REPORTABLE

IN THE HIGH COURT OF SOUTH AFRICA

KWAZULU-NATAL DIVISION,

PIETERMARITZBURG

CASE NO: 13812 / 2014

In the matter between:

THUTHUGANI CONTRACTORS (PTY) LTD **APPLICANT**

and

THE COMMISSIONER OF SOUTH AFRICAN

REVENUE SERVICE **RESPONDENT**

JUDGMENT

Delivered on 17 February 2016

MOODLEY J:

[1] This is an appeal in terms of s 47(9)(e) of the Customs and Excise Act 91 of 1964 (the Act) against a determination and demand for the repayment of fuel levy refunds made by the Commissioner of the South African Revenue Service (the Commissioner) by virtue of the provisions of s 47(9)(a), (10) and (11) of the Act, read with s 44(11)(a) thereof.

[2] The applicant (Thuthugani) seeks an order setting aside the decision of the Commissioner to disallow refunds in the sum of R849 232.19 for diesel (distillate fuel) purchased by Thuthugani during the period April 2011 to May 2013, and directing the South African Revenue Service (SARS) to pay the costs of the appeal. Thuthugani contends that it qualified for the refunds because it was, at the relevant time, a 'user' carrying on forestry activities for 'own primary production' as contemplated in Sub-Note 6(g)(iii) of Schedule 6 / Part 3 of the Act.[1]

[3] The appeal is opposed by the Commissioner who disallowed the diesel refunds on the basis that although Thuthugani was registered as a 'user' as contemplated in the Act,[2] and undertook qualifying forestry activities in terms of the Act as a contractor for Mondi Limited (Mondi), it did not use the diesel for 'own primary production activities'.

Factual Matrix

[4] Thuthugani operated a forestry or silviculture services business in terms of a written Silviculture agreement entered into with Mondi in May 2011. The services provided by Thuthugani included land preparation, planting and maintenance of trees cultivated for timber in forests owned by Mondi, but excluded harvesting or felling of the trees. It is common cause that such silviculture services constitute 'forestry' activities as contemplated in the Act.

[5] In the course of providing silviculture services to Mondi, Thuthugani purchased diesel to be utilized for diesel powered engines and equipment. Thuthugani was registered in 2011 for Value-Added-Tax (VAT) purposes and for diesel refunds in accordance with the requirements in the Act. Thuthugani claimed diesel refunds as a 'user' of diesel in terms of s 75 of the Act from April 2011 until May 2013, which were allowed by SARS.

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[1] The schedules appear in the 'Customs and Excise Tariff' (the Tariff).

[2] 'User' for refunds of fuel levies and Road Accident Fund levies is defined in s75 (1C)(b)(i) read with Schedule 6 Part 3 Note 6(a)(vii) as: 'a person registered for value-added tax purposes under the provisions of the Value-Added Tax Act,1991 (Act No. 89 of 1991), and for diesel refund purposes as contemplated in section 75 (1A) and (4A)'.

[6] At field audits subsequently conducted by SARS in June and July 3013, the following facts were noted:

6.1 Thuthugani was registered for diesel refund purposes with forestry as its stated primary production.

6.2 Thuthugani was employed by Mondi as a contractor to provide silviculture services to Mondi which entailed tending to the forestry, after harvesting up to the point of next harvest.

6.3 Thuthugani did not own any forests and did not undertake any forestry activities in its own capacity.

[7] Arising from the facts noted, the Commissioner determined that Thuthugani did not comply with the diesel refund provisions because it conducted a non-eligible activity and did not qualify to claim diesel rebates because it is a *contractor* whose services are utilised by a *user* viz Mondi (my emphasis). In a letter dated 20 September 2013, the Commissioner advised Thuthugani of his determination, referring to Note 6(e)(i)(bb)(A) of Schedule 6 / Part 3,[3] and demanded repayment of the refunds which Thuthugani had been paid but was not entitled to.

[8] In response Thuthugani objected to the decision in a letter dated 21 October 2013 from its auditors, Marwick & Company Inc, who in turn referred the Commissioner to Sub-Note 6(g)(iii) of Schedule 6/ Part 3, which provides that in order to qualify for the refund either the user must carry on forestry activities as described in Sub-Note 6(g)(ii) for its own primary production in forestry, or the contractor of the user, who is contracted on a dry basis, must carry on the qualifying forestry activities. The auditors submitted that as Thuthugani carried out the majority of the activities listed under forestry in Sub-Note 6(g)(ii) which met the definition of 'own primary production', it qualified for the diesel refund as a 'user' under the former basis.

[3] Sub-Note 6(e)(i)(bb)(A) states: 'Any person whose services are contracted by a user, is not entitled to a refund in respect of distillate fuel used in any vehicle, vessel, machine or other equipment to render such services'.

[9] Thuthugani proceeded with an internal administrative appeal dated 7 October 2013. By way of a letter dated 25 November 2013, the Commissioner advised Thuthugani that the Appeal Committee had disallowed the appeal because it did not qualify to claim diesel refunds as a 'user', more specifically because it conducted 'activities in forestry as a contractor for Mondi Limited, which contract was also regarded to be a 'wet contract' in terms of Schedule 6'.

[10] Thuthugani duly submitted a notice in terms of s 96(1)(a) of the Act prior to the proceeding with this appeal. In its cause of action as set out in the notice, Thuthugani claimed an entitlement in terms of s 75(1A) and Schedule 6 / Part 3 of the Act on the following grounds:

10.1 it had purchased and used diesel in accordance with the provisions of s 75(1A) and Schedule 6 and was registered for both VAT and the diesel refund in compliance with s 75(1A)(b) (ii);

10.2 it was therefore a 'user' as defined in the Act as it was registered for VAT and the diesel rebate and made eligible purchases of diesel for use in its own primary production activities in forestry.

10.3 the fact that its business operations were conducted on land owned by Mondi, did not preclude Thuthugani's entitlement to the rebate.

The issues

[11] By the time the matter served before me on the opposed motion roll, it was not in issue that Thuthugani undertook qualifying forestry activities. It was also not in dispute that it was not relevant to the determination by the Commissioner to disallow the diesel refunds, that Thuthugani was not the owner of the land on which the forests were cultivated. Further Thuthugani had already grounded its dispute on being a 'user' and

not as a 'contractor of the user who is contracted on a dry basis'.[4] At the hearing Mr *Harcourt SC*, who represented Thuthugani advised that he no longer pursued the argument that SARS had 'misconceived its non-entitlement to impose a penalty' and imposed an incompetent penalty.

[12] Consequently, although there were initially several issues in dispute, there is only one crisp issue for determination: whether the activities undertaken by Thuthugani during the relevant period constituted 'own primary production activities' in forestry as contemplated in terms of Sub-Note 6(g)(iii) of Schedule 6 / Part 3.

[13] Mr *Harcourt* submitted that Thuthugani was registered as a 'user' for VAT and diesel refunds and the diesel Thuthugani purchased was used by it to undertake forestry services, which constituted qualifying primary production activities in forestry. In the performance of its obligations in terms of the silviculture agreement with Mondi, the activities were fully sustained and carried out by Thuthugani. Therefore, albeit within the context of the contractual relationship between Thuthugani and Mondi, Thuthugani's activities constituted 'own' primary production activities, and were not carried out as activities of a *contractor to a user* (my emphasis), whether on a wet or dry basis. Consequently the distillate fuel purchases by Thuthugani qualified as 'eligible purchases' for the purposes of the refund claimed by Thuthugani and the appeal should succeed.

[14] Mr *Harcourt* argued further that the interpretation by SARS of the relevant sections of the Act and Notes and its contention that "it could never have been the intention of the legislator that '*own primary production'* activities may be activities entirely outsourced" lead to an unbusinesslike and unreasonable result, having regard to the objective of the rebate viz the compensation of the user (consumer) of the fuel for payment of levies raised to finance expenditure incurred in the use of roads when the identified forestry user (Mondi) does not use the roads.[5]

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[4] Note 6(g)(iii) of Schedule 6 / Part 3 of the Customs and Excise Tariff. Thuthugani purchased and utilised the diesel to render the forestry services and was therefore a 'contractor on a wet basis'.
[5] Applicant's Heads of Argument para 7.

[15] Mr *Puckrin SC*, who represented the Commissioner, confirmed that it was not in dispute that Thuthugani had operated a forestry services business and that the forestry activities undertaken by Thuthugani in terms of the silviculture agreement with Mondi constituted forestry activities as contemplated in terms of Note 6(g)(iii) of Schedule 6 / Part 3. He submitted however that the qualifying forestry activities were not undertaken by Thuthugani for 'own' primary production activities as contemplated by the Act, as there was no ownership by Thuthugani of the products produced by the forestry activities and Thuthugani merely rendered services for a fee to Mondi, who derived the benefit of the production activities. He contended that consequently, although Thuthugani had registered for VAT purposes and for diesel refunds and is therefore described as a 'user' in terms of the Act, it did not qualify for the refund because the diesel was not used in compliance with the Act. He concluded that at best, Thuthugani is a 'contractor' on a wet basis to a non-registered 'user' viz Mondi,[6] and the determination by the Commissioner consequently ought to be confirmed as correct and the appeal dismissed.

Diesel refunds in terms of the Customs and Excise Act

[16] The Government levies a fuel levy and the Road Accident Fund levy on diesel.[7] Section 75 of the Act provides for a refund of a percentage of the levies for diesel[8]

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[6] It is common cause that Mondi was not registered as a 'user'.

[7] Part 5A and Part 5B of Schedule No 1 respectively.

[8] Section 75 provides: 'Specific rebates, drawbacks and refunds of duty

(1A) Notwithstanding anything to the contrary contained in this Act or any other law-

(a) (i) a refund of the fuel levy leviable on distillate fuel in terms of Part 5A of Schedule 1; and

(ii) a refund of the Road Accident Fund levy leviable on distillate fuel in terms of Part 5B of Schedule 1; or

(iii) only a refund of such Road Accident Fund levy,

shall be granted in accordance with the provisions of this section and of item 670.04 of Schedule 6 to the extent stated in that item;

(b) such refunds shall be granted to any person who-

(i) has purchased and used such fuel in accordance with the provisions of this section and the said item of Schedule 6; and

(ii) is registered, in addition to any other registration required under this Act, for value-added tax purposes under the provisions of the Value-Added Tax Act, 1991 (Act 89 of 1991), and for diesel refund purposes on compliance with the requirements determined by the Commissioner for the purposes of this Act and the Value-Added Tax Act;

(c) the Commissioner may withdraw money from the National Revenue Fund for refunding the

consumed by commercial users of equipment and machines powered by diesel engines which are not used on public roads. This refund, whether by way of payment or set-off against any VAT payable by an 'user', is deemed a 'provisional refund' subject to production by the 'user' of proof that the diesel was purchased as claimed and used in accordance with the provisions of s 75 of the Act and the item 670.04 of Schedule 6.[9]

The Customs and Excise Tariff and Thuthugani's Claim for Diesel Refunds

[17] Thuthugani claimed diesel refunds for the forestry activities it undertakes in terms of the Notes to Schedule 6 / Part 3[10] of the Customs and Excise Tariff read with Note A and H of the General Notes to Schedule No 1, unless indicated otherwise by the context.[11]

[18] Note 6 provides the following relevant sub-notes, for the purposes of item 670.04 read with the provisions of s 75(1A) and (4A):

18.1 The relevant definitions under Sub-Note 6(a) are:

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amount of such Road Accident Fund levy as if it were a fuel levy leviable and paid under this Act and refundable in terms of the said item of Schedule 6;

(d) the Commissioner may-

(i) pay any such refund upon receipt of a duly completed return from any person who has purchased distillate fuel for use as contemplated in the said item of Schedule 6;

(ii) pay any such refund by means of the system in operation for refunding value-added tax; and

(iii) for the purposes of payment, set off any amount refundable to any person in terms of the provisions of this section and the said items against any amount of value-added tax payable by such person;

(e) any such payment or set-off by the Commissioner shall be deemed to be a provisional refund for the purpose of this section and the said item of Schedule 6 subject to the production of proof by the user referred to in subsection (1C) *(b)* at such time and in such form as the Commissioner may determine that the distillate fuel has been-

(i) purchased as claimed on the application for a diesel refund; and

(ii) used in accordance with the provisions of this section and the said item of Schedule 6;

(f) the provisions of the Value-Added Tax Act, 1991 (Act 89 of 1991), shall *mutatis mutandis* apply in respect of the payment of interest on any amount of fuel levy or Road Accident Fund levy which is being recovered as it is in excess of the amount due or is not duly refundable.

[9] Section 75(1A)(e) supra.

[10] 'Rebates and Refunds of Fuel Levy and Road Accident Fund Levy'.

[11] Schedule 6 / Part 3 Note 3.

18.1.1 Sub-Note 6(a)(iii): ‘eligible purchases’ means ‘purchases of distillate fuel by a user for use and used as fuel as contemplated in paragraph (b)’;[12]

18.1.2 Sub-Note 6(a)(v): “non-eligible purchases” means ‘purchases of distillate fuel by a user not for use and not used as prescribed in these Notes as fuel for own primary production in farming, forestry or mining on land …’;

18.1.3 Sub-Note 6(a)(vii): ‘user’ as defined in section 75(1C)(b)(i)[13] means, ‘according to the context and subject to any notes to item 670.04, ‘a person registered for value-added tax purposes under the provisions of the Value-Added-Tax Act (Act No. 89 of 1991), and for diesel refund purposes as contemplated in section 75(1)(a) and (4)(A)’;

18.1.4 Sub-Note 6(e)(i)(bb):

‘(A) Any person whose services are contracted by a user, is not entitled to a refund in respect of distillate fuel used in any vehicle, vessel, machine or other equipment to render such services.

(B) Where a contract for such services is only on a dry basis, the user who supplies the distillate fuel to the contractor may apply for a refund in respect of the fuel actually used in rendering the services…’

18.1.5 Sub-Note 6(g):

‘Forestry: Refund of levies on eligible purchases of distillate fuel for forestry as specified in paragraph (b) (i) to this Note.

(i) In accordance with the definition of “eligible purchases”, the distillate fuel must be purchased by the user for use and used as

[12] Sub-Note 6(b)(i) sets out the extent of refund for eligible purchases for “forestry”.
[13] Section 75(1C) *(b)*:’ For the purposes of this section and the said item of Schedule 6-
(i) 'user' shall mean, according to the context and subject to any note in the said Schedule 6, the person registered for a diesel refund as contemplated in subsection (1A);…’

fuel for own primary production activities in forestry as provided in paragraphs (g)(ii) and (g) (iii).

(ii) Own primary production activities in forestry include the following:…[14]

(iii) The above activities only qualify for the refund if carried on for own primary production in forestry by the user or by the contractor of the user who is contracted on a dry basis.'

Interpretation of the Act and Notes to the Tariff

[19] Section 47(8)*(a)* of the Act provides that the interpretation *inter alia* of any tariff item or fuel levy item or item specified in Schedule 6, the general rules for the interpretation of Schedule 1, and every section note and chapter note in Part 1 of Schedule 1, shall be subject to the International Convention on the Harmonized Commodity Description and Coding System done in Brussels on 14 June 1983, and to the Explanatory Notes to the Harmonized System[15] issued by the World Customs Organisation from time to time.

But although s 47(8)*(a)* requires the interpretation of the chapter notes to be in conformity with the Brussels Notes, the provision does not mean that the notes are to be regarded as peremptory injunctions.[16] As held by Trollip JA in *Secretary for Customs and Excise v Thomas Barlow & Sons Ltd*:[17]

> '…they are not worded with the linguistic precision usually characteristic of statutory precepts; on the contrary they consist mainly of discursive comment and illustrations'.

[14] The list of activities has been omitted because it is not in dispute that Thuthugani carries out qualifying forestry activities.
[15] The Harmonized System means the nomenclature comprising the headings and subheadings and their related numerical codes, section, chapter and subheading notes, and the general rules for the interpretation of the Harmonized System.
[16] *International Business Machines SA (Pty) Ltd v Commissioner for Customs and Excise*1985 (4) SA 852 (A) at 864.
[17] 1970 (2) SA 660 (A) at 676C-D in respect of principles applicable to tariff classification, but also relevant to interpretation of the explanatory notes in the schedules generally.

[20] The special rules for the technical interpretation of Custom tariffs which were restated in *Durban North Turf (Pty) Ltd v Commissioner, SARS*[18] did not prove helpful in this matter.[19] It was therefore more useful, as agreed by Mr *Harcourt* and Mr *Puckrin,* to have recourse to the current approach to the interpretation of documents as set out by Wallis JA in the following excerpt from *Natal Joint Municipal Pension Fund v Endumeni Municipality*:[20]

> 'The present state of the law can be expressed as follows: Interpretation is the process of attributing meaning to the words used in a document, be it legislation, some other statutory instrument, or contract, having regard to the context provided by reading the particular provision or provisions in the light of the document as a whole and the circumstances attendant upon its coming into existence. Whatever the nature of the document, consideration must be given to the language used in the light of the ordinary rules of grammar and syntax; the context in which the provision appears; the apparent purpose to which it is directed and the material known to those responsible for its production. Where more than one meaning is possible each possibility must be weighed in the light of all these factors. The process is objective, not subjective. A sensible meaning is to be preferred to one that leads to insensible or unbusinesslike results or undermines the apparent purpose of the document. Judges must be alert to, and guard against, the temptation to substitute what they regard as reasonable, sensible or businesslike for the words actually used. To do so in regard to a statute or statutory instrument is to cross the divide between interpretation and legislation; in a contractual context it is to make a contract for the parties other than the one they in fact made. *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 document.*' (my emphasis)

[18] 2011(2) SA 347(KZP)
[19] Applicant's Heads of Argument para 2
[20] 2012 (4) SA 593 (SCA) para 18 (footnotes omitted); See *also Bothma-Batho Transport (Edms) Bpk v S Bothma & Seun Transport (Edms) Bpk* 2014 (2) SA 494 (SCA) para 12 499G-500A

Does Thuthugani qualify for diesel refunds as claimed?

[21] As previously noted, it is common cause that Thuthugani was registered as a 'user',[21] in that it was registered for diesel and VAT refunds. However the meaning of 'user' in s 75(1C)(b)(i) is specifically 'according to the context and subject to any notes to item 670.04'. Therefore registration for the refunds *per se* does not make Thuthugani a user whose purchase of diesel makes the purchase an *eligible purchase* for refunds. The user must *purchase and use* the fuel for *qualifying activities* for *own primary production*. (My emphasis)

[22] It is however also common cause that Thuthugani carried on qualifying forestry activities,[22] which were rendered in terms of the contract which it has with Mondi[23] and purchased diesel for use in its forestry activities. But it was therefore a contractor on a wet basis as it supplied the diesel for the machinery and equipment utilised in the forestry activities,[24] and is consequently excluded from relying on the second leg of Sub-Note 6(g)(iii), as correctly stated by its auditors.[25]

Mr *Harcourt* properly did not persist with the submission that the contention of SARS that the refund was not permitted because Thuthugani was a contractor on a wet basis was flawed, as there was never any letting, hiring or chartering of any vehicle or machinery on any basis and Thuthugani had provided a composite service which included the use of machinery for forestry purposes.

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[21] Sub-Note 6(a)(vii).
[22] Sub-Note 6(g)(ii).
[23] The Silviculture agreement No. 11314: Founding Affidavit pg 35-64.
[24] Sub-Note 6(a)(ix) provides that "'wet' or 'contracted or hired on a wet basis' means distillate fuel is supplied with the vehicle, vessel, machine or other equipment contracted or hired as contemplated in the definition of 'dry'".
[25] Pleadings Volume 1 Annexure F Letter dated 21 October 2013 pg 80:

> 'The above activities only qualify for the refund if carried on for own primary production in forestry by the user or by the contractor of the user who is contracted on a dry basis".
> This reference implies that you can qualify for the refund under two different scenarios, either as a contractor or the user, who is contracted on a dry basis OR if you carry on the activities listed for your own primary production in forestry.
> Schedule 6 /Part 3 Note 6(g), lists activities in forestry that meet the definition of Own Primary Production Activities. Thuthugani carries out the vast majority of these activities for its own primary production and will therefore qualify for the Diesel Refund under this scenario'.

[23] Therefore the final criterion with which Thuthugani had to comply is that the qualifying forestry activities were undertaken for '*own primary production'*.

[24] Although it was not in issue that forestry is a primary industry[26] and the dispute between the parties related to the word '*own*' rather than the term '*primary production*', I found it useful to consider the terms separately and as a single phrase.

[25] The New Shorter Oxford English Dictionary offers the following special collocations under the word '*primary'*:

(i) '*primary production:* the production of raw materials for primary industry';

(ii) '*primary industry:* industry (such as mining, fishing, agriculture, forestry etc) that provides raw materials for conversion into commodities and products for the consumer'.

These meanings accord with the reference to '*eligible purchases'* in Sub-Note 6(a)(iii), read with Sub-Note 6(b), and '*non-eligible purchases'* in Sub-Note 6(a)(v),[27] as the primary industries referred to in those notes are '*farming, forestry or mining on land'*.

[26] In the New Shorter Oxford English Dictionary:

(i) '*own*' as an *adjective*, is defined as: *'of, or belonging to oneself or itself; used to emphasize possession or ownership*'.

(ii) '*ownershi*p' is defined as '*noun*: *the state or fact of being an owner; legal right of possession; proprietorship*'.

[27] Therefore the term '*own primary production*' within the context of Note 6 of Schedule 6 / Part 3 connotes '*possession*', '*ownership*' or '*proprietorship*' of the production of the '*raw material*' produced for the forestry industry.

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[26] Wikipedia provides the following information on '*Primary sector of the economy*':
'The primary sector of the economy is the sector of an economy making direct use of natural resources. This includes agriculture, forestry, fishing and mining. In contrast, the secondary sector produces manufactured goods, and the tertiary sector produces services.'

[27] See para 15 of the judgment.

Thuthugani undertook the forestry activities pursuant to the silviculture agreement with Mondi – it rendered a service to Mondi for a fee. As a contractor, it had no claim to the timber/logs produced, as the timber belonged to Mondi (i.e. the *ownership of the product* of the forestry activities, as distinguished from the *ownership of the forest or the land* on which the forest is established).

Further the services by Thuthugani entailed tending to the forestry after harvesting up to the point of next harvest. It therefore did not include felling or debarking or other production activities necessary to provide the raw material, i.e. the timber, to the secondary sector[28] for conversion into a commodity or product for the consumer.

[28] I am therefore in agreement with Mr *Puckrin* who, having referred to the definition of the word '*own*' in:

(i) the Collins Thesaurus as a *determiner '= personal, special, private, individual, particular, exclusive*'; and

(ii) the Oxford Concise Dictionary as '*belonging or relating to the persons specified – done or produced by the person specified – particular to the person who is specified; individual*',

submitted that there should be some ownership of the product produced by the activities in order for the activities to qualify as '*own primary production'* and a concomitant benefit.

[29] This argument accords with the general rule that the owner of property also owns the economic benefits of that property. Thuthugani's economic benefits were derived from Mondi through the Silviculture agreement, and not from the products of the forestry activities it undertook. It could not, therefore, have undertaken the forestry activities for 'own primary production'. Thuthugani was a contractor on a wet basis.

[28] See footnote 24 supra.

Mondi may not have registered as a ‘user’ or purchased diesel or used the roads, but none of those factors render Thuthugani’s purchase of diesel eligible for refund in terms of the Act.

[30] I am of the view that there is no need to extrapolate the notes on ‘*primary production activities*’ in respect of mining, fishing and farming in order to reach a proper interpretation of ‘*own primary production*’ in respect of forestry, as proposed by Mr *Harcourt*.

[31] In the premises, I am unable to find that the provisions of the Act relied on by Thuthugani sustain the contention that the determination by SARS is wrong because it is:

(i) based on a factual misconception;

(ii) not supported by the technical definition in Note 6 of Part 3 of Schedule 6 to the Act;

(iii) inconsistent with ordinary grammatical language and syntax; and

(iv) an unreasonable and unbusinesslike interpretation of Note 6 of Part 3 of Schedule 6.

[31] To the contrary, I am satisfied that although Thuthugani was registered as a ‘user’ in terms of the Act, the purchases of diesel on which the refunds were claimed were not ‘eligible purchases’ for the purposes of Sub-Note 6(g) as the diesel was not used in forestry activities carried on by Thuthugani for ‘own primary production’ in forestry as stipulated in Sub-Note 6(g)(iii).

Consequently the purchases of diesel did not qualify for refund under the provisions of s 75(1A) and Schedule 6 / Part 3 as claimed by Thuthugani, and in my view, the determination by the Commissioner to disallow the refunds was correct.

Costs

[31] There is no reason why costs should not follow the result.
I am satisfied that the issues in the application warranted the briefing of Senior Counsel. However I am not persuaded that the applicant should bear the costs of two counsel,[29] even if the Commissioner deemed the employment of senior and junior counsel necessary.

ORDER

The appeal is dismissed with costs, including the costs of Senior Counsel.

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MOODLEY J

[29] AC Cilliers Law of Costs 3rd ed para 13.21

COUNSEL

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Date of hearing	:	30 November 2015
Date of Judgment	:	17 February 2016