

SOUTH AFRICA / JUDGMENT

Fair-Trade Independent Tobacco Association NPC and Others v Commissioner for the South African Revenue Services and Another (115176/2023; 115375/2023) [2024] ZAGPPHC 457 (15 May 2024)

[2024] ZAGPPHC 457

COURT

North Gauteng High Court, Pretoria

BEFORE

L.A. Retief

CASE / FILE NUMBER

115176/2023; 115375/2023

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FLYNOTES:

TAX – Customs – CCTV monitoring – Applicants operating licensed premises for manufacture and storage of tobacco products – Main application seeking to have Rule 19.09 set aside or declared unconstitutional – Contended that new licensing conditions infringe on rights to privacy, dignity and property – Seeking interim interdictory relief against SARS – Interim relief not preventing SARS from tax collection, nor impeding its customs officials to perform their duties – Interim relief granted.

IN THE HIGH COURT OF
SOUTH AFRICA
(GAUTENG DIVISION,
PRETORIA)
Consolidated

Matters:	Case No: 115176/2023 (1) REPORTABLE: NO (2) OF INTEREST TO OTHERS JUDGES: NO (3) REVISED DATE:15 MAY 2024 SIGNATURE In
the matter between:	FAIR-TRADE INDEPENDENT TOBACCO ASSOCIATION NPC First Applicant BEST TOBACCO COMPANY (PTY) LTD Second Applicant CARNILINX (PTY) LTD Third Applicant FOLHA MANUFACTURERS (PTY) LTD Fourth Applicant HOME OF CUT RAG (PTY) LTD Fifth Applicant PROTOBAC (PTY) LTD Sixth Applicant and THE COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICES First Respondent MINISTER OF FINANCE Second Respondent Case No. 115375/2023 BOZZA TOBACCO (PTY) LTD First

Applicant
KASP
TOBACCO (PTY) LTD
Second
Applicant
AFROBERG
TOBACCO MANUFACTURING (PTY) LTD
Third
Applicant
AMALGAMATED
TOBACCO MANUFACTURING (PTY) LTD
Fourth
Applicant
HARRISON
TOBACCO (PTY) LTD
Fifth
Applicant
UNITED
TOBACCO GROUP (PTY) LTD
Sixth
Applicant
and
THE
COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICES
First
Respondent
MINISTER
OF FINANCE
Second
Respondent
FAIR-TRADE
INDEPENDENT TOBACCO ASSOCIATION NPC
Third
Respondent
BEST
TOBACCO COMPANY (PTY) LTD
Fourth
Respondent
CARNILINX
(PTY) LTD
Fifth
Respondent
FOLHA
MANUFACTURERS (PTY) LTD
Sixth
Respondent
HOME
OF CUT RAG (PTY) LTD
Seventh
Respondent
PROTOBAC

(PTY) LTD
Eighth
Respondent
This
judgment is prepared and authored by the Judge whose name is
reflected as such, and is handed down electronically by
circulation to the parties / their legal representatives by email
and by uploading it to the electronic file of this matter
on
CaseLines. The date for handing down is deemed to be 15 May 2024.

JUDGMENT

RETIEF J

INTRODUCTION

- [1] This application, initially brought by way of urgency, concerns two applications duly consolidated for convenience as both matters concern the same interim interdictory relief against the First Respondent [SARS] and in respect of the same subject matter, Rule 19.09 the [impugned rule]. The impugned rule promulgated under the Customs and Excise Act, 91 of 1964 [the Customs Act] and which came into effect on 01 August 2022 [interim relief].
- [2] The first application, launched by Fair-Trade Independent Tobacco Association [FITA] , a voluntary association of independent South African tobacco product manufactures together with six of its members, [collectively, FITA applicants] all of whom are licensees in terms of the Customs Act. The FITA applicants seek

interim relief from the implementation of the impugned rule, pending the outcome of a judicial review application launched by them on the 25 November 2022 under case number 051433/2022 [main application]. In the main application, the FITA applicants contend that the introduction of the impugned rule is unconstitutional and stands to be set aside alternatively declared unconstitutional.
- [3] FITA has cited the Second Respondent [the Minister of Finance] in the Minister's official capacity and no relief is sought against the Minister of Finance.
- [4] The second application, launched by Bozza Tobacco (Pty) Ltd [Bozza] together with five other independent licensees in terms of the Customs Act [collectively, Bozza applicants]. The Bozza applicants have launched an application to intervene as applicants in the main application. In the interim, they too seek interim relief from the implementation of the impugned rule pending the outcome of their application for leave to intervene in the main application and pending the outcome of the main application.

- [5] In short, the reason for both the FITA and Bozza applicants [collectively applicants] seeking the interim relief is that the impugned rule contains, inter alia, new licensing conditions which they both contend are unconstitutional and which infringe on their right to privacy, dignity and property. The new license conditions compel registered licensees,[1] like the applicants who operate their licensed premises for the manufacture and storage of tobacco products, to allow SARS to continually monitor their activities and bonded goods in certain areas with CCTV equipment.
- [6] When the impugned rule came into effect on the 01 August 2022 the FITA applicants, in November of 2022, launched the main application. However, the trigger event for the interim relief was SARS persistence with its implementation of the impugned rule notwithstanding the pending main application.
- [7] SARS contends that the impugned rule was introduced as part of a broader package of initiatives to address illicit trade of tobacco products which in turn results in rampant tax evasion in the tobacco industry and to foster tax compliancy. SARS, in February 2023, commenced with two installations in terms of the impugned rule at BATSA and Gold Leaf, two of the largest tobacco product manufacturers in South Africa.
- [8] The applicants in addition to the interim relief, seek condonation from this Court in terms of section 96(1)(c)(ii) of the Customs Act as a result of SARS failure to condone their request in terms of section 96(1)(c)(i) of the Customs Act to reduce the time notice bar of 30 days referred to in section 96(1)(a)(i). SARS opposes condonation and the merits of the interim relief.
- [9] To address the respective issues this Court considers the legislative framework.

THE EMPOWERING PROVISIONS, THE IMPUGNED RULE AND SECTION 96 OF THE CUSTOMS ACT

The empowering provisions

- [10] The impugned rule, 19.09 was published under the empowering sections 19, 60 and 120 of the Customs Act. Section 19 grants SARS the power to license custom and excise warehouses. Tobacco warehouses are a species of custom and excise warehouses approved for the storage and manufacture of tobacco goods.
- [11] Section 60(1)(b), inter alia, empowers SARS to prescribe conditions and other requirements relating to the license through any rules made by SARS under the provisions of the Act as the running of a licensed tobacco warehouse is an activity for which a license is required.[2] The definition of the term 'this Act' includes any proclamation, government notice, regulation or rule issued or made or arrangement concluded or deemed to have been concluded thereunder or any taxation proposal contemplated in section 58 which is tabled in the House of Assembly, with 'rules' meaning rules made by SARS under the Customs Act.

- [12] Section 60(2), empowers SARS to, subject to an appeal to the Minister, refuse any application for a new license or refuse any application for the renewal of any license or cancel or suspend for a period any license if the applicant or the holder of such license, as the case may be, (a) has contravened or failed to comply with the provisions of the Customs Act or (b) has been convicted of an offence under the Customs Act or has been convicted of an offence involving dishonesty. Schedule 8 indicates that the period of validity of a license is indefinite, but subject to the conditions the SARS may impose.
- [13] Section 120(1) allows SARS to make rules regarding various matters including rules as to the control of the storage or manufacture of goods in custom and excise warehouses, the circumstances under which licences may be granted , all matters permitted to be prescribed by the rule which are necessary or useful for the purpose of the Customs Act.

The impugned rule

- [14] The purpose of the Customs Act includes to prohibit and to control the import, export, manufacture or use of certain goods and incidental matters relating thereto.
- [15] The published amendment, amends rule 19 by adding a further rule after 19.08. Under the rule 19.09.02, the licencing of a customs and excise warehouse are to be subject to the condition that CCTV equipment be installed on the premises for purposes of monitoring bonded goods[3] and activities in respect of those goods.
- [16] This licence conditions are expanded by Rule 19.09.05 in that, a licensees is obligated to ensure that that CCTV equipment has a clear and unobstructed view and that measures are to be put in place to safeguard the CCTV equipment and the recording footage from tampering, manipulation, interference, damage or destruction by any person.
- [17] The areas to be monitored by CCTV are all manufacturing areas, the packaging areas and the dispatch/loading areas where these tobacco products are loaded onto vehicles for transport.[4] The monitoring must include the ability to see full coverage of loading activities as well as the full details and particulars of the vehicles used at despatch and loading (make, colour and number plates).
- [18] 19.09.06(a)(i) regulates sanctions in relation to any person who may tamper or interfere with, damage or destroy any CCTV equipment or the CCTV camera's view with reference to 19.09.03.
- [19] Penal sanctions are catered for which include convictions of a fine or imprisonment for a period not exceeding 1 year.

[20] The impugned rule also makes provision for transitional arrangements in respect of license holders on the effective date of the rules. In short, failure of a licensee to comply with the impugned rule and failure to admit an officer of SARS or authorised person to implement the impugned rule by allowing the CCTV equipment to be installed [notice of implementation], SARS may in terms of section 60(2)(b) cancel or suspend the licensee's license.

Section 96 of the Customs Act

[21] Section 96 of the Customs Act is headed "Notice of Action and Period for Bringing Action".

[22] Subsection (1)(a)(i) states the following:

"(i) No process by which any legal proceedings are instituted against the State, the Minister, the Commissioner or an officer of anything done in pursuance of this Act may be served before (own emphasis) the expiry of a period of one month after delivery of a notice in writing setting forth clearly and explicitly the cause of action, the name and place of abode of the person who is to institute such proceedings (in this section referred to as "litigant") and the name and address of his or her attorney or agent, if any.

(ii) ...

(iii) No such notice shall be valid unless it complies with the requirements prescribed in the section and such rules."

[23] Section 96(1)(c):

"(c)(i) The State, the Minister, the Commissioner or an officer may on good cause shown reduce the period specified in (a) or extend the period specified in (b) by agreement with the litigant.

(ii) If the State, the Minister, the Commissioner or an officer refuses to reduce or to extend any period as contemplated in subsection (i), a High Court having jurisdiction may, upon application of the litigant reduce or extend any such period where the interest of justice so requires."

REASON FOR THE IMPUGNED RULE

[24] To place the dispute in context the reason for the impugned rule is helpful.

[25] Although the reason for the rule is not found in the published rule itself, an internal request for legislative amendments, a document dated in July 2019 referred to as the 'INTERNAL REQUEST FOR LEGISLATIVE AMENDMENTS' [the document], appears to shed some light on SARS's reason.

[26] The document which was attached to SARS papers, states that the purpose can be found in SARS's difficulty to verify the integrity of the values presented on documentation and the information provided by licensees of custom excise warehouses. SARS is seeking to eradicate dishonest entrepreneurs stating that dishonesty will in all probability never be eliminated, but it is of essence to promote ethical behaviour by creating an environment in

which it is difficult to act unlawful, therefore the installation of strategically positioned, CCTV-cameras, with artificial intelligence support, usually serves as a deterrent to people with mal-intent.

- [27] The main purpose according to the document of such installation is to monitor SARS' interest in the production line (product counter area, storage, dispatch and receiving areas). The CCTV-cameras will be monitored at a central national control room from where risks and transgressors will be attended to. The impugned rule was also recommended as a backup for audit inspections allowing custom officers to review the videos of the dispatch areas and request documentation of a specific dispatch. This action will serve as a deterrent for all manufacturing warehouses to pay their duties and taxes before releasing products for distribution. The installation of CCTV-cameras in customs and excise manufacturing warehouses which, according to SARS has already been enshrined in the Republic of China, Mongolia, the Philippine,

the Socialist Republic of Vietnam, to name a few [comparable countries].

For present purposes it is significant to appreciate that none of the comparable countries referred to by SARS in the document justifying

the implementation of the impugned rule are countries founded on democratic values nor do they appreciate the supremacy of the Constitution like South Africa. Furthermore the main object in the document refers to monitoring SARSs' interest in, inter alia, the storage area. Significant in that the storage area is not catered for in the impugned rule but is in the notice of implementation. This will be expanded on below.[5]

INTERIM RELIEF

Have the applicants demonstrated a prima facie right to warrant the protection they seek against the implementation of the impugned rule?

- [28] SARS has informed all the applicants in writing that it intends implementing the impugned rule with the notice of implementation. The notice of implementation nor the content thereof is in dispute nor that the applicants at various stages sought an undertaking from SARS not to implement the impugned rule pending the finalisation of the main action. This call was not met favourably, triggering this application on an urgent basis.
- [29] The FITA applicants rely on similar grounds as in the main application namely that the impugned rule offends the rule of law and is ultra vires the Customs Act [Constitutional challenge] and that its implementation will unreasonably, disproportionately and unjustly limit the applicants' constitutional rights of privacy, dignity and property contend further that at common law, their right to conduct their business operation without undue and/or unlawful interference [infringement challenge]. The consequences of the implementation of the impugned rule from which the FITA applicants require protection is connected to the grounds raised by them in the main application[6].

- [30] The Bozza applicants who have not yet entered the arena of the main application also rely similarly on the infringement challenge.
- [31] The question which arises with the granting of interim relief is whether the applicants substantively possess a prima facie right which requires interim protection against the discharge and/or implementation of the impugned decision.
- [32] It is from this premise that the Court examines the evidence and considers the arguments in support of the interim relief.

Constitutional Challenge

- [33] The FITA applicants argue that the impugned rule gives SARS an “unfettered” discretion that will not be subject to any objective legal standard such as prima facie proof or reasonable apprehension being the safeguards which protect the rights and interests of licensees. In consequence, the discharge and implementation of the impugned rule requires no rationality and failure on the part of licensees to abide with its Draconis’s provisions will be met with sanction and in certain circumstances, penal sanctions. SARS is thus exercising plenary powers as a delegated authority.
- [34] As this Court understand the argument, if the applicants substantively possess a right to challenge the legality of the decision to promulgate the impugned rule in the main application,[7] which they do and have, why would they not equally possess a prima facie right to the lawful implementation on the basis that such implementation will cause a reasonable apprehension of irreparable harm [harm] by the consequence, the infringement upon certain rights. Hence the reason why the requirements of interim relief are not to be viewed in isolation.
- [35] One of the reasons why the FITA applicants wish this Court to ‘freeze’ the position pending the outcome of the main application is that the impugned rule provides SARS with a right to monitor activities on a continuous basis without interruption, such footage they argue will be immortalised on CCTV footage.
- [36] This immortalised footage is not in the control of the applicants but SARS. SARS has failed to provide the applicants with protection or indemnify them from harm which may arise from such loss of control over such footage. FITA contends that harm from the collection of footage and data collected is a reasonable and foreseeable consequence in that, if such footage should come into the hands of a competitor, an illegal trader or should SARS’s system be compromised (hacked), the applicants have no interim protection pending the outcome of the main application and are without any remedy. FITA contends further that should the impugned rule be set aside there will be no remedy from any harm which may have already occurred as a direct result of such immortalised footage.
- [37] The FITA applicants’ Counsel expanded the harm argument without recourse by way of an example. According to rule 19.09.03, the CCTV footage must record the number plates and details including the make and colour of the vehicles which arrive or leave a licensees

dispatch and/or loading area. If such detailed recorded information or data pertaining to tobacco goods in transit should be compromised, it may result in a day's worth of surveillance recording. Such revealing patterns and times when vehicles, carrying tobacco products, are arriving and leaving the warehouse. This is a potential risk. The risk of loss and harm should the vehicle be intercepted and the tobacco products taken, is foreseeable and they are without recourse from SARS. SARS Counsel making light of this example forgets that the protection of compliant licensed taxpayers should surely outweigh creating a potential opportunity for illicit traders to obtain tobacco products.

- [38] Not only are the applicants without a remedy but failure to comply with the impugned rule constitutes failure to comply with a license condition. This may result in the suspension or revocation of the applicants license notwithstanding their revenue potential in support of economic growth but their tax compliancy. An aspect not dealt with argument by SARS.
- [39] Yet a further compounded consequence lies in the wake of SARS which was foreshadowed by the document itself. This is the possibility of a disconnect between the discharge of the impugned rule and the provisions of the impugned rule itself. Counsel for the Bozza applicants explained that the possibility was imminent and referred to it as the overreach of SARS from which the applicants seek protection. The overreach: according to the notice of implementation received by Bozza in October 2023, SARS, inter alia, intended to conduct a pre-planning site visit. The purpose of which visit was to assess the facility and to determine the number of CCTV systems required in the manufacturing, packaging, storage and loading/dispatch area.
- [40] However, as pointed the continuous monitoring of the storage area is not catered for in the impugned rule. In particular 19.09.03 only refers to the manufacturing, the packaging and the despatch or loading areas. The notice of implementation is not align with the impugned rule triggering an unlawful implementation, albeit in part. SARS through its attorneys required compliance notwithstanding the challenge in the main application. The risk of overreach alluded to too, goes to the heart of harm and the infringement challenge. The possibility of harm is apparent and imminent if implemented.
- [41] The contention by SARS that the CCTV cameras will only be monitoring the pre-identified areas of a licensed tobacco product warehouse on implementation is factually not correct having regard to the notice of implementation. Furthermore, no guidelines exist for SARS in the implementation stage of the impugned rule, this illustrates the disconnect between the impugned rule and notice of implementation.

Infringement challenge

- [42] Both the FITA and applicants Bozza raise that the implementation of the impugned rule will infringe on the applicants right to privacy, dignity and property. The right to dignity not expanded in the founding papers. The right to property as argued by SARS appears to coincide with the argument of protection of trade secrets. The latter

to be dealt with hereunder with reference to the right of privacy as illustrated by the FITA Counsel .

[43] SARS concedes that whilst juristic persons, like the applicants, possess a right to privacy, this right is attenuated when compared with the rights held by natural persons,[8] in particular in respect of business premises in the customs and excise industry which is a closely regulated space. It argued that the legitimate expectation that the applicants in such a statutory controlled environment would possess will not be disturbed by the impugned rule. How much privacy can the applicants legitimately expect to have in such a regulated industry?

[44] Applying Bozza argument concerning the disconnect between the notice of implementation and the provisions of the impugned rule, the applicants vis a vis the provisions of rule 19.09.03 as it stands, possess a legitimate expectation that the privacy in the storage facility, albeit attenuated by nature, will not be infringed.

[45] Counsel for SARS did not address the inconsistencies between the notice of implementation and the impugned rule but contended that other than the privacy right being greatly attenuated, there exists no reasonable expectation to privacy anywhere within the licensed premises. One accepts this argument to include the storage facility. In this regard SARS relied on the Gaertnet matter [9]contending that as it stands, it is a given that the applicants can be searched by customs officials without a warrant.

[46] Applying Gaertnet matter the FITA applicants correctly contend that the reasonable expectation to be searched by a customs official anywhere in the premises by a customs officials including in the storage facility by the officials as the proverbial boots on the ground, is certainly not the same expectation of continuous monitoring and recording for the playback value by customs officials. SARS argues that the silent CCTV monitoring, as a tool for monitoring compliance, is in sharp contrast to inspections and searches which may result in the interruption of production. SARS appears to miss the point. Silence is not the trigger, but rather the continuous ‘search ability’ created by a lens without distinction. The continuous ability to playback footage is a perpetual means to search and continual means to collect evidence in spaces and at times which fall within the legitimate expectation of the privacy

purview.

[47] Expanding the argument by illustration the FITA applicants explain that a manufacturing area is germane to each applicant manufacture in certain respects. Germane in respect of product production, the very monitoring object highlighted in the document, namely “- monitoring SARS interest in the production line-“ This is not SARs’ interests (compliance and revenue collection) BUT interest in.

[48] FITA argues that a brand specification and how the management of its production line works regarding output are confidential and constitute proprietary information worth protection by each licensee. CCTV footage will capture all recordings in its path without distinction. SARS conversely contends that the CCTV cameras under the impugned rule will not include trade secrets in that it will only record the layout of the factory floor, how the products are produced and packaged and loaded. However this is the exact point the FITA applicants wish to make. The possibility that the CCTV equipment

records more information than what SARS is entitled to in law, without justification, appears to exist and is relevant.

[49] The Constitutional challenge and infringement challenge does demonstrate infringement and consequential harm. The remaining requirements to sustain the interim relief dealt with hereunder.

BALANCE OF CONVENIENCE

[50] The thrust of the FITA applicants' argument is that the convenience must favour the applicants and much reliance is made on the time trigger of the implementation of the rule. FITA contends that the rule was published over a year ago and SARS has waited over a year to implement the rule. There is no sense of urgency to implement from SARS. Procedurally the main application has been initiated, the interim relief sought is pending the outcome of the main application, what dire consequences could there be for SARS if the interests of FITA can be protected in the interim?

[51] The Bozza applicants contend that because SARS has not shown, as it calls an iota of harm that it will suffer if the CCTV equipment is not installed, the fact that the regulated environment is business as usual and that the opportunity of a track and trace is still there for SARS to effect, should it need to monitor compliancy, the balance of prejudice/convenience must favour the applicants.

[52] SARS contends that it will suffer irreparable harm, this includes the tax administration system and the national fiscus in that, inter alia, SARS's ability to prevent and deter the rampant illicit trade and related tax evasion in the tobacco industry will be compromised.

That it has already implemented the impugned rule at two of the largest tobacco warehouses in South Africa.

[53] Against the respective arguments no evidence has been provided to support that any of the applicants are connected with acts of illicit trade or that they are not presently tax compliant. The impact of the interim relief will in consequence not prevent SARS from tax collection, nor impede its customs officials to perform their duties nor does SARS contend that it will interfere with the other measures it has in place already, albeit on its own version presently inadequate, to prevent tax non-compliance. In fact

SARS argues that the applicants in any event are subject to a number of provisions contained in the Customs Act and the rules which

empower SARS to take action to enforce compliance namely section 4 of the Customs Act that applies to tobacco warehouses.

[54] In the event that the main application succeeds the fact that SARS has already implemented the rule elsewhere is of little weight and the weight of such factor is applied in the interim bearing this prejudice in mind. Applying the OUTA principle^[10] the balance of convenience must favour the applicants.

NO SATISFACTORY ALTERNATIVE REMEDY

[55] SARS argues that there is no clear basis in the light of the main application that the applicants' possess no other satisfactory remedy. This SARS contends even though they, through their attorneys refused to stop the implementation of the impugned rule pending the outcome of the "satisfactory remedy". Under the circumstances and all be it by their own hand SARS has forced the applicants to bring this application to protect their prima facie rights whilst awaiting a just and equitable result.

[56] It certainly was not for the lack of the applicants trying to prevent SARS and warning SARS of its intention to bring this relief prior to the notice of implementation, as will be seen hereunder.

[57] In consequence this being a satisfactory remedy in the interim, the alternate remedy already initiated.

CONDONATION

[58] Both the FITA applicants and the Bozza applicant seek condonation in terms of section 96 of the Customs Act, in particular, section 96(1)(c) of the Customs Act in that SARS contended that no good cause existed for it to provide such reduction of time as requested.

[59] SARS understanding in its heads of argument of section 96 is misplaced. The provisions provide for a time delay before proceedings against SARS can be instituted and is not a bar. In short, it is the statutory time given within which SARS may react before legal proceedings can be instituted against it.

[60] From the papers the impugned rule was not part of FITA applicants licence conditions on date of issue. The impugned rule came into operation on the 1 August 2022, the main application launched 25 November 2022. FITA applicants received the notice of implementation on the 23 October 2023 and gave statutory notice of this application to SARS on the 1 November 2023, instituting the urgent proceedings on the 7 November 2023, thus before the 30 day waiting period.

[61] From the papers Bozza and the second applicant, Kasp Tobacco (Pty) Ltd, obtained their licence after the 1 August

2022. Notwithstanding they launched their application for intervention in the main application and urgent application on the 8 November 2023 having received the notice of implementation on the 13 October 2023.

[62] Having regard to the steps taken by the applicants this Court then seeks to exercise its discretion by striking or finding a balance when considering what is in the interest of justice. Factors considered was the that SARS was requested to provide an undertaking, SARS was aware of the main application, the applicants complied with section 96 by first requesting a reduction of time before the institution of legal proceedings. The fact that the FITA applicants had, as far back as 27 July 2022, a time before the promulgation of the impugned rule indicated that it would challenge rule if promulgated, speaks to the foreseeability of legal action and the possibility of a time reduction request in terms of section 96. The prospect of success with the interim relief too is a factor to be weighed.

[63] The balance tips in favour of the applicants on the reasons above and on such factors this Court exercises its discretion accordingly and grants condonation to the applicants.

The following order is made in respect of case number 115176/23:

1. That the First to Sixth Applicants' [Applicants] non-compliance with the time periods provided for in terms of section 96 of the Customs and Excise Act 91 of 1964 are condoned.
2. Pending the final determination of the application under case number 051411/2022 [main application], the First Respondent is interdicted and restrained from implementing the rule 19.09 relating to "the requirements in respect of the monitoring of certain customs and excise warehouses through CCTV equipment" published in terms of the Customs and Excise Act 91 of 1964 in Government Gazette No.46648, dated 1 July 2022 as against the Applicants.
3. The First Respondent is directed to pay the costs of this application, such costs including with the employment of two counsel, one being a senior counsel on Scale C and junior counsel on Scale B

The following order is made in respect of case number 115375/23:

4. That the First to Sixth Applicants' [Applicants] non-compliance

with the time periods provided for in terms of section 96 of the Customs and Excise Act 91 of 1964 are condoned.

5. Pending the final determination of the application under case number 051411/2022 [main application], the First Respondent is interdicted and restrained from implementing the rule 19.09 relating to "the requirements in respect of the monitoring of certain customs and excise warehouses through CCTV equipment" published in terms of the Customs and Excise Act 91 of 1964 in Government Gazette No.46648, dated 1 July 2022 as against the Applicants. This is notwithstanding the outcome of their application for intervention.

6. The First Respondent is directed to pay the costs of this application, such costs to include the employment of two counsel, one being a senior counsel on the Scale C and junior counsel on Scale B.

L.A. RETIEF

JUDGE OF THE HIGH COURT

GAUTENG DIVISION, PRETORIA

Appearances:

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- [1] Means a person operating premises licensed in terms of section 60 as a customs and excise warehouse for the manufacture or storage of tobacco products.
- [2] Customs and Excise Rules GNR 1874 GG16860 of 8 December 1995, Rule 19(a)(1).01.
- [3] Defined as any manufactured or imported tobacco products in a licensed custom and excise warehouse that have not been entered for home consumption.
- [4] See Rule 19-09-03(a).
- [5] See clause [39].
- [6] Tshwane City v AFRI forum and Another [2016] 960 SA 279 (CC) at para
56. “Ordinarily the harm sought to be prevented through interim relief must be connected to the grounds in the main application.”

-
- [7] Section 33 of the Constitution.
- [8] Gaertner v Minister of Finance 2014
- (1) SA 442 (CC) at par 63.
- [9] Ibid 4.
- [10] National Treasury and Others v Opposition to Urban Tolling Alliance and Others (Road Freight Association Intervening) 2012 (6) SA 223 9CCF0 at para 55.
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CASE PAGE <https://chat.esheria.ai/case-law/south-africa/fair-trade-independent-tobacco-association-npc-and-others-v-commissioner-unknown-topic-agpphc-2024--6a3ea5113b1caa91298091dd>

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