

SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN SUPREME COURT OF APPEAL

FROM: The Registrar, Supreme Court of Appeal

DATE : 1 October 2010

STATUS: Immediate

*Commissioner, South African Revenue Service v Plasmaview Technologies
(Pty) Ltd*

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 Supreme Court of Appeal (SCA) today upheld the Commissioner's appeal against a judgment of the high court, which set aside an amendment to the motivation of a tariff determination on review as if it were a decision by the Commissioner. The Commissioner had demanded payment from Plasmaview of underpaid duties and tax calculated in two schedules served on the latter. The high court held that the amounts claimed were not owing and due.

Plasmaview imported partially assembled TV sets. It requested a determination from the Commissioner's office to identify the applicable tariff heading under which the sets had to be declared. The determination identified a tariff heading that allowed a full rebate of duties paid on the partially assembled sets.

The importer then began to import fully assembled TV sets, but still declared them under the same tariff heading that no longer applied to their imports, and claimed the full rebate. When the Commissioner demanded underpaid duty and tax in respect of these fully assembled sets, Plasmaview applied to the

high court for a declaratory order that the amounts determined by the Commissioner were not owing and due. It mistakenly identified an internal memorandum relating to the correctness of the motivation for the original determination it had requested, as an amendment of the determination itself. A review of this amendment was sought as if it were a decision taken by the Commissioner, on the grounds that Plasmaview was not consulted before the amendment was effected. It also sought an order declaring that the amounts demanded by the Commissioner were not owing and due by Plasmaview. The high court granted the relief claimed.

On appeal, the SCA held that the high court had erred. No new determination had been made by the amendment of the original determination's motivation. There was thus no decision that could be set aside. Fully assembled TV sets did not qualify for a rebate. The Commissioner was entitled to claim underpaid duty and tax.

The order of the high court was set aside and substituted with an order dismissing Plasmaview's application.