


IN THE HIGH COURT OF SOUTH AFRICA  
(WITWATERSRAND LOCAL DIVISION)

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: YES/NO.	
(2) OF INTEREST TO OTHER JUDGES: YES/NO.	
(3) REVISED. ✓	
DATE .....	 SIGNATURE

CASE NO: 18184/2000

In the matter between:

R C DRILLING (PTY) LTD

Applicant

and

THE COMMISSIONER FOR THE SOUTH  
AFRICAN REVENUE SERVICES

Respondent

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JUDGMENT

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MARAIS, J:

This is an appeal in terms of section 47(9) of the Customs and Excise Act 91 of 1964 ("the Act") by way of notice of motion against tariff determinations made by the Commissioner of the South African Revenue Services ("the Commissioner") in respect of four imported

vehicles namely the Groundsmaster 200 and 300, the Greensmaster 3200 and the Reelmaster 4500-D. Initially there was a determination dated 13 August 1999 relating only to the Greensmaster 3200 and the Reelmaster 4500-D. A subsequent determination related to the other two vehicles. By a sensible arrangement between the parties the respondent consented to the applicant amending its initial application in order to avoid a duplicity of appeals and incorporating an appeal against the later determination relating to the Groundsmaster 200 and 300. The issues are effectively identical in the case of all four vehicles. The amended notice of motion on the basis of which this appeal was heard is that dated 10 August 2000 and to be found at page 1 of the papers.

The Commissioner determined that the vehicles should fall under Tariff Heading ("TH") 84.33 "Grass ... mowers". The applicant contends that the vehicles should fall under TH 87.09 "Tractors".

TH.84.33 reads as follows:

*"84.33 - HARVESTING OR THRESHING MACHINERY, INCLUDING STRAW OR FODDER BALERS; GRASS OR HAY MOWERS; MACHINES FOR CLEANING, SORTING OR GRADING EGGS, FRUIT OR OTHER AGRICULTURAL PRODUCE, OTHER THAN MACHINERY OF HEADING NO. 84.37.*

- *Mowers for lawn, parks or sport-grounds:*
- 8433.11 - *Powered, with the cutting device rotating in a horizontal plane*
- 8433.19 - *Other*
- 8433.20 - *Other mowers, including cutter bars for tractor mounting*

- 8433.20 - Other haymaking machinery
- 8433.40 - Straw or fodder balers, including pick-up balers
- Other harvesting machinery; threshing machinery:
  - 8433.51 -- Combine harvester-threshers
  - 8433.52 -- Other threshing machinery
  - 8433.53 -- Root or tuber harvesting machines
  - 8433.59 -- Other
  - 8433.60 -- Machines for cleaning, sorting or grading eggs, fruit or other agricultural produce
  - 8433.90 -- Parts."

TH 87.01 reads as follows:

- "87.01 - TRACTORS (OTHER THAN TRACTORS OF HEADING NO. 87.09) (+).
  - 8701.10 - Pedestrian controlled tractors
  - 8701.20 - Road tractors for semi-trailers
  - 8701.30 - Track-laying tractors
  - 8701.90 - Other."

Neither party contends that there is any tariff classification under the heading for which it contends which in clear terms describes the vehicles in question. Applicant relies on the vehicles falling under tariff classification "8701.90 - Other" whereas respondent relies upon it falling under tariff classification "8433.19 - Other"

Both parties therefore rely upon what they contend is the correct interpretation of the Tariff Heading under which they claimed the vehicles fall.

The vehicles as landed

The relevant and essential features of each of the four vehicles as imported do not differ in any material respect. It is therefore convenient to describe only one of the vehicles using the Groundsmaster 200 as embodying the features and characteristics which are relevant to the tariff classification of all four vehicles.

A photograph of this vehicle as presented upon importation appears at p 19 MLL4 which shows a small four-wheeled open vehicle with a single seat for the driver. As presented on importation the vehicle is fitted with no implements and in that state is accordingly unable to operate as a lawnmower without the addition of the necessary implement.

The vehicle is described in the founding affidavit of Luckhoff and a supporting affidavit by expert witness Fuls who describes himself as an engineer specialising inter alia in research on tractor designs. The vehicle consists of a propelling base with two arms extended forwards towards the front of the vehicle onto which implements may be fitted. The vehicle contains an engine and the necessary controls to enable it to be driven, steered and stopped. A variety of implements are available which can be fitted to the two arms extending forward of the vehicle and there is a power take-off from the vehicle which supplies power to the implement fitted. The accessories designed for use with the vehicle

are so designed that they can readily be interchanged within reasonable periods, the operations required to effect changes being described in the affidavit by Fuls (p 60 para 9.2). The implements which can be used with the Groundsmaster 200 are a debris blower, a rotating broom, a plow, a flail and a mower (per Fuls). Luckhoff describes the vehicle as being capable of fitted with a leaf mulcher and a snow-thrower which are presumably the functions of certain of the implements described by Fuls. Nothing turns on this.

According to Luckhoff all the appliances can be detached "*with minimum effort in the field*" and none are permanently attached to the tractor; indeed none of them are fitted to the vehicle as landed and imported.

Luckhoff concludes "*the vehicle is quite clearly designed to push an implement that may be fitted to*" the arms extended forwards from the front of the vehicle (which can be seen on the photographs MLL19). This conclusion is supported by Fuls who states:

"9.6 *The vehicles have been designed in such a manner that the implements attached to them are pushed by the vehicle. The implements themselves rest either on their own skids 's' or wheels 't' when operating, therefore necessitating to be pushed in stead of merely being supported.*"

Fuls then concludes:

"9.7 *As a result of the design of the arms and power take-off points of the vehicle, it is clear that the vehicles have been designed as multi-purpose vehicles. It can furthermore not be said that any of the implements is permanently*

*attached to the vehicles. They have been designed to mount or detach any of the implements with ease."*

In my view the conclusions of Luckhoff and Fuls are irresistible. The Groundsmaster 200 is capable of being fitted with implements to its forward-facing arms, providing power to operate them and to propel them forward whilst the implements are supported by their own means whether in the form of skids or wheels. It is equally clear that the vehicle may be used to push and power a variety of implements designed to operate with it which implements can readily be detached from the vehicle and interchanged and can therefore not be said to be permanently attached to the vehicle. The further conclusion of Fuls also seems irresistible from the above description which is "*the vehicles have been designed to push the implements rather than to function as a permanent propelling base for the mower implements*".

I deal later with the respondent's evidence in regard to the nature of the vehicles, insofar as this challenges the evidence of the appellant and is inconsistent with the above conclusions.

#### The relevant principles governing tariff classifications

The vehicles in question fall under Part 1 of Schedule No 1 to the Act which deals with "*ordinary customs duty*". Part 1 of Schedule 1 contains:

- "(a) The General Rules for the Interpretation of the Harmonized System*
- (b) Section Notes.*
- (c) Chapter Notes.*
- (d) Tariff headings and sub-headings.*
- (e) The scale of duty in respect of each tariff heading and subheading."*

The Harmonized System also includes (a) to (d) above, but in addition contain so-called Explanatory Notes. The interpretation of Part 1 of Schedule 1 is subject to the Explanatory Notes (see section 47(8)(a) of the Act).

The process of interpreting the Act, the Harmonized System and the Explanatory Notes is described in I B M v Commissioner for Customs and Excise 1985 4 SA 852 (A) at 863G as follows:

*"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."*

In Secretary for Customs and Excise v Thomas Barlow and Sons 1970 2 SA 660 (A) at 675H-676F Trollip JA sets out the first principles governing interpretation as follows:

*"It is of importance, however, to determine at the outset the correct approach to adopt in interpreting the provisions of the schedule and in applying the explanations in the Brussels Note.*

Note VIII to Schedule 1 sets out the 'Rules for the interpretation of this Schedule'. Para 1 says:

*'The titles of sections, chapters and sub-chapters are provided for ease of reference only; for legal purposes classification (as between headings) shall be determined according to the terms of the headings and any relative section of chapter notes and, provided such headings or notes do not otherwise indicate, according to paragraphs (2) to (5) below.'*

*That I think, renders the relevant headings and section and chapter notes not only the first but the paramount consideration in determining which classification, as between headings, should apply in any particular case. Indeed, right at the beginning of the Brussels' notes, with reference to a similarly worded paragraph in Nomenclature, that is made abundantly clear. It is there said:*

*'In the second provision, the expression "provided such headings or notes do not otherwise require" (i.e. the corresponding wording of the Nomenclature) is necessary to make it clear that the terms of the headings and any relative sectional chapter notes are paramount i.e., they are the first consideration in determining classification.'*

*It can be gathered from all the foregoing 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 must 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 latter 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 illustrations."*



In African Oxygen Ltd v Secretary for Customs and Excise 1969 3 SA 391 (T) at 397B-G

Colman J said:

*"An attempt to categorise such an item is complicated by one's knowledge that it was imported by the applicant with the intention that it should be combined with other components consisting of thermal equipment and used as part of a 'V.I.E.'. But in my view it is my duty to exclude from consideration my knowledge of the importer's purposes and intentions, as well as those of the supplier, in so far as they may possibly be gathered from invoices, correspondence or a name or description applied to the goods."*

In a later judgment of Autoware (Pty) Ltd v Secretary for Customs and Excise 1975 4 SA

318 (W) at 321C-F Colman J said:

*"Another category of evidence which I consider to be irrelevant is that which related to the manner in which the vehicles were described in advertisements, manuals and elsewhere by their Japanese progenitors and by the local assemblers and distributors of Toyota products. (See Varroux Motors Bpk. V Commissioner of Customs and Excise, 1958 (1) SA 449 (T), and the Privy Council case cited therein at p. 459; see also African Oxygen Ltd. v Secretary for Customs and Excise, 1969 (3) SA 391 (T) at p. 394C).*

*Similarly, as there is nothing in the relevant portions of the Act or its Schedules which indicates that any matter in issue is to be governed by the intentions of the designer, manufacturer, importer, assembler or user of the vehicles or their parts, it seems to me that I should not be influenced by evidence of such intentions, except, perhaps, to the extent that such evidence may help to explain technical matters on which I require technical assistance. The irrelevance of evidence of intention, as such, is dealt with in African Oxygen Ltd. v Secretary for Customs and Excise, supra at p. 397B-H."*

Classifying the vehicles

The first stage as set out in the I B M case is to look at the words used in the Tariff Heading and the Chapter Notes and determine as far as possible their meaning.

TH 8701 reads:

*"Tractors (other than tractors of Heading No 87.09)."*

8701.90 provides for "other". The three preceding subheadings are not relevant or applicable to this inquiry. The Chapter Notes to Chapter 87 contain the following relevant note 2 which provides:

*"For the purposes of this Chapter, 'tractors' means vehicles constructed essentially for hauling or pushing another vehicle, appliance or load, whether or not they contain subsidiary provision for the transport, in connection with the main use of the tractor, of tools, seeds, fertilisers or other goods."*

The respondent classified the vehicles under TH 84.33 which provides:

**"84.33** *Harvesting or threshing machinery; including straw or fodder balers; grass or hay mowers; machines for cleaning, sorting or grading eggs, fruit or other agricultural produce, other than machinery of heading No. 84.37.*

**8433.19** *Mowers."*

The relevant Explanatory Note under TH 84.33 reads:

*"This heading also covers lawnmowers, known as riding lawnmowers, consisting of three or four-wheeled basic machines fitted with a driving seat and having a permanently attached cutter, i.e., one which is removed only for repair or maintenance. Since their principal function is the moving of lawns, they remain in this heading even if they have a coupling device for hauling or pushing light attachments such as a trailer."*

The description of the vehicle which I have set out shows that it has no commercial or practical use as presented (save perhaps to act as an eccentric form of not particularly comfortable personal transport, a usage or design purpose which neither party suggests).

The vehicles can only perform useful or commercial functions if fitted with implements attached to the mounting brackets of the forward facing support of (see JF1 p 67 and MLL4 p 19).

The vehicles have power take-offs enabling the implement attached to the forward facing arms to be power-operated.

From these facts prima facie the objective design purpose and use of the vehicles is to push (according to the descriptions already referred to, self-supporting) implements in front of them powered from the vehicles.

It seems to me self-evident that the vehicles as imported fit neatly into the category described in Chapter Note 2 of Chapter 87 which provides as for the purpose of the relevant Chapter:

*"Tractors' means vehicles constructed essentially for ... pushing another ... appliance ...".*

I reach this prima facie conclusion by having regard to the vehicle as imported and its essential relevant features and without having regard to the contended design intention or intended use of the vehicle according to the affidavits of the parties.

I add that in order to be a mower, as contended for by the respondent, the vehicle has to be fitted with a mowing implement attached to the front facing arms and self-supporting and pushed by the vehicle and driven off it. It is therefore inherent in the respondent's argument that the vehicle is constructed to push such appliance.

The respondent advances various contentions mainly on the strength of an affidavit by a Mr Du Plessis an academic and expert on farm machinery and in particular tractors and traction. The main thesis put forward by Du Plessis that conventional tractors have certain specific features relating inter alia to the weight distribution, engine power and type and transmission which are absent in the vehicles at issue. These comments seem to me interesting rather than persuasive in the case where the vehicles at issue perform and are designed to perform the functions appropriate to tractors as contemplated in the Chapter Notes to Chapter 87 which I have already quoted. The respondent contends that the principal function of the machines is the mowing of lawns "*and that they are purpose-designed and constructed for use as riding on lawn mowers*". There is no such evidence provided by the respondent and the contention is a matter of inference. The respondent

appears to rely for the inference which it requires to be drawn on its contention that *"it is not seriously disputed by the applicant that the implements are all associated with the regeneration and upkeep of lawns"*. *"The implements"* refers to the items which can readily be fitted to the forward facing arms of the vehicle.

Firstly, the implements which I have described are not all associated with the *"regeneration and upkeep of lawns"*. Secondly, even if many of the implements are so associated (without being mowing implements) that fact does not lead to the conclusion that *"the principal function of the vehicles is the mowing of lawns"* or that *"they are purpose-designed and constructed for use as riding on lawnmowers"*.

As support for its contention that the vehicles are mowers and are to be classified as such the respondent contends *"it is apparent that the vehicle, without an implement fitted thereto, has no practical use. On the applicant's own version, the vehicles were designed to push or haul the implements"*. This argument is a non-sequitur. Firstly, the vehicle as imported has a practical use. The practical use is that it can have attached to it a wide range of implements which it can push and drive.

Secondly, if valid, the contention that the vehicle *"without an implement fitted thereto, has no practical use"* is of equal application to a vehicle which is clearly a tractor as described by Du Plessis and which would be recognised as such by any lay person. Such tractor if it does not have attached to it an implement or load which it pulls (or as the case may be

pushes) has no practical use save perhaps to provide eccentric personal transport. The fact that the vehicle as presented at the dockside and without attachments therefore cannot perform any useful or commercial function until some item is attached to it is therefore a red herring. A tractor properly so defined suffers from exactly the same deficiency. Thirdly, the Chapter Notes to Chapter 87 in Note 2 states that "*for the purposes of this Chapter, 'tractor' means vehicles constructed essentially for hauling or pushing another vehicle, appliance or load*". The vehicle, if designed to "push or haul" the implements of the self-standing nature already described by me therefore fits exactly within this description, useless though it may be unless one of these implements is so attached to it as to enable the vehicle to push or power them.

Totally against the contentions of the respondent are the explanatory note under TH84.33 reading:

*"This heading also covers lawnmowers, known as riding lawnmowers, consisting of three or four-wheeled basic machines fitted with a driving seat and having a permanently attached cutter, i.e., one which is removed only for repair or maintenance."*

It is unarguable that the mower (cutter) which has to be attached to the vehicles to make them capable of mowing a lawn can be classified as being "a permanently attached cutter".

The vehicle is not made with such a cutter attached nor need it ever be fitted with one. It is not imported fitted with one. The cutter is readily detachable and interchangeable with other implements. Where a vehicle is not as made or imported fitted with a particular

implement (i.e. a cutter), is designed to have attached to it four or more separate and distinct easily interchangeable implements it is not arguable that it can be classified as a vehicle which has one of the available implements (chosen in this case by the respondent to suit its own purposes) "*permanently attached*" to it. This is emphasised by the explanation that a "*permanently attached cutter*" is "*one which is removed only for repair or maintenance*". It simply cannot be said on any logical basis that the vehicles as imported have an invisible cutter permanently attached to them. The fact that such cutter may be (removably and amongst other implements) be attached by the user is quite irrelevant.

The explanatory note therefore does not suggest that the vehicles as imported should be classified under TH84.33. Indeed as it is the explanatory note which most directly refer to vehicles of the type at issue it is against the contention of the respondent.

The respondent points out that Chapter Note 7 of Chapter 84 provides:

*"A machine which is used for more than one purpose is, for the purposes of classification, to be treated as if its principal purpose were its sole purpose."*

The respondent alleges that the principal function and designed purpose of the vehicles was the mowing of lawns and that any other functions that they perform are subsidiary. The answer to this is that the purpose and use of the vehicles is to push implements which are not part of the vehicles as imported but are readily detachable and are

interchangeable. I am unable to find that the purpose of the machines (as imported) is to act as lawnmowers and that they are therefore to be so classified.

The respondent argues "*the vehicles are, upon importation, incomplete machines with the main essential features of the complete machine. It has no use without an implement*". It must therefore be classified in the same heading as the complete machine. For this contention the respondent relies upon explanatory note to Section Note 2. The explanatory note relied upon appears to be that at p 92 headed "*(iv) Incomplete Machines*".

In my view this explanatory note has no application as the vehicles as imported are not incomplete machines. They are complete vehicles capable of having attached to them implements which they can push or drive. The implements which can be attached to the vehicle are so varied that firstly it is not possible to determine what the function of the "*complete machine*" (as interpreted by the respondent) would be. It could be a debris blower, a snow-thrower, a leaf mulcher or a rotary broom etc. Furthermore I already pointed out that the vehicles are alleged to be of no use without an implement attached does not make them an incomplete machine any more than a conventional tractor standing on the dockside without any implement or trailer attached to it that it can plow. I have given my reasons for this.

I am satisfied that the tariff heading most appropriate to the vehicles is 8701.90.

In the result the appeal succeeds and I make the following order:



1. The determination of the respondent that the imported Greensmaster 3200, Groundsmaster 200, Groundsmaster 300 and Reelmaster 4500-D be classified under tariff heading "8433.19", is set aside and is substituted with a determination that the said vehicles be classified under tariff heading "8701.90".
2. The respondent is to pay the costs of the application which will include the costs attendant upon the employment of two counsel.

  
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D MARAIS  
JUDGE OF THE HIGH COURT