



**HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

CASE NO: 31356/2021

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: NO.

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED.

DATE: 19 MAY 2022

SIGNATURE

A handwritten signature in black ink, consisting of a large, stylized 'L' followed by a series of horizontal strokes.

In the matter between:

LUEVEN METALS (PTY) LTD

Applicant

and

**THE COMMISSIONER FOR THE
SOUTH AFRICAN REVENUE SERVICE**

Respondent

Summary: Revenue – Value Added Tax – Interpretation of Section 11(1)(f) of Value Added Tax Act 89 of 1991 – zero rated sale of gold – secondary refining and manufacture not qualifying.

ORDER

The application is dismissed with costs, including costs of senior and junior counsel.

JUDGMENT

This matter has been heard in open court and is otherwise disposed of in terms of the Directives of the Judge President of this Division. The judgment and order are accordingly published and distributed electronically.

DAVIS, J

[1] Introduction

In terms of section 11(1)(f) of the Value Added Tax Act, 89 of 1991 (the VAT Act) the supply of gold to the South African Revenue Bank (the SARB), the South African Mint Company (Pty) Ltd (Mintco) or any registered bank (jointly the listed entities) in certain unwrought forms is zero rated. The applicant sources gold from coins, second-hand jewellery and similar sources which it supplies to the listed entities after refinement thereof. The Commissioner for the South African Revenue Service (SARS) is of the opinion that the gold so supplied by the applicant is precluded from zero rating by a proviso in section 11(1)(f) that the gold supplied should not have undergone a refining or manufacturing process other than the refining or manufacturing process for purposes of supply to the listed entities. As the gold supplied by the applicant has undergone a prior refining and manufacturing process before the refining and manufacture for purposes of supply to the listed entities, it is therefore precluded from being zero rated for VAT. The applicant disputes this and seeks a declaration to the contrary.

[2] Section 11(1)(f) of the VAT Act

This section reads as follows:

“11(1) Where, but for this section, a supply of goods would be charged with tax at the rate referred to in section 7(1), such supply of goods shall, subject to compliance with subsection (3) of this section, be charged with tax at the rate of zero per cent where –

...

(f) the supply is to the South African Reserve Bank, the South African Mint Company (Pty) Ltd or any bank registered under the Banks Act, 94 of 1990, of gold in the form of bars, blank coins, ingots, buttons, wire, plate or granules or in solution, which has not undergone any manufacturing process other than the refining thereof or the manufacture or production of such bars, blank coins, ingots, buttons, wire, plate, granules or solution” (the words underlined have been so emphasized in order to, at the outset, highlight the crux of the present dispute).

[3] The relief sought by the applicant

- 3.1 The applicant is not a mine nor does it produce gold ore which is then extracted from the surrounding material and refined and manufactured into gold, in the form of any of the eight listed forms (bars, ingots etc.).
- 3.2 The applicant is a purchaser and trader in gold which has already previously been refined (in whatever form) and which has thereafter principally been manufactured into gold coins (not blanks) and jewellery pieces of various nature and purity (these facts are not in dispute).

- 3.3 The applicant then takes the gold (also referred to by it as “gold containing material” due to its lesser purity) which it has sourced or purchased from members of the public and “processes” it by in-house melting, refining and casting into “lesser purity bars. Thereafter, these bars are taken to a refinery (in this case Rand Refinery) where the gold is (for a second or even third time) refined and manufactured into one of the listed eight forms whereafter it is sold and supplied to the listed entities.
- 3.4 After the debate which ensued during the hearing of the application, the applicant persisted with the following relief (contained in prayers 2.1, 2.3 and 2.4 of its Notice of Motion):

“That a declaratory order be issued in terms whereof it be declared that:

2.1 The word “gold” in section 11(1)(f) of the Value Added Tax Act 89 of 1991 refers to, and only applies to gold (in any of the unwrought forms permitted in the subsection) refined to the grade of purity required for acquisition by the South African Reserve Bank (SARS), the South African Mint Company (Pty) Ltd (Mintco) or by any bank registered under the Banks Act, 94 of 1990 (“bank”).

...

2.3 The phrase “which has not undergone any manufacturing process other than the refining thereof or the manufacture or production of” in section 11(1)(f) of the VAT Act, precludes the zero rating of gold:

- (i) *not being in one of the eight unwrought forms identified in the subsection and*
- (ii) *that has undergone further manufacturing or production processes once it has reached the state of purity required for acquisition by SARB, Mintco or a bank.*

2.4 *The phrase “which has not undergone any manufacturing process other than the refining thereof or the manufacture or production of in section 11(1)(f) of the VAT Act, refers to any manufacturing process(es) carried out by the vendor supplying gold to the SARB, Mintco or a bank, and does not refer to any process(es) to which gold may have been subjected to historically, prior to being refined to the grade of purity required for acquisition by the SARB, Mintco or a bank”.*

[4] Interpretational principles

4.1 The principles of statutory interpretation have been encapsulated in *Natal Joint Municipal Person Fund v Endumeni Municipality* 2012 (4) SA 593 (SCA) per Wallis JA as follows: *“The interpretational process is an objective process. A sensible meaning is preferred to an insensible meaning that undermines the apparent purpose of the document. A judge must be alert to guard against the temptation to substitute what they regard as reasonable, sensible and businesslike or the words actually used. To do so in regard to a statute or statutory instrument is to cross the divide between interpretation and legislation The inevitable point of departure is the language of the provision itself read in context and having*

regard to the purpose of the provision and the background to the preparation and production of the documents”.

4.2 The fact that the interpretational process commences with the wording and ordinary grammatical meaning of the words used in the statute under examination, has been confirmed in *Cool Ideas 1186 CC v Hubbard and another* 2014 (4) SA 474 (CC) in the following fashion: “*A fundamental tenet of statutory interpretation is that the words in the statute must be given their ordinary meaning, unless to do so would result in an absurdity*”. See also *Poswa v MEC for Economic Affairs, Eastern Cape* 2001 (3) SA 582 (SCA) at [10] to [13].

4.3 Specific case law relied on by the parties shall, where necessary be referred to further during the interpretive process undertaken hereunder.

[5] The wording of the section

5.1 The words used in the section do not comprise of technical terms and spell out certain jurisdictional requirements for a sale of gold to qualify to be zero rated. Upon a simple reading of the words used in the subsection these requirements appear to be: (1) the sale must be to a prescribed list of purchasers; (2) the gold must be in one of eight prescribed forms and (3) the gold must not have undergone a process other than that of the refining, manufacturing or production of the eight prescribed forms i.e. bars, ingots and the like.

5.2 In the section under consideration the lastmentioned of the three requirements is introduced by the relative pronoun “which”. In the definitions contained in the Shorter Oxford English Dictionary, when “which” is used in this fashion, it introduces “... *a clause describing or stating something additional about the antecedent ...*” or introduces “... *a*

clause defining or restricting the antecedent, especially a clause essential to the identification of the antecedent ...”.

5.3 Where, in section 11(1)(f), the “antecedent” is the gold to be sold, the words following “which” therefore not only refers to that gold but qualifies or restricts its refining, manufacturing or production processes.

5.4 Whether, despite this rather straight-forward meaning, the words used should be interpreted differently, as contended for by the applicant, will be discussed hereinlater.

[6] The purpose of the section

6.1 SARS (correctly) points out that section 11(1)(f) should be interpreted in the context of the Act as a whole. The purpose of the VAT Act is to raise revenue for the benefit of the National Revenue Fund. Section 7(1) of the VAT Act provides that for this purpose, a tax, known as Value-Added Tax shall be levied and paid on the supply by any vendor of goods or services supplied by such vendor in the furtherance of its business. Currently, this is calculated at 15% of the value of the supply concerned.

6.2 The VAT Act provides for a scheme of input and output tax and is “... *not levied on the full price of the commodity at each transactional delivery step it takes along the distribution chain. It is not accumulative but merely a tax on the added value the commodity gained during each interval since the previous supply ...*”. See *Metcash Trading Ltd v Commissioner for SARS and Another* 2001 (1) SA 1109 (CC) at [33]. The consequence is however that the purchaser must “fork out” more for the goods or services by paying the total of the selling price plus 15% VAT added thereto.

- 6.3 A variety of goods are zero-rated in the sense that the VAT percentage levied thereon is nil percent. Section 11 caters for a list of these goods such as illuminating kerosene (section 11(1)(e)) and goods supplied consisting of sanitary towels or pads (section 11 (1)(w) read with Part C of Schedule 2).
- 6.4 The zero-rating of goods and services, whereby the total costs for purchasers are reduced, is based on policy considerations. Examples hereof are certain exports, the stimulation of the economy by ensuring that businesses can be sold and acquired at competitive prices, and to provide relief for the indigent.
- 6.5 Policy considerations form part of the exercise of executive power and, in conformity with the doctrine of the separation of powers, are not justiciable by the court.
- 6.6 SARS stated in its answering affidavit that section 11(1)(f) “... was promulgated ... with the specific intention to provide the mining industry with a favourable tax regime. This favourable tax regime was intended to promote and enhance the economic viability of gold mining in South Africa, to extend the lifespan of the mines, including marginal mines, within the context of this highly capital intensive industry. The mining industry plays a vital role in the South African Economy, being a major employer and a significant contributor to the Gross Domestic Product”. In reply, the applicant baldly denied this statement, without furnishing any basis for the denial apart from the argument that SARS’ contentions “are bare, unsubstantiated and are inconsistent with what is expressly stated in the subsection”.

6.7 Additionally, the applicant stated that to “flatly” state what the legislator’s intention was, is impermissible. Ordinarily, that would hold true, but as can be seen from the examples referred to in paragraphs 6.3 and 6.4, the zero-rating of certain items are clearly policy based. SARS’ statement also does not prescribe an interpretation, it stated the policy decision which informed the subsection, the formulation of which still has to be interpreted. Often formulations of statutory enactments lead to unforeseen consequences and the interpretive model heralded in by *Natal Joint Municipal Pension Fund* have cast the net much wider and more purposive than a mere attempt at deducing the “intention of the legislature” as prescribed in earlier cases. See in this regard the discussion by Perumalsamy, *The Life and Times of Textualism in South Africa*, [2019] Potchefstroom Electronic Law Journal, 65, 5 November 2019.

6.8 Insofar as “intentionalism” as mentioned in the aforementioned article must yield before “contextualism” as espoused in *Natal Joint Municipal Pension Fund*, the policy considerations shall be taken into account as part of the “context” within which the section must be interpreted, but not as the intended goal of the legislature.

[7] The applicant’s “context”

In order to properly appreciate the applicant’s contentions, regard should also be had to the “context” or factual environment within which the applicant operates and seeks to apply its interpretation of section 11(1)(f). It is the following:

7.1 The applicant’s business is summed up in Heads of Argument filed on its behalf as follows: “*the applicant first produced or refined lesser-purity gold bars from gold-containing materials (including second-hand jewelry*

and scrap gold). The applicant then deposited its lesser-purity gold bars to Rand Refinery Ltd (Rand Refinery) who further refined, produced and delivered pure gold bars to Absa for and on behalf of the applicant”.

- 7.2 For the tax periods 03/2018 to 03/2020 the applicant supplied gold bars of a purity of 99,5% to Absa in accordance with its requirements which supplies were zero-rated. The applicant contends that “probably” as a result of a legal opinion obtained, SARS thereafter started contending that the gold supplied by the applicant to Absa were previously “subjected to manufacturing processes” as the gold sourced by the applicant was in the form of second-hand jewellery, scrap gold and previously melted and manufactured gold bars of a lesser purity gold.
- 7.3 The applicant contends that the “gold” referred to in section 11(1)(f) ought to be interpreted as “*referring to the gold being supplied to the closed-list recipients*” and not the gold initially sourced prior to the supply to Rand Refinery, i.e. the supplied product and not the source product.
- 7.4 Pursuant to this line of reasoning, the applicant also submitted that “refining” is not to be interpreted in a limited extent, but should include the concept of “re-refining”.
- 7.5 The applicant’s argument is that the subsection under consideration never intended nor required an investigation into the source of the gold or its historical processes. For purposes hereof, the applicant relies on Class Rulings previously issued by SARS. These Class Rulings were made during 2011 and 2016, valid for five years. The Class Rulings entailed that “*Rand Refinery will not be able to indicate to the depositor that specific ounces of gold deposited by that depositor on a certain date was sold to a specific customer on a specific date but the sales by Rand Refinery can be*

tracked by means of allocation of portions of sales to a depositor. Having regard to the information provided and the manner in which Rand Refinery and the depositors conduct their business, the depositors will not be able to substantiate the zero-rating of the supply of gold on their behalf by Rand Refinery”.

7.6 How the above came about is as follows: Rand Refinery was (until recently) the world’s largest single-site refinery and smelting complex for a variety of precious metals. It mainly though, receives gold. The “depositors” of gold include mines, banks and gold traders such as the applicants. Once a depositor’s gold (or gold bearing material such as jewellery or scrap gold) enters the smelting and refining process at Rand Refinery, it is co-mingled with the material of other depositors and can no longer be separately identified. Rand Refinery cannot, after the refining process, link any of the final products to any specific depositor’s deposited products. For purposes of submitting a claim for zero-rating, SARS therefore accepts a tax invoice from Rand Refinery as proof of the amount of gold sold by Rand Refinery on behalf of a depositor to the listed entities set out in section 11(1)(f).

7.7 Section 78 of the Tax Administration Act 28 of 2011 (the TAA) read with section 41B of the VAT Act provides for the Class Rulings to be binding in respect of a class of VAT vendors, while section 82(1) of the TAA provides that SARS must apply the applicable tax Act to a taxpayer in accordance with such a ruling.

[8] Evaluation

8.1 To start off with, let’s look at the route the gold which the applicant supplied to the listed entities took: it was mined at some stage, then refined

(at either Rand Refinery or elsewhere), thereafter it had undergone a manufacturing or production process whereby it became jewellery, coins or scrap gold as a result of these manufacturing processes. The applicant, as a gold trader, then acquired this gold and in-house refined, melted and manufactured it into lesser-purity gold bars. Thereafter these bars were delivered to Rand Refinery where it was yet again refined and then manufactured into one of the eight categories of gold mentioned in section 11(1)(f) (in this case, bars of pure gold) before it was sold to Absa.

- 8.2 There is no doubt that the gold had undergone an initial “refining” and subsequent “manufacturing or production” process before being refined and manufactured by Rand Refinery for the second (or even third) time. The fact that Rand Refinery cannot, after the final refining and manufacturing process identify which of its depositors’ gold ended up in each subsequently produced gold bar, does not detract from this. Rand Refinery surely knows the volume (if not also the carat weight) of gold received from each depositor and the volume of gold in the purity required by the closed list of recipients produced for each depositor. This is clear from the “tracking” referred to in the Class Rulings referred to in paragraph 7.5 above.
- 8.3 There is also no definition of “gold” contained in the VAT Act, save in respect of second-hand goods, (which is not applicable here) and the fact that the closed list of recipients may require gold at a certain purity (for minting or investment purposes) cannot define the word used in section 11(1)(f). To my mind, simply put, the section simply conveys the message that when gold is sold to the SARB, Mintco or the banks, in whatever purity they may require, that gold should not have previously undergone a refinement or manufacturing process prior to it being refined or

manufactured into gold bars, ingots and the like. If the volume of gold supplied to the listed recipients emanated from gold which had previously been refined and undergone manufacturing processes, that supply would not qualify to be zero-rated.

- 8.4 I paraphrased the section in the abovementioned fashion to illustrate two issues. Firstly, the applicant made much of the fact that, having regard to the fact that the closed list of recipients only required gold of the highest purity, that is what the term “gold” must be interpreted to mean i.e “gold at a purity of no less than 99.5%”. This insertion of a definition does not appear from the plain wording used. Secondly, the applicant’s interpretation, namely that gold (of this purity) only refers to the gold once sold to the closed list of recipients, irrespective of where it came from, would render the words “*which has not undergone any manufacturing other than refining or the manufacture ... into such bars ...*” superfluous (my underlining for emphasis).
- 8.5 One of the principles aiding interpretation is that all the words used in a statutory provision must be given meaning and afforded their due weight. In *Afriforum and another v University of the Free State* 2018 (2) SA 185 (CC) it was put as follows at [43]: “... *contextual interpretation requires that regard be had to the setting of the word or provision to be interpreted with particular reference to all the words, phrase or expressions around the word or words sought to be interpreted*” (my emphasis).
- 8.6 Adv Swanepoel SC, argued that the “double use” of the eight forms of gold is unnecessary and once the first reference thereto is removed, the subsection then reads as follows, which gives it a different meaning: “*the supply is to the [listed entities], of gold ... which has not undergone any manufacturing process other than the refining thereof or the manufacture*

or production of ... bars, blank coins, ingots, buttons, wire, plate, granules or solution". The argument then proceeds that, once gold is refined by Rand Gold and manufactured into one of the eight unwrought forms, it qualifies for zero-rating.

- 8.7 In my view, this attempt at ascribing the applicant's preferred meaning to the subsection is impermissible for two reasons: firstly, it is impermissible to simply excise words from a section or ignore words. To do so would offend against the current state of our law of interpretation as sanctioned by the Constitutional Court and secondly, to achieve the meaning contended for by the applicant, it is not only the "double use" of the eight forms which is excised, but also the use of the second relative pronoun used, namely "such".
- 8.8 In order to justify these excisions the applicant also sought to rely on the fact that gold which has previously been refined and subsequently manufactured into, for example, jewellery, loses its character once it had been delivered to Rand Refinery and (again) becomes gold which has been refined and manufactured into one of the eight forms of unwrought gold and that this loss of its original character as a result of it being "commixed" with other gold (say from mines) results in the subsection becoming "absurd".
- 8.9 The applicant's argument was formulated as follows: "*... the word 'gold' referred to in the subsection ought to be interpreted as referring to the gold being supplied to the three closed-list recipients (not the gold sourced prior to the supply to Rand Refinery) and the question is whether such gold has been subjected to a further impermissible process of manufacture (to quote from the appellant's heads of argument. In order to substantiate this interpretation, the applicants argue that "the banks" only at a grade of*

purity equal to or exceeding 99.5% i.e. pure or fine gold. It is this gold, so the applicant says, and not the “lesser-purity gold bars” which the applicant delivers to Rand Refinery, which the subsection targets and which gold may not be “re-refined”. Apart from the difficult linguistic gymnastics which this interpretation requires, there is no evidence of any instance where “pure gold bars” are delivered to Rand Refinery to be “re-refined” or manufactured. To do so, would in any event be an absurdity: if gold has already been refined and manufactured into “pure” gold bars, it can be sold to the listed recipients. It would be an absurdity (both financially and in general) to re-do the process. To interpret the subsection to refer to a factual absurdity would render such an interpretation itself absurd. The opposite interpretation, namely to disqualify from zero-rating once-refined and manufactured gold (such as second-hand jewellery) when it is subsequently re-refined, does not lead to such an absurdity. It simply means that those suppliers (such as mines) who has ore and mined gold refined and manufactured into the eight forms of unwrought gold, can have sales or supplies of such gold to the listed recipients zero-rated and that traders in previously refined gold may not, after re-refining such gold, have their supplies to the listed recipients zero-rated for VAT. The second interpretation, espoused by SARS, leads to a “*sensible meaning [which] is to be preferred to one that leads to insensible or unbusinesslike results ...*” as put in *Natal Joint Municipality Pension Fund* (above) at [18], while the applicant’s interpretation suffers from “absurdity disabilities”.

- 8.10 It is trite that an interpretation which would lead to an absurdity, should not be followed. See *The Business zone 10101 CC t/a Emmarentia Convenience Centre v Engen Petroleum Ltd and Others* [2017] JOL 37364 (CC) at [46] and *Poswa v MEC for Economic Affairs, Eastern Cape* (supra) at [10] – [11].

- 8.11 The fact that the VAT Act appears to indirectly distinguish “*between goods consisting solely of gold, namely pure gold (at least 99,5% purity) and goods containing gold, namely anything less than 99,5% purity*” is an aspect raised as a comment by De Koker et al, *VAT in South Africa*, February 2021, Lexis Nexis. However, it appears clearly from this commentary that the distinction is not made in respect of section 11(1)(f), but in respect of Binding General Ruling 43 (VAT) in relation to second-hand gold and made with reference to the definition of “precious metals” contained in the Precious Metals Act 37 of 2005. This led the applicant to concede in its heads of argument that “... *the authors do not, as part of their commentary, pertinently consider the exclusion contained in section 11(1)(f)*”.
- 8.12 As a further aid to its interpretation, the applicant referred to selected comparative international legislation. In this regard, the applicant referred to Section 11 of the New Zealand Goods and Services Tax Act 141 of 1985 and argued that its similar provision for zero-rating of the supply of gold does not exclude second-hand gold. However, the section reads as follows: “*A supply of goods that is chargeable with tax under Section 8 must be charged at the rate of 0% in the following situations – (n) the supply of new fine metal, being the first supply of the new fine metal after its refining, by the refiner to a dealer in fine metal, for the purpose of supplying the fine metal for use as an investment items*”. The definitions contained elsewhere in the said Act confirms that the section envisages the supply of gold of a purity of not less than 99,5%. In my view, use of the word “first” again militates against the interpretation advanced by the applicant as it would preclude re-refining, but it might conceivably also refer to subsequent sales without re-refining.

8.13 SARS pointed out that the requirement in section 233 of the Constitution which requires a court to prefer any reasonable interpretation of legislation consistent with international law over any alternative interpretation inconsistent with it, does not assist the applicant for the simple reason that revenue law constitutes foreign domestic law and not international law. Furthermore, our courts have repeatedly cautioned against “... *the dangers inherent in placing reliance on the meaning ascribed to a particular word in the context of another statute, especially that of a foreign country*”. *Van Heerden & Another v Joubert NO* 1994 (4) SA 793 (SCA) at 798H-J. See also *Greater Johannesburg Transitional Metropolitan Council v Eskom* 2000 (1) SA 866 (SCA), *Levi Strauss Company v Coconut Trouser Manufactures (Pty) Ltd* 2001 (3) SA 1285 (SCA) at [8] and *Akani Garden Route (Pty) Ltd v Pinnacle Point Casino (Pty) Ltd* 2001 (4) SA 501 (SCA) at [7] in this regard. For these reasons, neither the New Zealand Act nor the inconclusive section dealing with the zero-rating of gold to a restricted list of recipients in the United Kingdom, being section 30 of the UK VAT Act 23 of 1994, read with Group 10 of Schedule 8 thereof, are either convincing or definitive of the interpretational issue of Section 11(1)(f). In the fact, the UK VAT Act does not even deal with the issue of a “first” supply or any prohibition against re-refining. It is simply an example of foreign domestic revenue law.

8.14 To sum up, I find that, upon a simple reading of the section, the ordinary grammatical meaning of the words used does not give rise to a “glaring absurdity” nor does it give rise to “inconsistency, hardship or an anomaly” from the consideration of the VAT Act as a whole which would justify a departure from the words used. The interpretation advanced by the applicant on the other hand, entails the excision of some words used in the subsection and lead to either an absurd or “insensible” result, neither of

which is assisted by any of the general principles applicable to the interpretation of statutes.

- 8.15 As a last-ditch attempt, the applicant contends that SARS has not previously implemented its (current) stance on the interpretation of section 11(1)(f) and that it had allowed second-hand and impure gold to be re-refined and re-manufactured and thereafter, upon supply via Rand Refinery to the closed list of recipients, to be zero rated. In this regard, the applicant relied on the following extract from the judgment in *Commissioner, South African Revenue Services v Bosch and another* 2015 (2) SA 174 (SCA) at 184 A – D: “*There is authority that in any marginal question of statutory interpretation, evidence that it has been interpreted in a consistent way for a substantial period of time by those responsible for the administration of the legislation is admissible and may be relevant to the balance in favour of that interpretation*”. Firstly, as already indicated, the interpretative question is not as “marginal” as the applicant makes out but, even if it was, the “admissible evidence” was scant. Secondly, the case relied on had been overturned by *Mashall & Others v Commissioner, South African Revenue Service* 2019 (6) SA 246 (CC), wherein the Constitutional Court stated that the rule requiring that some weight should be afforded to “*custom in the interpretation of ambiguous legislation*” originated in the context of legislative supremacy where “*statutory interpretation was aimed at ascertaining the intention of the legislature*”. The court found that what was missing from the approach adopted in *CSARS v Bosch*, “*is any explicit mention of a further fundamental contextual change, that from a legislative supremacy to a constitutional democracy. Why should a unilateral practice on the part of the executive arm of Government play a role in the determination of the reasonable meaning to be given to a statutory provision?*” Insofar as SARS may previously, to whatever extent,

have allowed the applicant to zero-rate its supplies to Absa, that does not bind this court, nor does it restrict the interpretative exercise undertaken in this case.

- 8.16 In conclusion, I mention that, in any interpretative exercise, the supremacy of the Constitution and the rights contained therein, must be acknowledged, but no constitutional principle is offended by the interpretations under debate in this matter.

[9] Conclusion

I find that the interpretation of section 11(1)(f) of the VAT Act advanced by the applicant is incorrect. It is therefore not entitled to the declaratory orders sought. Prior to dismissing its application, it is necessary, for the sake of clarity and good order to set out what the result of this finding is. It is that section 11(1)(f) is interpreted to encompass the following jurisdictional requirements for the supply of gold to be zero-rated for VAT:

- 9.1 A supply to the South African Reserve Bank, the South African Mint Company (Proprietary) Limited or any bank registered under the Banks Act, 1990 (Act 94 of 1990);
- 9.2 of gold;
- 9.3 in the form of bars, blank coins, ingots, buttons, wire, plate, granules or in solution;
- 9.4 which gold has not undergone any manufacturing process other than:
- 9.4.1 the refining thereof; or

- 9.4.2 the manufacture or production of such bars, blank coins, ingots, buttons, wire, plate, granules or solution, and
- 9.4.3 the vendor has obtained and retained such documentary proof as the Commissioner may require to substantiate the vendor's entitlement to apply the zero-rate.
- 9.5 The supply of gold which is derived from gold which had previously been refined and subsequently undergone any manufacturing process before being refined or manufactured in the prescribed eight unwrought forms for purposes of supply to the listed recipients, is therefore excluded from zero-rating.

[10] Order

The application is dismissed with costs, including the costs of senior and junior counsel.



N DAVIS
Judge of the High Court
Gauteng Division, Pretoria

Date of Hearing: 24 November 2021

Judgment delivered: 19 May 2022

APPEARANCES:

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