

THE REPUBLIC OF UGANDA
IN THE TAX APPEALS TRIBUNAL OF UGANDA AT KAMPALA
APPLICATION NO. 123 OF 2019.

MAHOMA UGANDA LIMITED..... APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY.....RESPONDENT

BEFORE: DR. ASA MUGENYI, DR. STEPHEN AKABWAY, SIRAJI ALI.

RULING

This ruling is in respect of an assessments of Shs. 76,382,050 due to the respondent's reclassification of imported items.

The applicant is a limited company incorporated in Uganda and engaged in the business of hydro power generation. The applicant entered into an agreement with the Ministry of Energy and Mineral Development relating to implementation of a 2.7 MW Hydropower plant in Kabarole district, Uganda in order to produce electricity and supply it to the national grid.

The respondent conducted a review of the Asycuda World System where it reviewed the applicant's invoice. No. 950002376, the customs entry documents under entry No. C39600. The applicant and the respondent disagree on the classification of the items listed below;

- a) Valves were classified by the applicant as parts of hydraulic turbines under sub-heading 8410.90.00, attracting an import duty rate of 0% but the respondent contends they were supposed to be classified under sub-heading 8481.80.00 with an import rate of 10%.
- b) The unit control system, auxiliary system, switch gear and Scada were classified by the applicant as parts of hydraulic turbines of subheading 8410.90.00 attracting an import duty rate of 0% but the respondent contends that they were supposed to be classified under sub- heading 8537.10.00 with an import rate of 10%.
- c) Cables and parts were classified by the applicant as parts of hydraulic turbines of sub- heading 8410.90.00, attracting an import duty of 0% but the respondent

contends that they were supposed to be classified under sub-heading 8544.20.00 with an import duty of 25%.

The respondent re-assessed the entries and issued an additional assessment of Shs.76,054,160. The applicant objected and the respondent made an objection decision on 11th November 2019 disallowing the objection.

Issues

1. Whether the applicant is liable to pay the tax of Shs. 76,054,160 assessed?
2. What remedies are available to the parties?

The applicant was represented by Mr. Martin Mbanza while the respondent by Ms. Charlotte Katuutu and Ms. Diana Mulira.

The applicant's first witness Mr. Lalith Hewgama, its manager finance testified that the applicant is in the business of hydro power generation. It had an agreement with the Ministry of Energy and Mineral Development relating to the implementation of a 2.7 hydropower plant in Kabarole. It contracted a manufacturer in Slovenia to design, manufacture and supply a Francis type turbine for the hydro power plant. The said turbine was manufactured and was delivered in different containers. The items were cleared under entry C3960 under HSC 8410.90.00 at 0%. The respondent conducted a verification exercise and released the imports under the said HSC. The imports were installed in Kabarole. On 17th September 2019, the respondent wrote to the applicant that it had misclassified valves under HSC 84190000 instead of HSC 84818000 and demanded taxes of Shs. 76,054,160. The respondent also contended that the applicant had misclassified the unit control system under HSC 84109000 instead of HSC 85371000. An auxiliary system switch was also misclassified under HSC 84109000 instead of HSC 85442000. The manufacturer and the clearing agents informed the applicant that the turbine was rightfully classified. The applicant objected and the respondent disallowed the objection.

The respondent's witness, Mr. Brian Kiiza, a customs tariff officers working in its customs department testified that the applicant purchased and imported valves, unit control systems, auxiliary systems, switch gears, scadas, cables and other parts for generating electricity into Uganda. In August 2019, the respondent conducted an audit

on the applicant's imports. In September 2019 the respondent communicated to the applicant about the misclassification of the above items. He stated that valves were reclassified from HSC 8410.90.00 which attracts an import duty of 0% to HSC 8481.80.00 with a duty rate of 10%. Unit control systems, auxiliary systems, switch gear and scada were classified under HSC 8410.90.00 which attracts a rate 0% but were reclassified to HSC 8537.10.00 which attracts a duty rate of 10%. Cables and other parts were classified under HSC 8410.90.00 which attracts an import duty rate of 0% but were reclassified to HSC 8544.20 which has a duty rate of 25%.

On 14th November 2023, the Tribunal visited the locus where the turbines were. The applicant's representative, Mr. Perer Bharahana took them around and showed them the different parts.

The applicant submitted that the respondent's reclassification of valves, unit control system, auxiliary system, switch gear, cables and parts was erroneous and unlawful. It imported a turbine which comes with main inlet valves, unit control system, auxiliary system, switch gear, cables and parts, turbine casing, wicket gates turbine blades among others all which comprised the turbine. It submitted that the valves are part and parcel of the turbine as they regulate pressure and ensure that water doesn't affect the turbine. The components are essential to the performance of the unit. It submitted that the specifics and functions of the Francis type of the turbine clearly fall in the HSC 8510.

The applicant submitted that HSC 84.10 of the East African Community Common External Tariff Code EAC CET states.

Hydraulic turbines, water wheels, and regulators thereof

Hydraulic turbines and water wheels:

8410.11.00—of power not exceeding 1000 kw	0%
8410.12.00-- of power not exceeding 1000 kw but not exceeding 10,000 kw u	0%
8410.13.00-- of power not exceeding 10,000 kw	0%
8410.90.00—parts including regulators kg	0%

The applicant submitted that HSC list that the parts of the turbine are subjected to 0% because the code specifies "parts" (more than once) and the word "including". The *Black's law dictionary* defines includes; "to contain as part of something". The applicant

submitted that the parts must have an identifiable relationship to the turbine even though it is not listed by name.

The applicant submitted that at the locus visit on 15th November 2023, the tribunal and parties were able to view examine and take photographs of the turbine and its valves unit control system, auxiliary system, switch gear, cables and parts, turbine causing, wickets gates, turbine blades among others subject of the tax dispute. With guidance of the project manager, it was observed that the work of the valves is to open or close the water supply to the runners.

The applicant submitted that the 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 relative section or chapter notes and provided such headings or notes do not otherwise require, according to the following provisions”.

The applicant submitted that the GIR 2 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 cited *Royal Electronics Assembling Group Limited v URA* Application 37 of 2017 where the tribunal held 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 the Francis hydraulic turbine was imported unassembled, as the shipment was too large for one consignment. The applicant prayed for a refund of the 30% of Shs. 22,816,248.00, interest on the same at a rate of 2% per month and costs of this application.

In reply, the respondent submitted that the World Customs Organization has the responsibility to develop international standards, foster cooperation and build capacity

to facilitate legitimate trade, to secure a fair revenue collection and to protect society, providing leadership, guidance and support to Customs administrations.

The respondent submitted that Article 3 (1) of the HS Convention provides that:

"(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;

(b) Each Contracting Party shall also make publicly available its import and export trade statistics in conformity with the six-digit codes of the Harmonized System, or, on the initiative of the Contracting Party, beyond that level, to the extent that publication is not precluded for exceptional reasons such as commercial confidentiality or national security;

(c) Nothing in this Article shall require a Contracting Party to use the subheadings of the Harmonized System in its Customs tariff nomenclature provided that it meets the obligations at (a) (i), (a) (ii) and (a) (iii) above in a combined tariff/statistical nomenclature".

The Harmonized Commodity Description and Coding System is a multipurpose goods nomenclature used as the basis for Customs tariffs. The Harmonized System is a structured nomenclature comprising a series of 4-digit headings, most of which are further subdivided into 5 and 6-digit subheadings. The HS was designed and developed as a "core" system so that countries and organizations adopting it could make further subdivisions (national subdivisions) according to their particular needs.

The respondent submitted that General Interpretation Rules (GIR) 1 provide 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."

The respondent submitted that in *Solutions Medical Systems Limited v Commissioner of Customs & 30 Border Control*, Application. 472 of 2020, the Tax Appeals Tribunal of Kenya stated that;

"GIRI requires that classification be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes and, unless otherwise required, according to the remaining GIRS taken in that order".

The respondent submitted that the Tribunal also relied on the Explanatory Notes and an opinion from the WCO to find that hemodialysis apparatus which was imported for use with artificial 5 kidney dialysis apparatus should be classified in HSC 8421.29.00 where it is specifically mentioned but not as part of the hemodialysis apparatus.

The respondent submitted that what must be considered first are the terms of the heading, the relative section and chapter notes. As per GIR1, if the terms of a heading mention the name of the traded item, then the GIR 1 has to be applied and the item must be classified under that heading. Therefore, since the valve is include included in heading 8481 of chapter 84, it should, in all cases be classified in its specific heading.

The respondent submitted that it found that the imported items had been misclassified. It accordingly classified valves under HSC 8481.80.00 with an import duty rate of 10 %; the unit control system, auxiliary system, switch gear and scada under HSC 8537.10.00, with an import duty rate of 10%; and cables and parts under HSC 8544.20.00 with import duty rate of 25%.

The respondent submitted that in *Elgon Hydro Siti Limited v URA* Application 55 of 2020, the tribunal noted that;

"The function of the gear is to control or increase speed while the function of a turbine is to use the flow of water to turn a wheel to create power".

The respondent submitted that similarly in this case, the Francis turbine uses the flow of water to turn a wheel to create kinetic energy while the valve regulates the pressure. The respondent submitted that the functions of all other misclassified items indicates that they serve different purposes from that of a turbine. Whereas they are part of the power generating system they are not part of the turbine.

The respondent submitted that as per the locus visit it was very clear that the disputed items are separate from the turbine. The turbine was in a spiral casing, the auxiliary system was in a different room, the unit control system and the main inlet valve were clearly not inside the turbine.

The respondent cited on *Elgon Hydro Siti v URA* Application 125 of 2019 where the tribunal stated that "The fact that a bulb holder holds a bulb for it to light does not make the holder a bulb". In the same vein, the fact that the relief valve regulates the pressure inside the turbine, does not make the relief valve, a turbine.

The respondent further stated that it noted that the applicant stated that the assessments were based on total invoice values. This matter was never raised at objection and at the scheduling. The respondent submitted that S. 16 (4) of The Tax Appeals Tribunal Act provides that;

"Where an application for review relates to a taxation decision that is an objection decision, the applicant is, unless the tribunal orders otherwise, limited to the grounds stated in the taxation objection to which the decision relates".

The respondent maintained that the applicant ought to have sought to add a new ground that the assessments were based on total invoice values.

Having listened to the evidence and read the submissions of the parties this is the ruling of the Tribunal

The applicant imported equipment for its hydro power generation plant in Kabarole, Uganda. The respondent conducted a review of the applicant's import declarations. As a result, it issued an additional import duty assessment of Shs. 76,054,160. The applicant objected and the respondent made an objection decision disallowing it.

The following are the imports in dispute;

1. The respondent contends that the valves imported under sub heading 8410.90.00 attracting an import duty rate of 0% were wrongly classified as parts of the hydraulic turbines instead of HSC 8481.80.00 at import rate of 10%.

2. The respondent contended that the unit control system auxiliary system, switch gear and scada fall under subheading 8537.10.00 at import rate of 10% were wrong classified as parts of hydraulic turbines under subheading 8410.90.00 attracting an import rate of 0%.
3. The respondent contended that cables and other parts fall under sub heading 8544.20.00 with import duty of 25% were wrongfully classified as parts of hydraulic turbines of sub heading 8410.90.00 attracting an import duty of 0%.

The respondent reassessed the entries to Shs. 76,382,050.

The applicant contended that it classified the valves, unit control system, auxiliary system, cables and other parts under the EAC External tariff HS Code 8410.90.00 attracting a rate of 0% because they were designed exclusively for a specific turbine or hydroelectric plant and cannot be used. According to the respondent the items were wrongly classified as parts of the hydraulic turbines.

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."

A turbine is defined by *Cambridge's Advanced Learner's Dictionary* 4th Edition p. 1691 as "a type of machine through which liquid or gas flows and turns a special wheel with blades in or to produce power." 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%"

The tribunal notes that there were three categories of imported goods. We will allocate the correct HS Code as follows.

Firstly, the respondent alleged that the valves which fall under HSC 8481.80.00 at import rate of 10% were wrongly classified as parts of the hydraulic turbines under HSC 8410.90.00 attracting an import duty rate of 0%. It is not in dispute that the applicant imported valves. In *Elgon Hydro Siti v Uganda Revenue Authority* Application 125 of 2019 the Tribunal noted that 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."

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%

In *MTN Uganda Limited v URA* Application 3 of 2015 the tribunal stated

"The Tribunal agrees with the respondent that the most reliable source of information on imports is the import documents. Import documents are the documents lodged with customs at the entry point and include the following: Customs bill of entry, Invoice, Bill of lading, contract, certificate of origin, Road transit customs document, packing list, Certificate of Conformity, Import Declaration Form, amongst others."

The import documents, the commercial invoice p. 8 of the applicant's trial bundle show that it imported valves. The Tribunal has already held that valves are not part of the turbine. The EAC external tariff specifically provides for valves. Where an item is specifically provided for the Tribunal can ignore the provision. In *Elgon Hydro Site v Uganda Revenue Authority* (supra) the Tribunal noted

"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%."

Likewise, the valves imported by the applicant form part of the hydro power generating plant but not part of the turbine. Therefore, if the applicant imported valves, they should be classified as such under the proper HSC 8481 which shows that they attract import duty of 10%. The respondent was justified to reclassify the valves.

The second dispute was in respect of unit control system auxiliary system, switch gear and scada fall which the respondent felt should fall under HSC 8537.10.00 at import

rate of 10% were wrong classified as parts of hydraulic turbines under subheading 8410.90.00 attracting import rate of 0%. The applicant submitted that unit control system controls the amount of water flowing into the turbine. The auxiliary system is engineered to meet functional requirements while the Scada is computerized system capable of gathering and processing data. The commercial invoice exhibit AE1 shows that the applicant imported a unit control system, auxiliary systems and Scada which were classified under HSC 8537 10 10. Though the HSC was 8537 10 10 the applicant classified it at 8410.90.00 attracting an import duty rate of 0%. If the commercial invoices show what the applicant should have classified the goods under HSC 8537 10 10 the Tribunal cannot dispute it because the exporter knew what it exported. HSC 8537 falls under HSC 85.37 which states

“Boards, panels, consoles, desks, cabinets and other bases, equipped with two or more apparatus of heading 85.35 or 85.36, for electric control of the distribution of electricity including those incorporating instrument or apparatus of Chapter 90, and numerical control apparatus, other than switching apparatus of heading 85.17.”

These are not turbines or parts of turbines. What is important to note items under HSC 8537.10,00 dealing with a voltage not exceeding 1,000 v carry an import rate of 10%. Therefore, the respondent was justified to reclassify the said items.

The last dispute was in respect of cables and other parts which the respondent felt fall under HSC8544.20.00 with import duty of 25% but were wrongfully classified as parts of hydraulic turbines under HSC 8410.90.00 attracting an import duty of 0%. The commercial invoice, exhibit AE1 shows that the applicant imported cables and other parts. In the commercial invoice the said cables were classified under HS 8544 49 95. If the exporter and or manufacturer has classified them under the said HSC, the Tribunal does not see why it should dispute the said information. S.114 of the Evidence Act states that where one person by his declaration or act intentionally caused another person to act on that belief neither he or his representative shall deny the truth of the thing. If the invoices availed by the applicant as importer led the respondent to believe the said items fell under the declared HSC why should the applicant deny their truth? HSC 8544.20 falls under heading 85.44 which reads.

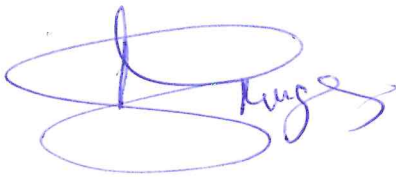
“Insulated (including enameled or anodized) wire, cable (including co-axial cable) and other insulated electric conductors, whether or not fitted with

connectors; optical fibre cables, made up of individually sheathed fibres, whether or not assembled with electric conductors or fitted with connectors.”

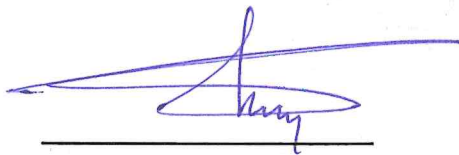
The said items are not turbines or parts of turbines. They maybe used in the hydro power plant for electrical purposes. HSC 8544.20.00 mentions co-axial cable and other co-axial electric conductors which attract a rate of 25%. Therefore, the respondent was justified to reclassify the HSC.

Taking the above into consideration, this application is dismissed with costs to the respondent.

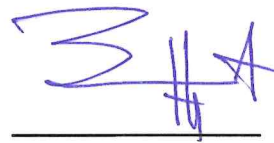
Dated at Kamapala this 22nd day of December 2023.



DR. ASA MUGENYI
CHAIRMAN



DR. STEPHEN AKABWAY
MEMBER



MR. SIRAJI ALI
MEMBER