

**IN THE REVENUE APPEAL TRIBUNAL
(HELD AT MASERU)**

RAT 04/2012/13

In the matter between:

X

APPELLANT

AND

**LESOTHO REVENUE AUTHORITY
COMMISSIONER**

**1ST RESPONDENT
2ND RESPONDENT**

JUDGEMENT

CORAM:

**HON. N. MAJARA – PRESIDENT
HON. J.T.M. MOILOA – MEMBER
MS P. LEBITSA – MEMBER**

DATE OF HEARING:

29/04/14, 30/04/14 and 3/11/14

DATE OF JUDGEMENT:

15 MAY 2018

ANNOTATIONS:

STATUTES:

1. ... Act, No.# of ...
2. VAT Act, No.9 of 2001
3. Income Tax Act, No.9 of 1993

CASES:

1. Madras Electric Supply Corporation Vs Boarland
2. CIR Vs Richmond Estates (Pty) Ltd 1956 (1) S.A. 602 (AD)

[1] Introduction

- 1.1 On 31 October 2011 the Respondent assessed Appellant for income tax for the years 2008 – 2011 in the amount of M7, 180, 845.75, and, for Value Added Tax in the amount of M16, 859, 315.44 for the years 2008 – 2011. As a result of these assessments the Appellant now appeals to this Tribunal and asks that this appeal be upheld.
- 1.2 Respondents disallowed Appellant's objection on 31 January 2013.
- 1.3 Appellant filed its appeal against the disallowance on the 28th February 2013.

[2] **Grounds of Appeal**

2.1 On 15th April 2013 Appellant filed its appeal and grounds thereof as follows:

2.1.1 The Appellant was exempt from income tax and VAT in terms of ... Act....

2.1.2 The Appellant was not liable for income tax in terms of the Income Tax Act, 1993.

2.1.3 The Appellant was not liable for VAT in terms of the VAT Act N0.9 of 2001 alternatively, the Appellant was entitled to input tax deductions.

2.1.4 The Appellant had a legitimate expectation that it would not be assessed for income tax and VAT.

[3] **Material Facts**

3.1 The Appellant is a statutory body established in terms of **Section 4 of the ... Act,** It is established as an autonomous and independent body corporate with a common seal, perpetual succession, capable of suing and being sued and subject to this act, capable of performing such acts as bodies corporate may, by law perform.

3.2 Appellant's functions and general duties are set out in **Section 15 of the Act.** True general powers and responsibilities of Appellant are expanded

upon in **Section 16 of the Act**. The Appellant's function was "to promote, develop and supervise the provision of ... services in Lesotho,"

3.3 In performing its functions the Appellant was required to, *inter alia*,

3.3.1 grant, amend and revoke licences

3.3.2 ...

3.3.3 ...

3.3.4 Set technical standards and procedures to monitor adherence to such standards

3.3.5 ...

3.3.6 ...

3.3.7 "take reasonable steps to promote ... services that will satisfy reasonable demands of at least advantaged members of the communities for the provision of services such as emergency service, ... services and delivery."

3.3.8 "Represent Government in consultation with Minister of ... for ... servicesrelating to"

3.3.9 "be responsible for any inter-governmental ... agreements and conventions as may be signed, satisfied, approved or acceded to by the Government of Lesotho."

3.3.10 “represent Lesotho in international meetings and negotiations in matters relating to ...”

[4] In order to perform the functions mentioned above the Appellant contends that it imposes licensing fees and structures such fees in the manner described in the “Explanatory Note to”

4.1 The powers and duties of Appellant were exercised by a Board appointed by the Minister responsible for

4.2 The Appellant’s Board was controlled by the Government who is its sole shareholder through the Minister of

[5] **Funds of Appellant**

Appellant was initially partly funded by the Government. But it also obtained funds raised from the services in the course of performing its duties under the ... **Act**. Such funds arose from a variety of revenue streams levied by Appellant pursuant to the ... **Act** and its supporting Regulations.

[6] **FINANCIAL REPORTS FOR 2007, 2008, 2009, 2010 AND 2011**

The financial reports of Appellant reflected the following revenue streams in respect of the years in dispute:

2007:

... licence fees	M #####
Licence fees	M #####
Application fees	M #####
Royalties fees	M #####
Usage	M #####
Interest Income	M #####

2008:

... licence fees	M #####
Licence fees	M #####
Application fees	M #####
Royalties	M #####
Penalties	NIL
Usage	M #####

2009:

... licence fees	M #####
Licence fees	M #####
Application fees	M #####
Royalties	M #####
Penalties	NIL

Usage NIL

2010:

... licence fees	M #####
Licence fees	M #####
Application fees	M #####
Royalties	M #####
Penalties	NIL
Usage	NIL

2011:

... licence fees	M #####
Licence fees	M #####
Application fees	M #####
Royalties	M #####
Penalties	NIL
Usage	NIL

[7]

7.1 Appellant contends that Appellant's funds are controlled by Lesotho Government through Appellant Board. In my view this assertion is a simplistic assertion. In my view it is clear that Appellant's funds are owned and controlled by Appellant's autonomous Board in terms of the Act.

Such funds were required to be kept in the bank account of Appellant approved by the ... Minister in consultation with the Minister of Finance and had to be administered in accordance with policies and rules approved by the ... Minister.

7.2 The account of Appellant had to be annually audited by the Auditor-General or his appointees and such accounts and the auditor's report had to be made publicly available.

7.3 The Appellant is obliged by law to submit a comprehensive report on its operations to the Minister each year. The Minister is required by law to lay a copy of that report together with the Appellant's audited accounts and its auditors report, before Parliament.

7.4 Parliament did not direct/authorise that excess funds made by the Appellant be transferred to Consolidated Fund. It specified how they will be applied by Appellant. To me this approach of Parliament is consistent with the Parliament's desire for a financially autonomous Appellant as well.

[8] **Government Functionary**

8.1 The Appellant contends that it is a "Government functionary" (whatever this term means) for the following reasons:

8.1.1 Appellant was formed by Government, fulfilled functions of the Government and represented the Government.

8.1.2 The Appellant is controlled and managed by the Government appointees.

8.1.3 The Appellant is treated as being a “Government functionary” for auditing and reporting purposes.

8.1.4 The Government funded the Appellant

8.1.5 Funds of the Appellant are all managed and controlled by Government and/or Government appointees.

8.1.6 The Appellant is statutorily obliged to use all its funds for the purposes specified by Parliament in terms of ... **Act**. In particular in terms of **Section 19(2) of the ... Act** establishing Appellant, Appellant is enjoined only to use its funds for its operations and to perform the functions of promoting and developing ... in Lesotho. On this basis therefore, so went Appellant’s argument, the ... (Appellant) is a non-profit making organization.

[9] I now turn to examine the argument of Appellant that it is a “Government Functionary”. This term is nebulous and lacking in precise meaning. It is not used in the legislation pertaining to the Appellant at all, in all my reading of the Act and its regulations I have not seen any use of words or phrases that say clearly that Appellant is a government functionary to be viewed as if it were a department of government and run as such. The word “functionary” is defined by Concise Oxford English Dictionary as an “official”. While it is true the purpose for which Appellant was created by parliament is to “promote, develop and supervise the provision of efficient local, national, regional and international ... services in Lesotho” in terms of **Section 15 of the ... Act**, it does not in my view make it a

Government Department/Functionary. The creator of Appellant is Parliament. The intentions of its creator are to be found in the legislation by Parliament creating Appellant. Parliament created this artificial person (Appellant) “with no body to kick and no soul to condemn” as **Centlivres CJ** once said in **CIR Vs Richmond Estates (Pty) Ltd 1956 (1) SA 602 (AD) at 606**. Appellant is specifically given mandate by Parliament to be a body corporate capable of suing and being sued and of performing all acts as bodies corporate may by law perform. See **Section 4**. Appellant is created to be an autonomous body. The “mind” of the Appellant is its Board. In terms of **Section 5 of the Act** Parliament vested powers and duties of the Appellant in the Board. It therefore means, in my view that the Board is given authority by Parliament to operate Appellant as an autonomous being and not as a “functionary of Government.” If it had been the intention of Parliament that Appellant was to function as Department of Government, Parliament would have done so. In my view Parliament’s intent and nature about Appellant must be gathered from the statute itself. I see no exemption of Appellant from payment of taxes on its objects. I am not prepared to give that exemption to Appellant which Parliament did not give to Appellant in the first place. Neither do I think it will be proper for me to penalize Appellant for the fact that Parliament in its wisdom decided that Appellant should retain its profits instead of remitting them to the Consolidated Fund of Government. I accordingly reject the ground of appeal of Appellant based on the argument that Appellant is a Government “functionary” in terms of the ... **Act**.

[10] **Registration of Appellant as Corporate Tax Payer**

- 10.1 In 2000 the Appellant registered itself as a corporate tax payer. Appellant contends that it did so erroneously assuming that every Lesotho entity had to be so registered.
- 10.2 On 17th May 2004 the Appellant says it realised its error and requested the LRA to deregister it.
- 10.3 On 8th February 2005 LRA's Senior Tax Auditor responded positively to Appellant's request stating *inter alia*, that

“we are of the opinion that.....the ... is solely owned by the Lesotho Government and that it is a non-profit making organization [and that] it is therefore non-taxable in respect of the Company Tax.”

In expressing this view I have not been able to find a provision in the tax legislation that makes her opinion binding on the LRA whether such authority be in the scope of her powers as a Senior Tax Auditor or otherwise. Be that as it may, this issue became a bone of contention between the parties as we shall see the reaction of Respondents in this litigation later.

- 10.4 On 29 August 2012 the Commissioner General of the LRA, wrote to Appellant and stated that “the Senior Tax Auditor (who wrote the letter of the 8th February 2005) was not entirely incorrect to have purported the [Appellant] is exempt from income tax.” The contention of the Appellant

there is that the LRA conceded that the Appellant was “non-profit” organization and that therefore it was exempt from tax.

[11] Does a tax obligation go away simply because some administrative official made a mistake that it was not due? In my considered view it does not matter how genuine and *bona fides* parties concerned may have been in their initial thinking that it was not due. In my view one cannot plead “estoppel” to a statute. In my view if a tax obligation exists, it remains so.

[12] **Appellant and Value Added Tax Obligation**

12.1 As a matter of fact the [Appellant] was never registered as a VAT vendor prior to the raising of the relevant assessments. The Appellant contends that in 2008 the Respondents performed a VAT audit on the Appellant to establish whether the Appellant’s suppliers were complying with VAT obligations. At that time, so contends the Appellant, the Respondents did not give any indication that it disagreed with the position of the Appellant that it was not required to register as a VAT vendor.

12.2 Appellant draws our attention to the provision of **Section 17(7) of the VAT Act** which says:

“The Commissioner may register a person [as VAT vendor] whom the Commissioner has reasonable grounds to believe is required to apply for registration under this section but who has failed to do so.”

Appellant states that the Commissioner –General has never registered the Appellant as a VAT vendor.

[13] **Summary of Legal Grounds of Appellant’s Appeal**

13.1 A summary of the legal grounds on which the Appellant appeals are as follows:

13.1.1 The Appellant was exempt from income tax and VAT in terms of the provisions of the ... **Act**.

13.1.2 The Appellant was not liable for income tax in terms of the provisions of the **Income Tax Act**;

13.1.3 The Appellant was not liable for VAT in terms of the provisions of the **VAT Act**; alternatively the Appellant was entitled to input tax deductions.

13.1.4 The Appellant had a legitimate expectation that it would not be assessed for Income Tax and VAT.

[14] **As to Exemption of Appellant from Income Tax and VAT in Terms of LRA Act**

14.1 Appellant contends that per **Section 19(2) of the ... Act**, the powers of Appellant are therein set out as follows:

“The Authority shall use the funds raised under this Act to meet the cost of its operations and shall use any surplus accrued for the promotion and development of”

- 14.2 As a statutory body, so the argument goes, the Appellant only had such powers and duties as were entrusted to it, or, imposed upon it by statute. The Appellant's power's in respect of the use of its funds, and the duties which were imposed upon the Appellant in respect of its funds, were limited by Parliament to "meet the cost of its operations and the promotion and development of" Therefore, Appellant argues, Parliament intended that the Appellant would not have the power, or the duty, to pay tax i.e. the Appellant would be exempt from tax.
- 14.3 Appellant contended that for the reasons set out above Appellant is exempt from both income tax and VAT tax in terms of the ... Act.

[15]

- 15.1 As to the first ground of appeal, namely, that the Appellant was exempt from Income Tax and VAT in terms of the ... **Act**, the Appellant makes the following submissions relying primarily on the interpretation it places on **Section 19(2) of the ... Act, Section 19 (2) of the ... Act** provides that:

"The Authority shall use the funds raised under this Act to meet the cost of its operations and shall use any surplus accrued for the promotion and development of ..."

From this reading of section **19(2)** the Appellant argues that as a statutory body, Appellant only had such powers and duties as were entrusted to it, or, imposed upon it by statute. The argument continues to contend that the Appellants powers in respect of the use of its funds were limited by Parliament to "promotion and development of" The conclusion that

Appellant makes from this is that parliament intended that Appellant would not have the power, or the duty, to pay tax. In other words, so concludes the logic of Appellant's reasoning, Appellant is exempt by Parliament from payment of tax (Income Tax and VAT).

- 15.2 The above then was the primary thrust of Appellant's contention that in terms of **Section 19(2) of the ... Act** it is not liable to pay tax of any sort.

[16]

- 16.1 In the alternative to their contention that **Section 19(2) of the ... Act** exempts Appellant from tax, Appellant urges us to find that in terms of **Section 17(1)** and **Section 25 of the Income Tax Act**, Appellant is not liable to pay Income Tax. Appellant has put up his contention as a Second Ground of its appeal.

- 16.2 The argument in support of this Second Ground of Appeal is that in terms of **Section 17(1) of the Income Tax Act**, "gross income" is:

- (a) Employment income; and
- (b) Business income; and
- (c) Property income; and
- (d) Any other income or gain

But does not include amounts exempted from income tax."

Appellant contends that "employment income" and "property income" are defined in **Sections 18 and 20**. None of the income of Appellant comes from those businesses. "Business income" is defined in Section 19 as "the

profits or gains arising from a business.” Appellant contends that it is a “*Government functionary*” and in that sense it is in the same position as the Government for the reasons that follows. Firstly, Appellant is required to perform duties in the public interest and its activities in performing those duties were not of a “business” nature. They are functions of a public nature intended for the public benefit.

[17] In oral submissions before us Appellant relied, *inter alia*, on the legal proposition that Appellant being a “Government Functionary” is in fact an arm of the Crown and that being the case the Crown is not subject to taxation for taxing Appellant would lead to absurdity in that it would amount to requiring that the Crown pay tax to itself. Appellant relied on the House of Lords decision in **Madras Electric Supply Corporation Vs Boarland (Inspector of Taxes) 1955 H.L. 667**. In that case it was held per **Lord MacDemott** that “*the Crown cannot find in the prerogative an immunity from tax in a statute, if a statute according to its true construction, includes the Crown amongst those liable to tax it imposes; but in an Act of parliament general words shall not as a rule of construction bind the Crown to its prejudice unless by express provision or necessary implication.*” Further, a general taxing provision must be construed in the light of the “*implied exemption on the grounds of the prerogative*”- per **Lord Reid/ Lord Keith** held: “*That the Crown is not bound by a statute unless by express words or by clear implication, necessarily involves that the words in a statute capable of applying to Crown may be overridden by the exercise of the prerogative.*”

In a nutshell therefore, so concludes this line of reasoning by Appellant, it is a fundamental principle of law that Government does not impose an obligation on itself by implication unless a statute expressly states so. I pause here to caution

that this argument of Appellant will hold if we were to find that Appellant is in fact a department of Government and as such a part of the Crown.

17.2 The Appellant contended that if we were to hold that they are liable to pay income tax or register a VAT vendor and/or levy “output” VAT would be requiring the Appellant to do things that are outside the ambit of the powers vested in it by Parliament in terms of the ... **Act** and would therefore be requiring Appellant to act ultra vires.

17.3 In regard to the Appellant’s liability to payment of tax on “royalty fee” of the ... regulatory fees which Respondents consider to be “property income” in terms of **Section 17 (1) of the Income Tax Act**, Appellant contends that such income was exempt from tax in terms of **Section 25 of the Income Tax Act** anyhow for the reasons already advanced by Appellant earlier.

[18] **THE NATURE AND CHARACTER OF LICENSES ISSUED BY APPELLANT IN TERMS OF PART ... OF THE ... ACT, ...**

18.1 **Section 26 of the Act** gives [Appellant] authority to prescribe, from time to time, classes of ... services which may be offered on domestic or international basis.

Section 27 of the Act provides that no person shall establish or provide ...services in Lesotho except under and in accordance with, a licence issued pursuant to the Act. In that regard the [Appellant’s] service providers are issued with private or public ... licences as market conditions and the public interest warrants.

Section 31 provides that each licence that is granted by the [Appellant] shall describe the services that the licensee shall provide. The type of licenses that may be granted by the [Appellant] are listed **Section 31 (2) (a)** through to (f). They are ... services.

18.2 A licence is defined by the Oxford English Dictionary as “*A permit from an authority to own or use something, do a particular thing, or carry on a trade. It is a formal or official permission.*”

18.3 My reading of **Part VI of the ... Act** leads me to conclude that licensing fees collected by Appellant from ... providers for permission to use the national asset of ...are a form of tax on those licensees and therefore cannot be taxable in the hands of Appellant. On the basis that tax on tax is impermissible in law we hold that Appellant cannot be taxed on these revenue streams.

[19] **LIABILITY OF [APPELLANT] TO PAY INCOME TAX**

I have already expressed my conclusions of law in relation to whether Appellant is exempt from income tax by Parliament by implication as is suggested by Appellant. In my view that logic does not assist Appellant’s case as by the same token it can equally be legitimately concluded that since Parliament did not exempt Appellant anywhere in the **... Act**, Appellant is in fact not exempt from income tax therefore. In my view there is an even stronger argument for concluding that Parliament, did in fact intend Appellant to pay tax like all persons in – see **Section 4, Income Tax Act 1993** read in conjunction with **Section 4 of the ... Act**. If all entities must pay tax of the law governing persons and entities, then Appellant must also pay tax like all entities of similar character unless Parliament specifically exempts Appellant. Parliament has not done so to

Appellant. Appellant is liable to pay income tax on its income in excess of its legitimate and/or exempted expenses.

[20] **LIABILITY OF APPELLANT TO REGISTER AS A VAT VENDOR OR TO LEVY VAT**

20.1 Appellant contends that it is not required to register as a VAT vendor or to levy VAT in terms of **VAT Act**. Appellant recognizes that Government is not exempt from paying VAT. **Section 7(2) of the VAT Act** expressly states so that it is not exempt from VAT. Appellant therefore concedes that it has to pay “input” VAT as part of the price paid by it for goods/services supplied to them. However, because government and its arms (such as Appellant and Respondents themselves) use goods and services supplied to them to carry out, what Appellant contends are Government functions on a non-commercial basis, they are not required to levy VAT on vendors nor are they required to levy VAT in respect of functions performed by them. That is why, Appellant argues, they do not pay VAT on the taxes and fees which they are obliged to pay to Government and its arms from time to time. Appellant furthermore submits that in carrying out what it calls “*its public functions*”, Government and its arms, like Appellant, is not making supplies which are subject to VAT. Appellant draws a distinction between itself and the situation dealt with in **Riverside Housing** case relied upon by the Respondents.

20.2 Appellant differentiates it on the basis that the position of Government (by Government read Appellant in the sense that Appellant is a Government functionary) is fundamentally different to that of a private charity (Riverside Housing) carrying on private letting activities on a commercial

basis for the purposes of deriving rental profits as was the case in Riverside Housing case. Appellant argues that in order for Appellant to have been obliged to levy “output” VAT, it must *inter alia*, have carried on an “undertaking” and must have “*supplied goods and services*” as contemplated in the **VAT Act** nor does it supply “*goods and services*” as contemplated in the **VAT Act** either. Appellant contends that the performance by Appellant of Government function of allocating licences to operators is not an “undertaking” as contemplated in the **VAT Act**. The fees, it is contended by the Appellant, which are paid to Appellant by licensees are essentially taxes as opposed to consideration for any particular service rendered by Appellant. The services which Respondent contend are provided by Appellant are each of a public nature... which is a public benefit. It is argued that such services are supplied to the general public and it is not a benefit to Appellant. The public itself is not paying a consideration benefit for the services that Appellant renders for them for the granting of licenses to operators and policing operators to ensure that they operate their licenses in terms of the conditions attached for them without causing chaos in the ... national asset which the Government has charged Appellant with its management and utilization for the general good. On the other hand, in terms of **Section 14 (1) of the VAT Act**, VAT is levied “*on the taxable value of a taxable supply*” which such taxable value is “*the consideration for the supply.*” If there is no consideration for a supply, there can be no VAT on that supply. It follows therefore that, as there is no consideration for any “services” provided by Appellant there can be no VAT. We agree with the Appellant’s contention in this regard and we uphold Appellant’s appeal that it is not required in law to register as a VAT vendor nor is in law required to levy VAT on the licences it issues to operators.

[21] **APPELLANT’S FIFTH GROUND: LEGITIMATE EXPECTATION NOT TO PAY TAX**

21.1 As regards the fifth Ground of Appeal, the Appellant submits that it had a legitimate expectation that it would not be taxed. This contention is based on the fact that in 2000 the Appellant registered itself as a corporate taxpayer. It did so because erroneously (so it contends) assuming that every entity in Lesotho had to be so registered. However, on the 17th May 2004 Appellant realized its error and requested Respondents to deregister it. On 8th February 2005 Respondents responded to that request and stated *inter alia*, that “*we are of the opinion that the [Appellant] is solely owned by the Lesotho Government and that it is a non-profit making organization [and that] it is therefore non-taxable in respect of the company tax.*” I have already dealt with this argument in relation to liability of Appellant to payment of Income tax. I shall not repeat my views here again in relation to VAT. For my purposes at this stage I am required to determine whether in terms of the **VAT Act** Appellant is liable to register as a VAT vendor and pay VAT on services that it renders to operators. Suffice it to say that Mr. X testified before us that Appellant regulates the transmissions of ...and it is not lessor of any asset. He testified that any references in the Appellant’s financial statements to “leases” are references to leases in terms of which Appellant pays rather than receives funds. Respondents completely misunderstood the financial statements, Mr. X testified. He testified specifically that [Appellant] imposes licenses primarily designed at eliminating potential chaos in the In other words having issued licenses, the [Appellant’s] polices the operators to conduct themselves in terms of their licenses. The question is: do licence fees attract VAT and does a licensor in the position of Appellant render a vatable service to operators in

terms of **VAT Act or ... Act**. In my respectable view that is the question we must answer here.

[22]

22.1 The definition of “*business Income*” is found in **Section 19**. Appellant argues that in order for Appellant to have been obliged to levy “output” VAT, it must, *inter alia*, have carried on an “*undertaking*” and must have “*supplied goods or services*” as contemplated in the **VAT Act**. Appellant, so the argument goes, as an arm of Government (and that sense a Government functionary) does not carry on an “*undertaking*” as contemplated in the **VAT Act** either. Appellant contends that the performance by Appellant of Government function of allocating licences to operators is not an “*undertaking*” as contemplated in the **VAT Act** either. Appellant contends that the performance by Appellant of Government function of allocating licenses to operators is not an “*undertaking*” as contemplated in the **VAT Act**. The fees, it is contended by Appellant which are paid to Appellant by licensees are essentially taxes as opposed to consideration for any particular service rendered by Appellant. The services which are provided by Appellant are each of a public nature...which is a public benefit. It is argued that such services are supplied to the general public and it is not a benefit to the Appellant that Appellant renders for the granting of licences to operators and policing operators to ensure that they operate their licenses in terms of conditions attached to them without causing chaos in the ... that are a national asset which the Government has charged Appellant with its management and utilization for the general good of the public in Lesotho.

On the other hand, in terms of **Section 14(1) of the VAT Act**, VAT is levied “on the taxable value of a taxable supply” which such taxable value is “the consideration for the supply”. It means the profits or gains arising from a business.

22.2 In **Section 20** one finds the meaning of property income. It includes dividends, interest, natural resource payments, rent, royalties, and gains on the disposal of investment assets, but does not include income which is business or employment income.

22.3 The assessment made on Appellant was made on the basis that it derives its income, *inter alia*, from the leasing of ... towers to private operators It was contended by Appellant that Respondent basis was factually incorrect. Mr. X who testified for Appellant flatly refuted this assertion of Respondent and testified that Appellant neither owns towers nor leases any towers to private operators. He testified that ... towers are owned by operators. Accordingly any income imagined by Respondents to be income derived from any leasing of towers and attributed to Appellant as taxable income must be expunged and reversed.

[23]

23.1 License fees collected by Appellant from operators are disputed by Appellant to traceable income on the basis that such collection of fees from operators is purely a government function by a Government functionary which is not taxable much the same way as vehicle licensing fees charged and collected from motorists. They are in the nature of taxes it is contended. Are licence fees taxes levied and collected by Appellant from operators or are such license fees in fact revenues fees in the form of taxes

raised and collected by Appellant for its sole benefit as part of its business operation? I have already held that Appellant is not a Government functionary and cannot be compared to a Government department. It is an autonomous statutory body created by Parliament...

23.2 It is common cause that license fees levied and collected by Appellant end up in the Appellant's account. They are not paid over by Appellant into the Consolidated Fund of Government. I have said already that I do not count it against Appellant that it does not pay over its profits to the Government's Consolidated Fund. It is Parliament that elected that Appellant should not do so but that Appellant was to utilize such profits for the promotion and development of ... See **Section 19 (2) of ... Act**. Indeed all moneys paid by operators to Appellant in respect of their ... business are retained by Appellant and utilised. The important distinction I make in regard to profits of the [Appellant] is that Parliament did not legislate that such profits should be exempt from tax. On the contrary Parliament legislated that ... (Appellant) shall be subject to all laws applying to corporate entities. Per **Section 4 [of the]... Act**, all persons and corporate entities are subject to payment of tax on their profits.

23.2 In my view I do not see that the licensing of ... operators in the terms of the mandate given to Appellant qualify as "taxable value of or taxable supply in terms of **Section 14(1) of the Vat Act 2000**. I would accordingly uphold Appellant's appeal that it is neither required to register as a vendor in terms of **VAT Act, 2000** and that it renders no taxable supply or service.

[24] **CONCLUSION**

In the view we take of this appeal we hold:

24.1 That Appellant is liable for income tax of profits made by it and in respect of income derived by it, from the following revenue streams:-

- Application fees
- Royalties fees
- Penalties fees
- Usage fees
- Other income
- Interest Income
- We direct that the parties must sit down and re-work tax payable to Respondent arising from Appellant's revenue streams specified in 23.1 above amounting to ... less any legitimate operating expenses and other lawful deductions allowable in terms of **Income Tax Act, 1993.**

24.2 That ... licence fees and operators licence fees ... are in the nature of taxes and as such Appellant is not in law required to pay income tax on them.

24.3 That Appellant is not in law liable to pay VAT in respect of the licence fees and other charges which it collects from operators in connection with execution of its mandate in terms of the .. **Act, ...**

[25] **COSTS:**

There will be no order as to costs. Each party will bear its own costs

J.T.M. MOILOA
MEMBER

I agree

N. MAJARA
PRESIDENT

I agree

PULENG LEBITSA
MEMBER

**For Appellants: Adv. Julia Boltar instructed by Mr D.P. Molyneaux
of Webber Newdigate**

**For Respondents: Adv. Henk Louw instructed by Mr M. Dichaba of Lesotho
Revenue Authority**

**[Please note that to protect the identity of the Taxpayer involved in this case, certain information
contained in the judgment relating to the Taxpayer has been redacted by way of ellipsis]**