



Commissioner of Domestic Taxes v Buyline Industries Limited (Commercial Case E004 of 2025) [2025] KEHC 12045 (KLR) (Commercial and Tax) (11 August 2025) (Judgment)

Neutral citation: [2025] KEHC 12045 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE E004 OF 2025**

TM MATHEKA, J

AUGUST 11, 2025

BETWEEN

COMMISSIONER OF DOMESTIC TAXES APPELLANT

AND

BUYLINE INDUSTRIES LIMITED RESPONDENT

JUDGMENT

1. The respondent is a limited liability company incorporated in Kenya whose principal business activity is the manufacturing of beauty products and other personal care products. The appellant conducted a desk review of the respondent's tax returns to assess excise duty compliance. It thereafter issued an additional assessment, disallowing prepaid excise duty claimed on packaging materials. The appellant argued that under section 14(1) of the *Excise Duty Act* 2015, relief is only granted for excise duty on raw materials used to manufacture excisable goods. It maintained that packaging materials do not qualify as raw materials under this provision, even if essential to the final product, and thus are not eligible for excise duty relief.
2. The appellant contended that the respondent was issued an assessment notice on 3rd October 2023 after directing the respondent to amend its returns to account for tax shortfalls. Aggrieved by the said assessment, the respondent objected to it vide a letter dated 24th October 2023, arguing that Section 14(1) of the *Excise Duty Act* refers broadly to raw materials and not just those in a natural or chemical state. The respondent claimed that input materials such as glass bottles, labels, caps, and unit boxes are essential to the finished excisable products and therefore qualify as raw materials. The respondent maintained that without these components, its products would be incomplete and unsellable, justifying the claim for prepaid excise duty.
3. Upon consideration of the respondent's objection, the appellant issued its objection decision dated 14th November 2023 rejecting it, thus upholding the earlier assessment.



4. Aggrieved by the appellant's objection decision, the respondent filed an appeal against it at the Tax Appeal Tribunal (hereinafter referred to as the "the tribunal") vide a Notice of Appeal dated 7th December 2023. Thereafter, the respondent filed a Memorandum of Appeal and Statement of Facts both dated 19th December 2023.
5. Upon consideration of the pleadings filed and rival submissions by Counsel for the parties, the Tribunal identified one issue for determination: whether the respondent erred in law and in fact by disallowing the appellant's claim of excise tax paid on imported glass bottles, labels and plastic caps used for the manufacture of excisable products which is in line with section 14 of the *Excise Duty Act*.
6. The Tribunal held that since the *Excise Duty Act* does not define raw materials, and given its broad definition in the Black's Law Dictionary and the *Excise Duty Act*'s broad definition of manufacture, any ambiguity in interpretation of the term "raw materials" should be interpreted in favor of the taxpayer.
7. The Tribunal then found that the materials in question are essential to the finished product and thus qualify as raw materials under Section 14(1) of the *Excise Duty Act*. Hence, the respondent was justified in offsetting excise duty paid on these materials against the duty on finished products. In the end, the respondent's appeal before the Tribunal was allowed, and the appellant's objection decision dated 14th November 2023 was set aside.
8. The appellant was dissatisfied with the Tribunal's decision, and lodged this appeal against it vide a memorandum of appeal dated 9th January 2025 raising the following grounds of appeal –
 - i) That the Honourable Tribunal erred in law by purporting to create an ambiguity under Section 14(1) of the *Excise Duty Act* on the meaning of raw materials used in manufacture of excisable goods when no such ambiguity exists in the law on the respondent's use of packaging materials as a raw material in the manufacture of its alcoholic beverages;
 - ii) That the Honourable Tribunal erred in law by failing to apply the cardinal rules of interpretation of tax statutes on the use of ordinary meaning of the term "raw material" under Section 14(1) of the *Excise Duty Act* in determining whether the respondent's packaging materials (bottles) are raw materials used in the manufacture of respondent's excisable goods;
 - iii) That the Honourable Tribunal erred in law by failing to find that the dispute before it was on the application of strict interpretation of tax statutes on whether the respondent's packaging materials (bottles) could be construed as raw materials under Section 14(1) of the *Excise Duty Act* used in the manufacture of the respondent's finished product (alcoholic beverages);
 - iv) That in finding purported ambiguity under Section 14(1) of the *Excise Duty Act* on failure to define the term raw materials, the Tribunal erred in law and fact as the Act cannot define/ prescribe raw materials on all conceivable products in the manufacturing processes;
 - v) That in failing to apply strict interpretation of tax statutes on Section 14(1) of the *Excise Duty Act*, the Tribunal wrongfully concluded that packaging materials (bottles) are used as raw materials in the respondent's line of business of manufacture of the respondent's products;
 - vi) That the Honourable Tribunal erred in law in finding that the respondent is permitted to claim excise duty paid on its packaging materials as raw materials when the packaging materials are not ingredients used in the manufacture of the respondent's products;
 - vii) That the Honourable Tribunal erred in law and fact by failing to find that costs on packaging materials not being raw materials used in the manufacture of the respondent's alcoholic



beverages under Section 14(1) of the *Excise Duty Act* are only claimable as allowable deductions under Section 15 of the *Income Tax Act*;

- viii) That the Honourable Tribunal erred in law by failing to find that it is bound by decisions of the higher Courts, which has conclusively determined that packaging materials are not raw materials used in the manufacturing processes;
 - ix) That the Honourable Tribunal erred in law and fact in failing to consider the appellant's submissions and responses in its finding; and
 - x) That the Honourable Tribunal misapplied the law and facts and therefore arrived at the wrong decision.
9. The appellant's prayer is for this Court to allow this appeal with costs and set aside the Tribunal's findings and orders subject of this appeal.
10. This appeal was canvassed by way of written submissions which were highlighted on 16th June 2025. The appellant's submissions were filed by Chelang'at Mutai, Advocate on 5th May 2025, while the respondent's submissions were filed on 6th May 2025 by the law firm of Butala Joy & Associates Advocates.
11. Ms. Chelang'at, learned Counsel for the appellant relied on Commissioner of Income Tax vs Kenya Seed Company Limited [1986] eKLR and submitted that raw materials as defined in both Black's Law Dictionary and Marian Webster Dictionary, refer to inputs used in the production of a final product. Once transformed into a finished product, they cease to be raw materials. She further submitted that raw materials must be inputs directly involved in the manufacturing process and must affect the composition or form of the final product. Ms. Chelang'at stated that packaging bottles in contrast, are used only after the manufacturing process for storage and distribution and do not form part of the finished product. She therefore maintained that the products in question would still be complete and consumable without the packaging materials.
12. In view of the above, Ms. Chelang'at asserted that packaging materials like glass bottles, though essential for completing the product, are not raw materials, as the product is usable without them. Therefore, excise duty on such packaging should not be offset under Section 14 of the *Excise Duty Act*. On the contrary, costs associated with packaging bottles could still be claimed as allowable deductions under Section 15 of the *Income Tax Act*, and not under excise duty relief. Ms. Chelang'at cited Republic v Commissioner of Domestic Taxes Large Taxpayer's Office ex-parte Barclays Bank of Kenya Ltd, [2012] eKLR and asserted that the Tribunal misapplied the law by not applying established principles of strict interpretation of tax statutes to determine whether packaging materials like bottles can be considered raw materials in the manufacture of nail polish and related products.
13. Learned Counsel relied on the decision of the Court of Appeal in Mjengo Limited vs Commissioner of Domestic Tax [2016] eKLR and submitted that the respondent's imported glass bottles are solely for packaging and do not contribute to the manufacturing process of nail polish, removers, or oils. Further, the said packaging does not alter the product's content or value, as the final product remains the same regardless of the packaging material used, such as glass or plastic bottles. Ms. Chelang'at cited the provisions of sections 9(3) & 11 of the Excise Duty Tax Act, section 127c of the repealed Customs & Excise Act and Mount Kenya Bottlers Ltd & 3 others vs Attorney General & 3 others [2019] eKLR, and contended that nail polish bottles are not returnable containers, and therefore, under Section 9(3) of the *Excise Duty Act*, their cost must be included in the excisable value of the final product. Multiple taxation would only be an issue if the bottles were returnable and their cost still included in the excisable value.



14. Ms. Butala, learned Counsel for the respondent submitted that imported glass bottles, labels, and plastic caps used by the respondent in manufacturing products like perfumes, deodorants, nail polish, and cosmetics are essential to the final product, enabling proper storage, use, and compliance with legal labelling requirements. This means that without them, the products would lack consumer value and would not be safely or legally sold. In the premise, Counsel contended that the aforesaid products should be classified as raw materials eligible for excise duty relief under Section 14(1) of the [Excise Duty Act](#). Learned Counsel argued that since the [Excise Duty Act](#) does not define "raw material," the term should be given its ordinary meaning being inputs or inventory necessary to produce the final product.
15. She further submitted that section 2 of the [Excise Duty Act](#) defines "manufacture" broadly to include production and intermediate processes, and each clause stands independently. She therefore contended that glass bottles, labels, and plastic caps are part of the production process and thus meet the definition thereunder. Ms. Butala Commissioner of Domestic Taxes (Large Taxpayers Officers) vs Barclays Bank of Kenya Ltd [2020] eKLR , Court of Appeal decision and argued that taxation and penalties must be based on clear statutory language, and where ambiguity exists, interpretation should favour the taxpayer. She cited the Supreme Court in Gatirau Peter Munya vs Dickson Mwenda Kithinji & 2 others [2014] eKLR and argued that when interpreting statute, a purposive approach should be applied to reveal the true intent behind the law.
16. Counsel submitted that due to ambiguity in Section 14(1) of the [Excise Duty Act](#), the provisions thereunder should be interpreted in its favour, allowing it to offset excise duty paid on imported materials against duty on finished products. Ms. Butala relied on Republic vs Kenya Revenue Authority Ex Parte MKopa Kenya Limited [2018] eKLR and stated that the respondent had a legitimate expectation based on longstanding practice of offsetting input credits against output tax, as no law explicitly disallowed such claims for packaging materials.

Analysis And Determination

17. It is well settled that pursuant to the provisions of Section 56(2) of the [Tax Procedures Act](#), an Appeal to the High Court from the decision of the Tax Appeals Tribunal or to the Court of Appeal shall be on a question of law only. This means that this Court is not permitted to substitute the Tribunal's decision with its own conclusions based on its own analysis and appreciation of the facts unless where additional evidence has been adduced with leave of Court pursuant to the provisions of Section 78 of the [Civil Procedure Act](#), Order 42 Rule 27 of the Civil Procedure Rules 2010, & Rule 15 of the Tax Appeals Tribunal (Appeals to the High Court) Rules, 2015.
18. I have carefully considered grounds of appeal, the Record of Appeal, the statement of facts filed by the respondent together with the rival submissions by Counsel for the parties, the issue that arises for determination is whether the respondent was justified to offset the excise duty due on its finished products from the excise duty paid on the imported raw materials such as imported glass bottles, labels and plastic caps.
19. It is not in dispute that the respondent imported excisable goods being glass bottles, labels and plastic caps to be used in packaging its excisable products manufactured in Kenya being perfumes, deodorants, hair care products, nail polish & treatment, colour cosmetics, men aftershaves and baby care products. The respondent contended that its imported glass bottles, labels, and plastic caps are raw materials under Section 14(1) of the [Excise Duty Act](#), as they are essential to manufacturing its products such as perfumes, men's aftershaves, and baby care items.
20. The respondent maintained that without these components, the products would be incomplete and unusable. It argued that glass bottles are essential to the manufacturing process of products like nail



- polish and removers, as they ensure product stability and usability, making them critical components of the finished goods. Labels on the other hand are mandatory for regulatory compliance, making them necessary for manufacturing and sale. On the contrary, the respondent maintained that glass bottles, labels, and plastic caps are not raw materials within the meaning of the Act and thus do not qualify for excise tax relief.
21. The respondent maintains that the finding of the Tribunal in support of their position that these are raw materials, because the provision of s. 14(1) of the [Excise Duty Act](#) are ambiguous. The appellant's position is that there is no ambiguity.
22. Section 14(1) of the [Excise Duty Act](#) which provides that –
- Where excise duty has been paid in respect of excisable goods imported into, or manufactured in Kenya by a licensed manufacturer and which have been used as raw materials in the manufacture of other excisable goods (hereinafter referred to as "finished goods"), the excise duty paid on the raw materials shall be offset against the excise duty payable on the finished goods.
23. This provision of the law speaks about excisable goods imported or manufactured and used as the raw materials in the manufacture of other excisable goods. In this case it is the glass bottles and the respondent's finished products. It is evident that the [Excise Duty Act](#) has not defined what a raw material is, but one is found Black's Law Dictionary which defines raw material as -
- any substances found in their natural, modified or semi-processed state used as an input in the production process for subsequent modification or transformation into a finished good.
24. The [Excise Duty Act](#) defines manufacture to include –
- a) the production of excisable goods;
 - b) any intermediate or uncompleted process in the production of excisable goods; or
 - c) the distilling, rectifying, compounding, or denaturing of spirits;
25. It is clear it is about the actual production of excisable goods. What does the respondent produce? It is the nail polish, the aftershave, the oils and others. The respondent has not demonstrated other than packaging how else these items fit into the manufacturing process as set out herein above as raw materials.
26. The Act says
- “Excisable goods” means the goods specified in Part I of the First Schedule;
27. A glance at part 1 of the first schedule indicates inter alia the following as excisable goods Imported Glass bottles (excluding imported glass bottles for packaging of pharmaceutical products) Provided that it shall not apply to glass bottles imported from any of the countries within the East African Community; Articles of plastic of tariff heading; Imported paper or paper board, labels of all kinds whether or not printed ...
28. It is not in doubt that the items are already classified as excisable. The question as to whether they are raw materials is answered in the definition given by the dictionary describes what I would consider to be the natural meaning of what a raw material is. That substance [substances] that is an input in the in the process of manufacturing to come up with the finished product. The bottle is a container. It does



not affect the actual make up of the product it contains. It makes it usable, or portable, or marketable in certain way. It is not inputted in the actual production of the nail polish or other products.

29. I found this to be the same position taken by the learned Judge in *Commissioner of Domestic Taxes v London Distillers (K) Limited* [2025] KEHC 11286 (KLR) where the court was faced with the exact issue and where the argument was similar but related to alcoholic beverages; in that case

“The Respondent argues that bottles are “essential inputs” for the manufacturing process, facilitating various aspects like identification, portability, presentation, sales, marketing, distribution, and consumption. They contend that the Appellant’s definition of raw materials is too narrow and not in line with international manufacturing practices.”

30. In arriving at a definition, the court rendered itself thus:

It is a well-established principle in manufacturing that raw materials are substances or components used in the primary production or manufacturing of goods. They undergo a transformation or are incorporated into the final product. Packaging materials, though essential for the commercialization and distribution of a product, typically serve as containers or protective coverings. They do not, in the ordinary sense, become an integral part of the composition of the product itself. Differently put, an alcoholic beverage is still an alcoholic beverage, regardless of the bottle it is in. The bottle does not contribute to the chemical or physical properties of the alcohol.

31. He went on to say:

21. The wording of Section 14(1) of the *Excise Duty Act* refers to materials “used as a raw material in the manufacture of other excisable goods.” The phrase “used as a raw material” strongly implies incorporation or transformation into the new excisable good. While bottles are used in the process of bringing the excisable good (alcoholic beverage) to market, they are not “used as a raw material” in the sense of being an ingredient or component that is transformed into the beverage itself.

22. It is good to note that if Parliament intended to provide relief for all essential inputs, including packaging, it could have used broader language such as inputs, components, or materials used in the production process. The specific choice of “raw material” suggests a narrower scope, focusing on direct compositional inputs.

32. It is my view that this position is reinforced by the Court of Appeal in *Commissioner of Domestic Taxes (Large Taxpayers Officers) v Barclays Bank of Kenya Ltd* [2020] eKLR observed that

There is no doubt in our minds that the decisions in *Adamson v Attorney General* [1933] AC 247, *Cape Brandy Syndicate v. Inland Revenue Commissioners* [1920] 1 KB 64, *T. M. Bell v. Commissioner of Income Tax* [1960] EA 224, *Republic v. Commissioner of Income Tax ex parte SDV Transami* [2005] eKLR and the first judgment represent a correct statement of the law, namely strict construction of tax legislation, so that the tax demand must fall within the terms of the statute without ambiguity. If there’s any ambiguity in the legislation, it is not to be rectified by considerations of intendment, but by amending the legislation. However, determination of whether there is clarity or ambiguity in the legislation or whether a tax demand is precise and within the terms of the legislation, is not



an abstract or pedantic exercise. It must be based on the evidence and the circumstances of each case. We agree with the majority of this Court in *Stanbic Bank Ltd v. Kenya Revenue Authority* [2009] eKLR that meaning of words should not be strained so as to find ambiguity.

33. Hence, from the foregoing it emerges that from my reading and understating of the meaning of raw materials and manufacturing, s. 14 (1) of the *Excise Duty Act* does not present an ambiguity. There is a distinction between packaging and the good itself, and in any event, there is a relief from the fear of double taxation. Hence it is my considered view that the meaning of raw material in the manufacturing process would not include the bottles and other items in which the respondent's goods are packaged.
34. The respondent raised a serious concern over what would amount to double taxation if the court found in favour of the appellant 'definition of raw materials to exclude the items they have set out in this matter.
35. The respondent is not without recourse. In *Commissioner of Domestic Taxes v London Distillers (K) Limited* above the court stated and I take the same position

The crucial question remains whether the bottle is "used as a raw material" for the beverage. Given the analysis above, it is difficult to conclude that it is. The cost of packaging is generally a business expense. As the Appellant correctly pointed out, such costs are typically treated as allowable deductions under income tax laws for the purpose of calculating taxable profits, rather than as a direct excise duty relief on the input itself. (emphasis mine)

36. Ultimately, I find that the appeal is with merit. The same is allowed.
37. The decision of the Tribunal be and is hereby set aside.
38. The Decision of the Commissioner be and is hereby is reinstated.
39. Each party to bear its own costs.

DATED SIGNED AND DELIVERED VIA CTS THIS 11TH AUGUST 2025

MUMBUA T MATHEKA

JUDGE

