**IN THE COURT OF APPEAL OF TANZANIA**
**AT DAR ES SALAAM**

**(CORAM: OTHMAN, C.J., MASSATI, J.A. And MUGASHA, J.A.)**

**CIVIL APPEAL NO. 141 OF 2015**

**GEITA GOLD MINING LIMITED .....APPELLANT**

**VERSUS**

**COMMISSIONER GENERAL (TRA) ..... RESPONDENT**

**(Appeal from the Judgment and Decree of the Tax Revenue Appeals Tribunal, at Dar es Salaam)**

**(Hon. Mattaka – Vice Chairperson)**

**dated the 3rd day of June, 2015**
**in**
**Tax Appeal No. 19 of 2004**

.....

## JUDGMENT OF THE COURT

18th February & 01st March, 2016

**MASSATI, J.A.:**

This appeal emanates from the decision of the Tax Revenue Appeals Tribunal (the Tribunal) dated 3rd June, 2015, in Tax Appeal No. 19 of 2014. The impugned decision affirmed the decision of the Tax Revenue Appeals Board dated 30th May, 2014.

The facts leading to the present appeal are neither complicated nor in dispute. They are as follows. In May, 2013, the appellant imported two unassembled caterpillar dumper trucks. They entered the country through Sirim, the Kenya/Tanzania border. In the pre arrival Declaration forms (PAD), the appellant declared the goods under HS Code 87.040.10.10 of Chapter 87 of the Common East African Tariff. Under that code the duty rate for unassembled trucks was zero. The appellant also claimed that it enjoyed an exemption. The respondent, Tanzania Revenue Authority (TRA) challenged the said classification, and reclassified them under HS Code 87.04.10.90 whose duty rate was 10% and also ruled that it did not enjoy any exemption under the law.

Aggrieved the appellant lodged an appeal in the Tax Revenue Appeals Board (the Board).

The Board dismissed the appeal. On further appeal to the Tribunal, the latter also found the appeal lacking in substance, and dismissed it. In its decision, the Tribunal found not only that the respondent correctly used HS Code 8704.10.90 for classification of the dumper trucks, but also that

the appellant did not qualify for exemption under item 30 (b) of the 5th schedule to the East African Community Customs Management Act. The appellant has now come to this Court.

At the hearing of this appeal as in the Tribunal the Appellant was represented by Dr. Kibuta Ongwamuhama, learned counsel, assisted by Ms. Salome Gondwe, learned counsel. On the other hand the respondent was represent by Mr. Juma Beleko, learned counsel.

The appellant raised and argued five grounds of appeal.

In the first ground the appellant complains that the Tax Revenue Appeals Tribunal erred in law by failing to rule that Rule 1 of the General Interpretation Rules for classification of goods requires the goods to be classified according to the specified tariff heading under which they fell.

It was submitted for the appellant that, if Rule 1 enables the customs official to match the goods in question with the ones in the HS Code, then Rule 1 should be applied for classification purposes without resort to the

other rules. It was therefore wrong for the respondent and the Tribunal to take the view that Rule 2 could be applied in the classification of the trucks in this case.

But it was submitted for the respondent that Rule 1 was only intended for easy reference only, but the classification of the goods would be determined according to the forms of the heading and any relative section or chapter notes. So, in order to determine the proper classification of the dumper trucks, Rule 1 must be read together with Rule 2. According to this Rule, and the appellant's exhibits, the dumper trucks were imported as complete units and so correctly classified under Rule 2, by determining the use of the trucks as the essential character of the goods; which properly fell under the classification of "other" attracting the duty rate of 10% under HS Code 87.04.10.90.

We agree with Dr. Kibuta together with the observation in the Indian cases he cited of **MODI XEROX LTD vs COLLECTOR OF CUSTOMS** (1998) 103 ELT 619, **GLAXO LABORATORIES (INDIA) LTD vs UNION OF INDIA AND OTHERS,** that Rule 1 of the HS Code was the basic

canon, and that for legal purposes, the Tariff shall be determined according to the terms of the heading and the relative section notes and chapter notes; and that the end use of a product is irrelevant. But to our understanding that is only so if the section and chapter notes "do not otherwise require". If the notes require otherwise the subsequent Rules come into play in/sequence in determining the appropriate classification.

In the present case, the essential character of unassailed goods could not wholly have been determined by looking at the section and chapter notes. The chapter notes describe them as vehicles, other than railways or rail trams. The section notes describe them as vehicles for use of transportation of goods. The word "unassembled" could not easily reveal the essential character of the said trucks. So Rule 2 (a) had to come in. According to Rule 2 (a):-

> *"Any reference in a heading in an article shall be taken to include a reference to that article incomplete or unfinished, provided that as presented, the incomplete or unfinished article has the essential character of the complete or finished*

*article. It shall also be taken to include a reference to that article complete or finished (or failing to be classified as complete or finished by virtue of the Rule) presented unassembled or disassembled."*

This is the Rule which explains what essential character "unassembled goods," which do not otherwise fit in the chapter or section notes, fit in.

By using Rule 2 (b) of the HS Code, the respondent was not in error, because that is the only one which gives clue on how to arrive at the essential character of the dumper trucks.

On that score, we find no merit in the first ground of appeal and accordingly dismiss it.

In the second ground of appeal the complaint is that:-

*"That the Tax Revenue Appeals Tribunal erred in law by failing to rule that Rule 1 of the General Interpretation Rule take precedence and requires*

*no further reference to other rules if the desired result is provided."*

The learned counsel submitted that the Tribunal ought to have faulted the Board's decision and ought to have held that Rule 1 takes precedence and requires no further reference to other rules.

For the respondent it was contended that Rule 1 is not independent and must be read together with other rules. In the present case, Rule 1 ought to have been read with Rule 2.

This ground was indeed raised in the Tribunal, and indeed the Tribunal acknowledged so. Unfortunately, after reciting both counsel submissions on that ground of appeal, the Tribunal did not make any specific finding on the issue, but went on to dwell with the other grounds of appeal. So, the complaint that the Tribunal failed to decide on that point is well taken.

Having said that, we would like to note that much as we agree with the Appellant that Rule 1 takes sequential precedence over the other rules we have already held above that, it would be wrong to hold that the Rule takes absolute precedence. Even its wording suggests that:-

> *"...for legal purposes, classification shall be determined according to the terms of the headings and any relative, section, or chapter notes and* ***provided,*** *such headings, or Notes do not otherwise require according to the following provisions..."*

So, Rule 1 is subject to the provisions therein. It takes precedence only, if the classification or description is unambiguous. If the applied specification and the imported goods do not match, Rule 2 has to be resorted to in order to get to the accurate specifications. Rule 2 (a) assists in determining the essential character of the goods; where their pre assessed application for classification do not match. To hold that Rule 1 supersedes all the other Rules all the time would lead to absurdity because it would mean that a customs officer would have to accept every

classification suggested by an importer. We do not think that, that is the intention of Rule 1, or of the HS Code, as a whole.

So, we also find that this ground two is devoid of substance and we have to dismiss it.

In the third ground of appeal, the Tribunal is criticized:-

> *"That Tax Revenue Appeals Tribunal erred in law by failing to rule that when classifying imported goods one has to look at the character/form in which the goods are imported."*

It was submitted for the Appellant that as a matter of customs principle, in classifying goods one has to look at the state in which the goods are imported. It is not open for an officer to venture into what the goods will be or capable of being, when cleared. It was submitted before us, as it was before the Tribunal, that, it was immaterial whether the trucks were imported unassembled, the applicable HS Code was 8704.10.10, and not 8704.10.90.

For the respondent it was contended that, in order to ascertain the nature and character of the goods, the respondent had to take into account the Commercial Invoice (Exhibit A 1) which showed that the dumper trucks were purchased as whole units, and this is what led to the classification of the goods. It was further submitted that according to the appellant's own admission at the Board, the dumper trucks had to be unassembled only in order to facilitate their transportation.

It is again unfortunately true that the above ground also featured as the 6th (vi) ground of appeal before the Tribunal. But after dwelling on grounds (vii) and (v) the Tribunal went on to deliberate on ground (vii). So, it is true that the Tribunal failed to decide on ground (vi) of the appeal. This was clearly wrong. But now that this ground is before us, we shall have to determine it on the basis of the law and the evidence on record.

The answer to this issue is to be found in Rules 1 and 2 (a) of the HS Code, which as we have already found above, must be read together to get a solution.

It is Rule 2 (a) which makes reference the concept of "essential character". If those two Rules are read together must but agree with the Appellant that in classifying the imported goods, must look at the character of the goods at the time of their importation. But the form/character of the goods is a matter of evidence. All the circumstances have to be looked at, such as the physical appearance of the goods, the Commercial Invoice, etc., as well as the guidelines, in Rule 2 (a).

Taken in their totality, we are satisfied that in terms of Rules 1 and 2 (a) of the HS Code, the respondent properly took into account all the character and form/state in which the dump trucks were imported, and placed them in the correct classification code 8704.10.90.

In the fourth ground of appeal the Appellant assails the decision of the Tribunal for:-

> *"...erring in law in holding that the dump trucks were transported in dissembled for ease of*

*movement and therefore could not full under HS Code 8704.10.10."*

There, it was submitted that once the dumper trucks were classified as "unassembled" the proper code was HS Code 8704.10.10, period. It was further submitted in this Court as in the Tribunal, that the trucks were imported as unassembled not for convenience of transport; but that it was the only way they could have been imported and that given that tax character must be strictly construed, and the tariff code for such unassembled trucks was set in code 8704.10.10, it was wrong to classify them otherwise. This is where, the learned counsel referred us to the **UNION OF INDA vs TARACHARD GUPTA AND BOSS** case.

Mr. Beleko, learned counsel submitted that the Indian case cited above by the Appellant was based on Indian policy; and that although the HS Code has international application, its application must consider local policy.

On this issue, the Tribunal reiterated its finding that as the trucks were imported as complete units as supported by import documents, and the appellant's own admission, they were correctly classified under HS Code 8704.10.90. attracting duty of 10%.

In our considered view, on the facts of this case, the trucks were classified under HS Code 8704.10.90 not upon a finding that they were unassembled for purposes of ease of transportation, but because, the respondent found that in terms of Rules 1 and 2 (a) of the HS Code, after matching the goods described as "unassembled" it found that they had the essential character of complete trucks which could only fit in the classification "other", whose rate of duty was 10%. The idea of the trucks having been so packed for purposes of easy transportation was introduced by the Appellant itself in its correspondence, Exhibit A 1 and A z, and not an invention of the Tribunal.

In the result we find that this ground lacks merit and we also dismiss it.

The fifth and last ground of appeal reads as follows:-

> *"That the Tax Revenue Appeals Tribunal erred in law in holding that dump trucks in unassembled form do not fall under item 30 (b) of the FIFTH Schedule to the East African Community Customs Management Act which exempts machinery from liability to import duty."*

It was submitted for the Appellant that this ground was taken in the alternative and without prejudice to the foregoing grounds of appeal. The learned counsel submitted that unassembled trucks fall within the ambit of item 30 (b) of the fifth schedule to the East Africa Community Customs Management Act which provides general exemptions for machinery and spare parts thereof used in mining when imported by a licensed mining company. It was his view that dump trucks were machinery used in mining activities. Therefore they should enjoy the general exemption.

But the respondent had a different view. He submitted that those dump trucks do not qualify for exemption, not only because the appellant

had never claimed for such exemption in his declaration forms, but also because machinery and spares fall under a different heading for motor vehicles in which dump trucks fall.

In its decision, the Tribunal found that the dump trucks/caterpillars in this form could not fall under item 30 (b) of the 5th Schedule to the EACCMA as the goods were not exempted.

This point should not detain us. Item 30 B of the Fifth Schedule to the East Africa Community Customs Management Act, made under the authority of section 114 of the Act, provides general exemptions for:-

> *30. "Machinery, Spares, and Inputs for Direct use in Oil, Gas and Geothermal Exploration*
>
> *(a) ...(not applicable)*
>
> *(b) Machinery and spare parts thereof used in mining equipment by licensed mining companies."*

It is clear from the wording of the principal paragraph 30 that the exemption was intended to be enjoyed for direct use in Oil, Gas and Geothermal Exploration. The dumper trucks were not imported for use for any of the jobs designed in item the principal and governing paragraph. So, we agree with the learned counsel for the respondent that provision is inapplicable.

For all the above reasons we must now come to the decision that this appeal has no semblance of merit. It is accordingly dismissed with costs.

**DATED** at **DAR ES SALAAM** this 25th day of February, 2016.

M. C. OTHMAN
**JUSTICE OF APPEAL**

S. A. MASSATI
**JUSTICE OF APPEAL**

S.E.A. MUGASHA
**JUSTICE OF APPEAL**

I certify that this is a true copy of the original.

J. R. KAHYOZA
**REGISTRAR**
**COURT OF APPEAL**