

**TAX APPEAL TRIBUNAL  
SOUTH EAST ZONE  
ENUGU  
[SECOND QUARTER/ 10<sup>TH</sup> SITTING]  
APPEAL NO: TAT/SEZ/002/14**

**FEDERAL INLAND REVENUE SERVICE ..... APPELLANT**

**VS.**

**MAFIX INDUSTRIES LIMITED..... RESPONDENT**

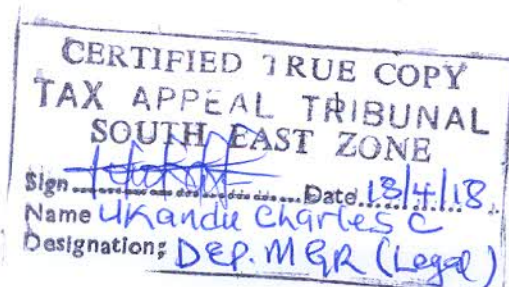
**CHAIRMAN: PROFESSOR C.J. AMASIKE**

**COMMISSIONERS: DR. [MRS] JOSEPHINE A.A AGBONIKA  
CHIEF NGOZI AMALIRI  
IGNATIUS CHIBUTUTU ESQ.  
PROFESSOR EDDY OMOLEHINWA**

**RULING**

Appellant seeks to recover alleged tax liability for the period 2001 – 2006. When prompted by the Tribunal regarding whether it could proceed with such action before the Tribunal more than six years after the tax period at issue, Appellant argues that there is no limitation of time for tax recovery.

Appellant argues that tax recovery does not have a limiting statute and cites the Limitations Act of 1966 S. 1(2ii) which provides that the statute shall not apply to any proceedings for the recovery of any sum under the care of the Federal Board of Inland Revenue. However, as appellant reminds us, section 4 of the same law “appears” to preclude its application to “an action for which a period of limitation is fixed by any other enactment”.



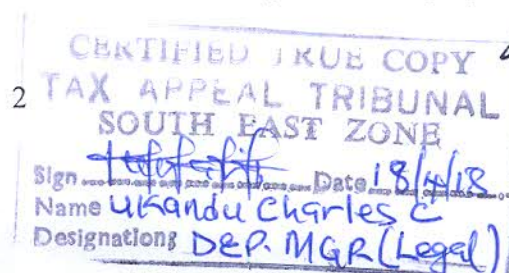
In search of any possible limiting enactment in the various tax laws, appellant refers us to S.85 (1) (C) of the Companies Income Tax Act (CITA) which provides that if taxes are not paid within the times stipulated in CITA, the FIRS shall serve a demand note requiring payment to be made within 30 days of the service of the notice.

We are also referred to S.20 (1) of the Value Added Tax Act which allows the FIRS to recover any tax penalty or interest due it through proceedings in in the Value Added Tax Tribunal. However, neither this Act nor CITA states the time of commencement of any such proceedings.

The Appellant suggest that we use the case of Oando Supply and Trading vs FIRS ( 2011) 4TLRN 113 as a guide. It was held therein that “where no timetable is stipulated for the taking of a step required by law, the law does not lie prostrate but has always imposed a reasonable time. What is a reasonable time in each particular case depends on the circumstances of the case”.

Certainty is one of the hallmarks of a good tax system. In this regard, a tax payer should know the time frame within which he can be held responsible for previous noncompliance. The primary essence of having a limiting period is to ensure that all claims are diligently and promptly presented while the evidence in support of the claim, or the defence to a claim, is/are still available and the witness(es) memory is/are still fresh. A further essence of a specific time frame is to guarantee finality in litigation.


And so in line with this, CITA (s.66), Personal Income Tax Act (PITA) s.55, Petroleum Profits Tax Act (PPTA) s. 36 all impose a six year limitation (from the relevant year of assessment) on the time frame within which the tax authority may raise additional assessment in connection with the returns filed by the tax payer.





However, the law also gives the FIRS a means of opening the barred period. See for example section 36 (4) of Petroleum Profit Tax Act (PPTA), which provides “ *Notwithstanding the other provisions of this section, where any form of fraud, willful default or neglect has been committed by or on behalf of any company in connection with any tax imposed under this Act, the Board may at any time and as often as may be necessary, assess the company on such amount as may be necessary for the purpose of recovering any loss of tax attributable to the fraud willful default or neglect*”. See also Sections 55 (2) of PITA and Section 66 CITA.

Appellant finally argues that even if there was some specific limiting law, issues relating to limitation are not valid before the Tribunal because of paragraph 19 of the 5<sup>th</sup> schedule to the FIRS Establishment ACT 2007 which provides that **“the provisions of any statute of limitation shall not apply to any appeal brought before the Tribunal.”**

 The language of paragraph 19 is very clear and accordingly, we <sup>hold</sup> conclude that the Appellant is not time barred.

Sign:



Prof. C.J. Amasike, Ph.D

Chairman Tax Appeal Tribunal,

South East Zone.

Date:

6/09/2015

