



THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal
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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.

Mobile Telephone Networks (Pty) Ltd

v

Commissioner for the South African Revenue Service

Today the Supreme Court of Appeal dismissed an appeal from the Gauteng Division of the High Court, Pretoria (per Hughes J). Mobile Telephone Networks (Pty) Ltd (MTN) offers two kinds of vouchers: vouchers for goods such as data, which can be used exclusively on data; and vouchers for a specified amount in Rands which can be used to access a range of services on the MTN network (the pre-paid vouchers). It sought a private binding ruling from the Commissioner for the South African Revenue Service that the pre-paid vouchers fell under the provisions of s 10(18) of the Value-Added Tax Act rather than s 10(19) which had previously been applied. Section 10(18) in essence attracts VAT at the time the voucher is used by the customer to obtain services rather than on its initial sale to the customer. The Commissioner's ruling was adverse to MTN, to the effect that s 10(19) applied. MTN then approached the high court for declaratory orders to the effect that the pre-paid vouchers fell under s 10(18). The high court entertained the application for declaratory relief but refused the application on its merits.

On appeal, the Supreme Court of Appeal held that declaratory orders in tax matters were competent. However, they were entertained in limited cases. Having reviewed a number of matters where they had been entertained, the bare minimum requirement was that the facts in the matter must be clear, sufficient, and uncontested. The Supreme Court of Appeal held that the facts in the present matter did not meet these criteria and, as a result, it was not appropriate to entertain the application for declaratory relief. That being the case, the merits could not be considered and the application was correctly dismissed by the high court, albeit for different reasons. As a consequence the Supreme Court of Appeal refused the appeal with costs.