

CASE LAW SUMMARY – May 2024

JJJ (Pty) Ltd v Commissioner for the South African Revenue Service (VAT 22425) [2024] ZATC 7 (16 January 2024)

This is an appeal to the Tax Court by the taxpayer appealing for the Court to compel SARS to furnish it with further discovery and particulars as relates to an audit conducted by the South African Revenue Service (“SARS”).

The facts and arguments

JJJ (Pty) Ltd (“the taxpayer”) is an exporter of gold-bearing bars. SARS conducted an audit of the taxpayers VAT affairs. Based on its audit findings, SARS alleged that the taxpayer was involved in a scheme that involved the smelting of Kruger Rands and reclassification of gold bars produced from said smelting as second-hand gold jewellery. This reclassification was, according to SARS, effected so the taxpayer could claim input VAT and further enable the selling of gold below spot price. SARS was also of the view that the taxpayer was fully aware of the fact that the above-mentioned supplies consisted of smelted Kruger Rands and further that these transactions were facilitated through the generation of fictitious invoices. Following the conclusion of the audit SARS issued an additional assessment in which it disallowed certain input taxes claimed by the taxpayer.

The taxpayer denied any involvement, claiming that it could not be held liable for any alleged criminal activities carried on by its suppliers. The taxpayer claimed it acted in good faith as all suppliers were required to sign declarations as relates to the source of goods supplied to the taxpayer. The taxpayer therefore requested that SARS make further discovery of all documents it relied upon in reaching its conclusion that the taxpayer was a willing participant in the above-mentioned scheme (it would appear that said documentation was obtained following an industry-wide investigation by SARS).

SARS however contested that the documents furnished in its initial discovery were sufficient as it was only compelled to discover documents it intended to use in this particular case. It argued that its investigation into the affairs of third parties was irrelevant to the matter at hand.

Over and above the request for SARS to make further discovery, the taxpayer requested the Court to compel SARS to make further particulars. The request for further particulars included the following:

- the specific method or process SARS uses to determine what constitutes ‘full and proper description of goods’;
- the information SARS relied on in reaching its conclusion that the taxpayer was a participant on the above-mentioned scheme;

SARS was of the view that the taxpayer had not provided a ‘full and proper description of goods’ as the taxpayer had purported (through the use of fictitious documents) to represent smelted Kruger Rand as second-hand jewellery.

Over and above the taxpayer's requests for further discovery and particulars, SARS had its own request for the taxpayer to make further discovery for documents pertaining to periods not covered by SARS' audit. The taxpayer opposed this request on the basis that SARS was requesting information that related to periods not covered by the additional assessment issued by it. The taxpayer further argued that SARS initiating this line of enquiry could be seen as evidence to the fact that its findings following the audit could not conclusively prove that the taxpayer was party to the above-mentioned scheme.

The judgment

The Court in its judgement found that the initial discovery made by SARS was indeed sufficient as the taxpayer aware of the grounds of assessment and would in all likelihood not be caught by surprise should it not have sight of the additional documents uncovered by SARS during its wider reaching investigation. The taxpayer's appeal for further discover was therefore dismissed with costs in favour of SARS.

As relates to the taxpayer's request for particularity with regard to the information SARS relied upon in concluding the taxpayer's involvement in the above-mentioned scheme, the Court found that such request was irrelevant as the taxpayer's lack of knowledge in this regard did not make it impossible for it to prove its innocence. The taxpayer's appeal for further particulars was therefore dismissed with costs in favour of SARS.

The Court upheld SARS' request for further discovery. Despite the information relating to periods outside those covered by the assessment, the Court was of the view that SARS was well within its rights to request information that could result in it proving the existence of the scheme during a period not covered by the assessment. SARS' request for further discovery by the taxpayer was upheld with costs in favour of SARS.

Editorial comment

While taxpayers are well within their rights to request that SARS make discovery (be it initial or additional discovery) and that SARS furnish particulars, it is important to note and/or remember the importance of relevance as relates to the information requested. This based on the fact that relevance weighs significantly in the Court's assessment of whether or not to grant the taxpayer what they are requesting. An added advantage for taxpayers is that the relevance argument applies equally to requests made by SARS (as is evidenced in this case).