Commissioner South African Revenue Service v Sasol Chevron Holdings Limited (Case no 1044/2020) [2022] ZASCA 56 (22 April 2022)

Introduction

This is an appeal to the Supreme Court of Appeal (SCA) by the Commissioner for the South African Revenue Service (CSARS) against a decision of the Gauteng Division of the High Court (High Court) in favour of Sasol Chevron Holdings Limited (Sasol Chevron).

Sasol Chevron had instituted a review application under the Promotion of Administrative Justice Act 3 of 2000 (PAJA) seeking, *inter alia*, an order to review and set aside the CSARS' decision that Sasol Chevron was not entitled to a refund of the VAT levied on the supply of the goods sold to Sasol Chevron as envisaged in s11(2)(a)(ii)(bb) of the VAT Act read with regulation 6, Part One of the Export Regulations[1].

More specifically, the review application related to whether it is permissible for a vendor as defined in s1 of the VAT Act once such a vendor has made an election to supply goods at a zero rate in terms of s11(1)(a)(ii) read with Part Two – Section A of the export regulations to migrate to Part One of the self-same export regulations in respect of the same supply of goods by issuing fresh tax invoices at the standard rate of VAT in terms of s7 of the VAT Act. Neither the High Court nor the SCA dealt with SARS' decision in this regard, but rather opined on whether the parties adhered to the timelines prescribed by the provisions of PAJA.

Facts

The crux of this matter hinges on the time periods as set out in s7 of PAJA. By way of background, s7(1) of PAJA provides as follows:

> *'Any proceedings for judicial review in terms of section 6(1) must be instituted without unreasonable delay and not later than 180 days after the date–*
> *a) subject to subsection (2)(c), on which any proceedings instituted in terms of internal remedies as contemplated in subsection 2(a) have been concluded; or*
> *b) where no such remedies exist, on which the person concerned was informed of the administrative action, became aware of the action and the reasons for it or might reasonably have been expected to have become aware of the action and the reasons...'*

Section 9(1) of PAJA goes on further to provide that the 180-day period may, either by agreement between the parties or absent such agreement, by a court on application, be extended for a fixed period. And a court may grant an extension of the 180-day period referred to in s7(1) if, in terms of s9(2) of PAJA, the interests of justice so require.

SARS asserted that the review application had been lodged after the expiry of the 180-day period provided for in s7(1) of PAJA. Accordingly, SARS contended that absent an application for an order that the 180-day period be extended in terms of s9(2) of PAJA, the review application fell to be dismissed on that ground alone without consideration of the merits of the review application itself. It is common cause between the parties that Sasol Chevron did not bring any application for the extension of the 180-day period in terms of s9(2) of PAJA.

Briefly, the timeline of this case is as follows:

- In a letter dated 6 December 2017, SARS noted that Sasol Chevron was not entitled to a refund of the VAT levied.
- Further correspondence was exchanged between the parties, culminating in a letter dated 26 March 2018 from SARS to Sasol Chevron in which SARS reaffirmed its previous stance. It is important to note that SARS' letter of 26 March 2018 was no more than a recapitulation of the position that SARS had consistently adopted since 2017.

[1] Regulations promulgated under Government Notice No R316, Government Gazette 37580 of 2 May 2014.

- On 21 September 2018, and with a stalemate having arisen, Sasol Chevron instituted a review application under PAJA seeking, *inter alia*, an order to review and set aside SARS' decision of 6 December 2017.
- The review application papers were served on SARS on 25 September 2018.

The High Court held that as the CSARS provided his reasons for his decision of 6 December 2017 only on 26 March 2018, this meant that the 180-day period commenced to run from 27 March 2018. And, having regard to the fact that the 'review application was issued on 21 September 2018 . . . [on] the 179th day after the reasons were provided on the 26th March 2018', it followed that 'the review application was timeously instituted within the prescribed 180-day period' as required in s 7(1) of PAJA. The High Court then upheld Sasol Chevron's application and CSARS' decision was set aside.

Questions before the SCA
The SCA was asked to determine whether Sasol Chevron's review application was instituted within the 180-day period prescribed in s7(1) of PAJA.

The CSARS noted that the application made by Sasol Chevron in response to the latter's application was declined on 6 December 2017. Accordingly, SARS' response communicated to Sasol Chevron in writing on this date constituted its written decision supported with reasons underpinning such decision. In addition, the CSARS went on to highlight that the application for review was instituted only on 21 September 2018 – some 22 months after the decision was taken and reasons therefor provided.

Findings of the SCA
The SCA found that where no application for the extension of the 180-day period in terms of s9(2) has been made, a court has no authority to enter into the substantive merits of a review application brought outside the 180-day period prescribed in s7(1).

It therefore follows that Sasol Chevron's review application was instituted outside the 180-day period prescribed in s7(1). The inevitable consequence of this is that absent an application in terms of s9(2) of PAJA, the high court should have dismissed the review application for want of compliance with the prescripts of s7(1) as it had no power to enter into the substantive merits of the review.

26 April 2022