THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

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The Commissioner for the South African Revenue Service v Woolworths Holdings Limited (863/2023) [2025] ZASCA 99 (04 July 2025)

Today, the Supreme Court of Appeal (SCA) dismissed with costs an appeal by the Commissioner for the South African Revenue Service (SARS) against the judgment of the Tax Court of South Africa, Western Cape in which the Tax Court upheld a claim by Woolworths Holdings for input tax deduction for VAT incurred in relation to underwriting services utilised during a rights offer set up to raise capital to buy all the shares in David Jones Limited.

The dispute between Woolworths Holdings and SARS arose from a transaction in which Woolworths Holdings acquired all the shares of David Jones Limited, an Australian department store, for a purchase price of R21, 4 billion. The acquisition was funded by existing cash, new debt facilities, and equity funding raised through a R10 billion fully underwritten renounceable rights offer. Woolworths Holdings concluded an unsecured syndicated facility agreement with various foreign and South African banks as underwriters and lenders, for provision of a short-term equity bridge facility in the amount of up to R11 billion. At completion of the transaction, the equity bridge facility was repaid with the capital raised from the rights offer.

The rights offer was made to South African residents and foreign shareholders. For this purpose, Woolworths Holdings secured professional underwriting services from local suppliers and foreign services suppliers. The services related to arranging and executing the equity bridge facility and the rights offer. Consequently, Woolworths Holdings incurred professional fees in relation to these services.

When accounting for VAT for the period ending in February 2015 Woolworths Holdings deducted input tax in relation to the portion of the VAT incurred in respect of the rights offer taken up by local shareholders. It also declared in respect of the portion of the VAT incurred on the cost of the services supplied by foreign service providers and claimed a reduction of a portion of such costs.

SARS disallowed the input tax deduction and levied a further VAT output tax on what it regarded as the correct value of the total imported services. SARS then imposed a 10% understatement penalty (USP) for the amounts it considered to have been understated. The basis for disallowing the input tax deduction and levying further output tax was that the services relating to the rights offer were not taxable supplies rendered for the purpose of consumption, use or supply in the course or furtherance of an enterprise conducted by Woolworths Holdings as provided in the VAT Act.

SARS reasoned that prior to the acquisition of David Jones, Woolworths Holdings had not engaged in the activity of issuing shares in a continuous, unchanged or uninterrupted manner, as an enterprise. It

had not traded in the issuing of shares prior to the acquisition and did not do so subsequent to the acquisition. Woolworths Holdings' objections to SARS determinations were not successful, and thereafter the matter served before the Tax Court. That Court upheld the appeal by Woolworths holdings, finding that the expenses in relation to which input tax deduction was claimed were incurred in furtherance of an enterprise conducted by Woolworths Holdings.

The main issue on appeal before the SCA was whether Woolworths Holdings was entitled to deduct, as input tax, the VAT it paid on fees charged to it by local service providers in relation to the underwriting services. Linked to that was the question of whether Woolworths Holdings was obliged to declare and pay VAT on the fees it paid to the non-resident services suppliers, and whether SARS was entitled to impose a USP in the circumstances.

The SCA held that in determining whether the expenses incurred were incurred in the conduct or furtherance of the enterprise conducted by Woolworths Holdings SARS improperly ignored a significant portion of the activities conducted by Woolworths Holdings and the real nature of its enterprise. The contention by SARS that a once-off transaction at the start of a business enterprise does not form part of the enterprise ignored some of the activities conducted by Woolworths Holdings. And the argument that the rights offer was not set up in furtherance of the enterprise conducted by Woolworths Holdings was inconsistent with the textual definition of 'enterprise' in section 1 of the VAT Act, including the proviso in that section. In addition, the distinction sought to be drawn by SARS between an 'enterprise' and its 'business' was artificial. Consequently, the appeal by SARS was dismissed.

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