**THE SUPREME COURT SEATING IN KIGALI, DECIDING COMMERCIAL MATTERS, DECIDES IN A PUBLIC HEARING, TODAY ON 12/02/2016 CASE No RCOMA 0187/12/CS, AS FOLLOWS:**

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**PARTIES:**

**APPELLANT:** Rwanda Revenue Authority (RRA) on behalf of its Commissioner General, P.O. Box 3987 Kigali, represented in this case by Me KABIBI Spéciose, as counsel.

**RESPONDENT: Garibsons Commodities Central Africa LTD,** summoned at no known address

**SUBJECT MATTER:** Value equivalent to United States Dollars (USD) 170/metric ton Garibsons Commodities Central Africa Ltd to serve as a basis for taxation

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## I. CASE SUMMARY

[1] On 03/08/2012 Garibsons Commodities Central Africa Ltd made a declaration of customs tax at a customs value of 170 USD /metric ton of rice imported from Pakistan but the Customs Administration ordered it to pay the tax based on the value of 386 USD /metric ton.

[2] Garibsons wrote to the Commissioner for Customs requesting him/her that it be charged the tax based on the value of USD 170/metric ton, he/she replied that based on the meeting held on 08/05/2012 bringing together the Customs Administration, the Private Federation and Rice Importers and agreed that an indicative value ranging from 345 USD to 539 USD/metric ton be put in place for rice imported to Rwanda, its request was rejected.

[3] Garibsons filed a claim with the Commercial High Court requesting that RRA be ordered to charge it at a customs value of 170/metric ton based on the agreement to purchase rice dated 08/07/2010 entered into with MESKAT &FEMTEE (PVT) Ltd, a company from Pakistan, Court rendered case RCOM 0237/12/HCC on 07/11/2012, deciding that the Rice of Garibsons which was supplied to Rwanda on 03/08/2012 must be charged a tax based on the customs value of 170 USD/metric ton, and further ordered RRA to pay to Garibsons the counsel fees equivalent to Frw 2,000,000.

[4] In taking its decision, the Court explained that the method used by RRA of 'Fall Back Value' in determining the tax owed by Garibsons Ltd is used only when the price of the goods imported was unable to be determined. Court further said that RRA did not indicate the legally interpretable reasons behind its use of the 'Fall Back Value' putting aside the other methods that must be used before reaching this step.

[5] RRA appealed to the Supreme Court on 30/11/2012 arguing that the Commercial High Court disregarded the laws and decided that the method of 'Fall Back Value' used by RRA in determining the taxable value for the rice imported by Garibsons was contrary to the laws.

[6] The case was heard in public on 20/10/2015 and on 08/12/2015, with RRA being represented by Me Mugire Joseph as Counsel while Garibsons Commodities Central Africa Ltd failed to appear but was notified at no known address according to the Law.

## II. LEGAL ISSUES AND THEIR ANALYSIS:

**Determining whether the 'Fall Back Value' method used by RRA in determining the taxable value for the rice imported by Garibsons Commodities Central Africa Ltd is in conformity with the Laws.**

[7] Me Mugire, counsel representing RRA says that the Commercial High Court decided that Garibsons must pay tax based on the value agreed upon with the seller 'Transaction Value' allegedly because of the reasons based on to reject this method which is not provided for in paragraph 2 of the Appendix 4 to the East African Community Customs Management Act, 2004 revised edition 2009, and disregarded the fact that this paragraph should be interpreted in the light of Article 122, Section 4 of that Act which stipulates that under no circumstances should the contents of its Appendix 4 prevent the customs officer to express doubt on what was said or on the documents of declaration made available.

[8] He further says that based on this article, after RRA examined the prices Garibsons declared, it found that these prices cannot apply because even when making bulk purchasing in Pakistan, it appears nowhere on rice websites, and that the invoices of dealers in Kenya, a member country of EAC, they bulk purchase the same type of rice and on the same buyer those invoices indicate that they bulk purchase at a price higher than its price, this is confirmed by the research conducted by the Customs Administration, department of Valuation, on 08/06/2012, whereby they indicated that the taxable prices for the rice from Pakistan applicable in Kenya and Uganda are higher than those he requests to be used for charging taxes payable by it.

[9] He further says that in the Case of Garibsons versus COGEBANQUE, in its submissions as addressed to the Supreme Court, it agrees that the price of rice it purchases from Pakistan stands at USD 350 C & F Dar Es Salaam (*at the time of transaction, the price of Pakistan rice packed in 25 kg sacs was 350 USD at Tanzania's port of Dar es Salaam')* this indicating clearly that for itself the prices it based on in this case are far different from those it requests that tax be based upon.

[10]Concerning the fact that RRA did not explain the reasons as to why it ignored the other methods that must first be used before reaching to the step of 'Fall back value' which it used, Me Mugire says that the Commercial High Court disregarded Article 122.2 of EAC CMA stating that when an '*importer'* so requests in writing, he/she is given explanations as to how the customs value was determined, meaning that RRA had no reasonable ground to give those explanations in case Garibsons Commodities Central Africa Ltd did not so request in writing.

[11] He continues saying that if the Court found that RRA had to make such an explanation to the Court, the latter should have requested its reaction thereon, especially as it is only an allegation by the claimant but for which claimant did not provide his case pleadings as making part and parcel of the claim.

[12] He concludes saying that in the Case RS/REV/COM/12/CS rendered by the Supreme Court, Garibsons requested the Court to decide that it pays tax for the rice it imported between September and October 2010 at a value of 170 USD/metric ton based on the agreement dated 08/07/2010 it says it entered into with MESKAY & FEMTEE (PVT) LTD, that the Court decides that the pieces of evidence on which RRA based to justify the reasons it had doubts concerning that price are legally grounded, which is also the reason why he requests that the appeal lodged by RRA should be considered to legally substantiated because what was the bone of contention in that Case is exactly similar to the subject of litigation in this Case, and the agreement the claimant requests to serve as reference is also the same.

## COURT FINDINGS

[13] Article 122(1) of the East African Community Customs Management Act, 2004 revised edition 2009 provides that when imported goods are taxable, the value of those goods is determined in full compliance of the reasons contained in the Appendix Four attached to this Act, while section 4 of this article states that at the time of examining the value of imported goods, under no circumstances should the contents of this Appendix deprive the Customs Administration of the right it has to examine the truth on the declaration documents submitted by the importer which indicate their value.

[14] Article 122 (6) also states that in assessing the stipulation in that section or Appendix Four, reference is made to decisions, directives and the assessment submitted by the Customs Directorate, the World Trade Organization or the Customs Cooperation Council.

In this connection, Article 17 of the Agreement to Implement Article VII of the General Agreement on Customs Tariffs and Trade which also states that nothing restricts the Customs Directorate to search for the truth on the expressions or documents of declarations of goods.

[15] Appendix Four to this Act also provides that in its Section 2(1) that usually when charging tax, reference is made to the Transaction Value, but that when there are doubts on that value, use is made of the methods cited in its Sections from 3 to 17, which include: comparison of the transaction value of similar goods; comparison of value of goods that are quite similar to those being taxed (Transaction Value of similar goods); searching for other method according to which goods are sold on the market (Deductive Value); searching for the value of the good in accordance to the amounts relating to the contents of the goods, interests, expenses made etc. (Computed value), should these methods be impossible, use is made of the method of logical assessment stated in point 8(1) but with due consideration of the principles and general provisions contained in Appendix Four and of the information that will be available to the country where tax is being applied (Fall Back Value).

[16]Concerning the value of 170 USD/metric ton which Garibsons declared on the rice imported to Rwanda on 03/08/2012, the Court notes that RRA had reasonable grounds to doubt on this value because the research conducted by the Customs, Valuation Department, on 08/05/2012 browsing internet websites on which are posted international values of the rice indicated that its value is lower compared to the value of the same type of rice and quantity imported from Pakistan by importers in other member countries of the East African Community.

[17] The Court further notes that this Court in Case RS/REV/COM/0002/12/CS rendered on 31/05/2013 decided that even if Garibsons declared the price of 170 USD/metric ton of rice of the type '*IRRI-6 White Rice Long Grain'* some of this rice were broken to 20% other type broken between 20% and 30% imported in Rwanda between September and October 2010 based on the agreement it alleges to have entered into with MESKAT & FEMTEE (PVT) Ltd on 08/07/2010, Garbsons should be charged tax based on the value of 362 USD/metric ton, this confirming that RRA had all reasonable grounds to doubt on the value of 170USD/metric ton mentioned in that agreement on which Garibsons based and in this Case when it requests that the rice of the same type that was purchased from the same wholesaler which it imported on 03/08/2012 be charged a tax at the value of 170 USD/metric ton.

[18]As regards the fact that RRA determined the value at which Garibsons was charged tax using the 'Fall Back Value' method instead of using any other method among those listed in Appendix Four to the above Act which determines the East African Community Customs Management, the Court finds that there is no mistake as such because it is one of the methods to levy tax in case there is reasonable ground to express doubt on the Transaction Value listed in that Appendix, point 8, which RRA did, as explained above after comparing the value applicable in the regional countries where Rwanda is located and by browsing internet websites on which are posted international values for the same type of rice purchased from Pakistan.

[19]Concerning the fact that RRA did not explain the reasons as to why it ignored other steps to be followed before reaching the step of 'Fall Back Value' which it used, the Court notes that RRA had no obligation to give explanation as to how the Customs value was determined whereas Garibsons had not so requested in writing as provided for in Article 122.2 EAC CMA which stipulates that explanations are given to the importer of goods upon a written request.

[20]Based on the explanations given, the Court finds that the rice Garibsons imported to Rwanda on 03/08/2012 should be charged a tax at the value of 386 USD/metric ton approved by RRA.

## III. DECISION OF THE COURT

[21] **Declares** that the appeal lodged by RRA is legally grounded;

[22] **Declares** that the rice imported from Pakistan, for which Garibsons Commodities Central Africa Ltd made a tax declaration at the Customs on 03/08/2012 must be charged a tax based on the value of 386 USD/metric ton;

[23] **Declares** that Case RCOM 0237 rendered by the Commercial High Court on 07/11/2012 is modified in all its contents;

[24] **Orders** Garibsons Commodities Central Africa Ltd to pay Frw 100,000 as case filing fee.

**So ordered and pronounced in the public hearing of 12/02/2016.**

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| Kayitesi R.Emily | Nyirinkwaya Immaculée | Mukandamage M. Josée |
| Judge | Presiding Judge | Judge |

Sé

UWARUGIRA Jean -Baptiste

Court Registrar

*Certified copy of the original*

*Done at Kigali, on 12/10/2016 Jerome IMANIRAHARI [Signature and Court's Stamp]*