



REPUBLIC OF KENYA



Commissioner of Customs and Border Control v Animix Limited (Customs Tax Appeal E030 of 2024) [2025] KEHC 9712 (KLR) (Commercial and Tax) (4 July 2025) (Judgment)

Neutral citation: [2025] KEHC 9712 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CUSTOMS TAX APPEAL E030 OF 2024**

CM KARIUKI, J

JULY 4, 2025

BETWEEN

COMMISSIONER OF CUSTOMS AND BORDER CONTROL APPELLANT

AND

ANIMIX LIMITED RESPONDENT

(Being an Appeal from the Judgment of the Honorable Tax Appeals Tribunal delivered in Nairobi on 12th July 2024 in Tax Appeals Tribunal Appeal No. E143 of 2023)

JUDGMENT

Background

1. The Respondent lodged a claim for a Value Added Tax (VAT) refund from the Appellant in respect of the period between August 2018 and July 2020, amounting to KShs. 21,024,116.00.
2. On 27th October 2022, following an audit, the Appellant rejected the Respondent's refund claim. The Appellant further reclassified the Respondent's sales from zero-rated to general-rated and subsequently assessed VAT amounting to KShs. 143,457,914.65.
3. Dissatisfied with the assessment, the Respondent lodged a Notice of Objection on 8th November 2022.
4. The Appellant, vide its objection decision dated 5th January 2023, upheld the audit findings, confirming the VAT assessment and further imposed penalties and interest, thereby maintaining the tax payable at KShs. 143,457,914.65.
5. Aggrieved by the objection decision, the Respondent filed a Notice of Appeal before the Tax Appeals Tribunal on 3rd February 2023.



6. The Tribunal, upon hearing the matter, found that the Appellant erred in reclassifying the Respondent's imported products from VAT-exempt to General-rated, and held that such reclassification was unjustified.
7. The Tribunal further held that the Appellant erred in declining the Respondent's VAT refund claim.
8. Dissatisfied with the entire Judgment and Orders of the Tax Appeals Tribunal issued at Nairobi in Tax Appeal No. E143 of 2023, the Appellant lodged an appeal to the High Court vide a Memorandum of Appeal dated 4th September 2024. The Appellant challenges the Tribunal's findings on the following grounds:
 - a. That the Tax Appeal Tribunal erred in law and in fact in acting contrary to Rule 1 of the General Interpretation Rules of the Harmonized System by failing to consider the terms of the headings, relative sections and chapter notes and instead considered the text to the title of the chapters which are only used for ease of reference when considering the tariff classification of the product imported by the Respondent.
 - b. That the Tax Appeals Tribunal erred in misconstruing Rule 3(a) of the Harmonized System that applies to a product constituting of more than one material or substance and misconstrued the correct classification of the imports of animal feed premixes.
 - c. That the Tax Appeal Tribunal erred in law and in fact in their analysis of the Appellant's imports as animal feed premixes for the preparation of animal feed, alternatively referred to as feed additives.
 - d. That the Tax Appeals Tribunal erred in law by ignoring the rules of interpretation and misguided itself in deeming that the appropriate classification under Chapter 2309 would be under HS code 2309.90.10. which is exempt from VAT as provided for in the 1st Schedule, Part 1, Paragraph 43 of the *VAT Act* 2013.
 - e. That the Tax Appeals Tribunal erred in law and in fact by failing to apply Rule 3(b) of the General Interpretation Rules to classify the product imported by the Respondent under Heading 2309.90.10
 - f. That the Tribunal erred when it framed the wrong issues for determination, thus asked itself the wrong questions, and in so doing arrived at a wrong conclusion.
 - g. That the Tribunal erred both in law and fact in ignoring all material evidence placed before it and based its judgment on a biased approach without due regard to the balance of the scales of justice.
9. The Respondent filed a Statement of Facts dated 6th May 2025 in response to the appeal.

Directions of the court.

10. The Court directed that the appeal be canvassed by way of written submissions, which were duly filed and exchanged by the parties.

The appellant's submissions.

11. The Appellant submitted that the Tax Appeals Tribunal erred in law and fact by wrongly determining that the Respondent's imports were VAT-exempt under HS Code 2309.90.10, and thus improperly overturned the Appellant's tax assessment. The appellant contends that the Tribunal misapplied the General Interpretation Rules (GIRs) of the Harmonized System, particularly Rules 1, 3(a), 3(b), and



6. The Tribunal based its findings on chapter titles instead of legally binding headings and notes and failed to apply the correct test for composite goods. The appellant contends that the Tribunal incorrectly classified the Respondent's imports as animal feed premixes or additives under HS Code 2309.90.10, exempt from VAT, without properly considering that the imported items consisted of various components that should have been assessed individually. The Appellant contends that the Appellant presented import documents showing that most of the Respondent's imports did not fall under VAT-exempt codes listed in the First Schedule to the VAT Act, 2013. The Tribunal disregarded this evidence. The Tribunal failed to enforce the principle under Section 56(1) of the Tax Procedures Act, which places the burden of proof on the taxpayer. The Appellant maintains the Respondent did not adequately support its objection to the VAT assessment. The reclassification and assessment were not arbitrary but based on the Respondent's own documentation and applicable law. The appellant relied on Section 56 (1) of the Tax Procedures Act, Metcash Trading Limited vs Commissioner for the South Africa Revenue Services and Another case CCT3/2000, Primrosa Flowers Limited vs Commissioner of Domestic Taxes (2019), and Trust Bank Limited & 2 Others (2009) eKLR
12. The Appellant prayed that the High Court set aside the Tribunal's decision, uphold the tax assessment and Objection Decision dated 5th January 2023, and award costs of the appeal to the Appellant.

The respondent's submissions.

13. The respondent submitted that the Respondent maintains that its products—feed additives, binders, and animal nutrition supplements—were correctly classified under HS Code 2309.90.10, which is VAT-exempt. This classification had been consistently used for over ten years and previously accepted by the Appellant without challenge. The Appellant's reclassification lacked evidentiary support and failed to discharge the burden of proof under Section 57 of the Tax Procedures Act and Section 107(2) of the Evidence Act. The Tribunal's findings were based on factual evidence, including import documents, technical specifications, and expert analysis, and should not be overturned without clear error. The respondent relied on Kenya Revenue Authority v Export Trading Co Ltd [2021] eKLR and Republic v KRA Ex Parte Bata Shoe Co Ltd [2014] eKLR
14. The respondent submitted that the Respondent provided complete documentation—export entries, tax invoices, payment confirmations, and buyer acknowledgments—to support its zero-rated sales and input VAT claims. Under Sections 8 and 24 of the VAT Act, 2013, zero-rated supplies entitle a taxpayer to claim input VAT. The Appellant's refusal to honor the refund was arbitrary and violated the Respondent's statutory and constitutional rights. The respondent relied on Commissioner of Domestic Taxes v WEC Lines (K) Ltd, Republic v KRA Ex Parte Export Trading Co Ltd [2015], and Republic v KRA Ex Parte Bata Shoe Co Ltd [2014]
15. The respondent submitted that the Tax Appeals Tribunal had jurisdiction to hear and determine the classification dispute under Section 12 of the Tax Appeals Tribunal Act and the EACCMA. The Tribunal exercised this jurisdiction lawfully and applied the General Interpretative Rules (GIRs) properly. The respondent relied on KRA v W.E. Tilley (Muthaiga) Ltd [2020] eKLR and Bidco Africa Ltd v KRA [2021] eKLR.
16. The Respondent submitted that the classification under HS Code 2309.90.10 was correct; the products were zero-rated, and the VAT refund claim was valid; the Appellant's reassessment was unlawful and unsupported by evidence.



17. The Respondent prayed that: The Appeal be dismissed in its entirety; the Tribunal’s decision dated 12th July 2024 be upheld; the Court orders a refund of all taxes due to the Respondent; and the Costs of the appeal be awarded to the Respondent.

Analysis and Determination.

18. Having carefully considered the pleadings, the evidence on record, the written submissions of the parties, and the applicable legal principles, the Court identifies the following issues for determination:
- i. Whether the Respondent’s products were properly classified under HS Code 2309.90.10;
 - ii. Whether the said classification rendered the products zero-rated or exempt under the VAT Act;
 - iii. Whether the Respondent was entitled to a VAT refund in the sum of KShs. Kshs. 21,024,116.00.

I. Whether the Respondent’s products were properly classified under HS Code 2309.90.10

19. The crux of the Appellant’s case is that the Tax Appeals Tribunal misapplied the General Interpretation Rules (GIRs) of the Harmonized System, and consequently erred in classifying the Respondent’s animal nutrition products as exempt under HS Code 2309.90.10.
20. However, the evidence placed before the Tribunal indicated that the Respondent had, for over a decade, consistently classified its imports—consisting of feed additives and premixes—under HS Code 2309.90.10, and that such classification had previously been accepted by the Appellant.
21. The Tribunal examined relevant import documents, including: Import declaration forms, Technical specifications, Certificates of analysis, and Expert testimony.
22. Based on this evidence, the Tribunal found that the imported goods fell squarely within the scope of HS Code 2309.90.10, which covers “Preparations of a kind used in animal nutrition.”
23. This Court is guided by the principle that an appellate court should be slow to interfere with factual findings of a specialized tribunal unless there is a demonstrable error in law or a misapprehension of facts (*KRA v Export Trading Co Ltd* [2021] eKLR). The Appellant has not demonstrated that the Tribunal’s findings were perverse or irrational.
24. Moreover, the burden to justify a reclassification lay with the Appellant under Section 57 of the *Tax Procedures Act* and Section 107(2) of the *Evidence Act*, and it failed to adduce cogent evidence in support of its position. The Tribunal cannot be faulted for rejecting unsupported assertions.
25. Accordingly, the Court finds no error in the Tribunal’s determination that the products were properly classified under HS Code 2309.90.10.

II. Whether the classification rendered the products zero-rated or exempt under the VAT Act

26. The *VAT Act*, 2013 (First Schedule, Part I, Paragraph 43) provides that animal feeds and premixes used in the preparation of animal feeds are exempt from VAT.
27. The Tribunal correctly noted that once it was established that the goods fell under HS Code 2309.90.10, they were eligible for VAT exemption under the above provision.
28. In *Commissioner of Domestic Taxes v Total Kenya Ltd* [2020] eKLR, the Court of Appeal reiterated the principle that tax statutes must be strictly interpreted and that ambiguities must be resolved in favour of the taxpayer. This Court adopts the same approach in affirming the Tribunal’s conclusion.



III. Whether the Respondent was entitled to a VAT refund

29. The Respondent produced comprehensive documentary evidence to support its refund claim, including: Zero-rated sales invoices, Export entry declarations, Payment confirmations, and Buyer acknowledgments.
30. Under Section 24 of the *VAT Act*, a taxpayer is entitled to claim input VAT where its outputs are zero-rated. The Tribunal correctly applied this provision in finding that the Respondent was entitled to a refund.
31. Further, Section 47(1) of the *Tax Procedures Act* provides that a taxpayer who has overpaid tax or is otherwise eligible under law shall be refunded the excess. The Tribunal's findings align with this legal standard.
32. The Appellant's unilateral reassessment and denial of refund, without sufficient justification, also offended the principles of fair administrative action under Article 47 of the *Constitution* and the *Fair Administrative Action Act*, 2015, as was reaffirmed in *Republic v KRA Ex Parte Bata Shoe Co Ltd* [2014] eKLR.

Conclusion and orders.

33. In light of the foregoing analysis, this Court finds that:
 - i. The Respondent's products were correctly classified under HS Code 2309.90.10;
 - ii. The said classification rendered the products VAT-exempt under the VAT Act;
 - iii. The Respondent was lawfully entitled to a VAT refund of KShs. Kshs. 21,024,116.00;
 - iv. The Appellant's reassessment and objection decision dated 5th January 2023 was not supported by law or evidence.
34. Accordingly, the Court dismisses the Appeal in its entirety and makes the following orders:
 - i. The Judgment and Orders of the Tax Appeals Tribunal in Tax Appeal No. E143 of 2023 are upheld;
 - ii. The Appellant is directed to process and pay the VAT refund of KShs. KShs. 21,024,116.00 to the Respondent within 60 days of this Judgment.
 - iii. The costs of this Appeal are awarded to the Respondent.
35. Orders accordingly.

**DATED, SIGNED, AND DELIVERED AT NAIROBI THROUGH TEAMS APPLICATION, THIS
4TH DAY OF JULY, 2025**

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CHARLES KARIUKI
JUDGE

