

UGANDA / JUDGMENT

Rwimi EP Company Limited v Uganda Revenue Authority (Application 132 of 2022) [2023] UGTAT 60 (30 August 2023)

[2023] UGTAT 60

COURT

Tax Appeals Tribunal (Uganda)

BEFORE

Mugenyi, Chairperson, Akabway, Panel Member,
Mugerwa

CASE / FILE NUMBER

Application 132 of 2022

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THE REPUBLIC OF UGANDA IN THE TAX APPEALS TRIBUNAL OF UGANDA AT KAMPALA APPLICATION NO. 132 OF 2022

RWIMI EP COMPANY LIMITED..... VERSUS

UGANDA REVENUE AUTHORITY.....

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

This ruling is in respect of an application challenging a classification of imported relief valves under the Harmonized System Code (HSC).

The applicant is engaged in hydro power generation in Uganda. In December 2016, it purchased a hydraulic turbine from Kolektor Turboinstitut D. O. O of Solvenia for generating electricity in Uganda. In March 2022, the respondent conducted an audit of the applicant's imports which culminated into a reclassification of valves contained in entries numbers C7815, C7774 and C7785 of 2017 from HSC 8410.90 at 0 % rate to HSC 8481.80 at 10% rate. The respondent considered the valves as not part of the turbine but accessories classified specifically provided for under HSC 8481.80.00 which resulted in an import duty assessment of Shs. 105,491,720. The applicant objected that the relief valves are an integral part of the hydraulic turbine and ought to be classified under HSC 8410.90. The respondent maintained that the valves should have been classified under the HSC 8481.80.00.

Issues

- 1. Whether the respondent's re-classification of the valves from HSC 8410.90 to 8481.80 was lawful?
- 2. Whether the applicant is liable to pay import duty of Shs.105,491,720 assessed?
- 3. What remedies are available?

The applicant was represented by Mr. Kavuma Terrence while the respondent by Ms. Diana Mulira Kagonyera and Ms. Charlotte Katuntu

The applicant's witness, Mr. Ravinda Jayasuriya, manager operations of Eco Power Group testified that on the 23rd day February 2017, the applicant imported hydraulic turbines in a disassembled form in containers entries Nos. 7815, C7774 and C7785 of 2017 under HSC 8410.90 at a tax rate of 0%. The imported goods included hydraulic turbines and water valves which had pressure regulators. In March 2022, the respondent conducted an audit on the applicant's imports which resulted in a reclassification of the pressure values from HSC 8410.90 at 0% rate to HSC 8481.80 at 10% rate. He contended that the respondent's decision was erroneous. He contended that the relief valves are an integral part of the turbine and is a pressure regulator and can only be used in a power generation hydraulic turbine not for any other purpose. The valves on which import duty was assessed was used those of similar valves imported by other taxpayers. He said the pressure relief valve is installed in the pipeline.

The respondent's witness, Mr. Brian Kiiza, its customs tariff officer, testified that in February 2017, the applicant purchased valves and pipes for generating electricity. In March 2022, the respondent conducted an audit on the applicant's imports. It reclassified the pipes and valves attracting import duty at a rate of 10%. The respondent informed the applicant of the assessed taxes.

On 23rd June 2023, the Tribunal visited the locus where the valves are. It was shown the relief valves, the pipes and the turbines. The release valves regulate the pressure in inside the spiral case. Mr. Brian Kizza, the respondent's witness contended that the relief valves are not part of the turbine.

The applicant submitted that it purchased hydraulic turbines for generating electricity in Uganda. They were shipped in a disassembled state. The respondent conducted an audit on the applicant which culminated in reclassification of valves from HSC 8410.90.00 90 to HCS 8481.80.00

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The applicant contended that a relief valve is an integral part of the imported Francis hydraulic turbines and is therefore subject to 0% customs duty under the HSC 84.10 of the East African Community Common Tariff Code which states

'Hydraulic turbines, water wheels and regulators thereof' Hydraulic turbines and water wheels: 8410.11.00 – of a power not exceeding 1,000KW u 0% 8410.12.00 -- of a power exceeding 1,000KW but not exceeding 10,000 KW u 0% 8410.13.00 – of a power exceeding 10,000KW u 0% 8410.90 – parts, including regulators kg 0%"

The applicant submitted that the relief valve is attached to the spiral case of the turbine. Notes 3,4 & 5 of Section XVI of the East African Community Common Tariff Code 2017 provides that:

- "3. Unless the context otherwise requires, composite machines consisting of two or more machines fitted together to form a whole and other machine designed for the purpose of performing two or more complementary or alternative functions are to be classified as if consisting only of that component or as being that machine, which performs the principal function".
- 4. Where a machine (including a combination of machines) consists of individual components (whether separate or interconnected by piping, by transmission devices, by electric cables or by other devices) intended to contribute together to a clearly defined function covered by one of the headings in Chapter 84, or chapter 85, then the whole falls to be classified in the heading appropriate to that function.
- 5. For the purposes of these Notes, the expression "machine" means any machine, machinery, machinery plant, equipment, apparatus or appliance cited in the headings of chapter 84 or 85".

The applicant submitted that its witness, Lakmal Edirisooriya, an operations engineer, showed the Tribunal the location of the pressure relief valve on the turbine. It submitted that the function of a relief valve in a hydraulic turbine is stated in the Turbine Instructions for operation and maintenance as hereunder:

"Pressure relief valve is installed for pressure protection in a pipeline system. The valve, which is normally closed is designed to open rapidly if there is a risk of water hammer. The

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relief valve's effectiveness depends on the properties of the system. The valve is used to control transient conditioned by reducing the rate of net change in flow velocity in the pipeline. When triggered automatically or manually, relief valve allows water to flow in the tail water. The resultant outcome causes a pressure drop and thus has the potential to reduce the maximum pressure".

The applicant submitted that the hydraulic turbine, relief valve and other machines are intended to achieve production of hydro power. The taxation of a hydro power production is provided for under HSC 84.10 at a rate of 0% and Notes 3 and 4 of Section XVI of the East African Community Common Tariff Code 2017. The respondent was obligated to classify the relief valve under HSC 84.10 liable to a 0% rate of tax.

The applicant submitted that the wording of subheading 8481.80.00 relied upon by the respondent to levy customs duty, applied to "other appliances". The applicant submitted that the phrase "other appliances" is too vague to use it to levy custom duty on relief valves for a hydraulic turbine. It submitted that a logical interpretation of the term "other appliances" can be derived from the terms of HSC 8481. The term 'other appliances' is in the genus of 'taps, cocks, valves used on or in pipes, tanks, vats or the like', which is not the case in respect of the applicant's valves. It submitted relief valves are not used in pipes, tanks or vats but for a hydraulic turbine. Therefore HSC 8481.80.00 cannot be a basis for imposing a 10% customs duty on the applicant.

The applicant submitted that the customs duty imposed by the respondent is without any factual basis. The respondent assessed using the value of similar imports by other importers. It did not give an explanation as to why it did not use the transaction value. The applicant cited *Commissioner Customs v Testimony Motors Ltd* Civil Appeal 33 of 2014 where the court held that the 4th Schedule mandates valuation based on a sequential order. The applicant submitted that the respondent's failure to use the transaction value in assessing the customs duty is unlawful..

The applicant submitted that the declared value of the pressure regulator in entry C7815 of 2017 is 178,188,865, a 10% tax on the same is equivalent to Shs.17,818,886 as opposed to the sum of Shs. 20,491,720 that was levied by the respondent without any

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factual basis The applicant submitted that the respondent's Exhibit. 7 at p. 146 of the Joint Trial Bundle, the declared value of the pressure regulator in entry C7774 of 2017 is Shs. 78,233,947, a 10% tax on the same is Shs. 7,822,394 as opposed to Shs. 40,983,439 that was levied by the respondent. The applicant's Exhibit. 8, p. 113 of the Joint Trial Bundle, the declared value of the pressure regulator in entry C7785 of 2017 is Shs. 73,978,736, a 10% tax on the same is Shs. 7,397,873 as opposed to the sum of Shs. 40,983,439 that was levied by the respondent without any factual or legal basis. In Exhibit. 7 p.101 of the Joint Trial Bundle, the declared value of the pressure regulator in entry C7840 of 2017 is Shs. 29,005,957. A 10% tax on the same is Shs. 2,900,595 as opposed to the sum of Shs. 3,335,685 that was levied by the respondent. The applicant prayed that the tribunal finds that it is not liable to pay import duty of Shs. 105,491,720.

In reply, the respondent submitted that the World Customs Organization (WCO), of which Uganda is a member, has the responsibility inter alia, to develop international standards, foster cooperation and build capacity, to facilitate legitimate trade, to secure a fair revenue collection and support customs administrations. The respondent submitted that one of the international treaties under the auspices of the WCO is the International Convention on the Harmonized Commodity Description and Coding System (HS Convention) which allows goods moving across borders to be assigned to a class in a uniform manner all over the world. 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, Customs tariff and statistical nomenclatures shall be in conformity with the Harmonized System. It thus undertakes that, in respect of this 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
- \$(iii)\$ It shall follow the numerical sequence of the Harmonized System.
- Each Contracting Party shall also make publicly available its import and export trade \$(b)\$ 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:

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

The respondent submitted that the Treaty of the East African Community (EAC) and the East African Community Customs External Tariff (EAC- CET) are the legal framework that manages tariff classification in the East African Community as adopted from the WCO Harmonized System, and the East African Community Customs Union. The respondents submitted that the relief valves ought to be classified under the heading 84.81 specifically under HSC 8481.20 with a duty rate of 10%. On the other hand, the applicant contends that it ought to have been classified under HSC 8410.90 under parts of a hydraulic turbine with a duty rate of 10%.

The respondent submitted that EAC-CET is governed by 6 rules of interpretation called the General Interpretation Rules (GIR) which are applied in hierarchical order. One cannot use Rule 2 before it uses Rule 1. It submitted that 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 a heading or not do not otherwise require, according to the following provisions".

It cited *Solutions Medical Systems Limited v Commissioner of Customs and Border Control*, Appeal 472 of 2020, where the Tax Appeals Tribunal of Kenya stated that GIR1 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 Explanatory Notes to the Harmonized System give more detailed explanations of the provisions. In *Solutions Medical Systems Limited, v Commissioner of Customs and Border Control* (supra), the Tribunal of Kenya held that although the explanatory notes are not legally binding, they provide a commentary on the

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scope of each heading, and are generally indicative of the proper interpretation of the EACCET. The Tribunal relied on Rule 1 and Note 2(a) to Chapter 90 of the EACCET. 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 kidney dialysis apparatus should be classified in HSC 8421.29.00.

The respondent submitted that the Explanatory Notes to GIR1 provide:

- "(II) Rule 1 begins therefore by establishing that titles are provided "for ease of reference only. They accordingly have no legal bearing on classification.
- (III) The second part of this Rule provides that classification shall be determined by:
 - (a) According to the terms of the headings and any relative Section or Chapter Notes (b) Where appropriate, provided the headings or Notes do not otherwise require, according to the provisions of Rules 2, 3, 4 and 5.
- (IV) In provision (I) (a) is self-evident, and many goods are classified in the Nomenclature without recourse to any further consideration of the Interpretative Rules (e.g., line horses (heading 01.01), pharmaceutical goods specified in Note 4 to Chapter 30 (heading \$30.06)\$).
- (V) In provision (I) (b);
 - (a) The expression "provided such headings or Notes do not otherwise require" is intended to make it quite clear that the terms of the headings and any relative Section or Chapter Notes are paramount i.e., they are the first consideration in determining classification. For example, in Chapter 31, the Notes provide that certain headings relate only to particular goods. Consequently, those headings cannot be extended to include goods which otherwise might fall there by reason of the operation of Rule 2 (b)
 - (b) The reference to Rule 2 in the expression "according to the provisions of Rules 2, 3, 4, and 5" means that:
 - (1) goods presented incomplete or unfinished (e.g., a bicycle without saddle and tyres), and
 - (2) goods presented unassembled or disassembled (e.g., unassembled or disassembled, all components being presented together) whose components could individually be classified in their own right (e.g., tyres, inner tubes) or as "parts" of those goods, are to be classified as if they were goods in a complete or finished state, provided the terms of Rule 2 (a) are satisfied and the headings or Notes do not otherwise require."

The respondent submitted that accordingly, in customs classification matters, what must be considered first are the terms of the heading and the relative Section and Chapter Notes. The respondent cited *Commissioners of Customs & Excise v. Smithkline Beecham Plc* Case c206/03 where the court stated the circumstances under which opinions of the WCO can be disregarded. It stated that the classification opinion of the World Customs Organization is to be disregarded if such opinion is contrary to the wording of the heading in the Combined Nomenclature.

The respondent submitted that Explanatory Notes expound on the provisions of Note 2 (a). According to the Explanatory Notes to Note 2 to Section XVI, there are certain items which if found to be solely or principally suitable for use with a particular machine, then they ought to be classified in the same heading as the machine. However, the relief valve is not one of these items. The respondent submitted that the Explanatory Notes in respect of Note 2 to Section XVI provide that:

· "Parts which are suitable for use solely or principally with particular machines or apparatus (including those of heading 84.79 or heading 85.43), or with a group of machines or apparatus falling in the same heading, are classified in the same heading as those machines or apparatus subject, of course, to the exclusions mentioned in Part (1) above..."

The respondent submitted that the Explanatory Notes go ahead to provide that:

"The above rules do not apply to parts which in themselves constitute an article covered by a heading of this Section (other than headings 84.87 and 85.48); these are in all cases classified in their own appropriate heading even if specifically designed to work as part of a specific machine. This applies in particular to;

(4) Taps, cocks, valves, etc. (heading 84.81).

The respondent submitted that as such, pursuant to Note 2(a) to Section XVI, the valve is not an exclusion (84.09, 84.31, 84.48, 84.66, 84.73, 84.87, 85.03, 85.22, 85.29, 85.38 and 85.48), but rather is specifically mentioned as one of the items which must be classified in its specific heading even if it is suitable for use solely or principally with the turbine. This implies that it must at all times and in all cases be classified in its heading, being 84.81. The relief valve is not part of the turbine.

The respondent disagreed with the applicant's submission that a relief valve being attached to the turbine makes it a turbine. The respondent insisted that a relief valve is neither a turbine nor is it part of it but rather is a separate item for purposes of customs classification. Although a turbine may be disassembled, it cannot be said that the relief valve is part of the turbine.

The respondent submitted that the Explanatory Notes list 3 main types of turbines being the Francis turbine, the Kaplan turbine and the Pelton turbine. The Explanatory Notes define the Francis turbine as follows:

"Francis type, for medium or low water pressure at large volume. These comprise a one-piece cast steel rotor with large, fixed helicoidal blades, and a stator consisting of conduit tubing, usually spiraled, with large, variable angle guide blades ensuring a radial flow of water around the whole periphery of the rotor, and an axial water-outlet."

The respondent submitted that there is no mention of a relief valve, or any other valve, as being part of the turbine. The EAC-CET provides subheading notes. Subheading Note 3 to Chapter 84 states:

"For the purposes of subheading 8481.20, the expression "valves for oleo hydraulic or pneumatic transmissions" means valves which are used specifically in the transmission of "fluid power" in a hydraulic or pneumatic system, where the energy source is supplied in the form of pressurized fluids (liquid or gas). These valves may be of any type (for example, pressurereducing type, check type). Subheading 8481.20 takes precedence over all other subheadings of heading 84.81".

The respondent submitted that the relief valve is used in the transmission of fluid power where the energy source is supplied by a liquid, namely, water. As such, the relief valve properly fits in the definition of the valve under subheading 8481.20 of the EACCET.

The respondent cited *Elgon Hydro Siti Limited v URA* Application 125 of 2019, where the Tribunal defined a turbine as per **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. The Tribunal further defined a valve as per the Cambridge Advanced Learners Dictionary as a device which opens and closes to control the flow of liquid or gases. The respondent submitted that in *Kikagati Power Co. Ltd v*

URA, Application 55 of 2020, the matter related to customs classification of a gear which is used a Kaplan turbine. The Tribunal noted that the function of a 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. Similarly, in the present 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 from the locus visit conducted by the Tribunal on 23rd June 2023, it was made clear that the relief valve is a separate item from the turbine. The turbine was in a spiral casing. AW4- Mr. Lakmal Edirisooriya, confirmed that inside the casing, there is a runner and blades; water hits the blades of the runner to produce kinetic energy; they convert the kinetic energy in the water into a rotational mechanical process. He further confirmed that after the kinetic energy has been generated, the relief valve regulates the pressure inside the spiral case. The relief valve was joined to the turbine by screws. Also connected to the turbine is the generator. These are all separate machines joined together to make a production line. If the relief valve was said to be uniquely and exclusively designed for the turbine, this does not change the fact that it is a valve specifically provided for in a heading. It is not part of the turbine.

The respondent submitted that in Elgon Hydro Siti the Tribunal (*supra*) held 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. Whereas the relief valve maybe part of the hydraulic power generating system it is not part of the Francis turbine

The respondent contended that the applicant's submission that the assessment had no factual basis was never raised at the objection. The respondent submitted that S. 16(4) of the Tax Appeals Tribunal Act states:

"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."

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The respondent further cited *Kasese Cobalt Company Limited v Uganda Revenue Authority* Application 28 of 2018 and *Kwasa Logistics Uganda Limited v Uganda Revenue Authority* Application 151 of 2022.

The respondent submitted that it rightfully used values of similar valves imported by other tax payers such as Elgon Hydro Siti and Kikagati Power Co. Ltd. The 4th Schedule to the East African Community Customs Management Act, provides for valuation methods including the transaction value, the transaction value of identical goods, the transactions value of similar goods, among others. Since the transaction value of the relief valves could not be determined from the importation documents, the respondent was well within the law when it applied the value of similar valves as imported by other companies with turbines for purposes of generation of electricity. The respondent prayed that the tribunal finds that the respondent properly valued the valves and that the tax of Shs. 105,491,720 is due and payable. It argued that the relief valve ought to have been classified in heading 84.81.20 with a duty rate of 10%.

In rejoinder, the applicant submitted that if the pressure valve is not part of the turbine, then it can only be a machine which is defined in Note 5 to Section XVI of Chapter 84 to the East African Community Common Tariff Code 2017 as hereunder:

"For the purposes of these notes, the expression "machine" means any machine, machinery, plant, equipment, apparatus or appliance cited in the headings of Chapter 84 or 85."

The applicant submitted that indeed a valve is cited in the heading 84.81 thereby making it a machine. Further, that going by the respondent's evidence and argument above, Note 2(a) to Section XVI of Chapter 84 to the East African Community Common Tariff Code 2017 is wholly inapplicable because it specifically provides for rules to classify parts of machines. Note 2(a) to Section XVI of Chapter 84 to the East African Community Common Tariff Code 2017 is inapplicable to valves which are machines within the meaning of Note 5 of Section XVI of Chapter 84 to the East African Community Common Tariff Code 2017.

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

The dispute between the parties revolves around the classification of relief valves and whether they form part of the turbine. The turbine in question is called the Francis Turbine. The respondent reviewed the applicant's past import clearances and purportedly found that there was a misclassification of valves under subheading 8410.90 attracting a 0% import duty instead of sub heading 8481.80 attracting 10% import duty. The respondent demanded tax of Shs. 105,491,720.

Uganda is a member of the World Customs Organization (WCO). One of the treaties under the auspices of the WCO is the International Convention on the Harmonized Commodity Description and Coding System. Article 3(1) of the Treaty provides that;

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

- Each Contracting Party undertakes, except as provided in sub paragraph(c) of this \$(a)\$ paragraph that from the date on which this convention enters into force in respect of it, its custom 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 costs.
- ii. It shall apply the General Interpretation Rules for the interpretation of the Harmonized System and all the Sections, Chapter and sub heading 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 Commission 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 through its tax authority guided by General Interpretation Rules (GIR) of the Harmonized System (HS) and to ensure that correct classification of the product has been made".

Uganda uses the Harmonized System under the East African Customs Union. Article 12(4) of the Protocol on the Establishment of the East African 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 African Community Common External Tariff (EAC-CET). This is used to determine the import duty payable on goods that originate from outside the East African Community. 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. 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, 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 failing to be classified as complete by virtue of this rule), presented assembled or unassembled.
- \$(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 and substances. Any reference to goods of a given material substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. This classification of goods consisting of more than one material or substance shall be according to the principle 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 a mixed or composite goods or to part only of the items in a set 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, in so far as this criterion is applicable.
- c. When goods cannot easily 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 in dispute that the applicant imported Francis turbines or parts thereof which included valves. In *Elgon Hydrogen Siti Limited v Uganda Revenue Authority* (supra), the Tribunal relied on the definition of a valve by *Cambridge's Learner's Dictionary*⁴ 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".

The applicant submitted that relief valves are an integral part of the hydraulic turbine and ought to be classified under HSC 8410.90 whereas the respondent maintains that the valves should have been classified under the HSC 8481.80. The dispute revolves around the reclassification of the imported valves of the applicant. It is the tribunals duty to ascertain whether or not the right duty rate was applied.

The East African Community Common External Tariff provides for turbines and valves under Chapter 84 under S. XVI which relates to "Nuclear reactors, boilers, machinery and mechanical appliances." HSC 84.10, which was relied on by the applicant provides for Hydraulic turbines, water wheels, and regulators. It reads

'Hydraulic turbines, water wheels and regulators thereof' Hydraulic turbines and water wheels: 8410.11.00 -of a power not exceeding 1,000KW u 0% 8410.12.00 -- of a power exceeding 1,000KW but not exceeding 10,000 KW u 0% 8410.13.00 - of a power exceeding 10,000KW u 0% 8410.90 – parts, including regulators kg 0%" Using the said HSC, the duty rate of 0%.

Heading 84.81, relied on by the respondent, 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."

HSC 8481 reads

| "8481.10.00- Pressure- reducing valves | kg 10% |

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| 8481.20.00- Valves for oleohydraulic 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%" |

The respondent relied on HSC 8481,80 which deals with other appliances

In MTN *Uganda Limited v URA* Application 3 of 2015 the tribunal 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, they latter may be considered as part of the component..."

The packing list, Exhibits A2, R8 and R10 shows that the applicant imported relief valves. This contradicts the evidence adduced by the applicant that the valves were to regulate pressure. The commercial invoices tendered in as exhibits are not clear.

The applicant cited Notes 3,4 & 5 of Section XVI of the East African Community Common Tariff Code 2017 which states that;

- "3. Unless the context otherwise requires, composite machines consisting of two or more machines fitted together to form a whole and other machine designed for the purpose of performing two or more complementary or alternative functions are to be classified as if consisting only of that component or as being that machine, which performs the principal function".
- 4. Where a machine (including a combination of machines) consists of individual components (whether separate or interconnected by piping, by transmission devices, by electric cables or by other devices) intended to contribute together to a clearly defined function covered by one of the headings in Chapter 84, or chapter 85, then the whole falls to be classified in the heading appropriate to that function.
- 5. For the purposes of these Notes, the expression "machine" means any machine, machinery, machinery plant, equipment, apparatus or appliance cited in the headings of chapter 84 or 85".

The word "composite" is defined by Oxford Advanced Learner's Dictionary p. 301 as 'made of different parts or materials.' The applicant imported different packages which it asserted were too big to be imported at once. It imported a turbine and valves in disassembled states. Paragraph VII of the Explanatory Note to GIR2 (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 "

We have to ascertain whether valves and a turbine were two different goods. Or if the valve was a composite part of the turbine. If they are different items means that they attract different tax rates.

The applicant adduced evidence to show that the valves it imported were to regulate pressure. This does not seem to be in dispute. At times when classifying items, their functions may not be useful where the sub heading is clear. In *Elgon Hydro Siti v URA* the tribunal stated that;

"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 to extend it to other appliances used in a hydraulic power plant. Why the framers only targeted turbines to attract no taxes, and not other parts of a plant is not our business. While valves are part of a hydraulic power plant, they are not part of a turbine. Turbine spherical valves are disassembled parts of a 'hydraulic power plant', but are not parts of a power turbine. They are auxiliaries and not accessories".

Therefore, the fact that the valves reduced the pressure of a turbine does not itself mean that they are part of the latter for purposes of classification.

So, the Tribunal has to determine whether the valves were part of the turbine. Firstly, the valves were itemized separately in the packing list. It is also not in dispute that the valves were priced differently from the other items. Otherwise, the applicant would not have

submitted on transactional values and respondent relied on value of similar goods. In most cases where an item is a composite part of a good, the seller would not charge the parts differently as their prices are included in those goods, they are part of. The Tribunal would need a convincing explanation as to why the seller charged or priced the parts separately. The commercial invoice states "turbine and accessories". An accessory is defined by Oxford Advanced Learner's Dictionary 9th Edition p.8 as "an extra piece of equipment that is useful but not essential or that can be added as a decoration." The valves were not decorations.

It is also not in dispute that the valves came in different containers from the other parts or the turbines. Because they were priced separately, it is difficult to say that there were in a disassembled state. The locus visit showed that the valves were not in the turbine. They were outside the turbine further buttressing the argument that they were not in a disassembled state. The function of the 'turbine is to convert kinetic and or potential energy of water into mechanical energy as stated in the instruction manual, Exhibit AE4. The said exhibit at p. 23 of the joint trial bundle when mentioning functional description clearly states. What the turbines consists of. It reads

"3.4.1 Turbine

Turbine consists of runner, spial case, distributor, draft tube, inlet pipe, pressure release vale, air pipeline, main shaft and main shaft seal"

The reading of the said functional description or what a turbine consists of does not include a pressure relief valve. The said omission may not be by accident. Pressure relief valve is provided for under 3.4.2 in the manual. It reads "Pressure relief valve is installed for pressure protection in a pipeline system." The word "Install" is defined by Oxford Advanced Learner's Dictionary 9th Edition p.790 as 'to fix equipment or furniture into position so that it can be used.' The use of word installed implies that the valve is not part of the pipeline system but is fixed so that it may be used. Therefore, one would not be wrong to conclude that the valves were not composite or disassembled parts of the turbines but are fixed in the pipeline system to

regulate pressure. Though the valves were part of the electricity generating project, they were not part of the turbines.

Valves are separately provided for under Heading 84.81. HSC 8481.10.00- provides for "Pressure-reducing valves" and 8481.40.00 provides for Safety or relief valves. The manual provides for pressure relief valves. While the packing lists shows that the valves were relief valves, the applicant submitted their purpose was to regulate pressure. If we go by what is on the packing list the proper heading would be HSC 8481.40. While if we are going by the functions the applicant adduced of pressure regulating the proper HSC would 8481.10.00. Maybe the person who made the packing list erroneously listed them as relief valves. Or were they pressure relief valves? At the locus and the evidence adduced shows that the valves were to regulate pressure. The respondent relied on 8481.80 maybe because the applicant had not informed them of the functions of the valves at the time of import or it had not seen the packing list. Whether the Tribunal relies on the packing list which mentions relief valves, or the functions of the valve to regulate pressure, or the manual which combines both to read pressure relief valves, the resultant HSCs 8481.40, 8481.10, 8481.80 respectively still give a rate of 10%. The said valves are not part of the turbine. Where The East African Community Common External Tariff provides specifically for valves, the Tribunal would be reluctant to consider them as turbines. A composite valve imported separately remains a valve under the HSC. Therefore, the applicant is still liable to pay taxes.

The applicant submitted that the respondent's failed to use the transaction value method. The respondent submitted that this was not part of the objection decision. The Tribunal agrees with the respondent. The issue of why the respondent did not use the transaction value was not part of the objection decision. Nor was it part of the scheduling or issues agreed. No evidence was led on why the respondent did not use the transaction value. The applicant cited Commissioner Customs \$v\$ Testimony Motors Ltd (supra) where the transaction value was upheld. The said case was determined after evidence had been adduced. In this case no evidence was adduced as to why the transaction value was not used. One of the fundamental rules of natural justice is that a party has a right to be heard. The respondent has to be given a chance or right to heard so as to explain why it did not use the transactional value. The said chance or right was not exercised by the respondent because it was raised only in the submissions. In the said circumstance the Tribunal would agree that the said submission fell outside the ambit of the dispute.

Without prejudice to the foregoing. S. 122 (1) of the East African Community Customs Management Act provides 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".

The 4th Schedule to the East African Community Customs Management Act (ECCMA) provides for valuation methods including the transaction value, the transaction value of identical goods, and the transactions value of similar goods, among others. Part 2 of the 4th Schedule of the EACCMA states as follows:

Paragraph 2(1) provides that:

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

Paragraph 3(1)(a) provides that:

"Where the customs value of the imported goods cannot be determined under the provisions of paragraph 2, the customs value shall be the transaction value of identical goods sold for export to the Partner State and exported at or about the same time as the goods being valued".

Paragraph 4(1)(a) provides that:

> "Where the customs value of the imported goods cannot be determined under the provisions of Paragraph 2 and 3, the customs value shall be the actual value of similar goods sold for export to the Partner State and exported at or about the same time as the goods being valued".

The commercial invoices, exhibit AEX1 is for turbine and accessories. It does not indicate the actual price for the turbine and the accessories separately. The prices on an invoice may be altered subject to negotiations. No receipts were tendered as exhibits to ascertain the price of the valves. The Tribunal cannot go by the submissions of the applicant to determine the transaction value. Counsel of the applicant is not a witness. If the transaction value of the valves cannot be determined from the importation documents, tendered in the Tribunal, the respondent was well within the law when it applied the value of similar valves as imported by other companies with turbines for purposes of generation of electricity.

In the circumstances, this application is dismissed with costs. The applicant is liable to pay import duty Shs. 105,491,720.

Dated at Kampala this

$\text{\textit{Sym}}^{\text{\textit{day}}}\text{\textit{of}}$

nguist

2023.

DR. ASA MUGENYI CHAIRMAN.

nun

DR. STEPHEN AKABWAY MEMBER

MR. GEORGE MUGERWA MEMBER

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