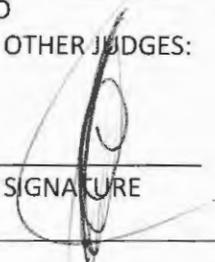


REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

(1) REPORTABLE: NO	
(2) OF INTEREST TO OTHER JUDGES:	
(3) REVISED:	
06 May 2022	
DATE	SIGNATURE

CASE NUMBER: 59288/2021

In the matter between:

SASIMA INVESTMENT HOLDINGS (PTY) LTD

APPLICANT

and

THE COMMISSIONER FOR THE SOUTH AFRICAN

REVENUE SERVICE

RESPONDENT

JUDGMENT

BEFORE: LEDWABA DJP.

(The matter was heard via Teams in accordance with the Directives regarding the arrangements during the National State of Disaster; the Judgment will be uploaded onto Case Lines to the electronic file of this matter and will be electronically submitted to the parties/their representatives by Email).

[1] The applicant filed an urgent application for an interim interdict, that the respondent should release the truck with registration number B349BLP and the fuel contained in the truck and the suspension of the amount in the letter of demand pending the determination of the relief set out in Part B of the notice of motion. In Part B the applicant intends to make a review and/or application to the High Court for an order in the following terms;

“[6] To the extent that it may be necessary, that the period of one month specified in section 96(1)(a)(i) of the Customs and Excise Act, 91 of 1964 be reduced to such an extent that this application is then construed as being complaint with section 96 of the Act alternatively, that non-compliance with the time period specified in section 96(1)(a)(i) of the Act be condoned.

[7] The respondent’s decision that the Applicant failed to submit all requested documents in contravention of section 101(1)(a) and (2) of the Act, read with rule 101.1 and impose a penalty of R5000.00 in terms of section 91, are reviewed and set aside;

[8] That the respondent’s decisions that the Applicant used false and misleading documents in contravention of section 40(1) read with section 84(1) and 103 of the Act and impose a penalty of R20, 000.00 in terms of section 91, are reviewed and set aside.

[9] That the respondent’s decision that the goods were irregularly dealt with and are liable to forfeiture in terms of section 87, is reviewed and set aside.

[10] That the respondent's decision to demand provisional payment of an amount of R145, 414.50 in terms of section 93 of the Act, alternatively that the respondent's decision to refuse the applicant's application for suspension of payment, is reviewed and set aside;

[11] That the respondent's decision to demand payment of duties amounting to R233, 526.00, is reviewed and set aside;

[12] That the respondent's decision to demand payment of warehouse rental upon the release of the vehicle and goods in terms of section 17 of the Act, is reviewed and set aside.

[13] That the respondent pay the costs of the application."

[2] The brief factual background relevant to this application is that on 16 September 2021 at Skilpadhek, on the border to Botswana, the respondent detained the truck and trailer that the applicant uses to transport fuel to Botswana. Pursuant to an export entry made on behalf of the applicant, the respondent issued a letter of demand demanding payment of duties on the fuel, on the basis that the fuel has been irregularly dealt with in terms of the Custom and Excise Act 91 of 1964 (the Act). The Applicant responded to the letter of demand by requesting the truck, trailer and fuel detained and requested suspension of payment pending the action of review proceedings.

[3] The applicant was not satisfied with the respondent's response that a committee would consider its request. The Applicant issued a section 96 notice on 16 November 2021 and launched this urgent application a week later.

[4] THE MAIN ISSUES IN MY VIEW, RELEVANT TO THIS URGENT APPLICATION ARE THE FOLLOWING:

[5] (i) Is it in the interest of justice that the period of one month in a section 96 notice ought to be reduced.

(l) Is the relief sought by the applicant in Part A final or justified.

[6] In terms of the provisions of section 102 the applicant bears the onus to prove the lawfulness of its conduct.

[7] The applicant in arguing for the relief sought in the papers submitted that it has an obligation to pay demurrage. On careful perusal of the papers, the transporter of the fuel was contracted by Puma Botswana and not the applicant. In terms of the contract of sale signed by the applicant, ownership the fuel passed to the purchaser. Crucially, the purchaser is not a party to the proceedings.

[8] In my view the relief sought by the applicant is not interim in that once the vehicle is released there is no guarantee the vehicle will return to South Africa with the fuel sale should Part B not proceed or succeed. The vehicle is registered in Botswana and its owned by a Botswana Transport company.

[9] Based on what I have said above; I think it is no necessary to delve into the issue of irregular dealing.

[10] Importantly is the principle of pay now argue later, in terms of the Act, is applicable.

The applicant did not provide sufficient evidence why the principle should not be applicable to it. Further in paragraph 12 of the annexure TMZ to the papers,

the applicant conceded that the amount demanded would not result in irreparable hardships to it

ORDER:

[11] The matter is heard on an urgent application in terms of section 6 (12) of the uniform rules.

[12] The application in respect of Part A is dismissed.

[13] The applicant is ordered to pay the respondents costs.



**HON. AP LEDWABA
DEPUTY JUDGE PRESIDENT OF THE
HIGH COURT**

HEARD ON: 14 December 2021

FOR THE APPELLANT: Ms L F Laughland
(Instructed by EDWARD NATHAN SONNENBERGS)

FOR THE RESPONDENT: Mr John Peter SC
(Instructed by: VDT Attorneys Inc)

DATE OF JUDGEMENT: 06 May 2022