THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION)

CIVIL APPEAL NO. 0032 OF 2021
ARISING FROM TAX APPEALS TRIBUNAL APPLICATION NO. 83 OF 2021

UGANDA REVENUE AUTHORITY :: APPELLANT
VERSUS

AGABA HENRY :: RESPONDENT

(Before: Hon. Justice Patricia Mutesi)

JUDGMENT

Background

1. This is an appeal from the ruling and orders of the Tax Appeals Tribunal (hereinafter "the Tribunal") in Application No. 83 of 2021. The brief background of the appeal, as can be gathered from the record of the Tribunal, is that sometime around August 2021, the respondent bought and imported into Uganda a 2010 Mercedes Benz E-class model (hereinafter "the vehicle") at USD 6,637 being the Cost, Insurance and Freight. The respondent declared USD 6,508 as the purchase price of the vehicle and self-assessed taxes of UGX 25,966,962/= which he duly paid.

2. The appellant rejected the declaration and uplifted the vehicle's customs value to USD 9,205.44. This meant that the respondent owed an extra UGX 6,762,667/= in taxes. The respondent objected to the uplifted value on the ground that the appellant was bound to apply his transaction value in computing the taxes. The appellant disallowed the objection reasoning that the East African Community (EAC) Administrative Ruling of Valuation of Used Goods of 13th December 2013 prescribed the fallback method, which it had used in uplifting the value, as the applicable customs valuation method for all used cars imported into the EAC.

3. The respondent paid the disputed UGX 6,762,667/= and got the vehicle out of the warehouse but he still proceeded to the Tribunal challenging the objection decision. In its ruling, the Tribunal agreed with the

respondent, finding that the appellant was not justified in uplifting the vehicle's customs value. The Tribunal ordered the appellant to refund the respondent's UGX 6,762,667/= plus interest thereon at court rate from the date of the ruling until payment in full. The Tribunal also ordered the appellant to pay the respondent's costs of the application.

The Appeal

4. The appellant was aggrieved by the ruling and orders of the Tribunal and appealed to this Court on the following 3 grounds:

> ***"1. The Honourable Members of the Tax Appeals Tribunal erred in law in disregarding Section 122(6) of the East African Community Customs Management Act, thereby arriving at a wrong decision.***
>
> ***2. The Honourable Members of the Tax Appeals Tribunal erred in law in not taking into account the Administrative Ruling of Valuation of Used Goods of 2013 in regard to the respondent's used motor vehicle.***
>
> ***3. The Honourable Members of the Tax Appeals Tribunal erred in law in holding that the respondent's vehicle qualified for the transaction value method of valuation whereas not."***

Duty of the High Court in tax matters

5. Section 27(2) of the Tax Appeals Tribunal Act Cap 345 provides that an appeal may be made to the High Court from a decision of the Tribunal on questions of law only. In **Uganda Revenue Authority v Tembo Steels Ltd, High Court Civil Appeal No. 9 of 2006**, this Court explained that the intention of the legislature in enacting that provision was to leave questions of fact, such as the accuracy of tax assessments, to tax professionals at the appellant and at the Tribunal, and to reserve to this Court only points of law for determination.

6. Therefore, in appeals from the Tribunal, this Court entertains and decides questions of law only. Nevertheless, since the failure to exhaustively and objectively appraise evidence constitutes an error of law, this Court may, after finding that the Tribunal is guilty of such an error, reappraise the evidence adduced in the Tribunal and draw its own inferences of fact (see

SWT Tanners Ltd & 14 Ors v Commissioner General, URA, Court of Appeal Civil Appeal No. 172 of 2019).

Representation

7. The appellant was represented by Mr. Sam Kawerit and Mr. Derek Ahumuza from its Legal Services and Board Affairs Department. The respondent was represented by Mr. Ibrahim Abayo from M/S Meritas Advocates.

Determination of the appeal

8. I have fully considered the materials on record, the submissions of the parties and the laws and authorities cited. Counsel argued the grounds of appeal together and I will resolve them accordingly. In this appeal, the Court is primarily called upon to decide whether or not the Tribunal was right in finding that the appellant ought to have used the transaction value method to determine the customs value of the vehicle.

9. Counsel for the appellant faulted the Tribunal for disregarding Section 122(6) of the East African Community Customs Management Act ("EACCMA") which allows the appellant to have "due regard to" the rulings of the Directorate of Customs ("the Directorate"). Counsel submitted that the Tribunal ought to have found that the appellant was bound to apply the Directorate's Administrative Ruling of Valuation Used Goods, 2013 ("the Administrative Ruling") which prescribed that the fallback method is the primary customs valuation method for used cars.

10. On the other hand, counsel for the respondent submitted that the Tribunal correctly interpreted and applied Section 122(6) of the EACCMA. Counsel submitted that the Tribunal rightly found that the Administrative Ruling does not take precedence over Section 122(1) and the 4th Schedule of the EACCMA which prescribe that the transaction value method is the primary customs valuation method for all imports.

11. In rejoinder, counsel for the appellant submitted that subsections (5) and (6) of Section 122 were included in the EACCMA to allow the Directorate the gap to "amend" the application of customs valuation methods. Counsel argued that the valuation of used motor vehicles poses significant risks or challenges to customs officers and tax administrators in

determining the proper prices actually paid or payable for the vehicles, which complicates the use of the transaction value method. Counsel concluded that the appellant chose to apply the fallback method in this case due to persistent rise in falsification of documents, undervaluation and forgery of receipts and other similar documents by importers.

12. Section 122(5) of the EACCMA empowers the EAC Customs Cooperation Council ("the Council") to publish administrative rulings of general application giving effect to the Fourth Schedule of the Act. Section 122(6) of the EACCMA provides that in applying or interpreting Section 122 and the 4th Schedule, due regard shall be taken of the decisions, rulings, opinions, guidelines and interpretations of the Directorate, the World Trade Organisation ("WTO") or the Council. The Tribunal defined "due regard" to mean regard which is appropriate in the circumstances.

13. The Tribunal concluded that the correct construction to be given to Section 122(5) and (6) of the EACCMA and the Administrative Ruling is that for a customs authority to apply the fallback method, there must be actual complexities, as opposed to perceived complexities, in applying the initial five methods. The Tribunal then found that the appellant had erred when it applied the fallback method at first instance.

14. It is clear that Section 122 and the 4th Schedule of the EACCMA relegate the fallback method to be the residuary method of customs valuation. The fallback method is a method of last resort only applicable when all others have failed. An ideal case in which the fallback method could apply is one in which the importer lacks any purchase documents for the imported good. By prescribing the transaction value method as the primary method of customs valuation, and requiring that the remaining 5 methods are to be considered sequentially once it is impossible to apply that primary method, the legislature intended that priority must be given to the actual price of a good in customs valuation.

15. In my considered view, the Tribunal fully considered and understood the true import of subsections (5) and (6) of Section 122 of the EACCMA. The 2 provisions are meant to provide additional material for consideration in customs valuation when the actual price paid or payable for a good cannot be ascertained. It would defeat logic for a customs officer to start

looking for administrative rulings, opinions and guidelines of general application to determine the price of a good when there is genuine and uncontested paperwork before him or her which confirms the actual price paid or payable for that good.

16. The Administrative Ruling, whose implications have been the source of great contention in this appeal, was made by the Directorate on 13th December 2013 on the backdrop of the ever-increasing challenges which customs authorities all over the EAC face in determining the transaction values of used goods, especially clothes, motor vehicles, machinery and capital goods and other worn articles. In that Ruling, the Directorate started by recognising the statutory hierarchy of customs valuation methods in the EACCMA before prescribing that:

> ***"Consistent with the cannons of taxation in relation to consistency and equity, the application of Method 6 (Fallback method) is appropriate for valuation of used goods. It is therefore plausible to make additional adjustments in the application of the Fallback method in order to enable appropriate valuation of used goods when imported in the EAC Partner States.***
>
> ***…***
>
> ***Whereas there is a lot of challenges and complexities in applying the initial five (5) methods of valuation as specified in the Fourth Schedule of the EAC CMA on used goods, Customs shall apply the Fallback Method with the following considerations.***
>
> 1. ***Depreciation.***
> 2. ***Obsolescence.***
> 3. ***Condition.***
> 4. ***Risk management databases and other reliable sources.***
> 5. ***Specific duties under the EAC Common External Tariff.***
> 6. ***Exchange of information on valuation of used goods …"***

This appeal turns on the interpretation and significance to be ascribed to the Administrative Ruling in the context of the EACCMA framework for customs valuation.

17. Administrative rulings are made under delegated legislative power pursuant to Section 122(5) of the EACCMA which expressly anticipates that administrative rulings of general application may be made and published to give effect to the Fourth Schedule. It is trite law that delegated legislation cannot exceed the purview of the parent Act. When delegated legislative power is exercised beyond the scope prescribed or anticipated by the parent Act, the resultant subsidiary legislation is null and void to the extent of its inconsistency with that parent Act (See **High Court Misc. Cause No. 243 of 2017; Uganda Law Society V Kampala Capital City Authority & Anor**).

18. Therefore, it is not possible that an administrative ruling can amend the EACCMA by reorganising the hierarchy of customs valuation methods prescribed by Section 122(1) and the 4th Schedule thereof. Given the clear wording of Section 122(5) of the EACCMA, an administrative ruling cannot alter that hierarchy. Counsel for the appellant suggested that subsections (5) and (6) of Section 122 of the EACCMA were enacted to *"allow the Directorate the gap to amend the application of the customs valuation methods"* prescribed by the Act. In the absence of express wording in the Act to that effect, that argument appears unfounded. If the EACCMA had intended that the Directorate has such powers, it would and should have said so expressly.

19. Pursuant to Sections 3 and 4(1)(b) of the EACCMA, the role of the Directorate is to initiate policies on Customs and related matters and to coordinate and monitor the enforcement of the customs law of the EAC. The Directorate has no power to rethink and rewrite the EACCMA or to direct EAC partner states to ignore some parts of the Act. The Directorate can only interpret and implement the EACCMA. It therefore appears that the appellant misconstrued the scope of the Directorate's mandate because even if the Administrative Ruling had expressly directed Customs to ignore the statutory hierarchy of valuation methods, such an instruction would be *ultra vires* and hence, unreliable.

20. Nevertheless, I am satisfied that the Administrative Ruling did not instruct customs authorities to completely ignore and disregard the initial 5 methods when valuing used cars. It simply advised EAC partner states

that, more often than not, there will be complexities in applying the initial 5 methods of customs valuation prescribed in the EACCMA due to the ever-increasing cases of falsification of documents, forgery and fraudulent misrepresentation by importers, among other factors. The Ruling also told customs authorities that they will often find that the fallback method is appropriate for valuation of used goods. Consequently, the true effect of the Administrative Ruling was to recognise the bottlenecks in applying the initial 5 methods and to enrich the range of possible considerations while applying the fallback method so that they can navigate those bottlenecks more conveniently.

21. The appellant has a duty to ascertain the genuineness of import documents on a case by case basis, which it cannot abdicate by simply relying on the general claim that importers are fraudulent. To assume that all importers of used cars in Uganda are fraudulent and collectively punish them for such fraud without hearing them and considering their respective documentation, would violate Articles 21 and 42 of the Constitution of the Republic of Uganda, which guarantee equal, just and fair treatment to all persons in making administrative decisions which affect them. Innocent and genuine used car importers should not be bundled together with those who are fraudulent and collectively punished. Every importer should be given fair and just consideration before a customs valuation decision is made in respect of his or her goods.

22. In the present case, it appears that the appellant did not even consider whether or not the respondent's import documents were genuine and accurate. The appellant simply stated that the vehicle did not meet the criteria for the transaction value method. According to Paragraph 2 of the 4th Schedule of the EACCMA, the only criterion for the transaction value method to apply is the presentation of genuine proof of the actual price paid or payable for the good. Since the appellant did not contest the genuineness of the respondent's documents, I am satisfied that the vehicle met the criterion for the transaction value method and the appellant was not justified to uplift its customs value.

23. Another point of contention between the parties was the import of this Court's decision in **High Court Civil Suit No. 212 of 2012; Testimony**

Motors Ltd V The Commissioner Customs, Uganda Revenue Authority. The Court notes that that decision was appealed vide **Court of Appeal Civil Appeal No. 33 of 2014; The Commissioner Customs, Uganda Revenue Authority V Testimony Motors Ltd**, and the Court of Appeal decided the appeal on 23rd March 2023. In both cases, the court confirmed the priority of the transaction value method in customs valuation.

24. Counsel for the appellant argued that the ***Testimony Motors*** case is significantly distinguishable from the instant facts and that this Court should thus follow the Administrative Ruling which prescribed the fallback method as the primary method for valuing used goods. In my view the distinctions in the circumstances in ***Testimony Motors*** and those in the present case are inconsequential. I have already found that the Administrative Ruling did not prescribe the fallback method as the *primary* method for valuing used good and even if it did, such a prescription would be *ultra vires* and unreliable. Thus, even if I find that ***Testimony Motors*** is distinguishable from the instant case, it would still not help the appellant's case because the Administrative Ruling did not and could not justify resort to the fallback method at first instance.

25. I note that the ***Testimony Motors*** case confirmed that Section 122(1) of the EACCMA is mandatory in requiring that customs valuation of imports is conducted in accordance with the 4th Schedule. The case also confirmed that if a valid transaction value exists, it should be used as the customs value of an imported good and that the presentation of genuine proof of the actual price paid or payable for an imported good takes away the appellant's discretion to consider other methods of customs valuation.

26. I am cognisant of the appellant's concerns over the ability of the initial 5 methods of customs valuation to deliver genuine and accurate customs values. The appellant stressed the challenges it goes through in dealing with the ever-increasing cases of falsification of import documents. It may therefore be necessary for the 4th Schedule of the EACCMA to be amended to create different legal regimes for valuation of brand new and second-hand or used goods. The solution for the impasse is clearly with the legislature. However in the absence of such formal legislative changes, neither the appellant nor the Directorate can rewrite the 4th Schedule.

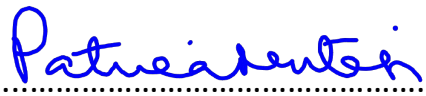
27. Considering the above findings, I am unable to fault the reasoning and findings of the Tribunal. The appellant rejected the respondent's declaration merely on the premise that "all importers of used cars are fraudulent". That conclusion was arbitrary since every import transaction should be considered on its own facts and merits.

Reliefs

28. Consequently, the appeal fails and I make the following orders:

    i. The appeal is hereby dismissed.

    ii. Costs of the appeal are awarded to the respondent.



Patricia Mutesi

JUDGE

(29/12/2023)