REPUBLIC OF SOUTH AFRICA

IN THE TAX COURT OF SOUTH AFRICA

(HELD IN JOHANNESBURG)

Case No.: **VAT 1543**

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

19 November 2025 _____

DATE SIGNATURE

In the matter between:

SLGGM

APPELLANT

and

THE COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE

RESPONDENT

J U D G M E N T

This Judgment was handed down electronically by circulation to the parties/their legal representatives by email and by uploading to the electronic file on Case Lines. The date for hand-down is deemed to be 19 November 2025.

MALI J

Introduction

[1] This is an appeal against the additional assessments issued by the respondent for the VAT periods 05/2006 to 01/2015 in accordance with the Value Added Tax Act 89 of 1991 (VAT Act).

[2] The appellant, SLGGM is a non- profit company registered in terms of section 21 of the Companies Act of 1973. It is also registered as a Public Benefit Organisation (PBO) for purposes of the Income Tax Act 58 of 1962. The appellant was incorporated in 2002 and established to research, develop and deliver capacity building programmes in school management and leadership, school governance and teacher development for schools, including the schools in the Gauteng Province.

[3] The appellant received payments from GDE, which it contends that the payments were grant funding. SARS 'contention is that the payments received from GDE for the activities undertaken other than those of welfare organisation do not comprise grant funding, thus they were payments for consideration for the actual supply therefore VAT must be charged on the payments at standard rate.

The legal framework

[4] Sections 11(2)(*n*) and (*t*) of the VAT Act provide as follows:

> "**11. Zero rating.—**(2) Where, but for this section, a supply of services would be charged with tax at the rate referred to in section 7(1), such supply of services shall, subject to compliance with subsection (3) of this section, be charged with tax at the rate of zero per cent where—
>
> (*n*) the services comprise the carrying on by a welfare organisation of the activities referred to in the definition of "welfare organisation" in section 1 and to the extent that any payment in respect of those services is made in terms of section 8(5) those services shall be deemed to be supplied by that organisation to a public authority or municipality; or …
>
> (*t*) the services are deemed to be supplied in terms of section 8(5A):"

[5] Section 8(5A) of the VAT Act provides:

> "**8. Certain supplies of goods or services deemed to be made or not made.—**
>
> (5A) For the purposes of section 11(2)(*t*), a vendor (excluding a designated entity) shall be deemed to supply services to any public authority, municipality or constitutional institution listed in Schedule 1 of the Public Finance Management Act, 1999 (Act No. 1 of 1999), to the extent of any grant paid to or on behalf of that vendor in the course or furtherance of an enterprise carried on by that vendor."

[6] Section 1(1) of the VAT Act defines "grant" as follows:

> " **'grant'** means **any** appropriation, grant in aid, subsidy or contribution transferred, granted or paid to a vendor by a public authority, municipality or constitutional institution listed in Schedule 1 to the Public Finance Management Act, 1999 (Act No. 1 of 1999), **but does not include—**
>
> (*a*) a payment made for the supply of any goods or services to that public authority or municipality, including all goods or services supplied to a public authority, municipality or constitutional institution listed in Schedule 1 to the Public Finance Management Act, 1999 (Act No. 1 of 1999) in accordance with a procurement process prescribed—
>
> (i) in terms of the Regulations issued under section 77(4)(*c*) of the Public Finance Management Act, 1999 (Act No. 1 of 1999); or
>
> (ii) in terms of Chapter 1 of the local Government; Municipal Finance Management Act, 2003 (Act No. 56 of 2003), or any other similar process; or
>
> (*b*) a payment contemplated in section 8(23);"

Background facts

[7] It is common cause that the appellant and GDE entered into a memorandum of agreement on 30 May 2006. Clause 5.2 of the memorandum recorded that GDE was a founding member of the appellant and would retain an interest in the appellant by way of representation on its board of directors.

[8] Clause 2.2 provided that the appellant and GDE were to use their respective skills, expertise, resources and knowledge inter alia, by utilising the appellant as an independent entity falling under the auspices of the GDE, to facilitate, and attend to all day-to-day operational requirements that may be necessary to implement and effectively run the appellant. Clause 2.3.2 provided that the appellant was appointed as a first option service provider in relation to the improvement of the quality of education in schools through the transformation of education in the Gauteng Province by the improvement of school management of and governance skills.

[9] In 2010 the appellant and GDE entered into another agreement styled "memorandum of understanding" (MOU) replacing the first agreement. Similar clauses as above were retained. In 2019 the appellant and GDE concluded another "memorandum of understanding". It retained corresponding obligations between the appellant and GDE.

[10] On 28 March 2015 SARS assessed the appellant in respect of the relevant tax periods in the total amount of R93,485,660.45, with understatement penalties at 50% in the amount of R18,576,757.19 and the late payment penalties in the amount of R9,173,442.73. SARS basis of assessment is that the payment received by the appellant from GDE classified as a grant was consideration for actual supplies made by the appellant to the GDE as the appellant supplied services to the GDE.

[11] The appellant objected to the assessments on the basis that the payments from GDE were in respect of grant funding for the purposes identified in the appellant's founding documents, and to be used in accordance with the purposes, uses, and conditions set out in the agreements pertaining to such funding, thus the enhancement of education in the Gauteng Province.

[12] In its rule 32 statement the appellant states that it operated as a welfare organisation and was thus a "designated entity" as defined in section 1 of the VAT Act and that section 8(5) read with section 11(2)(*n*) of the VAT Act render the supplies it made to the GDE zero rated and that the payments it received from the GDE for the activities undertaken other than those of welfare organisation comprise grants as defined and that section 8(5A) read with section 11(2)(*t*) of the VAT Act render the supplies zero rated.

[13] SARS stood by its assessments that the appellant is not a welfare organisation and that the funding received from GDE was the payment received for consideration for actual supplies, therefore attracting VAT at standard rate.

Issue

[14] The central question for determination is whether payments made by the GDE to the appellant constituted "grant funding", thus subject to zero-rating or were payments for "actual services rendered" by the appellant to the Department, thus attracting VAT at standard rate.

Evidence

[15] A sole witness Mr A the Chief Executive Officer of the appellant testified on behalf of the appellant. He testified that the appellant was responsible for rendering services to the recipients such as school governing bodies, teachers, learners, parents and school management teams. Services were in the form of programmes independently developed after analysing and identifying needs, gaps and shortcomings in the educational system. Proposals would be prepared to address the issues. The programmes were also extended to other provinces, but not limited to public schools, as non- Departmental and independent school educators benefited.

[16] He further stated that the appellant annually applied for grant funding in the form of a letter detailing the programmes for implementation. To obtain funding payments the appellant would submit invoices to the GDE to process grant funding payments which included a R5 million annual transfer for the appellant's operational costs. GDE was not obliged to pay the invoice amount; it decided on the amount it wanted to pay in its sole discretion as GDE was not the debtor of the appellant.

[17] Mr A did not deny that the itemised invoices were prepared to comply with procurement requirements, thus inferring that the appellant was the service provider. Furthermore, he acknowledged that the appellant reports to the GDE quarterly on both programs and the budget, this is despite that he initially denied the responsibility to report on the budget. All this information was contained in the agreements between the appellant and GDE.

[18] Mr A was confronted with documentary evidence particularly paragraph 6.6 to 8 of the MOU showing inconsistency with the alleged independence of the appellant. In these paragraphs amongst others, it is recorded that GDE was at liberty to make amendments to the strategic plan and budgets, upon which the appellant would be required to revise and re-submit the plan and/or budgets within 30 days after being required to do by the GDE. The appellant was required to effectively strategize, implement, manage, monitor and review the appellant's program and related projects subject to the right of GDE in its sole discretion, to conduct an independent review during any period during the tenure of the agreement or subsequent agreement, unless the power of review is revoked by GDE in writing.

[19] In retort to the above he stated that the appellant was obliged to submit quarterly and annual reports to GDE as part of oversight and reporting obligations which it did. In response to question posed about clause 2.3.2 read with clause 1.1.7 of the MOA of April 2002 which provides for the appointment of the appellant as the "first option service provider"; he stated that the appellant was never appointed as a service provider.

[20] Clause 5 of the MOU dated September 2010, dealing with the key mandate for the appellant reads as follows:

> "GDE recognises and has established SLGGM to be the training delivery arm of the GDE in the area of School Governance Development, School Management Development and Teacher Development."

Mr A's answered that it did not mean that the appellant was the service provider.

Discussion

[21] In arriving at the proper construction of the applicable VAT provisions, the Court must engage in an interpretative exercise. As established in *Natal Joint Municipal Pension Fund v Endumeni Municipality,*[1] interpretation must consider the context, circumstances surrounding the creation of the provision, and the material known to those responsible for its drafting.

[22] Building on Endumeni, in *Capitec Bank Holdings v Coral Lagoon Investments 194 (Pty) Ltd*[2] it is held that the triad of text, context, and purpose should not be applied mechanically. Instead, interpretation involves understanding the relationship between the words used, the concepts they express, and the provision's place within the broader legal framework. The starting point remains the language of the provision.

[23] In *CSARS v Marshall N.O. and Others*[3] it is held:

> "[18] The VAT Act regulates taxation in respect of the supply of goods and services and importation of goods and services within the country. The vast majority of transaction relating to supply, by a vendor, of goods or services, fall within the scope of s 7(1) of the VAT Act. This is because the definition of 'supply' in s 1 of the VAT Act includes a very wide range of transactions."

[24] The definition of a "grant" in section 1(1) of the VAT Act explicitly excludes "any payment made for the supply of any goods or services *to* the public authority or municipality making the payment". The core of the dispute therefore turns on the nature of the payment: was it a gratuitous or unrequited transfer of funds, or was it a *quid pro quo* for services supplied to the Department?

[25] The appellant places stringent reliance on section 8(5A), which deems certain grants to be supplies. However, this section only applies if the payment is first established to be a grant. If the payment is for actual services, section 8(5A) is not applicable.

[26] The appellant's interpretation seeks to rely on the deeming provision of section 8(5A) without first establishing the foundational fact that the payments were gratuitous. The definition of a "grant" requires the payment to be unrequited. The evidence demonstrates a clear *quid pro quo*: the Department paid the appellant to act as its "training delivery arm" and to perform the capacity-building functions described in the agreements.

---

1 [2012] ZASCA 13; 2012 (4) SA 593 (SCA) para 18.
2 [2021] ZASCA 99, 2022 (1) SA 100 (SCA) para 25.
3 2017 (1) SA 114 (SCA).

[27] The fact that the ultimate beneficiaries were teachers and learners does not alter the fact that the service of training these individuals was supplied to the Department, enabling it to fulfil its own public duties. The Department received direct and substantial value in return for its payments.

[28] Mr A's evidence amongst others, for example his insistence that GDE received no benefit from the appellant's work is untenable and directly contradicted by, for example, his own statement in the 2013 financial report that the appellant's main business was to provide capacity-building interventions as mandated by the GDE.

[29] Mr A's attempt to retreat from his initial, clear evidence that unspent funds were treated as **"deferred income"** because **"the money did not belong to the appellant"** until the work was done, further eroded his credibility. **[emphasis added]** This admission is entirely inconsistent with the nature of a grant, which becomes the property of the recipient upon payment. It is, however, perfectly consistent with payment for services to be rendered, where the funds are an advance for a specific contractual mandate. Furthermore, the capitalization on the fact that the services were extended to other provinces does not change the nature of the payment received from GDE.

[30] In most parts of his evidence, he was evasive, repetitive, and fundamentally lacking in credibility. His testimony was characterised by a "repeated refrain" that was obstructive and designed to avoid conceding points that were plainly evident from the documents. Most damning was the direct contradiction between his initial testimony and documentary evidence he himself oversaw.

[31] For these reasons, where Mr A's oral testimony conflicts with the contemporaneous documentary evidence, the latter is preferred, and his testimony is rejected. As discussed above, there is overwhelming evidence demonstrating that the payments were made as consideration for services supplied by the appellant to GDE.

[32] Furthermore, considering the true nature of the relationship, between the appellant and GDE, the documentary evidence, particularly the MOU, paints a consistent picture of the appellant acting as an implementing agent for GDE. Analysing the "Key Mandate", clause 5 of the 2010 MOU is pivotal. It explicitly states that the GDE **"has established SLGGM to be the training delivery arm of the GDE" [emphasis added]**. This language is unequivocal. It describes a principal-agent relationship, not that of a benefactor and an independent grant-recipient.

[33] Also, alignment of purpose is another factor for consideration. While the appellant may have independently designed its programmes, the evidence shows these programmes were aimed at fulfilling GDE's constitutional and statutory mandate. Mr A conceded a "natural overlap" and that the appellant reported on the needs of the sector to the GDE and justified its funding based on addressing those needs. This accords with the conduct of a service provider reporting to its client, not an independent entity using grant funding for its own purposes.

[34] Moreover, the discovery of itemised invoices submitted by the appellant to the Department is entirely destructive of the appellant's version. Grants or donations are not invoiced; services are. The presence of these invoices, without any suggestion to the contrary provides compelling objective evidence of a supplier-client relationship.

[35] The Appellant relied on *Grain SA v CSARS*,[4] where the court declared that funds received for a Farmers' Development Program were donations and therefore not subject to VAT. This case is, however, clearly distinguishable. The court's decision turned on the specific legal definition of a "donation", which it quoted as:

> "... a payment whether in money or otherwise **voluntarily made** to any association not for gain... in respect of which **no identifiable direct valuable benefit arises** ... to the person making that payment ..."

[36] The present matter concerns a "grant", not a "donation". Even if these concepts were to be equated, the appellant's circumstances fail to meet the definition's core requirements. Crucially, the payment was not "voluntary" in the legal sense contemplated in *Grain SA*. The appellant's own documentation establishes it acted as an "implementing arm" of GDE, with obligations and deliverables. This relationship, evidenced by the issuance of invoices, is inconsistent with a voluntary donation and suggests an expectation of a specific service in return.

[37] The appellant also cited *MEC for Economic Opportunities WC v Auditor-General*[5] In that case, the central issue was whether certain payments should have been accounted for as subsidies or as payments for goods and services under Public Finance Management Act No. 1 of 1999 (PFMA) and Generally Recognised Accounting Practice (GRAP) accounting standards. The court reviewed and set aside the Auditor-General's findings regarding the department's non-compliance with those specific standards.

---

4 1434/2010 FSHC.
5 2021 (1) SA 455 (WCC).

[38] This case is entirely distinguishable to the present dispute. This matter concerns the correct **VAT treatment** of a payment, a question governed by the VAT Act, not public sector accounting standards. The appellant's argument that its accounting treatment was dictated by the Auditor-General is irrelevant to the legal characterization of the payment for VAT purposes. Compliance with auditing standards does not pre-empt or determine the correct legal construction under tax law; these are separate and distinct regulatory domains.

[39] The lack of PFMA compliance and the Auditor-General's classification of payments as a grant, while noted, are not determinative of the correct VAT treatment under the VAT Act. The substance of the relationship, as evidenced by the agreements, the invoices, and the appellant's own accounting treatment, prevails over form.

Conclusion

[40] The appellant has failed to discharge the onus, that the payments from GDE were grants. It is found that the appellant is involved in the actual supply of services taxable at standard rate. Consequently, the supplies must be standard rated for VAT purposes, not zero-rated. SARS had agreed on 10% penalty and that no understatement penalty shall be imposed.

[41] In the result, the following order is granted:

ORDER

1. The appeal is dismissed.
2. Value Added Tax assessments issued by SARS for the period 05/06 to 01/15 are confirmed.
3. The appellant is ordered to pay 10% penalty on late payments. There is no payment levied for understatement penalty.
4. There is no order as to costs.

NP MALI
JUDGE OF THE HIGH COURT

Before

JUDGE NP MALI (TAX COURT PRESIDENT)
MR W NDLOVU (ACCOUNTANT MEMBER)
MS G GOULD (COMMERCIAL MEMBER)