

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

SUIT NO: TAT/ NWZ/ KD/ 02/ 10

BETWEEN:

FEDERAL INLAND REVENUE SERVICE ----- APPELLANT

AND

FINETEX NIG. LTD & ANOR ----- RESPONDENTS

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 IMOISLI MEMBER 4

3RD JUNE, 2016

PARTIES: Absent

APPEARANCES:

APPELLANT: Represented by S. E. Audu (Miss).

1st RESPONDENT: Represented by E. O. Isiramen

2nd RESPONDENT: Represented by G.O Akpowa

TRIBUNAL JUDGMENT

By the Notice of Appeal filed on the 11th February, 2011, the Appellant is claiming the following reliefs:

1. The Appellant prays the Tribunal to order that the Assessment and reassessment Notices issued with respect to the Value Added Tax liability of the 1st Respondent be deemed valid.
2. The Appellant also prays that the Tribunal orders the Respondent to pay sum of N31,066,170.32 (Thirty one million, sixty six thousand, one hundred and seventy naira

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Sign: Hashim Abdullahi

thirty kobo only) being unremitted Value Added Tax for the period of January 1999 to June, 2003, including penalties and interest plus the cost of prosecuting this suit.

Before proceeding to trial, the parties filed all relevant processes including their replies (in the case of the 1st and 2nd Respondents), witness depositions and relevant documents to be relied upon.

It must be stressed that this Appeal has been most keenly contested and in attempt to maintain and sustain their divergent positions the parties have pleaded and given evidence of copious facts some of which are not relevant to a just determination of this Appeal. This judgment will therefore focus on the central issue arising from the claims of the Appellant, and this is the issue whether the assessment and reassessment Notices issued to the 1st Respondent in respect of the VAT liability of the 1st Respondent are valid and the legal consequences thereof.

During the trial, the Appellant's witness PW1 gave evidence, supported with documentary evidence showing that the 1st Respondent was duly served with the relevant assessment and demand notices for the period claimed in this case. The 1st Respondent, through its Counsel, did not object to the admissibility of those documents but rather requested to sight the originals and this was duly produced by the same witness.

However, in their written address, the 1st Respondent has strenuously resisted the claim that they were properly served the said notices.

We have carefully examined the exhibits showing that the 1st Respondent was properly served the required notices and we have found no reason to doubt them. We therefore hold that the assessment and reassessment notices issued by the Appellant with respect to the Value Added Tax liability of the 1st Respondent are valid. We reject the defence of the 1st Respondent that they were not duly served. That defence appears to be a convenient excuse.

The other crucial issue to determine is whether the Respondents are liable to pay to the Appellant the claimed sum of N31,066,170.32 (Thirty one million, sixty six thousand, one hundred and seventy naira thirty two kobo only) being unremitted Value Added Tax for the period of February 1999 to June 2003, including penalties and interest.

We must observe that though this issue is simple and straight forward to resolve, the parties have ranged against each other an unnecessarily long battle to fight it out, perhaps deliberately. The result of that unhealthy battle has been the undue delay which has bedeviled this case since the year 2011. The battle was even a carryover from the previous Tribunal that adjudicated VAT matters.

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The solution to this issue can be found in the clear and unambiguous provisions of the Value Added Tax Act of 1993 (which covered the period claimed in this Appeal) and the Value Added Tax Act of 2007 which is in pari materia with the 1993 Act as it relates to the relevant sections 15 and 18.

The bone of contention is the assessment made by the Appellant which they based on the Best of Judgment Assessment procedure. The question to answer is this - "Was the Appellant right in executing the Best of Judgment Assessment on the 1st Respondent?"

A good starting point is Section 15(1) of the Value Added Tax Act which in effect provides that a Taxable person SHALL render returns to the Board on terms stipulated therein. The language of Section 15(1) is mandatory and any taxable person who ignores this mandatory provision is practically digging its own grave. The whole problem of this case is therefore the wilful or inadvertent neglect or failure of the 1st Respondent to comply with Section 15(1) by rendering the appropriate returns. It is that failure to render the requisite returns that opened the door for the Appellant to execute the Best of Judgment Assessment against the 1st Respondent under Section 18 of the VAT Act. The action of the Appellant is therefore supported by the law. Furthermore, there is no evidence before us that the Appellant was vindictive or arbitrary in the conduct of the Best of Judgment Assessment.

It must be understood that even after the assessment was raised by the Appellant, all hope was not lost for the 1st Respondent. The law gave them the unfettered opportunity to object and or appeal against the assessment within 30 days of the assessment but the 1st Respondent did nothing. Under our laws, the assessment itself is not final and conclusive. It is the failure to object within the prescribed period that renders the assessment final and conclusive. This is the unfortunate situation confronting the 1st Respondent in this case.

There is totally no iota of evidence of any objection by the 1st Respondent in this matter and by not objecting, the assessment by the Appellant became final and conclusive in the eyes of the law.

It was only in this tribunal that the 1st Respondent has made heavy weather of the fact that it was not engaged in any taxable business during the relevant period. That may well be so but as far as the law is concerned, that fact is totally irrelevant to this case. It is too late in the day to raise that defence. They should have manifested that defence by way of rendering the appropriate returns even before the assessment was carried out or by objection of appeal within the prescribed period. It can therefore be seen that the hands of this Tribunal are tied by the law.

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Rank: Assistant Secretary (Manager)


Sign: Heshim Abdullahi 09/05/17.

We therefore have no difficulty in holding that the 1st Respondent is liable to liquidate the Tax claimed in this case.

There now remains the issue of the possible liability of the 2nd Respondent jointly with the 1st Respondent. The 2nd Respondent was appointed as a Receiver over the affairs of the 1st Respondent in the year 2002. He was appointed by a bank to which the 1st Respondent was indebted. His Receivership was between 2002 and 2005. He was discharged in 2005 by the bank that appointed him. The evidence before this Tribunal is that the 1st Respondent orchestrated the payment of their debt to the bank without reference to the 2nd Respondent as Receiver. Indeed, the evidence is that the 2nd Respondent was not in a position to carry out his duties as a Receiver as the 1st Respondent was more interested in paying off its debt to the bank without giving thought to the Receiver or even the need to pay its tax obligations. Besides, the 2nd Respondent's appointment in 2002 was long after the issues in this case had enured. It will therefore be against the interests of justice to make him liable in this matter. There is simply no evidence to do so. The case against the 2nd Respondent is hereby dismissed.

Judgment is hereby entered against the 1st Respondent as follows:

1. The assessment and demand notices issued against the 1st Respondent by the Appellant are valid.
2. The 1st Respondent is hereby ordered to pay to the Appellant the claimed sum of N31,066,170.32 (Thirty one million, sixty six thousand, one hundred and seventy naira thirty two kobo only) being unremitted Value Added Tax for the period of January, 1999 to June 2003, including penalties and interest.
3. There shall be no order as to costs.


BASHIR ABDULLAHI ALABASU

(CHAIRMAN)

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Rank, Assistant Secretary (Manager)
Sign. Hashim 09/05/14