



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

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The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal

Silverback Technologies CC & Others v Commissioner, South African Revenue Services [2023] ZASCA 128

Today, the Supreme Court of Appeal (SCA) dismissed an appeal from the Gauteng Division of the High Court, Pretoria. The appeal arose from three matters brought by the appellants, Silverback Technologies CC, Omnico (Pty) Ltd and Cytex Cycle Distributors (the appellants), pertaining to the same question of law which was addressed in a single judgment. The appeal revolved around the classification of imported bicycle parts destined for assembly and the related customs duty payable on such imports. Liability for customs duty attached to imported components if they bore the essential characteristics of a bicycle, which was the contention of the respondent, the Commissioner for the South African Revenue Service (SARS). The high court determined that SARS was correct in determining that the goods were liable for import duty and this Court was tasked with determining whether the high court was correct in confirming SARS' determination.

In order to determine whether the imported goods attracted import duties, this Court considered which of the two relevant tariff headings, namely, 8712.00.10 or 8714.9 applied. If the former tariff heading applied, customs duty would be payable and not in the case of the latter. The state of the law in regard to classification of goods for purposes of import duty is well-established: the Court must have regard to the ascertainment of the meaning of the words used in the relevant tariff headings, as well as the nature and characteristics of the goods, and the Court must, in addition, consider the heading which is most appropriate to such goods. In light of these factors, this Court considered the high court's determination that the imported goods were liable for payment of import duty.

Section 47(8)(a) of the Customs and Excise Act 91 of 1964 (the Act) required the Court to also have regard to the accompanying explanatory notes and headings. To this end, the appellants contended that, upon a proper understanding of the tariff headings, the Act and the aforementioned criteria regarding the classification of goods, wheels were the definitive aspect of a bicycle, and because the imported components did not include wheels, they could not constitute an 'essential characteristic' of a bicycle. However, SARS submitted that, in context, the essential character of a bicycle ought rather to be determined with reference to all the components making up the consignments, not only certain components.

To determine the question posed, this Court held that reliance on headings and explanatory notes when classifying goods must be understood as intended to provide explanations and guidance; they were not intended to override or contradict legislation. The Act held that any interpretation shall be subject to the International Convention on Harmonized Commodity Description and Coding Systems adopted in Brussels on 14 June 1983. This Court highlighted that the Harmonized System was the product of international agreements between states and should be interpreted uniformly by our courts. As such, courts are enjoined to interpret the Act and any tariff headings in a manner that is consistent with international law. It held that the expression 'the essential character of a bicycle' must be interpreted

purposely and contextually. The wording of tariff heading 8712.00, as well as the interpretive notes, were clear and unambiguous with regards to an incomplete or unfinished vehicle, namely a bicycle. The tariff heading, as well as the explanatory notes did not refer to a collection of parts constituting a bicycle, but to parts that have the 'essential character' of a bicycle.

Finally, in regard to the expert evidence presented by the parties, this Court, held that it was satisfied that SARS' expert witness possessed sufficient training and experience, and that there was therefore nothing militating against the acceptance of such evidence.

In the result, the SCA dismissed the appeal.

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