



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 March 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 of the South African Revenue service and Another v Richards Bay Coal Terminal (Pty) Ltd [2023] ZASCA 39 (31 March 2023)

Today, the Supreme Court of Appeal (SCA) dismissed an appeal from the KwaZulu-Natal Division of the High Court, Durban (high court) in the above matter. The question the court had to deal with was whether an aggrieved taxpayer, seeking to challenge a tariff determination in terms of the Customs and Excise Act 91 of 1964 (the CEA), is restricted to the remedy of a wide appeal under s 47(9)(e) of the CEA.

In 2001, the Department of Finance introduced a diesel rebate scheme. The respondent, Richards Bay Coal Terminal (Pty) Ltd (RBCT), one of the leading coal export terminals in the world, registered for the diesel fuel levy scheme in 2009. It thereafter claimed rebates for the period 2009 to 2017. The first appellant, the Commissioner, South African Revenue Service (SARS), launched an investigation into those claims and on 4 December 2017, SARS demanded repayment of R7 126 934.63, plus interest for what it asserted were claims for 'non-qualifying activity' by RBCT.

RBCT's challenge to SARS' tariff determination was two-pronged: it sought to appeal the determination (s 47(9)(e) of the CEA) and to review it. As a result of the review application, RBCT sought the record of the tariff determination in terms of Uniform rule 53, alternatively, the documents constituting the record under Uniform rule 35(11). SARS refused production of such record on the basis that RBCT did not have a right of review and was therefore not entitled to it. According to SARS, if the high court lacks review jurisdiction, then Rule 53 does not apply and there would be no basis upon which to compel it to produce the record.

The high court concluded that it does, in fact, have review jurisdiction and granted an order directing compliance with the provisions of Rule 53(1)(b). On appeal, SARS argues that RBCT is not entitled to the record of decision because all that matters is whether the decision is 'correct' and it does not matter how it arrived at that decision. This argument misconstrues what is sought to be achieved in a review: the right to just administrative action, and it does not take into account the wording of s 33 of the Constitution. SARS' argument undermines the important principle in our law that decisions should not be taken in secret and that administrative bodies should be held accountable for their actions. This Court held that SARS' argument cannot be sustained because a taxpayer enjoys both a right of appeal in the wide sense under s 47(9)(e) as well as a right of review.

In the result, the appeal was dismissed.

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