



THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal
Date: 23 March 2010
Status: Immediate

Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal.

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3M South Africa v Commissioner for the South African Revenue Service

The Supreme Court of Appeal today upheld in part an appeal by 3M South Africa against a decision of the North Gauteng High Court in an application against the Commissioner for the South African Revenue Service. 3M is an importer of Interam Brand mats, which are made up, inter alia, of ceramic fibre mineral wool which is used, after press-cutting thereof into shapes, in the manufacture of automotive catalytic converters for exhaust emission control systems. All such converters were destined for the export market.

In April 1991 the Commissioner, acting in terms of the provisions of the Customs and Excise Act 91 of 1964, determined a tariff heading under which the mats were categorised, attracting customs duty at a rate of 20%. It is common cause that this

determination was incorrect and that it should have been categorised under a different tariff heading, with the effect that no customs duty was payable. The incorrect determination was eventually corrected many years later, in November 2006 with effect from April 1991.

In terms of s 76B of the Act, 3M was entitled to refunds in respect of customs duty paid during the period of two years preceding the 'date of the (new) determination'. Arguing that this expression refers to the 'effective date' of the new determination, 3M claimed to be entitled, in principle, to claim refunds dating back to April 1989. The high court dismissed this argument, holding that 3M's claim for refunds was limited to the period of two years immediately preceding the date when the new determination was made, ie November 2006. The SCA agreed with this interpretation and dismissed that part of the appeal.

The Commissioner, however, also claimed to be entitled to unpaid customs duty in respect of the period 1 November 2000 to 1 February 2002 in an amount of R11,9 million, arguing that in terms of the Act such amount remained payable 'as long as the (first) determination remains in force'. The high court ruled in favour of the Commissioner on this aspect. On appeal, the SCA overturned this finding on the basis that the Commissioner's amended determination, made in November 2006, was made with retrospective effect from April 1991, with the result that no import duty was payable as from that date. The SCA accordingly issued a declaratory order to the effect that the amount of customs duty and interest thereon, demanded from 3M by the Commissioner, is not payable. The SCA also ordered the Commissioner to pay the costs of the appeal.

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