

RWANDA REVENUE AUTHORITY (RRA) v. UMURUNGI UMWIZERWA

[Rwanda SUPREME COURT – RCOMAA0020/16/CS (Mukanyundo, P.J; Ngagi and
Rugabirwa, J.) July 28, 2017]

Tax law – East African Community Customs Management Act – Erroneous declaration – In case of erroneous declaration that leads to the payment of less tax, Commissioner of customs is entitled to request the taxpayer to pay the balance of the tax he would have paid – East African Community Customs Management Act 2004, section 135.

Facts: Rwanda Revenue Authority carried out a tax assessment for Umurungi Umwizerwa on the goods she imported from the fiscal year 2010 up to 2014, whereby it charged her a consumption tax of 49,636,583Frw and VAT of 8,934,585Frw, those taxes are due to erroneous declaration made by Umurungi when she imported fruit juice from Uganda and paid consumption tax at the rate of 5% instead of 39% this led her to pay less on both consumption tax and value added tax. She was charged a total of 58,571,168Frw.

The taxpayer being unsatisfied with the tax she was charged, she filed a claim to the Commercial Court of Nyarugenge stating that the levied tax was unlawfully because basing on East African Community Custom Management Act, the Commissioner of customs does not have power to charge her tax when the taxpayer does not admit the offence of making and using forgery documents. In addition to this the Commissioner of customs is not the one supposed to make a decision on her administrative appeal, and she prays that the levied tax be waved. The Court ruled in favour of the defendant and ordered her to pay the charged tax and awarded damages to Rwanda Revenue Authority.

The taxpayer appealed to the Commercial High Court and the rulings of the appealed judgment was overturned and ordered RRA to refund the Court fees deposited by the taxpayer.

Rwanda revenue authority not being satisfied with the rulings of that judgments, appealed to the Supreme Court stating that the statements of the taxpayer that the Commissioner of customs did not have powers to charge her tax basing on the ruling of the judgment RCOMA0047/10/CS of Munyaneza v. RRA rendered by Supreme Court are groundless because these cases do not have similar facts, because in that judgment the Court relied on article 203 of East African Community Customs Management Act and ordered the taxpayer to pay the tax while the case at hand, the Court based on article 135 of that Law. Thus, the taxpayer must pay the balance because she made erroneous declaration, which led her to pay less tax compared to what she was supposed to pay. In conclusion, RRA prays for damages.

The taxpayer argues that, making a false or incorrect declaration is an offence provided by article 203 of the aforementioned Law and that offence must first be submitted to the competent Court and the culprit held liable, therefore the fact that she does not admit the offence, the Commissioner of customs did not have the powers to order her to pay that tax. She also requests for damages.

Held: In case of erroneous declaration which leads to the payment of less tax, the Commissioner of customs has the powers to request the taxpayer to pay the balance of the tax he/she would have paid which was not paid. Since that error differ from making and using forgery documents provided by article 203.

**Appeal has merit.
Overturns the rulings of the Commercial High Court.**

Statutes and statutory instrument referred to Laws:

East African Community Customs Management Act, 2004, article 135, 203, 219 and 220.

Cases referred to:

Munyaneza v RRA, RCOMA0047/10/CS, rendered by the Supreme Court on 29/07/2011.

Judgment

I. BRIEF BACKGROUND OF THE CASE

[1] This case started in the Commercial Court of Nyarugenge, Umurungi Umwizerwa suing Rwanda Revenue Authority for being illegally taxed, because the Customs department assessed the goods she imported for the fiscal year 2010 up to 2014, and levied her consumption tax of 49,636,583Frw and VAT of 8,934,585Frw; all worth 58,571,168Frw.

[2] The levied tax results from erroneous declaration made by Umurungi Umwizerwa while importing fruit juices from Uganda and paid a consumption tax on the rate of 5% instead of 39%; which resulted into paying less consumption tax and value added tax. Umurungi filed a case before the Commercial Court of Nyarugenge, on three grounds, stating that Commissioner General did not reply her, thus the tax must be waved, the Commissioner of Customs does not have the authority to give her a response nor charging her tax originating from offence while she does not admit the offence.

[3] In judgment RCOM1745/TC/NYGE rendered on 04/04/2016, Umurungi Umwizerwa lost the case on all grounds and was ordered to pay the whole tax she was imposed amounting to 58,571,168Frw and RRA was awarded 500,000Frw in damages.

[4] Umurungi Umwizerwa was not satisfied with the rulings of Nyarugenge Commercial Court, thus, she appealed against one issue relating to the capacity of the Commissioner of Customs to levy tax resulting from a criminal offence she does not admit in the Commercial High Court and she requested for the cancellation of the tax equal to 58,571,168Frw.

[5] On 06/10/2016, the Commercial High Court rendered judgment RCOMA00215/2016/CHC/HCC, whereby it reversed the rulings of judgment RCOM1745/TC/NYGE and ordered Rwanda Revenue Authority to refund Umurungi Umwizerwa 75,000Frw of the Court fees.

[6] Rwanda Revenue Authority unsatisfied with that ruling, it appealed at the Supreme court claiming that:

(a) The case relied on by the plaintiff and Commercial High Court in holding that the Commissioner of Customs did not have the authority to charge Umurungi Umwizerwa the tax does not have similar facts with the case at hand.

(b) The damages requested by Umurungi Umwizerwa are not relevant, therefore they should not be awarded, rather, the Court should compel her to pay RRA damages amounting to 1,000,000Frw for being dragged into vexatious litigations.

[7] The hearing of the case was held in public on 11/07/2017, Rwanda Revenue Authority represented by Counsel Karasira Sorezo Théogène, while Umurungi Umwizerwa was represented by Counsel Nsengiyumva Abel.

II. ANALYSIS OF LEGAL ISSUES

1. Whether the declaration made by Umurungi Umwizerwa was erroneous so that the Commissioner of customs was the proper officer to request her to pay the balance of the unpaid duty.

[8] Counsel Karasira Sorezo Théogène states that the case law relied on by the plaintiff and based on by the Commercial High Court to rule that the Commissioner of Customs was not the proper officer to levy the duty does not have the similar facts with the case under litigation in this court, because the facts in that case law (RCOMA0047/10/CS), the duty levied on Munyaneza Evariste was based on the provisions of article 203 of East African Community Customs Management (EACCMA) whilst the case at hand, the duty levied on Umurungi was based on the provisions of article 135 of EACCMA because she did not use false or incorrect documents as it was in the case RCOMA0047/10/CS, rather she made erroneous declaration which led her to pay less than what he was supposed to pay, hence she must pay the balance therefore article 203 of EACCMA is not applicable in such a case.

[9] He goes on further stating that in the judgment RCOMA0047/10/CS (paragraph 12), the Supreme Court found article 135 of EACCMA is not applicable in deciding that the Commissioner of Customs has the authority to levy tax without necessarily prosecuting the assessee of the offence because the aforementioned article concerns with the payment of the amount short levied or the repay of the amount erroneously refunded.

[10] Nsengiyumva Abel, the Counsel for Umurungi Umwizerwa contends that the arguments of Rwanda Revenue Authority that article 135 of EACCMA should have been applied is misleading, it just wants to apply it inappropriately. He argues that the provision concerns the payment of the amount short levied or repay the amount erroneously refunded during the provisional entry.

[11] He further argues that, as it is indicated on page 11 of the audit report, the inspectors stated that there was erroneous declaration because a wrong HS code was used, false declaration is an offence provided for by article 203 of East African community Custom management Act, while article 219 of the same Law bestows the Commissioner of Customs the powers to order the taxpayer to pay when the taxpayer admits the offence. Thus, the fact that she denies the offence, it implies that the Commissioner of customs did not have the power to order her to pay that tax, instead what could have been done is to submit the issue to the competent Court as is provided under article 220 of the same law so that the offender could be held liable of that crime. He rests his case stating that in case of a custom offence, the Commissioner of Customs does not have the power to impose tax; especially that Umurungi Umwizerwa does not admit that offence.

VIEW OF THE COURT

[12] Section 135 of East African Community Customs Management Act, 2004, provides that any duty has been short levied or erroneously refunded, then the person who should have paid the amount short levied or to whom the refund has erroneously been made shall, on

demand by the proper officer, pay the amount short levied or repay the amount erroneously refunded, as the case maybe; and any such amount may be recovered as if it were duty to which the goods in relation to which the amount was short levied or erroneously refunded, as the case maybe, were liable.

[13] Section 203 of EACCMA provides that a person who, in any matter relating to the Customs -(a) makes any entry which is false or incorrect in any particular, commits an offence to make or use false documents.

[14] The case file also demonstrates that Umurungi Umwizerwa was charged 49,636,583Frw of consumption tax and 8,934,585Frw of VAT all originating from her successive erroneous declaration which led her to pay tax computed on the rate of 5% instead of 39% on the fruit juice she imported from Uganda, this led her to pay less tax.

[15] The case file also indicates that in the letter dated 19/09/2016 which Umurungi Umwizerwa wrote to Commissioner of Customs she states that, she was informed that she declared a “HS CODE” which is not for Joly Juice and she requested that Rwanda Revenue Authority accepts the “HS CODE” she used in her declaration because of various reasons she demonstrated.

[16] Furthermore, the case file demonstrates that on 04/10/2016, the Commissioner of Customs wrote to Umurungi Umwizerwa in response to the letter mentioned in the preceding paragraph and informed her that pursuant to the provision of section 135 of the Law N°01/2005 of 01/01/2005 of East African Community Custom Management Act, she declared under “HS Code 2106.9010” instead of “HS Code of 2106.9099”, thus, the decisions she was notified in S.L N°22, 23, 24/CRMU/2016-2017 remain in place.

[17] The Court finds the fact that nothing could stop the Commissioner of Customs from demanding Umurungi Umwizerwa to pay the balance of the unpaid tax because she made various erroneous declaration as provided by section 135 of the aforementioned EACCMA, which provides that where any duty has been short levied, then the person who should have paid the amount short levied shall, on demand by the proper officer, pay the amount short levied and any such amount may be recovered as if it were duty to which the goods in relation to which the amount was short levied were liable.

[18] The Court finds that the arguments of the Counsel of Umurungi Umwizerwa that section 203 of EACCMA, 2004, which provides that a person who, in any matter relating to the Customs, makes any entry which is false or incorrect in any particular, commits an Offence to make or use false documents, should be based on, because the actions of Umurungi’ are considered as an offence, though she denies it, and therefore it should first be submitted to the prosecution lacks merit, because even if this article mentions erroneous declaration, it’s title is make or use forgery documents, which are contrary to what Umurungi effectively did, because she used wrong “ HS Code” which led to the reduction of the tax. The Court finds that in all correspondences of Commissioner of Customs to Umurungi Umwizerwa¹, there is no mention indicating that she committed an offence of using forgery documents which is provided under Section 203 of EACCMA, 2004,to

¹Look for the letter Ref: 176/RRA/CCS/CED/PCA/2015 of 25/09/2015 and that one Ref: 2006/RRA/CCS/OAU/2016.

consider that Rwanda Revenue Authority is contradicting itself by relying on section 135 of EACCMA.

[19] The Court realizes that the judgment RCOMA0047/10/CS which the plaintiff and the Commercial High Court based on in holding that the Commissioner of Customs did not have powers to charge tax, its facts are not similar with the appealed judgment, because in that case Munyaneza Evariste had been charged tax on the basis of the provision of article 203 of EACCMA, he was accused for using forgery receipts (false or incorrect documents) with intention under evaluate the tax base, while the case at hand is related to taxes imposed on Umurungi on the basis of the provision of article 135 of EACCMA because she did not use improper documents as it was the issue in the case RCOMA0047/10/CS, rather it was erroneous declaration which resulted into paying less tax than what she was supposed to pay and she must pay the balance. Thus article 203 of EACCMA is not applicable.

[20] Basing on the legal provisions and the motivations provided above, the Court finds that the Commissioner of Customs had the powers to order Umurungi Umwizerwa to pay the amount of the remaining tax, since he found that the amount paid was little, thus she must pay the tax imposed.

2. Whether there are damages to be awarded in this case.

[21] Nsengiyumva Abel, the Counsel for Umurungi states that Rwanda Revenue Authority must be ordered to pay 1,000,000Frw of the counsel fees to Umurungi on the appeal level for being dragged into unnecessary lawsuits.

[22] Karasira Sorezo Theogene, the Counsel for Rwanda Revenue Authority contends that damages requested by Umurungi have no basis, thus they cannot be awarded, rather the Court should compel her to pay Rwanda Revenue Authority damages worth 1,000,000Frw.

VIEW OF THE COURT

[23] The Court finds that, since Umurungi has lost the case the Counsel fees she requests from Rwanda Revenue Authority lacks merit.

[24] Regarding damages requested by Rwanda Revenue Authority for being dragged into unnecessary lawsuits, the Court finds that they should be awarded, but in the discretion of the court, therefore it is awarded 500,000Frw in addition to 500,000Frw allocated by Nyarugenge Commercial Court because 1,000,000Frw requested is excessive and it does not justify it.

III. DECISION OF THE COURT

[25] It decides that the appeal of Rwanda Revenue Authority has merit;

[26] Overturns the judgment RCOMA00215/2016/CHC/HCC rendered by Commercial High Court on 06/10/2016;

[27] Declares that, it was in the powers of the Commissioner of Customs to impose tax on Umurungi Umwizerwa;

[28] It orders Umurungi Umwizerwa to pay the imposed tax;

[29] It orders Umurungi Umwizerwa to give Rwanda Revenue Authority 500,000Frw of damages for dragging it into unnecessary lawsuits in addition to 500,000Frw awarded by Nyarugenge Commercial Court, the total amount being 1,000,000Frw;

[30] It orders Umurungi Umwizerwa to reimburse 100,000Frw of the court fees to Rwanda Revenue Authority which it deposited at the time of filing the claim.