



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: 28 SEPTEMBER 2022

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

Samsung Electronics SA (Pty) Ltd v The Commissioner for the South African Revenue Service (Case no 764/2021) [2022] ZASCA 126 (28 September 2022)

Today the Supreme Court of Appeal (SCA) handed down judgment dismissing the appeal against the decision of the Gauteng Division of the High Court, Pretoria (the high court).

The issue before the SCA was whether the Samsung Galaxy S7, commonly referred to as a smartphone (the product), is a 'telephone for cellular networks' or 'other apparatus for the transmission or reception of voice, images or other data'.

The amount of customs duty payable upon importation depends on the tariff heading (TH) or sub-heading in Part 1 of Schedule 1 to the Customs and Excise Act 91 of 1964 (the Act), under which the product is to be classified. The respondent, the Commissioner for the South African Revenue Service (the Commissioner), is empowered by s 47(9)(a)(i)(aa) to determine tariff headings or subheadings under which imported goods shall be classified. On 27 September 2017, the Commissioner notified the importer of the product, Samsung Electronics SA (Pty) Ltd (the appellant), of a tariff determination made the previous day that the product, which had been imported and entered on a bill of entry dated 4 October 2016, was to be classified under TH 8517.62.90 as 'machines for the reception, conversion and transmission or regeneration of voice, images or other data' (the first determination). The effect of the first determination meant that the product attracted no ad valorem duty upon importation.

Section 47(9)(d)(i)(bb) empowers the Commissioner to amend or withdraw any determination, if it was made in error, and make a new determination. On 11 April 2018, the Commissioner withdrew the first determination as having been made in error, and determined that the product would be classified under tariff heading 8517.12.10 as 'telephones for cellular networks or for other wireless networks, designed for use when carried in the hand or on the person' (the second determination).

The appeal is concerned with the proper interpretation of the competing tariff headings in Part 1 of Schedule 1 of the Act. The essence of the dispute between the parties was whether, prior to 1 April 2018, the product was correctly classifiable under TH8517.62.90 (as contended by the appellant) or TH8517.12.10 (as contended by the Commissioner). The competing tariff sub-headings in this case were:

'8517.12 - Telephones for cellular networks or for other wireless networks'

'8517.62 - Machines for the reception, conversion and transmission or regeneration of voice, images or other data, including switching and routing apparatus.'

The appellant sought a classification under 8517.62.90 that its smartphone product is not a telephone for a cellular network but rather some sort of undefined other Internet browsing apparatus that is not a telephone.

The SCA held that the objective characteristics of the product demonstrate that it is a telephone facility network: (i) the design is such that it is small enough to be carried in the hand or on the person with a large high resolution touch screen approximately of 5 inches (approximately 13 centimetres); (ii) it has

a speaker at one end which is audible when placed against the operator's ear and at the other end has a microphone to receive speech or voice from the operator's mouth; (iii) it has slots for the insertion of a sim card to operate as a telephone and communicate on a cellular network; and (iv) it has electronic keypads and software which enable the user to dial a telephone number to initiate a telephone call and to terminate a telephone call.

The fact that the product can connect to the Internet and browse the Internet like a computer, either over a cellular network or WLAN (Wireless Local Area Network) does not make it more like a traditional laptop or desktop computer with which it shares Internet browsing functionality. Its size, construction and sim card capacity dictate that it is still a telephone. It is merely an advanced telephone following the natural progression of rapid technological advancement and although shares many features of communication technology common to computers, it clearly identifies as a telephone and not as some other apparatus. As a result, the court held that the most appropriate heading at the time of the determination was TH8517.12.10.

~~~~ends~~~~