



REPUBLIC OF SOUTH AFRICA

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 2005
STATUS Immediate

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

CASE THE COMMISSIONER FOR THE SOUTH AFRICAN REVENUE
SERVICE **v** FORMALITO (PTY) LTD
(Case No 328 / 04)

Media Statement

On 31 May 2005 the Supreme Court of Appeal upheld an appeal by SARS against a judgment obtained against it by Formalito (Pty) Ltd in the High Court (Pretoria). Formalito imports firearms and ammunition into the country. During November 2000 SARS received information from a former employee of Formalito that it had under-declared the value of goods imported by it. An investigation by SARS found that there had been an under-declaration to the tune of R 695 652.95. SARS accordingly demanded payment of that sum and sought payment of a penalty equal to the value of the imported goods in the sum of R3 792 912.00. After receiving certain representations from Formalito SARS halved the penalty. Formalito obtained an order in the Pretoria High Court, on review, setting aside those decisions. On appeal to it, the SCA held that a false declaration in section 44 (11)(a)(i) of the Customs and Excise Act, meant false to the knowledge of the declarant. It concluded, contrary to the High Court, that the under-declaration was to the knowledge of Formalito, false. On that aspect of the case the SCA held that the High Court ought to have dismissed Formalito's application. The penalty of R1 896 456.00, however, according to the SCA, could not stand, as SARS had ignored its own guidelines. Had SARS followed

those guidelines the penalty would have amounted to less than twenty per cent of that actually declared forfeit by SARS. On this aspect of the case, the decision of SARS was set aside and the matter was remitted to it for reconsideration.

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