

**IN THE CARIBBEAN COURT OF JUSTICE**  
**Original Jurisdiction**

**CCJ Application No. OA 003 of 2013**

Between

**RUDISA BEVERAGES & JUICES N.V.**  
**CARIBBEAN INTERNATIONAL DISTRIBUTORS INC**

**Claimants**

And

**THE STATE OF GUYANA**

**Defendant**

**EXECUTIVE SUMMARY**

- [1] Rudisa Beverages, a co-Claimant in this action, is a company based in Suriname which produces beverages packaged in non-returnable containers. These beverages are imported into Guyana and distributed through CIDI Distributor, the other co-Claimant. By section 7 of the Customs Act of Guyana, an environmental levy is imposed on the importation of non-returnable beverage containers. The legislation does not contain any exemption in relation to CARICOM goods. This environmental tax which has been imposed on the Claimant's goods has the effect of raising the cost price on each imported container by GUY\$10. No similar tax is imposed on local producers of non-returnable beverage containers and, by the definition of "Import Duties" laid down in the Revised Treaty of Chaguaramas (RTC), the levy must be regarded as an import duty.
- [2] The effect of the environmental tax was first raised with the Council on Economic Trade and Development (COTED) by the Government of Suriname in a series of meetings spanning the period 2001 - 2012. COTED concluded that in so far as it applied to CARICOM goods the levy was in breach of the RTC. Guyana, in turn, committed itself to take the necessary action to eliminate the discriminatory effect of the environmental tax. Thus in 2013, the Government brought legislation to the National Assembly to amend the Customs Act but the proposal was rejected.

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- [3] The Claimants filed an application with the Court alleging that the imposition of the environmental tax is a breach of the RTC. In particular, they argue that the tax is inconsistent with CARICOM trade policy set out in Articles 78, 79, 87 and 90 of the RTC which provide for the free movement of goods and prohibitions on the imposition of import duties on CARICOM goods. They seek a declaration that the Customs Act violates either Article 87 or 90 of the RTC; an order compelling the State to amend or repeal the legislation to eliminate its discriminatory effect; an order restraining the imposition and collection of the tax and damages.
- [3] Guyana admits that the tax is inconsistent with their obligations under the RTC but notes that the Government has proposed legislation to rectify the discriminatory effect of the environmental tax but the proposed amendment was rejected by the National Assembly. The Government also submits that the aim of the legislation is environmental protection which is a fundamental right under the Constitution of Guyana.
- [4] The Court noted Guyana's admission that the imposition of the tax amounted to a breach of the RTC. It further observed that the explanation provided by the State, namely their inability to pass the necessary legislative amendment to the Customs Act, did not absolve the State from liability for the breach. The State was indivisible for the purposes of liability and had an overarching responsibility to honour treaty obligations. The Court took notice of the need to strike a balance between environmental protection and economic development. However, it emphasised that Article 65 of the RTC does not create an exception to the trade policy spelt out in Chapter Five, the purpose of which is to create "a level playing field for all CSME products." The Court found that Guyana was liable to the Claimants.
- [5] By way of relief, the Court declared that the tax was inconsistent with the RTC and ordered the State to take necessary action to ensure that it was not applied to goods of Community origin. The Court also ordered that the Claimants were entitled to a repayment of the tax which had been paid by them and collected by Guyana. The Court's approach on the issue of re-imburement was informed by *Société Comateb v Directeur*

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*Général de Douanes et Droits Indirects*<sup>1</sup>, namely that where a tax has been improperly collected in breach of a treaty obligation, it must be repaid unless it can be shown that the tax was passed onto to the consumer or a third party. There was no evidence to suggest that the tax was passed on. The documentary evidence as well as the testimony of the Claimants' witnesses demonstrated that the tax was absorbed by the Claimants in order to maintain their competitive edge in the Guyana market. The Court therefore ordered that the Claimants be repaid the sum of US\$6,047,244.47 together with such further tax paid from 25<sup>th</sup> October 2013 to the date of the judgment.

- [6] The Court required that if CIDI did not notify the Court that Guyana had complied with the orders of the Court by 30<sup>th</sup> October, 2014 the State of Guyana shall file with the Court on or before 15<sup>th</sup> November, 2014 a report on its compliance with those orders. Upon the filing of the said report the parties were granted liberty to apply in respect of any matter contained in the said report.

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<sup>1</sup> C192-218/95 [1997] ECR I-165, [1997] 2 CMLR 649. See also in a domestic context *Littlewoods Retail and others v Revenue and Customs Commissioners* C-591/10 [2012] All ER (D) 267, [2012] STC 1714 and *Lady & Kid A/S and others v Skatteministeriet* c-398/09 [2012] All ER (EC) 410, [2012] STC 854.