



**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:** 9 April 2026

**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*

*Glencore Operations SA (Pty) Ltd and Others v Commissioner for South African Inland Revenue and Another (Case no 406/2024) [2026] ZASCA 47 (9 April 2026)*

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Today, the Supreme Court of Appeal (SCA) handed down a judgment in which it upheld the appellants appeal with costs. The appeal concerns the interpretation of the diesel fuel rebate scheme under Section 75(1A) of the Customs and Excise Act 91 of 1964 (CEA), specifically whether a joint venture engaged in mining activities qualifies for diesel fuel levy refunds. The central issue before this Court was whether the Goedgevonden Joint Venture (the JV), which conducted mining operations, complied with the requirement in Note 6(f)(ii)(cc) in rebate item 670.04 (Note 6(f)), which provides that only mining activities conducted by persons with mining authorisation under the Mining and Petroleum Resources Development Act 28 of 2002 (MPRDA) qualify for refunds.

The factual background is as follows. The first and second appellants, Glencore Operations SA (Pty) Ltd (Glencore) and ARM Coal (Pty) Ltd (ARM), are mining companies duly registered in terms of the Companies Act 71 of 2008. In 2006, the two companies concluded a Joint Venture Agreement (JV agreement) in terms of which the third appellant, a joint venture, Goedgevonden Joint Venture (the JV), was formed for the purpose of mining coal on properties situated in the district of Witbank in Mpumalanga. The JV is, under s 51(1) of the Value-Added Tax Act 89 of 1991 (VAT Act), deemed to carry on an enterprise separate from its members, Glencore and ARM, and therefore liable to be registered as a VAT vendor. The JV is therefore registered as a vendor for value-added tax (VAT) purposes, also as a ‘user’ for diesel refund purposes under the CEA, in accordance with Note 6(f) of Schedule 6 to the CEA.

In 2008, a mining right was issued to Glencore under the MPRDA, subject to the condition that Glencore would exercise the right jointly with ARM in accordance with the JV agreement.

Glencore and ARM then started their joint mining activities in accordance with the JV agreement. The JV used diesel in its coal mining operations and paid fuel levies on diesel under the CEA.

Section 47(9)(a)(i)(bb) of the Act empowers the first respondent, the Commissioner of the South African Inland Revenue Service (SARS) to determine whether the fuel has been used in compliance with the requirements of the said rebate item. One of the requirements for a refund, which is set out in Note 6(f), is that the mining activities which qualify for the refund be carried on 'by the person in possession of the necessary authorisation granted or ceded in terms of the [MPRDA].' It is common ground that the fuel used by the JV in its mining activities is subject to this levy. Section 75(1C) permits SARS to investigate any application for a refund and to recover any refund already paid.

The dispute arose after SARS conducted an audit of the JV's diesel refund claims for the period June 2012 to September 2014 and disallowed a portion of those refunds. SARS determined that the amount the JV was to pay back to it was R5 099 995.21, comprising R4 584 824.96 plus interest of R515 170.25. Pursuant to SARS's demand that the JV return the refunds with interest, the JV repaid the refund amount and lodged an internal administrative appeal with the Internal Administrative Appeals Committee (IAAC) against this determination. The internal administrative appeal was initially handled by the Regional Appeal Committee (RAC), which, in terms of section 77B read with rule 77H11(2)(b)(i) of the CEA, is bestowed with powers to entertain appeals for refunds below R10 million. During the appeal process, however, several years after the issuance of the determination, the issue of compliance with Note 6(f) (the mining right requirement) was raised for the first time. SARS took the view that the JV was not entitled to the refunds because it did not itself hold the mining right. In addition, SARS also decided to audit the fuel refunds for the period from November 2015 to May 2017. Thereafter, believing that its decision on the determination would extend beyond its monetary jurisdiction, the RAC referred the matter to the National Appeal Committee (NAC), a committee empowered to hear appeals for amounts above the RAC's threshold of R10 million.

On 13 June 2019, the NAC determined that the JV was not entitled to any fuel levy refunds because it did not have a valid mining right in its name and went further and significantly increased the amount to be repaid by the JV. It ordered the recoupment of R82 984 080 in diesel refunds covering the audit period from June 2012 to September 2014. The Gauteng Division of the High Court in Pretoria (high court) subsequently upheld the NAC's decision, holding that the JV did not meet the statutory requirement of holding a mining right and was therefore not entitled to the rebate. The high court further upheld the NAC's decision to increase the amount of diesel refund payable to SARS and dismissed the application. This case turns on the interpretation and application of Note 6(f), and the provisions of the JV agreement are key for a purposive interpretation of Note 6(f).

On appeal, the SCA, in a unanimous judgment penned by Molemela P, undertook a detailed analysis of the statutory framework, the joint venture agreement, and the notarial deed granting the mining right and held that these are essential to the interpretive context of Note 6(f). This Court found that a sensible interpretation of the JV agreement reveals that, although the mining right was issued to Glencore, both Glencore and ARM were authorised to exercise the mining

right jointly in accordance with their JV agreement, and the joint venture structure was an integral component of the mechanism approved by the Minister of Mineral Resources for the lawful exploitation of mineral resources. The upshot of this was that although the mining right was formally registered in Glencore's name, it expressly incorporated the JV agreement. The mining right authorised mining to be conducted only through the joint venture structure, and compliance with that structure was a condition of the right's validity. As such, the JV agreement was not collateral to the mining right; it was constitutive of it. On these facts, this Court found that the incorporation of the JV agreement into the mining right, on its own, was a compelling reason for the good cause requirement. In addition, the SCA found that other factors are equally persuasive. First, the JV purchased diesel and duly paid levies. Second, the diesel on which the levies were paid was used exclusively in lawful mining operations at Goedgevonden under an MPRDA-compliant authorisation. Third, the JV used diesel solely for qualifying, primary production activities in accordance with the mining right. Fourth, SARS registered the JV as a VAT vendor and also as 'user' under the CEA.

The SCA further found that the appropriate interpretation, in accordance with the substance-over-form principle, is the one that recognises that the primary consideration concerning Note 6(f) is whether the joint venture possesses the necessary authorisation to conduct mining operations. The SCA found that the JV meets the requirements of Note 6(f), thus rendering the JV's refund claims legitimate.

The SCA also addressed the discretion conferred on SARS under Note 5 of Part 3 of Schedule 6, which permits refunds to be paid to another person on good cause shown. It held that this discretion is intended to prevent injustice arising from strict formal non-compliance. The discretion in Note 5 vests in SARS. The SCA therefore found that the request for the exercise of discretion was not rendered invalid by the forum in which it was raised.

The SCA also considered procedural issues relating to the internal appeal process. It held that the NAC lacked jurisdiction to determine the appeal because the amount in dispute initially fell within the competence of the RAC, and jurisdiction could not be created retrospectively by increasing the amount in dispute. In the absence of a statutory direction by SARS, the referral to the NAC was not authorised by law. Furthermore, the NAC acted unlawfully by introducing a new ground of disallowance, namely the absence of a mining right in the JV's name, which had not formed part of the original determination. The SCA further found that the escalation of the amount demanded was a direct consequence of the newly introduced ground relating to the mining right. The increase in the amount defeated the structured system of assessments, objections, and appeals envisaged by the Act. It also transformed the appeal process into an assessment process, which is a function reserved for SARS officials. The SCA held that the increase in demand to R82 984 080 fell outside the NAC's powers.

Ultimately, the SCA upheld the appeal, set aside the high court's order, and declared that the JV had complied with the statutory requirements. It further set aside the determination of the NAC and ordered SARS to pay the appellants' costs, including those consequent upon the employment of two counsel.