



## **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:** *31 May 2023*

**Status:** *Immediate*

**The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal**

*The Commissioner for The South African Revenue Service v Free State Development Corporation* (Case No 1222/21) [2023] ZASCA 84 (31 May 2023)

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The Supreme Court of Appeal (SCA) today dismissed an appeal against the judgment of the Free State Tax Court, Bloemfontein, (Musi JP) which granted an order permitting the respondent to withdraw its statement of grounds of appeal and file an amended statement.

The appellant is the South African Revenue Service (SARS). The respondent is the Free State Development Corporation, a taxpayer and a registered VAT vendor, in terms of the VAT Act. It is the official economic development agency for the Free State province. As such, when the Department of Economic, Small Business Development and Tourism and Environmental Affairs (DESTEA) wished to establish a Special Economic Zone (SEZ) in Harrismith, it then came to light that the identified land was registered in the name of the taxpayer. Thus, DESTEA requested the taxpayer to apply for a SEZ licence from the Department of Trade and Industry (DTI) on its behalf, on the understanding that the SEZ, when established, would be transferred into the name of the entity to be established. Thereafter, two agreements were concluded between the DTI and the taxpayer and sums of money were granted to the taxpayer for that financial year (2013/20014). The taxpayer declared the output taxes, yet, claimed them as zero-

rated supplies. It is these claims which SARS found that the taxpayer had erroneously claimed as 'zero-rated' that brought the matter before the Tax Court.

This appeal turns on whether the Tax Court was correct in granting an order, permitting the respondent, to withdraw its statement of grounds of appeal filed in terms of the Tax Court Rules, and to file an amended statement of grounds of appeal (the amended statement) against additional assessments levied by SARS. SARS submitted that the taxpayer is bound by its own declarations that the supplies were 'zero-rated'. The taxpayer, in its notice of objection, had claimed that the payment received was not linked to 'a supply' as required by the VAT Act but relied upon an incorrect legal conclusion in claiming that it was 'zero rated'. The basis of the objection and the claim for zero rating were similarly based on the nature of the transactions and the fact that the payments were not linked to an actual supply of goods or services. The amended statement claimed that, on the basis of the nature of the transactions, there was no 'supply' or 'deemed supply'.

SARS opposed the application on the basis that the proposed amendment sought to introduce grounds of appeal which constituted amended grounds of objection against the assessments not previously objected to. It also contradicted the taxpayer's VAT returns (in which the taxpayer claimed that the supplies were zero-rated).

**Issue:** Against this background, the issue at stake is whether the ground of appeal in the amended statement constitutes a new ground of objection not previously raised, as provided for by the Tax Court Rules. If it does, then the Tax Court had no jurisdiction to grant the order which it did.

**Held:** In dismissing the appeal and upholding the grant of the amendment, the SCA considered that failing to do so would allow SARS to surpass its obligation not to levy taxes, which are not payable in terms of the law. The Court considered the taxpayer's contention that there would be no prejudice to SARS, since the granting of the amendment will allow for the true legal issues (i.e, whether a vatable transaction occurred when the taxpayer performed in terms of the agreements) between the parties to be ventilated. For these reasons, the SCA dismissed the appeal with costs including the costs of two counsel, where so employed.

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