IN THE HIGH COURT OF SOUTH AFRICA
(TRANSVAAL PROVINSIAL DIVISION)

CASE NO: 13975/2001

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: ~~YES~~/NO
(2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO
(3) REVISED.
DATE 6/12/04 SIGNATURE

IN THE MATTER BETWEEN

TELKOM SA LIMITED **Applicant**

and

THE COMMISIONER FOR THE SOUTH AFRICAN REVENUE SERVICES **Respondent**

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JUDGMENT

**BERTELSMANN J**

The respondent is responsible for the collection of customs duty upon goods which are imported into South Africa and are classified in terms of Schedule 1 of Act 91 of 1964 as being liable to such duties.

The applicant is the provider of telephone and telecommunication services to the Republic of South Africa.

In order to fulfil its function in this regard it *inter alia* imports technology known as "TELPLUS VE DIGITAL PAIR GAIN SYSTEM" ( "the Telplus System"), from Australia.

This system is used in instances where additional lines of the existing telephone system cannot be installed. The Telplus System is added to the existing installation to increase the capacity of telephone exchanges. It is described in the papers as "a cable enhancement system", designed to allow more than one subscriber to utilise one physical copper pair of wires simultaneously.

The system comprises four (4) or five (5) components. Those which are principally used are:

1. an exchange shelf;
2. an exchange unit;
3. a remote unit;
4. front-end interface unit.

The components are not sold as a unit. They are sold individually, bought and imported individually, apparently to enable the applicant to exchange a whole unit if a part thereof should break, rather than to have to open the unit and to laboriously replace one of the parts of which it consists.

It is common cause that the units exist of a whole range of minute individual parts, components mainly constructed of metal that are mounted on boards or cards.

The various units cannot function alone. They are connected to one another by cables and, operating together, enable the connection between two users or subscribers to a telephone system to be made.

When the units were imported, the respondent made a tariff determination in respect of the exchange shelf, the exchange unit, the remote unit and a Telplus repeater, which were determined to be classifiable under tariff heading 8517.50 of Schedule 1 of the Act. This classification attracts customs duty.

The front-end interface unit was classified under tariff sub-heading 8543.89 and did not attract customs duty.

The applicant does not appeal against this latter decision. Applicant does, however, attack the issue of the classification of the other units and contends that the first two should be classified under tariff heading 8517.90.90, whereas the third should be classified under tariff heading 8543.89. In all these instances, the imported units would not attract customs duty.

" Schedule 1 of the Act sets out the rates of duty payable on the vast variety of goods which are the subject of international trade. Goods are systematically grouped in sections, chapters and subchapters. The titles to these divisions are provided for ease of reference only. The interpretation of the Schedule for purposes of classification must be effected, first, with reference to the headings and sub-headings falling under the chapters

a id sub-chapters. These headings give brief descriptions of the goods. The second source o' interpretation is the notes to each section or chapter. These notes are a guide to ir terpretation. The Schedule also includes some general rules and notes for the purposes o' classification. What I have said about the process of classification may be derived fr om the Schedul e itself, as also the lucid description of it by Trollip JA and Miller AJA in ***Secretary for Customs and Excise v Thomas Barlow & Sons Limited 1970 (2) SA 6t0 (A).*** Once a meaning has been given to the potentially relevant words, and the nature and characteristic s of the goods have been considered the heading most appropriate to su:h goods must be selected: ***International Business Machines SA (Pty) Limited v Commissioner fo Customs and Excise 1985 (4) SA 852 (A) at 863 G – H.*** For the pu poses of answe ring the questions in this appeal no more need be said on the law." Schutz JA in ***Commissioner for Customs and Excise v Capital Meats CC (in liq.idation) and another 1999 (1) SA 570 (SCA) 573 A to E.***

I respectfully adopt this concise and pithy description of the purpose of the Act and the Schedule.

The actual classific ation of goods can be a difficult exercise, but "the goods are to be clas ified not by re erence to one or other component but by reference to the nature and characteristics of th e goods as a whole." ***Per Nugent JA in The Heritage Collection (Pty) Limited v Co mmissioner, South African Revenue Services 2002 (6) SA 15 (A) on 21C to D.***

The first Schedule to the Act contains general rules for the interpretation thereof. These determine primarily that the titles of sections, chapters and sub-chapters are provided for ease of reference only. For legal purposes classification must be determined according to the terms of the headings and any relative section or chapter notes. Generally speaking, an article is referred to in headings both as a complete, incomplete and unfinished article. Headings providing the most specific description must be preferred to headings providing more general descriptions.

The essential dispute between the parties is whether the contested items were correctly classified under tariff sub-heading 8517.50, as " other apparatus, for carrier current line systems or for digital line systems" and whether they should have been classified as "parts" under heading 8517.90

The respondent, as has been stated above, regarded the items concerned as apparatus for "carrier- current line systems" or "digital line systems". This is explained in the note to the heading 8517.

" The term 'electrical apparatus for line telephony or line telegraphy' means apparatus for the transmission between two points of speech or other sounds (...) by variation of an electric current or of an optical wave flowing in a metallic or dielectric (...) circuit connecting the transmitting station to the receiving station.

The heading covers all such electrical apparatus designed for this purpose, including the special apparatus used for carrier - current line systems."

At first blush, it appears to me that the description of the Telplus System falls squarely within this definition.

Not so, argued Mr Dunn SC for the applicant with conviction. The definition of an "apparatus" is "things collectively necessary for the performance of some activity or function; the equipment used in doing something, a machine, a device". Or "equipment used for scientific experimentation or processes, a complex device or machine for a particular purpose: an x-ray apparatus or an integrated assembly of tools, appliances, instruments etcetera operating to achieve a specified result." B

These quotations from the New Shorter Oxford English Dictionary and the Webster Comprehensive Dictionary, are, in as much as they fit in to the heading of the tariff and its sub-headings, indicative of the function of these items.

Mr Dunn suggested that an apparatus was a device that could and did in fact perform a function independently of other devices. Consequently, so the argument ran, the items concerned could never constitute apparatus, as they could not function individually. Only when finally assembled could they perform the function for which they had been designed and could only in the assembled state, be classified as an apparatus.

Consequently the applicant suggested that the individual items should be regarded as parts. The individual components from which the imported items had been constructed as units should be regarded as a sub-assemblies or sub-parts.

I regret that I find this argument unattractive. The tariff heading does not suggest that an apparatus must a ways be able to function independently. On the contrary, the explanatory note specifically has the function of a combination of different machines or devices in mind, is it would be virtually impossible to envisage a telephonic device transmitting sound without having a sender and a receiver unit connected to one another either by cable o optical or radio wave.

Applying the test laid down in the authorities to which I have been referred by both parties, and in particular ***IBM v Commissioner for Custom and Excise 1985 (4) SA 852 (A) at 863 G to 864 C; Secretary for Custom and Excise v Thomas Barlow & Sons Limited 1970 (2) SA 660 (A) at 676 C to E*** , I am of the view that it is clear that the items in question have been placed in the correct heading by the respondent. The mere fact that they are replaced in unit form if any component part thereof should cease to operate properly, and that consequently only complete units of the various items are imported, is a function the commercial niceties of marketing and servicing the Telplus System, but is not a feature that affects the identification of the proper tariff heading under which the apparatus has to be classified. The items concerned are no parts, they are apparatus functioning when joined together. Under the circumstances I am of the view that the respondent's determination is correct and that the application must fail.

The fact that the applicant amended the relief it sought in respect of the repeater, relying upon a different section in which it should have been classified, cannot alter the result.

The application is dismissed with costs, such costs to include the costs of two counsel.

**E BERTELSMANN**
**JUDGE OF THE HIGH COURT**