

IN TAX APPEAL TRIBUNAL
IN THE NORTH WEST ZONAL TRIBUNAL
HOLDEN AT KADUNA

HONORABLE MEMBERS:

BASHIR ABDULLAHI ALBASU con, fwc, psc, AIG (Rtd) - **CHAIRMAN**

EBERECHI ADELE, SAN, JP - **MEMBER 1**

JOSHUA MUKTA WAKLEK, mni - **MEMBER 2**

KHADEEJA S. HALILU (MRS) - **MEMBER 3**

DR. OLUMHENSE IMOISILI - **MEMBER 4**

FEDERAL INLAND REVENUE SERVICE v GASKIYA TEXTILES MILLS PLC
(TAT/NWZ/KD/07/10)

RULING ON 16TH DECEMBER, 2010

The matter was filed on the 8th of February, 2006 in the defunct VAT Tribunal and transferred to the Tax Appeal Tribunal in 2010.

Reliefs sought by the Appellant is the sum of N20,552,853.87 (twenty million, five hundred and fifty two thousand, eight hundred and fifty three naira eighty seven kobo only) being unremitted VAT for the period 1994 to 1999, January to December 2002 and March, 2003.

The Respondents' Counsel applied by virtue of Order 9 Rule 4 & 5 for an adjournment to enable him file a formal application to set aside the judgment delivered on 30th March, 2007 by the defunct VAT Tribunal. He argued that the judgment of the VAT Tribunal was a default judgment and that it was given despite his letter informing the VAT Tribunal that he had withdrawn from the matter, in view of the fact that the Respondent had wound up. Even though, there was no representation for the Respondent, the VAT Tribunal went ahead and delivered judgment in the absence of the respondent.

Appellant's Counsel objected to the application for adjournment on the grounds that the Rules provided for 14 (fourteen) days within which to apply to set aside a default judgment; and that in this case, the judgment was given about 3 years ago, and the Respondent did nothing. He also submitted that the Federal High Court, Kaduna Division had granted the appellant, leave to issue a writ of execution, since the 27th November, 2007. That equity aids the vigilant and not the indolent.

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Rank Assistant Secretary (Manager)
Signature

In reply, Respondent's Counsel submitted that the Rules provide for 14 days or such longer time as the Tribunal may allow, and that the Appellant Counsel ought to produce the writ of execution that was delivered by the Federal High Court, Kaduna Division.

The Tribunal has carefully listened to the arguments of both counsel, and we make the following ruling:

- i. The Tax Appeal Tribunal (procedure) Rules, 2010, Order 9 Rule 4 & 5, gives the parties 14 days or such longer period as the Tribunal may allow for good cause shown, to bring an application to set aside a default judgment. In this case, the judgment was given 3 years ago, and from the date of the judgment to date, the Respondent has not shown the Tribunal any reasonable effort made to get the judgment set aside. Even though, the VAT Tribunal has ceased to operate, the Respondent had the right to appeal to the Federal High Court to set aside the judgment. To re-hear the matter at this period is not a judicious use of our discretion.
- ii. This matter has since gone to the Federal High Court Kaduna Division, where the court granted the Appellant leave for execution of the judgment. To re-hear this case by this Tribunal will imply that the Tribunal is setting aside the leave granted by the Federal High Court which the Tribunal has no jurisdiction to do.
- iii. The application of the Respondent counsel is hereby refused and the case struck out.

BASHIR ABDULLAHI ALBASU
(CHAIRMAN)

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Regional Assistant Secretary (Manager)
Bashir Abdullahi