



Customs @ Wylie

This e-mail flyer is created by the International Transport, Trade & Energy Division of Shepstone & Wylie. We have offices in, amongst other places, [Durban, Cape Town, Richards Bay and Johannesburg.](#)

Index

- **Hunting Season on SARS Now Open**
- **Deemed State Warehouse – Coughing Up for Storage Charges**
- **Draconian law limited**
- **The Lighter Side**

Hunting Season on SARS Now Open

The basis of a Court's jurisdiction over any matter, depends on whether or not it is able to give effect to its judgment. Until recently, our Courts were not able to give effect to their judgments against the State, simply because section 3 of the State Liability Act, provided that no Court may order the execution of the State's property if the State did not comply with an order of Court.

This section was declared to be unconstitutional by the Transvaal Provincial Division on 30 March 2007, with immediate effect, and the declaration has been referred to our Constitutional Court for



confirmation. We expect this declaration of invalidity to be confirmed by our Constitutional Court, shortly.

Of course, the implication is that if one now obtained a court order against SARS (or any other organ of the State) and they failed to comply with this order, one would be entitled to obtain a warrant of execution against the State's property.

Deemed State Warehouse – Coughing Up for Storage Charges

It often happens in the industry that goods are not entered for home consumption within 28 days of the goods being landed. In terms of the Customs & Excise Act, the goods must then be removed to the State Warehouse or, if it is not so removed, then the container depot where the goods remain is then deemed to be a State Warehouse.

It is common practice for these container depots, which are then deemed to be a State Warehouse, to continue to invoice the shipping lines, or their agents, for storage charges.

It would seem that both the container depots and the shipping lines lose sight of the fact that the goods (and containers in which they are carried) are then no longer stored at the deemed State Warehouse at the shipping line's instance or request. They are stored at the behest of SARS under the provisions of the Customs & Excise Act. As such, there is no obligation on the shipping line to continue to pay the container depot's storage charges for as long as the goods or containers remain in the deemed State Warehouse.

Draconian Law Limited

In a recent unreported decision our High Court confirmed that:

- while it is understandable that the Revenue authorities require draconian powers to ensure compliance with the Customs Act, such powers are not totally unfettered and must be exercised subject to the Constitution;
- the powers to detain or seize goods in terms of section 87 and 88 of the Customs Act is not exempt from the Constitutional requirements of just administration and the common law principles of natural justice.



- The decision to detain goods involves a two stage enquiry. Firstly there must be some evidence or circumstance that gives rise to a reasonable belief that the goods have been entered or dealt with contrary to the Customs Act. Then, and only then, can such goods be detained under section 88(1)(a) for the purpose of determining whether such goods are liable to forfeiture.

This makes it extremely important for anyone being subjected to an audit to have representation from the outset.

Did You Know?

- A deemed State Warehouse is entitled to rental for the storage of goods in accordance with the provisions of section 17 of the Customs & Excise Act and Rule 17.01.
- SARS is not entitled to continue to retain containers carrying goods which are stored in a State Warehouse. SARS rather has a duty to unpack the goods from the containers and to return the container to its owner or operator.
- SARS may exercise a lien over any goods owned by a person who has failed to pay duty, interest, penalties or forfeiture in terms of the Customs & Excise Act when it became payable.

The Lighter Side

- The 50-50-90 rule: Anytime you have a 50-50 chance of getting something right, there's a 90% probability you'll get it wrong.
- If you lined up all the cars in the world end to end, someone would be stupid enough to try to pass them, five or six at a time, on a hill, in the fog.
- A fine is a tax for doing wrong. A tax is a fine for doing well.



Contact Us:

We welcome any comments to our articles or any suggestions you may have and we will gladly send you a copy of any of the court decisions mentioned herein.

Visit our webpage on www.wylie.co.za, e-mail us at customs@wylie.co.za or contact us on:

031 302 0246 / 082 466 5062 - Quintus van der Merwe

031 302 0242 / 082 453 8819 - Prè Prinsloo

By all means, please use the content of this flyer for your information and guidance but do not consider it to be comprehensive or specific legal advice. We will not be liable for any loss or damages arising out of or reliance upon the content of this flyer. You should first consult us.