THE REPUBLIC OF UGANDA

IN THE TAX APPEALS TRIBUNAL OF UGANDA AT KAMPALA

APPLICATION NO. 125 OF 2019

ELGON HYDRO SITI LIMITED …….…….. APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY ……..…….. RESPONDENT

BEFORE: DR. ASA MUGENYI, DR. STEPHEN AKABWAY, MR. GEORGE MUGERWA.

RULING

This ruling is in respect of an application challenging a classification of imported ball valves to be used by a hydraulic turbine under the Harmonized System Code (HSC) and the proper calculation of the tax due.

The applicant is engaged in hydro power generation, implementing Siti 1 and 2 hydro power projects in Uganda. The respondent reviewed the applicant's past import clearances and held that there was a misclassification of imported valves under the HSC sub heading 8410.12 attracting 0% import duty instead of sub heading 8481.80 attracting 10% import duty. The respondent in a letter dated 17th September 2019, demanded Shs. 648,299,671 as tax due on the purported misclassification of valves. On 16th October 2019, the applicant appealed to the respondent, against the reclassification of the valves and the assessment upon which the latter maintained them. The applicant disputes the basis for assessing the tax.

Issues

1. Whether the applicant is liable to the import duty assessed by the respondent?
2. What remedies are available to the parties?

The applicant was represented by Ms. Lucy Kemigisha and Ms. Dorcas Kabaaho while the respondent by Mr. Barnabas Nuwaha.

The applicant's first witness, Mr. Hamlet Ahimbisibwe, its finance manager, testified that the applicant developed and implements the Siti 2 hydro power project in Uganda which has a capacity of 16.5 Mega Watts (MW). It utilizes hydro power potential from River Siti. To implement the project, it was required to construct a power plant. The applicant contracted the engineering, procurement, and construction to VS Hydro (Uganda) Limited which imported items in the former's names. On 25th May 2018, it imported a turbine which was too large to be shipped in one consignment. He testified that the shipment comprised of components of a turbine such as valves, control systems, switch gears, Scada, and cables which were assembled in Uganda. The applicant informed the respondent about the importation. The respondent provided a customs procedure code to be followed. Upon importation, the applicant classified the shipments under HSC 8410.12.00 and 8410.90.00 which attracted import duty of 0%. In 2019, the respondent carried an audit on the applicant and asserted that there was a misclassification of valves under HSC 8410.12.00 attracting 0% import duty instead of 8481.80.00 attracting 10% import duty. On 17th September 2019, the respondent demanded Shs. 648,299,671 as tax payable on misclassification of the valves. The respondent also issued new 'Asycuda' customs declaration forms. On 16th October 2019, the applicant appealed to the respondent to vacate the demand notice. On 21st October 2019, the respondent disallowed the applicant's appeal.

The applicant's second witness, Mr. Milton Natwijuka, a custom clearing agent with AKA clearing and forwarding company testified that he made three customs declarations on behalf of the applicant. The customs declarations were in respect of partial shipments of turbine which were transported into Uganda by three trucks. He classified two shipments under HSC 8410.12.00 with description 'Hydraulic turbines & water wheels, or a power exceeding 1000 kw but not exceeding 10,000 kw'. He classified the other shipment under HSC 8410.90.00 with the description of 'parts of hydraulic turbines, water wheels including regulators.' His classification was based on the importation documents which included a bill of lading, insurance schedule, commercial invoice and packing list. He was not present when the consignments were loaded in the containers. The processing of the import documents was done in the yellow channel of the 'Asycuda' system i.e., documents go to the document processing centre for verification.

The applicant's third witness, Mr. Eric Wade Jansen Rensburg, its electrical and mechanical consultant, and commissioning manager, testified that he supervises the Siti 1 power station. In 2017, the applicant commenced installation of the Siti 2 power station which has a capacity of 16.5 MW. His role was to verify everything that the applicant procured, engineered, constructed, and commissioned. He stated that to develop and implement the project, one of the elements required were tailor-made hydraulic turbines. The function of the turbines was to convert potential energy of flowing water to rotational energy. The applicant imported a Pelton turbine made by VS Turbo which was assembled at Siti 2 station. The turbine was imported in parts and assembled at the station. The hydraulic turbine consisted of a turbine housing, shaft with runner, inlet pipe, flywheel with bearing pedestal and injectors which are arranged around turbine housing. Each injector was equipped with a nozzle, a needle, a jet deflector and protection of water jet. He testified that a hydraulic turbine is made up of several other parts which include turbine ball valves; dismantling joints; turbine disc brake system, governor hydraulic pressure unit. He stated that spare parts are imported with the turbines. He stated that the valves cannot be used on equipment other than a hydraulic turbine. He also stated that turbines are usually imported in parts unless they are smaller units.

Mr. Matsiko Elinathan, an officer in the respondent's customs department, testified that the respondent carried out a review of the applicant's past clearances in respect of imports declared to the respondent under entries; C6608, C6611 and C6613 of 25th May 2018. He contended that the said entries were wrongly classified. Valves were classified as parts of hydraulic turbines under subheading 8410.12.00 paying an import duty of 0% in disregard of the General Interpretative Rules of the East African Community - Common External Tariff. He stated that the applicant's entries were reassessed, and the valves subjected to 10% import duty. Mr. Elinathan Masiko testified that the turbine is a big machine that comes when it is dissembled. There are valves at different levels. He stated that dissembled items are treated separately for purposes of classification.

The tribunal visited the locus at river Siti, where it was able to view the turbine and the valves. Mr. Issa Adu, the plant manager for Siti 2 stated that the applicant maintains and operates the plants. He stated that the work of the valves is to open or close water supply

to the runners. He also stated that the second part of the turbine is the injector valve or needle valve. The valve allows high water pressure to the runner. The pressure unit governs all the valves attached to the turbine system. These valves include: the ball valve, the needle or injector and the deflector.

The applicant submitted it is not liable to pay import duty of Shs. 648,299,671 resulting from purported misclassification of valves. It contended that the ball valves and the other components imported are part of the hydraulic turbine which attract an import duty of 0% under HSCs 8410.12.00 and 8410 90.00, It submitted that Article 12(4) of the Protocol on the Establishment of the East African Customs Union provides that the Partner States shall use the Harmonized Customs Commodity Description and Coding System, specified in Annex 1 of the Protocol, that is the East Africa Community Common External Tariff (EAC CET) which is used to determine import duty on goods that originate from outside the East Africa Community (EAC). The EAC-CET has several versions but since the applicant imported goods in 2018, the applicable version of the EAC-CET is the one of 2017. The applicant contended that under the EAC-CET, and the guidance provided in the explanatory notes the heading that applies to hydraulic turbines is 8410 which covers hydraulic turbines, regulators, and parts of the hydraulic turbine. HSC 8410.12.00 applies to Hydraulic turbines, and regulators of a power exceeding 1,000 kW but not exceeding 10,000 kW. HSC 8410.90.00 applies to parts, including regulators of Hydraulic turbines, and regulators.

The applicant submitted that the classification of goods in the HS nomenclature are governed by General Interpretative Rules (GIR). GIR 1 provides that.

> "The titles of Sections, Chapters and sub-Chapters are provided for ease of reference only for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the following provisions."

GIR 2(a) provides that.

> "Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished provided that as presented the incomplete or unfinished article has the essential character of the complete or finished article it shall also be taken to

include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this Rule), presented unassembled or disassembled."

The applicant submitted that Paragraph V of the World Customs Organization (WCO) Explanatory Notes to the Harmonized System, gives guidance on GIR 2(a) in respect of unassembled and disassembled goods to the effect that.

"The second part of Rule 2(a) provides that complete or finished articles presented unassembled or disassembled are to be classified in the same heading as the assembled article. When goods are so presented, it is usually for reasons such as requirements or convenience of packing, handling, or transport"

The applicant submitted that Paragraph VII of the Explanatory Note to GIR 2(a) further provides that.

"For the purposes of this Rule, "articles presented unassembled or disassembled means articles the components of which are to be assembled either by means of fixing devices (screws, nuts, bolts, etc.) or by riveting or welding, for example, provided only assembly operations are involved.

No account is to be taken in that regard of the complexity of the assembly method. However, the components shall not be subjected to any further working operation for completion into the finished state".

The applicant cited *Royal Electronics Assembling Group Limited v URA* Application 37 of 2017, where the Tribunal stated that.

"a machine in a disassembled/unassembled state may be imported in several consignments over a period of time if it is necessary for convenience of trade or transport"

The applicant submitted that from the review of GIRs 1 and 2(a) and the above decision, there are three considerations for the rules to apply

1. The entry under consideration is presented unassembled or disassembled, incomplete or unfinished.
2. If after assembling, it has the essential character of the complete or finished article.
3. The heading and legal notes of the HS don't otherwise provide for the entry.

The applicant submitted that one of the conditions for GIR 2(a) to apply to classification of imports is that the goods imported must be unassembled or disassembled. The applicant submitted that the 3 hydraulic turbines were imported unassembled, as the

shipment was too large for one consignment. The hydraulic turbine was brought into Uganda by 3 trucks. These parts were assembled in Uganda at the Siti 2 power plant site. The applicant submitted that in *Royal Electronics v URA* (supra) the Tribunal stated that.

> "Where an importer imports goods, parts of merchandise in Uganda, the best way a taxing authority can identify and ascertain what is imported is by looking at the import documentation such as the customs bill of entry, invoice, bill of lading, packing lists to mention but a few. The Tribunal further noted that the import documents required for pre-shipment are the certificate of origin, the certificate of conformity and the bill of lading".

In *MTN Uganda v URA* Application 3 of 2015 the Tribunal stated that.

> "To determine whether items are one component, resort may be made to the invoices and packing lists where one purchases a single component and there are various items in the packing list, the latter may be considered as part of the component. However, this depends on the circumstances of each case or item."

The applicant submitted that the bill of lading, invoices, and packing lists were evidence that the hydraulic turbine was imported in a disassembled state.

The applicant submitted that another consideration in classification of goods under GIR 2(a) is that the items if assembled should have an essential character as the complete or finished article. The applicant submitted that the items once assembled, form the complete hydraulic turbine that the applicant intended to import for the Hydro power generation, thus attracting an import duty rate of 0% under HSCs 8410.12.00 and 8410.90.00. The applicant submitted that in order to determine that unassembled parts will have the essential character of the item assembled, one must look at the functionality of the parts in dispute. In *MTN Uganda v URA* (supra) the Tribunal noted that "classification is based on functionality of that particular item." The applicant submitted that the valves had the same function as the turbine. The applicant submitted that the function of the valves is to open and close the flow of a liquid in the hydraulic turbine.

The applicant contended that applying the *ejusdem generis* rule the words under HSC 8410 should include valves. The applicant cited *Circuit City Stores Inc v Adams, 532 US 105 (2001)* where the Supreme Court defined 'ejusdem generis' as

> "a situation in which general words follow specific words in a statutory enumeration the general words are construed to embrace only objects similar in nature to those objects enumerated by the preceding specific words"

The applicant contended that the valves referred to under HSC 8481.80.00 are for pipes, boiler shells, tanks, vats or the like. Hydraulic turbines cannot be construed to be like pipes, tanks, vats, boiler shells. The ball valves that were imported by the applicant are specialized valves for the hydraulic turbine. These valves cannot be used on any other turbine. The applicant submitted that at the locus in quo, Issa Adu, the plant manager testified that the main function of the ball valve is to open and close water supply to the runners. The applicant submitted that the correct classification for the ball valves and other parts of the turbine that were imported unassembled or disassembled should be HSC 8410.12.00 and or 8410.90.00 as opposed to the reclassification by the respondent under HSC that have a different class and genus of items.

In the alternative, the applicant contended that the tax assessed was erroneous as it was based on incorrect customs value. The respondent used customs values of £ 270 176.47, £ 585,382 35 and £ 675,441.17 to compute import duty payable. The applicant submitted that S. 122 (1) of the East Africa Community Customs Management Act (EACCMA) provides that.

> "Where the imported goods are liable to import duty *ad valovem*, then the value of such goods shall be determined in accordance with the 4th Schedule and import duty shall be paid on that value".

According to Paragraph 2(1) of the Fourth Schedule to the EACCMA, 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. The applicant submitted that from the review of E2, the value of the valves is £ 375,750. At the then prevailing exchange rate of Shs. 4,552. 49, the customs value of the valves was Shs. 1,710,598,117.50. Using this transaction value, the import duty payable is Shs.171,059,811.75. The applicant submitted that should the Tribunal find that the valves in contention are not part of the turbine, the tax payable should be Shs. 171,059,811.75 and not Shs. 648, 299,671

In reply, the respondent submitted that it carried out a post clearance audit on the applicant which revealed that the latter had classified valves under HSC 8410.12.00. The respondent reclassified them under HSC 8481,80.00 and admitted that the tax liability has been reconciled to Shs. 171,078,975.

The respondent submitted that the World Customs Organization (WCO) is the world governing body in relation to customs matters. It develops international standards to secure fair revenue collection, guidance, and support to customs administrations. Uganda subscribes to the World Customs Organization and is a party to the International Convention on the Harmonized Commodity Description and Coding System which lay down the rules and regulations governing its application. The respondent submitted that Article 3(a) of the International Convention on the Harmonized Commodity Description and Coding System provides.

"1. Subject to the exceptions enumerated in Article 4:

(a) Each Contracting Party undertakes, except as provided in subparagraph (c) of this paragraph that from the date on which this Convention enters into force in respect of it, its Customs tariff and statistical nomenclatures shall be in conformity with the Harmonized System.

It thus undertakes that, in respect of its Customs tariff and statistical nomenclatures:

(i) it shall use all the headings and subheadings of the Harmonized System without addition or modification, together with their related numerical codes.

(ii) it shall apply the General Rules for the interpretation of the Harmonized System and all the Section, Chapter and Subheading Notes, and shall not modify the scope of the Sections, Chapters, headings or subheadings of the Harmonized System; and

(iii) it shall follow the numerical sequence of the Harmonized System"

The respondent submitted that Article 7(1)(b) and (c) provide that the Coding system is.

"(b) to prepare Explanatory Notes, Classification Opinions or other advice as guides to the interpretation of the Harmonized System.

(c) to prepare recommendations to secure uniformity in the interpretation and application of the Harmonized System;"

The respondent submitted that Article 3(1)(a)(ii) of the Harmonized System Convention provides that; “each contracting party undertakes to apply the General Rules for the

interpretation (GIRS) of the Harmonized System (HS)". The persons importing goods and classifying is obliged to use the General Rules for Interpretation of the Harmonized system, which rules are applied in sequential order together with relevant chapter, section, and explanatory notes. The respondent reiterated what the applicant stated in respect of GIR 1 and 2. The respondent submitted that GRI 1 requires that classification be determined according to the terms of the heading of the Tariff schedule and any relevant section or chapter notes. The respondent contended that the rules when read with the Common External Tariff (CET) [Harmonized Commodity Description and Coding System] show that ball valves imported by the applicant fall under heading 84.81, subheading 8481.80 where they are subject to 10% duty.

The respondent submitted that Chapter 84 in Section XVI, is titled "Nuclear reactors, boilers, machinery and mechanical appliances thereof" The respondent submitted that Heading 84.81 which forms part of the above chapter provides for.

> "Taps, valves and similar appliances for pipes, shells, tanks, vats or valves and thermostatically controlled valves." boiler the like, including pressure-reducing values and thermostatically controlled valves".

The respondent submitted that the explanatory notes to the Harmonized System, group international trade goods into sections, chapters and sub chapters are used for ease of reference. The WCO approved, under Article 8 of the International Convention on the Harmonized Commodity Description Coding System, explanatory notes and classification opinions adopted by the HS Committee. The respondent submitted that Note 2 to Section XVI (A Legal Note) excludes valves from the application of chapter 84 as stated below:

> "2.-Subject to Note 1 to this Section, Note 1 to Chapter 84 and to Note 1 to Chapter 85, parts of machines (not being parts of the articles of heading 84.84, 85.44, 85.45, 85.46 or 85.47) are to be classified according to the following rules:
>
> (a) Parts which are goods included in any of the headings of Chapter 84 or 85 (other than headings 84.09, 84.31, 84.48, 84.66, 84.73, 84.87, 85.03, 85.22, 85.29, 85.38 and 85:48) are in all cases to be classified in their respective headings.
>
> (b) Other parts, if suitable for use solely or principally with a particular kind of machine, or with a number of machines of the same heading (including a machine of heading 84.79 or 85.43) are to be classified with the machines of that kind or in heading 84.09, 84.31, 84.48, 84.66, 84.73, 85.03, 85.22, 85.29 or 85.38 as appropriate. However, parts which

are equally suitable for use principally with the goods of headings 85.17 and 85.25 to 85.28 are to be classified in heading 85.17;

(c) All other parts are to be classified in heading 84.09, 84.31, and 84.48. 84.66, 84.73, 85.03, 85.22, 85.29 or 85.38 as appropriate or, failing that, in heading 84.87 or 85.48"

The respondent submitted that the above notes prescribing that the parts should be classified under respective headings. The valves imported by the applicant are no exception.

The respondent submitted that in *Voltas Limited v Commissioner of Central Excise*: 2005 (179) ELT 234 the court defined a turbine to mean a specific item of machinery. It is further defined under the Oxford Dictionary as "any rotary machine in which a revolving wheel, or a cylinder or disk bearing vanes, is driven by a flow of water, steam, gas, wind, etc., esp. to generate electrical power. The respondent submitted that the explanatory notes to the Harmonized System presented at Page XVI-8410-1, provide that; “with regards to heading 84.10 Hydraulic turbines consist of a rotor encased in a stator which directs jets of water onto the blades of the rotor. A Pelton turbine is described under Article (1) on the same page without ball valve as one of the integral parts. The *Oxford Dictionary of Mechanical Engineering* describes a Pelton turbine as an impulse hydraulic turbine in which high-speed water jets, produced from a head of water by flow through nozzles, impinge on buckets around the periphery of a rotating wheel (Pelton wheel). The respondent contended that; “since the valves are not technically part of a Pelton turbine, they do not qualify for classification as parts thereof under heading 84.10 or subheading 84.10.90.

The respondent submitted that at the locus, the valve that has the closest technical description to the one imported by the applicant was located far away from the turbine casing. The respondent submitted that at the visit, no such ball valve was illustrated as being part of the turbine. The respondent contended that the hydraulic turbine has its own independent description as a stand-alone machine and so do the valves. The respondent submitted that that the applicant did not adduce evidence or cite any authority that shows that valves are classified as part of turbine.

The respondent submitted that the Harmonized System is international, and is applied uniformly by signatories to the Harmonized System Convention. In *US International Trade Commission Rulings and Harmonized Tariff Schedule Ruling NY 800472*; parts of a hydraulic turbine which included runner blades, oil head, control tubes, stop logs and a model turbine, which form part of the turbine casing were found not to be physical components of the turbine and were not classified under HS 84.10 which provides for other parts of a turbine. Similarly, in CLA-2-84: OT: RR: NC: N1:102, (NY N307465). CLA-2 84: RR: NC: 1:102: J81789 [NY J81789), ball valves, were classified under heading 8481.20. In as much as this code differs from the one used by the respondent, the Chapter and Heading are the same. In CLA-2-84: S: N: N3: 102 89362, a case involving a Pelton turbine with ball valves, a ruling was delivered in favour of classification of ball valve presented with turbine under 8481.80. The respondent submitted that the import data of China and India, shows that the code 84.81 is applied for ball valves.

The respondent submitted that *Royal Electronics Assembling Group Ltd v URA* (supra) is distinguishable from this case. The issue was classification of knocked down television sets imported while in this case, the contention is whether ball valves are parts of a turbine. The respondent submitted that the best way to identify and ascertain what is imported is by looking at the import documentation. The import information show that the applicant imported ball valves as items. There is no mention of parts of a hydraulic turbine. The respondent submitted that the applicant did not adduce evidence to show that ball valves have the essential character of a hydraulic turbine. The respondent contended that the functionality is different, and the materials used to make both are different.

The respondent submitted that the applicant's submission that valves are not covered by heading 8481 as it caters for valves to only pipes, boiler shells, tanks, vats is misguided. It submitted that it includes pressure-reducing valves and thermostatically controlled valves. The respondent submitted that the Notes to heading 84.81 elaborates the heading to mean, cover and cater to taps, cocks, valves, and similar appliances, used to regulate the flow (for supply or discharged) of fluids. The heading includes devices designed to regulate pressure or the flow velocity of a liquid or gas. The respondent submitted that the heading the applicant relies on (84.10) caters for: regulators - Hydraulic turbines and

water wheels: which is not what the applicant imported. The respondent submitted that the applicant confirmed that the function of valves is to open and close the flow of liquid in a hydraulic turbine. The explanatory notes clearly provide that the heading includes devices designed to regulate the pressure or the flow of a liquid or gas. That respondent concluded that ball valves are not parts of a turbine and are classified pursuant to GIR 1, heading 84.81, sub heading 8481.80, explanatory notes and case law.

In rejoinder, the applicant submitted that the classification of the ball valves by the respondent under subheading 8481: 80 is for a general classification of valves and does not cover ball valves that are specifically parts of the turbine imported with other parts of the turbine. The applicant submitted that these valves are classified under heading 8410 or under 8410.12.00 (hydraulic Turbine) or 8410.90.00 (Parts of a hydraulic turbine) as parts of a hydraulic turbine which was imported in a disassembled state. The ball valves it imported are part of a disassembled item.

The applicant submitted that ball valves are part of the turbine as they control water that is released to the runner. It submitted that it is clear from the applicant's bill of lading and invoice, that they as components ofa hydraulic turbine and were imported in a disassembled state and should be classified as such. The applicant submitted that in the customs ruling CLA-2-84: OT RRE NC: N1:102, issued by the National Commodity Specialist Division of the US Customs and Border Protection, bolts used in compressors were ruled to be classified as other parts of compressors and were not classified under a separate heading. The applicant submitted that the ball valves, by forming part of the hydraulic turbine should be classified under Heading 8410.

The applicant submitted that *Royal Electronics Assembling Group Ltd v URA* (supra) applies to the facts in this case because it was in respect of importation of unassembled goods. The applicant imported unassembled/disassembled goods too. The applicant submitted that if the hydraulic turbine had been imported assembled, the valves, would not have been classified separately.

Having listened to the evidence, perused the exhibits and read submissions of the parties, this is the ruling of the tribunal.

The respondent reviewed the applicant's past import clearances and purportedly found that there was a misclassification of valves under sub heading 8410.12 attracting 0% import duty instead of sub heading 8481.80 attracting 10% import duty. The respondent demanded Shs. 648,299,671 as tax due on misclassification of valves. The applicant disputes the reclassification and assessment and contends that the valves were part of turbines and should be classified and assessed as such attracting 0% duty.

The World Customs Organization (WCO) developed international standards to assist revenue collections of members and to guide and support their customs administrations. Uganda is a member of the World Customs Organization which developed the International Convention on the Harmonized Commodity Description and Coding System to facilitate trade and information exchange by harmonizing the description, classification and coding of goods in international trade

Article 3(a) of the International Convention on the Harmonized Commodity Description and Coding System provides;

> "1. Subject to the exceptions enumerated in Article 4:
> (a) Each Contracting Party undertakes, except as provided in subparagraph (c) of this paragraph that from the date on which this Convention enters into force in respect of it, its Customs tariff and statistical nomenclatures shall be in conformity with the Harmonized System.
> It thus undertakes that, in respect of its Customs tariff and statistical nomenclatures:
> (i) it shall use all the headings and subheadings of the Harmonized System without addition or modification, together with their related numerical codes;
> (ii) it shall apply the General Rules for the interpretation of the Harmonized System and all the Section, Chapter and Subheading Notes, and shall not modify the scope of the Sections, Chapters, headings or subheadings of the Harmonized System; and
> (iii) it shall follow the numerical sequence of the Harmonized System"

In *Export Trading Company limited v The Commissioner of customs and excise Income Tax* Appeal 8 of 2015 it was stated that the role of a member state is to make the correct interpretation though its tax authority guided by General Interpretation Rules (GIR) of the Harmonized system (HS) and to ensure that correct classification of a product has been made. Uganda uses the Harmonized system as provided for under the East African Customs Union. Article 12(4) of the Protocol on the Establishment of the East African Customs Union provides that the Partner States shall use the Harmonized Customs Commodity Description and Coding System, specified in Annex 1 of the Protocol, that is the East Africa Community Common External Tariff (EAC-CET). This is used to determine the import duty payable on goods that originate from outside the East Africa Community (EAC). The applicable version of the EAC-CET to the dispute is the one of 2017.

The CET includes General Interpretation Rules (GIR). Some of the key rules included in the GIR relevant to this application are:

"1. The titles of Sections, Chapters and sub-Chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the following provisions:

2. (a) Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this Rule), presented unassembled or disassembled.

(b) Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of Rule 3.

3. When by application of Rule 2 (b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows:

(a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

(b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

(c) When goods cannot be classified by reference to 3(a) or 3(b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration."

It is not disputed that the applicant imported turbines or parts thereof which may include valves. A turbine is defined by *Cambridge's Advanced Learner's Dictionary* 4th edition p. 1691 as "a type pf machine through which liquid or gas flows and turns a special wheel with blades in or to produce power." The applicant contended that it imported a Pelton turbine which is defined by the *Dictionary of Mechanical Engineering* as "An impulse hydraulic turbine in which high- speed water jets, produced from a head of water by flow through nozzles, impinge on buckets around the periphery of a rotating wheel." (*https://www.oxfordreference.com/search?q=pelton+turbine&searchBtn=Search&isQuickSearch=true* 11th July 2022). A valve is defined by *Cambridge's Advanced Learner's Dictionary* (supra) at p. 1735 as "a device which opens and closes to control the flow of liquids or gases," A ball valve is defined by the *Dictionary of Mechanical Engineering* (supra) as "A valve consisting of a ball with a hole through the centre, located within a spherical seat. There is full flow when the hole is aligned with the main flow direction, with progressively reduced flow as the ball is turned through 90° to the fully-shut position." From the said definitions it can be discerned that while a turbine is a machinery a valve is a mechanical appliance.

The relevant chapter under the East African Community Common External Tariff 2017 dealing with turbines and valves is Chapter 84 under Section XVI which is titled "Nuclear

reactors, boilers, machinery and mechanical appliances." Heading 84.10 which forms part of the chapter provides for Hydraulic turbines, water wheels, and regulators therefor. It reads.

"84.10 Hydraulic turbines, water wheels, and regulators therefor.

- Hydraulic turbines and water wheels:

8410.11.00 -- Of a power not exceeding 1,000	kW u 0%
8410.12.00 -- Of a power exceeding 1,000 kW but not exceeding 10,000	**kW u 0%**
8410.13.00 -- Of a power exceeding 10,000	kW u 0%
8410.90.00 - Parts, including regulators	kW u 0%"

Heading 84.81 which also forms part of Chapter 84 provides for "Taps, cocks, valves and similar appliances for pipes, boiler, shells tanks, vats or the like, including pressure-reducing valves and thermostatically controlled valves."

8481.10.00 - Pressure-reducing valves	kg 0%
8481.20.00 - Valves for oleo hydraulic or pneumatic transmissions	kg 10%
8481.30.00 - Check (nonreturn) valves	kg 10%
8481.40.00 - Safety or relief valves	kg 10%
8481.80.00 - Other appliances	**kg 10%**
8481.90.00 - Parts	kg 10%"

While the applicant contends that it imported turbines, the respondent insists that it imported inter alia valves. In Royal E*lectronics Assembling Group Limited v Uganda Revenue Authority Application* 37of 2017 The Tribunal stated that the most reliable source of information on imports is the import documents. In *MTN Uganda Limited v URA* Application 3 of 2015 the tribunal also stated that;

> "To determine whether items are one component resort may be to the invoices and packing list. Where one purchases a single component and there are various items in the packing list the latter may be considered as part of the component…"

A perusal of the bill of lading, exhibit A11, shows that the applicant imported a turbine runner, turbine flywheel with coupling, turbine spherical valve, turbine spare parts, hydraulic system, water hydraulic systems. The commercial invoice, exhibit A2 shows that the applicant imported a turbine horizontal shaft twin, ball valves, dismantling joints, turbine disc brake system, Governer HPU, total plant design and spare parts. The said

exhibits are not mentioning the same items. Therefore, one may not need to rely on them to exactly ascertain what the applicant imported. The bill of lading mentions turbine spherical valves while the invoice mentions ball valves. The packing list were not tendered in as exhibits. However as already stated, it is not in dispute that the applicant imported ball valves which are mentioned in the commercial invoice, in the bill of lading they maybe the spherical valves. The Tribunal notes that the ball valves were imported separately.

The HSC and GIR 3(a) provide that the most specific description is preferred to a heading providing a more general description. The respondent contends that HSC 84.81 which deals with valves should be applicable to the import of the ball valves. On the other hand, the applicant contethey nds that the valves were disassembled units of the turbine. It also contended that the valves cannot be used on any other equipment other than a hydraulic turbine. The applicant relied on GIR 2(a) which states that reference to an article complete or finished maybe presented as unassembled or disassembled. Paragraph VII of the Explanatory Note to GIR 2 (a) provides that;

> "For the purposes of this Rule, "articles presented unassembled or disassembled means articles the components of which are to be assembled either by means of fixing devices (screws, nuts, bolts, etc.) or by riveting or welding, for example, provided only assembly operations are involved. "

The applicants contended that the relevant HSC is 8410.90.00 which deals with parts. The valves should be considered as such. The applicant cited the *Supreme Tribunal Administrative of Portugal decision* of *Fabricade Queijo Eru Portugeuesa Ltd v Tribunal Tecnico Aduaneirode Segunda* 26 September 2000 where it was stated;

> "…the decisive criterion for the classification of goods for customs purposes general, is to be sought in their objective characteristics and properties as defined in the wording of the relevant heading in the section chapter notes"

The applicant contended that the ball valves had the same characteristics as a turbine.

The task of the Tribunal is to determine whether the ball valves are disassembled parts of a Pelton Turbine or stand-alone items. If they are parts, they attract 0% rate under HSC 84.10. If not, they attract the rate of 10% under HSC 84.81

The Tribunal already noted that a 'ball valve' is a mechanical appliance. A Pelton turbine is a machine. Since one is a mechanical appliance and the other a machine, the characters are not the same. While the function of the valve is to regulate the flow of water, the purpose of the turbine is to use the flow of water to turn a wheel so as to create power. Without the flow of water which is regulated by the ball valve, a turbine may not create energy. The question is: is the valve a mechanical appliance which is part of the machine or turbine? There are valves that are outside the machine whose flow of water they regulate.

Valves came in different shapes and names. Neither party availed a tribunal the ball valve in dispute nor its illustration. The valve at the locus was in a casing. The tribunal was able to get an illustration of a ball valve from the internet for ease of reference. (Merx Trade B.V. Ball valve 2- pierce body – high temperature – stainless steel- thread BSP -1/2").

ILLUSTRATION 1

The Tribunal cannot vouch that the ball valve the applicant imported was similar to the above one. However, what is important to note is that the above illustration shows that a ball valve can be a separate mechanical appliance from the machine whose flow of water it regulates.

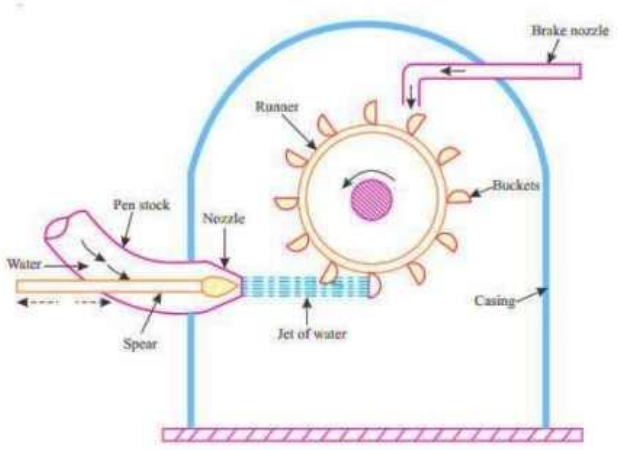
The applicant contended that the valve it imported was dissembled parts of a turbine. The applicant's graphic illustrations of a turbine were not allowed in as exhibits. Even when we try to sneakily peek at them, they mention 'inlet' valve but they do not specifically mention 'ball' valve. From the bill of lading, the applicant imported parts of turbine spherical valves, etc. The commercial invoice has ball valves with Bypass 550m pressure rating 50 bar. It is not clear whether the turbine spherical values in the bill of lading are the same as the ball valves in the commercial invoice. We hope that the spherical valves

are the same as ball valves. While the applicant contends that it imported the valves as disassembled parts of the turbine, in another breath, it states it imported them as spare parts. Importing as spare parts contradicts the evidence that the ball valves were imported as disassembled items of a turbine. Item 7 of the commercial invoice mentions spare parts of the turbine imported but it does not include ball valves that are treated separately as item 1. The discrepancies in the applicant's evidence raises doubt as to its credibility.

The respondent contended that the ball valves imported by the applicant were not part of the turbines it installed at the Siti projects. The respondent contended that a search on google revealed there is no part of a turbine which is a valve. A search on the internet shows that the parts of a turbine include a penstock, nozzle and spear, runner and buckets, casing and breaking Jet. (http://www.mechanicalwalkins.com/pelton-turbine-parts-working-applications-advantages-and-disadvantages 11th July 2022). There is no mention of a ball valve. On a balance of probability, ball valves may not be part of a turbine.

In order to understand whether the 'spherical; or ball valves are part of a turbine, one need to understand how a Pelton turbine works. The following illustration (https://theconstructor.org/practical-guide/pelton-turbine-parts-working-design-aspects/2894/ 11th July 2022) explains it clearly.

ILLUSTRATION 2



It involves pressure water being converted into kinetic energy. High-speed water from a jet turns a wheel to make it rotate creating kinetic energy which is known as electricity.

The wheel is known as the Pelton wheel, hence giving the name Pelton turbine. There is need for a valve to control the pressure of the water flowing into the turbine. So, the question is, where is the valve located? If it is outside the turbine, it is not part of the turbine.

The Pelton turbine involves a nozzle that directs the flow of water into the turbine. A nozzle is attached at the end of a pipe. Ball valves are usually located outside a pipe assembly. A valve is used to control the flow of the water entering or exiting a system. They may not form part of the turbine. From the above illustration, a ball valve does not need to be part of the turbine.

Chapter 84 provides for valves and similar appliances for pipes, pressure-reducing valves and thermostatically controlled valves." The bill of lading mentioned turbine spherical valves. The commercial invoice had 'ball valves with Bypass 550m pressure rating 50 bar'. At the locus in quo, the valve mentioned on the pipes were spherical valve DN500 PN63 with nominal pressure of 63 bar. The underlined shows that the valves were probably pressure reducing valves. Mr. Issa Adu, the plant manager for Siti 2I at the locus also testified that the valves allow high pressure to the runner. They open and close water. The valve allows high water pressure to the runner. Without doubt, the applicant imported pressure reducing valves as they had pressure rating. The purpose of the valve was to control the pressure of the flow of the water in the pipes as it enters the turbine. A pressure control value is one used to set the pressure in a pipe or vessel. (Dictionary of Mechanical Engineering 2nd edition). A flow control valve is one that regulates the rate or pressure of or flow of fluid through a pipe system or out of pressure (Dictionary of Mechanical Engineering 2nd edition). At the locus, the Tribunal noted that the valves were located outside the turbine as indicated by the plate showing the specification. The valves were not part of the turbine. The turbine cannot work without them but they do not form part it. They were specifically made for the turbine. The fact that a bulb holder holds a bulb for it to light does not make the holder a bulb.

The framers of the East African Community Common External Tariff made turbines attract a custom rate of 0%. However, they did not intend the rate to extend to other appliances

used in a hydraulic power generating system. While the ball valves are part of a hydraulic power generating system, they are not part of a Pelton turbine. Chapter 84 deals specifically with pressure valves and valves for similar pipes. HSC 8481.10.00 deals with pressure-reducing valves. The ball valves imported by the applicant ought to have been classified under HSC 84.81 attracting a duty rate of 10%

Furthermore, Note 2 to Section XVI (A Legal Note) excludes valves from the machine they affect. It is reproduced below for ease of reference:

> "2.-Subject to Note 1 to this Section, Note 1 to Chapter 84 and to Note 1 to Chapter 85, parts of machines (not being parts of the articles of heading 84.84, 85.44, 85.45, 85.46 or 85.47) are to be classified according to the following rules:
>
> (a) Parts which are goods included in any of the headings of Chapter 84 or 85 (other than headings 84.09, 84.31, 84.48, 84.66, 84.73, 84.87, 85.03, 85.22, 85.29, 85.38 and 85:48) are in all cases to be classified in their respective headings.

Taking the above into consideration ball valves still fall under HSC 8481.10.00 attracting a rate of 10%.

The applicant submitted that should the tribunal find that the valves in contention are not part of the Turbine and should be classified separately and as such attract an import duty of 10%, the tax payable should be Shs. 171,059,811.75 and not Shs. 648, 299,671. This is because, the customs value used by the respondent to compute the import duty on the valves was incorrect. The applicant contended that the respondent ought to have used the transaction value. The respondent conceded that the tax liability was reduced to Shs. 171,059,811.75. Therefore, since it is not in dispute, the applicant is ordered to pay Shs. 171,059,811.75 as the tax due.

The Tribunal notes that the applicant challenged a tax liability of Shs. 648,299,671 which was a result of both a reclassification of items and miscalculation of taxes of the valves. It has been able to revise the rate to Shs. 171,059,811.75. The respondent had ample time to revise the tax liability. The applicant was not successful on the issue of reclassification but was successful on miscalculation of taxes. Therefore, the Tribunal will award it half the costs of the application.

In the circumstances, the applicant is ordered to pay Shs. 171,059,811 as taxes. It is awarded half the costs of this application.

Dated at Kampala this day of 2022.

DR. ASA MUGENYI	**DR. STEPHEN AKABWAY**	**MR. GEORGE MUGERWA**
CHAIRMAN	**MEMBER**	**MEMBER**