

**IN THE TAX APPEAL TRIBUNAL
SOUTH-EAST ZONE
HOLDEN AT ENUGU**

APPEAL NO. TAT/SEZ/013/12

BETWEEN:

FEDERAL INLAND REVENUE SERVICE.....APPELLANT

AND

**MR. OBED ANUPUECHI (Trading in the Name and Style
of Capital Supermarket).....RESPONDENT**

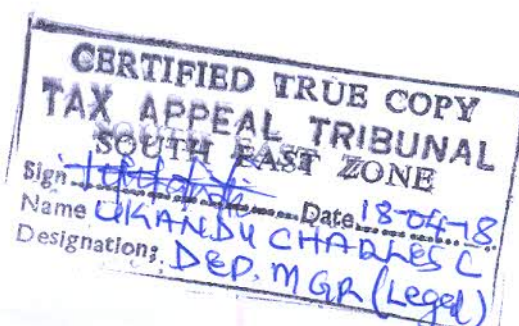
BEFORE THEIR HONOURS

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 Federal Government of Nigeria statutory body established under Federal Inland Revenue Service Act 2007, and is vested with the powers, inter alia, to administer and manage the Value Added Tax, Companies Income Tax, Education Tax, Withholding Tax, among other taxes. It is therefore empowered by the Act to do such things as may be necessary or expedient for the proper assessment and collection of taxes as specified in Schedule 5 of the FIRS Act 2007 and to account for the entire sum so collected to the



Federal Government of Nigeria. The Respondent is the owner of the supermarket trading under the name and style, Capital Supermarket.

This matter was filed by the Appellant at the Tax Appeal Tribunal on 2nd day of October 2012, claiming the sum of Two Million, Six Hundred And Eighty Five Thousand, Five Hundred Naira (N2, 685,500.00), being the Respondent's VAT liability for 2005-2010.

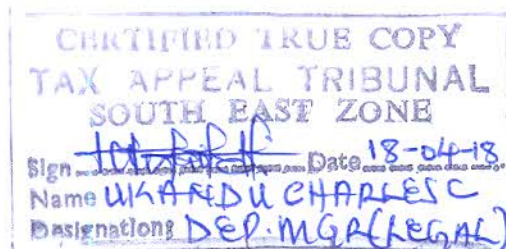
During the trial the Appellant, submitted that Mr. Obed Anupuechi (Trading in the Name and Style of Capital Supermarket), is by the operation of the law, conferred with the status of an agent for the purpose of collecting Value Added Tax (VAT) from his customers and for all his dealings on vatable goods and services for onward remittance to the Federal Inland Revenue Service.

That same was collected for the period between 2005 - 2010 but the Respondent refused to register and remit the tax so collected. Instead, he engaged in several tactics in trying to beat the tax authorities.

Consequently, the Appellant used its best of judgement assessment on the Respondent and the sum of Two Million, Six Hundred And Eighty-Five Thousand, Five Hundred Naira (N2, 685,500.00) was established as liability.

Furthermore, the Appellant sent Letters and notices to the Respondent, notifying and demanding the payment of the above sum from the Respondent all to no avail pursuant to which this matter was filed. The letters of the Appellant dated 27/05/09, 29/06/09, 10/08/09, 08/10/09, 18/07/10, 26/08/10, 10/10/10 and 25/03/11 were tendered and admitted in evidence before the Tribunal.

In the course of the trial, the Respondent submitted that since he had not registered for VAT as contemplated by S.8(1) of the VAT Act, LFN 2004 which was a condition precedent to his filing of returns he is not liable to the payment of tax. Section 8(1) provides that a taxable



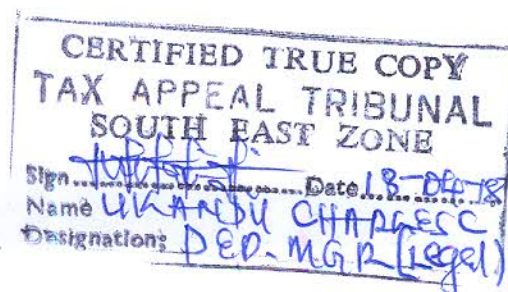
person shall, within six months of the commencement of the Act or business whichever is earlier, register with the Board for the purpose of the tax.

Furthermore, he submitted that the sanctions/remedies provided under section 8(2) and section 32 of the VAT Act are the only legal sanctions and/or remedies open to the Appellant where there is an allegation that any person has omitted to register with the Board for VAT (tax) after the period stipulated by the law or after a protracted period of time. In the absence of that, there is no other legal sanction or remedy provided for it under any Law. Section 8(2) provides for a penalty of ₦10,000 for the first month that failure occurs and ₦5000 for each subsequent month that failure continues. Section 32 also provides a penalty of ₦5000 fine for failure to register and if after one month, the person fails to do so, the business premises shall be sealed.

The Respondent further submitted that the best, of judgment (BOJ) assessment of ₦2,685,500 (Two Million, Six Hundred and Eighty Thousand, Five Hundred Naira) raised against the Respondent is not in the line with and did not follow the due processes of the Law.

It was further posited by the Respondent that although he had been trading since 2005, he did not register with the FIRS for VAT let alone render returns or pay taxes for a period stretching from 2005 - 2010.

The Respondent further contended that although he was in business between 2005 - 2009, it was not under the name Capital Supermarket and was therefore not liable to tax in that name. He maintained that the letters/notices alleged to have been served on him by the Appellant were not served on him nor delivered to him. The Respondent stated that it was after he was served with the originating processes in 2012, that he approached the FIRS office at Umuahia with the documents and informed them that he commenced business in 2010 and not as alleged in the said originating processes. The Respondent further stated that at the behest of the Umuahia office of the FIRS, he registered for VAT in 2012, and he



paid retrospectively his tax from 2011 at the prompting of the Umuahia Office of FIRS. The Respondent conversed that since then, he had continued to pay his tax as assessed by the said Umuahia Office of the FIRS.

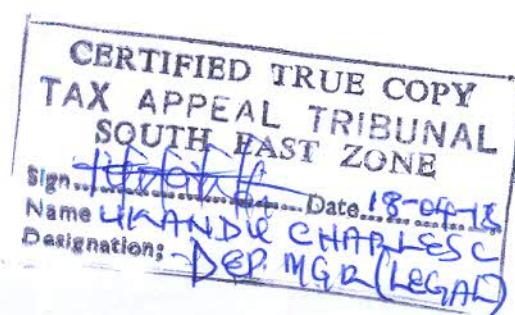
The Respondent further argued that all correspondence was addressed to the Managing Director, Capital Supermarket, and that Capital Supermarket was not an Incorporated Company at that time. In other words, it was not a company known to the Companies and Allied Matters Act and that he Obed Anupuechi, the proprietor of the Capital Supermarket was not a managing director and could not in law, be legally addressed as such on any process.

It was the Respondent's further contention that none of notices or letters were addressed to any known, ascertainable or definite address, haven been addressed to Uwalaka Street Umuahia. In addition, he pointed out that the extract of the alleged NIPOST's speed post service by which the Appellant's letters were served, was addressed to Uwalaka Street, Umuahia.

Issue for Determination:

After a careful consideration of all the evidence and submission by counsel on both sides, the Tribunal has distilled three issues for determination. The issues for determination are as follow:

1. Whether the Respondent is a "taxable person" under the Value Added Tax (VAT) Act.
2. Whether the Respondent is liable to pay Two Million, Six Hundred And Eighty-Five Thousand, Five Hundred Naira (N2, 685,500.00) as assessed value added tax (VAT) based on the best of judgement assessment used by the appellant.
3. Whether an unregistered person is liable to pay VAT.



Issue 1:

Whether the Respondent is a “taxable person” under the Value Added Tax (VAT) Act.

The obligation of payment of tax is mandatory on both individual person and registered bodies.

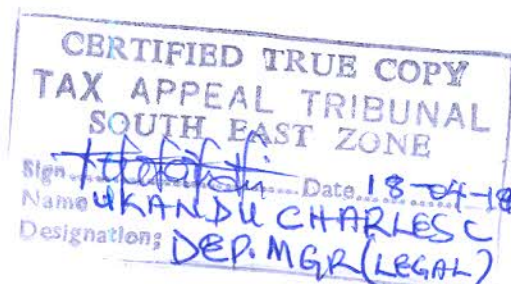
The above stems from the provision of Section 46 of Value Added Tax Act, the provision is very instructive in defining who a taxable person is. It provides thus:

a taxable person includes an individual or body of individuals, family, corporations sole, trustee or executor or person who carries out in a place an economic activity, a person exploiting tangible or intangible property for the purpose of obtaining income therefrom by way of trade or business or person or agency of Government acting in that capacity”

Taking into account the forgoing provision of the Act, it can be discerned with all clarity that a taxable person is both an individual and a corporate body.

It is wise to conclude based on the forgoing that the Respondent either as Mr. Obed. Anupuechi or as Capital Supermarket is a taxable person going by the wordings of the Act. The Respondent's obligation to charge VAT on goods sold or for services rendered and the remittance of same to the Appellant either as an individual person or as a registered body (Capital supermarket) is active at all material times he is carrying on business as contemplated in the Act.

It is this Tribunal's opinion that registration under the Value Added Tax Act does not preclude payment of tax. In any case, if an individual is subject to payment of tax, there is no reason why the Respondent should not pay tax even if it is not a registered body. The fact that the Act provides penalties in both section 8(2) and S. 32 VAT Act is indicative of the fact that the Act does not treat with levity the issue of lack of registration. The Act did not state that a person who fails to register should not pay tax. Issue 1 is therefore answered in the affirmative.



Issue 2:

Whether the respondent is liable to pay Two Million, Six Hundred And Eighty-Five Thousand, Five Hundred Naira (N2, 685,500.00) as assessed tax (VAT) based on the best of judgement assessment used by the appellant.

Where it is discovered that a taxable person is not rendering returns as required by the law, the appellant is empowered by the Act to make necessary assessment based the best of its judgement assessment.

It is settled that the Respondent is a taxable person within the provisions of the Act. Where he is not rendering returns, best of judgement assessment can be employed to asses his tax liabilities. Section 18 of the VAT Act provides as follows:

where a 'taxable person' fails to render returns or renders an incomplete or inaccurate returns, the board shall assess, to the best of its judgement, the amount of tax due on the taxable goods and services purchased or supplied by the taxable person

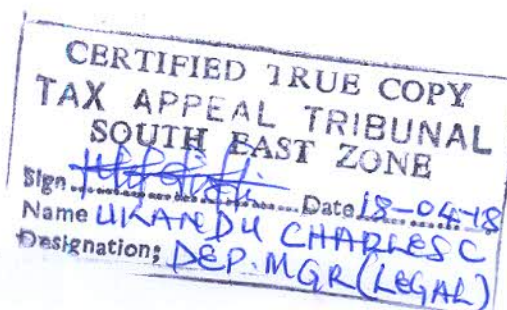
It can be discerned from the above that the Respondent being a taxable person did not file returns as stipulated by the law, and in so doing, the Appellant can assess him for tax irrespective of S. 8(1) and 32 VAT based on best of judgement assessment. The liability so assessed stands at a sum of Two Million, Six Hundred And Eighty-Five Thousand, Five Hundred Naira (N2, 685,500.00).

The Tribunal finds the Respondent liable to pay the said sum having admitted that he actually carried on business within the said period but failed to file returns or pay taxes.

Issue 3:

Whether an unregistered person is liable to pay VAT.

Since the Respondent is dealing in vatable goods, by implication, he was liable to pay VAT for the period from 2005 - 2010. Therefore, he is a taxable person. The collection of VAT is attached to the goods and service involved and not whether the collector is a registered or unregistered VAT collector.



That is why Section 46 of the Value Added Tax Act provides thus:

a taxable person includes an individual or body of individuals, family, corporations sole, trustee or executor or person who carries out in a place an economic activity, a person exploiting tangible or intangible property for the purpose of obtaining income therefrom by way of trade or business or person or agency of Government acting in that capacity"

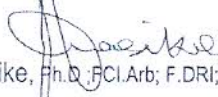
In view of the forgoing, the Respondent is liable to pay VAT and this Tribunal so hold.

The Tribunal therefore Orders as follows:

1. That the Respondent is a taxable person within the meaning of the Value Added Tax Act and as such is liable to pay tax.
2. That the Respondent in failing to file returns or register for VAT made himself susceptible to the Appellant's best of judgment assessment and orders the Respondent to comply with the payment as assessed by the Appellant.
3. That the Respondent shall pay to the Appellant with immediate effect, the sum of **Two Million, Six Hundred And Eighty-Five Thousand, Five Hundred Naira (N2, 685,500.00)**
4. That in failure to register between 2005 and 2010 the Respondent was also liable to pay N10,000 for the first and N5000 for each of the subsequent years bringing the total to Thirty-Five Thousand Naira only.
5. That the total amount shall be paid with immediate effect.

Parties are entitled to appeal against this judgment.

Signed



Prof. C.J. Amasike, Ph.D; FCI.Arb; F.DRI; M.ADRg

Chairman

Tax Appeal Tribunal,

South East Zone

