IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: ~~YES~~/NO
(2) OF INTEREST TO OTHER JUDGES: YES/NO
(3) REVISED:

17/03/21
DATE

SIGNATURE

CASE NUMBER: 13584/2020

In the matter between:

DRAGON FREIGHT (PTY) LTD **APPLICANT**	**FIRST**
TIAN LE TRADING ENTERPRISE CC **APPLICANT**	**SECOND**
NEW FEELING FASHION DESIGN (PTY) LTD **APPLICANT**	**THIRD**
TINGTING SECRET BEAUTY (PTY) LTD **APPLICANT**	**FOURTH**
HIQ PACIFIC TRADING CC **APPLICANT**	**FIFTH**
FFB IMPORT-EXPORT CC **APPLICANT**	**SIXTH**
CALLA TRADING (PTY) LTD **APPLICANT**	**SEVENTH**

And

THE COMMISSIONER OF THE SOUTH AFRICAN

REVENUE SERVICE **FIRST**
RESPONDENT

THE MINISTER OF TRADE, INDUSTRY

AND COMPETITION **SECOND**
RESPONDENT

THE SOUTH AFRICAN APPAREL ASSOCIATION **THIRD**
RESPONDENT

THE APPAREL AND TEXTILE ASSOCIATION OF

SOUTHERN AFRICA **FOURTH**
RESPONDENT

SOUTHERN AFRICAN CLOTHING AND TEXTILE

WORKERS UNION **FIFTH RESPONDENT**

JUDGMENT

(Handed down electronically to the parties' legal representatives by email, uploading on Caselines and release to SAFLII. The date and time for delivery of judgment is deemed to be 10h00 on 17 March 2021).

BAQWA J

[1] The respondents herein apply for leave to appeal to The Supreme Court of Appeal against the judgment of this court handed down on 11 December 2020.

[2] For ease of reference the parties are referred to as in the main application and even though they have filed separate applications, I deal with them together due to the overlapping nature of the grounds for the various applications.

[3] Full reasons were provided in the judgment and I do not propose to furnish further reasons save to state that judgment is in line with and consistent with the judgment in the first Dragon Freight application under case no: 82686/19 (GP) handed down by Tuchten J on 27 November 2019. In that judgment SARS applied for leave to appeal which was refused for having no prospects

of success. SARS did not pursue its right to seek leave to appeal to the Supreme Court of Appeal.

[4] It is common cause that the two Dragon Freight applications are substantially similar and that similar evidence was presented in both by a large measure. The present judgment confirmed the findings in the Tuchten judgment.

[5] In the circumstances, there exists two consistent judgments on similar facts, involving the same parties. On this fact alone, the prospects of success on appeal appear to be dim.

[6] Whilst it is trite that an application for leave to appeal does not provide the parties with an opportunity to re-argue the matter, it is quite apparent from the heads submitted by some of the respondents that portions of the judgment they seek to appeal against have either been misinterpreted or misunderstood.

[7] The respondents still contend that the jurisdictional conditions contained in section 96(1)(a) of The Act were not fulfilled and that this Court lacked jurisdiction to order the relief granted. They further contend that there are conflicting judgments on the issue and rely in this regard on *Commissioner for the South African Revenue Service v Prudence Forwarding (Pty) Ltd and Another* 2015 JDR 245 (GP) ("the Prudence case").

[8] At the risk of being repetitive, Prudence is distinguishable from the present case in that the Applicants' Notice of Motion provides for the review and setting aside of the decision to detain the containers as well as the decision to seize the containers.

[9] Similarly, the Applicants' Section 96 Notice provides for the review and contemplates the prospect of setting aside the decision to seize the containers. The applicants, for these reasons, did not have to amend their notice of motion to introduce a new cause of action which was not provided for in either the Notice of Motion or the Section 96 Notice.

[10] In the Prudence matter, it was the belated amendment of The Notice of Motion which led to the Court's finding that *"jurisdictional conditions precedent were not fulfilled and the Court accordingly lacked jurisdiction to grant the final relief it granted, in the form of an order setting aside the seizure of the goods*". (at paras 28 and 30). The factual matrix and the legal conclusion which the Court in Prudence arrived at are clearly distinguishable from the present case.

[11] A further misapprehension by the respondents is with regard to the Applicants' 'Responses to the Trader Questionaire and The Request for Further Particulars' where the respondents contend that the court found that the applicants were entitled to ignore SARS' requests for information. This is not what the judgment says. What the court found was that the applicants had

provided answers to SARS' request for information, but that SARS had ignored these responses.

[12] In so far as the reverse onus arising out of Section 102(4) is concerned, the Export Declarations were part of the documents relied upon by SARS in making its decision. SARS was duty bound to establish the probative value thereof prior to making its seizure decision. In the judgment the Export Declarations were found to be irrelevant in that they did not relate to the containers or goods in question. The Declarations were also found to be illegible because they were in Chinese and most of the contents thereof could not be deciphered. In a nutshell, the Export Declarations do not fall within the ambit of the documents referred to in Section 102(4) and they do not therefore trigger a reverse onus.

[13] Section 17(1) of the Superior Courts Act No 10 of 2013 (The Act) provides:

"*Leave to appeal may only be given where the judges concerned are of the opinion that:-*

(i) The appeal would have a reasonable prospect of success; or
(ii) There is some compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration".

[14] It is now a well-established legal fact that Section 17(1)(a) of The Act provides for a stringent test than its predecessor for leave to be granted. The current requirement is that the Court must be satisfied that the appeal "would" (previously "may") have a reasonable prospect of success. (See *Mont Chevaux Trust (IT 2012/28) v Tine Goosen,* Unreported, LCC Case No. LCC 14R/2014, dated 3 November 2014; *Notshokovu v S,* unreported, SCA Case No: 157/15 dated 7 September 2016 and Erasmus Superior Court Practice, DE Van Loggenberg, Vol Part A, R512, 2020 A2-55. The respondents have not met this threshold.

[15] There are no conflicting judgments which would have to be considered by The Supreme Court of Appeal in terms of Section 17(1)(a)(ii) of The Act and public interest will not be served by an appeal in respect of which there is no legal uncertainty.

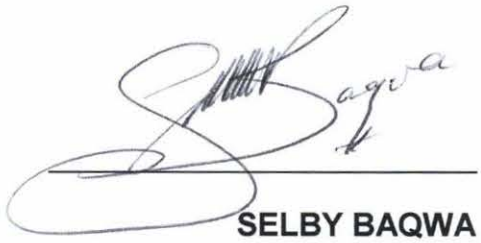
[16] In the circumstances, I am not persuaded that another court would come to a different conclusion. The respondents' grounds of appeal and the reasons therefore do not justify leave to appeal being granted and there is no compelling reasons to grant leave in terms of Section 17(1)(a) of The Act.

[17]

ORDER

In the result, I make the following order:

> The application for leave by the respondents is dismissed with costs, which shall include the costs consequent upon the employment of two counsel, the one being senior counsel.



SELBY BAQWA

JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA