Commissioner Investigations and Enforcement v Eastern Consulting Management Limited (Income Tax Appeal E132 of 2021)
[2022] KEHC 12202 (KLR) (Commercial and Tax) (23 August 2022) (Ruling)

Neutral citation: [2022] KEHC 12202 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)

COMMERCIAL AND TAX

INCOME TAX APPEAL E132 OF 2021

DAS MAJANJA, J

AUGUST 23, 2022

BETWEEN

COMMISSIONER INVESTIGATIONS AND ENFORCEMENT ..... APPELLANT

AND

EASTERN CONSULTING MANAGEMENT LIMITED ..... RESPONDENT

RULING

Introduction and Background

1. The Respondent carries on the business of importing readymade garments for wholesale in Eastleigh, Nairobi. Sometime in April 2019, the Respondent initiated the process of importing assorted readymade garments from Turkey comprising of 1045 men's suits and 10,000 shirts and on arrival, part of it was captured and logged as entry no. 2019JKA4406357 ("the Consignment"). On 22nd May 2019, the Appellant ("the Commissioner") targeted the Consignment for investigation and verification on suspicion that it had been undervalued to avoid payment of the correct dues.

2. In a letter dated 27th June 2019, the Commissioner communicated its findings. The Commissioner held that the value of the Consignment together with that of previous importations had been understated hence not all taxes due were paid. It revaluated the Consignment and extended the same to all the Respondent's importations of similar items from the same country of origin. The Commissioner thus assessed KES. 20,141,967.00 as the tax payable by the Respondent for the Consignment and the other previous importations.

3. The Respondent objected to the tax demand through its letter of 10th July 2019. The Respondent explained that the Consignment was declared under Import Declaration Form (IDF) no. E190138145 which comprised of 520 suits and 4800 shirts whose Free On Board (FOB) value was USD 4880.00.

That however, the exporter in the Packing List confirmed that the Consignment comprised of 5156 shirts and 604 suits and lodged the IDF for pre export verification of conformity and subsequently was issued with a certificate of conformity. The exporter then issued it with a commercial invoice no. 03790 and the aforementioned information was lodged on the Commissioner's portal on 13th May 2019. The Respondent states that it assessed the tax payable as KES. 301,610.00, that is for 520 suits and 4800 shirts, and proceeded to make payment for the same as the tax for the surplus items had already been paid in the previous consignment.

4. The Respondent stated that considering its previous assessment valuation had always been allowed by the Commissioner and goods released on the basis of the said assessment, it was shocking that the Consignment had been stopped from being released even after all tax had been paid with the Commissioner indicating that the same was based on an understatement of values and as such, a higher value applied. That the Consignment went through the customs service department who gave recommendations and forwarded the matter to the Valuation and Tariffs department and that the first verification was done on 24th May 2019 where the various officers gave comments and recommendations. The Respondent averred that the process stalled at the Valuation and Tariffs department who indicated that the value to be paid for shirts and suits was USD 1.3 and 5 respectively and that even though the Respondent rejected these values, it decided to make payment as per these values to avoid further demurrage. The Respondent stated that the Commissioner came up with new values of USD 10 and USD 40 for the shirts and suits respectively without any justification or basis whatsoever and that the Respondent wrote various complaint letters to it citing frustrations.

5. Thus, the Respondent objected to the demand by the Commissioner on the grounds that the Commissioner erred in failing to calculate the applicable values using the taxation methodologies and procedures that allow for fair competition among traders, that the Respondent had paid all tax due for all its consignments as can be evidenced by the payment receipts it had attached. The Respondent further stated that the tax is usually assessed and paid online and monitored by the Commissioner and that the Commissioner erred in failing to apply the taxation principles of equity and fairness. The Respondent further faulted the Commissioner for failing to use comparative entries of other traders importing the same goods and from the same manufacturer and for failing to provide necessary information on the basis and justification of the new valuation for the shirts and suits applied and yet there were clear guidelines basing on the benchmarks, the matrix guidelines provided as well as the valuation methodologies. Further, that the Commissioner failed to apply the benchmark principles recommended by it to the traders of the Eastleigh business community and/or even use the matrix guidelines provided by it and that the Commissioner erred when it usurped the powers of the Valuation and Tariffs department whose role is to value imports. The Respondent contended that the Commissioner did not participate in the verification exercise and had not seen the Consignment they purported to value as it is the ISO and verification officers who did the verification exercise at JKIA on 19th June 2019.

6. The Respondent further averred that the Commissioner, in subjecting the Respondent's previous consignments to revaluation was an illegality as the said consignment entries underwent through the Commissioner's online systems, inspected and released after full compliance by the Respondent. That all duty fees had been paid for the consignments and thus, the Commissioner was estopped by law from re-valuing previous consignments that were released after full compliance, inspection and verification. The Respondent accused the Commissioner of not taking into consideration the different various parameters to be applied to various consignments before a tax value is calculated and that it was arbitral and out of malice that a uniform value was being purportedly applied to all consignments that had different quantities and FOB values. Further, that the Commissioner did not take into account the market factors and consideration of the type of imports in reference and the

prevailing market circumstances since the Respondent sold goods on wholesale and in most cases on credit before determining the applicable tax.

7. It was therefore the Respondent's position that the tax value to be paid for the Consignment was USD 0.8 for shirts and USD 2 for suits based on the values given by the exporter and as can be quantified from the documents supplied, that is; the invoice, sale agreement and others. The Respondent fronted the use of the 'Transactional Value' method to determine the customs value which for the Consignment, calculated the tax payable at KES. 301,610.00 and that the same was promptly paid.

8. The Respondent stated that following a meeting between the Commissioner and the Eastleigh business community, the parties agreed on various benchmark values to be applied together with the taxes payable by various traders. The Respondent urged that it paid taxes based on the Transactional Value method which was more than what it would have paid if it applied the benchmark method for tax assessment since the net weight of the Consignment was two tonnes. The Respondent stated that various traders have paid taxes on the said principles and that the Respondent had obtained various entries of various traders whose similar goods had been released and yet they had paid lower taxes for more quantities than the Respondent and that the said entries were accessible in the Commissioner's portal.

9. The Respondent further claimed that it had obtained an entry of a Kenyan importer who bought goods from the same exporter as the Respondent's and has however paid less tax on less values than what was sold to the Respondent yet that particular consignment was released after self-assessment and full compliance. The Respondent thus urged that it should not be discriminated against from other Kenyan traders as this act will force it out of the market and cause it substantial financial losses and set a bad precedent to the business community.

10. The Respondent therefore prayed that the Consignment be released henceforth as the applicable tax had already been paid and that the duty payable had been calculated using the Transactional Method but that in the alternative the benchmark values be applied. The Respondent further urged the Commissioner to provide the method and basis used at arriving at the value of USD 10 and USD 40 for the shirts and suits for the Respondent's consignments, that the tax demand issued on 27th June 2019 be quashed in relation to the entries that duly underwent through the Commissioner's compliance system and were duly inspected, verified and released and that the storage charges and customs warehouse rent accumulated be wholly waived. The Respondent also noted that not all of its consignments had been flagged as having been understated as indicated in the letter of 27th June 2019 and that no reason had been given for hand picking the ones listed.

11. For the above reasons, the Respondent objected to the demand and stated that it awaited the Commissioner's objection decision.

12. The Commissioner made its objection decision through its letter of 31st July 2019 ("the Objection Decision") stating that it had conducted a revaluation of the Consignment in accordance with section 122 and the 4th Schedule of the East African Community Customs Management Act, 2004 (EACCMA) and thus the tax payable on it was KES. 2,632,243.00 whereas the tax payable for previous importations was KES. 12,106,830.00. The Respondent wrote to the Commissioner on 8th August 2019 seeking a confirmation of whether the letter of 31st July 2019 was the objection decision and further sought a written explanation as to how the customs value for the Respondent's goods were determined and/or arrived at and the reasons thereof.

13. The Respondent then lodged an appeal to the Tax Appeals Tribunal ("the Tribunal") seeking inter alia to set aside the Objection Decision, KES. 598,504.56 being demurrage costs, full waiver of the

warehouse rent due to the Commissioner and accumulated from 16th May 2019, punitive and general damages and a declaration that the import duty tax as assessed in the Simba portal was correct and accurate and that all tax due had been duly paid by the taxpayer.

14. After studying the parties' pleadings and submissions, the Tribunal delivered its judgment on 28th May 2021. In its decision, the Tribunal framed only one issue for determination; Whether the Commissioner erred in fact and law on the valuation of the Respondent's imports under EACCMA. The Tribunal held that it had gone through IDF No. E1904136998 dated 16th April 2019 and confirmed as true that the said consignment comprised 1045 men suits and 10,000 shirts whose total FOB value was USD 10,090.00. The Tribunal further examined the documents provided by the Respondent including an email dated 26th June 2019 wherein the exporter advised the Respondent to divide the consignment as declared under IDF No. E1904136998 above into two separate consignments to avoid subjecting the consignment to elaborate laboratory tests and that the main consignment was then divided into two consignments and declared separately. That the Appellant lodged IDF No. E1904138143 for the first consignment being Entry 2019JKA4397265 which the Appellant stated contained 530 men suits and 4840 shirts and the FOB value was USD 4932.00. The Tribunal stated that it had examined the said IDF and found that indeed 530 men suits and 4840 shirts had been so declared, however, the Respondent stated that upon inspection of the said consignment, it discovered that the same had 356 pieces of shirts and 84 suits were missing. The Respondent submitted that the missing pieces had been packed in the second consignment and the Tribunal noted that this assertion was not disputed by the Commissioner and therefore, upon subtracting the missing items, it was correct to state that the first consignment contained 446 suits and 4484 shirts.

15. That with regards to the second consignment, the Tribunal noted the Respondent's submission that it lodged an IDF No. E1904138145 comprising of 520 men suits and 4800 shirts whose FOB value was USD 4,880.00. The Respondent stated the exporter had indicated, in the packing list, that the consignment comprised of 5156 shirts and 604 suits including an excess from a previous consignment. The Tribunal held that if the Respondent's case is anything to go by, the Respondent was importing a consignment comprising of 1045 men's suits and 10,000 shirts whose total FOB value was USD 10,090 through the initial IDF no. E1904136998 and therefore, the second consignment under IDF No. E1904138145 ought to have contained 559 Suits and 5516 shirts and not the 520 men suits and 4800 shirts as declared by the Respondent. The Tribunal held that this was simple arithmetic but that the parties did not bring out this issue.

16. The Tribunal further made reference to a commercial invoice dated 2nd May 2019 which, according to the Commissioner captured unit values for the said suits as USD 2 and shirts USD 0.8 which did not satisfy the Commissioner in that the figures did not match the declaration because the entry captured 4880 packages of the 'readymade garments' while the invoice gave 4800 shirts and 520 suits. That according to the Commissioner, it verified 5128 suits and 608 shirts, the difference, the Respondent claimed, as added quantities by the exporter as what was not delivered in the previous importation. The Tribunal stated that this assertion pointed to an under-declaration of some items and that the Respondent did not challenge this figures.

17. The Tribunal further found that the sale agreement provided by the Respondent did not indicate the transaction value but that there were other methods of ascertaining the transactional value when determining customs value of the Consignment. The Tribunal cited the provisions of section 122(1) and Para. 2(1) Part 1 of the Fourth Schedule of the EACCMA to state 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 and that the aforementioned commercial invoice dated 2nd May 2019 indicated that the

Respondent imported 4800 shirts and 520 suits at a value of USD 4880.00 as the actual amount paid. Further, that IDF No. E1904138145 for consignment for entry no. 2019JKA4406357 also tallied with the said invoice. The Tribunal also scrutinized the certificate of conformity issued on 3rd May 2019 and noted that the three documents are synchronized. The Tribunal relied on the case of *Standard Resource Group Ltd v Attorney General & 2 others* [2016] eKLR to hold that there was absolutely no reason why the transaction value of the imported documents should be rejected. Further, that the Commissioner did not allege that the Respondent and the exporter colluded to interfere with the costs of sale and therefore, it was not clear to the Tribunal why the Commissioner rejected the values in the invoice. That without prejudice to section 122(4) of the EACCMA, the Tribunal was of the view that it was not necessary for the Commissioner to depart from the transaction value as indicated in the invoice.

18. The Tribunal further noted that even though it was made aware of a valuation report that was deemed private and confidential, the Commissioner did not furnish a copy to the Respondent or produce it before the Tribunal. Further that since the Commissioner did not provide an explanation on how the tax demand was arrived at, the Commissioner had not succeeded in discharging its burden of proof. The Tribunal also stated that it had scrutinized the Objection Decision which re-evaluated taxes for 2018 where the Respondent submitted that the taxes due were paid and it availed the Commissioner's acknowledgement slips. The Tribunal found that the Commissioner did not avail to it evidence indicating why the taxes for 2018 should be reevaluated and that whereas the Objection Decision provided for adjusted price in USD, it did not provide reasons for such adjustments.

19. The Tribunal further stated that it had examined the tax demand dated 27th June 2019 and the Objection Decision and juxtaposed the same with section 51(9) of the *Tax Procedures Act*, 2015 ("the TPA"). That the Respondent was informed about the tax demand which upon objection by the Respondent, was amended by the Commissioner by revising the demanded amounts and that the Respondent was also notified about the Objection Decision. However, the tax demand did not indicate how the demanded tax was arrived at, for example, the demand did not indicate how the adjusted unit price was arrived at and the Tribunal wondered how a taxpayer can defend itself without information on how a formula was arrived at. The Tribunal was of the view that the demand should provide sufficient information to allow the taxpayer to respond to it and defend itself and that this view is rooted under Article 47 of *the Constitution* under which the fair administrative body is required to take a fair administrative action and that provision of information is also a prerequisite condition to fair hearing under Article 50 of *the Constitution* and this right cannot be denied.

20. The Tribunal also held that taxpayers are entitled to access to information under Article 35 of *the Constitution* which this case, would have assisted the taxpayer prepare a defence. That it could have been easier for the Commissioner to explain how the payable tax was arrived at and that this explanation is not privileged information, neither is it confidential information and should have been explained beforehand. The Tribunal underpinned that fair trial is part of the right to a fair trial which is a right that cannot be limited and is one of the absolute rights under Article 25(c) of *the Constitution*.

21. The Tribunal concluded that the Commissioner fell short of observing the provisions of Articles 35, 47 and 50 of *the Constitution* and section 51(9) and (10) of the TPA as well as section 122(2) of the EACCMA when issuing the tax demand and the Objection Decision. Consequently, the Tribunal found that it is contrary to Article 47 of *the Constitution* for the Commissioner to demand for taxes without providing justifications and ultimately held that the Commissioner erred in law and fact on the valuation of the Respondent's imports under the EACCMA. The Tribunal thus made dispositive orders that allowed the Respondent's appeal and set aside the Objection Decision.

22. This decision by the Tribunal is what has precipitated the filing of the instant appeal by the Commissioner which is grounded on the Memorandum of Appeal dated 19th July 2021. The

Respondent responded to the appeal by filing a cross appeal dated 13th September 2021 together with a Statement of Facts of the same date. The parties have also filed written submissions supplemented by oral submissions in support of their positions and which mirror the facts I have already highlighted above.

Analysis and Determination

23. This court's jurisdiction that is circumscribed by section 56(2) of the TPA which provides that "An appeal to the High Court or to the Court of Appeal shall be on a question of law only". The Commissioner has rightly cited the decision of the Court of Appeal in *John Munuve Mati v Returning Officer Mwingi North Constituency & 2 others* [2018] eKLR where the court summarised what amounts to "matters of law" as follows:

> (38) [T]he interpretation or construction of *the Constitution*, statute or regulations made thereunder or their application to the sets of facts established by the trial Court. As far as facts are concerned, our engagement with them is limited to background and context and to satisfy ourselves, when the issue is raised, whether the conclusions of the trial judge are based on the evidence on record or whether they are so perverse that no reasonable tribunal would have arrived at them. We cannot be drawn into considerations of the credibility of witnesses or which witnesses are more believable than others; by law that is the province of the trial court.

24. This means that an appeal limited to matters of law does not permit the appellate court to substitute the Tribunal's decision with its own conclusions based on its own analysis and appreciation of the facts.

25. From the parties' submissions, the main issues for determination in this appeal are as follows:

    a. Whether the Tribunal erred in finding that the transactional value of the Consignment and previously imported goods could be determined from the documents provided by the Respondent.

    b. Whether the Respondent's cross-appeal is properly before court.

    c. If the Respondent's cross-appeal is properly before court, whether the same is merited and ought to be allowed.

Choice of method used to determine the customs value.

26. At the center of the parties' dispute before the Tribunal was the choice of method used to determine the customs value of the Consignment and other goods imported by the Respondent. Whereas the Respondent and the Tribunal stated that the transactional value could be deduced from the documents provided, that is the commercial invoice dated 2nd May 2019, the sale agreement between the Respondent and the exporter, the IDF No. E1904138145 in respect of the Consignment and the Certificate of Conformity dated 3rd May 2019, the Commissioner on the other hand disagrees.

27. The Commissioner avers that the transactional value could not be determined based on the documents availed by the Respondent at the time of uplift of the customs values and that in the absence of the transactional value, the next method according to the Fourth Schedule of EACCMA is the 'Identical Goods' method. The Commissioner submitted that it could not get identical goods in the market and hence went to the next method being 'Similar Goods' method but that the similar goods provided by the Respondent did not originate from the same country of origin as the imported goods and therefore

that method could not also be used, leading the Commissioner to apply the 'Deductive Method' where the deduction of value from the price of the greatest aggregate quantity sold was relied on by the Commissioner.

28. It is common ground that section 122 of the EACCMA provides for the determination of value of imported goods liable to ad valorem import duty as follows:

> 122 (1) 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.
>
> (2) Upon written request, the importer shall be entitled to an explanation in writing from the proper officer as to how the Customs value of the importer's goods was determined.
>
> (3) Where, in the course of determining the customs value of imported goods, it becomes necessary for the Customs to delay the final determination of such customs value, the delivery of the goods shall, at the request of the importer be made:
>
> Provided that before granting such permission the proper officer may require the importer to provide sufficient guarantee in the form of a surety, a deposit or some other appropriate security as the proper officer may determine, to secure the ultimate payment of customs duties for which the goods may be liable.
>
> (4) Nothing in the Fourth Schedule shall be construed as restricting or calling into question the rights of the proper officer to satisfy himself or herself as to the truth or accuracy of any statement, document or declaration presented for customs valuation purposes.
>
> (5) The Council shall publish in the Gazette judicial decisions and administrative rulings of general application giving effect to the Fourth Schedule.
>
> (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.
>
> (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 an entry is presented to and accepted by the proper officer.

29. The Fourth Schedule therein further provides, in part, at Para. 2(1) that ''The customs value of imported goods shall be the transaction value, which is the price actually paid or payable for the goods....''. Whether the price of the Consignment could be determined from the documents provided as affirmed by the Tribunal is a question of fact. I agree with the Tribunal that the transactional value could be deduced from the commercial invoice dated 2nd May 2019, the sale agreement between the Respondent and the exporter, the IDF No. E1904138145 in respect of the Consignment and the Certificate of Conformity dated 3rd May 2019 which when read together, matched with the Respondent's declaration of the value to the Commissioner. Even though the sale agreement that was dated 3rd June 2019 had no indicative transactional value, the other documents were sufficient to guide the Commissioner as to the value and the sale agreement, if anything, cemented the relationship

between the exporter and the Respondent and provided proof that they were indeed transacting. Although the Commissioner submitted that it sought further documents from the Respondent, there is no communication to that effect and the demand of 27th June 2019 and the Objection Decision do not call for any such supporting documents. There is also no evidence showing that the Commissioner called into question the documents provided by the Respondent.

30. Having considered the record, I find that the Tribunal did not err in the manner that it apprehended the facts and the law before it in arriving at the decision that the transactional value could be determined from the documents provided by the Respondent. I also agree with the Tribunal's finding that as provided for by the EACCMA, an importer is entitled to an explanation as to how the customs value of its goods was determined. In its Objection Decision, the Commissioner never explained to the Respondent how it came up with the customs value for the Consignment even after the Respondent wrote to the Commissioner seeking an explanation. The fact that the information was privileged and confidential did not mean that the Commissioner could not offer the Respondent a general explanation as to how it arrived at the values, just like it did before the Tribunal.

31. Overall, I find that the Tribunal was right in its decision on the question whether the Commissioner erred in law and fact on the valuation of the Respondent's imports under the EACCMA.

The Respondent's cross-appeal

32. The Commissioner impugned the cross appeal filed by the Respondent on the grounds that the same is non-existent in law as the Tax Appeals Tribunal Act and the Tax Appeals (Appeals to the High Court) Rules only provides for fling of a Notice of Appeal and thereafter the Memorandum of Appeal. On its part, the Respondent avers that Order 42 Rule 32 of the *Civil Procedure Rules* provides for the filing of a cross-appeal but that the same does not provide for timelines within which a cross-appeal should be filed and the Rules are also silent on the procedure for filing cross-appeals in the High Court.

33. When a similar issue was brought before the court in *York Investments East Africa Limited v Commissioner of Investigations and Enforcement* (Miscellaneous Application E612 of 2021) [2021] KEHC 7 (KLR) (Commercial and Tax) (10 September 2021) (Ruling), the court cited Rule 20 of the Tax Appeals (Appeals to the High Court) Rules which provides that 'The rules determining procedure in civil suits before the Court to the extent to which those rules are not inconsistent with the Act or these Rules, shall apply to the tax appeal as if it were a civil suit'. Thus, the court held that Rule 20 imports the provisions of the Civil Procedure Rules to the extent that they are not inconsistent with the Tax Appeals (Appeals to the High Court) Rules and that Order 42 of the Civil Procedure Rules governs the procedure for appeals to the High Court and it too, does not expressly provide for the filing of cross-appeals in appeals to the High Court but that Order 42 rule 32 of the Civil Procedure Rules suggest that a party to an appeal in the High Court may indeed file a cross appeal. The court went on to state as follows:

> '.....although there is no express provision for filing a cross-appeal, the High Court exercising its appellate jurisdiction may entertain a cross-appeal as it is required to consider and make judgment on objections to the judgment of the Tribunal or subordinate court even as to those portions that have not been appealed against by either party. This position has found favour in *Twaher Abdukarim Mohamed v Independent Electoral and Boundaries Commission and 2 Others* MSA CA Civil Appeal No. 154 of 2013 [2014] eKLR and *Bulsho Trading Company Ltd v Rosemary Likholo Mutakha and Another* Busia HCCA No. 1 of 2018 [2020] eKLR. Since the Civil Procedure Rules provide for the filing of cross-appeals, I do not find this position inconsistent with Rules. In my view, therefore the Applicant was entitled to file a notice of cross-appeal in response to the Appellant's appeal. This view is

consistent with the constitutional edict under Article 159 of *the Constitution* which provides that the court should strive to do substantive justice unhindered by technicalities.'

34. For these reasons, I find that the Respondent's cross-appeal is properly filed and that there is no prejudice that will be occasioned on the Commissioner if the same is heard and determined.

35. The Respondent's cross appeal is anchored on its prayers in the appeal before the Tribunal, that the Tribunal did not render decisions on. Those prayers included refund of demurrage costs, waiver of warehouse rent due to the Commissioner, punitive and general damages and costs of the appeal.

36. Whether the Tribunal could grant the prayers is both a question of law and fact. By failing to consider and deal with the prayers sought by the Respondent, the Tribunal committed an error of law. The Tribunal ought to have made findings on the aforementioned prayers because, as stated elsewhere, this court is exercising appellate jurisdiction on matters of law only. The proper relief in these circumstances would be to refer the matter back to the Tribunal for resolution (see *Commissioner for Investigations and Enforcement v Menengai Oils Limited* ML HC ITA No. 40 of 2020 [2021] eKLR).

37. However, this court is cognisant of the limited jurisdiction of the Tribunal established under section 3 of the Tax Appeal Tribunal Act, 2013 ("the TATA") which provides that, ''There is established a Tribunal to be known as the Tax Appeals Tribunal to hear appeals filed against any tax decision made by the Commissioner.'' This provision is to be read with Part VIII of the TPA which provides for the manner in which a tax payer may challenge the Commissioner's tax decision.

38. As I have set out above, the issues culminating in this decision arose for the Commissioner's Objection Decision. The claim for refund of demurrage costs, waiver of warehouse rent due to the Commissioner, punitive and general damages were not part of the Commissioner's Objection decision. The Tribunal therefore lacks jurisdiction to entertain those claims in view of its limited jurisdiction. This is not to say that the claims cannot be made in another forum

Disposition

39. For the reasons I have set out above, I dismiss the appeal and cross-appeal.

DATED AND DELIVERED AT NAIROBI THIS 23RD DAY OF AUGUST 2022.

D. S. MAJANJA

JUDGE

Ms Mutai, Advocate, instructed by the Kenya Revenue Authority for the Commissioner for Investigations and Enforcement

Ms Kikany instructed by Abdullahi, Gitari and Odhiambo Advocates LLP for the Respondent