

IN THE TAX APPEAL TRIBUNAL

NORTH CENTRAL ZONE

SITTING AT JOS

ON WEDNESDAY 24<sup>th</sup> JUNE 2015

BEFORE THEIR HONOURS

**CERTIFY TRUE COPY**

Tax Appeal Tribunal  
North Central Zone

24 JUN 2015

KERSHA AERGA

HON. ABRAHAM N. YISA

HON. HASHIYA BEN UMAR (MRS)

HON. OLUSOLA IBIDAPO-OBE (MRS)

HON. JIBRIL NGATKYA USENI

HON. JOSEPH O. IHEKWEREME

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

APPEAL NO: TAT/NCZ/008/2014

BETWEEN

FEDERAL INLAND REVENUE

SERVICE.....APPELLANT

AND

PRINCE PALACE HOTEL.....RESPONDENT

JUDGEMENT

The Appellant in its amended Notice of Appeal dated the 18<sup>th</sup> day of September 2014 sought for the following reliefs from the Tribunal:-

***"3. RELIEFS SOUGHT FROM THE TRIBUNAL***

*WHEREOF the Appellant Claims against the Respondent as (sic) follows:-*

- (a) *The sum of = N=1,007,116.36 (One Million Seven Thousand One Hundred and Sixteen Naira Thirty Six Kobo) as the sum of Value*

*Added Tax for the period of January-December 2008 to January-June 2013 years of Assessment.*

- (b) *Penalty on the unremitted Value Added Tax in the sum of N100,711.63 (One Hundred Thousand Seven Hundred and Eleven Naira Sixty Three Kobo) for the periods January-December 2008, January-June 2013 years of Assessments.*
- (c) *Interest on the unremitted Value Added Tax N556, 410.21 (Five Hundred and Fifty-Six Thousand Four Hundred and Ten Naira Twenty One Kobo Only) at the rate of 21% per annum from January-December 2008 to January-June 2013 till the total debt is completely liquidated."*

When the matter came up before the Tribunal on the 21<sup>st</sup> of May 2015 the Respondent was neither in Court nor were they represented. There was proof that the Respondent was served with a Hearing Notice as to the Hearing since the 12<sup>th</sup> of May 2015 intimating them of the Hearing date. That being the situation Counsel to the Appellant had a witness in Court and was ready to proceed.

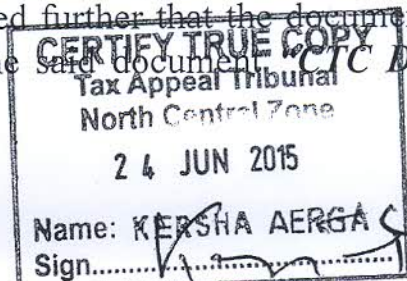
The Appellant called Mr. Odu Alechenu Agadah who testified as Appellant witness No 1. He affirmed to speak the truth. The witness testified that he is a Civil Servant who works for the Appellant (FIRS) with the Return and Payment Process Unit (RPP) as an Assistant Manager, Tax. He testified that he had worked for the Appellant for 15 years and knows the Respondent as a Taxpayer for 10 years.

He testified that he had made a witness statement on Oath which he identified by his name and signature and urged the Tribunal to take the Statement as his evidence-in-chief in this Appeal.

The witness identified a document referred to in paragraph 8 of the said statement. He said the document is an audit exercise report in respect of the Respondent. He testified that even though he did not make the document, his Tax Controller who was currently in Abuja made the document, but he keeps custody as the officer in charge.

Upon application by Counsel to the Appellant; *"Document titled Tax Audit Exercise (2008-June 2013 Records dated 11<sup>th</sup> November 2013"* was admitted in evidence & marked **Exhibit 1**.

The witness testified further on paragraph 9 of his witness statement on oath; he referred to a document titled VAT Re-assessment Notice, which he said he could identify. He identified the same as having been made by his Tax Controller Mr. Abari Mohammed who was in Abuja. He testified further that the document was in his custody as the current officer in charge. The said document *"CTC Document*





*Titled VAT Re-assessment Notice dated January 27<sup>th</sup> 2014*” was admitted in evidence and marked **Exhibit 2**.

The witness testified further with reference to Paragraph 10 of his statement on oath. He identified Certified True Copy of a delivery receipt which was signed by his Tax Controller and which he keeps custody of.

Upon application by Counsel documents titled *“Demand Notice Year of Assessment 2014 dated 27/1/2014 and Delivery Receipt of Peace Express Services Limited No 127536 dated 6/02/2014”* were admitted in evidence and marked Exhibits **“3”** and **“3 a”** respectively.

The witness testified further as to the certified true copy of a reminder addressed to the Respondent. The witness identified the document, which he testified was in his custody as the officer in-charge. Upon application by Counsel *“FIRS document dated 6<sup>th</sup> July, 2014 titled 2<sup>nd</sup> Reminder Addressed to Prince Palace Hotel”* was admitted in evidence and marked **Exhibit 4**.

The witness finally urged the Tribunal to enter Judgment in favour of the Appellant in recovery of the VAT, including the penalty and interest.

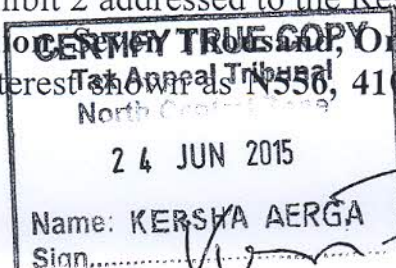
The Counsel to the Appellant urged the Tribunal to enter judgement in favour of the Appellants having by their only witness supplied un-contradicted testimony and tendered exhibits to support their claims.

As stated earlier in this judgement the Tribunal is satisfied that the Respondent is aware that the matter was listed for hearing on the 21<sup>st</sup> day of May 2015 having been served with a Hearing Notice on the 12<sup>th</sup> day of May 2015.

This being the case and having reviewed the evidence of Appellant’s witness No 1, the Tribunal would formulate one issue for determination in this Appeal. The issue formulated is *“Whether the Respondent is liable to pay Value Added Tax for the period of January-December 2008 to January-June 2013 years of assessment and if same is liable to penalty and interest?”*

From the evidence adduced before the Tribunal as supplied by the Appellant witness No. 1, the Respondent was served with Exhibit 1 which states the VAT liability of the Respondent which was put at **N1, 007,116.36 (One Million, Seven Thousand, One Hundred and Sixteen Naira, Thirty Six Kobo)**.

The said Exhibit was received on the 13<sup>th</sup> day of November 2013 as marked on the face of the Exhibit. There is also in evidence before the Tribunal the VAT Re-Assessment Notice i.e. Exhibit 2 addressed to the Respondent which shows that VAT of **1,007,116.36 (One Million, Seven Thousand, One Hundred and Sixteen Naira, Thirty Six Kobo)** plus interest shown as **N556, 410.21 (Five Hundred and Fifty-**





**Six Thousand, Four Hundred and Ten Naira, Twenty One Kobo Only)** and penalty of **N100,711.63 (One Hundred Thousand, Seven Hundred and Eleven Naira, Sixty Three Kobo)** making a total of **N1,664,238.20 (One Million Six Hundred and Sixty Four Thousand Two Hundred and Thirty Eight Naira Twenty Kobo)** is due from the Respondent.

There is also evidence before us as shown on Exhibit 3a - Demand Notice, Year of Assessment 2014 that the VAT of N1,007,116.36 (One Million, Seven Thousand, One Hundred and Sixteen Naira, Thirty Six Kobo) was still outstanding.

The said Exhibit 3, which is addressed to the Respondent, quotes the Respondent's Tax Identification Number (TIN) as 01011961-0001. Exhibit 3a, which is the Receipt of Peace Express Services Limited, shows that Exhibit 3 was received/delivered.

There is also evidence before the Tribunal that a second reminder was sent to the Respondent vide Exhibit 4. The said Exhibit 4 dated 6<sup>th</sup> June, 2014 states the sum of **N1, 664,238.20** as the total amount due.

We believe that the evidence of the Appellant witness No. 1 which is un-contradicted is the true position in this matter.

We believe that VAT in the sum of **N1, 007,116.36 (One Million, Seven Thousand, One Hundred and Sixteen Naira, Thirty Six Kobo)** is due from the Respondent to the Appellant for the period of assessment i.e. January-December 2008 to January-June 2013.

By the provisions of S. 8 of the VAT Act 1993 a person becomes taxable upon registering himself with the Federal Inland Revenue Service.

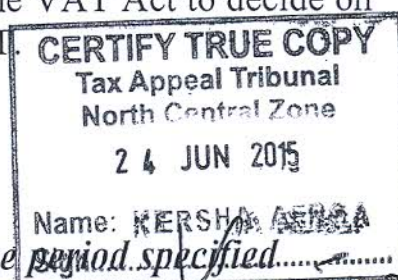
The fact that the Respondent has a TIN No with the Appellant shows it is registered with the Respondent and therefore liable to pay VAT.

Having decided that upon registration with TIN No 01011961-0001, the Respondent was liable to pay Tax, it follows that the Taxes claimed by the Appellant having been incurred from January-December 2008 to January-June 2013 as testified to by the Appellant witness No 1; the amount outstanding is still due and owed.

This being the situation the Tribunal will have to look into the VAT Act to decide on the effect of non-remittance of deducted tax, in this case VAT.

S. 19 (1) of the Value Added Tax Act provides:-

- (1) *"If a taxable person does not remit the tax within the period specified..... in section 15 of this Act, a sum equal to five percent per annum plus*



- (1) *"If a taxable person does not remit the tax within the period specified in section 15 of this Act, a sum equal to five percent per annum (plus interest at the Commercial rate) of the amount of tax remittable shall be added to the tax and the provisions of this Act relating to collection and recovery of unremitted tax penalty and interest shall apply".*

We believe the evidence of the Appellant witness in this Appeal; that Value Added Tax is due from the Respondent to the Appellant; having registered with the Appellant as a Tax Payer. The evidence supplied by the Appellant is uncontradicted, unimpeached and uncontroverted. The Respondent has not supplied any evidence to counter or impeach this evidence.

We shall answer the lone issue formulated in the affirmative i.e. in favour of the Appellant.

We enter Judgment for the Appellant in the sum of **N1,007,116.36 (One Million Seven Thousand One Hundred and Sixteen Naira Thirty Six Kobo)**; being value Added Tax for January-December 2008 and January-June 2013 years of assessment.

We also enter Judgement for the Appellant in the sum of **N50,355.82 (Fifty Thousand Three Hundred and Fifty Five Naira Eighty Two Kobo)** being 5% of the VAT due as provided under Section 19 (1) of the VAT Act which we reproduced above as penalty on the sums due.

The Respondent shall also pay interest of 21% of the unremitted sum to the Appellant i.e. the sum of **N556, 410.21** due on the unremitted VAT from January-December 2008 to January-June 2013 till the total debt is completely liquidated.

We shall make no Order as to cost.

Representation

- S.E Audu (Miss) for the Appellant.
- Respondent not represented.

**DATED AT JOS, THIS 24<sup>th</sup> DAY OF JUNE 2015**



**HON. ABRAHAM N. YISA**  
Chairman

