



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
DATE 31 May 2012
STATUS Immediate

Please note that the media summary is for the benefit of the media and does not form part of the judgment.

Distell Limited v The Commissioner for the South African Revenue Service (526/2011) [2012] ZASCA 88 (31 May 2012)

The Supreme Court of Appeal (SCA) today dismissed an appeal against an order of the North Gauteng High Court, Pretoria involving a dispute regarding a tariff classification in relation to excisable goods under the Customs and Excise Act 91 of 1964. The appeal turns on whether the 15 beverages in question¹ are fermented or distilled (spirituous) beverages. The appellants contended that they are fermented and therefore classified under tariff heading (TH) 22.05, alternatively 22.06. The respondent contended that they are spirituous, and therefore classifiable under TH 22.08.

The products in question consist of base wines which are stripped of flavour and colour and have cane spirits added to them in order to bolster the alcohol content significantly. Sweeteners, flavourants, colourants and water are also added.

The SCA held that the stripped wine, forming the basis of the beverages in question, does not qualify as 'wine of fresh grapes' under TH 22.05. This could thus not be the applicable TH as the essential characteristic of a beverage resorting under this TH is that of a 'wine of fresh grapes of heading 22.04'. The beverages could also not be 'wines fortified with alcohol'. As the Court had already found that the stripped wine cannot be regarded as wine for the purposes of TH 22.04, it therefore cannot be made fortified wine in the sense used in TH 22.05.

¹ Angels' Share Cream, Delgado Supremo, GoldCup Creamy Vanilla, Barbosa, GoldCup Banana Toffee, Zorba, Nachtmusik, Mokador, Alaska Peppermint, Copperband, VonCoco, Clubman Mint Punch, Viking, Castle Brand and Brandyale.

As regards TH 22.06, the court held that the beverages could not be regarded as a mixture of fermented beverages and non-alcoholic beverages as all the attributes of the fermentation process had been removed from the stripped wine. They therefore did not resort under TH 22.06.

Thus, the SCA held that these beverages fall under TH 22.08 and more particularly, '[a]ll other spirituous beverages not falling in any preceding heading of this Chapter'.

As a result the appeal was dismissed with costs, including the costs of two counsel.