

Supreme Court of Appeal 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.

C:SARS v Amawele Joint Venture CC

The SCA today upheld an appeal by the Commissioner for the South African Revenue Service against a decision of the Gauteng Division of the High Court, Pretoria, dismissing an appeal against a decision by the Tax Court, Pretoria that certain construction services rendered to the Department of Housing, KwaZulu-Natal, were to be zero rated for the purposes of VAT.

Amawele had undertaken three contracts for the Department of Housing, two for the revitalisation and rectification of houses built during the period from March 1994 to 2002, and one to provide emergency relief in respect of housing damaged by a storm in Emnambithi. This work was undertaken in terms of two national housing programmes, the Emergency Assistance Programme (EAP) and the Rectification and Revitalisation Programme (RRP). The question was whether the supply of services pursuant to these contracts were zero rated by virtue of s 11(2)(c), read with s 8(23) of the VAT Act, because they were services supplied as part of the Housing Subsidy Scheme identified in s 3(5)(a) of the Housing Act 107 of 1997.

The SCA analysed the history of sections 11(2)(c) and 8(23). It was apparent from this history that when these sections were introduced neither the EAP nor the RRP were part of the Housing Subsidy Scheme, because they were not in existence at that time. When they were introduced in 2004 and 2005 they were constituted separately as national housing programmes, separate and distinct from the Housing Subsidy Scheme. In the circumstances the provision for zero rating of supplies under the latter scheme was not applicable to the EAP and the RRP. The ruling to the contrary by the Tax Court, upheld by the Full Court, was accordingly set aside.