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JUDGMENT

iAfrica Transcriptions (Pty) Ltd/mvd

IN THE HIGH COURT OF SOUTH AFRICA

(NORTH GAUTENG HIGH COURT, PRETORIA)

CASE NO: 3271/10

DATE: 2010.12.02

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DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE	YES /NO
(2) OF INTEREST TO OTHER JUDGES	YES /NO
(3) REVISED	NO
DATE	15/2/2011
SIGNATURE	<i>M. J. van der Merwe</i> M. J. van der Merwe AT

In the matter between

GKD BUISMET (PTY) LTD

Applicant

and

THE COMMISSIONER SOUTH

AFRICAN REVENUE SERVICES

Respondent

J U D G M E N T

20 VAN DEVENTER AJ: This application concerns the tariff classification of a rubber felted belt which the applicant imported on 7 November 2007.

Against the importation of the rubber filter belt the applicant had a difference of opinion with the respondent as to the correct tariff heading in part I of Schedule 1 to the Customs and Excise Act 1964, Act 91 of 1964, under which the belt needed to be classified. I shall refer to the Customs and Excise Act as "the Act".

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Lengthy consultation and negotiation took place between the applicant and the respondent. For purposes of this judgment it is not necessary to refer to these consultations and negotiations in detail. Of relevance is that the respondent finally classified the trapezoidal filter belt in tariff heading 4010.12 on part I of Schedule 1 to the Act.

The applicant now prays for an order setting aside this classification and ordering that the subject belt be classified in tariff heading 4016.99.85 of part I of Schedule 1 to the Act.

On the papers before me there is no dispute that any other
10 classification other than 4010.12 and 4016.99.85 could apply,
consequently it is not necessary for me to consider any other
classification. To determine the correct classification the nature of the
belt and the characteristics thereof must be established. For this purpose
the applicant relies on the founding affidavit of Van Blerk read with the
expert reports of Stevendale and Behrens.

The applicant at page 14 of the paginated papers paragraph 9.4
submits a description of the rubber felted belt as follows:

"A belt made of vulcanized SBR which apart from a carcass free
middle section is re-enforced with textile fabric embedded in the
20 bottom cupboard, has traversing groves, trapezoidal in shape and
sloping from the outside to the middle and drainage holes in the
middle carcass free area to facilitate filtering and is for exclusive
use with the vacuum horizontal belt filter machines."

This definition is supported by Stevendale and Behrens.

The respondent does not dispute this definition. This is also true

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In respect of the respondent's expert Nieberding. The peculiar characteristics of the rubber filter belt are therefore common cause. Having determined the characteristics of the rubber filter belt the purpose and functioning thereof must be considered. It is not disputed that the rubber filter belt forms an integral part of the vacuum horizontal belt filter machine and that this machine is used for industrial purposes. In simplified terms the functioning of the rubber filter belt can be summarized as follows: The belt is designed to ensure the flat run of the belt along the supporting table. At point A the slurry is deposited onto the rubber filter belt which is continuously moving. The slurry is then drained or filtered towards holes positioned along the belt. The sides of the belt have elastic rubber curbs which contain the incoming slurry. The slurry is watered and a vacuum box collects the filtrate through a manifold. A feed box and wash boxes are mounted over the filter and are so designed that the slurry is distributed evenly. The liquid is removed from the slurry to the extent that when point B is reached all that is left on the rubber filter belt is the solid material. The filtering is not done by the belt but by a filter cloth independently of the belt other than for the continuous movement.

From the very simplified process which I have described it is clear that the product which is deposited onto the rubber filter belt at point A is not the product which arrives at the point of destination, namely point B. The continuous washing and filtering between points A and B effectively constitute a manufacturing process by means of the filter cloth.

In *Commissioner South African Revenue Service v The Baking Tin (Pty) Ltd* 2007 (6) SA 545 (SCA) at 547 para [5] the court dealt with the

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applicable principles in respect of classification.

"Classification as between headings is a three stage process. First interpretation. The ascertainment of the meaning of the words used in the headings and relevant 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 section of the heading which is most appropriate to such goods."

These principles are accepted by both the applicant and the respondent.

10 The respondent determined a classification in tariff heading 4010.12 of part I of schedule 1 to the Act. The heading to 40.10 reads:

"Conveyor or transmission belts or belting of vulcanized rubber."

There are three components to be considered. Is the rubber filter belt a conveyor belt? The respondent relies on dictionary meanings to conclude that the rubber filter is no more than a conveyor belt. Six definitions have been referred to by the respondent. These appear at pages 178 to 179 of the paginated papers. The definitions are all similar and find application in the moving of a product from point A to point B. The rubber filter belt has unique features which in the process of

20 conveying add to drastic changes in the product which it received but without the belt being central to such changes. The role of the continuous rolling rubber filter belt is to facilitate a continuous filtering and separation process. The belt must of vulcanised rubber. This component is present in the rubber filter belt.

Mr Meyer, on behalf of the respondent emphasised that the

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manufacturing process which takes place from the point where the slurry is received to the point where the solid product is delivered is a process not performed or executed by the belt as such but by the various components of the machine of which the belt forms an integral part. The focal point of the manufacturing process is to filtrate and separate a function performed by the filter cloth and not the rubber filter belt. If the belt is not there then filtering can still be done by what is referred to as batch filtering. It may be so that the rubber filter belt facilitates a smooth filtering process but it is not directly involved in that process. The facilitation of the smooth process lies in the fact that the rubber filter belt moves the slurry received. The shorter Oxford Dictionary defines a conveyor belt as: "An endless moving belt".

Mr Barnard, or the applicant, did not dispute that the rubber filter belt is indeed an endless moving belt. He submitted however, that this belt has unique features which take the belt out of the realm of a conveyor belt. In this regard Mr Barnard relied heavily on the judgment of Coleman J in *Auto Ware, (Pty) Ltd v Secretary of Customs and Excise* 1975 (4) SA 318 (W). The facts in this case are distinguishable from the facts on the papers before me. In *Auto Ware* the court had to deal with the conversion of one product into another.

In the application before me there is no such conversion which needs to be considered. On applicant's own version the rubber filter belt has been specially designed to fulfil the role of facilitating the liquor/solid process. If not the only, then certainly the primary role and function of the rubber filter belt is to continuously convey the received product between

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point A and point B. It is so that the belt has certain features assisting in the manufacturing process, but it is also so that the belt plays no significant role in the filtering process which results in only the solid arriving at point B.

Mr Barnard has not convinced me that the rubber filter belt is not a conveyor belt and that the classification done by the respondent must be set aside. The application must therefore fail.

I make the following order.

The application is dismissed with costs including the costs of two
10 counsel.

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