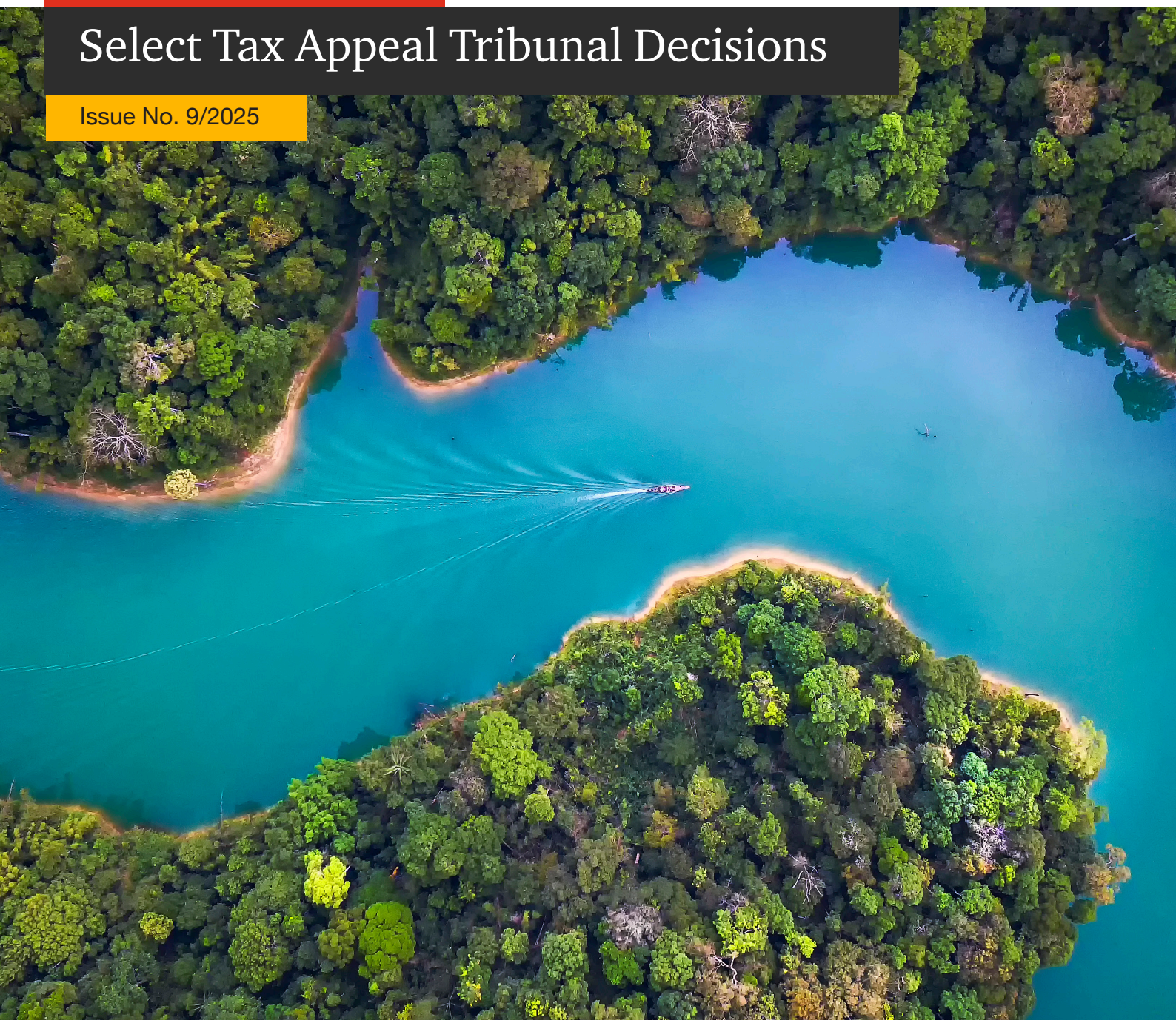
pwc

JibuDocs

Tax Case Summaries

Select Tax Appeal Tribunal Decisions

Issue No. 9/2025



Disclaimer

Legal

This case summary is intended to be of general use only. It should not be relied upon without seeking specific legal/tax advice on any matter. The information contained may or may not reflect the most current legal developments and does not establish, report, or create the standard of complete analysis of the topics presented and we therefore take no responsibility for any reporting that might not be accurate.

Readers should read the actual cases. The information presented does not represent legal/tax advice neither is it intended to create any professional relationship between sender and receiver/reader. This information may not be republished, sold or used or reused in any form without the written consent of the PwC and JibuDocs.

Authorship

This report utilizes the technology of JibuDocs, an AI-enabled document digitization tool, to generate its summaries. These summaries are intended for informational purposes only and may omit or misrepresent key details. Always refer to the original case text for accurate legal analysis.

JibuDocs uses AI to intelligently extract key information from both physical and digital documents, transforming them into a searchable and well-organized digital format. The tool stands out by understanding context, ensuring a highly tailored and productive experience for users. Please reach out to the contacts provided below if you would like to explore how JibuDocs could be applied to your documents.

Sentai Simons
Director
+254 79 210 1014
ssimons@637capital.com

Daniele Pisani
Director
+254 70 163 7637
dpisani@637capital.com

Preface

In this issue of tax case summaries, we continue to provide succinct summaries on the decisions issued by the TAT.

Whether you are a seasoned tax professional seeking to stay abreast of recent developments, a student delving into the intricacies of tax law, or a curious individual with a penchant for understanding the legal framework that governs our fiscal responsibilities, these case summaries provide a valuable resource.

The “Index” section highlights the key issue(s) under consideration by the TAT and is not an indication that the issue(s) highlighted are the only issues raised by the parties.

For a detailed analysis on any case and how it would affect your tax affairs, please look out for our tax alerts, reach out to your usual contacts or the following PwC tax team members.

Titus Mukora
Partner/Director
+254 20 285 5000
titus.mukora@pwc.com

Joyce Wamai
Manager
+254 20 285 5000
joyce.w.wamai@pwc.com

Brian Rono
Senior Associate
+254 20 285 5000
brian.rono@pwc.com

Enjoy your read!
PwC.

Table of Contents

Income Tax Act ("ITA")

Offsetting PAYE from advance tax

TAT e263/2024:
Salaam Microfinance Bank Limited vs Commissioner Of Domestic Taxes

Background

The Respondent conducted a comprehensive audit on the tax affairs of the Appellant which resulted into a notice of assessment issued for Value Added Tax (VAT) and Pay as You Earn (PAYE) income tax for the years 2018 to 2022.

The Appellant was dissatisfied with the said assessments and objected to the default assessments. The Respondent reviewed the Appellant's objection and issued its decision confirming the assessments.

Being dissatisfied with the Respondent's objection decision, the Appellant filed the instant Appeal.

Issues for Determination

- Whether the Respondent erred by failing to offset the assessed PAYE from the available credit under the advance tax ledger.
- Whether the SPA constituted an employee share ownership plan.
- Whether the Respondent erred by charging excise duty on penalty interest.
- Whether the Respondent erred by charging excise duty on the interest income arising from monies deposited with commercial banks.

Appellant's Argument

The Appellant argued that the Respondent erred in law by failing to offset the assessed PAYE from the available credit under the advance tax ledger. The Appellant also contended that the Respondent erred in law by purporting to assess PAYE on the consideration for the sale of shares in UMBL; which consideration does not qualify to be subjected to PAYE under section 35 of the ITA.

The Appellant further asserted that the Respondent erred in law by charging excise duty on penalty interest which is a non-excisable income under the enabling law paragraph 4 Part II of the First Schedule of the EDA.

Lastly, the Appellant maintained that the Respondent erred in law and in fact by charging excise duty on the interest income arising from monies deposited with Commercial Banks.

Respondent's Argument

The Respondent contended that it established a variance between staff costs as per the trial balances and the staff costs as per the iTax declarations.

The Respondent further argued that under Section 37 of the ITA, as long as the arrangement was one that benefited the UMBL shareholders, the Appellant ought to have withheld the PAYE on that benefit.

The Respondent also alleged that it reviewed the Withholding Tax returns filed by the Appellant and other information availed to it for the period of 2018 to 2022 to determine whether the correct and complete declarations were made and excise duty payable remitted in line with the EDA.

Tribunal Findings

The Tribunal found that the Respondent erred by failing to offset the assessed PAYE from the available credit under the advance tax ledger.

The Tribunal also found that the SPA did not constitute an employee share ownership plan and that accordingly the Respondent erred by assessing PAYE on the deferred consideration paid to shareholders for the sale of shares in UMBL.

The Tribunal further found that the Respondent erred by charging excise duty on penalty interest.

Lastly, the Tribunal found that the Respondent erred by charging excise duty on the interest income arising from monies deposited with commercial banks.

Tribunal's Decision

The Appeal was allowed and the Respondent's objection decision dated 19th January 2024 was set aside. Each party was ordered to bear its own cost.

Withholding tax on brokerage commissions

TAT e543/2024:
Waica Reinsurance (Kenya) Limited vs Commissioner of Legal Services and Board Coordination

Background

The Respondent undertook a compliance check on the operations, transactions and tax compliance of the Appellant for the years of income 2019 to 2021 and thereafter issued a letter of findings dated 24th January 2023 outlining its preliminary findings from the audit.

Following engagement between the two parties, the Respondent issued an assessment on 24th April 2023 and demanded the sum of Kshs. 103,784,965.00, to which the Appellant objected on 23rd May 2023, and the Respondent issued its Objection on 21st July 2023 confirming assessment for Kshs. 59,220,548.00.

Issues for Determination

Whether the Respondent erred in charging the commissions paid on brokerage agency commissions (business acquisition fees) to withholding tax and issuing the assessment to the Appellant for the period 2019 - 2021.

Appellant's Argument

The Appellant contended that the Respondent wrongfully and erroneously imputed an agency relationship where there is none, thereby issuing erroneous withholding tax on commissions for business acquisitions costs.

The Appellant further contended that the reinsurance broker deducts their brokerage commission from the premium paid by the insurance company to the reinsurer, and therefore such direct deduction does not create an agency relationship, between the Appellant and the reinsurance brokers.

Respondent's Argument

The Respondent submitted that the Appellant's argument is contrary to the industry practice of payment of brokerage fees.

It contended that the Appellant did pay these brokerage fees, which constituted commissions/business acquisition fees, as represented in the Appellant's financial statements, and the same ought to have been subjected to WHT as per Section 35 of ITA.

Tribunal Findings

The Tribunal found that there exists a fiduciary relationship between the Appellant and reinsurance brokers who were paid a commission, and the commissions so paid were subject to WHT in accordance with Section 35 (3) (d) of ITA. The Tribunal consequently found and held that the Respondent was justified in assessing the Appellant on the commissions paid on brokerage agency for withholding tax for the period 2019 - 2021.

Tribunal's Decision

The Appellant's Appeal was dismissed and the Respondent's Objection Decision dated 21st July 2023 was upheld, subject to variation by the partial judgement entered on 30th May 2024. The parties were ordered to bear their own costs.

East African Community Customs Management Act ("EACCMA")

Tariff reclassification

TAT e363/2024:
Rubis Energy Kenya Plc Vs Commissioner Of Customs And Border Control

Background

The case revolves around the reclassification of the Appellant's product, K-Lube ATF, by the Respondent. The Respondent reclassified the product under a different Harmonized System (HS) Code, which resulted in a demand for short-levied duties.

The Appellant objected to this reclassification and the subsequent demand for additional duties, arguing that the product had not undergone any material change to warrant a different classification. The Appellant had previously received a private ruling from the Respondent classifying the product under a specific HS Code, which they continued to use even after the expiry of the ruling's timeline.

Issues for Determination

Whether the Respondent erred in re-classifying the Appellants products under HS Code 2710.19.56 and demanding short levied duties. -

Whether the private ruling issued by the Respondent in 2019 classifying K-Lube ATF under HS Code 2710.19.56 created a legitimate expectation.

Appellant's Argument

The Appellant argued that the reclassification of their product and the subsequent demand for short-levied duties was erroneous. They maintained that there had been no material change in the product to warrant a different classification.

They also contended that they had a legitimate expectation to continue using the HS Code provided in the private ruling, despite its expiry, as there had been no change in law or product composition.

Respondent's Argument

The Respondent argued that the Appellant could not rely on an expired private ruling for product classification. They maintained that the product was a lubricant, based on its description on the Appellant's website and various laboratory tests. They also contended that the Appellant had agreed to the short-levied taxes by paying the initial amount demanded.

Tribunal Findings

The Tribunal found that the Respondent erred in reclassifying the Appellant's product and demanding short-levied duties. It held that the material composition of the product could only be established through scientific methodology such as laboratory tests, which the Respondent did not provide. The Tribunal also found that the Appellant could not claim a legitimate expectation against the clear provisions of the law.

Tribunal's Decision

The Tribunal allowed the appeal, set aside the Respondent's review decision, and ordered each party to bear its own costs.

TAT e616/2024:
Export Trading Company Limited vs Commissioner Customs and Border Control

Background

The Appellant, Export Trading Company Limited, is a private limited liability company incorporated in Kenya whose principal activity is importation of fertilizer into the country. The Appellant lodged entry number 24MBAIM4012531 and declared the products Falcon Gold Max 10-10-10 +TE, Falcon Gold N-Max 14-6-5 + TE, Falcon Gold K-Max 4-16-27 +TE and Falcon Gold P-Max 7-21-7 + TE under the 2022 East African Community Common External Tariff (EACCET) HS code 3105.20.00 which provides for other mineral and chemical fertilisers.

The Respondent, Commissioner Customs and Border Control, noted that there was possible misclassification of the products and carried out a verification on the tariff classification of the products. Consequently, The Respondent issued a tariff ruling dated 9th April 2024 classifying the products under HS code 3824.99.90 by applying General Interpretation Rules (GIR) for the classification of goods 1 and 6.

Issues for Determination

Whether the Respondent erred in classifying the Appellant's consignment under HS code 3824.99.90 instead of HS code 3105.20.00.

Appellant's Argument

The Appellant argued that the Respondent misinterpreted the General Note to the Explanatory Notes (EN) to chapter 31 and violated the sequential order of application of the GIRs of the Harmonized System by elevating rule 3(c) where 3(b) suffices classification.

The Appellant maintained that the most appropriate HS Code for NPK fertilizer is 3105.20.00 according to the Harmonized Commodity Description and Coding System.

Respondent's Argument

The Respondent argued that the Appellant's products, Falcon Gold Max 10-10-10 +TE, Falcon Gold N-Max 14-6-5+ TE, Falcon Gold KMax 4-16-27 +TE and Falcon Gold P-Max 7-21- 7 + TE contains mixture of micronutrients and macronutrients and thus cannot be classified within the scope of chapter 31. Both macronutrients and micronutrients are important for plant's overall growth. The Respondent thus pleaded that the appropriate code for the Appellant's product is HS Code 3824.99.90.

Tribunal Findings

The Tribunal found that the Respondent erred in classifying the Appellant's consignment under HS code 3824.99.90 instead of HS code 3105.20.00. The Tribunal noted that heading 3105 provides a more specific description as it expressly mentions the elements unlike heading 38.24 which provides for general description of chemical products.

The Tribunal also noted that the consignment that the Appellant imported contained a mixture or combination of that material or substance with other materials or substances and applying GIR 2(b) still places the consignment under HS Code 3105.20.00 instead of HS code 3824.99.90.

Tribunal's Decision

The Appeal was allowed. The Respondent's review decision dated 13th May 2024 was set aside.

The Appellant's consignment namely: Falcon Gold Max 10-10-10 +TE, Falcon Gold N-Max 14-6-5 + TE, Falcon Gold K-Max 4-16-27 +TE and Falcon Gold P-Max 7-21-7 + TE were classified under tariff code 3105.20.00.

The Appellant was entitled to a refund of any duties paid in protest pursuant to Section 144(3) of EACCMA.

Each party was to bear its own cost.

TAT e617/2024:
Export Trading Company Inputs Kenya Limited vs Commmissioner Customs and Border Control

Background

The Appellant, Export Trading Company Inputs Kenya Limited, imported a consignment of fertilizer into Kenya. The Appellant declared the product under the 2022 East African Community Common External Tariff (EACCET) tariff code 3105.20.00.

The Respondent, Commissioner Customs and Border Control, issued a tariff ruling classifying the product under HS code 3824.99.90.

The Appellant applied for a review of the tariff classification, which was upheld by the Respondent. Aggrieved by the Respondent's findings, the Appellant filed an appeal.

Issues for Determination

Whether the Respondent erred in classifying the Appellant's consignment under HS code 3824.99.90 instead of HS code 3105.20.00.

Appellant's Argument

The Appellant argued that the product should be classified under HS code 3105.20.00, which provides for other mineral and chemical fertilizers. The Appellant claimed that the Respondent misinterpreted the law and was more focused on collecting taxes than facilitating trade.

The Appellant also argued that the Respondent violated the sequential order of application of the General Interpretation Rules (GIR) of the Harmonized System by elevating rule 3(c) where 3(b) suffices classification.

Respondent's Argument

The Respondent maintained that the product was correctly classified under HS code 3824.99.90, which provides for other chemical products and preparations of the chemical or allied industries.

The Respondent argued that the product contained both macronutrients and micronutrients, which are essential for plant growth, and thus could not be classified solely under chapter 31, which covers chemical fertilizers.

Tribunal Findings

The Tribunal found that the Appellant's consignment could still be classified under tariff code 3105.20.00 because the code does not imply that the fertilizing elements nitrogen, phosphorus, or potassium must be in pure form.

The Tribunal also found that heading 3105 provides a more specific description as it expressly mentions the elements unlike heading 3824 which provides for general description of chemical products.

Therefore, the Tribunal concluded that the Respondent erred in classifying the Appellant's consignment under HS code 3824.99.90 instead of HS code 3105.20.00.

Tribunal's Decision

The Tribunal allowed the appeal, set aside the Respondent's decision, and ordered that the Appellant's consignment be classified under tariff code 3105.20.00.

The Appellant was also entitled to a refund of any duties paid in protest pursuant to Section 144(3) of EACCMA. Each party was to bear its own cost.

TAT e070/2024:
No Excuses Limited vs Commissioner of Customs and Border Control

Background

No Excuses Limited, a company involved in the importation of tyres, was audited by the Commissioner of Customs and Border Control. The audit revealed that the company had been importing SUV, pickup and off-road tyres and classifying them under tariff code 4011.20.20. The Commissioner reclassified the imports under HS Code 4011.10.00 and demanded short levied taxes of Kshs. 3,605,870.00. No Excuses Limited objected to this decision, but the Commissioner upheld the demand. The company then appealed to the Tax Appeals Tribunal.

Issues for Determination

Whether the Commissioner erred in applying the East African Community Common External Tariff (EAC/CET) 2022 instead of the EAC/CET 2017 - Whether the Commissioner erred in classifying the appellant's imports under HS Code 4011.10.00 instead of HS Codes 4011.20.10 and 4011.20.20

Appellant's Argument

No Excuses Limited argued that the Commissioner erred in applying the EAC/CET 2022, as the relevant period of import was before the tariffs were promulgated.

The company also contended that it had correctly classified its imports under tariff code 4011.20.20, and that the Commissioner had wrongfully reclassified the goods under HS Code 4011.10.00.

The company further argued that the Commissioner's decision was arbitrary, unreasonable, unfair and contrary to the right of fair administration action.

Respondent's Argument

The Commissioner argued that the EAC/CET 2022 was applicable, as the audit focused on entries declared between the years 2022 to 2023. The Commissioner also maintained that the tyres imported by No Excuses Limited were correctly classified under HS Code 4011.10.00, which covers tyres used on motor cars, including station wagons and racing cars. The Commissioner further contended that the company had a history of non-compliance with respect to valuation of goods before clearance.

Tribunal Findings

The Tribunal found that the Commissioner had erred in classifying the appellant's imports under HS Code 4011.10.00 instead of HS Codes 4011.20.10 and 4011.20.20.

The Tribunal noted that the Commissioner had not provided evidence of the actual tyres examined upon importation, and that the categorization of tyres under 'all season', 'winter' and 'summer' was broad and could mislead.

The Tribunal also found that the Commissioner had not demonstrated that the tyres imported by No Excuses Limited could not be classified under HS Codes 4011.20.10 and 4011.20.20 due to rim sizes.

Tribunal's Decision

The Tribunal allowed the appeal, set aside the Commissioner's Review Decision dated 11th December 2023, and ordered each party to bear its own cost.

TAT e352/2024:
Chrystal Africa Limited vs Commissioner of Customs and Border ControL

Background

Chrystal Africa Limited, a company engaged in the distribution of plant care products, imported a product known as Chrystal VIVA 20 SL, a plant regulator. The company declared the product under the 2022 EAC/CET HS Code 3824.99.90, which provides for plant growth regulators. However, the Commissioner of Customs and Border Control reviewed the classification and determined the product to be an immersion treatment by product in post-harvest period to enhance the ornamental value of flowers and buds, classifying it under the 2022 EAC/CET HS Code 3824.99.90. Dissatisfied with the Tariff Ruling, Chrystal Africa Limited filed a review application, which was upheld by the Commissioner. The company then lodged an appeal.

Issues for Determination

Whether the Respondent's decision to reclassify the Appellant's imported product Chrystal VIVA 20 SL from the declared HS Code 3808.93.90 to HS Code 3824.99.90 breached the Appellant's right to legitimate expectation - Whether the Respondent erred in its decision to reclassify the Appellant's imported product from HS Code 3808.93.90 to HS Code 3824.99.90

Appellant's Argument

Chrystal Africa Limited argued that the Commissioner erred in fact and law by classifying the product under EAC/CET HS Code 3824.99.90. The company contended that Chrystal VIVA 20 SL is a plant growth regulator, which should be classified under EAC/CET HS Code 3808.93.90. The company also argued that the Commissioner's decision breached its legitimate expectation, as the product had been classified under HS Code 3808.93.90 for over three years.

Respondent's Argument

The Commissioner of Customs and Border Control argued that during its verification of the imports, it determined that the products were majorly used in post-harvest period to enhance the ornamental value of the flowers and buds, hence it did not act as a plant growth regulator. The Commissioner also stated that it was guided by the provisions of the General Interpretative Rules 1 (GIR 1), which states that classification shall be determined in accordance with the headings and any other relative section or chapter notes.

Tribunal Findings

The Tribunal found that the Commissioner's reclassification of the product was devoid of the essential procedural and substantive fairness required under the doctrine of legitimate expectation. The Tribunal also found that the Commissioner erred in its decision to reclassify the product from HS Code 3808.93.90 to HS Code 3824.99.90, and the reclassification was not justified.

Tribunal's Decision

The Tribunal allowed the appeal by Chrystal Africa Limited, set aside the Commissioner's Review Decision dated 26th February 2024, and ordered each party to bear their own costs.

TAT e866/2024:
ACO Drainage Limited vs Commissioner Customs & Border Control

Background

ACO Drainage Limited, the appellant, imported a waste water treatment plant and declared it under HS Code 8421.21.00. The respondent, Commissioner Customs & Border Control, reclassified the item under HS Code 8421.29.00. The appellant contested this reclassification, leading to a series of correspondences and meetings between the parties. The respondent maintained its position, leading to the appellant filing an appeal with the Tax Appeals Tribunal.

Issues for Determination

Whether the respondent erred in reclassifying the ROX- Ecological Total Oxidation Sewage Treatment Plant imported by the appellant's from HS Code 8421.21.00 to HS Code 8421.29.00.

Appellant's Argument

The appellant argued that the respondent failed to consider all relevant information and explanations before issuing its decision. The appellant also claimed that it had a legitimate expectation based on the respondent's earlier tariff rulings. The appellant further argued that the respondent wrongfully interpreted and applied the description under Tariff Code 8421.29.00 in classifying and assessing the appellant's imported product.

Respondent's Argument

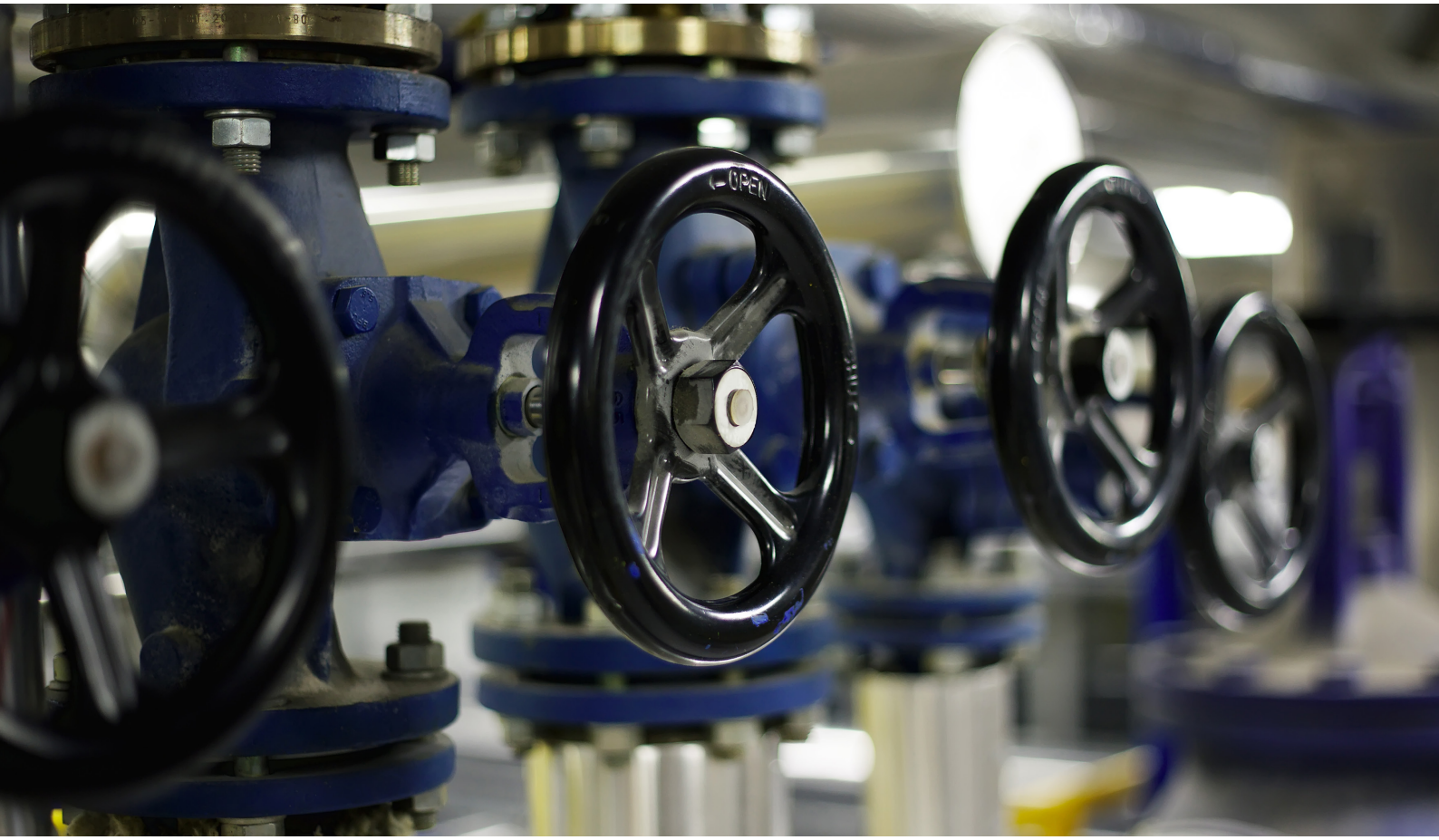
The respondent maintained that the reclassification was correct based on the product's description and intended use. The respondent argued that the product was not used to purify water but to reduce its toxicity levels, making it fit under HS Code 8421.29.00. The respondent also argued that previous tariff rulings could not be universally applied and that each ruling was issued based on specific goods and entries.

Tribunal Findings

The Tribunal found that the respondent erred in reclassifying the product. It determined that the product description and intended use fit more specifically under HS Code 8421.21.00. The Tribunal also noted that the respondent should have simply looked at the purpose or use of the product before arriving at its decision.

Tribunal's Decision

The Tribunal allowed the appeal, setting aside the respondent's review decision and tariff ruling. Each party was ordered to bear its own costs.



TAT e686/2024:
BASF East Africa Limited vs Commissioner of Customs and Border Control

Background

BASF East Africa Limited (the Appellant) imported a product known as ISO 145/8, which it declared under the East African Community Common External Tariff (EAC/CET) HS Code 3824.99.90.

The Commissioner of Customs and Border Control (the Respondent) stopped the processing of the entry to confirm the declared HS Code and advised that the product should be classified under EAC/CET 3909.50.00.

The Appellant disputed this classification, leading to an escalation to the Tariff Section for determination.

The Tariff Section classified the product under EAC/CET HS Code 3909.50.00, a decision which the Appellant objected to and subsequently appealed.

Issues for Determination

Whether the Respondent erred in reclassifying the Appellant's imported product ISO 145/8 from HS Code 3824.99.90 to HS Code 3909.50.00 of the 2022 EAC/CET.

Appellant's Argument

The Appellant argued that the product ISO 145/8 is a mixture of two monomeric organic compounds, not a polyurethane in primary form as classified by the Respondent. The Appellant also contended that the product was not presented as a constituent of a set, and the rule on sets under Section VII Note 1 does not apply to products put in sets for further industrial manufacture. The Appellant therefore argued that the product should be classified under HS Code 3824.99.90.

Respondent's Argument

The Respondent maintained that the product ISO 145/8 is a polyisocyanate component of a two-component polyurethane form system, and thus correctly classified under EAC/CET HS Code 3909.50.00. The Respondent also argued that the product is often traded as one part of a multi-component system or set, which justifies its classification under the said HS Code.

Tribunal Findings

The Tribunal found that the Respondent did not provide sufficient evidence to support its claim that the product is a polymeric organic compound and/or that the product contains polyurethane linkages.

The Tribunal also agreed with the Appellant that the rule on constituent sets is not applicable to industrial raw materials such as ISO 145/8, which should be classified separately.

Therefore, the Tribunal found that the Respondent erred in reclassifying the Appellant's imported product ISO 145/8 from HS Code 3824.99.90 to HS Code 3909.50.00 of the 2022 EAC/CET.

Tribunal's Decision

The Tribunal allowed the Appellant's appeal, set aside the Respondent's Review Decision dated 13th May 2024, and ordered each party to bear their own costs.

TAT e193/2024:
EBEE Mobility Kenya Limited vs Commissioner of Customs and Border Control

Background

EBEE Mobility Kenya Limited, the appellant, imports electric bicycles in Completely Knocked Down (CKD) form, assembles them locally, and sells them. The batteries for these bicycles are sourced separately from within the partner states. The appellant declared the imported parts under Tariff Heading 8714.91, which covers frames and forks parts thereof of items of Headings 8711 to 8713, attracting a duty of 10%.

However, following a desk audit, the respondent, Commissioner of Customs and Border Control, reclassified the goods under Heading 8711.60.00, which provides for motorcycles and cycles fitted with an auxiliary motor, attracting a higher duty of 25%, VAT at 16%, and excise duty at a specific rate of Kshs. 10,520.00.

The appellant was issued a demand notice for short-levied duties amounting to Kshs. 6,987,161.00.

Issues for Determination

Whether the Respondent erred in Whether the respondent erred in reclassifying the appellant's imported goods from HS Code 8714.91.00 to HS Code 8711.60.00.

Appellant's Argument

The appellant argued that the respondent erred in reclassifying the imported goods, as the essential character of the bicycles was determined by the battery, which was not part of the import. The appellant also argued that the respondent failed to conduct a comprehensive analysis to determine the adequacy and classification of imported spare parts. The appellant further contended that the respondent's sudden change in tariff classification constituted a breach of the appellant's right to legitimate expectation, fair administrative action, and presumption of regularity.

Respondent's Argument

The respondent argued that the imported goods were essentially electric bicycles in CKD form, notwithstanding the absence of a battery. The respondent contended that the motor, which was part of the imported consignment, was critical in converting the bicycle to electric, thus giving it its essential character. The respondent also argued that it had the power to correctly classify the goods and recover any duty that had been short levied.

Tribunal Findings

The tribunal found that the motor is essential in distinguishing a normal bicycle and an electric bicycle and gives the same its essential character as an electric bicycle in CKD form at the point of importation. The tribunal concluded that what was imported was an incomplete electric bicycle, and therefore the consignment in question constituted of electric bicycle in CKD form, notwithstanding the absence of a battery. The tribunal held that the most appropriate tariff code for the classification of the appellant's imported electric bicycles in CKD form would be HS Code 8711.60.00.

Tribunal's Decision

The tribunal dismissed the appellant's appeal and upheld the respondent's review decision dated 21st December 2023. The parties were ordered to bear their own costs.

Determination of Customs Value

TAT e147/2024:
Sintel Security Print Solutions vs Commissioner of Customs and Border Control

Background

The Appellant, Sintel Security Print Solutions, a company engaged in the importation and sale of mobile phone Subscriber Identification Modules (SIM), was issued a demand notice by the Respondent, Commissioner of Customs and Border Control, for custom duties amounting to Kshs 17,407,526.00. This demand was related to 5 importations made during the tax period 2022-2023.

The Respondent claimed that the Appellant had understated the value of SIM modules by using invoices which lacked basic features of authentic invoices.

Dissatisfied with the Notice of Demand, the Appellant lodged an Application for Review, which was rejected by the Respondent. The Appellant then appealed to the Tax Appeals Tribunal.

Issues for Determination

Whether the Respondent erred in relying on transactional value of identical goods in determining custom value. - Whether the Respondent's review decision dated 3rd January 2024 was justified.

Appellant's Argument

The Appellant argued that the Respondent erred in fact and in law by disallowing the invoices used by the Appellant in support of the declarations in the subject customs entries.

The Appellant also claimed that the Respondent erred in fact and in law by purporting to apply paragraph 3 of the Fourth Schedule to the EACCMA, to determine the customs value of the Appellant's imports based on the transaction value of identical goods. The Appellant further argued that the Respondent erred in fact and in law by failing to consider the grounds advanced by the Appellant in support of the application for review.

Respondent's Argument

The Respondent argued that it conducted a Post Clearance Audit (PCA) on the Appellant for the period 2022 to 2023. The audit revealed instances of undervaluation of some consignments of sim modules. The Respondent then issued a demand on 29th November 2023 for the short-levied duties amounting to Kshs 17,407,526.00.

The Respondent further argued that the Appellant failed to adequately support the declared value despite being given an opportunity to do so. Consequently, the Respondent used the transaction value of identical goods for the Appellant as a basis of the demand for extra duties.

Tribunal Findings

The Tribunal found that the Respondent had no justification to depart from Transactional Value method in favour of Transactional Value of Identical Goods method. The Tribunal also found that the Respondent's review decision dated 3rd January 2024 was not justified.

Tribunal's Decision

The Tribunal allowed the Appeal and set aside the Respondent's review decision dated 3rd January 2024. Each party was ordered to bear its own cost.

Tax Procedures Act ("TPA")

Assessment beyond the 5-year statutory limit

TAT e269/2024:

Heavy Lift Logistics East Africa Limited vs Commissioner of Legal Services & Board Co-Ordination

Background

The appellant, Heavy Lift Logistics East Africa Limited, a company involved in clearing and forwarding services and transport logistics, was issued an audit notification letter by the respondent, Commissioner of Legal Services & Board Co-ordination, for Corporation Tax and VAT for the period of 2017 to 2022.

The respondent issued an assessment notice for the said period amounting to Kshs 26,310,401.00 inclusive of penalties and interest. The appellant objected to the additional assessment, but the respondent confirmed the assessment of the sum of Kshs 30,888,792.00 inclusive of penalties and interests.

The appellant then filed an appeal.

Issues for Determination

Whether the assessments in respect to 2017 year of income were statutorily time barred - Whether the Respondent erred in confirming the assessments

Appellant's Argument

The appellant argued that the respondent erred by including the disbursements incurred by the appellant on behalf of their customers as part of income for corporate income tax purposes.

The appellant also claimed that the respondent failed to consider the filed income tax returns for the years 2019 to 2022 when computing the variances for the period.

Furthermore, the appellant contended that the respondent erred in fact and in law by failing to consider the appellant's tax loss position when computing the income tax due.

Respondent's Argument

The respondent argued that the appellant failed to provide invoices and contractual agreements to support its claims on the variances.

The respondent also contended that the appellant only provided a reconciliation schedule which did not adequately support the appellant's position.

The respondent maintained that it conducted an audit on the appellant's banking, financial statements and returns for the period 2017 to 2022 and issued a notice of assessment based on variances noted in the appellant's VAT returns vis a vis the income tax returns for the period.

Tribunal Findings

The tribunal found that the respondent's attempt to recover 2017 taxes vide its assessment notice dated 31st October 2023 was unlawful and thus, the assessments in respect to 2017 year of income were statutorily time barred.

However, the tribunal also found that the appellant failed to demonstrate that the respondent erred in confirming the assessments for the years 2018 to 2022.

Tribunal's Decision

The appeal was partially allowed. The corporate income tax assessments in respect of the 2017 year of income and the VAT assessments in respect to the period up to 31st January 2018 were expunged.

The corporate income tax assessments in respect of the 2018 to 2022 and the VAT assessments in respect to the period 1st February 2018 to December 2022 were upheld. Each party was to bear its own cost.

TAT e289/2024:
RMA Motors (Kenya) Limited vs Commissioner of Investigations & Enforcement

Background

The Respondent commenced investigations against the Appellant for the period between January 2014 to December 2018 for Corporation Income Tax and VAT. The Respondent issued a tax assessment demanding a total of Kshs. 64,787,162.00. The Appellant objected to the assessment, but it was outside the statutory period of thirty (30) days. The Appellant filed an application seeking leave to have their late objection processed, which was approved by the Respondent. The Respondent reviewed the Appellant's objection then issued an Objection Decision enhancing the assessments to Kshs. 104,113,129.00. The Appellant lodged an appeal against the Respondent's Objection Decision.

Issues for Determination

- Whether the Appeal is invalid by virtue of Section 52 of the Tax Procedures Act
- Whether the assessments are statute time barred under Section 31 (4) of the TPA
- Whether the Respondent erred in confirming the assessments Appellant's Argument The Appellant argued that the Respondent erred in law and fact by incorrectly applying the banking analysis in coming up with the Appellant's sales and consequently demanding Corporation Tax. The Appellant also contended that the Respondent's assessment is invalid because the Respondent disregarded the documents that it availed.

The Appellant further argued that the assessments are beyond five years therefore, unlawful.

Respondent's Argument

The Respondent argued that it commenced investigations against the Appellant upon receiving intelligence that the Appellant was mis declaring imports on iTax and underdeclaring sales.

The Respondent used the banking analysis method to establish the taxable income. The Respondent also argued that the Appeal is invalid on basis that the Appellant did not pay VAT on overstated imports which was not contested.

The Respondent further contended that during the investigations, it identified offences committed by the Appellant since it had contravened Section 97 (a) of the TPA by making an incorrect statement which affects tax liability.

Tribunal Findings

The Tribunal found that the Appellant's Appeal is validly lodged before the Tribunal as is envisaged under Section 52 (2) of the Tax Procedures Act. The Tribunal also found that the Respondent did not have a justification to assess taxes beyond five years. The Tribunal further found that the assessments are unlawful, null and void.

Tribunal's Decision

The Appeal was allowed and the assessments dated 7th November 2023 and the resultant objection decision dated 12th February 2024 were set aside. Each party was ordered to bear its own cost.

Documentary burden of proof

TAT e942/2023:
Edward Onyango vs Commissioner of Domestic Taxes

Background

The Appellant, Edward Onyango, is a Kenyan citizen and proprietor of a bar and restaurant in Kisumu City. The Respondent, Commissioner of Domestic Taxes, conducted a verification audit of the Appellant's operations for the period 2018 to 2021.

The audit resulted in a tax assessment notice issued to the Appellant for a principal tax of Ksh 6,541,725.45, comprising VAT for December of each year from 2018 to 2021 and income tax for the same period.

The assessment was based on unsupported purchases and expenses. The Appellant objected to the assessments, but the Respondent confirmed the tax amount, leading to the Appellant's appeal.

Issues for Determination

Whether the Respondent's objection decision dated 5th December 2023 was justified.

Appellant's Argument

The Appellant argued that the Respondent confirmed the tax assessment without due regard to all records, explanations, and information provided by the Appellant. The Appellant also argued that it had fulfilled all conditions for a valid notice of objection as per Section 51(3) of the Tax Procedures Act. The Appellant claimed that all inputs and expenses could be accounted for and supported, and should not have been disallowed.

Respondent's Argument

The Respondent argued that the Appellant failed to provide sufficient supportive evidence for its objection.

The Respondent stated that it had requested specific documents from the Appellant, which were not provided. As a result, the Respondent assessed the tax liability based on available information and confirmed the assessments.

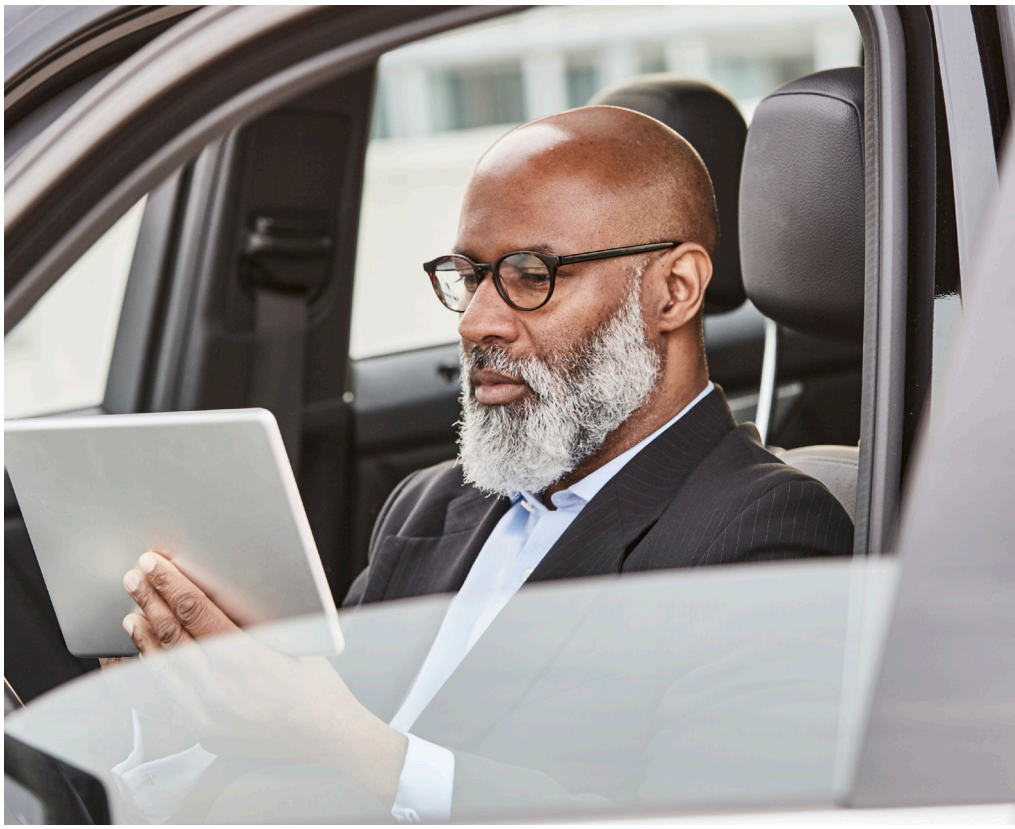
The Respondent also argued that the Appellant failed to discharge their burden of proof by not providing the necessary supporting documentation.

Tribunal Findings

The Tribunal found that the Appellant failed to provide sufficient and relevant documentation to support its claims. The Tribunal noted that the burden of proof lies with the Appellant, and this burden was not discharged. The Tribunal also found that the Respondent was justified in its assessment based on the available information.

Tribunal's Decision

The Tribunal dismissed the Appeal, upheld the Respondent's decision dated 5th December 2023, and ordered each party to bear its own costs.



TAT 207/2022:
IBANGUA Investments Limited vs Commissioner of Domestic Taxes

Background

The Respondent conducted an audit on the Appellant's tax affairs and issued additional assessments for Income Tax and VAT. The Appellant lodged an Objection to the Respondent's additional assessments.

The Respondent reviewed the Appellant's objection and issued its Objection Decision. Aggrieved by the Respondent's Objection Decision, the Appellant filed its Appeal with the Tribunal. The Tribunal heard the Appeal and pronounced itself allowing the Appellant's Appeal on the basis that the Objection Decision was issued beyond the prescribed statutory period.

The Respondent appealed the decision to the High Court, which pronounced itself allowing the Appeal and the judgement set aside, with the matter being remitted back to the Tribunal to determine the issue of the Objection Decision raised by the Respondent.

Issues for Determination

Whether the Respondent's Objection Decision issued on 28th January 2022 against the Appellant was validly issued - Whether the Respondent's additional assessment for Income Tax and VAT for the period 2017-2019 issued against the Appellant was justified.

Appellant's Argument

The Appellant argued that the Respondent's Objection Decision was not issued within the stipulated timelines as is envisaged in Section 51 (4) of the TPA. It also argued that it provided all the documents that were required of it.

The Appellant further argued that the Respondent's additional tax assessment on VAT and Income Tax is illegitimate and erroneous as sufficient information and explanations were provided before the assessment was made.

The Appellant also argued that the Respondent erred in law and fact when it declined to consider the amended self-assessment filed by the Appellant within the time limits.

Respondent's Argument

The Respondent argued that it issued the Objection Decision within the statutory timelines. It also argued that it considered the Appellant's explanations and documents in issuing the Objection Decision.

The Respondent further argued that the issue of amended self-assessments is an afterthought as the Appellant has not supported the averments with documentation.

The Respondent also argued that it has the power to raise assessment based on the information available to it.

Tribunal Findings

The Tribunal found that the Objection Decision issued by the Respondent on 28th January 2022 was issued within the statutory timeline of 60 days in line with the provisions of then prevailing Section 51 (11) (b) of the TPA.

The Tribunal also found that the Appellant did not provide the Respondent with competent and sufficient documentation as required to support its position and thereby did not shift the burden to the Respondent.

The Tribunal concluded that the Appellant did not discharge its burden of proof as required by providing competent and sufficient documentation to prove the Respondent's assessment and objection decision wrong, excessive or erroneous.

Tribunal's Decision

The Appellant's Appeal was dismissed. The Respondent's Objection Decision dated 28th January 2022 was upheld. Each party was ordered to bear its own costs.

Failure to pay taxes not in dispute before lodging appeal to the Tax Appeals Tribunal

TAT e165/2024:
The County Government of Kiambu vs. Commissioner of Domestic Taxes

Background

The Commissioner of Domestic Taxes conducted an audit of the County Government of Kiambu's tax affairs and issued it with a Notice of Assessment for taxes amounting to Kshs. 612,390,129.00 under the tax heads of PAYE on gratuity payments, motor vehicle benefits, secondary employees, airtime benefits, and on servants, as well as Withholding Income Tax and VAT.

The County Government of Kiambu partially objected to the assessments of taxes not conceded and lodged an objection. The Commissioner of Domestic Taxes partially accepted the County Government of Kiambu's objection by partially amending the VAT assessment and confirming the PAYE and Withholding Tax assessments as raised.

Dissatisfied with the Commissioner of Domestic Taxes' Objection Decision, the County Government of Kiambu lodged this Appeal at the Tribunal.

Issues for Determination

Whether the Appellant's Notice of Appeal dated 31st January, 2024 is valid - Whether the Appellant discharged the burden of proof.

Appellant's Argument

The County Government of Kiambu argued that the Commissioner of Domestic Taxes erred in law by claiming withholding taxes without any basis, demanding for withholding taxes on transactions that do not attract withholding taxes, demanding PAYE on pool cars used by the County officers to discharge official functions, and failing to appreciate that the transactions anchoring the imposition of levies and other charges by County Governments does not amount to a 'taxable supply'.

The County Government of Kiambu further argued that the Commissioner of Domestic Taxes' Objection Decisions violate the Appellant's right to Fair Administrative Action and legitimate expectation.

Respondent's Argument

The Commissioner of Domestic Taxes argued that the County Government of Kiambu's Appeal is not valid as the County Government of Kiambu had failed to either complete the payment of conceded taxes or reach a settlement plan with the Commissioner of Domestic Taxes.

The Commissioner of Domestic Taxes further argued that the County Government of Kiambu failed to provide evidence to support the objection despite several reminders.

The Commissioner of Domestic Taxes submitted that it is allowed to make additional assessments based on the available information to the best of his judgment pursuant to Section 31 of the TPA.

Tribunal Findings

The Tribunal found that the County Government of Kiambu failed to provide evidence to show that at the time of lodging its Notice of Appeal on 31st January 2024 it had paid the tax not in dispute in full or negotiated another payment plan with the Commissioner of Domestic Taxes. The Tribunal held that the County Government of Kiambu had the obligation to pay the tax not in dispute or enter into an arrangement with the Commissioner of Domestic Taxes to pay the same. In the absence of which the County Government of Kiambu has failed to demonstrate compliance with Section 52 (2) of the Tax Procedures Act hence failing to properly invoke the mandate of the Tribunal as envisaged by the TPA.

Tribunal's Decision

The Tribunal struck out the Appeal and ordered each party to bear its own costs.

Refund decision beyond statutory timelines

TAT e338/2024:
CIPLA Kenya Limited vs Commissioner of Customs & Border Control

Background

The Appellant, Cipla Kenya Limited, applied for a refund of overpaid Corporate Income Taxes (CIT) amounting to Kshs. 26,593,801.00 for the year of income ended 31st March 2022.

The Respondent, Commissioner of Customs & Border Control, embarked on a refund verification process by requesting several documents and explanations.

The Respondent issued its Income Tax audit findings rejecting the Appellant's CIT refund claim and subsequently issued an additional demand for principal CIT and VAT amounting to Kshs. 223,581,871.00. The Appellant objected to the additional assessment and appealed against the Respondent's Refund Decision.

Issues for Determination

Whether the Respondent erred in law and in fact by issuing its refund decision 446 days late contrary to the express provisions of Section 47 (3) of the Tax Procedures Act

- Whether the Respondent erred in law and in fact by rejecting the Appellant's CIT refund application of Kshs. 26,593,801.00

Appellant's Argument

The Appellant argued that the Respondent failed to issue its Refund Decision within the statutory timeline of ninety (90) days, thus the application for refund automatically stood allowed in law by effluxion of time as set out under Section 47 (3) of the TPA.

The Appellant also argued that the Respondent failed to determine the Appellant's claim that it overpaid instalment taxes for the 2022 tax period on its own merit.

Respondent's Argument

The Respondent argued that the delay by the Appellant to provide the requested documents made it impossible for the Respondent to issue the decision within the stipulated 90 days.

The Respondent also argued that the Appellant's application for refund was rejected because additional tax was raised for the period 2021 that was partly off-set by the refund.

Tribunal Findings

The Tribunal found that due to the Respondent's failure to issue a Refund Decision within ninety (90) days from when the Appellant made its application, the Appellant's application for refund automatically stood allowed by operation of the law.

The Tribunal held that the Respondent erred in law and in fact by issuing its Refund Decision 446 days late contrary to the express provisions of Section 47 (3) of the Tax Procedures Act.

Tribunal's Decision

The Appeal was allowed. The Respondent's Refund decision dated 7th February 2024 was set aside. The Respondent was directed to refund to the Appellant Kshs. 26,593,801.00 within sixty (60) days of the date of delivery of this Judgment. Each party was to bear its own costs.

Tax Appeals Tribunal Act ("TAT Act")

Incompetent pleadings

TAT e927/2023:
VOJAK Investments Limited Vs Commissioner Of Domestic Taxes

Background

The Appellant, Vojak Investments Limited, was issued with additional assessments by the Respondent, Commissioner of Domestic Taxes, based on VAT withholding certificates.

The Appellant claimed that it had no relationship with the issuer of the certificates, the Ministry of Finance and Planning, and that the certificates were fraudulent. The Appellant reported the matter to the police and objected to the assessments.

The Respondent rejected the objections, leading to the appeal.

Issues for Determination

Whether the appeal is competent.

Appellant's Argument

The Appellant argued that the assessments were based on fraudulent VAT withholding certificates and that it had no relationship with the issuer of the certificates.

The Appellant also claimed that the assessments and confirmation were done without its involvement and that the decision to reject its objections was made without providing a rationale for the decision.

Respondent's Argument

The Respondent argued that the appeal was time-barred and that the Appellant failed to file an appealable decision. The Respondent also contended that the additional assessments were issued in accordance with the provisions of the Income Tax Act and the Value Added Tax Act, based on available information indicating that the Appellant had claimed withholding tax without corresponding sales.

The Respondent further argued that the Appellant failed to provide conclusive evidence to support its allegations of fraud.

Tribunal Findings

The Tribunal found that the appeal was incompetent as neither party attached the objection decision in their pleadings. The Tribunal held that it lacked jurisdiction to entertain the appeal.

Tribunal's Decision

The appeal was struck out and each party was ordered to bear its own cost.

TAT e309/2024:
Samuel Ng'ang'a Mbugua vs Commissioner of Domestic Taxes

Background

The Respondent conducted an audit of the Appellant's activities for the period 2016 to 2022 for income tax and VAT obligations. The Respondent issued additional VAT assessments to the Appellant.

The Appellant lodged notices of objection, which were initially out of time, but the Respondent granted leave for a late objection. Upon review, the Respondent issued an objection decision, which the Appellant appealed.

Issues for Determination

Whether the Appellant was entitled to claim for Input VAT

Whether the Respondent's objection decision was valid

Whether the Appellant's appeal was competent given the delay in serving the appeal documents and the unsigned pleadings

Appellant's Argument

The Appellant argued that the disputed Input VAT arose from expenses that were actually incurred and were used to generate income.

The Appellant admitted to partially providing supporting documents and requested additional time to furnish the rest.

The Appellant contended that the assessments were uncalled for and that the Respondent should have thoroughly assessed their reasonable grounds before issuing the decision.

Respondent's Argument

The Respondent argued that the Appellant failed to provide sufficient documents to support its alleged grounds of objection and/or input VAT it sought to claim. The Respondent also argued that the Appellant's appeal was not competent due to the delay in serving the appeal documents and the unsigned pleadings.

The Respondent further argued that the Appellant's claim for Input VAT was time barred.

Tribunal Findings

The Tribunal found that the appeal was incompetent as neither party attached the objection decision in their pleadings.

The Tribunal held that it lacked jurisdiction to entertain the appeal.

Tribunal's Decision

The Tribunal struck out the Appeal and ordered each party to bear its own cost.

Appealable decision

TAT e814/2023:
Susan Nungari Gachui vs Commissioner of Domestic Taxes

Background

The Appellant, Susan Nungari Gachui, a Kenyan entrepreneur dealing in residential houses, was issued with Agency Notices by the Respondent, Commissioner of Domestic Taxes, to remit Kshs. 73,108,365.00 being taxes due and payable.

The Respondent also issued a Notification for Restraint over Property for unpaid taxes of the same amount.

The Appellant lodged an appeal against these actions, arguing that the Respondent had assessed taxes on income that was never received by her and not consisting of gains or profits, contrary to Section 3 (2) as read with Section 6 of the ITA.

Issues for Determination

Whether the Tribunal has jurisdiction to determine this Appeal.

Whether the Respondent was justified in issuing a Notification of Restraint over the Appellant's Property and demanding taxes amounting to Kshs. 73,108,365.00.

Appellant's Argument

The Appellant argued that the Respondent erred in fact and law by assessing taxes on income that was never received by her and not consisting of gains or profits.

She also contended that the Respondent violated her constitutional right to fair administrative action by acting arbitrarily and issuing the Notification of Restraint of Property, going as far back as sixteen years.

The Appellant further argued that the Respondent erred in law and fact by assessing rental income at a rate of 30% instead of the monthly rental income tax rate of 10% contrary to Section 6A of the ITA which became effective on 1st January 2016.

Respondent's Argument

The Respondent argued that the Appellant misapprehended the issue at hand and that the instant Appeal is in reference to the Respondent's rejection of her application for extension to extend time to lodge an objection Application.

The Respondent also contended that the decision that the Appellant has sought to challenge, dated 25th October 2023 is a notification of restraint of property, and is the Respondent's right of execution as envisaged under Section 40 (5) of the Tax Procedures Act.

Tribunal Findings

The Tribunal found that the Notice of Restraint over property for unpaid taxes issued to the Appellant is not an appealable decision and hence does not fall within the Tribunal's Jurisdiction.

The Tribunal therefore concluded that there is no appealable decision in this case, the result is that it is seized of the jurisdiction to entertain the Appeal and shall down its tools.

Tribunal's Decision

The Appeal was struck out and each party was ordered to bear its own costs.

Late Appeals

TAT e866/2024:
Pauline Nyambura Mwangi vs Commissioner of Legal Services & Board Co-Ordination

Background

The appellant, Pauline Nyambura Mwangi, a sole proprietor in the business of selling furniture and fittings, was issued with a VAT assessment order by the respondent, Commissioner of Legal Services & Board Co-ordination, totaling Ksh 1,101,646.21 in relation to December 2019.

The appellant lodged an objection against the entire assessment. The respondent requested relevant documents in support of their objection grounds. The respondent confirmed the principal VAT assessment.

The appellant was issued with assessment orders confirming principal tax of Ksh 6,725,825.51 in relation to VAT for December 2018 and November 2019, Income tax for 2018, 2019, 2020 and 2021 years of income and PAYE for May 2021.

The appellant lodged objection against these assessments. The respondent issued a demand letter requiring the appellant to pay within 30 days an amount of Ksh 11,676,284.00 comprising principal tax interest and penalties in relation to various tax heads. The appellant lodged an application for late objection. The respondent issued its objection decision confirming principal tax assessments of Ksh 6,725,825.51. The appellant filed its notice of appeal at the Tribunal.

Issues for Determination

Whether the Appeal is properly before the Tribunal. - Whether the Respondent was justified in confirming the VAT assessment.

Appellant's Argument

The appellant argued that the respondent erred in its decision to issue the appellant with additional tax assessment in respect of VAT for December 2018, November and December 2019 based on variances between income tax returns and VAT returns yet the appellant deals with exempt supplies whereas the respondent assumed all supplies were to be taxed at the general rate.

The appellant also argued that the respondent erred in its decision to issue the appellant with additional tax assessment in respect of corporation tax for 2018, 2019, 2020 and 2021 review period based on added back purported unsupported expenses yet the expenses were actually incurred in generation of income and should thus be considered.

The appellant further argued that the respondent erred in its decision to issue the appellant with additional tax assessment in respect of PAYE for May 2021 based on added back purported unsupported expenses yet her employees did not meet the threshold for charging PAYE.

Respondent's Argument

The respondent argued that the issued additional corporation tax assessments were based on disallowed overstated purchase expenses for years 2018 and 2019 based on established variances between purchases claimed in Appellant's income tax returns and purchases claimed as per their VAT returns for the periods.

The respondent also argued that the VAT additional assessments for December 2019, December 2018 and November 2019 were issued based on noted non-declaration of incomes from established variances between turnover declared in Appellant's income tax returns and sales as per their VAT returns for the Appellant's income tax returns and sales as per their VAT returns for the years 2018 and 2019.

The respondent further argued that the PAYE additional assessment for May 2021 emanated from noted variances between salaries and wages expense claimed in the Appellant's income tax returns and salaries and wages declared as per PAYE returns filed for years 2018 to 2021.

Tribunal Findings

The Tribunal found that the Appeal was not properly before it as it offends mandatory provisions of the law relating to statutory timelines. The Tribunal also found that the appellant failed to defend her position regarding tax assessments issued by the respondent even at the Tribunal.

The Tribunal further found that the appellant failed to discharge the burden of proof as couched under Section 56(1) of the TPA in showing the respondent's confirmed assessments as wrong.

Tribunal's Decision

The Appeal was struck out and each party was ordered to bear its own costs.

TAT e707/2024:
EXOME Sciences Kenya Limited vs Commissioner of Customs & Border Control

Background

The respondent sought short levied duties of Kshs. 4,347,675.00 from the appellant. The appellant was unable to lodge an appeal in time as the Director authorized to handle and make decisions on the affairs of the appellant was out of office and out of the country and had no access to its corporate email or any electronic communication system of the company.

Issues for Determination

Whether the appellant should be granted an extension of time to file its Notice of Appeal in response to the respondent's decision.

Appellant's Argument

The appellant argued that the delay in filing the appeal was due to the absence of the Director who was out of the country and had no access to the company's communication systems. The appellant also argued that it would suffer prejudice if not granted leave to file its appeal.

Respondent's Argument

The respondent did not file any response to the appellant's application, thus the application was deemed as unopposed.

Tribunal Findings

The Tribunal found that the appellant's reasons for delay were reasonable and supported by evidence. The Tribunal also found that the delay was not inordinate and was explained to the satisfaction of the Tribunal. The Tribunal therefore decided to exercise its discretion in favour of the appellant.

Tribunal's Decision

Tribunal's Decision

The Tribunal granted the appellant leave to appeal out of time. The Notice of Appeal, Memorandum of Appeal, statement of Facts together with the Appeal documents attached thereto, all dated 27th June 2024 were deemed as properly filed and served. No orders as to costs were made.