THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 8 July 2025

Status: Immediate

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The Commissioner for the South African Revenue Service v African Bank Limited (242/2024) [2025] ZASCA 101 (8 July 2025)

Today the Supreme Court of Appeal (SCA) dismissed the appeal with costs including the costs of two counsel, where so employed.

This was an appeal against the judgment and order of the Tax Court of South Africa, Western Cape (the tax court) dismissing the appellant's special plea that the tax court lacked jurisdiction to adjudicate upon and determine the appeal lodged to it in terms of s 107 of the Tax Administration Act 28 of 2011 (the TAA). The appeal was with leave granted by that court. The appeal concerned the interpretation of s 32(1)*(a)(iv)* read with s 17(1) of the Value Added Tax Act 89 of 1991 (the VAT Act). The question was whether a ratio determination made by the appellant, the Commissioner for the South African Revenue Service (the Commissioner) under s 17(1) of the VAT Act constituted a refusal as contemplated in s 32(1)*(a)(iv)* of the VAT Act.

The appellant is the Commissioner for the South African Revenue Service (SARS) and the respondent is African Bank Limited (African Bank), a registered bank and Value Added Tax vendor. In terms of s 7 of the VAT Act, African Bank as a vendor was, subject to the exemptions, exceptions, deductions, and adjustments, liable to pay VAT on the supply of goods and services supplied by it in the course or furtherance of its enterprise calculated at the rate of 15 per cent on the value of the supply concerned. It was entitled to deduct, as input tax, the VAT incurred by it on goods and services acquired for the purposes of consumption, use or supply in the course of making taxable supplies.

The VAT Act provides in s 17 for the method whereby the deductible 'input tax' is calculated where the goods or services are acquired partly for consumption, use or supply in the course of making taxable supplies and partly for another use. It is clear from s 17(1) that it obliges a VAT vendor that acquires supplies for mixed purposes to make permissible deductions of input tax in accordance with an apportionment ruling made by the. The ruling that was in place at the relevant time was Binding General Ruling 16 (BGR 16), which the Commissioner issued on 25 March 2013 and reissued on 30 March 2015 with effect from 1 April 2015, and which authorised the vendors to apply the varied standard turnover-based method of apportionment in determining Commissioner the ratio contemplated in s 17(1).

The main issue which arose for consideration in this appeal was whether the tax court had jurisdiction to hear the appeal lodged to it in terms of s 107 of the TAA. The Commissioner contended that the tax

court lacked jurisdiction to hear the appeal because he did not refuse to approve the method for the determination of apportionment ratio. The Commissioner argued that there was no decision as contemplated in s 32(1)(a)(iv) of the VAT Act. African Bank argued otherwise.

The following facts gave rise to the dispute. On 21 September 2020 African Bank's representative requested the Commissioner to issue a binding VAT ruling to approve a method to determine the apportionment ratio. It sought confirmation from the Commissioner that African Bank 'may continue to apply transaction count apportionment method as set out in its previous ruling dated 12 August 2019 (Reference 2017/323 (28/17/2)), with the modifications set out in section 5 of [its] application'. On 23 September 2021 the Commissioner declined the request and instead issued a substantially different ruling.

On 13 October 2021 African Bank objected to the Commissioner's ruling. Its complaint was that the Commissioner did not approve the alternative method of apportionment for determining the ratio contemplated in s 17(1) of the VAT Act as requested by it. Instead, the Commissioner unilaterally approved another alternative method, not requested by African Bank. The Commissioner disallowed the objection and advised African Bank to appeal if it was dissatisfied with the decision. As advised, African Bank lodged an appeal in the tax court. In the appeal, African Bank requested that the ruling be altered to one approving the alternative method of apportionment requested by it. The Commissioner opposed the appeal. Before the hearing of the appeal, the Commissioner sought and obtained leave from the tax court to amend its rule 31 statement by introducing the special plea challenging the tax court's jurisdiction to hear the appeal.

The Commissioner contended that his refusal on 23 September 2020 to grant the apportionment ratio in the terms sought by African Bank was not a decision which was subject to objection and appeal procedures under s 32(1)*(a)(iv)*. This was because that his approval of an alternative method of apportionment ratio was not a decision 'refusing to approve a method for determining the ratio contemplated in section 17(1)'. The Commissioner argued that the provisions of s 32(1)*(a)(iv)* were clear and unambiguous. To constitute a decision that was subject to objection and appeal procedures, the Commissioner must have refused to approve any method for determining the ratio. This was so, ran the argument, because the word 'refusing' was qualified by the words 'to approve a method for determining the ratio contemplated in section 17(1)'. The Commissioner argued that because he determined an apportionment ratio in this case, albeit not the one requested, there was no refusal decision and that being the case, the jurisdiction of the tax court was not engaged. The tax court dismissed the Commissioner's special plea. The Commissioner appealed against the tax court's judgment.

The SCA Court dismissed the Commissioner's appeal. It held that the literal interpretation of s 32(1)*(a)(iv)* contended for by the Commissioner failed to have regard to the context and the purpose of the section. That purpose was to provide remedies to the vendors who are aggrieved by the Commissioner's decision and such remedies could be sought by way of an objection and the appeal procedures. The interpretation of the Commissioner, if followed, would have resulted in vendors being deprived of their rights to seek remedies provided for under s 32(1)*(a)(iv).* VAT vendors were aggrieved where the Commissioner refused to approve a method for determining the ratio which they considered to be appropriate for their businesses and instead issued a determination which was different from the determination requested. The construction of the section contended for by African Bank was to be preferred to the one advanced by the Commissioner as it gave effect to the purpose of the remedies of objection and appeal provided by s 32(1)*(a)(iv)* of the VAT Act. Legislation must be interpreted purposively. Moreover, the construction of the section contended for by the Commissioner encouraged piecemeal adjudication of disputes which would prolong litigation and lead to wasteful use of judicial resources.

The SCA concluded that the tax court was correct therefore in finding that because the Commissioner had made an alternative ruling to the one requested by the African Bank, this amounted to a refusal to

approve a method for determining the ratio as contemplated by s 32(1)*(a)(iv)* and confirmed the dismissal of the special plea by the tax court.

In the result the appeal was dismissed with costs including the costs of two counsel, where so employed.

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