



**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:** 29 NOVEMBER 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*

*Pacific Solar Technologies (Pty) Ltd v The Commissioner of the South African Revenue Service (Case no 715/2021) [2022] ZASCA 166 (29 November 2022)*

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

The issue before the SCA was whether a solar home system had the essential character of an energy source and power generation device or that of a lighting kit.

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 appellant, Pacific Solar Technologies (Pty) Ltd (Pacific Solar), imported five different types of solar home systems (the product), which was entered under TH 8501.31. On 29 March 2018, the respondent, the Commissioner of the South African Revenue Service (the Commissioner), made tariff determinations in respect of two of the models imported by Pacific Solar, namely the PVES 20W and PVES 100W models.

The two competing tariff headings in the case were 8501.31 (as contended by Pacific Solar) and 9405.40.21 (as contended by the Commissioner). They respectively provide:

'8501 – electric motors and generators (excluding generating sets)

8501.31 – Of an output not exceeding 750W.'

'9405 – Lamps and lighting fittings including searchlights and spotlights and part thereof, not elsewhere specified or included; illuminated signs, illuminated name-plates and the like, having a permanently fixed light source, and parts thereof not elsewhere specified or included.

9405.40 – Other electric lamps and lighting fittings.

9405.40.21 – Other light fittings, containing light emitting diodes (LED) as a source of illumination.'

The SCA relied on the principle set out in *Commissioner for the South African Revenue Services v LG Electronics SA (Pty) Ltd (LG Electronics)* [2010] ZASCA 79, wherein it was held that the enquiry 'does not turn on what the product was going to be or what it will be adapted to be. Rather, the court must consider what the product was at the time of importation'. The SCA found that the product, as presented at the time of entry, constituted a fully functioning lamp, which was common cause. Accordingly, by

application of the principle in the *LG Electronics* matter, the product fell to be classifiable under TH 9405.40.21.

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