**IN THE COURT OF APPEAL OF TANZANIA**
**AT DODOMA**

**(CORAM: MWAMBEGELE, J.A., KEREFU, J.A. And MAIGE, J.A.)**

**CIVIL APPEAL NO. 308 OF 2020**

**1. SHANA GENERAL STORE**
**2. SHANA GENERAL STORE LIMITED** ..... **APPELLANTS**

**VERSUS**

**COMMISSIONER GENERAL, TANZANIA REVENUE AUTHORITY ..... RESPONDENT**

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

**(Ngimilanga, Vice Chairperson)**

**dated the 30th day of January, 2020**
**in**
**Tax Appeal No. 15 of 2019**

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# JUDGMENT OF THE COURT

20th October & 3rd November, 2021.

## MWAMBEGELE, J.A.:

The proceedings and record of this appeal are rather confusing. What we are not sure of is if this confusion is not a deliberate act by the appellants. Despite the fact that it is not clear who was or were supposed to be the appellants in the matter right from the level of the Tax Revenue Appeals Tribunal, it is not clear why this appeal refers to two appellants while it is only one appellant who lodged a notice of appeal. What will be demonstrated in this judgment will undoubtedly reveal why we so raise this

concern. We however, at this stage wish to state some facts leading to what we think is a confusion.

The parties at the Tax Revenue Appeals Board (the Board) were Shana General Store Limited as the first appellant and Shana General Store as the second appellant, on the one hand and the Commissioner General of Tanzania Revenue Authority, on the other, as the respondent. The Board decided in favour of the Commissioner General of Tanzania Revenue Authority, the respondent then and herein. Aggrieved, a notice of intention to appeal was lodged to the Tax Revenue Appeals Tribunal (the Tribunal). The same appears at p. 151 of the record of appeal. While it refers to Shana General Stores Limited and Shana General Stores as "the appellant" in both the title and the body, it refers to Shana General Stores Limited and Shana General Limited as "the appellants" in the Statement of Appeal appearing at p. 153 of the record of appeal but whose body shows that "the particulars of the appellant" are Shana General Stores Limited; only one appellant. The proceedings of the Tribunal (p. 251), the judgment and decree thereof, pp. 284 – 304 and pp. 305 – 306, respectively, show only one appellant, Shana General Stores Limited. It is also important to note that the appeal before the Tribunal was argued by way of written

submissions in which the appellant's advocate refer to two appellants while the respondent refers to only one appellant, Shana General Stores Limited.

Be that as it may, the Tribunal decided in favour of the respondent then and in this appeal as well, the Commissioner General of Tanzania Revenue Authority. Undaunted, a notice of appeal to this Court was lodged. It appears at p. 307 of the record of appeal. It is only Shana General Stores Limited who lodged that notice. Shana General Stores does not feature. However, the memorandum of appeal shows two appellants, Shana General Stores as the first appellant and Shana General Stores Limited as the second appellant. Likewise, the appellants in their communication with the respondent have been using the names of the appellants interchangeably. They would refer to them as SGS, SGSL or sometimes as simply Shana General. This ailment went on even after the respondent warned SGSL of not going on with this malpractice through her letter bearing Ref. No. A.B. 209/2/10/01/1 dated 27.10.2014 appearing at p. 37 of the record of appeal.

We shall address this confusion and its outcome on the appeal before us at a later stage in this judgment. For the sake of convenience, we shall refer to the parties as, simply, Shana General Store (SGS), Shana General

Store Limited (SGSL) and the Commissioner General of Tanzania Revenue Authority (the respondent).

At this stage, we find it apt to narrate the material background facts to this appeal as they can be gleaned from the record of appeal. SGSL is a company incorporated in Tanzania with Tax Identification Number (TIN) 104-975-380 issued on 18.09.2006, appearing at p. 36 of the record of appeal (Exh. A2). Its principal shareholder is Abdallah Iddi Mshana who also operated, and perhaps still operates, a business entity; SGS, a business name under which he traded, with TIN 100-167-476 issued on 01.07.1999, appearing at p. 35 of the record of appeal (Exh. A1).

It happened that in the month of November, 2013, SGS, using SGSL's TIN, imported in Tanzania goods from Candy Kenya Limited, a company based in Kenya. The goods were certified by Kenya Revenue Authority (KRA) as originating from Kenya. The relevant certificate appears at p. 13 of the record of appeal and was received in evidence as Exh. P5. Basing on the certificate of origin, the goods were declared in the Pre-Arrival Declaration Form (PAD) No. 3914129 which appears at p. 16 of the record of appeal (Exh. P6), as exempted from customs duty. However, on 02.12.2013, despite the PAD, the respondent assessed the goods for import duty at a tune of Tshs. 38.691,240/=. The respondent was of the

view that the goods were not exempt from customs duty in that they were manufactured using raw material under the remission scheme in the East African Community (EAC) and thus meant for export outside the EAC, otherwise, if imported within, they were to be subject to normal customs duty.

The respondent stuck to his guns despite a series of Abdallah Iddi Mshana's complaints and follow-ups. Having seen that the complaints and follow-ups did not bear any positive results, on behalf of SGSL, the said Abdallah Iddi Mshana, lodged a review under the provisions of section 229 (1) and (2) of the EAC Customs Management Act, 2004 (the EACCMA). However, the respondent did not respond to the review within thirty days as required by subsection (5) to section 229 of the EACCMA as a result of which SGSL appealed to the Board by filing a notice of intention to appeal under section 16 (1) and (3) of the Tax Revenue Appeals Act, Cap. 408 of the Revised Edition, 2002 (the Tax Revenue Appeals Act) and rule 4 (1) and (4) of the Tax Revenue Appeals Board Rules, 2001 as amended by GN No. 366 of 2009 (at p. 6 of the record of appeal). Thereafter, SGSL lodged a Statement of Appeal which appears at p. 7 of the record of appeal. However, upon mature reflection, SGS was joined as the second appellant as appearing in the Amended Statement of Appeal at p. 31 of the record of

appeal. The main ground in the Amended Statement of Appeal was that the imported goods were exempt from tax as they were of Kenyan origin as certified by KRA and that they should therefore be accorded preferential tariff in terms of section 111 of the EACCMA. The Board decided in favour of the respondent. An appeal to the Tribunal was thus barren of any fruit hence the present appeal before us.

This appeal is premised on the following six grounds:

1. That the Tax Revenue Appeals Tribunal erred in law in holding that the goods imported by the appellant are liable to duties and taxes under Article 25 (2) (b) of the East African Community Customs Union, 2004 whereas the certificate of origin showing that the goods originated in Kenya;
2. That the Tax Revenue Appeals Tribunal erred in law by failing to hold that the application for review of the Respondent's decision was properly made by Shana General Stores in terms of section 229 (1) of the East African Community Customs Management Act and since the Respondent never determined the application the implication and section 229 (5) of the East African Community Customs Management Act should follow;

3. That the Tax Revenue Appeals Tribunal erred in law in holding that once there a duty remission scheme granted to the manufacturer the incentive of free duty and taxes under the East African Community Common External Tariff ceases;
4. That the Tax revenue appeals tribunal erred in law in holding that the Appellant was required to make thorough search if the goods were manufactured using materials from Kenya while there was a certificate of origin issued by a competent authority showing that the goods originated from Kenya;
5. That the Tax Revenue Appeals Tribunal erred in law by failing to hold that the respondent was required under rule 12 (3), 13 (2) and (3) of the Rules of Origin to verify if the goods imported by the appellant were manufactured using materials obtained in Kenya instead of making a unilateral decision that the certificate of origin is invalid or ineffective; and
6. That the Tax Revenue Appeals Tribunal erred in law in holding that the appellant has failed to discharge its burden under section 18 (3) (b) of the Tax Revenue Appeals Act, CAP. 408.

The appeal was argued before us on 20.10.2021 during which, while Messrs. Stephen Axwesso, Alan Nlawi Kileo and Wilson Mukebezi, learned

advocates, joined forces to represent the appellants, Ms. Consolatha Andrew, learned Principal State Attorney, Mr. Cherubin Chuwa, learned Senior State Attorney and Mr. Thomas Buki, learned State Attorney, like the learned advocates for appellant, joined forces to represent the respondent. Both parties had earlier on filed written submissions in support of their respective positions which they sought to adopt as part of their oral submissions.

At the oral hearing, after adopting the written submissions in support of the appeal, Mr. Stephen Axwesso, amplified on some matters in the written submissions. He submitted that the Tribunal erred in upholding the decision of the Board that the goods imported by the appellant were liable to duties and taxes in terms of Article 25 (2) of the Protocol on the Establishment of the EAC Customs Union, 2004 (the Protocol) while a certificate of origin is in place. He submitted further that, once a certificate of origin is issued, it raises a rebuttable presumption that the goods were produced wholly in the partner state by using materials obtained in the partner state or produced in the partner state by using materials partially obtained outside the partner state. He added that the presumption can only be rebutted in exceptional circumstances and only through a verification exercise conducted in terms of rules 12 (2) and 13 (2) and (3)

of the Rules of Origin, 2009. He argued that the respondent cannot make a unilateral decision that the certificate of origin is invalid and that it is ineffective without carrying out the verification exercise by forming a verification committee to verify its correctness or otherwise. The learned counsel submitted further that it was wrong for the appellant to impose tax on the goods by merely looking at the Legal Notice.

Mr. Axwesso submitted further that the Tribunal also erred in holding that the certificate of origin was not sufficient evidence to show that the imported goods were not manufactured under the duty remission scheme. That, the Tribunal was wrong in ignoring the certificate of origin and holding that the goods were manufactured using materials obtained from outside the EAC under the duty remission scheme, without any evidence.

Submitting on the second ground of appeal, Mr. Axwesso stated that the Tribunal erred in concurring with the Board that SGS who was the importer of the goods did not object or apply for review of the respondent's decision to demand import duty. He contended that the application for review was properly made by SGSL in terms of section 229 (1) of the EACCMA and that the decision of the respondent directly affected SGS who imported the goods.

Mr. Axwesso added that the application for review was never determined by the respondent and that, in terms of section 229 (4) of the EACCMA, the respondent was mandatorily required to communicate its decision within thirty (30) days of the lodging of the review. Failure to do that, under section 229 (4) of the EACCMA, the respondent was deemed to have accepted the review application thus meaning that the appellants had no tax liability, he submitted.

On the third ground, Mr. Axwesso submitted that the Tribunal erred in holding that once there is a duty remission scheme granted to a manufacturer, the incentive of free duty and taxes under the EAC Common External Tariff ceases. He contended that goods which enjoy duty remission scheme are those manufactured using raw material imported from outside partner states under the remission scheme; that is, imported without paying duty. These goods, he submitted, are meant for export outside the EAC as per Article 25 of the Protocol and must be exported outside the EAC. The learned counsel, however, submitted that an innocent buyer like the appellant would not know if the goods were manufactured using raw materials imported from outside EAC under the duty remission scheme. He contended that an answer to this would be the production of

a certificate of origin or a scientific examination issued by a competent authority, in this case the KRA.

Mr. Axwesso combined the fourth and fifth grounds of appeal in their argument in support of the appeal. He submitted that the respondent never questioned the validity of the certificate of origin and differed with the finding of the Tribunal that the appellant was required to conduct a search to validate that the goods were manufactured using raw materials imported from outside the EAC under the duty remission scheme. That process would not be relevant in the presence of the certificate of origin, he argued. He contended that the onus, after the production of the certificate of origin, was placed by law on the respondent as per rules 12 (3), 13 (2) and (3) of the Rules of Origin.

On the last ground of appeal, Mr. Axwesso submitted that the Tribunal erred in law in holding that the appellant failed to discharge her burden under section 18 (2) (b) of the Tax Revenue Appeals Act, because production of the certificate of origin meant that the goods originated from a particular local country using locally sourced materials and no evidence was led by the respondent that the same was not genuine. In addition, Mr. Axwesso termed as irrational and arbitrary the decision by the Tribunal to the effect that the imported goods were produced from the goods shown in

the Legal Notice because the mere fact that the manufacturer's name appear in the Legal Notice is not enough proof that the goods were manufactured using raw materials appearing in the Legal Notice.

Given the above submissions, the learned counsel implored the Court to allow the appeal with costs.

Responding Ms. Andrew submitted on the first ground of appeal that the respondent did not at all doubt the certificate of origin. She contended however, that the certificate of origin meant that the goods were manufactured in Kenya but that it did not show that the same were not manufactured using raw materials appearing in the Legal Notice. As per Article 25 (2) of the Protocol, Ms. Andrew argued, the goods were supposed to be exported outside the EAC, short of which, if imported within, they were to be charged import duty. The learned counsel quoted the legal notice appearing at p. 30 of the record of appeal which shows, *inter alia*, that the finished goods benefitting from the duty remission shall primarily be for export outside EAC and that in the event they are sold in the customs union, they shall attract duties, levies and other charges provided by the EAC Common External Tariff. She added that allowing importation of such goods in any of the partner states without adhering to the conditions stipulated under Article 25 (3) of the Protocol will defeat the

whole purpose of promoting such goods for export outside the EAC provided for under Article 25 (1) of the Protocol.

With regard to the second ground of appeal, a complaint that the application for review of the respondent's decision was properly made by Shana General Stores in terms of section 229 (1) of the EACCMA and that since the respondent never determined the application, under subsection (4) of the same section, the imported goods were free from any import duty. The learned Principal State Attorney submitted that the complaint is one of facts, not one of law, which should not be entertained by the Court as per section 25 (2) of the Tax Revenue Appeals Act. Alternatively, the learned counsel submitted that the Tribunal was correct to hold that SGS and SGSL were different entities. She thus contended that no proper application for review was lodged by the appellant.

The third ground of appeal, a complaint that the Tribunal erred in holding that once there is a duty remission scheme granted to a manufacturer, the incentive of free duty and taxes under the EAC Common External Tariff ceases, Ms. Andrew submitted, has been responded to when arguing the first ground. She contended that, for the reasons stated, the Tribunal did not err to so hold.

On the fourth ground of appeal, that the Tribunal erred in holding that the appellant ought to have made a search if the goods imported were not manufactured using the raw materials which benefitted the duty remission scheme, she submitted that if the Council of Ministers was made aware that the goods to be manufactured would be for consumption within the EAC, perhaps it would not have granted the remission. The appellant was thus under the duty to prove that the goods were not manufactured using the materials under the duty remission scheme; the certificate of origin presented was not sufficient to prove that, she submitted.

The complaint in the fifth ground of appeal is that the Tribunal erred in not holding that it was incumbent upon the respondent to verify that the goods imported by the appellant were manufactured using raw materials under the duty remission scheme before making a unilateral decision that the certificate of origin was invalid. Ms. Andrew submitted that, the fact that goods met the origin criteria does not make them qualify for export within the EAC Customs Union; the certificate of origin was relevant for purposes other than that.

With regard to the last ground, Mr. Thomas Buki, gave Ms. Andrew a helping hand and submitted that the Tribunal was right to hold that the appellant did not discharge her duty to prove the case under the provisions

of section 18 (2) (b) of the Tax Revenue Appeals Act. He submitted further that the appellant was required to prove that she did not enjoy the duty remission scheme on the raw materials used to manufacture the goods under discussion and that is when, as per **Insignia Limited v. The Commissioner General, Tanzania Revenue Authority**, Civil Appeal No. 14 of 2007 (unreported), evidential burden would be shifted to the respondents. He added that the section imposes the burden of proof in tax matters upon an appellant. The appellant failed to discharge that burden, he argued.

Having submitted as above, the learned Principal State Attorney submitted that the appeal was without merit and implored upon us to dismiss it with costs.

In a short rejoinder, Mr. Axwesso conceded that the Legal Notice showed that the appellant was granted a permit to import liquid glucose under the duty remission scheme but submitted that the raw material was not used to manufacture goods imported to Tanzania under discussion. He reiterated that the correctness of the certificate of origin should have been verified by the respondent through KRA. He added that the duty to verify that the goods under discussion were produced using raw material under the duty remission scheme was the respondent's, not the appellant's.

Having heard the arguments by the parties, we retreated to compose the judgment. However, because of the confusions narrated above, especially the fact that the notice of appeal showed that it was only SGSL who lodged the notice of appeal to register her dissatisfaction with the judgment of the Tribunal, we found difficulties in going on to compose the judgment without reopening the proceedings with a view to hearing the parties to the appeal the effect of this ailment on the appeal. We thus summoned the parties and reopened the proceedings on 01.11.2021. To the learned counsel for the parties, we posed the question: what was the effect on the appeal in view of the fact that SGS did not lodge any notice of appeal to the Court.

Mr. Stephen Axwesso, the learned counsel who appeared for the appellant, admitted that, indeed, SGS did not lodge any notice of appeal to the Court and that the ailment was caused by the Tribunal whose proceedings, judgment and decree referred to only SGSL as the only appellant. He contended that the appellants are not to blame as the notice of intention to appeal to the Tribunal appearing at p. 151 of the record of appeal comprised the two appellants. Likewise, the statement of appeal appearing at p. 153 of the record of appeal, showed two appellants. Given the ailment, the learned counsel prayed that the record be remitted to the

Tribunal so that the appeal is considered in respect of both appellants. Alternatively, he prayed that the appeal before us be considered in respect of SGSL only who filed a notice of appeal.

On the other hand, Mr. Cherubin Chuwa, the learned Senior State attorney who appeared for the respondent, submitted that the appellant in the appeal before us is only SGSL who lodged the notice of appeal. As there was no notice of appeal by SGS, there was no appeal in his respect, he argued. The appeal should therefore be considered in respect of SGSL only, he contended. The learned Senior State Attorney strenuously objected to the proposal by Mr. Axwesso that the matter should be remitted to the Tribunal to consider the appeal in the inclusive manner.

In a short rejoinder, Mr. Axwesso submitted that the confusion was a result of an oversight and should not be used to punish the taxpayer. He thus reiterated his prayers made above.

We should state at the outset that we agree with Mr. Axwesso and Mr. Chuwa that SGS did not lodge a notice of appeal in terms of the mandatory provisions of rule 83 (1) of the Tanzania Court of Appeal Rules. Given that failure to lodge a notice of appeal, the memorandum of appeal she jointly filed with SGSL lacks legs on which to stand. The appeal in her respect is therefore incompetent and struck out.

There thus remains an appeal in respect of SGSL only. We now turn to confront the grounds of appeal in respect of this remaining appellant. In so doing, we find it appropriate to start with the second ground of appeal which is a complaint that the Tribunal erred in law by failing to hold that the application for review of the respondent's decision was properly made by the appellant in terms of section 229 (1) of the EACCMA and that since the respondent never determined the application the implication under section 229 (5) was that the respondent was not required to impose the import duty complained of. The issue that arise from this ground of appeal is two-fold. That is, whether the appellant rightly complained to the respondent and whether the respondent's failure to respond to the application for review, meant that the goods were not subject to import duty as complained of.

We have stated at the beginning of this judgment that the importer of the goods was SGS. She used the appellant's TIN. The application for review lodged with the respondent appears at p. 113 of the record of appeal. It was written by SGS on headed paper of SGSL. As already stated above, it was SGSL who lodged an appeal to the Board against the decision of the respondent imposing import duty on the goods. SGS was joined later. The Tribunal upheld the decision of the Board in holding that SGS

and SGSL were different entities. Having so held, we do not think the Tribunal should have proceeded to determine an appeal by SGS who did not at all complain against the imposition of import duty. Neither did she lodge an application for review with the respondent. She just joined the proceedings through the amended statement of appeal. As SGS neither complained against the imposition of tax nor lodged an application for review, she, being a separate legal entity from SGSL, had no cause of action against the respondent. Likewise, the appellant; SGSL, was not the consignee of the goods. She was not the importer. She was thus a stranger to the transaction between Candy Kenya Ltd, the supplier of the goods and SGS, the consignee and importer of the goods. The provisions of section 229 (1) of the EACCMA provide in no uncertain terms that:

> *"A person directly affected by the decision or omission of the Commissioner or any other officer on matters relating to Customs shall within thirty days of the date of the decision or omission lodge an application for review of that decision or omission."*

What we discern from the above provision is that it is a person who is **directly affected** by the decision of the Commissioner or his officers who has the right to file a revision. In the case at hand, SGS was the importer of the goods and, in our view, is the one who was **directly affected** by

the decision of the Commissioner to impose import duty. However, the application for review was made by SGSL. That, in our view, was improper and the application was incompetent before the eyes of the law. The Tribunal thus rightly decided that the respondent was in the right track to impose the import duty against the importer; SGS.

With regard to the respondent's failure to respond to the review, we agree with the respondent that as the review was applied by a person who was not directly affected by the decision to impose import duty on the goods under discussion, the respondent was justified to ignore that application.

The net effect of the above discussion is that the appellant, given that she was not the consignee and importer of the goods, she is a different entity from the consignee and importer of the goods; SGS. The appellant thus had no *locus standi* in the dispute between SGS and the respondent from the outset. The Tribunal, therefore, rightly dismissed the appeal against her.

The above said and done, we find the above discussion disposes of the appeal. In the premises, we do not find any dire need to consider and determine the rest of the grounds of appeal. Their consideration and determination, in our view, will not serve any useful purpose.

The sum total of the above is that the respondent was justified to impose import duty on the goods under discussion and the Tribunal rightly so found. Consequently, we find no merit is this appeal and dismiss it with costs.

**DATED** at **DODOMA** this 2nd day of November, 2021.

J. C. M. MWAMBEGELE
**JUSTICE OF APPEAL**

R. J. KEREFU
**JUSTICE OF APPEAL**

I. J. MAIGE
**JUSTICE OF APPEAL**

This Judgment delivered this 3rd day of November, 2021 in the presence of Mr. Primi Telesphori, learned Principal State Attorney for the Respondent and holds brief for Mr. Stephen Axwesso, learned Advocate for the Appellants, is hereby certified as a true copy of the original.


H. P. NDESAMBURO
**DEPUTY REGISTRAR**
**COURT OF APPEAL**