



Commissioner of Customs and Border Control v Premier Solar Solutions Limited (Customs Tax Appeal E017 of 2024) [2025] KEHC 12782 (KLR) (Commercial and Tax) (18 September 2025) (Judgment)

Neutral citation: [2025] KEHC 12782 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CUSTOMS TAX APPEAL E017 OF 2024
BK NJOROGE, J
SEPTEMBER 18, 2025**

**BETWEEN
COMMISSIONER OF CUSTOMS AND BORDER CONTROL APPELLANT
AND
PREMIER SOLAR SOLUTIONS LIMITED RESPONDENT**

JUDGMENT

1. This Appeal arises from the Judgement of the Tax Appeals Tribunal delivered on 9th February, 2024. This is in respect to Tax Appeals Tribunal Appeal No. 984 of 2022.
2. The Appellant herein was the Respondent before the Tax Appeals Tribunal, while the Respondent herein was the then Appellant.

Background Facts

3. The Appellant carried out a desk review audit of the Respondent's imports between 2017 and April 2022, following intelligence suggesting ongoing misclassification of aluminium articles under HS Code 7610. The goods in question were declared as aluminium alloy horizontal walkways and vertical steps under tariff subheading 7610.90.00, which attracts 0% import duty and 16% VAT.
4. The audit revealed that these items were incorrectly declared and should have been classified under HS Code 7616.99.00, which carries a 25% import duty and 16% VAT. The Appellant informed the Respondent of these findings via a letter dated 21st April 2023 and subsequently issued a demand for short-levied taxes on 3rd June 2022. The Respondent requested a review of the demand, but the Appellant upheld its decision in a review outcome dated 10th August 2022.



5. The Respondent successful Appealed to the Tax Appeals Tribunal which held as follows;

“The upshot of the above is that the Appeal as filed is merited and the Tribunal accordingly proceeds to issue the following Orders:

- a. The Appeal be and is hereby allowed.
- b. The Respondent's review decision dated 10th August 2022 be and is hereby set aside.
- c. Each party to bear its own costs.

It is so ordered.”

6. The Appellant, being dissatisfied with the entire judgment of the Tax Appeals Tribunal delivered on 9th February 2024 in Tax Appeals Tribunal Appeal No. 984 of 2022, Appeals to the High Court against the said judgment on the following grounds;

- a. The Tribunal erred in law and fact by failing to appreciate that the Respondent's imports (aluminium articles) were not structures or part of structures.
- b. The Tribunal erred in law and fact by failing to appreciate that the Respondent's imports (aluminium articles) were not prepared for use in structures.
- c. The Tribunal erred in law and fact by failing to consider the evidence tendered by the Appellant showing that the Respondent's imports (aluminium articles) were imported as a stand-alone aluminium articles.
- d. The Tribunal erred in law and in fact allowing reclassification from 7616.99.00 to 7610.90.00.
- e. The Tribunal erred in fact and in law in failing to appreciate the evidence tendered by the Appellant before it before rendering it judgment.
- f. The Tribunal erred in law and fact in disregarding the General Rules for Interpretation of the Harmonised System that govern the classification of goods under the Harmonized Commodity Description and Coding System.
- g. The Tribunal erred in fact and in law by not taking into consideration that the East Africa Community Customs External Tariff (EAC/CET) is a document available to all parties and should guide them in applying the right HS Code at all times.
- h. The Tribunal erred in fact and in law by failing to consider that the Kenyan tax system is a self-assessment system where the Respondent was required to assess itself and make payments to the Appellant.
- i. The Tribunal erred in fact and in law by failing to consider that the Kenyan tax system is a self-assessment system where the Respondent was required to assess itself and make payments to the Appellant.
- j. The Tribunal erred in law and fact by not considering that the Appellant, being guided by Section 135 of the East Africa Community Customs Management Act (EACCMA) can demand for short-levied taxes.
- k. The Tribunal erred in fact and in law by failing to consider that a party's legitimate expectation cannot override the law.



- l. The Tribunal misdirected itself on both facts and law, and thereby arrived at wrong, erroneous and absurd findings/decisions.
7. The Appellant prayed for orders that
 - a. The Appeal be allowed
 - b. The Judgment of the Tribunal dated 9th February 2024 issued against the Appellant be hereby set aside.
 - c. The Appellant’s review decision dated 10th August 2022 be upheld.
 - d. The costs be awarded to the Appellant herein.
8. The Respondent filed the Statement of Facts dated 10th February 2025. The Respondent argued that the Appellant’s Appeal is misguided and unfounded. It asserted that the Tax Appeals Tribunal correctly classified the aluminium articles in question under HS Code 7610.90.00 rather than HS Code 7616.99.00 as proposed by the Appellant. These aluminium items, used as structures and accessories in solar panel installations, fall squarely within the broader definition of structures under the said code, which includes components like aluminium walkways and mounting structures. The Tribunal, referencing both the East African Community External Tariff 2017 and the General Rules for Interpretation of the Harmonized System, concluded that the Respondent’s imports meet the criteria for HS Code 7610.90.00, which attracts a 0% duty, aligning with past import classifications and creating a legitimate expectation.
9. The Respondent further asserted that the Appellant has previously processed similar imports under HS Code 7610.90.00 without issue, and therefore cannot now arbitrarily change the classification. They emphasize that the Tribunal gave due consideration to the law and all evidence presented, and thus, the allegations that the Tribunal disregarded the Appellant’s arguments are baseless. The Respondent accuses the Appellant of procedural lapses in issuing short levy demands and argues that the Tribunal’s decision was thorough, well-reasoned, and under the law. Consequently, the appeal does not establish any error in law or fact that would justify overturning the Tribunal’s findings.

Issues for Determination

10. The Court has carefully considered the written submissions by the parties herein, the Appeal, the Record of Appeal, as well as the Statement of Facts. The Court frames the following issues for determination;
 - a. Whether the proper HS classification of the Respondent’s imports is 7616.99.00 or 7610.90.00.

Analysis

11. It is trite that the classification of goods imported into Kenya is governed by the East African Community External Tariff (EAC CET) 2017.
12. Further, the General Rules for the Interpretation of the Harmonized System, which at Rule 1 (“GRI 1”) provides that:

“The titles of Sections, Chapters and sub-Chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the following provisions, i.e.: GR 2 to 6.”



13. It was the Appellant's submission that the articles imported by the Respondent do not qualify as structures should the Court apply the Ejusdem Generis rule in interpreting heading 76.10. This is because the articles imported by the Respondent are individual and are not an amalgamation of parts of a structure. Moreover, they are not parts of a structure, as they are not prepared for use in structures. They are imported as standalone aluminium articles and are merely placed on structures without further modifications.
14. Thus, the Appellant took the position that, having considered all the other headings related to articles of aluminium, they do not apply to the Appellant's aluminium mounting kits for solar panels, and as such, the most appropriate heading for such unique articles of aluminium is heading 76.16.99.00.
15. While relying on 2 and 6 of The General Rules for the Interpretation of the Harmonized System as contained in the East African Community Common External Tariff; the Respondent submitted that the first part of Rule 2 (a) extends the scope of any heading which refers to a particular article to cover not only the complete article but also that article incomplete or unfinished, provided that, as presented, it has the essential character of the complete or finished article.
16. Therefore, it was the Respondent's argument that a solar installation is part of a structure. It is installed on the roofs of buildings, which are in themselves structures. Roofs, roofing frameworks, Doors, Door Frames, Windows, Window Frames, and Thresholds for Doors are essential to the finished article and therefore classified under the same HS Code.
17. The main issue for contention is whether the proper HS classification of the Respondent's imports is 7616.99.00 or 7610.90.00.
18. Heading 7610 provides;
- 76.10 Aluminium structures (excluding prefabricated buildings of heading 94.06) and parts of structures (for example, bridges and bridge-sections, towers, lattice masts, roofs, roofing frameworks, doors and windows and their frames and thresholds for doors, balustrades, pillars and columns); aluminium plates, rods, profiles, tubes and the like, prepared for use in structures.
- 7610.10 Doors, windows, and their frames and thresholds for doors
- 7610.90 Other
19. The description for Heading 7616 is as follows;
- 76.16. Other articles of aluminium.
- 7616.10 Nails, tacks, staples (other than those of heading 83.05), screws, bolts, nuts, screw hooks, rivets, cotters, cotter-pins, washers and similar articles
- Other :
- 7616.91 Cloth, grill, netting and fencing, of aluminium wire
- 7616.99 Other
20. In light of the above, the Appellant's aluminium structures, parts of structures, and accessories for installation of solar panels are classifiable under Heading 7610.90.00 and not Heading 7616.99.00. This is because Heading 7610 points out that "aluminium structures.....prepared for use in structures." As stated by the Respondent, the solar module mounting structure is the base on which the solar panels



lie, thus the mounting structure is permanently fixed onto the roofing. Thus, it is classifiable under HS Code 7610.90.00 as opposed to HS Code 7616.99.00

21. This Court also follows the decision in *Commissioner of Customs and Border Control v Promasidor (K) Limited* [2023] KEHC 20587 (KLR) where the Late Majanja J. held as follows;

“The appellate jurisdiction of this court is circumscribed by section 56(2) of the *Tax Procedures Act* (“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”. 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. It will only intervene if the conclusions are not supported by the facts (see *John Munuve Mati v Returning Officer Mwingi North Constituency & 2 others* [2018] eKLR and *Mercy Kirito Mutegi v Beatrice Nkatha Nyaga & 2 others* NYR CA Civil Appeal Mo. 48 of 2013 [2013] eKLR). I am therefore satisfied that the Tribunal rightly analysed the evidence on record and came to a conclusion that was supported by the CET, the GIRs, the Explanatory Notes and the evidence before it. The Miksi product more likely than not fell within Heading 19.01 as opposed to 04.02 and I cannot fault the Tribunal for arriving at this conclusion.”

22. The Court agrees with the finding of the Tribunal that the Appellant erred in law in classifying the Appellant’s aluminium articles from HS Code 7610.90.00 to HS Code 7616.99.00. No submissions have been made to show that the conclusion arrived at by the Tribunal was not supported by facts or it was perverse.
23. The Appeal lacks merit and is dismissed.
24. As to costs, the fair order that renders itself to the circumstances of this case, is let each party bear its own costs.

Determination

25. The Appeal is dismissed in its entirety for lack of merits.
26. Each party to bear its own costs of the Appeal.
27. It is so ordered.

DATED, SIGNED AND DELIVERED AT MILIMANI THIS 18TH DAY OF SEPTEMBER, 2025.

NJOROGE BENJAMIN. K.

JUDGE

In the presence of: -

Mr. Wainaina for the Appellant

Miss Maina for the Respondent

Mr. Wabwire - Court Assistant.

