



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF
APPEAL

From: The Registrar, Supreme Court of Appeal

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Commissioner for the South African Revenue Service v Diageo SA (Pty) Ltd (1063/2023)
[2024] ZASCA 158 (15 November 2024)

Today the Supreme Court of Appeal (SCA) handed down judgment in an appeal by the Commissioner of the South African Revenue Service (the Commissioner), against an order of a full court of the Gauteng Division of the High Court, Pretoria (the full court), which reviewed and set aside the Commissioner's determination concerning the correct classification of a liqueur product, Cape Velvet Cream Original, manufactured by the respondent, Diageo SA (Pty) Ltd (Diageo), for the purposes of excise duty under the Customs and Excise Act 91 of 1964 (the Act). The SCA upheld the appeal with costs and substituted the full court's order with an order dismissing the appeal to that court with costs.

Diageo, a subsidiary of the British multinational Diageo Plc, produces a range of liqueurs marketed under the name 'Cape Velvet'. The dispute arose due to the classification of one such product, Cape Velvet Cream Original (the product). The Commissioner had classified the product under Tariff Heading 2208.70.22 (and corresponding Tariff Item 104.23.22), which applied to liqueurs with added alcoholic ingredients. Diageo challenged this classification, contending that the product should fall under Tariff Heading 2208.70.21 (and Tariff Item 104.23.21), as it believed the product had a wine spirit base with 'non-alcoholic ingredients' added, as provided for under Additional Note 4(b) to the Act.

The matter was first heard by the Gauteng Division of the High Court, Pretoria, which upheld the Commissioner's classification. Diageo appealed to the full court of the same division, which reversed the high court's decision, classifying the product under Tariff Heading 2208.70.21. The Commissioner was granted special leave to appeal to this Court.

The main issue before the SCA was whether the ingredients added to Cape Velvet Cream Original were 'non-alcoholic' as defined under Additional Note 4(b).

Diageo argued that the vanilla used in the product, which had an alcohol by volume (ABV) of 0.6% before mixing but reduced to 0.002% after dilution, qualified as 'non-alcoholic'. Diageo based its argument on Note 3 to Chapter 22 of the Act, which defines non-alcoholic beverages as those with an ABV not exceeding 0.5%. Furthermore, Diageo claimed that the vanilla, being

diluted to an ABV of 0.002%, should be classified as ‘non-alcoholic’ and that applying the principle of *de minimis non curat lex* (the law does not concern itself with insignificant matters or trifles) would support this interpretation. The Commissioner, on the other hand, contended that Additional Note 4(b) required any ingredient added to the wine spirit base to be entirely non-alcoholic. The vanilla, having an ABV of 0.6% before dilution, did not qualify as ‘non-alcoholic’. Furthermore, the Commissioner argued that the principle of *de minimis* could not be applied in this context and that Note 3 was not applicable to liqueurs, as it specifically referenced non-alcoholic beverages.

The SCA upheld the Commissioner’s appeal, reaffirming the classification of Cape Velvet Cream Original under Tariff Heading 2208.70.22, ie the product had an ‘alcoholic ingredient’. The Court found that the wording of Additional Note 4(b) was clear and unambiguous, requiring ingredients added to the wine spirit base to be entirely ‘non-alcoholic’. The Court emphasised that ‘non-alcoholic’ must be given its ordinary grammatical meaning, which means containing no alcohol at all. The Court rejected Diageo’s reliance on Note 3, as it applies specifically to non-alcoholic beverages and not to liqueurs like Cape Velvet Cream Original.

The SCA also dismissed the application of the *de minimis* principle, noting that it had not been used in South African customs and excise law and that applying it in this matter would undermine the clarity and consistency required in tariff classification.

As a result, the appeal was upheld with costs and the full court’s order was substituted with an order dismissing the appeal to that court with costs.

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