



**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

DATE 1 June 2021

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 Toneleria Nacional RSA (Pty) Ltd (444/20) [2021]
ZASCA 65 (1 June 2021)*

The SCA today upheld an appeal by the Commissioner: SARS against a decision by the Western Cape Division of the High Court, upholding an appeal by Toneleria Nacional RSA (Pty) Ltd against a SARS determination of the customs classification of certain wooden items imported by Toneleria from Chile for use in the maturation of wine. The wooden items are oak planks or slats made of the same oak as wine barrels and subjected to similar processes of curing and toasting before being cut into shape using a circular saw. They are used by some winemakers as an alternative to maturing wine in oak barrels, which are expensive. The planks or slats are suspended in the wine from a frame and the winemaker. The effect in imparting flavour, aroma and structure to the wine is similar to the effect of maturation in oak barrels.

The tariff item 44.16 under which Toneleria sought to import the disputed items applied to 'Casks, barrels, vats, tubs and other coopers' products and parts thereof, of wood, including staves.' Although Toneleria describes these items as staves, they are not staves of the type referred to in the tariff heading, because they are independent items not intended as parts

of anything else. Nor are they casks, barrels, vats or tbs. Accordingly they could only qualify for inclusion under tariff heading 44.16 if they were 'other coopers' products'.

The court considered what a cooper is and held that in its ordinary meaning it is a person who makes barrels and other similar containers using traditional methods that have been in use for hundreds of years. The cooper is a skilled craftsman, using special tools and techniques to produce wine barrels and similar containers. These have distinctive features, such as the bulge around the centre of the barrel and the hoops of metal or wood that hold the barrel staves together. All of these features were missing from the items imported by Toneleria. Nor was there any evidence to show that they are generally accepted as 'coopers' products', that is, products created using the skills and special techniques of a cooper. It is not sufficient that they may perform some of the functions of a wooden barrel, although not its storage function. The tariff heading required the product to be products of the skills and techniques of a cooper. The evidence did not show that the production of these items required any input from a cooper.

The SCA accordingly held that the imported items were not 'other coopers' products' and therefore did not qualify for importation under tariff heading 44.16. The appeal was upheld with costs including the costs of two counsel.