

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 14703/2020

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| (1) | REPORTABLE: Yes <input type="checkbox"/> / No <input checked="" type="checkbox"/> |
| (2) | OF INTEREST TO OTHER JUDGES:
Yes <input type="checkbox"/> / No <input checked="" type="checkbox"/> |
| (3) | REVISED: Yes <input type="checkbox"/> / No <input checked="" type="checkbox"/> |

Date:	26 May 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 (LEAVE TO APPEAL)

DU PLESSIS AJ

[1] Background

[2] This is an application for leave to appeal against the whole judgment and the order that I granted on 15 March 2023. The case was an appeal in terms of s 47(9)(e) of the Customs and Excise Act 91 of 1964 against the Commissioner's determination on 16 January 2019 that the goods ("seamless carbon steel pipes") imported by the applicant fall to the classified under Tariff sub-heading 7304.19 as "line pipe of a kind used for oil or gas pipelines". The applicant sought an order to have that

determination set aside and replaced with a determination that the goods fall under Tariff sub-heading 7304.39.35 as “other [items], of circular cross-section of iron or non-alloy steel”. This order was granted.

[3] Application for leave to appeal

[4] The applicant relies on three grounds. The first ground relates to the terms of the heading and the meaning of words, with specific reference to the word “alloy” and “non-alloy”. The second ground is to the nature and characteristics of the product, with specific reference of whether they are “of a kind used for oil or gas pipelines”. Lastly, and this flows from the above, that the court erred in selecting the most appropriate tariff heading.

[5] This application is brought in terms of s 17(1)(a)(ii) of the Superior Courts Act in that there is a need to clarify the principles relating to the classification of goods in TH73.04, in particular the relevance of the alloying elements in the steel industry in which the goods are to be used, in the determination of the nature and characteristics of the good (i.e. the interpretation “of a kind”).

[6] It is not necessary for me to discuss the merits of each of these grounds in detail. After considering the submissions made on behalf of the respondent, I agree that there is a compelling reason why the appeal should be heard.

[7] Order: application for leave to appeal

[8] I, therefore, make the following order:

1. The application for leave to appeal is granted to the Supreme Court of Appeal.
2. Costs to be costs in the appeal.

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:	Ms HJ Snyman
Instructed by:	Shepstone & Wylie Attorneys
For the for respondent:	Ms MPD Chabedi and Mr WN Mothibe
Instructed by:	Maponya Incorporated
Date of the hearing:	19 May 2023
Date of judgment:	26 May 2023