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IN THE REVENUE APPEALS TRIBUNAL ESWATINI

JUDGMENT

CASE NO: RATE/VT009/23

In the appeal between:

RATE/VT009/23 **APPELLANT**

And

ESWATINI REVENUE SERVICES- **RESPONDENT**

THE COMMISSIONER GENERAL

Neutral Citation: *RATE/VT009/23 v Eswatini Revenue Services, The Commissioner for Eswatini Revenue Services (009/23) (2023) RATE 009* (March 2023)

Coram: Mr Mbuso Simelane, Ms Fikile Dlamini, Ms Ntombenhle Shongwe, Mr Sandile Dlamini, Ms Khethiwe Dlamini (Members)

Heard: 31st August 2023

Delivered: This judgment was prepared and authored by the Members of the Tribunal whose names are reflected and is handed down electronically by circulation to the parties/their legal representative by email and by uploading it to the electronic file of this matter. The date for hand-down is deemed to be 17th November 2023.

Mr. Mbuso Simelane President of the Tribunal
(Members) Ms. Fikile Dlamini Mrs. Khetsiwe Dlamini Mr. Sandile Dlamini Mr. Musa Hlatshwayo Ms. Ntombenhle Shongwe Mr. Earl John Henwood
Mrs. Nelisiwe Tsabedze- Hlophe Executive Secretary

Summary: Tax Issue: Value Added Tax – registration - Appellant applied to the Respondent for VAT registration and application was approved effective 1st September2017. The Appellant having submitted the VAT returns for the ensuing period, the Respondent disallowed the input tax claim on the basis that there was none - compliance with Section 6 of the Act in that Appellant was not yet making any taxable supplies - Appellant lodged objection against the disallowed VAT input claim, whereupon in May 2018, the Respondent then cancelled the Appellant's VAT registration. Appellant lodged an appeal against the VAT de-registration - Respondent allowed the Appeal against the VAT de-registration and revived the registration - Appellant having filed input tax claims from the tax period September 2017 (original registration date) to August 2018, the Respondent directed that the Appellant was only entitled to a 6-months refund from February 2018 (date of revival of registration) to July 2018.

JUDGMENT

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1) The Appellant is RATE/VT009/23, a company duly registered in terms of the company laws of the Kingdom of Eswatini with its principal place of business at Mbabane, in the Hhohho district.

2) The Respondent is described as Eswatini Revenue Service, a semi-autonomous revenue administration agency on behalf of the state, established in terms of the Revenue Authority Act No. 1 of 2008. The Commissioner General cited herein in his official capacity as the Chief Executive Officer of Eswatini Revenue Service, a legal body charged with the responsibility of revenue collection on behalf of the Government of Eswatini.

3) This is an appeal where the Appellant was registered as a VAT vendor as per the letter dated 7th November 2017, indicating the effective date for the registration to be the 1st of September 2017 and that the first return and payment was expected by 20th October 2017. As a result, the Appellant was required to submit returns and make payments by the 20th day of every month.

4) The Appellant, pursuant to the instruction of the confirmation letter, then submitted the VAT returns for the periods September 2017, October 2017, November 2017, December 2017 and January 2018. Through the letter dated 1st February 2018, the Respondent informed the Appellant that the standard rated input tax claim was disallowed on the basis that there were no taxable supplies made in accordance with section 6(1) of the Value Added Tax Act, 2011 (herein after referred to as the Act).

5) On the 19th of March 2018, the Appellant filed its objection against the disallowed input tax claim for the periods October 2017, November 2017, December 2017, and January 2018. The Appellant submitted that the Act provides that any taxpayer who reasonably expects to attain the registration threshold based on the forecasted financial trading activities should apply for registration. It is on that basis that after the signing of the lease agreement between the Appellant and FINCORP, an application for registration as a VAT vendor was made.

6) The Appellant further submitted that it is on that basis that there was reasonable expectation that the business will make taxable supplies in excess of the registration threshold, and it was after the scrutiny of the lease agreement that the Respondent registered the Appellant for VAT purposes with effect from 1st September 2017. The Appellant avers that as a VAT registered person, they are conversant of their obligation to file VAT returns within the prescribed period, which they duly did.

7) The Appellant, through the letter dated 8th March 2019 submitted that the Act did not specifically provide for properties developed for investment purposes, whereas the costs incurred in the construction of the property are for the purpose of generating future vatable supplies. It is the Appellant's submission that it is not possible to invoice rental until the building has been completed.

8) The Respondent having disallowed the objection and further deregistered them, the Appellant on or about the 12th June 2018, filed an appeal against the VAT de-registration or cancellation decision arguing that it would be unfair, unjust, and unequitable to cancel its VAT registration. The Appellant further submitted that the Respondent failed to bring any substantive and credible evidence within confines of the Act to suggest that the company is no longer meeting the registration requirements.

9) On the 1st of August 2018, the Respondent allowed the appeal against de-registration. The Respondent stated as follows;

> ***"We hereby revive your registration, however, please note that the Commissioner General reserves the right to reverse his decision in instances where the conditions are eventually not met".***

10) The Appellant is of the view that ever since the Respondent's decision of 1st August 2018, reviving the registration of 7th November 2017, there has not been any cancellation or set aside of registration. The Appellant is of the view that he has been registered for VAT since the 7th of November 2017.

11) Following deliberations on the issue, the Respondent allowed the objection and advised the Appellant to file input tax schedules for verification purposes. The Appellant filed input tax schedules for the periods from September 2017 to August 2018, however, the Respondent directed that only schedule within the period of six (6) months starting from February to July 2018, would be considered. The Appellant filed an objection against the six months period schedules issue.

12) The Appellant argued that the six months determination by the Respondent is contrary to the provisions of Section 28(3) of the Act which specifies that the six months must be before the date of registration. The Appellant further argued that there was never any registration made in July 2018 and the Respondent is mistaken in referring to August 2018 as being the date the Appellant started making taxable supplies. The objection was disallowed by the Respondent through a letter dated 13th March 2019.

13) The Respondent, through the letter dated 13th March 2018, informed the Appellant that the input tax claim was disallowed on the basis that there were no taxable supplies made in accordance with section 6(1)(b) of the Act, which stipulates that a taxpayer should have made taxable supplies at the beginning of any 3 calendar months which will exceed one-quarter of the annual registration threshold.

14) The Respondent submitted that registration as a taxable person is based on Section 6(1)(b) of the Act, which details the conditions for registration as follows; there must be reasonable grounds of future taxable supplies by the taxpayer, the future taxable supplies must be made

within a period of 3 calendar months of the inception of the business and the supplies should exceed at least a quarter of the annual registration threshold.

15) The Respondent further advised the Appellant that in their case the above requirements for registration were not satisfied, therefore the registration was cancelled. However, the Respondent, subsequently revived the registration through a letter dated 1st August 2018, on condition that in any event where the requirements for registration were not thereafter met, the right to reverse the decision was reserved.

16) Through the letter dated 13th March 2019, the Respondent maintained that in terms of Section 28(1)(a) of the Act, credits are allowed to a taxable person for tax paid in respect of all taxable supplies made to that person during the tax period. This means that the taxable person can only claim input tax for VAT incurred on taxable supplies made to the taxable person. That the underlying principle is that for input tax to be claimed, it must have been paid on taxable supplies and charged by a registered vendor. Further that as much as the Appellant was registered for VAT, however, for the period, there were no taxable supplies made, as per the dictates of Section 28(1)(a) of the Act. Therefore, the requirements for claiming input tax had not been met, as there was no output tax on which input tax could be subtracted.

17) The Respondent submitted that the fact that the Appellant's registration was revived, did not mean that the Appellant qualified to claim credit for input tax, however, the input tax claim was contingent upon fully meeting the requirements of Section 28(7) of the Act. The Respondent allowed the Appellant's appeal through a letter dated 20th March 2021 advising that the input tax credit would be allowed on supplies of capital assets or imports made prior to becoming registered, if they were for use in the business provided that they were at hand at the date of registration and that their supply or import occurred not more than 6 months before the date of registration.

18) The Respondent maintained, through the letter dated 1st August 2018, the decision to allow input tax claim for the 6 months period, starting from February 2018 to August 2018. The Respondent submitted that the reviving of the VAT registration was from the period 01st August 2018 going forward and did not date back to the initial registration of September 2017 which had been cancelled. It is on that premise that, as per section 28 of the Act, the periods

covered in this case are the periods starting February 2018 to August 2018 and did not include periods where the registration was cancelled.

19) In addition, the Respondent advised the Appellant that a reliance on Section 6 (1) (b) is important in the determination of whether a taxpayer can claim any input tax incurred or not. The VAT entitlements and obligations are only applicable where the requirements for VAT registration are met and in this particular case the VAT registration was effective after the letter of 1st August 2018. Further to that, by this period the Appellant was able to display reasonable expectation that taxable supplies of one quarter of the registration threshold would be made within a 3-month period, hence the reason to allow input tax prior to the revival of the registration (February 2018 to August 2018) in terms of section 28(3) of the VAT Act of 2011.

20) Believing that the aforesaid Respondent's denial of the objection constituted an appealable decision, the Appellant lodged its Appeal under section 15 (1) of the Revenue Appeals Tribunal Act 13 of 2019, which appeal was lodged with the Tribunal on the 31st of March 2023.

21) Mr Kenneth Simelane appeared for the Appellant and Ms Bongekile Singwane in joinder Mr Bongisipho Dlamini, Mr Thandokuhle Khumalo appeared on behalf of the Respondent.

22) The Appellant has raised the following grounds of appeal and submitted as follows:

1. The Respondent erred in law and in fact in finding that there were no VAT obligations expected from the Appellant on or about November 2017 to on or about August 2018, after the Appellant was registered for VAT. It had filed its objection against the purported cancellation of the registration.

2. The Respondent erred in law and in fact in finding that the issue (relating to the VAT claim) was not an issue of registration, but it was a requirement in terms of the law to have taxable supplies in order to qualify for a VAT input claim.

3. The Respondent erred in law and in fact in holding that the upholding of the Appellant's objection and the revival of the registration did not apply retrospectively.

4. The Respondent erred in law and in fact finding that the objection decision of 1st August 2018 envisaged a VAT registration that started from that period (1st August 2018) and going forward and did not date back to the initial registration of September 2017.

5. That the Respondent erred in law and in fact in finding that his decision to disallow the claim before February 2018 does not offend the neutrality principle and or does not cause the taxpayer to bear the burden of VAT and or that the Appellant had not met the requirements for registration on or about November 2017.

6. The Commissioner General erred in law and in fact in finding that Section 6 (1) (b) of the Act was relevant and or important in the determination of whether a taxpayer can claim any input incurred or not.

7. That the Respondent erred in law and in fact in finding that it was only in August 2018 wherein the Appellant was able to display a reasonable expectation that taxable supplies of one quarter of the registration threshold would be made within three months, hence the reason to allow input tax prior to the revival of the registration.

8. That the Respondent erred in law and in fact holding that the refund for six months period starting from February 2018 to August 2018 was in line with Section 28(3) of the Act as the registration of the taxpayer was in August 2018 and not in September 2017.

9. That the Respondent erred in law and in fact finding that the Appellant was not entitled to interest on the late refund in terms of Section 49 of the Act on the basis that there were no objections filed by the Appellant and that there was also no amount of security for the tax due paid by the Appellant in terms of Section 35(5) of the Act.

23) There are three issues under contention in this appeal and, the Tribunal breaks them down below:

23.1 Firstly, the Appellant seeks the Tribunal to determine whether or not the Appellant qualified for such VAT registration, and this involves a consideration of the terms of

the lease agreement concluded between the Appellant and its tenant, viewed against the relevant provisions of the Value-Added Tax Act No.12 of 2011.

23.2 Secondly, the Appellant seeks the Tribunal to determine whether the unilateral cancellation of the VAT registration by the Respondent was justified considering that the Appellant had already started performance of his obligations.

23.3 Thirdly, the Appellant seeks the Tribunal to determine whether the effective period for the registration, in accordance with the provision of the Act from which the Appellant qualified for an input tax credit.

24) **Appellant's submission**

24.1 The Appellant in the above application advances the following main arguments as to its appeal;

24.2 The Appellant comes before the Tribunal to argue that through in lodging its appeal the Appellant wished to sum them down to three main areas of arguments for purposes of the hearing before the Tribunal as the other grounds were dealt with administratively by both parties. What is contentious between the parties in this matter, revolves around the following two substantive issues, namely:

24.2.1 The determination of the Appellant registration date as a VAT vendor by the Respondent, so as to determine the six (6) month period prior to which, a registered VAT vendor can claim VAT input in line with Section 28 (3) of the VAT Act of 2011 ("**the VAT Act**"):

24.2.2 To make a determination as to whether the refunds sought by the Appellant ought to be paid with interest in terms of Section 49 of the VAT Act.

24.3 The Appellant submitted to the Tribunal that these main areas sum up the net effect of the case before it.

24.4 As to the issue of registration, as an initial point of consideration, the Appellant argued that the only registration date it has from the Respondent is clearly apparent on its current certificate of registration which was issued on the 11th November 2017 for the Tribunal and has never been issued with any other. To this end the Appellant argued that the VAT Act itself makes it clear that:

> "***A certificate of registration shall state the name and other relevant details of the Taxable person, the date on which the registration takes effect and the taxpayer identification number***".

24.5 Thereby making the registration date, in the absence of any other, the 11th November 2017 as the valid registration date.

24.6 The Appellant argued further that though the Respondent purported to cancel the registration, on the basis of Section 8 (5) of the VAT Act, it was in itself wrong in law and accordingly was objected to by the Appellant. In amplification of the Appellant position, the Respondent upheld its objection and "revived" its registration.

24.7 The Appellant argues that in pursuing its VAT registration it provided the requisite documentation required by the Respondent to consider its application, in particular a lease agreement showing a reasonable expectation to meet the required threshold for the VAT registration.

24.8 However, the Respondent would later deny the Appellants claim for VAT input and make a unilateral decision to cancel its registration, only to later allow the VAT input claims following an Appeal by the Appellant. Surprisingly though when Appellant accordingly filed its input tax claims these were disallowed and the Respondent in turn directed that the Appellant can only claim input tax for a period of Six (6) months starting from February 2018 to July 2018, which the Appellant disputed and in rebuttal stated that the Six (6) month period ought to in fact be computed from September 2017.

24.9 In the main, the Appellant argued that the Respondent's arguments that it relied upon in cancelling its registration, namely that, the Appellant did not meet the registration requirements nor did it have a taxable supply held no water as such arguments have been overtaken by events, particularly the fact that the Respondent itself approved the Appellant's VAT registration application when it could have declined it, and further still having cancelled the VAT registration, upon objection to the cancellation and appeal to the disallowance of the VAT input tax claims, it is the Respondent itself that re-instated both. Further exhibiting that there was no true legal basis for neither.

24.10 To this end, it is the Appellant's contention that, in the absence of any other effective date of registration than that as evidenced by the only VAT registration the Appellant has in its possession, that being the 1st of September 2017. Thus, all rights and obligations of the Appellant as a VAT registered entity should flow therefrom. Meaning therefore that post the Respondent conceding that it was entitled to VAT input tax (following an Appeal) then this entitlement should flow from the date of effective registration, thus for purposes of Section 28 (3) this should be a computation six (6) months prior to September 2017, legally speaking.

24.11 The Appellant asserts therefore, that with a concession in place from the Respondent, that the Appellant is entitled to a refund (which it ought to however extend to a Six (6) month period before effective registration), following the Respondent stating as such in a response to an Appeal of disallowed VAT input claims by the Appellant, it follows that the Appellant is entitled to a refund in terms of Section 49 (2) of the VAT Act, which compels the Commissioner General to pay interest at the rate of two percent per month on the amount of the refund for the period commencing on the day after the latest date for making the refund and ending on the date the refund is made.

24.12 In closing the Appellant addressed the issue of raising payment of security in this matter as misguided and therefore not worth arguing at any length, which it indeed did not.

24.13 In light of the above the Appellant prayed that its appeal in its entirety be upheld by the Tribunal.

25) ***Respondent's arguments***

25.1 The Respondent submits as a point of departure that, it did indeed approve the Appellants application for VAT registration effective 1st September 2017. Further that in that instance the Appellant was authorised to charge VAT on all taxable supplies and prices charged by it should indicate VAT charged on each transaction and that the Appellant was placed in the VAT registration category where the taxpayer is to make payments on a monthly basis.

25.2 The Respondent submitted to the Tribunal that all entitlements flowing from such as the filing of VAT returns, charging VAT on taxable supplies and right to input deduction are only applicable where "requirements for VAT registration are met and a person becomes a taxable person in terms of section 5 of the VAT Act", to which the Respondent further posited that in the present case pursuant to this the Appellant became such taxable person on August of 2018.

25.3 The Respondent then made the submission that in respect of the claim for input tax, it is only where all the taxable persons supplies for the period in question are taxable supplies for purposes of the VAT Act that VAT input tax may be credited to the VAT registered vendor and in the case of the Appellant such taxable supplies were not apparent and not made hence the Respondents disallowance of the Appellants claim.

25.4 In furtherance of the reason for the disallowance of the VAT input tax claim, the Respondent relied on the case of ***Consol Glass (Pty) Ltd vs CSARS***[1]***,*** which the Respondent posits in dealing with a similar question, the court held that the overall evidence was not persuasive enough to show that services were for the purposes of making taxable supplies. The Respondent further buttressed the point by submitting

[1] [2020] ZASCA 175

that in the case of ***Customs and Excise Commissioners v Redrow Group plc***[2] it was held that;

> "***These provisions entitle a taxpayer who makes both taxable and exempt supplies in the course of his business to obtain credit for an appropriate portion of the input tax on his overheads…***"

Further that;

> "***to be entitled to deduct 'input tax' in the calculation of the VAT payable, a vendor must be registered in terms of the Act, must be carrying on an 'enterprise' and must have paid VAT on goods or services which the vendor acquired wholly for the purpose of consumption, use or supply in the course of supplying goods or services which are chargeable with Tax under the provisions of Section 7 (1) of the Act (i.e. goods or services supplied in the course or furtherance of the 'enterprise')***

Lastly that;

> "***The Act also provides in Section 17 for the method whereby the deductible 'input tax' is calculated where the goods or services are acquired partly for consumption, use or supply in the course of making taxable supplies".***

25.5The Respondent then submits that its only reason for disallowing the input claim by the Appellant in respect of the period in question is that there were no taxable supplies made pursuant to Section 6 (1) (b) of the VAT Act which clearly states that a taxpayer should have made taxable supplies at the beginning of any period of three (3) months of which will exceed one quarter of the annual registration threshold.

25.6 In respect of the Respondent's cancellation of the registration, it submits that this was occasioned by the realization on its part that the Appellants had failed to make taxable supplies and to this end the Commissioner-General can simply invoke section 8 (4) of the VAT Act and cancel that person's registration, as long as the Commissioner-General has satisfied himself that, that person is not qualified to register under Section 6 of the Act.

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[2] [1999] 2 All ER (HL) at 9 g-h,

25.7 The Respondent then further submits that it was after several meeting and discussions with the Appellant that it made the realization that it now had the prospects of making taxable supplies that it then 'revived' the registration of the Appellant.

25.8 The Respondent however hastened to state that this 'revival' did not restore the taxpayer to *status quo*, because the law states that there cannot be ''legitimate registration in the absence of a taxable supply, thus it could be wrong to say that the registration goes back to 2017, because there was no taxable supply then.

25.9 In closing the Respondent stated that it was aligned with the Appellant's view that it is to pay interest in terms of Section 49 of the VAT Act , however disputes that this interest should run from the six months prior to the initial registration but rather in terms of section 28 (3) of the Act which according to the Respondent covers the period from February 2018 to July 2018, which is appropriate registration period, wherein the Respondent noted the Appellant making a taxable supply.

25.10 To this end, it was the Respondents prayer that the Tribunal dismiss the Appellant's appeal.

26) **Tribunal's analysis**

26.1 This matter has a history leading up to the current appeal before the Tribunal. The Tribunal is of the view that for the appreciation of what is in dispute between the parties, it would be necessary to preface this judgment by considering brief submissions from both the Appellant and Respondent which set out the long-term history starting as far back as September 2017.

26.2 The main pillar of Appellant's argument is to require the Tribunal in total to consider firstly, the determination of the Appellant's registration date as a VAT vendor by the Respondent, so as to determine the six (6) month period prior to which, is available to a registered VAT vendor to claim VAT input in line with Section 28 (3) of the VAT Act of 2011 ("**the VAT Act**"). The Appellant contends that the only registration date it has from the Respondent is clearly apparent on its current certificate of registration and has

never been issued with any other. The Appellant's counsel proceeded to explain that the only certificate in their possession was issued in September 2017 and therefore determined the registration date in the absence of any other valid registration date.

26.3 In arguing against this point, Respondent responded by stating clearly to the Tribunal that all entitlements flowing from the registration, such as the filing of VAT returns, charging VAT on taxable supplies and right to input deduction, are only applicable where "requirements for VAT registration are met and a person becomes a taxable person in terms of section 6 of the VAT Act", to which the Respondent further posited that in the present case pursuant to this, the Appellant became such taxable person on August of 2018. To illustrate this point, the Respondent cited ***Consol Glass (Pty) Ltd vs CSARS***.[3]

26.4 Before looking into this ground of appeal, the Tribunal will first consider whether or not the Appellant qualified for registration as a VAT vendor by the Respondent, so as to determine the six (6) month period prior to which, available to a registered VAT vendor to claim VAT input in line with Section 28 (3) of the VAT Act of 2011 ("**the VAT Act**") and also whether Appellant is entitled to the input refund claim.

26.5 The Tribunal has noted that the Value Added Tax Act of 2011 under Section 6 clearly states that a person can apply to the Respondent for registration as a VAT vendor and section 7 goes on to further detail the requirements for such registration to be valid and it was pursuant to these sections that the Appellant applied to be registered for VAT purposes. The exact wording of the provision clearly shows that an "***application for registration must be made***"**,** meaning that the registration is not automatic. It is the Tribunal's considered view that it is incumbent on the administrator to consider such application and decline it if the Applicant does not qualify for registration. As part of the qualification requirements, section 6(1) (b) provides as follows:

> ***"A person who is not already registered under this Act shall apply to be registered in accordance with section 7- At the beginning of any period of three calendar months where there are reasonable grounds to expect that the total taxable value***

[3] [2020] ZASCA 175

of taxable supplies to be made by the person during that period will exceed one-quarter of the annual registration threshold".

26.6 In a rigorously systematic analysis by this Tribunal, we conclude that the most critical requirement for registration is the provision of an estimate of the taxable supplies envisaged, and that such determination lies with the Respondent who must verify whether a taxpayer meets the registration threshold thus ensuring compliance with the VAT Act. The Tribunal is saying so because it has noted from the arguments of the parties that to be considered for registration, the Appellant in this matter was carrying out, as an activity, a project **(investment)** and not a business specifically "to ***construct a building project for rentals***.

26.7 It is the Tribunal's opinion that this is where the problem lies. The Tribunal is of the considered view that Appellant understood their project was at the initial stages in the sense that the building from which the intended turnover was based were at preliminary or pre-operatory level and consequently the leasing to tenants was not anticipated soon or within the stated period in the legislation.

26.8 The Tribunal straight away differs with the Appellant that indeed they were going to meet the estimated amount of the taxable supplies for the period stated in the legislation as the project was at preliminary stage. The Tribunal finds this material in determining the issues of qualification, registration, claiming of input tax and refund in terms of section 49 (2) of the VAT Act, which compels the Commissioner-General to pay interest at the rate of two percent per month. The Tribunal is basing this on the arguments made by Appellant that it was not possible to invoice rentals until the building has been completed.

26.9 However, for whatever reason Appellant believed that they would exceed the one-quarter registration threshold hence the application. The Tribunal wonders as to how that was possible as they were engaged in a project which required some time to be completed. The truth of the matter might be that Appellant looked to section 6 of the VAT Act requiring anyone who exceeds or has ***reasonable grounds to believe*** will exceed the one- quarter to apply and register for VAT. Arising from the arguments by

both parties, it is plain that the issue raised touches on the validity of the application and registration that took place on the 1st of September 2017 which the learned counsels have locked horns as to whether or not it was a valid registration.

26.10 It is the Tribunal's considered view that, unfortunately, in this case the Respondent failed to note that the Appellant did not qualify for registration on 1st of September 2017, as the rentals would only start coming through in August 2018, falling outside the 6 months upon registration envisaged by section 28 of the VAT Act.

26.11 Further, it is the Tribunal's view, that the consideration and approval of the registration lies with the administrator considering the application to review and exercise due diligence when going through it and see exactly what is submitted. Had an officer of the Commissioner-General considering the application properly gone through it, he or she would have realised that what was being registered was a project and not a business. It follows therefore that a project would not yield output but only input. It is the Tribunals considered view that the Respondent would also have realised that the turnover stated would not have been achieved within the specific period taking into account that this was a project at preliminary stage.

26.12 It is the Tribunal's considered view that in the whole process there was a legal duty which has been abrogated that needed the attention of the Respondent in this matter. The Tribunal is of the view that this whole exercise required the Respondent to, in particular, scrutinize all documents received in support of the registration applications to ascertain whether the Applicant met the requirements for registration as provided for in the VAT Act.

26.13 The Tribunal after having gone through the record of proceeding and the submissions made during the hearing, discovered that this exercise was seemingly, sufficiently carried out by the Respondent, as evidenced in the email dated 29th September 2017, which read as follows;

> ***"We have engaged with the SRA on the matter below and they have advised that they are waiting estimates of the annual revenue to be generated by the company from you. They (SRA) alleged that this is the only outstanding information delaying the entire registration process. Kindly provide the estimate to Wallington (SRA)"***

26.14 The Tribunal has considered the question of VAT registration as discussed by Maggs[4] in the case of the South African jurisdiction, as follows;

> ***From 1st April 2014, the requirement of a reasonable expectation to exceed R1 million taxable supplies has been replaced with the requirement that existing or future businesses have contractual agreement to make the R1 million thresholds within the next 12-month period. The expected future taxable supplies are no longer based on budget or projections but will be based on facts confirmed by the existence of a written contractual obligation. The 12-month period is not a reference to a tax-year or a reference to a financial reporting period. The R1 million future expected supplies should not include abnormal transactions of a temporary nature.***

26.15 This extract from the article above shows that the placement of heavy reliance on budget or projections with regards to estimating taxable supplies would at a later stage likely result in taxpayers not meeting the VAT registration requirements. Again, it is the Tribunal's considered view that the existence of a written contractual obligation in this case is considered a more accurate measure of the value of the taxable supplies and the timing on which the taxable supplies will flow to the entity.

26.16 The Tribunal 's conclusion is based on the fact that the pre-condition of the existence of a contractual agreement in the case of the South African jurisdiction provides certainty to SARS to weigh whether the VAT registration will be met or not. In such cases SARS was required to carefully examine the written contractual obligation to ascertain whether the registration requirements will be met or not.

26.17 It is the Tribunal's view that in the present case, in respect of the estimate of annual revenue, Section 6 (b) of the Act states;

> "***At the beginning of any period of three calendar months, there must be a reasonable ground to expect that the total taxable value of taxable supplies to be***

[4] et al (2015, 2023)

made by the person during that period will exceed one-quarter of the annual registration threshold (the annual registration threshold being E500 000)".

26.18 This therefore means for a prospective VAT vendor to be registrable, they must be able to demonstrate with ***documentary evidence*** that within the first 3 calendar months of registration they will make taxable supplies exceeding E125 000.

26.19 Further the Tribunal has noted the response to the enquiry on taxable supplies estimate, as an email was sent by the Appellant on the 29th of September 2017, which read as follows;

"Please see the attached signed lease agreement between RATE/VT009/23-ERIS joint venture and FINCORP Swaziland for the building currently under construction and note the following-Lease commencement upon the issue of the Certificate of Occupation, which is expected on June/July 2018; the lease period is 20 years and the rentals payable SZL 580 000 per month escalating at 8% per annum".

26.20 It is important for the Tribunal to emphasise here that this email was sent for the purpose of assisting the Respondent in weighing whether reasonable grounds existed to satisfy the requirements for VAT registration to be met by the Appellant as envisaged by the Act. The email (sent to one Wallington Simelane from the Respondent's registration unit) in annexure marked "SM 14 (a)" on page 54 of the Appellant's notice of appeal and accompaniments, further clarified clause 1.21 of the lease agreement which read thus:

"***Lease commencement date - the later of the practical completion date or on which the authority issues an occupation certificate in respect of the premises".***

26.21 Since this clause did not have a specific date and if the Respondent considered this to be a key factor on their decision it was incumbent upon them to seek clarity on the actual commencement date, referred to in the email above. Section 6 and 7 of the VAT Act guides the Respondent on the conditions to be met by a prospective VAT registrant for approval of registration. If an application is approved, the successful registrant is entitled to assume that the Respondent has satisfied itself or has done due diligence

before approving the registration, especially because once the registration is approved there are some obligations that the Appellant is supposed to comply with.

26.22 The Tribunal has considered the attendant obligations of the Appellant upon registration contained in the VAT confirmation letter which read as follows:

> ***"The Swaziland Revenue Authority has approved your application for Value Added Tax registration. Your effective date of registration is 1st September 2017.You are hereby authorized to charge VAT on all taxable supplies that you supply in your business and your prices should indicate that VAT was charged on each transaction. Your first return and payment are expected by 20 October 2017. Thereafter, you will be expected to submit returns and make payments by the 20th day of every month".***

26.23 Cross referencing the above contents of the letter with the email containing the contents of the lease agreement, the Tribunal wonders as to which supplies was the Respondent authorizing the Appellant to charge VAT on as at 1st of September 2017 when the Appellant's 29th September 2017 email clearly stated that the tenant would start paying rent in July 2018. The Respondent's letter further reads that "***your first return and payment is expected by the 20 October 2017".*** This again begs the question as to what payment was the Respondent expecting by the 20th of October 2017 when the Appellant's email had already established that the lease commencement date would be July/August 2018.

26.24 The Tribunal has noted the confirmation letter from Respondent advising the Appellant that he would be expected to submit returns and make payments by the 20th day of every month. The Tribunal has noted that since the year 2017 and to be specific from the date of registration certificate (September 2017) the Appellant has honestly discharged the requirements of filing monthly returns as was clearly stipulated during the hearing. All monthly returns have disclosed input tax with no output. These regular disclosures continued and were noted by Respondent after the 6 months period. The Tribunal has noted that the Appellant fulfilled this obligation by submitting the monthly returns, however, the Respondent then turned around and advised as follows;

"This letter serves to inform you that the standard rated input tax claim in your VAT return covering the period November 2017 has been disallowed, this is because there were no taxable supplies made in accordance with Section6 (1) (b) of the Act which stipulates that a taxpayer should have made taxable supplies at the beginning of any period of three calendar months".

26.25 It is the Tribunal's considered view that, had the Appellant at least furnished the Respondent with a budget or projection, the Respondent would have been uncertain on the actual timing of the taxable supplies as discussed by **Maggs**.[5] Therefore, professional judgment would have been employed by the Respondent when vetting the VAT registration application. However, in this case, a more accurate measure of the timing of the taxable supplies was at the Respondent's disposal and with all the relevant facts to assist the Respondent in making an informed decision.

26.26 The Tribunal is of the opinion that, on a correct interpretation of the law, the effective date for registration should have been at least three months before the rentals were to be received by the Appellant. That is since the tenant started paying the rentals in August 2018, then the correct effective date of registration for VAT purpose should have been June 2018 and in this instance the Appellant would only be allowed to claim input tax going backwards 6 months from this date, which sets the input tax entitlement back to February 2018.

26.27 It is therefore the Tribunal's view that indeed the determination by the Respondent pertaining the claim for input tax was correct since there were indeed no taxable supplies being made by the Appellant at this point, however, it creates the impression that it is the Appellant who is at fault by not making taxable supplies, whereas it is the Respondent, who failed to make a correct determination on the commencement of the making of taxable supplies by the Appellant.

26.28 It is on the basis of the foregoing that we are respectfully unable to subscribe to Respondent's submissions under this ground as they had been furnished with all the pertinent information at initial registration, instead of approving the registration, they

[5] at al. (2015, 2023)

should have advised that since Appellant's taxable supplies would be made either in July/August 2018, the effective date would be August 2018 and an input tax credit for six months prior to registration would be allowed from February 2018 as per section 28 (3) of the VAT Act.

26.29 The Tribunal is of the view that the Act is very clear that a prospective registrant for VAT is one who envisages to make taxable supplies in the 3 months immediately ensuing after the application for registration. Since an email was sent to the Respondent advising of the lease commencement date, then sufficient evidence was available to them pertaining the commencement of the making of taxable supplies by Appellant. Thus, the Respondent failed to ascertain that the monthly returns which the Appellant was advised to file would only have a claim for input tax and no output tax as of October 2017.

26.30 It was also Appellant's arguments, that in pursuing its VAT registration it provided the requisite documentation required by the Respondent to consider its application, in particular a lease agreement showing a reasonable expectation to meet the required threshold for the VAT registration. However, in arguing this point, the Tribunal noted that the Respondent was very scanty as to why given that the purpose of application is to allow the Commissioner- General to satisfy themselves that a taxpayer meets the prescribed qualifications for VAT registration, it failed to ascertain that Appellant did not meet the requirements under the VAT Act, a fact that the Respondent is now hiding behind.

26.31 It is the Tribunal's settled view that having been faced with the prevailing circumstances the Respondent is to blame for the mistakes made in the whole process of registration and the remedy would have been to cancel the Appellants' registration under sections 6 and 7 and not to take the Appellant to task and order him to apply for re-registration. The Tribunal is of the respectful view that, the Respondent should have further provided sufficient reasons in its decisions and further gave opportunities to the Appellant to be part and parcel of the negotiations to remedy its blunder and to provide a lasting solution to the matter.

26.32 If the Appellant is still registered the only question is whether under section 6 and 7 the Appellant is entitled to claim input tax. It is the Tribunal's view that the above sections do not disqualify the Appellant from claiming input tax. It is the Tribunal's view that tax laws have to be interpreted strictly. They cannot be interpreted to achieve administrative conveniences. It is the Tribunal's view that Respondent should not be allowed to use oversights in prescribing operational tools for purposes of administrative conveniences. Taxpayers deserve protection from any administrative arbitrariness.

26.33 In the event then, it follows that the Appellant are still legally registered for VAT and so are entitled to all rights conferred to them by virtue of being validly registered for VAT. It is also the Tribunal's view that the Appellant has a right to the refund of input tax claimed dating back to the date of valid registration (1st September 2017) and accordingly the Respondent should admit the claim for refund and effect payment thereof.

26.34 Ultimately, as discussed in the foregoing reasoning, this ground of appeal is successful in the sense that the Respondent erred in registering the Appellant without a proper examination of the documentation provided in support of the application in particular, the lease agreement, to ascertain whether the registration requirements will be met or not. As such it does not lie with the Respondent to now turn around and dispute such erroneous registration.

26.35 The Tribunal is of the considered view that in the absence of any other effective date of registration than that as evidenced by the only VAT registration the Appellant has in its possession, that being the 1st of September 2017, it is the Tribunal's view that the correct registration effective date as a VAT vendor in accordance with section 28 of the VAT Act from which Appellant qualified for input tax credit is the ***1st of September 2017***.

26.36 Now that the Tribunal has determined the effective date for registration, from which the Appellant qualified for input tax credit, it is also incumbent upon the Tribunal to determine whether such refunds sought by the Appellant ought to be paid with

interest in terms of Section 49 of the VAT Act. We shall seek to determine these issues simultaneously as they are inextricably linked.

26.37 The Appellant argued that, with the concession from the Respondent, that the Appellant is entitled to a refund in place, the Respondent having stated as such in a response to an appeal of disallowed VAT input claims by the Appellant, it follows that the Appellant is entitled to a refund in terms of Section 49 (2) of the VAT Act, which compels the Commissioner- General to pay interest at the rate of two percent per month on the amount of the refund for the period commencing on the day after the latest date for making the refund and ending on the date the refund is made.

26.38 The Respondent responded by stating that it was aligned with the Appellants view that it is to pay interest in terms of Section 49 of the VAT Act , however, disputes that this interest should run from the six months prior to the initial registration but rather in terms of Section 28 (3) of the Act which according to the Respondent covers the period of February 2018 to August 2018, which is the appropriate registration period, wherein the Respondent noted the Appellant making a taxable supply. Section 49 of the VAT Act provides;

> ***(1) Where the Commissioner-General is required to refund an amount of tax to a person as a result of-***
>
> ***(a) an objection decision under section 35; or***
>
> ***(b) a decision of the Tribunal under section 36; or***
>
> ***(c) a decision of the High Court under section 37,***
>
> ***the Commissioner-General shall pay interest at a rate of one percent per month on the amount of the refund for the period commencing from the date the person paid the tax.***
>
> ***(2) Where the Commissioner-General fails to make a refund required within two months, the Commissioner-General shall pay interest at a rate of two percent per month on the amount of the refund for the period commencing on the day after the latest date for making the refund and ending on the date the refund is made.***

26.39 On the issue of interest, our opinion goes hand in hand with the refund of input tax claimed by the Appellant for the 6 months period beginning 1st September 2017. As we have already stated it was wrong for Respondent to register a non-qualifying taxpayer and obviously, that has led the demand for interest to have a basis as Commissioner - General failed to make a refund as required within the two months stipulated in the legislation. In the case of ***Ranbxi Laboratories Ltd. v. Union of India***[6] *the Honourable Supreme Court held that:*

> ***"In case of delayed refunds, Applicant shall be entitled for interest on such delayed refund amount and that disbursement of refund by department beyond the statutorily prescribed period, makes assessee entitled for interest on such refund amount".***

26.40 As a Tribunal we wish to register our observations in this matter that the Appellant has all along been in the good books of the Respondent by providing all records to the satisfaction of the Respondent from the 1st of September 2017. From the record it is clear that Appellant was taken by surprise by the disallowance and subsequent cancellation of registration, and this is why we share the view of the Appellant that the Respondent suddenly made a "U" turn which now has fatal consequences upon the Respondent as they are now liable to pay the interest.

26.41 The fact that the Respondent had misinformed itself in registering Appellant as a VAT taxpayer should not burden the Appellant with the lost time value of their refund. It is the Tribunal's opinion that in this case under the Appellant's position, the positions of section 6 and 7 of the VAT Act ought to have been keenly followed and further to that, Appellant ought to have been properly advised on the status of the application. It is the Tribunal's conclusion that Appellant as a registered taxpayer qualifies for interest on refunds as section 47 could not be read in isolation from 49 (interest) and this section qualifies the Appellant for the interest. section 47 of the Act read thus;

[6] 2011 [Civil Appeal No. 6823 of 2010]

(1) If, for any tax period, a taxable person's input tax credit exceeds output tax for that period, the Commissioner- General shall refund the excess within two months of the due date for the return for the tax period to which the excess relates, or within two months of the date when the return was made if the return was not made by the due date.

27) The last issue for determination is the ground of appeal, which faults the Respondent for the unilateral cancellation of the VAT registration. It was the Appellant's submission that, though the Respondent purported to cancel the registration on the basis of section 8 (5) of the VAT Act, was in itself wrong in law and accordingly objected to by them. Moreover, it is the Appellant's submission that in amplification of their position, the Respondent upheld its objection and "revived" its registration.

27.1 The Appellant's counsel further argues that in pursuing its VAT registration it provided all the documentation required by the Respondent to consider its application, in particular a lease agreement showing a reasonable expectation to meet the required threshold for the VAT registration.

27.2 The Respondent countered by submitting that this was occasioned by the realization on its part that the Appellants had failed to make taxable supplies and to this end the Commissioner-General can simply go to section 8 (4) of the VAT Act and cancel that person's registration, as long as the Commissioner-General has satisfied themselves that, that person is not entitled to register under section 6 of the Act.

27.3 As stated earlier, the Tribunal is of the view that before registration is approved, all documents pertinent to the application were carefully examined. The vetting of the VAT registration application is a critical stage in the sense that once VAT registration is approved, there are some administrative duties that the Appellant is required to fulfil. The duties for a VAT vendor are stated by **Varusha Moodaley**[7] as follows:

"Upon registration as a vendor with SARS, a vendor is required to levy and account for VAT on goods or services supplied in the course of his enterprise and may claim

[7] (2015)

input tax deductions incurred in respect of goods or services acquired in the course of making taxable supplies. A registered vendor is required to issue tax invoices in respect of supplies made and to retain certain documentary proof in accordance the Value-Added Tax Act 89 of 1991 (the "VAT Act"). A vendor is also required to complete and submit VAT returns, and to make payment of any VAT amounts due to the SARS in accordance with his / her allocated tax period (generally on a bi-monthly basis). Failure to adhere to these obligations may result in the imposition of penalties and interest".

27.4 We have to say that we are in agreement with the Appellant that given the facts and background of the case, the unilateral cancellation of the VAT registration by the Respondent was completely wrong in terms of the law. The Respondent for instance has not offered an explanation for its error when considering the application for registration.

27.5 Furthermore, the fact that this was discovered when the Appellant had submitted the VAT returns shows that the Appellant had already started complying with the duties of a VAT registered vendor under the law. It is worth mentioning that the duties and obligations of the Appellant had been expressed by the Respondent through the VAT approval letter. It is the Tribunal's view that the failure on the part of the Respondent led the Appellant to labour under the belief that they were properly registered for VAT purposes. It is the Tribunal's view that the Respondent should not have the right to invoke Section 8 of the VAT Act to cancel the Appellant's registration since all pertinent facts in relation to the matter were disclosed when the matter came under their consideration.

27.6 In relation to the pertinent provision (section 8 of the VAT Act) regarding cancellation of registrations, the language used is not peremptory, in the sense that the word "may "is used giving the Commissioner-General the leeway to apply his discretion whether on the given facts he may or may not cancel the taxpayer's registration. Looking at the facts of this case, it is one that clearly warranted the discretion to be applied to the taxpayer's favour seeing as the cancellation would not be permanent.

27.7 It is the Tribunal's view that one would thus argue that a cancellation would only be applicable where the facts indicated that the non-provision of taxable supplies would be a permanent or long-term situation which is not the fact in this case. Subsequently, via the letter dated 18th May 2018, the Respondent contended that the requirements for registration were not met by the Appellant, as a result such registration for VAT was cancelled. The letter further stated that the cancellation would take effect from the end of that current tax period, May 2018.

27.8 The Tribunal is of the view that the law makes it very clear under section 8 of the Act that the Respondent can cancel a certificate of registration whether on account of being notified by a taxpayer who has ceased to have a qualification for continued registration or if the Commissioner-General himself has reasons that satisfy him that the certificate should be cancelled; he has power to do that. He must exercise that power where reasons exit and if this power is not exercised properly, the taxpayer has a right of appeal under the section. ***In this matter before the Tribunal, the Commissioner-General did exercise that power and canceled the certificate and later revived the very same certificate without issuing a new one.***

27.9 This according to the Tribunal is the first certificate issued in 2017 which is still in force. Therefore, the Respondent cannot while the certificate is in force seek to deny the Appellant the enjoyment of statutory rights by asserting that the Appellant does not qualify for input tax claim, since registration is already in place, it is no longer an issue.

27.10 The Tribunal is of the view that under the circumstances, the Respondent was supposed to first cancel the registration certificate of the Appellant and, at least after the cancellation, allow the Appellant to apply for a new registration and be issued a new certificate of registration. It is the Tribunal's view that the consideration for grant of a new certificate and if there are any attaching conditions are the sole obligations of the Respondent to disclose. In the absence of that, the Appellant is entitled under the law to peg the only certificate in their possession, to section 6 and 7 and to hold it valid and in effect.

27.11 As far as they are still registered and are in possession of a certificate, they are entitled to their rights under the law which include the refund. In our view and, applying

the law, we regret to say that the Appellant's submission has merit as the Respondent itself had approved the Appellant's VAT Registration application at which point it had every opportunity to decline, and further still having cancelled the VAT registration upon objection to the cancellation and appeal to the disallowance of the VAT input tax claims, it is the Respondent itself that re-instated both.

27.12 It is the Tribunal's view that the Act of cancellation and revision of the same certificate was misapplication of the law. It is erroneous for the Respondent in the course of this appeal to invite the Tribunal to declare Appellant as a person who does not qualify to claim VAT input while their registration status still subsists. The Tribunal is also of the view that to say that you can simply invoke section 8 to repudiate registration is a gross abuse of the Commissioner-General's powers and offends the basic taxation principle of equity/ fairness. Further if indeed the cancellation was in good faith, why was a new registration not issued thereby killing the old registration. The Tribunal is confined to address itself to the rights of a registered taxpayer in respect of claims for input tax.

27.13 As regards the cancellation, on the 1st of August 2018, the Respondent thereafter revived the registration. For purposes of this case, it is important for the Tribunal to determine the meaning of the word ***"revive*** "in this context. The word revive is defined by the Cambridge dictionary as; "***to come or bring something back to life, health, existence, or use."***

27.14 In this case, it is the Tribunal's view that this can be interpreted to mean the cancelled VAT registration was now brought back to existence or made operational. In effect this would mean the Respondent never cancelled the registration. However, adding to the confusion, the Respondent in its revival letter, was not specific on the effective date of such revival, leaving one with the conclusion that if indeed if it was a revival, without a specified date for the revival, then it was being backdated to the original effective date.

27.15 In our opinion, if a new effective date was intended, then the revival letter should have been issued stating clearly the new effective date. Otherwise, this coupled with

the meaning of revival as a backdrop, creates the impression that the revived registration is the original one communicated via the letter dated 7th November 2017 which advised the Appellant that their effective date of registration was 1st September 2017. The usage of the term "reviving" has the connotation of restoring the *status quo ante.*

27.16 Again, the use of the word "revive" takes us back to the determination of the effective date for registration to enable the Appellant to claim input tax from thereon. It is the Tribunal's view that, whether the registration was revived or not, the Act under section 28 (7) is quite categoric in providing that input tax may be credited by a taxable person for the period where all of the taxable person's supplies for that period are taxable supplies.

27.17 In terms of this provision a credit for input tax is allowed on output tax charged or collected. It is apparent that for a business nature of the Appellant's type there would be a lapse between the inception and the actual making of the taxable supplies. The issue now is whether there is a special exception for entities dealing in commercial property development especially since a huge portion of their input tax would naturally fall outside the 6 months allowed by section 28 (3), depending on the length of time it took to finish the building. Section 28(3)(a) provides as follows in this regard;

> "***A credit is allowed to a taxable person on becoming registered for input tax paid of all taxable supplies of goods, including capital assets, made to the person prior to the person becoming registered-provided that in the case of capital goods, the supply occurred not more than 6 months before the date of registration".***

27.18 Capital assets is defined by the Cambridge dictionary as follows'.

> ***"Something, such as land, buildings, equipment, etc., which is owned by a company and which is used to produce income for the company". This dictionary meaning also aligns with International Accounting standards (IAS-40) which describe an investment property as land or building held to earn rentals.***

27.19 The property in question, fits into the definition of capital assets mentioned under Section 28(3) of the Act, since it is held for earning rentals. It is the Tribunal's view that, any cost (that is inclusive of VAT) incurred in the development of the property and

bringing it in the manner intended by management, a VAT credit is allowed on the condition that the cost should have been incurred not more than 6 months before the date of registration. The conclusion becomes unavoidable that any cost incurred beyond the prescribed 6-month period would fall outside the eligibility period for an input tax claim if the second registration date is considered.

27.20 In this case therefore if the new registration date as revived by the Respondent is to be considered it would mean the Appellant is entitled to claim input tax 6 months going backwards from the revival date 1st August 2018. This would mean the Appellant would only be entitled to claim input tax on the construction costs from February 2018.

27.21 It is our view that, the input VAT incurred from September 2017 to January 2018 would be rendered a cost to the Appellant, which is against the tax principle that VAT should not be a cost to taxpayers. Despite the apparent ambiguity and or *lacuna* in the legislation regarding transactions of this nature, it would not have been the intention of the legislature to saddle taxpayers with the VAT cost as a burden. As such the legislation should be interpreted in a manner that best gives effect to the intention of the legislature as enunciated in ***SARS v Air world CC and another***[8] as follows;

> ***"......In recent years courts have placed emphasis on the purpose with which the Legislature has enacted the relevant provision. The interpreter must endeavour to arrive at an interpretation which gives effect to such purpose. The purpose (which is usually clear or easily discernible) is used, in conjunction with the appropriate meaning of the language of the provision, as a guide in order to ascertain the legislator's intention. Thus, In Standard General Insurance Co Ltd v Commissioner for Customs and Excise 2005 (2) SA 168 (SCA) para 25, Nugent and Lewis JJA said: 'Rather than attempting to draw interference as to the drafter's intention from an uncertain premise we have found greater assistance in reaching our conclusion from considering the extent to which the meaning that is given to the words achieves or defeats the apparent scope and purpose of the legislation. As pointed out by Nienaber JA in De Beers Marine when dealing with the meaning of***

[8] [2007] SCA

"export" for the purpose of s 20(4) - which draws a distinction between export and home consumption —the word must "take its colour, like a chameleon, from its setting and surrounds in the Act".

27.22 The Tribunal is saying so because the issue touches upon a case where the very obvious loopholes in the legislation have been considered by both the administrator and the executive after an outcry from most taxpayers. Ideally in relation to construction, the claim for input tax should be allowed without limitations since the period of construction is not ascertainable and any position which renders the VAT an expense to the taxpayer should be avoided at all costs.

28) **CONCLUSION**

28.1 Having considered the basis of the appeal as advanced by both parties, it is the Tribunal's view that in relation to the relief sought by the Appellant, that the decision as contained in the letter dated 4th October 2021, on VAT input claim refund objection, ***be set aside***, and the Tribunal allows the Appellant's claim for a credit on input tax on the capital goods supplied to them up to 6 months before the original registration date (1st September 2017) in line with the Act.

28.2 This is so especially since, it seems there is an inadequacy in the Act as it does not provide a remedy to Appellant, in cases where it is the Respondent who is at fault in erroneously registering them even though they did not qualify at the time. The Act only empowers the Respondent to cancel the registration, whether it was Respondent's negligence in approving the registration in the first place or not.

29) **ORDER**

The Tribunal therefore makes the following orders:

1. The Appellant is still legally registered under the registration certificate issued on the 1st September 2017 and so are entitled to all rights conferred on them by virtue of being validly registered for VAT.

2. The Appellant has a right to the refund of input tax claimed in terms of section 28 (3) of the VAT Act of 2011 ("**the VAT Act**") for the 6-month period beginning 1st September 2017 and accordingly the Respondent is ordered to admit the claim for input tax refund and effect payment thereof with interest in terms of section 47 and 49 of the VAT Act.

3. In this matter, each party should therefore bear its own costs.

____

MR MBUSO SIMELANE

PRESIDENT OF THE TRIBUNAL

I Agree.

____

MS FIKILE DLAMINI

MEMBER OF THE TRIBUNAL

I Agree

____

MR SANDILE DLAMINI

MEMBER OF THE TRIBUNAL

I Agree

____

MS NTOMBEHLE SHONGWE

MEMBER OF THE TRIBUNAL

I Agree

____

MS KHETHIWE DLAMINI

MEMBER OF THE TRIBUNAL

Appearance

For Appellant: Mr Kenneth Simelane

For Respondent: Miss Bongiwe Singwane (in joinder Mr Bongisipho Dlamini Thandokuhle Khumalo)