REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION

PRETORIA

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

06 SEPTEMBER 2022 .....

DATE SIGNATURE

CASE NO: 39598/20

In the matter between:

DANKIE OUPA DELWERY CC	**APPLICANT**
AND	
THE COMMISIONER OF THE SOUTH AFRICAN REVENUE SERVICES	**RESPONDENT**

JUDGMENT

CEYLON , AJ

A. INTRODUCTION:

[1] This is an opposed application in terms of which the Applicant seeks an Order in the following terms:

1. that the Applicant's appeal against the determination by the Commissioner (contained in Annexure "FA7" to the founding affidavit), that the Applicant does not qualify for the diesel funds claimed by the Applicant under rebate item 670.04 provided for in the Customs and Excise Act 1964, is upheld and that the said determination as well as the Respondent's dismissal of the Applicant's internal administrative appeal against the said determination, are set aside.

2. the said determination is substituted with a determination that the diesel refunds claimed by the Applicant qualify under rebate item 670.04.

3. the Respondent be ordered to pay the costs of this application.

B. BACKGROUND:

[2] The following is a brief background of the dispute between the parties.

[3] The Applicant, a duly registered VAT vendor in terms of the VAT Act 89 of 1991, purchased distillate fuel and diesel for use by its equipment, machinery and vehicles for its business (mining activities). It was also so registered for diesel refund purposes.

[4] The Applicant apparently delivered VAT returns to SARS in respect of such fuel and diesel purchased and the Respondent paid the applicable refunds by means of the system in operation for refunding VAT and the Applicant was a "user" as defined in Note 6 (a) (vii). Customs and Excise Act 1964 ("the Act").

[5] It appears that SARS conducted an investigation (audit) into the Applicant's diesel usage for the time period from October 2015 to October 2017 (assessment period) and found that the Applicant did not comply with the provisions of Note 6 to part 3 of Schedule 6, in that the diesel for which the refund was claimed is used for non-eligible purchases and that the Applicant was not compliant with the requirements of schedule 6, part 3, note 6 (d), in that some of its invoices did not contain the physical address of the purchaser and that those invoices only contained the postal address instead. It further found that the dispensing logbooks did not specify the activity conducted by the vehicle or machinery and whether the activities are qualifying activities and that the Applicant's user logbooks in respect of each vehicle or machine into which diesel was dispensed and utilised, was not kept and/or submitted as required by Note 6 (q) (v) (dd).

[6] Due to the said findings, the Commissioner disallowed rebate on 530 810 litres of diesel to the value of R1 150 987-17 as claimed for by the Applicant during the assessment period.

[7] The Applicant delivered its notice in terms of section 96 of the Act, dated 30 May 2020, on the Respondent. The period of one month in terms of section 96 (1) of the Act has expired.

[8] Around 28 November 2018 the Applicant launched an internal administrative appeal against the Respondent's determination and demand. On 23 August 2019 the Applicant received a letter from the Respondent containing the outcome of the appeal. The appeal was dismissed by the Internal Administrative Appeal Committee and confirmed the contents of the letter of demand.

[9] It is against the background of the above that the Applicant launched the present application for the relief mentioned above.

C. THE ISSUES TO BE DETERMINED:

[10] The following are the issues to be determined by this Court:

(a) whether the Applicant's physical address is a requirement for a valid tax invoice;

(b) whether the Applicant's record keeping is sufficient, and, if not, whether the Respondent acted irregularly in failing to allow the Applicant the opportunity to prove that the fuel was appropriately used within 30 days of demand; and

(c) whether the Applicant's logbooks were legally compliant or did it contain sufficient details regarding the usage of fuel for eligible purchase.

(d) are there exceptional circumstances for this Court to depart from the general rule in section 8 (1) (c) of PAJA.

D. THE CONTENTIONS OF THE PARTIES:

[11] The following are the brief contentions of the parties in relation to the issues to be determined.

(I) Whether the Applicant's physical address is a requirement for a valid invoice:

(a) The Applicant quoted the requirements for valid tax invoices in terms of Note 6 (d) in paragraph 19.4 of its founding affidavit. It reads as follows:

"*(i) for the purposes of section 75 (4A) (c), the invoice must be a tax invoice containing the following information:*

(aa) the words "tax invoice";

(bb) the name, address and VAT number (a 10-digit number starting with 4) of the supplier;

(cc) the name and address of the purchaser (if the invoice value is over R500);

(dd) date of transaction;

(ee) description of the goods (being diesel or distillate fuel);

(ff) the quantity delivered or purchased;

(gg) value of the supply;

(hh) the amount of VAT, which must be shown as 0% since VAT is not levied on distillate fuel or diesel."

(b) The Applicant, in view of the above, submitted that there is no requirement that its physical address should be contained on its invoice as the note only refer to the term "address" without specifying which address is required.

(c) The Applicant contends further that it depends on the interpretation of the contents of the note, specifically sub-paragraph (cc) thereof, and that the interpretation should include statutes, to determine what meaning should be given to the term and relies on the Natal Municipal Pension Fund v Endumeni Municipality 2012 (4) SA 593 (SCA) at para 18 decision, which will be discussed below.

(d) The Applicant submitted that, even if the Respondent's contention (as appears from the notice of intention to assess) that the Applicant's invoices are deficient, because it only contains postal addresses and no physical one, in which case a delivery note must be provided, this contention would be incorrect due to the fact that the wording of said Note 6 (d) does not make any mention of a requirement of a delivery note and therefore the Commissioner's contention in this regards is unfounded.

(e) The Applicant contended that its accountants made detailed representations to the Commissioner in respect of the requirement of a physical address on the invoices, the Respondent did not engage on these representations and submissions in its determination and simply confirmed the *prima facie* finding that the Applicant's invoices were not compliant.

(f) The Applicant submitted that it also made submissions with regards to the issue of the physical address on the invoices to the Appeal Committee (via internal appeals procedure), but the said Committee did not engage with these submissions and also just confirmed the findings contained in the letter of demand.

(g) The Applicant refers to the decision of Maharaj v Rampersad [1964 (4) SA 638 (8) at 646 C] in relation to whether the invoices were compliant or not. The details and importance of this decision will be discussed herein-below.

(h) The Applicant went on to contend that the object of requiring the invoices to have the address of the purchaser is clear from the structure of section 75 of the Act. It submitted that the refund which is granted under section 75 (1A) is provisional only and the officials of the Commissioner may in due course require production of proof by the user, *inter alia*, that the fuel/diesel has been purchased as claimed on the application for the diesel refund.

(i) The Respondent contended that the term "address" in the Notes to the Act does not specify which address should be on the users' invoice. The Respondent submitted that reference to the word "address" in Note 6 (d) must be considered with the requirements of section 75 (1C) (a) (iii) of the Act, which, *inter alia*, requires the Commissioner to establish if fuel was delivered to the premises of the user.

(j) The Respondent referred the Court to the decision of Commissioner for the South African Revenue Services v Longholm Farms (Pty) Ltd [1354/2018) [2019] ZASCA 163 (29 November 2019] where the meaning of the word "used" in section 75 of the Act was considered in relation of a dispute that also involved diesel rebate, but if the diesel were used off-site or on the premises would entitle the taxpayer to a rebate. The said decision will be discussed later herein.

(k) The Respondent went on to argue that the physical address of the user must be contained on its (user's) invoice and asks how will the Applicant satisfy the onus of proving that diesel was discharged to its premises if the tax invoice does not contain the physical address.

(l) The Respondent contended further that the Applicant is required, in terms of the said Notes, to prove that diesel was delivered, as well as the quantity of the diesel supply. For this reason, the Respondent argued, the physical address of the mine to which the diesel is delivered, must be stated on the tax invoice.

(m) The Respondent further submitted that the word "address" must refer to the physical address of the Applicant if the latter itself shows that, by its actions, for instance to invite SARS to inspect the mining activities at its physical address so that SARS can ascertain and understand the usage of the fuel.

(n) A further indication that the word "address" refers to physical address, its in another action of the Applicant, when the Applicant caused certain invoices to be corrected to include the physical address (eg certain OVS Petroleum invoices) and that other invoices be made to contain both physical and postal addresses (eg the Suidwes invoices).

(o) The Respondent also contended that the Applicant is selective in its arguments, in that on the one hand it corrects the invoices to contain the physical address on the

invoice and on the other it (Applicant) insist that the postal address is sufficient for invoice purposes.

(p) The Respondent concluded its argument by suggesting that the only interpretation that is both logical and practical is that a tax invoice, in relation to rebates, should contain the physical address of the user/purchaser.

(II) whether the recordkeeping of the Applicant is sufficient, and, if not, whether the Respondent acted irregularly in failing to allow the Applicant the opportunity to prove that the fuel was appropriately used, within 30 days of demand:

(a) According to the Applicant, the Respondent made the following findings in respect of the recordkeeping of the Applicant:

(i) the purpose of usage as per the dispensing records is not sufficient to establish the activity conducted and if the activities are qualifying activities, eg "delwery".

(ii) the usage logbooks for each vehicle or machine into which diesel was used were not kept and submitted by the vendor as required by Note 6 (q) (v) (dd).

(iii) dispensing logbooks did not provide a clear description of activities.

(iv) usage logbook were not provided.

(b) The Applicant disputed these findings and contended that its logbooks did comply in that it included, in relation to each VAT period, for example, the amount of diesel purchased in total, the amount of fuel supplied to each machine or vehicle or equipment used in primary mining activities, the purpose of usage for each distribution each day for each machine or vehicle, being "delwery". These were already alluded to herein-above.

(c) The Applicant further provided, through its accountants, logbooks regarding the storage and supply of fuel each day of the relevant period, the description of each asset referred to in the "Reg No" column of logbooks provided, etc, before the demand was issued by the Respondent. These were also discussed above.

(d) The Applicant contended that in view of the submissions made to the Respondent (eg the contents of Annexure "FA17" and paragraphs 56.9 and 56.10 of the founding papers), the Respondent's findings that the Applicant's recordkeeping is deficient, cannot be sustained.

(e) The Applicant also disputed the findings of the internal Administrative Appeal Committee, regarding the logbooks (that the logbooks are deficient, in that they only indicate fuel dispensed to vehicles/equipment for activities purported to be performed, but no records of actual activities performed were provided, nor of diesel actually used), indicating that the activities performed appear from the logbooks, were in fact performed by the vehicles/equipment and the fuel usage were properly accounted for, litre by litre, in the records of the Applicant. This issue was also set out above.

(f) In light of the above, the Applicant dispute the Respondent's ruling that the Applicant's recordkeeping was deficient at the time of the audit. However, in the alternative, the Applicant submitted, that the Respondent acted irregularly in failing to allow the Applicant the opportunity, which is expressly granted to the Applicant in terms of the section, to prove that the fuel had been appropriately used, within 30 days of demand. The Applicant submitted that the Respondent refused it the opportunity to show within the thirty (30) days of date of demand that the fuel had indeed been used in accordance with the provisions of item 670.04 as the Applicant was entitled to do and that it was the Respondent's official, Ms Matea, who refused the Applicant the said opportunity provided to the Applicant in terms of section 75 (4A) (e).

(g) In the latter regard, the Applicant argues that the Respondent's determination and issuing of a demand constitutes administrative action as envisaged in section 1 of PAJA 3 of 2000 and therefore the Respondent is enjoined by section 33 of the Constitution as enacted in PAJA to conduct administrative action that is lawful, reasonable and procedurally fair [relying on BCE Food Service Equipment (Pty) Ltd v Commissioner for the SA Revenue Services (27898/2015) GLD, Johannesburg, 12 September 2017 at paras 6-8]. The Applicant also argued that where the Respondent exercises a discretion which is pertinent to the making of an assessment, the exercise of such discretion may be set aside on appeal [relying on South Atlantic Jazz Festival (Pty) Ltd v Commissioner for the SA Revenue Services 2015 (6) SA 78 (WCC) at paras 21-23 and Wingate-Pearce v Commissioner for the SA Revenue Services 2019 (6) SA 196 (GJ) at para 47]. The Applicant submitted that, by parity of reasoning, this Court also has similar power.

(h) If regard is had to the aforementioned, the Applicant submitted, that the refusal by SARS to provide the Applicant the opportunity to prove that the fuel in question had indeed been used in accordance with the applicable requirements, was materially influenced by an error of law as intended in section 6 (2) (d) and was also unreasonable in terms of sub-section (h) thereof.

(i) This Court now turn to the Applicant's contention that, if its invoices are found to be deficient, that the Respondent irregularly failed to allow it an opportunity to prove that the fuel was appropriately use, within 30 days of demand.

(j) The Applicant contended that in terms of section 75 (4A) (e) (i) it is expressly granted this opportunity to do so within thirty (30) days of demand. The section reads as follows:

"*Notwithstanding anything to the contrary in this Act contained, any user of distillate fuel who has been granted such refund and who fails to –*

(aa) keep any such invoice;

(bb) complete and keep such books, accounts and documents; or

(cc) forthwith furnish any officer at such officer's request with such invoice and the books, accounts and documents required to be completed and kept,

Shall, in addition to any other liability in terms of this Act in respect of the fuel to which such failure relates, be liable, as the Commissioner may determine, for payment of an amount not exceeding the levies refund on such fuel, unless it is shown by the user within 30 days of the date of any demand for such payment for such amount in terms of this section that the fuel has been used in accordance with the provisions of said item of Schedule 6."

(k) The Applicant submitted that the Respondent's refusal to allow it the 30 day time period mentioned in section 75 (4A) (e) (i) above, was materially influenced by an error of law as envisaged in section 6 (2) (d) and was unreasonable in terms of section 6 (2) (h) of PAJA.

(l) The Respondent contended that the audit was already done and completed, and that the Applicant was given sufficient time to comply with the relevant legislation. According to the Respondent, the information should have been supplied at the time of the audit and not thereafter. The *ex post facto* compliance by the Applicant (eg at internal appeal) is not valid [relying on the Longholm and Canyon Reserves decisions, *supra*].

(m) The provisions of section 6 (2) (d) and (h) reads as follows:

"*(2) (d) A court or tribunal has the power to judicially review an administrative action if-*

...

(d) the action was materially influenced by an error of law;

...

(h) the exercise of the power or the performance of the function authorised by the empowering provision, in pursuance of which the administrative action was purportedly taken, is so unreasonable that no reasonable person can have so exercised the power performed the function;"

(n) From the above provisions of section 6 (2) (d) and (h), it evident clear that the Applicant requires this Court to review the Respondent's administrative action on grounds of a material error of law and/or the unreasonableness thereof.

(III) whether the Applicant's logbooks were legally compliant or did it contain sufficient details regarding the usage of fuel for eligible purchase:

(a) The Respondent submitted that in terms of Note 6 (q) of Part 3 of Schedule 6 of the Act, the keeping of books, accounts and the documents for purposes of the items referred to in the preceding subsections is required.

(b) For the Applicant to claim refunds in relation to eligible purchases, it must satisfy the Commissioner of both the facts that the diesel/fuel was used for eligible purchases and that the usage of same has been recorded in logbooks and such logbooks has been furnished to the Commissioner in support of the claims for such refunds.

(c) The Respondent contended that the definition of a logbook has been expanded since 01 April 2013 to expressly include a requirement that it should indicate a full audit trail of distillate fuel for which refunds are claimed, from the purchase to the use thereof.

(d) The Respondent further submitted that the Applicant did not comply with the requirements of the said Note in that it did not keep and maintain records that indicate that the fuel was used (not only dispensed) for ordinary production activities in mining.

(e) The Respondent then argued that the failure to discharge this onus is dispositive of this application [relying on the decisions of Ellert v Commissioner for Inland Revenue 1954 (1) SA 483 (A) at 490 D-F and Ernst v Commissioner for Inland Revenue 1954 (1) 318 (A)].

(f) The Respondent went on to contend that the Applicant failed to keep and submit the usage logbooks for each vehicle and machine into which the diesel was dispensed and used as required by Note 6 (q) (v) (dd) as a result of which SARS was unable to determine the usage of the fuel by said machines and vehicles.

(g) In this regard, Annexure "FA5" of the Applicant's founding affidavit does not comply with the requirements for a valid logbook in that it cannot be *prima facie* the document (annexure) be determined how the fuel was used as the Applicant only provided a generic description.

(h) The Applicant provided SARS with Annexure "FA17" to its founding affidavit in an attempt to correct the logbooks to the required format, but the relevant pages to the logbook still failed to specify the details of the mining activities performed with the fuel in question and where such activities were being carried out.

(i) The Respondent submitted that the statutory rules referred to above are peremptory and not merely directory in terms of the rules of interpretation [relying on the book of Wiechers, M Administrative Law (1985) at 19-199].

(j) The Respondent contended that the Applicant failed to show, with sufficient particularity, that the usage of the fuel was used for eligible purchases [relying on Canyon Resources (Pty) Ltd v Commissioner for the SA Revenue Services 68281/2016 at para 9.5 and Maharaj v Rampersad at 646 *supra*].

(k) In response to the Respondent's findings regarding recordkeeping in the demand, the Applicant contended that, in its founding papers, the logbooks that was provided to the Respondent for each VAT period included:

(i) the amount of fuel purchased in total (in compliance with Note 6 (q) (v) (aa);

(ii) the amount of fuel supplied to each machine or vehicle or equipment used in the primary mining activities (in compliance with Note 6 (q) (v) (dd);

(iii) the opening and closing meter readings for each day during the VAT period (in compliance with Note 6 (q) (v) (bb); and

(iv) the purpose of use of each distribution on each day for each vehicle or machine (n compliance with Note 6 (q) (v) (bb), being "delwery" activities).

(l) Before the demand was issued, the Applicant's accountants also provided, *inter alia*, the following to the Respondent:

(i) logbooks regarding storage and supply of the fuel for each day of the relevant period; and

(ii) a description of each asset referred to in the "Reg No" column of the logbooks provided.

(m) A representative sample of the logbooks that were provided is annexed as Annexure "FA5" of the founding papers, while a true copy of the descriptions of the assets under "Reg No" to the column on the logbooks is contained in Annexure FA6".

(n) From said Annexure "FA5", the activity conducted is described as "delwery" throughout and it seems that the Respondent does not have any difficulty with the other information reflected on the annexure, if the answering affidavit is taken into consideration.

(o) The Applicant contended further that if Annexure "FA5" is compared to "FA6", a more detailed description of the vehicles and equipment referred to under column "Reg No" on "FA5" is provided.

(p) The Applicant submitted that at the time of the internal appeal, as far as the logbooks were concerned, all the required information was available at the time that the audit was conducted, but that it was not compiled in the format in which it was required by the Commissioner.

(q) The Applicant contended that in the internal appeal the Applicant corrected the logbooks as per the required format and attached it to the grounds of appeal as Annexure "U". The corrected logbooks comprised more than two arch lever files and which are in the possession of the Respondent. Accordingly, a copy of the first 30 pages thereof has, for illustrative purposes, been annexed to the papers.

(r) The Applicant went on to submit that when Annexure "FA17" is read with paragraphs 56.9 and 56.10 of the founding papers, the Respondent's finding that the Applicant's recordkeeping was deficient, cannot be upheld.

(s) With regards to the finding of the internal appeal Committee that the logbooks provided by the Appellant only indicate the fuel dispensed to vehicles/equipment for purported activities to be performed, no records of actual activities performed were provided, nor of diesel actually used, the Applicant replied that the purported activities to be performed appearing from the logbooks were in fact performed by the vehicles and equipment in question and stated that the diesel actually used is properly accounted for, litre for litre, in the Applicant's records.

(t) Despite all of the above submissions made by the Applicant, the Respondent, according to the Applicant, continued to assert that the logbooks remain non-compliant as no usage of the fuel had been demonstrated as required by the Note.

(IV) are there exceptional circumstances for this Court to depart from the general rule contained in section 8 (1) (c) of PAJA:

(a) The Respondent responded to the order sought by the Applicant that the Commissioner's determination be substituted with one that the Applicant do qualify for the fuel refunds claimed. The Respondent contended that this submission by the Applicant cannot be granted. The Respondent relies on section 8 (1) of PAJA which states that a court or tribunal, in proceedings for judicial review in terms of section 6 (1), may grant any order that is just and equitable. It went on to submit that section 8 (1) (c) in particular, expressly recognises the court or tribunal's power to grant an order -:

"*setting aside the administrative action and –*

(i) remitting the matter for consideration by the administrator, with or without directions; or

(ii) in exceptional cases –

(aa) substituting or varying the administrative action or correcting a defect resulting from the administrative action; or

(bb) directing the administrator or other party to the proceedings to pay compensation."

(b) The Respondent argued that it is only in exceptional circumstances that it would be appropriate for a court to depart from the general rule set out in section 1 (c) of PAJA, and not to remit the matter back to the administrator for a fresh decision. Thus, the Respondent submitted, in the unlikely event that this Court were to review and set aside the impugned decision, it should, absent exceptional circumstances, send the matter back to SARS for reconsideration [relying on the Gauteng Gambling Board v Silverstar Development Ltd and Others at paras 28-29].

(c) The Respondent went on to contend that in order to determine what appropriate relief constitute in any particular matter, in other words a just and equitable order in the circumstances, the SCA, in the Tswelopele NPO v City of Tshwane 2007 (6) SA

511 (SCA) at para 17, explained that what needs to be kept in mind is the need for an effective remedy.

(d) With regards to what appropriate relief may be, within the context of judicial review, the Respondent referred this Court to the decision of the Constitutional Court in Steenkamp at para 48, and where it was held that:

"*It goes without saying that every improper performance of an administrative function would implicate the Constitution and entitle the aggrieved party to appropriate relief. In each case the remedy must fit the injury. The remedy must be fair to those affected by it and yet vindicate effectively the right violated. It must be just and equitable in the light of the facts, the implicated constitutional principles, if any, and the controlling law. It is nonetheless appropriate to note that ordinarily a breach of administrative justice attract public-law remedies and not private law remedies. The purpose of public law remedies is to pre-empt or to correct or reverse an improper administrative function…*

Ultimately, the purpose of a public remedy is to afford the prejudiced party administrative justice, to advance efficient and effective public administration, compelled by the constitutional precepts and at a broader level, to entrench the rule of law". [Steenkamp NO v Provincial Tender Board, Eastern Cape 2007 (3) SA 121 (CC)].

(e) The Respondent further submitted, relying on the Trencon Construction case at para 48, for the test for "exceptional circumstances" in section 8 (1) (c) (ii) (aa) of PAJA, where the Constitutional Court held that:

"*Given the doctrine of separation of powers in conducting this enquiry there are certain factors that should inevitably hold greater weight. The first is whether a court is in as good a position as the administrator to make the decision. The second is whether the decision of the administrator is a forgone conclusion. The two factors must be considered cumulatively. Thereafter, a court should still consider other relevant factors. This may include delay, bias or the incompetence of an administrator. The ultimate consideration is whether a substitution order is just and equitable. This will involve a consideration of fairness to all implicated parties. It is prudent to emphasize that the exceptional circumstances enquiry requires an examination of each matter on a case-by-case basis that accounts for all relevant facts and circumstances.*" [Trencon Construction (Pty) Ltd v IDC of SA and Another 2015 (5) SA 245 (CC)].

(f) The Respondent then concluded, in light of the above submissions, that there are no exceptional circumstances which exist to justify the remedy of substitution in this particular case, and that this Court is not in as good a position as SARS to determine whether the Applicant has completed the logbooks properly and in compliance with the relevant legislative requirements of the Act. [Relying on Bapedi v Commissioner of Traditional Leadership Disputes & Claims and Others 2014 ZACC 36 paras 78-79].

(g) In light of the contentions made above, the Applicant sought that the application be granted and that the determination and dismissal of the internal appeal against the determination be set aside with costs, including the costs of senior counsel, whilst the Respondent prayed that the application be dismissed with costs including the costs of two counsel.

E. LEGAL PRINCIPLES AND DISCUSSION:

[12] The discussion that follows is in relation to the issues to be determined before this Court.

- Requirements of a Physical address:

[13] It is common cause that subsection (cc) of section 75 (4A) (c) of the Act requires a tax invoice to contain the name and address of the purchaser. It does not specifically require that the physical address be reflected on the tax invoice. It therefore seems to this Court that there is a dispute between the parties regarding the interpretation of the word "address". The Applicant contended that this word includes either the physical or postal address, or both. The Respondent argued that it could only refer to the physical address.

[14] In disputes relating to the interpretation of legislative provisions, statutes must be interpreted in line with the ordinary rules of grammar and syntax taking cognisance of the context and purpose thereof [Endumeni Municipality *supra*; Longholm *supra*, at para 11]. This approach applies equally to taxing statutes [Commissioner for SA Revenue Services v Bosch and Another (2014) ZASCA 171; 2015 (2) SA 174 (SCA) at para 9; Longholm *supra*, at para 11]. In City of Johannesburg v Cantina Tequila and Another [2012] ZASCA 21 at para 8 it was held that words used in a statute must be given their ordinary grammatical meaning unless they lead to absurdity, and that the clear language of a provision should not be ignored under the guise of absurdity merely because the result may be unpalatable, nor may a provision be construed in a manner that the language does not permit, for in so doing, it is improperly substituting its will for that of the lawmaker.

[15] In the Oxford Learner's Dictionary, the word "address", as a noun, is described in the following terms:

"*The particulars of the place where someone lives or an organisation is situated.*" In the Longman Dictionary of Contemporary English it is defined as:

"*The details of the place where someone lives or works which you use to send them letters, etc.*" This is the ordinary, normal meaning attributed to the word "address" and it is very similarly described in both dictionaries above.

[16] The main contentions of the parties were set out above, and it attempted to indicate to this Court in which context the word should be understood and what its purpose is.

[17] The Applicant's argument regarding the issue of the address, as contained in said section 75 (4A) (c) (cc) read with the Endumeni decision *supra*, seems to suggest that the word address, in its ordinary, dictionary meaning refers to the physical or postal address or both.

[18] With regard to the requirement raised by SARS, in their assessment/demand, that if a postal address is used on the invoice, a delivery note should also be included, this Court agrees with the submission of the Applicant that the wording of Note 6 (d) to the Act does not mention such requirement. This Note has been quoted above and does not refer to any such delivery note. On an interpretation of the said Note, as envisaged in the Endumeni and Longholm decisions *supra*, this contention of the Respondent is unfounded.

[19] The Applicant's contention that only the address of the purchaser is required, not a delivery address and that delivery is not a requirement for a refund in terms of the Act of the Notes thereof is, in the view of this Court, also persuasive. Nowhere in the Act or Notes, neither in the interpretation rules stated in the Endumeni, Longholm or Cantina Tequila decisions is applied hereto, does a contention contrary to that of the Applicant find any application.

[20] The Applicant further submitted that the guidance that is given to VAT vendors under the VAT Ruling of SARS (of 11 March 2014), that the Diesel Refund System, administered in terms of the VAT system, which suggests that physical or postal addresses may be used, or both, for purposes of the VAT Act, is an indication that a physical address is not required. And this, the Applicant argued, is why its invoices that only contain postal addresses, is compliant. The Respondent disputed this argument, submitting that the Ruling is pertinent to the VAT Act and not applicable to the Act.

[21] Although this Court agree that the VAT Ruling and the VAT system used in the process of the rebates are closely linked, and it may be of guidance to VAT vendors, such as the Applicant, this Court agrees with the contention of the Respondent that, strictly speaking, it does not find application to the Act and therefore the said contention cannot be sustained in the circumstances.

[22] The Applicant's contention that in, relation to farms, addresses ordinarily refer to the name of the farm and not the physical address thereof, has not been directly disputed by the Respondent. A farm address in South Africa consists of a farm name, assigned by the occupants or owner of the farm, together with a town or colloquial area name. The farm address also provides for an optional building name in the building address type, which identifies either the specific dwelling of a tenant or another structure on the farm that acts as a service delivery point, for example,

Blommeplaas, Koue Bokkeveld or My Geluk, S935, opposite farm dam, Koffiefontein, Letsement Local Municipality [Coetzee S and Cooper, AK "What is an address in South Africa" in South African Journal of Science, Vol 3, n 11-12, Pretoria Nov/Dec 2007].

[23] In light of the aforementioned, it is clear that the addresses of farms are referred to primarily by their names and not by its physical address. On the Applicant's invoices the name of the farm, Welverdiend, Wolmeranstad is reflected. In the view of this Court, the Applicant's contention in this regard, in light of the aforegoing, is correct.

[24] The Respondent contended that the word "address" must be considered with the requirements of section 75 (1C) (a) (iii) to determine its proper meaning. This section reads as follows:

"*Notwithstanding the provision of subsection (1A), the Commissioner may investigate any application for a refund of such levies on distillate fuel to establish whether the fuel has been –*

(i) ...

(ii) ...

(iii) delivered to the premises of the user and is being stored and used or has been used in accordance with the purpose declared on the application for registration and the said item of Schedule 6."

Section 75 (1A) states that:

"*Notwithstanding anything to the contrary contained in this Act or any other law –*

(a) (i) A refund of the fuel leviable on distillate fuel in terms of Part 5 of shall be granted in accordance with the provisions of this section and of item 670.04 of Schedule No 6 to the extent stated in that item."

[25] It appears to this Court that there is no dispute that the Applicant is a "user" above and that diesel fuel is included in the concept "distillate fuel" in terms of section 75 (1C) (a) above.

[26] In the said Longholm decision, *supra*, at para 18, the Court held that section 75 (1C) (a) (iii) means "*that a taxpayer can only claim for diesel fuel stored and used on its own premises.*"

[27] Having had regard to the contentions of each of the parties, the principles relating to interpretation of statutes in the Longholm, Endumeni, Maharaj and Cantina Tequila decisions and the dictionary meanings outlined *supra*, this Court concludes that the meaning of address in the relevant Notes to the Act refers to the physical or postal address of the purchaser, or both thereof.

- Recordkeeping sufficient? If not, did Respondent act irregularly in failing to give the Applicant 30 days to prove that funds was appropriately used:

[28] As indicated above, the Applicant submitted that its recordkeeping was not deficient as indicated in the Respondent's findings in relation thereto. In this regard, the Applicant contended that its logbooks did contain the amount of fuel purchased, the amount supplied to all machines, vehicles and equipment used in its primary mining activities, the purpose of usage for distribution for each day in respect of each such machine, vehicle and equipment ("delwery") and the storage and supply for each day of the assessment period, description of each asset (under column "Reg No"), which was done through its accountants before the demand was issued by SARS. In addition, the logbooks reflected the fuel dispensed to all vehicles, machines and equipment for all activities performed and the fuel usage were accounted for in relation to such activities, litre by litre, in the logbooks.

[29] In light of the above, and if the recordkeeping is still found to be deficient, the Applicant submitted that the Respondent acted irregularly in not allowing the Applicant the opportunity to, within 30 days, prove that the fuel had been appropriately used, relying on section 1 of PAJA and the BCE Food Service Equipment and South Atlantic Jazz Festival decisions, *supra*.

[30] The Respondent's contention that the Applicant did not comply with the provisions of Note 6 (q) of Part 3 of Schedule 6, relating to the proper keeping of books, accounts and documents for purposes of refunds and rebates have been outlined above. In addition, the Respondent submitted that logbooks (Annexures "FA5" and FA6") were only provided at the internal appeal and it does not comply with the examples provided by SARS – it was not compliant in respect of the "usage" required.

[31] The Respondent contended that the logbooks contained in Annexure "FA17" of the founding papers were not available to SARS at the time of the actual audit and only became available when the demand was made by SARS. These were corrected logbooks and not compliant [relying on the decisions of Canyon Resources and Graspan, *supra*].

[32] With regard to the logbooks contained in Annexure "FA14", the Respondent submitted that it was at the internal appeal that SARS first had sight of these corrected logbooks, as they were not available when audit was conducted. The Respondent submitted further that SARS is entitled, at any stage, to require the logbooks when a refund or rebate is claimed in terms of section 75 of the Act and that refunds are a concession to the taxpayer and strict compliance with the legislation and regulations are absolutely necessary [relying on the Canyon Resources *supra* and Allpay Consolidated Investment Holdings (Pty) Ltd & Others v Chief Executive Officer, South African Social Security Agency and Others 2014 (1) SA 604 (CC) decisions].

[33] With regards to the alternative submission herein by the Applicant, that it was not allowed to prove that the fuel was appropriately used, the Respondent submitted that

the audit was duly done and completed and that the Applicant was given sufficient time to comply with the relevant legislation. The Respondent contended that the information required should have been supplied at the time of the audit, not thereafter and that the Applicant's *ex post facto* compliance, at the time of the internal appeal is not valid [relying on the said Longholm and Canyon Resources decisions, *supra*].

[34] In referring to the Maharaj decision, *supra*, and where it was held as follows:

"*The enquiry, I suggest, is not so much whether there has been 'exact', 'adequate' or 'substantial' compliance with the injunction but rather whether there has been compliance therewith. This enquiry postulates an application of the injunction, to the facts and a resultant comparison between what the position is and what, according to the requirements of the injunction, it ought to be. It is quite conceivable that a Court might hold that, even though the position as it is, is not identical 'with' what it ought to be, the injunction has nevertheless been complied with. In dealing whether there has been a compliance with the injunction the object sought to be achieved by the injunction and the question of whether this object has been achieved are of importance.", in Canyon Resources supra, it was held that:*

"In the present case "the injunction" to users was that those who wish to claim rebates had to demonstrate with sufficient particularity "the journey the distillate fuel has travelled from purchase to supply" and then with equal particularity indicate the eventual use of every litre of such fuel in eligible purposes. Should the eventual use not be stated or sufficiently indicated, the claim fails. Should the volume of diesel used not be clearly determinable, the claim should also fail. Should the journey of every litre not be particularized, the claim would, once again, fail." [at para 9.5 thereof]

[35] In matters such as these, the Applicant carries the onus to persuade the Court that the determination by the Respondent should be set aside as well as the onus of proof, on a balance of probabilities, that, on its papers, it is entitled to an order for the relief (rebates) sought. [Canyon Resources, *supra*, at para 9.10 and Stellenbosch Farmers Winery Ltd v Stellenvale Winery (Pty) Ltd 1975 (4) 234 (C)].

[36] In the view of this Court, the Applicant did not comply with the provisions of the Notes and Act in relation to the required recordkeeping, certainly not at the time that the audit was conducted. On its own version, the Applicant did not supply the logbooks in the specified format as required by Note 6 (q) of the Act. The Applicant itself conceded that certain of the logbooks or information thereto, was supplied after the audit was conducted. Certain logbooks were submitted in a corrected form, again after the audit was completed. Certain of the logbooks did not contain the specified usage of the fuel in respect of a particular machine, vehicle or equipment as required, while other logbooks were not provided at all. [see for example Annexures "FA5", "FA6", "FA14", "FA17" and "U" referred to herein above].

[37] This Court is not convinced that the Applicant complied with the provisions of Note 6 (q). The strict compliance required has not been adhered to by the Applicant, as

envisaged in the principles set out in Allpay and Canyon Resources decisions, *supra.* These requirements are peremptory and not directory and strict compliance thereto is expected as indicated in Wiechers, *supra.* In the view of this Court, the Applicant did not show, with sufficient particularity that the fuel has travelled the journey to the eventual use thereof for eligible purposes, as required by the principles laid down in the said Canyon Resources decision, *supra.*

- whether the Applicant's logbooks were legally compliant or did it contain sufficient details regarding the usage of fuel for eligible purchase:

[38] It is clear that the aspects of the Applicant's recordkeeping and that of its logbooks are closely related and intertwined. This is so because the recordkeeping informs the nature, extent and manner in which the logbooks are compiled, written up and kept. It therefore stands to reason that this Court's findings regarding the recordkeeping have a direct impact on how it will find regarding the sufficiency and compliance of the logbooks.

[39] For instance, this Court indicated that there has not been compliance with Note 6 (q), for example that the Applicant failed to keep and submit the necessary usage logbooks in respect of each machine and vehicle as provided for in Note 6 (q) (v) (dd) if regard is had to Annexure "FA5" to the founding papers. With regard to "FA17" thereof, it was a corrected logbook submitted in order to comply with the specified format required by the Act and Notes. Further, the Applicant did not manage to show with sufficient particularity the usage of fuel for eligible purchases as described in the relevant principles set out in the Canyon Resources decision, *supra.* In addition, certain logbooks were corrected and only furnished with the grounds of appeal (at the internal appeal stage) under Annexure "U". In the view of this Court the logbooks should be complete and submitted at the time at which the Applicant applies for the rebate. The Notes should be adhered to with strict compliance as indicated above, as envisaged in the Canyon Resources and Allpay decisions and Wiechers, *supra.*

[40] In the view of this Court, if it has been found that the recordkeeping is incomplete, deficient and non-compliant with the provisions of the Act and the relevant Notes thereto, it will follow that the logbooks will suffer the same fate. Accordingly, this Court is of the opinion that the Applicant's contention regarding the sufficiency of its logbooks cannot succeed in the circumstances. It is therefore not necessary for this Court to separately canvass the compliance of the Applicant's logbooks in light what has been found above already.

[41] In view of the aforementioned, this Court agrees with the argument of the Respondent that if it is found that the recordkeeping and the logbooks are not compliant, as is the case here, it would be dispositive of the application.

F. CONCLUSION:

[42] (a) This Court have found in favour of the Respondent in respect of the deficiency of the recordkeeping and the logbooks of the Applicant and that this is dispositive of the application.

(b) In light of the above, there is no need for this Court to deal with any other issue raised in this application.

(c) In view of the foregoing, this Court is not persuaded that the appeal can succeed in the circumstances.

G. COSTS:

[43] The general rule in relation to costs is that costs follow the result and this rule may only be departed from upon good grounds shown [Myers v Abramson 1951 (3) SA 348 (C) at 455]. This Court could not find any such grounds to deviate from the said general rule.

H. ORDER:

[44] In the result, the following order is made:

(a) the application is dismissed with costs, including the costs consequent upon the employment of two counsel.

B CEYLON

Acting Judge of the High Court of South Africa

Gauteng Division

Pretoria

Date of hearing:	17 March 2022
Judgment Date:	06 September 2022

APPEARANCES:

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