THE REPUBLIC OF UGANDA
IN THE TAX APPEALS TRIBUNAL OF UGANDA AT KAMPALA
APPLICATION NO. 3/2007

EQUINOX INTERNATIONAL LTD……APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY……RESPONDENT

RULING.

The applicant brought this application for review, challenging the decision of the Commissioner General to seize its goods for presenting false documents to Customs contrary to S. 203 and S. 210 of the East African Community Customs Management Act (EACCMA).

Briefly the facts agreed by both parties are: the applicant is a limited company duly registered under the Companies Act Cap 110 Laws of Uganda. The applicant imported into Uganda a consignment of electrical lighting appliances from Fitzgerald Lighting Ltd of the United Kingdom vide Customs Entry C. 37475 of 06/09/2006. It attached an invoice of British Pound Sterling 9795.62 and paid taxes amounting to about U.shs. 22,000,000 /=.

The respondent later halted the clearance process of the applicant's consignment on account of a second invoice of British Pound Sterling 39,791.21 in respect of the same goods. The applicant objected to this and was later requested to furnish an explanation, which it did.

The applicant was later informed that the goods could not be released because they had been seized by the respondent for uttering false documents. The Tax Appeals Tribunal in Miscellaneous Application No. 06/2007 ordered the release of the goods on the 11th June 2007 upon provision of security pending the determination of the main application.

Issues:

At the Joint Scheduling Conference by the parties, the agreed issues were:

a) Whether the respondent acted legally in seizing the applicant's goods?
b) What is the correct value of the goods?
c) Remedies and costs.

The applicant in its written submission answered the following issues which had not been agreed upon:

1. Whether the invoice of Pounds 9,765.62 is false document?
2. Whether the invoice of Pounds 39,791.21 is a correct invoice for customs purposes?
3. Remedies and costs.

The respondent in reply addressed the issues as raised in the applicant's written submissions and not as agreed at the joint scheduling conference. However the applicant in its reply addressed the issues as had been agreed upon at the joint scheduling conference. It is on record that before the start of hearing, the applicant had applied to have the issues re-worded. After an objection from the respondent, the tribunal directed that both counsel stick to the issues as agreed at the scheduling conference: The Tribunal shall address the issues as agreed upon at the joint scheduling conference. The tribunal however notes that the first two issues addressed by the applicant in its first submission are addressed by the second issue agreed upon at the joint scheduling conference.

The applicant called Mr. Sendijja Kizito Ali, its managing director, as a witness. He testified that the applicant is an agent for the Fitzgerald Lighting Ltd of UK. He further testified that the applicant obtained goods amounting to 9,795.62 pounds from Fitzgerald. The said goods were paid by a bank transfer, exhibit R.7. Having paid the required taxes the respondent refused to release its goods. It was presented with a second invoice of 39,791.21. Sendijja stated that the figure in the second invoice R10 was a result of combining other costs i.e. costs of goods of 9,795.62 pounds, transport costs - ship, inland transport from Mombasa, storage charges,

custom import duty VAT and agent commission. In contradiction, he testified that the second invoice exhibit R10 was a false invoice. Mr. Sendijja informed the tribunal that it was the clearing agent who made the declarations at the custom entry. The said clearing agent did not testify before the tribunal.

The applicant's second witness, Engineer Enoch Sabiti of Stema Associates testified that the invoice of 39,791.21 pounds, exhibit R.10, was for the private use of the applicant and himself. He further testified that there was an agreement exhibit A11, between the applicant and Stema Associates for the supply of electrical fitting worth 39,791.21 pounds. The applicant never supplied the goods in issue.

The respondent's witness RW1, Geoffrey Balamaga, testified that he works with the Enforcement division in the Customs department of the respondent. Their mandate as officers of the Customs department is to detect and deter illegal entry of goods into the country. In 2006 the applicant declared to the Customs department a consignment imported from overseas under entry C.37475 of 06/09/06 – Exhibit R.1 of goods worth 9,795.6 pounds CIF – (Costs of 9,795.62 (FOB), Insurance of 1800 and Freight of 174). The price of 9,795.62 was adjusted by the respondent as per paragraph 9 of the fourth schedule of EACCMA. The corrected value declared for customs was 11.769.62 British pounds for which tax of Ushs. 22,022,681/= was paid. When the department cross checked the documents i.e. the invoice exhibit R8, attached by the applicant, they found it inconsistent with what they had at that time, documentation from the same country of origin where the same consignment was originating. Balamaga also testified that the respondent's intelligence unit discovered a commercial invoice, exhibit R10 that related to the same consignment but had different values and figures quoted. However because of security reasons the respondent could not disclose the source of its information to the tribunal.

On analyzing the two documents the respondent found them to have features that glaringly distinguished them. Exhibit R8 did not bear a manufacturer's stamp while R10 had one. The signatures on R8 and R10 differed. The figure on R8 was 9,795.62, while R10 had 39,791.21 pound sterling. Whereas R10 had got a VAT analysis for the goods below the stamp, R8 did not have any. The total invoice quantities in R8 are in 4 decimal places whereas R.10 has 2 decimal places; R.8 declares price, but R.10 declares unit price. Balamaga testified further that these are salient features on invoices from UK and that are not standard but act as guides to the respondent in establishing the authenticity of the documents.

Having made its observations the respondent issued a query notification notice, exhibit R9, to the applicant. The applicant was requested to attach a sale contract, an irrevocable letter of credit, a freight invoice and the original invoice. The applicant answered the query notification notice. However no sales contract was attached. The applicant attempted to explain the two invoices in exhibit R13, which still had inconsistencies. When the respondent was not satisfied with the explanations given in the letter, it issued a seizure notice to the applicant. The seizure notice was signed by the applicant.

On the first issue of whether the respondent acted legally in seizing the applicant's goods, the applicant, contended that the invoice of 9,795.62 pounds, exhibit R.8, was an ex-works invoice. It was a genuine invoice, and the goods were not liable to forfeiture and therefore their seizure was unlawful. The applicant further contended that even if the seizure was lawful, so long as the Commissioner failed within two months to institute proceedings against the applicant, or to require the claimant to institute proceedings, the goods ought to have been released in accordance with section 216(2) of East African Community Customs Act 2004 (ECCMA). Their continued detention after two months without prosecution constituted an illegality. The institution of proceedings referred to is in accordance with S. 220 of the EACCMA and the proceedings should be criminal and not before the Tax Appeals Tribunal. The applicant made a claim for the goods vide C 43745 by the letter of 5th October 2006 –

Exhibit A3. Therefore not only was the initial seizure of the goods illegal, but the continued detention of the goods after a period of two months without prosecution illegal.

Counsel for the respondent did not make any submission on issue (a) arguing that counsel for the applicant had not addressed it in its written submissions. As pointed out already, the applicant had re-worded the issues in the first submissions. For the respondent's reply to issue (a), the tribunal will look at the evidence adduced at the trial.

On issue (b), what is the correct value of the goods? Both counsel do not address the issue directly. The Tribunal is of the view that issue (b) is hinged on which of the two invoices – invoice of 9,795.62 pounds (R.8) and invoice of 39,791.21 (R.10) is the correct one? Both counsel made submissions accordingly.

Counsel for the applicant contended that the invoice of 9,795.62 pounds (Exhibit R.8) was an ex-works invoice, and the respondent had relied on it for making an adjustment to the tax on the imported goods. It was therefore a genuine invoice. The counsel for the applicant also contended that the respondent did not engage either a handwriting expert or get a police report to determine that the invoice of 9,795.62 pounds was false, and neither did the respondent verify the said document with the exporter – Fitzgerald Lighting Ltd of UK. When the respondent demanded an explanation for its existence, the applicant provided it in a letter dated 26/09/06 – exhibit R.13. The applicant did not receive any response from the respondent, apart from the seizure notice. The counsel for the applicant argued that the differences between the two invoices, R.8 and R.10 are totally irrelevant to customs valuation, and at no time did the applicant admit that the invoice of 39,791.21 pounds (R.10) was the correct one for the customs value of the imported goods.

Counsel for the applicant also contended that the secondary evidence provided for in the EACCMA's Fourth schedule was never used by the respondent to establish the genuineness

of either the invoices of 9,795,.62 or invoice of 39,791.21 pounds, and that the onus of writing to the exporter on the two invoices was on the respondent. The respondent failed to do so, as required in Sect. 122(4) of EACCMA.

In reply the respondent argued that submission of the invoice of 9,795.62 in the declarations under entry C.37475 of 06/09/06 – exhibit R.2 was false because it had an ex-factory price, and there was no addition of handling charges, transport and insurance in the United Kingdom, in line with international trade. Counsel for the respondent also submitted that S.226 (1) of EACCMA protects it from disclosing the source of information that enabled the respondent to obtain the second invoice of 39,791.21 pounds. Neither the applicant nor the exporter, Fitzgerald Lighting Ltd, disowned this document.

Counsel for the respondent submitted further that the applicant made contradictory and unbelievable explanations in exhibit R13. After these explanations, several meetings were held and correspondences exchanged between the applicant and the respondent. The respondent was satisfied that the transaction value as depicted in the invoice of 39,791.21 pounds – R.10 was the genuine customs value. Subsequently, the respondent assessed the taxes in the sum of Ushs. 79,839,201/= on the second invoice. The respondent had been ordered, in *Miscellaneous Application N. 06/2007*, to release the goods upon provision of a security bond of U.shs. 149,215,529/= which was the value of goods. The applicant had paid U.shs 22,022,618/= at self declaration. There is a balance of U. Shs. 57,807,520/= outstanding from the applicant as taxes on the second invoice.

Having listened to the evidence of the witnesses, examined the exhibits and read the submissions of the parties, the findings of the Tribunal are stated here below:

Issue (a) is whether the respondent acted legally in seizing the applicant's goods? The applicant declared its goods, by way of a customs entry C.37475 of 06/09/2006 – exhibit R.2.

One of the documents attached to the entry was the invoice of 9,795.62 pounds – exhibit R8. Upon checking the entire documentation attached to the entry, the respondent became dissatisfied, in particular to the invoice, exhibit R.8. The respondent asked the applicant to provide more supporting documents. S. 122(1) of the East African Community Customs Management Act 2004 (EACCMA) provides where goods are liable to import duty advalorem, then the value of the goods shall be determined in accordance with the fourth schedule and import duty shall be paid on that value. The fourth schedule provides for various methods on how import duty maybe determined. However S. 122(4) further provides that:

> *"Nothing in the Fourth Schedule shall be construed as a restricting or calling into question the rights of the proper officer to satisfy himself or herself as to the truth or accuracy of the statement, document or declaration presented for customs valuation purposes"*

On being dissatisfied the respondent was justified to request for further document. The applicant availed the extra documents, apart from a sales contract which it did not have. The applicant contends that the respondent should have determined the taxes in accordance with the fourth schedule. Where entries in a customs declaration are not correct a custom officer shall not be restricted to it.

Then the issue of a second invoice for the similar quantity of goods and from the same source showing a value of 39,791.21 pounds came up. While the fourth schedule is helpful in determining taxes the issue before the customs department was the authenticity of the invoice presented to it. The respondent demanded an explanation for the existence of two invoices relating to the same goods. The explanations given by the applicant were in a letter written to the respondent on 26/09/2006 exhibit R.13. The respondent found these explanations unacceptable and proceeded to issue a seizure notice, dated 02/10/2006 – exhibit R.11, in accordance with section 203 (a) of EACCMA.

S. 203 reads

> *203. A person who, in any matter relating to the Customs-*
>
> *(a) makes any entry which is false or incorrect in any false particular, or*

documents

(b) makes or causes to be made any declaration, certificate, application, or other document, which is false or incorrect in any particular; or

(c) when required in accordance with this Act to answer any question put to him or her by an officer, refuses to answer such question or makes any false or incorrect statement in reply thereto; or

(d) …….

(e) in any way is knowingly concerned in any fraudulent evasion of the payment of any duty; or

(f) except by authority moves, alters, or in any way interferes with any goods subject to Customs control; or

(g) brings into a Partner State, or has in his or her possession, without lawful excuse any blank or incomplete invoice, bill head, or other similar document, capable of being filled up and used as an invoice for imported goods; or

(h) counterfeits or in any way falsifies, or knowingly uses when counterfeited or in any way falsified, any documents required or issued by, or used for the purpose of, the Customs,

commits an offence and shall be liable on conviction to imprisonment for a term not exceeding three years or to a fine not exceeding ten thousand dollars.

The respondent suspected the applicant or it's agents had committed a crime by making a false declaration.

Once a false declaration has been made goods are liable to forfeiture. S. 210 (g) of the EACCMA reads

S. 210. In addition to any other circumstances in which goods are liable to forfeiture under this Act, the following goods shall be liable to forfeiture

(g) any goods in respect of which, in any matter relating to the Customs, any entry, declaration, certificate, application or other document, answer, statement or representation, which is knowingly false or knowingly incorrect in any particular has been delivered, made or produced; and

Once goods are liable to forfeiture, the law empowers the concerned officers to seize them.

Section 213 of the EACCMA reads

> *(1) An officer or a police officer or an authorised public officer may seize and detain any aircraft, vessel, vehicle, goods, animal or other thing liable to forfeiture under this Act or which he or she has reasonable ground to believe is liable to forfeiture; and that aircraft, vessel, vehicle, goods animals or other thing may be seized and detained regardless of the fact that any prosecution for an offence under this Act which renders that thing liable to forfeiture has been, or is about to be instituted.*

The law provides that the authorized public officer should have reasonable grounds to believe the goods are liable to forfeiture. The emergence of the second invoice R10, of 39,791.2 pounds, raised suspicion in the officers that the applicant had made false declarations. The tribunal noted that the respondent's refusal to accept the explanations provided by the applicant in R.13 amounted to it querying the entire entry of C.37475 of 06/06/2006 – R.2. Not being satisfied with the explanation the respondent seized the goods. The respondent was justified to seize the goods belonging to the applicant on the suspicion that an offence had been committed. At the time of seizure it is not required that any prosecution should have been instituted. In the tribunal's considered opinion, the respondent acted within the provisions of the East African Community Customs Management Act 2004. The seizure of the consignment was legally done.

The issue before the tribunal was whether the seizure was lawfully done? This issue is also stated in the applicant's application. The applicant did not raise an issue of whether the continued detention of the goods was illegal in it's pleading. However in its submission the applicant contended that the continued detention of the goods was illegal. The respondent did not address the matter of the continued detention of the goods in it's submission. S.22 of the Tax Appeals Tribunal Act provides that a proceeding before a tribunal shall be conducted with as little formality and technicality as possible. Hence the tribunal shall try to address the issue of the continued detention of the goods despite it not being stated as one at commencement of the trial.

Seizure of goods is one thing and continued detention is another. The tribunal has already held the seizure was lawful, but was the continued detention of the goods illegal? The law provides under S. 214 that the respondent has to give notice of the seizure which was done. S. 214 of the Act reads

> *214.-(1) Where anything has been seized under this Act, then, unless such thing was seized in the presence of the owner of the thing, or, in the case of any aircraft or vessel, of the master thereof, the officer effecting the seizure shall, within one month of the seizure, give notice in writing of the seizure and of the reasons to the owner or, in the case of any aircraft or vessel, to the master:*
>
> *Provided that*
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> *(a) notice of seizure shall not be given in any case where any person has, within a period of one month, been prosecuted for the offence by reason of which the thing has been seized, or the offence has been compounded under Part XVIII, and if, after any notice has been given but before condemnation of the thing in accordance with this Act*
>
> *(i) any such prosecution is brought, then such thing shall be dealt with in accordance with section 215 as if such notice had been given;*
>
> *(ii) the offence is so compounded, then such thing shall be dealt with in accordance with Part XVIII as if no such notice had been given;*
>
> *(b) where any such thing has been seized in the presence of any person coming within the definition of owner for the purposes of this Act, then it shall not be necessary for the officer effecting the seizure to give notice to any other person coming within such definition;*
>
> *(c) a notice given to any person coming within such definition of owner shall be deemed to be notice to all other persons coming within such definition;*
>
> *(d) …….where a person coming within such definition of owner is*
>
> *(2) ……*
>
> *(3) Where anything liable to forfeiture under this Act has been seized, then*

(a) if any person is being prosecuted for the offence by reason of which the thing was seized, the thing shall be detained until the determination of such prosecution and dealt with in accordance with section 215;

(b) in any other case, the thing shall be detained until one month after the date of the seizure, or the date of any notice given under subsection (1), as the case may be; and if a claim is not made as provided in subsection (4) within a period of one month, such thing shall be deemed to be condemned.

(4) Where anything liable to forfeiture under this Act has been seized, then, subject to subsection (1) (a) and subsection (3) (a), the owner may, within one month of the date of the seizure or the date of any notice given under subsection (1), as the case may be, by notice in writing to the Commissioner claim such thing.

(5) Where any notice of claim has been given in accordance with subsection (4), then the thing seized shall be detained by the Commissioner to be dealt with in accordance with this Act.

(6) The Commissioner may permit such thing to be delivered to the person making a claim, in this Part referred to as the claimant under subsection (4), subject to the claimant giving security for the payment of the value of the thing, as determined by the Commissioner in the event of condemnation of the thing.

In the application before the tribunal, the respondent contends that the neither applicant or it's agents were ever prosecuted. However because the respondent did not address the said issue in its submission (as already indicated the respondent's submission in reply answered different issues raised by the applicant) the said contention was not rebutted. Also because the detention of the goods was not an issue the respondent did not adduce evidence to deny or confirm that criminal proceedings were instituted. RW1 Mr. Geoffrey Balamaga merely stated in his evidence "We opened up an offence under S.203 of the East African Customs Management Act, for false declarations to Customs." This is vague. What does "opening an offence" mean? Was he referring to drawing a charge sheet or instituting proceedings against the applicant? On the other hand the applicant's witnesses were silent in their testimony as to whether or not any criminal proceedings were instituted against them. It is only in its submissions that counsel for the applicant mentions failure to prosecute the applicant's

officers. During the hearing emphasis was not put on the criminal proceeding because the continued detention of the goods was not an issue.

In the event criminal proceedings were not brought against the applicant S. 214 (3) requires that the items should have been detained until one month after the date of seizure or the date of any notice given under Subsection 1. The respondent issued a notice as required under subsection 1 which is exhibit R11. The date of the notice is 2.10.2006. S. 214(3)(b) required the applicant to make a claim within a period of one month. In the event such claim is not made the items would be deemed to have been condemned.

Under S. 216 of the EACCMA where notice of claim has been given the respondent is required to prosecute the applicant or require the applicant to institute proceeding for recovery. S. 216 reads

> *216.-(1) Where any notice of claim has been given to the Commissioner in accordance with section 214, the Commissioner may, after within a period of two months from the receipt of such claim, either-*
>
> > *(a) by notice in writing to the claimant, require the claimant to institute proceedings for the recovery of such thing within two months of the date of such notice; or*
> >
> > *(b) himself or herself institute proceedings for the condemnation of such thing.*
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> *(2) Where the Commissioner fails within the period of two months either to require the claimant to institute proceedings, or the Commissioner fails to institute proceedings, in accordance with subsection (1), then such thing shall be released to the claimant:*
>
> *Provided that if the thing is prohibited goods or restricted goods which has been imported, or carried coastwise or attempted to be exported in contravention of this Act, the thing shall not be released to the claimant but may be disposed of in such manner as the Commissioner may direct.*
>
> *(3) Where the Commissioner has, in accordance with subsection (1), required the claimant to institute proceedings within the period of two months and the claimant has failed to do so, then on the expiration of the period the thing shall be condemned and shall be forfeited and may be sold or otherwise disposed of in such manner as the Commissioner may direct.*

(4) Where any proceedings have been instituted in accordance with this section, then

(a) if the court is satisfied that a thing was liable to forfeiture under this Act, the thing shall be condemned;

(b) if the court is not so satisfied, the thing shall be released to the claimant:

Provided that the court shall not release the thing to the claimant unless it is satisfied that the claimant is the owner or, by reason of any interest in the thing, is entitled to the possession thereof and if the court is not so satisfied, the thing shall be condemned as if no claim had been made.

The applicant in its reply states that it applied in it's letter, exhibit A3, dated 5th October 2006 which is received by the respondent on the same day for the release of it's consignment. Exhibit A3 does not make reference to the seizure notice. It refers to the letter of 26.9.2006 and is a continuation of the said letter. However because the continued detention of the goods was not an issue at the scheduling the respondent did not address the tribunal as to whether A3 amounts to the notice of claim required under S. 214 EACCMA. The applicant's witness did not inform the tribunal as to when he signed the seizure notice. What is on record is that the clearing agent refused to sign the seizure notice and later the applicant signed it. Was the letter A3 sent before or after the applicant was aware of the seizure notice? The date of signing the seizure notice would have helped the tribunal to determine whether it constituted a notice of claim. A notice may not necessarily have any format. Maybe neither party followed the right procedure? One of the reasons issues are drawn at the beginning of a trial is to give all parties a chance to be heard and to allow the parties present evidence in rebuttal of what the other has stated. The respondent should have been given a chance to inform the tribunal on whether A3 constituted a notice of claim. If so, what happened after the applicant delivered it to them. Was there any criminal proceedings instituted? The applicant's witnesses should have informed the tribunal when the seizure notice was signed. Were there any criminal proceeding brought against its officers and when were the goods released? The tribunal cannot make assumptions where there is no evidence before it.

The applicant actually applied to the Tribunal in Misc Application 6/2007 which ordered the release of the goods to the applicant on the 11.6.2007 on the provision of security. There is no evidence as to when the goods were released in pursuant of the said order. In the event exhibit A3 constituted a notice of claim and no criminal proceedings were instituted against the applicant the tribunal would have held the continued detention of the goods until the actual date released as illegal. This would have been done outside the statutory time limits.

The issue of the continued detention was not pleaded by the applicant. It was not included among the issues agreed upon during the conference scheduling. The applicant did not lead any evidence on it. It came during the submissions in reply of the applicant. The respondent was not given a chance to confirm or rebut the new allegations raised. The said issue of detention was an afterthought. On second thoughts the tribunal shall not address it.

As already stated, the tribunal holds that the seizure of the applicant's goods by the respondent was not unlawful. This issue is decided in favour of the respondent.

Issue (b), what is the correct value of the goods is determined by which of the two invoices, the pro forma invoice dated 4.4.06 of 9,795.62 pounds, exhibit R8, or the commercial invoice dated 24.4.06 of 37,791.21, exhibit R10 looks more authentic? According to the respondent's witness RW1 Geoffrey Balamaga a pro-forma invoice is a document highlighting the quotation of what exactly the importer has proposed to buy; it shows quantity and the price. A commercial invoice, defined by the same witness is the final document stipulating what the buyer has finally accepted to take on. Both invoices are from the same source – Fitzgerald Lighting Ltd of UK.

Before addressing the said issue the tribunal wishes to bear in mind that the onus of proof is on the applicant. S.18 of the Tax Appeals Tribunal Act provides that in a proceeding before a tribunal for review of a taxation decision the applicant has the burden of proving that-

(a) *where the taxation decision is an objection decision in relation to an assessment, the assessment is excessive; or*

(b) *in any other case, the taxation decision should not have been made or should have been made differently.*

The evidence presented in support and opposition of the above issue is factual. S. 22 of the Act further states that a proceeding before a tribunal shall be conducted with as little formality and technicality as possible, and the tribunal shall not be bound by the rules of evidence but may inform itself of any matter in such manner as it thinks appropriate. The burden of proof before the tribunal like other civil courts is on a balance of probabilities. Taking the above into consideration the tribunal shall evaluate the evidence presented before it.

The applicant does not deny the pro forma invoice of 9,795.62 exhibit R8. The applicant's witness Mr. Ali Ssempija testified that it was from Fitzgerald. The respondent did not bring the witness who presented the second invoice of 37,791.21 to it in court for security reasons. It is a well known fact that in order for the respondent to collect the correct amount of taxes and obtain information on false entries it relies on whistle blowers or informers. To make such evidence inadmissible because its origin is not clear would be a blow to the fight against corrupt practices which are done in the dark. S. 226 of the EACCMA provides that it is not mandatory in any proceeding to disclose the nature of information received in customs matters or name of the person who released the information. However the tribunal shall caution itself against the use of such evidence as it can be used to the detriment of the taxpayer. Such evidence can easily be concocted. The tribunal will look at the circumstances of each invoice, trade practice and the evidence adduced before making a conclusion.

When the invoice of 9,795 exhibit R8, is compared with that of 37,475 exhibit R10, the latter looks more authentic. R8 did not bear the manufacturer's stamp which R10 has. R10 has a VAT analysis while R8 does not. The applicant did not have a contract to support invoice R8. Invoice R10 has a supporting contract dated 13.5.2006, exhibit R15, between Fitzgerald

Lighting Company and Stema Associates. The price of 37,791.21 British pounds in the contract is the same as that in invoice R10. In fact the applicant's second witness Mr. Enoch Sabitti testified that his company had contracted the applicant to bring in goods worth 37,791.21 British pounds. He further testified that the applicant did not supply the said items. The actual supply of the said items is another issue. His company is free to sue the applicant for breach of contract in the relevant court. The applicant's second witness did not deny the quantities and the price in R10. Such an omission is important.

The Tribunal has noted that besides the differences of the two invoices as submitted by the respondent's witness Balamaga, there are glaring differences in the prices per unit- irrespective of the labels used – price list (R.8) or unit price or net unit price (R.10). A small sample tabulation below shows it:

Ref No.	Item description in line with verif. Account LV/A	Quantities		Price per unit in Pounds		Totals in pounds.	
		R8	R10	R8	R10	R8	R10
J2D 16	J2D 28 Jupiter	80	80	2.2500	11.26	180.00	900.80
U226564	UVM 418X CAL	300	300	3.8200	15.53	1146.00	4659.00
P216	P2D 16 Phoenix	80	80	2.6800	10.88	214.40	870.40
G205048	GL 136X CAL	150	150	3.2100	13.03	481.50	1954.50
L209336	LTTX Light Pack	200	200	1.4400	5.85	288.00	1170.00
L208205	LPT 18X Light pack	500	500	0.7300	2.98	365.00	1490.00
L208524	LPF 36X Light pack	1500	1500	0.8400	3.40	1260.00	5100.00
W211164	ADP 36 B MK2 Budget W. pack	200	200	2.6100	10.59	522.00	2118.00
L305381	LPFT236X Light pack	300	300	1.2800	5.21	384.00	1563.00
D206005	DMLP6 Dim Light pack	89	89	6.3800	1.54	33.88	137.06

The information in the first four columns is identical in the two invoices. Across the board, the price per unit in R.8 is around one quarter (1/4) of the price unit in R.10, for the same item. This difference is more critical than most of the glaring different salient features pointed out by the respondent. In any case, these salient features enumerated by witness Bamalaga, are only guides towards establishing the authenticity of the documents. The respondent's

intelligence did not contact the manufacturer, Fitzgerald Company, to find out the authenticity of the two invoices. However that is not fatal as the onus is on the applicant, who actually knows the manufacturer better, to prove that the Commissioner should have acted otherwise.

What is important to note is that the applicant and the respondent do not deny the quantities in R8 and R10. What is in dispute are the prices and the value of the sale. The unit prices are different hence giving rise to different tax liability.

The conduct and the demeanor of the plaintiff's witness Mr. Sendija Ali is unconvincing. He testified that exhibit R10 is a false document. However it is on record that he wrote to the respondent in exhibit R13 trying to explain the breakdown of how the figure in R10 was reached. Why would he go to the length of explaining a falsehood? Simply denying it would have sufficed. While he denies R10 in one breath, in another he told the tribunal that R10 was for his personal use. The applicant's second witness, Engineer Enoch Sabiti of Stema Associates testified that the invoice of 39,791.21 pounds, exhibit R.10, was for the private use of the applicant and himself. In essence the second invoice of 39,791.21 is not false. What is so private about a commercial document?

Mr. Sendija Ali's evidence that R8 is an ex works invoice leaves a lot of doubt in the mind of the tribunal as to his conduct. For tax purposes the applicant ought to have submitted a CIF (Costs, Insurance and Freight) commercial invoice. By submitting an invoice with a less figure he was under -declaring the value of the goods imported. If the applicant is to seek justice it should come with clean hands. The fourth schedule of the EACCMA paragraph 2(1) states that the customs value of imported goods shall be the transaction value, which is the price actually paid for the goods adjusted in accordance with paragraph 9. The price actually paid for goods includes cost, insurance and freight. If the applicant were to sell it's goods in Uganda would it exclude the costs it incurred? Mr. Sendijja testified that the figure in the second invoice R10 of 39,791.21 was a result of combining other costs i.e. costs of goods of

9,795.62 pounds, transport costs - ship, inland transport from Mombasa, storage charges, custom import duty VAT and agent commission. If we are to go by this testimony it would mean that the adjustment made under paragraph 9 of the fourth schedule on the price of 9,795.62 to 11.769.62 British pounds for which tax of Ushs. 22,022,681/= was paid, was not correct.

Did the irrevocable letter of credit –Exhibit R.7 prove that the invoice of 9,795.62 pounds was a genuine invoice as the applicant submitted? It is not full-proof, although this letter was never queried at the hearing. This letter of credit could have been part payment, given that the invoice associated with it was only a pro-forma invoice, which can be attached to the customs entry. The balance of payment could be paid after the issuance of the commercial invoice. The applicant argued that the invoice of 39,791.21 pounds R.10 was for internal use. From onset, the Tribunal found this fallacious. This has an invoice address to the applicant – Equinox International Ltd, of Uganda. The invoice was prepared by Fitzgerald Lighting Ltd of UK – the principal company for whom Equinox International Ltd is an agent in Uganda. Any subsequent invoice generated locally, for example for Stema Associates, could only and meaningfully include the R.10 information, being the actual cost of the goods imported for the job. This invoice would also include some of the items mentioned in R.13, for example customs clearance expenses, but certainly not the contractual value of R.13.

The Tribunal's conclusion is that the invoice of 9,795.62 pounds (R8) does not look authentic. The applicant, on whom the burden of proof fell, failed in establishing the falsehood of R10. It failed to do so in the written explanation in the letter of 26/09/2006 –exhibit R.13. The letter was totally irrelevant in explaining the existence of this second invoice R.10. The invoice of 39,791.21 pounds (R.10) is plausible because the applicant indirectly admitted that it was it's document. The value of the goods for customs purpose is 39,791.21 pounds plus insurance cover plus freight to Kampala i.e. CIF Kampala.

In the circumstance this application is dismissed with costs. The tribunal notes that since it is not a criminal court and the matter is not a criminal prosecution as provided for in S.214 to S.216 of the EACMMA, it cannot order that the full security bond be forfeited to the state. However the applicant is free to recover any outstanding taxes from it. It is not disputed that there is a balance of U. Shs. 57,807,520 outstanding from the applicant as taxes on the second invoice. The tribunal orders that the applicant pays the outstanding taxes of Shs. 57,807,520/= plus costs to the respondent.

Dated at Kampala this day of 2010.

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Mr. Asa Mugenyi	**Mr. Stephen Besweri Akabway**	**Mr. George Wilson Mugerwa**
Chairman	**Member**	**Member**