

Rödl & Partner

NEWSFLASH KENYA

TAX COURT ALERT, STAND-
ARDS LEVY & NITA UPDATES

Issue:
15 May 2023

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→ Background

Rödl & Partner recently represented its client, a Kenyan manufacturer of flavoured tea, in a Customs dispute at the Tax Appeals Tribunal and obtained a favorable judgment. In this issue we have summarized the facts of the case and analyzed the Tribunal's decision.

The Kenya Bureau of Standards and Kenya Revenue Authority have lately also enhanced their compliance and enforcement efforts for the Standards levy and NITA (National Industrial Training Authority) levy respectively in regular notices to taxpayers. We have discussed in this issue some of the basic requirements for the two levies.

→ Tax Court Alert: Appeal No. 766 of 2022

Background

Rödl & Partner filed an appeal at the Tax Appeals Tribunal on behalf of its client ("the Appellant"), a flavoured tea manufacturer, through a Notice of Appeal dated 8 July 2022 on the following grounds inter alia:

- That the Respondent failed to disclose the laboratory findings supporting its tariff ruling dated 15 July 2021 that necessitated its assessment of 18 May 2022.
- That the Respondent wrongfully interpreted and applied the description of Tariff code 2106.90.20 on the Appellant's assessed products.
- That the Respondent failed to consider its earlier tariff ruling for similar herbal blends dated 4 April 2019 that classified the Appellant's assessed products under tariff code 2106.90.20

Decision & Reason for Judgement

The Honourable Chair Robert M. Mutuma gave the following orders:

1. The Appeal is merited and hereby allowed.
2. The Respondent's review decision dated 23 June 2022 be and is hereby set aside.

The Tribunal referred to one of the authorities in the Appellant's submission comprising of a Certificate of Conformity by the Kenya Bureau of Standards (KEBS) which concurred and indicated the HS code for the Strawberry Fruit Blend as 2106.90.20.00 whose authority it termed as neutral and an independent entity whose findings may be applied by both parties. On the contrary the

Respondent was noted to have cited a laboratory analysis and finding which was not adduced as evidence to assist the Tribunal in its judgement.



Our Comment

The Ruling has now set a precedent in resolving Customs disputes relating to tariff classification by allowing consideration of inputs and authorities from neutral and independent entities such as KEBS who equally have the technical capacity to determine classifications.

In addition, the Respondent will also be compelled to improve on the transparency of its internal lab test results and fully disclose the same to both the Appellant and Courts. Rödl & Partner is willing to assist any taxpayer who feels aggrieved by the inconsistency and lack of transparency in tariff rulings applied to them by the Kenya Revenue Authority.

→ Standards Levy Update

The Kenya Bureau of Standards is currently notifying entities whose activities have been categorized as “manufacture” to do a self-compliance check. The term manufacture as defined by the Standards Act Cap 496 for which the levy applies is:

“Manufacturer” includes produce, process, install, treat, test, operate and use.

The self-compliance check has been communicated to include the following:

- Online registration as a manufacturer to obtain an entry number which is issued and maintained by the Director of KEBS.
- Remitting a standard levy at the rate of 0.2 per cent of the monthly turnover net of VAT if any.

- Remitting all the standard levy due in time. The levy is payable before the 20th day of the succeeding month failure to which it attracts a penalty of 5 per cent per month for the period the amount remains outstanding.

- Accurate and complete keeping of records for all the transactions which may affect their liability to pay standard levy.

Comment: The ongoing sensitization communique by the KEBS sets the stage for imminent enforcement upon standards levy defaulters. It is important to note the levy ceiling Kes. 33,333 p.m. (Kes. 400,000 p.a.) as provided for under paragraph 3 of the Standards Levy Order, 1990.

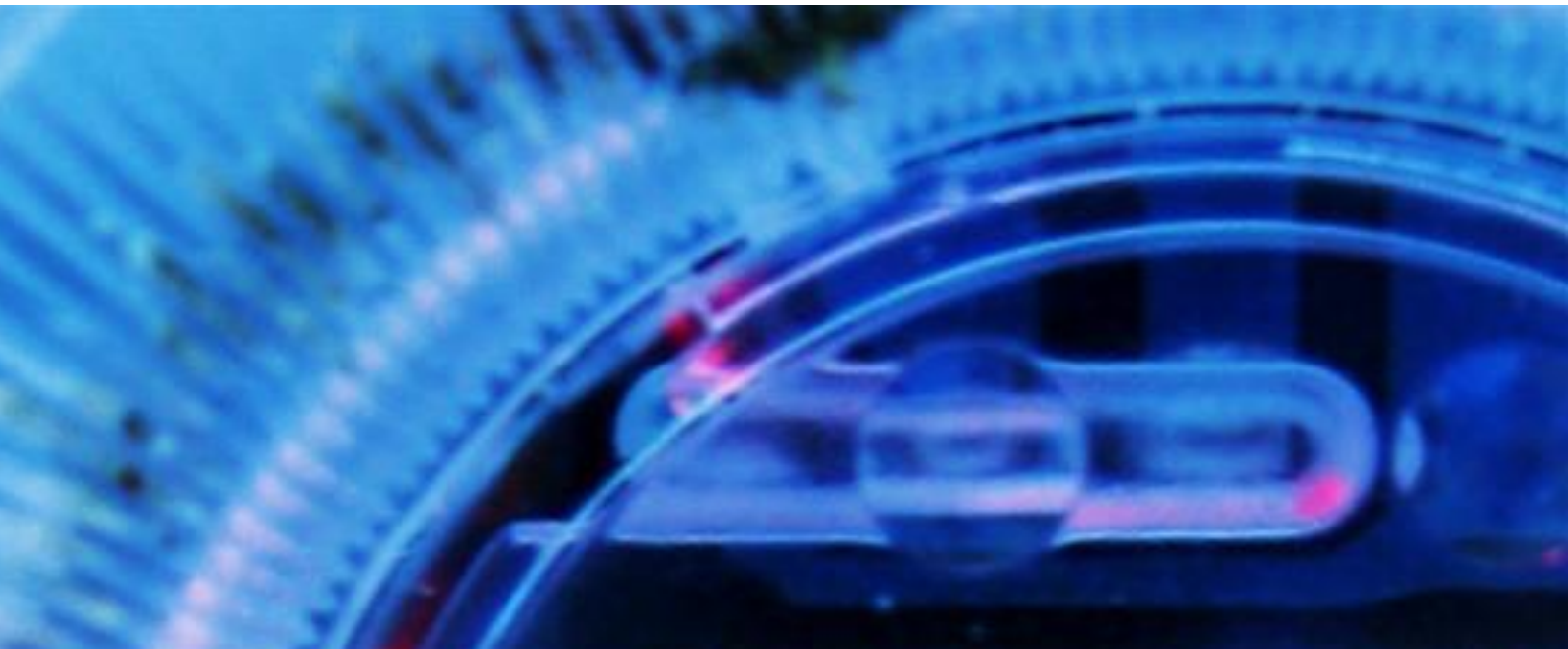
→ NITA Levy Update

The following enhancements have been effected in the online tax portal (iTax) from the month of May 2023 to boost NITA Levy compliance and customer experience by employers:

- PAYE Return has now been simplified to auto calculate the NITA Levy Liability from employees in sheet B and C. This will also enable employers to declare NITA Levy for employees with no PINs where applicable.

- Payment of NITA Levy Arrears through iTax.
- Payment of NITA Levy by Employers with no PAYE Obligation.

It is important for taxpayers to familiarize with the new online PAYE Excel template that auto calculates NITA’s training levy based on the number of employees on the PAYE return.



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This is a general guideline tax and legal alert and should not be a substitute for proper advice. For queries and clarification, kindly get in touch with Rödl & Partner.

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