

THE REPUBLIC OF UGANDA
IN THE TAX APPEALS TRIBUNAL AT KAMPALA
IN THE MATTER OF APPLICATION NO. 37 OF 2017

ROYAL ELECTRONICS ASSEMBLING GROUP LTD.....APPLICANT
VERSUS
UGANDA REVENUE AUTHORITY.....RESPONDENT

BEFORE DR. ASA MUGENYI, DR. STEPHEN AKABWAY, MR. GEORGE MUGERWA

RULING

This ruling is in respect of an application challenging a customs assessment of Shs. 298,847,520 arising from importation of goods into Uganda.

The applicant purportedly imports television parts which it assembles into a complete set under the Royal brand. The respondent carried out a customs post clearance audit on the applicant for the period January 2015 to June 2017 and issued it with an assessment of Shs. 298,847,520 on the grounds that it was importing complete televisions (TV).

The following issues were agreed:

1. Whether the applicant operates an assembling plant?
2. Whether the applicant falsely declared its import declarations?
3. What remedies are available to the parties?

However the main issue for determination is whether the applicant is liable to pay the tax assessed?

The applicant was represented by Mr. Bernard Oundo while Ms Diana Mulira Kagonyera represented the respondent.

This dispute revolves around the importation of parts which are purportedly assembled to make complete TV sets. The respondent contends that the import documentation show that the applicant imported completed TV sets. The applicant contends it has an assembling plant and what was imported were unassembled televisions in complete knock down condition which were correctly classified under HSC 8528.72.10.

The applicant's first witness, Mr. Al Karim Jivraj, its director, testified that the applicant is engaged in assembling and selling television sets and related electronics. The applicant employs a staff of four people, but the number increases depending on demand. He described assembling as putting parts together to get a complete television set. He explained that a television set consists of a television tube, circuit board, buttons, wires, front cabinet, back cabinet, power supply, power cables, speakers, screws, the nuts and everything that makes a television complete, known as a 'Knock Down Kit' (CKD). All these are imported from China. He testified that a purchase order is sent by the applicant to the supplier who gives the applicant a proforma invoice. The parties sign a contract. A telegraphic payment is made to the supplier. After completion of payment a commercial invoice is given to the applicant. Other documents include a certificate of conformity.

The applicant's second witness, Mr. Yovan Mengora, its clearing agent testified that he helps the applicant in assessing its taxes and verifying imports. He testified that he cleared consignments of unassembled television sets consisting of different parts. He described the process of verification as ascertaining the contents in the containers vis a vis particulars in import documents such as the bill of lading, packing list, commercial invoice, proforma invoice and purchase order.

The applicant's third witness, Mr. Kahifa Din Nawab, its mechanical engineer stated that he is in charge of standard quality control, testing, training and supervising the assembling process. He testified that the television the applicant assembles has two major components namely; the Knock Down Kits (CKD) which comprise of the front shell, back cabinet, mother board, speakers, power cables with power switch, touch panel and remote control. The second component is the television tube. The applicant puts all the components together.

The respondent called one witness, Mr. Nicholas Jengo, a customs auditor who testified that the respondent carried out an audit on the applicant which revealed that the latter was importing finished items. He contended that the applicant was managing a store and not an assembly plant. He told the tribunal that when the staff of the applicant were asked to assemble a TV set, they could not do so. When the respondent reviewed the import

documentations they showed that the applicant was importing finished products. The certificates of conformity issued by the country of origin described the products imported as televisions and not spare parts.

On 6th August 2019, the Tribunal visited, the *locus in quo*, the assembling plant where the TV sets are assembled. Mr. Kashir the Workshop Manager, took the tribunal members through the assembling process. He showed the members the workers assembling the TV sets. The first stage involves putting accessories on the shell cabinet. The second stage involves the fixing of speakers, switch board and mother board to the set. The third stage is fixing the clamps, panel to the cabinet. The set is tested. The software is installed and settings configured. Then tested and packaged. There is a second department that installs the picture tube to the mother board. It is wired. Television buttons and other accessories are fixed to the CKD shells. The tube is added to the front shell. Screws are fixed. The motherboard is installed, then the set is tested. The back cabinet is fixed and the items packed.

In its submission, the applicant submitted that it imports various television parts in complete knock down conditions and television tubes which it puts together to make a complete television set. In 2017, the respondent conducted a post customs clearance audit on the applicant which reviewed its importation documents. The audit purportedly revealed that the applicant was not an assembling plant but was importing complete television sets instead of unassembled ones. The audit's findings were made on the following observations:

1. The applicant employed only four people who could not even assemble a single television no matter how they tried.
2. The applicant did not have any specialised machinery to assemble televisions.
3. The applicant's pre-shipment documents described the imported goods as televisions instead of complete knock downs kits.
4. Various parts required to make a television were ordered for, invoiced for and paid for differently even when they came from the same supplier.
5. Purchase contracts were for specific parts of television and not for CKDS.

The applicant contended that it imported unassembled televisions in complete knock down condition and that its goods were correctly classified. The term 'Complete Knock Down'

(CKD) is not defined in EACCMA and the East African Common Customs External Tariff 2017 (EACCET). In **Toyota Kenya Limited v Commissioner of Customs Services TAT184 of 2015** the Tribunal noted that there is no definition of complete knock down kit in the EACCMA. The World Trade Organisation gave some guidance on the term “CKD” in **China – Measures Affecting Imports of Automobile Parts (WT) DS 339,340,342** where CKD kits were defined as all or nearly all auto parts and components necessary to assemble a complete vehicle. In **H.D Motor Company India Private Limited v Commissioner of Customs, Inland Container Depot, Tughlakabad, New Delhi 110020 and others** it was held that the applicant’s import of motorcycles in the form of components, parts and sub-assemblies as per the lists filed by the applicant would constitute import of motorcycles in complete knock down forms. The applicant argued that CKD kits with respect to televisions can be defined as “All or nearly all of the parts and components necessary to assemble a television”. A television CKD kit may include parts, components, sub-assemblies or part-assemblies.

The applicant submitted that the contracts it made were for CKD kits and not for specific parts of televisions as alleged by the respondent. The applicant submitted that under Additional Note 2 of Section XVI of the EAC Common External Tariff “a machine in a disassembled or unassembled state may be imported in several consignments over a period of time if it is necessary for convenience of trade or transport.” The only condition given is that all the constituent parts must be imported through the same entry point.

The applicant argued that though the respondent contended that the certificate of conformity described some goods as televisions, a certificate of conformity is issued by Uganda National Bureau of Standards (UNBS) certifying that a particular goods conform to compulsory Ugandan standards. It does not relate to the nature of goods for purposes of ascertaining the customs payable. A certificate of Conformity is issued under the Uganda National Bureau of Standards (Inspection and clearance of imports) Regulations 2018. The applicant submitted that a certificate of conformity is issued under a different regime and is concerned with conforming to standards. It does not relate to custom duty.

The applicant cited **M KOPA Uganda Limited v Uganda Revenue Authority TAT 15 of 2017** where the Tribunal held that where an assurance not on law, but in facts is made on full disclosure of facts is made by a taxpayer to Uganda Revenue Authority, then it is

bound by the assurance. The applicant also cited **Kampala Nissan Uganda v URA** TAT 28 of 2007 where the Tribunal held that where an assurance or a representation is made on facts and a complete disclosure of facts made, a statutory body can be estopped from altering its position regarding the representation.

The applicant submitted that It made full disclosure of facts to the respondent by submitting all its importation documents namely invoices, contracts, purchase orders, packing lists, etc prior to importation. It also submitted import schedules and a complete list of components of the CKD kits to the respondent. The respondent reviewed all the documents submitted and approved the applicant's use of HS Code 8528.72.10. Its goods were subjected to physical examination by the respondent's agents at Malaba Port. The verification accounts issued by the respondent confirmed that it had imported CKD kits of unassembled televisions. The applicant contended that the respondent cannot turn around and claim that it imported complete televisions when it had presented to the latter a full disclosure of facts that its goods were in CKD form. It accordingly prayed that the Tribunal finds that the respondent is estopped from altering its position and representation that it imported unassembled televisions in CKD forms.

On whether it operates an assembling plant, the applicant pointed out that 'assembling' is not defined in any tax statute. It accordingly cited the *Oxford Learners Dictionary* meaning of 'Assembling' which is "The action of fitting together the component parts of a machine or other object." Likewise, an assembling plant is defined as a factory where large items such as cars are put together usually using parts which have been made in other factories. Therefore the applicant submitted that it is an assembling plant importing various television parts which it puts together into a complete television. The applicant cited the evidence of AW1, its Director, that it imports television parts from China in complete 'Knock Down' condition. It is also clear from its import documents viz: purchase orders, invoices, packing lists, bills of lading, certificates of conformity, certificate of origin and verification accounts which show that it imported 21 inch, 17 inch and 14 inch complete 'Knock Down' kits. The applicant also pointed to the testimony of Engineer Kashif Bin Nowab, the plant engineer, who, during the *locus in quo* on 6th August, 2019, demonstrated to the Tribunal the process of assembling televisions at the assembling plant. The applicant argued that the plant engineer demonstrated to the Tribunal that the applicant puts together different parts of a television to come up with a complete

television in line with the Dictionary meaning of assembling. He also showed the machinery and tools that are used to assemble televisions. The applicant prayed that the Tribunal finds that it is an assembling plant because there is no law that specifies the machinery and/or number of staff employed to manage an assembling plant.

The applicant contended that it always submitted to the respondent an import schedule of the constituent parts for assembling prior to importation as is evident in Exhibits 7 and 8. On whether it made false declarations, the applicant submitted that all documents were submitted to the respondent prior to importation for it to review them before importation. Had therefore similarities been an issue at that stage, it should have been pointed out.

In its reply, the respondent submitted that it conducted a post clearance audit on the applicant for the period January 2015 to June 2017. It also conducted a physical tour of the applicant's assembling plant on 21st August 2017 and found that the applicant had a store rather than an assembling plant. It also found that the applicant's purported assembling plant employed only four staff and there was no major equipment or machinery found at the premises. The applicant did not declare any substantial plant and machinery in its assets schedule in its income tax returns. The respondent, basing on these findings, disregarded all the televisions previously declared as unassembled and kits imported at 10% import duty rate under HS Code 8528.72.10 and reclassified them under HS Codes 8529.90.00 and 8528.72.90 which carry an import duty rate of 25%. Consequently, Shs. 211,247,520 was imposed. In addition a penalty of US\$ 1,000 on each of the 24 consignments was imposed in accordance with S. 203 of EACCMA. This import duty amounted to Shs. 87,000,000.

On whether the applicant operated an assembling plant, the respondent cited the Collins Cambridge English Dictionary definition of the word 'assemble' which is "To fit together the separate parts of a machine or object". The respondent argued that the applicant was importing finished televisions. This was supported by Exhibits. A16, A17, A18, and A19. The respondent explained the importance of a Certificate of Origin, as a certificate prepared and completed by the exporter or manufacturer. It may be subject to official certification by an authorised third party. It is generally submitted to Customs authorities of the importing country to justify the product's eligibility for entry or its entitlement to preferential treatment. The respondent contended that to assure consumers the quality

and safety of the imported goods, the government of Uganda, through the Uganda National Bureau of Standard, implemented a series of guidelines – Pre-Export Verification of Conformity to Standards Programme (PVOC). It further explained that PVOC verifies the conformity of all regulated products. Compliance to PVOC requirements is mandatory. Hence every consignment of regulated products exported to Uganda must have a Certificate of Conformity.

The respondent reviewed the applicant's import documentations and found that while some described the contents as complete knock down (CKD), there are others which clearly describe the goods as complete televisions. The respondent therefore submitted that the certificate of conformity is issued for any consignment exported on behalf of the Uganda government by an independent party. It is an independent document. Verification accounts are documents issued by customs after examination of documents submitted and sighting of the goods; it is not a pre-shipment document and cannot be a basis or evidence of shipment.

In its rejoinder, the applicant submitted that the import documents including invoices, verification accounts certificates of origin, certificates of conformity, supplier's contracts, purchase orders, packing lists, bill of lading prove that the applicant imported CKD kits and television tubes. It is only a few certificates of conformity which describe the goods imported as televisions.

Having listened to the evidence adduced and read the submissions, this is the ruling of the Tribunal.

At the beginning of the trial, the parties agreed on issues. These included whether the applicant operates an assembly plant? We think the Tribunal should be more concerned with whether the tax assessed is payable? Whether the applicant operates an assembly plant may not substantially affect tax liability.

The first issue was whether the applicant operates an assembling plant. In a letter of 6th February 2009 the respondent allowed the applicant to use HS Code 8528.59.10 of the East African Community Common External Tariff, which gives the applicant a preferential rate of 10% on its imported unassembled inputs on the following conditions:

1. A detailed schedule of the constituent parts for assembling shall be submitted for approval prior to importation of the goods. The items should be in a complete knock down condition (CKD).
2. The period under which goods are expected to be consumed or assembled into television sets shall be stated.
3. Quarterly returns should be submitted on the television sets assembled from the constituent parts to Customs Audit Division on the 9th floor, Crested Towers.
4. No constituent parts shall be sold as spare parts

Mr. Al Karim Jivraj, AW1, testified that the applicant is engaged in assembling televisions and selling them. Mr. Nicholas Jengo, the respondent's witness who carried out the Post Clearance Audit in 2017, doubted whether the applicant was running an assembling plant. For him it was more of a store than a plant; there were only four employees and the applicant appeared to be more in the business of trade than assembling. In response, the applicant contended that there was no law specifying the number of staff or machinery for a place to qualify to be an assembly plant.

The Tribunal agrees with the applicant that the EACCMA does not define "assemble" and "assembling plant". The Tribunal notes that neither party presented an expert witness from either the Ministry of Industry, Trade and Cooperative or the Uganda Manufacturing Association to give guidance on what an assembling plant is. The Tribunal appreciates the definitions sourced by the parties. The applicant provided the definition of "assembling" from the Oxford Learners Dictionary as "the action of fitting together the components, parts of a machine or other objects". The respondent, on the other hand used Collins English Dictionary definition of "assembling". "To fit together separate parts of a machine or other objects." From the said definitions, it is not difficult to discern that assembling involved putting parts of a product together so as to achieve a final product.

The applicant submitted that it imports unassembled televisions in 'Complete Knock Down' (CKD) condition. The applicant adduced evidence to show that it was assembling television sets. This included visiting the *locus in quo* on 6th August 2019. During the visit, Mr. Kashif Bin Nawab, described the applicant's assembling process. The Plant Engineer took the Tribunal around the plant, showed them the process of assembling; thus proving that the applicant was putting different parts of a television to come up with a complete

set. He showed the members an assembling table specifically made for assembling televisions. From the evidence adduced the Tribunal is convinced that currently the applicant operates an assembly plant. However we are not in a position to tell whether at the time the applicant imported the items in question it was operating an assembling plant.

The Tribunal has to ask itself does the operation of an assembly plant by the applicant absolve it from paying the tax assessed by the respondent. It is difficult to ascertain when the plant started operation? If so, whether at the inception, it was assembling. At the time the applicant imported the products or parts in dispute, was the assembly plant operating? While the respondent strives to maximise tax collection, most taxpayers aim at profit maximization. One cannot rule out the possibility of a manufacturer importing completed products instead of parts in order to reduce tax liability and to increase profit.

The second issue is whether the applicant falsely declared its imports? When an importer imports goods, parts or merchandise in Uganda, the best way a taxing authority can identify and ascertain what is imported is by looking at the import documentation. The applicant contended that it made full disclosure of what was imported. It is this disclosure that should be able to determine the tax liability. Though the applicant tried to rely on the doctrine of estoppel, it can only be used as a shield and not as a sword.

The task of the Tribunal is to establish what did the applicant actually import? The Tribunal has to look at the evidence in respect of importation and determine whether the applicant has discharged its burden under S. 18 of the Tax Appeals Tribunal Act. The Tribunal agrees with the respondent that the most reliable source of information on imports is the import documents. Import documents are the documents lodged with customs at the entry point and include the following: Customs bill of entry, Invoice, Bill of lading, contract, certificate of origin, Road transit customs document, packing list, Certificate of Conformity, Import Declaration Form, amongst others. S. 235(1) of the EACCMA provides that a proper officer may within five years of the date of importation require the owner of the goods or any other person who is in possession of any documents relating to the goods to produce the documents relating to the goods. After import, goods are disposed or sold, so one is not in a position to factually ascertain what was actually imported. In order to ascertain what goods an importer imported, at times it is necessary to look at documents issued by independent third parties, such as government

institutions and public bodies. The risk of tampering with such documents in order to pay less import duty is minimal. The Tribunal will therefore focus on the following pre-shipment and other import documents: i) Packing list. ii) Certificate of Origin, ii) Certificate of Conformity and iii) Bill of Lading.

An importer furnished a packing list. This lists down all the goods or items the importer packed in the shipment containers. It is an importer's document who is at discretion to list what he may want to in order to achieve its objectives.

A certificate of origin is defined by *Black's Law Dictionary* 10th Edition p.272 as "an official document required by some countries upon the entry of imported goods, listing the place of production and what goods are included, to be certified by a customs or consular officer." The Certificate of Origin is issued by the manufacturer or exporter confirming the quantity and quality of goods imported.

A bill of lading is defined by *Black's Law Dictionary* (supra) p.198 as "A document acknowledging the receipt of goods by a carrier or by the shipper's agent and the contract for transportation of those goods." It is further stated at p.199 that:

"A bill of lading maybe regarded in three several aspects (1) It is a receipt given by the master of a ship acknowledging that the goods specified in the bill have been put on board; (2) It is document [that] contains the terms of the contract for the carriage of the goods agreed upon between the shipper of the goods and the shipowner (whose agent the master of the ship is); It is a 'document of title' to the goods, of which it is the symbol."

A bill of lading is important because it shows the goods a shipper transported. It is also a title to goods imported. However at times goods are shipped in crates where it is difficult for the shipper to verify what is shipped. Therefore it may not be very reliable.

A certificate of conformity is issued under the Uganda National Bureau of Standards (Inspection and Clearance of Imports) Regulations 2018. The certificate of conformity is a Uganda Government requirement for ensuring the quality and safety of imported goods to the Ugandan consumer. Regulation 5 reads:

"The commodities specified in Schedule 1, Part 1 shall, prior to being imported in Uganda be subjected to Pre- Export Verification of Conformity to standards (PVoC), in the country of origin."

Regulation 5(2) states the items in sub-regulation Clause 5(1) shall be accompanied by a certificate of conformity. A certificate of conformity is defined by the operations manual of the UNBS Pre-export Verification of conformity as “a document issued by the appointed service provider to conforming commodities.” Pre-export verification of conformity (PVoC) is defined as

“a type of conformity verification performed in the country of export/ origin that is essentially the assessment of the exporter/manufacturer’s statement that their Commodities conform to agreed set of requirements which may include an audit of the production processes, documentary check of Conformity with regard to regulations, general inspection and testing to ensure that specific commodities conform to the relevant Compulsory Uganda Specification or any other approved International Standards”

It is clear that Pre- export verification of goods involves inspecting the goods. One cannot say goods conform to certain standards without inspection of them. Someone who inspects the goods cannot be said not to have seen them.

The applicant contended that a certificate of conformity is issued under a different regime. It does not relate to customs duty. This contention is lacking. The Uganda National Bureau of Standards (UNBS) is a statutory body established by an Act of Parliament, under the Ministry of Trade, Industry and Cooperatives (MTIC), and is responsible inter alia for matters of Standardisation and Quality Assurance. Within its mandate, UNBS has the duty to inspect Commodities imported into the country, to ensure that they conform to mandatory Uganda standards. It is difficult for UNBS to state that goods do not conform to set standards if it does not have a proper description of the goods imported. A certificate of conformity is issued by a service provider in the exporting country. The goods that are exported are the same goods that will be imported into Uganda.

If there are any discrepancies in the import documentation, the importer should explain them as it is the one who deals with the issuing authorities. Where the documents contradict another, such documents become suspect and are considered incorrect. In the absence of any genuine explanation, the importer

would not have discharged its burden under S. 18 of the Tax Appeals Tribunal Act to prove that the assessment was excessive or incorrect.

Taking the above into consideration, the tribunal will peruse the import documentation. These documents include purchase order, Proforma Invoice, the commercial invoice, the contract, Certificate of Origin and the packing list. These document will be compared against the certificate of conformity issued by the Uganda National Bureau of Standards. Where there are discrepancies in the import documentation and the certificate of conformity where there is no valid explanation for such discrepancy the applicant will be required to pay the tax assessed.

ROYAL ELECTRONICS ASSEMBLING GROUP LTD. – ANALYSIS OF IMPORTS (EXHIBITS A1 –A28)

Exh. No.	Date	Customs entry	Commercial documents	Packing list	Certificate of conformity (COC)	Comment
A1.	9.6.17	C22117	CKD Kits (PO, KT CI)	Unassembled TVs	TV CKD kits	No discrepancy
A2	16.6.17	C23006	CKD kits. (PO, KT, CI, CO)	Unassembled flat screen TV, TV tubes	14" & 17" Television Royal	Discrepancies
A3	21.2.17	C7484	CKD kits (PO, PI, KT, CI, BL)	Unassembled TVs without tubes	TV CKD kits	No Discrepancy
A4	17.3.17	C10603	TV tubes, CKD kits (PO, PI, KT, CI, BL, CO)	CKD kits, TV tubes	14", 15", 17", 19" & 21" TV Royal	Discrepancies
A5.	16.1.17	C2319	TV tubes, CKD kits etc. (PO, PI, KT, CI, BL)	TV tubes, CKD Kits	14", 17" & 24" Televisions Royal	Discrepancies
A6.	16.1.17	C2193	CKD kits (PO, PI, KT, CI, BL, CO)	CKD Kits	CKD Kits	No discrepancy
A7.	23.12.17	C5264	TV tubes, CKD kits (PO, PI, KT, CI, BL, CO)	TV CKD Kits, TV Tubes and others	14", 15", 17" & 19" Television Royal	Discrepancies (19" is also not in PL)
A8.	10.12.16	C50583	CKD kits (PO, PI, CI, BL, CO)	CKD Kits, TV sets	CKD Kits	No discrepancy
A9	13.9.16	C37881	CKD kits (PO, PI, KT, CI, BL, CO)	CKD kits	Television Royal CKD kits	No discrepancy
A10	19.9.16	C38721	TV tubes, CKD Kits (PO, PI, KT, CI)	Unassembled TVs, TV tubes	Television Royal	Discrepancies
A11.	24.6.16	C25528	TV tubes, CKD kits, DVD player (PO, PI, CI, BL, CO)	TV tubes, CKD kits	Televisions Royal, DVD Royal	Discrepancies
A12.	20.6.16	C24575	CKD kits (PO, PI, KT, CI, BL, CO)	CKD Kits	CKD Kits	No discrepancy
A13.	30.4.16	C18015	CKD kits (PO, PI, CI, BL, CO)	CKD Kits	CKD Kits	No discrepancy
A14.	13.3.16	C11113	TV tubes CKD kits (PO, PI, KT, CI, BL, CO)	TV tubes	None	Discrepancies
A15.	13.3.16	C11108	CKD kits. (PO, PI, KT, BL, CO)	CKD Kits	No certificate	Discrepancies
A16	14.2.16	C7464	CKD kits (PO, PI, KT,	CKD kits	21", 17", 14" TV CKD	No discrepancy

			CI, BL, CO)		kits	
A17	7.12.16	C56598	TV tubes, CKD kits (PO,KT, CI,CO)	TV tubes, CKD Kits	Television Royals	Discrepancies
A18	29.11.15	C55548	CKD kits (PO,PI, KT, CI, BL, CO)	CKD kits	CKD kits	No discrepancy
A19	26.11.15	C55155	CKD kits (PO,PI, KT,CI,BL,CO)	CKD Kits	CKD Kits	No discrepancy
A20	23.10.15	C50060	TV tubes (PO, PI, KT, CI, BL, CO)	TV tubes	14", 17" 21" Television Royal	Discrepancies
A21.	26.9.15	C46382	CKD kits (PO, PI, KT, BL)	CKD kits	CKD kits	No discrepancy
A22	21.7.15	C3425	CKD kits. TVs (PO. PI, CI,KT, BL, CO)	CKD kits, TVs	CKD Kits	No discrepancy
A23	17.9.15	C44382	TV tubes (PO, PI, KT, CI, BL)	Television CKD, LED TV	17", 21" Television Royal	Discrepancies
A24	9.6.15	C27188	CKD kits (PO, PI, KT, CI,BL, CO)	CKD Kits	CKD kits	No discrepancy
A25	15.5.15	C22604	CKD kits (PO, PI, KT,CI, BL, CO)	CKD Kits	CKD Kits	No discrepancy
A26	28.3.15	C15185	CKD kits (PO, KT, CI, BL, CO)	CKD kits	CKD Kits	No discrepancies
A27	3.5.15	C20316	CKD kits (PO, PI, KT, CI, BL, CO)	CKD Kits	CKD Kits	No discrepancy
A28	29.3.15	C15311	TV tubes, CKD kits (PO, PI, KT, CI,BL, CO)	TV tubes, CKD Kits	Television Royal tubes, CKD Kits	Discrepancy

NB

PO stands for Purchase Order
PI stands for Proforma Invoice
KT stands for Contract
CI stands for Commercial Invoice
BL stands for Bill of lading
CO stands for Certificate of origin

The tribunal has compared the documentation of the imports in the said custom entries. When the import documentation were compared with the certificate of conformity, it was realised that there some discrepancies in the description of some of the imports. The applicant did not call any witness from UNBS to explain why the description in the certificate of conformity differed from the other documents. The Tribunal would want to understand why a neutral inspector from a public body would inspect an item described as a CKD kit or TV tube and identify it as a TV. The burden of proof is on the applicant to explain why the assessment should have not been made or should have been made differently. Where there is doubt in the mind of the tribunal as to the description of goods imported, then that burden has not been discharged.

The Tribunal therefore order under S. 19 (c) of the Tax Appeals Tribunal Act that the following custom entries be reconsidered by the respondent for purposes of paying the correct custom duties or tax payable: C23006 of 16.6.17(exh.A2), C10603 of 17.3.17(A4), C2319 of 16.1.17(A5), C5264 of 23.12.17(A7). C38721 of 19.9.16(A10), C25528 of 24.6.2016 (A11), C1113 of 13.3.16 (A14), C1108 of 13.3.2016 (A15), C56598 of 7.12.16 (A17), C50060 of 23.10.15 (A20), C44382 of 17.9.15 (A23), C15311 of 29.3.15 (A28). That is out of 28 customs entries 11 are sent back for reconsideration. The applicant will pay half the costs of the application.

Dated at Kampala this day of 2020.

DR. ASA MUGENYI
CHAIRMAN

DR. STEPHEN AKABWAY
MEMBER

MS. CHRISTINE KATWE
MEMBER