

IN THE TAX APPEAL TRIBUNAL  
HOLDEN AT LAGOS

APPEAL NO: TAT/LZ/018/2010

BETWEEN

FEDERAL INLAND REVENUE SERVICE.....APPELLANT

AND

MEGA TECH SOFTWARE LIMITED.....RESPONDENT

JUDGMENT

INTRODUCTION

The Appellant is a statutory body established under the Federal Inland Revenue Service (Establishment) Act A164 2007 and is vested with the power to administer and manage the Value Added Tax Act 1993.

In line with its statutory powers, the Appellant conducts routine Value Added Tax Monitoring/Compliance Exercise and **conducts tax** audit of companies that deal in vatiable goods and services. It also ensures that such companies render monthly Value Added Tax returns to the Appellant as required by law.

The Respondent is a company registered under the Companies and Allied Matters Act with its office at No. 13, Alhaji Kanike Close, South West, Ikoyi, Lagos, carrying on the business of sale and consultancy on computer software and hardware, all vatiable goods and services.



By the Appellant's Notice of Appeal dated 3<sup>rd</sup> of February 2011, the Appellant contends that the Respondent has failed to tender and remit Value Added Tax (VAT) returns for January 1996 – December 1999 which, by the VAT Monitoring and Verification Exercise conducted by the Appellant, stands at ₦23,501,769. 01 (Twenty Three Million Five Hundred and One Thousand Seven Hundred and Sixty Nine Naira One Kobo).

The Appellant further contends that due to the Respondents persistent failure and /or refusal to pay VAT or file returns, it updated the Respondents VAT liability by raising a Best of Judgment assessment of ₦8,250,000 (Eight Million, Two Hundred and Fifty Thousand Naira) for January 2000 to September 2005, putting the Respondent's total VAT liability between January 1996 and September 2005 at ₦31,751,769.01 (Thirty One Million, Seven Hundred and Fifty One Thousand, Seven Hundred and Sixty Nine Naira, One Kobo).

The Respondent on the other hand has not objected to the Appellant's claim nor filed a reply to this appeal.

### **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?

### **ARGUMENT**

Learned counsel for the Appellant submits that the Respondent is a registered VAT collector pursuant to Section 8 of the VAT Act and is required to render returns and having failed to do so, the Appellant exercises her power pursuant to Sections 18, 19 and 20 of VAT Act. The Sections are below reproduced:

#### **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 16 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 provision 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 16 of this Act"*

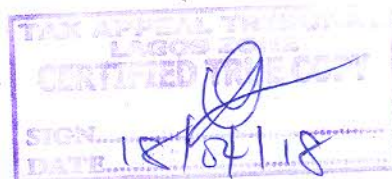
**Section 20:**

*"(1) Any tax, penalty or interest which remains unpaid after the period specified for payment may be recovered by the Board through proceedings in the Value Added Tax Tribunal.*

*(2) A taxable person who is aggrieved by an assessment made on the person may appeal to the Value Added Tax Tribunal established in the second schedule to this Act.*

*(3) Appeal from the Value Added Tax Tribunal shall be made to the Federal Court of Appeal".*

The Appellant further submits that by the provisions of the VAT Act, the returns and money remittance for any month must be rendered to it by the taxable person on or



before the 30<sup>th</sup> day of the month following that in which the purchase or supply was made.

It made reference to **section 15 of the VAT Act** which provides:

*“(1) A taxable person shall render to the board, on or before the 30<sup>th</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.”*

The Appellant states that the respondent did not object to the assessment, which thus became final and conclusive. It relied on the cases of **FBIR V. AZIGBO BROTHERS LTD. (1962) NTC 88 at 93- 94, FBIR V. OWENA MOTELS (2010) 2 TLRN 89**, where the court upheld the claim of the plaintiff and held: “an assessment is deemed conclusive after 30 days of service of the demand notice with no objection.....”

The Appellant states that section 15 (1) and 32 of the VAT Act as amended empowers the Appellant to impose penalty and interest on the respondent for failure to file and remit the VAT collected to the Appellant as and when due within the time limit as stipulated by sections 10, 12 and 13 of the VAT Act.

Furthermore, the Appellant states that the VAT Act imposes penalties and interest for non- remittance of VAT as and when due.

**Section 34 of the VAT Act:** *“a taxable person who fails to collect tax under this Act, is liable to pay as penalty 150% of the amount not collected, plus 5% interest above the Central Bank of Nigeria rediscount rate”*

It is the Appellant’s submission that the total sum of ₦31,751,769.01 (Thirty One Million, Seven Hundred and Fifty One Thousand, Seven Hundred and Sixty Nine





Naira, One Kobo) is conclusive and binding on the respondent having not been objected to nor defended at trial at the Tax Appeal Tribunal.

The Appellant Urges the Tribunal to order the payment of outstanding tax with accruing interest and penalties from the date of judgment and cost of prosecuting this case.

The respondent on the other hand has not put up an objection or a reply to this appeal.

### ANALYSIS

The sole issue placed before this Tribunal for determination is:

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

The Respondent is a vatiable person, registered as such under the law, evidenced by the Respondent's VAT registration form admitted as Exhibit P2 of the Appellant's list of Exhibits placed before this Tribunal. The goods/services shown in the said Exhibit, being computer software and hardware services, and not being exempted by the law, is taxable goods/services.

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 15, 18, 19 and 20 of VAT Act which sections are above cited.

It is now pertinent to consider 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?



Sections 15 (1) & 18 of the Value Added Tax Act (as amended) becomes necessary as a guide in resolving this issue. The sections are now reproduced.

**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."

**Section 18:**

"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".

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 taxable person and is registered with the Appellant as such. I refer to the Vat Registration Form marked as Exhibit P2 before this Tribunal.

The Appellant in paragraph E of the witness statement on oath marked as Exhibit P1 contends that the Respondent has since registration, failed to file VAT returns and to remit any VAT to it.

In the Appellant's letter attached to Exhibit P3, it has claimed the outstanding sum of ₦23,501,769.01 (Twenty- Three Million, Five Hundred and One Thousand, Seven Hundred and Sixty Nine Naira, One Kobo) as tax due from the Respondent for the year 1996- 1999, but has however failed to show in any evidence before this Tribunal any assessment that establishes this claim. The Appellant's claim for ₦23,501,769.01





(Twenty- Three Million, Five Hundred and One Thousand, Seven Hundred and Sixty Nine Naira, One Kobo) is unsubstantiated and thus, must fail.

The Appellant has also claimed ₦8,250,000 (Eight Million, Two Hundred and Fifty Thousand Naira) for January 2000 to September 2005, being best of judgment assessment for the period.

In Exhibit P3, the Appellant has shown a VAT RE- Assessment Notice which reflects as follows:

For year 2000 – VAT payable = N 900,000

For 2001 - VAT payable = N 1, 250, 000

For 2002 - VAT payable = N 1, 350, 000

For 2003 – VAT payable = N 1, 500, 000

For 2004 – VAT payable = N 1, 750, 000

There was no assessment for the year 2005 before the Tribunal. This brings the above figure to a total of ₦6,750,000.

Thus, out of the Appellant's claim ₦8,250,000 (Eight Million, Two Hundred and Fifty Thousand Naira), the Appellant has only proved ₦6,750,000, and we give judgment accordingly, and order the Respondent pay to the Appellant the sum of ₦6,750,000 (six million, seven hundred and fifty thousand naira), representing a best of judgment assessment for the years 2000 through 2004.

DATED AT LAGOS THIS 20<sup>TH</sup> DAY OF APRIL 2012

  
KAYODE SOFOLA SAN (Chairman)

  
CATHERINE AJAYI

  
D. HABILA GAPSISO



  
MUSTAFA BULU IBRAHIM

  
CHINUA ASUZU

