THE REPUBLIC OF UGANDA

IN THE TAX APPEALS TRIBUNAL OF UGANDA AT KAMPALA

APPLICATION NO. 24 OF 2021

CENTURY BOTTLING COMPANY LIMITED ==========APPLICANT

VERSUS

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

BEFORE: DR. ASA MUGENYI, MR. GEORGE MUGERWA, MS. CHRISTINE KATWE

RULING

This ruling is in respect of an application challenging tax assessments arising from the treatment of credit notes and the importation of concentrates from an Export Processing Zone (EPZ) in Kenya to Uganda.

The respondent carried out a customs post clearance audit on the applicant for the period January 2015 to December 2018. After several reconciliations, taxes arising from two audit issues remained in dispute. The first one was of Shs. 490,400,451 which arose from the treatment of debit notes and credit notes on prices paid on the importation of concentrates. The respondent only considered additional taxes arising from debit notes and did not consider credit notes. The second one was of Shs. 3,593,100,911 arising from the importation of mango puree produced by All Fruits EPZ Limited and Organic Growers and Packers EPZ Limited in Kenya. The respondent contends that taxes are payable because the goods were imported from an Export Processing Zone (EPZ) in Kenya.

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. Ronald Kalema and Ms. Vanessa Irene Mbekeka while the respondent by Mr. Aliddeki Ssali Alex and Mr. Sam Kwerit.

This dispute revolves around the treatment of credit notes when making adjustments for custom values and taxes due on concentrates imported from an Export Processing Zone in Kenya.

The applicant's witness, Mr. John Mukiibi, its financial controller, testified that on 24th July 2019, the applicant received a custom post clearance audit notification for the period January 2015 to December 2018. After several reconciliation meetings and correspondences, the respondent issued a management letter of 23rd December 2019. Eventually after further several meetings and correspondences, taxes in respect of two issues remained in dispute. The first tax of Shs. 490,400,451 related to the treatment of credit and debit notes on prices paid on importation. The second tax of Shs. 3,593,100,911 as in relation to imports of mango puree from an Export Processing Zone.

He testified that the applicant is involved in production of carbonated soft drinks under a bottling arrangement with Coco-Cola company. The applicant imports concentrates for its production from Conc Limited, a related company in Ewatini. The applicant received quarterly debit and credit notes from the concentrate suppliers, which were adjustments to the prices of the imported concentrates. He testified that the adjustments also known as 'incidence adjustments' catered for price rebates, as the price increases given to the applicant failed to meet pre-agreed sales targets. At import, the applicant declared 100% of the value of the concentrate before the said adjustments were considered. The applicant declared and paid the correct import duties based on the full value of the imported concentrates. He stated that the respondent assessed additional taxes on debit notes but failed to make adjustments for the credit notes leading to a tax liability of Shs. 490,400,452. He contended that the respondent ought to have considered all the price adjustments.

Mr. Joseph Mukibi testified that the applicant imported mango puree from Kenya during the audit period. It a base concentrate used in the production of a fruit drink known as 'Minute Maid'. He testified that the applicant makes an order with Coca Cola Midi for the purchase of mango puree. Coco Cola Midi issues an order to particular suppliers, All Fruit EPZ Limited, and Organic Growers and Packers EPZ Limited in Kenya to produce mango puree. The mango puree is produced under the supervision of Coca Cola Midi. Upon completion

of production the mango purees is exported by the producers in Kenya to the applicant. The export documents include a certificate of conformity, a certificate of origin, the loading plan and an export licence which were presented to the respondent. The respondent imposed an additional tax on the allegation that mango puree was manufactured in an Export Processing Zone in Kenya and was liable for import duty at importation in Uganda. He contended that the applicant is not liable to pay duties as it presented certificates of origin issued from Kenya.

The respondent's witness, Mr. Emmanuel Ochola, an officer in the Customs Audit department testified that on 26th August 2019, the respondent commenced an audit on the applicant for the period January 2015 to December 2018 which was concluded on 23rd December 2019. The respondent communicated the results to the applicant who objected. The parties held reconciliation meetings. The applicant conceded and paid taxes of Shs. 1,297,076,979. The respondent demands taxes of Shs. 490,400,451 arising from the treatment of debit and credit notes and Shs. 3,593,100,911 for imports from an EPZ. In respect of the first tax, he contended that debit notes, additional invoices and additional payments were not declared to the respondent. They ought to have had corresponding customs declarations. He testified that the concentrates were cleared using Method 1 (transaction value) of the WTO Valuation Agreement. The use of credit and debit notes necessitated the respondent to disregard Method 1 and apply other valuation methods. In respect of the second tax, he contended that mango puree was sourced from companies in a Kenya EPZ. The said imports are governed by the Protocol on the Establishment of the East African Customs Union (Export Processing Zones) Regulation which provided that goods brought out of an Export Processing Zone and taken into any part of the Customs territory for use in the Customs territory shall be deemed to be imported into the customs territory of the Partner State. He contended that the tax treatment is under Article 252(b) of the Protocol of the establishment of the East African Community Customs Union. He contended that Commissioner may subject to the custom laws on payment of the duties permit removal of goods from an EPZ to be entered for home consumption. He submitted that under the East African Community Customs Union (Export Processing Zones) Regulation, 20% shall be sold to customs territory upon approval by the Commissioner and after payment of duties due. The 20% quota as permitted by the Commissioner is treated

as an import into the Partner State and are subject to import duty. He stated that the applicant imported mango puree from Premier Foods Limited, Sunny Processors, All Fruits (EPZ) and Organic Growers and Packers EPZ Limited. He stated that the respondent assessed taxes of Shs. 3,593,100,911 on mango puree from the EPZ companies

The applicant submitted that Schedule 4 of the EACCMA provided for methods of valuation to be applied sequentially. It submitted that it used the transaction value Method to ascertain the custom value of its imports. Article 1 of the WTO customs Valuation Agreement define transaction value as the price actually paid or payable for goods when sold for export to the country of importation adjusted in accordance with the provision of Article 8. The applicant submitted that it provided the respondent with debit and credit notes to allow it to derive the accurate custom values. It received quarterly debit and credit notes from Conco Limited which affected the custom values declared at import and it made the necessary adjustments. The applicant cited *Eicher Tractors Limited, Haryana v Commissioner of Customs Mumbai* (2000) 4 Suppl. S.C.R. 597 where it was noted that a discount is a commercially acceptable measure which may be resorted to by a vendor for a variety of reasons including stock clearance. The law casts a mandate on the authorities to accept the price actually paid or payable for goods under assessments as the transaction value. The applicant submitted that the GATT agreement allows the respondent to make post import adjustments which it did. The respondent's witness testified that the latter disregarded the transaction value method. The applicant contended that the respondent's determination of the value of its imports in disregarding the transaction value method was contrary to S. 122 of East African Community Customs Management Act (EACCMA). The applicant cited *Bidco Oil Refineries Limited v Commissioner of Customs Services* Application 150 of 2015 where the Tribunal found that the Commissioner failed to apply the valuation methods sequentially as envisaged in the law. The respondent failed to demonstrate to the Tribunal to its satisfaction as to which valuation method applied to the custom values in issue. The applicant contended that the respondent should use the transaction value method as adjusted to include credits/discounts in determining the actual price paid for the concentrates.

In respect of the imports of mango puree, the applicant made an illustration of the transaction. In the said illustration, the applicant contracted Coca Cola Midi for the purchases of mango puree, which issues purchase orders with suppliers in Kenya among them the EPZ companies. Proforma invoices are issued to the applicant prior to shipment. The applicant declared the import as originating from Kenya. Invoices are issued by All Fruit EPZ Limited to Coca Cola Midi for the mango puree stating that the goods be shipped directly to the applicant. Subsequent invoices are issued to the applicant. The export documents include certificates of conformity, certificates of origin and loading plans.

The applicant contended that the mango puree originated from Kenya where it was issued certificates of origin by competent authorities i.e. the Kenya Revenue Authority, hence it was not liable to pay taxes. It submitted that S. 111 of the EACCMA provides that goods from partner states shall be accorded community tariff treatment in accordance with the rules of Origin under the Protocol. S.111(2) states that customs shall require a certificate of origin and other documents as proof of origin of the goods. The applicant submitted that Article 14 of the Customs Union Protocol provides that goods shall be accepted as eligible for community tariff treatment if they originate in the Partner States. Paragraph 1e of the World Customs Organization guidelines define 'origin criteria' to mean conditions regarding the production of goods which must be fulfilled for goods to be considered to originate under the applicable rules of origin. Under Rule 4(a) of the East African Community Customs Union (Rules of Origin) Rules, goods shall be accepted as originating in a Partner State where the goods are wholly produced in it. The applicant submitted that mango puree it imported was wholly produced in Kenya as evidenced by the certificates of origin. It further submitted that a certificate of origin is prima facie evidence of origin of goods which can only be disputed by the regulating authority. The applicant cited Commissioner *SARS v levi Straws (Pty) Limited* (509/2019) [2021] ZASCA 32 where the court noted that 'certificates of origin are validated by the country of origin of the goods. Such a certificate, once given, may only be queried in exceptional circumstances.' The applicant contended that a certificate of origin is conclusive evidence of the origin of goods which would make the mango puree imported by the applicant eligible for preferential community treatment. The applicant also cited *British American Tobacco Uganda Limited v Uganda Revenue Authority* Application 62 of 2019 where the Tribunal noted that "For one to be accorded

preferential treatment under the EACCMA, goods must originate from the Partner States and treatment shall be in accordance with the Rules of origin provided under the Protocol."

The applicant submitted that Article 25 of the Protocol on the Establishment of the East African Customs Union provides for the principles governing export promotion schemes. The applicant submitted that Article 25(2)(b) of the Protocol states that in the event that such goods are sold in the custom territory they will attract full duties, levies and other charges provided in the Common External Tariff. Article 25(3) states that the sale of such goods shall be subject to authorization by a competent authority and such sale shall be limited to 20% of the annual production of the company. The applicant submitted that Regulation 14(b) of the East African Community Customs Union (Export Processing Zones) Regulations state that unless otherwise goods brought out of an export processing zone and taken into any part of the customs territory for use shall be deemed to be imported in the customs territory of the Partner States. The applicant submitted further Regulation 15(1) provides for conditions under which goods shall not be taken out of an export processing zone. These include necessary permits being obtained from the competent authority. The applicant also cited S. 168 of the EACCMA which provides that the Commissioner may on the payment of duties due permit removal of goods from an export processing zone. The applicant questioned whether authorization was received. The applicant contended that the respondent should have obtained information from Kenya Revenue Authority before imposing additional tax. The applicant contended that mango puree could only leave the EPZ after having obtained relevant permission and paid applicable duties.

The applicant further contended that the law does not impose obligations on who should pay tax upon removal of goods from an EPZ. The applicant submitted that the law does not impose an obligation on it to pay the taxes. In the alternative, the applicant submitted that it is the person selling the goods manufactured in the EPZ who has the onus to account for the taxes and obtain explicit permission from competent authorities before goods are removed. The applicant cited *Jafferali M. Alibhai v The Commissioner of Income Tax* [1961] EA 610 where it was stated that the subject is not to be taxed unless the words of the taxing statue unambiguously impose the tax upon him. It also cited *Mangin v Inland Revenue*

Commissioner [1971] AC 739 where the court stated that one has to look at what is clearly said in a statute. There is no room for any intendment. The applicant argued that the EACCMA did not state who bears the burden of paying taxes for manufactured goods sold under the 20% quota limit. The applicant also cited *Ormond Investment Co. Limited v Betts* 1928 AC 143 where it was intimated that an ambiguity meant 'a phrase fairly and equally open to diverse meanings.' It further cited *Badenhorst v CIR* 1955(2) SA 207 (N) 215 where it was stated that when a provision of the income tax Act is reasonably capable of two constructions, the court will adopt the construction that imposes a small burden on the taxpayer. The applicant concluded that it is therefore not liable to pay additional tax assessed by the respondent.

The respondent did not file its submissions in time as per the directives of the Tribunal. It did not seek leave to file submissions late. They will not be considered. Therefore, there was no need for a rejoinder. Having heard the evidence of the parties and read the submissions of the applicant the following is the ruling of the tribunal.

The respondent did a customs post clearance audit on the applicant for January 2015 to December 2018. After several reconciliations, taxes arising from two audit issues remained in dispute. The first tax in dispute was Shs. 490,400,451 which arose from the treatment of debit notes and credit notes on prices paid for importation of concentrates. The respondent only considered debit notes but not credit notes. The second tax in dispute is Shs. 3,593,100911 arising from the importation of mango puree produced by All Fruits EPZ Limited and Organic Growers and Packers EPZ Limited in Kenya. The respondent contends that taxes are payable because the goods were imported from an Export Processing Zone in Kenya.

The applicant contended that it used the transaction value method in determining the custom value of its imports. It contended that the method allowed it to make adjustments whereby credit and debit notes are considered. It was aggrieved by the respondent's decision to allow the debit notes but ignore the credit notes.

The custom value of goods is determined under the East African Community Customs Management Act (EACCMA). S. 122(1) of the said Act reads

> "Where imported goods are liable to import duty ad valorem, then the value of such goods shall be determined in accordance with the Fourth Schedule and import duty shall be paid on that value."

Part 1 of the Fourth Schedule provides that "customs value of imported goods" means the value of goods for the purposes of levying ad valorem duties of customs on imported goods. Part 2 of the Fourth Schedule provides for the methods. For the first method, it states that

> "2(1) The customs value of imported goods shall be the transaction value, which is the price actually paid or payable for the goods when sold for export to the Partner State adjusted in accordance with the provisions of Paragraph 9."

The respondent contended that when considering debit notes it applied Article 8 (1)(d) of the WTO Valuation Agreement which provides that in determining the custom value under the provisions of Article 1 ,there shall be added to the price actually paid or payable of the imported goods "the value of any part of the proceeds of any subsequent sale, disposal or use of the imported goods that accrue directly or indirectly to the seller". Debit notes were therefore considered by the respondent but not credit notes. Credit notes are issued to customers giving discounts. In *Eicher Tractors Limited, Haryan v Commissioner of Customs* (supra)the court recognized that a discount is a recognized feature of international trade practice and that as long as those discounts are uniformly available to all and based on logical commercial bases. Article 1 of the WTO customs Valuation Agreement defines transaction value as the price actually paid or payable for goods when sold for export to the country of importation adjusted in accordance with the provision of Article 8. This is similar to Paragraph 2(1) of the Fourth Schedule. If the price paid by an importer consists of a discount which is not disputed, then the credit notes issued should be considered in ascertaining the custom value of the imports. A discount is part of the value of the price not actually paid. When considering the transaction value method, the amount actually paid or payable is what is considered. Therefore, a credit note showing what was not paid or payable should be considered in arriving at the price an importer actually paid or was payable.

The WCO Guide to Customs Valuation and Transfer Pricing note the use of credit and debit notes. Commentary 5.3.2 states

> "Where the adjustment is initiated by the taxpayer and an adjustment is recorded in the accounts of the taxpayer and a debit or credit note issued, it could be, depending on the nature of the adjustment, considered to have an impact on the price actually paid or payable for the imported goods, for Customs valuation purposes. In other cases, particularly where the adjustment has been initiated by the tax administration the impact may be only on the tax liability and not on the price actually paid or payable for the goods.
>
> Where such an adjustment takes place before the goods are imported then the price declared to Customs should take into account the adjustment.
>
> If, on the other hand, the adjustment takes place after importation of the goods, (i.e. it is recorded in the accounts of the taxpayer and the debit/credit note issued after Customs clearance of the goods), then Customs may consider that the Customs value is to be determined on the basis of the adjusted price, applying the principles established in Commentary 4.1"

The respondent did not adduce any evidence to show that it doubted the truth or authenticity of the credit notes. If it had done so, the Tribunal would have asked the applicant to adduce them during the trial to ascertain their authenticity. In any case, the respondent could not doubt the credit notes and accept the debit notes, when they are all from the same source. The respondent's witness stated that the credit and debit notes were not declared to it. Then how did the respondent consider debit notes that were not declared to it? There is no rule that requires an importer to declare credit notes on importation of goods as they are not export documents. They are only provided when requested for. The respondent could have asked the importer to avail the documents during an audit.

In refusing to consider the credit notes, the respondent does not give convincing reasons why it disregarded Method 1, the transaction value method. The respondent also does not state which method it used when it disregarded the transaction value method. The respondent is not justified in not considering the credit notes of the applicant. The assessment of Shs. 490,400,451 which arose from the treatment of debit notes and credit notes on prices paid for the importation of concentrates is set aside.

The second leg of the dispute is in relation to taxes of Shs. 3,593,100911 arising from the importation of mango puree produced by All Fruits EPZ Limited and Organic Growers EPZ Limited in Kenya. It is not in dispute that the applicant imported mango puree from manufacturing companies in an EPZ. The applicant was issued certificates of origin that showed that the mango puree originated from Kenya. It contended that it was entitled to preferential treatment accorded to the certificates of origin.

EPZs are industrial estates that are fenced in for producing manufactured goods for export. Article 1 of the Protocol on the Establishment of the East African Customs Union states that an EPZ means a designated area or region in which firms can import duty free as long as the imports are used as inputs into the production of exports. S. 2 of the Free Zones Act 2014 of Uganda defines an EPZ to mean a designated part of a free zone or territory of Uganda, where any goods introduced are generally regarded for the purpose of import and export duty and taxes as being outside the custom territory but are duly restricted by controlled access and where the benefits provided under the Act apply and the EACCMA applies. EPZs remove Customs Duties, taxes, and or regulatory burdens upon export-oriented enterprises operating within government-designated areas. Article 25 of the Protocol on the Establishment of the East African Customs Union states that;

> "The Partner States agree to support export promotion schemes in the Community for the purposes of accelerating development, promoting and facilitating export-oriented investments, producing export competitive goods, developing an enabling environment for export promotion schemes and attracting foreign direct investment."

It is not in doubt that the benefits of operating EPZs include; free trade conditions, streamlined Government red tape and licensing and long-term tax concessions. (Reference https://www.eac.int/customs/customs-procedures/export-processing-zones. 18th October 2022). EPZs also allow for direct foreign investment, creation of jobs, increase of foreign exchange.

In this matter, the All Fruits EPZ Limited and Organic Growers EPZ limited were in the EPZ in Kenya. The Kenya Special Economic Zones Act S.4(4) provides

> "(4) A special economic zone shall be a designated geographical area where business enabling policies, integrated land uses and sector-appropriate on-site and offsite

infrastructure and utilities shall be provided, or which has the potential to be developed, whether on a public, private or public-private partnership basis, where any goods introduced and specified services provided are regarded, in so far as import duties and taxes are Special Economic Zones are concerned, as being outside the customs territory and wherein the benefits provided under this Act apply."

Therefore, the said companies would be considered as operating in special economic zones which are EPZs under the Protocol on the Establishment of the East African Customs Union.

In the East African Community, because the companies under the EPZs are given concessions, they are required to export the goods they manufacture. S. 167 of the EACCMA provides that

"(1) Subject to the custom laws, goods in export processing zones or freeports, whether of foreign or of domestic origin shall be entered for—

(a) export after undergoing processing in an export processing zone; or

(b) re-export in the same state from a freeport.

(2) Goods entering an export processing zone or a freeport shall be exempt from duty in accordance with the Protocol."

While the goods entering the zone are exempt from duty, those leaving it may not be. S. 168 of the EACCMA provides;

"(1) The Commissioner may, subject to the Customs laws and to such conditions as the Commissioner may impose and on payment of the duties due, permit removal of goods from an export processing zone or a freeport, including waste from the manufacturing process, to be entered for home consumption.

(2) The value for the purpose of determining the duty on goods removed from an export processing zone or a freeport shall be determined in accordance with section 122.

(3) A person who contravenes any conditions imposed by the Commissioner under this section commits an offence and any goods in respect of which such offence has been committed shall be liable to forfeiture."

Article 25 of the Protocol on the Establishment of the East African Customs Union states that

"(a) The Partner States agree that goods benefiting from export promotion schemes shall primarily be for export.

(b) In the event that such goods are sold in the customs territory such goods shall attract full duties, levies and other charges provided in the Common External Tariff."

Regulation 14(b) of the East African Community Customs Union (Export Processing Zones) Regulations state that unless otherwise, goods brought out of an export processing zone and taken into any party of the customs territory for use shall be deemed to imported in the customs territory of the Partner States. S. 46(2) of the Uganda Free Zones Act provides;

"Any good taken out of or services provided from an export processing zone for use in custom territory of Uganda shall be taken to have been imported in Uganda."

The Kenya Special Economic Zones Act provides that

"6(b) goods which are brought out of a special economic zone and taken into any part of the customs territory for use therein or services provided from a special economic zone to any part of the customs territory shall be deemed to be imported into Kenya.

7. Subject to section 6— (a) goods and services within a special economic zone, which shall constitute a customs-controlled area, shall not be taken out of the zone except—

(i) for export;

(ii) for entry into the customs territory, subject to the regulations and procedures on customs;

(iii) for removal to any other customs-controlled area with the approval of the proper officers and subject to any conditions as may be imposed; or

(iv) for repair and maintenance or processing or conversion with prior approval of the proper officer and subject to any conditions as may be imposed;"

Therefore, it is not in dispute that once goods leave an EPZ, there are treated as if they have been exported to the importing Partner State. The goods attract full duties, levies and other charges provided in the Common External Tariff. Goods imported into Uganda from an EPZ would attract duties.

The applicant was given a certificate of origin which it claims gave it preferential treatment. For one to claim for preferential treatment under the Rules, one must have a certificate of origin. Rule 10 of the Rules of Origin state that:

"The claim that goods shall be accepted as originating from a Member State in accordance with the provisions of this Protocol shall be supported by a certificate given by the exporter or his authorized representative in the form prescribed in Appendix I of this Protocol. The certificate shall be authenticated by an authority designated for that purpose by each Member State.

Article 3.4.1 on Procedures for the implementation of the Protocol on Rules of Origin provides that:

> "An exporter in a COMESA member State intending to export goods to another member State and desiring to have such goods granted preferential tariff treatment in the importing Member State must obtain a certificate of origin from the authority in his state who has been designated to issue such certificates.
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> The certificate, when presented by the importer to the Customs Authorities in the importing member State will serve as evidence of their originating status and hence enable them to be accorded preferential tariff treatment that is being sought."

Article 3.3.2. of the said Procedures for the implementation of the Protocol on Rules of Origin reads:

> The certificate of origin should be attached to the import of goods declaration to enable the Customs authorities of the importing member state to grant preferential treatment to shipment."

The applicant attached certificates of origin. It is not in dispute that the goods originated from Kenya as the EPZs were located there. However, the Tribunal notes that a certificate does not grant preferential treatment. It merely serves, as stated in Article 3.4.1 on the Procedures on the implementation of the Protocol on Rules of Origin, as evidence that goods originate from the country mentioned in the certificate. To refuse to issue a certificate of origin when an EPZ is located in the country mentioned would be geographically wrong. There is no rule that provides that a competent authority should not issue a certificate of origin because there is an EPZ located within the territory.

A certificate of origin may enable the holder to seek for preferential treatment sought under Protocol. The preferential treatment sought is not automatic. Firstly, there has to be preferential treatment provided in the law. One cannot seek what is not provided. that S. 111 of the EACCMA provides that goods from partner states shall be accorded community tariff treatment in accordance with the rules of Origin under the Protocol. Article 14 on the Protocol on the Establishment of East African Customs Union states that for purposes of this Protocol, goods shall be accepted as eligible for Community tariff treatment if they originate in the Partner States. Community tariff treatment is not synonymous with preferential treatment. Community tariff treatment signifies that the holder of the certificate of origin should be treated in the same way as other members of the community in respect

of tariffs. The tariff treatment may differ from what is required of non-members. Community tariff treatment maybe preferential if the community members are given preferential treatment. Secondly, the holder of the certificate has to be entitled to preferential treatment. *Black's Law Dictionary* 10th Edition p. 634 defines 'eligible' as "Fit and proper to be selected or to receive a benefit." It does not state that once goods originate from a Partner State one is automatically entitled to an exemption to pay customs duty. While one should be eligible for preferential treatment, community tariff treatment is inevitable where one is a member of the community.

A perusal of the rules governing EPZ show that goods imported into them are given preferential treatment. S. 167 of the EACCMA shows that the goods entering EPZ are exempt from duty in accordance with the Protocol. Therefore, preferential treatment is granted to imports into an EPZ. However, one has to ask whether this exemption extends to goods leaving EPZs.

The Protocol on Rules of Origin and the Protocol on the Establishment of the East African Customs Union are established under the EACCMA. S. 168(2) of the EACCMA provides that the value for the purpose of determining the duty on goods removed from an export processing zone or a freeport shall be determined in accordance with section 122. S. 122 of the EACCMA reads

> "(1) Where imported goods are liable to import duty ad valorem, then the value of such goods shall be determined in accordance with the Fourth Schedule and import duty shall be paid on that value."

Article 25(2)(b) of the Protocol on the Establishment of the East African Customs Union provides that where such goods are sold in the custom territory they shall attract full duties, levies, and other charges. A reading of the said law shows that goods from an EPZ do not have preferential treatment because they are considered as exports. A certificate of origin for goods produced in an EPZ is a document showing that goods originate from the mentioned country but does not confer preferential treatment but community tariff treatment. The community tariff treatment for goods from an EPZ is they should pay import duty under the EACMA and the Protocol. Where there is a specific law it takes precedence over a general law. A specific legislation derogates from the general legislation. The Law

in respect of EPZs caters for community tariff treatment where the goods imported originate from an EPZ in the Partner States. This overrides any preferential treatment that may arise in respect of the laws conferring origin in the community. However, in this case preferential treatment is given to imports into the EPZ while exports from it are granted community tariff treatment. Therefore, a certificate of origin for goods from an EPZ would merely indicate that items used in the manufacture of the imports were given preferential treatment as they are exempt from taxes but the goods are subject to community tariff treatment on export.

Though the applicant states invoices were issued in the names of Coca Cola Midi France, it does not deny that it imported the mango puree concentrates. The import documents, pages 81, 83, 85, 102 etc. of the joint trial bundle show the exporter as All Fruits EPZ Limited but the consignee as the applicant. It is without doubt that the applicant was the importer. In its letter of 21st October 2020 to the respondent, the Financial Director of the applicant states

> "Since the protocol does not highlight who is responsible for paying or accounting for taxes due when goods are sold in the customs territory, it is our opinion that the responsible party for accountability should be the principal i.e. the supplier/exporter who in [this] is the EPZ (sic)."

This shows that the applicant was aware that customs duty was payable for the imports. The company in the EPZ is responsible for paying any export duties if due. The applicant is required to pay duties as provided for in the community tariff treatment of goods from an EPZ as provided in the law. In this case, the applicant as importer should pay import duties as provided for in S. 168 of the EACCMA which states that import duties shall be payable under S. 122 of the said Act. S. 122 states that where imported goods are liable to import duty ad valorem, then the value of such goods shall be determined in accordance with the Fourth Schedule and import duty shall be paid on that value. This clears the ambiguity in the applicant mind that the law is not clear on who is to pay the duties. There is no evidence that the applicant is exempt of import duties under the EACMMA and that there was preferential treatment in respect of exports from an EPZ for which it is eligible.

Furthermore, the applicant admits that it did not comply with the Protocol. The applicant submitted Regulation 15(1) the East African Community Customs Union (Export

Processing Zones) Regulations provides for conditions under which goods shall not be taken out of an export processing zone. These include necessary permits being obtained from the competent authority. The applicant contended that respondent should have obtained information from Kenya Revenue Authority before imposing additional tax. It contended that mango puree could only leave the export processing zone with the relevant permission and payment of the applicable duties. S. 167 (3) of the EACCMA provides that a person who contravenes any conditions imposed by the Commissioner under this section commits an offence and any goods in respect of which such offence has been committed shall be liable to forfeiture. Where one fails to comply with conditions, it commits an offence. On conviction the goods are liable to forfeiture. However, the law does not exonerate a party who has failed to comply with the conditions from paying the proper custom duties due. When one does not comply with the law on imposing custom duties he is a considered a smuggler. To hold that persons who do not comply with the law should not pay custom duties would be to encourage smuggling.

The applicant has not discharged the burden that it should not pay taxes of Shs. 3,593,100,911 for importing mango concentrates from an Export Processing Zone. The respondent did not file its submissions in time and its assessment of Shs. 490,400,451 which arose from the treatment of debit notes and credit notes was set aside. Therefore, it is awarded half the costs of the application

Taking the above into consideration, the Tribunal orders as follows

1) The assessment of Shs. 490,400,451 is set aside.
2) The assessment of Shs. 3,593,100,911 is upheld
3) The respondent is awarded half the costs of the application.

Dated at Kampala this day of 2022.

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DR. ASA MUGENYI	**MR. GEORGE MUGERWA**	**MS. CHRISTINE KATWE**
CHAIRMAN	**MEMBER**	**MEMBER**