



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

Please note that the media summary is for the benefit of the media and does not form part of the judgment.

Commissioner: SARS v Levi Strauss SA (Pty) Ltd (509/2019) [2021] ZASCA 32 (7 April 2021)

The SCA today upheld in part an appeal by SARS against a decision by the Gauteng Division of the High Court, Pretoria upholding an appeal by Levi Strauss SA (Pty) Ltd against three determinations by SARS in relation to customs duties and VAT payable on the importation of branded clothing for sale in South Africa.

The successful appeals related to the determination of the transaction value of the imported clothing in terms of s 65 of the Customs and Excise Act 91 of 1964. Section 67(1)(a)(i) of the Act provides for the inclusion in transaction value of all commissions except buyers' commission. Levi Strauss claimed that commission paid to an associated company in the international Levi Strauss group of companies, Levi Strauss APD, based in Singapore, was buyer's commission paid to an agent for the sourcing and procurement of the imported clothing. The SCA held that as Levi Strauss APD was part of the Group Sourcing Organisation of the Levi Strauss group and the company that headed the Asia Pacific region of the group, of which Levi Strauss SA was a part, its actions in procuring the manufacture of clothing for the group were not those of a buying agent and the commission paid to it was not a buying commission. Accordingly it had to be included in determining the transaction value of the imported goods.

Section 67(1)(c) of the Act provides for the inclusion in the transaction value of imported goods of royalties due directly or indirectly as a condition of sale of the goods for export to South Africa. The SCA agreed with and approved the broad approach to the determination of when the obligation to pay royalties becomes due directly or indirectly as a condition of the sale of goods for export that has been applied in a range of jurisdictions around the world. This requires the court to examine all aspects of both the transaction under which the goods were imported and the agreement under which the obligation to pay royalties arises. Under a Trademark License Agreement concluded between Levi Strauss SA and Levi Strauss & Co, the ultimate holding company of the Levi Strauss group royalties were payable for the use of the trademarks and trade names of Levi Strauss & Co, the amount of the royalties to be calculated and to accrue when goods were sold. The court held that the nature of the relationship between Levi Strauss & Co and Levi Strauss SA was such that the obligation to pay royalties was inextricably part of the transaction under which the goods were imported and therefore the royalties had to be included in the transaction value of the imported goods.

The SCA dismissed SARS's appeal against the High Court's decision to set aside a determination that goods consigned directly from SADC member states to Levi Strauss SA were not entitled to claim country of origin status under the Protocol on Trade in the Southern African Development Community (SADC) Region. SARS contended that although the goods were sent directly from Madagascar and Mauritius to Levi Strauss SA in South Africa, they did not qualify for country of origin status, because they were purchased from the manufacturers in those countries by a company in the Levi Strauss group based in Hong Kong and sold by them to Levi Strauss SA at a mark-up of twelve percent. The SCA held that the relevant provisions of the Protocol and the Act were concerned only with the factual question of whether the goods had been consigned from one SADC country to another and not with the underlying commercial relationship in terms of which this had occurred. As the goods emanated from two SADC member states and were sent directly from those states to South Africa, another member state, they were entitled to claim country of origin status and were entitled to enter the goods for customs purposes at the favourable rates of duty provided in the Protocol.