

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

11)	REPORTABLE:
12)	OF INTEREST TO OTHER JUDGES:
(3)	REVISED:
DATE	10/02/2021
SIGNATURE	[Redacted Signature]

CASE NO: 2024-051127

In the matter between:

WCF HARDWARE DISTRIBUTORS (PTY) LTD

Applicant

and

COMMISSIONER FOR THE SOUTH AFRICAN

REVENUE SERVICE

Respondent

JUDGMENT

**THIS JUDGMENT IS HANDED DOWN REMOTELY AND WILL BE CIRCULATED TO
THE PARTIES ELECTRONICALLY**

WELGEMOED, AJ

(1) The application before the Court is an opposed tariff appeal that was set down for hearing on the opposed motion roll for 24 November 2025 and heard on 25 November 2025, wherein I reserved judgment. The applicant sought the following relief:

"1.1. The respondent's tariff determination (JHB 43/2022) made on 13 February 2023 in terms of the provisions of section 47(9) of the Customs and Excise Act, 91 of 1964 ("the Customs Act"), determining that rebate item 315.06/83.02/01.04/40 is not applicable to the hinges imported by the applicant ("the determination"), be set aside;

1.2. The decision of the Customs and Excise National Appeals Committee dated 28 June 2023 ("the NAC") to uphold the Letter of Demand issued against the applicant dated 17 February 2023 ("the demand") and the demand, be set aside; and

1.3. It be determined that rebate item 315.06/83.02/01.04/40 applies to the hinges imported by the applicant;

1.4. In the alternative to 1.3 above, declaring that rebate item 320.01/8302.10/01.06 applies to the activities of the applicant."

NATURE OF RELIEF:

(2) The application is a tariff appeal as provided for in section 47(9)(e) of the Customs and Excise Act, 91 of 1964 (“the Act”) against a tariff determination made by the Respondent (“the Commissioner”) on 13 February 2023 in terms of section 47(9)(a), determining that the:

2.1 Applicant’s import of parts of hinges that it manufactures (“the imported product”) are not subject to Rebate Item 315.06/83.02/01.04/40.

(3) A tariff appeal in terms of section 47(9)(e) of the Act is an appeal in the wide sense, i.e. *“a complete re-hearing of, and fresh determination on the merits of the matter with or without additional evidence or information”*¹. The court effectively steps into the shoes of the Commissioner and makes a new tariff determination.

(4) The parties are in agreement that the imported products are classified under tariff heading 8302.10. The issue for determination is, however, whether TH8302.10 is subject to rebate item 315.06/83.02/01.04/40 or not.

(5) The Commissioner contends that it is not, and that the Applicant is liable for duty at 20%. Whereas the Applicant contends that the imported products are subject to a full rebate of duty as it resides under item 315.06/83.02/01.04/40 of Schedule 3.

¹ *Tikly and Others v Johannes NO and Others* 1963 (2) SA 588 (T) at 590 G

- (6) TH8302.10, as it appears in Schedule 1 to the Customs Act, reads as follows:

"8302. Base metal mountings, fittings and similar articles suitable for furniture, doors, staircases, windows, blinds, coachwork, saddlery, trunks, chests, caskets or the like; base metal hat-racks, hat-pegs, brackets and similar fixtures; castors with mountings of base metal; automatic door closers of base metal:

8302.10 Hinges"

- (7) Rebate item 315 of Schedule 3 reads as follows:

"315 BASE METALS AND ARTICLES OF BASE METAL

315.06 INDUSTRY: BASE METAL FITTINGS AND MOUNTINGS OF A KIND SUITABLE FOR FURNITURE, DOORS, STAIRCASES, WINDOWS, BLINDS, COACHWORK, SADDLERY, TRUNKS, CASKETS AND THE LIKE

315.06.83.02/01.04 Parts of hinges, for the manufacture of concealed self-closing furniture hinges with circular hinge bosses"

- (8) The Applicant *alternatively* contends that if the products are not classifiable under rebate item 315.06.83.02/01.04 then it ought to be classifiable under rebate item

320.01/8302.10/01.06, which also qualifies for a full rebate of duty. The provision, as it appears in schedule 3, reads as follows:

"320.00 MISCELLANEOUS MANUFACTURED ARTICLES

320.01 INDUSTRY: FURNITURE AND FIXTURES

320.01/8302.10/01.06 *Hinges of base metal, for use in the manufacture of furniture classifiable in tariff headings 94.01, 94.03 and mattress supports of subheading 9404.10."*

- (9) The Applicant contends that by virtue of the above provision, tariff heading 94.03, as it appears in Schedule 1, is also relevant. The provision reads as follows:

"9403.40 - Wooden furniture of a kind used in the kitchen:

9403.40.90 6 - - *Other*"

- (10) The Applicant is however not persisting with the alternative relief. In the replying affidavit it is stated that the Applicant stands by its primary relief sought i.e. that it should be determined that rebate item 315.06/83.02/01.04/40 applies to the parts of the hinges that the Applicant imports.

BACKGROUND:

- (11) The Applicant is registered with the Commissioner as a manufacturer under rebate of duty in respect of item 315.06 of Schedule 3 to the Customs Act.
- (12) The Applicant's application for a rebate store was approved by SARS on 11 April 2009. At the time of registering the Applicant as a rebate user, the Commissioner was informed which products the Applicant imports and what manufacturing the Applicant does. On the strength thereof SARS registered the Applicant as a rebate user.
- (13) On 13 May 2022, the Commissioner issued the Applicant with a Notification to conduct a desk Audit ("Audit letter"). The audit was to be conducted using a sample of transactions to verify compliance with the duty relief and duty suspension schemes. The Commissioner conducted an audit for the periods 2018/05/01 to 2022/04/01 known as a "Post Clearance Inspection". During the audit, an onsite visit was conducted on 06 September 2022 for physical rebate store assessment.
- (14) Following the audit, the Commissioner initially issued the Applicant with a Letter of Findings ("the LOF") dated 13 September 2022 for the audit period 2020/05/01 to 2022/04/01. The Applicant's findings essentially were that the product imported by the Applicant has the characteristics of a finished product and that the Applicant does not manufacture but assembles a finished product.

- (15) The Applicant responded to the LOF with a letter dated 21 September 2022. In short, the Applicant submitted that it creates, through the manufacturing process, 11 new products from the product which it imports and that the manufacturing process meets the intended criteria for the rebate. Following the response, the Commissioner issued the Applicant with a Notice of Intent dated 13 October 2022 ("the NOI"). In the NOI the Commissioner held that the Applicant does not qualify to import goods using rebate item 315.06 and that the goods should be brought to account using tariff heading 8302.10(3) as hinges under "general" of which the rate of duty is 20%.
- (16) Subsequent to the conclusion of the audit, the Commissioner's Branch Office submitted an application (known as a departmental submission) to the Commissioner's Tariff Head Office for a determination to establish whether Schedule 3 is applicable. The Tariff division issued tariff determination JHB 43/2022 dated 13 February 2023 which held that TH8302.10 does not qualify under rebate item 315.06.
- (17) Following the tariff determination the Commissioner issued the Applicant with the demand in which the Commissioner is demanding payment of an amount of R3 640 842.30 which amount consists of underpayment in duty, underpayment in VAT, interest on VAT and VAT penalty of 10%.

- (18) The Applicant lodged an internal administrative appeal ("the IAA") against the demand on or about 29 May 2023. The National Appeals Committee ("NAC") upheld the determination and the resulting demand with its letter dated 28 June 2023.
- (19) On 3 July 2023 the Applicant delivered its notice in terms of section 96 of the Customs Act advising the Commissioner that it intends to proceed with the present litigation.

ISSUE IN DISPUTE:

- (20) The dispute between the parties rests on the proper interpretation of the word "manufacture" as used in rebate item 315.06.
- (21) The Applicant contends that assembling different parts amounts to manufacturing and the Commissioner contends that assembling is not manufacturing. Therefore, the Applicant is not involved with the manufacturing of concealed hinges as required by rebate item 315.06.
- (22) The Applicant's operations consist of the following manufacturing process:
- 22.1 Importing and receiving the parts for the hinges into its rebate warehouse;
 - 22.2 The removal of the parts it receives from the rebate store, to the manufacturing area;

- 22.3 Manufacturing the hinges in the assembly area adjacent to the rebate store with the attachment of screws, plates and dowels. The Applicant manufactures 11 different formats of hinges, the formats and the process are depicted in annexures "FA17.1" and "FA17.2" to the founding affidavit.
- 22.4 Documenting and allocating the manufactured hinges to its sales company;
- 22.5 Whereafter the sales company distributes the hinges to its branches for sales to its customers.

(23) The Commissioner conducted an audit of the Applicant's operations during 2022 and concluded that the Applicant *"does not manufacture but assembles finished product. The product has the essential characteristics of a finished product, which are hingers (sic) and plates"*. This sentiment was echoed in the tariff determination. Further, in its answering affidavit the Commissioner relied on a 1 minute 28 second video allegedly taken during an *in loco* inspection where a representative of the Applicant according to the Commissioner *"clarified that the applicant only "assembles" the components"* and that the representative stated that in order to manufacture hinges one would require *"huge machines"* of which there were none.

INTERPRETATION OF REBATE ITEM 315:

(24) In order to determine this dispute, the point of departure is the language used in the relevant provisions of the Customs Act.²

(25) Section 75(1)(a) of the Customs Act provides as follows:

“75. Specific rebates, drawbacks and refunds of duty:

(1) Subject to the provisions of this Act and to any conditions which the Commissioner may impose –

*(a) any imported goods described in schedule 3 shall be admitted under rebate of any customs duty applicable in respect of such goods at the time of entry for home consumption thereof, to the extent and for the purpose or use stated in the item of **schedule 3** in which they are specified.”*

(26) Section 75(2)(a) provides further that:

*“A rebate of duty in respect of any goods described in **schedule 3** shall be allowed only in respect of goods entered for use in the **production or manufacture of goods** in the industry and for the purpose specified in the item of the said schedule in which those goods are specified.”*

(27) Section 10(4) of the Customs Act provides as follows:

² *Mashwayi Projects (Pty) Ltd and Others v Wescoal (Pty) Ltd and Others* 1(1157/2023) [2025] ZASCA 5 (29 January 2025) at para [17].

*" If in any prosecution under this Act or in any dispute in which the State, the Minister or the Commissioner or any officer is a party, the question arises whether the proper duty has been paid or whether any goods or plant have been lawfully used, imported, exported, **manufactured**, removed or otherwise dealt with or in, or whether any books, accounts, documents, forms or invoices required by rule to be completed and kept, exist or have been duly completed and kept or have been furnished to any officer, it shall be presumed that such duty has not been paid or that such goods or plant have not been lawfully used, imported, exported, manufactured, removed or otherwise dealt with or in, or that such books, accounts, documents, forms or invoices do not exist or have not been duly completed and kept or have not been so furnished, as the case may be, unless the contrary is proved."*

(28) Section 102(5) goes further and provides:

*"If in any prosecution under this Act or in any dispute in which the State, the Minister or the Commissioner or any officer is a party, it is alleged by or on behalf of the State or the Minister or the Commissioner or such officer that any goods or plant have been or have not been imported, exported, **manufactured in the Republic**, removed or otherwise dealt with or in, it shall be presumed that such goods or plant have been or (as the case may be) have not been imported, exported, manufactured in the Republic, removed or otherwise dealt with or in, unless the contrary is proved."*

- (29) Consequently, the onus is therefore on the Applicant to prove that the goods were manufactured in the Republic in compliance with the Customs Act, the rules, schedules as well as the notes thereto.
- (30) Item 315.06 of Schedule 3 provides for a rebate to be granted on the "*Parts of hinges*"
- (31) The Applicant provided the anatomy of hinges that illustrate that a hinge consists of several parts that include *inter alia*, a hinge, a mounting plate, a hinge cup, screws and covers.
- (32) The Commissioner does not dispute that the Applicant imports hinges, plates, screws and dowels.
- (33) The dispute is whether the Applicant's assembly process constitutes "*manufacture*" as contemplated in item 315. The Applicant argues that on a proper interpretation of the provision, the nature of the product is so that the item contemplates assembly. Put differently so the argument is presented "*...in the context of item 315 to "manufacture" is to assemble.*"
- (34) To this end, the rebate item provides that it should be "*Parts of hinges, for the manufacture of concealed self-closing furniture hinges with circular hinge bosses*".
- (35) When considering what the word "*manufacture*" means, the parties accept that the definition in section 1 of the Customs Act is not helpful. The definition appears to deal with excisable goods, which is not applicable in this instance.

(36) Schedule 3, in which item 315 resides, also does not contain a definition for "manufacture".

(37) In interpreting Schedule 3 the Court is obliged to consider³:

"...[F]irst, 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 which is most appropriate to such goods."

(38) When applying the General Interpretive Rules it is imperative to start with GR1 (the primary rule). That states that the classification is determined by the terms of the headings and any relative section of chapter notes.

(39) Upon considering the imported goods, the heading and notes it is clear to this Court that the imported goods are not in fact the different parts of which a hinge consists as set out above. The Applicant does not manufacture hinges, or mounting plates, or hinge cups, or screws or covers. Annexure "FA17.1" being the "upgrading value added schedule" of the Applicant shows that completed hinges are imported that already consist of a complete hinge and plate in most instances. These imported

³ *Commissioner for the South African Revenue Service v Diageo SA (Pty) Ltd* (1063/2023) [2024] ZASCA 158; [2025] 1 All SA 299 (SCA); 87 SATC 415 (15 November 2024) para 8

goods are, in itself, final products. None of the imported products, characteristics are changed or upgraded by the Applicant.

(40) The imported products fail to meet the qualifications of the Notes to Schedule 3.

Note 4 reads:

*"4. Unless the context otherwise indicates, the industries specified in this Schedule shall, subject to approval by the Commissioner in each case, be deemed to include the production or manufacture of products not specifically mentioned in the name of such industry, **provided such products are generally produced or manufactured in that industry from the same or similar basic raw materials as the products mentioned in such name.**"*

[own emphasis].

Note 6 reads:

*"Any provision in this Schedule for a complete article or an incomplete article which has, or is regarded **as having the essential character of such complete article, assembled or unassembled shall, as the Commissioner may determine except where specifically otherwise specified, remain applicable** even where any parts or sub-assemblies of any such article, imported by any importer, have lost the essential character of such article due to the non-importation of parts or sub-assemblies manufactured in the Republic."*

[own emphasis].

(41) The imported goods are not raw materials used in the manufacturing of part of hinges. The use of raw materials contemplates a process whereby the raw materials undergo a change of characteristic. Raw materials must undergo a substantial transformation (change of characteristic) to become part of the finished product, whereas the imported items in question are already finished components that do not require further transformative processing.

(42) Further GR 2(a) provides:

"Any reference in a heading to an article should be taken to include a reference to an 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 be taken to include a reference to that article complete or finished (or failing to be classified as complete or finished by virtue of this rule, presented unassembled or disassembled.)"

(43) Explanatory note (i) to General Interpretative Rule 2(a) (incomplete or unfinished articles) sets out the following:

"(i) The first part of rule 2(a) extends 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."

(44) Explanatory note (vii) to the General Interpretive Rule 2(a) (articles presented unassembled or disassembled):

"(vii) For the purposes of this rule, 'articles presented unassembled or disassembled' means articles the components of which are to be assembled either by means of fixing devices (screws, nuts, bolts, etc.) and by riveting or welding, example provided only assembly operations are involved. No account is to be taken in that regard of the complexity of the assembly method. However, a component shall not be subjected to any further working operation for completion into the finished state."

(45) On a proper application of the relevant General Interpretive Rules, the hinges, as presented, have the essential character of complete hinges and are accordingly classifiable as complete or finished hinges under General Interpretive Rule 2(a).

(46) In essence, annexure "FA17.1" simply depicts the repackaging of completed hinges by the adding of screws, the essential character of the imported goods remains the same even after the so-called upgrading of value by the Applicant.

(47) The Applicant does not satisfy the test as set out by the SCA in ***Enviroserv Waste Management (Pty) Ltd v Commissioner for the South African Revenue Service (154/2022) [2023] ZASCA 180*** in endorsing the definition of manufacture as set out in ***Safranmark*** stated that:

"Furthermore, nothing in the section can be interpreted to mean that raw material is 'insufficient' as an end product of the process of manufacture as contended by the Commissioner. The test is whether that which is made is different from that out of which it is made."

(48) Accordingly, this Court agrees with the finding of the NAC in paragraph 13 of its Determination:

"13. It is therefore concluded that, upon importation, all the parts are assembled and are therefore not covered under the industry specified in the said rebate item. In terms of section 75(2) of the Customs and Excise Act, 91 Of 1964 read with Note 1 to Schedule No. 3 a rebate shall be allowed only in respect of goods entered for use in the production or manufacture of goods in the industry and for the purposes specified in the item."

ORDER:

(49) Consequently, I make the following order:

1. The application and appeal is dismissed;
2. The Applicant is ordered to pay the costs of the application, consequent upon the employment of 2 counsel on Scale C and Scale B.



WELGEMOED CJ

**ACTING JUDGE OF THE HIGH COURT
OF SOUTH AFRICA GAUTENG
DIVISION, PRETORIA**

Date of Hearing: 25.11.2025

Date of Judgment: 10.02.2026

Counsel for Applicant: N Komar

Counsel for Commissioner: MP van der Merwe SC & EB Yawa