THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

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Aveng Mining Shafts & Underground v The Commissioner for the South African Revenue Service (1192/2023) [2025] ZASCA 20 (17 March 2025)

Today the Supreme Court of Appeal (SCA) dismissed with costs, the appellant's appeal against an order of the Tax Court of South Africa, Gauteng (the tax court).

Aveng Mining Shafts and Underground, a division of Aveng (Africa) (Pty) Ltd (Aveng) is a vendor as defined in s 1 of the Value-Added Tax Act 89 of 1991 (the Act). It's enterprise entails shaft sinking and mining construction activities for various mining clients. From time to time, it employs employees who are deployed to mines for limited periods to do work required for specific projects. These employees must be accommodated close to the mines where they perform the work and provided with food. Aveng pays the suppliers the amounts charged for the accommodation and food. These charges, it is common cause, constitute entertainment expenses. Aveng's enterprise does not involve the making of taxable supplies of entertainment in the course of its enterprise. Aveng does not separately charge its mining clients for these costs. An estimate of the costs is included in the overall price at which it tenders to do the shaft sinking and mining for its clients and by the time the entertainment expenses are actually incurred, they may differ from the costs which prevailed when the tender price was determined. In submitting its VAT returns for the period 06/2012 to 08/2016, Aveng claimed input tax in respect of entertainment expenses incurred in respect of these employees. The Commissioner for the South African Revenue Services (the CSARS) disallowed the input tax deduction because the entertainment expenses were for employees who were not away from their usual place of work, and Aveng did not recoup the expenses from the employees.

Aveng's subsequent appeal to the tax court against the disallowance of the input tax was unsuccessful. The appeal against the judgment was with the leave of the tax court.

The issue before the SCA was whether s 17(2)*(a)*(i)*(bb)* of the Act allowed Aveng, to deduct certain input tax in respect of entertainment expenses, from its output tax for the period in question. The tax court had found that because Aveng did not recoup the entertainment expenses from the employees, it was precluded from deducting the input tax.

The SCA analysed s 17 of the Act. It held that a proper interpretation of s 17(2)(*a*)(i)(*bb*) requires that the text, the context and the purpose of its provisions be examined and considered simultaneously and holistically. Starting with the context and purpose, the Court considered Aveng's invocation of the neutrality principle. This principle entails that VAT is not a cumulative tax but a tax on value gained during the interval since a previous supply and paid only on the value that is added in each step of a production process. The SCA held that the neutrality principle did not find application because a vendor is not entitled in terms of s 17(2)(*a*) to deduct from its output tax an amount of input tax in respect of goods or services acquired 'for the purposes of entertainment'. The only input taxes that may be deducted in respect of entertainment

expenses are those falling within the express exceptions. These exceptions must be interpreted restrictively.

As regards the exception in subparagraph *(bb)* of s 17(2)*(a)*(i), the SCA found that while the context and purpose may be used to elucidate the text, it cannot displace the ordinary meaning of the express wording of a statute. Specifically, that the context is not a licence to contend for meanings unmoored from the text and its structure. Turning to the text of the relevant provisions of the Act, the SCA stated that it is significant that the definition of 'input tax' does not include the input tax on all goods and services supplied to and acquired by a vendor, but only 'to the extent' determined in accordance with the specific provisions of s 17, and the goods or services must be acquired by the vendor for making taxable supplies in the course of its enterprise. Entertainment is not the enterprise of Aveng. The input tax incurred was accordingly not in respect of goods and services acquired 'for making taxable *supplies of entertainment'* by Aveng. They were acquired in respect of making taxable supplies of sinking mining shafts and related mining work, which is Aveng's enterprise. The provisions of s 17(2)*(a)*(i) were not satisfied.

Also, assuming that a taxable supply of entertainment is made for a charge in the course of Aveng's enterprise, Aveng failed to recover the charge from its employees directly. In the alternative, if it would be sufficient for the purposes of the exception, to recover the charge from Aveng's clients, Aveng failed to establish that what it built into the price charged to clients covered all the direct and indirect costs of such entertainment.

As a result, the SCA dismissed the appeal with costs. On the issue of costs, the SCA held that although the appeal involved an important issue of principle, it was not one of such complexity as to justify the employment of two counsel.

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