

Supreme Court of Appeal deals a rebate blow to Sars

Eugene Goddard

A long-standing court case relating to the payment of VAT and duty on goods stolen in bond has finally been resolved.

The Supreme Court of Appeal (SCA) has cleared up any uncertainty over rebate item 412.09 of Schedule 4 of the Customs and Excise Act 91 of 1964, long litigated between SA Revenue Service (Sars) and a company called Encarnacao.

Essentially, at the case's core, was Encarnacao's claim that Sars owed it a rebate whereas the revenue service argued that outstanding VAT and duties were payable on the company's bonded goods.

Lunga Vilakazi, senior associate of shipping and logistics at Shepstone & Wylie Attorneys, acting on behalf of Encarnacao, explained that since the related rebate had been enacted, there had been uncertainty over whether goods held in state-seized

storage because of suspected theft, qualified under item 412.09.

Vilakazi added that "in the past Sars contended that goods lost in a robbery or hijacking had entered home consumption", and therefore the tax authority "called for payment of duties and VAT".

The matter had been disputed between Sars and Encarnacao for some three years at the time of the Gauteng High Court's ruling in favour of the latter earlier this month.

In a last-ditch attempt to overturn the Pretoria ruling, Sars took the matter to the SCA in Bloemfontein.

But Bloemfontein confirmed what had been decided in Pretoria, finally ruling for Encarnacao, with costs.

"It means that there's no uncertainty about this rebate whatsoever anymore," Vilakazi said.

He also contextualised the judgement, adding that the R58 000 rebate that Encarnacao was claiming from Sars was small beer compared

to the amount of claims that Sars would probably now be facing.

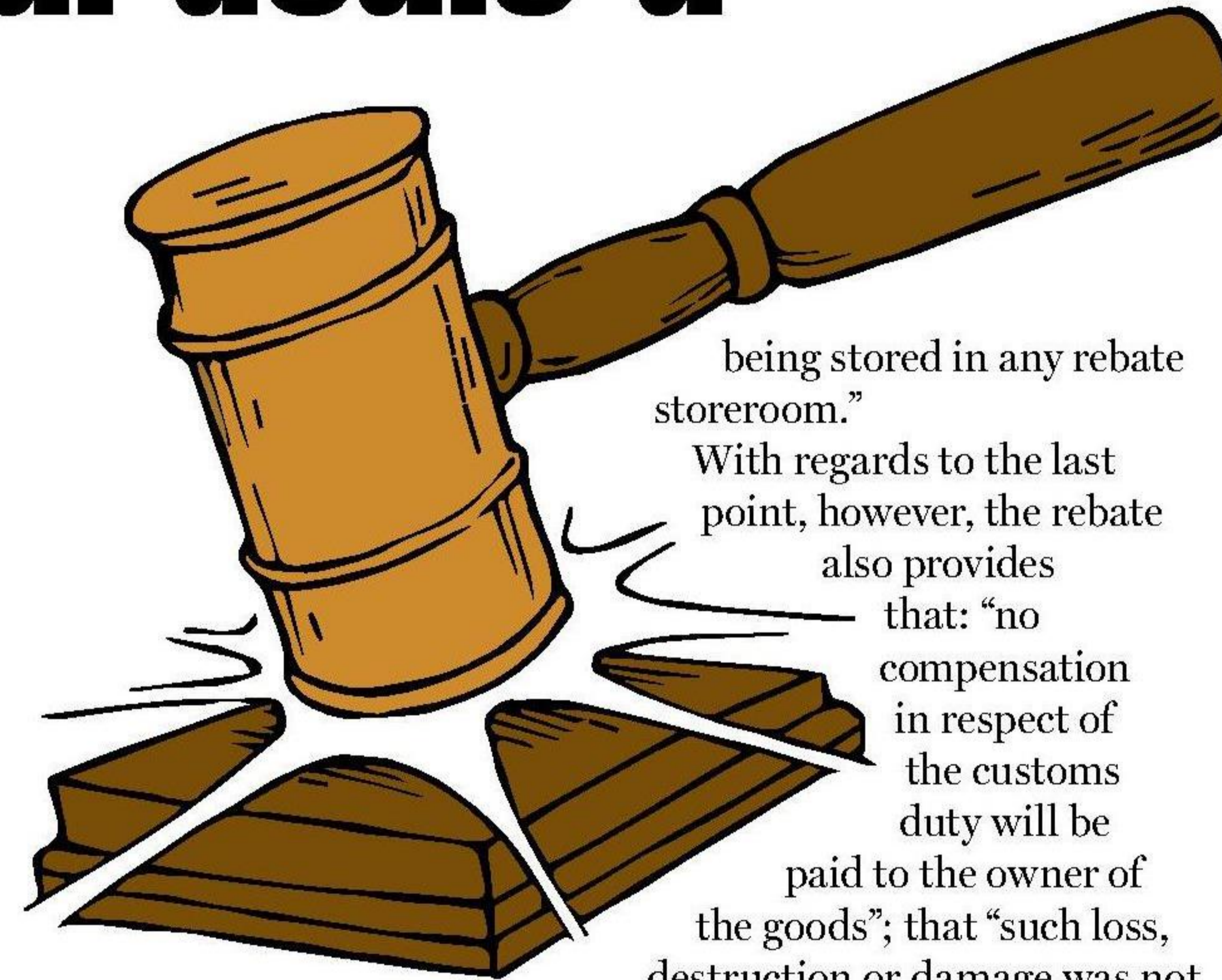
"We're talking millions," said Vilakazi, whose firm alone has 32 similar cases pertaining to the long-contested rebate clause.

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– LUNGA VILAKAZI



being stored in any rebate storeroom."

With regards to the last point, however, the rebate also provides that: "no compensation in respect of the customs duty will be paid to the owner of

the goods"; that "such loss, destruction or damage was not due to fraud and negligence"; and that "such goods did not enter home consumption".

Vilakazi emphasised that "the interpretation of the third proviso was the crux of the decision whether such goods enter home consumption".

At the time of going to press it wasn't certain whether Sars had honoured its obligation to Encarnacao.

Having lost all the way to the SCA, it seems that the revenue service has no oblique rebate wording behind which to hide any more.

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From a legal technical point of view, Vilakazi stated that the rebate involved goods "proved to have been lost, destroyed or damaged on a single occasion in circumstances of vis major or in such other circumstances as the Commissioner deems exceptional while the goods are: in any customs and excise warehouse, being removed with deferment of payment, or