THE REPUBLIC OF UGANDA

IN THE TAX APPEALS TRIBUNAL AT KAMPALA REGISTRY

APPLICATION NO. 7 OF 2015

JOHN KAMANYIRE ==========APPLICANT

VERSUS

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

RULING

This ruling is in respect of an application challenging a tax assessment of Shs. 14,795,019/= by the respondent on the applicant for an imported vehicle under the East African Community Customs Management Act (EACCMA).

Briefly, the facts of the application are: The applicant imported a motor vehicle BMW 320i 2007, 1990 cc (cubic capacity). On 19th August 2016 the respondent had the motor vehicle valued at US$ 10,156.88. On 1st September 2016 the applicant paid taxes on the said value.

Issues

1. What is the transaction and customs value of the motor vehicle?
2. Whether the respondent properly assessed the applicant for the taxes on the motor vehicle?
3. What remedies are available?

The applicant represented himself. The respondent was represented by Mr. Habib Arike and Mr. Ronald Baluku.

The applicant filed a witness statement. He testified that he imported a BMW 320i, 1990 cc, 2007 model on 20th June 2016. He paid US$ 5,500 (cost, insurance, freight) up to Kampala. On 4th August 2016 the vehicle arrived in Kampala and was put in a warehouse belonging to Cadam. He was notified by his agent that they were unable to generate an assessment for taxes as the motor vehicle could not be traced on the used

motor vehicle indicative guidelines. He wrote a letter requesting for an assessment. After several correspondences he received an extract where a vehicle BMW 3 series, 320i ABA-VA, 2007, 2000cc was required to pay taxes basing on a value of US $ 10,156.88. The applicant objected to the manager on the said value as the said vehicle was different from his. The manager did not reply to his objection. Having exhausted the appeal process of the respondent he paid taxes of Shs. 32,232,683 on 17th September 2016 basing on the value of 10,156.88. He filed this application before the Tribunal. He believes the taxes should have been based on the transaction value of US$ 5,500.

The respondent called one witness, Mr. Isaac Winyi a customs officer. He filed a witness statement where he stated that the applicant was advised to pay taxes applying the value of US$ 10,156.88. The latter objected and appealed to the respondent's manager of Kampala. The value used by the respondent was upheld. He stated that in respect of the applicant's contention that the vehicle of 1990 cc is different from that of 2000 the respondent rounds of to the nearest. 000. This does not distort the value appraised.

In cross examination, Mr. Winyi testified that the vehicle was imported using a commercial invoice, bill of lading and an export certificate. The value on the commercial invoice was US$ 5,500. According to the methodology of the respondent, it does not use transactional values on used articles. They use values from their guidelines basing on figures it gets from the internet. It uses an average of prices. This is done by applying the rules of the World Customs Organisation. It is a fall back method.

In his submission the applicant contends that he imported a car at a cost of US$ 5,500. The respondent assigned a value of US$ 10,156.88. The vehicle imported had a cubic capacity of 1990. However the guidelines used a similar car with cubic capacity of 2000. The applicant contended that this has no legal basis.

The applicant challenged the respondent's use of the fall-back method. The applicant cited *Testimony Motors Ltd v Commissioner of Customs* Civil Suit 212 f 2012 where the

court held that the Commissioner has no powers to restrict the valuation of used motor vehicles to one method only to the exclusion of all others.

The applicant further contended that the respondent's reasons of arriving at the valuation decision are not consistent with the East African Community Customs Act (EACCMA) and should not be upheld. The respondent ought to have used alternative methods.

The respondent in its submission admitted that the applicant's motor vehicle BMW 320i 1990 cc was not in its motor vehicles indicative guideline. It contended it rightly adopted the fall back method in assessing the taxes payable by the applicant.

The respondent cited S. 122(1) of the EACCMA which provides that where imported goods are liable to import duty the value of such goods shall be determined in accordance with the Fourth Schedule and import duty shall be paid on that value. The respondent also cited S. 122(5) of the Act which provides that the Council shall publish in the Gazette judicial decisions and administrative rulings of general applications giving effect to the fourth schedule. The respondent contended that in applying or interpreting S. 122 and the provisions of the Fourth Schedule regard should be given to the decisions, rulings, opinions, guidelines and interpretations given by the Directorate, World Trade Organizations or Custom Cooperation Council.

The respondent noted that the Fourth Schedule prescribes six methods of determining the custom value of imported goods. These are, in order of precedence, the transaction method, the value of identical goods, value of similar goods, the deductive value method, computed value method and the fall back value method. The fall back method is an alternative lawful method recommended in the opinion of the Technical Committee of the Customs Cooperation Council for the use by customs administrations which are facing challenges in the valuation of imported used/second hand motor vehicles.

The applicant argued that the fall back method is applied where the customs value of the imported goods cannot be determined under methods 1 to 5. The fall back method

is used were reasonable means consistent with the principles and general provisions of the Fourth Schedule and on the basis of the date available in a partner state. The use of indicative values of similar used vehicle on the market by the respondent is within the reasonable means consistent with the principles and general provisions of the Fourth Schedule and on the basis of the data available in a partner state.

The respondent cited the *Association of Clearing, Forwarding and Freight Forwarders (ACWFFK) v Kenya Revenue Authority and Commissioner Customs and Exercise Department* where the court held that a Routine Order issued by the Commissioner of Customs and Excise directing staff of the department to apply the depreciation method in valuation of ad valorem import duty payable on used motor vehicles as lawful

Having listened to the evidence and read the submissions of the parties the Tribunal rules as hereunder.

The applicant imported a BMW vehicle 320i 1990 cubic capacity 2007 model. The value of the vehicle on the invoice was US$ 5,500 (Cost, Insurance, freight). The applicant was advised to pay taxes basing on a value of US$ 10,156.88 which was obtained from a guideline based on figures from the internet. The applicant objected to the value assigned to the vehicle by the respondent.

S. 122 of the EACCMA provides for the determination of value of goods for import duty. The said Section does not distinguish between first hand goods and used goods. S. 122(2) provides that the value of goods shall be determined by the fourth schedule. And import duty shall be paid on that value.

S.122(6) of the said Act provides that in applying and interpreting the Fourth Schedule due regard shall taken of the decisions, rulings, opinions, guidelines and interpretations given by the Directorate, the World Trade Organisation or the Customs Cooperation Council.

Under the Fourth Schedule the customs value of imported goods means the value of goods for the purposes of levying ad valorem duties of customs on imported goods The Fourth Schedule provides for a sequential mode of determining value of goods for purposes of levying import duty. The first mode is the transaction value. Paragraph 2(a) of the Schedule provides that the customs value of imported goods shall be the transaction value, which is the price actually paid or payable for the goods when sold. Under Paragraph 3(a) of the Schedule where the customs value of the goods cannot be determined under the provisions of Paragraph 2, the customs value shall be the transaction value of identical goods sold. Identical goods are defined in the Schedule as goods which are the same in all respects including physical characteristics, quality and reputation. Under Paragraph 4 where the custom value of the goods cannot be determined under the provisions of Paragraphs 2 and 3 the transaction value of similar goods. Similar goods means goods which, although not alike in all respects, have like characteristics and like component materials which enable them perform the same functions and to be commercially interchangeable. Paragraph 5 of the Schedule deals wth the use of the deductive value and computed value where the preceding paragraphs do not apply. Paragraph 8 of the Schedule deals with the fall back method. It provides that where the customs value of the imported goods cannot be determined under the preceding paragraphs, the customs value shall be determined using reasonable means consistent with the principles and general provisions of this Schedule and on the basis of the data available in the Partner State.

The Schedule is clear. In order to determine the customs values of imported goods, the taxing authority should apply the methods provided in the Schedule in a sequential order. The taxing authority cannot apply the fall back when the transaction option is available. The respondent admits it on the second page of its submission when it states "… it is not disputed that the 1st and the primary method of valuations is the transaction value method…"

In Testimony Motors Ltd v The Commissioner of Customs and Uganda Revenue Authority Civil Suit 212 of 2012 the His Lordship Madrama noted

> "Consequently, it is abundantly clear that other methods are to be used for valuation purposes if the method prescribed by paragraph 2 fails to establish the custom value. Secondly the interpretative notes require the succeeding method to be applied sequentially that is one after the other. It is only after failure of the succeeding paragraph that the next paragraph can be applied."

It is therefore clear that before the respondent would apply the fall back method it ought to have used the transaction value on the applicant's vehicle.

The transaction value of the applicant's vehicle was stated in the commercial invoice as US$ 5,500. The value of US$ 5,500 was not disputed. Despite that, Mr. Isaac Winyi, the respondent's witness testified that the respondent did not use the commercial invoice. That is the respondent did not use the transaction value. Mr. Issac Winyi testified that the respondent does not use the transaction value on used articles. However the transaction value is the primary method of valuation. The EACCMA does not distinguish between used and unused articles.

The respondent used guidelines it obtained from the internet under the fall back method. The respondent's counsel submitted that the fall back method is applied where the customs value of the imported goods cannot be determined under methods 1 to 5. Where an importer has tendered in the commercial invoice showing the value of the imported item one wonders how one can fail to determine the value of the import. The respondent ought to have used method one.

In applying the fall back method under the Fourth Schedule of the EACCMA, the respondent applied the opinion of the World Trade Organisation. The respondent cited S. 122 (6) which allows it to have due regard to the decisions, rulings, opnions, guidelines and interpretations given by the directorate, the World Trade Organisation and the Customs Cooperation Council. However there is nothing in the said Subsection that makes the said decisions, rulings, opinions and interpretations take precedence over the requirement to use the transaction value of the import in determining the customs value. To use a guidelines obtained from the internet when the actual value of the import is stated in the commercial invoice would be to promote the use of fictitious

figures in determining customs value. His Lordship Madrama in *Testimony Motors Ltd v Commissioner of Customs* (supra) cited Article 7 of the Technical Committee on Customs Valuation 2nd Edition July 1997 as forbidding arbitrary or fictions values in establishing customs values.

The Tribunal is cognisant of the challenges the respondent faces when determining the custom value of used items such as fraud, false declarations etc. The applicant is not in the business of importing and selling used vehicles in Uganda. However the said challenges should not overlook the need of fairness when assessing taxes. A taxpayer ought not to pay more taxes than what he actually should pay. The transaction value stated in the commercial invoice of the applicant was never challenged. The applicant ought to pay the customs value on the transaction value in the commercial invoice adduced in evidence.

In the circumstance, the Tribunal will allow the application with costs. The Tribunal orders that this matter be remitted back to the respondent for reconsideration. The respondent should reassess the applicant's vehicle for customs duty using the transaction value in the commercial invoice. Any balance or difference paid by the applicant on the first assessment over and above the assessed customs value should be refunded to the applicant. The excess amount shall attract interest of 2% per month from the date of payment till it is refunded. The Tribunal so orders.

Dated at Kampala this day of 2018

DR. ASA MUGENYI	**DR. STEPHEN AKABWAY**	**MS. CHRISTINE KATWE**