



**IN THE HIGH COURT OF SOUTH AFRICA  
(GAUTENG DIVISION, PRETORIA)**

Case no: **74019/2016**

In the matter between:

**SILVERBACK TECHNOLOGIES CC**

**APPLICANT**

And

**THE COMMISSIONER FOR THE SOUTH AFRICAN  
REVENUE SERVICES**

**RESPONDENT**

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Case no: **13891/2017**

In the matter between:

**OMNICO (PTY) LTD**

**APPLICANT**

And

**THE COMMISSIONER FOR THE SOUTH AFRICAN  
REVENUE SERVICES**

**RESPONDENT**

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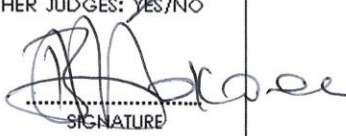
Case no: 15052/2017

In the matter between:

**CYTEK CYCLE DISTRIBUTION CC****Applicant**

And

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

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED.
31/11/22	
DATE	SIGNATURE

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### JUDGMENT

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**MOKOENA AJ****INTRODUCTION**

- [1] These three matters came before me as appeals in terms of Section 47(9) of the Customs and Excise Act, 91 of 1964 ("the Act"). Accordingly, they constitute a complete re-hearing of the matters and the Parties were entitled to present additional evidence or information to enable the Court to determine the merits of the matters.
- [2] It is common cause that because the issues for determination in these matters overlapped, it was convenient that all these matters must be heard together. This was also in compliance with the directive issued by this Court that the matters should be combined and heard together in one sitting<sup>1</sup>. The Parties in their submissions referred mainly to the Silverback matter.

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<sup>1</sup> Joint Note 454 paras 1 to 3.

- [3] The Applicant then bought an application to amend prayers 1 of the Notice of Motion in the Silverback matter to read consistently with the other two matters. The application was not opposed. Tariff Heading Number "8714.91" was accordingly amended to read "8714.9". The Applicant subsequently abandoned prayers 2 of its Notice of Motion.
- [4] Counsel for the Applicant further placed on record that the Applicants have no objection to the Respondent's filing of its additional affidavit in the Omnico matter. In addition, the Parties agreed that the applications to strike out the expert evidence of Mr. Du Toit, must be dealt with as part of the overall argument.
- [5] The Applicants in all these matters import and distribute bicycles and bicycles parts and the Respondent is empowered by the Act to determine custom duty payable on those goods. In carrying out that statutory duty, the Respondent is guided by various schedules in the Act to classify those imported goods for purposes of tariff determination.
- [6] In the Silverback matter and in terms of the bill of entry number "5036029" dated 31 July 2015 with invoice number "TD15070 16A", the Applicant imported a consignment of bicycle parts of four different models packed in accordance with the old packing method. These parts consisted of<sup>2</sup>:-
- *Frame;*
  - *Fork;*
  - *Front derailleur;*
  - *Handlebar;*
  - *Complete brake set (i.e brake levers, cable broke blocks and callipers);*
  - *Stem;*
  - *Grip;*

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<sup>2</sup> Respondent's Answering Affidavit p292 para 11 [See also: Applicant's Replying Affidavit p359 para 6].

- *Crank set(Chainwheel and the two pedal arms);*
- *Shifters;*
- *Bottom bracket parts("BB parts");*
- *Saddle;*
- *Seat post."*

[7] It is common cause that the Applicant entered these bicycle parts under Tariff Heading 8714.9 ('TH8714.9') as frames and forks and parts thereof and the Respondent determined them under Tariff Heading 8712.00 ('TH8712.00') as bicycles and other cycles (including delivery tri-cycles), not motorised.

[8] In respect of the Omnico matter, the Applicant imported a consignment of bicycle parts using two different packing methods referred to as "Box 1" or "Scenario 1" and "Box 2" or "Scenario 2". "Box 1/ Scenario 1" consisted of the following<sup>3</sup>:-

- *"Frame;*
- *Fork;*
- *Handlebar, Handlebar and Stem head;*
- *Brake set;*
- *Gear set (gear lever, cables and front derailleur);*
- *Parts of crank – gear (cranks, crank arms and chain ring bolts)."*

[9] "Box 2/ Scenario 2" consisted of the following bicycle parts:-

- *"Frame;*
- *Fork;*

<sup>3</sup> Respondent's Answering Affidavit p120-121 para 11-12 [See also: Applicant's Replying Affidavit p207 para 10].

- *Handlebar; handlebar and stem;*
- *Brake set."*

[10] All these parts were imported individually under TH87.14 and the Respondent classified them under TH8712.00 by application of the General Rule of Interpretation 2(a) ('GIR 2(a)').

[11] With regard to the Cytec matter, the Applicant on 12 January 2016 imported bicycle parts under different packing methods referred to as "*Scenario 1*" and "*Scenario 2*" under bill of entry number "*5008464*"

[12] On 7 March 2016, the Respondent issued a tariff determination under TH8712.00. It arrived at that determination by application of GIR 2(a) and classified those parts under TH8712.00 as it alleged they embodied the '*essential character*' of complete bicycles.

[13] In "*Scenario 1*" the bicycle parts consisted of<sup>4</sup>:-

- *"Carbon frame(including headset);*
- *Carbon fork;*
- *Alloy stem;*
- *Alloy handlebar(including tape);*
- *Shimano gear shifter;*
- *Rear brake calliper (Including gear);*
- *Cables (complete gear and brakes);*
- *Battery (Including sensor and charger).*

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<sup>4</sup> Respondent's Answering Affidavit p122-123 para 10 [**See also:** Applicant's Replying Affidavit p207 para 3].

[14] In respect of "Scenario 2" the bicycle parts consisted of<sup>5</sup>:-

- *Allow Frame (Including a rear shock);*
- *Suspension fork;*
- *Handlebar (Including grips);*
- *Shimano shifters;*
- *Brake and gear levers; and*
- *Cables (complete gear and brake); and*
- *Brake Callipers."*

[15] The issues to be decided are framed in the Parties' Joint Practice Note in the Silverback matter as follows:-

- *"Whether the products, as presented upon importation, are bicycles as such or parts and accessories of bicycles.*
- *The dispute hinges, to a large extent, on the proper interpretation and application of General Interpretive Rule 2(a). The aforementioned enquiry involves ascertaining what the essential character of a bicycle is, and whether the parts imported by the Applicant, if assembled, have the essential character of a bicycle<sup>6</sup>."*

[16] The Applicants contend that the bicycle components it presented upon importation were not bicycles as such but parts and accessories of bicycles and should be classified under TH8714.9 which does not attract custom duty. The Respondent disagree. It contents that by application of GRI 2(a), the various configurations of those parts embody the 'essential character' of a complete bicycle and thus falls to be classified under TH8712.00.

<sup>5</sup> Respondent Answering Affidavit p123 para 12 [See also: the Applicant's Replying Affidavit p207 para 5].

<sup>6</sup> Parties Joint Practice Note p447.



- [17] I must say that this matter raises some complex questions which I believe the Parties appreciate. I am grateful to Counsels for their respective submissions of their Supplementary Heads of Argument which reached me on 08 June 2021 and 06 July 2021 respectively. I now turn to consider the Tariff Headings and the statutory framework of classification of bicycle components for tariff determination.
- [18] It is common cause that the Tariff Headings applicable in these matters are the following<sup>7</sup>:-

<b>8712.00</b>	<b>Bicycles and other cycles (including delivery tri-cycles), not motorised:</b>
8712.00.10	Bicycles
<b>87.14</b>	<b>Parts and accessories of vehicles of headings 87.11 to 87.13:</b>
<b>8714.9</b>	<b>Other:</b>
8714.91	Frames and forks, and parts thereof
8714.92	Wheel rims and spokes
8714.93	Hubs (excluding coaster braking hubs and hub brakes), and free-wheel sprocket wheels
8714.94	Brakes, including coaster braking hubs and hub brakes, and parts thereof
8714.95	Saddles
8714.96	Pedals and crank-gear, and parts thereof
8714.99	Other

<sup>7</sup> Applicant's Founding Affidavit (Silverback matter) p25 para 55.

- [19] The interpretation of the Tariff Headings are regulated by the provisions of Section 47(8)(a) of the Act which reads:-

*"The interpretation of —*

- (i) *any tariff heading or tariff subheading in Part 1 of Schedule No. 1*
- (ii) *...*
- (iii) *the general rules for the interpretation of Schedule No. 1; and*
- (iv) *every section note and chapter note in Part 1 of Schedule No. 1,*

*shall be subject to the International Convention on the Harmonized Commodity Description and Coding System done in Brussels on 14 June 1983 and to the Explanatory Notes to the Harmonized System issued by the Customs Co-operation Council, Brussels (now known as the World Customs Organization) from time to time."*

- [20] In **Unilever SA (Pty) Ltd and another v Commissioner for Customs & Excise** this Court express itself on the provisions of this section as follows<sup>8</sup>:-

*"As some Countries, including the United States of America, adhered to their own Classification Systems, and, because of differences in Classifications locally, a so-called Harmonized Commodity Description and Coding System (...) became open for signature in 1984 and has been adopted and signed by many Countries including South Africa. The harmonised system is designed to facilitate uniform interpretation and application throughout the world of customs tariffs. The explanatory notes to the harmonised system constitute the official interpretation of that system (...). South Africa has incorporated the harmonised system for the purpose of Schedule 1 of the Act which came into effect on 1 January 1988 pursuant to Notice R2228 published in the Government Gazette 10865 of 6 November 1987. In terms of Government Notice R2569, published in Government Notice 11037 on 20 November 1987, the explanatory notes became effective in the Republic of South Africa on 1 January 1988 for the purpose of section 47(8) of the Act."*(emphasis added).

<sup>8</sup> [2002] 3 All SA 563(T) at 565d.



- [21] What stands out in **Unilever** is that the interpretation of any Tariff Heading or Sub-heading of Schedule No.1 of the Act are subject to the uniform interpretation of the explanatory notes to the harmonised system and as applied throughout the world.
- [22] I must however emphasise that this Court is not bound by any foreign decision which is inconsistent with international practice; our constitutional values and principles and which offends the principle of uniformity. The importance of this principle in States' relations is well captured by the Respondent in its Supplementary Heads of Argument by reference to a passage in **Commissioner for The South African Revenue Service v Toneleria Nacional RSA (Pty) Ltd ("Toneleria Nacional")** which reads<sup>9</sup>:-

*"The Harmonized System is a product of international agreements between states, and like any international agreement it should as far as possible be interpreted uniformly by national courts. It should not be subject to an approach to interpretation the proper purview of which is purely domestic legislation."*

- [23] Furthermore, this Court cannot abrogate its powers and duty to experts to interpret legislations. The general principle is articulated in **International Business Machines SA (Pty) Ltd v Commissioner of Customs and Excise** as follows<sup>10</sup>:-

*"... questions of interpretation of the documents are matters of law and belong exclusively to the court. On such questions the opinion of witnesses, however eminent or highly qualified, are (except in regard to words which have a special or technical meaning) inadmissible (...). So, subject to the exception mentioned, the courts do not receive opinion evidence, either as to the meaning of a statutory provision [...], or a patent specification or any other documents."*

<sup>9</sup> Respondent's Supplementary Heads of Argument para 6.

<sup>10</sup> 1985(4) SA 852(A) at 863G-H.

- [24] I must say that even if experts were called by the Court to express their opinion on the meaning to be attributed to words which have a 'special' or 'technical' meaning, the Court would not be bound to accept that opinion except where the facts upon which the experts based their opinion are reconcilable with all other evidence and or the facts of the case<sup>11</sup>.
- [25] This approach to admissibility of expert evidence is in my view applicable to the opinion which may be expressed by the Harmonised System Committee of the World Trade Organisation on tariff matters.
- [26] In this matter the dispute is not all about the 'special' or 'technical' meaning of a bicycle. It is common cause that a bicycle for purposes of "TH8712 .00." is a vehicle with a tubular metal frame mounted on two spoked wheels one behind the other<sup>12</sup>.
- [27] The explanatory notes to "TH8712" reads:-

*"An incomplete or unfinished vehicle is classified as the corresponding complete or finished vehicle provided it has the essential character of the latter (See: Interpretation Rule 2(a)), as for example:*

(A) ....

(B) ....

(C) A bicycle without saddle and tyres.

*This chapter also covers parts and accessories which are identifiable as being suitable for use solely or principally with the vehicles."*

<sup>11</sup> Glenn Marc Bee v The Road Accident Fund: (093/2017)[2018] ZASCA 52 (29 March 2018) paras 22 to 23.

<sup>12</sup> Respondent's Heads of Argument p423 paras 41 and 43.

[28] GRI 2(a) reads:-

***“Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also taken to include a reference to article complete or finished (or falling to be classified as complete or finished by virtue of this rule), presented unassembled or disassembled.”***

[29] The notes to GRI 2(a) reads:-

- (i) *“The first part of this Rule 2(a) extends the scope of any heading which refers to a particular article to cover not only the complete article but also that article incomplete or unfinished, provided that, as presented, it has the essential character of the complete or finished article.*
- (ii) ....
- (iii) ....
- (iv) ....
- (v) *The second part of Rule 2(a) provides that complete or finished articles presented unassembled or disassembled are to be classified in the same heading as the assembled article. When goods are so presented, it is usually for reasons such as requirements or convenience of packing, handling or transport.*
- (vi) *This Rule also applies to incomplete or unfinished articles presented unassembled or disassembled provided that they are to be treated as complete or finished articles by virtue of the first part of this Rule.”*

[30] It is clear from the reading of GRI 2(a) together with the notes that GRI 2(a) only apply in respect of the classification of *incomplete or unfinished articles* for determination of custom duty payable on those articles.

- [31] In **Toneleria** the Supreme Court of Appeal addressed the interpretation of Tariff Headings and the classification process in the following manner<sup>13</sup>:-

*"The proper approach to questions of classification between different headings is well established. It follows a three-stage process: 'Classification as between headings is a three-stage process: First, interpretation - the ascertainment of the meaning of the words used in the headings (and relative section and chapter notes) which may be relevant to the classification of the goods concerned; second, consideration of the nature and characteristics of those goods; and third, the selection of the heading most appropriate to such goods.'"*

- [32] The Court went further to deal with the interpretation of Section 47(8)(a) of the Act. It referred with approval to **Secretary for Customs and Excise v Thomas Barlow and Sons Ltd** and said<sup>14</sup>:-

*"The Explanatory Notes do not have an overriding function, in that the primary task of the court is to ascertain the meaning of the relevant headings and section and chapter notes, but they are a helpful guide in explaining or perhaps supplementing the headings, without overriding or contradicting them."*

- [33] I deem it necessary to quote the relevant passage in **Barlow**. It reads<sup>15</sup>:-

*"... the primary task in classifying particular goods is to ascertain the meaning of the relevant headings and section and chapter notes, but, in performing that task, one should also use the Brussels Notes for guidance especially in difficult and doubtful cases. But in using them one must bear in mind that they are merely intended to explain or perhaps supplement those headings and notes and not to override or contradict them. They are manifestly not designed for the latter purpose, for they are not worded with the linguistic precision usually characteristic of statutory precepts; on the contrary they consist mainly of discursive comment and illustrations. And, in any event, it is hardly likely that the Brussels Council intended that its Explanatory Notes should contracting its own Nomenclature. Consequently, I think that in using the Brussels Notes one must construe them so as to conform with and not to override or contradict 'the plain meaning of the headings and notes'. If an irreconcilable conflict*

<sup>13</sup> *Toneleria*, supra, para 4.

<sup>14</sup> *Toneleria*, supra, ft.8.

<sup>15</sup> 1970(2) SA 660(AD) at 676B-E.



between the two should arise, .... then possibly the meaning of the headings and notes should prevail, because, although sec. 47(8)(a) of the Act says that the interpretation of the Schedule 'shall be subject to' the Brussels Notes, the latter themselves say in effect that the headings and notes are paramount, that is, they must prevail"(emphasis added).

- [34] It is clear from the foregoing that *incomplete* or *unfinished* articles are to be classified as complete articles provided they have the 'essential character' of the complete or finished articles (emphasis added).
- [35] The question is how to determine the 'essential character' of *incomplete* or *unfinished articles* for purposes of "TH8712.00". This question is quite relevant in the second stage of the three-stage classification process of articles.
- [36] The Supreme Court of Appeal in **Commissioner, South African Revenue Services v Komatsu Southern Africa (Pty) Ltd** answered this question and said: 'The 'essential character' of the machine is determined by having regard to the purpose for which the machine was designed; linked to this is the ascertainment of the principal function of the machine.'<sup>16</sup> (emphasis added).
- [37] In **Commissioner, South African Revenue Service v LG Electronics SA (Pty) Ltd** the Supreme Court of Appeal endorsed the approach followed in **Autoware (Pty) Ltd v Secretary for Customs and Excise** in addressing this question. It quoted with approval what Colman J said in **Autoware (Pty) Ltd v Secretary for Customs and Exercise**.<sup>17</sup> The relevant passage in **Autoware** reads<sup>18</sup>:-

<sup>16</sup> 2007(2) SA 157 (SCA) at 162D.

<sup>17</sup> 2012(5) SA 439 (SCA) at 446F-H.

<sup>18</sup> 1975(4) SA 318 (W) at 327G-H.

*"... it seems to me, [the issue] must be decided on the basis of the presence or absence, in the unmodified vehicles, of the essential feature or components of a station wagon. ... What I mean by an essential feature of a station wagon is not a feature which is important, for one reason or another, or even one which is necessary for the proper functioning of a station wagon. I mean a feature which is essential in that it embodies the essence of a station wagon, and differentiates such a vehicle from others which are not station wagons." (emphasis added).*

[38] In as much as the Supreme Court of Appeal in **LG** endorsed the approach followed in **Autoware**, it did not reject or dismissed the approach followed in **Komatsu** in deciding this question. The approach followed in **Komatsu** was followed in **Toleneria**<sup>19</sup>.

[39] In addition, **Autoware** is distinguishable to this matter in that the issues the Court was engaged with are quite different to the issues to be decided upon in this matter. This is what Colman J said in **Autoware**<sup>20</sup>:-

*"As I see the matter, it will be for the Court to determine, on objective consideration, whether or not the applicant, by a process of a manufacture (as defined in the Act), converted something which was not a station wagon into a station wagon."*

[40] From the reading of that passage, it is clear that the Court in **Autoware** was not asked to decide the question of classification of imported articles as in this matter. It rejected the evidence of the Commissioner pertaining to that aspect as of no relevance to the issues before it. In that respect, the question as to the purpose of the article in dispute did not arise. Colman J quoted with approval what was held in **Mincer Motors Ltd v Commissioner of Customs and Excise**. He said<sup>21</sup>:-

*"The learned Judge held that evidence of the purpose for which the modification had been effected was irrelevant and that, it seems to me, is consistent with what I have said" (emphasis added).*

<sup>19</sup> Toleneria, *supra*, p25 paras 36 & 38.

<sup>20</sup> Autoware, *supra*, p320F

<sup>21</sup> Autoware, *supra*, p321G



- [41] The principal focus in **Autoware** in deciding what constitute an essential feature of an incomplete article, was the presence or absence of a component which gives an incomplete article the appearance of a complete article and differentiate such article from others.
- [42] It seems to me from the foregoing that the purpose and principal function of an article is not always a significant factor in determining the essential feature of an incomplete article. This question may also be answered by having regard to the nature, form and characteristic of a component as to whether it gives the incomplete article the design and appearance of a complete article. What approach or test to be applied to answer this question will of course depend on the circumstances of each case.
- [43] Before considering whether some of the imported bicycle parts and components rendered the incomplete bicycle to have the appearance of a bicycle, I shall firstly address the relevance and admissibility of the expert opinion of Mr. Du Toit for the Respondent.
- [44] It is accepted and must be accepted that Courts are not equipped with the required skill to know how a bicycle is made up and function and, the nature and characteristics of its components. These are matters that can better be explained by a bicycle expert who is knowledgeable in bicycles and who understand the purpose and function of different types of bicycles and their components. Understanding the purpose for which different types of bicycles are designed for and how are they made up, is a technical matter.
- [45] Mr. Du Toit in his affidavit differentiates between two types of bicycles and their respective purpose and, the nature and characteristics of the different components which are part of the bicycle components imported by the Applicant. Furthermore, it is not in dispute that Mr. Du Toit is a bicycle expert.

[46] For these reasons, the affidavit of Mr. Du Toit is admitted. I shall consider his opinion in addressing the question as to whether some of those imported parts of a bicycle by the Applicants are components which embody the essence of a bicycle. I turn to deal with the Parties' submissions relating to the determination of an 'essential character' of an *incomplete or unfinished article*.

[47] The Parties joined issue on the following<sup>22</sup>:-

*'The Applicant contended that the products imported are frames and forks, and parts thereof under TH8714.91; alternatively, TH8714.99 ("Other"), or further alternatively per corresponding part under TH8714.9,*

*The Commissioner (Respondent) contends that collectively the bicycle parts have the 'essential character' of a (complete) bicycle and are, as such, classifiable as a bicycle under TH8712.00.10, by application of GRI 2(a)'.*

[48] Mr. Snyman for the Applicant contended during argument that in answering this question, this Court must follow the approach in **Autoware** and **LG**. He argued that what the Court considered in **Autoware** was 'just a station wagon' and in this matter is 'just a bicycle'.

[49] I am not persuaded for the reason that **Autoware** as I have already mentioned is distinguishable to this matter. Secondly, a specific component (*video turner*) in **LG** was regarded as an essential component because the notes to the relevant Tariff Heading referred to it as such. In this matter, the notes to "TH8712.00" does not mention the wheels of a bicycle as essential components which embody the essence of a bicycle. That is what distinguishes **LG** to this matter.

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<sup>22</sup> Respondent's Answering Affidavit p299 para 28 (Silverback Matter) [See also: Applicant's Replying Affidavit p360 para 10].

- [50] The Applicants further maintain that *'an essential character may be defined as the components which impart the form, shape and overall visual appearance of a complete bicycle'*. They then arrived at a conclusion that wheels impart that form, shape and overall visual appearance of a complete bicycle<sup>23</sup>. They contend further that the imported articles without any wheels, have little to no function in relation to the overall functioning of a complete bicycle<sup>24</sup>.
- [51] This submission contradicts what is said in **Autoware** that *'an essential feature is not a feature which is necessary for the proper functioning of a complete article'*. In any event Mr. Snyman conceded during argument that it does not mean that an *incomplete or unfinished article* must be operational or functional for the application of GRI 2(a). He agreed with the submissions made by the Respondent on that specific aspect<sup>25</sup>.
- [52] This then begs the question as to whether the imported articles without wheels are bicycles or not (*i.e whether they exhibit the essential character of a bicycle if assembled*).
- [53] The Applicant in the Cytek matter contends that the Respondent does not state what the *'essential character'* or essence of a bicycle is<sup>26</sup>. I do not agree.
- [54] The Respondent elaborate in its Answering Affidavit and said<sup>27</sup>:-
- 'The guideline incorporates the six main bicycle components identified above. The frame and fork are required to be present. This is so because they are the 'core components' to which all other components are attached. Also, these two components are central in recognising the product as a bicycle, both in design and appearance. Regarding the other components, the Commissioner is of the view that the presence of any two of those components (together with the frame and fork) would be sufficient to capture the essence of a bicycle" (emphasis added).*

<sup>23</sup> Applicant's Founding Affidavit p27 para 68.2 (Silverback Matter).

<sup>24</sup> F.t 22 para 68.3.

<sup>25</sup> Respondent's Heads of Argument p425 para49. (Silverback Matter).

<sup>26</sup> Applicant's Replying Affidavit p210 para 11.2.

<sup>27</sup> Respondent's Answering Affidavit p139 para 38.

- [55] The Respondent's assertion is supported by the evidence of Mr. Du Toit who explained fully in his filed affidavit the function and the design of the different components imported by the Applicant. *Interestingly*, both Mr. Du Toit and Mr. Stickells, the Applicant's own expert, agree as to the 'essential components' of a bicycle. However, Mr. Du Toit does not agree that a saddle and pedals constitute the essential components of a bicycle. The two experts do not agree also as to the function and ranking of a handlebar and the difference between a drive-train and a crank set.
- [56] I considered the expert opinion of Mr. Stickells because there was no formal withdrawal of his affidavit. It remained part of the record of these proceedings. Mr. Snyman merely addressed me from the bar not to consider it. No explanation was provided as to why it was filed in the first place.
- [57] It is significant to note that what the Respondent said regarding the essential component of a bicycle and the opinion expressed by Mr. Du Toit on this specific issue, was never challenged or disputed. Furthermore, there is nothing in the Act or Schedule which indicates that the components mentioned by the two experts constitutes the essential parts of a complete bicycle.
- [58] The Respondent supported the approach it followed by relying on the guidelines of both Her Majesty's Revenue and Customs ('HMRC'), the European Union and the United Kingdom<sup>28</sup>.
- [59] The Applicant did not offer any substantive argument as to why this Court must ignore the persuasive nature of these guidelines and the fact that by following them conform to the principle of uniformity.
- [60] In the final analysis, I have no doubt in my mind that the frame and the fork objectively viewed are central in recognising the incomplete components assembled as a bicycle. More so because the definition of a bicycle include a frame. Other components are attached to the frame and the fork.

<sup>28</sup> Respondent's Answering Affidavit p140 para41-46 (Cytek matter).



[61] For this reasons, I make the following order:

1. The appeals are dismissed with costs which shall include the costs of two Counsels employed by the Respondent.
2. The applications to strike out are dismissed with costs.
3. The Applicants are ordered to pay the excise duty on the imported articles in all these matters as already determined by the Respondent.



**MOKOENA A.J**  
**ACTING JUDGE OF THE**  
**HIGH COURT**

Date of Hearing : 29 October 2020

Judgment Delivered : 31 January 2022

#### APPEARANCES

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