



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

Commissioner for the South African Revenue Service and Others v Dragon Freight (Pty) Ltd and Others [2022] ZASCA 84

The Supreme Court of Appeal (SCA) today upheld an appeal against an order by the Gauteng Division of the High Court, Pretoria (high court), in terms of which it reviewed and set aside a decision by the first appellant, the Commissioner for the South African Revenue Service (SARS), to seize 19 containers of clothing imported from China (the goods), in terms of s 88(1)(c) of the Customs and Excise Act 91 of 1964 (the Act). SARS had taken this decision because the value of the goods had been under-declared by the respondents, which allowed them to pay a lesser amount of customs duty. The high court ordered SARS to release the containers to the respondents.

The SCA held that the respondents had not complied with s 96(1) of the Act, which proscribes the institution of legal proceedings against SARS, unless a litigant delivers a written notice to SARS, setting out its cause of action clearly and explicitly, at least one month before instituting those proceedings. On this ground alone, the appeal was upheld.

The SCA further held that SARS' decision to seize the goods was lawful, reasonable and procedurally fair. The agreements in terms of which the goods were allegedly bought in China, were false. Export declarations which SARS had obtained from the General Administration of Customs of the People's Republic of China (GACC), showed that the prices declared to the GACC of similar goods which the respondents had bought from the same suppliers in a

previous shipment, involving the same clearing agent, were 1000% higher than the prices of the goods declared to SARS in the 19 containers. The respondents' explanation for the unbelievably low prices, which included fraud by Chinese export agents, was not credible. They provided different explanations as to how the goods were sourced and bought at such low prices, which were false. A textile expert engaged by SARS determined that the prices declared by the respondents were unrealistic and unattainable. They refused to provide information and documents concerning the conclusion of the sale agreements, and the inference drawn by SARS that the agreements were created by the importers to support the entries on importation, was justified.

For these reasons, the high court's findings that SARS had been presented with the requisite documents by the respondents in terms of the Act; that the export declarations obtained from the GACC had nothing to do with the 19 containers; and that the respondents had responded copiously to SARS' requests for information and documents, was incorrect. The respondents had not proved that the goods were imported as prescribed by the provisions of the Act, as they were required to do under s 102(4). SARS' decision to seize the 19 containers was thus lawful and reasonable.

The SCA accordingly upheld the appeal. The high court's order was set aside. It was replaced with an order dismissing the respondents' application to review and set aside the decision to seize the 19 containers, with costs, including the costs of two counsel where so employed.

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