

IN THE HIGH COURT OF SOUTH AFRICA
(TRANSVAAL PROVINCIAL DEVISION)

CASE NO: A2154-2/2005
DATE HEARD:

In the matter between:

DURO PRESSING (PTY) LTD **Applicant**

AND

COMMISSIONER FOR SOUTH AFRICAN
REVENUE SERVICES **Respondent**

DELETE WHICHEVER IS NOT APPLICABLE (1) REPORTABLE: YES/NO. (2) OF INTEREST TO OTHER JUDGES: YES/NO. (3) REVISED.		
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JUDGMENT

MABESELE, AJ

This matter concerns an appeal against a tariff determination which was given by the respondent in respect of the flat garage door sections which were imported by the applicant.

The applicant, Duro Pressing (Pty) Ltd, is a company duly registered and incorporated with limited liability in accordance with the company laws of the Republic of South Africa and carries on business as a private company.

The respondent is the Commissioner for the South African Revenue Service (the "Commissioner"). The respondent vested with powers set out in the Customs and Exercise Act, 91 of 1964 is tasked with administering the Act.

For record purposes, I wish to point out that the respondent in its answering affidavit, contended in *limine* that the applicant had failed to comply with the provisions of section 96(1) of the Customs and Exercise Act. However, Dunn SC, who appeared for the respondent abandoned that point during the hearing of this matter.

The facts are that on 27 July 2004 the respondent inspected a shipment of flat garage door sections which the applicant's clearing agents, Sun Couriers (Pty) Ltd had, on behalf of the applicant. The goods were then cleared under tariff heading 7210.70 of Part 1 to Schedule 1 of the Customs and Exercise Act.

The tariff heading reads:

“ 72.10 : Flat-rolled products of iron of non-alloy steel of a width of
600mm or more, clad, plated or coated.
7210.70: Painted, varnished or coated with plastics”

The applicant contended that the respondent's determination is incorrect and that the appropriate tariff heading is 73.08.30, alternatively 73.08.90 of Part 1 to Schedule 1 of the Act.

The said tariff heading reads:

“73.08 : Structures (excluding prefabricated buildings of heading no: 94.06) and parts of structures (for example, bridges and bridge sections, lock-gates, towers, lattice masts, roofs, roofing frame-works, doors and windows and their frames and thresholds for doors, shutters, balustrates, pillars and columns) of iron steel; plates, rods, angles, shapes, sections, tubes...prepared for use in structures of iron or steel.

73.08.30 : Doors, windows and their frames, and thresholds for doors ”

The Explanatory Notes to tariff heading 73.08 reads:

“ The heading also covers parts such as flat-rolled products, including so called universal plates, strips, rods, angles, shapes, sections and tubes which have been prepared for use in structures ”

Joubert SC, who appeared for the applicant contended that the respondent’s contention that note1(k) of the Chapter Notes to Chapter

72 is not exclusive and therefore the applicant's product is specifically included in the phrase "flat-rolled products" is without merit. He argued that on a proper interpretation of Chapter Note 1(k) the flat-rolled products which are included in that chapter are the products that have patterns which are derived directly from rolling as well as those which have been perforated, corrugated or polished. By the use of the word "those", the Chapter Note makes it clear that the perforating, corrugating and polishing relate to the product not the pattern. He contended that since the imitation wood grain pattern is imprinted onto the applicant's product by means of a press and not rolling, the Chapter Note excludes tariff heading 72.10 as an appropriate tariff heading for the classification of the applicant's product.

A further argument raised by Mr Joubert was that "drilling" and "bending" are simply examples given of types of preparatory work and do not define the ambit of preparatory work as contended for by Mr Dunn. Mr Joubert contended that the tariff heading 72.10 is inappropriate for the applicant's product because the Explanatory

Notes of Chapter 72 provides that "further worked articles" are classified in Chapter 73.

The respondent's case is that the applicant's goods had not been prepared for use at the time of its importation and thereby qualified to be classified under tariff heading 72.10. Mr Dunn argued that the applicant's goods were in the form of flat-rolled products or flat sheet of steel when they were imported.

The "flat-rolled products" as defined in Chapter Note 1(k) to Chapter 72 include those with patterns in relief which are derived directly from rolling (for example, grooves, ribs, chequers, tears, buttons, Lozenges) and those which have been perforated, corrugated or polished, provided that they do not assume the character of articles or products of other headings.

The correct approach to the process of tariff classification was laid down in *International Business Machines v Commissioner for Customs* 1985(4) SA 843(A) at 863 F-H as follows:

“Classification as between headings is a three process: first, interpretation – the ascertainment of the meaning of the words used in the heading (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.”

The said approach was reiterated in *Commissioner for Customs and Exercise v Capital Meats CC 1999(1) SA 570 SCA* at 573 A-D wherein SCHUTZ JA stated:

“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 sub-chapters. 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 their sub-headings falling under the chapters and their sub-chapters. These headings give brief description of the goods. The second source of interpretation is the notes to each section or chapter..... Once a meaning has been given to the potentially relevant words, and the nature and characteristics of the goods have been considered the heading most appropriate to such goods must be selected.”

Chapter Notes of Chapter 72 state *inter alia* that:

“Further worked articles, such as castings, forging, etc., and sheet piling, wedging angles, shapes and sections, railway or tramway track material and tubes are classified in Chapter 73 or in certain cases, in other chapters”. From this explanatory note “further worked articles”,

in my view, are excluded from the articles which are being produced from the product described under tariff heading 72.10.

Although the flat-rolled products are classified under tariff heading 72.10 they are also covered in the explanatory notes to tariff heading 73.08 with the qualification that they should have been prepared for use in structures. In my view, therefore, flat-rolled products which have been worked further or prepared for use in structures should be classified under tariff heading 73.10.

The nature and characteristics of the applicant's product upon importation are set out in the applicant's founding affidavit briefly as follows:

The steel had been de-coiled, leveled, and cut to the applicant's specifications. The sections that have been cut are then coated with a plastic film. An imitation wood grain pattern is imprinted onto each section of steel by pressing a mould against a flat sheet under pressure

of approximately 20 tons. Certain sections which are intended for a particular garage door are imprinted with square patterns by pressing a flat steel sheet under 400 tons stamping press with use of special metal dies.

It was argued by Mr Joubert that objectively determined, once a steel has been cut to the specifications and the imitation wood grain pattern is imprinted on each section of the steel, the product is fit for use as a section of a greater structure, namely, a garage door, in the present case. He contended that the applicant's product was, at the time of importation, clearly a "further worked article"

Mr Dunn argued, in the contrary, that a door is not a structure and therefore the applicant's product cannot be said to be a section of structures which are classified under tariff heading 73.10. That argument is without merit, in my view, in that a door is one of the examples of structures which are classified under tariff heading 73.10.

From the nature and characteristics of the applicant's product as described, I am of the view that at the time of its importation, it was in a form of a "further worked article" or had been prepared for use in a specific structure.

Since the importation wood grain pattern is imprinted onto the applicant's product by means of a press and not rolling, such product, in my view, is excluded from flat-rolled products as defined in Chapter Note1(k) which the respondent relied on in support of its case.

Since it is evident from the above that the applicant's product had been prepared for use at the time of its importation, it follows logically that it should be classified under tariff heading 73.10

In the premises I make the following order:

1. The appeal succeeds.

2. A determination that the applicant's product be classified under tariff heading 72.10.70 is set aside and substituted with the following:

"The applicant's product be classified under tariff heading 73.10.30"

3. The respondent is ordered to pay the costs of this application, which include the costs of two counsel.

MM MABESELE
(ACTING JUDGE OF
THE HIGH COURT)