REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

(1) REPORTABLE: NO (2) OF INTEREST TO OTHER JUDGES: NO (3) REVISED	
13 August 2020	**C.J. COLLIS**
DATE	SIGNATURE

CASE NO: 83481/18

In the matter between:

PEARLSTOCK (PTY) LTD **APPLICANT**

and

THE COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE **RESPONDENT**

JUDGMENT

COLLIS J

INTRODUCTION

[1] This is a tariff appeal in terms of Section 47(9)(e) of the Customs and Excise Act 91 of 1964 ("the Customs Act"). A tariff appeal is a complete rehearing of the merits of the matter, with or without additional evidence.[1]

[2] The appeal lies against a tariff determination/classification for custom duty purposes of certain "PVC Panels", imported by the applicant. The imported panels consist of polymers of vinyl chloride. In Metmak (Pty) Ltd v Commissioner of Customs and Excise 1983 (3) 892 (T) at 897B, it was held that a single judge sitting in motion court in the High Court having jurisdiction, is competent to hear such an appeal,[2]

[3] On importation the respondent classified the panels as other plastics of PVC under tariff subheading 3916.20.90 attracting customs duty at a rate of 18%.

[4] The applicant contends that the goods should be classified under tariff subheading 3921.12 of PART 1 of Schedule No.1 to the Customs Act (which covers plastics of cellular PVC), attracting customs duty at a rate of 10%.

ISSUE FOR DETERMINATION

[5] The question that this court is called upon to determine is whether the PVC goods constitute cellular PVC products as contended for by the applicant, or not as contended for by the respondent.

[1] Tikly & Others v Johannes NO & Others 1963 (2) SA 588 T @590F to 591A.
[2] S 49 (9) (e).

COMMON CAUSE FACTS

[6] It is common cause between the parties that the products are indeed polymers of vinyl chloride and that it is the PVC, which gives product their essential character.[3] Furthermore, it is common cause that there are no Section Notes, which are of any assistance for the present purposes of interpretation.[4]

LEGISLATIVE FRAMEWORK

[7] Section 47(1) of the Customs and Excise Act 91 of 1964 provides as follows:

> Payment of duty and rate of duty applicable.
>
> "Section 47(1) Subject to the provisions of this Act, duty shall be paid for the benefit of the National Revenue Fund on all imported goods all excisable goods, all surcharge goods, all environmental levy goods, all fuel goods and all Road Accident Fund levy goods in accordance with the provisions of Schedule 1 at the time of entry for home consumption of such goods: Provided that the Commissioner may condone any underpayment of such duty where the amount of such underpayment in the case of –
>
> (a) goods imported by post is less than 50 cents;
> (b) goods imported in any other manner is less than five rand; or
> (c) excisable is less than two rand."

[3] Founding Affidavit para 7 p 8 & Answering Affidavit para 14 p 130.
[4] Founding Affidavit para 50 p 26 & Answering Affidavit para 28 p 136.

[8] When the matter concerns one of interpretation, Section 47(8)(a) provides guidelines as follows:

> "Section 47(8)(a) The interpretation of –
>
> (i) any tariff heading or tariff subheading in PART 1 of Schedule 1;
>
> (ii) (aa) any tariff item or fuel levy item or item specified in Part 2, 3, 5, 6 or 7 of the said Schedule, and
>
> (bb) any item specified in Schedule 2, 3, 5 or 6;
>
> (iii) the general rules for the interpretation of Schedule 1; and
>
> (iv) every section note and chapter note in Part 1 of Schedule 1;
>
> shall be subject to the International Convention on the Harmonized Commodity Description and Coding System done in Brussels on 14 June 1983 and to the Explanatory Notes to the Harmonised System issued by the Customs Co-operation Council, Brussels (now known as the World Customs Organisation) from time to time: Provided that where the application of any part of such Notes or any addendum thereto or any explanation thereof is optional the application of such part addendum or explanation shall be in the discretion of the Commissioner."

[9] The proper approach to tariff classification was set out in International Business Machines (SA) Pty Ltd v Commissioner for Customs and Excise [5] by Nicholas AJA, as he then was, to be the following:

> "Classification as between headings is a three – stage process: first, interpretation – the ascertainment of the meaning of the words used in the headings (and relative section and chapter notes) which may be relevant to the classification of the goods concerned; second, consideration of the nature and characteristics of those goods; and third, the selection of the heading which is most appropriate to such goods."

[10] Furthermore, Part 1 of the Schedule, including the notes thereto and the tariff headings and subheadings should be interpreted according to the natural and ordinary sense of the language used therein, unless the context or the subject clearly shows that they were used in a different sense.[6]

[11] The relevant headings, section and chapter notes, therefore, are not only the first, but the paramount consideration in determining which classification between headings should apply in a particular case.[7] It is also possible that these rules result in the possibility of classification under more than one heading.[8]

[5] 1985(4) SA 852 (A) at 863F-G.
[6] Steyn Die Uitleg Van Wette 5 ed at 2 para 2; National Screenprint (Pty) Ltd v Minister of Finance 1978 (3) SA 501 (C) at 506H, and effect must be given to every word.
[7] 32 SATC 101; 1970 (2) SA 660 (A) 676A.
[8] Heritage Collection (Pty) Ltd v Minister of Finance 43 SATC 27

[12] In order to make the above determination, the court may consult well-known and authoritative dictionaries and for technical words, technical dictionaries and authority may be used.[9]

[13] Also, words which are not technical or specialised bear their ordinary meaning.[10]

[14] In Secretary for Customs & Excise v Thomas Barlow and Sons Ltd 1970 (2) SA 660(A) at 675D - 675H Trollip JA described the structure of Schedule 1 as follows:

> "All goods generally handled in international trade are systematically grouped in sections, chapters and sub-chapters, which are given titles indicating as concisely as possible the broad class of goods each covers. Within each chapter and sub-chapter, the specific type of goods within the particular class is itemised by a description of the goods printed in bold type. That description is defined in the Schedule as a "heading." Under the heading appears sub-headings of the species of the goods in respect of which the duty payable is expressed. The Schedule itself and each section and chapter are headed by "notes", that is rules for interpreting their provisions."

[15] The learned judge expressed an opinion that the approach to be adopted, generally when applying the explanations in the Brussels notes as follows:[11]

[9] Durban North Turf v CSARS 2011 (2) SA 347.
[10] Durban North Turf v CSARS 2011(2) SA 347 @351 para 19.

[11] At 676B – E.

> "It can be gathered from the aforegoing that, the primary task in classifying particular goods is to ascertain the meaning of the relevant headings and section and chapter notes but in performing that task, one should also use the Brussels Notes for guidance especially in difficult and doubtful cases. But in using them one should bear in mind that they are merely intended to explain or perhaps supplement those headings and notes and not to override or contradict them. They are manifestly not designed for the later purpose, for they are not worded with the linguistic precision usually characteristic of statutory precepts; on the contrary they consist mainly of discursive comment and illustration. And in any event, it is hardly likely that the Brussels Council intended that its explanatory notes should override or contradict its own Nomenclature. Consequently, I think that in using the Brussels Notes one must construe them so as to conform with and not to override or contradict the plain meaning of the headings and notes."

[16] It is important to note that although the interpretation of headings, chapter and section notes are governed by specific tariff classification principles and rules, such principles and rules do not override the general principles and rules of legal and interpretation.

[17] In National Joint Municipal Pension Fund v Endumeni Municipality[12] the Supreme Court of Appeal summarized the legal principles of interpretation as follows:

[12] 2012 (4) SA 593 (SCA) at [18].

> "[18] …...: Interpretation is the process of attributing meaning to the words used in a document, be it legislation, some other statutory instrument, or contract, having regard to the context provided by reading the particular provision or provisions in the light of the document as a whole and the circumstances attendant upon its coming into existence. Whatever the nature of the document, consideration must be given to the language used in light of the ordinary rules of grammar and syntax; the context in which the provision appears; the apparent purpose to which it is directed and the material known to those responsible for its production. Where more than one meaning is possible each possibility must be weight in light of all these factors. The process is objective, not subjective. A sensible meaning is to be preferred to one that leads to insensible or unbusinesslike results or undermines the apparent purpose of the document. Judges must be alert to and guard against the temptation to substitute what they regard as reasonable sensible or businesslike for the words actually used. To do so in regard to a statute or statutory instrument is to cross the divide between interpretation and legislation; in a contractual context it is to make a contract for the parties other than the one they infact made. The "inevitable point of departure is the language of the provision itself, read in context and having regard to the purpose of the provision and background to the preparation and production of the document."

[18] In Kommissaris Van Doena en Aksyns v Mincer Motors Bpk 1959 (1) SA 114 (A) at 121C – D the Appellate Division held that expert evidence is not admissible to prove the meaning of words used.

[19] The headnote of the decision mentioned above is quoted for ease of reference as follows:

> "The words "motor cars" in item 22 of the First Schedule to the Excise Act 62 of 1956 bear their ordinary meaning. Accordingly, in order to determine the meaning of 'motor car' in the item evidence is irrelevant and inadmissible. In its ordinary meaning an essential connotation of the idea of a "motor car" is that the vehicle by virtue of its construction should above everything and in the first instance be suitable and designed for carriage of passengers. From this it follows that a vehicle, such as a lorry which is so built that its use is limited chiefly to the carriage of goods, is not a motor car in the ordinary sense of the word. The same applies where the vehicle is of such a make that both passengers and goods without passengers can equally well be carried therein. The respondent, at the request of purchasers and before delivery, had altered certain imported commercial delivery vans. Behind the seat at the front of the delivery van a further seat had been introduced in such a way that the otherwise available floor space could be restored by folding the additional seat flat on the floor. In some cases, one glass panel, in others two resembling windows, had been inserted into the side panels on either side of the vehicle. The appellant had averred that the delivery vans had become motor cars on account of these alterations that the alterations fell within the definition of manufacture in Section 1 of the Act and that the excise duty in respect of such altered vehicles was accordingly payable.

Held as the vehicles were more suitable for the carriage of goods than the carriage of passengers, that they were not motor cars such were intended in item 22."

[20] The above position was reaffirmed in the Durban-North case quoted *supra*, at paragraph [21] where it was stated:

"Opinion evidence on the meanings of ordinary words is inadmissible, except in regard to words which have a special or technical meaning. International Business Machines SA (Pty) Ltd, supra at 874B."

FIRST STAGE: INTERPRETATION OF THE MEANING OF THE WORDS

[21] The ascertainment of the meaning of the words used in the headings (and relative section and chapter notes), which may be relevant to the classification of the goods concerned.

[22] Upon importation, the applicant's clearing agent had entered the PVC panels under tariff heading 3921.90.47 as non-cellular polymers of vinyl chloride, attracting customs duty at a rate of 10%.[13]

[23] The commodity description on the commercial invoice presented described the product as 'PVC Wall/ Ceiling: 6x300x3600 mm, at 50% PVC, 2.3 Kg' The analysis certificate composition depicted the following information:

[13] Founding affidavit para 9 p 8

Materials: Reference Content (0%)

PVC Resin 50%

CaCO3 (Calcium Carbonate) 44%

Slearic Acid 1%

Stabilisation Co-Material 0.8%

Tatium Pigment 1.7%

CPE 2.5% and that the goods were of cellular construction.

[24] The respondent's officials initially determined that the goods should have been entered as builders' ware of plastics, not elsewhere specified or included under TH 3925.90, attracting a customs duty at a rate of 20%.[14]

[25] On 28 September 2016, the applicant's clearing agent lodged a further internal administrative appeal in terms of Sections 77A to H of the Customs Act and contended that the correct tariff classification of the goods was TH 3921.12 (i.e. cellular PVC) attracting customs duty at a rate of 10%.[15]

[26] In a letter dated 4 July 2017, the Internal Administrative Appeal Committee informed the applicant of the outcome of the internal appeal and although it agreed with the applicant that TH 39.25 could not apply, it did not agree with the applicant's contention that the PVC panels fall to be classified under TH 3921.12. Instead the committee found that the goods were not 'cellular' and should be classified under TH 39.16.20.90 attracting customs duty of 18%.[16]

[14] Answering affidavit para 3.4 p 114
[15] Founding affidavit para 12 p 10
[16] Answering affidavit para 3.9 p 116

[27] It should be mentioned that the Act provides that the Commissioner is free to change his mind, even after he has issued a written determination. The Act provides that a determination may be amended, withdrawn, or another determination substituted for it with retrospective effect to the date of the original entry.

[28] In its substituted determination, the respondent in annexure 'FA 4' commented on the process used in relation to the goods stating that they appeared to have been manufactured through extrusion and that they have rectangular shapes throughout the panels.

[29] It is so that the applicant bears the *onus* to show that the tariff heading contended for by it is the most appropriate heading and for this purpose, it needs to provide admissible evidence demonstrating the nature and the characteristic of the goods.

[30] The imported goods must be classified as they are at the time of importation and in determining which classification, as between headings shall apply in a particular case, the test for classification is an objective one.[17] The general rule is that the goods are characterised by their objective characteristics and not by the intention with which they were made, nor the use which they may be put. In determining the nature, characteristics and properties of the goods in question, the ordinary principle of classification, namely that the goods are classified by reference to the nature and characteristics of the goods as a whole, is applied.[18] If these interpretative rules,

[17] Queens Slide Fasteners SA (Pty) Ltd v Commissioner of Customs 19 SATC 73
[18] Durban North Turf-case

including the counsel of despair enshrined in rule 3 (c) do not lead to an appropriate classification between headings, then the norm to be applied is that heading is to be used which is appropriate to the goods to which the goods to be classified are most akin.[19]

[31] In *casu* it is important to note that the respondent did not have at its disposal the expert report of Professor Maya J. John, that it now wishes to place reliance either on importation of the goods or at the latest when considering the internal administrative appeal of the applicant. The report is dated 5 April 2019 and therefore, the respondent could not have consulted this expert report at the time, as it was not in existence when the substituted determination was made on 4 July 2017. If the respondent intended to rely on expert evidence, such as the report by Prof John, such expert report should have been called for the purpose of making the determination during the appeal stage. This would have given the applicant an opportunity to engage with this report and if dissatisfied challenge the report by also bringing its own expert before a determination was made. This would constitute fair administrative action on the part of the respondent and in the present instance it fell short of this.

[32] It is also significant that throughout its answering affidavit, the respondent makes no mention as to why on importation its official initially made an incorrect determination. Nothing turns on this for the present matter, but the incorrect determination, if nothing else, serves to illustrate that the exercise which the respondent's officials are called upon to perform when classifying the goods based on the heading, chapter and section notes which may be relevant to the classification of

[19] LAWSA-Joubert Second Edition 22 Part 2 para 547 p 241

the specific goods is not such a straightforward matter. Therefore, it follows that where the respondent seeks to rely on additional evidence to make a substituted determination, such additional evidence must be called for before the specific duty is to be imposed.

[33] In the present matter and at the hearing, this court was presented with an example of one of the panels which was handed in as Exhibit 1. As a result, I had the benefit of observing the characteristics of the imported article.

[34] The Customs and Excise Tariff Book in Section VII read as follows:

Plastic And Articles Thereof, Rubber and Articles Thereof

Section Notes:

1. 'Goods put up in sets consisting of two or more separate constituents, some or all of which fall in this Section and are intended to be mixed together to obtain a product of Section VI or VII, are to be classified in the hearing appropriate to that product provided that the constituents are:

   (a) having regard to the manner in which they are put up clearly identifiable as being intended to be used together without first being repacked;

   (b) presented together; and

   (c) Identifiable, whether by their nature or by the relative proportions in which they are present, as being complementary to one another……'

[35] Chapter 39 Chapter Notes 1 defines plastic and articles thereof as follows:

> ‘Throughout the Schedule the expression “plastics” means those materials of headings 39.01 to 39.14 which are or have been capable, either at the moment of polymerisation or at some subsequent stage of being formed under external influence (usually heat or pressure, if necessary with a solvent or plasticiser) by moulding, costing, extruding, rolling or other process into shapes which are retained on the removal of the external influence.’

[36] Chapter Note 10 provides as follows:

> “In headings 39.20 and 39.21, the expression “plates, sheets, film, foil and strip” applies only to plates, sheets, film, foil and strip (excluding those of Chapter 54) and to blocks of regular geomatic shape, whether or not printed or otherwise surface-worked, uncut or cut into rectangles (including squares) but not further worked (even if when so out they became articles ready for use).”

[37] Chapter 39 further defines “cellular plastics” in the explanatory notes as follows:

> “cellular plastics are plastics having many cells (either open closed or both), dispersed throughout their mass. They include foam plastics, expanded plastics and microporous or microcellular plastics. They may either be flexible or rigid.

Cellular plastics are produced by a variety of methods. These include incorporating a gas into plastics (e.g. by mechanical mixing evaporation of a low boiling point solvent, degradation of a gas producing material), mixing plastics with hollow micro-spheres (e.g. of glass or phenolic resin), sintering granules of plastics and mixing plastics with water or solvent soluble material which are leached out of plastics leaving voids."

[38] The explanatory note to tariff heading 39.20 state, *inter alia*, that:

"This heading also excludes cellular products (heading 39 - 21) and strips of plastics of an apparent width not exceeding 5mm (Chapter 54)."

[39] Tariff heading 39.21 in the explanatory note further state *inter alia*;

"This heading covers plates sheets, film, foil and strip, of plastics other than those, heading 39.18, 39.19 or 39.20 or of chapter 54. It therefore covers only cellular products or those which have been reinforced, laminated supported or similarly combined with other materials……..."

[40] The relevant headings and subheadings read as follows:

Heading/Subheading	CD	Article Description	Statistical Unit	Rate of Duty			
				General	EU	EFTA	SADC
39.21		Other Plates sheets film,					

		foil and strips of plastics:					
3921.1		Cellular:					
3921.12	8	Of polymers of vinyl chloride	Kg	10%	free	Free	free
39.16		Monofilament of which any cross-sectional dimension exceeds 1mm, rods, sticks and profile shapes whether or not surface-worked but not otherwise worked of plastics:					
39.16.20		Of polymers of vinyl chloride:					
3916.20.90		Other	Kg	18%	free	Free	free

[41] As mentioned above, classification as between headings shall be determined according to the terms of the headings and any relative section and chapter notes.[20]

[42] The wording of the Chapter Headings 39.16 and 39.21 do not provide a direct guidance as to the meaning of the word cellular.

[43] The word cellular is as a result to be interpreted within the context of the other subheadings of Tariff 39.21. The explanatory notes to tariff heading 39.21 however makes reference to cellular products that are covered by the tariff heading, without providing guidance as to the meaning of the word cellular.

[20] Commissioner, South African Revenue Service v The Baking Tin (Pty) Ltd 2007 (6) SA 545 (SCA) at 547D.

[44] By embarking on the process of interpretation, the first point of departure would be to ascertain as to whether the imported goods or articles are described in broad terms in the headings/subheadings or the relevant section or chapter notes.

[45] The article description under heading 39.21 is: *Other plates, sheets, film, foil, and strips of plastics.* Subheading 39.21.1 provides for cellular products, which provides for even further itemised subheadings under 39.21.12 *of polymers of vinyl chloride.* By this mere itemised article description, the Commissioner sought to include under this heading items such as other plates, sheets, film, foil and strips of plastics of cellular polymers of vinyl chloride.

[46] This is precisely the description of the goods given on 'FA1' annexed to the founding affidavit and the analysis certificate composition attached to 'FA1' stipulated the panels consists of PVC Resin 50%.

[47] As mentioned, this court has had the benefit of observing an example of the 'goods' under discussion. Having regard to the objective characteristics of the example given to the court, it is a far stretch to contend that the example of the panel handed to the court is neither a sheet or plate of plastic. This is the point of departure for the court and it ought to have been the point of departure for the respondent's officials on the date of importation when such tariff classification was made.

[48] If there existed any doubt, and in the present instance there clearly was, hence the initial incorrect classification, then the respondent official was at liberty to call for additional information or evidence, which it had failed to do at the time. No explanation

is also proffered by the respondent in its answering affidavit as to why this additional evidence was not called for at the time.

[49] In the present matter the applicant referred this court to the definition of the word cellular as taken from the New Shorter Oxford English Dictionary, which amongst others described 'cellular' as….of or having small compartments, cavities, or divisions of area; porous; (of a fabric or garment) having an open texture.[21]

[50] The respondent alleges that this court should not place reliance on the Oxford Dictionary definition relied upon by the applicant as it would be inappropriate and that the court should instead have regard to a specific and technical definition of 'cellular' as used in relation to PVC products as described by Prof John.[22]

[51] The dictionary definition of the word cellular relied upon by the applicant falls within the objective characteristics of the article in question. The article description provided for under tariff heading 39.21 also supports the appearance with an open eye of the goods in question.

[52] As mentioned the article description as contended for by the respondent under heading 39.16 is: Monofilament of which is described as any cross-sectional dimension which exceeds 1mm, rods, sticks, and profile shapes, whether or not surfaced-worked but not otherwise worked, of plastics. Sub-heading 3916.20.90 further provides for other plastic imposing a duty levy of 18%. By mere observation of

[21] Founding Affidavit para 57 p 28
[22] Answering Affidavit para 56 and 57 p 138 & definition of 'cellular' as set out in para 4.4 p 170

the goods with a naked eye and based on the description thereof given upon importation, I find it improbable that the respondent official could have concluded that the articles under dispute could resort under tariff heading 39.16 as it fell short of the article description. It stands to reason that a conclusion could not be reached that they were not panels of PVC plastic and cellular in construction.

SECOND STAGE: CONSIDERATION OF THE NATURE AND CHARACTERISTICS OF THE GOODS

[53] As mentioned the second stage to consider is the nature and the characteristics of the goods under discussion. In this regard the applicant alleges, that a visual inspection of the imported PVC panels shows that they cannot be described as porous but rather that they have compartments or divisions as described in the definition relied upon by the applicant.[23]

[54] Further, the applicant was in agreement with the respondent that the PVC panels do not resemble the manufacturing process of containing gases to create an expanding effect and as such it asserts that it falls within the tariff heading 39.21. The applicant contends that the goods are manufactured by way of extrusion, which entails that the composite materials making up the product (principally PVC resin and calcium carbonate) are shaped into panels by forcing the mixture through a dye at high temperature.[24] It as a result contends that the PVC panels are thus manufactured under external influence by extruding as provided for in Note 1 to Chapter 39.

[23] Founding affidavit para 66 p 32
[24] Founding affidavit para 72 p 34 & Answering affidavit para 45 p 142

[55] In reply the respondent asserts that it bears no knowledge of the manufacturing process but accepts that it occurs by way of extrusion. It however asserts that the use of this process alone will not result in producing cellular PVC and places reliance for this viewpoint on the report of Prof John.

[56] Prof John sets out that on the samples provided to her for analysis, she subjected the samples to thermogravimetric analysis (TGA), differential scanning calorimetry (DSC) and microscopic analysis and concluded that it does not constitute cellular PVC. In addition to this, the sample provided to the expert also cannot be termed as cellular as defined by MV Titow in the Fourth Edition Elsevier Applied Science Publishers as a PVC material or product.[25]

[57] In its replying affidavit the applicant asserts that the Customs and Duty Act, is an act of general application across an extremely wide spectrum of commodities. Furthermore, that it is not the sort of legislation which has limited technical application or which requires special understanding of technical language or usage. Based on this it asserts that the expert evidence should not be admissible to prove the meaning of the words used in the Act or the schedules thereto.[26]

[58] In determining the nature and characteristics of the goods for the purposes of making a correct tariff classification it is incumbent upon the party responsible in terms of Act to call for expert evidence where needed, in order to make a correct tariff

[25] Respondent's supporting affidavit para 4.2p 162
[26] Replying affidavit para 5 & 5 p 201-202

determination. Expert opinion where relevant should be called for by the Commissioner before such determination is made. That way any duty to be imposed on the taxpayer can also be challenged through expert evidence by the taxpayer, and most importantly before the imposition of such duty. To merely place reliance on expert evidence *ex post facto* is in violation of the *audi alterem partem* rule and as already mentioned, not in accordance with just administrative action as provided for in section 33 of our Constitution.[27]

[59] It is for the above reasons that I conclude that on observation of the goods and having regard to the explanatory notes to the chapter notes to Chapter 39, that the goods have small compartment cavities or divisions of areas which falls within the New Shorter Oxford English Dictionary as contended by the applicant.

THIRD STAGE: SELECTION OF THE MOST APPROPRIATE HEADING

[60] Given the totality of the evidence presented before this court, I therefore conclude that the PVC panels in respect of which a tariff determination had to be made are *prima facie* classifiable under tariff heading 39.21 and more specifically under tariff heading 3921.12 which would have attracted a 10% custom duty levy.

ORDER

[61] In the result the following order is made:

61.1 The applicants appeal against the respondent's tariff determination in terms whereof the respondent determined that the tariff heading 3916.20.90 in

[27] Section 33 provides: Just administrative action: 's 33(1) Everyone has the right to administrative action that is lawful, reasonable and procedurally fair'

Part 1 of Schedule 1 to the Customs and Excise Act 91 of 1964 ("the Act") is applicable to a product described as a "PVC Panels", as set out in annexure "FA4" to the Notice of Motion, is upheld.

61.2 The respondent's tariff determination referred to in paragraph 61.1 is set aside and replaced with a tariff determination in terms of which the products described in paragraph 61.1 above, be classified under tariff heading 3921.12.

61.3 The respondent is ordered to pay the costs of the application including the costs occasioned by the employment of senior counsel.

C.J. COLLIS
JUDGE OF THE HIGH COURT

Appearances

Date of Hearing	: 20 February 2020
Date of Judgment	: 13 August 2020
Counsel for the Applicant	: Adv. J.P Vorster SC
Attorney for the Applicant	: Shepstone & Wylie Attorneys
Counsel for the Respondent	: Adv. L.G Kilmartin and Adv. N.P Moropa
Attorney for the Respondent	: The State Attorneys

Judgment transmitted electronically.