

IN THE TAX APPEAL TRIBUNAL  
SOUTHWEST ZONE



HOLDEN AT IBADAN

THIS MONDAY, 26<sup>TH</sup> MAY, 2014

APPEAL NO: TAT/IB/018/2012

BEFORE:

- |                               |                |
|-------------------------------|----------------|
| 1. Honourable Joseph A. Ushie | (Chairman)     |
| 2. Honourable Cyril I. Ede    | (Commissioner) |
| 3. Honourable Jibril N. useni | (Commissioner) |

FEDERAL INLAND REVENUE SERVICE

APPELLANT

AND:

BEST MODEL HOTEL

RESPONDENT

JUDGEMENT

**FACTS**

This appeal was filed by the Appellant on 16<sup>th</sup> July, 2012 against the Respondent for failure/refusal to file VAT returns and make remittances to the Appellant.

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The Company was incorporated in November, 2007 and was given best of judgment VAT assessment of N120, 000 covering the period July, 2009 to December, 2010 (18 months). The Respondent has since liquidated the tax liability as assessed. The Appellant has also acknowledged the payment.

**Issues for determination: Payment of penalty & interest**

Consequent upon the failure of the respondent to file VAT returns and remittances for the years 2008, 2009 and 2010, the Appellant imposed the sum of N390, 000 as penalty and interest covering a period of April 2008 to March, 2009, totaling 15 months on the Respondent under Section 35 of VAT Act 1993.

**Section 35 of VAT Act states:**

*"A taxable person who fails to submit returns to the board is liable to a fine of N5, 000 every month in which the failure continues"*

After the examination in chief, cross examination and re-examination, the Tribunal established that Form VAT 003, "Value Added Tax penalty for failure to submit Returns" signed by Mr. Ozoede, Assistant Director of Taxes dated 7<sup>th</sup> August, 2009, covering the period of April 2008 to June 2009 was only 15 months being the default period. The Tribunal found as a fact that it was the computation and misapplication of the provisions of the VAT Act that occasioned the miscarriage of justice.

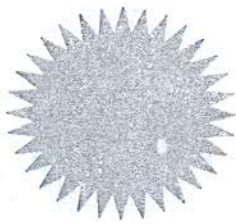
The appropriate penalty that is payable for 15 months according to the provisions of Section 35 of the VAT Act is N75, 000 and not N390, 000.



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1. The Tribunal has considered the Respondents' application for the waiver of accrued penalty and interest and approved that only the statutory fine of N5, 000 for every month in which the failure continues under Section 35 of VAT Act, be paid, which amounts to N75, 000.
2. Judgment is hereby entered in favour of the Appellant for the sum of N75, 000 being penalty and interest imposed on the Respondent.
3. The Respondent is hereby ordered to be filing its tax returns and remittances as prescribed by Law.

DATED AT IBADAN THIS 26<sup>TH</sup> DAY OF MAY, 2014



1. Honourable Joseph A. Ushie (Chairman)

2. Honourable Cyril I. Ede (Commissioner)

3. Honourable Jibril N. useni (Commissioner)

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