



Commissioner of Customs and Boarder Control v Laborex Kenya Limited (Commercial Appeal E045 of 2024) [2025] KEHC 10339 (KLR) (Commercial and Tax) (16 July 2025) (Ruling)

Neutral citation: [2025] KEHC 10339 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL APPEAL E045 OF 2024
JK NG'ARNG'AR, J
JULY 16, 2025**

BETWEEN

COMMISSIONER OF CUSTOMS AND BOARDER CONTROL APPELLANT

AND

LABOREX KENYA LIMITED RESPONDENT

(Being an appeal against the judgment of the Tax Appeals Tribunal delivered on 11/10/2024 in TAT Appeal No. E570 of 2023)

RULING

1. The appellant is a company incorporated in Kenya and is in the business of importation, distribution, and marketing of pharmaceuticals in East Africa.
2. The respondent is a principal officer of Kenya Revenue Authority, KRA, which is an agency of the government whose core mandate is to assess and collect government revenue and related purposes.
3. The appellant imported Clostridium Botulinum Toxin Type A (Botox) and declared it under tariff code 3004.90.00. The respondent then reclassified the product Botox under Tariff 3304.99,00 and issued a Ruling dated 21/6/2023. The appellant then objected to the classification vide letter dated 4/7/2023.
4. The respondent issued its review decision on 24/7/2023 and upheld its reclassification prompting the appellant to file an appeal vide notice of appeal dated 7/9/2023 before the tax appeals tribunal. The tribunal delivered its judgment on 11/10/2024 in favor of the respondent and set aside the review decision dated 24/7/2023.
5. Being aggrieved with that finding, the appellant filed the instant appeal vide memorandum of appeal dated 4/12/2024 which was based on 5 grounds that are summarized as: -



1. The tribunal erred in holding that the product Botox is a medicinal product principally and a cosmetic minimally despite the data sheet of the product not specifying this categorization.
2. The tribunal erred by failing to classify the product Botox under HS Code 30.04 which covers medicaments despite finding that it was a medicinal product principally.
3. The tribunal erred in failing to consider Legal Notes 1(e) and Note to Chapter 30 of the 2022 EAC CET 2022 in classifying the product Botox.
4. The tribunal erred by failing to implement the Harmonized System Convention guidelines on classification of goods for purposes of International Trade contrary to Article 2 (6) of the 2010 Constitution and by finding that the product Botox is classified under HS Code 3002.90.00.
5. The tribunal erred in failing to find that the product is classified under HS Code 3304.99.00.
6. The appellant thus prayed that the judgment of the tribunal dated 11/10/2024 be set aside and the appellant's tariff decision dated 24/7/2023 be upheld.
7. The respondent filed its lengthy statement of claim dated 30/1/2025 which I have seen and considered in depth. The respondent maintained that the product Botox was a beauty product used for skin care.
8. The appeal was canvassed by way of written submissions. The appellant's were dated 16/4/2025 whereas the respondent's were dated 6/5/2025.
9. This Court has considered those submissions alongside the pleadings and record before it.
10. This court is called upon to review a decision of a competent tribunal. As a first appellate court, this court has a duty to examine matters of both law and facts and subject the whole of the evidence to a fresh and exhaustive scrutiny, before drawing a conclusion from that analysis.
11. This duty is captured by Section 78 of the Civil Procedure Act which espouses the role of a first appellate court which is to: '..... re-evaluate, reassess and reanalyze the extracts of the record and draw its own conclusions.' This was buttressed by the Court of Appeal in the case of Peter M. Kariuki v Attorney General [2014] eKLR where it was held that:

“We have also, as we are duty bound to do as a first appellate court, to reconsider the evidence adduced before the trial court and reevaluate it to draw our own independent conclusions and to satisfy ourselves that the conclusions reached by the trial judge are consistent with the evidence. See Ngui v Republic, (1984) KLR 729 and Susan Munyi v Keshar Shiani, Civil Appeal No. 38 of 2002 (unreported).”
12. In *Mercy Kirito Mutegi v Beatrice Nkatha Nyaga & 2 others* [2013] eKLR, the Court of Appeal held: -

“What are the points of law raised in this appeal? An appellate court will not ordinarily differ with the findings on a question of fact, by the trial Judge who had the advantage of hearing and seeing the witnesses. Our role is to review the evidence and determine whether the conclusions reached are in accordance with the evidence and the law.”



12. The grounds of the appeal are inter-related and all center around the reclassification of the appellant's product from HS Code 3004.90.00 to HC Code 3304.99.00. This Court will determine this issue first as its finding will have a ripple effect on all the other grounds.

Whether the tribunal erred in upholding setting aside the appellants reclassification of the appellant's products from the zero rated tariff HS Code 3004.90.00 to HC Code 3304.99.00 which attracts 35% import duty.

12. The appellant maintained that its product was classifiable under HS Code 3004.90.00 whereas the respondent classified it under HS Code 3304.99.00.
12. Though the appellant described the Botox as a medicament with peripheral cosmetic value, the respondent described it as a beauty and cosmetic product albeit containing some medical application.
12. The classifications under the General Interpretative Rules (GIR) are the primary method of GIR determining classification of materials and products. These are the 6 rules that are applied when setting up a 6-character commodity code. The rules are laid down in the global Harmonized System and transposed into the EU Combined Nomenclature.
12. GIR 1 provides that the classification is determined principally by the terms of the headings and the relative section or chapter notes. The information contained in the manufacturer's product and patient leaflet as seen from pages 240-252 of the record of appeal reveal that the product is not a simple beauty or cosmetic product. The clinical particulars indicate that Botox is used for the treatment or management of neurological disorders, bladder disorders and skin and skin appendage disorders.
12. From the preparation of the product, usage, mode of administration and side effects, it can be deduced that Botox is a medicament, noting that it has other uses aside from cosmetic purposes such as treatment of neurological disorders, bladder disorders, skin and skin appendage disorders and glabellar lines.
12. The leaflet also reveals that the product is used to relax the muscle and treat several conditions in the body by blocking nerve impulses in the injected muscle and reduce to much contractions therein. It then follows that though the product is used for cosmetic purpose, the same is used for treatment of other medical conditions and disorders. Further, even in its cosmetic use, the same must be administered by a qualified and registered medical practitioner.
12. It then follows that Botox is a medicinal preparation containing botulinum toxin for therapeutic or cosmetic use. I find and hold that the tribunal's classification of the product as a medicament was correct.
12. GR1 1 provides for the classification by the terms of the headings and notes. The rule provides that: -

“Classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes”.
12. Having found that the product is a medicament, under the HS, this points to Chapter 30 which provides for Pharmaceutical products. The applicable heading is Heading 3004 which provides for medicaments consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses or in forms or packaging for retail sale. I do note that from the record, the product is supplied in vials/measured doses for injection thus the heading is befitting.
12. GRI 6 provides for subheading level wherein the applicable subheading is 3004.90 which provides for other medicaments not containing antibiotics or hormones. Going back to the manufacturer's



information, there is evidence that Botulinum toxin is a neurotoxin. It is neither an antibiotic or hormone.

12. The conclusion is that the product Botox is classified under 3004.90 which provides for other medicaments consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses or in forms or packaging for retail sale. Though the respondent submitted that the product fell under Chapter 33, the same is inapplicable noting that HS 3304 provides for beauty or make-up preparations and preparations for the care of the skin (other than medicaments). The chapter clearly exempts medicaments. The examples given therein such as sunscreen, manicure or pedicure preparations are not medicaments and are directly used for cosmetic purposes. That is not the case for the subject product herein.
12. The upshot is that the tribunal did not err in finding that the product was classified under HS Code 3004.90. The respondent's classification of the product in its review decision dated 24/7/2023 was erroneous and the same was correctly set aside. The classification for the product Botox is 3004.90.00 as declared by the respondent.
12. The instant appeal is thus unmerited and the same is dismissed.
12. Each party will bear its own costs.

JUDGEMENT DATED, SIGNED AND DELIVERED VIRTUALLY THIS 16TH DAY OF JULY, 2025

In the presence of;

Muna for the Appellant

Ng'ang'a for the Respondent

Mark/Siele (Court Assistants)

.....

J. NG'ARNG'AR

JUDGE

