Sintel Security Print Solutions v Commissioner of Customs and Border Control (Tax Appeal E147 of 2024) [2025] KETAT 121 (KLR) (7 February 2025) (Judgment)

Neutral citation: [2025] KETAT 121 (KLR)

REPUBLIC OF KENYA

IN THE TAX APPEAL TRIBUNAL

TAX APPEAL E147 OF 2024

CA MUGA, CHAIR, BK TERER, EN NJERU, E NG'ANG'A & SS OLOLCHIKE, MEMBERS

FEBRUARY 7, 2025

BETWEEN

SINTEL SECURITY PRINT SOLUTIONS ..... APPELLANT

AND

COMMISSIONER OF CUSTOMS AND BORDER CONTROL .... RESPONDENT

JUDGMENT

Background

1. The Appellant is a limited liability company registered in Kenya engaged in the business of importation and sale of mobile phone Subscriber Identification Modules (SIM).

2. The Respondent is a principal officer appointed under Section 13 of the *Kenya Revenue Authority Act*, CAP 469 of Kenya's Laws (hereinafter "the Act"). Under Section 5 (1) of the Act, the Kenya Revenue Authority is an agency of the Government for the collection and receipt of all tax revenue. Further, under Section 5(2) of the Act with respect to the performance of its functions under subsection (1), the Authority is mandated to administer and enforce all provisions of the written laws as set out in Part 1 and 2 of the First Schedule to the Act for the purposes of assessing, collecting and accounting for all revenues in accordance with those laws.

3. By a letter dated 29th November 2023 the Respondent demanded from the Appellant Custom Duties in the sum of Kshs 17,407,526.00 The custom duties related to 5 importations made during the tax period 2022-2023. Dissatisfied with the Notice of Demand, the Appellant, pursuant to Section 229 of the East Africa Community Customs Management Act (EACCMA) duly lodged an Application for Review dated 5th December 2023 together with supporting documents, including samples and proof of payment.

4. Upon review of the Appellant's application, the Respondent issued the impugned review decision dated 3rd January 2024, in which the Appellant's application for review was rejected and the Notice of Demand for customs taxes was upheld.

5. Dissatisfied with the review decision, the Appellant preferred this Appeal vide notice of appeal dated 5th February 2024 and filed on 6th February 2024.

The Appeal

6. The Appeal is based on the Memorandum of Appeal dated 5th February 2024 and filed on 6th February 2024 raising the following grounds of appeal:

    a. That the Respondent erred in fact and in law by disallowing the invoices used by the Appellant in support of the declarations in the subject customs entries, in keeping with provisions of Section 122 as read with Paragraph 2 of the Fourth Schedule to the East African Community Customs Management Act, 2004 (hereinafter "EACCMA".

    b. The Respondent erred in fact and law by purporting to apply paragraph 3 of the Fourth Schedule to the EACCMA, to determine the customs value of the Appellant's imports based on the transaction value of identical goods.

    c. The Respondent erred in fact and in law by failing to appreciate that subject customs entries were properly entered under Section 34(1) (a), delivered to the proper officer as per Section 34(2) and dealt with in accordance with Section 2(2) (a) and (b) of EACCMA and examined pursuant to Section 41 thereby determining the accuracy of the declarations.

    d. The Respondent erred in fact and in law by failing to consider the grounds advanced by the Appellant in support of the application for review.

    e. The Respondent erred in fact and in law by basing its review decision on a failure to supply documents which she never asked for prior to the issuance of its demand notice.

    f. The Respondent erred in fact and in law by failing to consider and appreciate that the Appellant supplied all relevant documents required to authenticate the validity of the transactions to which the imports related.

    g. The Respondent abused its powers by unfairly and without any lawful excuse issuing a demand notice not supported and/or preceded by any lawful request for documents.

    h. The demand notice constitute disproportionate and excessive enforcement measures in light of the Respondent's failure to engage the Appellant prior to the issuance of the demand notice.

    i. The demand notice was arbitrary, capricious and in bad faith.

Appellant's Case

7. The Appellant filed its statement of facts dated 5th February 2024 on 6th February 2024.

8. The Appellant stated that vide letter dated 29th November 2023 the Respondent demanded from the Appellant customs duties in the sum of Kshs 17,407,526.00 related to 5 importations made during the tax period 2022-2023. The Respondent based its demand on the allegation that the Appellant had understated the value of SIM modules by using invoices which 'lacked basic features of authentic invoices such as incoterms, suppliers' bank details, signatures and stamps of the suppliers.'

9. Consequently, the Respondent purported to disallow the invoices in question to determine the customs value of the imported SIM modules and instead invoked the provisions of paragraph 3 of the Fourth Schedule of the EACCMA, to determine the customs value based on the transaction value of identical goods.

10. Dissatisfied with the notice of demand, the Appellant, pursuant to Section 229 of the EACCMA, duly lodged an application for review dated 5th December 2023 together with supporting documents, including samples and proof of payment.

11. In the application for review, the Appellant stated that it explained and demonstrated the validity and authenticity of each and every invoice questioned by the Respondent by highlighting on the same invoices the presence of the basic features of authentic invoices such as incoterms, suppliers' bank details, signatures and stamps of the suppliers. As the invoices were valid, the Appellant requested the Respondent to abide by and apply paragraph 2 of the Fourth Schedule of EACCMA in determining the customs value of the imported SIM modules and avoid reference to and reliance on paragraph *3*. According to the Appellant, the Respondent then verbally sought clarification which were duly responded to via letter dated 14th December 2023.

12. The Respondent then issued the impugned review decision dated 3rd January 2024, in which the Appellant's application for review was rejected and the notice of demand for customs taxes was upheld.

13. According to the Appellant, the review decision failed to consider the grounds advanced by the Appellant in support of the application for review and further, purported to uphold the demand customs taxes on the grounds that the Appellant had failed to provide bank statements. This was despite the fact that the Respondent only asked for bank statements on the same day it made the review decision that is on 3rd January 2024, after the Appellant had forwarded Bank Statements on the Appellant's own accord on 19th December 2023.

14. The Appellant averred that the Respondent erred in issuing the Notice of Demand as a first step, contrary to Article 47 of *the Constitution* of Kenya 2010, (hereinafter "*the Constitution*") Section 4(1) and (3) of the *Fair Administrative Action Act*, CAP 7L of the Laws of Kenya (hereinafter "FAAA") and the general Rules of natural justice.

15. Further, the Appellant argued that in pursuing Section 234 and 235 of the EACCMA, the Respondent ignored, failed and/or neglected to request from the Appellant any documents that may have assisted in determining the correct duties in relation to the subject entries. This request would have created an avenue for the Respondent to explain in detail any pertinent issue that may have led to a different decision.

16. The Appellant argued that in pursuing Section 236 of the EACCMA, the Respondent denied the Appellant the opportunity to assist in determining the correct duties in relation to the subject entries - by verifying the accuracy of the documents referred to above, inviting the Appellant to explain any apparent inconsistency, or call for samples of the SIM modules.

17. The Appellant noted and stated that the subject entries were properly entered under Section 34(1)(a), delivered to the proper officer pursuant to the provisions of Section 34(2) and dealt with in accordance with Section 2(2)(a) and (b) of EACCMA and examined pursuant to Section 41 thereby determining the accuracy of the declarations. It alleged that both the declarant and the proper officers at the port of entry know the requirements of the Act and declarations thereof, and must with due diligence satisfy themselves of the accuracy of their respective work.

18. The Appellant stated that the Respondent erred in establishing that the Appellant understated the value of SIM modules, and the error is apparent in the Respondent's Schedule of Workings, which in the description column captures only one (1) supplier, instead of the three (3); one (1) entry for Valid Africa Limited and two (2) each for Wuhan Tianyu Information Industry Company Limited and XH Smart Technology Mauritius Limited.

19. The Appellant contended that the Respondent erred in holding that invoices used to support the customs declarations "lacked basic features of authentic invoices such as incoterms, suppliers' bank details, signatures and stamps of the suppliers". The Appellant attempted to demonstrate as below why this reason cannot stand, seeing that the invoices themselves had these features:

    a. Invoice No IM-2022-0023, IE No. 22NBOIM406960441: Valid Africa Limited.

        i. In description has separate Cost, Freight and Insurance (incoterm CIF)

        ii. Supplier's Bank details appear at the bottom left corner, labelled ‘‘BANK DETAILS:"

        iii. At the bottom the invoice states that ‘This is a computer-generated document. No signature is required in line with best practices worldwide, also used by the Kenya Revenue Authority (KRA)’.

    b. Invoice No TY-E230227-6, IE No. 23NBOIM405177492: Wuhan Tlanyu Information industry Co. Ltd.

        i. In “Item" has separate FOB Value, Transport Cost/Weight and Insurance (incoterm CIF). NB Row 5 Column 2 Terms of Delivery CIF JKIA"

        ii. Supplier's Bank details appear at the bottom left corner, labelled ‘Beneficiary Bank:’

        iii. At the bottom right corner there is a stamp and signature.

    c. Invoice No TY-E230206-3, IE No. 23NBOIM402565048: Wuhan Tianyu Information Industry Co. Ltd.

        i. In "Item" has separate FOB Value, Transport Cost/Weight and Insurance (incoterm CIF). NB Row 5 Column 2 Terms of Delivery CIF JKIA"

        ii. Supplier's Bank details appear at the bottom left corner, labelled "Beneficiary Bank:"

        iii. At the bottom right corner there is a stamp and signature.

    d. Invoice No C20220714-C136, IE No. 22NBOIM407418850: XH Smart Technology (Mauritius) Ltd.

        i. In “Description" has separate Cost and Freight, (incoterm CIP Nairobi Kenya appears between unit Price" and “Amount"). NB Row 5 Column 2 Terms of Delivery CIF JKIA"

        ii. Supplier's Bank details appear on the Proforma Invoice No. PI22-01-005 V2 in the middle left of the table, labelled “Banking Details:"

        iii. At the bottom right corner there is a stamp and signature below it.

    e. Invoice NoC20220817-C136, IE No. 22NBOIM408772064: XH Smart Technology (Mauritius) Ltd.

i. In “Description" has separate Cost and Freight, (incoterm CIP Nairobi Kenya appears between “unit Price" and “Amount"). NB Row 5 Column 2 "Terms of Delivery CIF JKIA"

ii. Supplier's Bank details appear on the Proforma Invoice No. PI22- 01-005 V3 in the middle left of the table, labelled "Banking Details:"

iii. At the bottom right corner there is a stamp and signature below it.

20. The Appellant stated that the bank statements for the tax period in question supplied to the Respondent reveal that the invoices were duly settled and paid for. It averred that the Respondent erred in fact by purporting to base the review decision on a failure by the Appellant to supply bank statements, which it requested via electronic mail at 1:22 pm on 3rd January 2024, the same date of the review decision.

21. Further, the Appellant alleged the Respondent erred in beginning to compare the Appellant's invoice values with records in her custody, disregarding Section 122 of the EACCMA as read with the Fourth Schedule to the EACCMA, giving primacy to transaction value, and as demonstrated above, its reasons for rejecting the transaction value were misapprehended.

Non-applicability of paragraph 3 of the fourth schedule to the EACCMA

22. The Appellant relied on Section 122(6) of the EACCMA which provides as follows:

> “(6) In applying or interpreting this section and the provisions of the Fourth Schedule due regard shall be taken of the decisions, rulings, opinions, guidelines, and interpretations given by the Directorate, the World Trade Organisation or the Customs Cooperation Council.”

23. The Appellant cited the case of TAT 119 of 2018 Auto Express Limited v Commissioner of Customs & Boarder Control wherein the Tribunal in paragraphs *65* stated as follows:

> “The Tribunal however notes Text 1.2 of Article 17 of the WTO Customs Valuation Agreement recommends that certain procedures should be observed in such instances. Text 1.2 - "Decision regarding cases where Customs Administrations have reasons to doubt the truth or accuracy of the declared value" - not only re affirms that the transaction value is the primary basis of valuation, but recommends that, as a first step, Customs should ask the importer to provide further explanation that the declared value represents the total amount actually paid or payable for the imported goods. If reasonable doubt still exists after receiving additional information (or in absence of a response), Customs may decide that the value cannot be determined according to the transaction value method. "

24. The Appellant noted that the Respondent, in its notice of demand dated 29th November 2023, stated the following:

> “that it had to determine the correct customs values of the imported goods using paragraph 3 of the Fourth Schedule (Transaction Value of identical Goods)". In so doing, the Respondent failed to explain if indeed the valuation method used was of "identical goods" described in the Fourth Schedule as meaning “goods which are same in all respects, including physical characteristics, quality and reputation, Minor differences in appearance shall not preclude goods otherwise conforming to the definition from being regarded as identical."

25. According to the Appellant, it is not apparent from the Notice of Demand whether the twin issues of quality and reputation were regarded. It relied on Paragraph 1(2) of the Fourth Schedule of EACCMA which provides as follows:

> " (2) For the purposes of this Schedule
>
> (a) Goods shall not be regarded as "identical goods" or "similar goods" unless they were produced in the same country as the goods being valued;
>
> (b) goods produced by different persons shall be taken into account only when there are no identical goods or similar goods, as the case may be, produced by the same person as the goods being valued."

26. It also asserted that it is not apparent from the Respondent's notice of demand whether the compared goods were produced by the same person and imported at or about the same time as the sim modules being valued. It cited Paragraph 3 (1) (a) of Fourth Schedule of EACCMA which states as follows:

> " 3. Where the customs value of the imported goods cannot be determined under
> (1) the provisions of paragraph 2, the customs value shall be the transaction value
> (a) of identical goods sold for export to the Partner State and exported at or about the same time as the goods being valued..."

27. The Appellant stated that it is also not apparent from notice of demand when the compared goods were imported, and if they related to each relevant entry in this regard. The Appellant cited Paragraph 3 (1) (b) of Fourth Schedule of EACCMA which states as follows:

> " (b) In applying the provisions of this paragraph, the transaction value of identical goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued shall be used to determine the customs value and where no such sale is found, the transaction value of identical goods sold at the different commercial level or in different quantities, adjusted to take account of differences attributable to commercial level or to quantity, shall be used, provided that such adjustments can be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustment, whether the adjustment leads to an increase or decrease in the value."

28. In addition, the Appellant asserted that the Respondent's notice of demand did not demonstrate any evidence of whether the compared goods were imported at the same commercial level and in substantially same quantities, or if at different commercial levels or different quantities but adjusted for it. It cited Paragraph 3 (2) of Fourth Schedule of EACCMA which provides as follows:

> " (2) Where the costs and charges referred to in Paragraph 9 (2) are included in the transaction value, an adjustment shall be made to take account of significant differences in such costs and charges between the imported goods and the identical goods in question arising from ddifferences in distances and modes of transport."

29. According to the Appellant, the Respondent's notice of demand did not attempt to demonstrate whether there was more than one transaction and if the lowest such value was picked. In this regard, the Appellant relied on Paragraph 3 (3) of Fourth Schedule of EACCMA which provides as follows:

> "(3) Where in applying the provisions of this paragraph, more than one transaction value of identical goods is found, the lowest such value shall be used to determine the customs value of the imported goods."

30. Finally, the Appellant asserted that it is not possible to ascertain from the Respondent's notice of demand whether Section 122(7)[sic] was considered in converting the currencies - which rate was used. The said section provides as follows:

> "(7) The rate of exchange to be used for determining the equivalent of a Partner State currency of any foreign currency shall be the selling rate last notified by the Central Bank of the respective Partner State when accepted by the proper officer."

Appellant's Prayers

31. The Appellant urged this Tribunal to make the following Orders:

    a. That this Tribunal be pleased to allow the Appellant's Appeal in its entirety.

    b. This Tribunal be pleased to set aside and/or vacate the review decision dated 3rd January 2024.

    c. This Tribunal be pleased to Order the Respondent to pay the costs of this Appeal.

    d. This Tribunal be pleased to issue any other Order favourable to the Appellant as it may find just and expedient to issue.

The Respondent's Case

32. In response to the appeal, the Respondent filed its statement of facts dated 7th March 2024 on 8th March 2024.

33. The Respondent stated that the dispute arose after the Respondent conducted a Post Clearance Audit (hereinafter "PCA") on the Appellant for the period 2022 to 2023. The audit revealed instances of undervaluation of some consignments of sim modules. The Respondent then issued a demand on 29th November 2023 for the short-levied duties amounting to Kshs 17,407,526.00 The Appellant then lodged an application for review dated 5th December 2023.

34. The Respondent stated that the Appellant further gave explanations to the application for review vide a letter dated 14th December 2023. The Respondent then issued a review decision dated 3rd January 2024 which motivated the Appellant to file this appeal.

35. It asserted that it carried out a PCA on the Appellant pursuant to section 235 and 236 of the EACCMA. The Appellant noted that where the Post clearance Audit reveals that taxes were short levied or erroneously refunded, section 135 empowers the Respondent to recover any such amount short levied or erroneously refunded.

36. The Respondent noted that the Appellant imported SIM Modules at significantly low FOB values declared under customs entry numbers 23NBOIM405177492, 23NBOIM402565048, 22NBOIM408772064, 22NBOIM406960441, and 22NB0IM407418850.

37. The Respondent further noted that some of the invoices used by the Appellant to support its declarations lacked basic features of authentic invoices such as incoterms, Suppliers' bank details, signatures and stamps of suppliers. Consequently, the said invoices could not be relied upon to determine the customs value of the imported goods under the provisions of paragraph 2 or 3 of the Fourth Schedule to the EACCMA.

38. The Respondent cited Section 122 of the EACCMA which provides that where imported goods are liable to import duty ad valorem, the value of such goods is to be determined in accordance with the Fourth Schedule and import duty shall be paid on that value.

39. It asserted that for the transaction value to be accepted for customs purposes the same should be supported by commercial documents that tally with foreign payments to the suppliers. It also noted that where the transaction value cannot be demonstrated then the transaction value of identical goods is to be taken as the transaction value.

40. Where the transaction value cannot be demonstrated, the Respondent stated that the transaction value of identical goods should be taken as the transaction value. It cited Paragraph 2 of the Fourth Schedule to EACCMA which provides that the customs value of imported goods is the transaction value which is the price actually paid or payable for the goods when sold for export to the partner state.

41. On the other hand, it cited paragraph 3 of the Fourth Schedule to EACCMA which provides for the determination of the customs value of imported goods using the identical goods.

42. The Respondent therefore used the best available parameters to ascertain the correct customs value of the goods imported by the Appellant and assessed the short-levied taxes of Kshs 17,407,527.00 as indicated in its demand of 29th November 2023.

43. The Respondent acceded that in its review application, the Appellant attached various commercial documents, which the Respondent considered. However, the Respondent noted that despite various requests, the Appellant failed to provide additional documents such as its bank statements and certified telegraphic transfers to further corroborate its support for declared values. Consequently, the Respondent confirmed its demanded taxes vide its review decision of 3rd January 2024. The Respondent also stated that the Appellant also availed bank statements on 4th January 2024, a day after issuance of the review decision.

44. The Respondent averred that the Appellant failed to adequately support the declared value despite being given an opportunity to do so. Consequently, the Respondent used the transaction value of identical goods for the Appellant as a basis of the demand for extra duties.

45. The Respondent also alleged that it notified the Appellant that sufficient documentary evidence was required to justify the application of the declared values for a comprehensive review to be done.

46. The Respondent firstly noted that the Appellant's Appeal is not supported by any documentary evidence and the only document attached to its Appeal is the Respondent's review decision dated 3rd January 2024. Consequently, the Respondent stated that the Appellant's Appeal has not met the evidentiary burden of proof pursuant to Section 56 of the *Tax Procedures Act*, CAP 469B of the Laws of Kenya (hereinafter "TPA").

47. The Respondent further averred that while the Appellant claimed to have attached annexes to its statement of facts, the same had not been attached.

48. Contrary to the Appellant's averments under paragraph 1 of the Memorandum of Appeal and paragraphs 17 to 19 of the Appellant's statement of facts, the Respondent averred that the invoices

supplied by the Appellant were considered but the same were not sufficient to corroborate the Appellant's case. The Respondent also stated that the Respondent's demand notice is not contrary to Article 47 of *the Constitution*.

49. Contrary to the Appellant's allegations, the Respondent stated that it severally requested for documents, some of which were provided, but others were not provided. The Respondent noted that the Appellant's further explanation acknowledges the request for documents, which the Respondent considered in rendering its decision.

50. The Respondent noted that the Appellant has not annexed the invoices averred on in its statement of facts. That notwithstanding, the Respondent stated that it considered all the invoices availed and issued its decision on the same.

51. In response to paragraph 18 of the Appellant's statement of facts, the Respondent stated that the bank statements relied upon were not supplied during the review stage. Further, the said bank statements were not attached to the statement of facts.

52. In further response to the Appellant's statement of facts at paragraphs *21*, the Respondent averred that it determined the customs value of the imported goods in issue pursuant to section 122 of EACCMA as read together with paragraph 3 of the Fourth schedule to EACCMA in view of the fact that the Commercial documents provided by the Appellant could not support the transaction value method.

53. In further response to the Appellant's statement of facts at paragraphs *21* to *29*, the Respondent averred that it determined the customs value of the imported goods in issue pursuant to section 122 of EACCMA as read together with paragraph 3 of the Fourth Schedule to EACCMA in view of the fact that the Commercial documents provided by Appellant could not support the transaction value method.

54. Finally, the Respondent stated that the transaction value could not be ascertained as the invoices available could not be relied upon to determine the transaction value and the bank statements as well as proof of payment to the foreign suppliers were not availed as elaborated in the Respondent's review decision. The unit values applied in line with paragraph 3 of the Fourth Schedule to EACCMA were from previous consignments of the same taxpayer.

Respondent's prayers

55. The Respondent prayed that the Tribunal would grant it the following Orders:

    a. Upholds the Respondent's review decision dated 3rd January 2024 as proper and in conformity with the provisions of the Law; and

    b. That this Appeal be dismissed with costs to the Respondent.

Issues for Determination

56. The Tribunal having carefully considered the parties' pleadings and documentation notes that the following two issues fall for its determination:

    a. Whether the Respondent erred in relying on transactional value of identical goods in determining custom value.

    b. Whether the Respondent's review decision dated 3rd January 2024 was justified.

Analysis and Findings

a. Whether the Respondent erred in relying on transactional value of identical goods in determining custom value.

56. The Respondent applied transactional value of identical goods method concerning 5 custom entry numbers 22NBOIM406960441, 23NBOIM405177492, 23NBOIM402565048, 22NBOIM407418850, 22NBOIM408772064. On the other hand, the Appellant stated that the Respondent was supposed to use the transaction value method in determining the customs value of its consignment in respect of the 5 custom entry numbers.

57. Section 122. (1) of the EACCMA provides as follows:

> Where imported goods are liable to import duty ad valorem, then the value of such goods shall be determined in accordance with the Fourth Schedule and import duty shall be paid on that value.''

58. The Fourth Schedule to the EACCMA gives the methods of valuation. The methods are set out in a sequential order of application. The Fourth Schedule provides six methods of determining the customs value of imported goods namely:

i. Transaction Value Method (Method 1)

ii. Transaction Value Method of Identical goods (Method 2)

iii. Transaction Value Method of Similar goods (Method 3)

iv. Deductive Value Method (Method 4)

v. Computed Value Method (Method 5)

vi. Fallback Value Method (Method 6)

59. The Interpretative Notes in Part 11 of the Fourth Schedule (Interpretative Notes) set out the applicability of the valuation in that they should be applied in "sequential order of application" as follows:

i. Method 1 must be attempted first;

ii. Method 2 can only be considered if the customs value cannot be determined under the first method;

iii. Method 3 to 6 follow the same procedure as Method 2;

iv. Method 6 can only be applied where all the previous methods are not applicable; and

v. The only exception is that the sequence of methods 4 and 5 may be reversed.

60. The priority method is transaction value which is the price actually paid or payable for the goods when sold for export; followed by Transaction Value of Identical Goods, Transaction Value of Similar Goods among other methods in that order of priority. In this case, the Respondent opted to use Transaction Value of Identical Goods instead of Transaction Value on grounds that the documents availed by the Appellant were not reliable.

61. Paragraph 2 of the Fourth Schedule to the EACCMA provides for Transaction Value as a method to be used to determine the customs value of goods. Paragraph *2* (1) provides as follows:

> the customs value of imported goods shall be the transaction value, which is the price actually paid or payable for the goods when sold for export to the Partner State adjusted in accordance with the provisions of Paragraph *9*."

62. The Appellant adduced invoices, Single Administrative Document (SAD), proforma invoices, purchase orders, documents I relation to bank transactions and a bank statement to support its position that custom entry numbers 22NBOIM406960441,23NBOIM405177492,23NBOIM402565048,22NBOIM407418850, 22NBOIM408772064 ought to have been subjected to Transaction Value.

63. The Tribunal has examined the invoices for custom entry vis a vis the Respondent's assertion that some of the invoices used by the Appellant to support its declarations were unreliable in that the said invoices lacked basic features of authentic invoices such as incoterms, suppliers' bank details, signatures and stamps of suppliers. The Tribunal examined the invoices, SAD, proforma invoices, purchase orders, airway bill, documents in relation to bank transactions, bank statement, Appellant's letter dated 14th December 2023 and other documents that the Appellant provided and established the Respondent's assertions were implausible.

64. The Tribunal noted that contrary to incoterms, suppliers' bank details, signatures and stamps of suppliers appear on the documents that the Appellant adduced as evidence. Further the transactions are also reflected in the bank statements.

65. The Tribunal also noted that some invoices were computer generated. The Tribunal took judicial notice that some computer-generated documents do not feature a signature. Therefore, whereas some invoices did not have a signature, some invoices and in particular invoice number M-2022-0023 indicates that it is computer generated.

66. The Tribunal further notes that whereas the Respondent asserted that the Appellant availed bank statements on 4th January 2024, a day after issuance of the review decision, the Appellant stated that the Respondent erred in fact by purporting to base the review decision on a failure by the Appellant to supply bank statements, which the Respondent requested via electronic mail at 1:22 pm on 3rd January 2024, the same date of the review decision. The Respondent did not challenge this assertion. Nevertheless, the Tribunal examined the bank statement in issue and was satisfied by the same.

67. This Tribunal in Profile International Kenya *Limited v Commissioner for Customs & Border Control (Tax Appeal 1054 of 2022*) [2024] KETAT 268 (KLR) observed that determination of the value of imported goods liable to ad valorem import duty ought to be applied sequentially and where the Respondent departs from the sequence, has to give justified reasons.

68. In this case, the Tribunal having examined the documentary evidence was satisfied that the Respondent had no justification to depart from Transactional Value method in favour of Transactional Value of Identical Goods method.

69. Consequently, the Tribunal finds and holds that the Respondent erred in relying on Transactional Value of Identical Goods method in determining custom value.

70. Having found that the Respondent erred in departing from Transactional Value method, the Tribunal holds that the ensuing review decision dated 3rd January 2024 was not justified.

Final Decision

71. The upshot to the foregoing is that the Tribunal finds and holds that the Appeal is meritorious and makes the following Orders:

    a. The Appeal be and is hereby allowed.

    b. The Respondent's review decision dated 3rd January 2024 be and is hereby set aside.

    c. Each party to bear its own cost.

72. It is so Ordered.

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

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CHRISTINE A. MUGA - CHAIRPERSON

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BONIFACE K. TERER - MEMBER

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ELISHAH N. NJERU - MEMBER

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EUNICE N. NG'ANG'A - MEMBER

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OLOLCHIKE S. SPENCER - MEMBER