

THE REPUBLIC OF UGANDA
IN THE TAX APPEALS TRIBUNAL OF UGANDA AT KAMPALA
APPLICATION NO. 131 OF 2019

VIVO ENERGY UGANDA LIMITED ===== APPLICANT
VERSUS
UGANDA REVENUE AUTHORITY ===== RESPONDENT

BEFORE: DR. ASA MUGENYI, MR. GEORGE MUGERWA, MR. SIRAJ ALI

RULING

This ruling is in respect of an application challenging an assessment of excise duty of Shs. 1,309,486,724 on lubricants imported by the applicant.

From 2014 to March 2019, the applicant imported lubricants of the following brands; Tellus S2, Shell Spirax S4 oils, Omalla S2 G680, Shell Argina S4s, Air Tools and lubrication oil. The applicant did not pay excise duty on the imports as it considered them industrial grade lubricants which do not attract taxes under any relevant law. The respondent demanded payment of excise duty of Shs. 1,309,486,724 contending that the applicant had misclassified them under the Harmonized System Code (HSC).

The following issues were set down for determination.

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

The applicant was represented by Mr. Joseph Luswata while the respondent by Mr. Alex Alideki Ssali.

The applicant's witness, Mr. David Mwesigye, its frontline technical manager testified that as an industrial engineer he is conversant with the mechanics and operations of equipment and lubricants. He testified that lubricants do not aid in the movement of

machines or equipment but reduce friction between interacting surfaces. He stated that that selecting the right lubricant for a particular machine or equipment depends on the part of the machine or equipment and the manufacturer's recommendation. He stated that the lubricants in issue are industrial grade for large machinery and equipment for large scale operations, including factories, mobile plants or earth moving equipment, drilling machines and agricultural equipment.

The witness stated that Tellus S2 is an industrial grade oil used in hydraulic fluid systems and is sold to industrial customers like Mukwano, Nile Breweries. It is used in off-road or earth moving equipment such as in construction or mining applications, Tellus S2 is used to lubricate the lifting, tipping or hydraulic applications but it is not used to move or lubricate the engines. Shell Spirac S4 oils are used in construction, mining and agricultural operations like tractors and combine harvesters. Shell Argina is used by thermal power plants. Air tool Oil S2A is used in pneumatic tool and rock drill systems. The witness stated that misapplication of oils can damage equipment or machines. Shell Heat Transfer oil S2 is used for heating applications in textile and chemical plants while Shell Corena is used to lubricate air compressor units in factories, mining and construction operations, Shell Turbo T is used to lubricate turbine units in hydro power and steam turbines in factories, Shell Tonna S3 M68 is used to lubricate slideway machines. Refrigeration oil S4 FR-F 68 is used as a refrigerant in ammonia compressors.

The respondent's first witness, Mr. Elinathan Masiko, a supervisor in its customs department, testified that the applicant imports petroleum lubricants as part of its business. From 2014 to March 2019, the applicant imported lubricants namely; Tellus S2, Shell Spirax S4, Omal S2 G680, Shell Argina S4, Air Tool and lubrication oils, and did not pay excise duty for them. On 20th September 2019, the respondent conducted a system analysis of past clearances in the ASYCUDA customs system and established that the applicant had misclassified the lubricants it imported. The witness contended that the lubricants imported could be used in motor vehicles and therefore qualify as motor vehicle lubricants. The lubricants are liquid and ought to be classified under HSC 2710.19.51 of the East African Community Common External Tariff (EAC-CET) 2017

which provides for the classification of liquid lubricants. He stated that the lubricants imported could not be classified under HSC 3403.99.00 because their composition by weight is 70% or more of petroleum oils and subheading 34.03 excludes classification of lubricants constituting 70% or more by weight of petroleum oils. The respondent's audit revealed that due to misclassification of the lubricants under HSC 3403.99.00 instead of HSC 2710.19.51, excise duty at a rate of 10% on the imports was payable by the applicant. The respondent wrote to the applicant requesting for the payment of taxes of Shs. 1,309,486,724 due to the misclassification. On 31st October 2019, the applicant objected on the ground that the imports were for industrial application and did not attract 10% excise duty. The witness stated that the lubricants imported are motor vehicle lubricants which ought to be classified under HSC 2710.19.51 which provides for classification of lubricants in liquid form.

The respondent's second witness, Mr. Awas Denis Trevor, a petroleum engineer in the respondent's Domestic Taxes Department reiterated the testimony of the respondent's first witness and stated that the lubricants in issue can be used in both on-road and off-road motor vehicles implying that they are motor vehicle lubricants.

The applicant submitted that this dispute revolves on whether excise duty was payable on the lubricants imported by it. It submitted that the lubricants are industrial grade products which are used to lubricate industrial machinery and engineering plants and did not attract excise duty from 2018 to 2019. The lubricants when applied to machines cool them by removing excess heat, reduce friction, prevent wear and tear and reduce rusting and sludge formation. The applicant submitted that the lubricants are of different types and grades. Some are heavier than others as denoted by their grade numbers. The right lubricant for a machine depends on the manufacturer's manual and the machine to be lubricated. Some machines or equipment require lubricating oils of different viscosities. The applicant submitted that the imported lubricants were industrial grade, used to lubricate large machinery and equipment in factories or industries, mobile plants, earth moving equipment, drilling equipment, agricultural equipment or engineering equipment. The equipment in which the lubricants were used include dragline, blast hole drilling

machines, excavators and loaders. Chemicals are added to lubricants to enhance their performance. The chemicals used in industrial grade oil differs from that for motor vehicle oils. Some chemicals or additives for industrial grade oil may contain particles which are not suitable for motor vehicle lubrication leading to immediate or long-term damage to the machine or equipment. The applicant submitted that Tellus S2 was sold to industries and factories like Mukwano and Nile Breweries for use in their hydraulic systems and forklifts, Shell Spirax S4 was sold to Kibali gold mine for construction and mining operations, Shell Argina was sold to Jacobsen for thermal power production among others. The applicant's technical data sheets of each type and grade of oil, exhibit A1 to 30 sets out the equipment for which the oil was manufactured. The imported oils were for use in industrial settings or operations, engineering, earth moving and marine equipment, thermal power generation and refrigeration systems which are not motor vehicles. If the imported oil was used in motor vehicles, they may cause damage due to differences in viscosity and additives.

The applicant submitted that the tax was imposed on motor vehicle lubricants. It submitted that the phrase '*motor vehicle lubricants*' is not defined in the Excise Duty Act or any other Act of Uganda. The applicant submitted that the meaning of 'lubricant' is not in dispute. The applicant submitted that 'motor vehicle' is not a legal term but has been defined in the *Oxford Dictionary* as "a road vehicle powered by an internal combustion engine or other motor, any road vehicle driven by an engine." It is also defined in the Traffic and Road Safety Act as "any self-propelled vehicle intended or adapted for use on the road" while a 'vehicle' has been defined to include "a machine or implement of any kind drawn or propelled along roads whether by animals, mechanical, electrical or any other motive or power." The applicant submitted that under the Traffic and Road Safety Act, the definition of vehicle is inclusive while under the Roads Act 16 of 2019, it is exhaustive. It submitted that the ordinary English definition of 'motor vehicle' is exclusively for a road vehicle while the statutory definitions refer to vehicles that primarily move on land. When the Excise Duty Act imposed excise duty on motor vehicle lubricants, it was deliberate. The applicant argued therefore that the word motor vehicle lubricants must be understood in the ordinary sense as lubricants for use by motor

vehicles suited for road use. The applicant cited *Chief Constable of Avon v Fleming* (1987) 1 ALL ER 318, *Good Electric Ltd v Thorne* (1979), *R v. Owens* (1950).

The applicant submitted that parliament passed the Excise Duty (Amendment) Act 2020 which came into force on 1st July 2020, amending Part 1 of the Second Schedule by imposing tax on products under both HSCs 34.03 and 27.10. It submitted that the amendment resolved the issue and more 'lubricants' rather than 'motor vehicle lubricants' are now taxed. Parliament first imposed excise duty on motor vehicle lubricants in 2015. It was aware of lubricants imported under HSCs 2710, 3403 and 99.00 but did not impose tax on them since they were for industrial use. The applicant submitted that it can be inferred from the foregoing that motor vehicle lubricants were understood by the legislature to be different from other lubricants during the period before the amendment.

In reply, the respondent submitted that the imported petroleum lubricants are used in excavators, bull dozers, specialized motor vehicles, articulated dump trucks and agricultural tractors which belong to the category of off-road motor vehicles. It submitted that for several years the applicant correctly classified its imported lubricants under Subheading 2710.19.51 of the EAC-CET and only changed the classification to Subheading 3403.99.00 after the imposition of excise duty on lubricants falling under Subheading 2710.19.51. The respondent submitted further that the imported lubricants are used in industrial grade equipment and ordinary motor vehicles and as such ought to attract excise duty at the rate of 10%. It submitted that the applicant's witness, David Mwesigye AW1 conceded that excavators, bulldozers and articulated dump trucks use Tellus S2 while Shell Argina can work on excavators, specialized motor vehicles and articulated dump trucks. The applicant also admitted that its lubricants are used in specialized motor vehicles. For instance, Tellus S2, Shell Spirax, Omalla S2 G680, Shell Argina are used in excavators, bull dozers, articulated dump trucks and agricultural tractors, combine harvesters, earth movers, diesel engines and marine vehicles. The respondent submitted that the question which arises is whether excavators, bull dozers,

specialized motor vehicles 8705, articulated dump trucks and agricultural tractors are motor vehicles for the purposes of the Excise Duty Act.

The respondent submitted that excise duty at the rate of 5% was imposed on motor vehicle lubricants by S. 4(1) of the Excise Duty Act, 2014. The rate was increased to 10% in 2016 and to 15% in 2020. It submitted that the term '*motor vehicle*' is not defined in the Excise Duty Act, 2014 as amended nor in any other Statute in Uganda. It submitted that the term must be given its ordinary legal meaning. It cited the definition of a '*vehicle*' and a '*motor vehicle*' in *Black's Law Dictionary* 11th Edition at p. 1868 and submitted that excavators, bull dozers, specialized motor vehicles 8705, articulated dump trucks and agricultural tractors which the applicant argues are industrial grade equipment, fall within the definition of a motor vehicle. The respondent cited various foreign authorities on the definition of the term '*motor vehicle*'. It submitted that as long as a vehicle is to a reasonable person suitable for road use and has been fitted to enable it move safely on the road then it is a motor vehicle regardless of whatever other purpose it may have been designed for. Accordingly, the lubricants in question are motor vehicle lubricants for the purposes of the Excise Duty Act.

The respondent submitted that under S. 4(2)(c) of the Excise Duty Act, 2014, excise duty is paid by the person importing the excisable good at the time of importation. The respondent submitted that in order to determine the classification of the imported lubricants there is need to look at the HS' code and the General Interpretative Rules. It submitted further that the imported lubricants fall under HSC 2710.19.51 of the EAC-CET and under General Interpretation Rule 1 of the General Rules for the Interpretation of the Harmonized System. The respondent cited Sub-Chapter 34.03 under Chapter 34 of the EAC-CET and argued that lubricants which constitute 70% or more of petroleum oils do not fall under HSC 3403.99.00 of the EAC-CET. The imported lubricants contained 70% or more of petroleum oils and as such cannot be classified under HSC 3403.99.00 of the EAC-CET based on the chemical composition rather than usage. The respondent submitted that it re-classified the imported lubricants from HSC 3403.99.00 to HSC 2710.19.51. The respondent submitted that lubricants classified under HSC 3403.99.00

attracted excise duty at the rate of 5% between 2014 and 2016 and a rate of 10% between 2016 and 2020. The change in classification by the applicant occurred after the imposition of excise duty in respect of lubricants under subheading 2710.19.51. The respondent submitted that the applicant has failed to demonstrate that the imported lubricants can only be used for industrial grade equipment and not motor vehicles. The evidence on record namely that of AW1 showed that industrial grade equipment and motor vehicles have parts in common like engines, pistons, valves and other moving parts and that the lubricants in issue can be used in both industrial grade equipment and in motor vehicles. The respondent submitted that the applicant did not manufacture the imported lubricants and cannot therefore conclusively attest to their working and application. The respondent concluded that the imported lubricants could be used in industrial grade equipment and motor vehicles and ought to attract excise duty at the rate of 10% and should have been classified under HSC 2710.19.51 and not HSC 3403.99.00.

In rejoinder, applicant submitted that the law applicable to the dispute is the Excise Duty Act. The East African Community Customs Management Act and the HSC classification under the EAC-CET has no relevance because it was not until June 2020 when the tax was imposed on the basis of HSC classification of lubricants that included motor vehicle lubricants.

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

From 2014 to 2019, the applicant imported the following lubricants into Uganda: Tellus S2, Shell Spirax S4, Omalla S2 G680, Shell Argina S4 oils, Air Tools oils and lubrication oil. It did not pay excise duty on the imports as it considered them industrial grade lubricants. The respondent demanded payment of excise duty of Shs. 1,309,486,724 contending that the applicant misclassified them under the Harmonized System Code (HSC).

The Excise Duty Act imposed excise duty on excisable goods under the Act. It came into force on 1st July 2014. Excise duty is imposed by S. 4 of the Excise Duty Act.. It states as follows;

- “(1) Subject to this Act, the excisable goods and excisable services specified in Schedule 2 shall be chargeable with the excise duty specified in that Schedule.
- (2) Unless otherwise provided in this Act excise duty –
- a) In the case of an excisable service, is to be paid by the person providing the service;
 - b) In the case of a manufactured excisable good, is to be paid by the person manufacturing the excisable good; and
 - c) In the case of an imported excisable good, is to be paid by the person importing the excisable good.”

S. 4(5) of the Act provided that an importer of goods shall pay excise duty at the time of import. It imposed excise duty on fourteen items under Part 1 of Schedule II of the Act. But none of the fourteen items was lubricants.

In 2015, the Excise Duty Act was amended by the Excise Duty (Amendment) Act 2015 by adding item 15 which was motor vehicle lubricants. S. 2(j) of the Act read

” By inserting immediately after item 14 the following –

- | | |
|---------------------------------------|------|
| 15. Motor vehicle lubricants. | 5% |
| 16. Chewing gum, sweets and chocolate | 10% |
| 17. Furniture | 10%” |

The Tribunal is not concerned with items 16 and 17. It is important to note that the Amendment Act introduced motor vehicle lubricants. It did not define what a motor vehicle was. The Excise Duty Amendment Act 2016 increased the rate of tax for lubricants from 5% to 10%. The relevant Section 3(l) read;

“By substituting for item 15 the following –

- | | |
|------------------------------|------|
| 15. Motor vehicle lubricants | 10%” |
|------------------------------|------|

Once again, the Amendment Act of 2016 did not define motor vehicles. In 2020, the excise duty in respect of motor vehicles was further increased to 15% and made more clarifications. The relevant Section, S. 2(g) of Excise Duty Amendment Act 2020 read

"Lubricants under HS codes 2710.19.51, 2710.19.52,
3403.19.00 and 3403.99.00 including motor vehicle
lubricants, except aircraft lubricants. 15%"

The said Amendment Act did not apply to the applicant's imports since they were imported from 2014 to 2019. It was the Amendment Acts of 2014 and 2015 which applied.

However, it is important to know what Excise Duty Amendment Act of 2020 included and whether it had a bearing to this case. It mentioned HSC 2710.19.51 which reads.

"Lubricants in liquid form..."

It also mentioned HSC 2710.19.52 which read

"Lubricating greases..."

Also, HSC 3403.19.00 and HSC 3403.99.00 both which read

"Other "

In order to fall under HSC 3403.19.00 and HSC 3403.99.00 one has to look at the relevant heading 3403 which read

"Lubricating preparations (including cutting-oil preparations, bolt or nut release preparations, anti-rust or anti-corrosion preparations and mould release preparations, based on lubricants and preparations of a kind used for the oil or grease treatment of textile materials, leather, furskins or other materials, but excluding preparations, containing, as basic constituents, 70% or more by weight of petroleum oils or of oils obtained from bituminous minerals.

- Containing petroleum oils or oils obtained from bituminous minerals"

HSC 3403.19.00 refers to the 'other' of items in HSC 3403.11.00 and HSC 3403.91.00 both which read

"Preparations for the treatment of textile materials, leather furskins or other materials"

The respondent contended that the applicant classified its imports under the Harmonized System Code (HSC). The Tribunal notes that the applicant imported its lubricants from 2014 to 2019. The use of the Harmonized System Code (HSC) came into effect in 2020. Therefore, the HSC did not apply to the applicant's imports from 2014 to 2019. However, it has a bearing on what lubricants may not have included in the Amendment Act of 2014 or the extent so as to require Parliament to amend the Act so as to include them. HSC

2710.19.51 mentions lubricants in liquid form. HSC 2710.19.52 mentioned lubricating greases. The effect of the Excise Duty Amendment Act would be to make all lubricants in liquid form, all lubricating greases and lubricating preparations under the relevant subheading under HSC 3403 including motor vehicle oils attract excise duty at a rate of 15%. But the respondent would not be correct to apply the HSC to the applicant's imports which were imported prior to 2020. For instance, the applicant's imports were in liquid form, but from 2014 to 2019 there was no excise duty on liquid lubricants. It is also not necessary for the Tribunal to delve into whether the applicant's imports had 70% or more weight of petroleum oils or oils obtained from bituminous minerals.

The Excise Duty (Amendment) Act, 2015 imposed excise duty on motor vehicle lubricants at the rate of 5% which was later increased to 10% by the Amendment Act of 2016. The Excise Duty Amendment Act of 2014 applied to motor vehicle lubricants. Having excluded the application of the HSC to the applicant's imports, the Tribunal is left with the application of motor vehicle lubricants in the Act. The applicant contended that the phrase '*motor vehicle*' does not apply its imports for the reason that its lubricants were suitable only for industrial application and engineering plants. The respondent on the other hand argues that the term '*motor vehicle*' is wide enough to include vehicles like excavators, bull dozers, specialized motor vehicles, articulated dump trucks and agricultural tractors, all of which belong to the category of off-road motor vehicles.

The first question the Tribunal will ask itself relates to the interpretation to be given to the phrase '*motor vehicle*'. The Excise Duty Act nor its amendment Acts define motor vehicle

The first rule of statutory interpretation is the literal rule. Words should be given their ordinary meaning. This rule was defined in *Nyali Ltd v. Twentsche Overseas Trading Company Ltd*, (1960) 1 EA 703 as follows;

'The rule is that in construing all written instruments the grammatical and ordinary sense of the words is to be adhered to unless that would lead to some absurdity, or some repugnance or inconsistency with the rest of the instrument....'

In its ordinary sense the term `motor vehicle` has been defined in *Oxford Advanced Learner's Dictionary* New 9th Edition at p.980 as "any road vehicle driven by an engine" Vehicle is defined at p.1671 as "a thing that is used for transporting goods from one place to another, such as a car or lorry, truck: *motor vehicles* (= cars, buses, lorries/ trucks, etc.)" The use of etc., etcetera, means it is not limited to the foregoing. *Black's Law Dictionary* 10th Edition p. 1788 defines a vehicle as "1. An instrument of transportation or conveyance. 2. Any conveyance used in transporting passengers or things by land, water, or air." It defines a motor vehicle on the same page as "A wheeled conveyance that does not run on rails and is self-propelled, esp. one powered by an internal- combustion engine, a battery or fuel- cell, or a combination of these." The definition excludes trains and other equipment.

The Traffic and Road Safety Act S.2 defines a vehicle to include "a machine or implement of any kind drawn or propelled along roads whether by animal or mechanical, electrical or any other motive power:" The said definition is for purposes of the Act and may have no bearing to this dispute. The Act was passed in 2019. The dispute occurred from 2014 to 2019. A literal understanding of a vehicle would not include an animal whereas the Act includes it.

In *The Road Accident Fund v Thandiswa Linah Mbele* [2020] ZASCA 72, the Supreme Court of South Africa looked at the definition of a motor vehicle in the Road Accident Fund Act which defined a motor vehicle as

"Any vehicle designed or adapted for propulsion or haulage on a road by means of fuel, gas or electricity, including a trailer, a caravan, an agricultural or other implement designed or adapted to be drawn by such motor vehicle."

The court stated that the definition displayed three requirements before a vehicle qualifies as motor vehicle for purposes of the Act. The vehicle (a) must be propelled by fuel, electricity or gas and (b) must be designed for propulsion (c) on a road. In *Bolani Ores Limited and another v State of Orissa* (1968) ORI 1 it was stated that

"Motor Vehicle" means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has been attached and a trailer, but does not

include a vehicle running upon fixed rails or a vehicle specially adapted for use only in a factory or in any other enclosed premises.”.

The definition of vehicle may be obtained by looking at an Act.

At times what may be perceived as a vehicle dependw on what the ordinary man in the street perceives it. In *Willie Shauke v Santam Limited* Appeal 710 of 1994 the Supreme Court of South Africa stated that

“The word ‘designed’ in the present context conveys the notion of the ordinary, everyday and general purpose for which the vehicle in question was conceived and constructed and how the reasonable person would see its ordinary, and not some fanciful, use on a road.”

A vehicle may be determined by its general use. In *Road Accident Fund v Erik Van Den Berg*. 2006 (2) SA 250 (SCA) the court stated that,

“It is common cause that the PTR is used to compact road surfaces. It does not however, follow that it was not designed to be used for other purposes as well. If one of those other purposes it was designed for is to travel on a road it falls within the definition and qualifies as a motor vehicle as defined.”

It also stated that.

“It is the design of the PTR that makes it possible for the vehicle to be used as aforesaid. It is fitted with all the paraphernalia required to be fitted to a motorcar so as to enable it to be used with safety on a public road, such as headlamps, direction indicators, brake lights and rear-view mirrors. These features may of course be required for its primary purpose of compacting but that is in my view an irrelevant consideration.”

The features of the subject may be used in some quarters to determine whether it is a vehicle.

The applicant contended that the lubricants it imported were for machines. It is not in dispute that machines may require lubricants in order to operate efficiently. *Oxford Advanced Learner's Dictionary* (supra) p. 907 defines a machine as “a piece of equipment with moving parts that is designed to do a particular job.” *Black's Law Dictionary* (supra) at p. 1093 defines a machine as “A device or apparatus consisting of fixed and moving parts that work together to perform some function.” A question would arise where one

imports lubricants for a machine and the respondent contends that it is supposed to be for a vehicle. For instance, lubricants are imported for use in excavators, tractors or bulldozers. Can a machine be a vehicle or not or a combination of both?

We shall begin with excavators. An excavator is defined by *Oxford Advanced Learner's Dictionary* (supra) p. 515 as "A large machine that is used for digging and moving earth"

A search on googles https://www.google.com/search?q=excavator&sc_es defines it as

"Excavators are heavy construction equipment consisting of a boom, arm, bucket, and cab on a rotating superstructure atop an undercarriage with tracks or wheels. These machines are used mainly for digging purposes as well as various lifting and carrying tasks in various applications."

When we query as to whether excavators are vehicles the answer at https://www.google.com/search?q=are+excavators+vehicles+or+machines&sc_esv is

"Excavators are popular earthmoving vehicles that feature a bucket, arm, rotating cab and movable tracks. These components provide superior digging power and mobility, allowing this heavy equipment to perform a variety of functions, from digging trenches and breaking holes to lifting away waste and excavating mines."

One would not be wrong to conclude that an excavator is both a machine and a vehicle.

Case law seems to look at it differently. In *Andya's Earth Works v Verey* [2012] NSWCA 32, in 2006 a worker was riding in the bucket of an excavator when the driver suddenly dropped the bucket down to the earth, causing him to suffer injury. Although the incident occurred on a worksite and involved an excavator, the worker considered the incident to be a motor vehicle accident and sought damages under the Motor Accidents Compensation Act 1999 (which is not applicable in Uganda). The trial judge determined that the excavator was a self-propelled vehicle on wheels and therefore a vehicle within the definition of the Act. The Court of Appeal agreed with the appellant and determined that the excavator moved as a result of long tracks on rollers, and not on wheels. It found that the tracks did not assume the shape of wheels. Further, it considered that the body of the excavator did not technically sit 'on' them. As such, the Court of Appeal overturned the trial judgment and ruled that the excavator did not fall within the definition of 'motor

vehicle' and therefore the worker was not entitled to bring a claim for compensation under the Motor Accidents Compensation Act 1999.

In respect of a tractor, googles at <https://www.google.com/search?q=is+a+tractor+a+vehicle&sca> states that

"A tractor is a vehicle that's used on a farm or work site, often to pull a trailer or other equipment. A farmer might use a tractor to pull a plow through her corn field before planting. Tractors typically have two large wheels in back, and smaller wheels in front."

Once again case law seems to differ. In *Good Electric Ltd. v Thorne* 1979 Capl 2657 (PE SCTD) a question arose as whether the term "motor vehicle" as used in the Conditional Sales Act included with its meaning a Massey Ferguson 200 Crawler Tractor. The court noted that

"During the past half century and longer, motor vehicles have acquired their own unique characteristic in the several particular judicial and statutory contexts in which they have been found and described. What has been described a motor vehicle for one statutory purpose may not suit the purpose of another."

The court further noted.

"If each and every of the self- propelled devices capable of carrying persons and things which are the product of modern technology and human invention were to be classified as motor vehicles then we would be tempted to include in the list aircraft, hovercraft, machines of war and a host of motor- driven contrivances not ordinarily associated with the term "motor vehicle".

Our fear is that trains would also be included. The court concluded

"Upon review of these and other pronouncements with respect to the interpretation of the words "motor vehicle, I find a degree of well-placed judicial caution in the construction of the term "motor vehicle." I do not find judicial support for the proposition that a tractor dozer or loader is a motor vehicle. The M. F. 200 Tractor does, not in my opinion, possess the features of portability and carrying capacity of a motor vehicle as the term commonly implies."

In *Rex v Owens* Canadian Criminal Cases Vol. 98 p.280 the appellant a juvenile was convicted for unlawfully driving a motor vehicle. One of the grounds of his appeal was

that the rubber-tired "farm-all" tractor he was driving at the time of the alleged offence was not a "motor vehicle" or automobile" within the meaning of the Act. The evidence showed that "farm-all" tractor was a rubber- tired, four-wheel machine, with two front wheels close together. It was self-propelled and was driven by the appellant from the driver's seat. The estimate of its maximum speed on the road was from 15 to 20 mph and 18 miles at time. The court stated;

"In my opinion, this case decides that in a question of taxation, at least, it is the function of the machine, and not is mode of locomotion or driving power that determines its character."

The court concluded that

"I cannot bring myself to think that the term "motor vehicle" would convey the meaning to plain me of a farm-all tractor, even though it has rubber tires, and could travel along a high- way at a maximum rate of from 15 to 20 m.p.h.

For the reasons given, I would hold that the character of the machine governs, and that there is reasonable doubt as to whether or not the tractor in question is within the words motor vehicle."

Therefore, while one may look at the structure of a tractor to determine whether it is a motor vehicle or not, another person may look at its function.

The term 'motor vehicle' under Clause 2(j) of the Excise Duty (Amendment) Act, 2015 is not defined. Our understanding of the definition of the word "motor vehicle is that it is not clear as to whether it applies to excavators, tractors, bull dozers. While the definition may apply to ordinary cars, coaches, buses, lorries, trailers, there is doubt as to its application to tractors and excavators. There are many modes of arriving at what a vehicle. While some look at the definitions in the statutes, other look at the general use of the apparatus, others look at the features or structure, while others may determine a vehicle by looking at whether it uses wheels vis-vis rails or has a road licence. Because of the different perspectives used, we get different answers as to whether tractors, excavators or bull dozers are vehicles. In short, we may have a scenario of six blind men trying to determine what an elephant is, or in our case whether the definition of a motor vehicle applies to a tractor, excavator or bull dozer. In order for one to be liable to pay taxes, the subject matter must be in the clear and precise. The subject matter should fall within the confines

of the law or the words that impose tax liability to make one liable to pay tax. If there is reasonable doubt the term 'motor vehicle' does not apply to tractors and excavators, then there is doubt as to whether the lubricants imported for them would fall under the Excise Duty Act. Where there is an ambiguity in the law, the taxpayer is given the benefit of the doubt.

The applicant adduced evidence in exhibit A1 and submitted that it imported the following which were also summarized and admitted by the respondent;

TABLE A

No.	Brand	Application as per the manual	Motor vehicle application
1.	Shell Omala S" GX 150, 220,320,460 and 680	Suitable for the lubrication of non-geared applications	Specialized vehicles of 8705, bull dozers, excavators, agricultural tractors, off Road Dumpers, Mobile lifting machinery
2.	Shell Tellus S2 M 32, 46, 68, 100 V 46	Hydraulic and fluid power transmission systems.	Excavators, bull dozers specialized motor vehicles, Articulated dump trucks and agricultural tractors.
3.	Shell Spirax S4 CX 10W, 30, 50, S3T and S4 TXM	It is designed to keep transmission components protected so that work efficiently	Agricultural tractors, Combine harvestors, Earth Movers, Dump Trucks,
4.	Shell Argina S 440, S540	Specifically formulated for four-stroke diesel engines, to keep piston clean and maintain cool performance and prevent hot erosion	Diesel Engines Marine vehicles
5.	Shell Air tools	Suitable for the lubrication of pneumatic tools, rock drilling hammers and similar applications.	Mobile drilling trucks for water, minerals etc.
6.	Shell Corena	Designed to deliver highest performance of lubrication of rotary sliding vane and screw air compressors.	Diesel engines, marine engines
7.	Shell Turbo T\$6 T100	Used to lubricate turbine units in hydro power and steam turbines.	Machines

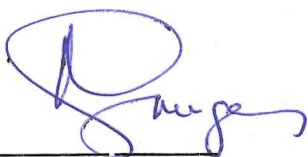
A perusal of the tables shows that the lubricants imported by the applicant were used for excavators, tractors, machinery and other equipment. The Tribunal already noted that the

definition of some of the items like tractors and excavators cannot be said to fall under the definition of motor vehicle. The Tribunal is cautious to extend the definition of motor vehicle to include lubricants of the said equipment. The respondent did not dispute the application of the said lubricants. It did not adduce evidence to show that the lubricants applied to motor vehicles which are not in dispute. Therefore, the Tribunal holds that the respondent was not justified to issue the Excise Duty assessment of Shs. 1,309,486,724

For the reasons above this application is allowed with the following orders;

1. The applicant is not liable to pay the tax in dispute.
2. The applicant is awarded the costs of the application.
3. The respondent will refund to the applicant the deposit of 30% of the tax in dispute.

Dated at Kampala this 12th day of September 2023.



DR. ASA MUGENYI
CHAIRMAN



MR. GEORGE MUGERWA
MEMBER



MR. SIRAJ ALI,
MEMBER