

IN THE TAX APPEAL TRIBUNAL

SOUTH – EAST ZONE

HOLDEN AT ENUGU

SUIT NO. TAT/SEZ/010/10

BETWEEN:

FEDERAL INLAND REVENUE SERVICE APPELLANT

AND

BARATILES NIG. LTD RESPONDENT

BEFORE THEIR HONOURS

Chairman: Prof. C. J. Amasike

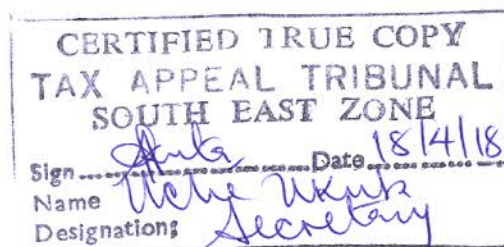
Commissioners: Ignatius Chibututu, Esq.
Dr. (Mrs.) Josephine A. A. Agbonika
Prof. Eddy Omolehinwa
Chief Ngozi I. Amaliri

JUDGMENT

The Appellant is a statutory body established under the Federal Inland Revenue Service Act, 2007 and is vested with the powers to among others, administer and manage Education and Companies Income Tax Act. It is empowered by the Act to do such things as may be necessary and expedient for the proper assessment and collection of Education Tax and Companies Income Tax and account for the entire amount so collected to the Federal Government of Nigeria.

The Respondent is a company registered in Nigeria under the Companies and Allied Matters Act with its registered office at 109 Faulk Road, Aba, Abia State. At all times material to this suit, the Respondent carried on inter alia the business of sale of tiles, marble, and was also a general importer and supplier of goods and

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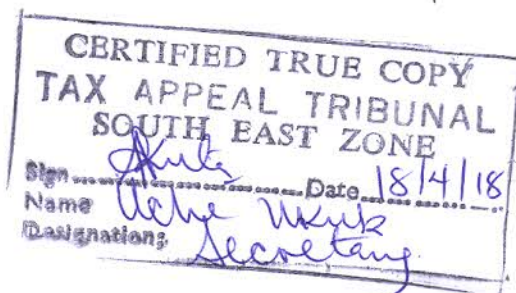
services. By virtue of the nature of its business the Respondent was liable to pay Value Added Tax (VAT) for the period relevant to this suit being January, 1997 to December, 2002, but failed or refused to do so despite several letters to wit, notice of assessments, re-assessment and several demand notes.

This matter was instituted on 11th October, 2005 by FIRS (Appellant) before the defunct Value Added Tax Tribunal, against **Baratiles Nigeria Ltd.** (Respondent) to recover the sum of Five Million, Six Hundred and Fifty Thousand Naira (₦5,650,000.00) from the Respondent being money due to the Federal Government of Nigeria as Value Added Tax (VAT) for the period from January 1997 to December 2002. Upon the Respondent's failure, despite several letters from the Appellant to register, remit and render its VAT returns to the appellant, it raised a Best of judgment (BOJ) assessment for the period aforementioned. Notice of Assessment, Re-assessment and several demand letters were served on the Respondent but all to no avail.

As a result of the abolition of the VAT Tribunal, the matter was transferred to the Tax Appeal Tribunal (TAT). All necessary processes needed for prosecuting this case were filed before the TAT and the matter came up before Tax Appeal Tribunal for the first time on the 26/1/2011. The Appellant was represented by Ike Odume Esq but the Respondent was not in court. Application for substituted service by pasting was granted to the applicant and the matter was adjourned to 22/3/2011 for further mention. The matter was further adjourned to 23/3/2011 to enable the Tribunal clerk effect the order for substituted service on the Respondent.

Although the matter came up on various dates such as 31/08/11, 01/09/11, 25/10/11, 16/11/11 and 30/11/11 the Respondent was not at the tribunal.

On 26/01/12, the Respondent through his counsel asked for more time to settle the matter out of the Tribunal. It was then adjourned variously to 14/03/12, 17/04/12 and 17/05/12 for report of settlement, without success. On the 26/06/12, the Appellant moved a motion to substitute his witness Mr. Adeleye Sunday who was said to have been transferred out of the region with Mrs. Nwaogu. The motion was granted and the matter was adjourned to 14/08/12 for definite hearing.



On the adjourned date, the Respondent appeared in person and denied liability but further appealed to the Tribunal to give him more time to settle the matter out of Tribunal. The matter was then adjourned to 12/09/12 for report of settlement. On that day, the Respondent offered to pay N50, 000.00 (fifty thousand naira) in full and final settlement of his liability, claiming that he could not afford to pay anything more than that. The Appellant maintained that the Respondent's claim was false and that his liability was as stated in their claim.

On 17/1/2013 when the matter came up, the Respondent was not at the Tribunal and the matter was adjourned to 24/7/2013 for hearing. On the said date, the Respondent was again not at the Tribunal. The Appellant's application to lead his witness in evidence was granted. The Appellant opened its case by calling Mrs. Elizabeth Nwaogu (PW1), a staff of FIRS (Appellant). The witness identified and adopted her statement on oath dated 10th May, 2012 and she tendered documents to the Tribunal marked as Exhibits A1 to A11. Thereafter, the matter was adjourned to 19/9/13 for cross examination of PW1.

On 19/01/2014 the matter came up for cross examination but the Respondent Counsel was not in court. On that date, Akwuete Charles and Co. Chambers sent in a letter asking for a further adjournment as counsel to the Respondent to 23/10/13. The Appellant's witness (PW1) was discharged on 17/12/13 when the Respondent's counsel failed to come to court to cross examine her despite two adjournments to enable the him do so.

The matter was adjourned to 29/1/2014 for defence. On the adjourned date, another counsel from a different chamber appeared for the Respondent to ask for adjournment. The Appellant's counsel objected to the Respondent's change of counsel without following due process. The Tribunal noted this, but in the interest of justice granted his application and the matter was adjourned to 11/2/2014 for defence.

On 11/02/14, Respondent was neither at the Tribunal nor represented. Furthermore, the Respondent had not filed his statement of defence or witness statement on oath or any process whatsoever in this case. Appellant's application to foreclose the Respondent from defending his case was granted and the matter was adjourned to 12th March, 2014 for adoption of final written addresses.

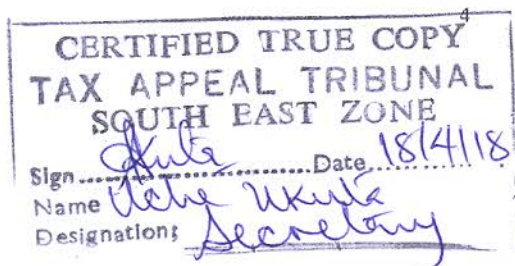
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Designation: <i>Secretary</i>	

On 12/3/14, Appellant informed the court that its final written address had just been filed and needed a little time to serve it on the Respondent. The matter was further adjourned to 9th April, 2014, the Appellant adopted its final written address dated 11th but filed on 12th March, 2014. The Appellant then urged the Tribunal to enter judgment in the sum of N5, 650,000 in its favour and against the Respondent.

THE APPELLANT'S GROUNDS OF APPEAL ARE HEREUNDER SUMMARIZED.

- I. The Appellant is a statutory body established under the Federal Inland Revenue Service Act, 2007 and is vested with the power to administer, manage collect Companies income, Education and Value Added Tax under under the relevant Acts.
- II. The Appellant is empowered by the Act to do such things as may be necessary or expedient for the proper assessment and collection of Companies Income Tax and Education tax and account for the entire amount so collected to the Federal Government of Nigeria.
- III. Sequel to the above, the Appellant is also empowered by the Act to conduct a routine tax Monitoring/Compliance Exercise on all Companies that deal in taxable goods and services and ensure that the companies pay their tax to the Appellant as required by the law.
- IV. The Respondent is a company registered in Nigeria under the Companies and Allied Matters Act with its registered office at No: 109 Faulk Road Aba, Abia State.
- V. The Respondent carries on inter alia the business of sale of tiles and marbles as well as importer of general goods and services by virtue of which the Respondent has the Responsibility to pay Companies Income Tax, Education and Value Added Tax.
- VI. The Respondent is a taxable person liable to remit and render to the appellant a true and accurate monthly return of all taxable goods and services supplied by it from the month of January 1997 to December 2002 in accordance with the provisions of the Act.
- VII. Despite several attempts to visit and hold meetings with the Respondent and several letters dated 30th May 2003, 30th June 2003, 13th August 2003, 13th



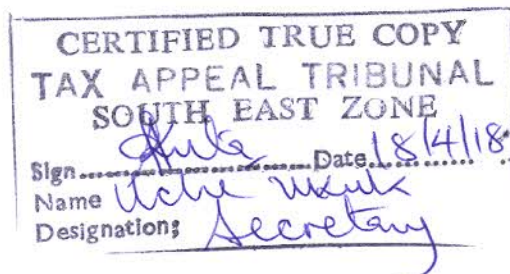
September 2003 together with VAT re-assessment notices for the years 1998-1999, 1997, 2000, 2001, and 2002, written to the Respondent in an effort to get the Respondent to register with the Appellant and also remit and render its tax returns, the Respondent failed, refused and neglected to register, remit and render its monthly return of taxable goods and service to the appellant as required by the law.

- VIII. As a result of the Respondent's failure, refusal or neglect to register, remit and render its monthly returns at all material times in accordance with the provisions of the law, the Appellant proceeded to assess the Respondent on the Best Of Judgment (BOJ) for the period of January 1997 to December 2002. A liability established against the Respondent amounted to five million, six hundred and fifty thousand naira (N5,650,000.00). The VAT re-assessment notice dated 14th/8/03 reflects this amount.
- IX. Further to that the Appellant wrote a final reminder to the Respondent dated 22nd September 2003 and demand letter dated 13th/January/2005 and the Respondent refused to comply.

THE APPELLANT SOUGHT FROM THE TRIBUNAL the following orders;

An order compelling the Respondent to immediately register for vat and

An order compelling the Respondent to pay the sum of five million, six hundred and fifty thousand naira. (N5,650,000.00) as a debt owed by the Respondent to the Federal Government of Nigeria, and An order awarding cost for prosecuting this matter.



ISSUES FOR DETERMINATION

The sole issue identified for determination by the Appellant was;

Whether the Appellant was entitled to claim value added tax from the Respondent in this matter.

It is the view of the Tribunal that, the issue is well founded.

The Appellant's counsel submitted, that the Appellant is empowered by the law to institute action against any person that fails to pay Value Added Tax, pursuant to section 25 (1) of Federal Inland Revenue Service (Establishment) Act 2007 which provides that "the service shall have power to administer all enactments listed in first schedule to this Act and any other enactments or laws relating to Taxation in respect of which National Assembly may confer power on the Service".

He cited Sections, 7,8,15 and 46 of the Value Added Tax Act in support of his argument.

By virtue of Section 15 of VAT Act: A taxable person shall render to the board, on or before 30th day of the month following that in which the purchase or supply was made, a return of all taxable goods and services purchased or supplied by him during the preceding month in such manner as the Board may, from time to time, determine.

He argued that, Baratiles Nigeria Limited (Respondent) being a Company in the business of selling tiles, marbles, and being a General importer and supplier of goods and services is a taxable person as defined by section 46 of VAT Act. Section 46 of VAT Act defines a Taxable person among other things as "a person who independently carries out in any place an economic activity as a whole seller, trader, supplier of goods or services...." The Respondent being in that category, refused to register with the Appellant for the purpose of tax as provided by section 8 of VAT Act. Despite several visits and meetings with the Respondent, as well as letters asking the Respondent to register which were tendered in evidence in this matter, the respondent refused to comply.

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Designation; <i>Secretary</i>	

As a result of the Respondent's failure, or refusal to register, remit or render its monthly returns, the Appellant assessed the Respondent on the basis of its Best Of Judgment (BOJ), as provided by Section 18 of the VAT Act. The Appellant's assessment of the respondent for VAT from January 1997 to December 2002 on best of judgment basis, established a liability of Five Million, Six Hundred and Fifty Thousand Naira only (N5,650,000.00) against the Respondent. The assessment was communicated to the Respondent via letters with reference NO: BBV/UNREG/01/2003, BBV/UNREG/02/2003 and BV/UNREG/03/2003 tendered by the witness and these were not challenge by a tax payer. He relied on the case of **Federal Board of Inland Revenue v. Owena Motors** 2 TLRN March 2010, where it was held that an assessment would become final and conclusive, where it was not challenged within the time allowed by statute.

It was the Respondent's refusal to register for tax that led to the institution of this case. The respondent did not file pleadings or enter defence in challenge of the Appellant's evidence.

He argued that a defendant who doesn't give evidence in support of his pleading or in challenge of evidence of the plaintiff is deemed to have accepted the fact adduced by the plaintiff notwithstanding his general traverse. He cited the case of **F.C.D.A v. Naibi** (1990) 3 NWLR9part 138)270 at 272.

Also in **Ita v. Inyang** (1994) 1 NWLR (part 318) 56 at 73. The court held that "the law will not protect any person against his own deliberate default or misdeed" he further stated that, in this case the respondent was given adequate opportunity to defend his case but it refused to do so. In support of the view that, a party to a legal dispute cannot claim breach of fair hearing where he has willfully absented himself from the hearing or failed to give evidence when called to do so, he relied on the case of **A.G. of Rivers State v. Ude** (2007) ALL FWLR (part347)598 at 613-614.

The Appellant urged the Tribunal to enter judgment for the sum of Five Million, Six Hundred and Fifty Thousand Naira only (N5, 650,000.00) in their favour as full payment of Value Added Tax liability against the respondent for the period from January 1997 to December 2002.

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On the strength of the testimony of PW 1 and the exhibits tendered the Tribunal is satisfied that the Best Of Judgment assessment from January 1997 to December 2002 was well made since the Respondent according to PW1 failed or refused to register, remit or render monthly returns for the said period.

The evidence of PW 1 concerning the Best Of Judgment assessment to the tune of Five Million, Six Hundred and Fifty thousand Naira (N 5,650,000.00) was neither challenged nor controverted throughout the proceeding and must therefore be relied on.

In **Yusuf v. State** (2012) All FWLR (pt.641) 1478 at 1505 it was held that, the law gives the court license to act and rely on unchallenged evidence to arrive at a decision.

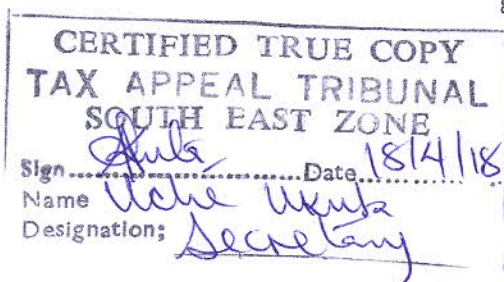
Also, the Supreme Court in **Akinboye v. Edeko** (2012) All FWLR (pt 636) 522 at 540 held that:

It is trite that, when evidence given by one party is not contradicted or controverted by the other party who has the opportunity to do so... the court should accord credibility to such evidence.

Section 25(1) FIRS Act 2007 empowers the applicant to administer all forms of taxes listed in the first schedule one of which is the VAT Act. Failure to remit to the Board in accordance with Section 15 VAT Act constitutes an offence. The Appellant is therefore entitled to claim the amount for which the Respondent defaults from the respondent.

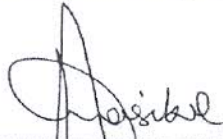
In the ultimate, the soul ground of appeal succeeds and it is hereby ordered as follows:

1. That the sum of five million, six hundred and fifty thousand naira (5,650,000.00) has become due to the appellant by the respondent having crystallized as Best Of Judgment assessment for January 1997 to December 2002.
2. Judgment is entered for the immediate payment of the sum of five million, six hundred and fifty thousand naira (N5,650,000.00) by the Respondent in favour of the Appellant.



Respondent is deemed admitted and has therefore crystallized as a debt owed to the appellant by the Respondent.

2. Judgment is entered for the Appellant against the Respondent in the sum of Fourteen Million, One Thousand, Three Hundred And Seventeen Naira being amount assessed as additional VAT for the period between 2009 to 2010.
3. That the said amount should be paid immediately by the Respondent to the Appellant.
4. There shall be no order as to cost.
5. Parties are entitled to appeal against this judgment.



Prof. C.J. Anasike, Ph. D
Chairman
Tax Appeal Tribunal [S.E.Z]

Dated: 12th September, 2014

COUNSEL:

Emmanuel EzeFor The Appellant

Nwabueze Ajaegbu..... For The Respondent.

