

# **AUTOXPRESS SARL v. RWANDA REVENUE AUTHORITY**

[Rwanda SUPREME COURT– RCOMA0084/11/CS (Mugenzi, P.J., Hatangimbabazi and Mukamulisa, J.) 22 March 2013]

*Tax Law – Tax declaration – Tax verification – Imposition of due tax and penalties for a taxpayer who denies to have made a false tax declaration – Custom commissioner has no power to impose tax and penalties rather the case is referred to courts – East African Community Customs Management Act, article 219.*

**Facts:** AUTOXPRESS SARL imported tyres for business purposes and Rwanda Revenue Authority audited this company and realised that there are taxes that were not paid and which it must pay plus related penalties as well. AUTOXPRESS SARL immediately sued it before the Commercial High Court which ruled that its claim is without merit and ordered it to pay RRA 3,565,691Frw of taxes and duties plus 100\$ of penalties.

AUTOXPRESS SARL appealed to the Supreme Court submitting that the Judge disregarded article 219 of East African Community Customs Management Act which stipulates that the Commissioner has no powers to impose penalties where the accused does not admit the offence. RRA argues that the Commissioner has never ordered AUTOXPRESS SARL to pay taxes, but has rather showed taxes that should have been paid and the penalty that would have been imposed but he has not penalised it as the purpose was to use amicable settlement.

**Held:** 1. In case the taxpayer does not admit for the offence of false tax declaration he is accused by the tax collector, he cannot be charged of the tax and penalties. Since the commissioner of RRA has done so for the offence that he does not admit for the recovery of that tax was illegally done; therefore the collection of tax must comply with the law.

**Appeal has merit.  
Tax recovery is invalidated.  
Court fees to the defendant.**

**Statutes and statutory instruments referred to:**

East African Community Customs Management Act, article 219.

**No case referred to.**

## **Judgment**

### **I. BRIEF BACKGROUND OF THE CASE**

[1] The Customs Services Department of Rwanda Revenue Authority (RRA) conducted the audit in respect to tyres imported by AUTOXPRESS SARL for business purposes and it realised that there are taxes that were not paid and wrote to AUTOXPRESS SARL notifying it of the amount of taxes that should have been paid and the penalty it was subjected to. AUTOXPRESS SARL did not agree and appealed to the Commissioner of Tax Services who also explained the amount of money it should pay as well as penalties.

[2] AUTOXPRESS SARL seized the Commercial High Court arguing that it was illegally taxed. The Court ruled that the claim is without merit and ordered AUTOXPRESS SARL to pay 3,565,691Frw of taxes and duties charged by the Commissioner of Customs Services and pay 100\$ of penalties charged by the Commissioner of Customs Services.

[3] AUTOXPRESS SARL appealed to the Supreme Court submitting that the Judge disregarded article 219 of East African Community Customs Management Act "EAC CMA", where under its paragraph two it clearly stipulates that the Commissioner of Customs Services has no powers to impose penalties where the accused does not admit the offence that he/she instead attempts the amicable settlement and in case of failure they seize the court.

[4] The case was heard in public on 21/02/2013 where AUTOXPRESS SARL was represented by Counsel Nsengiyumva Abel while Counsel Tugirumuremyi Raphael and Counsel Sugira Belinda represented RRA.

## **II. LEGAL ISSUE IN THE CASE AND ITS ANALYSIS**

➤ **Whether the Commissioner of Customs Services has power to impose the penalty to a person who does not admit the offence.**

[5] Counsel Nsengiyumva representing AUTOXPRESS SARL argues that it appealed on a single ground that the Judge ignored 219 of East African Community Customs Management Act "EAC CMA". He explains that in the judgment AUTOXPRESS has appealed against, the Commercial High Court ruled that the Commissioner has no power to charge taxes to a person who does not admit the offence, but it held that he/she has not charged AUTOXPRESS SARL any tax whereas in his letter to the latter he ordered it to pay (must be paid).

[6] Counsel Sugira representing RRA submits that what has been done is the statement of the offence rather than ordering AUTOXPRESS SARL to pay; that what the Commissioner has done is to show taxes that should have been paid and the penalty for the offence. As for the phrase "must be paid", Counsel Sugira argues that though it is written in that way, the Commissioner has showed the offence but has not fined AUTOXPRESS SARL.

[7] Counsel Tugirumuremyi who also represents RRA states that that document is a "statement of offence" sent to the taxpayer for it to choose the option that it thinks pleases; but what RRA prefers is mainly amicable settlement as its intention is not to take anyone to court. He explained that the Commissioner has never considered AUTOXPRESS as a criminal, he instead advised for amicable settlement which it actually resorted to when it appealed to the Commissioner of Customs Services.

[8] Counsel Nsengiyumva submits that if RRA emphasises that it was not claiming payment from AUTOXPRESS SARL, this means that it has no outstanding debt towards the former; he thus finds that RRA has changed its pleading line from the time it became aware of the judgment RCOMA 0087/10/CS between itself and Munyaneza delivered by the Supreme Court whereby it ruled that the Commissioner has no powers to impose penalties.

[9] The statement drafted by RRA on 19/01/2010 shows that AUTOXPRESS SARL has committed the offence of false declaration provided for by article 203, b) of East African Community Customs Management Act and punished by article 12 of Law N° 74/2008 of

31/12/2008 modifying and complementing Law N° 25 of 04/12/2005 on tax procedures and thereby evaded taxes amounting to 3,565,691Frw.

[10] After that statement RRA addressed a letter to AUTOXPRESS SARL on 26/02/2010 notifying the latter of that offence and that tax and requested it to pay that money pursuant to provisions of article 130(1) of East African Community Customs Management Act.

[11] After AUTOXPRESS SARL lodged its appeal showing that it does not admit the offence is accused of, RRA wrote the former two letters on 06/04/2010 both of them in reply to its letter of 11/03/2010; one was informing it that taxes and duties it has evaded and has to pay amount to 10,902,730Frw plus fines equal to 100\$ and 166,313Frw, and the other informing it that taxes and duties it has evaded and must pay amount to 3,565,691Frw plus fines of 100\$ and 54,392Frw.

[12] Though Counsel for RRA argues AUTOXPRESS SARL was neither ordered to pay any tax nor fine and that only the statement of offence was drafted for the latter to choose amicable settlement instead of being taken to court, the Court finds that the contents of the letters of 26/02/2010 and 06/04/2010 referred to above clearly proves that AUTOXPRESS SARL was indeed ordered to pay that amount of money and it is RRA that chose the prosecution option as it had drafted the statement of the Judicial Police Officer showing to prosecuted offence.

[13] Article 219 of East African Community Customs Management Act “EAC CMA”, invoked by both parties in support of their arguments, stipulates under its paragraph (1) that the Commissioner of Customs may, where he or she is satisfied that any person has committed an offence, compound the offence and may order such person to pay a sum of money; but under its paragraph (2) the same article stipulates that he/she shall only exercise those powers if the person admits in a prescribed form that he or she has committed the offence.

[14] Under article 220 of the same East African Community Customs Management Act, it is provided that any person who has committed the offence can be prosecuted by a court of competent jurisdiction which can impose any fine or any sentence of imprisonment in case he/she is convicted of the offence.

[15] Both articles mentioned above imply that there are two ways of prosecuting a taxpayer suspected of an offence; the amicable settlement where he/she admits the offence and he/she is fined or prosecution by a court of competent jurisdiction where he/she does not admit the offence.

[16] The Court finds that as long as AUTOXPRESS SARL did not admit the offence it was accused of by RRA, provisions of article 219 of East African Community Customs Management Act “EAC CMA” mentioned above should have applied; therefore it should not have been charged taxes in the way RRA has done so in respect to an offence it does not admit, rather the recovery of that tax must be done in accordance with the law.

### **III. DECISION OF THE COURT**

[17] The Court decides that the appeal of AUTOXPRESS SARL has merit.

[18] The Court decides that tax recovery from AUTOXPRESS SARL is invalidated without prejudice to the right of RRA to recover that tax in accordance with the law.

[19] The Court orders RWANDA REVENUE AUTHORITY "RRA" to pay court fees equal to 25,800Frw, failure to do so within the prescribed time, it shall be deducted from its assets through State's coercion.