



THE SUPREME COURT OF APPEAL  
REPUBLIC OF SOUTH AFRICA

**MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL**

From: The Registrar, Supreme Court of Appeal  
Date: 29 May 2018  
Status: Immediate

***Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal.***

***The Commissioner for the South African Revenue Service v Encarnação N.O. (431/2017) [2018] ZASCA 71 (29 May 2018)***

The Supreme Court of Appeal (the SCA) today dismissed an appeal with costs, against the judgment of the Gauteng Division of the High Court of South Africa (Pretoria) that found that the trustees of the DA Encarnacao Trust (the trust) qualified for the full rebate of custom duty in terms of Rebate item 412.09 in Schedule 4/Part 1 of the Customs and Excise Act 91 of 1904(the Act).

This appeal was initially concerned with the meaning and scope of Rebate item 412.09 within the context of a consignment of imported cigarettes being stolen as a result of an armed robbery. The dispute was narrowed down to one central question: what was meant by ‘such goods did not enter into consumption’?

The appellant notified the trust that they were liable for outstanding custom duties in respect of the stolen goods. The trust disputed this liability for payment on the basis that it qualified for a full rebate of the custom duty together with VAT.

The SCA held that an armed robbery falls within the scope of *vis major*. There was a lack of evidence that the stolen products were ever found. Therefore it was difficult to see what more was required of the trust in order to claim a rebate. The SCA concluded that the manner in which the cigarettes were inserted into the market for consumption was not relevant to the application of the Rebate, thus the appeal is dismissed with costs.

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