

**IN THE HIGH COURT OF SOUTH AFRICA
(TRANSVAAL PROVINCIAL DIVISION)**

Case number: 31143/05

In the matter between:

QUICK STEP (PTY) LTD

Applicant

and

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

First Respondent

THE SOUTH AFRICAN REVENUE SERVICE

Second Respondent

J U D G M E N T

Coram: Pelser AJ

1. This an an application for review.
2. The applicant seeks the following relief:
 - 2.1. Condonation in terms of Section 9(1) of the Promotion of Administrative Justice Act, Act 3 of 2000 ("the Act") of the failure by the applicant to bring this application within 180 days from the date of the decision complained of as stipulated in Section 7(1) of the Act.
 - 2.2. That a decision by the first respondent taken on 22 October 2004, in terms whereof the applicant was refused permission to remove certain cigarettes from a customs and excise warehouse for exportation be reviewed and set aside.
3. Section 7(1) of the Act reads:

"Any proceedings for judicial review in terms of Section 5(1) must be instituted without unreasonable delay and not later than 180 days after the date –

- (a)**
- (b) where no such remedies exist, on which the person concerned was informed of the administrative action, became aware of the action and the reasons for it or might reasonably have been expected to have become aware of the action and the reasons."**

4. Section 9 of the act reads as follows:

"(1) The period of

- (a)**
- (b) 90 days or 180 days referred to in Sections 5 and 7 may be extended for a fixed period,**

by agreement between the parties or, failing such agreement, by a court or tribunal on application by the person or administrator concerned.

(2) The court or tribunal may grant an application in terms of sub-section (1) where the interests of justice so require."

- 5. The application was served on the respondents on 13 September 2005 – i.e. approximately eleven months after the relevant administrative action and approximately five months after expiry of the 180 day period stipulated in Section 7.
- 6. There can be no debate about the question whether delay is substantial. It is almost double the 180 days provided for in Section 7(1) of the Act.
- 7. The act provides for the situation where an application cannot be brought within the 180 day period. Section 9(1) provides that the person concerned may apply to court for an extension of the 180 day period. In such application and in terms of Section 9(2) the court must be satisfied that the interests of justice so require. If not thus satisfied the court should not grant an extension of the 180 day period.
- 8. An application in terms of Section 9(1) must, of necessity, place evidence before the court on the strength of which the court is put in a position to decide whether the interest of justice require that the court entertain the main application. Once the applicant has placed such evidence before the court the respondent or respondents, if it so

wishes, is entitled to likewise place evidence before the court to persuade the court that it is not in the interests of justice. Only then will the court be in a position to decide.

9. The applicant has in paragraph 9 of the founding affidavit said the following:

“(I) Submit that in view of the content of this application it is in the interests of justice that the time period be extended.”
10. That is a blanket submission and doesn't advance the case of the applicant at all. The content of the application deals with the merits for review – not with the interests of justice.
11. Mr Barnard for the applicant did not deal with this aspect in his heads of argument at all. For that reason I gave him a pertinent opportunity to deal with it in his argument in court. He was not able to advance any reasons. What he indeed advanced was limited to reasons why it is in the interest of his client. This court is not in a position to find that the interest of the applicant can be equated with the interests of justice.
12. In the circumstances I have no basis upon which to exercise my discretion to extend the 180 day period.
13. I am in agreement with the following passage from Associated Institutions Pension Fund & Others v Van Zyl, 2005(2) SA 302 (SCA) at 322:

“In my view there is indeed a duty on applicants not to take an indifferent attitude but rather to take all reasonable steps available to them to investigate the reviewability of administrative decisions adversely affecting them as soon as they are aware of the decision. These considerations are, in my view, also reflected in both Section 7(1) of PAJA and in the provisions of Section 12(3) of the Prescription Act, 1969.”
14. In the circumstances I am of the opinion that the late filing of the application cannot be condoned in terms of the provisions of Section 9(1) of the Promotion of Administrative Justice Act.
15. In the circumstances the relief sought in paragraph 1 of the notice of motion is refused.
16. Even if I were to entertain the merits of the application I am of the view that the applicant cannot succeed with prayer 2 of the notice of motion asking for the decision of the first respondent not to allow the export of cigarettes to be reviewed and set aside.

17. The salient facts are the following:
- 17.1. During November 2003 the applicant allegedly entered into an agreement with a company registered in Mauritius to buy from it and import into South Africa cigarettes manufactured in China.
 - 17.2. The applicant allegedly unsold the cigarettes to a local company.
 - 17.3. The cigarettes arrived in South Africa during December 2003 and were entered into a customs and excise warehouse in terms of Bill of Entry 18509 dated 23 December 2003.
 - 17.4. Due to the fact that the cigarettes were destined for local consumption the packaging of the cigarettes bore a diamond stamp impression as was required initially by Section 54(2) of the Customs and Excise Act, 91 of 1964 and since its amendment by Section 54(2)(a).
 - 17.5. After 23 December 2003 the purchaser of the cigarettes allegedly cancelled the agreement.
 - 17.6. The applicant thereafter informed the first respondent that the applicant had found a potential purchaser of the cigarettes in Angola and requested the first respondent to release the cigarettes for exportation to Angola. Such request was refused.
 - 17.7. A further request was refused by the first respondent on 22 October 2004, the reason being the imperative provisions of Section 35A(2)(b) of the Act. Such section reads:

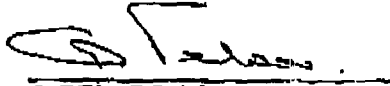
"No licensee may remove any cigarettes or allow any cigarettes to be removed from a customs and excise warehouse unless:

(a)
(b) if removed for export, such stamp impression does not appear on the containers.
 - 17.8. The applicant alleges that it is the owner of the cigarettes.
18. I am of the view that at the time the applicant requested permission to remove the cigarettes from the warehouse for export Section 35A(2)(b) had already come into effect as a consequence of which the Commissioner did not have the power to grant the requested permission, even if he had wanted to.

19. I make the following order:

19.1. Condonation of the late filing of the application in terms of the provisions of Section 9(1) of the Promotion of Administrative Justice Act, No. 3 of 2000, is refused;

19.2. The applicant is ordered to pay the costs of the application.



Q PELSER AJ
22 September 2006