

REPUBLIC OF SOUTH AFRICA



IN THE TAX COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

Case Number: VAT22425

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES:NO
(3) REVISED: YES/NO

16/01/2024

DATE

SIGNATURE

In the matter between:

RAPPA RESOURCES (PTY) LTD

Appellant

and

THE COMMISSIONER FOR THE SOUTH AFRICAN

REVENUE SERVICE

Respondent

ORDER

In respect of the application by the taxpayer to compel further discovery:

[1] The application is dismissed with costs such costs to include the costs of two counsel where employed.

In respect of the application by the taxpayer for further particulars:

[1] The application is dismissed with costs such costs to include the costs of two counsel where employed.

In respect of SARS' applications to strike out:

- [1] The applications are dismissed with costs such costs to include the costs of two counsel where employed.

In respect of SARS' application to compel further discovery:

- [1] Within fifteen days of this order, the respondent, Rappa Resources (Pty) Ltd (the taxpayer) is compelled to make the following documents available to SARS for inspection and copying or to state under oath that any of them are not in its possession and in the latter event, it must state their whereabouts:

- a. KYC (Know Your Client) documentation of the taxpayer's remaining suppliers during the audit period 01/2019 to 06/2020;
- b. The taxpayer's site visit reports concerning site visits held regarding the taxpayer's remaining suppliers during the audit period 01/2019 to 06/2020;
- c. The due diligence documents risk management reports and FICA searches conducted regarding the taxpayer's s remaining suppliers;
- d. The taxpayer's records containing declarations made to the South African Diamond and Precious Metals Regulator "SADPMR" documentation in respect of the following;
- e. The taxpayer's breakdown of goods purchased from the remaining suppliers for the period 01/2019 to 03/2020;
- f. Suppliers' invoices and analysis breakdown in respect of remaining suppliers, 02/2018 to 06/2020;
- g. Tax invoices, delivery notes, receipts, analysis conducted on supplies, bank statements reflecting payments made in respect of the

transactions concluded between the taxpayer and Gold Kid Trading CC and/or Gold Kid (Pty) Ltd;

- h. The purchase agreements that the taxpayer entered into with Geba and the remaining suppliers;
- i. The taxpayer's contracts between itself and the remaining suppliers, concerning the sale and purchase of gold-bearing material during the audit period;
- j. The taxpayer's reports, memoranda, recommendations, presentations prepared by the investigators, consultants, advisers, and experts known as Paul and Kurt, as well as contemporaneous notes minutes of meetings held with Paul and Kurt;
- k. The taxpayer's VAT201 returns and documentation that accompanied the returns for the period 01/2018 to 12/2018;
- l. The correspondence and documentation exchanged between the taxpayer and SARS in respect of the various verification audits conducted for the period 01/2018 to 12/2018;
- m. The taxpayer's 'tax-type reports' for the period 01/2018 to 12/2018;
- n. The taxpayer's income tax returns and any accompanying documents for the period 02/2018 to 06/2020;
- o. The taxpayer's relevant bank statements and other documentation for the period 01/2018 to 12/2018 concerning payments made to the taxpayer or deposits received by the taxpayer from cash-in-transit or paymaster companies;
- p. The taxpayer's documentation and/or correspondence in respect of goods containing gold material received from cash-in-transit, paymaster companies, courier companies, including services of this nature rendered by Northern Spark or a company associated with it, Brink's, Asset Movement and Financial Services ("AMFS"), Rens

Kontant, or any other supplier who rendered service of this nature for the period 02/2018 to 06/2020;

- q. The taxpayer's documentation and/or correspondence in respect of goods containing gold material collected from the taxpayer's premises by cash-in-transit companies, paymaster companies, courier companies, including services of this nature rendered by Northern Spark or a company associated with it, Brink's, Asset Movement and Financial Services ("AMFS"), Rens in Kontant, or any other supplier that rendered services of this nature for delivery to the taxpayer's customers for the period 02/2018 to 06/2020;
- r. The taxpayer's annual financial statements for the years ending 30 June 2018;
- s. The taxpayer's documentation in respect of the directors from time-to-time in respect of the taxpayer and its predecessor in title Waste Production Utilisation, including documentation reflecting the appointment and resignation of the directors, their contracts of employment and area of responsibilities and resignation letters and/or other documents reflecting the reasons for the resignation;
- t. The taxpayer's documentation in respect of the taxpayer's shareholders and its predecessor in title Waste Production Utilisation's shareholders from time-to-time including the taxpayer's shareholders register; share certificates issued; shareholder agreements concerning the acquisition and sale of shares in the taxpayer; resolutions concerning the acquisition of any shareholding in the taxpayer or its predecessor; and records of any proceedings before and correspondence with any regulatory body including the Competition Commission and Competition Tribunal, concerning the acquisition of shares in the taxpayer;
- u. Schedules and excel spreadsheets containing the taxpayer's month-to-month Au/AG export summary for the period January 2014 to January 2023, concerning: the supplies received from the taxpayer's suppliers

on a daily basis, the delivery date, the results date, the work day results, the refiner lot No., the taxpayer's deposit No; the supplies received by the taxpayer with reference to the suppliers names, the wet weight; smelting loss; official weight; gold fineness; gold weight fine; gold factor; gold weight sold; silver fineness; silver weight fine; silver factor, silver weight sold, the trading in (Au) with reference to gross sales, final sales @ 0 %, purchases, gross contribution, GC %, rebate allocation; net gross contribution; net GC % and customer sold to, export fees/refining/hedging fees, other costs, financing costs, tax

- [2] The taxpayer is to pay SARS' costs of this application such costs to include the costs of two counsel where employed.

JUDGMENT

FISHER, J

Introduction

- [1] This judgment is in respect of three separate interlocutory applications dealing with the entitlement to discovery of documents and further particulars in a pending appeal before this court.
- [2] SARS conducted an audit for the January 2019 to June 2020 periods. Pursuant thereto additional assessments were raised in which SARS disallowed input taxes claimed by the taxpayer in respect of the supplies of three of its suppliers, Northern Spark, JR Tech and Geba for the VAT periods 01/2019 to 06/2020. The amounts involved exceed R4 billion. The appeal relates to these additional assessments.
- [3] The interlocutory applications are as follows:
- a. First, an application by the taxpayer to compel SARS to furnish it with further discovery.

- b. Second, an application by the taxpayer to compel SARS to furnish it with further particulars.
- c. Third, an application by SARS to compel the taxpayer to furnish SARS with further discovery.

[4] SARS has also sought to strike out matter in the affidavits of the taxpayer.

[5] Before dealing with the background to the main case and the interlocutory applications themselves it is helpful to understand the legal principles which relate to a party's entitlement to discovery and particularity in this court.

Applicable legal principles

[6] In terms of the rules prescribing procedures for lodging objections and appeal (the tax court rules) if a procedure in the tax court is not provided for then the most appropriate rule under the uniform rules may be utilised by a party or the tax court.¹

[7] There are no tax court rules dealing with the application to compel further particulars, to compel discovery or applications to strike out.

[8] The parties agree that the applicable uniform rules of court are rules 35, 21 and 23.

Application to compel discovery (uniform rule 35(7))

[9] The essential feature of discovery is that the person requiring discovery is, in general, only entitled to discovery once the battle lines are drawn and the legal issues established.

[10] Discovery is not a tool designed to put a party in a position to draw the battle lines and establish the legal issues. Rather, it is a tool used to identify factual issues once legal issues are established.²

[11] The court has a discretion whether or not to enforce discovery or inspection. That discretion is predicated on the documents in issue being relevant to the issues which are defined in the pleadings.³

¹ Rule 42 of tax court rules

² *STT Sales (Pty) Ltd v Fourie* 2010 (6) SA 272 (GSJ) at 276C–D.

³ *Baard v Allem* (unreported, GJ case no A5005/2021 dated 14 October 2021 — a decision of the full court) at paragraph [17] and the cases there referred to.

[12] This principle was reaffirmed in *Helen Suzman Foundation v Judicial Service Commission*⁴ the Constitutional court stating as follows:

"Under rule 35 documents are discoverable if relevant, and relevance is determined with reference to the pleadings. So, under the rule 35 discovery process, asking for information not relevant to the pleaded case would be a fishing expedition. "

[13] The test for relevance is "...that every document that relates to the matter in question in the action which, it is reasonable to suppose, contains information which may - not which must —either directly or indirectly enable the party requiring the affidavit either to advance his own case or to damage the case of his adversary.⁵

[14] A document can properly be said to contain information which may enable the party requiring the discovery either to advance his own case or to damage the case of his adversary if it is a document which may fairly lead him to a train of inquiry which may have either of these two consequences.⁶

Further particulars (uniform rule 21)

[15] As in the case of discovery, further particulars may only be requested after close of pleadings i.e. when the legal issues are established. At that stage the litigant is entitled to "only such further particulars as are strictly necessary to enable him or her to prepare for [the appeal]"

[16] The purpose of permitting a party to call for further particulars for trial is:

(a) to prevent surprise;

(b) that the parties should be told with greater precision what the other party is going to prove in order to enable his opponent to prepare his case to combat counter allegations; and

⁴ *Helen Suzman Foundation v Judicial Service Commission* 2018 (4) SA 1 (CC) at para 26.

⁵ *Swissborough Diamond Mines Pt Ltd and Others v Government of the Republic of South Africa and Others*, 1999 (2) SA 279 (TPD) at 316E-H

⁶ *Id* at 316 --

(c) having regard to the foregoing nevertheless not to tie the other party down and limit his case unfairly at the trial.⁷

[17] In general, the purpose of particulars for trial is not to elicit evidence or information which will emerge on cross-examination.⁸

The applications to strike out (rule 23(2))

[18] Uniform rule 23(2) allows for the striking out of averments which are scandalous, vexatious, or irrelevant. The opposite party may, within the period allowed for filing any subsequent pleading, apply for the striking out of such matter, provided that an opportunity is given to remove them and provided also that a court shall not grant the application unless it is satisfied that the applicant will be prejudiced in the conduct of any claim or defence if the application is not granted.

[19] A decision whether or not to strike out is discretionary in nature⁹.

Background

[20] As its main business the taxpayer exports gold-bearing bars.

[21] In the ordinary course an exporter will always be in a VAT refund position in the light of its export at zero percent and its purchase of the goods from the supplier at standard rate.

[22] From 2017 the VAT law changed for the gold industry: during the period 1 April 2015 to 31 March 2017, vendors could not claim any notional input tax credits upon purchasing any gold products. From 1 April 2017, a vendor who purchases second-hand gold product from a non-vendor, is permitted to claim a notional input tax on the supply, provided that certain requirements in terms of the VAT Act are complied with.

[23] The definition of second-hand goods excludes gold coins contemplated in section 11(1)(k) of the VAT Act, or any other goods containing gold unless those goods are

⁷ *Samuels v William Dunn & Company South Africa (Pty) Ltd* 1949 (1) SA 1149 (T) at 1158; *Thompson v Barclays Bank DCO* 1965 (1) SA 365 (W) at 369;

⁸ *Von Gordon v Von Gordon* 1961 (4) SA 211 (T) at 213.

⁹ *Living Hands (Pty) Ltd v Ditz* 2013 (2) SA 368 (GSJ) at 394D–E.

acquired for the sole purpose of supplying those goods in the same_state to another person.¹⁰

- [24] This new VAT facility allowed for the alleged scheme. This took the form of operations which smelted Krugerrands and pretended that the gold bars that were generated by this smelting comprised second-hand gold jewellery.
- [25] Central to the pleaded case of SARS is that the 15% margin for claiming input tax provided a cash-flow which allowed for the sale of gold below the spot price.
- [26] SARS argues that it is axiomatic that such a sale below value could only be profitable if there were an unlawful revenue source in the form of the VAT claim. The case is that this is the only reason for the enterprise conducted by the taxpayer.
- [27] The first ground of assessment concerns whether the supporting tax invoices on which the taxpayer relies in respect of three of its suppliers, Northern Spark, JR Tech and Geba comply with the provisions of section 20(4)(e) of the VAT Act. The taxpayer bears the onus to prove compliance with the aforesaid section.
- [28] The second ground of assessment concerns whether the input taxes can lawfully be claimed by the taxpayer in respect of the three suppliers tax invoices. The taxpayer bears the onus to prove that it is lawfully entitled to claim these input tax credits.
- [29] The third ground is whether the available direct evidence and circumstantial evidence proves that the taxpayer is a participant in a section 73 scheme.
- [30] SARS must prove whether the jurisdictional requirements of section 73 have been met. But, in terms of section 73(3), once it is proved that the scheme would result in a tax saving, it is presumed that, until the contrary is proved, the scheme was carried out solely or mainly for the purposes of obtaining a tax benefit.
- [31] The crux of the fraud and/or section 73 scheme pleaded is that unlawful input tax claims were generated by relying on fictitious invoices. The fiction allegedly lay in the characterization of smelted Krugerrands as second-hand gold jewellery. This allowed for the claiming of an input tax which, without the fiction, would not arise.

¹⁰ Section 1; 'second-hand goods' (ii) (bb) or (cc)) of the VAT Act.

- [32] It is SARS' case that the taxpayer was aware that its supplies consisted of smelted Krugerrands and that the transactions were facilitated by fictitious tax invoices that generated the unlawful margin. This, it is alleged, enabled both the taxpayer's suppliers and the taxpayer to buy and sell the gold below the spot price of gold. The taxpayer thus shared in the unlawful input tax claim and its VAT refund is based thereon.
- [33] Krugerrands, which are legal tender, can only be sold for profit (i.e. below the spot price) if the transactions are subsidised by unlawful input claims. SARS says the taxpayer was aware of this and thus knowingly claimed input tax which it knew it was not entitled to; alternatively, it was involved in a section 73 scheme.
- [34] It is not a prerequisite for SARS case to be established that the taxpayer needed to have knowledge of the identity of the specific suppliers that generated the fictitious invoices and that colluded with its suppliers. SARS must show that the taxpayer knowingly shared in the "original sin" of the input claim.
- [35] The taxpayer purchases its supplies at spot minus 3%. SARS says that this is only possible due to the unlawful input tax which it recovers. Thus, it says that the three suppliers are not independent third parties.
- [36] Put differently, SARS contends that the business of the taxpayer could not be profitable but for the recovery of input tax that it knows it is not entitled to claim. SARS says that the taxpayer is not, as it alleges, collecting VAT for SARS. Instead, SARS says it is participating in the creation of an illegitimate margin.
- [37] The case of SARS against the taxpayer is thus circumscribed: the business is a chimera from its inception to the present; it has never been an independent commercial enterprise.
- [38] The case of the taxpayer is simple. It says that it has followed all required industry protocols and has also been subject to self-imposed checks. Accordingly, it says that it cannot be held responsible for any criminality of its suppliers. It states the following in its rule 32 statement:

"The taxpayer is a commercial concern and not a crime fighting organisation and can only do what it reasonably can in order to ensure that it transacts

with suppliers who operate lawfully and ethically. In this regard, it requires, as an express term of the relevant supply agreement, that all of its suppliers sign declaration forms in which the source of the supplied goods is disclosed.”

[39] The taxpayer furthermore raises legal arguments in relation to the section 73 scheme which have little if anything to do with documentary evidence.

Application of the taxpayer to compel further discovery from SARS

[40] The taxpayer seeks a compendium of categories of documents, including correspondence reports; memoranda; directives; policy documents; and minutes of meetings, which may be relied on by SARS to establish that the gold ultimately supplied to the taxpayer, comprises smelted Krugerrands.

[41] The documents are of a type which it seems the taxpayer may believe have been unearthed by or brought into existence for the inquiry which SARS is undertaking into the gold industry and specifically the modus operandi relating to the smelting of Krugerrands. The investigation is ongoing and has been far wider than the taxpayer and its three suppliers which are the subject of the grounds of assessment.

[42] SARS contends that the request is an impermissible interrogatory.

[43] As set out above the battlelines are drawn by the pleadings. The case of the taxpayer is simple. It says it has acted in good faith and without direct or constructive knowledge that the gold being supplied comprised smelted Krugerrands.

[44] On this basis SARS cannot be compelled to disclose all documents relating to its industry wide investigation. If it seeks to advance its case by the use of a particular document, it must discover it. It need only discover those documents which it plans to use to make out its case against the taxpayer. This, it says, it has done.

[45] Reference to the vast discovery which has been made by SARS would seem to bear this out. SARS will not be entitled to rely on documents that it has not discovered, so one would think it would act prudently to make out its case. Its wider far-ranging investigations into the conduct of third parties are not relevant.

[46] The taxpayer knows what the grounds of assessment are. I can see no risk that the taxpayer will be taken by surprise should it not be allowed to delve into the categories of documents formulated by it for examination.

[47] Most importantly, the documents sought cannot assist the taxpayer to establish its own pleaded grounds of appeal. It does not deny that Krugerrands are smelted in the industry; its case is that that it has no culpable involvement in this practice. An in-depth immersion in SARS's investigation, which is what is sought to be achieved by this application, has no conceivable way of furthering this position.

[48] In the circumstances the taxpayer's application to compel further discovery is dismissed.

[49] A similar problem characterises the taxpayer's application to compel further particulars. I now deal with that application.

Application by the taxpayer to compel further particulars from SARS

[50] I shall deal with the particularity sought by category of documents sought.

Particulars relating to the full and proper description of the goods

[51] The taxpayer seeks particulars as to the specific method and/or process that SARS uses to determine what would constitute a 'full and proper description of the goods'; and asks what would constitute such a description according to SARS.

[52] SARS, in its response to the taxpayer's request for these particulars indicated that the deficiency in the description is that it belies the fact that the primary source of the gold was Krugerrands that were unlawfully smelted and that the description was provided with the specific intention to mislead in that the taxpayer was aware that the descriptions on the invoices were inaccurate insofar as they create the impression that the source of the gold supplied is from scrap gold and second-hand gold jewellery.

[53] Section 2(4) of the VAT Act provides:

"Except as the Commissioner may otherwise allow, and subject to this section, attached invoice (full tax invoice) shall be in the currency of the Republic and shall contain the following particulars:

- (a) The words "tax invoice", "VAT invoice" or "invoice";
- (b) The name, address and VAT registration number of the supplier;
- (e) full and proper description of the goods (indicating, where applicable, that the goods are second-hand goods) or services supplied;
- (f) the quantity or volume of the goods or services applied
- (g) either—
 - I. the value of the supply, the amount of tax charged and the consideration for the supply; or
 - II. where the amount of tax charged is calculated by applying the tax fraction to the consideration, the consideration for the supply and either the amount of the tax charged, or a statement that it includes a charge in respect of the tax and rate at which the tax was charged:

Provided that the requirement that the consideration or the value of the supply, as the case may be, shall be in the currency of the Republic shall not apply to a supply that is charged with a tax under section 11."

[54] The requirements of the Act enable the taxpayer to prepare its own case. The particularity sought pertains to matters of argument as to the adequacy of the description.

The information SARS based its findings on to determine that the taxpayer was a participant in the section 73 scheme.

[55] This is patently a request for evidence. It is particularity to which the taxpayer is not entitled for its preparation. Recall, the case of the taxpayer is that it is innocent. It is able to prepare this case without reference to SARS's evidence.

The information that SARS considered to verify Mr Bickerton's alleged confession at the tax inquiry and how it confirmed the taxpayer's actual knowledge regarding the source of the gold supplied to the taxpayer.

[56] The views expressed by Mr Bickerton as to the volumes of second-hand gold in the industry are on record.

[57] The approach taken by the taxpayer and SARS are respectively argument. The particulars are not necessary for the taxpayer's preparation.

The percentage of the taxpayer's alleged share in the unlawful margin alleged

[58] The particulars furnished as well as the manner in which SARS has pleaded its case indicates that SARS does not know how the sharing in the margin has taken place along the line of supply.

[59] SARS is correct in its contention that the question is whether or not there was participation and the percentage is irrelevant for the taxpayer's preparation.

Details pertaining to the introduction of illicit gold into the supply chain.

[60] Again, one must view the entitlement to this information against the pleaded case of the taxpayer. It pleads innocence. This case can be run without these specific particulars.

[61] In any event the taxpayer has been provided with sufficient details to prepare for trial and to understand SARS's case.

[62] Regard must have had to the LOAF, FOAL, disallowance of objection, the Rule 31 and Rule 33 statements, that deal with aspects relating to the introduction of the illicit gold into the supply chain, specifically the creation of the fictitious invoices, the invoice factories, the need to disguise the smelting of Krugerrands and the manner in which this is achieved. The expert summaries of Ms de Nysschen and Mr Klingenberg, inter alia, analyse the supply chains and provide a clear indication of the basis for SARS' case.

[63] In the circumstances the application for further particulars is dismissed

SARS's application to compel further discovery

[64] SARS was late in delivering its rule 36(6) notice. It seeks condonation for this late filing. The application for condonation is opposed.

[65] This tax appeal is very important to both parties and. The quantum is significant to the fiscus – being more than R 4 billion.

[66] The fact that the appeal was postponed limits the prejudice to the taxpayer. The matter is complex and the delay not excessive. Accordingly, condonation is granted.

[67] Documentation that, according to SARS, still needs to be discovered by the taxpayer is as follows:

- a) Documents pertaining to the taxpayer's remaining suppliers;
- b) The taxpayer's reports, memoranda, recommendations, presentations prepared by the investigators, consultants, advisers, and experts known as Paul and Kurt, as well as contemporaneous notes minutes of meetings held with Paul and Kurt;
- c) The taxpayer's VAT201 returns and documentation that accompanied the returns for the period 01/2018 to 12/2018;
- d) The correspondence and documentation exchanged between the taxpayer and SARS in respect of the various verification audits conducted for the period 01/2018 to 12/2018;
- e) The taxpayer's 'tax-type reports' for the period 01/2018 to 12/2018;
- f) The taxpayer's income tax returns and any accompanying documents for the period 02/2018 to 06/2020;
- g) The taxpayer's relevant bank statements and other documentation for the period 01/2018 to 12/2018 concerning payments made to the taxpayer or deposits received by the taxpayer from cash-in-transit or paymaster companies;
- h) The taxpayer's documentation and/or correspondence in respect of goods containing gold material received from cash-in-transit, paymaster companies, courier companies

- i) The taxpayer's documentation and/or correspondence in respect of goods containing gold material collected from the taxpayer's premises by cash-in-transit companies, paymaster companies, courier companies;
- j) The taxpayer's annual financial statements for the years ending 30 June 2018;
- k) The taxpayer's documentation in respect of the directors from time-to-time in respect of the taxpayer and its predecessor in title Waste Production Utilisation;
- l) The taxpayer's documentation in respect of the taxpayer's shareholders and its predecessor in title Waste Production Utilisation's shareholders
- m) Schedules and excel spreadsheets containing the taxpayer's month-to-month Au/AG export summary for the period January 2014 to January 2023.

[68] It seems to me that, in this application, both parties have engaged in an extraordinarily complex examination of questions of relevance which are simple if not elementary.

[69] The issue is this, the taxpayer says that the inquiry is limited to the period of the assessment and the suppliers mentioned and cannot go beyond these limits. It contends further that the fact that SARS seeks to go beyond these limits indicates that SARS could not have been satisfied as to the section 73 requirements.

[70] The pleaded defence of the taxpayer is a simple denial that it was a part of any scheme or had knowledge of the source of the gold supplied to it.

[71] Proof of the section 73 scheme entails that SARS must prove whether the jurisdictional requirements of section 73 have been met.

[72] But, in terms of section 73(3), once it is proved that the scheme would result in a tax benefit it is presumed that, until the contrary is proved, the scheme was carried out solely or mainly for the purposes of obtaining a tax benefit.

- [73] The genesis and maintenance of the enterprise is central to the pleaded case. SARS alleges that the existence of the enterprise, if established, is discernible from the supplies of gold to the taxpayer over time.
- [74] Not only is it the case of SARS that the enterprise in issue was born of the scheme but it also contends that it has supported a continuum which is relevant to the pleaded case and which is not confined only to the period raised in the assessment.
- [75] It may be that SARS is entitled only to relief confined to the assessed period for the purposes of the appeal. The taxpayer is, however, mistaken in its submission that documentary evidence relating to the engendering of the enterprise from its beginning to the present is not relevant.
- [76] The case as pleaded encompasses the taxpayer's entire supply line as opposed to merely the three suppliers singled out in the assessment. Put differently, the very existence of the enterprise is alleged to be based on the supply of gold in the form of smelted Krugerrands; the entire supply source is thus relevant to the dispute.
- [77] The taxpayer's attempt to confine the discovery to the assessed period and the named suppliers fails to acknowledge the central allegation to the effect that the enterprise was brought into existence to take advantage of the 2017 amendment to the law and only exists because of the entire illegitimate supply chain.
- [78] In relation to the jurisdictional requirements pertaining to section 73, the fact that documentation relating to the scheme as a whole is sought for the appeal process does not denote that SARS did not have sufficient information to satisfy itself that section 73 could be applied. Indeed, the taxpayer does not state what the nature and import of any alleged deficiency is.

The applications to strike out

- [79] SARS seeks to strike out paragraphs in the taxpayer's founding affidavit in its application to compel further particulars and its answering affidavit in SARS' application to compel further discovery.
- [80] SARS complains variously that the allegations must be struck out because they:

- (c) are based on speculation and suspicions that are presented as conclusive evidence;
- (d) constitute the taxpayer's deponent's irrelevant opinion concerning the adequacy of SARS case and SARS motives;
- (e) are scandalous and vexatious and are not substantiated by fact.

[81] Rule 6(15) of the Uniform Rules reads as follows:

"The court may on application order to be struck out from any affidavit any matter which is scandalous, vexatious, or irrelevant, with appropriate order as to costs, including costs as between attorney and client. **The court may not grant the application unless it is satisfied that the applicant will be prejudiced if the application is not granted.**" (Emphasis added)

[82] SARS has, to my mind, not shown the requisite prejudice.

Costs

[83] There is no reason why the costs should not follow each result. The parties both employed more than one counsel and neither dispute that this was necessary.

Orders

[84] In the circumstances I make orders which read as follows:

[1] In respect of the application by the taxpayer to compel further discovery:

The application is dismissed with costs such costs to include the costs of two counsel where employed.

[2] In respect of the application by the taxpayer for further particulars:

The application is dismissed with costs such costs to include the costs of two counsel where employed.

[3] In respect of SARS' applications to strike out:

The applications are dismissed with costs such costs to include the costs of two counsel where employed.

[4] In respect of SARS' application to compel further discovery:

4.1 Within fifteen days of this order, the respondent, Rappa Resources (Pty) Ltd (The taxpayer) is compelled to make the following documents available to SARS for inspection and copying or to state under oath that any of them are not in its possession and in the latter event it must state their whereabouts:

- a. KYC (Know Your Client) documentation of the taxpayer's remaining suppliers during the audit period 01/2019 to 06/2020;
- b. The taxpayer's site visit reports concerning site visits held regarding the taxpayer's remaining suppliers during the audit period 01/2019 to 06/2020;
- c. The due diligence documents risk management reports and FICA searches conducted regarding the taxpayer's s remaining suppliers;
- d. The taxpayer's records containing declarations made to the South African Diamond and Precious Metals Regulator "SADPMR" documentation in respect of the following;
- e. The taxpayer's breakdown of goods purchased from the remaining suppliers for the period 01/2019 to 03/2020;
- f. Suppliers' invoices and analysis breakdown in respect of remaining suppliers, 02/2018 to 06/2020;
- g. Tax invoices, delivery notes, receipts, analysis conducted on supplies, bank statements reflecting payments made in respect of the transactions concluded between the taxpayer and Gold Kid Trading CC and/or Gold Kid (Pty) Ltd;

- h. The purchase agreements that the taxpayer entered into with Geba and the remaining suppliers;
- i. The taxpayer's contracts between itself and the remaining suppliers, concerning the sale and purchase of gold-bearing material during the audit period;
- j. The taxpayer's reports, memoranda, recommendations, presentations prepared by the investigators, consultants, advisers, and experts known as Paul and Kurt, as well as contemporaneous notes minutes of meetings held with Paul and Kurt;
- k. The taxpayer's VAT201 returns and documentation that accompanied the returns for the period 01/2018 to 12/2018;
- l. The correspondence and documentation exchanged between the taxpayer and SARS in respect of the various verification audits conducted for the period 01/2018 to 12/2018;
- m. The taxpayer's 'tax-type reports' for the period 01/2018 to 12/2018;
- n. The taxpayer's income tax returns and any accompanying documents for the period 02/2018 to 06/2020;
- o. The taxpayer's relevant bank statements and other documentation for the period 01/2018 to 12/2018 concerning payments made to the taxpayer or deposits received by the taxpayer from cash-in-transit or paymaster companies;
- p. The taxpayer's documentation and/or correspondence in respect of goods containing gold material received from cash-in-transit, paymaster companies, courier companies, including services of this nature rendered by Northern Spark or a company associated with it, Brink's, Asset Movement and Financial Services ("AMFS"), Rens Kontant, or any other supplier who rendered service of this nature for the period 02/2018 to 06/2020;

- q. The taxpayer's documentation and/or correspondence in respect of goods containing gold material collected from the taxpayer's premises by cash-in-transit companies, paymaster companies, courier companies, including services of this nature rendered by Northern Spark or a company associated with it, Brink's, Asset Movement and Financial Services ("AMFS"), Rens in Kontant, or any other supplier that rendered services of this nature for delivery to The taxpayer's customers for the period 02/2018 to 06/2020;
- r. The taxpayer's annual financial statements for the years ending 30 June 2018;
- s. The taxpayer's documentation in respect of the directors from time-to-time in respect of the taxpayer and its predecessor in title Waste Production Utilisation, including documentation reflecting the appointment and resignation of the directors, their contracts of employment and area of responsibilities and resignation letters and/or other documents reflecting the reasons for the resignation;
- t. The taxpayer's documentation in respect of The taxpayer's shareholders and its predecessor in title Waste Production Utilisation's shareholders from time-to-time including The taxpayer's shareholders register; share certificates issued; shareholder agreements concerning the acquisition and sale of shares in The taxpayer; resolutions concerning the acquisition of any shareholding in The taxpayer or its predecessor; and records of any proceedings before and correspondence with any regulatory body including the Competition Commission and Competition Tribunal, concerning the acquisition of shares in The taxpayer;
- u. Schedules and excel spreadsheets containing the taxpayer's month-to-month Au/AG export summary for the period January 2014 to January 2023, concerning: the supplies received from the taxpayer's suppliers on a daily basis, the delivery date, the results date, the work day results, the refiner lot No., the taxpayer's deposit No; the supplies

received by the taxpayer with reference to the suppliers names, the wet weight; smelting loss; official weight; gold fineness; gold weight fine; gold factor; gold weight sold; silver fineness; silver weight fine; silver factor, silver weight sold, the trading in (Au) with reference to gross sales, final sales @ 0 %, purchases, gross contribution, GC %, rebate allocation; net gross contribution; net GC % and customer sold to, export fees/refining/hedging fees, other costs, financing costs, tax.

- 4.2 The taxpayer is to pay SARS' costs of this application such costs to include the costs of two counsel where employed.

**FISHER J
JUDGE OF THE HIGH COURT
JOHANNESBURG**

This Judgment was handed down electronically by circulation to the parties/their legal representatives by email and by uploading to the electronic file on Case Lines. The date for hand-down is deemed to be 16 January 2024.

Heard: 3 November 2023

Delivered: 16 January 2024

APPEARANCES:

For the Applicant: Rafik Bhana, SC

Gavin Goldman

Brandon Casey

Instructed by: Girard Hayward Inc

For the Respondents:

Etienne Coetzee SC

Henk de Wet SC

Sophia Maritz

Instructed by:

VZLR Inc.