THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

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Status: Immediate

The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal.

JT International Manufacturing South Africa (Pty) Ltd v The Commissioner for the South African Revenue Service (1330/2023) [2025] ZASCA 37 (4 April 2025)

Today the Supreme Court of Appeal (SCA) upheld the appeal and further set aside and replaced the order of the Gauteng Division of the High Court, Pretoria.

During the period 7 January 2011 to 25 July 2011, the appellant imported a total of 12 consignments of cigarette tobacco from Switzerland. The appellant duly entered each consignment of the tobacco by completing and submitting to the Commissioner for the South African Revenue Service (the Commissioner) the SAD 500 form. The SAD 500 form declared that the goods were imported under the rebate code 460.24. This is the rebate code relating to the excise duty on cigarette tobacco in Part 2A of Schedule 1 to the Customs and Excise Act 91 of 1964 (the Act). The appellant, however, failed to complete or submit SAD 500 (ZRW) forms (ZRWs) in respect of the consignments prior to or upon delivery of the tobacco to the manufacturing warehouse within 30 days after the entry of goods on SAD 500 forms, as required by rule 19A.09(c). The explanation for the default is that the appellant's employee, Mr Mahlalela who was responsible for ensuring that the ZRWs were timeously completed and submitted to the Commissioner, failed to do so in respect of the relevant consignments.

In January 2012, it was discovered that ZRW forms had not been completed or submitted for the shipments at the relevant time. The Commissioner gave notice of its intention to claim from the appellant the Part 2A excise duty in respect of the cigarette tobacco. In response, the appellant explained the failure and expressed regret for the error. It averred that at no point was the revenue owing to the *fiscus* at risk, and that the appellant could account for its excise declarations. In conclusion, it asked among others, for absolution from payment of the Schedule 1 Part 2A duty. The Commissioner turned down the appellant's request. It stated that the appellant was not entitled to the rebate because it had not complied with rule 19 A.09(*c*). It demanded payment.

On 16 April 2012, the appellant made a formal request for the Commissioner to exercise his discretion in terms of s 75(10) of the Act to exempt the appellant retrospectively from the requirement to file the ZRWs. The Commissioner rejected the exemption application on the ground that the Commissioner was not empowered by that provision to grant the relief sought. On 22 November 2012, the appellant lodged an internal administrative appeal in terms of ss 77A to 77HA of the Act against the Commissioner's decisions to claim excise duty and VAT amounting to R60 946 051.34, and to refuse to exercise the s 75(10)(*a*) power to exempt the appellant from compliance. On 10 September 2013, the Commissioner notified the appellant of the decision of the Customs and Excise National Appeal Committee dismissing the appeal.

On 17 April 2014 the appellant brought an application in the Gauteng Division of the High Court, Pretoria and by agreement between the parties the high court made a separation order in terms of rule 33(4) of the Uniform Rules of Court. The high court held that the exemption power granted to the Commissioner under s 75(10)(*a*) applies exclusively to circumstances where goods had been duly imported under rebate of duty, but where the importer/manufacturer later decided to use the goods in a different manner. It accordingly dismissed the application and ordered each party to pay its own costs.

The issue before the SCA was the correct interpretation of s 75(10)(*a*) of the Act as read with rebate item 460.24 in which rule 19A.09(c) is listed as one of the requirements to be met to qualify for a rebate. The question is whether the Commissioner was correct to determine that he does not have powers to condone non-compliance with the relevant provisions.

The SCA found that with regards to the text of the section, it is significant to note that the exercise of the exemption power that is conferred on the Commissioner by the proviso to s 75(10(*a*) does not depend on whether the relevant conduct constitutes a failure to comply with a 'pre-condition' or a 'substantive requirement' of the provisions governing rebates. The SCA held that the ambit of the subsection is much wider than contended for by the Commissioner and that it is not restricted to granting exemptions in instances where the intended use of duly imported goods has changed after importation.

The SCA held further that the proviso to s 75(10)(*a*) permits the Commissioner to decide that any one or more of the requirements that are set out in the main provisions of s 75(10)(*a*) need not be complied with, with or without depriving the appellant of its right to claim a rebate. The Commissioner may do so before the entry in question, or after it has already occurred. The determination that the Commissioner has a discretion under the proviso to s 75(10)(*a*) to exempt non-compliance does not mean that he is compelled to grant exemption. He may exercise his discretion in favour of, or against, granting exemption.

In the result the SCA upheld the appeal and further set aside and replaced the order of the Gauteng Division of the High Court, Pretoria.