

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, JOHANNESBURG

Case No: 5837/2020

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED: YES/NO
28/8/2021	
DATE	SIGNATURE

In the matter between:

DEVLAND CASH AND CARRY(Pty) Ltd

Applicant

and

**THE COMMISSIONER FOR THE
SOUTH AFRICAN REVENUE SERVICE**

Respondent

JUDGMENT

MAKUME, J:

Introduction

- [1] This is an application to compel the respondent, being the Commissioner of the South African Revenue Services (SARS) to deliver the record of the impugned decisions in terms of Rule 53 of the Uniform Rules of Court.

Background facts

- [2] The applicant, Devland Cash and Carry Pty Limited, is a private for profit company registered and incorporated in terms of the company laws of the Republic of South Africa, with its registered address at corner Klipkas and Piston Roads, Devland, Johannesburg. Devland carries on business as a wholesaler of fast-moving consumables, goods, to customers in South Africa and its neighbouring countries.
- [3] The respondent is the Commissioner for the South African Revenue Services (SARS) with its registered address at 299 Bronkhorst Street, New Muckleneuck, Pretoria. The respondent is a statutory body with powers to collect tax from individuals as well as companies doing business in the Republic of South Africa. The revenue collected is used to run various institutions of the government of South Africa.
- [4] Taxpayers are by law compelled on a yearly basis to submit their tax returns to their local SARS office, which tax returns are then assessed by officials in the employment of SARS who then issue what is called final returns to a taxpayer.
- [5] In the event SARS officials find any irregularities whilst auditing the tax returns, SARS issues reassessments to such a taxpayer and also levy penalties either for late submission or incorrect returns, and in most instances, penalties and interest are levied with such reassessment by SARS.
- [6] On or about the 15th of November 2018, SARS finalised the audit and reassessment of VAT returns in respect of the applicant and demanded payment by 31 December 2018. SARS had also reassessed the applicant's corporate income tax by 28 September 2018.
- [7] The total amount due by the applicant was reassessed and determined at R1.9 billion, which amount included penalties and interest. On receipt of the assessment, the applicant submitted a letter to SARS requesting suspension of the payment of the tax debt for corporate income tax and VAT in terms of Section 164 of the Tax Administration Act 28 of 2011 (TAA).

[8] During or about February 2020, SARS informed the applicant of its decision declining the applicant's request for suspension of payment of the additional assessment in respect of both VAT and corporate income tax.

[9] On 21 February 2020, the applicant launched an urgent application in terms of Rule 6(12) of the Uniform Rules of Court and sought the following relief:

- a. that pending the final resolution of the relief in Part B, that the decision of the respondent of 7 and 11 February 2020 to decline the applicant's request for suspension of payment of the applicant's tax debt and in respect of corporate income tax for the period 2012 to 2015 and value-added tax for the period January 2012 to November 2016 are suspended.

[10] The relief sought at that stage by the applicant in Part B of that application is as follows:

- a. That the decision of the respondent of the 7th and 11th February 2020 to decline the applicant's request for the suspension of payment of the assessed tax are reviewed and set aside.
- b. Secondly, that the said decision be referred back to SARS for reconsideration, alternatively, that the decisions are substituted by the following:
 - i. that payment of the disputed tax is suspended pending finalisation of the objection and appeal process,
 - ii. that the applicant is directed to conclude a session in security in favour of the respondent of his debtors book to the value of R145 748 114.04 in respect of his alleged liability for corporate income tax and R108 000 000 in respect of the VAT assessment.

[11] The urgent application served before Tsoka J on the 25th of February 2020 and the following was made as order of court:

- a. That Part A of the application is postponed *sine die*.

- b. The respondent, SARS, shall deliver its notice to oppose by 17h00 on Wednesday, 26 February 2020.
- c. That SARS delivers its answering affidavit by 2 March 2020.
- d. Pending the arguing of the application and delivery of judgement, (i), that SARS shall suspend all recovery proceedings of whatsoever nature, including the taking of any judgement or the equivalent thereof in respect of the disputed tax debt as defined in Paragraph 3.1 of the Notice of Motion.
- e. Such suspension shall operate as an interim interdict.

[12] During or about August or September 2020, the applicant brought an application seeking an order to amend its Notice of Motion by amending Paragraph 2 of Part B of the Notice of Motion by deleting the prayer for remittal of the decision to SARS for reconsideration and, in effect, only pursuing its erstwhile alternative relief which is for substitution of the decision by the Court hearing the review application by suspending payment of the tax debt pending finalisation of the objection and appeal proceedings.

[13] That application served before Van Oosten J, who confirmed in an order that the applicant had abandoned reliance on the remittal portion of the relief sought and, as for the application for amendment itself, same was removed from the roll as being moot. It must be noted that whilst all this was happening, the parties at the instance of SARS engaged in settlement discussions. The settlement discussions faltered when the applicant declined to agree to an order to the effect that the impugned decision be remitted for reconsideration and insisted on an alternative order of substitution. It is then that the applicants launched an application seeking to amend its prayers, which I have dealt with above.

[14] On 20 October 2020, the applicant then launched this application now seeking an order in the following terms:

- a. Compelling the respondent to produce the record pertaining to the impugned decision in the review application in terms of Rule 53.

- b. That the record be dispatched to the registrar of the court and to the applicant within five days of service of the order.
- c. That the respondent pays costs.

[15] In the affidavit supporting the application to compel, the deponent, Mr Yusuf Gathoo, says the following at Paragraph 20:

“What is evident is that in either event, the record is long overdue. SARS delay in furnishing the record has prejudiced the taxpayer, both in its review application and in its pending amendment application. The taxpayer is unable to supplement its founding papers in the review application as it is entitled to do so in terms of Uniform Rule 53(4) until such time as it receives the record from SARS.”

[16] On the 9th of December 2020, SARS addressed a letter to the applicant which reads in part as follows:

“We refer to your application to compel the record of decisions dated 29 October 2020. We submit that no formal response was made to the writer for provision of the record and as such, the application to compel same was not necessary, as our client would have provided same to you on request. In any event, same is attached. You will note that part of the minutes are redacted. This is as a result of confidential information contained therein pertaining to other taxpayers being considered by the same committee on the same day in question. As a result, it is our client's provision of the record and the completely unnecessary issuing of the application to compel you are directed to withdraw your application to compel.”

[17] The applicant was not satisfied with what had been sent by SARS. As a result, on 16 December 2020, the applicant sent to SARS a long list of what it requires and why it regards the record furnished as incomplete. The applicant says that everything it requested in the correspondence of 16 December 2020 pertains to information and or documents and or evidence that served before the relevant SARS committees in deciding the taxpayer's application for suspension of payment and therefore form part of the record pertaining to the impugned decisions and by failing to respond, SARS has failed to provide the taxpayer with the full and complete record related to documents which the taxpayer is entitled to.

- [18] On 15 June 2021, the applicant amended its Notice of Motion in keeping with their letter dated 16 December 2020 and requested further documents to be disclosed as part of the record.
- [19] Notwithstanding, SARS and its Counsels having formed the view that the further documents requested by the applicant do not form part of the record of the decision, a same constituted interrogatories, and a fishing expedition, SARS filed a supplementary record on 9 April 2021. At that stage, SARS hoped that the applicant would then file their supplementary affidavit so as to enable the review application to be proceeded with. This was not to be, because on 26 May 2021, the applicant filed an application to amend his Notice of Motion by adding a list of additional documents which it contends ought to be included in the record. It must also be noted and recorded that whilst all this was happening, the applicant on 24 November 2020, filed an application in terms of Section 18(1) of the Promotion of Access to Information Act 2 of 2000 (PAIA), in which it requested the same documents which it had already demanded in the application to compel.
- [20] There are in fact three proceedings taking place between the applicant and the respondent. Firstly, it is this review application. Secondly, it is the pending appeal and lastly, it is the application for information in terms of the PAJA Act. In the meantime, SARS is interdicted by the order granted in February 2020 from proceeding to do anything to recover what is due to the State.
- [21] It is trite law that the primary purpose of Rule 53 is to facilitate and regulate applications for review. The rule plays a vital role in enabling a Court to perform its constitutionally entrenched review function.
- [22] Notwithstanding the fact that the applicants failed to strictly comply with the requirements of Rule 53(1)(b), SARS ignored that and on 9 December 2020, delivered the record which was followed by another record on 31 March 2021, after Devland had on 16 December 2020 complained that the first record was incomplete.
- [23] SARS raised additional assessment against Devland after having scrutinised the returns and found that Devland was intentionally evading payment of tax by:

- a. Making false statements in its returns, preparing false books of account, and claiming undue refunds.
- b. Deliberately issuing or passing credit notes and credit journals to reduce income and output tax without sufficient supporting documentation.
- c. Repeatedly invoicing goods as zero-rated foodstuffs with no details for related parties only, showing that it wilfully circumvented the inventory system and did not charge VAT on these goods.
- d. Wilfully neglecting to record income by not dealing with long-standing credit balances in debtors' accounts and unallocated receipts in the accounts receivable and accounts payable.
- e. Recording sales as being exported in order to avoid declaring and paying output tax.

[24] It was as a result of the above findings that SARS declined any request to suspend payment by Devland. Devland now demands that SARS must furnish to it further information in the form of documents and records that took place in the committees that deliberated on the request for suspension.

[25] On 26 May 2021, Devland delivered its second supplementary affidavit, which included a demand for further documents which became listed as the complete record in its Notice of Amendment dated 15 June 2021. It must be recalled that on 16 December 2020, Devland forwarded a letter to SARS' attorneys contending that the record that SARS had sent on 9 December 2020 was incomplete. Over and above that, on 26 October 2020, Devland had issued a notice in terms of Rule 35, (12) and (14) calling on SARS to deliver within five days the following documents:

- a. Minutes of the SARS committee meeting in terms of which that committee declined the applicant's suspension of payment request on 7 February 2020.

- b. All documents and deliberations that served before the SARS committee in relation to its decisions of 7 February to decline the applicant's suspension of payment request.

[26] On 19 April 2021, in a letter by SARS' attorneys, SARS told Devland that:

“We enclose the following documentation which serves to supplement the record provided to you on 9 December 2020. We are instructed to advise that your client is not entitled to sight any documentation requested by you on behalf of your client referred to above.”

[27] SARS was constrained to express itself in the manner referred to above because it had become apparent that, regardless of documents having been provided to the applicant, the applicant now and then supplements its founding affidavit by calling for production of further documents. Parallel with the issuing of the supplementary affidavit to compel, the applicant has also issued requests for information in terms of the Promotion of Access to Information Act, in which the applicant seeks the same documents which it has already demanded in the Rule 53 application.

Is this an application to compel in terms of Rule 30A of the Uniform Rules of Court, or is it a notice to discover in terms of Rule 35, or is it an application to comply with the provisions of Rule 53(1)(b)?

[28] It is common cause that the main application seeks an order reviewing and or setting aside the decision by the respondent in refusing to suspend payment of reassessed taxation due by the applicant to SARS in the sum of R1.9 billion.

[29] The applicant maintains that what SARS provided to it on 9 December 2020, as well as on 21 April 2021, is not sufficient and, in fact, is an incomplete record of the proceedings sought to be reviewed.

[30] The record of proceedings that the applicant seeks are detailed in the founding affidavit and relate to, amongst others, the following:

- a. Detailed description of the risks identified by the CRU during audit.

- b. Link chart analysis of all companies and assets belonging to the taxpayer and its directors referred to.
- c. The committee member sign-off sheet in respect of the meeting held on 15 October 2019.
- d. Documents and or evidence that served before the relevant SARS committee detailing the basis on which the committee decided not to approve the recommendation presented at the meeting of 5 March 2019, that the SOP application be declined and the committee decisions that the suspension application be reworked.
- e. Minutes of the meeting of 5 March 2019 at which the recommendation that the suspension of payment applications be declined was not approved by the SARS committee.
- f. Documents and or evidence of SARS contention that the taxpayer deals primarily in cash which makes it difficult to prove hardship referred to in Paragraph 5.2 under Point 4.2 of the minute of the meeting held on 15 October 2019. (the minutes).
- g. Documents and or evidence relied on by SARS for its contention that the incorporation of new companies in 2017 and 2018 and the decreased VAT refunds claimed are indicative of a possible transfer of the business to other entities referred to in the minute.
- h. Documents and or evidence relied on by SARS relating to the outcome of the investigations conducted by FIC referred to in Paragraph 5.1 under Point 5 of the minutes.
- i. Documents and or evidence relied on by SARS for its contention that there are no assets in the name of the taxpayer except the stock sitting in wholesale referred to in Paragraph 5.1 under Point 6 of the minute.
- j. All underlying documents and or evidence relied on by SARS to support its change in position at its meeting of 5 March 2019 that there is no risk of the dissipation of assets (referred to in Paragraph A on Page 5 of the

recommendation of 5 March 2019) to the meeting of the 15 October 2019 that the risk of dissipation of assets is high referred to in Paragraph A on Page 10 of the recommendation of 15 October 2019.

- k. Annexure L, which provides for a discussion on the risk areas identified referred to in Paragraph D on Page 2 of the large assessment pack in respect of CIT that formed part of the B team pack which relates to the decision taken on 15 October 2019 (large assessment pack).
- l. The memorandum prepared by SARS forensic audit which details the risks included in the risk profile and referred to in Paragraph F on Page 2 of the large assessment pack for CIT.
- m. Evidence that the taxpayer has moved some of its export business to other businesses within the company group from about mid-2016 referred to in Paragraph 5(A) on Page 18 of the large assessment pack for CIT.
- n. Debt collection plan (excel spreadsheet) referred to in Part C on Page 19 of the large assessment pack for CIT.
- o. Annexure L, which provides a detailed description of the risks identified in the risk profile or report referred to in Paragraph 1.6 on Page 1 of the large assessment pack in respect of VAT that formed part of the meeting pack which relates to the decision taken on 15 October 2019.
- p. The template detailing an alleged serious tax offence in respect of ghost exports and other alleged under declaration of income and output tax that was delivered to SARS criminal investigations referred to in Paragraph 2.16(B) on Page 17 of the large assessment pack for VAT.
- q. The applicant's management account as at February 2019 that were provided to SARS on 11 September 2019 in support of the suspension of the payment application.
- r. Confirmation of payment received by SARS from the applicants of the amount of R300 000 per month.

- s. Vehicle schedule provided by the applicant to SARS on 1 February 2019.
- t. Schedule of assets as of 28 February 2019 provided by the applicant to SARS on 1 February 2019.
- u. Audio recording or transcription of the meeting held on 15 October 2019.

Issues for determination

- [31] The crisp issue before me is whether Section 68 of the TAA is in principle capable of being invoked by SARS to justify withholding documents that would otherwise fall within the Rule 53 record.
- [32] It must be remembered that this application to compel the furnishing of further documents is to enable the taxpayer to test the basis on which SARS declined to the suspension of payment request whether such decision was undertaken in an impartial and objective manner. It is not an application aimed at setting aside the assessment. That is left for the tax court to decide on.
- [33] The taxpayer admits that amongst the list of documents it requires are documents that they themselves provided to SARS. In resisting to produce the further documents, SARS relies principally on the provisions of Section 68(1) of the TAA as well as Section 35 of the Promotion of Access to Information Act 22 of year 2000 (PAIA) which act deals with the mandatory protection of certain records of SARS.
- [34] It is so that in placing reliance on the two acts SARS contains that the risk reports debt collection plans and link chart analysis are opinions, advice, reports as well as recommendations as contemplated in Section 68(1)(a)(i) and (ii) of the TAA including Section 35 of PAIA.
- [35] The opinions, advice, debt collection plans all contain information relating to the verification audit selection procedures and methods used by SARS in conducting audits and to disclose such information is likely to jeopardise the effectiveness of SARS audits as contemplated in Section 68(1)(k) of the TAA.

[36] The Court in *Comair Limited v Minister of Public Enterprises and Others*¹ was confronted with a similar defence of confidentiality. The question was framed in the following words by Jordaan J:

“Whether the first respondent's claim to confidentiality should be allowed to act as an absolute bar to the disclosure of relevant documentation thus frustrating not only the applicant's ability to properly prosecute his review application but also this Court's ability to determine the review on the basis of all relevant documents, notwithstanding the proposal for a confidential regime that would protect the claimed confidentiality while ensuring limited yet necessary access to the relevant documents.”

[37] SARS maintains that it has fully complied with the requirements of Rules 53(1)(b) in that it delivered what it said was the full record of the proceedings sought to be corrected or reviewed. It says it did so on 9 December 2020. Then again, a second batch of the record was dispatched on 31 March 2021. In the result, SARS argues that whether or not in Devland's view the record was complete falls outside the scope of the application to compel under Rule 53(1)(b).

[38] Compliance with Rule 53 regarding time frames and providing a complete record is not just a procedural process but is a substantive requirement which serves to ensure that the substance of the decision is properly put to the fore at an early stage and any attempt to frustrate this would be met with displeasure by the Court.

[39] The Constitutional Court in *Helen Suzman Foundation v Judicial Service Commission*² held as follows:

“The unfairness suffered by a review applicant denied access to deliberations lies in the fact that she or he may have been prevented from making the best possible case. The fact that a number of other relevant documents and reasons distilled from the deliberations have been provided does not detract from the unfairness of withholding other relevant information. The information that has been withheld may provide evidence of reviewable irregularities that are not revealed by the other

¹ 2014 (5) SA 608 (GP) at para 3

² 2018 (4) SA 1 (CC) at para 77

documentation. That is why the rule requires that all relevant documentation must be provided unless there is some legally cognisable basis for withholding it.”

[40] Rule 53 was intended to operate to the benefit of the applicant. In certain cases, a decision maker may be required to produce the full record of proceedings which include its deliberations. This is exactly what Devland requires. It is the deliberations by the SARS committees that it requires to enable a Court to scrutinise the exercise of public power for compliance with constitutional prescripts. The Court in *Badi and Another v East Cape Cycling and Others*³ held that:

“... an incomplete record is not a record as contemplated in Rule 53.”

[41] Former Deputy Chief Justice Moseneke in *Masetlha v President of the Republic of South Africa and Another*⁴ stated as follows.

"Ordinarily courts would look favourably on a claim of a litigant to gain access to documents or other information reasonably required to assess or protect a threatened right or to advance a course of action. This is so because courts take seriously the valid interest of a litigant to be placed in a position to present its case fully during the course of litigation, whilst weighing meticulously where the interest of justice lie, courts strive to afford a party a reason opportunity to achieve its purpose in advancing its case. After all an adequate opportunity to prepare and present one's case is a time-honoured part of litigating parties right to a fair trial."

[42] It is against the above background that this court is now required to determine whether Section 68 of the TAA is in principle capable of being invoked by SARS to justify withholding documents that would otherwise fall within the rule 53 Record. The court in *Helen Suzman* held that non-disclosure can only be allowed if there is a legally cognisable basis for it and further that public interest privilege may constitute such basis subject to the caveat that confidentiality does not *per se* in on law confer any privilege against disclosure.⁵

³ [2019] ZACPEHC 82 at para 9 (5 November 2019)

⁴ 2008 (5) SA 31 (CC) at para 25

⁵ Helen Suzman Footnote 2 above at para 70.

- [43] The Constitutional Court has confirmed that the content of the record is to be determined by relevance to the impugned decision not on the case as pleaded in the founding affidavit, precisely because the applicant case is only fully particularised once it has had sight of the record and has had an opportunity to supplement its grounds of review.
- [44] In my view, SARS's reliance on Section 68 of the TAA is without lawful merit. This is so because Section 68(3) expressly allows for the disclosure of taxpayer information if authorised by any other act which expressly provides for the disclosure of information despite the provisions of this chapter.
- [45] SARS's reliance on privilege and confidentiality conflates two analytically distinct concepts. Legal professional privilege, whether legal advice, privilege, or litigation is a substantive evidentiary privilege recognised at common law and expressly preserved in Section 68(1)(b) of the TAA. SARS's confidential information means information relevant to the administration of a tax act that is information subject to legal professional privilege vested in SARS. On the other hand, statutory confidentiality is a creature of the TAA itself and its applicability, scope and any statutory exception, must be established with reference to the actual weighting of Section 67 to 74 and not simply asserted as a synonym to privilege.
- [46] In addition, Section 68(3) has a general override regarding SARS's confidential information. It reads as follows:
- “A person who is a SARS official or former SARS official may disclose SARS' confidential information if it is required by order of the High Court.”
- [47] Even when documents are properly privileged or confidential, our Courts have consistently preferred calibrated solutions over blanket exclusion. This was held in *Comair Ltd v Minister for Public Enterprises and Others*, that privileged documents are not automatically excluded from the record in their entirety. If relevant, they should be included subject to appropriately limited disclosure agreement between the parties or by order of Court.

- [48] Where access to information legislation intersects with Rule 53, the Constitutional Court in *PFE International Inc (BVI) v Industrial Development Corporation of South Africa Ltd*⁶ held that the uniform rules of court constitute another law within the meaning of Section 7 of the PAIA to regulating access to records once litigation has commenced.
- [49] Section 73 of the TAA entitles a taxpayer or its duly authorised representative to obtain a certified copy of the recorded particulars of an assessment or decision, access to information the taxpayer itself submitted to SARS, and other information relating to its own tax affairs. This provision is significant in the present matter. The taxpayer, Devland is not a stranger seeking access to a third party's confidential information. It is the taxpayer whose own reassessment and whose own suspension request generated the committee's deliberations. The Court has repeatedly emphasised that this regime exists principally to protect taxpayers generally, that is, the taxpayer's affairs as against disclosure to third parties or the public, rather than to shield SARS decision makers on a given taxpayer's own affairs from that very taxpayer.
- [50] The relevance of the committee deliberations to the review is informed by the structure of the Section 164(3) itself, which requires a senior SARS official exercising the discretion to have regard to eight enumerated factors, being the following:
- a. The taxpayer's compliance history.
 - b. The amount of tax involved.
 - c. The risk of dissipation of assets, whether adequate security can be provided.
 - d. Whether payment would cause irreparable financial hardship.
 - e. Whether sequestration or liquidation is imminent.

⁶ 2013 (1) SA 1 (CC) at para 32

f. Whether fraud is involved.

g. whether the taxpayer failed to furnish the requested information.

[51] Records showing how, if at all, the committee or committees considered and weight all the above factors go to the heart of whether the refusal was lawful, reasonable, and rational, and are accordingly part of the record on ordinary Rule 53 relevance principles.

[52] On the facts presented, SARS reliance on Section 68 requires closer interrogation, stripped to its core, SARS claims that the documents ought to be withheld is a claim based on the benefit of confidentiality. SARS does not identify any self-standing right outside of this as a basis for its assertion of privilege. This is fatal to SARS opposition as confidentiality is not a ground on which privilege can be established.

Conclusion

[53] In conclusion, Section 68 of TAA is in principle capable of application in Rule 53 proceedings. It expressly preserves legal professional privilege vested in SARS under Section 68(1)(b) and a defined conjunctively tested category of deliberative materials under Section 68(1)(e). It is not, however, a general secrecy provision permitting SARS to withhold from a taxpayer the record of that taxpayer's own affairs. Section 69(6)(a) says so, and Section 73 gives Devland a positive entitlement to its own record.

[54] The SCA in *Cape Town City v South African National Road Authority*⁷ held as follows:

“And as Rule 53 will only ever apply to the disclosure of documents by public bodies, I entertain some doubts as to whether such body can invoke the right to privacy to protect from disclosure documents relied upon by it to make decisions.”

⁷ 2015 (3) SA 386 at para 37

[55] It is clear that SARS interpretation of Section 68 inhibits rights rather than advance them and is in the result an unconstitutional interpretation. Therefore, this application is granted with costs.

Order

[56] In the result, I make the following order:

1. The respondent is compelled to produce a complete record pertaining to the impugned decisions in the review application under the above case number in terms of Rule 53, (the complete record), including but not limited to the following.
 - 1.1 Annexure 1, which provides a detailed description of the risks identified by CRU and during the audit referred to on Page 5 of the recommendation dated 15 October 2019.
 - 1.2 The link chart analysis of all the companies and assets belonging to the taxpayer and its directors referred to on Page 23 of the recommendation dated 15 October 2019.
 - 1.3 The committee member sign off sheet in respect of the meeting held on 15 October 2019, at which the recommendation dated 15 October 2019 was presented, detailing the outcome of the suspension of payment request.
 - 1.4 Documents and or evidence that served before the relevant SARS committee detailing the basis on which the committee decided not to approve the recommendation presented at the meeting of 5 March 2019, that the suspension of payment application be declined, and the committee's decision that the suspension application had to be reworked.
 - 1.5 Minutes of the meeting of 5 March 2019, at which the recommendation that the suspension of payment application be declined was not approved by SARS committee.

- 1.6 Documents and or evidence of SARS contention that the taxpayer deals primarily in cash, which makes it difficult to prove hardship referred to in Paragraph 5.2 under Point 4.2 of the minutes of the meeting held on 15 October 2019.
- 1.7 Documents and or evidence relied on by SARS for its contention that the incorporation of new companies in 2017 and 2018 and the decreased VAT refunds claimed are indicative of a possible transfer of the business to other entities referred to in the minute.
- 1.8 Documents and or evidence relied on by SARS relating to the outcome of the investigation conducted by FIC referred to in Paragraph 5.1 under Point 5 of the minute.
- 1.9 Documents and or evidence relied on by SARS for its contention that there are no assets in the name of the taxpayer except the stock sitting in wholesale referred to in Paragraph 5.1 under Point 6 of the minute.
- 1.10 All underlying documents and or evidence relied on by SARS to support its changes in position at its meeting of 5 March 2019 that there is no risk of the dissipation of assets referred to in Paragraph A on Page 5 of the recommendation of 5 March 2019 to the meeting of 15 October 2019 that the risk of dissipation of assets is high referred to in Paragraph A on Page 10 of the recommendation of 15 October 2019.
- 1.11 Annexure 1, which provides for a discussion on the risk areas identified referred to in Paragraph D on Page 2 of the large assessment pack in respect of CIT that form part of the meeting pack which relates to the decision taken 15 October 2019 in practise large assessment pack CIT.
- 1.12 The memorandum prepared by SARS forensic audit which details the risk included in the risk profile and referred to in Paragraph F on Page 2 of the large assessment pack for CIT.

- 1.13 Evidence that the taxpayer has moved some of its export business to other businesses within the company group from about mid-2016 referred to in Paragraph 5(A) on Page 18 of the large assessment pack.
- 1.14 Debt collection plan in (Excel spreadsheet) referred to in Part C on Page 19 of the large assessment pack for CIT.
- 1.15 Annexure 1, which provides a detailed description of risk identified in the risk profile report referred to in Paragraph 1.6 on Page 1 of the large assessment pack in respect of VAT that form part of the meeting pack which relates to the decision taken 15 October 2019 large assessment pack.
- 1.16 The template detailing an alleged serious tax offence in respect of ghost exports and other alleged declarations of income and output tax that was delivered to SARS criminal investigations referred to in Paragraph 2.16(B) on Page 19 of the large assessment pack.
- 1.17 The applicant's management accounts as at February 2019 that were provided to SARS on 11 September 2019 in support of the suspension of payment of payments applications.
- 1.18 Confirmation of payments received by SARS from the applicant of R300 000 per month.
- 1.19 The vehicle schedule provided by the applicant to SARS on February 2019.
- 1.20 Schedule of assets as at 28 February 2017 provided by the applicant to SARS on 1 February 2019.
2. Audio recording or transcription of the meeting held on 15 October.
3. The record shall be dispatched to the registrar of this Honourable Court and the applicant within ten days of the service of this order.

4. The respondent is to pay the cost of this application on a party and party scale.


M MAKUME
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

Appearances

For the Applicant: Adv A Rafik Bhana SC & Adv Suhail Mohammed
Instructed by: Abba Parak Incorporated.

For the Respondent: P.L Mokoena SC & L.S Sigogo SC
Instructed by: Mothapo Moshimane Mulangaphuma Incorporated

Date of Hearing:

Date of Judgment:

28 August 2026