

LEGAL BATTLE BETWEEN SAMSUNG AND SARS OVER DEVICE CLASSIFICATION

Introduction

The Gauteng Division of the High Court recently decided on a very interesting matter between technology giant Samsung and the South African Revenue Services (hereinafter referred to as 'SARS'). The case concerned the classification of the well-known Galaxy model for import and customs classification. The company sought to claim refunds of the customs duties paid on all its previous imports since 2017 based on its said classification.

The Background

The case put forward by Samsung is that its Galaxy S7 model was classified under the incorrect heading of the Customs and Excise Act¹ (hereinafter referred to as 'the Act'). As a result, SARS had a meeting with the company's representatives wherein it was requested that the company submit the device's specifications. Initially, it was determined to be classified under a tariff heading which essentially recognised it as a *'machine for the reception, conversion and transmission...of voice, images or other data'*.²

However, a few months later, SARS later withdrew this determination and instead classified the model under the tariff heading for *'telephone for cellular networks or other wireless networks designed for use when carried in the hand or on the person'*.³ This meant that the company could no longer apply for refunds on their customs duties paid, resulting in them approaching the High Court to set aside SARS' decision.

The Arguments Submitted

Samsung submitted that although the device can make telephone calls, its primary function was more for *'connection to the internet, social media, music and games and not the making of telephone calls'*.⁴ It further provided market surveys showing the usage of the device for these purposes and not the telephonic services it offered.

¹ Act 91 of 1964.

² Tariff determination heading TH8517.62.90 of the Act.

³ Tariff determination heading TH8517.12.10 of the Act.

⁴ At para 23.

However, SARS submitted that since the technology for telephones had developed in leaps and bounds, by allowing the applicant to have their submissions accepted, it would mean a definition for the 'principal function of the product' to be taken 'out of context'.⁵

Case Law

In the case of *Commissioner, SARS v Komatsu Southern Africa (Pty) Ltd*⁶, it was stated that:

*"It is clear from the authorities that the decisive criterion for the customs classification of goods is the objective characteristics and properties of the goods as determined at the time of their presentation for customs clearance. This is an internationally recognised principle of tariff classification. The subjective intention of the designer or what the importer does with the goods after importation are, generally, irrelevant considerations. But they need not be because they may in a given situation be relevant in determining the nature, characteristics and properties of the goods".*⁷

However, in *CSARS v The Baking Tin (Pty) Ltd*⁸ the Court further noted that the subjective intention of the designer or maker 'may affect what appears to be the objective characteristics of the goods and thus change their classification'⁹, which seemed to be the case here and which the Court was to be aware of.

Conclusion

Judge Mngqibisa-Thusi was not convinced of Samsung's arguments and noted that just because the device had access to the internet, it does not result in the nature and objective characteristics of the device having changed. Therefore, the application was dismissed, resulting in the device remaining under the classification of a 'telephone for cellular network'.

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⁵ At para 29.

⁶ 2007 (2) SA 157 (SCA)

⁷ At para 8.

⁸ 2007 (6) SA 545.

⁹ At para 13.