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Indirect Tax | Global Trade Advisory

Navigation Bar



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Highlights



Tariff
Amendments



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Highlights

This edition of TradeSmart highlights:

- **Tariff classification**

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Tariff classification – HMT Projects (Pty) Ltd vs The Commissioner for the SARS (7215/2018) [2020] ZAGPPHC 143 (14 April 2020)

[Introduction](#)

Tariff classification is deemed to be one of the most complex and contentious topics governed by the Customs and Excise Act, 1964 (Customs Act). It refers to the classification of goods in terms of, the [Harmonized Commodity Description and Coding System](#) under the World Customs Organization (WCO) Harmonised System Convention, which has also issued general rules of interpretation that are used as a guide in the correct classification of goods.

All import and export transactions require the goods on customs declarations to be classified, according to the appropriate tariff heading (TH), to determine the correct rate of customs duty, import and export restrictions, as well as whether goods are subject to antidumping or safeguard duties.

The case of *IBM SA (Pty) Ltd v CSARS 1985 (4) SA 852* set out the three stages of tariff classification, which are:

1. The interpretation of the meaning of the words used in the headings which may be relevant to the classification of the goods concerned
2. A consideration of the nature and characteristics of those goods
3. The selection of the heading which is most appropriate to such goods.

Another recognised principle of tariff classification was founded in the case of *CSARS v Komatsu 2007 (2) SA157 (SCA)*, where it was held that the decisive criterion in tariff classification is the objective characteristics and properties of the goods as determined at the time of their presentation for customs clearance.

Judgment was recently handed down in the case of *HMT Projects (Pty) Ltd vs The Commissioner for the SARS (7215/2018) [2020] ZAGPPHC 143 (14 April 2020)* in the High Court of South Africa (Gauteng Division, Pretoria), wherein the above principles was taken into account.

Facts

The matter originated from a tariff appeal, in terms of section 47 (9)(e) of the Customs Act, where HMT Projects (Pty) Ltd (HMT Projects) disputed a tariff determination made by the South African Revenue Service (SARS) regarding the importation of seamless carbon steel pipes.

HMT Projects contended initially that the seamless carbon steel pipes be classified under tariff subheading (TSH) 7304.39.35, which is headed as “*Other: Of a wall thickness exceeding 25 mm or an outside cross-sectional dimension exceeding 170 mm*”. However, when the matter reached court, HMT Projects changed their view and argued that the seamless carbon steel pipes should be classified under TSH 7304.59.45, which is headed “*Other: Of a wall thickness exceeding 25 mm or an outside cross-sectional dimension exceeding 170 mm. Both the TSHs were free of duty*”.

SARS always maintained the view that TSH 7304.19, which is headed “*Line pipe of a kind used for oil or gas pipelines, other*”, attracts 15% customs duty.

Issue

The issue related to the tariff classification of the seamless carbon steel pipes, which Davis N used the three stages of tariff classification found in *IBM SA (Pty) Ltd v CSARS*.

Application

The interpretation of the meaning of the words used in the headings

It was common cause that the pipes were used to convey petroleum or gas, as both parties agreed on TH 73.04, headed "*Tubes, pipes and hollow profiles, seamless, of iron (excluding cast iron) or steel*". The dispute lay in the definition of "pipeline".

In resolving the dispute, Davis N first looked at the dictionary definition of "pipeline" and found that distance of a pipeline is not a determinative factor when defining a "pipeline", despite the arguments of HMT Projects that the mining and petrochemical industry do not use piping over a long distance. As a result, Davis N found that a pipe used in a pipeline appears to be a continuous line of pipes, constructed to form a pipeline for the conveyance of gas or petroleum.

Consideration of the nature and characteristics of goods

As stated previously, there was no dispute regarding the fact that the pipes in question are used to convey petroleum or gas. The issue was around the fact HMT Projects are of the view that because the pipes have dual certification, it excludes them from kinds of pipes used for pipelines.

Davis N found that the dual certification did not detract away from the fact the characteristics of the seamless carbon steel pipes being pipes as kind used for oil and gas pipelines.

Applicable tariff heading

Davis N stated that "pipeline" is not a technical term that only an expert in the field would be able to explain, or interpret its meaning. TSH 7304.19 is very specific as opposed to the TSH suggested by HMT Projects.

The purpose for which goods are imported is not a determinative factor, but rather the objective characteristics of the goods, at the time of import is. As a result, the pipes have the characteristics of pipes used for pipelines and satisfy the specifications generally applicable to such pipes.

Ruling and conclusion

Davis N ruled that the applicable TSH is 7304.19 in favour of SARS. The basis of his ruling was as follows:

- a. The characteristics of the pipes are applicable to general specifications of pipes
- b. The fact that the pipes have dual certification is irrelevant and this cannot outweigh the essential character of the pipes.

Key findings

Davis N highlighted that the time of importation it is generally irrelevant the intention, or purpose, for which the importer is importing the goods. The key aspect is the objective characteristics of the goods which determine their applicable TSH. This is notably a common error that is made by importers, and an easy mistake that could be made.

Tariff classification is known to be a mine field, and correctly classifying goods can be of grave difficulty especially when there are complex rules surrounding the classification of goods.

In addition, Davis N emphasised that the essential characteristics of imported goods is key when classifying them. The fact that the imported goods may have ancillary applications in respect of their specifications is irrelevant.

This case is considered important as it confirms the three-step process of tariff classification succinctly and assists with highlighting the key aspects when classifying goods.

For more details on the case, visit the [SARS website](#).

Contact us

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