REPUBLIC OF SOUTH AFRICA

HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

(1)	REPORTABLE: ~~YES~~/NO
(2)	OF INTEREST TO MANY JUDGES: ~~YES~~/NO
(3)	REVISED.

CASE NO: 61689/2015

17/11/2019

In the matter between:

FLORDIS SOUTH AFRICA (PTY) LTD Applicant

and

THE COMMISSIONER OF THE SOUTH AFRICAN REVENUE SERVICE Respondent

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JUDGMENT

DAVIS, J

Introduction

[1] This is the judgment in a so-called "tariff appeal". In essence, the Applicant contends that its imported product, Ginsana, is a "medicament" and qualifies to be classified as such under a specific tariff heading in terms of the Customs and Excise Act, 91 of 1964 ("the Act"). The Commissioner for the South African Revenue Service ("the Commissioner") determined otherwise. The Commissioner contends Ginsana is to be classified under the tariff heading "food preparation not elsewhere specified or included".

[2] Nature of the proceedings

The application is an appeal brought in terms of section 47(9)(*e*) of the Act against the Commissioner's determination. As such, it is an appeal in the "wide" sense, i.e it amounts to a re-hearing of the matter and a fresh determination of the merits thereof, which includes the acceptance of additional admissible evidence.[1]

[3] The nature of tariff headings

3.1 Section 47(1) of the Act provides for the obligation to pay import duty on imported goods at the time of entry into the Republic.

3.2 The calculation of the duties to be paid on imported goods is determined by way of a "tariff heading" under which such goods are classified. This is done by way of Schedule No 1 to the Act, which provides for some 1 600 such tariff headings as more fully described hereunder.

3.3 Schedule No 1 is divided into sections, chapters and sub-chapters. Goods generally handled in international trade are systematically grouped in these sections, chapters and sub-chapters, which are given titles indicating the broad class of goods covered by each grouping. Within each chapter and sub-chapter, the goods classified in a particular class are itemized together with a description thereof. The description is defined in the schedule as a "heading". Under each heading, sub-headings of the specific species of goods are described, expressing the tariff at which duty is payable, hence the term "tariff heading". The schedule itself and each section, chapter or sub-

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[1] *Tikly and Others V Johannes NO and Others* 1963 (2) SA 588(T) at 590F - 591A and *Strauss Levy SA (Pty) Ltd v CSARS* 20923/2015, Gauteng Division, Pretoria (unreported) per Murphy, J on 02/05/2017 with reference to *Pahad Shipping V CSARS* [2010] (2) All SA 246 (SCA).

chapter contains “notes” providing instructions for the classification of goods.

3.4 Each heading in the schedule is assigned a four digit number (for example: tariff item 17.01 is *“cane or beet sugar and chemically pure in solid form, raw sugar not containing added flavoring or colouring matter”).* Each sub-heading is assigned a six digit number that includes the four digit number from the heading (for example: tariff item 1701.11 is “cane sugar” and item 1701.12 is “beet sugar”). Each sub-heading is further divided into products that are assigned an eight digit number, which includes the aforesaid initial six digit number (for example: tariff item 1701.11.10 is *“cane sugar for use by sugar refineries in the production of refined sugar used in the manufacture of wine”* and tariff item 1701.11.20 is *“cane sugar not exceeding 90% of polarization”).* Tariffs are thereby assigned to each specific item at an eight digit level, sometimes with the prefix “TH” to denote “tariff heading”.

[4] <u>The disputed tariff headings</u>

4.1 The Commissioner’s authorized delegatee, the Operational Specialist: Tariff Policy has determined that the Applicant’s Ginsana capsules fall under the tariff heading TH 2016.90.90 *“Food preparations not elsewhere specified or included: Other – Other”* (the “foodstuffs” classification).

4.2 The Applicant contends that the Ginsana capsules should be classified under TH 3004.90.90 *“Medicaments (excluding goods of heading 30.02, 30.05 or 30.06) consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses (including those in the form of transdermal administration systems) or in forms or packaging for retail sale: Other - Other”* (the “medicament” classification).

4.3 The principal dispute between the two parties centres around the divergent contentions as to whether the Ginsana product was a “foodstuff’ or a “medicament”. This was the dispute they successfully contended could not be determined by way of motion proceedings and which had been referred to oral evidence by De Vos, J in the following terms:

> “The matter is referred for the hearing of oral evidence ... on the issue of whether the GJNSANA product which forms the subject-matter of the main application constitutes a “medicament ... for therapeutic or prophylactic use” as envisaged under Tariff Heading 30.04.”

(Costs were reserved.)

[5] The evidence

5.1 For purposes of presenting expert evidence the parties' respective experts have prepared a joint minute. It was of limited assistance but identified at least the experts' different approaches to the matter. The joint minute noted that the experts have "perused all documentation in [their] respective reports and affidavits" and that no other joint minutes exist. Their "agreement" with each other was formulated as follows:

> "4. We understand that Prof Blackman as clinician used the highest level of clinical evidence as standard to evaluate the published scientific clinical data provided in the reports and affidavit. From this perspective in-vitro studies (laboratory- based), non-patient studies (animal-studies) and studies on healthy volunteers are not relevant since it does not show the desired outcomes in patients with the therapeutic indication. The standard against which the provided data was measured is the standard of evidenced-based medicines linked to the highest level of randomized clinical studies and on meta-analyses.
>
> 5. We agree that, the agreements and understandings above excluded the legal issues pertaining to this case".

The experts' oral evidence also reflected their divergent approaches.

5.2 For the Applicant, Prof Du Toit testified. She confirmed the contents of her affidavits filed in the main application and the referral application. She relied on a bundle of articles published in medical and other journals as well as a so-called "Cochrane review". She concluded that the weight of these published articles relating to research done on observances of use of Ginsana all indicate that Ginsana has therapeutic and prophylactic uses and benefits. She relied on the principles of "Evidence Based Medicine" ("EBM"), that is evidence obtained from the use of a particular product. EBM is intended to assist a medical practitioner in making decisions regarding the use of such products for his or her patients. Prof Du Toit maintained that all the evidence indicate that the use of Ginsana brings about therapeutic benefits but conceded that the exact extent of these benefits or efficacy in each specific application of the product has not yet been clinically determined. The evidence she relied on varied in use of Ginsana from *"Immunomodulatory effects of panax Ginseng (G115) on alveolar macrophages from patients suffering with bronchitis"* to *"modulation of cognition and mood...",* to references of improvement of pulmonary functions.

5.3 For the Commissioner, Prof Blockman testified. He was highly critical of the evidence of Prof Du Toit and the bundle of literature relied on by her. Although he conceded that the literature indicated positive outcomes as a result of the use of Ginsana, they were vague as to specifics. No “clinical effect” had been demonstrated in the trials referred to in the articles with sufficient reliability to allow Ginsana to be approved as a “medicine” by the Medicines Control Council in terms of the Medicines and Related Substances Act, 101 of 1965. For this purpose and in order to qualify as a medicine, pharmacovigilance requires that the etiology of a specific disease must be known, the vehicle to administer a particular drug to the correct “site of action” must be known and the effect of the administration of the drug in adequate concentrations for adequate amounts of time must be known. In other words, so he said, the pharmaceutical characteristics of the medicament must be known and well researched. The “Cochrane review” is a publication which reviews scientific papers published in the medical field having regard to the nature and extent of the research done or clinical trials performed. His conclusion was that the review indicated that the studies were poor in that they could not indicate the “true effect” or efficacy of Ginsana in respect of specified applications or treatment of specific diseases.

5.4 Neither of the experts’ expertise were doubted but the Commissioner put much stock in the fact that Prof Blockman was not only a professor in the clinical pharmacology division of the Department of Internal Medicine at the University of Cape Town, but that he was inter alia the Chair of the Pharmacovigilance Committee of the Medicines Control Council.

5.5 The criticism of Prof Du Toit’s evidence raised in cross examination centred around her reliance on the use of Ginsana without knowledge of the measure of efficacy thereof. Counsel for the Commissioner repeatedly stated that one might then as well be using “Smarties” (a well-known brand of candy-coated chocolate sweets). Conversely, Prof Blockman was criticized for being adverse to the use of complimentary medicines irrespective of the benefits thereof simply because their exact clinical efficacy has not yet been established.

5.6 The above is but a summary of the evidence given as each of the experts went into the contents of the research relied on by the Applicant in some depth. (Almost 500 pages of literature, in two indexed bundles, had also been produced.)

5.7 In the end, the determination of the correct tariff heading is a decision of the court, not the experts. In relation to the function and evidence of experts in the interpretation of Schedule No 1 to the Act and the classification process, Nicholas AJA in International Business Machines SA (Pty) Ltd v Commissioner for Customs & Excise said (with reference to a determination by a "Nomendature Committee"):

> "Under our system, questions of interpretation of documents are matters of law and belongs exclusively to the Court. On such questions the opinions of witnesses, however eminent or highly qualified, are (except in regards to words which have a special or technical meaning) inadmissible. So, subject to the exception mentioned the Courts do not receive opinion evidence, either as to the meaning of a statutory provision or patent specification or any other document."

5.8 Having pointed this out to counsel, they agreed that "medicament" was not a technical term and the oral evidence was only presented to indicate the true nature of the Ginsana product itself.

[6] The process of classification

6.1 In order to determine under which tariff heading a particular product is to be classified the process has been determined 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 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 selection of the heading which is the most appropriate to such goods."[2]

6.2 Further assistance in the interpretation process is statutorily determined by section 47(8)(*a*) of the Act, which provides as follows:

> "(*a*) Interpretation of—
>
> (i) any tariff heading or tariff sub-heading in part 1 of Schedule No 1;
>
> ...,
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> (iii) the general rules for the interpretation of Schedule No 1; and
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> (iv) every section note and chapter note in Part 1 of Schedule No 1,

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[2] *International Business Machines v Commissioner for Customs and Excise* 1985 (4) SA 852 (A) at 863 F - H.

shall be subject to the International Convention on the Harmonised Commodity Description and Coding System done in Brussels on 14 June 1993 and 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 such as 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."

[7] The first stage: ascertaining the meaning of the words used

7.1 The "medicament" classification:

7.1.1 The relevant part of TH 30.04 reads as follows:

"Medicaments ... consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses ... or in forms of packing for retail use."

7.1.2 The term "medicament" has been described, inter alia, as meaning the following:

"a substance used for medicinal treatment, a medicine, a remedy"

Shorter Oxford English Dictionary, Sixth Edition.

7.1.3 The relevant explanatory notes to tariff heading 30.04 read as follows:

"This heading covers medicaments consisting of mixed and unmixed products, provided they are ...

(a) Put up in measured doses or in forms such as tablets, ampoules ..., capsules ... or small quantities of powder, ready for taking as single doses for therapeutic or prophylactic use ...

(b) In packings for retail sale for therapeutic or prophylactic use...

Foodstuff and beverages containing medicinal substances are excluded from the heading if those substances are added solely to ensure a better dietetic balance, to increase the energy-giving or nutritional value of the product or to improve its flavour, always provided that the product retains its character of a foodstuff or beverage.

Moreover, products consisting of a mixture of plants or parts of plants ... used for making herbal infusions or herbal 'teas' ... and claimed to offer relief form ailments or contribute to general health and well-being, are also excluded (heading 21.06).

Further this heading excludes food supplements containing vitamins or mineral salts which are put up for the purpose of maintaining health or well-being but have no indication as to use or ailment. These products are usually in liquid form [which] but may also be put up in

powder or tablet form, are generally classified in heading 21.06 or Chapter 22."

7.1.4 The notes have been described as "guidelines" in "difficult and doubtful cases", but should not override or contradict the meaning derived from the wording of the tariff headings themselves.[3]

7.1.5 The Commissioner (correctly) referred to the principles of interpretation enunciated in *Natal Joint Municipal Fund v Endumeni Municipality* 2012 (4) SA 593 (SCA) at [18]. These are the following:

> "Whatever the nature of the document, consideration must be given to the language used in the 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 weighed in the 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."[4]

7.1.6 In the present instance, the meaning of the words used in the tariff heading are reasonably clear and a "sensible" meaning, leading to a "businesslike result" appears to be that substances which are put up for retail sale in measured doses and which are used as medicines, remedies or for medical treatment, be it therapeutic or prophylactic (i.e. curative or preventative) fall under this heading.

7.2 <u>The "foodstuffs" classification.</u>

7.2.1 Tariff heading 21.06 resides under chapter 21 which caters for *"Miscellaneous edible preparations".* The sub-heading 2016.90.90 reads as follows *''food preparations not elsewhere specified or included ..."*.

7.2.2 The <u>Shorter Oxford English Dictionary</u>, sixth edition describes "food" as *"a substance (to be) taken into the body to maintain life, growth, nourishment"* and defines "preparation "as *"a specially prepared or made up substance".* A "food preparation" therefore means a specially prepared or made up substance to be taken into the body

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3 See: *Secretary for Customs and Excise v Thomas Barlow and Sons* 1970 (2) SA 660 (A).

4 These were also referred to in, inter alia*, Bothma Batho Transport (Edms) Bpk v S Bothma & Seun Transport (Edms) Bpk* 2014 (2) SA 494 (SCA) and *Schoeman & Others Lombard Insurance Co Ltd* 2019 (5) SA 557 (SCA).

to maintain life and growth and to provide nourishment.

7.2.3 The words "... *not elsewhere specified or included"* denote a residual or "catch-all" heading, meaning products can only be classified under this heading if they are not classifiable somewhere else.

7.2.4 The explanatory notes describe two groups of food preparations which would resort under this heading. They are (a) *"preparations for use either directly or after processing (such as by cooking, dissolving or boiling in water, milk etc) for human consumption"* and (b) *"preparations consisting wholly or partly of food stuffs, used in the making of beverages or food preparations".* Various examples are then provided in the notes which conclude this topic as follows:

> "Preparations, often referred to as food supplements, based on extracts from plants, fruit concentrates, honey, fructose, etc. and containing added vitamins and sometimes minute quantities of iron compounds. These preparations are often put up in packaging with indications that they maintain general health or well-being.
>
> Similar preparations, however, intended for the prevention of treatment of diseases or ailments are excluded (heading 30.03 or 30.04)."

7.3 <u>The interpretation of the word "use" in the these tariff headings</u>:

7.3.1 The Commissioner put much stock in the contention that the test to be applied in classifying goods or products is by objectively determining their nature and that the subjective intention of the designer, manufacturer or importer of the products as to their use is irrelevant. As a general proposition, this is entirely correct. This much has been stated in *CSARS v Komatsu South Africa (Pty) Ltd* 2007 (2) SA 157 (SCA) and in *CSARS v The Baking Tin (Pty) Ltd* 2007 (6) SA 545 (SCA) (being the cases relied on) as well as in *CSARS v Coltrade International CC* (SCA) SA Tax Cases Reports vol 78, Part 4 2016, 217 and *Smith Mining Equipment (Pty) Ltd v CSARS* (SCA) SA Tax Cases Reports vol 76, Part 1 2014, 49.

7.3.2 However, in *Komatsu* above, the learned Judges of Appeal also found as follows:

> "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".

7.3.3 In *The Baking Tin* above, the judgement in *Komatsu* was further explained:

> "It seems to me, however, that the court was suggesting no more than light may be thrown on the characteristics of the article by subjective factors. The principle remains the same: it is not intention with which they are made nor the use to which they may be put, that characterize the containers in question, it is their objective characteristics".

7.3.4 A body of Canadian case law relied on by the Applicant further illustrates the position: it includes four appeals against determinations by the Canadian International Trade Tribunal (CITT) that four products, being devil's claw root tablets, St John's wort oil, certain vitamin and mineral tablets and garlic powder tablets all were to be classified under tariff headings 30.03 and 30.04. Although the appeals turned on decisions as to the reasonableness or legality of the CITT's determinations, the instructive conclusions were as follows:

> "[42] The CITT referred to the explanatory notes and other relevant provisions, and interpreted the language of the headings 30.03 and 30.04 as requiring only an indication of the use of the product for the prevention or treatment of a disease or ailment, not proof of medical efficacy. In each of the four appeals, evidence was presented to the CITT that the products were so used, and the CITT so concluded.
>
> [43] Having considered carefully the arguments of the Crown and the authorities cited, I have been unable to detect any basis for finding the CITT's interpretation of "medicament" to be unreasonable. I conclude that the decisions of the CITT disclose no error of law that warrants the intervention of this Court. I would dismiss these appeals".

(*Deputy Minister of National Revenue v Yves Ponray* & 3 others 24 June 2000 A-97-98 Federal Court of Appeal of Canada.) In all these cases, the court considered evidence indicating the use of the products to cure, limit or prevent "ailments" as indicative of the characteristics of the products.

7.3.5 Therefore, the tariff headings are interpreted to mean that if a product is put up in measured doses which are used for therapeutic or prophylactic purposes, it would constitute a medicament. On the other hand, if the product is used to be taken in by humans to maintain life or provide nourishment or is used to prepare such products, it is a foodstuff or food preparation.

7.3.6 The Canadian Tribunal referred to in paragraph 7.3.4 above, concluded in similar circumstances (dealing with the same "medicament" tariff heading) that it requires that

> "there must be reasonable indication that the goods are medicaments, but does not consider it reasonable or necessary to apply the exacting standards as urged by counsel for the Respondent. The Tribunal can find no support in the terms of the headings or the Explanatory Notes of the proposition that documented unassailable scientific proof of efficacy is a requirement for classification. Indeed, if this were the case, the Explanatory Notes provided would be rendered redundant".

7.3.7 I agree with this interpretation. Were, in a South African context with the South African law of interpretation as set out in paragraph 7.1.5 above, the term "medicament" to be interpreted to refer to only products of which exact clinical efficacy has scientifically been established it would lead to an "unbusinesslike" result. No such standard has been suggested by the tariff heading or the explanatory notes. The standard proposed by Prof Blockman equates to that required for medicines registered as such. If that was the standard required in terms of the Act, the tariff headings or the notes would have stated so.

7.3.8 Clearly also an interpretation requiring scientific proof of clinical efficacy before a product can be considered to be a medicament (or "used" as a medicament) would be out of kilter with that imposed by the only other foreign jurisdiction to which reference has been made by the parties in this matter. One should bear in mind in this regard the attempt at global harmonisation of classification of goods in international trade as referred to in paragraph 6.2 above. Notionally, any deviation from that applied in other jurisdictions, although permissible, would not be "businesslike".

[8] <u>The second issue: consideration of the nature and characteristics of the products in question</u>

8.1 The product in question is presented in packages of 60 capsules, each containing 100 mg of Panax ginseng extract, equivalent to 212,5 mg of dry root "standardized to ginsenosides of 4 mg". These standardized extracts are mixed with inactive pharmaceutical ingredients in order to create measured dosages for adults and otherwise recommended usage as prescribed by a user's doctor or healthcare practitioner.

8.2 The packaging also state that the product, Ginsana *"has been prescribed by practitioners in Europe for many years and is a product developed, manufactured and extensively tested in both patients and healthy volunteers by Ginsana SA, Switzerland".* The proposed package insert states, as by regulation it must, if that is the case, as it is in respect of this product, that *"this medicine has not been evaluated by the Medicines Control Council and is not intended to diagnose, treat, use or prevent any disease".* The wording of this statement of intent is prescribed by law and is not determinative of the actual nature of the product. The insert further consists of a "patient information leaflet" and a "professional package insert". There are precautions, dosages and warnings of possible side-effects stated as well as storage and disposal instructions. References are made to interactions and use in circumstances of pregnancy and lactation. The indications for use of the product is stated as follows:

"- Increase oxygen uptake capabilities in normal subjects patients and athletes

- Improves pulmonary function and oxygenation capacity in severely ill patients

- Stimulate immune response of alveolar macrophages in patients suffering from chronic bronchitis"

8.3 The Applicant relied on a body of literature where the beneficial results of ginseng have been researched. All of the literature have been criticized by Prof Blockman as not having demonstrated clinical efficacy with sufficient certainty. One example of the different approaches of the experts is the "Cochrane review" dealing with the cognitive benefits of ginseng. The abstract thereof starts as follows:

> "Ginseng is a herbal medicine in widespread use throughout the world. Its effect on the brain and the nervous system has been investigated. It has been suggested, on the base of both laboratory and clinical studies, that it may have beneficial effects on cognitive performance ... . This systematic review aimed to determine the effects of ginseng on cognition in healthy participants, participants with cognitive impartment and dementia. Five trials that intended to investigate the effects of ginseng on cognitive function of healthy volunteers were included in the review ... . Ginseng seemed to have beneficial effects for improvement of some aspects of cognitive behavior and quality of life in healthy participants. No serious adverse events caused by ginseng were found."

Prof Blockman (and the Commissioner) relied on reservation expressed in respect of this in the conclusions under the heading "implications for practice" which read as follows:

> "The small number of studies that have been done provided very limited evidence of beneficial effects of ginseng on cognitive function, behavior and quality of life in healthy participants. No serious adverse effects were caused by ginseng. No trustable evidence was revealed in this review for the effects of ginseng administration in participants with dementia and cognitive impairment. Given the potential efficacy of ginseng suggested by laboratory studies, better-designed, randomized, double-blind, placebo-controlled clinical studies are needed on this important issue."

8.4 It may very well be that Prof Blockman's criticism of the lack of proof of exact clinical efficacy is correct and that one cannot with exact medical (or pharmaceutical) certainty say how much ginseng in what doses over what particular period of time will result in a certain percentage improvement of cognitive functioning of patients with dementia of a certain level and over a certain age, but is the absence of such knowledge determinative of the nature of the product?

8.5 Objectively, the product is packed in dosaged capsules, for use by patients and healthcare practitioners in therapeutic or prophylactic circumstances. No evidence has even been suggested by the Commissioner (or by Prof Blockman) that the product is used as anything but "a remedy" or a medicament. Counsel for the Commissioner argued that the Applicant has failed to present evidence of use of ginseng (in the same fashion as evidence had been presented in the Canadian appeal referred to earlier), but the whole bundle of articles relied on, repeatedly and extensively dealt with the issue of use of ginseng in preventing or curing various ailments. No other uses have been demonstrated. I therefore find this, on a balance of probabilities to constitute sufficient evidence of the use of ginseng.

[9] <u>Selection of tariff heading:</u>

9.1 In my view the contents of paragraph 8 above conclusively indicate that Ginsana G115 capsules, being the product in question, do not constitute a "food preparation". The Commissioner also did not seriously contend that the product was a food preparation (and no evidence in this regard was produced), this was simply the Commissioner's default position following on the attack on the lack of proof of clinical efficacy insisted on by Prof Blockman.

9.2 When the product itself as described in paragraphs 8.1 and 8.2 above is evaluated, it does not present itself as a food preparation for maintenance of life and growth or nourishment. Further indications are the following: tariff heading 21.06.90.90 is a sub-heading of heading 21.06.which caters for “miscellaneous edible preparations”. Although Ginsana capsules are taken orally, to stretch the classification thereof to an edible preparation in the sense of a “foodstuff’, is a stretch too far.

9.3 The more appropriate selection of the two tariff headings in question is therefore clearly TH 3004.90.90. In laymen’s terms: Ginsana is to be classified as a “medicament” and not a “foodstuff’.

[10] Having reached the above conclusion, I find no reason, in the exercise of my discretion, why costs should not follow the event.

[11] Order

1. The tariff determination 34/2013 dated 6 March 2014 classifying the Ginsana capsules in tariff heading 2106.90.90 of Part 1 of Schedule No 1 to the Customs and Excise Act, 91 of 1964 is set aside.

2. The Ginsana capsules imported under cover of Bill of Entry No 60401 dated 21 August 2012 is classified in tariff heading 3004.90.90 of Part 1 of Schedule No 1 to the above Act.

3. The Respondent is ordered to pay the Applicant’s costs, inclusive of the costs of Prof du Toit and inclusive of previously reserved costs.

N DAVIS
Judge of the High Court
Gauteng Division, Pretoria

Date of Hearing: 29, 30 May & 02 July 2019
Judgment delivered: 17 October 2019

APPEARANCES:

For the Applicant:	Adv JM Barnard
Attorney for Applicant:	Raubenheimers Attorneys, George *c/o* VFV Attorneys, Pretoria
For the Respondent:	Adv. JA Meyer SC with Adv. L Kilmartin
Attorney for Respondent:	The State Attorney, Pretoria