

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**CIVIL APPEAL NO. 01 OF 2001**

**THE HAIR CARE CENTER LTD ::: APPELLANT**  
**VERSUS**  
**UGANDA REVENUE AUTHORITY ::: RESPONDENT**  
**BEFORE: THE HON. MR. JUSTICE R.O. OKUMU WENGI.**

**JUDGMENT:** \_\_\_\_\_ This

is an appeal by a Tax payer whom the Tax appeals Tribunal on 14/02/2001 ordered to pay taxes, penalties and demurrage on a consignment of Body Care products it imported. The decree from which this appeal arises was to the effect that though the appellant had not authorised the clearing agent who had under declared the goods, and was not responsible for his actions as such, he could not escape liabilities to pay the levies. The appellant had imported the goods from South Africa which were properly cleared by an agent ATACO, who in the course of its declarations was found to have falsified invoices with the possible result that taxes would be evaded. The goods were seized. However, the offence was compounded such that the goods were released on condition that certain fines were paid.

In the appeal two grounds were formulated as follows:-

- 1). That the Tribunal erred in law in holding that the appellant should bear the financial responsibility of the goods in particular the penalty.
  
- 2). The Tribunal erred in fact and law when it held that neither party was at fault and that each party should bear its own costs.

In its decision the Tax Appeals Tribunal stated that the self appointed agent ATACO was the person guilty of the offence, and that the appellant was in the circumstances not to be held vicariously liable. What I have to decide in this appeal is whether an owner of imported

goods in respect of which a customs offence is committed but for which it is not liable should nevertheless be made to pay penalties and storage charges arising from the commission of that offence by that party not before court. The Tax Appeals Tribunal in making its decision stated that: -

“5. Although not responsible in the sense indicated in No. (2) above nevertheless the owner cannot escape the financial responsibility for his goods vis a vis the respondent, he has to claim then by -

- paying the taxes due
- paying the penalty and
- paying the demurrage charges and costs,

this having clearly exonerated the appellant from the actions of the agent ATACO. It is this statement of liability that has evoked this appeal.

I do agree that it is the agent who committed the offence with the result 30 that the goods of the appellant were to be unlawfully impounded. After impounding them the appellant had to pay the storage charges and recover them from the agent. However, when it comes to the penalty I do not think it is proper to penalise someone for an offence for which another is independently guilty, or more accurately, liable to be charged with. Since the self appointed agent committed an offence in his own right and the Tax Appeals Tribunal did not convict the appellant for it, the Tax Appeals Tribunal could not properly condemn the importer, and the Appellant should collect the penalty directly from the agent. Similarly the importer should feel free to recover money that it pays for storage of the goods following their being unlawfully impounded, from the agent. In other words the agent faces the Uganda Revenue Authority for the offence he committed and also pays any penalty imposed against it and would also be liable to reimburse the importer for the costs of storage paid by the importer for storage of his goods.

In the result I would allow this appeal in part as related to the penalty with costs to the appellant.

**R.O. OKUMU WENGI**

**JUDGE**

**22/01/02.**