SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

FROM The Registrar, Supreme Court of Appeal

DATE 29 November 2019

STATUS Immediate

Commissioner for the South African Revenue Service v Langholm Farms (Pty) Ltd (1354/2018) [2019] ZASCA 163 (29 November 2019)

Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal.

Today the Supreme Court of Appeal (SCA) upheld the appeal of the appellant, the Commissioner for the South African Revenue Service (SARS), against the decision of the Eastern Cape Division of the High Court, Grahamstown (the high court).

The respondent, Langholm Farms (Pty) Ltd is located about 27 km from Grahamstown in the Eastern Cape. It operates a pineapple growing enterprise and sells pineapples to Summerpride Foods (Pty) Ltd (Summerpride) which is situated 147 km away from the respondent in East London. The respondent delivers its pineapples to the Summerpride factory mainly using its own trucks, which transport the pineapples in loading bins specifically designed to facilitate the loading and offloading of such produce. When the trucks deliver the pineapples to Summerpride, they fill up with diesel at the Bathurst Co-Operative dispenser, a depot located at Summerpride, before returning to the respondent's farm with the empty bins. The trucks that are used for the transportation to Summerpride are not refuelled on the respondent's farm.

The respondent is registered as a VAT vendor and a recipient of a diesel rebate as envisaged in the Customs and Excise Act 91 of 1964 (the Act). The respondent submitted to the appellant a claim for a diesel rebate. After an audit, the appellant advised the respondent that the diesel used in transporting the pineapples and obtained from the Bathurst Co-Operative was a 'non-eligible usage' as in its opinion, in terms of s 75(1C)*(a)*(iii) of the Act, a rebate could only be claimed for diesel delivered, stored and dispensed from storage tanks situated on the respondent's premises. This interpretation was disputed by the respondent, which launched the present proceedings in the high court seeking declaratory orders on its interpretation of s 75(1C)*(a)*(iii).

Before the SCA, the appellant argued that the application was academic and that the declaratory orders did not fall within the ambit of s 21 of the Superior Courts Act 10 of 2013 as no dispute had arisen as yet concerning the interpretation of s 75(1C)*(a)*(iii) and, as such, the application was premature. The appellant expressed a clear view as to the proper construction of s 75(1C)*(a)*(iii) which was that refunds may only be claimed on fuel that was delivered, stored and dispensed from storage facilities on the premises of Langholm. In contrast the respondent contended that SARS had completed its audit and made its prima facie views known. In the respondent's view it would be absurd to hold that the taxpayer could not claim for diesel fuel

that is not stored on the farm and stored offsite. This raised a clear dispute for resolution by way of a declaratory order.

The SCA held that there was nothing objectionable in the respondent seeking clarity on the statutory interpretation that would influence the outcome of the appellant's audit. However, the SCA held that the language of s 75(1C)*(a)*(iii) was clear and unequivocal. On a plain reading, s 75(1C)*(a)*(iii) means that a taxpayer can only claim for the diesel fuel stored and used on its own premises.

Thus, the SCA held that the declaratory orders were granted on a mistaken view of the law. In the ordinary language of the section 'used' and 'has been used' relate to the premises of the taxpayer, whether it is in the past or in the present, and not to any other premises.

The SCA held that the respondent's complaint on absurdity must fail. In the circumstances, the appeal by SARS was upheld by the SCA.