REPUBLIC OF SOUTH AFRICA

TAX COURT
Held at Johannesburg

CASE NO: VAT 1129

Reportable: No
Of Interest To Other Judges: No
Revised.

5 August 2015 **……..**
SIGNATURE

In the matter between:

MR. A **Appellant**

and

The Commissioner of the South African Revenue Services **Respondent**

JUDGMENT

Vally J (Natasha Singh and Isaac Nkama concurring)

Introduction

1. The appellant claimed to be operating a construction business. The business has no legal existence independent of himself. However, the goods and services he supplied were subject to payment of value-added tax (VAT) in terms of the *Value-added Tax Act 89 of 1991* (VAT Act). This caused him to register with the respondent, in his own name, as a VAT vendor. Once registered he became liable for submitting VAT returns every two months, and for paying over any VAT he received from his clients. In terms of the VAT Act he is entitled to seek a

rebate for any VAT he paid to any supplier of goods or services he obtained for purposes of conducting his construction business. This is referred to as input VAT.[1] The rebate/input VAT is claimed by setting it off against any payment he has to make to the respondent for VAT he received from his clients. If he has paid out more in VAT for goods and services he obtained for purposes of the construction business then he can claim a refund from the respondent.

2. He claimed certain rebates for input VAT for the VAT periods ending 07/2011, 09/2011 and 11/2011. His claims were assessed, found to be wanting and, disallowed. He objected to the disallowance. The objection, too, failed. He appeals to this court to overturn the decision to reject his claims.

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[1] Input VAT is a term used in practice to refer to input tax. Input tax is defined 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; or
(ii) the vendor on the importation of goods by that vendor; or
(iii) the vendor under the provisions of section 7 (3);

(b) an amount equal to the tax fraction (being the tax fraction applicable at the time the supply is deemed to have taken place) of the lesser of any consideration in money given by the vendor for or the open market value of the supply (not being a taxable supply) to him by way of a sale on or after the commencement date by a resident of the Republic (other than a person or diplomatic or consular mission of a foreign country established in the Republic that was granted relief, by way of a refund of tax as contemplated in section 68) of any second-hand goods situated in the Republic; and

(c) an amount equal to the tax fraction of the consideration in money deemed by section 10 (16) to be for the supply (not being a taxable supply) by a debtor to the vendor of goods repossessed under an installment credit agreement or a surrender of goods: Provided that the tax fraction applicable under this paragraph shall be the tax fraction applicable at the time of supply of the goods to the debtor under such agreement as contemplated in section 9 (3) (c),

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 input VAT claims

3. The appellant claimed the following VAT inputs:

3.1.	For the period ending 07/11	R49 091 – 00
3.2.	For the period ending 09/11	R278 096 – 15
3.3.	For the period ending 11/11	R578 000 - 00

4. It is beyond doubt that these are substantial amounts for VAT inputs. The total amount of input claimed for the six month period is R905 187 – 15. This means that the purchasers he made in the course and scope of his construction business during the relevant six months was R6 465 622 – 50. That, by any standard is a substantial amount of purchases. The respondent did not accept his *ipse dixit* that he purchased goods and services in that amount during the said months. It demanded that he furnish documentary proof of these purchases before it reimbursed him for the VAT contained in these purchases. He obliged and provided the following documentary evidence:

4.1. Unstamped bank deposit slips;

4.2. Quotations from various suppliers;

4.3. Invoices issued to persons other than himself or his construction business;

4.4. Invoices not reflecting the name of the purchasers – i.e. cash sale invoices;

4.5. Invoices reflecting purchases of goods that were for private consumption and not for goods that were inputs to the goods and services he supplied as part of his construction business.

5. The details of the documentary evidence he produced and the reasons for their rejection by the respondent are captured in certain table for the relevant periods.

6. It is for the appellant to show that the respondent was incorrect in disallowing his claim for input VAT. This is because s 102(f) of the *Tax Administration Act 28 of 2011* (TAA) imposes a duty upon him to prove that the decision of the respondent is incorrect. The provision of the section reads:

> "A taxpayer bears the burden of proving-
> …
> (f) whether a 'decision' that is subject to objection and appeal under a tax Act is incorrect."

7. The tax Act that is relevant to his claim is the VAT Act. It details the requirements that have to be met for an input tax (sometimes referred to as "input VAT") claim to be successful. Input tax really refers to the value-added tax (VAT) paid by the vendor (purchasing vendor) to another vendor (selling vendor) for goods and services purchased from the selling vendor, which goods and services are to be used as inputs for the goods and services the purchasing vendor sells (or intends to sell) to a third person, and while charging (or intending to charge) the third person VAT for the goods and services he sold (or intends to sell) to that third person. The purchasing vendor is then entitled to claim a refund from the respondent for this VAT s/he paid to the selling vendor. The definition provided in the VAT Act is much more detailed than is expressed here[2], but this, in my view, captures the essence of the definition, especially as

[2] The definition provided in s 1 of the VAT Act reads:
> "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; or
> (ii) the vendor on the importation of goods by that vendor; or

it applies to this case. For the claim of a refund from the respondent to be successful the purchasing vendor has to ensure that s/he has complied with the requirements set out in the VAT Act. The most important ones relate to the evidence the purchasing vendor has to produce to the respondent in order to demonstrate that s/he has actually paid the VAT to the selling vendor, and that the goods and services bought from the selling vendor were actually used as inputs for the goods and services s/he sells (or intends to sell) to a third person. The requirements are quite strict and failure to comply with them bears a very high risk of having the claim rejected by the respondent. One of the requirements is that the vendors keep records of all invoices they issue or receive when conducting their businesses. A selling vendor is required to keep a copy of an invoice (tax invoice) s/he issues and a purchasing vendor is required to keep the said invoice (or a copy thereof) s/he receives. The respondent when facing a claim for a refund is entitled to call on the vendor (who would obviously be the purchasing vendor) seeking a refund to furnish proof of the invoice s/he received from the selling vendor in order to determine

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(iii) the vendor under the provisions of section 7 (3);

(b) an amount equal to the tax fraction (being the tax fraction applicable at the time the supply is deemed to have taken place) of the lesser of any consideration in money given by the vendor for or the open market value of the supply (not being a taxable supply) to him by way of a sale on or after the commencement date by a resident of the Republic (other than a person or diplomatic or consular mission of a foreign country established in the Republic that was granted relief, by way of a refund of tax as contemplated in section 68) of any second-hand goods situated in the Republic; and

(c) an amount equal to the tax fraction of the consideration in money deemed by section 10 (16) to be for the supply (not being a taxable supply) by a debtor to the vendor of goods repossessed under an instalment credit agreement or a surrender of goods: Provided that the tax fraction applicable under this paragraph shall be the tax fraction applicable at the time of supply of the goods to the debtor under such agreement as contemplated in section 9 (3) (c),

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 validity of the claim for a refund. Section 20 of the VAT Act spells out the requirements that have to be met for a tax invoice to be valid. Sub-section 20(4) in particular is very specific in this regard. It reads:

> ”(4) Except as the Commissioner may otherwise allow, and subject to this section, a tax invoice (full tax invoice) shall be in the currency of the Republic and shall contain the following particulars:
>
> (a) The words 'tax invoice' in a prominent place;
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> (b) the name, address and VAT registration number of the supplier;
>
> (c) the name, address and, where the recipient is a registered vendor, the VAT registration number of the recipient;
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> (d) an individual serialized number and the date upon which the tax invoice is issued;
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> (e) full and proper description of the goods (indicating, where applicable, that the goods are second-hand goods) or services supplied;
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> (f) the quantity or volume of the goods or services supplied;
>
> (g) either-
>
> (i) the value of the supply, the amount of tax charged and the consideration for the supply; or
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> (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 the rate at which the tax was charged:
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> Provided that the requirement that the consideration or the value of the supply, as the case may be, shall be in the currency of the Republic shall not apply to a supply that is charged with tax under section 11.

8. The question that presents itself in this case is: has the appellant shown that the respondent was wrong in disallowing his claims. He was not able to furnish any documentary evidence other than what he had provided to the respondent when he made his claims for the refunds. Instead, he relied solely on his own *viva voce* evidence which he presented at the hearing.

9. His evidence, which consumed the better part of the day, was convoluted and rambling, but boiled down to one simple averment: “I provided the invoices in support of my claim for the refunds to an unnamed official at the Springs office of SARS on 7 March 2012.” He did not keep copies of the documents he furnished to this official, but they all were compliant with the VAT Act and they all bore out that he paid the input tax to various suppliers in the course of conducting the business for which he was registered as a VAT vendor. He claims that the documents were misplaced by an employee or employees of the respondent, thus absolving him of any responsibility to produce the invoices so that the respondent can be satisfied that indeed he did pay the input tax during those tax periods for which he claims a refund. He furthermore claimed that he had managed to locate some of the documents that bear proof of the fact that he paid the input taxes for which he claims a refund. The documents he referred to are those captured in the tables referred to in para 5 above.

10. The respondent presented the testimony of Mrs X in rebuttal of his claim that he furnished the relevant invoices to an unnamed official of the respondent at the Springs office on 7 March 2012. She pointed out that it is an inflexible rule of the respondent that no original documents are accepted by any official of the respondent at any of its offices. Officials would only create a digital file of the documents presented to them by scanning the said documents and would then return the hard copies of the documents to the person(s) presenting them. Under no circumstances is this rule to be breached and in her experience had never been breached. Her further testimony was that in any event she had met with the appellant before he chose to pursue this appeal where she explained to

him that he had to furnish the relevant invoices if he insisted that he had paid the input tax. He should also visit all the vendors that supplied him with the goods and services for which he paid input tax and request copies of the invoices they had initially provided to him. This, she had pointed out to him, would not be difficult as those vendors were required to comply with the VAT Act and other relevant legislations which obliged them to keep records of all invoices they supplied to him. He failed to do this. Hence, he was, and still is, unable to furnish a single valid invoice to support his claims that he paid input taxes which entitled him to the refunds he was seeking.

11. There is no doubt that the appellant has failed to comply with the provisions of VAT Act by keeping copies of the invoices he received. When challenged to produce copies of the invoices, he failed to meet the challenge. He failed to furnish any valid invoice to support his claim that he paid input taxes for the 07/11, 09/11 and 11/11 periods that entitled him to a refund from the respondent. None of the documents that were rejected by the respondent complied with s 20(4) of the VAT Act. Hence, the respondent was correct in rejecting his claim. The respondent gave him an opportunity to remedy his defects. He failed to do so. He had an opportunity to remedy it at this hearing. It cannot be overlooked that his claims were for a substantial amount and for him to contend that he has no valid invoices to support them makes no sense. No reasonable businessman would allow invoices verifying purchasers of more than five million rands to disappear. His explanation as to how they disappeared reveals that he was grossly negligent. He, alone, should bear the consequence of that.

12. Before closing, it is necessary to say that his claim was so lacking in merit that his pursuit of it was vexatious. The respondent did not employ independent legal representatives to present its case. It relied solely on its legally trained employees to present its case. Had it utilised independent legal representatives, I would, without hesitation, order that the appellant pay the costs incurred by the respondent in having to deal with his appeal.

Order

13. The following order is made:

    1. The appeals of the appellant are dismissed.

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Vally J
Judge: Tax Court, Johannesburg

Dates of hearing : 16 February, 18 June 2015
Date of judgment : 5 August 2015