

IN THE TAX REVENUE APPEALS BOARD

AT DAR ES SALAAM

CUSTOMS AND EXCISE TAX APPEAL NO. 15 OF 2022

ALI HAIDARI KAVIRA..... APPELLANT

VERSUS

COMMISSIONER GENERAL(TRA)..... RESPONDENT

JUDGMENT

Before G.J. Mhini – Vice Chairman

Ali Haidari Kavira herein referred to as "*the appellant*" is person engaged in the business of importation of goods for home consumption, and the Commissioner General of Tanzania Revenue Authority, herein referred to as "*the respondent*" is a statutory body vested with, among others, powers of administration of tax laws.

Back to the facts of the case, in July 2014 the appellant imported among others, a 1x40 ft container No. PCIU8528627 containing building materials for his purported hotel. After payment of duties and taxes as usual, which according to the appellant, extinguished the respondent's interest on the goods, the respondent's customs auctioned the cargo. Thereafter, the appellant sought for compensation from the respondent for the loss of the imported cargo resulting from the negligent auction of the cargo by the

respondent's customs amounting to USD 61,961.51 and compensation for loss of business earnings of USD 300,000, a request which was turned down by the respondent, hence the present appeal.

In the statement of appeal, the appellant has raised three grounds of appeal as follows –

1. The respondent's interests on the imported cargo extinguished with payment of duties and taxes, and therefore, he made a grave mistake in auctioning goods whose taxes were already paid.
2. The respondent's refusal to compensate the appellant without any justification whatsoever is not only barbaric, but also confiscatory, impoverishing and ought to be prohibited by any stretch of imagination, as the respondent is only entitled to his fair share of taxes.
3. The respondent neglected the available legal guidelines in dealing with the appellant's case, nor humanity.

At the hearing of the appeal, in which we ordered the learned counsel for the parties to file written submissions, the appellant was represented by Mr. Jimmy Mrosso learned advocate and Mr. Marcel Kanoni learned state attorney appeared for the respondent.

The issues framed for the determination of the appeal are as follows –

1. Whether the respondent's interest on the imported cargo was extinguished on payment of taxes by the appellant.
2. Whether the auction sale was proper and in accordance with the law.
3. Whether the appellant is entitled to compensation from the respondent.
4. To what reliefs are the parties entitled.

Mr. Jimmy Mrosso learned advocate for the appellant submitted on the first issue that, the duties and taxes on the imported goods, as per the evidence tendered, were duly paid as evidenced in Exhibits A-8, A-9 and A-13, as such, the auction was illegal as the respondent's interest was extinguished by payment of duties and taxes.

He submitted that, payment of warehouse rent was unnecessary as duties and taxes were paid within the seven days grace period provided by the law. Referring to section 2 (2) of the East African Community Customs Management Act, 2004 he submitted that, all conditions for the container to be deemed to have been entered for home consumption, upon payment of duties and taxes were met, and thus the respondent was wrong in holding the goods after duties and taxes were paid four days after declaration on 8th July 2014.

He argued that, the respondent's interest is on the duties and taxes, and that interest is extinguished after collection of duties and taxes. Also, he argued that, the respondent does not own a warehouse, though he is deemed to be the owner for purposes of collection of taxes, and warehouses in this case, were owned by TPA and private entities (ICDs bonded warehouses). Thus, he submitted that, the respondent's decision to charge warehouse rent on goods entered in accordance with section 2 (2) of the EACCMA, 2004 was illegal. As the respondent's interest extinguished, then he was required to push the appellant to finalize other formalities of storage charges to warehouse keepers, but not warehouse rent as warehouse rent is a form of punishment by the respondent to push the consignee to clear the goods within the given grace period (7 days local cargo and 21 days for

transit cargo). According to him, there is no warehouse rent after duties and taxes are duly paid as such, the respondent's decision to charge and waive some of it as evidenced in Exhibit A-10 was wrong and illegal.

As regards to the second issue, Mr. Jimmy Mrosso learned advocate for the appellant submitted that, the auction sale was ultra vires and illegal. Referring to section 42 91) of the EACCMA, 2004 he submitted that, the respondent neither issued any notice by publication in the gazette, nor tendered evidence to that effect for sale of goods by customs by public auction. As such, he submitted that, the alleged auction sale of the imported goods was illegal.

As regards to the third issue, Mr. Jimmy Mrosso learned advocate for the appellant submitted that, subject to section 17 of the EACCMA, 2004 the respondent is liable to compensate and refund the appellant for the loss of his containerized cargo, and all other containers as evidenced in Exhibit A-5 which he was forced to surrender. He argued that, by holding the goods after payment of duties and taxes, they attracted extra warehouse rent of Tshs. 22,258,080.00 as evidenced in Exhibit A-9 which ought to be refunded to the appellant as was wrongly paid. He also argued that, the appellant is entitled to the loss of cargo of USD 61,961.51 as compensation for loss of income and refund of unlawful warehouse rent paid to the tune of USD 300,000.00.

As regards to the fourth issue, Mr. Jimmy Mrosso learned advocate for the appellant prayed the Board to determine the appeal in favour of the appellant.

Mr. Marcel Kanoni learned state attorney for the respondent submitted on the first and second issue that, the 1x40 ft container was entered for home consumption on 4th and 8th July 2014 when all duties and taxes were paid and cleared to the respondent as evidenced in Exhibit A-8 and A-9. He submitted that, payment of duties and taxes does not extinguish the respondent's interest on the goods. Referring to section 34 (1) (a) and (5) of the EACCMA, 2004, submitted that, after payment of duties and taxes, the appellant, was required to comply with the provisions of section 34 (1) (a) of the EACCMA, 2004, thus his failure to comply with the provisions resulted to his containers to be taken to customs warehouse. He also referred to section 42 (1) of the EACCMA, 2004, and submitted that, the law empowers the respondent to sell the goods which are under customs warehouse.

He argued that, the 1x40 ft container was declared on 4th July 2014 and duties and taxes were paid on 8th July 2014. Thereafter, he submitted that, the container remained uncollected for 21 days until when the respondent took it to customs warehouse and was auctioned on 29th September 2023 (sic).

He added that, the other containers were neither declared nor paid duties and taxes, hence were also taken to customs warehouse. He contended that, the publication was made in the government gazette, which the Board should take judicial notice.

Therefore, he submitted that, the respondent's interest was not extinguished by payment of taxes by the appellant and the auction was proper according

to the law as the 1x40 ft container remained in the customs warehouse for more than two years.

As regards to the third issue, Mr. Marcel Kanaoni learned state attorney for the respondent submitted that, the respondent has not occasioned any loss to the appellant as the 1x40 ft container was declared on 4th July 2014 and duties and taxes were paid on 8th July 2014, and it remained uncollected until on 29th September 2016 when it was auctioned as per the law. He referred to section 142 (2) of the EACCMA, 2004 and submitted that, the appellant is not entitled to any claim of refund or compensation from the respondent as duties and taxes which were paid on 8th July 2018 were supposed to be claimed not later than 8th July 2015 as evidenced in Exhibit A-1, A-3, and A-4.

Hence, he submitted that, the appellant's claim after 8th July 2015 is time barred and cannot be granted to the appellant.

As regards to the fourth issue, Mr. Marcel Kanoni learned state attorney for the respondent prayed the Board to dismiss the appeal for being devoid of merits with costs.

In his rejoinder submission Mr. Jimmy Mrosso learned advocate for the appellant reiterated his submission in chief and added on the first and second issues that, the containers remained uncollected pending release order from the respondent which was never issued after the appellant paid duties and taxes.

On the provision of section 34 (1) (a) and (5) of the EACCMA, 2004 quoted by the respondent, he argued that, it is irrelevant and misleading as the terms "entry" and "enter" referred to section 2 (2) and section 34, 35 and 36 have no same meaning, and they refer to totally two different legal aspects.

From the arguments of the learned counsel for the parties we are called upon to determine the appeal, and we will jointly determine the first and second issue together, they are **"whether the respondent's interest on the imported cargo was extinguished on payment of taxes by the appellant"** and **"whether the auction sale was proper and in accordance with the law"** and they are derived from the first ground of appeal.

There is no doubt, and parties have no dispute that, the appellant imported a 1x40 ft container, and other three containers, for building materials in July 2014. The evidence, Exhibits A-8 and A-9, further reveals that, on 4th July 2014 1x40 ft container was declared to customs, and the appellant paid duties and taxes to the respondent on 8th July, 2014 amounting to Tshs. 65,138,576.20.

The evidence, further reveals that, the appellant on 22nd December, 2014 paid warehouse rent amounting to Tshs. 22,258,080.00 as evidenced in Exhibit A-9.

In terms of the provisions of section 2 (2) of the EACCMA, 2004 goods are deemed to be entered when the entry made and signed by the owner in the prescribed manner is accepted and signed by the proper officer and duty

due or deposit in respect of the goods has been paid. Also, goods are deemed to be entered for home consumption when they have been declared for use in a Partner State.

Therefore, parties have no dispute that, upon payment of duties and taxes as evidenced by Exhibit A-8 and A-9, the imported goods were cleared at customs and entered for home consumption. On what happened after the payment of duties and taxes by the appellant, this is what caused the dispute before this Board.

As evidenced in Exhibit A-12, the respondent's letter dated 12th April, 2017, the 1x40 ft container of the appellant was sold by the respondent. The auction sale of the container, as evidenced in Exhibit A- 3, was made by the respondent on 29th September 2016. Parties are in dispute on the respondent's justification to sell by public auction the 1x40 ft container of the appellant of which the respective duties and taxes for clearance of the same were duly paid on 8th July, 2014.

The appellant argues that, after the payment of duties and taxes by the appellant on 8th July 2014, the respondent's interest on the imported goods was extinguished, and therefore, the respondent was wrong to hold the goods by refraining to issue a release order, and as such, the sale of the imported goods in the 1x40 ft container by public auction made by the respondent was illegal.

The respondent, on the other hand, argues that, the auction sale was proper in law as, after payment of duties and taxes, the goods remained at customs uncollected until when they were finally sold by public auction on 29th

September, 2016. Therefore, in view of the respondent, after payment of duties and taxes, the appellant had obligation to remove the goods at customs, failure of which, the respondent placed the same under customs warehouse and auctioned them in accordance with the law and the procedure was followed.

There is no dispute that, the circumstances under which goods deposited under customs can be sold are provided for under the provision of section 42 (1) of the EACCMA, 2004 [R.E.2017]. Section 42 (1) provides as hereunder -

"Where any goods which have been deposited in a Customs warehouse are not lawfully removed within thirty days after deposit, then the Commissioner shall give notice by publication in the Gazettes of the Partner State or newspaper of wide circulation in the Partner State that unless such goods are removed within thirty days from the date of notice they shall be deemed to have been abandoned to Customs for sale by public auction and may be sold in such manner as the Commissioner may deem fit:

Provided that any such goods which are of a perishable nature, or are animals, may be sold by the proper officer without notice, either by public auction or by private treaty, at any time after deposit in the Customs warehouse".

In terms of the provision, where goods lawfully deposited in a customs warehouse are not lawfully removed within thirty days after deposit, such goods are deemed to have been abandoned to customs and as such are subject to be sold by public auction. On the conditions for sale, it is by issuance of the notice by publication in the gazette of Partner State or newspaper.

On whether the appellant in this case abandoned the goods after being lawfully deposited, as evidenced in Exhibit A-8 and A-9, the appellant paid duties and taxes in respect of the 1x40 ft container on 8th July 2014. Thereafter, the appellant argues that, the respondent went on to hold the goods as he never issued a release order. The respondent, as evidenced in Exhibit A-12, alleges that, after payment of duties and taxes, the appellant uncollected the goods from customs, and the failure by the appellant to collect the goods from customs is the reason for the sale of the goods by public auction. However, in the same Exhibit A-12, the respondent admits that, the 1x40 ft container were declared under the old "*Asycuda ++system*" and it was difficult to ascertain if taxes and duties were paid in respect of the same containers.

The appellant alleges that, after payment of duties and taxes, he was not issued with a released order. The respondent does not say anything on whether or not a release order was issued for the appellant to remove his container from customs. Further, as evidenced in Exhibit A-9, apart from paying taxes and duties on 8th July 2014, the appellant also paid warehouse rent of Tshs. 22,258,080.00 on 22nd December 2014 to the respondent's customs. In addition to that, the respondent waived warehouse rent to the

appellant at 63% as evidenced in Exhibit A-10. Under the circumstances, and based on the evidence on record, while we cannot tell certainly why the appellant did not remove his imported goods after payment of duties and taxes for clearance of the same at customs, we also find the respondent's allegation that, the appellant failed to remove his goods from customs after payment of duties and taxes is unworthy of belief. Under the circumstances, we doubt if the respondent's sale of the 1x40 ft container of the appellant was a result of the appellant's failure to remove the same from customs within the prescribed time after payment of duties and taxes. We say so because the possibility that the sale of the 1x40 ft container by the respondent was made under a mistaken belief that duties and taxes were not paid as evidenced in the respondent's admission in Exhibit A-12 that, as per the "*asycuda ++ system*" it was difficult to ascertain whether duties and taxes were paid, cannot be safely waived. Under the circumstances, in principle the appellant taxpayer has to be given the benefit of doubt as we hereby do.

It is crystal clear that, in absence of credible evidence that, release order was issued to the appellant after payment of duties and taxes, and the 1x40 ft container was abandoned by the appellant at customs warehouse, after payment of duties and taxes, the respondent's sale by public auction of the appellant's imported cargo (1x40 ft container) was not justifiable in law for lack of basis.

In addition to that, the respondent alleges in Exhibit A-3 that, the container was sold on 29th September 2016 after completion of all customs procedure.

This allegation is supported by the respondent's state attorney in his submission.

In terms of section 42 (1) of the EACCMA, 2004, goods lawfully deposited in a customs warehouse are deemed to have been abandoned, and hence liable for customs sale by public auction if they are not lawfully removed within thirty days after deposit. On the condition for sale, we stated that, the respondent has to issue a notice by publication in the Gazette of Partner State or newspaper.

In the present case, the respondent who has the burden to prove that the procedure for auction of the goods was complied, has not tendered the notice published on the Government Gazette or Newspaper of the sale by public auction of the 1x40 container of the appellant which was effected on 29th September, 2016. The respondent's state attorney urging us to take judicial notice of the Government Gazette we find is unfounded neither details or nor particulars of the same have been given or described for the Board to take judicial notice. The fact that, the notice of auction published in the Government Gazette is within reach of the respondent who conducted the auction, then to assist the Board to determine justice fairly, the respondent ought to have produced it during the proceedings for the observation of the Board. Therefore, we find, even if we were to find that the appellant abandoned its container at customs warehouse, which is not the case, still the respondent's sale of the container was conducted in contravention of the law.

On the respondent's argument as evidenced in Exhibit A-1 that the appellant's refund claim is time barred as required under section 144 (2) of the EACCMA, 2004, section 144 provides –

"(1) Subject to any regulations, the Commissioner shall refund any Customs duty paid on the importation of the goods—

(a) of any import duty, or part thereof which has been paid in respect of goods which have been damaged or pillaged during the voyage or damaged or destroyed while subject to Customs control;

(b) of any import or export duty which has been paid in error.

(2) Refund of import or export duty or part thereof, shall not be granted under subsection (1) unless the person claiming such refund presents such claim within a period of twelve months from the date of the payment of the duty.

(3) The Commissioner shall refund any import duty paid on goods in respect of which an order remitting such duty has been made under this Act".

From the face of it, the provision is applicable in case, the claim for refund of any import duty or export duty which has been paid in error, is in respect of import duty which has been paid in respect of goods which have been

damaged or pillaged during voyage or damaged or destroyed while subject to Customs control.

In this case, the appellant is not claiming for refund of import duty which has been paid in error or has been paid in respect of goods which have been damaged or pillaged during voyage or damaged or destroyed which under customs control, hence we find section 144 (2) of the EACCMA, 2004 has been erroneously applied by the respondent in the circumstances of this case.

In this case, the goods were sold by public auction by the respondent while subject to customs control after duties and taxes were duly and lawfully paid to customs. As such, section 144 (3) of the EACCMA, 2004 is applicable to the appellant's case and the limitation of time imposed by section 144 (2) is therefore inapplicable.

Given the analysis above, we are inclined to resolve the first and second issue in favor of the appellant, and hence, we find the appellant's appeal on the first ground has merits.

Turning to the third issue, it is "**whether the appellant is entitled to compensation from the respondent**" and is derived from the second and third ground of appeal.

On this issue the appellant argues that, the respondent is liable to compensate and refund the appellant for loss of his containerized cargo under section 17 of the EACCMA, 2004. The refund and compensation, according to the appellant, is for loss of cargo amounting to USD 61,961.51,

compensation for loss of income and refund of unlawful paid warehouse rent amounting to USD 300,000.

The respondent argues that, the respondent has not occasioned any loss to the appellant, therefore, the appellant is not entitled to any claim for refund and compensation from the respondent as duties and taxes were paid on 8th July 2014 and the same were supposed to be claimed not later than 8th July 2015.

In our view, we find the issue is consequential, thus cannot detain us any longer. We made a finding that, the respondent erroneously sold by public auction the appellant's 1x40 ft container after duties and taxes were duly paid and in absence of proof that the 1x40 ft container was abandoned by the appellant at the customs warehouse after payment of duties, taxes and warehouse rent.

In that regard, we find the appellant is entitled to refund of the customs value of the wrongly auctioned 1x40 ft container, freight and taxes paid which in total amounts to USD 61,961.50 an amount which we are satisfied that, it is sufficiently proved by the evidence in Exhibit A-5, A-6, A-8 and A-9.

As regards to the appellant's claim for compensation for loss of business earnings of USD 300,000.00, we find the same is in the nature of general damages which fall outside the scope of the jurisdiction of this Board, thus cannot be granted. That being said, we find the appellant's appeal on the second and third ground has merits, and we resolve the third issue in the affirmative.

As regards to the fourth issue **“to what reliefs are the parties entitled to”** and to the extent of what we have stated in our determination of the first, second and third issue, we find the appellant has discharged his onus of proving that the respondent’s review decision dated 15th July 2022 declining to refund the appellant for wrongful auctioning of the appellant’s 1x40 ft container No. PCIC8528627 and duties and taxes paid in respect of that container was erroneous as required under the provision of section 18 (2) (b) of the TRAA, [Cap.408 R.E.2019].

In the event, we find the appellant’s appeal on the first, second and third ground (first, second and third issue) has merits and it is accordingly allowed. The respondent’s review decision dated 15th July 2022 is hereby set aside and quashed, and the respondent is accordingly ordered to refund the appellant the amount of USD 61,961.51 being the total of the purchase price of the items in the 1x40 ft container No. PCIU8528627, freight, duties and taxes paid on the container which was wrongly sold by public auction by the respondent. Further, parties are ordered to bear their own costs of the appeal.

Hon. G.J. Mhini, Vice Chairman
Mr. G.E. Mkocha, Board Member.....
Mr. J.I.K. Laswai, Board Member.....

12th October, 2023

Judgment delivered this 12th day of October, 2023 in the presence of Mr. Oscar Milanzi, learned counsel for the Appellant and Mr. Brian Magoma, learned State Attorney for the Respondent.

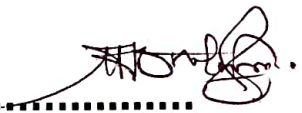




Right of appeal is explained.

Hon. G.J. Mhini, Vice Chairman 
Mr. G.E. Mkocha, Board Member..... 
Mr. J.I.K. Laswai, Board Member..... 

12th October, 2023

We certify that this is a true copy of the original.

Hon. G.J. Mhini, Vice Chairman 
Mr. G.E. Mkocha, Board Member..... 
Mr. J.I.K. Laswai, Board Member..... 

12th October, 2023

IN THE TAX REVENUE APPEALS BOARD

AT DAR ES SALAAM

CUSTOMS & EXCISE TAX APPEAL NO 15 OF 2022

ALI HAIDARI KAVIRAAPPELLANT

VERSUS

COMMISSIONER GENERAL (TRA).....RESPONDENT

DECREE

WHEREFORE The Appellant prays for judgment and decree against the Respondent as follows:-

- i. That the Respondent's interest on the imported cargo extinguishes with payment of duties and taxes, and therefore he made a grave mistake auctioning goods which were paid tax.
- ii. A holding that the Respondent's refusal to compensate the Appellant was wrong in law.

This appeal coming for final disposal on 12th day of October, 2023 before **Hon. G. J Mhini** Vice Chairman, **Mr. G. E. Mkocha** Board Members and **Mr. J. I. K. Laswai** Board Member, in the presence of **Mr. Oscar Milanzi**, counsel for the Appellant and in the presence of **Mr. Brian Magoma**, State Attorney for the Respondent.

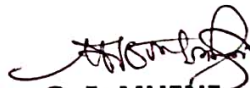
THIS BOARD DOTH HEREBY ORDER THAT:-

Board find that the Appellant has discharged his onus of proving that the respondent's review decision dated 15th July 2022 declining to refund the appellant for wrongful auctioning of the appellant's 1x40 Ft container No. PCIC8528627 and duties and taxes paid in respect of that container was erroneous as required under the provision of section 18 (2) (b) of the TRAA, [Cap 408 R.E 2019].

In the event, Board find the appellant's appeal on the first, second and third ground (first, second and third issue) has merit and it is accordingly allowed. The respondent's review decision dated 15th July 2022 is hereby set aside and quashed, and the respondent is accordingly ordered to refund the appellant the amount of USD 61,961.51 being the total of the purchase price of the items in the 1x40 Ft container No. PCIC8528627, freight, duties and taxes paid on the container which was wrongly sold by public auction by the respondent. Further, parties are ordered to bear its own costs of appeal.

Given under my hand and seal of the Board, this 12th day of October, 2023.




G. J. MHINI

VICE CHAIRMAN TO THE BOARD

MR. G. E. MKOCHA, BOARD MEMBER..... 

MR. J. I. K. LASWAI, BOARD MEMBER..... 

We certify that this is a true copy of the original.


G. J. MHINI

VICE CHAIRMAN TO THE BOARD

MR. G. E. MKOCHA, BOARD MEMBER..... 

MR. J. I. K. LASWAI, BOARD MEMBER..... 