

CASE NO. 9154/07

IN THE HIGH COURT OF SOUTH AFRICA
NATAL PROVINCIAL DIVISION

AT PIETERMARITZBURG ON THE 09th day of JUNE 2008
BEFORE THE HONOURABLE MR JUSTICE GORVEN; AJ

In the matter of:

L & G TOOLS & MACHINERY DISTRIBUTOR LTD

APPELLANT

AND

THE COMMISSIONER OF THE SOUTH
AFRICAN REVENUE SERVICES

RESPONDENT

UPON hearing on the 04th day of JUNE 2008 Counsel for the Applicant, and
Counsel for the Respondents; and
UPON reading the Notice of Motion and the other documents filed of record;

THE COURT RESERVED JUDGMENT;

THEREAFTER ON THIS DAY;

IT IS ORDERED:

That the appeal is dismissed with costs.

BY ORDER OF THE COURT,


R. J. JOOSTE
REGISTRAR

IN THE HIGH COURT OF SOUTH AFRICA
(NATAL PROVINCIAL DIVISION)

CASE NO.: 9154/2007

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L & G TOOLS & MACHINERY

DISTRIBUTOR LTD

and

THE COMMISSIONER OF THE SOUTH

AFRICAN REVENUE SERVICES

APPELLANT

RESPONDENT

J U D G M E N T

GORVEN AJ:

Introduction

On 22 August 2006 a consignment of goods imported by the appellant from the Peoples Republic of China was stopped for customs examination by an official employed by the Respondent. The Bill of Entry completed by the appellant's agent described the goods as "Taps, cocks, valves and similar appliances for pipes, boiler shells, tanks, vats or the like, incl. pressure-reducing valves & thermostatically controlled valves : Other" and entered the tariff subheading as 8481 80.90. The respondent, presumably acting in terms of Section 47 (9) (a) (ii) (aa) of the Customs and Excise Act, No 91 of 1964, determined the goods to fall under tariff sub-heading 8481.80.72. The effect of this determination, although not relevant to a consideration of this matter, is that this rendered the goods dutiable and the appellant duly made the relevant payment, reserving its rights and launching this appeal in terms of Section 47 (9) (e) of the Act.

It is the divergent views of the appellant and the respondent as to the correct tariff sub-heading which is at issue in this appeal. Tariff sub-heading 8481.80.72 is described as "Hose fittings" and tariff sub-heading 8481.80.90 is described as "Other". The essential question, accordingly, is whether the goods are hose fittings for the purpose of the classification. If not, it is common cause that they will fall within the category "Other".

The goods are described as watering pistols and watering wands. All are designed to be used in conjunction with a garden hose. All either have the means to adjust the flow or pressure of water from the hose pipe or to stop that flow. It is common cause therefore that all fall within heading 84.81 described as "Taps, cocks, valves and similar appliances for pipes, boiler shells, tanks, vats or the like, incl. pressure-reducing valves & thermostatically controlled valves" and that all fall within sub-heading 8481.80 described as "Other appliances". They are all designed to be connected to hose pipes. None is designed to do so by connecting to the hose pipe directly. They all clip into a coupler which is directly attached to the hose pipe.

No procedures are laid down in the Act for an appeal such as this. Both counsel agreed, however, that a single judge sitting in the Chamber Court has jurisdiction to hear the appeal as was decided in *Metmak (Pty) Ltd v Commissioner of Customs and Excise* 1984 (3) SA 892 (T). This case has been followed in this division (*Commissioner for Customs and Excise v C I Caravans (Pty) Ltd* 1993 (1) SA 138 (N) 141 I - J). Both parties treated the matter as an application under Rule 6 and delivered affidavits, not confining themselves to a reconsideration of the material before the respondent at the time the determination was made. Both parties agreed that there was no onus to discharge. This accords with the approach taken in the *C I Caravans* case (*supra*) where Page J said the following (at 149C):

"It seems to me, however, that nothing of importance turns upon this point in the present appeal, which is concerned in the main with questions of interpretation which cannot, in their very nature, be decided by reference to an *onus of proof*."

Duty on imported goods is levied according to part 1 of schedule 1 to the Act. This schedule is based on Nomenclature agreed at the Harmonised Commodity Description and Coding System at Brussels on 14 June 1983 to which South Africa became a signatory. This system makes a six digit code mandatory for headings and sub-headings but provides for contracting countries to add a sub-heading beyond the six-digit level to cater for specific national needs. In the present matter, therefore, the mandatory six-digit code is 8481.80. The further classification into either 72 or 90 belongs to South Africa alone. One cannot, therefore, derive assistance in this matter from other countries which are signatories to the Brussels Harmonised System. I have also not found, nor was I referred to, case law dealing with the categorisation of goods such as these.

In *International Business Machines SA (Pty) Ltd v Commissioner for Customs and Excise 1985 (4) SA 852 (A)*, Nicholas AJA described the process of classification as follows (at 863G – H):

"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 which is most appropriate to such goods."

The appellant contended in correspondence and in its affidavits that a hose fitting is "essentially a device used to connect a hose [hosepipe] to either the water source such as a tap, another hose or to an appliance such as a nozzle, watering pistol, lawn sprinkler etc... We believe that the existing tariff sub-heading for 'hose fittings'

is intended to cover locally produced fittings such as quick couplers etc". This submission is repeated on behalf of the appellant in Mr Harcourt's heads of argument where it is submitted that the goods in question are accessories attached by a "hose fitting", meaning a coupler, to a hose pipe. As pointed out by Mr Pammenter, who appeared for the respondent, however, the couplers linking the hose pipe to the imported goods do not fall within the description of the main heading 84.81 since they are not taps, cocks, valves etc. In argument Mr Harcourt conceded this point.

Mr Harcourt submitted that "Hose fittings" does not mean all items attached to a hose pipe, whether directly or indirectly, but only items attached directly. Mr Harcourt submitted that, taken to its logical conclusion, the respondent's determination will mean that anything which is attached to a hosepipe, including a tap, would therefore be classified as a hose fitting. I do not agree. If the distinction is between direct attachment and indirect attachment, one could be faced with the same anomaly. It is possible, for example, to manufacture a tap in such a way that a hosepipe can fit directly onto it. The tap would then, on the appellant's approach, be classified as a hose fitting. In neither situation would this be the case because, as pointed out in the appellant's affidavit, a tap is classified under a different tariff heading. At most it would lead to an application of Rule 3 of the General Rules for the Interpretation of the Harmonised System applying to goods *prima facie* classifiable under two or more headings. This would also be the position for other appliances which are classified under other headings to which a hose pipe is attached.

As helpfully set out in Mr Harcourt's heads of argument, the Concise English Oxford Dictionary (11th Ed.) defines a fitting as a small part attached to equipment. The Collins English Dictionary (Internet online Ed.) defines a fitting as an accessory or part. Neither definition specifies or requires direct attachment. He submits that a

hose fitting is therefore a secondary or ancillary item attached to a flexible tube. On this approach, a tap would not meet the definition since the hose is attached to it and the tap is not secondary or ancillary to the hose pipe. A hose fitting is therefore an item which is accessory to a hose in the sense that it requires to be attached to it in order to be used for the purpose for which it was designed and which falls under general heading 84.81.

In *Commissioner, SARS v Komatsu Southern Africa (Pty) Ltd 2007 (2) SA 160* the following was said, after referring to the three-stage process, (at para 8):

"It is clear from the authorities that the decisive criterion for the customs classification of goods is the objective characteristics and properties of the goods as determined at the time of their presentation for customs clearance. This is an internationally recognised principle of tariff classification. The subjective intention of the designer or what the importer does with the goods after importation are, generally, irrelevant considerations. But they need not be because they may in a given situation be relevant in determining the nature, characteristics and properties of the goods."

As to the nature and characteristics of the goods, they are accessories which when, and only when, connected to a hose pipe produce a range of spray patterns, volume, pressure and reach. All require to be used with a hose pipe and none can be used without one. They are all goods which are designed to fit onto a hose pipe. They do so by connecting to the coupler directly attached to the hose pipe. They are specifically manufactured with a section designed to clip into a specific coupler. The coupler is designed for the sole purpose of providing a quick and easy means for the goods in question, and other similar goods, to connect to a hose pipe. The system involving the coupler and the goods is designed so that one hose pipe can be used with a multitude of accessories. Without this system, if a person wished to use a number of different hose accessories, it would require having a number of hose

pipes, each with its directly attached accessory, or the detachment of one directly attached accessory and the subsequent direct attachment of an alternative one.

The above exercise does not involve an enquiry into the subjective intention of the designer or what the appellant does with the goods after import, it emerges from an analysis of the goods themselves.

The goods in question are designed to be fitted onto a hose pipe, albeit by an intervening coupling device. The selection of the heading which is most appropriate to the goods in question is "Hose fittings". I am therefore of the view that the determination of the respondent that they fall under tariff sub-heading 8481.80.72 was correct.

In the result, the appeal is dismissed with costs.



Date of Hearing	:	4 June 2008
Date of Judgment	:	9 June 2008
Counsel for the Applicant	:	Adv AWM Harcourt, instructed by Mooney Ford
Counsel for the 1 st Respondent	:	Adv CJ Pammenter SC, instructed by State Attorney (KZN)