IN THE TAX APPEAL TRIBUNAL
LAGOS ZONE
SITTING AT LAGOS

TAT/LZ/VAT/035/2015

Between
**Tetra Pak West Africa Limited** Appellant
And
**Federal Inland Revenue Service** Respondent

## Judgment

### Issues for Determination

In determining this appeal, this Tribunal only has to address the following 3 questions:

1. **Do invoices and instructions for payments constitute sufficient evidence of revenue received from exported services?**

   Section 11 of the Value Added Tax Act (VAT Act) requires a taxpayer to keep sufficient records for determining its tax liability. To support its claim for tax exemption on its exported services' revenue, the Appellant presented the Respondent with its invoices, bank statements, and instructions for payments. The Respondent refused to exempt some of the revenue for insufficient evidence. The appellant considers the documents it supplied sufficient. The Respondent does not.

   Are those records sufficient?

2. **Do invoices, Customs Duty Collection Pay-In-Forms, and Customs Revenue Receipts constitute sufficient evidence of Input VAT?**

   Section 11 of the VAT Act requires a taxpayer to keep records sufficient to determine its tax liability. To support its claim for tax refund on excess Input VAT paid, the Appellant presented the Respondent with its invoices, Customs Duty

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Collection Pay-In-Forms, and Customs Revenue Receipts. The Respondent refused the tax refund for insufficient evidence. The appellant considers the documents it supplied sufficient. The Respondent does not.

Are those records sufficient?

3. **Do penalties and interests begin to accrue from assessment years or from the date additional assessments become final and conclusive?**

Under the Federal Inland Revenue Service (Establishment) Act (FIRS Act), penalties and interest begin to accrue for an assessment or demand notice when the assessment becomes final and conclusive. Under the VAT Act penalties and interest begin to accrue for tax returns rendered when tax remains unremitted. The Respondent calculated interest and penalties for a demand notice from the time of non-remittance of VAT. The Appellant rejects this computation.

Is the computation correct?

## Introduction

To claim deductions, exemptions, and refunds from the tax collector, a taxpayer must show sufficient evidence to the Respondent to substantiate its claims.

The Appellant submitted documents it believed sufficient to substantiate its claims for exemption of exported services and deduction of Input VAT in determining its tax liabilities. Those documents are: its invoices; bank statements; instructions for payments; Customs Duty Collection Pay-In-Forms; and Customs Revenue Receipts. Unpersuaded by the documents supplied, the Respondent raised additional VAT assessments for 2010 and 2011 assessment years. The additional assessments arose from the Respondent's disallowance of deductions claimed by the Appellant as sums received for rendering services to its affiliate outside Nigeria. The Respondent also arrived at Input VAT sums different from those reported by the Appellant in its returns for 2008 to 2012, debarring the Appellant's claim for refund. The Respondent



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computed penalties and interests from 2010 and 2011 respectively in the additional assessments.

The Appellant believes it has supplied enough evidence to prove its entitlement to tax exemption for its exported services and refund on its Input VAT. The Respondent insists that the Appellant has not. The Appellant also challenges the start date relied upon by the Respondent in computing penalties and interest.

## Facts and Procedural History

After a tax-audit exercise, the Respondent assessed the Appellant to additional VAT for 2010 and 2011 assessment years. The additional VAT was charged on some sums the Appellant had initially deducted from its returns as sums received for exported services but which the Respondent disallowed. The Respondent also charged penalties and interest on the additional assessments.

The Appellant objected to the assessment notices, contending that the Respondent should not have disallowed those deductions for sums it legitimately received for exported services. The Appellant also pointed out that the Respondent was wrong to have computed penalties and interest on the additional assessments. Concerning the sums the Respondent arrived at as Input VAT for 2008, 2009, 2011, and 2012, the Appellant asserted that they are an understatement of the real sums paid out.

The Respondent refused to heed the Appellant's objection.

The Appellant appealed to this Tribunal. At the trial, the Appellant called one witness, Mr Aruna Oshiokamele. The Respondent also called one witness, Mr Enerson Johnson. Both parties introduced documentary evidence.

## Parties' Positions

**Do invoices and instructions for payments constitute sufficient evidence of revenue received from exported services?**

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The Appellant is of the view that the invoices and instructions directing its affiliate to use payment for exported services to offset its debts are sufficient evidence to establish the revenues derived from exported services and enjoy exemption on those sums. It submits that some sums claimed as exported-services revenue cannot be traced to its bank statements because those sums were used to set off debts owed its affiliates and outstanding invoices for services it received from its affiliates. It argues that it need not have repatriated revenue derived from exported services to enjoy tax exemption on exported services. The Appellant challenges the Respondent's demand for a certificate of exportation as a pre-condition for grant of the tax exemption and points out that certificate of exportation covers exported goods and not services.

The Respondent counters that the law requires the Appellant to present a certificate from Nigerian Export Promotion Council; bank statements; invoices; and sales and service schedules to substantiate its claim. The Respondent states that the Appellant is not entitled to the tax exemption claimed because (a) it failed to produce a certificate from Nigerian Export Promotion Council,(b) the exported services revenues it claimed could not be traced to its bank statement, and (c) no other record existed to substantiate those transactions.

**Do Invoices, Customs Duty Collection Pay-In-Forms, and Customs Revenue Receipts constitute sufficient evidence of Input VAT?**

The Appellant argues that the Pay-In Forms for Customs Duty Collection, Customs Revenue Receipts, and Invoices provided to the Respondent and tendered in evidence are sufficient records of the accurate Input VAT it paid.

The Respondent retorts that to validate the Appellant's Input VAT claims, the law requires the Appellant to present a Bill of Entry/Lading, Custom Form M, Risk Assessment Form, VAT Input Form, and Invoice from Country of Origin. It maintains that in the absence of these documents the Appellant's claims fail.

**Do penalties and interests begin to accrue from assessment years or from the date additional assessments become final and conclusive?**

Relying on Paragraphs 13(2) and (3) of the 5th schedule to FIRS Act, the Appellant asserts that penalties and interest begin to accrue on additional assessments when the

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assessment becomes final and conclusive, that is, where the taxpayer fails to appeal within 30 days after the assessment is raised. The Appellant argues that since it objected to the assessment notice within 30 days, the assessment notice had not become final and conclusive and the Respondent's computation of penalties and interest is unlawful.

The Respondent states that the penalties and interest began accruing from 2010 and 2011 respectively when the Appellant ought to have remitted those taxes but did not. The Respondent concludes that sections 15 and 19 of VAT Act and sections 32 and 40 of FIRS Act validate its penalties-and-interest computation timetable.

**Analysis**

**Do invoices and instructions for payments constitute sufficient evidence of revenue received from exported services?**

Section 11 of VAT Act provides:

> A person who is registered under section 8 of this Act (in this Act referred to as "a registered person") shall keep records of transactions, operations, imports and other activities relating to taxable goods and services as are sufficient to determine the correct amount of tax due under this Act.

The section mandates the Appellant to keep sufficient records to establish its tax liability. The Act does not determine what constitutes sufficient records, but they must include enough data and documents to enable the tax collector assess the taxpayer's VAT exposure.

The Respondent claims certain documents are required of the Appellant by law to substantiate its claim. The Respondent does not cite which law. The taxpayers are entitled to know beforehand what specific documents may be required by the Respondent in proof of certain transactions.

The Appellant tendered invoices for the disputed exported-services revenues and also supplied records of instructions sent to its affiliate to use payments to offset its debts {Exhibits A015 (c) and (d) and Exhibit A016}. Those payments were not made to its account. The Respondent did not examine those documents to determine their



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sufficiency; it stated that it examined only the Appellant's bank statement. In the absence of specific requisitions on taxpayers to substantiate their claims, the Respondent has the duty to consider all records supplied by the Appellant to determine sufficiency or otherwise of the records supplied.

The Respondent failed to properly examine the Appellant's record. Only when these records have been thoroughly examined can their sufficiency or otherwise be determined.

**Do Invoices, Customs Duty Collection Pay-In-Forms, and Customs Revenue Receipts constitute sufficient evidence of Input VAT?**

The Appellant tendered Pay-In Forms for Customs Duty Collection; Customs Revenue Receipts; and Invoices for 2008, 2009, 2011, and 2012 (Exhibits A014 (a), (b), (c), and (d)). The Respondent considered them insufficient because certain documents it desired were not supplied.

The question here is not whether the Appellant supplied certain documents but whether the records it did supply are sufficient to show the amount of Input VAT it paid and substantiate its claim to tax refund.

The Appellant presented its Pay-In-Forms for Customs Duty Collection, which include VAT assessments on imports calculated and filled by an assessment officer. It also presented its Customs Revenue Receipts issued by the various banks to which the Appellant paid the VAT assessed in the Pay-In-Forms. The banks' stamps indicate that those sums were actually paid in by the Appellants and received by the bank for the Respondent. The Appellant presented some invoices as well.

The Respondent did not examine those documents to determine their sufficiency; it stated that it examined only the Appellant's Input VAT forms. In the absence of specific requisitions on taxpayers to substantiate their claims, the Respondent has the duty to consider all records supplied by the Appellant to determine sufficiency or otherwise of the records supplied.

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The Respondent failed to properly examine the Appellant's record. Only when these records have been thoroughly examined can their sufficiency or otherwise be determined.

**Do penalties and interests begin to accrue from assessment years or from the date additional assessments become final and conclusive?**

Sections 15 and 19 of the VAT Act relied on by the Respondent to support its computation of penalties and interests from the assessment years apply to failure to remit tax as computed in returns within the prescribed time.

The issue here relates to the computation of penalties and interests when additional assessments or demand notices have been raised on a taxpayer. Section 13 of the 5th Schedule to the FIRS Act applies. Its provisions allow computation of penalties and interests only when the assessment or demand notices have become final and conclusive. Assessment or demand notices become final and conclusive if a taxpayer fails to file a notice of appeal within 30 days after the order or decision being appealed is made.

The Appellant filed its notice of appeal within 30days from date it received the Respondent's notice of refusal to amend the additional assessments. The assessments have not become final and conclusive.

We hold that the penalties and interests were wrongfully computed by the Respondent.

**Conclusion**

We allow this appeal.

We set aside the additional assessments for 2010 and 2011 assessment years. We order the Respondent to examine the Appellant's records and re-assess the Appellant's VAT liability, if any, for those years.

We order the Respondent to examine the Appellant's records and determine its entitlement to tax refund, if any.

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**Legal Representation:**

A. Atake Esq. D. Komolafe Esq. Ms I. H. Whyte, V. Okpara Esq. Ms S. Sulaiman and Ms B. Jaja for the Appellant.

Mrs Victoria Aderibigbe for the Respondent.

**DATED AT LAGOS THIS 3RD DAY OF JUNE 2016**

**KAYODE SOFOLA SAN** (Chairman)

**CATHERINE A. AJAYI**
Commissioner

**D. HABILA GAPSISO**
Commissioner

**MUSTAFA BULU IBRAHIM**
Commissioner

**CHINUA ASUZU**
Commissioner

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