

REPUBLIC OF KENYA
IN THE TAX APPEALS TRIBUNAL
TAX APPEAL NO. E962 OF 2024

MANUCHAR KENYA LIMITED.....APPELLANT

-VERSUS-

COMMISSIONER OF CUSTOMS AND BORDER
CONTROLRESPONDENT

JUDGMENT

BACKGROUND

1. The Appellant is a company duly incorporated in Kenya under the Companies Act CAP 486 Laws of Kenya whose principal activity is importation and distribution of chemicals.
2. The Respondent is a principal officer appointed under Section 13 of the Kenya Revenue Authority Act, CAP 469 of Kenya's Laws (hereinafter "the Act"). Under Section 5 (1) of the Act, the Kenya Revenue Authority is an agency of the Government for the collection and receipt of all tax revenue. Further, under Section 5(2) of the Act with respect to the performance of its functions under subsection (1), the Authority is mandated to administer and enforce all provisions of the written laws as set out in Part 1 and 2 of the First Schedule to the Act for the purposes of assessing, collecting and accounting for all revenues in accordance with those laws.

3. On 22nd April 2024, the Appellant imported a consignment of NPK-19-19-19+TE Fertilizer (hereinafter fertilizer) and declared the same under tariff code 3105.20.00.
4. The Respondent in a tariff ruling dated 7th June 2024 reclassified the fertilizer under tariff code 3824.99.90.
5. Dissatisfied with the reclassification, the Appellant lodged a review application dated 25th June 2024 that was followed by a physical meeting on 17th July 2024.
6. On 18th July 2024, the Respondent issued a review decision upholding the earlier reclassification of the fertilizer under tariff code 3824.99.90.
7. Aggrieved by the Respondent's review decision dated 18th July 2024, the Appellant filed its notice of appeal dated 16th August 2024 on even date.

THE APPEAL

8. The Appellant's case was predicated upon a Memorandum of Appeal dated and filed on 30th August 2024 wherein the Appellant raised the following as its grounds of Appeal:
 - (i) That the product NPK 19-19-19+TE is a compound fertilizer containing, as essential constituents, the fertilizing substances Nitrogen(N), Phosphorus(P), and Potassium(K).
 - (ii) That the Appellant correctly classified NPK 19-19-19+TE fertilizer in HS Code 3105.20.00 based on General Interpretative Rules (GIRs) 1,3b and 6.

- (iii) That the Respondent erred in law and fact by re-classifying the NPK 19-19-19+TE fertilizer in HS Code 3824.99.00 based on GIRs 1,3c and 6.

APPELLANT'S CASE

9. The Appellant's statement of facts dated and filed on 30th August 2024 wherein the Appellant expounded upon its grounds of Appeal as follows:
- (i) The product NPK 19-19-19+TE is a compound fertilizer containing, as essential constituents, the fertilizing substances Nitrogen(N), Phosphorus(P), and Potassium(K).
10. It was the Appellant's case that the imported fertilizer is an NPK fertilizer containing trace elements as shown by the product's technical data sheet which indicate that cumulatively Nitrogen, phosphorous and potassium account for 57.16% of the product's nutrient content. Further, that the product's material safety data sheet identifies the product as a fertilizer whose constituent compound weight account 99.96% while trace elements account for 0.04% thus the proper classification is under Chapter 31 of the EAC CET.
- (ii) The Appellant correctly classified NPK 19-19-19+TE fertilizer in HS Code 3105.20.00 based on General Interpretative Rules (GIRs) 1,3b and 6
10. The Appellant stated that classification of goods in the Nomenclature is governed by the six (6) General Interpretative Rules (GIRs) which are applied sequentially and rely on the World Customs Organization (WCO) and the Harmonized System Explanatory Notes (ENs) which constitute the official interpretation of the Nomenclature at the International level. And though not binding, they are indispensable complements to the HS.

11. It was the Appellant's case that while Title of a chapter is just for ease of reference, for legal purposes terms of the heading and relative section and chapter notes are applicable thus the Appellant properly classified its product under tariff code 3105.20.00 as guided by GIRs 1, 3b and 6 as guided by the terms of heading 3105 under Chapter 31 which covers classification of fertilizers. Moreover, that the Appellant's product is a compound fertilizer composed of essential constituents described in chapter notes 2,4, 5 and 6 to Chapter 31.
12. According to the Appellant, fertilizers under Chapter 31 may contain substances trace elements other than fertilizing substances and that as guided by GIR 3(b), elements that give the product its essential character in terms of the goods description, percentage weight (99.96%) and nutrient content (57.16%) are Nitrogen, Phosphorous and Potassium with negligible trace elements in both weight (0.04%) and nutrient content at less than 2% thus the proper tariff code was 3105.20.00.
 - (iii) The Respondent erred in law and in fact by reclassifying NPK 19-19-19+TE fertilizer in HS Code 3824.99.90 based on GIRs 1,3(b) and 6
13. The Appellant stated that the Respondent's grounds of reclassification were legally and factually flawed as goods are classified as presented and the Respondent was deliberately misinterpreting the ENs to Chapter 31 to confirm its bias. That contrary to Respondent's assertion the Appellant's product was a NPK fertilizer containing trace elements and is both a macronutrient and micronutrient preparation and the only preparations excluded were those which are *prima facie* micronutrient preparations which

may contain small quantities of fertilizing elements NPK but not as essential constituents.

14. The Appellant further stated that whereas Note 6 to Chapter 31 and EN (c) to Heading 3105 provides that a mixture of fertilizing substances (NPK) and non-fertilizing substances remain classified under Heading 3105 which provides for;

“Mineral or chemical fertilizers contain two or three of the fertilizing elements nitrogen, phosphorous and potassium.”

The Respondent’s suggested Heading 3824 provides for:

“chemical products and preparations of the chemical or allied industries (including those containing of mixtures of natural products), not elsewhere specified or included.”

15. The Appellant cited the following case law that agreed with classification of similar products under Heading 3105:

- **Commissioner of Customs and Border Control v Western Seed Ltd (Income Tax Appeal E035 of 2023[2024]**
- **Greenlife Crop Protection Africa Limited v Commissioner of Customs and Border Control[TAT Appeal No. E691 of 2023]**
- **Lachlan Kenya Limited v Commissioner of Customs and Border Control[TAT Appeal No. 160 of 2019]**

16. The Appellant asserted that while even the cited Court rulings align with its classification under Chapter 31, it was baffling that the Respondent remained unmoved and continues to issue tariff rulings classifying fertilizers under Chapter 38. That the Respondent is ignorant of the fact that Part A of the 2nd Schedule to the VAT Act, 2013 provides for zero-rating of fertilizers under Chapter 31 and that Respondent's attempt was an affront to curtailing the very efforts by the Government at boosting agricultural production since classification under Chapter 38 attracted a 16% VAT.

Appellant's Prayer

17. The Appellant's sought the following reliefs:

- (a) The Tribunal sets aside the Review Decision dated 18th July 2024 classifying NPK 19-19-19+TE fertilizer in HS Code 3824.99.90
- (b) The Tribunal grants orders as to continued declaration of identical/similar future consignments of NPK 19-19-19+TE fertilizer under the currently applied tariff code 3105.20.00
- (c) The Tribunal awards the costs of this Appeal to the Appellant.
- (d) The Tribunal makes such other orders that it may deem appropriate.

THE RESPONDENT'S CASE

18. The Respondent replied to the Appeal through its Statement of Facts dated and filed on 27th September 2024.

19. According to the Respondent, upon entry, the Appellant's product was subjected to a thorough verification exercise that included examination of

verification report, product technical information availed in data sheets and product uses. That as a result, the Respondent reclassified the product under tariff code 3824.99.00 as guided by GIR 1 and 6.

20. The Respondent asserted that the product is an agricultural nutritional formulation containing both macro and micro elements that are beneficial to plants. That macronutrients NPK are essential for plant growth and overall state of the plant whereas micronutrients helps plants by providing minerals and vitamins crucial to disease prevention and healthy development and wellbeing of plants.
21. The Respondent did not dispute the chemical composition of the Appellant's product, the terms of Heading 31.05 and product packaging at 9.9Kgs but stated that none of the nutrients can claim advantage over the other and it was misleading for the Appellant to ignore micronutrients when citing the identity of the product since the small quantities are sufficient quantities required for plant growth and development.
22. The Respondent held that the product was a balanced fertilizer suitable for all stages of plant growth especially vegetative growth, root development and overall plant health and fruiting. That trace elements help address any micronutrient deficiencies that plants might experience making it an all-purpose option for general plant health.
23. The Respondent held that it is important in classification to note elements that make up a product and macronutrients without micronutrients would be incomplete and that rules and classification was based on facts as determined and submissions presented as provided for under Section 236(a) of the East

African Community Customs Management Act, 2004 (hereinafter “EACCMA”).

24. The Respondent asserted that in classifying Appellant’s product, it was guided by the product data sheet and applied GIR 1, 3(c) and 6. That it established the product contained macro elements NPK of Chapter 31 and microelements of Chapter 38. That while Chapter 31 excludes micronutrient preparations applied to seeds, foliage or soil to assist in seed germination and plant growth, Chapter 38 provides for products with small amounts of fertilizing elements NPK but not as essential constituents.
25. In conclusion, the Respondent held that the Appellant failed to discharge the burden of proving the review decision as incorrect pursuant to Section 56(1) of the Tax Procedures Act, CAP 469B of the Laws of Kenya (hereinafter “TPA”).
26. Respondent made the following prayers:
 - (i) That the Tribunal upholds the review decision dated 18th July 2024.
 - (ii) That the Tribunal dismiss the Appeal with costs.

PARTIES’ WRITTEN SUBMISSIONS

27. The Appellant’s written submissions were dated 26th March 2025 and filed on 28th March 2025. The Respondent did not file its submissions as directed by the Tribunal.

28. The Appellant submitted and expounded verbatim on issues as tackled in its statement of facts. The Tribunal carefully considered the submissions but will not rehash them.

ISSUES FOR DETERMINATION

29. The Tribunal having carefully considered the parties' pleadings, documentation and submissions adduced before it notes that a single issue falls determination as follows;

Whether the Respondent erred in reclassifying the Appellant's consignment under HS code 3824.99.90 instead of HS code 3105.20.00.

ANALYSIS AND FINDINGS

30. The Tribunal having established a single issue for determination will proceed to analyze the same as follows:

Whether the Respondent erred in classifying the Appellant's consignment under HS code 3824.99.90 instead of HS code 3105.20.00.

31. The bone of contention in the instant matter is the proper tariff classification of Appellant's imported NPK fertilizer with the Respondent insisting on tariff code 3824.99.90 against the Appellant's declared import tariff code of 3105.20.00. The two headings and their respective codes provide as follows:

"3824 Prepared binders for foundry moulds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included."

“3824.99.90 ‘Other’”

“3105 Mineral or chemical fertilizers containing two or three of the fertilizing elements nitrogen, phosphorus and potassium; other fertilizers; goods of this Chapter in tablets or similar forms or in packages of a gross weight not exceeding 10 kg.”

“3105.20.00 Mineral or chemical fertilizers containing the three fertilizing elements nitrogen, phosphorus and potassium.”

32. The Tribunal observes that the Appellant’s imported consignment contained the following chemical composition:

“Mono-ammonium phosphate 24.6%, Potassium sulphate 38.96%, Urea 28%, Ammonium Sulphate 8.4% and Trace elements 0.04%.”

33. The Tribunal notes that GIRs for the classification of goods provides that classification of goods in the Nomenclature shall be governed a number of principles. In this regard, GIR 1 provides as follows as follows:

“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.”

34. The Tribunal having examined the Heading 3105 vis a vis the consignment that the Appellant imported and noted that the consignment contained fertilizing elements nitrogen, phosphorus and potassium as provided under Heading 3105. Equally, tariff code 3105.20.00 provides for fertilizing

elements nitrogen, phosphorus and potassium. In this case, the Tribunal notes that GIR 2(b) which provides as follows is applicable:

“Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of Rule 3.”

35. The Tribunal notes that the Appellant’s imported consignment contains other trace elements including Magnesium, Zinc, Molybdenum, Iron, Copper and Boron among other elements. Therefore, pursuant to GIR 2(b), the Appellant’s imports could still be classified under Hs Code 3105.20.00 because the code does not imply that the fertilizing elements nitrogen, phosphorus or potassium must be in pure form.
36. Heading 3105 also makes reference to ‘*other fertilizers.*’ In this regard, Note 6 to chapter 31 provides as follows:

“For the purposes of heading 31.05, the term “other fertilizers” applies only to products of a kind used as fertilizers and containing, as an essential constituent, at least one of the fertilizing elements nitrogen, phosphorus or potassium.” The Respondent did not dispute that these ‘other elements’ are also fertilizers or that they did not contain fertilizing elements nitrogen, phosphorus or potassium.

37. The Tribunal further reviewed the provisions of GIR 3 in relation to the issue at hand. GIR 3 provides as follows:

“When by application of Rule 2 (b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows:

- a. The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.*
- b. Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3 (a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.*
- c. When goods cannot be classified by reference to 3 (a) or 3 (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.”*

38. The Tribunal notes that GIR 3(a) provides that the heading which provides the most specific description shall be preferred to headings providing a more general description. The Tribunal finds that heading 3105 provides a more specific description as it expressly mentions the elements unlike heading 3824 which provides for general description of chemical products. Secondly,

Chapter 31 deals with fertilizers a fact admitted even by the. The point of departure between the parties is that whereas the Appellant held that tariff code 3105.20.00 provides for macronutrients NPK which give the product their essential character, the Respondent held that none of the macronutrients or micronutrients can claim advantage over the other.

39. The Tribunal notes that the Appellant imported a mixture or combination of material or substance with other materials or substances apart from fertilizing elements. Tariff code 3105.20.00 provides for three elements that is fertilizing elements nitrogen, phosphorus and potassium and the Appellant's imports included other trace elements. Heading 3105 makes reference to *'other fertilizers'* while Note 6 to chapter 31 provides as follows:

“For the purposes of heading 31.05, the term “other fertilizers” applies only to products of a kind used as fertilizers and containing, as an essential constituent, at least one of the fertilizing elements nitrogen, phosphorus or potassium.”

40. The Tribunal notes that applying GIR 2(b) places the consignment under tariff code 3105.20.00 instead of HS code 3824.99.90. Consequently, the Tribunal finds and holds that the Respondent erred in classifying the Appellant's consignment under HS code 3824.99.90 instead of HS code 3105.20.00.
41. The Tribunal will not depart from its findings in **Coffee Management Services Limited vs Commissioner of Customs and Border Control [TAT Appeal No. 1317 of 2022]** and **Exporting Trading Company Limited [TAT Appeal No 616 of 2024 and 617 of 2024]** in its holding that the Respondent erred in

reclassifying the Appellant's consignment under HS code 3824.99.90 instead of HS code 3105.20.00.

FINAL DECISION

42. The upshot to the foregoing is that the Tribunal finds and holds that the Appeal is meritorious and makes the following Orders:

- (a) The Appeal be and is hereby allowed.
- (b) The Respondent's review decision dated 18th July 2024 be and is hereby set aside.
- (c) Each party to bear its own cost.

43. It is so Ordered.

DATED and DELIVERED at NAIROBI on this 21st day of May 2025.

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**CHRISTINE A. MUGA
CHAIRPERSON**

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**ELISHAH N. NJERU
MEMBER**

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**EUNICE N. NG'ANG'A
MEMBER**

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**LOLCHIKE S. SPENCER
MEMBER**