused, then they shall be sold by public auction after one month's notice of such sale has been given by the proper officer by publication in such manner as the Commissioner may deem fit.
- Provided that any such goods which are of a perishable nature may be sold by the proper officer without notice, either by public auction or private treaty, at any time after the expiry of the initial warehousing period.
- (3) Where any goods are sold under the provisions of this section, then the proceeds of such sale shall be applied in the order set out below in the discharge of-
- (a) the duties;
 - (b) the expenses of the sale;
 - (c) any rent and charges due to the Customs or to the warehouse keeper;
 - (d) the port charges; and
 - (e) the freight and any other charges."

S. 60 of the Act states that

- "(1) Goods entered for home consumption or sold in accordance with this Act shall be removed from a warehouse within fourteen days after such entry or sale as the case may be.
- (2) Where goods are entered for export such goods shall be removed from the warehouse or bonded factory and exported within thirty days or within such further period, not exceeding thirty days, as the Commissioner may, in any particular case, allow.
- (3) Where goods are not removed within the period required under this section then such goods shall, unless the Commissioner in any special case otherwise directs, be forfeited and may be destroyed or otherwise disposed of in such manner as the Commissioner may direct."

The applicant's case is that the respondent sold the goods in question without complying with the provisions of S. 57(2) of the Act. The said provision as seen above requires that any sale of warehoused goods by the Commissioner be undertaken by public auction after a month's notice has been given to the owner of the goods. The question which must be answered in order to resolve this issue is whether at the time of the sale the goods in question were warehoused goods or whether they had been entered for home consumption. This question is relevant for the reason that it determines which provision of the law applies. If at the time of sale the goods were warehoused then S. 57 of the Act will apply however if at the time of sale the goods had been entered for home consumption then the provisions of S. 60 of the Act will apply.

The testimony of Okoya Alfred shows that the goods were imported on 8th June 2014 and were warehoused on 26th June 2014. On 20th June 2015, the goods were entered for home consumption vide entry number C44719. This position is repeated in the testimonies of both the applicant and Mr. Kintu Steven who both stated that the goods were exited vide exit note number 2015/X/63386.

The definition of a "*bonded warehouse*" under S. 2(1) above shows that warehoused goods refer to dutiable goods on which import duty has not been paid and which have been deposited in a warehouse pending payment of such duty or pending export. Where duty in respect of the goods have been paid they cease to be warehoused goods and are

released for home consumption. It is clear from S. 2(2) (a) and (b) above that goods are deemed to have been entered for home consumption when the duty due has been paid and the entry has been signed and accepted by the proper officer. Exhibit AEX4 shows that the goods were entered for home consumption.

The goods in question having been entered for home consumption at the time of sale, it follows that S. 57 above which specifically deals with warehoused goods, is not applicable. This means that the applicant's arguments relating to sale by private treaty and the failure by the respondent to give the applicant the requisite notice cannot be sustained. The law applicable is S. 60 (1) and (3) which gives the Commissioner powers to dispose of goods entered for home consumption if they have not been removed from a warehouse within fourteen days after such entry. In the instant case the goods in question were entered for home consumption on 23rd June 2015. By the time of sale on or about 18th March 2019, the goods had been in the warehouse for more than four years. Under S. 60 the Commissioner is not required to give notice or to sell by public auction. The applicant has asserted that her efforts to remove the goods in question from the warehouse were frustrated by the respondent. The applicant's letter dated 15th May 2019 however tells a different story. Paragraph three of this letter states "its only the shipping line company that I had not sorted myself with because I had not cleared the balance in order for them to give me the 'Release Order' to take my goods from Multiple ICD". This letter which was written a month or so after the sale of the goods does not lay any blame on the respondent for the failure to release the goods. This position however changes in the applicant's correspondences dated 20th January 2022 and 31st January 2022. In these correspondences the failure to release the goods is now placed squarely on the shoulders of the respondent. As observed by the tribunal in *Multi-Konsults Ltd v. URA TAT 72/2019*, greater weight is usually given by the courts to evidence captured in the immediate aftermath of an incident as compared to evidence produced long after the occurrence of the events giving rise to the matters in issue. Relying on the applicant's letter dated 15th May 2019, it is hard to blame the respondent for the delay by the applicant in removing its goods from the warehouse. The goods in question were only sold after a period of four years. No diligent owner of goods would have left their goods in a warehouse for such a

long period of time. We accordingly find that the respondent acted lawfully in disposing of the applicant's goods under S. 60(1) and (2) of EACCMA.

2. Whether the applicant's election to treat the appeal of 15th May 2019 as allowed is valid?

The appeal which forms the subject of this issue is provided for under S. 229 (1) of the EACCMA. For the sake of completeness, the entire Section will be reproduced below;

S. 229(1) of the Act states

- "(1) A person directly affected by the decision or omission of the Commissioner or any other officer on matters relating to Customs shall within thirty days of the date of the decision or omission lodge an application for review of the decision or omission.
- (2) The application referred to under subsection (1) shall be lodged with the Commissioner in writing stating the grounds upon which it is lodged.
- (3) Where the Commissioner is satisfied that, owing to absence from the Partner State, sickness or other reasonable cause, the person affected by the decision or omission of the Commissioner was unable to lodge an application within the time specified in subsection (1), and there has been no unreasonable delay by the person in lodging the application, the Commissioner may accept the application lodged after the time specified in subsection (1).
- (4) The Commissioner shall, within a period not exceeding thirty days of the receipt of the application under subsection (2) and any further information the Commissioner may require from the person lodging the application, communicate his or her decision in writing to the person lodging the application stating reasons for the decision.
- (5) Where the Commissioner has not communicated his or her decision to the person lodging the application for review within the time specified in subsection (4) the Commissioner shall be deemed to have made a decision to allow the application.
- (6) 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."

The applicant's argument is that the Commissioner was deemed to have allowed her appeal dated 15th May 2019 because the Commissioner did not communicate his decision within a period of thirty days of the receipt of the application.

S. 229(1) provides that the application in question shall be lodged within a period of thirty days of the date of the decision. The application in question was lodged on 15th May 2019. The decision in respect of which the application was lodged was the sale of the applicant's goods by the Commissioner. The testimony of Alfred Okoya shows that the date of sale was on or about 18th March 2019. The testimony of the applicant puts the date of sale as March 2019. The appeal as stated above was lodged on 15th May 2019 which is a period of more than thirty days from 18th March 2019. Even if the period is reckoned from 1st April 2019, the appeal would still be outside the thirty day period prescribed under S. 229(1). An application for review filed out of time is an application which is not properly before the Commissioner. The provisions of S. 229(4) and (5) only apply to applications which have complied with the requirements of S. 229(1). Accordingly the applicant's election to treat the appeal of 15th May 2019 as allowed is invalid.

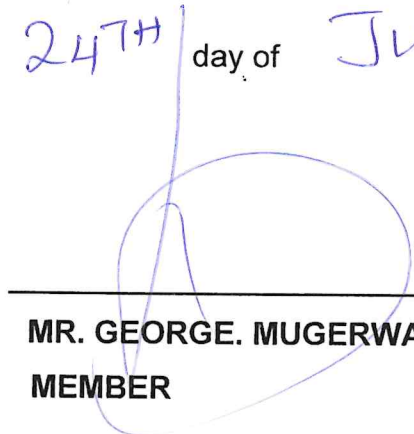
Having determined that the sale of the goods in question was lawful and that the applicant's election was invalid there is no need to determine the third issue which relates to the respondent's letter dated 31st March 2022.

For the reasons above this application is dismissed with costs.

Dated at Kampala this 24th day of JULY 2023.



**MR. SIRAJ ALI,
CHAIRMAN**



**MR. GEORGE. MUGERWA
MEMBER**



**MS. CHRISTINE KATWE
MEMBER**