THE 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

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Rennies Travel (Pty) Ltd v SARS (207/2021) [2022] ZASCA 83 (6 June 2022)

Today the Supreme Court of Appeal (SCA) upheld an appeal from the Tax Court of South Africa (tax court). The SCA set aside the order of the tax court and replaced it with one that sets aside the appellant's February 2012 to December 2016 assessments to the extent that they had imposed value-added tax (VAT) at the standard rate on supplementary commission paid.

The appellant, a travel agency, made arrangements for the international travels of passengers, including the sale of international airline tickets. In terms of these arrangements, the appellant derived income from three contractual sources with three airlines, namely a service fee charged to the client, a flat rate charged to the airline and a supplementary commission charged to the airline in the event that certain sales targets had been reached. The South African Revenue Service (SARS) determined that the appellant was liable for the payment of VAT on the supplementary commission and maintained that the supplementary commission had been earned because of a supply of services that attracted VAT at the standard rate (then 14 per cent). Accordingly, SARS issued additional assessments for the period concerned.

The assessments were issued pursuant to a tax audit that had been conducted by SARS, and related to both the standard and supplementary commission received by the appellant for the period by the airlines. The appellant objected to the additional assessments and maintained that the receipts had to be zero-rated under s 11(2)*(a)* and *(d)* of the Value-Added Tax Act 89 of 1991 (VAT Act). The matter proceeded on appeal, which only revolved around the supplementary commission.

The material terms of the agreements that the appellant had entered into with the airlines were not identical. Two of the agreements provided that, once a certain target had been reached in terms of ticket sales, supplementary commission was payable in addition to standard commission for all tickets sold, whereas the remaining agreement entailed the payment of supplementary commission only for all tickets sold after a particular target had been reached. These agreements also provided for the charging of separate fees for marketing campaigns. SARS maintained that the appellant had received supplementary commission as incentives for promoting sales above certain agreed targets. The tax court held that the supplementary commission had been paid for the supply of services of marketing and promotion of international airline tickets, and held that the supplementary commission was payable because of successful marketing and promotion campaigns.

Upon appeal, the SCA highlighted that VAT was only payable on a supply of services. If there was no supply of services, there could accordingly not be any liability for VAT. In the tax court it was submitted that the supplementary commission was an incentive for meeting certain sales targets. The SCA held, however, that the supplementary commission was earned for the same supply of services than the standard commission, that is, the arranging of the transport of international passengers. The fact that the same services gave rise to more than one type of consideration could not alter the nature of the services. Accordingly, the SCA held that the supplementary commission falls to be zero-rated under s 11(2) of the VAT Act.

In the result, the SCA upheld the appeal and set aside the order of the tax court and replaced it with one that sets aside the appellant’s February 2012 to December 2016 assessments, to the extent that they had imposed VAT at the standard rate on supplementary commission paid.

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