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IN THE TAX APPEAL TRIBUNAL

SOUTH-SOUTH ZONE

HOLDEN AT BENIN CITY

ON THURSDAY, 17TH NOVEMBER 2011

BEFORE

HON. JUSTICE ABDUL .S. ABIRI (RTD)	-	**CHAIRMAN**
HON. ADENIKE A. EYOMA	-	**COMMISSIONER**
HON. DANIEL UGBABE UGBABE Esq.	-	**COMMISSIONER**
HON. SALIHU .A. BARAU	-	**COMMISSIONER**

APPEAL NO. TAT/SSZ/013/10

BETWEEN

FEDERAL INLAND REVENUE SERVICE..... APPELLANT

AND

OBA INTERNATIONAL SERVICES LIMITED.....RESPONDENT

JUDGMENT

The Appellant's claim against the Respondent is for the sum of N6,944,835.30k (six million, nine hundred and forty-four thousand, eight hundred and thirty-five Naira, thirty kobo only),being value added tax inclusive of interest and penalty due and payable from January 1994 to December 1999 to the Federal Inland Revenue Service. This Appeal was initially filed in the defunct Valued Added Tax Tribunal on 7th November, 2005 in the Enugu Zone.

By virtue of section 59 of the Federal Inland Revenue Service (Establishment) Act, No. 13 of 2007, the Tax Appeal Tribunal (TAT) was established and empowered to settle disputes arising from the operation of the Act and from tax legislation enumerated under the First Schedule to that Act. As a result of this development, the appellant filed the Appeal afresh before this Tribunal in accordance with the Tax Appeal Tribunal (Procedure) Rules 2010 on 31st March 2011.

It is pertinent to note, at this juncture, that the record shows that the Respondent failed to enter appearance and file its reply even after being duly served all relevant Tribunal processes.
At the hearing of the Appeal on 6th June, 2011, Learned Counsel for the Appellant, N.A. Evoh called his first and only witness Mr. Ogheneovo Obibi, Officer II Tax, Warri Integrated Tax Office (PWI). After being duly sworn, PWI adopted his sworn witness statement and gave evidence in support of the Appellant's claim. His evidence is summarized as follows:

The Appellant is a statutory body vested with the power to administer and manage the Value Added Tax Act, No 102 of 1993 as amended. The Appellant is also empowered to do other things as may be necessary and expedient for the proper assessment and collection of the Value Added Tax (VAT) and account for the amount so collected to the Federal Government of Nigeria.

The Respondent is a limited liability company which applied for registration as a collection agent and was duly registered as such agent under the VAT Act. Copies of the Respondent's application for registration and the certificate of VAT registration were admitted in evidence as Exhibits H and G respectively. Being an on-going concern for the period of 1994 to date and a taxable person, the Respondent is liable to collect VAT and remit same to the Appellant. For the period January 1994 to December 1999, the Respondent failed to remit any tax or file its monthly returns.
Consequent upon this failure, reminders were sent to the Respondent. Letters containing the reminders dated 12th April, 1996 and 31st March, 1999 were admitted in evidence as Exhibits A and B respectively. Further failure on the part of the Respondent prompted the Appellant to issue a notice of its intention to conduct compliance/monitoring exercise, the outcome of which was the

issuance of a Re-assessment Notice setting out the Respondent's VAT Liabilities. The notice of intent to conduct a compliance/monitoring exercise and the Re-assessment Notice were admitted in evidence as Exhibits C and F respectively.
The Respondent still refused to offset its VAT liabilities in spite of demand notices sent to it. Demand Notices dated 18th September, 2000 and 15th November, 2000 were admitted in evidence as Exhibits D and E respectively. The Appellant was therefore left with no other alternative than to remit the matter to its legal department for appropriate legal action.
The above is a synopsis of the Appellant's case which was closed on 6th July, 2011.

At the close of evidence, Learned Counsel for the Appellant filed his written address to which he gave oral amplification. He raised three issues for determination, to wit –

ISSUE 1
Whether the Respondent is a taxable person

ISSUE 2
Whether the assessment raised against the Respondent has become final and conclusive in the absence of any objection by the Respondent.

ISSUE 3
Whether the Appellant is entitled to the reliefs as claimed.

On Issue No.1, Learned Counsel for the Appellant submitted that the Respondent having duly fulfilled all requirements for registration as a VAT collection agent of the Appellant and having been duly registered as such as made evident in Exhibits H and G ought to be considered for all intents and purposes as a taxable person under the provisions of section 8 of the VAT Act. Counsel urged the Tribunal to resolve issue No. 1 in favour of the Appellant.

On Issue No. 2, Counsel for the Appellant relied on the evidence of PWI, in particular paragraphs 9-17 of his statement on oath which he adopted at the trial. The evidence highlighted the sequence of events leading to the issuance of exhibit F –Re-assessment Notice. He submitted that where a taxable person fails to make returns and remit tax collected on or before the 30th day of the month following

that in which the purchase or supply was made as specified under section 15 of the VAT Act and does not object to an assessment raised for that purpose, the assessment becomes final and conclusive. According to Counsel, the Appellant is therefore entitled to proceed to claim the amount contained in Exhibit F. In support of this submission, he referred us to the cases of **FBIR V. Owena Motels Ltd (2010) 2 TLRN 87 at p. 93 and FBIR V. Integrated Data Services Ltd (2009) 8NLWR 615 at P.636 Para. H.** Counsel for the Appellant urged us to place reliance on the authorities and hold that assessment in exhibit F-the Re-Assessment Notice - has become final and conclusive.

On Issue No. 3, Learned Counsel for the Appellant referred us to paragraph 3 of the Notice of Appeal which spelt out details of the reliefs sought, namely:

a) Remittance of the sum of N6,944,835.30
b) Cost of proceedings
c) Any other relief the Tribunal may deem fit to grant in the circumstances.

Counsel drew our attention to the fact that the Respondent failed to defend the Appeal even after being duly served; and that the Appellant rather than resort to default Judgment sought to lead evidence in proof of its case. He also referred us to the failure of the Respondent to object to Exhibit F which encapsulates the relief sought in paragraph 3(a) of the Notice of Appeal. It was the view of the Learned Counsel for the Appellant that the Respondent's failure to defend the Appeal and object to exhibit F left the evidence of PWI uncontested. Counsel cited the case of **Omo V Judicial Service Commission (2000)3 N S C Q R 30** in support of this submission. The Tribunal was urged to resolve issue No. 3 in favour of the Appellant.

We have given due regard to the testimony of PWI before us and the address of Learned Counsel for the Appellant and have also taken note of the Respondent's failure to enter appearance or file a reply to the Appellant's action. We also considered the several authorities cited by counsel.

With regard to Issue No. 1, we have duly considered the evidence of PWI, in particular paragraph 7 of his sworn statement as well as Exhibits H and G. We find that the Respondent is a taxable person within the meaning of the provisions of section 8(I) of the VAT Act.

We now turn our attention to Issue No. 2, to wit- whether or not the assessment has become final and conclusive. Evidence adduced before this Tribunal shows that the Respondent is an on-going concern, registered as a taxable person and therefore liable to render returns on or before the 30th day of the month following that on which the goods and services were purchased and supplied as it is mandated to do by virtue of section 15 of the VAT Act. Failure on the part of Respondent, in spite of several reminders, to file returns and remit taxes for the period 1994 to 1999 gave rise to compliance/monitoring exercise in which the Respondent participated. (See paragraphs 10 and 11 of PWI's sworn statement and Exhibits A, B and C).

Non compliance with the provisions of section 15 of the VAT Act gave rise to an assessment of the Respondent's tax liabilities inclusive of interest and penalty imposed thereon as contained in Exhibit F – the Re-assessment Notice. This in turn was followed by demand notices duly served to which the Respondent failed to respond. This was succinctly brought out in the evidence of PWI particularly in paragraphs 8 to15 of his sworn statement and Exhibits D and E. There is also evidence before us that the Respondent did not object to Exhibits F, D and E; neither did it defend this action.

We now examine the provisions of sections 18, 19 and 20 of the VAT Act, which deal with the effect of failure to render returns and to remit tax. In a nutshell, section 18 provides, inter alia, that failure to render returns attracts assessment by the Service on a best of judgment basis. Section 19(1) provides that a taxable person who fails to remit tax within the specified time will be liable to pay as penalty a sum equal to five percent (5%) per annum and interest at the commercial rate of the amount of tax due. Subsection (2) of that section provides for enforcement of payment if the tax together with penalty and interest is not paid within 30 days of notification of tax assessed. Finally, section 20 provides for the machinery of recovery which is the Tax Appeal Tribunal.

We agree with the Appellant's Counsel that Exhibit F -the re-assessment notice - was the result of the Respondent's continued

non-compliance with the provisions of Sections 15 and 19 of the VAT Act. We are also of the view that the amount contained in Exhibit F, that is N 6, 944, 835.30K inclusive of penalty and interest, crystallized into a debt due from the Respondent and payable to the Federal Government 30 days after demand notices – Exhibit D and E were issued and no objection raised. We therefore hold that the assessment is final and conclusive within the meaning of section 19 (2) of the VAT Act and as supported by the authority in **FBIR V. Owena Motels Ltd (2010) 2 T L R N 87.** The Service is therefore entitled to recover the tax liabilities which remain unpaid from the Respondent in accordance with the provisions of section 20 of the VAT Act.

With regard to Issue No.3, the relief in paragraph 3(a) of the Notice of Appeal is consistent with the evidence adduced in favour of the Appellant. We note further that the Respondent's failure to object to Exhibit F and indeed his failure to defend the Appeal has left the evidence of PWI unchallenged and uncontroverted. We therefore find in favour of the Appellant with regard to the relief sought under paragraph 3(a) of its Notice of Appeal.

We now turn to the relief as to cost of the proceedings. It would appear that our hands are tied by the provision of paragraph 22 of the Fifth Schedule to the Federal Inland Revenue Service (Establishment) Act No. 13 of 2007, which mandates each party to bear its own cost.

In conclusion, we hold that the Appellant has proved its case and therefore enter judgment for the Appellant in the sum of N 6, 944, 835. 30k.

We hereby order the Respondent to pay the Appellant the said amount.

We make no order as to costs.

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Hon. Justice A. S. Abiri (Rtd).....Chairman

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Hon. Adenike A. Eyoma.....Commissioner

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Hon. Daniel Ugbabe Ugbabe.....Commissioner

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Hon. Salihu A. Barau.....Commissioner

Appearance:
For Appellant - N.A. Evoh
O. Ihensekhien