



REPUBLIC OF KENYA



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**Commissioner of Customs & Border Control v Animix Limited (Tax Appeal E010 of 2023)
[2025] KEHC 8719 (KLR) (Commercial and Tax) (20 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 8719 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
TAX APPEAL E010 OF 2023
JWW MONG'ARE, J
JUNE 20, 2025**

BETWEEN

COMMISSIONER OF CUSTOMS & BORDER CONTROL APPELLANT

AND

ANIMIX LIMITED RESPONDENT

*(Being an appeal against the judgment of the Tax Appeals Tribunal at Nairobi
dated 17th March 2023 in Tax Appeals Tribunal Appeal No.561 of 2021)*

JUDGMENT

Introduction and Background.

1. This is an appeal by the Appellant (“the Commissioner”) arising from a judgment of the Tax Appeals Tribunal (“the Tribunal”) delivered on 17th March 2023. The background giving rise to the appeal is that in 2017, the Respondent imported “Yeast Culture” and classified it under (Harmonized System) HS Code 2309.90.90 but on 7th September 2020, the Commissioner issued a tariff ruling, categorizing the imported animal feed under HS Code 2102.10.00. Dissatisfied, the Respondent applied for a review, insisting that yeast culture should be covered under HS Code 2309.90.00. Due to the shipment being held and rising charges, the Respondent was compelled to pay all charges and penalties and deliberations and laboratory tests followed, with results communicated to the Respondent.
2. On 15th February 2021, the Respondent appealed the tariff ruling, and a Technical Committee by the Commissioner met on 23rd February 2021, with the Respondent in attendance. On 11th May 2021, the Technical Committee upheld its earlier decision, rejecting the Respondent’s appeal and the Commissioner demanded Kshs. 11,982,068/= (VAT, 25% duty, and interest) on the yeast culture imported in 2017. Aggrieved, the Respondent filed a Notice of Appeal on 26th August 2023, with the Tribunal which after considering the pleadings and submissions ruled in favor of the Respondent,



stating that while yeast is found in both Headings 21.02 and 23.09 of the Harmonized System, Heading 23.09 provides a more specific description.

3. This decision by the Tribunal is what has precipitated the Commissioner's appeal which has been canvassed by way of written and oral submissions by the parties' counsel.

Analysis and Determination.

4. I have carefully considered the record and the submissions filed by the parties herein. I note that the Commissioner urges the court to determine whether the Tribunal erred in finding that the Commissioner wrongly classified the imported yeast culture under HS Code 2102.10.00. The parties agree that classification of goods is adopted from the said Harmonized System, an internationally standardized system of names and numbers to classify traded products, that the EAC partner States agreed to adopt when they signed the Treaty for the establishment of the EAC on 30th November 1999. The parties also agree that to ascertain what code is applicable to particular goods, one has to look at the GIRs which are rules that govern the classification of goods under the Harmonized System and the Explanatory Notes which provide commentary on the intent and scope of provisions and as approved by the Customs Co-operation Council and constitute the official interpretation of the Harmonized System at the International level and are an indispensable complement to the System.
5. The Commissioner argues that information from the verification exercise showed the Respondent sells yeast culture to animal feed manufacturers and that the initial tariff findings identified the sample as an organic vegetative material containing bioactive microorganisms used as an additive in animal feed diets, specifically an animal feed supplement to stimulate growth. It submits that Heading 23.09 covers preparations used in animal feeding, including products obtained by processing vegetable or animal materials that have lost their original characteristics, and not specified elsewhere and Heading 21.02 covers yeasts (active or inactive) and other single-cell micro-organisms, dead. The Appellant submits that this heading generally includes active yeast used for fermentation, consisting primarily of *Saccharomyces* microorganisms and that its classification was guided by the GIRs sequentially and that GIR 1 states that classification is determined by the terms of the headings and relevant Section or Chapter Notes. When goods are classifiable under two or more headings, GIR 3(a) states that the heading providing the most specific description should be preferred. GIR 3(b) applies to mixtures or composite goods that cannot be classified by 3(a), classifying them by the material that gives them their essential character.
6. The Commissioner submits that based on the GIRs, technical information, description, and laboratory findings, the "yeast culture" is classifiable under HS Code 2102.10.00 and therefore, the Tribunal erred in its finding and the Commissioner prays that the Court considers the appeal, finds that the Tribunal's judgment be set aside and that the Commissioner's classification of the Respondent's product as HS Code 2102.10.00 be upheld.
7. In response, the Respondent submits that Classification involves first referring to the terms of the headings, then section, chapter, and sub-chapter notes and that Explanatory Notes are used if doubt persists. Further, that in addition to interpretation rules, the purpose, intended use, and chemical composition of the product should determine its classification. It contends that the Tribunal did not err in relying on Explanatory Notes on Chapter 23, which concluded that 'Yeast Culture' falls under Chapter 23 of the EAC Tariff Book, specifically HS Code 23.09 ("Preparation of a kind used in animal feeding").
8. The Respondent provides a table comparing Chapter 21 and Chapter 23, arguing that Chapter 21 (Miscellaneous Edible Preparations) is not applicable because the "Yeast Culture" is not edible by



human beings. Chapter 23 (Prepared animal fodder) is applicable because the product is used in animal feed preparation. It submits that "Yeast Culture" is not pure yeast; it contains feed grade yeast and other ingredients for animal performance, with yeast contributing only 0.20% of the total makeup. That the product is a brand name for an animal feed additive registered in South Korea, is not edible, and not fit for human consumption.

9. The Respondent states that it is registered as an importer and distributor of veterinary medicines and animal feed additives and that an SGS Kenya Limited report confirmed that "Yeast Culture" contains a small percentage of yeast, protein, amino acids, and vitamins. It argues that the Tribunal did not err in finding that the yeast culture was wrongly classified by the Commissioner under Tariff Code 2102.10.00 and that the Respondent correctly classified its product under the appropriate tariff heading, making the Commissioner's VAT assessment prejudicial. The Respondent asserts that it is the Commissioner's overall mandate to classify goods, but that the Tribunal's decision was correct despite the Appellant's claims and that it was correct in setting aside the demand of Kshs.11,982,068/= as the short-levied VAT was not a deliberate misstatement or failure by the Respondent, and the Commissioner lacked adequate justification. The Respondent prays that the Court dismisses the appeal in its entirety for lack of merit and that the judgment by the Tribunal is upheld.
10. Whether the Yeast Culture ought to have been classified under Heading 21.02 as preferred by the Commissioner or 23.09 as fronted by the Respondent is a question of fact and was within the province of the Tribunal. As stated, the Tribunal looked at the two Headings and the Explanatory Notes under Heading 23.09 and input from various regulatory bodies to conclude that Heading 23.09 is the best classification for the Respondent's product. Going through the same, I fail to find fault in this conclusion by the Tribunal. It was not disputed that the Respondent supplies animal feeds. Heading 23.09 provides for Residues and wastes from food industries; prepared animal fodder and the Note under this heading indicates that 'Heading 23.09 includes products of a kind used in animal feeding...'. On the other hand, Chapter 21 provides for 'Miscellaneous Edible Preparations' and it was not rebutted that the Respondent's products are not edible or fit for consumption by human beings.
11. It was also admitted that the makeup of the Respondent's product consisted largely of other ingredients for animal performance, with yeast contributing only 0.20% of the total makeup. The Explanatory Notes under Heading 23.09 indicated that yeast can make up such preparation of feeds. From these, it is evident that the product fit the classification of Heading 23.09 based on the specification and description of the product. I agree with the Tribunal that although yeast is found in heading 21.02, heading 23.09 and the Explanatory Notes therein provide for more specific description of the Respondent's product as compared to Heading 21.02.
12. I therefore find that the Tribunal considered the correct principles and factors, that is, Chapter Notes, Explanatory Notes, the product description, the intended use of the product in its determination that the product is classifiable under HS Code 2309.90.90. I find no perversion of the law in the manner in which the Tribunal determined this matter to warrant the court's intervention as urged by the Commissioner.

Conclusion and Disposition.

13. In the upshot, I find and hold that the Commissioner's appeal lacks merit and the same is hereby dismissed but with no orders as to costs. The Tribunal's decision dated 17th March 2023 is affirmed.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 20TH DAY OF JUNE 2025

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J.W.W. MONG'ARE



JUDGE

In the presence of:-

Ms. Chelangat for the Appellant.

Mr. Cheluget for the Respondent.

Amos - Court Assistant

