



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 29 August 2025

Status: Immediate

The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal

Assmang (Pty) Ltd v The Commissioner for the South African Revenue Service and Others (311/2024)
[2025] ZASCA 121 (29 August 2025)

Today, the Supreme Court of Appeal (SCA) dismissed with costs an appeal by Assmang (Pty) Ltd (Assmang) against a decision of the Gauteng Division of the High Court, Pretoria, which had rejected its claim for diesel refunds under the Customs and Excise Act 91 of 1964 (the Act).

Assmang, a mining company operating in the Northern Cape, had contracted with service providers for mining activities at its Khumani mine. It contended that diesel supplied to those contractors qualified for rebates under rebate Item 670.04 in Part 3 of Schedule 6 to the Act. SARS determined that the claims did not qualify and demanded repayment of refunds previously made. The high court confirmed SARS' determinations and dismissed a constitutional challenge brought by Assmang.

The SCA held that the contracts in question were in substance concluded on a 'wet rate' basis, not a 'dry rate' basis as required to qualify for a refund. The court endorsed the reasoning in *Canyon Resources (Pty) Ltd v SARS*, finding that Assmang's accounting method, whereby diesel costs were deducted from the contractor's invoices, amounted to the contractors bearing the cost of fuel. The contractual arrangements therefore did not entitle Assmang to diesel refunds. The Court further found that Assmang's record keeping failed to comply with the detailed requirements of Note 6(q) to Part 3 of Schedule 6. The system used by Assmang tracked only the dispensing of fuel to contractors, but not its ultimate use in qualifying for mining activities. This was insufficient to establish eligibility for refunds.

On the constitutional challenge, Assmang argued that the Act is unconstitutional insofar as it requires taxpayers to pay interest on amounts owing but does not oblige SARS to pay interest on refunds. The SCA held that the challenge was introduced late, without a proper factual foundation, and amounted to an abstract challenge. The Court emphasised that constitutional issues must be properly pleaded and supported by evidence. As the refund claims themselves failed, the issue of interest was not a live controversy and did not warrant determination. Finally, the Court noted that SARS had not imposed any penalty, and none was confirmed by the high court.

The appeal was accordingly dismissed with costs, including the costs of two counsel.