

RWANDA REVENUE AUTHORITY v. WORLD EXPRESS LTD

[Rwanda COMMERCIAL HIGH COURT – RCOM A 0586/13/HCC – (Niwemugeni, J.)
March 07, 2014]

Tax laws – To determine the value of the imported goods – In determining the value of the imported good, the imposition cannot be determined based on goods which seems to be similar or look alike and coming from the same country while the taxpayer has shown the value of the paid amount – Law n° 15/2004 of 12/06/ 2004, relating to evidence and its production, article 3.

Contract law – Loss of opportunities – Damages for expected income to be earned by a vehicle affected in transportation – They are granted if the claimant prove without any doubt that the vehicle was supposed to be used for transportation – procedural fees – For procedural fees to be granted the applicant shall provide evidence that they have been really spend, failing to do so they are determined by court discretion – Law n° 45/2011 of 25/11/2011 governing Contracts, article 142.

Contracts or obligation law – Procedural fees – Damages for case's expenses are granted when the claim has merit.

Facts: The World Express imported a vehicle, and when vehicle arrived in the country, it declared the purchase price as basis for levying tax. Customs objected the declared purchase price, and instead hiked it to the value higher than the declared purchase price. World Express filed a case in the Commercial High Court requesting the Court to determine the purchase price basing on the contract and payment documents.

The Commissioner General explained that he doubted on the purchase price of USD 4300 including shipping costs for a vehicle Combi and thus, he determined the priced based to another KIA Combi of the same year (1999) bought at USD6500 excluding shipping costs from Korea as was the case for the vehicle in question. The Court decided that, the Commissioner General based on insufficient information and ruled that, second hand vehicles may have different prices according to their technical state on the purchase date.

The Commissioner General appealed against the ruling in the Commercial High Court on the following grounds:(i) The Court erroneously ruled that RRA based on the provisions of appendix four, part one, paragraph three and four (Transaction value on identical goods and Transaction value on similar goods) of the East African Community Customs Management Act, (ii) That Court's decision also was based on doubt , when it said that there are reasons for doubting on World Express prices, (iii) RRA was Ordered to pay damages without legal basis.

World Express submitted as follows: (i) the vehicle in question, together with another one of Istana's brand, were purchased online at USD8500, including shipping charges (CIF). Istana at USD 4200 and Combi at USD 4300 including shipping costs as evidenced by the sales contract for purchase online, (ii) the judge based on the purchase price provided in the hearing to arrive at the truth of the matter, (iii) That the damages awarded to it have merit. And went ahead to request for damages equivalent to the amount of money it would have earned from public transport in a year, financial damages and case related costs at the appeal level.

Held: 1. In determining the value of imported goods for tax purpose, the imposition shall be based on the price of the imported goods shown by the taxpayer and especially when the tax administration failed to provide evidence which contradict the shown price. Therefore the price shown by the taxpayer for the imported vehicle cannot be changed by the tax administration based on goods which seems to be similar or look alike and coming from the same country

2. The fact that The World Express's claim had merit, Damages which were charged to Rwanda Revenue Authority remains.

3. There is nowhere that The World Express should request income it was supposed to earn if it failed to show activities that the vehicle was supposed to be performing in the country, and For procedural fees, the applicant shall provide evidence on how these fees were spent, failing to do so, these fees are determined at the Court discretion.

**Appeal without merit;
The appellant shall bear the costs.**

Statutes and statutory instruments referred to:

Law n° 15/2004 of 12/06/ 2004, relating to evidence and its production, article 3;

Law n° 45/2011 of 25/11/2011 governing Contracts, article 142.

No case referred to.

Judgment

I. BACKGROUND OF THE CASE

[1] The World Express says that it purchased a vehicle abroad and when it was delivered, it declared the purchase price but the customs administration objected the declared price and fixed a higher price that was not correct. The World Express filed the claim to the Commercial Court of Nyarugenge requesting the court to determine the value basing on the contract and the invoices.

[2] RRA says that it doubted on the purchase price of the vehicle Combi of 4300\$ including shipping charges and determined the real purchase price basing on the price of another vehicle of the same nature KIA Combi manufactured in the same year (1999) and bought in Korea as the one of World Express. That one was bought at the price of 6500\$ excluding shipping. RRA requests the court to uphold that tax and not consider the damages claimed by The World Express because RRA has the power to determine taxes and customs duties.

[3] The court decided that, in determining the price, RRA based on insufficient information because the fact that those two vehicles originate from a same country does not mean that they are the same. Ruling that used cars may have different prices according their conditions at the time of sell. RRA was not convinced with the court ruling and appealed against it in this Court On the grounds that the Court erroneously ruled that RRA based on the Appendix 4, part 3, paragraphs 3 and 4 of EACMA (transaction value on identical goods and transaction value on similar goods), that Court's decision also was based on doubt, when

it said that there are reasons for doubting on World Express prices, and on the awarded damages. The Court shall examine the validity of these grounds of appeal.

II. ANALYSIS OF LEGAL ISSUES

1. Whether RRA based on the Appendix 4, part 3, paragraphs 3 and 4 of EACMA (transaction value on identical goods and transaction value on similar goods) in determining the purchase price of the vehicle in question?

[4] Rwanda Revenue Authority (RRA) argues that the Court ruled it based on Appendix 4, part 3, paragraphs 3 and 4 of EACMA (*Transaction value on identical goods and Transaction value on similar goods*) in determining the price of The World Express Ltd's vehicle basing on two different items because of the following reasons:

- The vehicle KIA Combi is different from Combi which was purchased by The World Express because they do not have the same brand names and the manufacture companies are not the same.
- The price of brand new similar vehicles was not shown.
- Having the same country of Origin alone does not mean that the vehicles are the same.
- Used cars cannot have the same purchase price.

[5] RRA says that in the determination of the value of the vehicle it did not base on the said appendix, but on the appendix eight, part one, paragraph eight (Fall back method) which provides that "when the value of goods cannot be determined basing on the methods provided for in the previous paragraph, it shall be determined basing on the methods recognized by the principles and general provisions provided for in this appendix 4 and information available in a member State".

[6] The World Express in its submissions says that the vehicle in question was purchased online together with another one, Istana brand at 8500\$ including shipping charges (CIF). The price of Istana 4200\$ while the one of Combi was 4300\$ including shipping charges. This is proven by the online sale contract.

[7] The Court considers that on this ground of appeal, RRA misinterpreted the court's ruling because after having quoted that appendix in the paragraphs 8 and 9 of the judgment, the Court said this: "Basing on legal provisions mentioned in the previous paragraphs, the court considers that RRA did not base on the same goods or the similar goods in the determination of the value of the vehicle, but on the almost the same or almost similar vehicles from the same country of origin. The court did not therefore say that RRA based on the appendix 4, part 1, paragraph 3 and 4 (Transaction value on identical goods and Transaction value on similar goods) of EACMA but it said that RRA did not base on that appendix. The argument of having based on the Fall Back Method is baseless because the court considers that this method can be used only when the value of the goods cannot be known, while for that Combi vehicle it was shown at 4300\$. Therefore, this ground of appeal is baseless.

2. Whether the Court had doubt in its decision?

[8] Rwanda Revenue Authority (RRA) argues that, the Court decided that World Express Ltd pay tax based on the purchase of 4.300\$ yet it agrees that there is a reason to doubt on that value on page three paragraph 12 of the ruling.

[9] The World Express Ltd argues that on that paragraph, the judge wanted to show the prices of the vehicle as used in the evidences during the hearing in order to highlight the truth of the subject matter and it is in that regard that on paragraph 13 the court found that the grounds of uncertainty as raised by RRA to be unfounded and ordered that the World Express to pay taxes based on the purchase price of 4.300\$. It says that additionally in the paragraph 14, the World Express presented the corroborating and doubtless evidence proving that the taxable value of the vehicle in question as 4300\$.

[10] Basing on the article 3 of the Law on evidence, the Court finds that Rwanda Revenue Authority emphasizes one part of paragraph 12 mentioned by RRA which is favorable to it, and does not mention the whole sentence. This is because the court said that the fact that those three vehicles from Korea have different prices is a reason of doubting on the value declared by the World Express Ltd, *however saying that this price is not correct and determining another one needs more concrete and accurate information*. In paragraph 13, the Court decided that it finds the reason of believing so much and relying on information regarding the price one vehicle of USD 6500 excluding shipment charges, is not convincing yet the prices of other vehicles imported from Korea as seen above including shipping charges to Dar el Salaam or Kigali is lower than that one referred to: In Paragraph 14, Court ruled that the value provided by World Express Ltd shall be considered as true as long as there is no sufficient evidence contradicting the declared value of 4300 USD for the vehicle Combi and, thus, that value has to be confirmed.

[11] It is evident that Rwanda Revenue Authority (RRA) highlights a minor element explained by the judge and favorable to it, without going deep to the whole reasoning that lead to the Court's decision. The East African Community Customs Management Act, Fourth schedule (ss 122 (1) provides that in the determination of the value of imported items, the basis which is taken into consideration is the purchase price of those imported items. This Court finds that in the appealed case, there is nowhere it shows that doubting on the purchase price of The World Express vehicle would lead it to be taxed basing on the value higher than the price it purchased it. The Court failed to establish that having doubt on the price of the vehicle of The World Express could lead it to be taxed based on a value which is higher than the price that has bought it, Instead, the Court established that this could be a strong ground to tax it basing on the purchase price as long as there is no other evidence to the contrary that has been provided, Thus, this ground of appeal is baseless.

3. Whether an Order for RRA to pay damages was necessary

[12] Rwanda Revenue Authority (RRA) submits that it was ordered to pay 600.000Frw as case related costs and argues that they are baseless as the case itself had no basis. This Court finds that this not true because it is established that, The World Express's claim was valid.

4. Whether to award damages requested by the World Express

[13] The World Express Ltd is requesting damages for the amount expected to have earned in transporting persons (public transport) in a year amounting to 7,200,000Frw, financial damages of 2.000.000Frw, and court related costs at the appeal level equivalent to 500,000Frw.

[14] Article 142 of the law governing contract provides that “Damages shall not be granted for loss greater than what the aggrieved party can establish with certainty” This Court finds, The World Express does not establish with certainty whether it would have earned that amount of money from the business of public transport using the vehicle and does not even provide any explanations on financial damages that it is also requesting, and thus, the costs shall be determined at the Court discretion, because there is no proof that 500.000Frw was spent at the appeal level.

III. THE DECISION OF THE COURT

The Commercial High Court:

[15] Decides to receive the appeal filed by Rwanda Revenue Authority (RRA).

[16] Decides that it has no basis.

[17] Rules that, The World Express Ltd wins and Rwanda Revenue Authority (RRA) losses.

[18] Orders Rwanda Revenue Authority (RRA) to pay to The World Express Ltd 200.000Frw as costs at the appeal level which shall be paid within fifteen days, failing to do so, the amount shall be raised by forced recovery.

[19] Orders Rwanda Revenue Authority (RRA) to pay 9700Frw as expenses incurred in this case, to be paid within eight day failing to do so, the amount shall be raised on its properties by forced execution.

[20] Orders the execution of the ruling of the case R Com 0870/13/TC/Nyge on other issues.