

IN THE TAX APPEAL TRIBUNAL

SOUTH-EAST ZONE

HOLDER AT ENUGU

10 FEB 2014

APPEAL NO. TAT/SEZ/016/12

BETWEEN:

FEDERAL INLAND REVENUE SERVICE.....APPELLANT

AND

TRACAS NIGERIA LIMITED.....RESPONDENT

BEFORE THEIR LORDSHIPS

CHAIRMAN: Prof. C. J. Amasike

Commissioners: Ignatius Chibututu, Esq.

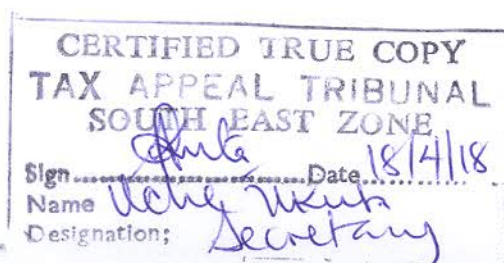
Dr. (Mrs) Josephine A.A Agbonika

Prof. Eddy Omolehinwa

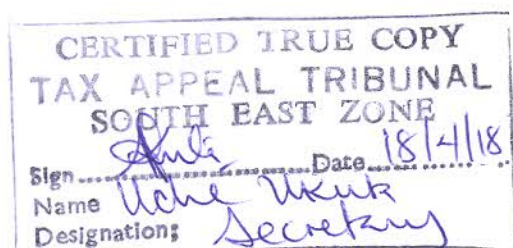
Chief Ngozi I. Amaliri Esq.

JUDGMENT

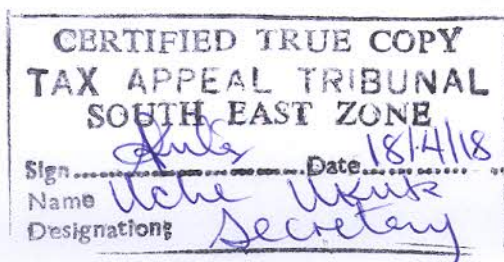
The Appellant is a statutory body established under the Federal Inland Revenue Service Act, 2007 and is vested with the power to administer and manage all the tax laws in Nigeria. It is empowered by the Tax Laws to do such things as may be necessary and expedient for the proper assessment and collection of the Value Added Tax of 5% and account for the entire amount so collected to the Federal Government of Nigeria. The Appellant is further entitled to raise Best Of Judgment [BOJ] Assessment on the Respondent where the Respondent fails or neglects or refuses to register for and pay the taxes accruable as and when due.



The Respondent is a company registered under the companies the Companies and Allied Matters Act with its office at No. 41/42 km 80, Enugu Onitsha Expressway, Awka, Anambra State. At all times material, the Respondent carried on business as a company registered under the Companies and Allied Matters Act by virtue of which it is liable to register and pay for Companies Income Tax and Value Added Tax on all VAT-able goods and services. Upon the company's refusal, neglect or failure to pay up its tax liability irrespective of efforts by the Appellant to get it to comply with the tax laws, the Appellant invoked its power under the tax laws, particularly Section 41[2] of the Companies Income Tax and Section 8[1] of Value Added Tax [As amended] to raise a Best Of Judgment Assessment as well as invoke penalties and interests to arrive at the total liability to **Seven Million, Six Hundred and Eighty-One Thousand , One Hundred and Eight Naira, Eighty-Six Kobo [N7,681,108,86.00]**. This was communicated to the Respondent vide a letter dated 09/05/2011, and a reminder dated 11/06/2012 and no response or objection emanated from the Respondent whatsoever save for its letter dated 23/03/2009 wherein it sought to deviate from a previously agreed mode for the payment of its established liabilities. The Appellant further stated that, since there was no objection from the Respondent for a period one year, on the Best Of Judgment Assessment used to arrive at the outstanding liabilities amounting to **Seven Million, Six Hundred and Eighty-One Thousand, One Hundred and Eight Naira, Eighty-Six Kobo [N7,681,108,86.00]**, the said amount had crystallized as a debt due to the Federal Republic of Nigeria for the period of 2005 to 2009. The Appellant gave Notice to the Respondent to produce the original copies of the letters dated 09/05/2011 and 11/06/2012 at the hearing of this suit.



- iv. The Respondent is a company registered under the companies and allied matters Act with its registered office at 82, Zik Avenue, Amawbia, Enugu State.
- v. At all times material the Respondent had carried on the business of distribution of alcoholic and non-alcoholic beverages, and has a duty to pay Value Added Tax.
- vi. By virtue of the nature of its business, the Respondent is a VAT collector liable to register for VAT and to render to the Appellant true and accurate monthly returns of all VAT-able goods and services supplied by it particularly for the period of 2007 to 2011 in accordance with the provision of the Act.
- vii. Routine VAT check at the office of the Respondent reveals that the liability for the said period stand at **Four Million, Seven Hundred and Twelve Thousand, Three Hundred and Thirty-Seven Naira and Ninety-Four Kobo (N4,712,337.94) only.**
- viii. Assessment notices were raised and served on the Respondent showing the said liability.
- ix. Despite several letters written and visits to the Respondent in an effort to get the Respondent to remit and render its tax returns, the Respondent failed, refused and neglected to remit and render its monthly returns of VAT-able services to the Applicant as required by the Act for the said period.
- x. The Applicant wrote letters dated 12 March, 2012 and 18th July, 2012 to the Respondent and informed the Respondent of the consequences of its failure, refusal or neglect to remit and render its monthly returns to the Applicant as required by Law.
- xi. Notice was given to the Respondent to provide the original copies of the letters referred to at the hearing of this suit.



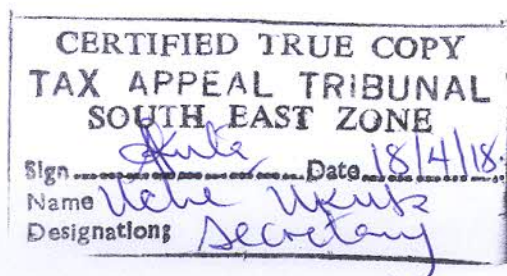
As a result of the above claims, the Appellant sought the following reliefs from the Tribunal:

An Order of the Tribunal compelling the Respondent to pay the Appellant:

- I. The sum of **Four Million, Seven Hundred and Twelve Thousand, Three Hundred and Thirty-Seven Naira and Ninety-Four Kobo only (N4, 712,337.94)** as tax due from Respondent to the Appellant for the period 2007 – 2011.
- II. Any other order(s) as the Tribunal may deem fit to make in the circumstances of the case.

When the Appeal was mentioned on 16th January, 2013, the Respondent was represented by its Auditor, Igboamalu Leo, who denied that they owed a liability of N4, 712,337.94 as VAT of 5%. He also claimed that they had made certain payments on behalf of Nigerian Breweries and needed to collect payment receipts from the Breweries to confirm this. The parties sought the permission of the Tribunal to settle out of court.

The matter was adjourned to 14th February, 2013 for report of Settlement. At the resumed hearing of the case, the Appellant's counsel informed the Tribunal that their office in Awka was in a reconciliation meeting with the Respondent whose liability had been reduced to N2, 232,471 from 4,712,337.94. The reason being that, the earlier computation was on their gross profit without bearing in mind the Respondent's input. That if this was considered, they were to pay 5% on the reduced amount rather than the gross amount and that that would have reduced their liability. On 7th November, 2013, the Appellant's counsel informed the Tribunal that the reconciled amount had further reduced to N1, 009,614.30 because



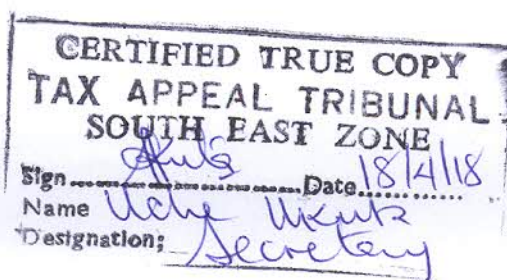
the Respondent had started liquidating the amount. He explained that at the last sitting, the Respondent had made a payment of N495,331 and further paid N427,027 between the last adjourned date and 7th November, 2013. That while the outstanding balance then was N2,232,472.00 instead of the original N4,712,337.94, those payments had reduced the balance to N1,736,641.00 and subsequently N1,009,614.30.

This prompted the Tribunal to invite the Desk officer that treated the reconciliation through a witness summon.

On 16th December, 2013, the summoned witness who gave her name as Ozor Dorris, stated in her evidence on oath that she was conversant with this matter, since she participated in the reconciliation exercise. The original figure of 4,712,337.94 was got from 5% of the Respondent's turnover. When the Respondent presented its purchase invoice, she saw that the input was also taxed and she had to remove the turnover from sale invoice, to enable her get the gross profit. In their calculation, they arrived at N2,232,472.00. The case was further adjourned because she did not have the relevant records to show the Tribunal.

On 10th February, 2014 she presented the financial statements for 2007 – 2011 financial years before and after reconciliation as well as the sales invoice submitted by the taxpayer. The witness explained the bundle of documents on 11th February, 2014, and was thereupon discharged.

After listening to the explanation of the Respondent's auditor Igboamalu Leo as well as evidence of the summoned witness, Ozor Dorris, the Tribunal is satisfied that the reduced figure of 2,232,472.00 was arrived at during a reconciliation exercise between the parties. That the Respondent had reduced that sum by its payment of N495,331 and a further sum of N427,027 out of the agreed balance of

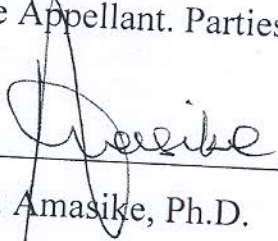


N2,232,472.00. That the current balance of One Million and Nine Thousand, Six Hundred and Fourteen Naira, Thirty Kobo [N1, 009, 614.30] is the Respondent's outstanding liability based of the reconciled figure. The said amount of One Million, Nine Thousand, Six Hundred and Fourteen Naira, Thirty Kobo [N1, 009, 614.30] haven been admitted by the Respondent need no further proof. See Owoo Vs Edet [2012] All FWLR [Pt. 642] 1791 at 1800, where the Court of Appeal held per Akeju JCA that:

...as admitted facts which require no further proof by the Respondent in line with Section 75 of the Evidence Act. It is settled that facts admitted do not require to be proved further...

Judgment is therefore entered for the Appellant. The said amount should be paid immediately by the Respondent to the Appellant. Parties are entitled to appeal.

Signed


Prof. C.J. Amasike, Ph.D.

Chairman

Tax Appeal Tribunal [S.E.Z]

