

IN THE TAX APPEAL TRIBUNAL
SOUTH- SOUTH ZONE HOLDEN AT BENIN
ON TUESDAY 11TH OCTOBER, 2011

Before:

Hon. Justice A. S. Abiri (Rtd.)	Chairman
Hon. Adenike A. Eyoma (Mrs.)	Commissioner
Hon. Daniel Ugbabe Ugbabe	Commissioner
Hon. Salihu A. Barau	Commissioner

Appeal No: TAT/SSZ/003/10

Between

FEDERAL INLAND REVENUE SERVICE APPELLANT

and

RED SEAR LIMITEDRESPONDENT

JUDGMENT

This appeal was first filed by the Appellant before the now defunct Value Added Tax(VAT) Tribunal by the Appellant claiming the sum of \$105817.78, i.e.; one hundred and five thousand eight hundred and seventeen dollars and seventy eight cents in the currency of the United States of America, being



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unremitted value added tax for the period of 1st January, 1998 to 31st December 1999, against the Respondent. With the establishment of the Tax Appeal Tribunal by the Federal Inland Revenue Service (Establishment) Act 2007 to replace the VAT Tribunal, the case not having been determined, the matter was transferred to this Tribunal which now has jurisdiction under the Act to hear tax cases emanating from the South-South Zone of Nigeria. This Tribunal having so ordered, processes were filed in compliance with the Tax Appeal Tribunal (Procedure) Rules 2010, *de novo* and served on the Respondent eventually through substituted service by pasting relevant processes on the frontage of the last known address of the Respondent.

It is on record that the Respondent neither filed a reply to the Appellant Value Added Tax Assessment nor the Statement of Claim nor did they contest the matter before this Tribunal throughout the proceedings from its commencement on November 24th 2010.

To prove their case learned Counsel to the Appellant called one Witness, Ogheneovo Obibi, Officer 11, Warri Integrated Tax Office. He adopted his Witness Statement on Oath and tendered three documents in support of the Statement of Claim of the Appellant and they were marked as indicated bellow.



- 1) "Exhibit A," 'VAT Reassessment Notice' dated 30th November 2000. This document shows how the tax payable was computed as a total of \$105,817.78, including penalty and interest on the principal tax sum.
- 2) "Exhibit B," A Solicitor's letter to the Respondents dated 5th May 2001' This was a letter demanding that the sum of \$105,817.78 be remitted to the appellants within 30 days. and,
- 3) "Exhibit C" A Solicitor's letter to the Respondents dated 30th November 2000. This letter avers that the amount due and payable resulted from the visit of VAT Monitoring and Compliance Inspectors to the premises of the Respondents

The Appellant closed its case on July 5th 2011.

In their written address learned Counsel to the Appellant canvassed three issues for determination, namely;

- 1) Whether the Respondent is a taxable person
- 2) Whether the assessment raised against the Respondent has become final and conclusive in the absence of any objection by the Respondent, and
- 3) Whether the Appellant are entitled to the reliefs as claimed.



Addressing the Tribunal on the three issues in the affirmative, learned Counsel to the Appellant referred us to Sections 8(1), 15 and 20 of the Value Added Tax Act 2007. He emphasised that the Respondent were registered under both the Companies and Allied Matters Act and the Value Added Tax Act as amended. Counsel also contended that the respondent was a going concern during the period of "January 1999 to December, 2000" (sic). He argued that the Respondent was under a duty to file value added tax returns and remit the related taxes to the Federal Inland Revenue Service on monthly basis. According to him the Respondent failed to do this. Counsel stressed that the tax established by the Service against the Respondent was calculated by the Service from books made available by the Respondent during a VAT Monitoring/Compliance exercise conducted by it with full cooperation by the Respondent.

Counsel further contended that all the necessary notices had been served by the Appellant on the Respondent and that the latter failed to raise any objections before or during these proceedings. He argued that the Respondent having not raised an objection within thirty days of the notices, the assessment had become conclusive. Counsel relied on the case of Federal Board of Inland Revenue V. Owena Motels Limited (2010)2TLRN page 87.



Counsel contended that the averments in the affidavit of PW 1 Ogheneovo Obibi and his testimony were not challenged by the Respondent. He submitted that in the circumstances, such averments are deemed as having been admitted as true by the Respondent. Counsel relied on the case of Nantim Chakven Digai & anor. V. Napcwat Ndinur Nanchang & ors. (2005) All FWLR 41,

On whether the Appellant had become entitled to the reliefs claimed Counsel submitted that Value Added Tax returns and remittances must be rendered on or before the 30th of the month following that in which the purchase or supply was made. Counsel cited in support the case of Federal Board of Inland Revenue V. Integrated Data Services Limited(2009) 8 NWLR 615.

In his oral address before the Tribunal learned Counsel also raised the issue of the Appellants' entitlement to remittance in the American dollar. This question he says was answered in favour of the Appellant in the case of Rock Bottom Interior Limited & anor. V. Mohammed Gafar (2005) All FWLR 113, a case decided at the Jos Division of the Court of Appeal where Court held that a Nigerian Court in its discretion may give judgment in foreign currency. He urged the Tribunal to so hold in respect of the Value Added Tax already collected by the Respondent on transactions between them and Shell Development Company in the currency of the transactions, the American dollar.

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On whether the respondents, Red Sear Limited are truly taxable under the Value Added Tax Act we resort to the provisions of the Act itself. The Act at section forty six says "taxable person" means a person who independently carries out in any place an economic activity as producer, wholesale trader, supplier of goods, supplier of services (including mining and other related activities) or person exploiting tangible or intangible property for the purpose of obtaining income there from by way of trade or business..."

Furthermore section eight of the Act requires the registration of the taxable person with the Service "...within six months of the commencement of business." Evidence before us show that the Respondent¹ a registered taxable person in compliance with section eight of the Value Added Act 1993 as amended. In compliance with Section eleven of the Act, the Respondent also maintained such records and books of all transactions as are sufficient to determine the correct amount of tax due under this Act. These records the Respondent made available to the Inspectors who, with their cooperation, determined the tax payable together with interest as \$105,817.78. The Respondent was duly appointed under the Value Added Tax Act as agents of the Federal Inland Revenue Service and were under a duty to render returns and remit tax collected to the Service. There is no doubt that they failed in their duty to their principal and were



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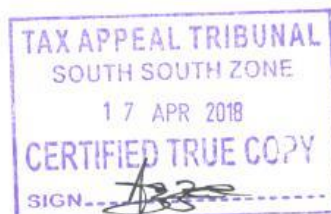
in breach of the enabling Act. They clearly failed to comply with the provisions of sections 15, 16, and 35 of the Act. This Tribunal is part of the recovery process as provided for in section 20 of the Value Added Tax Act and the Federal Inland Revenue Service(Establishment) Act, 2007.

The Federal Inland Revenue Service in the VAT Reassessment Notice sets out their claim to tax payable as follows, in the American dollar;(See Exhibit A)

Total supplies subject to VAT	\$ <u>1,679,647.40</u>
VAT charged by you	\$ 83,982.37
Add interest	\$ <u>21,835.41</u>
Total tax due plus interest	\$105,817.78
VAT due and payable	<u>\$105,817.78</u>

At no point in time did the Respondent question or contest the amount claimed by the Appellant.

On the whole we find that the Appellant has proved its case against the Respondent who is their statutory agent. Red Sears Limited are a registered taxable person under the Value Added Tax Act 1993 as amended. Having failed to render returns between January 1st 1998 and December 31st 1999 or to remit the tax payable, they have contravened the Act. Because the Respondent failed to contest the



assessment raised against them within the statutory period of 30 days from the date that notice was served on them or at all, the tax raised on them crystallised and became conclusive. The Respondent did not contest this matter and so have left us with no alternative than to accept the Appellant's claims and evidence in support. The Respondent having collected value added tax in the American Currency from their contract party should remit the tax so collected to the Appellant in the same currency.

We hold that the Appellant are entitled to the recovery of the value added tax payable in the sum of \$105,817.78 (one hundred and five thousand eight hundred and seventeen dollars and seventy eight cent) ~~currency of the United States of America~~ *A. S. Sui* 11/10/11

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

We make no order as to cost.

