REPUBLIC OF SOUTH AFRICA

IN THE TAX COURT OF SOUTH AFRICA

(HELD AT MEGAWATT PARK, JOHANNESBURG)

Case No.: **VAT 22315**

(1) REPORTABLE: YES / **NO**

(2) OF INTEREST TO OTHER JUDGES: YES / **NO**

(3) REVISED.

25/04/2025
DATE _____ SIGNATURE

In the matter between:

APPELLANT SOUTHERN AFRICA (PTY) LTD Appellant

and

THE COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE Respondent

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J U D G M E N T

This judgment has been handed down remotely and shall be circulated to the parties by way of email / uploading on CaseLines. The date of hand down shall be deemed to be 25 April 2025.

BAM J

Introduction

[1] At issue in this appeal is whether the appellant is entitled to VAT input tax, in the amount of R26 901 845.85. The appellant paid the amount as import VAT during October 2018, whilst acting as clearing agent for its client and principal, BIV Gold (Pty) Ltd, BIV, under the VAT account number 12345678, registered to BIV, in respect of the importation Britannia gold coins (coins). The coins had been imported by BIV from the United Kingdom (UK) to South Africa.

[2] Appellant sought to claim a refund of the import VAT in its VAT return for the tax period 04/2019. The Commissioner disallowed the refund and issued an additional assessment in the same amount on the basis that: the input tax claim was in respect of VAT paid on behalf of BIV, for goods imported by BIV into South Africa; that it was not Appellant's enterprise to import and sell gold coins; and that Appellant had acted in the capacity of a clearing agent for BIV. Accordingly, only BIV was entitled to claim back the VAT paid on the importation. I commence by setting out a summary of the background facts to put matters in context. But first, the parties must be introduced.

Parties

[3] The appellant, Appellant Southern Africa (Pty) Ltd, Appellant, is a company duly incorporated and registered in terms of the company laws of the Republic of South Africa, with VAT reference number 9876541. Its registered address is described as AAA, Kempton Park, Gauteng.

[4] Appellant is a clearing and forwarding agent, licensed in terms of section 64B of the Customs and Excise Act,[1] CEA. In the course of its enterprise, Appellant clears imported and exported goods on behalf of its clients. Appellant is accredited with local customs authorities, boarder agencies, ports, etc. In this regard, it is authorized to submit customs documentation on behalf of its clients, undertake calculations of duty and VAT, and assist its clients with any duty drawbacks.

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[1] Act 91 of 1964, as amended.

[5] In terms of Rule 64B.03(6) of the Customs Rules, the appellant is enjoined to account to its principal for, *inter alia*, payments made and received from the Commissioner on behalf of its principal and to furnish its principal with relevant Customs documentation.[2]

[6] The respondent is the Commissioner for the South African Revenue Service, appointed in terms of section 6 of the South African Revenue Service Act[3], SARS Act, with his principal place of business at *Lehae la* SARS, 299 Bronkhorst Street, Nieuw Muckleneuck, Pretoria, Gauteng. In terms of section 4 of the SARS Act, the Commissioner is charged with the enforcement of all legislation concerned with the collection of revenue, including, *inter alia*, the VAT Act[4] and Customs and Excise Act,[5] CEA.

Proceedings before this court

[7] Before this court, the appellant contends that it was entitled to claim the input tax in its capacity as a representative taxpayer or responsible third party. The appellant further contends that it was entitled to claim the amount as adjustment against its output tax, as provided for in section 21 of the VAT Act. It also queries whether there was indeed an importation of the gold coins and whether the goods were entered for home consumption.

[8] The Commissioner, anchoring its submission in, *inter alia*, the CEA, the VAT Act and common law, submits that the appellant's grounds seek, unduly so, to confer upon it the status of an importer or exporter, which is contrary to the established legal principles. The Commissioner says, and in pursuing this appeal, the appellant seeks to resolve a private contractual dispute which it ought to resolve with its client, BIV. The Commissioner says he cannot be drawn into private contractual disputes, which have no bearing on his work. He asks that the appeal be dismissed with costs, including the costs of two counsel as the appellant's grounds are unmeritorious and unreasonable.

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2 Rule 64B.03(6) reads: "Every licensed clearing agent shall—

(*a*) furnish his or her principal in respect of each transaction under the Act made on behalf of the principal with a copy of the customs documents, bearing the official customs stamps, or when section 101A comes into operation, copy of the information transmitted or received by electronic communication as provided in that section, to and from the Commissioner, a Controller or any officer; and

(*b*) promptly account to the said principal for payments –

(i) received in favour of the said principal from the Commissioner, a Controller or any officer;

(ii) received from the said principal in excess of the duties and other charges due to respect of the principal's business with the Commissioner, a Controller or any officer; and

(iii) made to the Commissioner, the Controller or any officer in respect of the business of the principal."

3 Act 34 of 1997.

4 Act 89 of 1991.

5 Act 91 of 1964.

[9] The appellant called two witnesses. They are: Mr Witness 1, the general manager of Appellant at the time relevant to the importation of the gold coins, and Mr Witness 2, Appellant's financial manager at the time. SARS called Mr Witness 3, a documentary inspector in the Customs unit, and Witness 4, an auditor involved in VAT audits. All four witnesses had submitted summaries of their evidence.

Background

[10] The essential facts necessary for proper adjudication of the issues are set out in the statement of common cause facts agreed to by the parties. They may be summarized as follows: Appellant entered into an agreement with BIV to act as a clearing agent. On 28 September 2018,[6] BIV purchased 9 000 gold coins weighing 358kg, with customs value of R157 652 915, from One& Co in the United Kingdom (UK). The gold coins were imported into South Africa under bill of entry (BoE) number 5000000, dated 3 October, through OR Tambo International, ORT, from the UK. On the same day, Appellant submitted the necessary Customs declaration, SAD 500, to SARS. It is common ground that VAT had not been declared in the customs declaration at the time, as both Appellant and BIV were under the mistaken impression that no importation VAT was payable on the importation of the coins.

[11] Upon examination, SARS noted that Appellant had failed to declare VAT on the importation and issued a report through the Electronic Data Interchange, EDI, system. The EDI system is an electronic platform used by SARS to communicate with amongst others, clearing agents, and to upload documents. SARS informed Appellant that the gold coins are not exempt from VAT and that a Voucher of Correction (VOC) was required to bring VAT into account. SARS detained the gold coins, on 3 October, pending payment of VAT. It also raised VAT liability in the amount of R26 091 845.85.

[12] On 5 October, Appellant passed a VOC, bringing VAT into account, which was accepted by the Commissioner on 6 October. On 10 October, One& Co requested Appellant SA to return the gold coins to the UK. On 12 October, BIV issued a "return invoice" to Baird, evidencing that the gold coins were to be returned to the UK. The export entries for the departure of the gold coins back to the UK were finalized by Appellant on 16 October. The coins were exported back to the UK, on 24 October 2018, under SARS Customs' supervision.

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6 Dates refer to 2018 unless indicated otherwise.

[13] On 25 October, Appellant attempted to pass a VOC to enable it to cancel the original customs declaration, but SARS refused to accept the VOC. On 31 October, SARS deducted the import VAT in the amount of R26 091 845.85 from Appellant's deferment account. On 9 May 2019, Appellant claimed the amount of R26 091 845.85 and accounted for it as input tax deduction for the tax period 04/2019. Following a verification exercise, SARS on 20 June 2019, disallowed the input tax claim and issued a notice of assessment for the tax period 2019/04. Later in this judgment, I touch briefly on the details leading to the export of the coins back to the UK.

Appellant's grounds of appeal

[14] The appellant's grounds may be crystallized thus:

(i) Relying on the Commissioner's point that only BIV is entitled to claim back the VAT paid on importation of the coins, the appellant claims it is entitled to claim input VAT as a representative taxpayer or responsible third party. The assertion relies on the provisions of sections 154 and 158 of the Tax Administration Act,[7] TAA.

(ii) Appellant further contends that on proper interpretation of the VAT Act, no importation occurred as the importation was stopped, the transaction cancelled, and the goods were never released by Customs for home consumption. The appellant questions whether there was importation for purposes of section 7(1)(*b*) of the VAT Act. It further questions whether the goods had been entered for home consumption as contemplated in section 13(1)(*i*) of the VAT Act, and if so, when.

(iii) Lastly Appellant claims it was entitled to claim an adjustment against its output tax as contemplated in section 21 of the VAT Act, based on the cancellation of the supply. It claims it was entitled to do so either in its personal capacity as importer, or in a representative capacity as a representative taxpayer or responsible third party for BIV.

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7 28 of 2011.

Point in limine

[15] The Commissioner submits that the BIV's VAT assessment regarding VAT on importation for October 2018 period has become final and conclusive. He submits that the appellant's purported dispute about the VAT declaration and payment by its principal is impermissible. To support his contentions, the Commissioner refers to sections 99(1) and 100(1)(*b*). Section 99 deals with the period of limitations for issuance of assessments and it reads:

> "(1) An assessment may not be made in terms of this Chapter—
>
> (*a*) …;
>
> (*b*) in the case of self-assessment for which a return is required, five years after the date of assessment of an original assessment;
>
> (i) by way of self-assessment by the taxpayer;"

[16] Section 100 deals with finality of assessment or decision—

> "(1) An assessment or a decision referred to in section 104(2) is final if, in relation to the assessment or decision—
>
> (*a*) …;
>
> (*b*) no objection has been made, or an objection has been withdrawn;"

[17] Two points must be mentioned to dispose of this point in *limine*. They are, in terms of section 54(2A)(*a*) of the VAT Act, where any goods are imported into the Republic by an agent, who is acting on behalf of another person who is the principal for the purposes of that importation, that importation shall be deemed to be made by that principal and not by such agent. The importer, it is not in dispute, was Appellant's client and principal, BIV. The VAT registration number used to account for import VAT was that of BIV. BIV has not contested the Commissioner's determination that import VAT be accounted for. The Commissioner's assessment in this regard has become final and conclusive.

[18] Lastly, sections 99 and 100 of the TAA, as the Supreme Court of Appeal remarked in *Commissioner for the South African Revenue Service* v *Brummeria Renaissance (Pty) Ltd and Others*, are about finality. Here the court remarked:

> "It is obviously in the public interest that the Commissioner should collect tax that is payable by a taxpayer. But it is also in the public interest that disputes should come to an end ─ interest reipublicae ut sit finis litium;"[8]

[8] (391/06) [2007] ZASCA 99; [2007] 4 All SA 1338 (SCA); 2007 (6) SA 601 (SCA); 69 SATC 205 (13 September 2007), paragraph 26.

[19] The point in *limine* is upheld. I now consider the appellant's grounds of appeal.

Ground 1: *The appellant's entitlement to claim input VAT as a representative taxpayer or responsible third party*

[20] The appellant submits that the list in section 153(1) of the TAA goes beyond the primary meaning of the words, a taxpayer who is responsible for paying the tax liability of another person as an agent'. The appellant submits that the word includes in section 153 is used in a non-exhaustive sense, which means, the meaning of a representative taxpayer is not confined to the classes of people enumerated in section 153(1)(*a*) to (*c*). For this submission, the appellant finds refuge in the Constitutional Court's decision of *De Reuck* v *Director of Public Prosecutions.*[9] The appellant submits it was entitled, in terms of section 154(1)(*d*)(ii) to any abatement, deduction, exemption, right to set off a loss, and other items that could be claimed by the person represented.

[21] In the event the court finds that Appellant was not acting as a representative taxpayer in the importation, it submits that it acted as a responsible third party and that SARS held Appellant personally liable. In terms of section 184(1) of the TAA the appellant is afforded the same rights and remedies as the taxpayer.

[22] Section 153(1) reads: "

> "In this Act, a representative taxpayer means a person who is responsible for paying the tax liability of another person as an agent, other than as a withholding agent, and includes a person who—
>
> (*a*) is a representative taxpayer in terms of the Income Tax Act;
>
> (*b*) is a representative employer in terms of the Fourth Schedule to the Income Tax Act; or
>
> (*c*) is a representative vendor in terms of section 46 of the Value-Added Tax Act."

[23] Section 158 deals with responsible third parties and it reads:

> "In this Act, responsible third party means a person who becomes otherwise liable for the tax liability of another person, other than as a representative taxpayer or as a withholding agent, whether in a personal or representative capacity."

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9 (Witwatersrand Local Division) and Others (CCT5/03) [2003] ZACC 19; 2004 (1) SA 406 (CC); 2003 (12) BCLR 1333 (CC); 2003 (2) SACR 445 (CC) (15 October 2003), paragraph 18.

[24] The Commissioner submits, correctly in my view, that before this court even considers the soundness of the appellant's proposed construction of the word includes, as used in section 153, the appellant faces several insurmountable impediments with its submissions. As a start, VAT on importation is levied on the basis of section 13 of the VAT Act. The relevant provision 13(6) states:

> "Subject to this Act, the provisions of the Customs and Excise Act relating to the importation, transit, coastwise carriage and clearance of goods and the payment and recovery of duty shall mutatis mutandis apply as if enacted in this Act, whether or not the said provisions apply for the purposes of any duty levied in terms of the Customs and Excise Act."

[25] In short, import VAT is levied based on the CEA. Therefore, the first hurdle the appellant must overcome is the exclusion of the Customs and Excise Act, CEA, from the application of the TAA. The definition of "Tax Act" in the definition section of the TAA makes this plain. It reads:

> " **'Tax Act'** means this Act or an Act, or portion of an Act, referred to in section 4 of the SARS Act, excluding customs and excise legislation;"

[26] For the same reason, it does not avail the appellant's case to shelter behind the enforcement provision 99(2)(*a*) of the CEA, which, for purposes of liability imposed on the principal, includes clearing agents, except where certain conditions are met, as defined in the section. The second impediment facing the appellant is set out in section 54(2A)(*a*), which reads:

> "For the purposes of this Act, where any goods are imported into the Republic by an agent who is acting on behalf of another person who is the principal for the purposes of that importation, that importation shall be deemed to be made by that principal and not by such agent: Provided that a bill of entry or other document prescribed in terms of the Customs and Excise Act in relation to that importation may nevertheless be held by such agent."

[27] Section 54(2A)(*a*) points exactly where liability lies when a clearing agent such as Appellant acts on behalf of a principal, obviating the very purpose behind section 153, which is to simplify and clarify the tax liability of different persons. To conclude on the appellant's argument, if it was the law maker's intention to bring agents and auctioneers within the purview of a representative taxpayer, it would have simply referenced in section 153(1) the representative vendors mentioned in section 54 of the VAT Act. It did not do so because the liability of a principal is catered for in section 54(2A)(*a*).

[28] But there is a further impediment the appellant must overcome, and it is, at a factual level, it is common ground that the Commissioner, upon examination of the SAD 500 submitted by the appellant simply determined that VAT had not been declared. A note calling for further documents was issued on the EDI system which culminated in the determination that a VOC was required to bring VAT into account, which is what the appellant eventually did after its submissions persuading the Commissioner otherwise had failed. At no point was the appellant ever held liable for import VAT as a representative taxpayer or responsible third party. It is for this same reason that the appellant cannot produce a single piece of evidence to support its contentions that it was held liable either as a representative taxpayer or responsible third party.

[29] Finally, the construction of the word includes contended for by the appellant cannot be upheld, for, in this case, the primary meaning of, "a taxpayer who is responsible for paying the tax liability of another person as an agent" already encompasses all the items in the list, which is to make the definition more precise. This is precisely what the Constitutional Court concluded in *De Rueck*:

> "If, as in this case, the primary meaning already encompasses all the items in the list, then the purpose of the list is to make the definition more precise. In such a case 'includes' is used exhaustively."

Ground 2: *Whether there was importation into South Africa; whether there was importation for purposes of section 7(1)(b) of the VAT Act; and whether the goods had been entered for home consumption as contemplated in section 13(1)(i) of the VAT Act, and if so when*.

[30] The appellant submits that properly interpreted and having regard to the purpose and structure of the VAT Act, the mere physical landing or entry of goods in South Africa is not sufficient to constitute an importation for purposes of section 7(1)(*b*). The term importation is not defined in the VAT Act. However, section 10 of the CEA provides:

> "**10. When goods deemed to be imported**.—(1) For the purposes of this Act all goods consigned to or brought into the Republic shall be deemed to have been imported into the Republic—
>
> (*a*) in the case of goods consigned to a place in the Republic in a ship or aircraft, at the time when such ship or aircraft on the voyage or flight in question, first came within the control area of the port or airport authority at that place, or at the time of the landing of such goods at the place of actual discharge thereof in the Republic if such ship or aircraft did not on that voyage or flight call at the place to which the goods were consigned or if such goods were discharged before arrival of such ship or aircraft at the place to which such goods were consigned;"

[31] In *Commissioner for Customs and Excise Act* v *Strauss & O* 1998 (4) SA 593 (T) at 598, the court acknowledged that the term importation is not described in the VAT Act. It clarified the position that once the goods land in the Republic of SA for use and benefit of the importer, then importation occurs which creates the obligation to pay customs duty at the time of such importation. In terms of section 39(1)(*b*) of the CEA however, the Commissioner may allow registered agents such as Appellant deferment of such payment. The appellant contends, with reference to the evidence of one of its witnesses, Witness 1, that the importation was never finalized. The point lacks merit. The law decrees when importation takes place. This trite legal position cannot be altered by the say so of the appellant's witness.

[32] In *Coconut Express CC* v *South African Revenue Service (Customs & Excise) and Others*, the court noted:

> "In this case, the applicant alleges that the final destination of the goods was Zambia. The Bill of Trading No MSCUIX00000 indicates the shipper as M/S XXX HEALTH CARE DCC of Towers, JLT Dubai and the consignee as Nnust express CC of Gardenview, Bedfordview, South Africa. The port of loading is NHAVA SHEVA, and the port of discharge is Durban. Place of delivery is Johannesburg, South Africa. Zambia does not appear at all in the Bill of Trading. The goods in question were consigned to a person and place in South Africa and it had later to be delivered at Johannesburg. It could perhaps later be consigned to Zambia. However, according to the Bill of Landing the goods' county of final destination is South Africa. In the circumstances, it is inevitable to conclude that the goods were imported to South Africa to be delivered to a particular person at a particular address."[10]

[33] The common cause facts in this case indicate that the declaration in the bill of entry, the airway bill and the commercial invoice recorded the final destination of the goods as South Africa. As held by the court in *Coconut*, the previously mentioned records serve as conclusive proof of the destination of the imported goods. There is no dispute that the goods were for the benefit of the applicant's principal, BIV. I find that upon the plane carrying the gold coins landing at ORT, the coins were duly imported. Appellant's argument that the physical landing of the coins in the Republic is not enough takes the matter no further.

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[10] (5324/2015) [2016] ZAKZDHC 15; [2016] 2 All SA 749 (KZD); 78 SATC 297 (5 April 2016), paragraph 51.

[34] Based on section 13 (1) of the VAT Act, importation is completed when such goods are entered for home consumption. The provision reads:

> "(1) For the purposes of this Act goods shall be deemed to be imported into the Republic on the date on which the goods are in terms of the provisions of the Customs and Excise Act deemed to be imported: Provided that—
>
> (i) goods which are entered for home consumption in terms of the Customs and Excise Act, shall be deemed to have been imported on the date on which they are so entered."

[35] Rule 00.05 of the Customs and Excise Rules defines entry or entered to include a declaration of goods in the appropriate SAD form. Once the SAD form has been completed and the importer or agent inserts the purpose code as that of home consumption, it is sufficient to prove that the goods have been entered for home consumption. In *Rentreag Marketing (Pty) Ltd and Others* v *Commissioner of Customs and Excise*, it was said that, "Goods are liable for customs duty at the time of entry into the Republic for home consumption, which is deemed to be the time when the bill of entry is delivered to the controller of customs and excise concerned... In terms of s 47(1) duty is payable at the time of entry for home consumption."[11]

[36] In this case, it is common cause that Appellant completed the SAD500, the VOC, accounting for VAT on importation, and admittedly used the purpose code in these forms for home consumption. This declaration is sufficient to prove that the goods were entered for home consumption. Witness 1 testified that the goods were entered for home consumption. Astonishingly, Appellant contends in its heads of argument that SARS did not put it to Witness 1 that it will contend that the goods were entered for home consumption. The point lacks merit. On the interpretation contended for by Appellant, suggesting the need for physical release of the goods, such contention does not accord with the provisions of the Customs Act and the trite legal position as espoused by our courts.

[37] It is common cause that the coins were stopped by the Commissioner so that Appellant account for VAT on importation and after VAT was accounted for, the gold coins were released. Witness 3, during his testimony, referred to a paperless release in the EDI system, meaning that the goods were released on 11 October 2018. There can be no question that the goods were duly imported into SA in terms of section 10 of the CEA and were thereafter released to Appellant after VAT. The evidence led suggested that the exportation of the goods occurred after the goods were released and after Appellant accounted for VAT. Thus, the exportation was a separate and new transaction. This ground too fails.

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[11] (344/99) [2001] ZASCA 32; 65 SATC 422 (22 March 2001), paragraph 15.

Ground 3: *Whether Appellant was entitled to claim an adjustment against its output tax as contemplated in section 21 of the VAT Act, based on the cancellation of the supply*

[38] The appellant submits that in the event the court finds that importation did occur, it was entitled to claim an adjustment against its output tax, as contemplated in section 21 of the VAT Act. Appellant submits that section 21(1)(*a*) and (*d*) deal with the supply of goods and services by a registered vendor where the supply has been cancelled and the goods and services returned to the supplier. Although the term importation is not defined in the VAT Act, so the argument goes, the importation of goods in terms of a sale agreement clearly constitutes a supply of goods, similar to the position of exports.

[39] I have difficulty comprehending this point because the purpose of this section is to allow a vendor to issue either a credit or debit note to correct any errors or changes in the supply of goods or services in furtherance of an enterprise. It is common ground that neither Appellant nor the importer, BIV, supplied any goods. On the contrary, BIV was the importer of the coins. The assertion that Appellant is somehow entitled to an adjustment in terms of this section is irreconcilable with the common cause facts. What is more, Appellant had never contended, let alone provide evidence, that it had incorrectly accounted for output tax. As the facts demonstrate, Appellant has all along been attempting to claim input tax charged under section 7(1)(*b*) of the VAT Act, in respect of importation by its client, BIV, which is markedly different from VAT charged on the supply of goods and services in furtherance of supply as defined in section 7(1)(*a*).

[40] Now faced with serious difficulty, as section 21 contemplates domestic supplies in terms of section 7(1)(*a*), the appellant raises, for the first time in its heads of argument, the absurdity and arbitrariness of provision 21(2) and a possible assault on the right to equality, in the event the court were to construe the section without reading in certain words. Quite simply, these matters were never pleaded in its rule 32 statement. The respondent was not warned that the section as it stands may fall foul of the Constitution unless certain words were read in. A constitutional attack must be properly pleaded so that the respondent is aware of the case it is called upon to face. See in this regard *Minister of Cooperative Governance and Traditional Affairs v De Beer and Another* (Case no 538/2020) [2021] ZASCA 95 (1 July 2021), paragraphs 95-96.

[41] For the sake of completeness, and without addressing the appellant's point on the possible constitutional challenges to the wording of section 21, section 16 of the VAT Act deals with deduction of input tax paid on importation of goods. However, there are strict requirements laid down such as that a vendor may not claim input tax deduction on a supply made unless the vendor is in possession of a valid tax invoice or import documentation, in the name of the vendor claiming back the VAT on importation. In this case the supporting

documentation are all in the name of BIV, rightly so, because it is the importer and the vendor under whose VAT registration number the importation VAT was accounted. Appellant has no entitlement whatsoever to claim the input tax because all the customs documentation is the name of BIV.

Conclusion and discussion costs

[42] Based on the reasoning set out in this judgment, the appellant has no case. Its appeal falls to be dismissed. The only person who may claim input VAT in respect of the importation is BIV, whose assessment, as I have earlier indicated, has become final. But there is something else that needs mention. Throught the life of this case, the Commissioner has consistently informed the appellant of its position. The Commissioner cannot be forced to make a refund of VAT contrary to the provisions of the VAT Act. The Commissioner has made the point, which appears to have solicited no response from the appellant, that a refund enjoins the Commissioner to scrutinize the compliance of the vendor claiming the refund. In the event the vendor owes any debt to SARS, the amount to be refunded must be offset against such debt.

[43] Further, and this is important, the appellant in its heads of argument refers to a letter of 7 December 2020 as proof that SARS had accepted certain VOCs amending the original SAD 500 and an amended SAD in respect of the export to the UK. These VOCs were aimed at making the appellant as importer and exporter. The common cause facts suggest that SARS never accepted these documents. In advancing its case however, the appellant contends that SARS accepted these documents and refers the court to CaseLines bundle 040-240-248. Nothing in the mentioned records suggests that SARS accepted the VOCs. But the letter of 7 December 2020 is important for one reason. It conveys certain critical information. In the letter, the appellant states, in an effort to persuade SARS to accept the VOCs:

> "7. BIV Gold refused to accept the VAT demanded. BIV and One & Co. agreed to cancel the sale, as more fully set out below.
>
> …
>
> 17. BIV has not paid the R26 million and has relinquished any possible claim to such money, being the actual importer of the goods. BIV contends that there was no actual importation, it is not responsible for the import VAT."

[44] In evidence Witness 2 testifying for the appellant, with refence to an urgent application deposed to by Witness 1, in which the appellant sought an interdict to restrain SARS from paying a VAT refund to BIV, avowed that were the money to be paid to BIV, they will not able to recover it, not only because of the large size of the amount but because BIV had accused Appellant of having caused it substantial losses. Which brings me to this point, the Commissioner correctly states that in lodging this claim, Appellant is attempting to resolve a

private dispute with its client, BIV. The time has come to put this long outstanding matter to rest. The appellant has no case against the respondent. It never had. Its grounds of appeal are unreasonable. On this basis, the appellant must be called upon to pay the respondent's costs, including the costs of two counsel.

Order

1. The appeal is dismissed.
2. The additional assessment made by the Commissioner for the tax period 04/2019 is confirmed as per section 129(2)(*a*) of the Tax Administration Act.
3. The appellant must pay the respondent's costs, such costs to include the costs of two counsel.

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BAM J
JUDGE OF THE HIGH COURT,
GAUTENG LOCAL DIVISION,
JOHANNESBURG

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MEMBER OF THE TAX COURT:
COMMERCIAL MEMBER

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MEMBER OF THE TAX COURT:
ACCOUNTANT

Date of Hearing: 06 September 2024
DOH: 06 September 2024
Date of Judgment: 25 April 2025