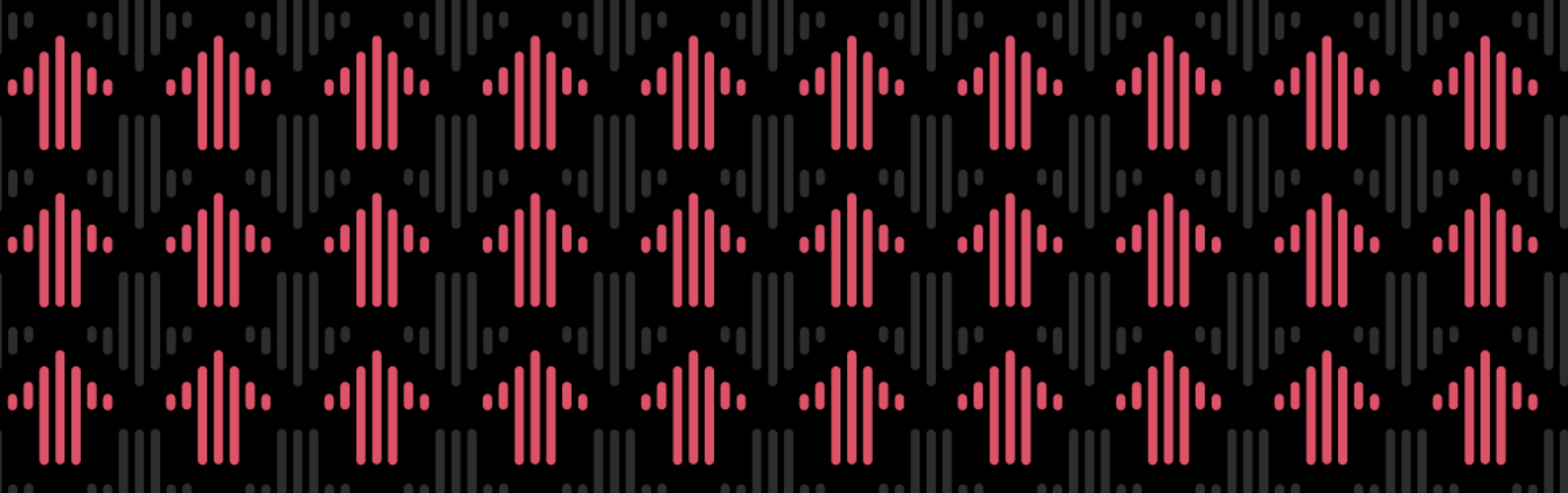




Tax Alert

Tax Appeals Tribunal rules on the importance of sequential application of customs valuation methods and statutory timelines

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In a recent judgement, the Tax Appeals Tribunal (“Tribunal”, “TAT”) held that the primary method of customs valuation is the Transaction Value, alternative methods are to be applied upon failure of the primary method and should be applied in sequential order.

In Tax Appeals case no. 279 of 2020 Wallpaper Kenya (“the Appellant”) versus Commissioner of Customs & Border Control (“the Respondent”), the Tribunal agreed with the Appellant’s assertion that the Transaction Value (“TV”) method, which is the primary method of valuation, must be used first and that the alternative methods of customs valuation can only be applied if the primary method has failed. The Tribunal further noted that the Appellant’s application for review was allowed by virtue of the Respondent failing to communicate its Objection Decision within the statutory time frame.

Brief facts of the case

The Appellant, an importer and seller of wallpaper, in a bid to clear a consignment of goods, lodged a customs entry and paid the requisite taxes in May 2020. The Respondent, through its National Targeting Centre (“NTC”), alerted the verification officers that the unit values declared in respect of the goods were low in comparison to similar goods imported from the same region. The consignment was therefore subjected to physical verification



and the Respondent subsequently demanded additional taxes on 14 May 2020 through the online clearing platform. The Appellant lodged an application for review of the decision vide a letter dated 28 May 2020 which the Respondent did not respond to.

Further, the Appellant, through a letter dated 19 June 2020, requested to pay the additional taxes under protest to allow for release of the goods and therefore minimize the accrual of demurrage and storage costs. The Respondent, vide a letter dated 25 June 2020, declined the Appellant’s request stating that the Appellant had not provided sufficient justification to support its request. Being aggrieved by the Respondent’s decision, the Appellant proffered an appeal at the TAT.



The Appellant's contention

The Appellant averred that the Respondent had failed to respond to its application for review within the legally stipulated thirty days. Accordingly, the Respondent is deemed, by the operation of the law, to have allowed the application for review.

The Appellant submitted that the Respondent had disregarded the transaction value of the goods as indicated in the commercial invoice, contrary to the provisions of Section 122 and paragraph 2 (1) of the Fourth Schedule to the East African Community Customs Management Act ("EACCMA"). The Appellant further argued that the Respondent had failed to provide reasons for its decision to uplift the customs value, contrary to the provisions of Sections 229 (4) of EACCMA and Section 49 of the Tax Procedures Act.

The Respondent's contention

The Respondent submitted that the import entry was targeted for verification exercise by the NTC, the verification officers were alerted that the value declared was low in comparison to similar goods that had been imported into the country. Upon physical verification the Respondent uplifted the customs value based on reference values of similar importations.

The Respondent further argued that the Appellant had failed to attach any transaction documents in support of the declared customs values, in the absence of which, the Respondent upheld the uplifted values as guided by Section 122 and the Fourth Schedule of the EACCMA. Further, the Respondent submitted that it issued its Objection Decision via its letter dated 25 June 2020.

Tribunal's decision

In its determination, the TAT noted that the Respondent's letter dated 25 June 2020 was not an Objection Decision, rather it was a response to the Appellant's letter dated 19 June 2020 and made no reference to the Appellant's application for review. The TAT further noted that contrary to the Respondent's assertions, the Appellant had provided supporting documents, including a proforma invoice, purchase contract and evidence of payment which, in the TAT's view, were sufficient for the Respondent to have considered in its assessment. Accordingly, the TAT found that by failing to communicate its Objection Decision within the statutory time-period, the Appellant's application for review was allowed pursuant to Section 229(5) of the EACCMA.

The TAT further noted that the Fourth Schedule to the EACCMA provides six

methods of determining customs value, the first being the TV method which is the primary method of valuation. Noting that the Appellant had applied the first method and paid tax on that basis, the Tribunal stated that the TV method must be used first and that the alternative methods, following the procedure, could only be applied if the primary method failed.

The Tribunal further noted that whilst the Appellant had imported the goods from Belgium, a European country, the Respondent argued having compared values of similar goods from the same region. However, the Respondent admitted to having compared the value of the goods to those of similar items imported from China and Italy, the former being in Asia.

The TAT indicated that it was incorrect for the Respondent to use this information as a basis for the uplifts noting that it is common knowledge that the value of wallpaper may be affected by different qualities and designs.

The tribunal observed that the Respondent's assumption that similar goods from the same region have the same value is incorrect, as the economic environments and circumstances vary by country. Consequently, the TAT found that the Respondent erred in uplifting customs duty on the imported goods.

Conclusion

This judgment demonstrates the complex nature of customs valuation, the TAT addressed itself on the substantive issue being the correct application of methods of valuation under the Fourth Schedule of EACCMA, which is in line with the World Trade Organization Valuation Agreement.

This is a welcome outcome as it creates the much-needed precedence for future customs valuation disputes. Further, the TAT's decision continues to reiterate the importance of both taxpayers and the customs authorities keeping within the statutory timelines.

Please feel free to contact your usual PwC contact or any of our experts listed herein should you wish to discuss this further.