REPUBLIC OF SOUTH AFRICA

IN THE TAX COURT OF SOUTH AFRICA

(HELD AT GAUTENG LOCAL DIVISION, JOHANNESBURG)

CASE NO: VAT 1715

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

…… ……

Date **ML TWALA**

In the matter between:

ABC (PTY) LTD APPELLANT

and

THE COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE RESPONDENT

J U D G M E N T

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives by e-mail. The date and time for hand-down is deemed to be 10h00 on the 11th December 2020.

TWALA J

[1] Before I commence with this judgment, I would like to extend my sincere gratitude and appreciation for the members of this Court, Ms Xaba and Mr Nhleko for their invaluable contribution and assistance in issues that involved their respective fields of expertise. Both concur with this judgment as far as the common cause facts are concerned as the issues of interpretation of the law falls exclusively within the domain of the presiding Judge.

[2] Central to this appeal, is the issue whether or not the appellant is liable, in terms of the Value Added Tax Act, 89 of 1991("the Act"), to pay value added tax ("the Vat") in the sum of R8 608 219.85 and interest thereon raised by additional assessments which included the levying of output tax on the supplementary commission and or incentive at the standard rate issued by the respondent on the 29th of March 2017 for the tax period February 2012 to December 2016.

[3] It is common cause that the appellant is a registered vendor in terms of the Act and carries on business as a travel agent which includes the selling of air tickets to its clients for local and international travel and is accredited by the International Air Transport Association ("IATA"). During the tax period of February 2012 to December 2016, the appellant concluded certain agreements with the airlines which have a local presence in the Republic. The three airlines are X Airways, Y Airways and Z Airways. These agreements were materially on the same terms and conditions and provided for the payment of a predetermined percentage of the commission calculated by reference to the volumes or thresholds reached, measured in monetary terms, of the international airline ticket sales on each airline arranged by the appellant covering a certain period determined in accordance with the formula agreed upon with each airline.

[4] The commission to be paid by the airlines is described as the international supplementary commission or incentive in these agreements. Furthermore, the quantum of the tax amount and the interest thereon are not in dispute since it was agreed upon when the matter was referred for alternative dispute resolution. It is the international supplementary commission or incentive which requires determination whether it is subject to Vat at a rate of zero per cent or the standard rate of 14% in terms of the Act.

[5] Although the respondent is opposing the appeal, it closed its case without leading any evidence after the appellant lead evidence of one witness, Mr M, and opted to close its case. The appellant has lodged this appeal in terms of section 107(1) and (4) of the Tax Administration Act, 28 of 2011("the TAA").

[6] Without regurgitating the evidence of Mr M, he testified in a nutshell on the overview of how the international supplementary commission is raised in the travel industry. He was initially employed by the Bidvest Group as Chief Financial Officer (CFO) of the Bidvest Travel Service in January 2000. From May 2019 to February 2020 he was the CFO of the appellant and he was involved with this issue of the additional assessment raised by the respondent in this case. Pre-2005 the travel agencies earned a standard commission at a flat rate of 7% on all airline tickets sold by the agent which was paid by the airlines. In 2005 the commission structure was changed by the airlines and the standard commission was reduced to 1%, with other airlines opting to completely cancel the payment of commission. The travel agents were then forced to charge the client a fee on the air ticket.

[7] As a result of the change in the commission structure, the travel agents then concluded agreements with some of the airlines in terms whereof an international supplementary commission structure was introduced which was driven by the volumes of tickets sold for international travel calculated in monetary terms. When these volumes or targets were reached or exceeded over a particular period the airline would pay the supplementary commission or incentive calculated on the agreed formula and or percentage. If the target is not met no incentive is payable by the airliner. Whilst in the employ of the appellant and being involved in IATA as the association's treasurer, the international supplementary commission has never been regarded as subject to Vat at the standard rate but was regarded as vatable at a zero rate like the standard commission earned on international airline travel tickets.

[8] Mr M admitted under cross examination by Advocate B SC, assisted by Advocate Nxumalo, that pre-2005 the whole agency commission came from the airlines at the rate of 7% that was in place then. Post 2005 airlines opted to pay no commission at all or only 1% – hence the airlines started charging the client a fee for the air ticket. However, the client is able to fly to its destination once the ticket is paid for and issued as it is not dependent on the targets agreed upon between the agent and the airliner.

[9] It was submitted by Advocate J SC, counsel for the appellant, that Vat is levied on the supply of service by the vendor and not the consideration therefore. If the supply of services is levied at zero per cent, so it was contended, then the consideration paid for those service is subject to be levied Vat at zero per cent. Since the international supplementary commission is based on the volumes, measured in monetary terms, of airline tickets sold over a particular period for international travel of passengers which is in terms of the Act subject to Vat at zero per cent, the supplementary commission is therefore not subject to Vat on the standard rate but should also be rated at zero per cent. The appellant, so the argument went, has not added anything else to its normal service for the arranging of transport or to secure the transport of its passengers for international travel to reach the volumes agreed upon with the airlines other than to sell the airline tickets to its clients.

[10] It was further contended by counsel for the appellant that the agreements concluded by the appellant and the three airlines do not create a separate obligation for the appellant to do something extra other than to sell more airline tickets to meet the set targets or volumes. The marketing and promotion of the airlines, so it was contended, was done and paid for separately and all its taxes were catered for separately. Therefore it is not a service being supplied by the appellant in addition to the selling of the airline tickets to meet the set volume. The respondent has failed to establish a proper basis both in fact and law, to split what is a single zero rated supply into a separate single zero rated and taxable supply. In other words, the respondent has failed to show this Court the supply of services by the appellant to the airlines which attracts Vat outside the prescripts of section 11 of the Act.

[11] Advocate B SC contended on behalf of the respondent that there are two types of agreements involved in this case. The first is a tripartite agreement involving the travel agent, the client/passenger and the airline and the second being a bilateral agreement between the travel agent and the airline. The first agreement is for the arranging of transport or the transporting of passengers. Once the airline ticket is issued to the client, it entitles the client to fly and creates an obligation on the airline to transport the client to the chosen destination on the particular date. The second agreement has nothing to do with the transportation or arranging for the transportation of the client but has everything to do with the volumes of airline tickets sold in a particular period which creates an obligation on the airline to pay the incentive to the travel agent.

[12] The supplementary commission, so the argument went, is dependent on the thresholds or volumes being met, which thresholds do not determine the entitlement of the passenger to be transported nor does it comprise the service of arranging transport for international travel. The supplementary commission or incentive is not paid for the sale of airline tickets which is an instrument to transport the passenger. For the transportation of passengers or arranging transport of passengers for international travel, so it was contended, the travel agent is paid a fee by the client and 1% standard commission by the airlines for each airline ticket sold and this is subject to Vat at the rate of zero per cent. The supplementary commission or incentive is earned when the travel agent meets the revenue thresholds or volumes from the sale of airline tickets and not from the service comprising of the arranging of transport or the transport of passengers.

[13] I agree with both counsel that the issue to be determined in this case is narrow and involves the interpretation of certain provisions of the Act. However, it is now settled and has been decided in a number of judgments that the interpretation of a document should start by considering the words contained in that document and not in isolation but the words should be read and interpreted in the context of the whole document.

[14] In *Novartis v Maphil [2015] ZASCA 111*, the Supreme Court of Appeal alluded to the following:

> "[27] I do not understand these judgments to mean that interpretation is a process that takes into account only the objective meaning of the words (if that is ascertainable), and does not have regard to the contract as a whole or the circumstances in which it was entered into. This court has consistently held, for many decades, that the interpretative process is one of ascertaining the intention of the parties – what they meant to achieve. And in doing that, the court must consider all the circumstances surrounding the contract to determine what their intention was in concluding it. KPMG, in the passage cited, explains that parole evidence is inadmissible to modify, vary or add to the written terms of the agreement, and that it is the role of the court, and not witnesses, to interpret a document. It adds, importantly, that there is no real distinction between background circumstances, and surrounding circumstances, and that a court should always consider the factual matrix in which the contract is concluded – the context – to determine the parties' intention.
>
> [28] The passage cited from the judgment of Wallis JA in Endumeni summarizes the state of the law as it was in 2012. This court did not change the law, and it certainly did not introduce an objective approach in the sense argued by Norvatis, which was to have regard only to the words on the paper. That much was made clear in a subsequent judgment of Wallis JA in *Bothma-Botha Transport (Edms) Bpk v S Bothma & Seun Transport (Edms) Bpk* [2013] ZASCA 176; 2014 (2) SA 494 (SCA), paragraphs 10 to 12 and in *North East Finance (Pty) Ltd v Standard Bank of South Africa Ltd* [2013] ZASCA 76; 2013 (5) SA 1 (SCA) paragraphs 24 and 25. A court must examine all the facts – the context – in order to determine what the parties intended. And it must do that whether or not the words of the contract are ambiguous or lack clarity. Words without context mean nothing.
>
> [29] Referring to the earlier approach to interpretation adopted by this court in *Coopers & Lybrand & others v Bryant* [1995] ZASCA 64; 1995 (3) SA 761 (A) at 768A-E, where Joubert JA had drawn a distinction between background and surrounding circumstances, and held that only where there is an ambiguity in the language, should a court look at surrounding circumstances, Wallis JA said (para 12 of Bothma-Botha):
>
> > 'That summary is no longer consistent with the approach to interpretation now adopted by South African courts in relation to contracts or other documents, such as statutory instruments or patents. While the starting point remains the words of the document, which are the only relevant medium through which the parties have expressed their contractual intentions, the process of interpretation does not stop at a perceived literal meaning of those words, but considers them in the light of all relevant and admissible context, including the circumstances in which the document came into being. The former distinction between permissible background and surrounding circumstances, never very clear, has fallen away. Interpretation is no longer a process that occurs in stages but is "essentially one unitary exercise" [a reference to a statement of Lord Clarke SCJ in *Rainy Sky SA v Kookmin Bank* [2011] UKSC 50, [2012] Lloyd's Rep 34 (SC) para 21].

[30] Lord Clarke in Rainy Sky in turn referred to a passage in *Society of Lloyd's v Robinson* [1999] 1 All ER (Comm) at 545, 551 which I consider useful.

> 'Loyalty to the text of a commercial contract, instrument, or document read in its contextual setting is the paramount principle of interpretation. But in the process of interpreting the meaning of the language of a commercial document the court ought generally to favour a commercially sensible construction. The reason for this approach is that a commercial construction is likely to give effect to the intention of the parties. Words ought therefore to be interpreted in the way in which the reasonable person would construe them. And the reasonable commercial person can safely be assumed to be unimpressed with technical interpretations and undue emphasis on niceties of language.' "

[15] In *Tshwane City v Blair Atholl Homeowners Association* 2019 (3) SA 398 (SCA) the Supreme Court of Appeal stated the following:

> "Para 61 It is fair to say that this Court has navigated away from a narrow peering at words in an agreement and has repeatedly stated that words in a document must not be considered in isolation. It has repeatedly been emphatic that a restrictive consideration of words without regard to context has to be avoided. It is also correct that the distinction between context and background circumstances has been jettisoned. This court, in *Natal Joint Municipal Pension Fund v Endumeni Municipality* 2012 (4) SA 593 (SCA) ([2012] All SA 262; [2012] ZSCA 13), stated that the purpose of the provision being interpreted is also encompassed in the enquiry. The words have to be interpreted sensibly and not have an unbusinesslike result. These factors have to be considered holistically, akin to the unitary approach."

[16] Before embarking on the interpretation exercise, it is apposite at this stage to mention the relevant sections of the Act to put matters in the correct perspective.

[17] The Act defines consideration as follows:

> "consideration, in relation to the supply of goods or services to any person, includes any payment made or to be made (including any deposit on any returnable container and tax), whether in money or otherwise, or any act or forbearance, whether or not voluntary, in respect of, in response to, or for the inducement of, the supply of any goods or services, whether by that person or by any other person, but does not include any payment made by any person as a donation to any association not for gain: Provided that a deposit (other than a deposit on a returnable container), whether refundable or not, given in respect of a supply of goods or services shall not be considered as payment made for the supply unless and until the supplier applies the deposit as consideration for the supply or such deposit is forfeited;"

[18] Section 7 provides as follows:

"**Imposition of value-added tax—**(1) Subject to the exemptions, exceptions, deductions and adjustments provided for in this Act, there shall be levied and paid for the benefit of the National Revenue Fund a tax, to be known as the value-added tax—

(*a*) on the supply by any vendor of goods or services supplied by him on or after the commencement date in the course or furtherance of any enterprise carried on by him;

(*b*) ……..

Calculated at the rate of 14 per cent on the value of the supply concerned or the importation, as the case may be."

[19] Section 11 provides the following:

"**Zero rating—**(1) ..

(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—

(*a*) The services (not being ancillary transport services) comprise the transport of passengers or goods—

(i) From a place outside the Republic to another place outside the Republic; or

(ii) From a place in the Republic to a place in an export country; or

(iii) From a place in an export country to a place in the Republic; or

(*b*) The services comprise the transport of passengers from a place in the Republic to another place in the Republic to the extent that that transport is by aircraft and constitutes "international carriage" as defined in Article 1 of the Convention set out in the Schedule to the Carriage by Air Act, 1946 (Act No. 17 of 1946); or

(*c*) …

(*d*) (i) The services comprise the—

(*aa*) Insuring;

(*bb*) arranging of the insurance; or

(*cc*) arranging of the transport,

of passengers or goods to which any provision of paragraph (*a*), (b) or (*c*) applies; or

(ii) insuring or the arranging of the insurance of passengers on an international journey, where the insurance of those passengers is provided under a single inbound or outbound insurance policy in respect of which a single premium is levied; or

(*e*) …

[20] Section 64 provides the following:

> **Miscellaneous—**(1) Any price charged by any vendor in respect of any taxable supply of goods or services shall for the purposes of this Act be deemed to include any tax payable in terms of section 7(1)(a) in respect of such supply, whether or not the vendor has included tax in such price.
>
> (2) …

[21] It is long established that VAT is an indirect tax on the consumption of goods and services in the economy. This form of revenue is raised for government by requiring certain businesses to register and to charge VAT on the taxable supplies of goods and services. These businesses become vendors that act as the agent for government in collecting the vat. However, there are certain supply of services which are vatable at the rate of zero per cent in terms of the Act.

[22] As indicated above, the issue that arises in this case is whether the achieving of the agreed targets or thresholds and payment of the supplementary commission is subject to tax in terms of the Act. The first issue to be determined is whether the achieving of the targets and or thresholds as set in the agreements concluded by the airlines and the travel agent by selling more airline tickets for international travel is a supply of services to arranging transport or transport of passengers. The second issue is, if it is a supply of service for arranging of transport or the transport of passengers, is it subject to be charged Vat at the standard rate or at a rate of zero per cent in terms of section 11.

[23] In order to determine the above issues, it is necessary to mention and consider certain clauses of the three agreements concluded by the appellant and the three airlines, being X Airways, Y Airways and Z Airways. The same principle of interpretation of documents, the starting point being the words used in the document and its context, is applicable in the interpretation of the clauses of these agreements which are similar in a material respect. For the purposes of this judgment, it would not be necessary to repeat some of the clauses that are similar.

[24] The relevant clauses of the Z Airways agreement start as follows:

> "Whereas
>
> i. …
>
> ii. …
>
> iii. The Agent and Z Airways SA wish to enter into an agreement with the view to promoting Ticket sales.

Definitions:

1.1.10 Flown Revenue –means the aggregate rand value of all Ticket sales effected by the Agent, through the Designated Outlets, less;

1.1.10.1 Standard Agent Commission;

1.1.10.2 taxes and other duties payable pursuant to such Ticket sales; and

1.1.11 Flown Revenue Target – means the amount stipulated in the incentive Schedule as such, being the minimum amount of Flown Revenue which the Agent needs to achieve in order to qualify for any Commission;

1.1.24 Standard Agent Commission – means the Standard Commission through the IATA BSP, if any, payable by Z Airways to the Agent in consideration for sales of Z Airways services and products effected by the Agent from time to time;

Clause 3

Incentive Scheme

1. Z Airways SA shall pay the Agent commission, subject to the Agent achieving the Flown Revenue Target during the applicable Incentive Period as per annexure A of this agreement; …

[25] The agreement of Y Airways provides as follows:

"Whereas

(A) The Airline has appointed the Agent as its non-exclusive Agent to promote and sell the Airline's tickets;

(B) The Airline is willing to offer the Agent an incentive in respect of the fares sold through the Agent's Consumer Sales Division subject to the terms and conditions set out in this agreement;

Clause 3

Sales Incentive and Marketing

1. The Airline agrees to make available to the Agent the Sales Incentive for Qualifying Sales during the Term subject to the terms and conditions of this agreement;

2. …

3. The parties shall agree on a Sales and Marketing plan on the terms set out in Schedule 3 of this agreement;"

[26] The X Airways agreement provides as follows:

"Clause 1

Definitions

Baseline – means an amount of R8 million in Flown Revenue;

Clause 2

Introduction:

2.1 …

2.3 X Airways wishes to appoint the Agent to sell tickets for flights operated by X Airways in exchange for a commission, on the terms and conditions set out in this agreement.

Clause 6

Services

6.1 …

6.2 The Agent shall ensure that the passenger or purchaser of the ticket destined to be included in the Flown Revenue shall be comprehensively informed of the alternative offerings available on the Sector prior to purchasing a X Airways ticket.

Clause 7

International Supplementary Commission

7.1 As consideration for the rendering of the services, X Airways shall pay to the Agent the International Supplementary Commission;

7.2 ...

7.3 The calculation of the International Supplementary Commission shall be calculated as per part 1 of Annexure “A” and the “back to rand one” principle shall apply. The incentive shall only be calculated from the first band that attracts the International Supplementary Commission rate discount. The Agent will be entitled to International Supplementary Commission rate discount commission on a Straight Line Basis.

7.4 …

7.6 If the Agent’s Flown Revenue for the Period exceeds the base, X Airways shall pay the International Supplementary Commission to the Agent for all Flown Revenue in excess of the base as stated in part 1 of annexure A in particular;

7.6.1 …

7.6.2 the International Supplementary Revenue will be paid on only Flown Revenue achieved by the Agent above the base during the Period, and not for Flown Revenue achieved by the Agent in reaching the base.

Clause 9

Promotional Campaigns

9.1 The parties may undertake joint initiatives to market and promote X Airways flights to all destinations, the details of such initiatives to be recorded in writing and subject to an approved quarterly business plan.

9.2 …

[27] It is noteworthy that there are schedules and or annexures attached to the three airline agreements which, in a nutshell, set the base line and or thresholds or targets to be achieved by the agent before the international supplementary commission or incentive, as some schedules describe it, becomes payable and the methodology for calculating same. For example, the X Airways schedule set the threshold or target at R8 million and once the sales of the international airline tickets meet or reaches this target, what is referred to in the schedules and or annexures to the agreement as 'flown revenue target', the agent is entitled to payment of a set or predetermined percentage of the international supplementary commission on the total flown revenue target after certain deductions have been made.

[28] The simple and plain language used in section 11 and the purposive interpretation thereof in the context of the whole section and the Act is that Vat in respect of the supply of services for international travel of passengers, that is, the arranging of transport or transport of passengers on international travel, shall be charged at the rate of zero per cent. The arranging of transport and or the transport of passengers on international flights is achieved once the passenger has paid for and the instrument for travelling has been issued entitling the passenger to travel on a particular airline, on a particular date to a chosen destination and the airline is obliged to transport the passenger. Once the instrument of travel has been paid for by the passenger, the agent is entitled to its fee which is part of the price being paid for the airline ticket and the 1% standard commission which is paid by the airline.

[29] I am unable to disagree with counsel for the respondent that section 11(2)(*d*)(i)(*cc*) of the Act provides for Vat to be charged for the supply of services for arranging of transport or for transport of passengers on international journeys at the rate of zero per cent. The purpose of the Act is to raise revenue for the government by requiring certain businesses to register and to charge Vat on taxable supplies of goods and services. Section 11 provides for the exceptions and exemptions – hence on the supply of services for arranging of transport and or the transport of passengers for international travel Vat is charged at the rate of zero per cent. I am in agreement with counsel for the appellant that it is a policy decision for the legislature to provide for such supply of service to be vatable a the rate of zero per cent as an incentive for the free movement of people and to promote tourism in the Republic.

[30] The common thread in the three agreements concluded between the airlines and the appellant is that the appellant is appointed as an agent to market and promote the selling of the airline tickets for international travel. These agreements provide in their respective schedules and or annexures for the airlines to pay the appellant a determined percentage of international supplementary commission or incentive on reaching the set thresholds or targets or volumes of sales achieved over a specific period known as the flown revenue target, which is measured in monetary terms. The trigger point for the payment of the international supplementary commission or incentive is the reaching or meeting of the set thresholds or targets of sales of the international airline tickets of the respective airlines.

[31] I am therefore unable to agree with the contentions of the appellant that the respondent has not shown or established the additional supply of services the appellant rendered to the airlines, other than the selling of airline tickets for the transport of passengers, which attract Vat to be charged at the standard rate of 14% in terms of section 7 of the Act. Furthermore, there is no merit in the argument that the respondent is basing its contentions on the consideration paid to the appellant by the airlines and not the supply of services. It is my respectful view that these three agreements provide for the appellant to market and promote the selling of the international airline tickets and on reaching the targets and thresholds agreed upon, the respective airlines will pay the appellant the international supplementary commission.

[32] The clear and plain interpretation of section 11 is that the selling of airline tickets for international travel is subject to Vat at the rate of zero per cent. However, applying the same principle to interpret the three agreements in their plane language and purposively, it is clear that the intention of the parties was to conclude these agreements for the purpose of marketing and promotion of the sales of airline tickets for international travel. Put differently, the appellant was to supply the services of marketing and promotion of the sales of the airline tickets for international travel and when the flown revenue target is met, which is measured in monetary terms over a specified period, the airlines would pay a consideration which is the international supplementary commission.

[33] I do not agree with the contentions that the appellant has done nothing more than to sell the airline tickets to earn the supplementary commission. The appellant is conflating the issues when it considers the marketing and promotion of the sales of the airline tickets for international travel as one transaction as the supply of service which falls within the compass of section 11(2)(*d*) which is the arranging of transport or transport of passengers. For the supply of services which fall within the prescripts of section 11(2)(*d*) the appellant was paid its standard commission by the airlines and its fee when the passenger bought and was issued with the instrument of travel, the airline ticket. However, the supplementary commission which is dependent on meeting the flown revenue targets over a period of time, does not affect the

appellant's entitlement to the standard commission. I hold the view therefore that the supply of services of marketing and promotion of sales of airline tickets for international travel to reach the flown revenue targets does not comprise the arranging of transport or transport of passengers.

[34] I am in agreement with counsel for the appellant that the taxes for the marketing and promotion of the sales of the airline tickets are paid at that point and have nothing to do with the arranging of transport of passengers. However, the consideration (international supplementary commission) for the services rendered by the appellant in the marketing and promotion of the sales of the airline tickets for international travel is only paid by the airlines once the thresholds and or flown revenue targets set in the agreements have been met or achieved. It follows ineluctably therefore that the incentive is paid by the airlines to encourage the appellant to market and promote the sales of the international airline tickets and as such does not interfere with the standard commission and fee that is paid to the appellant at the point of concluding the sale of the airline tickets.

[35] I do not agree with the contentions of the appellant that the flown revenue target is only reached because of the sales of airline tickets for the transport of passengers and that the incentive should therefore not be subject to be charged Vat at the standard rate of 14%. I hold the view that the international supplementary commission is not paid for the transport of passengers but only for the successful campaigns of marketing and promotion of the sales of airline tickets for international travel that meet the set flown revenue targets as agreed upon between the parties. It is my considered view therefore that the supplementary commission or incentive is subject to be charged Vat at the standard rate of 14% for it is not paid for by the airlines for the arranging of transport of passengers but for the successful campaigns to market and promote the selling of international travel airline tickets.

[36] It is my respectful view therefore that the language used in the three bilateral agreements is plain, clear and unambiguous. The intention of the parties is that the appellant is appointed as an agent to market and promote the sales of airline tickets for international travel. When the appellant successfully markets and promotes the selling of the airline tickets for international travel over a determined period and meet a set flown revenue target, it is paid a consideration in the form of incentives calculated in terms of the set guidelines in the agreements and their respective schedules. The international supplementary commission is paid to the appellant over and above the fee it charges the passenger and the standard commission of 1% which is paid by the airlines when the airline ticket is paid for by the passenger.

[37] The other issue which remain for determination is whether the supply of services of marketing and promotion of sales of the airline tickets is subject to the standard rate of Vat at 14% or as contended by the appellant that it is subject to Vat charged at the rate of zero per cent.

[38] I find myself in agreement with counsel for the appellant that in terms of section 7 Vat is charged on the supply of services and not on the consideration paid therefore. If the services rendered by the vendor is subject to Vat at the rate of zero per cent, the consideration paid therefore is by extension also subject to Vat at zero per cent. *In casu*, I have already found that the services of marketing and promoting of the sales of airline tickets for the international travel do not comprise of the arranging of the transport of passengers and therefore do not fall within the purview of section 11. I am of the considered view therefore that the services of marketing and promotion of sales of the airline tickets are subject to Vat like any other services as provided for in section 7 of the Act at the standard rate of 14%.

[39] The irresistible conclusion therefore is that the supplementary commission is paid as a consideration for the marketing and promotion of sales of the airline tickets for international travel and therefore is subject to be charged Vat at the standard rate of 14% for it does not involve the arranging of transport or the transport of passengers as envisaged in section 11 of the Act. In the result, it my considered view that the appeal should fail.

[40] On the issue of costs, normally the costs will follow the result unless there are circumstances that dictates otherwise. However, Advocate B SC submitted that the respondent does not insist on the appellant paying the costs of the appeal for the grounds of appeal in this case are not unreasonable. The issue involved in the appeal is the interpretation of the provisions of section 11(2)(*d*) of the Act. I agree that the issue involved in this case is the interpretation of the sections of the Act and therefore it cannot be said that the appellant was unreasonable in appealing the decision of the respondent to make the additional tax assessment. I am therefore satisfied that the proper order to be made in this case is that each party pays its own costs.

[41] In the circumstances, I make the following order.

1. The appeal is dismissed.
2. Each party to pay its costs of the appeal.

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TWALA M L

JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION