IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 2023-099811

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

[redacted]

05/03/2025

....

SIGNATURE **DATE**

In the application for leave to appeal of:

COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE Applicant

and

ASPASA NPC First Respondent

AFRISAM (SUTH AFRICA) (PTY) LTD Second Respondent

LAFARGE (PTY) LTD Third Respondent

AFRIMAT SUBSIDIARIES LISTED IN SCHEDULE 1 Fourth to Eleventh Respondents

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APPLICATION FOR LEAVE TO APPEAL: JUDGMENT

LABUSCHAGNE J

[1] The applicant seeks leave to appeal the judgment and order delivered on 6 December 2024. In that judgment I made an order as envisaged in section 105 of the Tax Administration Act, 28 of 2011 to assume jurisdiction to adjudicate the dispute (paragraph 1 of the Order). A declarator was issued that *"bulk"* as used in respect of aggregates in Schedule 2 to the Mineral and Petroleum Resources Royal Act, 28 of 2008 means the condition in which shot rock (blasted rock) exists at the muck pile prior to processing (i.e. crushing or other form of beneficiation). Accordingly, aggregates as at the muck pile is the condition stipulated by Schedule 2. I also granted a strike out of specific portions of the answering affidavit together with an order in favour of ASPASA in respect of the strike out and the costs of the application, including costs of two counsel on Scale C.

[2] SARS seeks leave to appeal the declarator issued in paragraphs [2] and [3] of the Order.

[3] SARS applies for leave on the basis that there are reasonable prospects that another Court would come to a different conclusion (section 17(1)(a)(i)) and that there are compelling reasons why the appeal should be heard (section 17(1)(a)(ii)). Five grounds of appeal are advanced. The crux relates to the interpretation of "bulk". The interpretation exercise set out in the judgment deals the SARS interpretation now posited and sets out why it is incorrect.

[4] It is contended that I have crossed the divide between interpreting legislation and making legislation. I am satisfied that there is no reasonable prospect that another court would agree with SARS.

[5] The interpretation given to *"bulk"* in the order is consistent with the interpretation by SARS in its own non-binding opinion pertaining to Afrimat.

[6] The interpretation of *"bulk"* is also consistent with the interpretation of senior officials of SARS and the industry in the period prior to 2019. Such interpretation is consistent with the current industry specific meaning of the word *"bulk"* when it pertains to aggregates.

[7] In assigning a meaning to the word *"bulk"* the term was interpreted with reference to text, context and the purpose of the legislative provision in which it appears. This is consistent with the now trite principles pertaining to interpretation of statutes. No words have been added. "Bulk" has been interpreted to mean the condition of aggregates at the muck pile.

[8] SARS's grounds of appeal are unpersuasive. They:

8.1 Seek to construe "aggregates" (the word used in the Act) as "commercial aggregates" (a concept nowhere found in the Act);

8.2 Result in the absurdity that royalties are only incurred after beneficiating aggregates, and therefore do not recompense the State for the natural resource extracted.

8.3 Rest on an interpretation which frustrates the apparent purpose of a statute, namely compensating the State by means of a royalty for the use of its mineral resources and incentivising beneficiation.

8.4 Culminate in a construction which is unbusinesslike and insensible in that it ignores the commercial viability, marketability and exploitability of aggregates in the state as they exist at the muck pile; and

8.5 Create a *lacuna* in the legislative scheme, rendering aggregates unregulated by the royalty regime (and therefore royalty-free by default) prior to their beneficiation in the form of post-fragmentation crushing and screening into various sizes.

[9] The interpretation advanced by SARS places reliance upon explanatory notes of 2013 and 2019 which are not authoritative in the process of determining context for statutory interpretation. They are historical indicators of past contentions. There is one strong indicator of why the interpretation of SARS does not pass muster and has poor prospects on appeal. The interpretation advanced by SARS results in the redundancy of section 6(2)(b) of the Royalty Act, while the interpretation in the judgment does not.

[10] I take note that the interpretation in the judgment was the result of a need in the industry for clarity. However, the applicant seeks to utilise the grounds on which I assumed jurisdiction in terms of section 105 of the Tax Administration Act to decide the issue, as a matter of law, as a reason why there are now compelling reasons to have the matter heard on appeal. The reasons advanced do not rise to that level. They motivate the reason why the Court assumed jurisdiction in terms of section 105 of the Tax Administration Act, while paragraph 1 of the Order granted is not being appealed.

[11] The argument advanced by SARS has poor prospects on appeal and I do not regard the grounds advanced as constituting compelling reasons why an appeal should be heard in the context of section 17(1)(a)(ii) of the Superior Courts Act.

[12] In the premises the application for leave to appeal is dismissed with costs.

LABUSCHAGNE J
JUDGE OF THE HIGH COURT