

**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 KADUNA TEXTILE LTD**  
**(TAT/NWZ/KD/04/10)**

**JUDGMENT ON 14<sup>TH</sup> JANUARY, 2013**

The matter was filed on the 6<sup>th</sup> of June, 2005 in defunct VAT Tribunal but transferred to Tax Appeal Tribunal in 2010.

Reliefs sought by the Appellant is the sum of N25,103,947.25 (twenty five million, one hundred and three thousand, nine hundred and forty seven naira twenty five kobo only) being unremitted VAT for the period January 1995 to June 2003.

The Appellant is a statutory body established under S.I (1) of the Federal Inland Revenue (Establishment) Act, 2007. It is vested with the power to administer and manage value Added Tax by virtue of the provision of S.7 (1) of value Added Tax Act cap VI Laws of the Federation of Nigeria 2004.

The Appellant is also empowered under S.7 (2) of the value Added Tax Act cap VI laws of Federation of Nigeria, 2004 to do such things as it may deem necessary and expedient for the assessment and collection of Value added Tax and shall account for the entire amount collected to the Federal Government of Nigeria.

Where a taxable person fails to render returns or renders incomplete or inaccurate returns, Federal Inland Revenue service is empowered by S.8 of the Value Added Tax Act to assess to the best of its judgment the amount of Tax due on the taxable goods and services purchased or supplied by the taxable person.

CERTIFIED TRUE COPY  
Certified by Hashim Abdullahi  
Rank Assistant Secretary (Manager)  
Sign: *[Signature]*

In a situation where a taxable person does not remit the tax within the specified time, S.19 of the said Act empowers the Federal Inland Revenue Service to impose a sum equal to 5% per annum (plus interest at commercial rate) to the amount of tax remittable and the provisions of the Act relating to collection and recovery of unmerited tax, penalty and interest shall apply.

The respondent is a textile manufacturing company duly registered under S.36 (6) of the Companies and Allied Matters Act; cap C20 Laws of the Federation of Nigeria 2004. The Respondent is also registered with the Federal Inland Revenue service Kaduna Value Added Tax office with registration number KUV040021323. The tax shall be charged on the supply of goods and services by the Respondent. The Respondent then has a duty to render Value Added Tax returns as and when due to the Federal Inland Revenue Service as provided by S. 15 (1) of the Value Added Tax Act. The Respondent has failed to file its monthly Value Added Tax returns to the appellant for the periods of January 1994 to 31<sup>st</sup> March, 1999 and October 2001 to March 2003 respectively.

The Appellant filed an appeal before the defunct Value added Tax tribunal on 23<sup>th</sup> September, 2005 and the appeal was part heard. With the advent of the Tax Appeal Tribunal, the appellant filed an appeal before this Tribunal on 11<sup>th</sup> February, 2011 and the appeal had to start de novo.

The Appellant's initial claims from the respondent are as follows:-

1. Additional VAT assessment covering January, 1994 to October, 1999 resulting from tax audit in the sum of N11, 819,235.00. (Eleven million, eight hundred and nineteen thousand, two hundred and thirty five naira only)
2. Best of Judgment assessment covering October 2001 to March 2003 including interest and penalties in the sum of N3,500,000 (Three million, five hundred thousand naira only)
3. Outstanding VAT liability in the sum of N8,038,030.30 (Eight million, thirty eight thousand, thirty naira, thirty kobo only).

The appellant prays the Tribunal to order the Respondent to pay total sum of N25,103,947.25 (Twenty five million, one hundred and three thousand, nine hundred and forty seven naira, twenty five kobo) being unremitted Value Added Tax including penalties and interests for the periods of January 1994 to 31<sup>st</sup> march 1999 and October 2001 to March 2003.

It should be noted that there is unaccounted excess claim of N1, 746,681.90 (One million, seven hundred and forty six thousand six hundred and eighty one naira, ninety kobo).

CERTIFIED TRUE COPY  
Certified by Hashim Abdullahi  
Rank Assistant Secretary (Manager)  
Sign *Hashim Abdullahi*



The Respondent filed a motion on notice praying for an order of this Honorable Tribunal to grant the Respondent extension of time to enter appearance out of time by filing the Respondent's reply. The motion was moved on 21<sup>st</sup> day of March 2012. The Respondent's application was granted.

The Appellant on the same date moved another motion on notice pursuant to Order XI Rule 1 of Tax Appeal Tribunal (Procedure) Rules 2010. The Appellant counsel's prayer is for an order of this Honorable Tribunal granting leave to the appellant to modify its witness's statement on oath by filing additional witness statement on oath therein attached as exhibit "A". Appellant prayer was granted and hearing commenced immediately.

At the hearing, the appellant tendered the following documents which were admitted in evidence and marked as exhibits accordingly:

1. Witness statement oath date 11<sup>th</sup> February, 2001 marked as Exhibit A1.
2. VAT Re- assessment notice (best of judgment) dated 4<sup>th</sup> July, 2011 covering 2001 – 2003 to the tune of N3,500,000.00 (Three million, five hundred thousand naira only) marked as Exhibit A2.
3. A letter to the Respondent dated 1<sup>st</sup> August, 2002 reference number KUV040021323 forwarding to the respondent VAT – Re- assessment notice no KUV/AA/029/2002 in the sum of N11,819,235.00 (Eleven million, eight hundred and nineteen thousand, two hundred and thirty five naira only) enclosing a copy of the VAT- Re- assessment Notice. This letter was also admitted in evidence and marked Exhibit "B".
4. A letter dated 17<sup>th</sup> April, 2001 with reference number KUV 040021323 explaining to the Respondent about its liability to pay the sum of N237,229.00 (Two hundred and thirty seven thousand, two hundred and twenty nine naira only) as penalty and interest for late rendition/ payment of July 2000 VAT enclosing a copy of VAT Re- assessment notice. The letter was also admitted in evidence and marked Exhibit "C".

It should be noted that the Respondent counsel failed to appear in subsequent sittings of this Honourable tribunal. The last time he appeared was on 21<sup>st</sup> May 2012 when he moved a motion for extension of time to enter appearance. This is a clear demonstration of lack of diligence to defend this appeal. The Tribunal can proceed whether the respondent appears or not. Order IX Rule 3 of the Rules of this Tribunal states and I quote:

*"If on the day of hearing or on any adjourned date, the appellant appears the tribunal may whether the respondent appears or not proceed to the hearing"*

CERTIFIED TRUE COPY  
Certified by Hashim Abdullahi  
Rank Assistant Secretary (Manager)  
Sign. *[Signature]*



*or further hearing and determination of the appeal and shall give its decision according to the merits of the appeal”.*

The Respondent filed another motion on notice dated 22<sup>nd</sup> April, 2012 pursuant to Order II Rule 1 and Order XII Rule 1 of Tax Appeal Tribunal Procedure Rule seeking to amend its notice of appeal and other accompanying processes. The motion was moved on 3<sup>rd</sup> September, 2012 and the Respondent's prayer was granted.

On 10<sup>th</sup> December 2012, the Appellant's witness adopted amended statement on oath dated 27<sup>th</sup> November, 2012. The Appellant's witness in paragraph 10 of his amended statement avers that the Appellant in a letter dated 21<sup>st</sup> November, 2002 explaining to the Respondent the additional liability of N8, 038,030.30 (Eight million, thirty eight thousand and thirty naira, thirty kobo) this letter was admitted in evidence and marked as Exhibit "D".


In the Amended Notice of Appeal the initial liability claimed as outstanding was amended to additional liability (see paragraph 11 of the amended notice of appeal).

The Respondent's claims in the Amended Notice of Appeal are as follows:-

1. Additional VAT liability based on tax audit covering January 1, 1994 to March 31, 1999 in the sum of N11,819,235.00 (Eleven million, eight hundred and nineteen thousand two hundred and thirty five naira only).
2. A Best of Judgment Assessment covering October, 2001 to March, 2003 in the sum of N3, 500,000.00 (Three million, five hundred thousand naira only).
3. Interest and penalties for late rendition in the sum of N237,229.00 (Two hundred and thirty seven thousand, two hundred and twenty nine naira only).
4. Additional VAT Liability based on Best Judgment (period not specified) N8,038,030.30 (Eight million, thirty eight thousand, thirty naira and thirty kobo)

Total reliefs sought by the Respondent are now N23, 594,494.00 (twenty three million, five hundred and ninety four thousand, four hundred and ninety four naira only).

The Respondent in reply did not contest the claim of N11, 819,235.00 (Eleven million, eight hundred and nineteen thousand, two hundred and thirty five naira only) as VAT liability from January, 1994 to March 1999. Respondent just claimed that it ceased its business operation from 16<sup>th</sup> December, 2002 a date different from the period covered by the claims of the Appellant. Respondent did not prove that it ceased to operate its business from the date claimed neither did it show that the Respondent was duly informed of its cessation of business. Amount claimed by the Appellant covered a period when the Respondent was still in business. The Respondent is still liable to pay this VAT liability.

CERTIFIED TRUE COPY  
Certified by Hashim Abdullahi  
Rank Assistant Secretary (Manager)  
Sign: 



The Best of Judgment Assessment of N3, 500,000.00 (three million, five hundred thousand naira only) which the Appellant claimed resulted from tax audit of the respondent was not contested by the respondent. Therefore the respondent is liable to remit the said sum to the Appellant.

Penalty and interest of N237, 229.00 (Two hundred and thirty seven thousand, two hundred and twenty nine naira only) which represents net amount after Respondent made some payment to the appellant was not contested. The Respondent is therefore liable to pay the said sum.

The fourth figure of N8, 038,030.30 (Eight million, thirty eight thousand, thirty naira thirty kobo) which is additional VAT liability should result from self- assessment by the Respondent or from tax audit by the Appellant. There is no evidence to show that any of the above was done S. 15(8) fifth schedule, Federal Inland Revenue Service (Establishment) Act 2007 empowers this Honorable Tribunal confirm, reduce, increase or annul an assessment. It states, and I quote:

*"The Tribunal may, after giving the parties an opportunity of being heard, confirm, reduce, increase or annul the assessment or make any such order as it deem fit"*

This Tribunal is reluctant to award this additional VAT liability in the absence of evidence of tax audit by the Appellant or self assessment by the Respondent. Accordingly, the additional VAT liability is annulled.

This Honorable Tribunal hereby confirms the following claims by the Appellant:

1. Additional VAT liability covering January 1994 to March 1999 in the sum of N11,819,235.00 ( Eleven million, eight hundred and nineteen thousand two hundred and thirty five naira only)
2. Best of Judgment Assessment covering October 2001 to March 2003 in the sum of N3, 500,000.00 (Three million, five hundred thousand naira only).
3. Balance of interest and penalties in the sum of N237, 229.00 (Two hundred and thirty seven thousand, two hundred and twenty nine naira only).

It is our decision that the total amount due to Appellant from the Respondent is N15, 556,464.00 (Fifteen million, five hundred and fifty six thousand, four hundred and sixty four naira only).

This Honorable Tribunals therefore orders the Respondent to pay the Appellant the total sum of N15,556,446.00 (Fifteen million, five hundred and fifty six thousand, four hundred

CERTIFIED TRUE COPY  
Certified by Hashim Abdullahi  
Rank Assistant Secretary (Manager)  
Signature: \_\_\_\_\_  
Page 27 of 42

and forty six naira only) being unremitted Value Added Tax for the period of January 1994 to June 2003 plus penalties and interest.

This is a unanimous/decision of the Tribunal.

**BASHIR ABDULLAHI ALBASU**  
**(CHAIRMAN)**

**CERTIFIED TRUE COPY**  
Certified by Hashim Abdullahi  
Rank Assistant Secretary (Manager)  
Sign: 