



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

1. REPORTABLE: ~~YES~~/NO

2. OF INTEREST TO OTHER JUDGES: ~~YES~~/NO

3. REVISED

DATE: 2 July 2025 SIGNATURE: ...

CASE NUMBER: 38144/22

In the matter between:

GLENCORE MERAPE VENTURE

FIRST APPLICANT

GLENCORE OPERATIONS SOUTH AFRICA (PTY) LTD

SECOND APPLICANT

MERAPE FERROCHROME AND MINING (PTY) LTD

THIRD APPLICANT

and

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

RESPONDENT

JUDGMENT ON APPLICATION FOR LEAVE TO APPEAL

COERTZEN AJ:

- [1] I delivered the main judgment in this matter on 7 November 2024. In terms of the order made, the first to third applicants' application (a statutory appeal in terms of s 47(9)(e) of the Customs and Excise Act 91 of 1964 – 'the Customs Act') was dismissed.
- [2] The applicants apply for leave to appeal the decision.
- [3] The main judgment deals sufficiently with the issues between the parties and the questions of law which were determined. There is no need to add to the reasons already given.
- [4] I have considered the notice of application for leave to appeal and the grounds raised therein in support of a proposed appeal.
- [5] During argument it became apparent that the focus of the application for leave to appeal concerns the first and second issues identified in paragraph 24 of the judgment i.e. (a) whether the Appeal Committee had the power to make a new determination or finding on the adequacy of the logbooks/record keeping,¹ and (b) whether the first applicant, GMV, was the holder of the necessary mining authorisation granted in terms of the MPRDA, as contemplated in Note 6(f)(ii)(cc) of Part 3 of Schedule No. 6 of the Customs Act.²
- [6] I am inclined to agree with counsel for the applicants that it follows as a matter of logic that the third issue, namely the discretion of the Commissioner under Note 5,³ does not arise if the applicants are successful on the first and second issues on appeal.

¹ Judgment, paras 70 – 99.

² Judgment, paras 100 – 125.

³ Judgment, paras 126 – 135.

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- [7] In respect of the first issue, the applicants urged me to again consider, *inter alia*, the Rules under the Customs Act, in support of a contention that the Appeal Committee must decide an appeal, having regard to the “grounds for appeal”,⁴ and with reference to *Groenewald NO v M5 Developments (Cape) (Pty) Ltd* 2010 (5) SA 82 (SCA). It was again pointed out by the applicants that the Appeal Committee is a creature of statute. I accept, as pointed out by SARS, that *Groenewald* may be distinguishable from the matter before me. However, the argument of the applicants in the main application (and in the application for leave to appeal), has always been that a rehearing by an internal Appeal Committee should be limited to whether the party appealing should be successful, having regard to the grounds of appeal. In that sense, the applicants contend that, although it is a “wide appeal”, the Appeal Committee should have decided the matter on the limited issues appealed against (and not have made a new determination or finding on logbooks and recordkeeping, where this was not an issue appealed against).
- [8] In respect of the second issue it was brought to my attention that the judgment of this Court delivered by Collis J in *Glencore Operations SA (Pty) Ltd and Others v Commissioner for the South African Revenue Service and Another* (15988/2020) [2023] ZAGPPHC 565 (17 July 2023) – (the *Goedgevonden* judgment), has been argued on appeal to the Supreme Court of Appeal, and that judgment is awaited. The crux of the applicants’ argument why leave to appeal should be granted in respect of the second issue revolves around the correct interpretation of the relevant legislation and Rules. The applicants contend that the purpose of Note 6(f)(ii)(cc) is to ensure that the mining activities are undertaken by someone who is authorised to do so under the MPRDA. Thus, according to the applicants, the Note should be interpreted to require that the “user” claiming the refunds (GMV in this case) be authorised to conduct the mining activities in terms of the provisions of the MPRDA. The

⁴ Rule 77H.04(5)(d) and (6)(c)(i).

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applicants submit that a court of appeal could reasonably arrive at a different conclusion, when interpreting the applicable legislation.⁵

[9] Having considered the grounds of appeal and the arguments advanced, I am ultimately of the view:

- a. That the proposed appeal would have a reasonable prospect of success on the first issue, regarding the nature and scope of the “wide appeal” before the Appeal Committee, and regarding the powers of the Appeal Committee;⁶
- b. That the question of the correct interpretation, scope, and application of the relevant legislation, and of Note 6 (and of Note 5 for that matter), present sufficient grounds to hold that there is “some other compelling reason why the appeal should be heard”.⁷

[10] It follows that leave to appeal should be granted.

[11] The applicants seek leave to appeal to the Supreme Court of Appeal. SARS does not contend that an appeal to the Full Court is more appropriate, should leave to appeal be granted.

[12] In my respectful view, the decision to be appealed involves questions of law of importance, which require a decision of the Supreme Court of Appeal.⁸

[13] In the result I make the following order:

1. Leave to appeal is granted to the Supreme Court of Appeal.
2. The costs of the application for leave to appeal shall be costs in the appeal.

⁵ The interpretation of Note 5 is apparently also an issue in the *Goedgevonden* appeal.

⁶ As contemplated in s 17(1)(a)(i) of the Superior Courts Act 10 of 2013.

⁷ As contemplated in s 17(1)(a)(ii) of the Superior Courts Act 10 of 2013.

⁸ As contemplated in s 17(6)(a)(i) of the Superior Courts Act 10 of 2013.


Y COERTZEN
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Date of hearing: 23 June 2025

Date of judgment: 2 July 2025

The judgment was provided electronically by circulation to the parties' legal representatives by email and by uploading the judgment to the electronic case file on Caselines. The date and time for delivery of the judgment is deemed to be at 10h00 on **2 July 2025**.

Appearances:

Counsel for the applicants: JP Vorster SC
E Muller

Instructed by: Macrobert Attorneys, Pretoria

Counsel for the respondent: G Marcus SC
P Ellis SC
L Haskins
M Musandiwa

Instructed by: Ramushu Mashile Twala Incorporated