REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 14703/20

(1) REPORTABLE: Yes☐/ No ☒
(2) OF INTEREST TO OTHER JUDGES: Yes☐ / No ☒
(3) REVISED: Yes ☐ / No ☒

Date: 15 March 2023 WJ du Plessis

In the matter between:

MINING PRESSURE SYSTEMS (PTY) LTD Applicant

and

THE COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE Respondent

JUDGMENT

DU PLESSIS AJ

[1] Introduction

[1] This is an appeal in terms of s 47(9)(e) of the Customs and Excise Act 91 of 1964 ("the Act") against the Respondent's tariff determination of certain steel products imported by the Applicant, described as "seamless carbon steel pipes API5L X42 PSLI MLS" (the "API 5L standard").

[2] The Applicant is a company that imports, *inter alia*, seamless carbon steel pipes manufactured in China. The Respondent, the Commissioner of the South African Revenue Service

("Commissioner"), is responsible for administrating the Act and interpreting the schedules to determine tariffs for imported goods. The crux of the case deals with the question of under which tariff heading ("TH") the imported goods should be classified. It is a matter of legal interpretation based on intricate facts about the technical nature and characteristics of the pipes.

[2] Background

[3] The Applicant imported seamless carbon steel pipes from China in May 2018. These pipes are supplied to the mining industry for various purposes, including chilled water columns, high-pressure pump columns, backfill columns, and drinking water transmission. The commercial invoice listed the goods as "carbon steel seamless pipes API5L X42 PSLI MLS". The Applicant cleared it under TH 7304.39.35 as "[t]ubes, pipes and hollows profiles, seamless, of iron (excluding cast iron) or steel, *[o[ther, of circular cross-section, of iron or non-alloy steel; other; of a wall thickness exceeding 25mm or an outside cross-sectional dimension exceeding 170mm"* [italics own emphasis]. This attracts no duty.

[4] However, on 16 January 2019, the Commissioner classified it under TH 7304.19 as "[t]ubes, pipes and hollows profiles, seamless, of iron (excluding cast iron) or steal, *line pipe of a kind used for oil or gas pipelines*" [italics own emphasis]. This attracts a 10% duty.

[5] Thus, the court must determine whether the pipes are "of a kind used for oil or gas pipelines". If it is, the Commissioner's determination stands, and the appeal must be dismissed. If it is not, then the court must determine whether it is circular cross-section, of iron, or non-alloy steel. In the latter case, whether the pipes are made from alloy or non-alloy steel becomes important. The Act sets out how the interpretation process should be done.

[3] The provisions of the Customs and Excise Act 91 of 1964

[6] Section 47(8)(a) of the Act states that

> The interpretation of -
>
> i. Any Tariff heading or tariff sub-heading in Part 1 of Schedule No. 1;
>
> ii. …;
>
> iii. The general rules for the interpretation of Schedule No 1; and
>
> iv. Every Section Note and Chapter Note in Part 1 of Schedule No 1,
>
> shall be subject to the International Convention on the Harmonised Commodity Description and Coding System done in Brussels on 14 June 1983 and to the Explanatory Notes to the Harmonised System issued by the Customs Cooperation Council, Brussels (now known as the World Customs Organisation) from time to time…

[7] Section 47(9)(a)(i) states that

> The Commissioner may in writing determine –
>
> (aa) The tariff headings, tariff sub-headings or tariff items or other items of any Schedule under which any imported goods … shall be classified

[8] The South African legislature thus gave statutory recognition to the Harmonised system or the "Brussel notes", which should be read with the wording in Schedule 1.[1]

[9] Classifying and determining tariffs in terms of the Act is a highly specialised exercise. While scrutinising expert reports to determine the appropriate tariff heading, it should be kept in mind the various purposes of customs duties that inform the Act: the collection of revenue, the protection of local industries, and an ancillary instrument as part of an economic development policy.[2] Customs duty can, for instance, protect the local market by requiring import duty on certain goods to protect local manufacturers.[3] The legislative framework should be transparent, predictable, with prompt procedures, and meet international standards.[4]

[10] To ensure uniformity in the classification of goods, the Harmonized System systematically organises goods by class or kind, in sections, chapters, headings and subheadings, based on specific rules. However, it only provides for the classification of goods. Each country then determines the rate payable on the goods once classified, based on their respective trade policy and revenue requirements.[5]

[11] The Harmonised System has provisions that codify the principles on which the system is based and lays down rules to ensure uniform legal interpretation. These rules pertain to the classification principles.

(i) General Rules for the Interpretation of the Harmonized System ("General Rules")

[12] The General Rules provide interpretative guidelines for the Harmonized System. These rules are legally binding and are intended to be a clear step-by-step basis for classifying goods. It should be applied in strict hierarchical order.[6]

[13] General Rules 1 to 5 apply to classification at the heading level, while general rule 6 applies to classification at the subheading level.

[14] In terms of General Rule 1, titles of Sections, Chapters and Sub-chapters are provided for ease of reference only. For legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes. If this does not solve the problem, the other interpretative rules come into play.

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[1] *Smith Mining Equipment Commissioner: South African Revenue Service* [2013] ZASCA 145 par 5.

[2] See Colesky T, *A comparative study on customs tariff classification* (2015) University of Pretoria, 55.

[3] Colesky T, *A comparative study on customs tariff classification* (2015) University of Pretoria, 57.

[4] Colesky T, *A comparative study on customs tariff classification* (2015) University of Pretoria, 49.

[5] Colesky T, *A comparative study on customs tariff classification* (2015) University of Pretoria, 94.

[6] *HMT Projects (Pty) Ltd v The Commissioner of the South African Revenue Service* 2020 JDR 0811 (GP) para 6.

[15] General Rule 3 states that if goods are classifiable under two or more headings, the heading that provides the most specific description shall be preferred to headings that provide a more general description.

[16] Lastly, General Rule 6, referring to subheadings, clarifies that only subheadings on the same level are comparable.

[17] Thus, a product is first classified in its appropriate 4-digit heading, then its appropriate 1-dash sub-division (5 digits), then a 2-dash subheading (6-digit sub-division within that heading), with a one-dash sub-division. Thus, six-digit subheadings can only be compared with other six-digit subheadings.

(ii) Explanatory Notes ("Notes")

[18] A set of Explanatory Notes further supports the Harmonized System. These notes are not legally binding, but they assist in interpreting the Harmonized System, the General Rules, and the Section and Chapter Notes.

[19] In *Secretary for Customs and Excise v Thomas Barlow & Sons*[7] the court made it clear that the primary task is to classify the goods by ascertaining the meaning of the relevant heading and section and that the Notes provide guidance in difficult and doubtful cases. The court then warned that they are "merely intended to explain or perhaps supplement those headings and notes and not to override them".[8] This is because the Notes are not written with the same precision as the terminology used in the headings and subheadings. Thus the court ruled that the Explanatory Notes must "conform with and not override or contradict the plain meaning of headings and notes".

[4] Process of classification

[20] *International Business Machines SA (Pty) Limited v Commissioner of Customs and Excise*[9] sets out this process of classification that entails a three-stage process:

i. Interpreting the words used in the Tariff Headings (and Sub-headings) and relative Section and Chapter Notes and Explanatory Notes which may be relevant to the classification of the goods;

ii. Consideration of the nature and characteristics of the goods; and

iii. Selection of the heading or item which is most appropriate for such goods.

[21] Step one and three are questions of law, while step two is a question of fact.[10] First-time classifiers will have to do the second step first.[11] Most court cases follow the above pattern since parties came to court contesting two possible headings. This is also the case here. Therefore, what follows

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[7] 1970 (2) SA 660 (A).

[8] At 676B – 676F.

[9] 1985 (4) ZASCA 87.

[10] *Commissioner for Customs and Excise v CI Caravans (Pty) Ltd* (1991) 53 SATC 295(N) at 306.

is an interpretation of the two tariff headings in dispute, followed by looking at the nature and characteristics of the goods and then determining the most appropriate heading for the goods.

[5] Tariff headings

[22] Chapter 73 of Schedule 1 to the Act is titled "Articles of Iron or Steel". Tariff heading 73.04 (the 4-digit classification) provides for "Tubes, pipes and hollow profiles, seamless, of iron (excluding cast iron) or steel". The parties agree that the items resort under this heading (specifically pipes of seamless steel). The parties, however, disagree as to the 6-digit tariff sub-heading.

[23] The Applicant argues it should resort under 7304.39.35, which reads:

> (73.04) Tubes, pipes and hollows profiles, seamless, of iron (excluding cast iron) or steel
>
> (7304.3) – Other, of circular cross-section, of iron or non-alloy steel:
>
> (7304.39) – Other:
>
> (7304.39.35.1) – of a wall thickness exceeding 25mm or an outside cross-sectional dimension exceeding 170mm.

[24] The Commissioner avers it is sub-heading 7304.19, which reads:

> (73.04) Tubes, pipes and hollows profiles, seamless, of iron (excluding cast iron) or steel
>
> (7304.1) Line pipe of a kind used for oil or gas pipelines:
>
> (7304.19) -- other.

[25] The General Explanatory Note to Chapter 73 provides that the Chapter covers the articles in headings 73.01 to 73.24. It explains that Tubes and Pipes are

> "Concentric hollow products, of uniform cross-section only enclosed void along their whole length, having their inner and outer surfaces of the same form. Steel tubes are mainly or circular […] cross-section"

[26] The Explanatory Notes to TH 73.04 provide

> The products of this heading include, in particular, line pipes of a kind used for oil or gas, casing, tubing and drill pipes of a kind used in drilling for oil and gas, tubes and pipes suitable for use in boilers, super heaters, heat exchangers, condensers, refining furnaces, feedwater heaters for power stations, galvanised or black tubes (so-called gas tubes) for high or medium pressure steamed, or gas or water distribution for buildings, as well as tubes for water or gas street distribution mains. In addition, tubes and pipes are used for the manufacture of parts for automobiles or for machinery of rings for ball bearings, cylindrical tapered or needle bearings or for other mechanical uses, for scaffolding, tubular structures or building construction.

[27] The Explanatory Note to subheadings TH 7304.1 (that the Commissioner contend for) states

> The products of this heading include, in particular, line pipers of a kind used for oil or gas. Casing, tubing and drill pipers of a kind used in drilling for oil and gas, tubes and pipes suitable for use in boilers, super heaters, heat exchangers,

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[11] *CI Caravans (Pty) Ltd v Commissioner for Customs and Excise* (1989) 52 SATC 193 (N*); Distell Ltd v Commissioner for South African Revenue Service (2012)* 74 SATC 272.

> condensers, refining furnaces feed water heaters for power stations, galvanised (so called, gas tubes) for high or medium pressure steam, or gas or water distribution in buildings as well as tubes for water or gas street distribution mains. (own emphasis)

[28] The Explanatory Note to sub-headings that includes TH 7304.19[12] (that the Commissioner contend for) provide

> These sub-headings cover all such articles irrespective of the standards or technical specifications which they meet [e.g. American Petroleum Institute (API) standard 5L or 5LU for line pipe and API standards 5A, 5AC or 5AX for casing, tubing and drill pipe].

[29] It also explains that General Explanatory Note to Chapter 72 applies to Chapter 73 too. Explanatory Note to Chapter 72 describes "other alloy steel"[13] (thus a definition of alloy steel) as

> Steel not complying with the definition of stainless steel and containing by mass one or more of the following elements in the proportion shown:
>
> 0,3 % or more of aluminium;
>
> 0,0008 % or more of boron;
>
> 0,3 % of chromium;
>
> 0,3 % or more of cobalt;
>
> 0,4 % or more of copper;
>
> 0,4 % or more of lead;
>
> 1,65 % or more of manganese; (Mill certificate 0,46% / 0,53%)
>
> 0,08 % or more of molybdenum;
>
> 0,3 % or more of nickel;
>
> 0,06 % or more of niobium;
>
> 0,6 % or more of silicon; (Mill certificate 0,22% / 0,21%)
>
> 0,05 % or more of titanium;
>
> 0,3 % or more of tungsten (wolfram);
>
> 0,1 % or more of vanadium;
>
> 0,05 % or more of zirconium;
>
> 0,1 % or more of other elements (except sulphur, phosphorus, carbon and nitrogen) taken separately.
>
> (Mill certificate carbon 0,22%/0,19%)
>
> (Mill certificate phosphorus = 0,017%/0,019%)
>
> (Mill certificate sulphur 0,008%/0,016%)

[30] Notes to Chapter 72 provide:

> In this Chapter, the following expressions have the meanings hereby assigned to them:

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[12] Page XV-7304-3.

[13] Note 1(f).

(a) Alloy pig iron:

[…]

(b) Non-alloy free-cutting steel:

Non-alloy steel containing, by weight, one or more of the following elements in the specific proportions:

0,08% or more of sulphur (Mill certificate 0,008% / 0,016%)

0,1% or more of lead

more than 0,05% of selenium

more than 0,01% of tellurium

more than 0,05% of bismuth

(i) Respondent's 5-digit heading TH7304.1 "line pipes of a kind used for oil or gas pipelines"

[31] Based on this, the Respondent states that the goods are alloy steel, and the Mill Test Certificates show that they comply with the API 5L standard for line pipes to be used for oil and gas transmission. The 5-digit tariff heading 7304.1 is thus applicable, as both the API 5L standard and the Explanatory Notes state that these pipes may be used to transmit other fluids such as steam, water and slurry. Since the appropriate sub-heading is applied and applying GRI 1 and 6, it is not necessary to compare the next level digits of the competing sub-headings. Therefore the appropriate heading is TH 7304.19.

[32] The Applicant disagrees with the heading, stating that "of a kind" indicates a class, category or genus of goods with common characteristics and that the specific use or application of the goods will determine the class of goods. Thus, pipes "of a kind" must be used for "oil or gas pipelines". This means that the design of the pipes is relevant insofar as it will impact the use of the product: in other words, to distinguish between the products used for oil and gas pipelines and products that are not. It does not refer to the intended or actual use but whether the pipes have the characteristics of line pipe of the class used for oil or gas pipelines.

[33] The Applicant also gives an interpretation for "oil or gas pipelines",[14] which they submit indicates that the line pipe will extend over long distances and that the pipe must be of that kind used for such purposes.

[34] The Commissioner agrees with the meaning of "of a kind" and "pipeline" but submits that the pipes meet the API5L standard. This standard is the specification for seamless steel pipes suitable for use in conveying gas, water, and oil in the oil and natural gas industries, making them "of a kind" used in the oil and gas industry. Therefore, the tariff classification was correct.

(ii) Applicant's 5-digit heading TH7304.3 "other, of circular cross-section, of iron or non-alloy steel"

[14] Based on the definition of “gas” in the Gas Act 48 of 2001 and “petroleum” and “petroleum pipelines” in the Petroleum Pipelines Act 60 of 2003, and a dictionary definition of “pipeline”.

[35] The Applicant submits that since the pipes do not fit under heading TH7304.1, as it is not line pipes of a kind used for oil or gas pipelines, it should fall under TH7304.3. For this to be possible, the pipes must be classified as "non-alloy" steel. There was disagreement about whether the pipes are made from non-alloy steel.

[36] To back up their argument, each party employed an expert witness to attest to the nature and characteristics ("line pipe of a kind"), and the technical meaning of the pipes (alloy or non-alloy).

[37] To determine the appropriate TH, it is necessary to delve into the nature and characteristics of the pipes.

[6] The nature and characteristics of the pipes

[38] Since the nature and characteristics of the pipes are described with reference to their diameter, wall thickness, and chemical composition, each party used expert reports to support their case.

(i) "Of a kind used for oil and gas pipelines"

[39] The Applicant relied on the expert opinion of Prof Mostert on whether the pipes in question are "of a kind" used for oil and gas pipelines. He states that oil and gas pipelines in South Africa use larger diameters, between 610mm – 660mm, as they must carry a high capacity and large volumes. High-strength steel is also needed because of the high pressure. This is in line with international trends. Since the pipes in question are smaller carbon pipes and not of the same strength, they are not pipes of the kind used for oil or gas pipelines, but rather for water in a piping system.

[40] The Commissioner disagrees. The pipes were classified as API 5L X42 PSL1, meaning that these pipes were manufactured according to API 5L standards, the American Petroleum Institute standard for line pipes used in the oil and gas industry. It is thus "of a kind used in the oil and gas industry", as they meet the standards of such pipes used. This was supported by the expert opinion of Dr Burger, who explained that the API 5L Standard provides standards for pipes suitable for conveying gas, water, and oil in both the oil and the natural gas industries. This standard then explicitly provides seamless and welded steel line pipe of various kinds.

[41] While Prof Mostert does not dispute this, he does state that just because the standard applies to goods, it does not mean that the pipes are suitable for use in an oil and gas pipeline. He refers to the word "pipeline" as denoting a very long large tube, usually underground, through which these liquids or gas flow for long distances. In South Africa, these pipelines have a larger diameter, and a different grade, as it needs to withstand the pressure of the gas. This is also in line with international trends. He concludes that these pipes are better suited to transport water over short distances and not for oil and gas use in a pipeline. Thus, even if classified as API 5L X42 PSL I, it is not a pipe of a kind used for oil and gas pipeline.

[42] Dr Burger finds this irrelevant: the API 5L Standard specifically provides standards for pipes suitable for conveying gas, water, and oil in the oil and natural gas industries. The API 5L specification does not prescribe how the pipe should be used. The applications referred to by Prof Mostert are trends and not enforceable regulations, for instance. Thus, these pipes can transport oil and gas, and whether they do or not is not the question, they are "of a kind".

[43] Essentially, the issue for the court to solve through interpretation, as far as this heading is concerned, is the following: The pipes are classified by the American Petroleum Institute as pipes that *can* be used for oil and gas. There are no regulations in South Africa that state the minimum safety requirements for pipes to be used. It specifically does not say that these pipes should not be used. It is in line with international trends and companies' policy not to use it, and it is Prof Mostert's expert opinion that it should not be used for it in the South African context. In that sense, these are not pipes "of a kind used for oil and gas". However, does the fact that it is generally not used for this purpose detract from the fact that, in terms of the API5L classification, it can be used, influence the interpretation of "of a kind" in the classification of the pipes? In my opinion, it does. This will be elaborated on below when deciding the most appropriate heading.

(ii) Alloy or non-alloy steel?

[44] The goods are described as "Carbon Steel Seamless Pipes API 5LX42 PSLI SMLS". The Mill Certificates certify the chemical composition of the goods as follows:

i. Carbon = 0,22% / 0,19%

ii. Silicon = 0,22% / 0,21%

iii. Manganese = 0,46% / 0,53%

iv. Phosphorus = 0,017% / 0,019%

[45] This enabled Prof Mostert to compare the chemical composition of the goods (typical for the API L5 standard), with the list in paragraph (f) of Chapter 72 to determine the definition of "Alloy Steel", as steel containing by mass one or more of various elements, including 1,65% or more manganese, 0,6% or more silicon. He then concluded that the goods are "carbon steel" or "steel" but not "alloy steel" (and thus non-alloy steel).

[46] The Respondent's expert, Dr Burger, differs. He starts with explaining what "carbon steel" is (with reference to the American Iron and Steel Institute), concluding that steel is considered carbon steel when there is no minimum content specified or required for chromium, cobalt, columbium [niobium], molybdenum, nickel, titanium, tungsten, vanadium or zirconium, or any other element to be added to obtain the desired alloying effect, with 0.40% copper, or less than 1,65% manganese, 0,60% silicon and 0,60% copper. "Alloy steel" is explained, with reference to the Marks Standard Handbook for Mechanical Engineers, as steel that derives its distinctive properties from some element or elements other than carbon, or such elements and carbon. Some alloys may contain as much as 1,25% of carbon – there is no complete agreement as to where the line between carbon steels, and alloy steels lie according to him.

[47] Dr Burger does not define "non-alloy" steel but states that alloy steel "is the standard term referring to steels with other alloying elements added deliberately in addition to the carbon". The respondents aver that this leads to the conclusion that the evidence of both experts and the Section and Chapter Notes is that "non-alloy free-cutting steel" in the sub-heading Notes of Chapter 72 is not the "non-Alloy Steel" for purposes of sub-heading 7304.3.

[48] There was a difference in opinion between the experts on what handbook is more authoritative on the subject of metallurgy and whether Prof Mostert's opinion, as an expert in metallurgy, should

carry more weight than Dr Burger, a mechanical engineer. This is neither here nor there. Both experts are employed to assist the court in deciding under which TH the goods should be classified by explaining the technical terms. The court, while respecting the specialised knowledge of the experts, is not bound by what they decide.[15]

[7] Selection of the heading or item which is most appropriate.

[49] In terms of General Rule 1 read with General Rule 6, the same level heading that provides the most specific description should be preferred to the other headings that provide more general description of the goods. In other words, the two headings contended for are TH 7304.1 "of a kind used for oil or gas pipelines" and TH 7304.3 "other, of circular cross-section, of iron or non-alloy steel: ". The question is, which one is more specific? In my opinion, the one is not more specific than the other, and thus this rule does not help eliminate the heading contended for by the Applicant. The applicability of each heading, therefore, needs to be considered.

[50] *Smith Mining Equipment Commissioner: South African Revenue Service*[16] dealt with the phrase "of a type". The court, in that case, determined that the central characteristic of the goods is not merely what they are used for but whether they are used for that purpose. This requires that what must first be determined is what kind of goods are of that type, which is a factual question established by evidence. In that case there was no evidence of the type of goods used, and all the court had before it was that the goods could be used for the purpose. From this it seems that what must first be determined is what is the kind of goods that fit the description, and then determine whether the goods are of that kind.

[51] Both experts, in this case, assisted the court in determining the characteristics of the goods i.e. what kinds of goods fit the description. Whether it is "of a kind" as stated in TH 7304.19 remains a question of legal interpretation. It should also be noted upfront that whether it is "of a kind" is an objective question, where the importer's actual use of the goods,[17] in line with case law, remains irrelevant.

[52] There is no disagreement between the parties on the definition of "pipeline", namely, that it is a large pipe used to transport petroleum products over a long distance. While this court in *HMT products*[18] stated that "[w]hether the pipeline would be of a short or long distance would be of no consequence", the court also made it clear that the tariff heading refers to "line pipe meeting the minimum standards for pipe used in pipelines whereby oil or gas can be conveyed". However, the pipes are not exactly similar in nature: the pipes, in that case, were alloy steel, and the central question was the definition of "pipeline".

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[15] *S v Gouws* 1967 (4) SA 527 (E).

[16] [2013] ZASCA 145 para 8.

[17] *Commissioner for South African Revenue Service v Duro Pressings (Pty) Ltd* (2008) 71 SATC 88 para 6; *African Oxygen Ltd v Secretary for Customs and Excise* (1969) 31 SATC 191. *Commissioner for South African Revenue Service v Komatsu Southern Africa (Pty) Ltd* (2006) 69 SATC 9; *Commissioner for South African Revenue Service v The Baking Tin (Pty) Ltd* (2007) 69 SATC 220.

[18] *HMT Projects (Pty) Ltd v The Commissioner of the South African Revenue Service* 2020 JDR 0811 (GP).

[53] The Applicant, in line with *Smith Mining Equipment Commissioner: South African Revenue Service*[19] presented expert evidence to indicate what would be line pipe "of a kind" used for oil and gas. A distinction is then drawn between piping / piping systems, and pipeline (the definition of which the parties agree on). The Applicant argues that pipeline used for gas and oil in South Africa are larger in diameter and made of high-strength steel. Thus, the goods, although classified by the API5L standard for pipe suitable for use in conveying gas, water, and oil and oil in the gas industries, are in the South African context not the kind that is used for oil and gas pipelines.

[54] The Respondent did not provide any evidence on the kind of line pipe used for pipelines in South Africa, and instead stuck with the argument that the API5L standard states that the lines comply with the standard, and whatever it is used for are irrelevant. I, therefore, find that the pipes are not pipes of a kind used for oil and gas pipelines as per TH 7304.1.

[55] What needs to be determined is whether the TH 7304.3 (and then 7304.39.35) contended for by the Applicant is applicable. *Secretary of Customs and Excise v Thomas Barlow & Sons*[20] placed primary importance on the headings, sections, and chapter notes. The Explanatory Notes played a secondary role in difficult and doubtful cases. In this case, Explanatory Note 72(f) defines "other alloy steel" as "steels not complying with the definition of stainless steel and containing by weight one or more of the following elements in the proportion shown". I repeat the elements in question here, together with the Mill Certificate findings:

> 1,65 % or more of manganese; (Mill certificate 0,46% / 0,53%)
>
> 0,6 % or more of silicon; (Mill certificate 0,22% / 0,21%)
>
> 0,1 % or more of other elements (except sulphur, phosphorus, carbon and nitrogen) taken separately.
>
> (Mill certificate carbon 0,22%/0,19%)
>
> (Mill certificate phosphorus = 0,017%/0,019%)
>
> (Mill certificate sulphur 0,008%/0,016%)

[56] If one thus compares the Mill certificate with Explanatory Note (f), the pipes are not "other alloy steel", and by logical inference is thus "non-alloy steel", capable of being classified under the TH contended for by the Applicant.

[8] Order

[57] I thus make the following order:

i. The Respondent's tariff determination is set aside and replaced with a tariff determination in terms of which the pipes in question be classified under tariff heading TH 7304.39.35.

ii. The Respondent must pay the cost of this application.

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[19] [2013] ZASCA 145 para 8.

[20] 1970 (2) SA 660 (A).

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WJ du Plessis

Acting Judge of the High Court

Delivered: This judgement is handed down electronically by uploading it to the electronic file of this matter on CaseLines. It will be sent to the parties/their legal representatives by email.

Counsel for the Applicant:	Adv HJ Snyman
Instructed by:	Shepstone & Wylie attorneys
Counsel for the for Respondent:	Adv MPD Chabedi (with her Adv W Mothibe)
Instructed by:	Maponya Incorporated
Date of the hearing:	2023/01/30
Date of judgment:	2023/03/15