KWAZULU-NATAL HIGH COURT, PIETERMARITZBURG
REPUBLIC OF SOUTH AFRICA

REPORTABLE

Case no: 4355/2008

In the matter between:

DURBAN NORTH TURF (PTY) LTD **APPLICANT**

Vs

THE COMMISSIONER OF THE SOUTH AFRICAN REVENUE SERVICE **RESPONDENT**

JUDGMENT

MADONDO J

Introduction

[1] This is an appeal in terms of section 47(9)(e) of the Customs and Excise Act, No. 91 of 1964 (the Act) against the determination of the respondent dated 21 December 2005 that the Poligras 2000 imported by the applicant for use as a synthetic hockey pitch falls to be classified under the tariff heading 57.03, particularly, under tariff sub-heading 5703.30. The applicant contends that the said goods ought to have been classified under tariff heading 95.06 and subheading 9506.99.

Parties

[2] The applicant is Durban North Turf (Pty) Ltd, a duly registered company which has its principal place of business at 12 Radar Drive, Durban North, KwaZulu-Natal. Olsen SC appears on behalf of the applicant.

[3] The respondent is the Commissioner for the Receiver of Revenue Service who is cited Care of the Office of the State Attorney, 3rd Floor Sangro House, 417 Smith Street, Durban. Pammenter SC assisted by Ms Phungula appears on behalf of the Respondent.

The background

[4] The applicant concluded a contract for the installation of a synthetic surface outdoor hockey pitch at the premises of Glenwood Old Boys Sports Club, Durban North. Following the conclusion of the said contract the applicant on 31 May 2005 imported the product known as Poligras 2000.for use as a hockey pitch.

[5] Section 47(1) of the Act provides, *inter alia,* that customs duty shall be paid on all imported goods in accordance with the provisions of Schedule 1 to the Act (the Schedule). The Schedule classifies goods under various tariff headings and sub-headings. The duty payable is determined by the tariff sub-heading under which the goods are classified.

[6] The respondent classified the product under Chapter 57.03, sub-heading 5703.30 of the Schedule and determined that thirty percent (30%) rate of duty was applicable to the importation of the product. However, the applicant contested the determination made by the respondent. On 28 June

2005 the applicant re-submitted the product for determination. But, on 28 July 2005 the respondent's earlier classification of the product was confirmed. The respondent then called for an underpayment in customs duty and VAT as a result thereof.

[7] The applicant still was not content with the determination and on 15 November 2005 it submitted further representations for consideration. Having applied his mind on the representations submitted by the applicant, the respondent found no reason for deviating from the previous determination and it once again confirmed the determination.

[8] On 21 December 2005 the respondent in terms of section 47(9)(a)(i)(aa) of the Act classified the synthetic turf (Poligras 2000) imported by the applicant as the carpet or any other textile floor coverings falling under tariff heading 57.03, particularly, under sub-heading 5703.30. On importation the applicant had declared the goods in issue on the relevant bill of entry as falling under tariff sub-heading 9506.99. The rationale for such declaration was that synthetic turf as an equipment of sporting should be classified under the tariff heading 95.06.

Issue to be decided

[9] The issue raised in this matter is whether the synthetic turf (Poligras 2000) is classifiable as a carpet or textile floor covering under tariff heading 57.03 or as sporting equipment under tariff heading 95.06.

Interpretation of the Schedule

[10] The importance of the dispute which has arisen lies in the fact that goods falling under tariff heading 95.06 are imported free of charge while goods falling under tariff heading 57.03 are subject to a duty of 30%. Presumably, the rationale for making sporting equipment not dutiable is to promote sports and to make it possible for all the citizens, the scholars in particular, to participate therein.

[11] Section 47(9) (a) (i) (aa) of the Act provides:

> "The commissioner may in writing determine-
>
> All tariff headings, tariff sub-headings or tariff items or other items of any Schedule under which any imported goods, goods manufactured in the Republic or goods exported shall be classified."

[12] Section 47(8) (a) of the Act provides that the interpretation of any tariff heading or tariff sub-heading in Part 1 of the Schedule and every section note and chapter note in Part 1 of the Schedule shall be subjected to the International Convention on the Harmonized Commodity Description and Coding System done in Brussels on 14 June 1983 and to the Explanatory Notes to the Harmonized System issued by the Customs Co-operation Council from time to time.

[13] This provision does not mean that the notes are to be regarded as peremptory injunctions. *International Business Machines SA (Pty) Limited v Commissioner for Customs and Excise 1985(4) SA 852 (A) 864.* For, as **Trollip JA** pointed out in *Security for Customs and Excise v Thomas Barlow and Sons Ltd 1970(2) SA 660(A) at 676C-D,*

> "are not worded with the linguistic precision usually characteristic of statutory precepts; on the contrary they consist mainly of discursive comment and illustrations. "

[14] All that Section 47(8) (a) requires is that the interpretation of the relative headings and section and chapter notes shall be in conformity with, and not contrary to Brussels Notes. *African Oxygen Ltd v Secretary for Customs and Excise 1969 (3) SA 391(T) 394C-E; Autoware (Pty) Ltd v Commissioner for Customs and Excise 1975 (4) SA 318(W) at 321E-F.*

[15) The Harmonized System means the nomenclature comprising the headings and sub-headings and their related numerical codes, section, chapter and sub-headings notes and the general rules for the interpretation of the Harmonized System.

[16] The Harmonized System determines the classification of goods. However, it does not determine what customs duty is payable on the importation of such goods into a contracting party. Such customs duty is fixed by the individual contracting parties concerned. The Harmonized System has only been devised to bring about uniformity in the classification of goods by contracting parties.

[17] Part 1 of the Schedule is based on the Harmonized System and provides for the rules interpretation, the headings, sub-headings, section chapter and sub heading notes *International Business Machines SA (Pty) Ltd case, supra, at 862A-863A.*

[18] Note VIII to the Schedule sets out the Rules for the interpretation of the Schedule; paragraph 1 says:

> "The titles of sections, chapter and sub chapters are provided for case reference only; for legal purposes, classifications (as between headings) shall be determined according to the terms of the headings and any relative section or chapter notes and, provided such headings or notes do not otherwise require..."

This is intended to make it quite clear that the terms of the headings and any relative section or chapter notes are paramount, i.e., they are the first consideration in determining classification.

[19] Part 1 of the Schedule, including the notes thereto and the tariff headings and sub-headings, should be interpreted according to the natural and ordinary sense of the language used therein unless the context or the subject clearly shows that there were used in a different sense, *Steyn, Die Uitleg van Wette 5th ed at page 2 para2; National Screen Print (Pty) Ltd v Minister of Finance 1978(3) SA 50 (C) 506H,* and effect must be given to every word. Words which are not technical or specialized bear ordinary meaning. *SA Historical Mint (Pty) Ltd v Minister of Finance 1997 (2) SA 862(C).*

[20] For the above purpose recourse may be had to well-known and authoritative dictionaries and for technical words, technical dictionaries of authority may be used. *International Business Machines SA (Pty) Ltd v Commissioner for Customs and Excise 1985 (4) SA 852(A) 859; National Screen Print case, supra, at 507 A-H, Department of Customs and Excise v Maybaker SA (Pty) Ltd 1982(3) SA 809 (A)816 D-H.*

[21] Opinion evidence on the meaning of ordinary words is inadmissible except in regard to words which have a special or technical meaning. *International Business Machines SA (Pty) Ltd case, supra, at 874B*. The Schedule contains general notes sections and chapter notes to aid in its interpretation.

Classification of goods

[22] It is of importance, however, to determine at the outset the correct approach to adopt in interpreting the provisions of the Schedule and in applying the explanations in the Brussels Notes. *Secretary for Customs and Excise v Thomas Barlow and Sons Ltd 1970(2) SA 660(A).*

[23] The relevant headings and sections and chapter notes are not only the first but the paramount consideration in determining which classification as between headings should apply in any particular case. In *Secretary for Customs and Excise case*, *supra*, at 676 B-E, **Trollip JA** said:

> "…the primary task in classifying particular goods is to ascertain the meaning of the relevant headings and section and chapter notes, but, in performing that task, one should also use the Brussels Notes for guidance especially in difficult and doubtful cases. But in using them one must bear in mind that they are merely intended to explain or perhaps supplement those headings and notes and not to override or contradict them. They are manifestly not designed for the latter purpose, for they are not worded with linguistic precision usually characteristics of statutory precepts; on the contrary they consist mainly of discursive comment and illustrations…I think in using the Brussels Notes one must construe them so as to conform with and not to override or contradict the plain meaning of the heading and notes. If an irreconcilable conflict between the two should arise, … then possibly the meaning of the headings and notes should prevail, because, although section 47(8)(a) of the act says that the interpretation of the Schedule "shall be subject to" the Brussels Notes, the latter themselves

> say in effect that the headings and notes are paramount, that is, they must prevail."

[24] On the principles applicable in determining whether articles fall under a particular classification, **Nicholas AJA**, as he then was, in *International Business Machines case*, *supra*, at 863 G said:

> "classification as between the headings is a three – stage process; first interpretation – the ascertainment of the meaning of the words used in the headings (and relative 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 headings which is most appropriate to such goods."

Ascertaining the meaning of the words used in the relevant headings and sub-headings

[25] Classification as between the headings shall be determined according to the terms of the headings and any relative section and chapter notes. *Baking Tin case, supra, at 853.* The notes are intended to serve as a guide, pointing the way to the desired or intended classification.

[26] Tariff heading 57.03 covers carpets and other textile floor coverings tufted whether or not made up. While tariff sub-heading 5703.30 covers carpets manufactured of "other man made textile materials", which are not specified or included in tariff heading 57.03 or in any of its tariff sub-headings. According to the general notes to the tariff heading 5703.30, this sub-heading covers tufted textile floor coverings produced on tufting machines.

[27] The Oxford English Dictionary defines the word ’carpet’ as:

> “a thick fabric, commonly of wool, used to cover tables, beds etc. a table cloth or a similar fabric generally worked in a pattern of divers colours, used to spread on a floor or the ground, for standing, sitting or kneeling on, or (now usually) to cover a floor or stair.”

[28] According to the General Notes to Chapter 57 the word ‘carpet’ includes ‘articles having the characteristics of textile floor coverings (e.g. Thickness, stiffness and strength) but intended for use for other purposes (for example, as wall hangings or table covers or for other furnishing purposes).’

[29] The above products are classified in Chapter 57 whether “made up (i.e. made directly to size, hemmed, lined, fringed, assembled, etc), in the form of carpet squares, bedside rugs, hearth rugs, or in the form of carpeting for installation in rooms, corridors, passages or stairs, in the length for cutting and making up.”

[30] It has been argued on behalf of the respondent that Poligras 2000 imported by the applicant falls to be classified under tariff heading 57.03 and sub-heading 5703.30, since it is a textile article similar to a floor covering.

[31] However, the applicant contends that Poligras 2000 falls to be classified under tariff heading 95.06 which refers to articles and equipment for general physical exercise, gymnastics, athletics, other sports (including table tennis) or outdoor games, not specified or included elsewhere in this chapter; swimming pools and paddling pools. Sub-heading 9506.99 refers to “other” articles and sports equipment not specified or included elsewhere in any of the preceding sub-headings of the tariff heading 95.06.

[32] A hockey pitch is not specified or included in any of the chapters, tariff headings and sub-headings in issue .The Shorter Oxford English Dictionary defines “hockey” as an outdoor game of a ball played with sticks or clubs hooked or curved at one end, with which the player of each side drives the ball towards the goal at the other end of the ground.

[33] Also, the Shorter Oxford Dictionary defines the word “outdoor” as something that is done, exists, lives or used out of doors or in the open air. In tariff heading 95.06 the expression “outdoor games” is used in a wide general sense and on proper construction the expression is intended to widen the category of sports so to include all outdoor games including hockey. *See also International Business Machines SA (Pty) Ltd v Commissioner for Customs and Excise 1985(4) SA 852 (A).*

[34] The word “other” referred to in the tariff heading 95.06 refers to other sporting equipment which is not specified or included in the tariff heading and in any of its sub-headings. On construction the word “other” may also cover a hockey pitch as sport equipment. However, I propose to deal with this question later in the judgement.

Nature and characteristics of goods

[35] In determining which classification, as between headings, shall apply in any particular case, the test for classification is an objective one. The imported goods must be classified as they are at the time of importation.

[36] The general rule is that the goods are characterised by their objective characteristics, and not by the intention with which they were made nor the use to which they may be put. In *Commissioner, South African Revenue Service v Baking Tim (Pty) Ltd 2007(6) SA 545 (SCA) 548 G-H, the Court held:*

> "… It is well established that the intention of the manufacturer or importer of goods is not a determinant of the appropriate classification for the purpose of the Act. Thus, the purpose for which they are manufactured is not a criterion to be taken into account in classification."

[37] However, there is an exception to the general rule that the nature, form, character and function of the article is objectively determined, where the wording of the relevant tariff items makes the purpose and intention relevant, as it was relied upon in *Secretary v Thomas Barlow and Sons Ltd 1970 (2) SA 660 (A) at 677 D0H per* ***Trollip AJA*** *(*as he then was*) and at 683 A-B, 864G per* ***Muller JA****.*

[38] Also, in *Commissioner, SARS v Komatsu Southern African (Pty) Ltd* 2007 (2) SA 157 (SCA) at 160 F-G and 161A, ***Theron AJA*** (as she then was) said the following in this regard:

> "It is clear from the authorities that decisive criterion for the customs classification of goods is the objective characteristics and properties of the goods as determined at the time of their presentation for customs clearance. This is an internationally recognised principle of tariff classification. The subjective intentions 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."

[39] In determining the nature, characteristics and the properties of the goods in question the ordinary principle of classification, namely, that goods are classified by reference to the nature and characteristics of the goods as a whole, is applied. *The Heritage Collection (Pty) Ltd v Commissioner South African Revenue Service 2002 (6) SA 15 (SCA) at 21 C-D.*

[40] The Introductory Notes to Chapter 57 reads:

> "For the purposes of this chapter, the term 'carpets and other textile floor coverings' means floor coverings in which textile materials serve as the exposed surface of the article when in use and includes articles having the characteristics of textile floor coverings but intended for use for other purposes."

[41] Poligras 2000 referred to in applicant's papers is defined in annexures "MB1", MB2 and "FLM 11 "respectively, as a wet synthetic surface for playing hockey sport, consisting of polyethylene or polypropylene yarn with a polyurethane secondary backing laid over on or bonded to a shock pad or elastic layer to absorb dynamic forces, and which in turn is laid on the binding or sealing layer of an engineered sub-base. Filled pitches and dressed pitches need to have sand or other materials to the required depth to stabilise the verticality of the pile. It is irrigated prior to its use. It is for that reason an artificial playing surface for hockey sport may have a water supply system in

the form of pipes which can spring up to irrigate when necessary and drainage system in the substratum over which the turf is laid.

[42] In its Founding Affidavit the applicant states that, generally, a hockey pitch consists of a synthetic fibre carpet as the playing surface, laid on a rubber shock pad or elastic layer. However, the applicant in its Replying Affidavit states that the use of the word ‘carpet’ referred to above is used in a general sense and it is not intended to convey the acceptance of the proposition that the hockey pitch falls into the category of those which are properly described by the word ‘carpet’ as it is used in a narrow or more specific sense in chapter 57 of Part 1 of the Schedule.

[43] As it appears in Annexure “ MB2“, a hockey pitch constitutes an artificial turf in which synthetic grass with white lines and tracks delineating areas of the hockey field embedded in it serves as an exposed surface of the pitch when in use. Synthetic grass together with the necessary white lines and tracks embedded in it, from its construction, in turn gives the hockey pitch its essential character.

[44] In the present case, it is not in dispute that Poligras 2000 imported by the applicant was a piece of equipment designed, developed, manufactured and supplied solely for use in the sport of hockey. Secondly, that the Poligras 2000 has specifically been manufactured in order to incorporate white lines appropriate to the game of hockey. Thirdly, that on importation the Poligras 2000 was intended only to be used as an artificial playing surface of hockey.

[45] In *Komatsu case*, *supra*, at page 162D, the essential character of the machine was in turn determined by having regard to the purpose for which the machine was designed, to which was linked the ascertainment of the principal function of the machinery.

[46] Being essentially intended to provide an artificial surface for playing hockey game, the Poligras 2000 is distinguished by its principal function from a carpet which is essentially intended to cover the floor surface or any other surface, as a protective covering. For the Poligras to perform its principal function for which it was designed and manufactured it must be irrigated with water, and this is not the case with a carpet. A carpet lacks the characteristics and properties of a synthetic turf. A carpet is not laid on a certified shock pad or on an engineered base, but on the floor or ground. Nor does it have a secondary backing. A carpet is normally put on the floor or in a corridor or a stair, but not in the open air.

[47] Rule 3(b) of the General Rules for the Interpretation of Harmonised System, calls for classification of goods by reference to component which gives them their essential character. The essential character of an artificial turf which differentiates it from a carpet is tufted synthetic grass with white lines and tracks delineating various areas on the hockey field embedded in it from the time of its construction.

[48] In *Secretary for Customs and Excise v Thomas Barlow and Sons Ltd*, *supra*, the purpose for which the article in question was constructed and designed, was held to be of fundamental importance in determining whether it

was a vehicle, and, if it was, whether it must be classified under a particular tariff heading. *See also Kommissaris Van Doeane en AK Syns v Mincer Motors Bpk 1959 (1) SA 114 (AD) at P121D-F and Falkiner v Whatton 1917 AC 106 (PC) at 110, a decision on then Australian Customs Duty Act.*

[49] The design, development and manufacture of Poligras 2000, in my view, sufficiently demonstrate that it is not a carpet or any other floor covering as the respondent contends. It constitutes and provides an artificial surface on which a hockey game is played.

Selecting the most appropriate tariff heading

[50] The proper approach is to classify goods according to the ordinary principles of classification involving an examination of goods in relation to the proper meaning of the headings. *Heritage Collection (Pty) Ltd, supra, at 20C –D.*

[51] Tariff heading 57.03 covers carpets and other floor coverings which are tufted, whether or not made up. Sub-heading 5703.30 covers carpets manufactured or 'other man made textile materials'. The reference to 'other' in this sub-heading relates to carpets and floor coverings as covered by the tariff heading 57.03, which do not fall within any of the headings and sub-headings of this heading. Sub-heading 5703.30 covers floor coverings which are made of tufted manmade materials which do not fall in any of the other tariff sub-headings of 5703. It has been argued on behalf of the respondent that Poligras 2000 being a carpet which is tufted and made of man made material clearly falls under 5703.30. Poligras 2000 is, in my opinion, by its nature,

essential characteristics and principal function clearly distinguishable from a carpet, as outlined above.

[52] Tariff heading 95.06 covers articles and equipment for general physical exercise. It has been argued on behalf of the respondent that the sub-headings to this tariff heading include a number of particular types of sports equipment, none of which equate to Poligras 2000 or any other surface covering on which sports are played. It has also been argued that chapter 95 covers equipment used in specific sports and games which does not include surfaces on which such games are played. Further, that should a floor covering on which sports is played be considered sporting equipment that would result in an anomalous situation since the surface of tennis court, floor surface of a gymnasium, natural turf on which rugby, cricket and soccer is played can be considered to be sports equipment.

[53] On construction the sports equipment in tariff heading 9506 covers any object used for sport or exercise. Amongst the examples given in the General Notes to Chapter 95 as articles and equipment for general physical exercise, gymnastics or athletics covered in the tariff heading, include trapeze bars and rings, wall bars, punch bags, boxing or wrestling rings and assault course climbing walls.

[54] In addition, the examples of the requisites for other sports and outdoor games given in Section B of the said Notes, which are said to be covered in tariff subheading 9506.99, include nets for various games (tennis, badminton, volleyball, football, basket ball, etc.), fencing equipment; fencing foils, sabres,

and rapiers and their parts, protective equipment for sports or games, eg. fencing masks and breast plates and knee pads, shin guards, etc.

[55] It is apparent from the above that there are different types of articles, principally for sports, put up in the same packing for the retail sale without repacking. In my opinion objects intended to facilitate the use of the articles in question may also be included in tariff sub-heading 9506.99.

[56] The hockey pitch (Poligras 2000) is not specified or included in the examples given in tariff heading 95.06. However, in my view, there is nothing in the examples which is inconsistent with the proposition that the synthetic turf in issue falls within the category of goods described in tariff heading 95.06 or similar goods of sporting.

[57] Rule 3 (a) of the General Rules for the Interpretation of the Harmonized System provides that when the goods are, *prima facie*, classifiable under two or more headings, the heading which provides the most specific description shall be preferred to headings providing a more general description. A hockey pitch is not specified or included in tariff heading 57.03 or in any of the sub-headings of the tariff heading. Moreso, the carpets covered in the said tariff heading and sub-headings lack the characteristics and properties of a synthetic turf in issue.

[58] The next question to decide is whether the hockey pitch is sport equipment. For an article or item to be said to be sport equipment, in my view, it must be essential and necessary for the playing of the sport in question. It

appears from the evidence of Derek Field, an expert witness, that in the case of a hockey sport an artificial surface is now the norm, not an exception.

[59] The applicant's expert witness, Dereck Field, describes hockey as a technically difficult game. It is extremely fast and a high level of skill is needed to stop and control the fast moving ball. For the aforegoing reasons, it is necessary, if the game is to be played properly, that the behaviour of the ball on the playing surface should be predictable as possible. This means that there should be no bumps or dips in the turf which would make it impossible even for a skilled player to avoid the ball hitting anything but the player's stick and the surface should be uniform so that the pace of the ball is predictable wherever on the field it may be played.

[60] Achieving these qualities for a playing surface is extremely difficult and expensive using natural grass. For that reason the sport of hockey has embraced the notion of artificial surfaces to such an extent that no games of championship standards are played on any other surface than the artificial one. The notable examples are premier leagues; inter provincial and international games (Olympic Games). According to Field artificial grass has developed better and more appropriate means of obtaining the required surface. It has also been found that the addition of another medium like water or sand to the artificial grass achieves the best result.

[61] It is apparent from the expert witness's evidence that in hockey the artificial turf is not only a substitute for natural grass, but equipment without which a professional game cannot be played. An artificial turf makes it

possible for the players to play the game utilising all the available technical skills required in the modern game.

[62] It has been submitted on behalf of the respondent that since Derek Field is not qualified to express an opinion on the subject matter in issue, his evidence should not be admitted as evidence before this Court and that no reliance can be placed thereon. I do not agree with such submission on the grounds that his evidence is of a technical nature and the only expert evidence before court on this specialised field of hockey. In my opinion Field's evidence has been of great assistance in the proper understanding and resolution of the dispute between the parties in this matter.

[63] The principal function of Poligras 2000 is to constitute and to provide an artificial surface upon which the game of hockey is played. It is evident from the above that it helps to facilitate the utilisation by players of all the available technical skills required in the modem games. It, therefore, follows that without it such skills cannot be utilised, to the detriment of the players. Accordingly, Poligras 2000 is essential and necessary for the proper conduct of hockey game. Also, it is essential and necessary for equipping hockey players to acquire necessary skills and to attain the level of expertise required in the field of hockey sport.

[64] Rule 3 (b) of the General Rules for the interpretation of the Schedule, calling for classification of goods by reference to component which gives them their essential character, to be invoked only if goods on ordinary principles fall under two or more headings. However, the goods are to be classified not by

reference to one or other component but by reference to the nature and the characteristics of the goods as a whole. *See Heritage Collection (Pty) Ltd, supra.*

[65] In my view, a synthetic turf with white lines and tracks delineating areas of hockey field embedded in it and by its general appearance gives the essential characteristics of a sport equipment

Conclusion

[66] Rule 4 of the General Rules for the Interpretation of the Harmonised System provides that goods which cannot be classified in accordance with the provisions of Rule 3 (a), (b) and (c), shall be classified under the heading to which they are most akin. Kinship, of course, depends on factors such as description, character, purpose, design, the principal function, etc. *See also Explanatory Note to Rule 4.*

[67] The essential characteristics of Poligras, namely; synthetic grass with white lines and tracks delineating various areas of the filed of hockey embedded in it, from its construction, together with its principal function makes it most akin to tariff heading 95.06 and sub-heading 9506.99 .

[68] In addition, as an article intended to facilitate the playing of hockey game and to enable the hockey players to attain the optimum level of expertise required in the field of hockey, Poligras 2000 must be put up in the same packing as the nets for various games, boxing or wrestling rings and

assault climbing walls, covered in the General Notes to tariff heading 95.06 and subheading 9506.99, and enjoy the same status.

[69] Had the respondent completely rolled out the imported Poligras 2000 and objectively determined its nature and essential characteristics as a whole, as outlined above, he would have seen that it is an artificial surface on which hockey game or a game is played.

[70] It has been argued on behalf of the respondent that since Poligras 2000 is made of tufted synthetic grass and carpet like, it should be classified as falling under tariff heading 57.03 and sub-heading 5703.30. It has sufficiently been shown in this case that a carpet referred to in the said tariff heading and sub-heading lacks the properties, features and essential characteristics of Poligras 2000 (the product). The mere fact that the respondent has on the ground that the product is made of tufted synthetic grass considered it to be a carpet does not, at all, make it a carpet. See also *Baking Tin case, supra, at 549*.

[71] 1n my view, what matters most is not what the respondent has considered the product to be, but what its essential characteristics, properties and principal function are. When determined objectively the nature, form, character and the function of the product render it classifiable under tariff heading 95.06 and sub-heading 9506.99 and not under tariff 57.03 and sub-heading 5703.30 as the respondent classified it. In the premises, I come to the conclusion that the product in question ought to have been classified under tariff heading 95.06 and sub-heading 9506.99.

Order

[72] (a) The appeal against the determination of the respondent dated 21 December 2005, that Poligras 2000 imported by the applicant (appellant) falls to be classified under tariff sub-heading 5703.30, is upheld upon the basis that the said goods ought to have been entered under tariff heading 95.06 and sub heading 9506.99.

(b) Save for the orders as to costs already made, the costs of these proceedings are to be paid by the respondent.

Date reserved on:	10/05/2010
Date delivered on:	31 August 2010
Counsel for the Applicant:	Adv Olsen SC
Instructed by:	Livingston Leandy Inc. C/O Tatham Wilkes (REF: N R Tatham/tm/g323)
Counsel for the Respondent:	Adv Pammenter SC / Adv Phungula
Instructed by:	State Attorney (KwaZulu-Natal) C/O Cajee Setsubi Chetty (REF:203/347/06/D/P13) (P J Kevan/ MR)