



Ebee Mobility Kenya Limited v Commissioner of Customs and Border Control (Tax Appeal E193 of 2024) [2025] KETAT 125 (KLR) (7 February 2025) (Judgment)

Neutral citation: [2025] KETAT 125 (KLR)

**REPUBLIC OF KENYA
IN THE TAX APPEAL TRIBUNAL
TAX APPEAL E193 OF 2024
RM MUTUMA, CHAIR, M MAKAU, JEPHTAH
NJAGI, D.K NGALA & T VIKIRU, MEMBERS
FEBRUARY 7, 2025**

BETWEEN

EBEE MOBILITY KENYA LIMITED APPELLANT

AND

COMMISSIONER OF CUSTOMS AND BORDER CONTROL RESPONDENT

JUDGMENT

Background

1. The Appellant is a limited liability company duly incorporated under the *companies Act* of the laws of Kenya, and is engaged in the business of importation of electric bicycles in Completely Knocked down form, assembly, marketing and sale of the electric bicycles.
2. The Respondent is the principal officer appointed under the *Kenya Revenue Authority Act* and mandated with the responsibility for the assessment, collection, receipt and accounting of the tax revenue as an agent of the Government of Kenya. The Respondent is also mandated with the responsibility for the administration and enforcement of all the statutes set out under the schedule to the said Act.
3. The Appellant imported electric bicycles in completely Knocked Down (CKD) form and spare parts of the same in two entries; 23EMKIM400067345 dated 18th November 2022; 23EMKIM400082869 dated 13th December 2022.

The goods were declared under Tariff Heading 8714.91, which covers frames and forks parts thereof of items of Headings 8711 to 8713. The heading attracts duty at 10%.
4. The Respondent undertook a desk audit of the Appellant's customs entries focusing on bicycle parts covering the period August 2021 to February 2023.



5. The Respondent indicated that its scrutiny of the entries 23EMKIM400067345 and 23EMKKIM400082869 revealed that the items imported as parts in the first entry when assembled would yield up to 180 bicycles; essential character of a bicycle with electric motor for propulsion, while for the second entry would yield 100 bicycles and other excess parts.
6. The Respondent communicated its findings to the Appellant on 22nd February 2023 and requested for further specified documentation.

Upon further engagement between the parties, the Respondent classified the goods under Heading 8711.60.00, which provides for; Motorcycles (including mopeds) and cycles fitted with an auxiliary motor, with or without side-cars; side-cars. The heading attracts duty at a rate of 25 %, VAT at 16 % and excise duty at a specific rate of Kshs. 10,520.00.
7. Consequently, the Appellant was issued by the Respondent with a demand Notice for short levied duties in the sum of Kshs. 6,987,161.00 on 7th November 2023.
8. The Appellant lodged an Objection to the demand on 6th December 2023, and the Respondent issued its Review Decision on 21st December 2023, and reduced the amount by Kshs. 3,626,792.00, confirming taxes due in the sum of Kshs. 2,780,081.00.
9. Aggrieved by the Respondent's Review Decision, the Appellant lodged its Notice of Appeal dated on 2nd February 2024.

The Appeal

10. The Appellant filed its Memorandum of Appeal dated and filed on 16th February 2024 and set out the following grounds of appeal;
 - a. That the Respondent erred in law and fact by issuing a Review Decision imposing a liability of Kshs. 2,780,081.00 arrived at by improperly classifying the Appellant's Completely Knocked Down (CKD) parts as a full electric bicycle classifiable under HS Code 8711.60.00, as opposed to HS Code 8714.91.00 which rightfully covers parts of a bicycle;
 - b. That the Respondent erred in law and in fact in finding that the Appellant's products fell under HS Code 8711.60.00, despite the fact that the product does not fit within the heading, sections, and Explanatory Notes of the mentioned classification.
 - c. That the Respondent erred in law and fact by purporting to classify importations of CKD electric bicycle parts under Tariff Heading 8711.60.00 which accrues import duty at an ad valorem rate of 25 %. This is contrary to the Appellant's declared HS Code 8714.91.00 which accrues duty at a rate of 10%;
 - d. That the Respondent erred in law and fact when utilizing GIR 2 of the EAC/CET by failing to appreciate that the Battery forms the essential character in the Appellant's bicycles, and the same is not imported with the rest of parts, but rather sourced separately from within the partner states;
 - e. That the Respondent erred in law and fact as a result of CKD nature of the imports, and by use of GIR 1 of the EAC/CET, the appropriate classification of the Appellant's product is Heading 8714 as declared by the Appellant;
 - f. That in applying GIR 2, the Respondent erred in law and fact by failing to take into consideration the prescribes of the Explanatory Notes to GIR 2 which requires that unassembled components of articles which are in excess of the number required for that



article when complete are to be classified separately. This aforementioned note mandates the Respondent to conduct an analysis to determine whether there are excess unassembled parts which are to be classified separately. The Respondent failed to conduct this analysis; and,

- g. That the Respondent erred in law and fact by issuing a Review Decision which is in breach of the Appellant's right to legitimate expectation, presumption of regularity and fair administrative action.

The Appellant's Case

11. The Appellant's case is premised on;
 - a. The Statement of Facts dated 16th February 2023 and filed on the same date with the annexures thereto;
 - b. The witness statement of Eric A. Makori signed on 4th October 2024 and filed on 7th October 2024 adopted in evidence during the hearing on 12th November 2024; and,
 - c. Written submissions dated 2nd December 2024 and filed on 3rd December 2024.
12. The Appellant stated that it is an importer of electric bicycles in Completely Knocked Down (CKD) form, which are then assembled locally at the company's warehouses to form fully built units. However, the batteries to be incorporated in the bicycles to turn it into an electric bicycle is not imported with the rest of the parts but rather it is sourced separately from within the partner states.
13. The Appellant also stated that at the point of importation therefore the bicycles are not electric, as the battery to be affixed onto the bicycle turning it into an electric bicycle is separately sourced locally from independent parties that are not related to the Appellant.
14. It stated that in appreciating the CKD nature of its imports, it declared the imported parts under Heading 8714 which provides for: "parts and accessories of vehicles of heading 87.11 to 87.13", which accrues duty at 10 %.
15. It was further stated that contrary to the Appellant's classification, the Respondent prescribed Tariff Heading 8711 which provides for motorcycles (including mopeds) and cycles fitted with an auxiliary motor, with or without side-cars; side-cars. Specifically, the Respondent prescribed subheading 60 to the same provides for "with electric motor for propulsion." The aforementioned HS Code accrues import duty at the rate of 25 %, VAT at 16 %, and Excise Duty at the specific rate of Kshs. 10,520.00.
16. The Appellant further averred that the genesis of the dispute at hand stems from the Respondent's Desk Audit on the Appellant's importations for the period August 2021 to February 2023. Following the audit, the Respondent presented its findings on 22nd February 2023, where it indicated that that were instances of misclassification where bicycles were declared as parts and classified under HS Code 8714.91.00 instead of being declared under HS Code 8711.60.00 by application of GIR 2.
17. The Appellant averred that as a result of the supposed misclassification, the Respondent assessed short levied taxes amounting to Kshs. 6,987,161.00 which was demanded vide the Respondent's letter of 7th December 2023.
18. It was stated that aggrieved by the demand the Appellant Objected on 6th December 2023, and in the objection reiterated that the appropriate classification for its imported electric bicycle parts was Heading 8714. It further stated that assuming a classification under HS Code 8711.60.00 was sustainable, the Respondent still erroneously imposed excise duty on the Appellant's imports despite them being not excisable. It pointed out that the provisions of the Second Schedule of the [Excise Duty](#)



Act, provided for a rate of Kshs. 10,520.00 excise duty for motor cycles of Tariff 87.11, other than, motor cycle ambulances and locally assembled motor cycles.

19. The Appellant averred that it also pointed the legislature purposely excluded cycles from the tariff description provided in the Excise Duty Act. The terms of heading to Tariff 8711 read motor cycles (including mopeds) and cycles fitted with an auxiliary motor, with or without side-cars; side-cars, while the tariff description in the second schedule to the Excise Duty Act reads, motor cycles of Tariff 87.11 other than motor cycle ambulances and locally assembled motor cycles. Consequently, the Excise Duty Act levies Excise Duty solely on motor cycles and not bicycles.
20. It was averred that following the Appellant's representations on the erroneous levying of excise duty regardless of HS classification, in its Review Decision dated 21st December 2023 the Respondent dropped excise duty. It however insisted that the appropriate classification of the Appellant's imports was still Heading 8711 consequently reviewing the demanded amount from Kshs. 6,987,161.00 to Kshs. 2,780,081.00. Therefore, the issue of the appropriate classification of its CKD electric bicycle parts remains in dispute necessitating the Appeal.
21. The Appellant stated that noting that its products were imported CKD, the Respondent applied GIR 2 of the East African Community Common External Tariff Nomenclature to deem the CKD parts as a full electric bicycle under HS 8711.60. The said GIR 2 provides;
 - “(2) (a) Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or failing to classified as complete or finished by virtue of this Rule), presented unassembled or disassembled.”
22. The Appellant contended that in applying the foregoing provision, the Respondent failed to appreciate that without the battery being installed, what the Appellant imported was essentially a conventional bicycle and not an electric bicycle as the essential character of the electric bicycle is informed by the battery.
23. The Appellant clarified that there are generally two broad categories of electric bicycles; Those with pedal-assist (electric assist); Those with electric -only.
24. The pedal-assist electric bicycles take advantage of the combined human plus electric power. Once the mode is turned on with the on/off button on the handlebars, the motor provides electric power as the cyclist pedals, which power will not be available without the presence of the battery. The critical part is the battery without which it be an ordinary bicycle.
25. For the electric only bicycle, the rider twists the throttle located on the handlebar, and the motor will kick in to propel the bicycle forwards. The critical part is the motor which on its own can propel the bicycle forward once turned on, without need for peddling.
26. The Appellant averred that its pedal-assisted electric bicycles work upon the sensors detecting movement in the pedals and signals the bike's controller to generate power for the motors facilitating pedaling. It stated that this establishes crucial and indispensable role played by the batteries in the bicycles.
27. The Appellant further averred that there no power generated without the battery, and in the absence of the battery, it functions only as a conventional bicycle. Fundamentally, the absence of the battery



renders the bicycle incapable of electric propulsion, essentially transforming it into a conventional, manually powered bicycle. The battery is indeed the most crucial component which turns the Appellant's bicycle into an electric bicycle.

28. The Appellant averred that the batteries are not imported together with the other components but is sourced externally from Uganda. Therefore, owing to the absence of the battery at the point of importation, the item received, declared and cleared is not an electric bicycle capable of classification under HS Code 8711.60.00 even through application of GIR 2.
29. It was stated that in applying GIR 2, the Respondent committed a grievous omission by failing to provide an analysis indicating that they had factored for any excess parts which would not fit with the Explanatory Note to GIR 2, which should not be read in isolation, but should be read together with its Explanatory Notes, and pertinent is Note vii, which provide;
 - “(vii) For the purposes of this Rule, “articles presented unassembled or disassembled” means articles the components of which are to be assembled either by means of fixing devices (screws, nuts, bolts etc.) or by riveting or welding, for example, provided, only assembly operations are involved.

No account is to be taken in that regard of the complexity of the assembly method. However, the components shall not be subjected to any further working operation for completion into the finished state.

Unassembled components of an article which are in excess of the number required for that article when complete are to be classified separately.”
30. The Appellant contended that the Respondent failed to execute a comprehensive analysis crucial for determining the adequacy and classification of imported spare parts. The fundamental legal framework, as stipulated in the explanatory notes, underscored the imperative nature of such an analysis, particularly where there is a possibility that the quantity of spare parts exceed the requisite for assembling a singular, complete article of the final product requiring clarifications under the respective heading of the part without GIR 2.
31. The Appellant stated that it was worth noting that even at the point of importation, the Respondent's proper officers verified the imports and in light of the absence the battery, resolved that the classification under GIR 2 was unsustainable, and consequently determined that the appropriate classification for the Appellant's CKD electric bicycle parts would be Heading 8714 which accrues duty at the rate of 10 %. Accordingly, the Appellant's consignments were cleared and released on the basis of the said classification without assessment for additional duties.
32. In view of the foregoing, the Appellant asserted that the demand by the Respondent despite the earlier clearances therefore constitute a breach of the Appellant's Right to Legitimate Expectation, Fair Administrative Action, and Presumption of Regularity.
33. The Appellant presented one witness at the hearing, Eric A. Makori who testified and was cross-examined by the Respondent. In his testimony he stated that the Appellant assembles electric bicycles known as e-bicycles, which get the motion force from the rider's cycling action. In addition, the inclusion of a motor and a battery, when used, provided added support to the rider's effort. The witness stated that the feature in the bicycle is referred to as pedal assist.
34. The witness further testified that the electrical support in the bicycle is not essential in the bicycle's operation, and the key item in providing the pedal assist was the battery, adding that, once the rider starts pedaling an electric bicycle, the sensors detect the pedaling motion and send a signal to the



bicycle's controller, which subsequently activates the battery. He also stated that the battery, usually a rechargeable lithium-ion type powers the motor to assist the rider's pedaling based on the selected assistance level. The motor also provides additional force to reduce the effort required, with the amount of assistance varying depending on the pedaling intensity or the settings. He stated that the system continuously adjusts the power flow to maintain a smooth ride, while the battery management system (BMS) ensures safe and efficient power use. When the pedaling stops, the battery stops sending power to the motor.

35. The witness testified that the motor on the e-bicycle cannot provide any assistance without the battery and in the absence of the battery, the bicycle is effectively rendered a regular bicycle. The motor only engages to provide support when pedaling, and this is only possible when the battery is installed, hence, both pedaling and a functioning battery are essential for the motor to operate.
36. The witness summarized the Appellant's e-bicycle as; while the motor and other components are essential, the battery is what powers everything. It directly impacts the range, performance, cost, and convenience of the e-bicycle, making it the most critical component. Without the battery, the e-bicycle will only function as a regular bicycle.
37. In its submissions, the Appellant stated that at the time of importation, the company's bicycles are not electric, as the battery to be affixed onto the bicycle, to convert the same to electric, is separately sourced locally from independent parties.
38. It submitted that the foregoing is the key point of divergence between the Appellant and the Respondent. While the Appellant asserts that the battery is the single most crucial component of the cycle, and in fact informs its essential character, the Respondent is adamantly refusing the assertion in order to justify its classification of the product under Heading 8711.
39. It was also submitted that the Appellant's classification of the bicycle under Heading 8714 was in appreciation of the CKD nature of its imports. And owing to the fact that the products were Completely Knocked Down (CKD), the Appellant declared the imported parts under Heading 8714 which provides for "parts and accessories of vehicles of heading 87.11 to 87.13" with a duty rate of 10%.
40. It submitted that the Respondent prescribed tariff Heading 8711 which provides for, "motorcycles (including mopeds) and cycles fitted with an auxiliary motor, with or without side-cars; side-cars. with electric motors for propulsion". This prescribed HS Code accrues import duty at the rate of 25 %, VAT at 16 % and excise at the specific rate of Kshs. 10,520.00.
41. The Appellant submitted that under the General Interpretative Rules (GIR) 2 (a) of the East African Community Common External Tariff (EAC/CET), the concept of essential character plays a critical role in classification of unassembled or disassembled goods.
42. It was submitted that in utilizing the above provision however, the Respondent failed to appreciate that without the battery installed and in place at the time of importation, what the Appellant imported was essentially a conventional bicycle and not an electric bicycle, as the essential character of the electric bicycle is informed by the battery.
43. It was further submitted that essential character refers to the fundamental nature or defining features of a product that allow it to be classified under the same tariff heading as a complete or finished good, even if it is imported in an incomplete or unassembled state. Therefore, determining the essential character of a product involves assessing factors such as its functional role, physical composition, economic importance, and intended use. The imported components must include the key features or parts necessary for the product to perform its primary function.



44. The Appellant submitted that if parts of a bicycle are imported in a CKD form but lack a critical component such as a battery for an electric bicycle, the import cannot be said to possess the essential character of a complete electric bicycle, because the absent component is fundamental to the product's classification and functionality. The battery constitutes the most critical component as it determines the essential character of the product as an electric bicycle. It defines the Appellant's electric bicycle's identity and performance, making it the most critical determinant of the electric bicycle's essential character.
45. It was a submission of the Appellant that utilizing GIR 1, the primary rule of classification, the Appellant's imports are most appropriately classified under Heading 8714, which aligns with the true nature of the goods as imported parts, which are assembled locally to create complete electric bicycles.
46. The Appellant cited the case of Republic vs. Commissioner of Domestic Taxes Large Taxpayers Office Exparte Barclays Bank of Kenya Ltd [2012] eKLR, whereon the case of Cape Brandy Syndicate vs. Inland Revenue Commissioners (1920) 1 KB 64 was cited with approval.
47. The Appellant also submitted that the sudden and erratic change in tariff classification of the Appellant's imported products constitutes a fundamental breach of the Appellant's legitimate expectation.
48. It was submitted that the principle of legitimate expectation was considered in the English case of Council of Civil Service Union vs. Minister for Civil Service (1995) AC 374, Where Lord Diplock defined the principle thus;
- “For a legitimate expectation to arise the decision must affect the other person by depriving him of some benefit or advantage which he had in the past been permitted by the decision makers to enjoy and which can legitimately expect to be permitted to continue to do until there has been committed to him some rational grounds for withdrawing it on which he has been given an opportunity to comment.”
49. The Appellant further submitted that it has on many occasions imported bicycles in CKD form for purposes of retailing the same. In all its previous consignments the Appellant had declared the same under Heading 8714 and the same had been allowed by the Respondent. Thus, having allowed the same in the past, the Respondent is now unjustly and unfairly attempting to demand for classification of the bicycles under a different tariff code subjecting the Appellant to higher duty charge.
- The Appellant buttressed its submission with the citation of the case of Keroche Industries Ltd- vs – KRA & 5 Others HCMA 743 of 2006 (2007) KLR 240.
50. The Appellant also submitted that the Respondent has created a landscape of great confusion marred with ambiguity by insisting that the same be reclassified under tariff code 8711.60.00 thus creating ambiguity, uncertainty in the taxpayers use of the harmonized coding system.
51. The Appellant also cited the case of Waweru & 3 others (Suing as officials of Kitengela Bar Owners Association) & Another vs. National Assembly & 2 Others, where it was stated that certainty of the law is especially more critical in legislation that imposes taxes on members of the public.
52. It was submitted that the Respondent breached this principle by failing to provide clear, transparent and well substantiated analysis in their classification decision, by unilaterally classifying the Appellant's imported parts under heading 8711, by misapplying GIR 2 (a), without providing the necessary analysis and computations to demonstrate how the CKD parts are sufficient to assemble complete electric bicycles.



53. The Appellant further submitted that pertinent is that in the event of ambiguity of the law which the Respondent has created, the same ought to be resolved in the taxpayers' favour.
54. The Appellant also submitted that the Respondent breached the Presumption of Regularity. It submitted that the Presumption of Regularity was defined in the case of Chief Land Registrar vs. Nathan Torop Koech & 4 others [2018] eKLR, where it was stated,
- “there is a presumption that all acts done by a public official have lawfully been done and that all procedures have been duly followed. The Presumption of regularity is a presumption that executive officials have properly discharged their official duties. The presumption is aptly captured in the ancient maxim “Omnia praesamuntur rite esse acta”, which roughly translates means “all things are presumed to have been done rightly.”
55. It was further submitted that upon the arrival of the goods in the country, the Respondent's customs officers at the point of clearance verified the containers, examined the imports, sighted the Appellant's bicycles in CKD form and established that the declared Tariff 8419.19.00 was correct. The customs officers did not raise any concerns on the classification. Therefore, a legitimate expectation was created, and the Appellant ought not be punished for relying on a Government authority's approvals as per the presumption of regularity.
56. The Appellant relied on the case of Kibos Distillers Ltd & 4 others vs. Benson Ambuti Adegga & 3 others [2020] eKLR, and asserted that the Appellant herein rightfully relied on the law as is and that they are not liable for the payment of the demanded amount of Kshs. 2,780,081.

The Appellant's Prayers

57. By reason of the foregoing the Appellant prayed for orders;
- a. That the Appellant's Appeal be allowed;
 - b. That the Appellant's imported CKD electric bicycle parts be declared under HS Code 8714.91.00; and,
 - c. That the Respondent's Review Decision dated 21st December 2023 and demand for Kshs. 2,780,081.00 be set aside in their entirety.

The Respondent's Case

58. The Respondent's case is set out on the following documents;
- a. The Statement of Facts dated 7th March 2024 and filed on 19th March 2024 together with the documents attached thereto;
 - b. The witness Statement signed by Jeremiah Oketch on and filed on 2nd October 2024, and adopted as evidence in chief by the Tribunal on 12th November 2024;
 - c. Written submissions dated and filed on 3rd December 2024.
59. The Respondent stated that it carried out a desk audit on the Appellant focusing on importation of bicycle parts and covered the period August 2021 to February 2023.
60. It was stated that the Appellant took the Respondent through the process of assembling the bicycle and it was evident that from the parts imported, on assembly, it was a complete bicycle with only the battery missing. The rear wheel assembly had a motor embedded at the point of importation.



61. The Respondent stated that the Appellant's contention was that the goods should be classified as parts as imported and not as bicycles on assembly which is achieved post importation.
62. The Respondent classified the goods under Heading 8711.60.00 which provides for; motorcycles (including mopeds) and cycles fitted with an auxiliary motor, with or without side-cars; side-cars. The code attracts import duty at the rate of 25 %, VAT at 16 %, and excise duty at a specific rate of Kshs. 10,520.00. The Respondent therefore issued a demand notice on the Appellant for short levied duties on 7th November 2023 demanding Kshs. 6,987,161.00. When the Respondent issued its review decision on 21st December 2023 it reviewed the sum of Kshs. 3,626,792.00 confirming taxes due of Kshs. 2,780,081.00.
63. The Respondent stated that its classification takes into account cycles fitted with an auxiliary motor and the same imported in Completely Knocked Down form had motors fitted in the rear wheel assembly.
64. The Respondent averred that it agreed with the assertions that the Appellant imports electric bicycles in CKD form and imports distinct bicycle parts. It averred that the Appellant's data reveals that the Appellant declared bicycle parts but did not make a single declaration of an electric bicycle. It stated that goods under the aforementioned categories both have different tariff codes.
65. The Respondent further stated that the two items ought to be classified separately because;
 - a. Bicycle parts under the heading 8714 which reads, "Parts and accessories of vehicles of heading 87.11 to 87.13."
 - b. Electric bicycle parts under heading 8711 which reads, "Motor cycles (including mopeds) and cycles fitted with an auxiliary motor, with or without side-cars; side-cars."
66. It was stated that therefore the most appropriate tariff line is Code 8711.60.00 which covers for bicycles "with electric motor for propulsion."
67. The Respondent averred that the goods in question are, "two wheeled cycles, fitted with an auxiliary motor, and essentially designed for carriage of persons." It stated that the Appellant's goods are essentially electric bicycles which are presented in CKD form, the CKD being just an unassembled form of the same item, which is presumably not assembled for ease of transport.
68. It was also stated that the presentation of the goods does not affect the tariff classification, as guided by the GIR Rule of the 2 (a) of the EAC/CET. It stated that the set of goods presented in the declared invoices are all that is needed to have corresponding "cycles fitted with an auxiliary motor."
69. The Respondent further stated that while the Appellant contends that the battery forms the essential character of the bicycles, the Respondent contends that it was guided by Rule 2 of the GIR, which provides for goods that are incomplete or unfinished. All that was needed was the incomplete or unfinished article has the essential character of the complete or finished article.
70. It stated that the provisions of the EAC/CET recognize "having auxiliary motor" as opposed to "having a battery". It was not in dispute that the kits have an auxiliary motor. Therefore, absence of a battery does not affect the tariff code, it can only be construed to mean that the items in question are incomplete.
71. The Respondent also stated that it took into account the provisions of the Harmonized System Classification and the GIRs and applied the same correctly when classifying the Appellant's goods.



72. It stated that Sections 235 and 236 of EACCMA gives the Respondent powers to call for documents and conduct a post clearance audit (PCA) on the import and export operations of a taxpayer within a period of five years from the date of importation or exportation.
73. It further stated that Sections 135 and 249 (1) of EACCMA, empowers the Respondent to recover any such amount short levied or erroneously refunded with interest at a rate of 2% per month for the period the taxes remain unpaid.
74. The Respondent also stated that Section 229 of EACCMA provides for application for review by any person affected by the decision or omission of the Respondent on matters relating to Customs and provides the legal timelines to be observed.
75. The Respondent presented one witness during the hearing, one Mr. Jeremiah Okech, who testified that the Respondent undertook a desk audit of the Appellant's customs operations for the period August 2021 to February 2023 with special focus on the bicycle parts. He stated that scrutiny of the Appellant's invoices/entries confirmed that the items imported as parts in the first and second entries would yield 280 bicycles with essential character of a bicycle with electric motor for propulsion.
76. The witness also testified that the Appellant took them through the process of assembling the bicycle and it was evident that from the parts imported, on assembly, it was a complete bicycle with only the battery missing. He also stated that they established that the rear wheel assembly had a motor embedded at the point of importation.
77. The witness also noted that the presence of the lithium iron charger would ensure that the missing battery is just fixed without being subjected to any further modification.
78. The witness stated that the Appellant's contention was that the goods should be classified as parts as imported and not as bicycles on assembly which is achieved post importation. He testified that the Respondent however classified the goods under Heading 8711.60.00 which provides for; motorcycles (including mopeds) and cycles fitted with an auxiliary motor, with or without side-cars; side-cars.
79. In its submissions the Respondent stated that the Appellant's import has been described for clarity as an E-Bicycle, and the Appellant adduced a document described as an E-bicycle manual, which describes the product as an electric bicycle that uses a battery powered electric motor to assist the rider.
80. It was submitted that, the Appellant's witness in his examination in chief stated that the bicycle is a normal bicycle but with a pedal assist mechanism, and that a human being has to ride it where it is equipped with a battery that amplifies the ability to move. He testified that the battery is installed to add to the rider's effort and that without the battery you will ride the bicycle as an ordinary bicycle. Hence the battery is the most important element of the bicycle.
81. The Respondent also submitted that during the cross-examination, the Appellant's witness admitted that; the bicycle subject of the Appeal is also called an E-bike; that the difference between an E-bike and ordinary bike is that an e-bike has a motor and a battery; there cannot be an electric bike without a motor; and the motor is essential to pedaling and can propel the bike forward.
82. It was also submitted that the battery was not imported alongside the other parts in the CKD form, but the motor was affixed in the rear wheel part of the bicycle. It was testified that the role of the motor is to convert electric energy from the battery to kinetic energy to assist in pedaling. If there is electric energy from the battery and the energy is not converted to kinetic energy, the battery will be of no use. It was submitted that if the bicycle has a battery, and there is no motor, then that would not be an electric bicycle.



83. The Respondent submitted that as a consequence it concluded that what was imported was an incomplete electric bicycle.
84. The Respondent submitted that it classified the imports under HS code 8711.60.00 which covers;
“Motor cycles (including mopeds) and cycles fitted with an auxiliary motor, with or without side-cars; side-cars- with electric motor for propulsion.”
85. The Respondent further submitted that it applied the GIR 2 (a) for the bicycle parts as presented with equal number of parts qualifies to be classified under 8711.60.00;
“(2) Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), presented unassembled or disassembled.”
86. It was submitted that the presentation of goods does not affect the tariff classification.
87. It was also submitted that the Appellant’s electric bicycles are “two wheeled cycles, fitted with an auxiliary motor, and essentially designed for carriage of persons.” The Appellant’s goods are essentially electric bicycles which are presented in Completely Knocked Down form. The CKD form being just an unassembled form of the item the same item which is presumably not assembled for ease of logistics and transportation.
88. The Respondent also submitted that the provisions of EAC/CET law recognizes “having auxiliary motor” as opposed to “having a battery.” And it was not disputed that the kits have an auxiliary motor. Therefore, the absence of a battery does not affect the tariff code, it can only be construed to mean that the items in question are incomplete. The assertion that the battery forms the essential part of the electric bicycle is therefore misleading.
89. The Respondent therefore submitted that the most realistic classification for the electric bike is HS Code 8711.60.00.
90. The Respondent submitted that it gave consideration to the issue of excess parts which would not constitute to a fully built units, noting that it was clear that the taxes in demand relate to 280 units as highlighted in the commercial invoices. Therefore, the Respondent submitted that it was misleading to allege that the Respondent did not carry out any analysis on the Appellant ‘s electric bicycles.
91. It was also submitted that though the Appellant has faulted the Respondent for breaching the Appellant’s right to legitimate expectation, the Commissioner is empowered to correctly classify the goods, where an importer has misclassified the goods. And in the event the reclassification of the goods leads to the goods attracting import duty, then it must be paid. Any attempts by the Commissioner to determine the liability of the importer to pay tax are neither capricious nor and arbitrary.
92. The Respondent submitted that the foregoing was affirmed by the Court of Appeal in Harshvardhan P. Shah T/a Vipees Through the Republic & Anor vs. Kenya Revenue Authority [2012] eKLR where it was emphasized that the provisions of Section 135 of EACCMA the Commissioner has power to recover any duty which had been short levied.



93. It was further submitted that Section 135 and 249 (1) of EACCMA empowers the Respondent to recover any such amount short levied or erroneously refunded with interest at a rate of 2 % per month for the period the taxes remain unpaid.
94. It was also submitted that Sections 235 and 236 of EACCMA gives the Respondent powers the Respondent to call for documents and conduct a post clearance audit (PCA) on the import and export operations of a taxpayer within a period of five years from the date of importation or exportation.
95. The Respondent submitted that the period covering the audit was 2017 to 2022 which pursuant to Section 235 and 236 of EACCMA. It submitted that the demand for additional taxes was proper in law and cannot be faulted for the demand of additional assessments.
96. Therefore, the Respondent submitted that its actions were anchored in law and there is no instance of illegality that has been demonstrated in its actions, and that its actions were neither arbitrary, nor in breach of the Appellant's legitimate expectation.

Respondent's Prayers

97. By reason of the foregoing, the Respondent prayed for orders;
 - a. The Appellant's Appeal be dismissed with costs; and,
 - b. The Respondent's Review Decision dated 21st December 2023 be upheld.

Issues for Determination

98. The Tribunal having carefully considered the pleadings filed, evidence adduced, and the submissions made by the parties, is of the considered view that one issue commend for determination as follows;

Whether the Respondent erred in reclassifying the Appellant's imported goods from HS Code 8714.91.00 to HS Code 8711.60.00.

Analysis and Determination

99. The Tribunal having identified the issue for determination proceeds to analyze and determine the same as hereunder.
100. The Appellant herein is an importer of electric bicycles, which are shipped in in CKD form, and assembled to fully built units in its warehouses for distribution and retail. It has been submitted that the battery component of the bicycle is not imported together with the other components and is sourced separately from EAC partner states and incorporated during the final assembling of the electric bicycles.
101. The Appellant has contended and submitted that at the point of importation, its bicycles are not electric, as the battery to be affixed to turn it into an electric bicycle, is separately sourced locally and is not part of the import. The Appellant further asserted that the battery component is the single most important and crucial component of the bicycle and thus informs its essential character and hence making it classifiable under Heading 8714 owing to the fact that the import was in CKD form.
102. On the other hand, the Respondent contended and submitted that, though the battery was imported as part of the CKD component of the bicycle, there was a motor affixed at the rear wheel part of the bicycle, which motor is critical in converting the bicycle to electric. It therefore concluded that what was imported in CKD form was an incomplete electric bicycle.



103. Gleaning from the material adduced and submissions made by the parties, it is quite clear to this Tribunal that the core of the issue in the classification dispute is whether at the point of importation, the Appellant's bicycles in CKD Form were electric bicycles or ordinary manual bicycles, thus their essential character determining their appropriate tariff classification.
104. The witnesses presented by the parties during the hearing testified that the difference between an ordinary bicycle and an electric bicycle is that an electric bicycle has a motor and battery. The role of the motor is to convert the electric energy from the battery to kinetic energy which is essential in pedaling and propelling the bicycle forward. Therefore, there cannot be an electric bicycle without a motor. Secondly, even if the bicycle has a battery, and there is no motor to convert the electrical energy to kinetic energy to propel the bike, then the battery has no value in turning the bike into electrical.
105. From the foregoing, it is apparent that the motor is essential in distinguishing a normal bicycle and an electrical bicycle and gives the same its essential character as an electric bicycle in CKD form at the point of importation. The only part of the bicycle missing at the point of importation is the battery, but the motor was part of the imported consignment, already installed at the rear wheels. Lack of a battery at that point did not change the character of the imported bicycle as an electric bicycle in CKD form.
106. In light of the foregoing the Tribunal comes to the inescapable conclusion that the Appellant's imported products fitted the character of electric bicycles, and therefore the consignment in question constituted of electric bicycle in Completely Knocked Down form, notwithstanding the absence of a battery.
107. The General Interpretative Rules to the East African Community Common External Tariff (GIR) (EAC/CET) Rule 2 (a) provides;
- “(a) Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), presented unassembled or disassembled.”
108. The Tribunal is satisfied that the Appellant's imports are electric bicycles which are presented in CKD form. The CKD form is just an unassembled version of the same electric bicycle, obviously not assemble for ease of logistics of transportation.
109. Electric bicycles are classifiable under Heading 8711 which provides;
- “Motor cycles (including mopeds) and cycles fitted with an auxiliary motor, with or without side-cars; side-cars.”
110. The imports in question as declared also appropriately fit the description provided in the tariff as;
- “..two wheeled cycles, fitted with an auxiliary motor, and essentially designed for carriage of persons.”
111. The Provisions in the EAC/CET provides for “having an auxiliary motor”, and not “having a battery”. The CKDs kits have an auxiliary motor, and therefore the absence of a battery does not affect this tariff as the appropriate one for correct classification.



112. Therefore, flowing from the foregoing, the Tribunal finds and holds that the most appropriate tariff code for the classification of the Appellant's imported electric-bicycles in CKD form would be HS Code 8711.60.00.
113. Consequently, the Tribunal finds and holds that the Respondent was justified in reclassifying the Appellant's imported products from HS Code 8714.91.00 to HS Code 8711.60.00.
114. The upshot of the foregoing is that that the Appellant's appeal is not merited and therefore fails.

Final Determination

115. The Appellant's appeal having failed the Tribunal makes the following orders;
- a. The Appellant's Appeal be and is hereby dismissed;
 - b. The Respondent's Review Decision dated 21st December 2023 be and is hereby upheld; and,
 - c. The parties to bear their own costs.
116. It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 7TH DAY OF FEBRUARY 2025.

ROBERT M. MUTUMA - CHAIRPERSON

MUTISO MAKAU - MEMBER

JEPHTHAH NJAGI - MEMBER

DELILAH K. NGALA - MEMBER

DR TIMOTHY B. VIKIRU - MEMBER

