



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT
OF APPEAL

29 March 2011

STATUS: Immediate

**COMMISSIONER, SOUTH AFRICAN REVENUE SERVICE v MULTICHOICE
AFRICA (PTY) LTD AND ANOTHER**

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

1. The SCA today held that for purposes of tariff classification in terms of Schedule 1 to the Customs and Excise Act, 91 of 1964, a decoder has a principal function which is the reception of a television signal. It should therefore be classified under tariff heading 8528.12.90 of Part 1 of the said Schedule.

2. The Commissioner for Customs and Excise had classified the decoder under the aforementioned heading, but on appeal to the North Gauteng High Court, Pretoria, the determination was set aside and the Commissioner was ordered to reclassify the decoder under tariff heading 8479.89.90. On appeal, the SCA held that tariff heading 8479.89.90 was not appropriate, since on the facts agreed between the parties' respective experts, decoders cannot be mechanical devices since they do not have any moving parts. Tariff heading 8479.89.90 applies to machines and mechanical appliances.

3. The SCA held further that the decoder can also not be classified under Tariff Heading 85.43 since this heading applies to machines and devices with individual functions which a decoder is not, as conceded by one of the respondents' expert witnesses.

4. The SCA held that an *ad valorem* excise duty of 7% is payable on the decoder in terms of Tariff Item 124.75 of Part 2B of Schedule 1 to the aforementioned Act. It held that the word 'reproducing' in the Item is a clear mistake on the part of the Legislature which, if literally interpreted, leads to a glaring absurdity and repugnance in the enactment. The word 'reproducing' should therefore read 'reception' in Item 124.75.

5. The appeal by the Commissioner was therefore upheld with costs and the Commissioner's original determination was confirmed.

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