REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

COMMERCIAL AND TAX DIVISION

TAX APPEAL NO. E015 OF 2025

BETWEEN

COMMISSIONER OF CUSTOMS &
BORDER
CONTROL.....APPELLANT

AND

ACO DRAINAGE LIMITED.....
RESPONDENT

(Being an appeal against the judgment of the Tax Appeals Tribunal at Nairobi dated 31st January 2025 in Tax Appeals Tribunal Appeal No. E866 of 2024)

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 31st January 2025. The background giving rise to the appeal is that the Respondent, a company engaged in the manufacture and distribution of customized drainage solutions tailored to specific customer requirements, imported a wastewater treatment plant known as the *Rox – Ecological Total Oxidation*

Sewage Treatment Plant under B/L No. MEDUV8787073 and Entry Nos. 23EMKIM400908598 and 23EMKIM400805350. The Respondent classified the Plant under **Harmonized System** (HS) Code 8421.21.00, which pertains to machinery and apparatus for filtering or purifying water but the Commissioner opined that the same was to be classified under HS Code 8421.29.00 in respect of filtering or purifying other liquids.

2. The Respondent expressed its dissatisfaction with the Commissioner's tariff classification in a letter dated 4th September 2023 and also communicated its wish to pay any extra taxes arising under protest but with a request for a technical tariff ruling. The Commissioner undertook a physical verification of the Plant and maintained its position on the classification in a tariff ruling dated 25th September 2023. The Respondent objected and sought to review the ruling in a letter dated 27th September 2023 and in line with **section 229** of the ***East African Community Customs Management Act*** (***EACCMA***), where the Respondent shared the product manual for the item and requested for a meeting to explain and demonstrate the functionality of the same.

3. The Commissioner granted the Respondent's request for a consultative meeting which was held on 3rd October 2023 and in a reviewed tariff ruling dated 3rd October 2023 it still upheld the tariff

classification of HS Code 8421.29.00. The Respondent erroneously lodged an appeal to the Commissioner for the reviewed tariff ruling in a letter dated 25th October 2023. The Commissioner issued a demand notice dated 23rd February 2024 which summoned the Respondent for offence compounding within 14 days in relation to fines due from extra taxes

paid on the imported plant.

4. The Respondent responded to the demand notice in a letter dated 1st March 2024 with a request for extension of the notice for 45 days to allow consultations on the same and it proceeded to properly file an application to be allowed to lodge an appeal with the Tribunal out of time in respect to the Commissioner's decision. The late appeal was allowed and the Tribunal considered the same and rendered a decision on 31st January 2025 (**ACO Drainage Limited v Commissioner Customs & Border Control [2025] KETAT 47 (KLR**). The Tribunal was of the view that from the East Africa Community (EAC)/Common External Tariff (CET), the description under HS Code 8421.21.00 is specific to filtering or purifying water, however according to the Commissioner, the item was not used to purify water but to reduce its toxicity levels and make the final discharge less harmful to life aquatic or otherwise. The Tribunal took a further view that in the description provided in

EAC/CET, it does not matter whether it is to 'purify' or 'filter' and that either fits to the description under HS Code 8421.21.00.

5. Citing the celebrated case of **Cape Brandy Syndicate V Inland Revenue Commissioners (1920) 1KB** on the interpretation of tax statutes, the Tribunal held that the Commissioner ought to have simply looked at the purpose or use of the product before arriving at its decision. In this case the product description clearly states the purpose to be for purifying to reduce human waste content in water and that after considering the ***Chapter Notes, Explanatory Notes*** and product description and intended use, the Tribunal determined that the classification of the product imported by the Respondent is determinable using ***General Interpretation Rules*** (***GIR 1***) and is described most specifically in tariff number 8421.21.00. The upshot of the foregoing is that the Tribunal held that the Commissioner erred in reclassifying the Plant from HS Code 8421.21.00 to HS Code 8421.29.00. The Respondent's appeal was therefore allowed and the Commissioner's review decision of 3rd October 2023 and the Tarriff Ruling of 25th September 2023 were set aside.
6. This decision by the Tribunal is what has precipitated the Commissioner's appeal which is grounded in its Memorandum of Appeal dated 27th March 2025. The Respondent has opposed the

appeal through the Statement of Facts dated 10th June 2025 and the parties have also canvassed the appeal by way of written and oral submissions by their respective counsel.

Analysis and Determination

7. I have carefully considered the record and the rival submissions filed by both parties. I note that in its appeal, the Commissioner urges the court to determine whether the Tribunal erred in finding that the Commissioner wrongly classified the imported plant under HS Code 8421.29.00 as opposed to HS Code 8421.21.00. I do not think it is in dispute 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.***

8. The Commissioner submits that the Appellant's assertion that sewage is not water is erroneously described as sewage is a mixture of human, solid, and chemical waste that requires biological decomposition and sludge handling, moving it beyond the scope of simple water filtration. The Commissioner argues the Tribunal failed to follow ***GIR Rule 6***, which requires precise classification at the subheading level based on technical criteria rather than a manufacturer's generalized language. It submits that previous tariff rulings are not binding because classification is entry-specific and depends on the exact technology presented at the time of import. For these reasons, the Commissioner urges the court to allow the appeal and set aside the Tribunal's judgment, upholding the Commissioner's review decision of 3rd October 2023.
9. On its part, the Respondent maintains that the imported Plant is primarily designed for filtering or purifying water and based on its function, the Respondent classified the plant under 8421.21.00, which specifically pertains to water purification machinery. It submits that the Commissioner previously upheld this classification and that its attempt to reclassify it was erroneous. The Respondent highlights that the Commissioner's officers reclassified the item without conducting a physical inspection of the Plant and that the Commissioner argued for code 8421.29.00, claiming the input is

sewage rather than water but the Respondent counters that sewage is simply water contaminated with waste and that the end goal, clean water, is the determining factor.

10. The Respondent asserts the Commissioner ignored the ***GIRs*** of the ***Harmonized System***, which prioritize a product's function in determining its tax category. The Respondent reiterates that the Commissioner had issued two previous tariff rulings in 2020 and 2021 affirming the classification of similar items or components under codes consistent with water purification and that these prior actions created a legitimate expectation that the Commissioner would remain consistent in its classification. The Respondent argues that departing from these rulings without a valid reason undermines legal certainty. The Respondent concludes that the reclassification was erroneous in both fact and it urges the court to dismiss the appeal in its entirety, uphold the Tribunal's decision and affirm the classification under HS Code 8421.21.00.

11. Going through record, I find that the Commissioner has not demonstrated a perverse finding or an error of law that would justify overturning the Tribunal's decision. The Tribunal relied on ***GIR 1***, which requires classification according to the terms of the headings and relevant notes. Heading 8421 covers filtering or purifying machinery for liquids or gases. Subheading 8421.21.00 specifically

refers to *"filtering or purifying machinery and apparatus for water."* The Tribunal found that the Plant treats sewage wastewater to reduce human waste content, which is a form of water purification and that this is consistent with 8421.21.00.

12. I find that the Tribunal's interpretation is consistent with the Plant's description and intended use at least going by the manufacturer's manual and letter clarifying that the Plant treats sewage wastewater to purify it. As stated, the Tribunal noted that the description in the EAC/CET for 8421.21.00 does not distinguish between "filtering" and "purifying" as both fall under the subheading. The Commissioner's argument that sewage is not "water" under the ***Harmonized System*** was rejected because the Plant's function is to purify water, not to treat non-water liquids. The Tribunal acknowledged that both parties agreed on Heading 8421, but diverged at the subheading level. HS Code 8421.29.00 is a residual category for *"other liquids"* (not water, beverages, oil, or petrol). The Tribunal found the product was more specifically described under 8421.21.00, in line with the Rule that specific descriptions prevail over general ones. The Tribunal's reasoning aligns with precedent and principles of statutory interpretation set out in ***Cape Brandy (supra)*** that in taxing statutes, one must look at what is clearly said, no implication or equity applies.

13. In my view, the Commissioner's grounds of appeal are largely interpretive and factual, not legal errors. It argued the Tribunal misinterpreted sewage as water and misapplied ***GIR 6***, however, the Tribunal's analysis shows it properly considered the Plant's function of water purification rather than its input of sewage alone, which finding is a reasonable application of the HS to the facts, not an error of law.

14. The Tribunal's conclusion was based on evidence, that is, the Plant manual, the manufacturer's letter and technical description and it did not disregard relevant material or misinterpret the law in a way that would be considered perverse or unreasonable.

Conclusion and Disposition

15. 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 31st January 2025 is affirmed. It is so ordered.

DATED SIGNED and DELIVERED virtually this 12TH DAY OF FEBRUARY 2026

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J.W.W. MONGARE
JUDGE

IN THE PRESENCE OF:-

1. Mr. Mbatia for the Appellant.
2. Mr. Isutsa for the Respondent.
3. Amos - Court Assistant