THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

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Mukuru Africa (Pty) Ltd v The Commissioner for the South African Revenue Services (Case no 520/2020) [2021] ZASCA 116 (16 September 2021)

Today the Supreme Court of Appeal (SCA) dismissed an appeal, with costs, by Mukuru Africa (Pty) Limited (Mukuru), against a judgment by the Tax Court of South Africa, Western Cape (the Tax Court).

The issue before the SCA was whether SARS was precluded by proviso (iii) to section 17(1) of the Value-Added Tax Act 89 of 1991 (the VAT Act) from granting approval for use of a so-called 'transaction count' (TC) ratio by Mukuru with retrospective effect for the period 1 March 2014 to 29 February 2016.

Mukuru a registered vendor under the VAT Act, commenced business on 1 February 2014. Mukuru provides money-transfer and *bureau de change* services, as well as mobile phone credit. It makes both taxable and exempt supplies for VAT purposes and also incurs expenditure in acquiring goods and services for the purpose of use, consumption or supply in the making of those supplies. On 20 February 2017, Mukuru applied to SARS for a ruling under s 41B of the VAT Act. It requested approval for the use of the TC ratio to apportion its mixed-purpose input VAT deductions for the tax periods commencing 1 February 2014. On 24 July 2018, SARS approved the TC method for use by Mukuru. It did so for the period commencing 1 March 2016, but not in respect of the earlier period from 1 March 2014 to 29 February 2016. SARS took the view that proviso (iii) precluded it from approving the TC ratio for use in any period prior to 1 March 2016.

Section 17(1) of the VAT Act does not stipulate a ratio. That is determined by way of a ruling from SARS as contemplated in Chapter 7 of the Tax Administration Act 28 of 2011 (the TAA) or s 41B of the VAT Act. When SARS issued the July 2018 ruling in favour of Mukuru, there was already in existence a ruling as envisaged in Chapter 7 of the TAA, namely Binding General Ruling 16 (BGR16). BGR16, which determined a ratio for the purpose of s 17(1) of the VAT Act, was first issued by SARS on 25 March 2013 (with effect from 1 April 2013) and re-issued on 30 March 2015 (with effect from 1 April 2015). The ratio fixed by BGR16 is described as the standard turnover-based method (the STB method) of apportionment. The STB method, which is the default method of apportionment, applies to all vendors who have not obtained an alternative ruling from SARS.

The SCA held that the legislature contemplates that the apportionment method for the purposes of s 17 of the VAT Act must relate to a time in the future or, if it is to be retrospective, for a period not exceeding the income tax year during which application is made for a change in the apportionment method. Properly understood therefore, Mukuru's application for the July 2018 ruling was an application to change from the STB method to the TC method. Accordingly, when SARS approved the change of

method in response to Mukuru's application, it had no power to do so, retrospectively, to a date earlier than 1 March 2016.

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