Republic of South Africa

IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)

Case No: A 129/2014
Tax Court Case No. VAT 872

Before: The Hon. Mr Justice Hlophe (Judge President)
The Hon. Mr Justice Binns-Ward
The Hon. Mrs Justice Cloete

Date of appeal hearing: 30 January 2015
Date of judgment: 6 February 2015

In the matter between:

ABC (PTY) LTD Appellant

And

THE COMMISSIONER FOR THE
SOUTH AFRICAN REVENUE SERVICE Respondent

JUDGMENT

BINNS-WARD J:

[1] This is an appeal against the judgment of the tax court[1] (see ITC 1871 (2014) and 76 SATC 109[2]) dismissing the taxpayer's appeal to that court brought in terms of s 33 of the Value Added Tax Act 89 of 1991 ('the VAT Act') against certain

[1] Constituted in terms of s 116 of the Tax Administration Act 28 of 2011 ('TAA'), which came into operation on 1 October 2012.
[2] The judgment of the court a quo is also quoted in full in the critical review by TS Emslie published in Davis et al (ed) *The Taxpayer* (Book 62, December 2013) at 229.

assessments made by the Commissioner in respect of its liability to pay value added tax in the relevant 2006 and 2007 periods of assessment.[3] The appeal to this court is brought in terms of s 133(2)(a) read with s 270(2)(d) of the Tax Administration Act 28 of 2011 ('TAA').

[2] The taxpayer staged annual international jazz festivals in Cape Town during the period in question. In the course of that enterprise it concluded sponsorship agreements with South African Airways, the City of Cape Town, the South African Broadcasting Corporation and Telkom in terms of which the sponsors paid money towards and provided goods and services for the festivals, in return for which the taxpayer provided goods and services to the sponsors in the form of branding and marketing. The taxpayer and each of the sponsors were registered as 'vendors' in terms of the VAT Act.

[3] The appellant was liable to declare and pay output tax[4] on the goods and services provided to the sponsors in terms of the aforementioned sponsorship agreements. Its failure to have done so was identified in the course of a tax audit. This resulted in the assessments in issue.[5] The appellant does not dispute its liability for output tax on the transactions. The matter in contestation is whether it should be entitled to offset that liability with a deduction in respect of the input tax[6] in respect of

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[3] The appeal to the tax court (then constituted in terms of s 83 of the Income Tax Act 58 of 1962) was lodged on 8 July 2010. Section 33 of the VAT Act was repealed in terms of s 271 of the TAA. The appeal is deemed to have continued thereafter as if brought in terms of s 107 of the TAA.

[4] '*Output tax*' is the tax charged by a vendor in terms of s 7(1)(a) of the VAT Act. Section 7(1)(a) provides: '*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'.

[5] The assessments were made on 21 September 2009. The appellant lodged an objection to the assessments on 9 November 2009. The objection was disallowed by the Commissioner on 15 June 2010.

[6] 'Input tax', insofar as currently relevant is defined in the VAT Act as:

*'"**input tax**", in relation to a vendor, means-*

(a) tax charged under section 7 and payable in terms of that section by-

(i) a supplier on the supply of goods or services made by that supplier to the vendor… where the goods or services concerned are acquired by the vendor wholly for the purpose of consumption, use or supply in the course of making taxable supplies or, where the goods or services are acquired by the vendor partly for such purpose, to the extent (as determined in accordance with the provisions of section 17) that the goods or services concerned are acquired by the vendor for such purpose'.

the 'supplies' made to it by the sponsors. The Commissioner had declined to allow any deduction of input tax in the particular circumstances.

[4] It is common ground between the parties that, despite their part cash components, the transactions in terms of the sponsorship agreements may be regarded essentially as barter transactions. In consequence, and accepting, as one may, that the transactions were at arms' length, the value of the goods and services provided by the appellant to the sponsors in each case falls to be taken as the same as that of the counter performance by the relevant sponsor. The Commissioner was able to assess the sum of the appellant's liability for output tax on the basis of the information contained in the respective sponsorship contracts. Thus, for example, in the case of the transaction with South African Airways the value was determined as the monetary equivalent of the value of the transportation benefits provided to the taxpayer by the sponsor expressed in the contract in so-called 'travel rands'.[7] In an ordinary arms' length barter transaction the value that the parties to it have attributed to the goods or supplies that are exchanged seems to me, in the absence of any contrary indication, to be a reliable indicator of their market value. It is thus plain that the value of the goods and services provided to the taxpayer by the sponsors was equally determinable from the sponsorship contracts. (For reasons which are unexplained, and which do not appear to bear scrutiny, the Commissioner did not include the cash payment components of the sponsorships in the calculation of the value of the services provided to the sponsors by the appellant.)

[5] The sponsors were required in terms of s 7(1)(a) of the VAT Act to levy value added tax on the supply by them of the goods and services concerned to the appellant. In terms of s 20(1) of the Act the sponsors were obliged within 21 days of the supply of the goods or services concerned to issue the appellant with a tax invoice in respect of the supply. The tax invoice was required to set out, amongst other things, '*either - (i) the value of the supply, the amount of tax charged and the consideration for the supply; or (ii) where the amount of tax charged is calculated by applying the tax fraction to the consideration, the consideration for the supply and either the amount of the tax charged, or a statement that it includes a charge in respect of the tax and*

[7] It was common cause that 'travel rands' were air travel vouchers redeemable as payment for any SAA flight.

the rate at which the tax was charged'.[8] The appellant would, subject to the applicable provisions of the Act, be entitled to deduct the tax thus levied on it by the sponsors from its liability to the South African Revenue Service in respect of output tax.

[6] Section 16(2) of the VAT Act provided in relevant part as follows at the pertinent time:

> No deduction of input tax in respect of a supply of goods or services, the importation of any goods into the Republic or any other deduction shall be made in terms of this Act, unless-
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> *(a)* a tax invoice or debit note or credit note in relation to that supply has been provided in accordance with section 20 or 21 and is held by the vendor making that deduction at the time that any return in respect of that supply is furnished;
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> *(b)* (i) a document as is acceptable to the Commissioner has been issued in terms of section 20 (6); or
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> (ii) a document issued by the supplier in compliance with section 20 (7) or 21 (5); or
>
> (c) ….

[7] It is common ground that, notwithstanding requests by the appellant that they should do so, the sponsors had not provided the appellant with tax invoices and no documents of the nature described in s 16(2)(b) of the VAT Act had been issued. It is also common ground that the Commissioner was aware of the sponsors' failure to comply with their obligation to issue tax invoices, but, that notwithstanding his responsibility in terms of s 4(1) of the VAT Act 'to carry out' the provisions of the Act, he had taken no steps to procure compliance by the sponsors with their obligation, or to have them prosecuted for their failure to do so.[9] The tax court held that in those circumstances the appellant could not make deductions in respect of the input tax.[10]

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[8] Section 20(4)(g) of the VAT Act.

[9] Section 4(1) of the VAT Act has subsequently been repealed and effectively substituted by s 3(1) of the TAA.

[10] The tax court stated in its judgment that the appellant would have been well advised to have taken the steps necessary to enable it to create documents in terms of s 20(2) having the status of tax invoices rendered by the sponsor-suppliers. Section 20(2) of the VAT Act provides:

> *Where a recipient, being a registered vendor, creates a document containing the particulars specified in this section and purporting to be a tax invoice in respect of a taxable supply of goods or services made to the recipient by a supplier, being a registered vendor, that*

[8] The tax court judgment further held that the sponsors had in point of fact not charged VAT on the value of the goods and services supplied and that the appellant had not paid VAT to the sponsors in respect of the supply of such goods and services. It does not seem to me, however, that the observation by the learned judge a quo in this regard affected the material finding of the court that the appeal should fail because of the appellant's inability to satisfy the requirements of s 16(2)(a) or (b) of the VAT Act. It is in any event not apparent from the judgment on what basis the factual finding was made. It may have been predicated on the provisions of the SABC and SAA sponsorship contracts which expressly excluded VAT in certain respects. Thus, for example, clause 4.6 of the SAA contract provided '*All amounts in this agreement exclude VAT and VAT shall be paid by the SPONSOR upon receipt of a VAT invoice from* [the appellant]'. Counsel for the Commissioner advanced a similar line of argument before us on appeal relying on those contractual provisions.

[9] In my judgment the approach overlooks that what required to be determined in respect of the appellant's claim to be entitled to a deduction for input tax was the '*open market value*'[11] of the supplies given by the sponsors in consideration for the services provided by the appellant. In the context of what is accepted by the parties to have been akin to a barter transaction, the value of the goods and services supplied by the sponsors fell for tax purposes to be determined in terms of s 10 of the VAT Act. Section 10(3)(b) provides that '*For the purposes of this Act the amount of any consideration referred to in this section shall be - to the extent that such consideration is not a consideration in money, the open market value of that*

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document shall be deemed to be a tax invoice provided by the supplier under subsection (1) of this section where-

(a) the Commissioner has granted prior approval for the issue of such documents by a recipient or recipients of a specified class in relation to the taxable supplies or taxable supplies of a specified category to which the documents relate; and

(b) the supplier and the recipient agree that the supplier shall not issue a tax invoice in respect of any taxable supply to which this subsection applies; and

(c) such document is provided to the supplier and a copy thereof is retained by the recipient:

Provided that where a tax invoice is issued in accordance with this subsection, any tax invoice issued by the supplier in respect of that taxable supply shall be deemed not to be a tax invoice for the purposes of this Act.

That obiter statement of opinion was misconceived, with respect. It overlooked the appellant's inability to have complied with the cumulative requirements of paragraphs (a), (b) and (c) of the subsection.

[11] See the definition of the term in s 1 of the VAT Act read with s 3 of the Act.

consideration'. There has not been any dispute between the parties on the Commissioner's computation of the open market value of the goods and services in question. On the contrary, the value of the non-cash benefits received by the appellant from each of the sponsors was common cause in the tax court. There was also no contention in the tax court that the sponsors had not supplied the goods and services stipulated in the sponsorship agreements.

[10] Insofar as currently relevant s 10(2) of the VAT Act provides:

> '*The value to be placed on any supply of goods or services shall, save as is otherwise provided in this section, be the amount of the consideration for such supply, as determined in accordance with the provisions of subsection (3), less so much of such amount as represents tax: Provided that - (ii) where the portion of the amount of the said consideration which represents tax is not accounted for separately by the vendor, the said portion shall be deemed to be an amount equal to the tax fraction* [14/114[12]] *of that consideration*'.

Notwithstanding any contractual arrangements that were in place, the sponsors did not account separately for the tax on the consideration given by the appellant. The tax levied by them is thus deemed to have been an amount equal to the tax fraction of the open market value of the goods and services supplied. By virtue of its counterprestation in terms of the barter transaction, the appellant must be taken to have paid the tax and it should have been issued with the relevant tax invoices by the sponsors.

[11] In the circumstances the only question that the court below was called upon to decide was whether, in the context of the failure, despite demand, by the sponsors to have issued tax invoices, the provisions of either s 20(7)(b) or 16(2)(f) of the VAT Act should have been applied to allow the appellant the deductions in respect of input tax.

[12] Section 20(7)(b) provides:

> *Where the Commissioner is satisfied that there are or will be sufficient records available to establish the particulars of any supply or category of supplies, and that it would be impractical to require that a full tax invoice be issued in terms of this section, the*

[12] See the definition of '*tax fraction*' in s 1 of the VAT Act.

> *Commissioner may, subject to such conditions as the Commissioner may consider necessary, direct-*
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> *(a) …; or*
>
> *(b) that a tax invoice is not required to be issued; or*
>
> *(c) … .*

The Commissioner must be able to be satisfied as to two things before he may direct that a tax invoice is not required to be issued: (i) the existence or availability of sufficient documentary records and (ii) the impracticability of requiring a full tax invoice to be issued.

[13] It was argued on behalf of the appellant that the sponsorship contracts afforded 'sufficient records' of the supplies concerned. In the context of there being no contention that the stipulated goods and services had not been supplied and no dispute that the contract documents record their open market value, I am willing for present purposes to accept that argument. I am unable, however, to find that it would be 'impractical to require that a full tax invoice be issued'. No basis for any such finding is apparent on the record. The fact that the sponsors have failed to issue the invoices does not make it impractical to require that they be issued. On the contrary it was the Commissioner's responsibility in the circumstances to compel their issue. The evidence provides no basis for us to find that the Commissioner could reasonably have been satisfied as to the requirement of impracticability.

[14] Section 16(2)(f) of the VAT Act provided as follows before its amendment in terms of s 173(1)(a) of the Taxation Laws Amendment Act 31 of 2013 with effect from 13 December 2013:

> *No deduction of input tax in respect of a supply of goods or services, the importation of any goods into the Republic or any other deduction shall be made in terms of this Act, unless –*
>
> > *(f) the vendor, in any other case, is in possession of documentary proof, as is acceptable to the Commissioner, substantiating the vendor's entitlement to the deduction at the time a return in respect of the deduction is furnished*.

The phrase '*in any other case*' distinguishes the circumstances in which s 16(2)(f) might apply from those in which paragraphs (a) to (e) of the subsection pertain. The provision was inserted by s 30(c) of Revenue Laws Second Amendment Act 36 of 2007 with effect from 8 January 2008. Counsel for both parties were agreed that the

matter is amenable to determination taking the provision into account because it was in operation when the relevant assessments were made.

[15] Mention has already been made of the fact that it was not in issue that what the parties were content to characterise as barter transactions were implemented, and that it may thus be inferred that the goods and services stipulated to be provided by the sponsors under the sponsorship contracts (which were in writing) were indeed provided. As also mentioned, it is evident that the Commissioner predicated his calculation of the output tax on the information provided in the contracts.[13] The appellant's contention is that the contracts also serve as proof of its entitlement to a deduction for input tax. In my judgment the contention is well-made. If the documents were good enough for the Commissioner to assess the appellant's output tax liability, it is impossible to conceive, having regard to the character of the particular transactions, why they should not also have been sufficient for the purpose of computing the input tax which should have been deemed to have been levied by the sponsors. The appellant had invoked the provisions of s 16(2)(f) in its representations to the Commissioner. In the circumstances he was bound to take them into account in making the assessment. I do not think that the Commissioner could reasonably have decided that the information in the contracts did not in the circumstances provide sufficient proof substantiating the appellant's entitlement to the deductions claimed. The Commissioner disallowed the deductions because the appellant was not in possession of relevant tax invoices.[14] That was also the only ground for disallowing the deductions expressly advanced by the Commissioner in his Statement of Grounds of Assessment filed in terms of rule 10 of the rules issued in terms of s 107A of the Income Tax Act 58 of 1962 and its replacement, s 103 (read with s 264) of the TAA.[15] He did not explain why s 16(2)(f) should not have applied.

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[13] There appears to be an arithmetical problem in respect of the assessment of the appellant's liability for output tax in respect of the 2006 sponsorships, but the point is borne out by the computation of the assessment in respect of the 2007 festival. There is no suggestion in the evidence that there was a conceptual difference in the method of making the assessments in respect of the two years concerned.

[14] When the assessments were made the Commissioner purported to disallow any deduction for the input tax on the ground that '*A sample of input tax expenses which you want to claim against the sponsorships received in kind, indicated that the expenses were already allowed in previous vat periods. No further input tax expenses will therefore be allowed in this respect.*' (SARS' letter to the appellant's public officer dated September 2009.) It was common cause that there was no factual premise for that statement.

[15] Para 5.4 of the statement.

[16] The respondent's counsel sought before us to counter the appellant's reliance on s 16(2)(f) on three bases.

[17] Firstly, he submitted that the provision was not of application to deductions claimed in respect of input tax. Counsel contended that the provision bore only on '*any other deductions*' as mentioned in the introductory part of the subsection.[16] That argument may be disposed of summarily in my view. It is simply not sustained by the plain and unambiguous wording of the provision. Paragraph (f) is expressly intended to provide a general supplemental basis for the allowance in cases in addition to those specifically identified in paragraphs (a) to (e). The phrase 'in any other case' means in any case other than those in (a) to (e). According to its tenor the paragraph applies in respect of any deduction comprehended in the introductory part of the subsection – that includes a deduction '*of input tax in respect of a supply of goods or services*'.

[18] Secondly, he contended that 'although the documentation [i.e. the sponsorship contracts] refers to amounts, there is no evidence on record that the amounts referred to can in any way be equated to the value of the services rendered or the consideration paid therefor'. He also argued that the documentation did not comply with the requirements of s 20(4) of the VAT Act.

[19] In regard to the respondent's second contention, I agree with the submission by Mr *Sholto-Douglas* SC for the taxpayer that it is not open to the Commissioner, in circumstances when the point was not clearly taken earlier, to contend for the first time at this stage that the appellant should have adduced evidence on the value of the consideration given for the goods and services provided by the sponsors. Moreover, not only was the point not taken, as described, but the Commissioner has proceeded for his own purposes using the information in the documentation as sufficient for computing the output tax. As recently observed by Ponnan JA in *Commissioner, South African Revenue Service v Pretoria East Motors (Pty) Ltd* 2014 (5) SA 231 (SCA) at para 11, '*The raising of an additional assessment must be based on proper grounds for believing that, in the case of VAT, there has been an under-declaration of supplies and hence of output tax, or an unjustified deduction of input tax. ... It is only in this way that SARS can engage the taxpayer in an administratively fair manner, as*

[16] Quoted in para [14], above.

it is obliged to do. It is also the only basis upon which it can, as it must [in terms of the applicable rules], *provide grounds for raising the assessment to which the taxpayer must then respond by demonstrating that the assessment is wrong*'. The point taken by counsel is in any event inconsistent with the effect of his acceptance of the characterisation of the transactions as barter transactions.

[20] Section 20(4) of the VAT Act prescribes the particularity that must be set out in a tax invoice. Much of it has nothing whatsoever to do with the entitlement to an input tax deduction, for example, the requirement that the words 'tax invoice' must appear in a prominent place on the document, that it must bear a serialized number and date of issue, and that it must bear the name, address and VAT registration number of the supplier. If the requirements of s 20(4) had to be satisfied, there would be no need or scope for s 16(2)(f). As it is, the identity of the suppliers is evident from the contract documents. It is not in issue that they are registered vendors. They all happen to be organs of state. Their addresses are well-known, or readily ascertainable. The quantity or volume of the goods and services supplied is also determined in terms of the contractual documentation. That what was stipulated was supplied is not in issue. It is also not in contention that the sponsors were obliged to issue the appellant with tax invoices and that they have failed to do so despite request. The respondent's reliance on non-compliance with s 20(4) is wholly without merit.

[21] The third basis was a contention that the appellant's challenge to the assessment on the grounds that the Commissioner should have allowed the input tax deduction in terms of s 16(2)(f) comes down to seeking to judicially review the Commissioner's decision not to accept the contract documents as proof of the appellant's entitlement to a deduction. The argument proceeded that the Commissioner's decision in that regard constituted 'administrative action' as defined in the Promotion of Administrative Justice Act 3 of 2000 ('PAJA') and if it is to be impugned may be done only in terms of an application in terms of s 6 of that statute, and not by appeal in terms of the VAT Act. It was submitted that the tax court has no jurisdiction to entertain review applications in terms of PAJA.

[22] The third contention is similar in character to that raised by the Commissioner in *Kommissaris van Binnelandse Inkomste v Transvaalse Suikerkorporasie Bpk* 1985

(2) SA 668 (T). That matter concerned an appeal to the Full Court of the Transvaal Provincial Division against a judgment of the Special Tax Court which had upheld the taxpayer's appeal against an additional income tax assessment made by the Commissioner. At p. 671G-I, Van der Walt J described the argument advanced on behalf of the Commissioner as follows:

> In the course of the argument on behalf of the appellant it was submitted that the respondent had misdirectedly sought relief from the Special Income Tax Court. The submission came down to saying that in deciding to make an additional assessment in terms of s 79(1)(i) [of the Income Tax Act] the appellant was exercising an administrative discretion, which was not susceptible to appeal, but only to review. Such a review can, so the argument went, only be brought in terms of Uniform Rule 53 before the Supreme Court as the Special Income Tax Court is a creature of statute having only the powers and capacity provided for in ss 83 and 84 of the Income Tax Act. That power and capacity does not include a power of review.[17] (My translation from the Afrikaans.)

The Full Court rejected the argument. It held that save in respect of decisions in relation to which a right of appeal was expressly excluded by the tax legislation, the tax court was empowered to take into consideration whether or not the Commissioner had properly exercised his discretion in respect of making assessments that were subject to appeal. In that context, so the Court held, where the exercise of discretion is pertinent to the making of the impugned assessment, the 'appeal' is in reality a 'review' of the Commissioner's decision on customary review grounds.[18] The Full Court's reasoning, which attracted no adverse comment in the judgment of the Appellate Division to which the matter was taken on further appeal,[19] is compelling. It is also conceptually consistent in all material respects with the judgment of Van Winsen J in ITC 936 24 SATC 361, from which Van Walt J quoted extensively in the course of his judgment.

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[17] *In die loop van die betoog namens appellant is aangevoer dat die respondent verkeerdelik by die Spesiale Inkomstebelastinghof regshulp aangevra het. Die betoog kom daarop neer dat die appellant by die besluit om 'n addisionele aanslag kragtens art 79(1)(i) te doen, 'n administratiewe diskresie uitgeoefen het wat nie aan 'n appèl onderhewig is nie maar slegs vir hersiening vatbaar is. So 'n hersiening kan slegs kragtens Hooggeregshofreël 53 voor die Hooggeregshof gebring word, so lui die betoog, aangesien die Spesiale Inkomstebelastinghof 'n statutêre skepping is met slegs magte en bevoegdhede verleen in arts 82, 83 en 84 van die Inkomstebelastingwet. Die magte en bevoegdhede sluit nie 'n hersieningsbevoegdheid in nie.*

[18] At p. 676C.

[19] 1987 (2) SA 123 (A).

[23] There has been no suggestion by the Commissioner that the assessments in issue in the current case were not susceptible to appeal. The Commissioner's decision not to allow a deduction in terms of s 16(2)(f) of the VAT Act was integral to the making of the assessments. The matter is thus in all respects relevant for the jurisdictional argument directly analogous to that which presented in *Transvaalse Suikerkorporasie*. Indeed, Mr *Koekemoer*, who appeared for the Commissioner, was unable to distinguish the matter in principle, save to say that the earlier cases were decided before the enactment of PAJA. In this regard counsel laid emphasis on the definition of 'court' in s 1 of PAJA[20] and submitted that it did not include the tax court. There is nothing in the argument. PAJA regulates the bringing and determination of review applications in terms of s 6 of the statute; it is not directed at the bringing and determination of appeals in terms of the tax laws administered under the TAA. The appellant in the current matter was exercising a right of appeal to the tax court against the assessments; it was not seeking the review and setting aside of a decision in terms of s 16(2)(f) of the VAT Act. The fact that the determination of the appeal might entail the tax court in considering the legality of an administrative decision that was integral to the making of the assessment does not deprive the court of its jurisdiction to decide the appeal. To interpret and apply the legislation as requiring the dichotomous procedures enjoined in the argument advanced on behalf of the Commissioner would in many cases defeat the very purpose of the establishment of the specialist tax court. The jurisdiction of the tax court to determine tax appeals is conferred without any limitation in s 117(1) of the TAA. The court must be taken to have been invested with all the powers that are inherently necessary for it to fulfil its expressly provided functions.

[24] In the result I consider that the appeal must succeed. The additional assessments must be set aside and remitted for reconsideration by the Commissioner

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[20] '***Court***' is defined in s 1 of PAJA as meaning:

'(a) the Constitutional Court acting in terms of section 167 (6) (a) of the Constitution; or

(b) (i) a High Court or another court of similar status; or

(ii) a Magistrate's Court, either generally or in respect of a specified class of administrative actions, designated by the Minister by notice in the Gazette and presided over by a magistrate or an additional magistrate designated in terms of section 9A,

within whose area of jurisdiction the administrative action occurred or the administrator has his or her or its principal place of administration or the party whose rights have been affected is domiciled or ordinarily resident or the adverse effect of the administrative action was, is or will be experienced'.

in the light of this judgment. An order will issue, substantially in the terms sought by the appellant, as follows:

1. The appeal is upheld, with costs.
2. The order of the tax court is set aside and replaced with an order as follows:
   (i) The appellant's appeal against the additional VAT assessments made for the tax periods 04/2006, 12/2006, 04/2007, 08/2007 and 12/2007 is upheld
   (ii) The asessments are set aside and referred back to the Commissioner for reconsideration.

A.G. BINNS-WARD
Judge of the High Court

We concur:

J.M. HLOPHE
Judge President

J.I. CLOETE
Judge of the High Court