

- a. Recovery of the sum of **Fifty-Seven thousand, Eight Hundred and Eighty-Three Dollars, Four Cents (\$57,883.4)** being the total value of royal de lite tomato paste contained in containers auctioned, handling and sea freight charges.
- b. Interest at the prevailing bank rate on the said amount in paragraph (a) above from the date of default to date of final judgment.
- c. Damages.
- d. Cost (including legal fees)

The Plaintiff is a limited liability Company registered under the laws of Ghana with its operating head office at Tema dealing in the business of import and export of general goods and also the sole distributor of Royal De Lite Tomato Paste to Ghana.

The Defendant is the Head of the body responsible for the mobilizing of revenue for the Government through the imposition and collection of taxes.

The Plaintiff Company avers that between 2nd March and 11th May, 2018, it imported 15 containers of Royale de lite tomato paste on three different Bills of Lading with registration numbers **GOSUXNG1231023**, **GOSUXNG1231222** and **GOSUXNG1231013** into the Country.

Plaintiff Company further avers that the bills of lading with registrations numbers **GOSUXNG1231023**, **GOSUXNG1231222** and **GOSUXNG1231013** had 5 containers assigned to each totalling 15 containers in all.

Plaintiff Company avers that when the said containers with the product, Royal de Lite Tomato Paste arrived at the Tema Harbor, Ghana in March 2018, it applied for the Customs Classification and Valuation Report (CCVR) to enable it take steps to clear the Tomato paste from the port immediately. Plaintiff Company says that upon application and reviewing the Customs Classification and Valuation Report (CCVR),

it discovered that the FOB values as found on the CCVR were too high as against the declared FOB value on the Sale Contract and the Sales Invoice from the supplier.

Plaintiff Company avers that, on the 20th day of March, 2018, the General Manager of Santa Shipping, Andrew B. Okutu, who was to clear the tomato paste on behalf of the Plaintiff Company (Kenashmi Ghana Limited), petitioned The Commissioner General, Ghana Revenue Authority, Customs Division over the FOB values on CCVR No. **GH20180021659001CNC1** and appealed for a review of the FOB value downward to enable it take delivery of the tomato paste.

Plaintiff Company avers that attached to the said letter was the Sale Contract, Swift and Customs Export Declaration from the country of origin for the Commissioner's perusal and appropriate action.

Plaintiff Company avers that while it was waiting to hear from the Commissioner, Ghana Revenue Authority, Customs Division regarding the petition written on its behalf by the General Manager of Santa Shipping, Andrew B. Okutu so it could take the necessary actions and take delivery of the tomato paste, it came to its attention/notice that some of the products, royal de lite tomato paste had found its way onto the Ghanaian market when same had not been cleared, distributed or sanctioned by Plaintiff Company.

Plaintiff Company avers that it also came to its attention/notice that containers with tag numbers **ZIMU1143664** and **TRHU3374087** had been taken from the port.

Plaintiff Company avers that due to the unfortunate development, on the 14th day of August, 2018, the Administrative Manager of Santa Shipping once more wrote on behalf of Plaintiff Company to The Commissioner General, Customs Division of the Ghana Revenue Authority informing the Commissioner General that containers with

tag numbers **ZIMU1143664** and **TRHU3374087** which both arrived on Vessel Tommi Ritscher on the 2nd day of March 2018 have been taken out of the Tema port without prior notice to the owners (Plaintiff Company) or their agents while containers with tag numbers **CLHU3425443**, **IPXU215079** & **GSLU2047045** were also about to be moved out of the Tema port.

Plaintiff Company avers that the said letter was also copied to the Sector Commander at the Tema Port.

Plaintiff Company again avers that on the 12th day of November, 2018, Mr Seth Dwira, Deputy Commissioner, Operations, Customs Division of the Ghana Revenue Authority in response to the March 2018 petition, wrote back to the General Manager of Santa Shipping Mr. Andrew B. Okutu indicating that the Commissioner General, Customs Division has accepted the FOB values presented in the petition dated 20th March, 2018 on **GH20180020963001CNC1** and **GH20180021659001CNC1** and entreated Santa Shipping to take steps to pay the necessary duties and taxes to enable Plaintiff Company clear the tomato paste from the port as they have been earmarked to be gazetted for Auction.

Plaintiff Company avers that while it was making the necessary arrangements to clear the tomato paste from the port upon receipt of the letter from the Deputy Commissioner, Operations as having accepted the FOB values presented by Plaintiff Company, it discovered that Container No. **TRHU-3374087**(which arrived on Vessel Tommi Ritscher on the 2nd day of March 2018) had been auctioned and an Auction Allocation Slip issued on the 6th day of August, 2018 to one Atta Poku and same released on the 9th day of August, 2018.

Plaintiff Company avers that Container number **ZIMU-1143664** was also auctioned and an Auction Allocation Slip issued on the 6th day of August, 2018 and same released on the 14th day of August, 2018.

Plaintiff Company further avers that though the said letter dated 12th November, 2018 from Mr. Seth Dwira, Deputy Commissioner, Operations informed Plaintiff Company to take steps to clear the royal de lite tomato paste, some of the containers had already been allocated and moved out of the Tema Harbour even before the letter reached Plaintiff Company.

The Plaintiff Company says that surprisingly, its checks in the Commercial and Industrial Bulletin publication of 5th October, 2018 revealed that on the 3rd day of February, 2018, seven (7) containers belonging to Plaintiff Company including Containers No. **TRHU-3374087** and **ZIMU-1143664** had already been advertised as part of goods to be auctioned when the said cargos belonging to Plaintiff Company had not even arrived in the Country.

Plaintiff Company further avers that even more ridiculous, on the same 12th day of November, 2018 that the Commissioner through Mr. Seth Dwira, Deputy Commissioner, Operations responded to Plaintiff Company's petition, Container Number **TRHU-1362678** (which arrived on Vessel Tommi Ritscher on the 2nd day of March 2018) was also auctioned with an Auction Allocation Slip issued in the name of one Issah Alhassan and same released on the 23rd day of November, 2018.

Plaintiff avers that subsequent to Mr. Seth Dwira, Deputy Commissioner, Operations writing back informing Santa Shipping about the Commissioner General's decision to accept the FOB values presented as against the one quoted on the CCVR on the 12th day of November, Container Number **ZIMU-2887450** (which arrived on Vessel Bahamas on the 11th day of May 2018) was auctioned on the 20th day of November,

2018 and an Auction Allocation Slip issued in the name of one Felix Dzikunu and same released on the 14th day of December, 2018.

Plaintiff Company avers that the whole transaction involving the advertising of some of its containers for auction in February when the tomato paste had not arrived in Ghana couple with Plaintiff Company's petition about the FOB Values as found on the CCVR when the cargos arrived in March smacks of irregularity and bad faith.

Plaintiff Company avers that it did the needful by petitioning The Commissioner General, Ghana Revenue Authority, Customs Division in March when the goods arrived and it realized that the FOB values quoted on the CCVR was higher than the declared FOB value on the Sale Contract and Invoice.

Plaintiff Company avers that the said petition was responded to on the 12th day of November and that whiles the petition was still pending and without giving Plaintiff Company a hearing or even replying to the petition, some of its containers were already up for auction and some subsequently sold.

Plaintiff Company avers that not giving it a hearing or replying to the petition in the earliest time to enable it take the necessary actions is a breach of the cardinal rule of natural justice and same is prejudicial. Plaintiff Company avers that before and at the time of the reply to the petition, it had already lost the said containers as same were auctioned and released leaving Plaintiff with no means of recovering same.

Plaintiff Company avers that by Defendant's actions, it evinced a clear intention of not giving Plaintiff Company a fair hearing but took decisions that were prejudicial and calculated to deny Plaintiff Company of its tomato paste even before the tomato paste arrived in the country and before responding to the petition by Plaintiff Company.

Plaintiff Company avers that by Defendants action, it has lost **Fifty-Seven Thousand, Eight Hundred and Eighty Three Dollars, Four Cents (\$57,883.4)** being the total value of handling and sea freight charges for the four (4) containers auctioned.

Plaintiff Company avers that the loss of revenue arising from the Defendant's action has and is causing it a great deal of hardship and slowing its business operations as the monies invested into importing the products stand to be lost.

Plaintiff avers that in October 2019, Plaintiff Company through its lawyers wrote to the Ghana Revenue Authority demanding an enquiry into the matter and refund of monies lost but same has not been replied to even though the letter was received by the Authority.

Plaintiff Company avers that unless this Honourable Court intervenes, the Defendants will not refund the monies lost by Plaintiff Company occasioned by the Defendants own doing.

WHEREFORE the Plaintiff seeks against the Defendants per the reliefs endorsed.

The Defendant entered appearance on 24th February, 2020 and filed its statement of defence on 18th March, 2020. Defendant denied each and every allegation of facts contained in the Plaintiffs Statement of Claim as if same were set out in extensor and denied seriatim.

Defendant denies paragraph 1 of the Statement of Claim and admits the averments in paragraphs 2, 3 and 4 of the Statement of Claim.

Save that the Plaintiff applied for the Customs Classification and Valuation Report (CCVR) paragraph 5 of the Plaintiff's Statement of Claim is denied,

The Defendant denies paragraph 6 of Plaintiff's Statement of Claim and says further that checks made did not confirm the Plaintiff's assertion that the FOB was too high.

The Defendant admits the averments in paragraphs 7 and 8 of Plaintiff's Statement of Claim and

denies paragraphs 9 and 10 of the Statement of Claim.

The Defendant denies paragraph 11 of the Plaintiff's Statement of Claim and says further that the Defendant has no obligation to inform the Plaintiff before it moves overstayed goods from the port.

The Defendant admits paragraphs 12, 13, 14 and 15 of Plaintiff's Statement of Claim and says further that the goods were not cleared within the prescribed period and were therefore detained, seized and later auctioned in accordance with the law.

Defendant denies paragraphs 16 and 17 of Plaintiff's Statement of Claim. In defense to paragraphs 18 and 19 of Plaintiff's Statement of Claim, Defendant says that the goods were not cleared within the prescribed time and were therefore auctioned in accordance with the law.

The Defendant vehemently denies paragraph 20 of the Statement of Claim and in response to paragraph 21 of the Statement of Claim, the Defendant will say that Plaintiff's petition is not a justification for failing to clear the goods within the time prescribed by the customs rules and regulations.

Defendant denies the averments in paragraphs 22 and 23 of the Plaintiff's Statement of Claim and further says that the goods were not cleared within the statutory period prescribed by law and were accordingly confiscated and auctioned in accordance with the law.

The Defendant denies the averments in paragraphs 25 and 26 of Statement of Claim and also denies paragraph 27 and 28 the Statement of Claim and further says that it acted in accordance with the law.

Defendant denies the averments in paragraph 29 of the Plaintiff's Statement of Claim and in further response says that Plaintiff's loss if any was occasioned by its own failure to act within time.

Defendant therefore says that Plaintiff is not entitled to any of its claims or at all.

The Plaintiff's reply to the Defendant defence is as follow;

Plaintiff joins issue generally on the Defence by the Defendant to the Statement of Claim by Plaintiff.

In reaction to paragraph 1 of the Statement of Defence, Plaintiff affirms the averment made in paragraph 1 of his Statement of Claim. And in reaction to paragraph 4 of the Statement of Defence, Plaintiff reaffirms the averment made in his Statement of Claim that when the containers with the product arrived in March 2018, it applied for the Customs Classification and Valuation Report (CCVR) to enable it take steps to clear the Tomato paste from the port immediately.

Further to Plaintiff's reaction to paragraph 4 of the Statement of Defence, Plaintiff says that on the 12th day of November, 2018, Mr. Seth Dwira, Deputy Commissioner, Operations, Customs Division of the Ghana Revenue Authority in response to the March 2018 petition, wrote back to the General Manager of Santa Shipping Mr. Andrew B. Okutu indicating that the Commissioner General, Customs Division has accepted the

FOB values presented in the petition dated 20th March, 2018 on **GH20180020963001CNC1** and **GH20180021659001CNC1**.

In further reaction to paragraph 4, Plaintiff says that it petitioned because the FOB values that were initially charged on the containers were excessive and the response from Mr. Seth Dwira, Deputy Commissioner, Operations, Customs Division of the Ghana Revenue Authority that the proposed FOB values presented in the petition had been accepted contrary to what was being charged initially by the Commission only confirms Plaintiff's assertion that the initial charge was too high.

In reaction to paragraph 7 of the Statement of Defence, Plaintiff affirms the averment made in paragraphs 9 and 10 of his Statement of Claim.

In reaction to paragraphs 8 and 9 of the Statement of Defence, Plaintiff says that it did not go to sleep when the products arrived at the port but took the necessary step by petitioning the Commission in respect of the high nature of the FOB Values. Plaintiff Company said it took the necessary step to enable it clear the products from the port and that the goods overstaying at the port was occasioned by the Defendant's lackadaisical and indifferent approach to Plaintiff's petition.

In further response, Plaintiff says it made several follow ups by writing again to the commission to respond to the petition which would have in effect determined the next step for the Plaintiff. The Commission after delaying and later accepting that the charges were too high cannot now be heard to say that the goods overstayed when same was occasioned by their outfit. The Defendant cannot seek to benefit from its own wrong.

In further response, Plaintiff says that the rule of natural justice, which is a cardinal rule of law requires that the Plaintiff in this case be given a hearing and same must be done within reasonable time. The conduct of the Commission which occasioned the delay is the reason why the products overstayed at the port. The subsequent seizure, detention

and auctioning of the products were all a direct consequence of the Defendant not acting timeously to respond to Plaintiff's petition and those acts cannot be grounded in law.

In reaction to paragraph 10 of the Statement of Defence, Plaintiff reaffirms the averment made in paragraphs 16 and 17 of its Statement of Claim.

In reaction to paragraph 11 of the Statement of Defence, Plaintiff says that the conduct of the Defendant by not acting timeously to enable the Plaintiff make an informed decision rather occasioned the delay for which reason same was not cleared within prescribed time. The conduct of the Commission leading to the auction of the tomato paste cannot be grounded in law.

In reaction to paragraph 12 of the Statement of Defence, Plaintiff reaffirms the averment made in paragraph 20 its Statement of Claim that the products were advertised and put up for auction even when the tomato paste had not even arrived in Ghana.

In reaction to paragraph 13 of the Statement of Defence, Plaintiff says that it is preposterous for the Defendant to allege that the petition is not a justification for failing to clear the goods within prescribed time. Plaintiff Company says it is a business entity in the business of making profits and has the right to lawfully petition when the charges on the imports are excessive.

In further response, Plaintiff Company says it will be unthinkable to go ahead and clear the products from the ports when the same company is complaining of the FOB Values being too high. The Commission in the end agreed that the FOB Values were high and agreed to proceed with those proposed by Plaintiff Company.

In reaction to paragraph 14 of the Statement of Defence, Plaintiff reaffirms the averment made in paragraph 22 and 23 of its Statement of Claim. Plaintiff in further response relies on the averment in paragraph 9 of this Reply and says that the conduct of the Defendant which occasioned the delay is the reason why the products overstayed at the

port. The subsequent seizure, detention and auctioning of the products were all a direct consequence of the Commission not acting timeously to respond to Plaintiff's petition and those acts cannot be grounded in law.

In reaction to paragraph 15 of the Statement of Defence, Plaintiff reaffirms the averment made in paragraphs 25 and 26 of its Statement of Claim.

In reaction to paragraph 16 of the Statement of Defence, Plaintiff reaffirms the averment made in paragraphs 27 and 28 of its Statement of Claim.

In reaction to paragraph 17 of the Statement of Defence, Plaintiff says that it rather acted within time and that all losses it incurred flows directly from the Commissions inaction and not acting timeously and that the Commission cannot seek to distant itself from the loss incurred by Plaintiff Company.

In reaction to paragraph 18 of the Statement of Defence, Plaintiff is vehemently opposed to same and says it is entitled to all reliefs endorsed on the Statement of Claim as same was occasioned by the Defendant's conduct.

At the close of the pleadings the issues set down for trial were as follows;

- i. *Whether or not Plaintiff was entitled to a fair hearing within reasonable time after it petitioned the Defendant in respect of the FOB values?*
- ii. *Whether or not the delay of the goods at the port was occasioned by the Defendant?*
- iii. *Whether or not the response from Mr. Seth Dwira, Deputy Commissioner, Operations of the Defendant indeed shows that the Plaintiff had a genuine case for which he petitioned?*
- iv. *Any other issue arising from the pleadings.*
- v. *Whether or not the Defendant was justified in seizing, transferring and auctioning Plaintiff's products before informing the Plaintiff that it had accepted the Plaintiff's proposed FOB values.*

- vi. *Whether or not the loss incurred by the Plaintiff is reasonably incidental or is occasioned by the Defendant's conduct and late action or response to Plaintiff's petition?*
- vii. *Whether or not it is standard practice that goods are put up for auction even before same arrives in the Country as happened in the case of Plaintiff?*
- viii. *Whether or not the Defendant complied with laid down procedure for confiscating and auctioning of Plaintiff's goods.*
- ix. *Whether or not the Plaintiff complied with laid down procedure and timelines prescribed by law for clearing goods imported into the country.*
- x. *Whether or not the Plaintiff is entitled to all the reliefs endorsed on the writ of summons?*

The principle of law of evidence in civil cases is that the burden of persuasion or proving all facts essential to any claim lies on whoever is making the claim.

Section 10(1) of the Evidence Act 1975 (NRCD 323) defines the burden of persuasion as

10(1) "for the purpose of this Act, the burden of persuasion means the obligation of a party to establish a requisite degree of belief concerning a fact in the mind of a tribunal of fact or court".

Section 11(1) of the Act defines the burden of producing evidence as the obligation on a party to introduce sufficient evidence to avoid a ruling on the issue against that party.

Section 12(1) reads "Except as otherwise provided by law, the burden of persuasion requires proof by preponderance of probabilities.

(2) Preponderance of probabilities means that degree of certainty of belief in the mind of tribunal of fact or the court by which it is convinced that the existence of fact is more probable than its non-existence".

In view of the above definition, the standard of proof required in all civil cases is proof by preponderance of probabilities.

1. **The Plaintiff representative Witness in the person of Stephen Adjokatcher** gave evidence during the trial. The witness statement of the representative filed on 14th October, 2021 was adopted on 1st March, 2022 by the Court as his evidence-in-chief. The evidence is a repetition of the Plaintiff's Statement of Claim with few additions and exhibits. **EXHIBIT A SERIES** (three bills of lading), **EXHIBIT B.** (Petition to the Commissioner General. GRA, Custom Division over the FOB), **EXHIBIT C.** (A letter written on behalf of Plaintiff to the Commissioner General, Custom Division of GRA), **EXHIBIT D.** (Deputy Commissioner Operations, Custom Division of GRA response to March 2018 petition) **EXHIBIT E.** (allocation slip executed in favour of Mr. Nana Agyeman), **EXHIBIT F**(allocation slip executed in favour of Mr. Atta Poku), **EXHIBIT G.** (a copy of the Commercial and Industrial Bulletin publication of 5th October, 2018), **EXHIBIT H** (allocation slip executed in favour of Mr. ISSAH ALHASSAN), **EXHIBIT I** (allocation slip executed in favour of Mr. FELIX DZIKUNU),**EXHIBIT J** (The challenges encountered in accessing the system to clear the goods)

The additions in the witness evidence to the Statement of Claim are; The Defendant having realised Plaintiff Company had paid the approved custom duty, coupled with the irregularity and curious case of the goods not being in the customs management system, allowed the Plaintiff to take delivery of the containers which had not been taken out of the port.

The said containers were never auctioned to Plaintiff Company as the Plaintiff Company paid the approved customs duty fees and took delivery of the containers. Plaintiff company was therefore never at any point allocated any auction allocation slip as the goods belonged to the Plaintiff company.

According to the Plaintiff's witness the containers were taken out of the port and allocated way before official gazzeting was done. It is standard practice to gazette before goods are auctioned. The whole transaction involving the advertising of some of Plaintiff Company's containers for auction on February 3rd, 2018, providing those whom the goods were purportedly auctioned to with allocation slips in August and later publishing the auction notice in the October 5th bulletin of the Commercial and Industrial Publication, smacks of irregularity and bad faith.

During cross examination his answer to the question whether he was aware in respect to payment of taxes even if a petition has been made? The following are the questions and answers;

Q: Are you aware that the procedure, even if you petition the Commissioner General for a review of your tax, is for you to pay the tax whilst he considers your petition.

A: No, with explanation. There is nothing like that in our payment of taxes.

Q: You've been in this business for long.

A: Yes.

Q: You've just said that there is no law that requires that you pay your tax whilst your petition is being considered by the Commissioner General. Is that correct?

A: Yes.

Q: Are you sure you know all the laws that govern revenue collection?

A: No.

Q: The correct procedure under the law is for you to pay the tax whilst waiting for the Commissioner General's response. I put it to you.

A: It is not true.

The issue of auctioning and allocation of containers deliberated upon in the course of the cross examination as follows;

Q: What is the name on *EXHIBIT "E"*?

A: Nana Agyeman.

Q: What is the date of allocation?

A: It looks faint but I think it is 6th August, 2018.

Q: Per *paragraph 15* of your Witness Statement, you have indicated and I read: (same read in open Court). So, you will agree with me that, as at November, some containers have been auctioned per your Witness Statement.

A: No, it was not auctioned, it was allocated.

Q: You also agree with me as indicated in *paragraph 16* of your Witness Statement that, as at August, 2018, some containers have been auctioned to one Attah Poku.

A: I said it was never auctioned, it was allocated and allocation slip was attached.

When the witness was again question on the standard practice as to gazette and auction transaction, the following are the excerpt;

Q: You have indicated in *paragraph 25* of your Witness Statement that, the standard practice is to gazette before goods are auctioned and that, the whole transaction involving the advertising of some of Plaintiff's containers for auction on February 3rd, 2018 smacks of irregularity and bad faith. Do you still stand by this your statement?

A: Yes.

Q: I am putting it to you that there was not advert or gazette notification of Plaintiff's goods for auction on February 3rd, 2018 because at that material moment Plaintiff's consignments have not been processed for Customs purposes.

A: My containers were allocated before they were gazetted.

The response of the witness that the Plaintiff did not pay taxes and duties on the consignment was as follows;

A: If your final classification valuation report is not ready, you cannot pay any tax to Government or Customs. After reviewing my petition, I was issued a new CCVR, I then went to pay duties and taxes on the remaining containers and same cleared out of the port.

The answer to the question as to the amount the Plaintiff was claiming from the Defendant was as follows;

Q: Per your Witness Statement, the amount the Plaintiff is seeking for the four (4) containers is *Fifty-Seven Thousand, Eight Hundred and Eighty-Three United States Dollars and Four Cents (US\$57,883.4)* and not *Fifty-Seven Thousand, Eight Hundred and Eighty-Three United States Dollars, Four Cents (US\$57,883.4)* for each container as indicated in the Writ of Summons and Statement of Claim.

A: What I am claiming is the four (4) containers out of the Fifteen (15).

The Plaintiff 2nd Witness (PW2) in the person of David Kofi Nutakor gave evidence during the trial. The witness statement of the representative filed on 14th January, 2021 was adopted on 22nd January, 2024 by the Court as his evidence-in-chief. The

evidence is a repetition of the Plaintiff's Statement of Claim with few additions. The additions which PW2 added are that as an industry expert and freight forwarder, he was aware that the Commissioner General when petitioned, ought to respond to such petition within a reasonable time to avert further delay which can ultimately lead to the petitioner or importer paying demurrage or risk his goods being auctioned.

That the Commissioner General, as a public officer is enjoined by law to swiftly determine such a petition which determination will inform an importer or petitioner as to how to proceed with the clearing process especially when the Commissioner General ought to have known that the goods were perishable. Unfortunately, this was not done in the instant case wherefore Plaintiff Company's found some of its product, the Royal De Lite Tomato Paste on the Ghanaian market when same had not been cleared, distributed or sanctioned by Plaintiff Company.

And that due to the perishable nature of the goods involved and the nature of the petition, a determination after eight (8) month of Plaintiff Company's petition is an unreasonably long time.

PW2's case is that the Commissioner General's acceptance of the Plaintiff Company's FOB values presented in the petition meant that the Plaintiff Company's petition was grounded and same was not a ploy or intended to waste time before clearing the goods.

Again, by not giving Plaintiff Company a hearing or replying to the petition in the earliest time to enable Plaintiff Company take the necessary step to clear the goods is a breach of the cardinal rule of natural justice and same is prejudicial.

During cross examination PW2 indicated that as an industrial expert and freight forwarder who holds a diploma in international freight forwarding association (FIATA) based in Geneva Switzerland. He also has proficiency certificate in custom

Division, Ghana Revenue Authority, as such he was aware of the objection procedure of the Ghana Revenue (GRA) when it comes to importation.

When asked whether the Plaintiff Company informed him as to whether they paid the duties and taxes due so as to enable the determination of their objection said, no payment was made. He stated that payments would have been done after the determination of the objection.

The Defendant representative Witness in the person of Prince Akwaboah gave evidence during the trial. The witness statement of the representative filed on 20th March, 2021 was adopted on 4th March, 2024 by the Court as his evidence-in-chief. The evidence is a repetition of the Defendant's statement of defence with few additions and exhibits. '**EXHIBIT 1**' (Petition Letter), '**EXHIBITS 2, 2a, 2b, 2c**' (Copies of allocation slips of goods auctioned to the buyers), '**EXHIBITS 3**' (A copy of the letter from the Deputy Commissioner, Operation), '**EXHIBITS 4, 4a, 4b, 4c, 4d, 4e, 4f, 4g, 4h, 4i**', (Copies of allocation slips), '**EXHIBIT 5**' (Custom declaration form).

The addition is the Defendant's duty is to ensure that there is strict compliance to the law relating to importation and clearing of goods. The custom law applicable provides that goods imported into the country should be cleared from the customs-controlled area within a cumulative period of twenty-one (21) days.

In the case of perishable goods importers have seven (7) days within which to clear their goods from the port, failure to do so mandates the proper officer to immediately sell the goods by public auction.

The Defendant in accordance with laid down procedure commenced auction of goods to which all 15 containers were granted and out of which four (4) containers with tag numbers, TR4U33740487, ZIMU1143664, TRHU1362678 and ZIMU2887450 were sold to Nana Agyemang, Mr. Atta Poku. Mr. Issah Aljhassan and Felix Dzikunu respectively. See Exhibits 2, 2a, 2b, 2c.

The Defendant in his response to the letter decided to give the Plaintiff the benefit of the doubt in respect of his proposed FOB value and entreated the Plaintiff to pay the necessary duties and taxes in order to clear the remaining eleven (11) containers of the gazetted goods from the port.

The Plaintiff was allocated auction slips covering the eleven (11) remaining containers which he passed the appropriate customs declaration enters and cleared the goods from the port as auction goods. See Exhibits "4, 4a, 4b, 4c, 4d, 4f, 4g, 4h, 4i and Exhibit 5"

The Defendant's failure to respond to the Plaintiff's petition early does not amount to the breach of National Justice since the Defendant by law was not mandated to entertain the Plaintiff's Position. The Plaintiff's petition did not meet the requirement of law as stated by Revenue Administration Act, 2016 (Act 915)

During cross examination of the Defendant witness the issue of raising an objection was discussed as follows;

Q: Is objection only through the system or it can be by petitioning the Commissioner?

A: Customs being an ISO compliant may accept both forms through the system and the manual petitioning but the effect is that once you do so manual, it doesn't stop the system from running.

Q: You have admitted that, the GRA accepts both objections through petitioning and ICUMS. Is that not correct?

A: Yes, but the preferred choice for the sake of trade facilitation is the system objection.

Q: You would agree with me that, the failure of the GRA to update its system and procedure to deal with manual objection swiftly ought not to be blamed on the Declarant or be made to suffer same.

A: In this specific instance, the Declarant has not suffered any damage, even though same did not utilize the ICUMS objection which is acceptable to almost 99.9% of all agents or Declarants.

The issue of objection at GRA raised either by manual or system was further deliberated upon as follows;

Q: In the compilation of this list, goods over which an objection has been raised or investigations ongoing over or a written explanation explaining the cause of the delay which has been received by the sector Commander ought not be included. You would agree with me.

A: The auction is the last stage of the process when the Declarant has failed to clear the goods. As I indicated earlier, if the objection is done in the system, it stops the process until all the petitions and grievances are resolved but when it is done manually, it could be that, before all the administrative processes are followed, that is the receipt of the letter at the Registry, forwarding same to various offices through to the Commissioner and the Commissioner also referring same to the technical unit for review may take some time. Our system is an end to end system such that when the agent sends a declaration to Customs, it leaves the agent portal and when Customs also act on the declaration as in this case when assessment was done in the system, it also leaves Custom's end, Custom cannot work on it any longer. So, if the agent has any grievance and instead of doing so in the system, he or she does it manually, nobody in Custom including the Commissioner can enter the system that, there is an objection that the system should stop running.

The advert, gazetting and auctioning of the subject matter in this suit was discussed as follows;

Q: The process leading up to auctioning includes or involves the process of advertising or publication. Is that correct?

A: That is correct for non-perishable and vehicles. Publication in this context refers to the gazette in the commercial and industrial bulletins.

Q: Were the goods that were auctioned in this case advertised or published?

A: No. The first four (4) containers which were auctioned and two (2) cleared out of the port and subsequently arrested by the Importer and brought back to Tema police station and finally all the four (4) given back to the Importer were not gazetted because they were treated as perishable goods, so approval was sought from the Commissioner General for disposal.

Q: Were *EXHIBITS "2"* and *"2A"* ever published before they were auctioned?

A: No, but what I would say in respect of the document, that is *EXHIBIT "G"* where it appears the container numbers on *EXHIBITS "2"* and *"2A"* are on *EXHIBIT "G"* dated 23rd February, 2018, 3rd February, 2018 and 23rd February corresponds with *EXHIBIT "2"* and 3rd February, corresponds with *EXHIBIT "2A"* is that containers or boxes which are used to carry goods for import have repetitive use, so it cannot be said that, these items which were manifested at the port in March, 2018 can find itself in February gazette when there was no information to Customs in February, 2018. So, once the Importer did not start business in March, there is all indications that, those containers do not relate to the containers in question.

On the issue whether the Plaintiff's containers were returned to it by the Defendant or not was also deliberated upon as follows;

Q: Yet, you have not provided any proof in support of your claim that, the said containers were ever returned to the Plaintiff.

A: The same way my Accuser has not also provided any proof or otherwise of my claim even though I have indicated the source of my claim.

Q: You have attached as *EXHIBITS "2", "2a", "2b" and "2c"*, auction allocation slips confirming that, these said containers were allocated to persons other than the Plaintiff in this matter but failed to provide any proof in support of same.

A: What I said was *EXHIBITS "2", "2a", "2b" and "2c"* were the containers which were arrested by the Importer, Mr Stephen Adjokatcher and brought back to Tema Police Station. So, as an institution, we resolved that, these containers be added to remaining eleven (11) and given to Mr. Stephen Adjokatcher whilst replacements were done for the beneficiaries of the auction.

Counsel for Plaintiff by its written address submitted that the matter raised by Counsel for the Defendant with regard to the capacity of PW1 to testify as a director of the Plaintiff Company shall be addressed and dispensed with accordingly. According to him one qualifies to testify as a witness if one meets the standards of Sections 58, 59 and 60 of NRCD 323. Hence, Stephen Adjokatcher (PW1) qualified to testify as a witness to testify on behalf of the Plaintiff Company.

That in the case of **AGYEI OSAE AND ORS V. ADJEIFIO AND ORS Supreme Court Civil Appeal No. J4/22/2007** it was held or stated that per Section 60 of the Evidence Decree, 1975, personal knowledge is a necessity for one's competence as a

witness. Counsel for the Plaintiff submits that one qualifies to testify as a witness if one meets the standards of Sections 58, 59 and 60 of NRCD 323. Hence, Stephen Adjokatcher (PW1) qualified to testify as a witness to testify on behalf of the Plaintiff Company.

On *ISSUE ONE: Whether or not Plaintiff was entitled to a fair hearing within reasonable time after it petitioned the Defendant in respect of the FOB values?*

Counsel referred the Court to Section 13(1) (a) of the Custom Act,2015 (Act 891), Section 37(3) of the Revenue Administration Act,2016 (Act 915) and Section 39(1) and (2) of Act 915 which stipulates that;

“39. (1) The Commissioner-General may adjust an assessment in a manner that ensures that the taxpayer is liable for the correct amount of tax in the circumstances to which the assessment relates.

(2) The Commissioner-General shall use best judgement and information reasonably available in making an adjusted assessment.”

It is further stated that the right of the Commissioner to adjust an assessment is discretionary and as such ought not to be exercised arbitrarily or unreasonably.

Article 296(a) and (b) of the 1992 Constitution.

Counsel for Plaintiff’s case is that giving the limited time frame Plaintiff had to clear its goods from the Harbour, the lackadaisical attitude of the Defendant in responding to the petition more than seven months after receiving same cannot by any standard be deemed reasonable. This unreasonable delay led to the Plaintiff losing four of its containers and incurring unwarranted liabilities.

Counsel submits that while the Defendant agrees that the manual system of objections is recognized by them, they present that unlike the electronic system it does not truncate the process. This means that while an electronic objection receives immediate attention, an importer who elects to use the manual system of objection as in the case of the Plaintiff, is then faced with delay in receiving a response as a result of the administrative inefficiencies on the part of the Defendant to synchronize both systems to achieve the same results.

Consequently, the Plaintiff suffered unreasonable delay in receiving a response to its petition as a result of the inability of the Defendant to ensure that they put in place a proper system where manual petitions receive the needed attention it demands.

1. **ON ISSUE TWO:** Counsel says that from issue one, the Plaintiff exercised its right of objection under **Section 13** of the **Customs Act, 2015**. This was done promptly on the 20th of March 2018 and same was received by the Defendant. The Defendant having received the petition of the Plaintiff failed to respond timeously resulting in the delay of the goods at the port and consequent loss of four of the Plaintiff's containers. It is the contention of Counsel that claiming the Plaintiff should have opted for an objection through the system (ICUMS) is nothing but a sorry attempt by the Defendant to cast blame on the Plaintiff who is innocent of the internal and administrative dealings and inefficiencies of the GRA.

ON THE FOLLOWING ISSUES; *ISSUE THREE: Whether or not the response from Mr. Seth Dwira, Deputy Commissioner, Operations of the Defendant indeed shows that the Plaintiff had a genuine case for which he petitioned? AND*

ISSUE FOUR: Any other issue arising from pleadings

Under this omnibus issue the Plaintiff wishes to address:

Whether or not the letter from Mr. Seth Dwira, Deputy Commissioner, Operations of the Defendant bars the Defendant from alleging that it has no obligation to inform the Plaintiff before it deals with Plaintiff's products at the port?

Counsel submits that Plaintiff's EXHIBIT "D" shows that by the said letter, the Defendant did not only inform the Plaintiff that it had accepted the FOB values they submitted but also went ahead to state that the Plaintiff's goods had been gazetted for Auction and hence the Plaintiff should pay the necessary duties and taxes so as to clear the goods from the port.

ON THE FOLLOWING ISSUE; *ISSUE FIVE: Whether or not the Defendant was justified in seizing, transferring and auctioning Plaintiff's products before informing the Plaintiff that it had accepted the Plaintiff's proposed FOB values.*

ISSUE SEVEN: Whether or not it is standard practice that goods are put up for auction even before same arrives in the Country as happened in the case of Plaintiff?
AND

ISSUE EIGHT: Whether or not the Defendant complied with laid down procedure for confiscating and auctioning of Plaintiff's goods.

It is the case of Counsel that under the Customs Act, 2015, when the Defendant seizes the goods of an importer liable to forfeiture, the officer who seized the goods is required to issue a written notice of seizure to the owner of goods. **Section 124 (2)** of the **Customs Act, 2015** prescribes as follows:

*"Where **goods** liable to forfeiture is seized, the officer who seized the goods **shall** give written notice of seizure to the owner,*

Counsel says that the operative word “shall” which is used in the provision connotes a mandatory requirement on the part of the Defendant to ensure that an owner of goods which are seized is issued a written notice of such seizure. This written notice is to be issued to the owner so as to afford him/her the opportunity to make a claim for the restoration of the goods. See Section 126(1) to (4).

From **Section 126(4)** of the **Customs Act, 2015** where goods are not of a perishable nature they may be auctioned by the Defendant **only** after being published in a Gazette or at least two daily newspapers of national circulation at least **fourteen days prior** to the intended auction.

It is submitted that the allocation slips in the names of Nana Agyeman and Atta Poku, Defendant’s EXHIBITS “2” and “2a” respectively both have the date of auction as the 6th day of August 2018. Yet, the LOT/CIB/CTNR# indicated on them “mysteriously” appears in the Commercial and Industrial Bulletin published on the 5th day of October 2018.

Evidently, the Defendant failed to comply with the mandatory provision under **Section 126(4)** of the **Customs Act, 2015** which clearly stipulates that an auction can only take place after gazetting has been done at least fourteen days prior to the auction. The whole transaction of auctioning some of the containers of the Plaintiff before gazetting same in the midst of an on-going review of the FOB values stated in the CCVR is in bad faith and breach of the stipulated procedure. It goes to establish the fact that the Defendant failed to comply with the laid down procedure for confiscating and auctioning of Plaintiff’s goods.

ON ISSUE NINE: Whether or not the Plaintiff complied with laid down procedure and timelines prescribed by law for clearing goods imported into the country.

Counsel submits that, once goods arrive in the country, an importer has a limited timeframe of twenty-one (21) days within which to clear the goods from the port. When the Plaintiff's goods arrived in the country it immediately began the process of clearing same by submitting its documents to The Customs Technical Services Bureau (CTSB) for Customs Classification and Variation Report (CCVR). The CCVR by the Defendant however indicated an exorbitant increase in the FOB values which prompted a petition to the Defendant.

The Plaintiff, though having taken the prudent step to petition the Defendant for a review of the FOB values on the 20th day of March did not receive a response from the Defendant until the 12th day of November 2018 at which point some of the containers of the Plaintiff had been lost as a result of the Defendant auctioning same without any notice to the Plaintiff.

Indeed the right of an importer to raise an objection to an assessment is duly recognized under the Customs Act, 2015 and the Revenue Administration Act, 2016. Again **Section 13(4)** of the **Customs Act, 2015** also prescribes that the procedure for filing an objection shall be in accordance with the law governing revenue administration.

Under the Revenue Administration Act, provision is made for raising an objection to a tax decision. **Section 42** of the **Revenue Administration Act, 2016** which deals with objections to tax decisions is reproduced below:

"42. (1) Subject to a tax law to the contrary, a person who is dissatisfied with a tax decision that directly affects that person may lodge an objection to the decision with the Commissioner-General within thirty days of being notified of the tax decision"

Section 13(4) of the **Customs Act, 2015** also prescribes that the procedure for filing an objection shall be in accordance with the law governing revenue administration

- (5) An objection against a tax decision shall not be entertained unless the person has*
- (a) in the case of import duties and taxes, paid all outstanding taxes including the full amount of the tax in dispute; and*
 - (b) in the case of other taxes, paid all outstanding taxes including thirty percent of the tax in dispute.*
- (6) Despite subsection (5) the Commissioner-General may waive, vary or suspend the requirements of subsection (5) pending the determination of the objection or take any other action that the Commissioner-General considers appropriate including the deposit of security.*

It is the submission of Counsel that while the Defendant insists on the payment of a tax assessment prior to raising an objection they do not make the same assertion when it comes to an objections via electronic means through the Integrated Customs Management System (ICUMS). They present that an objection through the ICUMS automatically puts a halt in the clearing process until same has been reviewed.

Furthermore, the Defendant's insistence on the payment of tax by the Plaintiff before an objection only seems to come into play because Plaintiff in this case opted to use the manual process of petitioning as opposed to the Defendant's "preferred" option which is ICUMS.

That even more astonishing and bewildering is the fact that the objection through ICUMS which the Defendant is very insistent on being the better means of registering an objection was not even in force as at 20th March 2018 when the Plaintiff petitioned the Defendant for a review of the FOB values indicated in the CCVR. Per the Defendant's own website, ICUMS was not introduced until the 28th of April 2020.

It is further submitted that even if the Plaintiff was to use the Defendant's "preferred" choice-ICUMS, that option was not even available to the Plaintiff at the time it

petitioned the Defendant on 20th March 2018 as same was not even in existence until 28th April 2020 per information on the Defendant's own website. (QUESTIONABLE as Defendant said it was in operation in 2018/2019)

That the Defendant's witness who claimed ICUMS started in 2018/2019 could not state the month in which it started. Though he indicated that he could make such information available at a later date, same was not done and could not be done because such evidence was not in existence!

Consequently, the Defendant is liable to the Plaintiff for all losses flowing from their failure to respond to the petition of the Plaintiff timeously and also follow due process in seizing, detaining and gazetting the Plaintiff's products.

Counsel says that having established that the Defendant is liable for the loss suffered by the Plaintiff, the Plaintiff is entitled to recover from the Defendant all the remedies being claimed as indicated in Plaintiff's writ of summons. And On the totality of evidence and legal arguments presented, the balance of probabilities tilts heavily in favour of the Plaintiff.

Counsel for Defendant by its address to the court submitted on ISSUE I

Whether or not the Plaintiff was entitled to a fair hearing within reasonable time after it petitioned the Defendant in respect of the FOB values.

That the Plaintiff was not entitled to any hearing within a reasonable time after it petitioned the Defendant for a review of the Customs Classification and Valuation Report (CCVR).

It is the contention of the Defendant that when the Plaintiff petitioned the CG to review the CCVR, it has at the same time the legal obligation to pay all duties and taxes due on the goods whilst its petition was being considered by the Defendant.

The Defendant's position is fortified by section 42 of the Revenue *Administration Act, 2016 (Act 915)*.

The Defendant drew the Court attention to section 42(5)(a) of Act 915 supra which requires a person who objects to an assessment relating to import duties and taxes by the Commissioner-General (CG) to go ahead and pay all outstanding taxes including the taxes in dispute before the objection or petition is considered.

That Such a petition does not, therefore, suspend the application of the Customs Act, 2015 (Act 891) which has also provided for specific period within which goods imported should be cleared from the port, otherwise they will be treated as uncleared cargo.

It is further stated that the Plaintiff woefully failed to clear its goods from the port and, therefore, cannot blame the Defendant for any loss that resulted from its failure to abide by the requirements of the law.

Sections 66, 67, 68 and 69 of Act 915 provide for refund of tax and other related matters.

Counsel submits that it is therefore clear from the above provision that a person who over pays tax can redeem the tax from the Defendant once it has been established that overpayment has been made.

Under Section 69 of Act 915 a Ghana Revenue Authority General Refund Account has been set up into which the Minister for Finance sets aside six percent of the total revenue collected from which payment can be made to those entitled to refund of tax. This refund account is used by the Defendant in the payment of refund to taxpayers who are entitled to such payment.

ON ISSUE II

II. Whether or not the delay of the goods at the port was occasioned by the Defendant.

The Defendant vehemently denies that the delay of the goods at the port was occasioned by the Defendant and repeats its response to issue I. The Defendant further says that the governing laws required the Plaintiff to have cleared its goods from the port despite its application for a review.

Again, where an importer fails to clear its goods from the port within the period allowed by the law or within a further period allowed by a proper officer, section 52 of Act 891 applies to such goods. **Section 52 of Act 891 reads:**

“Uncleared goods

Where goods imported by a conveyance or inland water way or railroad are not entered within seven days after being unloaded or within a further period as the proper officer may in special circumstances allow, the proper officer may deposit the goods in a State warehouse or may direct the importer or the agent to deposit the goods immediately in a specified State warehouse.”

The contention of Defendant Counsel is that the custom Act (Act 891) empowers the CG to deal with goods that have not been cleared from the port. Section 53(1)(2) & (3) of Act 891 reads:

“Deposit of goods in State warehouse

53. (1) Where goods imported are not delivered from a customs-controlled area

(a) within seven days after final discharge, or

(b) within a further period as the Commissioner-General may in special circumstances allow,

a proper officer may deposit the goods in a State warehouse for a period of not more than fourteen days.

(2) Goods deposited in a State warehouse shall attract rent and other charges as prescribed.

(3) Where goods deposited or required to be deposited in a State warehouse are

(a) of a perishable nature, the proper officer may, immediately, sell the goods by public auction; or

(b) not of a perishable nature, the proper officer may sell the goods by public auction in accordance with prescribed directives."

The Defendant says that until the CG has written to an importer that he has suspended the payment of an assessment or the application of any procedure prescribed by any tax law to a person, there is no basis for assuming that a mere application for a review entitles one to a quick response from the CG.

ON ISSUE V

V. Whether or not the Defendant was justified in seizing, transferring and auctioning Plaintiff's products before informing the Plaintiff that it has accepted the Plaintiff's proposed FOB values.

Counsel for the Defendant submits that the Customs Act (Act 891) and the Revenue Administration Act (Act 915) and its letter indicating the acceptance of Plaintiff's FOB values only entitles the Plaintiff to a refund of the excess tax paid if the Plaintiff had taken steps to clear the goods from the port based on the initial CCVR report.

ON ISSUE VI

V. Whether or not the loss incurred by the Plaintiff is reasonably incidental or is occasioned by the Defendants conduct and late action or response to Plaintiff's petition.

The Defendant denies any suggestion that the loss incurred by the Plaintiff was reasonably incidental or occasioned by its conduct and late action or response to Plaintiff's petition and in doing so the Defendant repeats all of its arguments above.

Counsel for the Defendant concluded on the assertion that The Plaintiff had options under the tax law as to how to proceed when it claimed that the Defendant delayed in responding to its objection (petition). The Plaintiff failed to abide by the requirement to pay the whole of the tax in dispute as required by Act 915 where a person objects to a tax decision and the steps taken by the Defendant to dispose of the goods were well within the law.

Therefore, the Defendant cannot therefore be blamed for any loss that has been occasioned by the Plaintiff's failure to abide by statutory requirements.

I have studied the pleadings evidence and submissions of counsel for the parties and has observed that the Plaintiff's reliefs are based on.

1. That Plaintiff being an importer and exporters of goods and the sole distributor of Royal Delit Tomatoes paste imported into the country between March 2018 and May 2018 fifteen (15) containers of the tomatoes paste.
2. On arrival of the goods, the Plaintiff's shipping agent knowing the prescribed period within which to clear goods from the port applied to CTSB for CCVR to enable it to know its taxes and duties needed for payment in order to clear the goods.
3. That on receipt of the FOB values for the 15 containers of tomatoes paste, it was higher than the FOB values on the contract and the supplier's invoice. As a result of

that the Plaintiff petitioned the Commissioner General of GRA for a review of the FOB values.

4. According to the Plaintiff whilst waiting for the response of the Petition sent in March 2018, it came to its notice that its imported products were in the Ghanaian market without its consent or have same cleared from the port.
5. That in August 2018, the commissioner was reminded of the Plaintiff's petition.
6. In November 2018, when the response was given accepting the Proposal of the FOB values of the Plaintiff, some of the Products were cleared from the port and some were yet to be cleared. Some personalities were given allocation slips to the auctioning of some Plaintiff's products.
7. It is the case of the Plaintiff that, the petition to the Commissioner General was Plaintiff's right as stated in the Customs Act, 2015 (ACT 891). Their petition was by manual while there was also the system procedure for petitions.
8. The Plaintiff expected that, with the petition in the process before the Commissioner General, payment of any taxes or duties would be suspended but this did not happen but the Defendant allowed the system to run against the Plaintiff which led to the loss of four of the containers of the Plaintiff because they were allocated and auctioned to certain personalities.
9. That the Plaintiff finds the conduct of the Defendant unfair, unconstitutional and more so proper procedure not followed by the Defendant to clear of uncleared goods from the ports. The procedure was to advertise, gazette and auction and above all notice given to the importer of the intended clearing from the port of the unclear products to enable the importer to take the necessary steps to clear its products.
10. According to the Plaintiff, failure on the part of the Defendant to give due recognition to the Plaintiff's petition and to respond within a reasonable period to avoid delay in clearing of Plaintiff's products and none adherence to the procedure

to clear an uncleared products has led to the losses of the Plaintiff hence the claim of the reliefs endorsed on the writ.

The Defendant on the other hand dispute the claims of the Plaintiff on grounds that it followed the laws and the procedures specifically the customs Act 2015 (Act 891), the Revenue Administration Act, 2016 (Act 915) to depose off the uncleared products of the Plaintiff.

2. Even then the alleged four (lost) containers have been retrieved and given back to the Plaintiff. That after receipt of the response from the Commissioner General, the Plaintiff was given the Allocation slips to clear off the remaining eleven (11) containers and the four (4) that were allocated and retrieved back to the Plaintiff.
3. That if some of the containers of the Plaintiff were seized, detained and auctioned it was due to the fact that, the Plaintiff failed to clear its products from the ports within the period prescribed by Law. And that the fact that the Plaintiff had petitioned the Commissioner General for a review of the report of the CCVR on FOB values of Plaintiff's products did not stop the Plaintiff to pay the due taxes and the duties to clear the products from the ports within the stipulated period by law as the law also provide for a refund by the Defendant excess tax paid by the Plaintiff.
4. That the procedure for petitioning the Commissioner although two, the system procedure would have truncated the process within which one was supposed to pay tax and for clearing its products within the specified period, but the manual procedure was not so, which procedure the Plaintiff chose to use.
5. Therefore, if there was any loss incurred by the Plaintiff, it was due to the failure to comply with the laws, rules and regulations of clearing goods from the port.

6. And even then, the allocated/auction products of the Plaintiff had been retrieved when the Plaintiff's witness stopped them at the Port Police station and same returned to the Plaintiff.
7. Therefore, the Plaintiff is not entitled to its relief

1) I have analyzed the information before the court and has observed that the action of the Plaintiff and the Defendants are all supported by law. The Plaintiff's act of petition to the Commissioner General to review the FOB values was supported by section 13(1)(a) of the customs Act 2015 (Act 891), Section 37(3) of the Revenue Administration Act 2016, (Act 915) and Section 39(1) and (2) of Act 915 which says 39(1). 'The Commissioner General may adjust an assessment in a manner that ensures that the tax payer is liable for the correct amount of tax in the circumstances to which the assessment relates'.

2) The question is if the Commissioner General may adjust an assessment, then it implies that anyone not satisfied with assessed tax figures has the right to bring this to his attention. Therefore, the Plaintiff's petition was in the right direction. The Defendant does not dispute this fact but is of the view that the petition does not stop the Plaintiff from paying the assessed tax unless the commissioner suspends same and more so if the procedure used in the petition was by Manual and not the system which automatically stop every process when there is a petition. See Section 13(b) of the Customs Act, 2015 which reads "An objection against a tax decision shall not be entertained unless the person has

- a. In the case of import duties and taxes paid all outstanding taxes, paid all outstanding taxes including the full amount of the tax in dispute; and (b) in the case of other taxes, paid all outstanding taxes including thirty percent of the tax in dispute.

- b. Despite subsection (5) the Commissioner General may waive, vary or suspend the requirement of subsection(a).
- c. Pending the determination of the objection or take any other action that the Commissioner General considers appropriate including the deposit of security.

3) From the available records before the Court, the Commissioner General entertained the objection raised by the Plaintiff and gave its response to the petition sent in March 2018 in November 2018. That if the objection was heard and responded, then section 13(6) plays a role here implying that 13(5) was suspended, waived etc.

The question is if the payment of tax was suspended per section 13(6) why would the Defendant calculate the period within which the Plaintiff should clear its products for it to be declare as uncleared products because they were not cleared within the prescribed period. And if the payment of tax was suspended there was no way the products could have been cleared because the tax on same had not been paid.

4)As earlier indicated the Defendant is of the view that per **Section 69 of Act 915**, the tax should have been paid not waiting for the determination of the petition to enable the Plaintiff cleared off its products as any excess payment would be refunded per **Sections 66,67,68 and 69 of Act 915**.

5)The issue is if payment had been suspended why should one make payment

Now with the matter of some of the products finding themselves out of the port.

This could only be done by the Defendant clearing them because according to records, the Plaintiff had failed to clear them from the ports because the period to be at the port had expired due to the Plaintiff failure to clear them.

6)The question of raising on objection by means of manual and not by system is a choice for the individual or an institution and there is no restriction on the choice, therefore if one procedure works to the disadvantage of a user, it should not be held against that user as the user would not be a privy as to which one was to his/her advantage or disadvantage.

From the records before the Court, there is no dispute about the fact that allocation slips/auction in respect of some of Plaintiff's product were given to the following persons Nana Agyeman and Atta Poku, Exhibit '2' and '2a' which were given in August 2018, whilst the petition was still pending. Another question is, did the Defendant follow the laid down procedure in its attempt to auction the so-called Plaintiff's uncleared products. The Rules and the Regulations stipulates that confiscated products must be advertised, Gazette before auctioning.

Again, section 124(2) of the Customs Act talks about written notice which might be given to the owner of goods liable to forfeiture. It reads" where goods liable to forfeiture is seized, the officer who seized the goods shall give written notice of seizure to the owner". The question is was the Plaintiff notified of the seized products which were to be forfeited. Furthermore, were the four containers advertised, gazetted before any auctioning.

The document before the Court indicates that the allocation slips were issued out in August whilst any advert in commercial and Industrial Bulletin published appeared in October, 2018.

The Court is of the view that the allocation/auction was done before any advert was made contrary to the rules, regulations as well as the law.

The Defendant's position is that, the products while being taken out were intercepted and the Plaintiff was given the allocation slips covering the remaining eleven containers after the Commissioner had given his response to be cleared, by Plaintiff together with the four containers. There is no evidence on record of the return of the four containers to the Plaintiff.

The Court is of the view that the Defendant did not complied with the laws, rules and regulations in handling the Plaintiff's products and the benefit of doubt of the four containers not being given to the Plaintiff goes in favour of the Plaintiff.

Consequently, the Plaintiff having proof its case by preponderance of possibilities is entitled to its claims, on the reliefs stated

- a. Recovery of the sum of **Fifty-Seven Thousand Eight Hundred and Eighty-Three Dollars, Four Cent (\$57,883.4)** being the total value of royal de lite tomatoes paste in four containers auctioned, handling and freight charges.
- b. Interest at the prevailing bank rate on the amount stated above from the date of default to date of Final Judgment
- c. Damages of **GH¢5,000.00**
- d. Cost of **GH¢5,000.00**.

(SGD)

DORIS AWUAH DABANKA-BEKOE (MRS)
JUSTICE OF THE HIGH COURT

COUNSEL:

ERNEST AGBESI NORMENYOH BEING LED BY
KWASI MINTAH BENYIN FOR THE PLAINTIFF - PRESENT

KWAME DANKYI WITH MAWUSI DAKE HOLDING BRIEF
FOR CEPHAS ODARTEY LAMPTEY FOR THE DEFENDANT PRESENT