



**EAST AFRICAN COURT OF JUSTICE
FIRST INSTANCE DIVISION**



Judgment: 26th March 2019 from 9:30 am
(Open Court, 2nd floor, EAC Headquarters)

Reference No. 7 of 2017 British American Tobacco Limited vs The Attorney General of the Republic of Uganda

Reference filed on: 9th August 2017.

Articles: 23, 27 and 30 of the Treaty the Establishment of the East African Community.

Rule: 24 of the EACJ Rules of Procedure, 2013.

Subject matter: *Discrimination of cigarettes in contravention of EAC laws.*

The Applicant, British American Tobacco Limited is a limited liability company incorporated in 1984 under the laws of Uganda. The Applicant resides in Uganda and lawfully operates its business as a manufacturer and dealer in tobacco and tobacco products.

The Applicant's case is that, the Republic of Uganda is a State Party to the EAC Treaty, the Customs Union and the Common Market Protocols which create various obligations upon Partner States.

The Applicant alleges to have entered into an agreement with British American Tobacco Kenya Plc (BAT), its sister company that is resident in Kenya, a Partner State of the EAC, to manufacture and supply cigarettes to the Applicant from its factory premises at Nairobi Kenya and deliver in Uganda for sale in the Ugandan market.

Further, on 30th March 2017, the Government of Uganda published the Excise Duty (Amendment) Bill No.6 of 2017 in the Uganda Gazette proposing an increase in the rate of excise duty on cigarettes (soft cup) from Ushs. 50,000 per 1000 sticks to Ushs. 55,000 per 1000 sticks. The said rate was to apply uniformly to all applicable tobacco products manufactured within the EAC.

The Bill was laid before the Parliament and referred to the Committee on finance, Planning and Economic Development. The Committee held meetings and prepared a report where it was recommended that the Bill be passed into law subject to a proposed amendment introducing different excise rates for locally manufactured and imported cigarettes.

On 10th May 2017, the Bill was brought before the plenary, debated upon by Members of Parliament and subsequently passed by the Parliament. The Bill introduced amendments of excise duty on locally manufactured cigarettes (soft cup) to an amount of Ushs. 55,000 per 1000 sticks and Ushs. 75,000 per 1000 sticks for imports. While introducing Ushs 80,000 per 1000 sticks for hinge lid locally manufactured and Ushs. 100,000 per sticks for imported.

On 13th June 2017, the President of Uganda assented to the Excise Duty (Amendment) Act of 2017 with a commencement date of 1st July 2017 and on 30th June 2017, the Act was published in the Uganda Gazette.

Thereafter, the Republic of Uganda through its agent, the Uganda Revenue Authority issued tax assessment notices on the basis of the above amendments requiring the Applicant to pay excise duty for its cigarettes manufactured in Kenya and brought into Uganda. The tax assessment initially categorised the cigarettes as locally manufactured but subsequently re categorised the same as imported attracting excise duty at the higher rate for imported cigarettes, i.e. Ushs 75,000 per 1000 sticks of 'soft cup' and Ushs 100,000 per 1000 sticks of 'hinge lid'.

The Applicant filed this Reference and by a letter dated 7th September 2017 wrote to the Uganda Revenue Authority informing them about the pending Reference and proposed postponement payment of additional tax pending resolution of the Reference.

On 19th September 2017, the Uganda Revenue Authority replied stating that the current provisions of the excise duty Act mandated them to collect excise duty on the Applicant's cigarette at the rate prescribed for imported cigarettes and that the Uganda Revenue Authority was not in a position to vary the implementation of the said provisions.

On 18th August 2017 the Applicant wrote to the Secretary General of the EAC, the Kenyan Ministry of EAC Labour and Social Protection stating *inter alia* that the Uganda revised excise duties were discriminatory.

On 30th August 2017 the EAC Secretariat urged the EAC Partner States to comply with the provisions of the EAC Customs Union Protocol and the Treaty and grant equal treatment to products from other Partner States.

On 23rd November 2017 the Ugandan Ministry of Finance, Planning and Economic Development wrote to the Applicant stating that the current excise duty regime contravenes the EAC laws and Tobacco Control Act and that they have taken cognizance of the Applicant's concerns. The letter further stated that, the Ministry would review the excise duty regime in the Financial Year 2018/19 to align with the EAC Treaty and the Customs Union Protocol which Uganda is obliged to comply with.

Pending hearing and determination of this Reference, the Applicant applied for interim orders and the First Instance Division granted the same thus currently, the Applicant's cigarettes brought into Uganda from Kenya, are being charged excise duty at the rate for locally manufactured cigarettes until final determination of this case.

The Respondent, Attorney General of the Republic of Uganda argues that, the different terms of taxes paid on locally manufactured cigarettes *visa a vis* imported cigarettes is intended to promote growth of the local industries and encourage the consumption of locally manufactured cigarettes.

The Respondent contends that the Excise Duty (Amendment) Act No.11 of 2017 was passed in good faith, was well intentioned and was for the benefit of not only the Republic of Uganda but also for the East African Community as a whole and that the said Act does not violate the provisions of the EAC Treaty or the Protocols as alleged.

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