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

DATE September 2016

STATUS Immediate

Please note that the media summary is for the benefit of the media and does not form part of the judgment.

CSARS v Marshall NO (816/2015) [2016] ZASCA 158 (3 October 2016).

MEDIA STATEMENT

Today the Supreme Court of Appeal handed down a judgment overturning an order of the Gauteng High Court, Pretoria, declaring certain payments received by the SA Red Cross Air Mercy Service Trust from various provincial health departments around the country were declared to be zero rated for VAT purposes.

The Trust is a welfare organisation. In 2006 it concluded an agreement with the Western Cape Health Department in terms of which it was to render a 'comprehensive aero-medical service'. This service entails providing, amongst other things, specialised intensive care service, support and transfer of patients to and from hospitals, medical rescue services, air ambulance services and training and support to health care workers. The Western Cape Health Department would pay for the services at a rate determined in terms of an agreed schedule of tariff that specifies a monthly availability fee of R900 00 for three aircraft, a kilometre rate of R8.26 for a fixed wing aircraft and an hourly rate of R4 446 for a rotary wing aircraft. Subsequent to 2006 the Trust included similar agreements with other provincial health departments within the country.

In October 2012 the Trust applied to the Commissioner for the South African Revenue Service for a ruling to be issued, declaring the payments received by it from the government to be zero rated.

The application for the ruling was purportedly made in terms of section 8(5) of the VAT Act which provides for the deeming of a supply of services in certain circumstances. The Commissioner refused to give the ruling applied for, instead he ruled that the services supplied by the Trust to the provincial health departments were ‘actual services’ and could therefore not be regarded as ‘deemed services’.
The Trust then approached the High Court, seeking an order in the terms it had proposed to the Commissioner. The high court granted an order accordingly. This meant that payments received by the Trust from the provincial health departments were to be in respect of deemed services and as such, were zero rated for VAT purposes under s 8(5) of the VAT Act.

In overturning the order of the high court the Supreme Court of Appeal held that on the Trust’s own argument the services were actually supplied to the health departments. They could therefore not be deemed to have been supplied. Further, the payments received were for the services actually supplied in terms of the written agreements. The court held that the deeming provision is only applicable in respect of subsidies and grants or gratuitous payments. Where the Trust engages payment in consideration for services actually rendered there was no basis for a zero-rating of the taxable supplies.

--- ends ---