

**IN THE TAX APPEAL TRIBUNAL
HOLDEN AT LAGOS**

APPEAL NO: TAT/LZ/VAT/040/2014

BETWEEN

GILAT SATCOM NIGERIA LIMITED

.....**APPELLANT**

AND

FEDERAL INLAND REVENUE SERVICE

.....**RESPONDENT**

JUDGMENT

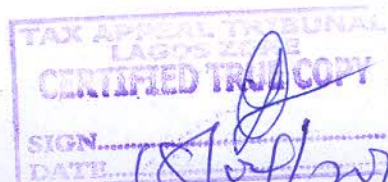
INTRODUCTION

The Appellant challenged the decision of the Respondent in its Letter of Demand/Notice of Refusal to Amend dated 3rd March 2014, wherein the Respondent refused to revise its additional assessment on the Appellant with respect to Value Added Tax (VAT) liability for 2008-2011 YOAs.

BACKGROUND DETAILS

The Respondent conducted an audit exercise in August 2012 for the 2006-2011 YOAs and issued a Tax Audit Report dated 5th October 2012 on conclusion of the exercise. This was followed by a series of reconciliation meetings that lasted till August 2013. Thereafter, the Respondent served on the Appellants six VAT Re-assessment Notices all dated 4th February 2014. Three of them were in respect of Naira denominated VAT liabilities (inclusive of interest and penalties) totaling N11,023,992.31 and the other three were in respect of Dollar denominated VAT liabilities (inclusive of interest and penalties) amounting to US\$247,282.48 for 2008 to 2011 YOAs, as shown below:

VAT Re-Assessment Notice No	YOA	VAT Due	Interest	Penalty	Total Tax Due plus Interest and Penalty
		N	N	N	N
ONK/MSTO 010	2008/2009	3,127,773.90	625,554.78	156,388.70	3,909,717.38
ONK/MSTO 008	2010	2,392,197.18	478,439.44	119,609.86	2,990,246.48



ONK/MSTO 009	2011	3,299,222.76	659,844.55	164,961.14	4,124,028.45
TOTAL		8,819,193.84	1,764,838.77	440,959.70	11,023,992.31
		US\$	US\$	US\$	US\$
ONK/MSTO 006	2008	650.00	130.00	975.00	1,755.00
ONK/MSTO 005	2010	51,021.55	10,204.31	76,532.33	137,758.19
ONK/MSTO 007	2011	39,914.55	7,982.91	59,871.83	107,769.29
TOTAL		91,586.10	18,317.22	137,379.16	247,282.48

The Appellant responded to the Re-assessment Notices via six separate Notices of Objection all dated 25th February, 2014. By a letter dated 3rd March 2014, the Respondent conveyed to the Appellant its refusal to amend the assessments in line with the Appellant's objection.

On 3rd April 2014, the Appellant filed a notice of appeal, supported by:

1. Witness statement, additional witness statement and further additional witness statement of Gideon Adewale; and
2. A list of documents and an additional list of documents.

The Respondent replied and filed:

1. Witness statement of Aliu Abdullahi; and
2. A list of documents.

ISSUE FOR DETERMINATION

The sole issue arising for determination is:

Whether the Additional Value Added Tax Assessments, with accruing interest and penalty, raised by the Respondent were validly raised?

PARTIES' POSITIONS



The Appellant submits that the averments of the Respondent Witness in **Exhibit AA** that "the Appellant failed, neglected or refused to file returns as prescribed by law from 2006-2011 years of assessment" are incorrect and not supported by any evidence whatsoever. The Appellant states further that the Respondent Witness had admitted, under cross examination, that the Respondent's contention that the Appellant did not file returns, is only in respect of 11, out of the 34 invoices annexed to **Exhibit AA**.

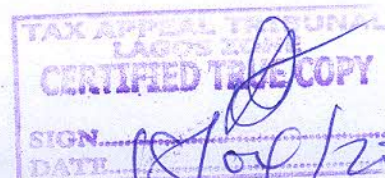
The Appellant, relying on sections 2 and 46 of the VAT Act, argues that an assessment for the purposes of VAT must be based on a transaction involving the supply of goods and services, otherwise known as a taxable supply.

The Appellant submits that the grounds raised in the Notice of Appeal relate to six specific assessments made by the Respondent for 2008, 2010 and 2011 YOAs. The Appellant therefore makes submissions on each of the VAT Re-Assessment notices as follows:

(1) ONK/MSTO 010 (N3,909,718.38)---- The Respondent assessed the Appellant for the sum of N3,909,718.38 as VAT due, including interest and penalty, on the sum of N66,516,965.00, allegedly representing the total supplies made by the Appellant for the 2008 YOA. The Respondent has not furnished the Tribunal with evidence of any taxable supply by the Appellant, on which this VAT assessment is based. Exhibit GA10 does not relate to a supply (of taxable goods and services), but was issued by the Appellant to its parent company, Gilat Satcom Israel for the reimbursement of USD421,000.00 being operational expenses incurred by the Appellant, based on the understanding between the Appellant and its parent company. This sum is included in Invoice No. 450001 dated 31/12/08 (Exhibit GA10) but this invoice is not among the invoices on which VAT had allegedly not been remitted.

(2) ONK/MSTO 006 (USD1,755.00) ----- The sum of USD13,000.00 is included in Invoice No. 450001 dated 31/12/08 (Exhibit GA10) which was issued by the Appellant to its parent company, Gilat Satcom Israel. The sum is for administration charges which the Appellant converted to its Naira equivalent (in the sum of N2,024,100.00) and computed the VAT thereon at 5% (in the sum of N101,205.00) as contained in Exhibit GA12. The invoice tendered by the Respondent in support of this additional assessment is the same as the one tendered by the Appellant in evidence and on the basis of which the VAT due in Naira had been remitted. Furthermore, the invoice under reference here is not included in the list of invoices on which VAT had allegedly not been remitted.

(3) ONK/MSTO 008 (N2,990,246.48) ----- The total supplies/sales turnover made by the Appellant in 2010 and on which VAT assessment should be based is N163,672,806.00, as evidenced by the total net value of the sales invoices and credit notes issued by the Appellant and not N266,643,450.00 as erroneously set out by the Respondent in its Re-



Assessment Notice. The Appellant remitted the VAT due, being 5% of ₦163,672,806.00 amounting to ₦8,183,740.00 as evidenced by the Respondent's receipts and e-tickets for the Appellant's year 2010 VAT remittances {Exhibit GA 22 (J1-11)}.

(4) ONK/MSTO 005 (USD137,758.19) ----- The sum of USD1,020,431 which formed the basis for this re-assessment (inclusive of interest and penalty) is erroneous as it is part of the dollar equivalent of the ₦163,672,806.00 on which the Appellant had already paid VAT amounting to ₦8,183,740.00. The Appellant's sales invoices and credit notes issued in respect of supplies for 2010 and 2011 YOAs clearly reflect both the Naira and Dollar equivalents of the sums due, as evidenced in paragraph 45 of Exhibit GA. The invoices tendered by the Respondent in support of this additional assessment are the same as those tendered by the Appellant in evidence and on the basis of which the VAT due in Naira had been remitted.

(5) ONK/MSTO 009 (₦4,124,028.45) ----- The total supplies made by the Appellant in 2011 and on which VAT assessment should be based is ₦124,156,411.00 as evidenced by the total net value of the sales invoices and credit notes issued by the Appellant and not ₦341,773,060.00 as erroneously set out by the Respondent in its Re-Assessment Notice. In addition, the Appellant also included in the 2011 sales invoices amounts payable with respect to credit memos/notes, amounting to ₦11,000,000.00, thus raising the amount assessable for VAT, from ₦124,156,411.00 to ₦137,259,515.00. The Appellant then remitted the VAT due, being 5% of ₦137,259,515.00 amounting to ₦6,696,832.00 as evidenced by the Respondent's receipts and e-tickets for the Appellant's year 2011 VAT remittances {Exhibit GA 22 (L1-24)}.

(6) ONK/MSTO 007 (USD107,769.29) ----- The dollar equivalent of the ₦124,156,411.00 on which the Appellant had already paid VAT is USD808,372.71 which is even higher than the USD798,291 that formed the basis for this re-assessment (inclusive of interest and penalty). USD808,372.71 is the Appellant's actual total supplies for 2011 and the sales invoices and credit notes issued in respect of supplies for 2010 and 2011 YOAs clearly reflect both the Naira and Dollar equivalents of the sums due, as evidenced in paragraph 45 of Exhibit GA.

The Appellant submits that the Respondent has failed either to establish any connection between the contested invoices and the additional assessments raised against the Appellant or to show the basis for the additional assessments.

The Appellant urges the Tribunal to quash or set aside the assessments as well as the penalty and interest in relation thereto.



The Respondent submits that the Appellant has failed, neglected or refused to file returns as prescribed by law from 2006 to 2011 YOAs, stating that it has exercised her power pursuant to Section 26(1) of the FIRS Act.

The Respondent further submits that in exercise of the aforesaid power, it conducted a tax audit on the Appellant and raised additional assessments. The Respondent maintains that the additional assessments were not arbitrarily raised as they were raised after an audit and proper reconciliation meeting between the two parties as evidenced in Exhibit AA4.

The Respondent argues that the dollar denominated VAT assessments were raised as a result of the findings in the course of the tax audit and that some of the contested invoices (i.e. "AR423024, 55012, 450011, 450014, 1500021, 450002, 423827, 423154, 423153, 423152") show that VAT was not paid on the invoices, rather the remarks was that of nil tax.

The Respondent avers that the Appellant termed part of their income as reimbursable expenses claiming same was excluded from VAT, stating further that the VAT Act does not cover the said exemption.

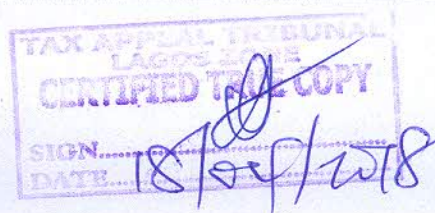
The Respondent urges the Tribunal to uphold the additional assessments served on the Appellant dated 3rd March 2014, inclusive of penalties and interest.

ANALYSIS AND DECISION

The sole issue placed before this Tribunal for determination is:

Whether the Additional Value Added Tax Assessments, with accruing interest and penalty, raised by the Respondent were validly raised?

We note that the contention of the Respondent Witness in **Exhibit AA** that "the Appellant failed, neglected or refused to file returns as prescribed by law from 2006-2011 years of assessment", corroborated by the Respondent's written address, is not supported by any evidence whatsoever. On the contrary, the Appellant has tendered ample evidence to support the various VAT returns that it had filed with the Respondent and submits that the Respondent has failed to contradict or debunk any of the evidence adduced by the Appellant. We hold that this Respondent's averment is incorrect and unsound.



As regards VAT Re-Assessment Notices ONK/MSTO 010 and ONK/MSTO 006, the amounts representing the total supplies on which the re-assessments are based are included in Invoice No. 450001 dated 31/12/08 (Exhibit GA10) but this invoice is not among the invoices on which VAT had allegedly not been remitted.

Regarding VAT Re-Assessment Notices ONK/MSTO 009, ONK/MSTO 008, ONK/MSTO 005 and ONK/MSTO 007, the Respondent has not provided sufficient evidence on how the contested invoices relate to the additional assessments that were raised. But we observe that the Appellant's sales invoices and credit notes issued in respect of supplies for 2010 and 2011 YOAs clearly reflect both the Naira and Dollar equivalents of the sums due, as evidenced in paragraph 45 of Exhibit GA. Moreover the invoices tendered by the Respondent in support of the additional assessments are the same as those tendered by the Appellant in evidence and on the basis of which the VAT due in Naira had been remitted.

Specifically, with regard to VAT Re-Assessment Notices ONK/MSTO 008 and ONK/MSTO 009, the total supplies/sales turnover made by the Appellant in 2010 and 2011 respectively and on which VAT assessment should be based is lower than the total net value of the sales invoices and credit notes issued by the Appellant. The Appellant remitted the VAT due on each of them as evidenced by the Respondent's receipts and e-tickets for the Appellant's year 2010 and 2011 VAT remittances.

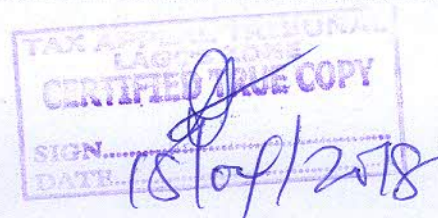
And regarding VAT Re-Assessment Notices ONK/MSTO 005 and ONK/MSTO 007, the amounts that formed the basis for these re-assessments (inclusive of interest and penalty) are the dollar equivalents of part of the total supplies, as contained in VAT Re-Assessment Notices ONK/MSTO 008 and ONK/MSTO 009 on which the Appellant had already paid VAT.

In light of the above we grant this appeal in part and set aside the Respondent's VAT Re-Assessment Notices ONK/MSTO 010, ONK/MSTO 008, ONK/MSTO 009, ONK/MSTO 005 and ONK/MSTO 007.

In view of the fact that VAT is payable in the currency of the transaction, we uphold the VAT Re-Assessment Notice ONK/MSTO 006 and order the Appellant to pay the sum of USD1,755 being additional VAT, including interest and penalty for 2008 YOA. But we also order the Respondent to set off the sum of N101,205.00 already paid by the Appellant as tax credit in favour of the Appellant in order to avoid double taxation of the administration charges.

Legal Representation:

Chukwuemeka Osuji Esq. for the Appellant.




Mrs Awashima Ukpi for the Respondent.

DATED AT LAGOS THIS 18TH DAY OF MAY 2016



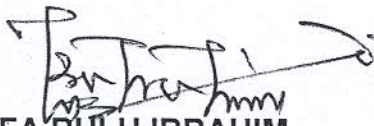
KAYODE SOFOLA, SAN (Chairman)



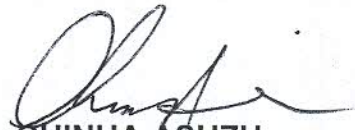
CATHERINE A. AJAYI (MRS)
Commissioner



D. HABILA GAPSISO
Commissioner



MUSTAFA BULU IBRAHIM
Commissioner



CHINUA ASUZU
Commissioner

