

## Statutory Instrument 41 of 2002

### Fiscal Appeal Court Rules, 2002

#### ARRANGEMENT OF SECTIONS

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**IT is hereby notified that the President of the Fiscal Appeal Court, with the approval of the Minister of Finance and Economic Development, has made the following rules in terms of section 4 of the Fiscal Court Act [Chapter 23:05]:—**

#### ***1. Title***

These rules may be cited as the Fiscal Appeal Court Rules, 2002.

#### ***2. Interpretation***

In these rules—

“appeal” means an appeal to the Court in terms of this Act;

“appropriate officer” in relation to any appeal, means the Commissioner whose decision or classification is the subject of the appeal;

“notice of appeal” means a written notice instituting an appeal in terms of subrule (1) of rule 3;

“party”, in relation to an appeal in terms of Part IV of the Act, includes an importer or manufacturer who has submitted a notice in terms of subrule (1) of rule 7 in relation to the appeal.

#### ***3. Notice of appeal***

(1) An appeal shall be instituted by means of a written notice which shall—

(a) clearly identify the decision or classification appealed against; and

(b) specify clearly all the grounds of appeal and material allegations of fact and contentions of law on which the appeal is based:

Provided that the material allegations of fact and contentions of law may be specified in a separate document;

and

(c) specify an address where service of any notice or document pertaining to the appeal may be effected.

(2) An appellant shall cause his notice of appeal and, if there is one, the separate document referred to in the proviso in paragraph (b) of subrule (1) to be served on the appropriate officer—

- (a) within sixty days after the appellant was notified of the decision appealed against, in the case of an appeal in terms of Part III of the Act; or
  - (b) within three months after paying the amount demanded as customs or excise duty or furnishing security for the due payment of that amount, in the case of an appeal in terms of Part IV of the Act.
- (3) For the purpose of calculating the sixty-day period referred to in paragraph (a) of subsection (2), if notification of the decision appealed against has been posted to the appellant, the appellant shall be deemed to have been notified of the decision when the notification would have been delivered in the ordinary course of post.

#### **4. Officer's reply**

Within thirty days after receiving a notice of appeal in terms of rule 3, the appropriate officer shall cause to be served on the appellant a written reply in which every allegation of fact and contention of law raised by the appellant is admitted or denied or otherwise traversed or dealt with.

#### **5. Submission of appeals**

Within fourteen days after serving his reply on the appellant, the appropriate officer shall submit to the registrar of the Court two copies of—

- (a) the notice of appeal and any other document served on him in terms of rule 3; and
- (b) his reply served on the appellant in terms of rule 4; and
- (c) any material correspondence relating to the appeal.

#### **6. Set-down of appeals for hearing**

(1) Subject to this rule, on receipt of papers submitted to him in terms of rule 5, the registrar of the Court shall set the appeal down for hearing on a sitting day fixed by the President of the Court in terms of subsection (6) of section 3 of the Act.

- (2) The date fixed in terms of subrule (1) shall allow sufficient time for the registrar of the Court—
  - (a) where appropriate, to publish notice of the date in terms of subsection (6) of section 18 of the Act; and
  - (b) to comply with subrule (3).

(3) The registrar of the Court shall serve on the appellant and the appropriate officer written notice of the time and date of the hearing of the appeal, which notice shall be served so as to be received by the parties at least thirty days before the date of the hearing.

#### **7. Appearance of third parties in appeals**

(1) An importer or manufacturer who wishes to be heard in an appeal in terms of subsection (6) of section 18 of the Act may, not later than fourteen days before the date fixed for the hearing of the appeal, submit to the registrar of the Court four copies of a written notice—

- (a) identifying the appeal in which he wishes to be heard; and
- (b) specifying clearly all the material allegations of fact and contentions of law which he wishes to place before the Court; and
- (c) specifying an address where service of any notice or document pertaining to the appeal may be effected.

(2) As soon as possible after receiving a notice in terms of subrule (1), the registrar of the Court shall serve copies thereof on the appellant and the appropriate officer in the appeal concerned.

- (3) Not later than five days before the date fixed for the hearing of the appeal concerned—
  - (a) the appropriate officer shall; and
  - (b) the appellant may;

submit to the registrar of the Court two copies of written reply to any notice served on him in terms of subrule (2), in which reply every allegation of fact and contention of law raised in the notice is admitted or denied or otherwise traversed or dealt with.

(4) At the same time as he submits a reply in terms of subrule (3), the appropriate officer or appellant, as the case may be, shall serve a copy of the reply on the importer or manufacturer who submitted the notice and on the other party to the appeal.

#### **8. Clarification, amplification and amendment of cases and submission of further documents**

(1) The President of the Court may, at any stage in an appeal, require or permit any party to the appeal to—

- (a) clarify or amplify any allegation or contention contained in any document submitted to the registrar of the court; or
- (b) amend any document submitted by the party to the registrar of the Court; or
- (c) submit to the registrar of the Court further documents in reply to or rebuttal of any document submitted by any other party to the registrar of the Court.

(2) A party who has been required or permitted in terms of subrule (1) to clarify or amplify any allegation or contention or to amend any document shall, within such time as may be specified by the President of the Court—

(a) submit two copies of a written notice to the registrar of the Court duly clarifying or amplifying the allegation or contention concerned or amending the document concerned, as the case may be; and

(b) serve a copy of the notice on every other party to the appeal.

(3) A party who has been required or permitted in terms of subrule (1) to submit further documents to the registrar of the Court shall do so within such time as may be specified by the President of the Court and shall serve a copy of every such document on every other party to the appeal.

(4) The President of the Court shall not require or permit a party to an appeal to do anything in terms of this rule unless every other party has been given due notice thereof and has had an opportunity to make representations in the matter.

#### ***9. Summoning of witnesses***

If at any time after he has fixed the date and time for the hearing on an appeal he is requested to do so by a party to the appeal, the registrar of the Court shall issue a subpoena in terms of section 6 of the Act for the attendance of any person as a witness or for the production of any book or document:

Provided that the President of the Court may refuse to allow such a subpoena to be issued if he considers that the attendance of the person or the production of the book or document concerned could not materially assist the Court in determining the appeal.

#### ***10. Absence of party for hearing of appeal***

If any party fails to appear at the hearing of an appeal, either in person or through a legal practitioner, the Court may nevertheless proceed with the hearing in his absence.

#### ***11. Order of proceedings***

(1) The President of the Court may determine the order in which the parties to an appeal shall present their cases and additionally or alternatively, the order in which any part of the subject-matter of an appeal shall be dealt with.

(2) If the President of the Court has made a determination in terms of subrule (1) before the hearing of an appeal, the registrar of the Court shall inform all the parties to the appeal as soon as possible of the determination.

(3) In the absence of a determination in terms of subrule (1), the appellant shall present his case first, then the importer or manufacturer, if any, who has submitted a notice in terms of rule 7, then the appropriate officer.

#### ***12. Opening addresses by parties***

Every party at the hearing of an appeal may address the Court by himself or through a legal practitioner for the purpose of outlining his case.

#### ***13. Examination of witnesses***

(1) Witnesses at the hearing of an appeal shall give evidence on oath, which oath may be administered by the President or registrar of the Court.

Provided that the President of the Court, either *mero motu* or on the application of any party, may allow a witness to give evidence unsworn.

(2) Every party at the hearing of an appeal may by himself or through his legal practitioner, cross-examine witnesses called by any other party:

Provided that the President of the Court may curtail the cross-examination of a witness if he considers the cross-examination to be repetitive or time-wasting.

#### ***14. Admissibility of evidence***

All evidence that tends logically to prove or disprove any fact in issue in the case concerned shall be admissible in any appeal.

#### ***15. Argument by parties***

Every party at the hearing of an appeal may, by himself or through his legal practitioner—

(a) address the Court for the purpose of summing up his case or arguing any point of law which may have arisen at the hearing; and

(b) with the consent of the Court, submit written argument on any point of law which may have arisen at the hearing.

#### ***16. Procedure at hearing generally***

Subject to the Act and these rules, the procedure at the hearing of any appeal shall be as informal as possible.

***17. Postponement or adjournment of hearings***

(1) The President of the Court may postpone or adjourn the hearing of any appeal.

(2) The registrar of the Court shall serve notice of any postponement or adjournment of a hearing on all parties to the appeal who were not present or represented when the postponement or adjournment was ordered.

***18. Consolidation of appeals***

Either before or during the hearing of any appeal, the President of the Court may order that two or more appeals be consolidated or heard together, and may give any directions as to the service of documents or otherwise that he considers will give effect to the order.

***19. Record of proceedings.***

(1) The record of hearings of appeals shall be a verbatim one:

Provided that, with the consent of the parties or their legal practitioners, the Court may record or cause to be recorded the substance of any evidence.

(2) The registrar of the Court shall have custody of the records of proceedings of the Court and, subject to any enactment or order of Court, shall ensure that the records are not accessible to the public.

(3) The President of the Court may authorise the registrar of the Court to publish any judgment of the Court, subject to such conditions as the President may fix to ensure that the identity and private affairs of parties to the appeal concerned are not revealed.

***20. Notification of judgments***

As soon as possible after the Court has delivered judgment in any appeal, the registrar of the Court shall serve a copy of the judgment on every party who appeared in person or through a legal practitioner at the hearing of the appeal.

***21. Extensions of time, condonation and departures from rules***

The President of the Court may, on good cause shown or by agreement of the parties—

- (a) extend any period prescribed in these rules, whether or not that period has already expired; or
- (b) condone any failure to comply with the rules; or
- (c) authorise any departure from the rules:

***22. Repeal***

The Fiscal Appeal Court Rules, 1987, published in Statutory Instrument 207 of 1987, are repealed.