**IN THE HIGH COURT OF SOUTH AFRICA**
**GAUTENG DIVISION, PRETORIA**

**CASE NO: 27441/2020**

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

[redacted]

**12 May 2025**

**Date** **K. La M Manamela**

In the matter between:

**BOTTOM LINE SOLUTIONS (PTY) LTD** Applicant

**TRADING AS BLS PORTCO SA**

and

**THE COMMISSIONSER FOR THE SOUTH** Respondent

**AFRICAN REVENUE SERVICE**

**DATE OF JUDGMENT:** This judgment is issued by the Judge whose name is reflected herein and is submitted electronically to the parties/their legal representatives by email. The judgment is further uploaded to the electronic file of this matter on Caselines by the Judge's secretary. The date of the judgment is deemed to be 12 May 2025.

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**JUDGMENT**

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**Khashane Manamela, AJ**

***Introduction***

[1] This is a review application by Bottom Line Solutions (Pty) Ltd trading as BLS Portco SA ('BLS'), operating as 'a clearing agent'[1] in terms of the provisions of the Customs and Excise Act 91 of 1964 ('the CEA'), to set aside a demand by the South African Revenue Service ('SARS') for payment in the amount of R3 688 458.21 in respect of liability for customs duty, value added tax ('VAT'), penalties, interest and other charges associated with the deemed diversion or exportation of goods.[2] BLS contends that the demand or assertions of liability on its part by SARS is unreasonable, irrational and failure by SARS to apply its mind to the relevant legal provisions, facts and circumstances of the matter, and, thus, ought to be reviewed and set aside in terms of the common law and the Promotion of Administrative Justice Act 3 of 2000 ('PAJA').

[2] The review is opposed by SARS mainly on the ground that BLS is liable in its role as an agent in terms of section 99(2) of the CEA as the impugned goods are deemed to have been diverted instead of being exported as declared. SARS, also, advanced grounds of a preliminary nature, as would appear below.

[3] The application came before me as a specially allocated motion. Mr JM Barnard appeared for BLS and Mr JA Meyer SC appeared for SARS. This judgment was reserved, but regrettably it is handed down much later than initially intended.

***Relevant aspects of the customs clearing process for goods to be exported after landing in South Africa***

[4] The essence of the dispute between the parties relate to the role played or which ought to have been played by BLS, as a clearing agent, in respect of the customs clearance for the

1 Par [56] below for the meaning of a 'licensed clearing agent' and 'registered agent'.
2 Pars [17]-[18] below for SARS' letter of demand ('LOD').

export of the impugned goods. It is therefore important for the process of 'customs clearance' to be highlighted.

[5] The process was explained by the Supreme Court of Appeal ('the SCA') in *Commissioner of Customs and Exercise v Container Logistics (Pty) Ltd; Commissioner of Customs and Exercise v Rennies Group Ltd t/a Renfreight*[3] as follows:

> What is known in ordinary language as 'customs clearance', is referred to in the Act as 'due entry'. Within a prescribed period after goods are imported the importer is required to make due entry thereof in the prescribed form. This is done by submitting a bill of entry containing particulars, *inter alia*, of the goods in question and the purpose for which they are being entered, to the Controller (an official designated by the Commissioner for a particular area). At the same time, unless the Controller allows a deferment, the duties due on the goods must be paid. If the Controller is satisfied, a release order is issued. Goods entered for home consumption are presumably released without further ado; what happens to them thereafter does not concern us. Goods destined for a neighbouring country may be entered either for removal in bond (s 18) or for storage in a customs and excise warehouse (s 18A) whence they may later be removed upon due entry for export. In either case, if they are destined for a place beyond the borders of the common customs area, there is an immediate liability to pay the duty but actual payment thereof is conditional upon it being proved to the satisfaction of the Commissioner that the goods have been duly taken out of the area. If proof is furnished within the prescribed time, the liability ceases; if not, the duty is payable on demand. Goods removed in bond or for export from a customs and excise warehouse may not be diverted without the permission of the Commissioner to any destination other than the one declared on entry.[4]

[6] SARS, in papers before the Court, has actually paraphrased the process for a clearing agent to remove bonded goods from the warehouse for export.[5] The narration appears to be criticised by BLS on the basis that there is no proof that the process set out was the applicable process at the relevant time and that the process set out does not appear to correlate with sections 18 and 18A of the CEA and the applicable rules. But, I do not consider the criticism fair and justified, more so, since BLS doesn't state what it considers to have been the correct

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3 *Commissioner of Customs and Exercise v Container Logistics (Pty) Ltd; Commissioner of Customs and Exercise v Rennies Group Ltd t/a Renfreight* 1999 (3) SA 771 (SCA) ('*Container Logistics*') concerning decisions by the Commissioner under s 99(2)(a) of the CEA rendering the respondents, as clearing agents, liable for obligations of their principals for unpaid customs duties and other charges in respect of goods which landed in Durban and cleared for export to Mozambique.

4 *Container Logistics* at par [10].

5 Answering Affidavit ('AA') pars 54-56, CaseLines (CL') C369-C370.

process at the time. BLS says it has been operating since 1999 as a clearing agent and, therefore, one wouldn't be unreasonable to expect it to alert the Court of anything which may be amiss in SARS' description of the process. More so, since BLS considers the facts and nature of the dispute in *Container Logistics* to be similar to those in this matter. But nothing really turns on this.

***Background***

[7] It is necessary to briefly set out some facts in the background to the matter or dispute between the parties. What appears below is common cause between the parties or not dispositively disputed by the affected party, otherwise the areas of dispute are pointed out.

[8] On 09 October 2015, BLS prepared and submitted for processing a SAD500 export declaration form or a 'bill of entry'[6] through the Johannesburg Customs Office of SARS for purposes of the release for movement of imported goods comprising 782 bales of men's t-shirts from Durban to the warehouse of an entity called Clearline Clearing and Logistics ('Clearline') in Johannesburg. The original bill of entry to enter the goods into the bonded warehouse of Clearline had been done by an entity called SMT Clearing. The documents were furnished to BLS through a local entity called Atlantic Impex. The bill of entry was to obtain authorisation to remove the goods from the bonded warehouse of Clearline to be exported through the Beitbridge border post to Lusaka, Zambia. According to SARS the clearing instructions were actually from a certain Mr Martin Ngwenya, acting on behalf of Intanet Investment Limited (Lusaka) ('Intanet'), although given on a pro-forma Atlantic Impex document. Intanet was the consignee of the goods.

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[6] Section 1 of the CEA defines a 'bill of entry' as including 'any SAD form, except as otherwise provided in any Schedule, rule or the Schedule to the rules'.

[9] BLS, still on 9 October 2015, populated some specific documents[7] by making entries on SARS' Electronic Data Interchange ('EDI') system and submitted same to SARS. On 12 October 2015, SARS' Customs Tactical Intervention Unit ('TIU') detained the goods under section 88(1)(a) of the CEA. On 13 October 2015, BLS says it received from SARS per the EDI (or noted same) the authority to release the goods from the warehouse for exportation.

[10] On 15 October 2015, following an inspection, the TIU noted a discrepancy in the number of bales declared on the bill of entry in that one additional bale (of 360 pieces of t-shirts) had not been declared. The TIU addressed a letter on 19 October 2015 to Butbro Products Trading CC ('Butbro'), the exporter[8] of the goods, informing it of TIU's findings. In response Butbro effected a voucher of correction (SAD504) on 20 October 2015.

[11] On 22 October 2015, the TIU - determined to deal with the matter under section 91 of the CEA - issued to Butbro a letter of intent.[9] Butbro abided by SARS's decision. On 23 October 2015, TIU informed Butbro, among others, that the DA70 notice may be processed and, on receipt of the deposit amount and once the TIU had issued the 'Movement under Detention Notice', the goods may be moved to the warehouse of Clearline under detention. This notice was issued on 28 October 2015 and sent to the MSC Depot in Durban, Butbro and Clearline.

[12] On 2 November 2015, Butbro passed a SAD504 Voucher of Correction to correct the ex-warehouse entry by amending the quantity and value of the goods. BLS says the voucher of correction was processed by SMT and BLS was informed to amend the WE entry, which it did.

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7 FA6, excluding the CN2, namely, The documents included the Customs Declaration Form (CD1), SAD 500 -Customs Declaration Form, SAD 554 – Voucher of Correction: Export, SAD 502 - Customs Declaration Form (Transit Control), the Customs Road Freight Manifest, SAD 505 - Customs Declaration Form (Bond Control), and the SAD 507 - Additional Information / Produced Documents.

8 Section 1 of the CEA on the definition of an 'exporter'.

9 SARS AA: C-365 par 36 and annexure "AA7": C-420

[13] It is opportune to point out that it is SARS' case, as would appear below, that contrary to TIU's knowledge and in direct contravention of the instructions under the TIU correspondence and the 'Movement under Detention Notice', BLS received the instructions from Atlantic Impex to pass an ex-warehouse bill of entry. BLS, according to SARS, knew that the declaration in the bill of entry was for the outright export of goods originally placed under the warehousing procedure and that the goods were destined for Zambia. This declaration and the documents which followed, SARS contends, were not properly completed by BLS.

[14] On 17 February 2016, SARS requested from BLS the following information regarding the release of the goods ex-warehouse: the CN2 document, the clearing instructions and the contact details of the person who issued the instructions to BLS. SARS also engaged with the legal representatives of Butbro and SMT. BLS argues that this means SARS was fully aware of the details of Butbro and SMT, it ought to be pointed out.

[15] On 20 July 2016, SARS issued a letter of intent to BLS and Clearline in which SARS stated that the goods were diverted without its permission to a destination not declared on the entry for removal in bond and that BLS and Clearline have intentionally and/or negligently failed to export the goods to Lusaka. It is essentially SARS' case that BLS failed to provide documents showing that the goods were transported via road to Zambia or that the documents submitted by BLS purporting to confirm exportation are false.

[16] On 05 September 2016, SARS issued a letter of demand to BLS and Clearline for payment in the amount of R3 688 458.21 by no later than 15 September 2016. An internal appeal process around March 2017 and request for alternative dispute resolution ('ADR') in April 2017 and February 2018, were to no avail. On 7 March 2018, BLS gave notice in terms

of section 96[10] of the CEA of BLS' intention to institute legal proceedings. This review application was launched on 30 June 2020.

***SARS' letter of demand***

[17] As indicated above, on 05 September 2016, SARS directed a letter of demand ('LOD') to BLS and Clearline, whilst copying Intanet.[11] The LOD also refers to oral representations received from BLS and Clearline.

[18] The material parts of the LOD include the following:

> Having considered the aforementioned e-mail letters as well as the oral representations made to this office by both BLS and Clearline please be advised as follows:
> …
> 8. In light thereof, the goods were diverted without permission of the Commissioner to a destination other than the destination declared on the entry for removal in bond and you may have intentionally and/or negligently failed to export the goods from South Africa to Lusaka.
> …
> **LEGAL APPLICATION**
> …
> 7. Based on the above, the goods are deemed to have been dealt with contrary to the provisions of Section 87 of the Act and are therefore liable to forfeiture.
> . …
> 10. In the circumstances, it is considered that Sections 18A(2), 18A (3) 18A (9), 19(7), 19(8) and 20(4)*bis* read with the relevant Rules thereto have been contravened which may constitute offences as described in terms of Section 80(1) (c) and (o) and Section 83 of the Customs & Exercise Act, Act No. 91 of 1964…
>
> **Summary of Liability**
> In light of the aforementioned and based on the available evidence in our possession, you are liable for payment of the following amounts:

| | | |
|---|---|---|
| Customs Duty | R | 973 861.20 |
| Value Added Tax* | R | 469 617.54 |
| Interest On Value Added Tax* | R | 33 881.47 |
| VAT Penalty in terms of section 39(4) read with section 213 of TAA* | R | 46 962.00 |
| Section 86(2)(a) deposit | R | 2 164 136.00 |
| Total | R | 3 688 458.21 |

> The aforementioned sum of **R 3 688 458.21** should reach this office on or before the **2016-09-15**, failing which action will be taken …[12]

[10] Par [51] below for a reading of s 96 of the CEA.
[11] Founding Affidavit ('FA') annexure 'FA1', Caselines ('CL'): C54-C61.
[12] FA1, CL: C54-C59.

[19] BLS' internal administrative appeal, as indicated above, was unsuccessful and the ADR process did not consummate to avoid this review application.

***Condonation for the late institution of the review proceedings***

[20] The review application was brought late. This is common cause. The period of the delay is approximately sixteen months late, counting from 5 February 2019 to 30 June 2020. The former represents the first day after the lapse of one year after the ADR process and the latter the date on which BLS issued the review with the registrar of this Court. No doubt the review was instituted beyond the prescribed 180 days for judicial reviews in terms of PAJA[13] and beyond the one year from the date of which the cause of action arose in terms of section 96[14] of the CEA.

[21] BLS seeks condonation of the non-compliance. BLS did request SARS to grant an extension of the one year period in terms of the CEA.[15] BLS blames a change in its legal representatives over the period of the delay and the failure of the settlement negotiations or ADR process with SARS. SARS considers the reasons advanced by BLS for the delay as irrelevant to the exercise of discretion by this Court in terms of section 96(1)(c)(ii); not sufficiently compelling or exceptional to justify condonation against prejudice on the part of SARS, and do not amount to good cause under section 96(1)(c)(i) of the CEA. Notably, the interests of justice dictates that there be finality of disputes, especially given the considerable length of the delay, it is also argued on behalf of SARS. SARS urges the Court to decline condonation.

[22] I have noted the submissions for and against the granting of condonation. I agree with SARS that finality of disputes is paramount especially in the environment in which SARS

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13 Section 7(1), read with s 6(1), of PAJA.
14 Par [51] below for a reading of s 96 of the CEA.
15 Section 96(1)(c)(i) of the CEA.

operates. But the period of delay is not unreasonably long and even if it is I do not detect any irremediable prejudice to SARS. Therefore, I will grant condonation in the interests of justice.

***Notice of motion, its subsequent amendment and the objections by SARS***

[23] The original notice of motion prefacing BLS' founding papers stated, in the main, the relief sought by BLS as being in respect of the SARS' decision to hold BLS liable for customs duty and other charges as borne by the LOD dated 5 September 2016.[16]

[24] BLS, subsequently, amended the original notice of motion in order to seek relief, mainly, as follows:

> 1. The decision of the Respondent dated 5 September 2016 in terms of which customs duty, VAT, VAT penalties, interest and forfeiture are demanded, is reviewed and set aside;
> 2. The decision of the Respondent in response to the Applicant's internal administrative appeal dated 9 March 2017, is reviewed and set aside;
> 3. The decision of the Respondent in response to the Applicant's application for alternative dispute resolution dated 5 February 2018, is reviewed and set aside;
> 4. The decision of the Respondent to terminate settlement negotiations dated 5 December 2018, is reviewed and set aside; and
> 5. The decision of the Respondent to refuse to set aside the LOD dated 5 December 2018, is reviewed and set aside;
> 6. Condonation is granted in respect of the requisite periods in the Promotion of Administrative Justice Act, 3 of 2000 and section 96 of the Customs and Exercise Act, 91 of 1964, in the event that the Respondent does not agree to the extension of therefore set periods;
> 7. The Respondent is ordered to pay the costs hereof and in the event of the Respondent opposing the application the Respondent be ordered to pay the costs on the scale of attorney and own client …[17]

[25] SARS contends that the relief sought (against the decisions set out in prayers 3 to 5 of) the amended notice of motion is not properly before this Court. SARS argues that the amendment to the notice of motion failed to comply with the jurisdictional fact under section 96 of the CEA. The material brought by the amendment was not included in BLS' pre-litigation

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16 Notice of Motion dated 26 June 2020, CL B1-B2.
17 Amended Notice of Motion dated 19 October 2020, CL C1-C2.

written notice.[18] The amended notice of motion strayed beyond the ambit of the pre-litigation notice by BLS, which only sought to review SARS' decision(s) surrounding the LOD of 5 September 2016. Now the amended notice of motion includes decisions relating to the internal administrative appeal and the ADR application. BLS was aware of the latter decisions of September 2016 and April 2017, respectively, but excluded them from the pre-litigation notice delivered in February 2018. Section 96 of the CEA is aimed at preventing prejudice on the part of SARS by giving it 'notice of judicial proceedings contemplated against SARS to enable SARS to prepare and plead its defence',[19] including to investigate claims and assess its options as to acceptance, rejection or settlement of any claim before being embroiled in litigation at the public expense.[20]

[26] I do not consider the relief relating to the ADR process, the termination of the settlement negotiations and the refusal to set aside the LOD to constitute decisions capable of independent determination from the main relief in the original notice of motion on the potential liability of BLS for the customs duty and other charges, referred to above. In my view, the disposal of the latter is equally dispositive of the former. Therefore, I don't consider the inclusion of the additional relief in the amended notice of motion to be prejudicial to SARS and would consider it for purposes of the outcome of this application.

***Record of the review proceedings***

[27] BLS laments the condition of the record of proceedings sought to be reviewed filed by SARS. According to BLS some documents have not been included, such as the detention notice; the actual removal of the goods from the warehouse and export documentation, and how the Zambia clearance documentation came about. And the documents relating to SARS'

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18 Par [16] above.

19 *Dragon Freight (Pty) Ltd and others v Commissioner for South African Revenue Service and others (South African Clothing and Textile Workers Union as Intervening Party)* [2021] 1 All SA 883 (GP) [56].

20 *Mohlomi v Minister of Defence* 1997 (1) SA 124 (CC) [9].

engagements with entities and persons, such as Butbro, Atlantic Impex, Clearline and SMT are not disclosed as part of the record. Also, the record is silent when it comes to the substantiation of the allegation of falsity and invalidity of the acquittal documents.[21] Consequently, both BLS and this Court are not enabled to fully assess the lawfulness of the decision-making process, it is argued on behalf of BLS.[22]

[28] SARS rejects BLS' criticism. The record, according to SARS, does not have to include documents not relevant to the decision of 5 September 2016 (i.e. relating to the LOD), such as those to do with the relief sought in terms of the amended notice of motion. SARS argues that the record comprises all documents and information before SARS at the time the decision was made and the disclosed documents shed light on the decision-making process and factors considered by the decision-maker.[23] SARS, also, considers the alleged failure on its part to obtain information from the Zimbabwean or Zambian customs authorities as outside of its statutory obligations under the CEA.

[29] I agree. The documents disclosed appear to me to be sufficient for the review. This is so despite my decision above to include the relief sought in terms of the amended notice of motion. A challenge of this nature is always effective when pursued earlier in terms of the rules of practice of this Court to compel the desired compliance, rather than belatedly as part of relief to dispose of a matter. Also, I searched in vain for specific aspects in BLS' case which it is contended by BLS will be affected by the allegedly omitted material.

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21 *AMI Forwarding (Pty) Ltd v Government of the Republic of South Africa (Department of Customs and Exercise)* 2010 JDR 0505 (SCA) [33].

22 *Democratic Alliance v Acting National Director of Public Prosecutions* 2012 (3) SA 486 (SCA) [37]; *Democratic Alliance v President of the Republic of South Africa* 2017 (4) SA 253 (GP) [24]; *Helen Suzman Foundation v Judicial Service Commission* 2018 (4) SA 1 (CC) [13]. See also DE van Loggerenberg, *Erasmus: Superior Court Practice* (Service 23, Jutastat e-publications May 2024) RS 23, 2024 at D1 Rule 53-3.

23 *Helen Suzman Foundation v Judicial Service Commission* 2018 (4) SA 1 (CC) [17].

***BLS' grounds of review***

[30] BLS, essentially, seeks that SARS' decisions be reviewed and set aside, on the grounds that: (a) there is no legal and factual basis to hold BLS liable for the amount claimed by SARS; (b) BLS only acted in its capacity as a clearing agent on instruction of Atlantic Impex in respect of a limited and defined mandate; (c) any potential liability ceased in terms of the provisions of section 99(2) of the CEA; (d) SARS is acting unreasonably, irrationally and failed to apply its mind to the relevant legal provisions, facts and circumstances; (e) this is a common law review application;[24] (f) the conduct breaches the legality principle and is also review regarding the questionable validity of the conduct; (g) the conduct also constitute administrative action and, thus, also falls within the ambit of a review in terms of PAJA.

[31] SARS criticises the BLS' grounds of review as only restating the grounds of review as set out in section 6(2) of PAJA and as lacking substantiation by way of facts. This is in addition to lamenting the additional grounds introduced by the amended notice of motion, dealt with above. I agree that some of the grounds do not constitute aspects of the review capable of particular attention but general standards or yardsticks against which the impugned decisions are to be judged.

***BLS' case (including submissions)***

*General*

[32] According to BLS it 'is a well-established clearing agent providing forwarding and clearing services to clients both domestically and internationally' and has been registered and licensed with SARS as a clearing agent since January 1999. It conducts business from Morningside, Durban.

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[24] *Container Logistics* at par [20]-[21]. See also *Pharmaceutical Manufacturers Association of SA and Another: In Re Ex Parte President of the Republic of South Africa And Others* 2000 (2) SA 674 (CC) [33], [44] and *Merafong City v Anglogold Ashanti Ltd* 2017 (2) SA 211 (CC) [143]-[144].

[33] To recap: BLS seeks the review and setting aside of the decision taken by SARS to hold it liable for customs duty, VAT, VAT penalties, interest and forfeiture in the amount of around R3 688 458.21.[25] The dispute relates to goods which were exported (according BLS) or were to be exported, but diverted (according to SARS). The amount demanded by SARS represents the liability SARS imputes to BLS for its role as a licensed clearance agent. According to SARS, BLS is liable for the obligations of its principal in accordance with the provisions of section 99[26] of the CEA. The material issues in the background are summarised above.[27]

[34] BLS' case is that the material goods were exported by road exiting at the Beitbridge border into Zimbabwe – in transit - and then arriving in Lusaka, Zambia. In other words, the goods were imported into South Africa with an intention to export them; were entered into a bonded warehouse under cover of bill of entry submitted to SARS by SMT, another clearing agent, and after SARS accepted and processed that entry, BLS was not subsequently involved. BLS emphasises that the bill of entry was submitted to SARS, which in turn - through the EDI - informed that the goods were released from the warehouse authorising the process to export the goods. BLS says the latter activity effectively ended its involvement in the transaction and, thus, SARS' claim relates to the subsequent events. BLS emphatically contend that it only had a limited involvement in the transaction which involvement ended with the obtaining of the authorisation by SARS to remove the goods from the bonded warehouse of Clearline to be exported. It was not involved in the removal of the goods from the bonded warehouse, the transportation of the goods to the Beitbridge border, the processing of the goods for export at Beitbridge or the subsequent removal in transit of the goods through Zimbabwe or the import of the goods into Zambia.

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25 SARS letter of demand, dated 5 September 2016, quoted in the material part in par [18] above.
26 Par [52] below, for a reading of s 99 of the CEA.
27 Pars [7]-[16], above.

[35] Also, it is BLS' case that the evidence available clearly shows that SARS from the outset knew that BLS had no involvement in the movement of the goods. Also, BLS did not know about the detention of the goods by SARS and the movement under detention notice issued by SARS' TIU although widely circulated, there was no notice to BLS. SARS was always in full control of and monitored the movement of the goods. And the subsequent exchanges with representatives of Butbro and SMT excluded BLS, which confirm that SARS did not consider BLS relevant regarding the shipment. Available evidence suggests that the goods had been duly exported, it is contended on behalf of BLS.

[36] BLS also points out that its limited mandate terminated long before the alleged falsification of documents and, thus, there is no merit in imputing liability on BLS for the obligation of its erstwhile principal. This is inimical to an agency agreement and the provisions of the CEA which cannot be properly interpreted to extend the functions and potential liability of an agent post the termination of its mandate. There was full compliance by BLS with the obligations imposed by sections 18 and 18A of the CEA. Besides any potential liability ceased as provided by section 99(2)(b)[28] of the CEA. BLS had no knowledge of the alleged diversion of the goods and could not have reasonably taken any more or other steps to prevent the alleged non-fulfilment. Consequently, SARS material decisions ought to be reviewed and set aside, as set out above.

***SARS' case (including submissions)***

[37] According to SARS the dispute in this matter concerns the removal of goods detained in terms of section 88(1)(a) of the CEA from a licensed warehouse without permission from SARS, the diversion and failure to duly export the goods as declared, as well as the falsification of customs' acquittal documents.

[28] Par [52] below for a reading of s 99(2)(b) of the CEA.

[38] The impugned decisions all flow from the decision made on 5 September 2016 in terms of the LOD. In this decision, SARS, under section 99(2) of the CEA levied duties, VAT, penalties, interest and forfeiture amounts against BLS, an authorised clearing agent, for the removal and diversion of bonded goods for home consumption, without SARS's permission. Section 99(2) of the CEA in effect renders agents liable for the obligations of their foreign principals.

[39] SARS opposes the review application on various grounds. Some of these have already been dealt with in the preliminary issues discussed above. Essentially, the only major ground of opposition still to be assessed is SARS' contention that BLS is liable and has not placed evidence before the Court that it satisfies the jurisdictional facts of section 99(2) to escape liability, as the clearing agent. Obviously, more will be said when determining the issues in the relief sought by BLS in support of SARS' quest for the dismissal of the review.

[40] The correct approach to section 99(2)(a)(i)-(iii) according to SARS is premised on the clearance process as set out in *Container Logistics*, referred to above.[29] Counsel for SARS submitted that the aforesaid process is helpful in determining whether BLS' liability has ceased under section 99(2). Essentially, goods removed in bond or for export from a customs and excise warehouse may not be diverted without the permission of SARS to any destination other than the one declared on entry. SARS says in this matter there was a failure to export the goods, despite the fact that a bill of entry was passed. BLS is liable under section 18A(3) of the CEA and has not satisfied the threshold criteria set out in section 99(2)(a) to escape liability as a clearing agent under the CEA. The onus rests on BLS to prove that the goods were exported. This is made clear by section 102 of the CEA. This onus was not satisfied, it is submitted on behalf of SARS.

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[29] *Container Logistics* at par [10], quoted in par [5] above.

[41] SARS rejects BLS' argument that the determination ought to include whether BLS, as a clearing agent, incurred liability under section 44 of the CEA. SARS objects to the raising of the argument based on section 44 in the BLS' reply on the basis of prejudice to SARS and seeks that it be ruled *pro non scripto*.[30] SARS says it was deprived of the opportunity to answer to any factual allegations and ground of review on which an argument of this kind may be founded.[31] I agree. But I also do not think that reliance of section 44 is dispositive of this matter or having any meaningful bearing on the outcome.

[42] And, regarding BLS disputing that it is rational and reasonable to hold it liable under the circumstances. But SARS contends that BLS' case does not extend to a challenge of validity of section 99(2) and, thus, the rationality and reasonableness of the provision were not raised for determination by this Court. Otherwise, the issue does not constitute a distinct inquiry, but is rather integrated in the grounds of review. SARS, nevertheless, pointed out that it is rational and reasonable for BLS, an agent, to be held liable under section 99(2) on the basis of a relationship of trust between SARS and licensed clearing agents. To hold otherwise would require the physical examination of every consignment of goods imported into or exported out of the Republic. This approach would render the effective administration of imports and exports near impossible and the administration costs prohibitively high. It would also cause delays which would seriously inhibit the flow of trade. It is thus both rational and reasonable that section 99(2) imposes liability on a clearing agent for conduct committed by the principle.

[43] SARS refutes the contention by BLS that any liability should cease upon satisfaction of the requirements under section 99(2). According to SARS the obligation under section 99 is

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30 *Swissborough Diamond Mines (Pty) Ltd and Others v Government of the Republic of South Africa and Others* 1999 (2) SA 279 (W) at 323G.

31 *Airports Company South Africa Limited v Airport Bookshops (Pty) Ltd t/a Exclusive Books* 2016 (1) SA 473 (GJ) at [17], citing *Swissborough Diamond Mines (Pty) Ltd and Others v Government of the Republic of South Africa and Others* 1999 (2) SA 279 (T) 323F.

prefaced in section 64B dealing with the licensing of clearing agents. The latter provision provides for the liability of a licensed clearing agent 'in respect of any entry made or bill of entry delivered as contemplated in section 99(2)'.[32] This ought to be considered against the obligations of a clearing agent for customs duty set out in section 18A of the CEA regarding goods which are exported from the customs and excise warehouse. In terms of section 18A(3) liability for customs duty does not cease, where the goods are not out of the common customs area,[33] as envisaged in 18A(2)(a), and where the goods have been diverted or deemed to have been diverted, as envisaged in 18A(9). The exporter, a foreign principal, remains liable and there is a link between the obligations of the exporter and its agent in this regard under section 18A(3).

[44] SARS argues that BLS has not escaped customs duty liability and, thus, falls within the purview of section 18A(3). SARS further argues that BLS cannot avoid liability without BLS satisfying SARS that (i) it was not a party to the non-fulfilment of the material obligation(s) by its principal or exporter; (ii) when BLS became aware of the non-fulfilment it notified the Controller of same as soon as practicable, and (iii) BLS took all reasonable steps to prevent the non-fulfilment. It is SARS' case that BLS has not proven these cumulative jurisdictional facts under section 99(2) to avoid liability. The onus is clearly on BLS in this regard. I deal with this further below.

[45] In conclusion it is submitted that this Court should dismiss the application, as BLS has failed to establish reviewable grounds. SARS seeks a cost order, including the costs of two

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32 Section 64B(5), quoted under par [50] below.

33 Section 1 of the CEA defines the 'common customs area' as 'the combined areas of the Member States of SACU' and 'SACU' as 'the Southern African Customs Union between the Republic of Botswana, the Kingdom of Lesotho, the Republic of Namibia, the Republic of South Africa and the Kingdom of eSwatini'.

counsel, one of whom is a senior counsel on scale C, where so employed, to accompany the dismissal of the application.

***Applicable legal principles***

[46] I have already referred to some legal principles applicable to the determination to be made in this matter. I consider it necessary to reflect in more detail some of the provisions of the CEA, as reflected below.

[47] Section 18 of the CEA provides for the removal of goods in bond as follows:

> (1) Notwithstanding anything to the contrary in this Act contained—
> (*a*) except as otherwise prescribed by rule—
> (i) the importer or owner of any imported goods landed in the Republic;
> (ii) the licensee of any customs and excise manufacturing warehouse in which excisable or fuel levy goods are manufactured;
> (iii) the licensee of any storage warehouse in which excisable or fuel levy goods are stored;
> (iv) the licensee or owner of any imported goods stored in a customs and excise storage warehouse; or
> (v) any clearing agent licensed in terms of section 64B appointed by such importer, owner or licensee,
> may enter such goods for removal in bond and may remove such goods or cause such goods to be removed—
> (*aa*) in the case of goods contemplated in subparagraph (i), to any place in the Republic appointed as a place of entry or warehousing under this Act or to any place outside the Republic: Provided that any goods which are in transit through the Republic as contemplated in subsection (1A), may only be so entered and removed or caused to be so removed by such licensed clearing agent; or
> (*bb*) in the case of goods contemplated in subparagraphs (ii), (iii) or (iv), to any warehousing place in the Republic or to any place in any other country in the common customs area appointed as a warehousing place for rewarehousing at that place in another such warehouse.
> …
> (2) In addition to any liability for duty incurred by any person under any provision of this Act, but subject to the provisions of section 99 (2), the person who enters any goods for removal in bond or who may remove in bond any goods contemplated in subsection (1) and who removes or causes such goods to be so removed, shall subject to the provisions of subsection (3), be liable for the duty on all goods which are so entered and so removed in bond.
> (3) (*a*) Subject to subsection (4), any liability for duty in terms of subsection (2) shall cease if -
> (i) goods destined for a place in the common customs area, have been duly entered at that place; or
> (ii) (*aa*) goods destined for a place beyond the borders of the common customs area have been duly taken out of that area; or
> (*bb*) in circumstances and in accordance with procedures which the Commissioner may determine by rule the goods have been duly accounted for in the country of destination.
> (*b*) Any person who is liable for duty as contemplated in subsection (2) must -
> (i) obtain valid proof that liability has ceased as specified in paragraph (*a*) (i) or (ii) within the period and in compliance with such requirements as may be prescribed by rule;

(ii) keep such proof and other information and documents relating to such removal as contemplated in section 101 and the rules made thereunder available for inspection by an officer; and
(iii) submit such proof and other information and documents to the Commissioner at such time and in such form and manner as the Commissioner may require; or
(iv) (*aa*) notify the Commissioner immediately if liability has not ceased as required in terms of paragraph (*a*) (i) or (ii) or valid proof has not been obtained as contemplated in subparagraph (i); and
(*bb*) submit payment of duty and value-added tax payable in terms of the Value-Added Tax Act, 1991 (Act No. 89 of 1991), together with such notification as if the goods were entered for home consumption on the date of entry for removal in bond.
(*c*) Subject to subsection (4), there shall be no liability for duty on any goods where such liability was discovered as a result of, or following upon any such inspection by an officer or a request by the Commissioner as contemplated in paragraph (*b*) (ii) and (iii), respectively, where that liability occurred on a date earlier than two years prior to the date on which such inspection commenced or such request was made.

[48] Section 18A of the CEA provides as follows:

(1) Notwithstanding any liability for duty incurred thereby by any person in terms of any other provision of this Act, any person who exports any goods from a customs and excise warehouse to any place outside the common customs area shall, subject to the provisions of subsection (2), be liable for the duty on all goods which he or she so exports.
(2) (*a*) Subject to the provisions of subsection (3), any liability for duty in terms of subsection (1) shall cease if—
(i) the said goods have been duly taken out of the common customs area; or
(ii) in circumstances and in accordance with procedures which the Commissioner may determine by rule, the goods have been duly accounted for in the country of destination.
(*b*) An exporter who is liable for duty as contemplated in subsection (1) must—
(i) obtain valid proof that liability has ceased as specified in paragraph (*a*) (i) or (ii) within the period and in compliance with such requirements as may be prescribed by rule;
(ii) keep such proof and other information and documents relating to such export as contemplated in section 101 and the rules made thereunder available for inspection by an officer; and
(iii) submit such proof and other information and documents to the Commissioner at such time and in such form and manner as the Commissioner may require; or
(iv) (*aa*) notify the Commissioner immediately if liability has not ceased as required in terms of paragraph (*a*) (i) or (ii) or valid proof has not been obtained as contemplated in subparagraph (i); and
(*bb*) submit payment of duty and value-added tax payable in terms of the Value-Added Tax Act, 1991 (Act No. 89 of 1991), together with such notification as if the goods were entered for home consumption on the date of entry for export.
(*c*) Subject to subsection (3), there shall be no liability for duty on any goods where such liability was discovered as a result of, or following upon, any such inspection by an officer or a request by the Commissioner as contemplated in paragraph (*b*) (ii) and (iii), respectively, where that liability occurred on a date earlier than two years prior to the date on which such inspection commenced or such request was made.
(3) If—
(*a*) the liability has not ceased as contemplated in subsection (2) (*a*); or

(*b*) the goods have been diverted or deemed to have been diverted as contemplated in subsection (9),
such person shall, except if payment has been made as contemplated in subsection (2) (*b*) (iv), upon demand pay—
(i) the duty and value-added tax due in terms of the Value-Added Tax Act 1991 (Act No. 89 of 1991), as if the goods were entered for home consumption on the date of entry for export;
(ii) any amount that may be due in terms of section 88 (2); and
(iii) any interest due in terms of section 105:
Provided that such payment shall not indemnify a person against any fine or penalty provided for in this Act.
(4) No goods shall be exported in terms of this section—
(*a*) until they have been entered for export; and
(*b*) unless, except as otherwise provided in the rules, they are removed for export by a licensed remover in bond as contemplated in section 64D.

[49] Section 44A of the CEA reads as follows:

Joint and several liability for duty or certain amounts.—Subject to the provisions of sections 36A (2) (*b*) (i) and 99 (2) (*b*), whenever in terms of this Act liability for duty or any amount demanded under section 88 (2) (*a*) devolves on two or more persons, each such person shall, unless he proves that his relevant liability has ceased in terms of this Act, be jointly and severally liable for such duty or amount, any one paying, the other or others to be absolved *pro tanto*.

[50] Section 64B of the CEA provides for clearing agent licences and liability of a licensed clearing agent as follows in the material part:

(1) No person shall, for the purposes of this Act, for reward make entry or deliver a bill of entry relating to, any goods on behalf of any principal contemplated in section 99 (2), unless licensed as a clearing agent in terms of subsection (2).
…
(5) A licensed clearing agent shall be liable in respect of any entry made or bill of entry delivered as contemplated in section 99 (2).
(6) A licensed clearing agent shall disclose the name and category of the principal referred to in section 99 (2) on such bill of entry and if such agent does not so disclose or makes or delivers a bill of entry where the name of another such agent or his own name is stated as the importer, exporter, remover in bond or other principal, as the case may be, he shall be liable for the fulfilment of the obligations imposed on such principal in terms of this Act.

[51] Section 96 of the provides for a notice of action and period for bringing action, as follows, in the material part:

(1) (*a*) (i) No process by which any legal proceedings are instituted against … the Commissioner or an officer for anything done in pursuance of this Act may be served before the expiry of a period of one month after delivery of a notice in writing setting forth clearly and explicitly the cause of action, the name and place of abode of the person who is to institute such proceedings (in this section referred to as the "litigant") and the name and address of his or her attorney or agent, if any.
…
(*b*) Subject to the provisions of section 89, the period of extinctive prescription in respect of legal proceedings against … the Commissioner or an officer on a cause of action arising out of the provisions of this Act shall be one year and shall begin to run on the date when the right of action first arose …
(*c*) (i) The … Commissioner or an officer may on good cause shown reduce the period specified in paragraph (*a*) or extend the period specified in paragraph (*b*) by agreement with the litigant.
(ii) If … the Commissioner or an officer refuses to reduce or to extend any period as contemplated in subparagraph (i), a High Court having jurisdiction may, upon application of the litigant, reduce or extend any such period where the interest of justice so requires.

[52] Section 99 of the CEA provides for the liability of an agent for obligations imposed on the principal as follows in the material part:

(1) An agent appointed by any master, container operator or pilot or other carrier, and any person who represents himself or herself to any officer as the agent of any master, container operator or pilot or other carrier, and is accepted as such by that officer, shall be liable for the fulfilment, in respect of the matter in question, of all obligations, including the payment of duty and charges, imposed on such master, container operator or pilot or other carrier by this Act and to any penalties or amounts demanded under section 88 (2) (*a*) which may be incurred in respect of that matter.
(2) (*a*) An agent appointed by any … exporter…, remover of goods in bond or other principal and any person who represents himself to any officer as the agent of any … exporter, … remover of goods in bond or other principal, and is accepted as such by that officer, shall be liable for the fulfilment, in respect of the matter in question, of all obligations, including the payment of duty and charges, imposed on such importer, exporter, manufacturer, licensee, remover of goods in bond or other principal by this Act and to any penalties or amounts demanded under section 88 (2) (*a*) which may be incurred in respect of that matter: Provided that, except if such principal has not been disclosed or the name of another agent or his own name is stated on the bill of entry as contemplated in section 64B (6) or the principal is a person outside the Republic, such agent or person shall cease to be so liable if he proves that—
(i) he was not a party to the non-fulfilment by any such … exporter, … remover of goods in bond or other principal, of any such obligation;
(ii) when he became aware of such non-fulfilment, he notified the Controller thereof as soon as practicable; and
(iii) all reasonable steps were taken by him to prevent such non-fulfilment.
(*b*) No … exporter, … remover of goods in bond or other principal shall by virtue of the provisions of paragraph (*a*) be relieved from liability for the fulfilment of any obligation imposed on him by this Act and to any penalty or amounts demanded under section 88 (2) (*a*) which may be incurred in respect thereof.

(*c*) For the purposes of the proviso to paragraph (*a*) a principal outside the Republic shall be deemed to include the consignee in a country outside the Republic shown on a bill of entry for removal in bond of imported goods.
(3) Every shipping and forwarding agent and every agent acting for the master of a ship or the pilot of an aircraft and any other class of agent which the Commissioner may by rule specify shall, before transacting any business with the Commissioner, and any class of carrier of goods to which this Act relates which the Commissioner may by rule specify shall, before conveying any such goods, give such security as the Commissioner may from time to time require for the due observance of the provisions of this Act: Provided that the Commissioner may call for special or additional security in respect of any particular transaction or conveyance of goods from any agent or carrier.
(4) (*a*) An agent (including a representative or associate of the principal) representing or acting for or on behalf of any exporter, manufacturer, supplier, shipper or other principal outside the Republic who exports goods to the Republic, shall be liable, in respect of any goods ordered through him or obtained by an importer by means of his services, for the fulfilment of all obligations imposed upon such exporter, manufacturer, supplier, shipper or other principal by this Act, and to any penalties or amounts demanded under section 88 (2) (*a*) which may be incurred by such exporter, manufacturer, supplier, shipper or other principal under this Act: Provided that any such agent shall cease to be so liable if he proves that—
(i) he was not a party to the non-fulfilment, by any such exporter, manufacturer, supplier, shipper or other principal, of any such obligation; and
(ii) when he became aware of such non-fulfilment, he forthwith notified the Controller thereof; and
(iii) all reasonable steps were taken by him to prevent such non-fulfilment.
(*b*) Every agent of a class referred to in paragraph (*a*) and specified in the rules for the purposes of this paragraph shall register himself with the Commissioner and furnish such security as the Commissioner may from time to time require for the due observance of the provisions of this Act: Provided that the Commissioner may accept such security from any association of such agents approved by him which undertakes to give security on behalf of its members.
(*c*) No agent referred to in paragraph (*b*) shall transact any business on behalf of any such exporter, manufacturer, supplier, shipper or other principal after a date specified by the Minister by notice in the *Gazette* unless he has complied with the provisions of paragraph (*b*).
(*d*) …
(5) Any liability in terms of subsection (1), (2) or (4) (*a*) shall cease after the expiration of a period of two years from the date on which it was incurred in terms of any such subsection.

[53] The statutory provisions quoted above are vital for purposes of addressing the issues requiring determination in this matter, to which I turn, next.

***Issues for determination***

[54] Some of the issues have already been discussed above. The following are the issues remaining for determination to dispose of this matter: (a) whether the demand by SARS for

payment by BLS in the amount of R3 688 458.21 in respect of liability for customs duty, value added tax ('VAT'), penalties, interest and other charges associated with the 'exportation' of goods should be set aside; (b) the role played or which ought to have been played by BLS, as a clearing agent, in respect of the customs clearance for the export of the impugned goods; (c) were the impugned goods removed in bond or for export from a customs and excise warehouse and diverted without the permission of SARS to a destination other than the one declared on entry for removal in bond; (d) did the involvement of BLS in the transaction end upon receipt – through the EDI – of the authority to release the goods from the warehouse for exportation; (e) were the CN2, road manifest and the customs clearance documents which reflect Zimbabwe Revenue Authority date stamp of 10 October 2015 and the Zambian Revenue Authority Clearance document that BLS forwarded on 15 August 2016 which reflects the Zambian Revenue Authority stamp of 15 October 2015 false and/or invalid documents, and (f) is BLS, as an agent on behalf of Intanet, the principal, liable for all obligations imposed on its principal in terms of section 99(2) of the CEA.

[55] The issues above are interlinked and in some respect repetitive. They have been only identified to highlight their existence, but the discussion would – in some respects – feature blended issues, as borne by the self-explanatory subheadings utilised. Repetitions may be unavoidable in some respects.

***A registered agent and a licenced clearing agent***

[56] The CEA and the Customs and Exercise Rules, 1995 ('the Rules') do not directly define the reference 'clearing agent'. But from the perspective of SARS '[a]ny person (excluding a registered agent) who lodges a Customs Clearance Declaration (CCD): …[f]or reward on behalf of another Customs Client type; or … [p]rovides a service that includes the clearance of goods (e.g. Licensee of a Customs warehouse making CCD on behalf of the importer, exporter or owner of the goods) must license as a Customs clearing agent in terms of Section 64B of the

Act'.[34] Section 64B of the CEA, quoted above, provides for clearing agent licences and liability of a licensed clearing agent.[35] Further, according to SARS there is a further category of 'registered agent', namely a person (individual or juristic persons) located in South Africa to act on behalf of a foreign principal'.[36] Also, according to SARS a 'registered agent' and what is referred to as a 'licensed clearing agent' are not the same.[37] But the latter may become the former. A registered agent accepts nominations by foreign principals in which the functions (i.e. importer, exporter or remover of goods in bond) to be fulfilled on behalf of the foreign principal are indicated.[38]

[57] According to BLS, in the context of this matter, it played the role of a 'clearing agent' and Atlantic Impex that of a 'registered agent'. BLS says it merely carried out the instruction of Atlantic Impex. A clearing agent, BLS points out, is an agent in the normal sense of the word, licensed in terms of the CEA to fulfil a specific function for its principal. BLS says that in the process of customs clearance the specific action would be to obtain approval from SARS regarding something provided for in the CEA.

[58] I suppose in the above context of the above analogy, Atlantic Impex would also be the principal and BLS the agent. But, BLS dissects the situation even further. It accords a further meaning to 'clearing agent': a special agent engaged by the principal for a specific limited purpose for completion and submission of customs clearance documents for approval. BLS, says the authority of the agent is limited to the aforesaid function which is performed for a reward or fee.

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34 https://www.sars.gov.za/customs-and-excise/registration-licensing-and-accreditation/clearing-agents/#elementor-toc__heading-anchor-0> accessed 1 May 2025.

35 Par [55] above for a reading of s 64B of the CEA.

36 https://www.sars.gov.za/customs-and-excise/registration-licensing-and-accreditation/registered-agent/#elementor-toc__heading-anchor-0> accessed 1 May 2025.

37 *Ibid.*

38 *Ibid.*

[59] SARS labels the distinction urged upon by BLS to be erroneous for purposes of liability under sections 18A and 99 of the CEA as these provisions impose liability on a person who is proven to have removed goods from a customs warehouse to an area outside the common customs area and on any agent for obligations imposed on a principal, save where the liability has ceased or is excluded under the CEA. SARS says neither of these statutory exclusions applies to BLS.

[60] I consider it to be common cause that BLS was involved in this matter as a licensed clearing agent or clearing agent. So far there is no connotation of liability in the aforesaid label.

***Role of a clearing agent in respect of the customs clearance and BLS' conduct***

[61] There is not much by way of divergence on what BLS did in the matter. The areas of dispute are regarding what BLS ought to have done or not done. BLS prepared the XE entry online using SARS' EDI system by populating the material documents (i.e. excluding the CN2 and included the customs declaration)[39] submitting them to SARS. BLS says the documents reflected Intanet as the consignee and, thus, BLS did not act for the exporter, Butbro. This, BLS argues, constituted compliance with sections 64B(6) and 99(2)(a), ostensibly regarding the duty placed on a licensed clearing agent to disclose the name and category of the principal.[40]

[62] BLS says that it appears that the actual exportation of the goods was done by Intanet, the consignee according to BLS, but according to SARS the 'true principal' of BLS disclosed in the various bills of entry. SARS points out that BLS was instructed by Mr Martin Ngwenya, acting on behalf of Intanet. Atlantic Impex, according to SARS, only provided its document for communication to BLS without any perceivable interest in the matter. Atlantic Impex could not be the principal in the matter as it had no customs procedure to instruct BLS on, it is argued on behalf of SARS. It is further pointed out on behalf of SARS that, an export involves only

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39 Footnote 7 above.

40 Pars [50] and [52] above for a reading of ss 64B(6) and 99(2)(a), respectively.

two parties, namely, the exporter and the foreign consignee and, thus, logically a clearing agent can only act on behalf of either of them. Consequently, either the exporter or the foreign consignee would be the principal of the agent.

[63] But SARS says no proof of export of the goods was provided and, thus, the goods were deemed to have been diverted in terms of section 18A(9)(b). Also, SARS says based on the facts, BLS would be liable even if its true principal was Atlantic Impex, although Atlantic Impex was not disclosed in the various bills of entry (as prescribed by sections 64B(6) and 99(2)(a)).

[64] SARS says it is common cause that BLS, as the licensed clearing agent, did not complete the CCD forms correctly and omitted important information that would have enabled BLS and SARS to track the goods diverted from warehouse detention. Had BLS taken these reasonable steps in completing the forms, SARS would not be reliant solely on the say-so of the parties. The lack of oversight facilitated the diversion of goods from detention and, thereafter, from the common customs area.

[65] The assertions by SARS are denied by BLS. In the main, BLS says what it did was proper as confirmed by the release granted by SARS in respect of the goods. BLS had no obligations beyond that as its mandate had terminated. I deal with the latter issue in detail under the next subheading.

***When does the involvement or role of a clearing agent ends (including BLS' case of limited mandate)***

[66] BLS further argues that any liability should cease upon satisfaction of the requirements under section 99(2). Section 99(2)(a) provides that the liability of an agent ceases if the agent furnishes proof that it was not a party to the non-fulfilment, that it notified the Controller of the non-fulfilment as soon as practically possible after becoming aware thereof, and that it took all

reasonable steps to prevent the non-fulfilment. But the latter does not find application where the principal is 'a person outside the Republic'.[41] A consignee outside the Republic shown on a bill of entry for removal in bond of imported goods is deemed to be 'a person outside the Republic'.[42] From what is stated above, it is clear that BLS' true principal was Intanet. I agree with SARS that the facts of this matter show that Intanet as the exporter and a foreign principal remains liable. Therefore, BLS, as Intanet's agent also bears the customs duty liability.

[67] It is BLS' case that its mandate in the transaction or process was fulfilled and relationship with the principal terminated when the clearance and agency fee was paid in the amount of R650 around 8 December 2015. BLS, also says that, the quantum of the fee received confirms the limited nature of its mandate and services it was engaged for. It received no further or other instruction in respect of the shipment, including for the transportation of the goods to the border and the processing of the goods for export at the border. Therefore, it is erroneous and both in fact and law for SARS to assume that the provisions of the CEA extends the agent/principal relationship.

[68] On the basis of what appears above, I agree with SARS that the customs duty liability of BLS has not ended.

***Where the acquittal documents falsified and/or invalid, and where the impugned goods diverted***

[69] The validity of the documentation relating to the processing of the goods for export purposes through the Beitbridge border and importation into Zambia ('the acquittal documents') is questioned by SARS. But BLS, on the other hand, contends that SARS does not have powers to deem documentation falsified or fraudulent as it purported to do. At most,

41 Section 99(2)(a).
42 Section 99(2)(c).

SARS may establish such falsification or fraud in the discharge of its onus to the Court.[43] In any way, any falsification of the documents would have occurred after BLS' limited mandate was terminated, BLS concludes. I have already ruled on the issue of limited mandate above.

[70] BLS, further contends that, apart from the discrepancies between the dates of the stamps of the foreign revenue authorities on the initial acquittal documents, which later were replaced with documents bearing stamps with different dates, SARS did not provide any evidence regarding the falsity of the CN2 document or any link to or knowledge of BLS regarding the alleged falsity. The evidence, BLS contends, show and confirm importation of the goods into Zambia. This is similar to what occurred in the decision of *Container Logistics*, it is contended by BLS.

[71] SARS deemed the goods to have been diverted, meaning that duty, VAT and penalties became payable in respect to the shipment. The ordinary process to be followed by a clearing agent when removing bonded goods from the warehouse for export is alluded to above and set out in the answering affidavit.[44] The process involves a declarant completing the customs declaration form on the EDI interface; submission by the declarant to the customs officer at the border, hard copies of some forms, and generation by the customs officer of a status release form for the release of the consignments.

[72] SARS says that it is important that a declarant, such as BLS, complete the material forms accurately and fully on the EDI interface to enable all parties involved in the movement of bonded goods to track the goods in consignment and to receive update notifications through the EDI interface of the authorisations granted for the movement of the goods or their further detention. It is said that the EDI interface functions in tandem with the SARS Entry/Exit system

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43 *AMI Forwarding (Pty) Ltd v Government of the Republic of South Africa (Department of Customs and Exercise)* 2010 JDR 0505 (SCA) [33].

44 AA par 54 – 56, CL C-369-370.

('SSM') utilised at the border post. The latter system allows the declarant and SARS alike to track in real time the exit of the goods from the country.

[73] Where goods are diverted SARS may invoke the remedies under sections 44, 87 and 99(2) of the CEA to hold liable any entity which acted in a manner which removed the goods from the control of Customs or SARS.[45]

[74] It is common cause that the initial acquittal documents submitted to SARS indicated the goods as having crossed Beitbridge border post into Zimbabwe on 10 October 2015. The documents were corrected by subsequent identical acquittal documents saved for the dates reflected thereon which indicated the goods having left South Africa on 6 November 2015; entered Zimbabwe on 7 November 2015 and Zambia on 15 November 2015. SARS says despite the two versions in terms of the documents its SMM system and EDI interface still reflect that the goods are 'unacquitted' and yet to arrive at the border to exit South Africa. This is also borne by other records such as security registers at the Beitbridge border on the truck or vehicle indicated as having ferried the goods across.

[75] BLS declares having no knowledge of the alleged diversion of the goods and could not have reasonably taken anymore or other steps to prevent the alleged non-fulfilment. Section 18A(3) provides that where the goods have been diverted or deemed to have been diverted as contemplated under subsection (9), liability for customs duty does not cease.

[76] I do not think that there is any credible basis on which BLS can assert that the two sets of acquittal documents are valid. The reason for replacement of the earlier set was due to the fact that they couldn't be relied upon and, thus, were invalid. The second set can also not be valid against the unrefuted evidence as borne by SMM system and EDI interface that the goods

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[45] *Capri Oro (Pty) Ltd and Others v Commissioner of Customs and Excise and Others* [2002] 1 All SA 571 (A) [20] citing with approval, *Secretary for Customs and Excise and Another v Tiffany's Jewellers Pty (Ltd)* 1975(3) SA 578(A) on the implications of s 87 of the CEA.

are ‘unacquitted’ and yet to arrive at the border to exit South Africa. All these lead me to accept SARS contention that the impugned goods have been diverted.

***Liability of BLS as an agent for obligations imposed on its principal***

[77] I have found above that SARS was correct in deeming the goods to have been diverted. But, BLS may avoid customs duty liability in terms of section 99(2) of the CEA by establishing the cumulative jurisdictional facts under section 99(2). SARS contends that BLS has not satisfied all the criteria under the provision.[46]

[78] Section 64D of the CEA proscribes the removal of goods for export under section 18A by an unlicensed remover.[47] SARS says BLS failed to complete the necessary information on the EDI interface and, thus, facilitated the removal and diversion of the goods declared for export and its plea of ignorance is contrived to escape liability under section 99(2). But, BLS has failed to establish meritorious reliance on section 99(2) to escape liability. Therefore, the current review before this Court is also without merit.

[79] Based on the facts set out above, SARS submits that the liability for payment of the duty and other charges on the part of Intanet, as the principal disclosed in the various bills of entry, did not cease by virtue of the provisions of section 18A(1) and 18A(3)(b)), and as Intanet is a foreign principal (as provided for in section 99(2)(a) read with (c)), BLS remained liable for payment of the duty and other charges demanded by SARS in terms of section 64B(6) and section 99(2)(a).

[80] I agree that BLS has not met the onus under section 99(2) that it notified SARS on becoming aware of the diversion of goods or that it took all reasonable steps to prevent the

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46 *Container Logistics* [15]-[17].
47 See also s 18A(4)(b) of the CEA.

non-fulfilment of the customs obligations. In fact, it is a finding of the Court that the improper preparation of the material documents by BLS facilitated the current turn of events.

***Conclusion and costs***

[81] Based on what appears above, I could not find anything to suggest that SARS made an error of law, acted with bias, took the impugned decisions for an ulterior motive or purpose, or that relevant considerations were ignored and irrelevant considerations were taken into account. The demand by SARS or assertions that BLS is liable is devoid of unreasonableness and irrationality.

[82] Against the backdrop of this outcome, I do not consider it warranted to directly address the other so-called decisions to do with the ADR process, the termination of the settlement negotiations and the refusal to set aside the LOD. I consider the finding made to be dispositive of these 'decisions'.

[83] It has been submitted on behalf of BLS that the well-established *Biowatch*[48] principle ought to be applied in the event the outcome is against BLS. On the other hand SARS has persisted in its case for a cost order against BLS in the event of such outcome. I do not consider application of the *Biowatch* principle justified by the facts of this matter and the issues determined.

[84] Therefore, I will dismiss the application and hold BLS liable for payment of costs of the application, including the costs of two counsel, one of whom a senior counsel on scale C, where so employed. I consider the aforesaid scale of counsel appropriate and justified.

***Order***

[85] In the premises, I make the order, that:

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[48] *Biowatch Trust v Registrar Genetic Resources and Others* 2009 (6) SA 232 (CC).

a) the application is dismissed, and

b) the applicant shall pay costs of the application, including the costs of two counsel, one of whom a senior counsel on scale C, where so employed.

[redacted]

**Khashane La M. Manamela**
**Acting Judge of the High Court**

**Date of Hearing : 12 November 2024**

**Date of Judgment : 12 May 2025**

**Appearances**:

For the Applicant : Mr JM Barnard
Instructed by : VFV Attorneys, Pretoria

For the Respondent : Mr J A Meyer SC (with previous heads of argument by Mr S Budlender SC and Ms S Kazee)
Instructed by : Klagsbrun Edelstein Bosman Du Plessis Inc, Pretoria