IN THE REVENUE APPEALS TRIBUNAL ESWATINI

RULING

CASE NO: RATE/CU013/23

In the appeal between:

RATE/CU013/23 **APPELLANT**

And

ESWATINI REVENUE SERVICES- **RESPONDENT**

THE COMMISSIONER GENERAL

Neutral Citation: RATE/CU013/23 *v Eswatini Revenue Services, The Commissioner for Eswatini Revenue Services (013/23) (2023) RATE 013* (April 2023)

Coram: Mr Mbuso Simelane, Ms Ntombenhle Shongwe, Mr Sandile Dlamini, Mr John Henwood, Ms Khethiwe Dlamini (Members)

Heard: 7 March 2024

1) Aggrieved by the Respondent's decision, in April 2023, Appellant lodged an appeal before the Tribunal, appealing a tax assessment on the purchase of a motor vehicle from the United Kingdom. For purposes of clearance and payment of the relevant import duties, the Appellant presented a receipt in order to enable the Revenue Authority to levy the appropriate import duties. Appellant was however advised by the Respondent that due to the discrepancy in the amount declared by her through the invoice for the car amounting

to 490.00 GBP with an Eswatini value of E 9, 988.28 (Nine thousand Nine Hundred and Eighty eight Emalangeni and Twenty Eight cents) and the amount actually paid to the seller being a total of 688,00 GBP with an Eswatini value of E 14 035, 21 (Fourteen Thousand and Thirty Five and Twenty One cents) this rendered the information given by the Appellant as contradictory.

2) The Respondent therefore disputed the Appellants' transaction value as submitted, from which the Respondent proceeded to re-assess the value of the vehicle, which it valued at E50 000.00 (Fifty Thousand Emalangeni) and as such expected all duties and taxes to be paid on the said value.

3) **As to the parties' settlement agreement.**

3.1) Upon proper filing of documents by both parties before the Tribunal, the appeal was set down for hearing for 7 March 2024, where Mr X appeared for the Appellant with the requisite power of attorney to represent the Appellant before the Tribunal pursuant to rule 14. Both parties informed the Tribunal that there had been a development in the case, in that the Respondent had further reviewed the assessment and the parties had agreed on a reviewed assessment, and as a result Appellant has paid and the motor vehicle has been released to the Appellant, hence the appeal was now moot and academic.

3.2) The Tribunal noted the submissions from both parties and appreciated the fact that they have reached a compromise in the matter. The Tribunal is of the considered view that agreements concluded freely and voluntarily by the parties ought to be respected and enforced as in accordance with the established *principle pacta sunt servanda* (agreement must be honoured).

3.3) However, the parties' attention is strictly drawn to the fact that in the context of matters before the Tribunal, voluntary agreements are only to be pursued within the parameters of the Revenue Appeals Tribunal Act of 2019 ("The Tribunal Act") specifically read together with the Revenue Appeals Tribunal Regulations of 2022 ("The Tribunal Regulations"), whose Section 16 specifically states the following.

"Powers of the Tribunal where parties reach an Agreement":

16 *(1) The parties may, at any stage during the proceedings, apply to the Tribunal to be allowed to settle the matter out of the Tribunal and the Tribunal shall grant the request under such conditions as it may impose.*

(2) Parties to the Appeal shall within a period of no more than sixty (60) days of the grant of the postponement report to the Tribunal the outcome of the settlement of the matter outside the Tribunal."

3.4) To this end the parties contravened the Tribunal Act and Regulations. It should go without saying the necessity for which the Legislature would make an express inclusion of a provision of this nature in the context of an appeal as officially lodged chief of which is the flagrant abuse of process to the detriment of a party. In this case, for instance, the Tribunal has no way of ascertaining the fairness of which the matter was handled as between the parties. This being a fact that the Tribunal cannot merely turn a blind eye to the very fact that the Appellant's purpose of lodging an appeal is to reach a fair and objective outcome in a matter.

3.5) For this reason, the Tribunal admonishes in the strongest terms the occurrence of that act of the parties reaching an agreement in a matter already before the Tribunal in contravention of Section 16 of the Tribunal Regulations. The Tribunal further warns and most importantly the Respondent being a consistent party in matter before the Tribunal, that any future occurrence of the same will be consequential by due and appropriate sanction.

4) ***As to the Appellants' claim for storage costs.***

4.1) After hearing the submissions from both parties, Appellant's version from the bar was that she had suffered a loss in costs due to storage expenses while the matter was being handled between the parties since 2021. Appellant appealed before the Tribunal for the consideration of storage costs. In response, Respondent then requested for a postponement to address adequately the storage cost as raised from the bar by the Appellant.

4.2) The Tribunal having heard both parties, granted the postponement to the 11 April 2024. The Appeal was set down for hearing on the 11 April where at Mr X for the Appellant did not show up without an early notification to the Tribunal to

explain such absence, except for an email that was sent a day before the hearing date which the Tribunal retrieved on the hearing date.

4.3) The Respondent submitted before the Tribunal that they have seen the email as per the documents that were circulated before the Tribunal, however, they prayed for wasted costs because they alleged that Appellant already knew about the training course he was going to attend. They argued that they were prepared for the matter and requested the Tribunal to allow the postponement with wasted costs. The Tribunal granted the wasted costs for the day and the matter was again postponed to 30 April 2024.

4.4) On the 30 April 2024, the Tribunal then invited the Appellant to make submissions. The Appellant when making his submissions, requested the Tribunal to consider the issue of storage costs as he has suffered a lot due to the delay in finalising the matter between the parties. The Appellant cited ignorance of the procedure to be followed when conducting duty warehouse processes insofar as the Appellant's application for the release of the vehicle is concerned.

4.5) The Respondent in response to this cited section 17 of the Act as read with regulation 18 (10) of the Customs and Excise Regulations of 1976, which clearly specify that goods are allowed in a bonded warehouse for a period not exceeding 5 years. Respondent further submitted that in terms of section 18(6), no goods which have been stored in a duty warehouse shall be taken to or delivered from it except upon due entry for the one or other of the following purposes: (a) home consumption and payment of any duty due on them; and re-warehousing in another duty warehouse or removal in bond as provided in Section 16.

4.6) The Respondent argued that Appellant was at liberty to request a provisional payment whilst the matter was still deliberated to minimize costs. They contended that it is not the duty of the Respondent to implement measures provided for in the trade facilitation agreement such that it is possible to separate release of goods pending finalisation of value determination. They contended further, that the motor vehicle was warehoused in a bonded warehouse being SWZOS 716 and the declarant of the good is a licensed clearing agent who was supposed to advice their client (Appellant) on the storage cost implications of the

motor vehicle up to the last stage of lodging of the IM4 declaration which is the mode of declaration used. Respondent further submitted that the Revenue Appeals Tribunal Eswatini cannot be seen spearheading agreements relating to third parties at the expense of the Respondent in issuance of storage costs.

4.7) After consideration of both parties' submissions, the Tribunal, accordingly, has to decide or determine whether Respondent's decision to refuse reimbursement of the storage costs falls within the bounds of reasonableness. The Tribunal is in respectful agreement with the submission made by Respondent that it is not the duty of the Respondent to implement measures provided for in the trade facilitation agreement. The Tribunal is of the view that the Appellant was at liberty to request a provisional payment whilst engaging the other party to reduce costs.

4.8) As to the Respondents' contention that the motor vehicle under wrangle was warehoused in the licensed bonded warehousing with a licensed clearing agent, it is the Tribunal view that indeed, it was the licensed clearing agent who was supposed to advise the Appellant (as a customer) on the import processes not the Respondent. It is the Tribunals considered view that the Respondent cannot be faulted for failure to advice Appellant on the consequences of a warehouse belonging to an urgent with its terms and conditions which include those of the storage costs.

4.9) The Tribunal takes note that this situation would have a differing outcome if it was the Respondents warehouse in which the vehicle was bound. Particularly because the outcome of the contravening "settlement negotiations" resulted in the Respondent decreasing the duty rate initially charged, which by implication is an acknowledgement by the Respondent that the duties initially charged were incorrect for purposes of the Customs and Excise Act of 1971 ("The Customs Act"). The implication of this would have been to attribute the keeping of the vehicle in the Respondents warehouse as ancillary to its wrongdoing, thus compelling to reconsider the storage cost or penalty. However, in view of the storage cost being relatable to a 3rd party, to which an alternative remedy was available to counter the cumulative costs, a remedy for the lost costs falls outside

the ambit of the interpretation of the Customs Act and any remedies attached to it.

4.10) It was a further submission by the Appellant that he was not aware of the Customs and Excise rules regulating warehouses, which unfortunately lends itself to the *ignorance juris non excusat* principle. The Tribunal is of the view that it is expected of a person like Mr X who, in a modern state, wherein many facets of the acts and omissions of the legal subjects are controlled by legal provision, involves himself in a particular sphere, that he should keep himself informed of the legal provisions which are applicable, which in that case relates to the Customs Act.

4.11) The Tribunal is of the considered view that Mr X appearing for the Appellant, as a person engaged in business will make himself aware of the laws necessary to engage in that business of importing cars into the country and if he does not , he cannot then expect or complain when he incurs liability. The Tribunal is of the considered view that ignorance of the law is not an excuse and cannot be in this case be regarded as a compelling reason for granting him storage costs. Further to that, there is no explanation tendered by Appellant to explain if he sought advice from the Respondent prior to importing a vehicle to the country.

4.12) The Tribunal is only sympathetic to the Appellant who is now confronted with an enormous amount of storage costs to be paid where it was his ignorance which led to his failure to comply with the provisions of the Customs and Excise Act. It therefore follows that, there is no merit in compelling the Respondent to compensate Appellant for failing to have regard to the issue of storage costs.

5) Having considered the information provided by both parties the Tribunal reaches a reasonable and fair conclusion not to grant the application for storage costs. In the circumstance, the application must fail.

The Tribunal hereby makes the following orders:

1. The application for storage costs is dismissed.

2. The Respondent is granted wasted costs as incurred on 11 April 2024.
3. Each party to bear its own costs.

MR MBUSO SIMELANE

PRESIDENT OF THE TRIBUNAL

Mr SANDILE DLAMINI

MEMBER OF THE TRIBUNAL

MR JOHN HENWOOD

MEMBER OF THE TRIBUNAL

MRS KHETSIWE DLAMINI

MEMBER OF THE TRIBUNAL

MS NTOMBENHLE SHONGWE

MEMBER OF THE TRIBUNAL

This ruling is to be handed down electronically by circulation to the parties, legal representative by email and uploaded on email platform. The date for hand-down is deemed to be 20 May 2024.

NELISIWE TSABEDZE-HLOPHE
REGISTRAR REVENUE APPEALS TRIBUNAL

Appearance

For Appellant: Mr Ncamiso Mdluli

For Respondent: Mr Bongisipho DlaminI and Mr Thandokuhle Khumalo