

REPUBLIC OF KENYA
IN THE TAX APPEALS TRIBUNAL
APPEAL NO. 11 OF 2016

PWANI OIL PRODUCTS LIMITED.....APPELLANT

-VERSUS-

THE COMMISSIONER, CUSTOMS SERVICES DEPARTMENT.....RESPONDENT

RULING

1. The Appellant imports and refines/processes edible oils for both the local and export markets. During the period 2012 – 2013 the Appellant applied for and was granted remission for Value Added Tax (VAT) in respect of crude palm oil products imported for manufacture of Oil products for export, namely but not limited to vegetable oils/fat, laundry bar soap and glycerin.
2. The Respondent gave the remission on condition that the Appellant executes security bonds for the due performance under the remission scheme and further that the raw materials imported by the Appellant were for the manufacture of goods for export purposes. The purpose of the security bonds is to enable the Respondent recover any taxes found due.
3. The Respondent executed the said security bonds and proceeded to import the raw materials i.e. crude oil and palm oil and manufactured products for exports to various destinations.
4. The Appellant subsequently applied for and obtained cancellation of the security bonds from the Respondent.
5. Sometimes in October 2014, the Respondent wrote to the Appellant and demanded additional taxes in respect of VAT, Import Declaration Fees (IDF), penalties and interest on the basis that the Appellant had not exported products manufactured using the raw materials imported under the remission scheme.
6. Being aggrieved by the Respondents claim to demand the said taxes, the Appellant filed an appeal before the then, Customs & Excise Appeals Tribunal whereupon the parties entered into and filed consent to pay an agreed amount of taxes.

7. The Respondent subsequently conducted post audit under its investigation and enforcement unit and found out that some exports could not be accounted for and proceeded to demand short levied taxes. The Respondent further proceeded to issue Agency notices in enforcement of collection of taxes.
8. The Appellant proceeded to the High Court and filed a Judicial Review Application to wit Miscellaneous Cause No. 455 of 2014. The parties deliberated the matter in the said Judicial Review Application and on 16/2/2016 the court delivered its ruling. /It disallowed the Appellant's prayers for CERTIORARI and PROHIBITION against the Respondent. The court further ordered that the issue as to whether or not the Appellant's documents are forgeries as alleged by the Respondent would be best left for the determination of the Tax Tribunal.
9. On 10/5/2016, the Appellant filed an exparte application dated 21/4/2016 and appeared before the Tribunal on 18/5/2016. The Appellant sought orders for stay of collection of taxes.
10. On 18/5/2016, the Tribunal granted an interim order for stay pending the inter-parties hearing of the Appellant's application and ordered that the matter proceeds to inter-parties hearing.
11. The Appellant argued that the Respondent has threatened to institute recovery measures for the demanded taxes amounting to Ksh: 134,883,572 as at 20th November 2014, which sum they allege, is colossal if paid to the Respondent will adversely and severely affect its operations and cause irreparable loss and damage to the Appellant.
12. The appellant further alleged that it is apprehensive that the Respondent would not be in a position to refund any monies if the intended Appeal is successful and its appeal will be rendered nugatory.
13. The Tribunal notes that the Respondent did not file any response to the Appellant's application herein save for the oral submissions made before the Tribunal by its representative during the hearing of the Application. There were no grounds of objection or affidavit filed by the Respondent.
14. The Tribunal notes that it has powers under Section 18 of the Tax Appeals Tribunal Act, 2013 to grant stay Orders. The same provides as follows:-

"Where an appeal against a tax decision has been filed under this Act, the Tribunal may make an order staying or otherwise affecting the operation or implementation of the decision under review as it considers appropriate for the purposes of securing the effectiveness of the proceeding and determination of the appeal."

15. Having considered the Appellant's application, the grounds thereof together with the supporting affidavit of one, Rajan Malde, and the submissions by the counsels on record, the Tribunal finds that the Appellant has shown sufficient cause to enable it to exercise its discretion in granting the order for stay herein.

16. In view of the a foregoing the Tribunal orders the following:-

- a) The Appellant's application filed on 10th May, 2016 is hereby allowed with costs to the Respondent.
- b) The Respondent's costs are hereby assessed at Ksh: 50,000/= payable within seven (7) days from the date hereof.
- c) The Appeal be set down for hearing

THESE ARE THE ORDERS OF THIS TRIBUNAL.

DATED and DELIVERED at NAIROBI this.....9th.....day ofSEPTEMBER.....2016.


JOSEPHINE KEMUNTO MAANGI (MRS)
CHAIRPERSON OF THE PANEL

MR. JOSEPH WACHIURI.....MEMBER

MR. PHILIP KORIRMEMBER

MR. RICHARD ROTICH.....MEMBER

MR. BONIFACE DIMMO.....MEMBER