

IN THE TAX APPEAL TRIBUNAL  
HOLDEN AT LAGOS

APPEAL NO: TAT/LZ/019/2015

BETWEEN

FEDERAL INLAND REVENUE SERVICE.....APPELLANT

AND

ENCORE HOTEL & SUITES LIMITED.....RESPONDENT

JUDGMENT

INTRODUCTION

The Appellant filed this Notice of Appeal on 8th May 2015 to challenge the Respondent's non-compliance to the demand notice of Value Added Tax (VAT) re-computation dated 11th December 2013 in respect of 2012 and 2013 Years of Assessment (YOAs).

ISSUE FOR DETERMINATION

The sole issue arising for determination is:

Whether the Respondent is liable to pay the outstanding VAT liabilities with accruing interest and penalty as claimed by the Appellant?

FACTS AND PROCEEDINGS

The Appellant is a statutory body established under the Federal Inland Revenue Service (Establishment) Act No. 13, 2007 and is vested with the power to administer, collect, regulate and to account for all taxes (including value added tax) collected to the Federal Government of Nigeria. In line with its statutory powers, the Appellant conducts routine Value Added Tax Monitoring/Compliance Exercise and audit on all companies that deal in VATable goods and services, ensuring also that such companies render monthly VAT returns to the Appellant as required by law.

The Respondent is a company registered in Nigeria under the Companies and Allied Matters Act with its office at No. 1, Ahanor Drive, Ajao Estate, Lagos, carrying on the business of hotel and lodging, and thereby liable to file monthly returns and remit VAT to the FIRS.

The Appellant filed a Written Statement on Oath dated 9th September 2015 by Emilia Egwu and documentary exhibits.

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The Respondent filed its Reply dated 30th September 2015 and Witness Statement dated 30th September 2015 by Dele Oduwale with attached documents. The Respondent made some appearance, but did not show up for hearing.

The matter proceeded to trial, pursuant to Order IX Rule 3 of the Tax Appeal Tribunal (Procedure) Rules 2010.

During trial, the Appellant tendered 7 Exhibits through its witness – Emilia Egwu – and were marked as Exhibits EE, and EE1-6.

### PARTIES' POSITION

The Appellant submits that the Respondent was a going concern and a registered VAT collector during the period 2012 to 2013, but that it had failed, neglected and/or refused to file its VAT Returns and remit VAT to the Appellant for 2012 and 2013 YOAs as provided for in sections 12, 18 and 19 of the Value Added Tax Act of 1993, Cap VI Laws of the Federation 2004.

The Appellant further submits that consequent upon such default by the Respondent, it conducted a VAT monitoring exercise in 2003 and established a VAT Re-computation amounting to the sum of ₦1,403,780.44 (One Million, Four Hundred and Three Thousand, Seven Hundred and Eighty Naira, Forty Four Kobo only), being the unremitted VAT for 2012 and 2013 YOAs and penalty and interest thereon. This VAT Re-computation was communicated to the Respondent by its letter dated 11th December 2013 (Exhibit EE2), which reflects as follows:

Details	2012	2013	TOTAL
	₦	₦	₦
Turnover as per document	8,404,848.80	9,627,840.00	18,032,688.00
VAT @ 5%	420,242.40	481,392.00	901,634.40
Less: VAT already paid	74,471.00	44,444.03	129,915.03
<b>VAT Payable</b>	<b>345,771.40</b>	<b>425,947.97</b>	<b>771,719.37</b>
Interest @ 21%	72,611.99	89,449.07	162,061.07
Penalty	195,000.00	275,000.00	470,000.00
<b>VAT Due</b>	<b>613,383.39</b>	<b>790,397.04</b>	<b>1,403,780.44</b>

The Appellant in Exhibit EE states that the Respondent did not object to the Assessment Notice and urges the Tribunal to order the payment of the outstanding tax with interest, penalty and cost of prosecuting this case.

The Respondent counters that it prepared monthly returns and remitted VAT to the Appellant as at when due, but that records of these returns and remittances were available at its end until there was an fire outbreak at their business premises that burnt up valuable documents including records relating to VAT returns and remittances. The Respondent states that it approached the Appellant to obtain copies of VAT related documents for the relevant period and all his efforts resulted in getting

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only information relating to four payments made on 25th May 2012 (for January to April 2012), one payment made on and 22nd June 2012 (for May 2012), and another payment made on 11th October 2013.

The Respondent submits further that the Appellant cannot substantiate in specific terms how and what method was adopted to arrive at the VAT liability of ₦1,403,780.44 and that it is on the basis of their objection to this tax liability that a letter dated 8th April 2015 was written to them by the Appellant. The Respondent argues that while this letter informed the Respondent of a Tax Audit Exercise scheduled for 26th May 2015, instead of the tax audit exercise it was the Appellant's Notice of Appeal that it received on 12th May 2015.

### ANALYSIS AND DECISION

The Appellant has argued that the Respondent is in default, having failed, as a VAT collector to render returns, thus the Appellant exercises her power to recover same pursuant to Sections 12, 18 and 19 of VAT Act which sections are cited below:

#### Section 12 VAT Act:

*"(1) A taxable person shall pay to the supplier the tax on taxable goods and services purchased by or supplied to the person.*

*(2) The tax paid by a taxable person under subsection (1) of this section shall be known as input tax".*

#### Section 18 VAT Act:

*"Where a taxable person fails to render returns or renders an incomplete or inaccurate return, the Board shall assess, to the best of its judgment, the amount of tax due on the taxable goods and services purchased or supplied by the taxable persons".*

#### Section 19:

*"(1) If a taxable person does not remit the tax within the time 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.*

*(2) The Board should notify the taxable person or his agent of the tax due together with the penalty and interest and if payment is not made within thirty days of such notification, the Board may proceed to enforce payment as provided in section 15 of this Act"*

In order to resolve whether the Respondent has defaulted in remitting VAT as required by the law and whether the Appellant has made a case to justify this Tribunal finding in its favour, it is necessary to use Sections 15 (1) & 18 of the Value Added Tax Act (as amended) as a guide. Section 15(1) is now reproduced as section 18 has been cited above.

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**Section 15:**

(1) "A taxable person shall render to the Board, on or before the 21<sup>st</sup> day of the month following that in which the purchase or supply was made, a return of all taxable goods and services purchased or supplied by him during the preceding month in such manner as the board may, from time to time, determine."

By the provisions of the law above cited, it is beyond contention that a taxable person is, under the law, required to render returns on all taxable goods and services he/she deals in within a given period. It is also settled that the Respondent is a VATable person, registered as such under the law, evidenced by the Respondent's "Application for VAT Registration" letter dated 20th April 2012 and various Revenue Collector's Receipts placed before this Tribunal.

The Appellant in paragraph 10 of the witness statement on oath marked as Exhibit EE contends that the Respondent has failed, neglected and/or refused to file its VAT returns and to remit any VAT to it. In the Appellant's letter dated 11 December 2013 and admitted as Exhibit EE2, it has claimed the outstanding sum of ₦1,403,780.44 (One Million, Four Hundred and Three Thousand, Seven Hundred and Eighty Naira, Forty Four Kobo) as tax due from the Respondent for the 2012 and 2013 YOAs, but has however failed to show in any evidence before this Tribunal any assessment that establishes this claim. The Appellant's basis for arriving at the turnover of ₦8,404,848.80 and ₦9,627,840.00 for 2012 and 2013 respectively, used to determine the VAT payable, is unsubstantiated.

The Respondent referred to a fire outbreak that led to destruction of records relating to its VAT returns and remittances, but there is no evidence as to the date of the fire outbreak or whether it occurred at all. The various documents attached to its Reply to the Notice of Appeal, particularly the "FIRS Payment Search By TIN" covering payments made from 1st January 2007 to 6th May 2015 show that it made only six payments in 2012 and 2013. These six payments consist of five VAT payments in 2012 and one VAT payment in 2013. A comparative analysis of these payments with what the Appellant's Exhibit EE2 shows as VAT already paid is shown below:

Details	2012	2013	Total
	₦	₦	₦
VAT already paid as per Exhibit EE2	74,471.00	44,444.03	118,915.03
VAT paid as per Respondent's Documents	30,707.25	35,825.00	66,532.25
<b>Difference</b>	<b>43,763.75</b>	<b>8,619.03</b>	<b>52,382.78</b>

The differences in the VAT payments, as indicated above, show that the documents used by the Appellant during the Monitoring exercise were much more than what the Respondent was able to place before this Tribunal. It is also obvious that the Respondent had remitted some VAT to the Appellant, though the Respondent has not placed sufficient evidence of the whole amount paid before the Tribunal.

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The Appellant's reference in Exhibit EE2 to "VAT already paid" also indicates that it is not correct to say that the Respondent has failed, neglected and/or refused to file its VAT returns and to remit any VAT to it.

The Respondent claims that it did not earn up to ₦1,403,780.44 from 1st January 2012 to 31st December 2013, but it has not proved this. However, calculating the turnover from the "VAT already paid" as per Exhibit EE2 shows that the turnover in 2012 alone is ₦1,489,420.00. The Respondent has not provided any document to prove what is the correct figure of its turnover for 2012 and 2013 YOAs.

We observe that there is no evidence before the Tribunal of the Respondent's objection to the Appellant's demand for VAT re-computation. Neither the Appellant nor the Respondent has furnished us with any evidence of reconciliation meetings after the Monitoring exercise. We do not have any evidence to link the proposed tax audit exercise to the Respondent's objection.

We order the Appellant to use its inherent powers to ascertain the correct turnover for 2012 and 2013 and use same to re-assess the Respondent's additional VAT liability, if any including the accrued interest and penalties. We also order the Respondent to make available to the Appellant all relevant documents, such as Bank Statements and Audited Financial Statements, that will aid the Appellant to ascertain its additional VAT liability, if any.

### Legal Representation

Ekunwe Ugochi (Mrs) for the Appellant.

S.B. Fiola Esq. for the Respondent.

DATED AT IKEJA LAGOS THIS 20TH DAY OF NOVEMBER, 2015

KAYODE SOFOLA, SAN (*Chairman*)

CATHERINE A. AJAYI (MRS)  
*Commissioner*

MUSTAFA BULU IBRAHIM  
*Commissioner*

D. HABILA GAPSISO  
*Commissioner*

CHINUA ASUZU  
*Commissioner*

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