



It was common cause that the pipes fall within heading 73.04 of Schedule 1 to the Act. The dispute concerned the correct subheading. The decisive question was whether the pipes were 'line pipe of a kind used for oil or gas pipelines' (TH 7304.19.90), as contended by the appellant, or whether they fell under TH 7304.39.35, as contended by the respondent.

The pipes were described in the import documentation and mill test certificates as carbon steel seamless pipes manufactured to the American Petroleum Institute specification API 5L (grade X42, PSL1). The experts agreed on the composition, dimensions and mechanical properties of the pipes, but differed on whether pipes of that specification and size are of a kind used for oil or gas pipelines.

Coppin JA, writing for the majority of the Court held that the high court erred in its application of the three-stage approach to tariff classification (interpretation of the headings and notes; identification of the goods; and determination of the appropriate heading). It impermissibly confined the meaning of 'of a kind used for oil or gas pipelines' to South African pipeline practice.

The SCA reaffirmed that classification is an objective enquiry based on the nature and characteristics of the goods at the time of importation, not on the importer's intentions or particular local practices. The SCA further held that there is nothing in the wording of TH 7304.1 that limits 'pipelines' to long-distance or high-volume systems in the South African context.

The SCA found that the pipes complied with the API 5L specification, a standard applicable to pipes used for the conveyance of oil and gas. The fact that they were of a lower strength grade (X42) or smaller diameter than those used in certain major pipeline projects did not disqualify them from being 'of a kind used' for oil or gas pipelines. The SCA held that suitability depends on design requirements and operating pressures, which may vary.

The SCA concluded that the pipes are seamless steel line pipes of a kind used in oil or gas pipelines and are properly classified under TH 7304.19.90. The SCA upheld the appeal with costs, including the qualifying expenses of the appellant's expert and set aside the order of the high court.

A separate minority judgment was penned by Matojane JA, who disagreed with the majority judgment but accepted the general legal framework for classification. Matojane JA held that in his view, the Commissioner erred in classifying these seamless carbon steel pipes under TH 7304.19.90 as 'line pipe of a kind used for oil or gas pipelines' and found the high court was right to set that determination aside. The minority held that compliance with the API 5L standard alone does not bring a pipe within TH 7304.1. In its view, the phrase 'of a kind used

for oil or gas pipelines' identifies a genus of goods defined by objective characteristics associated with oil and gas transmission pipelines.

Relying on expert evidence, it concluded that oil and gas transmission pipelines typically operate under high pressure and require higher-strength grades (such as X60 or X70). The X42 pipes in issue were, suited to lower-pressure industrial applications rather than oil or gas transmission pipelines. He therefore considered TH 7304.39.35 to be the correct classification and would have dismissed the appeal with costs.

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