The Republic of South Africa
THE SUPREME COURT OF APPEAL

reportable
case no: 472/98

In the matter between:

COMSHIPCO SHIFFAHRTSAGENTUR GmbH Appellant

and

THE COMMISSIONER FOR SOUTH AFRICAN REVENUE SERVICE Respondent

Coram: Vivier, Olivier, Streicher, Zulman, JJ A and Mpati, A J A

Heard: 29 November 2000

Delivered: 19 March 2001

Summary

Address commission paid by a disponent owner of a ship to the charterer is not expenditure for the purposes of section 11 *bis* (4) (f) of the income Tax Act 58 of 1962 as amended.

J U D G M E N T

STREICHER JA:

[1] I agree with Olivier JA that the so-called address commissions to which the charterers were entitled in terms of the relevant charterparties did not constitute marketing expenditure which entitled the appellant to a marketing allowance in terms of s 11*bis* of the Income Tax Act 58 of 1962.

[2] In terms of s 11*bis*(2) an exporter who has during the year of assessment incurred marketing expenditure (determined as provided in s 11*bis*(4)) is allowed to deduct from his income a marketing allowance determined as provided in s 11*bis*(3). S 11*bis*(4)(f) provides as follows:

> "(4) For the purposes of subsection (3) the marketing expenditure on which the marketing allowance is to be calculated shall be so much of the expenditure incurred by the exporter during the year of assessment and allowed to be deducted from his income under sections 11 and 17 as is proved to the satisfaction of the Commissioner to have been incurred directly-
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> . . .
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> (f) in respect of commission or other remuneration for orders for goods exported to any export country. . .and, in the case of an exporter who carries on any trade defined or recognized under

> subsection (4B) as an export service industry, any commission or other remuneration for orders for services or goods obtained in the course of such trade from persons based in an export country;"

[3] It is common cause between the parties that the appellant does business in Durban and that it is an "exporter" carrying on a trade, namely that of a charterer of ships, "recognized as an export service industry" within the meaning of those words in the section. It follows that in order for the address commissions to qualify as marketing expenditure on which a marketing allowance could be calculated they had to be expenditures which had been incurred "directly" in respect of "any commission or other remuneration for orders for services or goods obtained in the course of" the trade of the appellant, within the meaning of those words in s 11bis(4)(f). Whether that was the case is the issue to be decided in this appeal.

[4] At all material times the appellant's mode of carrying on business was to charter ships in and to charter ships out. Both charters in and charters out by the appellant were either time or voyage charters. In the case of a time as well as a

voyage charter the services of the vessel were made available to the charterer, but possession of the vessel and employment of the master and the crew remained with the owner of the vessel.

[5] In terms of the relevant charterparties between the appellant and the charterers an address commission was payable by the appellant to the charterers. The appellant tendered evidence as to what an address commission was. According to this evidence, historically, vessels were addressed to the master of the vessel or an agent at the port of loading or discharging and an amount of money was provided by the owner to the master or to the agent for whatever services were required in respect of the ship in a port, for example services required for getting the ship in and out of the port and for the loading and the discharging of the cargo. That is the origin of the expression "address commission". At present, according to the evidence, when a ship is chartered, it is the charterer who has to render the service of providing the cargo for the vessel and who has to ensure that the vessel gets into the port, loads and gets out quickly. In most cases the charterer requires

an address commission to be paid by the person from whom he charters the ship in respect of the provision of such services. In short an address commission is, according to the evidence tendered by the appellant, a commission payable for the provision of services in respect of a ship. However, the address commission is not actually paid to the charterer, it is deducted from the hire at the time the hire is paid.

[6] The standard form of charterparty approved by the New York Produce Exchange is the form most commonly used by the appellant. In terms of clause 2 of one such charterparty referred to in the evidence the charterer is obliged to pay for all "Port Charges, Compulsory Pilotages, Canal Dues, Agencies, Commission, Consular Charges (except those pertaining to the Crew), and all other usual expenses except those before stated . . . ".In terms of clause 8 thereof the charterers "are to load, stow, trim, secure and discharge the cargo at their expense under the supervision and responsibility of the Captain, . . ." .Clause 28 thereof provides as follows: "An address commission of 2½ per cent payable to Charterers on the hire earned and paid under this Charter."

[7] On behalf of the appellant it was submitted that the payment of an address commission was required by the relevant charterers and that it was therefore a commission paid for an order for services (being the agreement to charter a ship) as required by s 11bis (4)(f). It was suggested to counsel for the appellant that if the address commissions were not commissions they could nevertheless qualify as remuneration. However, counsel persisted in his argument that they were commissions.

[8] In my view it cannot be said that the address commissions were commissions or remuneration for the orders received from the charterers. In *Commissioner for Inland Revenue v Wandrag Asbestos (Pty) Ltd* 1995 (2) SA 197 (A) this court had to decide whether what was called a "selling commission", payable by Wandrag Asbestos (Pty) Ltd ('Wandrag') to Griqualand Exploration and Finance Co Ltd ('Gefco'), in clause 4(a) of an agreement which spoke of a sale of asbestos by Wandrag to Gefco, was a commission within the meaning of that word in s 11 *bis*(4)(f). Corbett CJ said at 214B-D:

"Turning to para (f) of s 11*bis*(4), I would point out that the word 'commission' is not a term of legal art. The relevant meaning in the *Oxford English Dictionary* reads:

> 'A remuneration for services or work done as agent, in the form of a percentage on the amount involved in the transactions; a *pro rata* remuneration to an agent or factor.'

In *Drielsma v Manifold* [1894] 3 Ch 100, at 107, Davey LJ said:

> 'Commission is *prima facie* the payment made to an agent for agency work, usually according to a scale - it may be an *ad valorem* scale, but not necessarily an *ad valorem* scale, It is in my opinion the most general word that can be used to describe the remuneration paid to an agent for an agency work other than a salary. . .' "

Although Corbett CJ found it unnecessary to decide exactly how much wider the net was spread by the words 'other remuneration' he did say at 214E:

"The words 'commissions or other remuneration for orders for goods exported to any export country' are cryptic, but I think that their meaning is reasonably clear. What the Legislature had in mind, in my view, was expenditure incurred in the payment of, or an obligation to pay, commission or other remuneration to a person **for services rendered in obtaining orders** for goods which in terms of the order are exported to any export country." (My emphasis.)

[9] The address commissions were not payable to the charterers as agents and

it was not submitted on behalf of the appellant that they were. What was submitted was that Corbett CJ's judgment was a minority judgment and that the majority held that an amount paid by Wandrag as seller to Gefco as purchaser qualified as a commission within the meaning of that word in s 11*bis*(4)(f). Corbett CJ's judgment was a minority judgment but there is no indication in the majority judgment that the majority disagreed with him in respect of the meaning of the word 'commission' or in respect of the meaning of the words "commissions or other remuneration for orders for goods" in s 11*bis*(4)(f). On the contrary, they would seem to have agreed. It is probably for this reason that Kumbleben JA found it necessary to hold, firstly at 206E, that if one had regard to substance rather than form, the agreement between Wandrag and Gefco could not be said to be one of sale, and secondly, at 208H:

> "It is true that the agreement as a whole cannot be classified as one of agency. But, on the assumption that the selling commission in clause 4(a) was the *quid pro quo* for marketing Wandrag's asbestos and for nothing else, one may validly regard this term of the agreement as one of agency in the sense of a mandate given by Wandrag (the mandator) to Gefco (the mandatory) in terms of which the latter undertook to perform the task of procuring orders for export for the former"

[10] To me it is likewise reasonably clear that the words 'commission or other remuneration for orders for services or goods obtained in the course of . . . trade from persons based in an export country' in the second part of s 11*bis*(4)(f) are to be interpreted to mean expenditure incurred in the payment of, or an obligation to pay, commission or other remuneration to a person **for services rendered in obtaining orders** for services or goods in the course of a trade recognized as an export service industry, from persons based in an export country.

[11] The question to be decided is therefore whether the address commissions constituted payments to persons for services rendered in obtaining the orders that is to say for services rendered in obtaining the charterers' agreement to charter the ships. In my view they did not. The charterer of a ship does not by simply placing the order to charter the ship render a service to the owner or the disponent owner (himself a charterer) of the ship. If an address commission is paid simply because of the order being placed or as an inducement to place the order and not for services

to be rendered in respect of the ship it is in the nature of a discount and not for services rendered in obtaining the order.

[12] In any event, the evidence establishes that the address commissions were not agreed to simply because of the order being placed or as an inducement for the placing of the order but were agreed to as remuneration to the charterers for services to be rendered by them in respect of the ships chartered. However, those services were services that were to be rendered after conclusion of the relevant charterparties, as a result of the conclusion of the charterparties and were thus not rendered in obtaining the charterers' agreement to charter the ships. The fact that the charterers required to be paid an address commission and that the charters would probably have been lost had appellant refused to pay address commissions does not change the nature of the services in respect of which the address commissions were to be paid, they were still not payable for services rendered in obtaining the charters.

[13] For these reasons I agree that the appeal should be dismissed with costs including the costs of two counsel.

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P E STREICHER JA

Vivier, JA)
Zulman, JA)
Mpati, JA) concur

OLIVIER JA

[1] The issue on appeal is whether the appellant is entitled to deduct the so-called address commission paid by it as disponent owner of ships to charterers of these ships from its income for the years 1 October 1988 to 30 September 1992 as a marketing allowance for the purposes of section 11 *bis* (4) (f) of the Income Tax Act 58 of 1962 as amended ("the Act").

[2] The respondent ("the Commissioner") disallowed the deduction of the said commission. An appeal by the taxpayer, the appellant, against such disallowance was dismissed by the Natal Income Tax Special Court, Galgut J presiding. The learned judge later granted leave to the appellant to appeal the said decision to this Court.

The background

[3] The appellant conducts business in Durban as a ship charterer. It is a "domestic company" for the purposes of the Act, and is liable for payment of income tax in terms of the Act.

[4] The appellant's business operations were described as follows by the court *a quo*:

> "The taxpayer's business operations consist of the chartering in by it of ships, and in turn by chartering them out. When chartering in it does so by means of time charterparties, and when chartering out by means of either voyage or time charterparties. Unlike charters by demise, which are charters whereby the vessel itself is leased to the charterer and is therefore placed in the possession and control of the charterer, voyage and time charters are both contracts of carriage, in which the owner retains such possession and control and in which the owner remains responsible for the navigation and management of the vessel.
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> In the case of a voyage charter the carriage is on a defined voyage or series of voyages, the owner being renumerated by the payment of freight, which is usually fixed according to the quantity of cargo shipped. The master and crew remain the owner's servants, the owner retaining possession of the vessel through them.
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> A time charter is one where, for a specific period, the owner makes the vessel available to the charterer, the consideration payable by the charterer being fixed by way of a rate for the time concerned (the rate being called hire, despite the fact that it is not a lease). Once again the owner retains possession of the vessel through its master and crew, who remain his servants, but the charterer is entitled to determine how the ship is to be

used. Like in the case of a voyage charter, the owner remains responsible for the navigation and management of the vessel, something that I will return to presently.

When a charterer in its turn charters out the vessel, as does the taxpayer, for the purpose of chartering out it is referred to as the disponent owner. As such its obligations to its charterer, whether it be a voyage or a time charter, are essentially those of an owner. It will therefore be such a charterer out, as disponent owner, who will be responsible, to the charterer at any rate, for the navigation and management of the vessel.

Important to the issue in the instant appeal is the responsibility of an owner or disponent owner for the navigation and management of the vessel. (In this regard any reference I make to an owner hereinafter will include a disponent owner.) As part of the said responsibility, and in the absence of a provision to the contrary in the charterparty concerned, in both voyage and time charters it is the function and obligation of the owner towards the charterer to arrange *inter alia* that the vessel gets into and out of the ports it stops at and that the loading and unloading are done, and in these connections to pay such disbursements as may be necessary, such as port charges, the hire of labour, and the like. It even includes bribes for the purpose of getting a favourable berth. Because these services and payments are vital to the issue in the instant appeal, in the absence of a better description I shall refer to them collectively as port services.

What is at issue in the instant appeal, as I said earlier, are so-called

address commissions."

[5] Three witnesses were called by the appellant to explain to the court *a quo* the nature of address commission. The court *a quo* summarised its nature and effect as follows:

> "These are peculiar to the shipping industry, and have been in existence for a few centuries. They are commissions paid by an owner to a charterer. When such a commission is demanded by a charterer it is because, despite the fact that what I call the port services are the obligation of the owner, it is the charterer who, in the interests of the owner no less than in its own interest, as a rule
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> undertakes them. The address commission is in other words paid by the owner for the benefit of having the charterer undertake the port services for which the owner would otherwise have been responsible. The commission is not reimbursive in the sense of compensating the charterer for its expenses, firstly because it is not only for disbursements but also in part for services rendered that it is intended to remunerate the charterer, and secondly because to the extent that it serves to cover disbursements that the charterer will incur, it is not intended to be an exact remuneration. On the contrary the amount, which is fixed in advance, is always expressed to be a percentage of 'the hire earned and paid' under the charterparty, the percentage usually being 1.25%. The percentage is by no means fixed,

however, because in some cases, very much in the minority, the address commission is not demanded by the charterer, and in other cases the percentage demanded might be less or more that 1.25%."

[6] The description by the judge *a quo* of the nature and ambit of "address commission" seems to me to be in accordance with the universal understanding of that concept. In the Oxford English Dictionary, 2nd ed, 1989 one finds as one of the meanings of the word "address", " ... the action of directing or dispatching (to a person or place). Still said of ships." As example the following is quoted "1882 Charter-party, ship to be addressed to Charterers or their Agents at port of discharge, paying 3% address commission". See also the discussion of "address commission" by Ackner, L J in ***Harmony Shipping Co. S.A. v Saudi-Europe Line Ltd*** ***(The "Good Helmsman")***, Court of Appeal, 1981 vol 1 Lloyd's Law Reports 377 at 419 - 421.

[7] It appears from the exhibits before the court *a quo* that the address

commissions claimed by the appellant for the years in issue were provided for in terms of the written charterparties entered into between the appellant and the various charterers. The charterparties were concluded on the commonly used *New York Produce Exchange* form. Clause 28 thereof provides for the address commission and reads as follows:

> "28 An address commission of 1.25% payable to charterers on the hire earned and paid under this charter."

[8] The peculiar character of the address commission is, therefore, that it is paid by the "lessor" to the "lessee". Was this commission deductible by the lessor from its income for taxation purposes?

The Act

[9] The appellant relies on the provisions of section 11 *bis* (4) (f) of the Act. In order to understand the provision, it is necessary to refer to its history.

[10] Section 11 *bis* of the Act was enacted and introduced in 1962. It created a deduction which was additional to the usual deductions claimable by a

taxpayer who derived income from trade. It created an exporter's "**market development allowance**" and at that time it was intended, and so worded, to benefit the exporter of **goods** only (see section 11 *bis* and the remarks in ***Secretary for Inland Revenue v Consolidated Citrus Estates Limited*** 1976 (4) SA 500 (A) at 510 E - G and 517 H).

[11] In 1972, however, and by various amendments to section 11 *bis*, the ambit of the section was broadened to embrace not only the export of **goods**, but of certain **services** as well, such services being those which had to do with what the section as amended called the "export service industry". For this purpose the definition of "exporter" was supplemented to include, not only an exporter of goods, but also any person who conducted an export service industry, and the definition of "export trade" was supplemented to include any trade recognised by the Minister of Finance under sub-section (4B) as an export service industry. Sub-section (4B) provided in turn that the Minister might by notice in the *Government Gazette* recognise as an export service industry any trade carried on in the Republic if he was

satisfied that in the course of that trade income was derived in a manner calculated to result directly in an inflow of foreign currency into the Republic. Acting in terms of sub-section (4B), the Minister caused Government Notice no 1184 to be published in *Government Gazette* no 5208 dated 9 July 1976, and in terms thereof one of the trades that he recognised as an export service industry for the purposes of section 11 *bis* was that of the "owners or charterers of ships".

[12] It is common cause that the appellant then duly took the necessary steps, and was registered as an exporter for the purposes of sub-section (4C). Consequently it is not in dispute that for the tax years in question the appellant was involved in the "export service industry" for the purposes of section 11 *bis*, and that it was an exporter as defined in sub-section 11 (1) and that it would qualify for the exporter's marketing allowance should it meet the other requirements of the section.

[13] Section 11 *bis* (2) provides that the marketing allowance would be available to exporters who have incurred the sort of **marketing expenditure** provided for in paragraphs (a) to (o) of sub-section (4), and sub-section (3) provides that the

marketing allowance would be an amount equal to seventy-five percent of the marketing expenditure.

[14] This brings me to sub-section (4) and in particular to paragraph (f) thereof. It reads as follows:

> "**(4)** For the purposes of subsection (3) the marketing expenditure on which the marketing allowance is to be calculated shall be so much of the expenditure incurred by the exporter during the year of assessment and allowed to be deducted from his income under sections 11 and 17 as is proved to the satisfaction of the Commissioner to have been incurred directly -
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> **.....**
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> **.....**
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> **(6)** ... in respect of commission or other remuneration for orders for goods exported to any export country or the clearing or forwarding of any such goods in such country and, *in the case of an exporter who carries on any trade defined or recognised under subsection (4B) as an export service industry, any commission or other remuneration for orders for services or goods obtained in the course of such trade from persons based in an export country*." (My italics)

[15] This means that to qualify for the exporter's marketing allowance, the

marketing expenditure must be proved to be:

> " ... so much of the expenditure ... as is ... incurred directly ... in respect of ... commission or other remuneration for orders for services ... obtained ... from persons based in an export country."

[16] Grammatically and logically one must insert the words "the procurement of" after the words "commission or other remuneration for" in subparagraph (f). It is clear that, as in the case of the export of goods, the legislature intended to encourage the export of services by a South African taxpayer in order to stimulate an inflow into the Republic of foreign currency, paid by the user of such services. Subsection 11 *bis* (4B) (a) says this in so many words.

[17] It follows that the situation envisaged by the legislator which would qualify for the benefits under section 11 *bis* (4) (f), is one where the provider of services in South Africa, *ie* the taxpayer, pays commission to an agent, to remunerate the agent for procuring orders for the services of the South African taxpayer in question, from persons based in a foreign country.

[18] Only if one reads the subsection in this way does it become reconcilable with the other provisions of section 11 *bis* (4), where a marketing allowance is recognised for expenditure incurred by the exporter for research into or obtaining information (including the remuneration of consultants, agents or representatives) in respect of the marketing of goods in any export country or for the rendering of services to persons based in an export country (subparagraph (a)); in advertising in an export country or in soliciting orders in, or participating in trade fairs in export countries (subparagraph (b)), *etc*.

[19] The position is thus that subparagraph (f) envisages that the South African exporter of a particular service employs an agent to procure orders from users of that service in an export country. The users pay the service provider for the services provided; the agent is entitled to a commission for the procurement of the order for the services provided by the South African exporter.

[20] The words "or other remuneration" must be read in the context of the situation described above. It extends the concept of "commission". Perhaps the

intermediary who procures the orders for the exporter's service is not an agent of whom it can be said that he earned a commission. He may be a broker or an intermediary, who does not work for a commission but for another form of remuneration, *eg* a salary. Clearly it was the legislature's intention that whether it is commission that is paid or any other form of remuneration, the amount thus paid by the exporter qualifies for tax deduction.

[21] I am, therefore, in respectful agreement with the view taken of the meaning of the word "commission" in the context of section 11 *bis* (4) (f) by Corbett CJ in ***Commissioner for Inland Revenue v Wandrag Asbestos (Pty) Ltd*** 1995 (2) SA 197 (A) ("*Wandrag*"). In delivering a minority judgment the learned Chief Justice pointed out at p 214 B that the word "commission" is not a term of legal art. He also referred to the Oxford English Dictionary where "commission" is defined as

> "A remuneration for services or work done as an agent, in the form of a percentage on the amount involved in the transactions; a *pro rata* remuneration to an agent or factor."

[22] The learned Chief Justice dealt also with the phrase in section

11 *bis* (4) (f) which is also now under consideration, but in the context of the export of goods. He said (at 214 E) that the words "commission or other remuneration for orders for goods exported to any export country" are cryptic, but that their meaning is reasonably clear. He then stated :

> "What the Legislature had in mind, in my view, was expenditure incurred in the payment of, or an obligation to pay, commission or other remuneration to a person for services rendered in obtaining orders for goods which in terms of the order are exported to any export country. ... A simple, but typical, case satisfying the requirements of section 11 (*bis*) (4) (f) would be where A, an exporter, has paid R 1 000 to agent B for obtaining an order in terms of which a quantity of A's goods are sold to a purchaser in an export country."

[23] Because the judgment of the learned Chief Justice was a minority one, it is necessary to analyse the facts of the case and the *ratio* of the majority judgment in order to ascertain whether the view put forward in paragraphs [17] to [20] is correct. The facts in *Wandrag* were the following: Wandrag was a mining concern, mining and producing asbestos at Kuruman. Towards the end of 1967,

and in order to secure the marketing of its asbestos, Wandrag concluded a contract with Griqualand Exploration and Finance Co Ltd ("Gefco"), which was also a producer and seller of asbestos. Wandrag's aim in the contract was to make use of Gefco's existing facilities both for upgrading Wandrag's product (Gefco would further fiberise and blend it with its own fibres) and for marketing the product overseas. Having blended Wandrag's fibres with its own, Gefco would export the product to overseas buyers acquired by Gefco through its marketing facilities. Clause 4 (a) of the agreement provided that Gefco was entitled to a "selling commission of 15% on the fob price of the fibre". The Commissioner disputed that the 15% "commission" constituted marketing expenditure within the meaning of that term in section 11 *bis* (4) (f), because the "selling commission" so called in the contract was not a true commission.

[24] The Commissioner argued that the contract was in reality one of sale, and the "commission" clause was merely a mechanism to calculate the net price to be paid by Gefco. Wandrag argued that the contract was one of agency or,

alternatively, a joint venture.

[25] The majority held that the contract was *sui generis*, but that its purpose was clear : Wandrag was totally dependent upon an export market but lacked the marketing and processing facilities to obtain such a market. The agreement enabled Wandrag to overcome this problem. The reciprocal benefit it held for Gefco was that it eliminated potential competitors in the export market (at 206 G-H per Kumleben JA on behalf of the majority).

[26] The majority held that the "commission" payable by Wandrag to Gefco was commission as envisaged in section 11 *bis* (4) (f). Kumleben JA (at 208 F - H) stated as follows:

> "It cannot be gainsaid that this payment was, and was intended to be, remuneration for Gefco for such procurement through its (Gefco's) appointed agents and perhaps employees. It was conceded that had Wandrag appointed and paid its own foreign agents for this purpose, the expenditure would have been directly incurred by Wandrag whether or not they in turn appointed subagents who actually secured the orders. I can see no distinction in principle between that situation and the present in which Gefco was commissioned and paid to undertake this task and it in turn

> appointed agents who obtained the orders. It is true that the agreement as a whole cannot be classified as one of agency. But, on the assumption that the selling commission in clause 4 (a) was the *quid pro quo* for marketing Wandrag's asbestos and for nothing else, one may validly regard this term of the agreement as one of agency in the sense of a mandate given by Wandrag (the mandator) to Gefco (the mandatory) in terms of which the latter undertook to perform the task of procuring orders for export for the former."

[27] The view taken in paragraphs [17] to [20] hereof in respect of the interpretation of section 11 *bis* (4) (f) is therefore in line with the interpretation given to it by both the majority and by the learned Chief Justice, *ie* that the true meaning of "commission or other remuneration"in section 11 bis (4) (f) represents, in a case such as the present, an amount paid by the disponent owner to an agent or broker or other intermediary who obtains, from a third party in an export country, **orders for the services provided by the disponent owner**.

[28] The question then becomes a factual one : can it be said that in the cases now under consideration the charterers acted as agents, brokers or some other form of intermediary for the appellant in the procurement of **orders for the**

services, **provided by the appellant**, by users of such services in an export country?

[29] As was correctly pointed out by the judge *a quo*, address commission is paid by the disponent owner to the charterer for the benefit of having the charterer undertake the port services for which the owner would otherwise have been responsible. The "commission" is not reimbursive in the sense of compensating the charterer for its expenses, firstly because it is not only for disbursements made by the charterer but also in part for services rendered by it at the port of discharge, and secondly because, to the extent that it serves to cover disbursements that the charterer may incur, it is not an exact remuneration.

[30] In a certain sense one can describe the charterer who undertakes and pays for the port services for which the owner would otherwise have been responsible as the agent of the disponent owner. *Non constat* that the "commission" paid qualifies for the benefits provided by section 11 bis (4) (f) of the Act. The disponent owner who pays address commission to the charterer of the owner's ship

does not pay such commission to remunerate the charterer for procuring orders **for the services of the disponent owner**. On the contrary, the commission is paid as remuneration **for port services rendered by third parties for the benefit of the disponent owner**. This commission is not paid as a marketing expenditure incurred for the procurement of orders for the services rendered **by** the taxpayer (the disponent owner), but is an expenditure for the procurement of port services rendered **to** the taxpayer. It follows that "address commission" does not qualify for the tax benefits in terms of section 11 bis (4) (f) of the Act.

[31] In the result, the appeal is dismissed with costs, including the costs of two counsel.

P J J OLIVIER JA