ICYEMEZO CYAFASHWE N'URUKIKO RW'IKIRENGA MU RUBANZA RCOMAA 00066/2016/SC RWACIWE N'URUKIKO RW'IKIRENGA KU WA 28/7/2017.

(RRA Vs UMURUNGI Umwizerwa)

I. *INTANDARO Y'URUBANZA*

UMURUNGI Umwizerwa yakorewe igenzura ku mitobe y'imbuto yatumije muri Uganda ariko mu kuyikorera imenyekanisha arikora ayishyira mu bikoreshofatizo byishyura umusoro wakwa ku byaguzwe *(tax de consummation)* ku ijanisha rya 5%.

Mu igenzura *UMURUNGI Umwizerwa* yakorewe, Ishami rya Gasutamo ryasanze UMURUNGI Umwizerwa yarakoze imenyekanisha rikosheje kuko ryasanze imitobe y'imbuto yatumije muri Uganda yari kwishyura umusoro wakwa ku byaguze ku ijanisha rya 39% mu gihe UMURUNGI Umwizerwa we yayimenyekanishije ku ijanisha rya 5% ibi bikaba byaratumye yishyura TVA nkeya mu mwaka wa 2010 kugera 2014 maze acibwa umusoro ukosoye ku byaguzwe *(Tax de Consommation)* ungana na 49,636,583 Frw n'umusoro ku nyongera gaciro ungana na 8,934,585 Frw.

UMURUNGI Umwizerwa yaregeye iki cyemezo mu Rukiko rw'Ubucuruzi rwa Nyarugenge avuga ko Komiseri Mukuru atamushubije ku bujurire bwe bityo umusoro yari yaciwe ukwiye kuvaho, ko kandi Komiseri wa za Gasutamo atarafite ububasha bwo kumuca umusoro ukomoka ku cyaha kandi icyo cyaha atacyemera.

UMURUNGI Umwizerwa asobanura avuga ko ingingo ya 21 y'Itegeko n° 26/2006 ryo ku wa 27/05/2006 rigena kandi rishyiraho imitunganyirize y'isoresha ivuga ko impaka zose zivutse hagati y'Ikigo cy'Imisoro n'Amahoro n'umusoreshwa zirebana n'ibyaguzwe zishyikirizwa Komiseri Mukuru ugomba gufata icyemezo mu gihe kitarenze iminsi mirongo itatu(30) guhera igihe zamugereyeho. Akomeza asobanura ko ingingo ya 32, igika cya 2, y'Itegeko n° 25/2005 ryo ku wa 04/12/2005 ivuga ko iyo nta cyemezo Komiseri Mukuru afashe mu gihe cy'iminsi mirongo itatu(30) cyagenwe n'Itegeko, ubujurire bufatwa nk'aho bufite ishingiro, kuba Komiseri Mukuru atarigeze amusubiza uwo musoro yaciwe wavuyeho.

RRA yisobanuye ivuga ko igisubizo ku itakamba ry'UMURUNGI Umwizerwa cyamwohererejwe hakoreshejwe agasanduku k'iposita ke gafite nimero 7454 Kigali-Rwanda yagaragaje igihe yatakambiraga Komiseri Mukuru wa za Gasutamo ku itariki ya 10/10/2015. RRA ishingiye ku ngingo

ya 253 ya East Africa Community Customs Management Act, 2004 ivuga ko mu gihe hari amategeko yo mu gihugu kigize Umuryango w'Ibihugu bya Afurika y'Iburasirazuba ateganya cyangwa avuga ibintu bimwe, hakurikizwa ibivugwa na East African Community Customs Management Act, 2004; Ibi bikaba bisobanura ko ku birebana no kujuririra icyemezo cyafashwe na Komiseri wa za Gasutamo aho gukurikiza Itegeko rigenga imitunganyirize y'isoresha n'Itegeko rigenga imitunganyirize y'umusoro ku byaguzwe wakwa ku bicuruzwa bimwe na bimwe hakurikizwa Itegeko rya East African Community Customs Management Act, 2004. Bityo ingingo ya 229(4) East Africa Community Customs Management Act, 2004 ivuga ko Komiseri asubiza uwamujuririye mu gihe cy'iminsi mirongo itatu ibarwa guhera umunsi yaboneyeho ubujurire, bityo kandi nk'uko biteganywa n'ingingo ya 2 ya EACCMA ryavuzwe haruguru, Komiseri bivuga Komiseri wa za Gasutamo akaba ari ntaho UMURUNGI Umwizerwa yashingira avuga ko atasubijwe ngo kuko atasubijwe na Komiseri Mukuru.

Ku kibazo cyo gukuraho umusoro kubera ko Komiseri wa Gasutamo adafite ububasha bwo guca UMURUNGI Umwizerwa umusoro mu gihe atigeze yemera ko yakoze icyaha. Urega asobanura ko yamenyeshejwe n'abagenzuzi ba RRA ko yakoze *declaration* itari yo, ngo kuko HS CODE yakoreshejwe atari yo. Akomeza avuga ko gukora *declaration* itari yo ari icyaha giteganywa n'ingingo ya 203 y'Itegeko rigenga za gasutamo muri EACCMA, 2004 bityo ingingo ya 219 y'iryo Tegeko iha Komiseri wa za Gasutamo ububasha bwo kwishyuza umusoreshwa mu gihe yemera icyaha, ariko ko kubera ko UMURUNGI atigeze yemera icyaha, nta bubasha Komiseri wa za Gasutamo yari afite bwo kumuca umusoro.

RRA yisobanuye kuri iyi ngingo ivuga ko, urega nta cyaha yamenyeshejwe mu nyandiko ko yakoze, ko ahubwo yagaragarijwe ko yishyuye umusoro muke ugereranyije n'uwo yagombaga kwishyura hashingiwe ku biteganywa n'ingingo ya 135 y'Itegeko rya EACCMA, 2004 ivuga ko umuntu uzatanga umubare muto w'amahoro, agomba abisabwe n'umukozi wa Gasutamo ubifitiye ububasha, kwishyura umubare uburaho kandi uwo mubare w'amahoro ugomba kugaruzwa nk'aho ari amahoro yerekeye ibicuruzwa byakiriweho amahoro make.

Urukiko rw'Ubucuruzi rwa Nyarugenge rumaze gusuzuma ibyo UMURUNGI Umwizerwa yaregeraga no kumva uburyo RRA yireguye rushingiye ku bimenyetso rwashyikirijwe n'amategeko, Urukiko rw'ubucuruzi rwa Nyarugenge rwemeje ko rusanga impamvu y'uko Komiseri wa za Gasutamo nta bubasha yari afite bwo guca UMWIZERWA Umurungi umusoro nta shingiro ifite,

bityo UMURUNGI akaba agomba gutegekwa kwishyura umusoro wose yaciwe ungana na 58,571,168 Rwf ndetse rugenera RRA indishyi z'ingana na 500,000 Frw.

UMURUNGI Umwizerwa yajuririye imikirize y'uru rubanza R.COM 1745/15/TC/Nyge mu Rukiko Rukuru rw'Ubucuruzi ku ngingo imwe ivuga ko, ***Urukiko rwemeje ko Komiseri wa Gasutamo afite ububasha bwo kwishyuza UMWIZERWA Umurungi atabanje kumukurikiranaho icyaha.***

Asobanura iyo mpamvu avuga ko ashingiye ku biteganywa n'ingingo ya 203 y'Itegeko rya East Frica Comunity Customs Management Act, 2004 Komiseri wa za Gasutamo nta bubasha yari afite bwo kuba yaramuciye umusoro utaremezwa n'Inkiko kandi ngo yarakoze icyaha. Akomeza avuga ko ibyo kuba bitarabaye agomba gushyikirizwa Inkiko hashingiwe ku biteganywa n'Ingingo ya 220 y'Itegeko rya EACCMA, 2004.

RRA yisobanuye ku ngingo yajuririwe ivuga ko hamenyekanishijwe umusoro muke bityo ko ari umusoro watubijwe akaba ari nta cyaha UMURUNGI Umwizerwa yakoze.

Urukiko rwaje gufata icyemezo muri uru rubanza ruvuga ko, kuba UMWIZERWA Umurungi yaramenyeshejwe ko yakoze imenyekanisha rikosheje hashingiwe ku ngingo ya 135 y'Itegeko ryavuzwe haruguru, kuba ataremeye ngo abe yakongera amafaranga y'umusoro waburaga, bivuga ko atemeraga ko imenyekanisha yakoze atariryo, kuba rero bigaragara ko yakoze imenyekanisha rikosheje *(incorrect declaration),* Komiseri wa Gasutamo nta bubasha bwo kumuca umusoro ushingiye ku cyaha atemera hatabanje kubaho kubanza kumukurikirana ku cyaha cy'inyandiko zimenyekanisha zitari iz'ukuri nk'uko biteganywa n'ingingo ya 220 y'Itegeko ryavuzwe haruguru, Urukiko Rukuru rufata umwanzuro ruvuga ko ibyemejwe n'Urukiko rw'Ubucuruzi mu rubanza RCOM 1745/15/TC/NYGE ku wa 06/10/2016 bivanyweho, rwemeza ko umusoro wose ungana na 58,571,168 Frw ukuweho kubera ko UMURUNGI Umwizerwa yakoze icyaha kandi akaba atacyemera bityo RRA ikaba itaragombaga kumwishuza itabanje kumurega mu nkiko mpanabyaha ngo icyaha n'ikimuhama abone kwishyuzwa uwo musoro.

RRA ntabwo yishimiye imikirize y'urubanza RCOMA 00215/2016/CHC/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi bituma irujuririra mu Rukiko Rw'Ikirenga ishingiye ku ngingo ya 28 (2)(70) igika cya kabiri n'agace ka 7 k'itegeko ngenga n° 03/2012/OL ryo kuwa 13/06/2012 Rigena Imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga ivuga ko Urukiko rw'Ikirenga rufite ububasha bwo kuburanisha mu rwego rw'ubujurire imanza zaciwe ku rwego rwa kabiri n'Urukiko Rukuru, Urukiko

Rukuru rw'Ubucuruzi cyangwa Urukiko Rukuru rwa Gisirikare, iyo izo manza zagenwemo n'Urukiko indishyi zingana nibura na miliyoni mirongo itanu z'amafaranga y'u Rwanda (50,000,000 Frw) cyangwa se zifite agaciro kagenwe n'umucamanza igihe habaye impaka, kangana nibura n' amafaranga y'u Rwanda Miliyoni Mirongo Itanu (50,000,000 Frw). Kuba ku rwego rwa mbere RRA yaratsinze ariko igatsindwa ku rwego rwa kabiri kandi agaciro k'ikiburanwa karenga Miliyoni Mirongo Itanu (50,000,000 Frw) kuko agaciro k'ikiburanwa ariwo musoro kangana na 58,571,168 Frw.

RRA yasobanuye impamvu y'ubujurire bwayo ivuga ko Urubanza rwashingiweho n'Urega ndetse n'Urukiko Rukuru rw'Ubucuruzi rukarushingiraho rwemeza ko Komiseri wa za Gasutamo atari afite ububasha bwo guca UMURUNGI Umwizerwa umusoro ntaho ruhuriye n'urwaburanwaga muri urwo Rukiko. RRA ikomeza isobanura ubujurire bwayo ivuga ko urubanza RCOMA 0047/10/CS MUNYANEZA Evariste yari yaciwe umusoro hashingiwe ku biteganywa n'ingingo ya 203 ya East Africa Community Customs Management Act, 2004 mu gihe mu rubanza rw'UMURUNGI Umwizerwa we yaciwe amahoro hashingiwe ku biteganywa n'ingingo ya 135 ya EACCMA, 2004 kubera ko icyo UMURUNGI Umwizerwa yakoresheje atari inyandiko zifite inenge *(false or incorrect documents)* nk'izakoreshejwe mu rubanza rwa MUNYANEZA Evariste, ko ahubwo icyo yakoze ari imenyekanisha rikosheje ryatumye asora make kuyo yagombaga gusora. Urukiko rwasanze UMURUNGI Umwizerwa yaragiye akora imenyekanisha ritari ryo bigatuma yishyura imisoro micye, nta cyari kubuza Komiseri wa za Gasutamo ubifitiye ububasha gusaba ko yishyura umubare ubura ku musoro yagombaga kwishyura utarishyuwe nk'uko biteganywa n'ingingo ya 135 EACCMA, 2004 ryavuzwe haruguru.

Urukiko rwasanze ibyo uburanira UMURUNGI Umwizerwa avuga ko hagomba gushingirwa ku ngingo ya 203 ya EACCMA, 2004 bityo ibyo yakoze bigafatwa ko ari icyaha bikaba bigomba kubanza gushyikirizwa Ubushinjacyaha, bitahabwa ishingiro kuko icyo yakoze ari ugukoresha HS code itariyo, bituma umusoro wagombaga kwishyurwa ugabanuka kandi ko mu nyandiko zose komiseri wa za Gasutamo yandikiye UMURUNGI nta na hamwe yigeze avuga ko yakoze icyaha cyo gukoresha ibyemezo mpimbano *(false&incorrect documents)* biteganywa n'ingingo ya 203 ya EACCMA, 2004 ngo RRA ibe irimo yivuguruza ishingira ku ngingo ya 135 ACCMA, 2004.

I. UMWANZURO W'URUKIKO

Urukiko rw'ikirenga rushingiye ko Urubanza RCOMA 0047/10/CS rwa MUNYANEZA Evariste rwari rwashingiweho n'Urukiko Rukuru Rw'Ubucuruzi rwemeza ko Komiseri wa za Gasutamo atari afite ububasha bwo guca umusoro ntaho ruhuriye n'Urubanza rw'UMURUNGI Umwizerwa kuko MUNYANEZA Evariste yaciwe umusoro hashingiwe ku ngingo ya 203 y'Itegeko rya EACCMA, 2004 ***aregwa gukoresha inyandiko zitari iz'ukuri (false or incorrect documents) agamije gutubya agaciro kabarirwaho umusoro*** mu gihe urubanza rw'UMURUNGI Umwizerwa yaciwe umusoro hashingiwe ku ngingo ya 135 EACCMA, 2004 kubera ko icyo yakoresheje atari inyandiko mpimbano zifite inenge, rwemeje ko Komiseri wa za Gasutamo afite ububasha bwo gukosora imenyekanisha rikosheje mu gihe usora yasoze amahoro make kuyo yagombaga gusora. Rushingiye ku ngingo ya 135 y'Itegeko rya EACCMA,2004 ryavuzwe haruguru, Urukiko rw'Ikirenga rwaciye urubanza ruvuga ko rusanze Komiseri wa za Gasutamo afite ububasha bwo gutegeka UMURUNGI Umwizerwa kwishyura umubare w'Amahoro yaburaga, mu gihe asanze umubare wishyuwe ari muto, bityo akaba agomba kwishyura umusoro wose yaciwe hiyongereyeho indishyi.