TAX APPEAL TRIBUNAL
SOUTH EAST ZONE
ENUGU
[THIRD QUARTER/ 4TH SITTING]

19TH SEPTEMBER 2013

APPEAL NO: TAT/SEZ/002/10

FEDERAL INLAND REVENUE SERVICE ..... APPELLANT

VS

AFRICAN PAINTS PLC..... RESPONDENT

Chairman: **Professor C.J Amasike**

Commissioners: **Dr. (Mrs) Josephine. A .A. Agbonika**
Professor Eddy Omolehinwa
Chief Ngozi Amaliri

Tribunal Registrar: Barr. Mrs Angela Chineme Edeko

Representation:
Eze Emmanuel appearing with Mrs. Ngufan Nwogu-Ikojo for the Appellant.

No representation for the respondent.

JUDGMENT OF THE TRIBUNAL

This is the judgment of the Tax Appeal Tribunal, South East Zone sitting at Enugu in respect of Appeal No: TAT/SEZ/002/10 between the Federal Inland Revenue Service [Appellant] and African Paints Plc [Respondent] before their Honours; Prof. C.J. Amasike, Dr. [Mrs.] Josephine A.A Agbonika, Ignatius Chibututu Esq, Prof Eddy Omolehinwa and Chief Ngozi Amaliri.

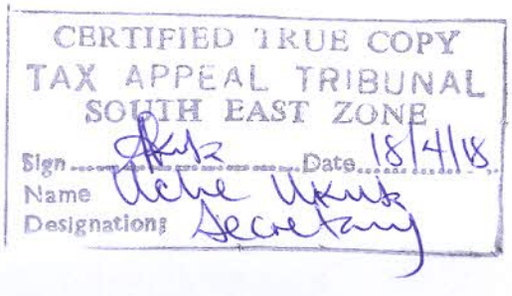
CERTIFIED TRUE COPY
TAX APPEAL TRIBUNAL
SOUTH EAST ZONE
Sign ..... Date 18/4/18
Name Uche Ukuta
Designation Secretary

The Appellant is a Federal Government agency, established by the Federal Inland Revenue Service Establishment Act 2007 and vested with the powers inter alia, to administer and manage the Value Added Tax Act 1993 (as amended). The Respondent being a tax payer under the Value Added Tax Act has failed, refused or neglected to file Value Added Tax returns or remit money deducted on behalf of the Appellant.

This matter originally commenced before the then VAT Tribunal on 2nd day of December, 2004 vide a summons dated 22nd Nov. 2004 and filed on 2nd Dec; 2004. The Appellant was represented by lawyers from the office of the Attorney General of the Federation whereas the Respondent was initially represented by Barrister Joe Martin Uzosike of OsitaUzosike& Co. and later, and for most of the proceedings, the firm of Kehinde, Kehinde & Co. took over on 26th day of July, 2005. Various processes were filed by both parties including the further amended statement of claimfiled by the Appellant on 13th September, 2006 and Statement of Defence dated 29th June, 2006 and filed 3rd July, 2006 by Babatunde Kehinde of Kehinde, Kehinde & Co. There was also a reply to the Statement of Defence.

The proceeding was stalled by the demise of VAT Tribunal and the establishment of Tax Appeal Tribunal by the FIRS (Establishment) Act 2007 to subsume its functions. Pursuant to this, the file was transmitted to the Tax Appeal Tribunal upon its commencement of sitting in 2010. The Appellant on 21st January, 2011 thereupon filed and served on the Respondent a fresh Notice of Appeal and a Motion on Notice to regularize appearance and this was supported by a four paragraphed Affidavit dated 13th January, 2011.

The appellant's grounds of appeal are hereunder reproduced.



THAT the Respondent being a VAT collector has refused, failed or neglected to file returns and remit VAT for the period of January 2000-July 2004

To support this claim, it stated that;

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

(ii) The Appellant is empowered by the Act to do such things as may be necessary or expedient for the proper assessment and collection of the Value Added Tax of 5% and account for the entire amount so collected to the Federal Government of Nigeria.

(iii) Sequel to 2 above the Appellant is also empowered by the Act to conduct a routine Value Added Tax Monitoring/Compliance Exercise on all companies that deal on VAT able goods and services and ensure that the companies render monthly returns to the Appellant as required by the law.

(iv) The Respondent is a company registered under the Companies and Allied Matters Act with its registered office at Plot 51, Morrions Crescent Ikeja, Lagos, and operational branch office at 154, Okigwe Road, Aba, Abia state.

(v) At all times material the Respondent carried on, inter alia, the business of manufacturing and sale of paints which are VAT able goods and services.

(vi) By virtue of the nature of its business, the Respondent became a VAT collector liable to render to the Applicant true and accurate monthly returns of all VAT able goods and services supplied by it.

(vii) Since the Respondent registered for VAT in 1994 it did not file any return or remit any VAT until 11/02/97 when it remitted VAT for January 1994 to December 1996 for the sum of One Hundred and Eighty-One Thousand, Seven Hundred and Fifty-One Naira, Two Kobo. It was issued with a receipt for this purpose.

(viii) The Respondent's VAT compliance was bedeviled by late filling of returns and remittances of VAT, an action contrary to VAT Laws and Liable to attract penalty.

(ix)Owing to the insistence of the Respondent on late filing of returns and late remittance the Appellants severally raised penalty of ₦5,000.00 per month against the respondent for all the months of default comprising of April, 1997 to July, 2005. Penalty forms dated 10/10/03 and 02/08/05 were respectively served on the respondent to this regards.

(x) As at July 2005 the Respondent's penalty for non-rendition of VAT returns for the period (April 1997-July 2005) came to Eleven Million, Nine Hundred and Sixty Thousand Naira (₦11, 960, 000).

(xi)The Appellant wrote several letters to the Respondent demanding that the Respondent resumes VAT rendition at the Appellant's tax office in Aba.

(xii) The Appellant upon investigation, discovered that the Respondent was planning to centralize VAT payment to Lagos where it has its Head office; an action that is illegal and not allowed by the VAT law. When confronted with this findings vide a letter dated 10/10/03 the Respondent did not deny same.

(xiii) Various efforts made by the Appellant to settle the matter vide reconciliation were rebuffed by the Respondent who refused to attend reconciliation meeting despite the various letters of invitation sent to them in this regard.

(xiv) Sequel to the Respondent's refusal to remit VAT from January 1999 to July 2005 and her failure to attend reconciliation meetings, the Appellant raised a Best of Judgment Assessment of Five Million, Five Hundred Naira (₦5,500,000.00) against the Respondent for the period of January 1999 to July 2005 vide Re-assessment Notices dated 10/01/03 for the sums of ₦850,000.00, ₦950,000.00, ₦1,000,000.00, ₦1,200,000.00, and finally ₦1,500,000.00 vide Re-assessment Notice dated 02/08/05. These assessments were duly communicated to the Respondent as evidenced by letters dated 17th Sep. 2003 and 2nd August 2005.

(xv) The Respondent failed and/or refused to pay or object to the assessment until the lapse of statutory period for objection. The assessment has therefore become final and conclusive.

(xvi) The only VAT remitted by the Respondent since January 1999-2005was the sum of ₦100, 000.00 being alleged VAT for April to November 2002 which was remitted on 23/03/05.

(xvii) The Respondent's case was referred to the erstwhile Federal Board of Inland Revenue from the Appellant's Aba office vide a letter dated 01/05/04.

(xviii) The Chairman of the Federal Inland Revenue Service referred the matter to the legal Department of the Appellant who the wrote to the Respondent giving them 14 days to comply with the Vat Law by remitting the VAT and paying the penalty. The said period elapsed without any remittance from the Respondent.

(xix) Other letters delivered by the Applicant to the Respondent in a bid to get it to make the returns/payment include letters dated 27/09/2002, 01/11/02, 28/01/03, 02/08/05, 10/12/03, 23/06/03, 25/08/03, 17/09/03, 25/01/05 and 26/07/04.

(xx) The Respondent's VAT liability to the Federal Government of Nigeria as at July 2005 was Seventeen Million Naira, Three Hundred and Sixty Thousand Naira (₦17, 360,000.00) as well as one Hundred and Thirty-One Million, One Hundred and Eight-Seven Thousand Naira (₦ 131,187,000.00) admitted as due by the Respondent.

(xxi) Notice is hereby given to the Respondent to provide the original copies of the VAT Re-assessment Notice as well as the penalty from/Applicant's letter dated 10/01/03, 10/10 /03, 02/08/05, 17/09/03, 2/08/05 and all such correspondence mentioned in paragraph XIX above at the hearing of this suit.

As a result of the above claims, the Appellant sought the following reliefs from the Tribunal:

(a) An Order of the Tribunal compelling the Respondent to pay to the Appellant:

(i) The sum of Seventeen Million, Three Hundred and Sixty Thousand Naira (₦17,360,000.00) as well as One Hundred and Thirty one Million, One Hundred and Eighty Seven Thousand Naira (₦131,187,000) admitted by the Respondent as tax due from Respondent to the Appellant for the period January 1999 to July 2005.

(ii) Cost of this litigation

(b) Any other Order(s) as the Tribunal may deem fit to make in the circumstance.

The Appellant moved its motion dated 16th April, 2012 filed on 17th April 2012 to enable him regularize his processes. Several hearing notices were thereupon served on the Respondent to enable them enter appearance all to no avail. However, on one of such instances a Lawyer, Babatunde Kehinde from Kehinde, Kehinde & Co. appeared for the Respondent on 26th November, 2012 while on a different occasion, Anthony Nwosa another Lawyer from the firm wrote adducing reasons for not coming to court.

Thereafter, although repeated hearing notices were served on the Respondent, no subsequent representations were made on her behalf.

The Appellant thereupon applied to open his case, and this was granted by the Tribunal. The Appellant called a witness, Elizabeth Chinwolan Nwagwu the schedule officer in charge of the Respondent's tax file. In testifying, she adopted her witness statement on oath dated 16th April, 2012, on 12th September, 2012, and tendered documents showing the debt of the Respondent and all the letters from the office including demand and assessment notices geared at getting the Respondent to pay her debt. Part of the documents also tendered, and admitted was Exhibit C which was the Respondent's amended statement of defence before the VAT

CERTIFIED TRUE COPY
TAX APPEAL TRIBUNAL
SOUTH EAST ZONE
Sign ..... Date 18/4/18
Name Uche Ukuta
Designation: Secretary

Tribunal wherein, it was admitted in paragraph 5(e) that certain officers of the Respondent at its Aba Depot namely, Mr. Ogunpola and Mrs. Chinyere misappropriated One Hundred Thirty-One Million, One Hundred and Eighty-Seven Thousand Naira (₦131, 187,000.00) being Value Added Tax for the period of April, 2002, to March, 2003.

At the close of the Appellant's witness evidence, she tendered a document dated 9th August, 2006, but stamped 14th August, 2006, emanating from Mrs. Odili, formerly known as Ms. Chinyere Okechukwu. She also referred the Tribunal to paragraph 5(k) of the amended statement of defence wherein it was alleged that Mr. Njoku and Ms. Okechukwu, now Mrs. Odili went to the Respondent's Lagos office to demand the sum of One Million, Five Hundred Thousand Naira (1,500,000.00) to settle the matter out of Tribunal.

The Tribunal thereupon adjourned to 30th October, 2012, for cross-examination of the witness and to summon the said Mrs. Odili among others to clarify certain issues as to whether or not the Respondent had made any payment in the past through them which they had failed to account for.

The Appellant's witness was discharged on 30th October, 2012, when the Respondent did not come to court on that day to cross-examine her. Matter was adjourned to 26th November, 2012, to hear from the subpoenaed witness. Mrs. Odili in her evidence said she was the same as Miss Okechukwu. She denied that she received any bribe from the Respondent. She said that on two different occasions, the Respondent's agents Alabi and Idowu brought to her office sums ranging from ₦100, 000.00 to ₦250,000.00 but that she did not accept them and merely advised them to go and pay their tax liabilities. She said she was surprised in 2006 to read in Babatunde Kehinde's amended statement of defence for the Respondent that she demanded the sum of ₦1.5 Million. She said the issue raised so much storm in the Appellant's office and was eventually referred to

EFCC for investigation. That although she was not indicted, FIRS redeployed her to her main Ministry, being the Federal Ministry of Justice. She said that the Appellant never showed her the report of the investigation. Case was adjourned for cross-examination to 16th January, 2013, and was discharged when the respondent did not show up for cross-examination. Case was adjourned for defence or adoption of written address to 14th February, 2013.

At the close of the Appellant's case, the Respondent was given various opportunities to open their defence and was served hearing notices in that respect but were all ignored. The Appellant was therefore given the 24th of July, 2013 to file and adopt his final written address. The written address dated 19th July, 2013 was thereby adopted on 24th July, 2013.

ISSUES FOR DETERMINATION

THE SOLE ISSUE IDENTIFIED FOR DETERMINATION BY THE APPELLANT WAS;

- **Whether the Respondent's Tax Arrears have become due and payable.**

To determine this, the Appellant observed that since there are two tax arrears outstanding against the Respondent, the Appellant ought to argue this issue in two parts: A and B. While issue A considers liability arising from penalties, interest and Best of Judgment, B considers that arising from a previously admitted debt.

We have given a careful and insightful consideration to the sole issue formulated by the Appellant and choose to adopt it as having been well founded.

Issue A

Whether the tax penalties and interests standing against the Respondent have become due and payable?

CERTIFIED TRUE COPY
TAX APPEAL TRIBUNAL
SOUTH EAST ZONE
Sign ..... Date 18/4/18
Name Uche Ukuk
Designation Secretary

The Appellant submitted in respect to issue A that the tax debt of Seventeen Million, Three Hundred and Sixty Thousand Naira (₦17,360,000.00) standing against the Respondent has become due and payable to the Federal Government of Nigeria. He argued that failure or refusal to render returns and remit Value Added Tax, late filings and/or irregular remittance all constitute a breach of the Value Added Tax Act of 1993, particularly under Sections 12, 13, 14, 15 and 16 of the Act which are hereunder reproduced.

Section 12: **Payment of tax by taxable person**

(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 13: **Remission of tax collected by Government Ministries, etc.**

(1) Every Ministry, statutory body or other agency of Government shall, at the time of making payment to a contractor, remit the tax charged on the contract to the nearest local Value Added Tax office.

(2) The Service may, by notice, determine and direct the companies operating in the oil and gas sector which shall deduct VAT at source and remit same to the Service.

(3) The remission shall be accompanied with a schedule showing the name and address of the contractor, invoice number, gross amount of invoice, amount of tax and month of return.

Section 13A: **Tax invoice**

(1) A taxable person who makes a taxable supply shall, in respect of that supply, furnish the purchaser with a tax invoice containing, *inter alia*, the following-

(a) tax payers identification number
(b) name and address
(c) VAT registration number
(d) the date of supply

(e) name of purchaser or client

(f) gross amount of transaction; and

(g) tax charged and rate supplied.

(2) A tax invoice shall be issued on supply whether or not payment is made at the time of supply.

Section 14: **Collection of tax by taxable person**

(1) A taxable person shall on supplying taxable goods or services to his accredited distributor, agent, client or consumer, as the case may be, collect the tax on those goods or services at the rate specified in section 2 of this Act.

(2) The tax collected by a taxable person under subsection (1) of this section shall be known as output tax.

Section 15: **Taxable person to render returns**

(1) A taxable person shall render to the Board, on or before the 21st 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.

(2) A person who imports taxable goods in to Nigeria shall render to the Board returns on all the taxable goods imported by him in to Nigeria.

(3) In this regard, any payment made to duly authorized Government agents shall be deemed to have been made to the Federal Inland Revenue Service.

Section 16: **Remission of tax**

(1) A taxable person shall, on rendering a return under section 15 (1) of this Act

(a) If the output tax exceeds the input tax, remit the excess to the Board; or

(b) If the input tax exceeds the output tax, be entitled to a refund of the excess tax from the Board on production of such documents as the Board may, from time to time, require.

(2) An importer of taxable goods shall, before clearing those goods, pay to the Board the tax on those goods.

(3) (*Deleted by No. 12 of 2007.*)

CERTIFIED TRUE COPY
TAX APPEAL TRIBUNAL
SOUTH EAST ZONE
Sign ..... Date 18/4/18
Name Ugochukwu Ukwu
Designation; Secretary

It is also trite that such actions as stated in the above sections attract penalties, interest and/or Best of Judgment Assessment in accordance with sections 18, 19 and 20 of VAT Act. It is the evidence, before this Tribunal that the Respondent between the year 1997-2005, engaged in non-filing, late filing, non and irregular remittance in some months as a result of which the sum of ₦17,360,000.00 was raised against her being a combination of penalties, interests and Best of Judgment Assessments. The Appellant also referred the Tribunal to the written statement on Oath of the witness and other documents attached thereof. They also relied on Assessment notices and demands which were also raised and served on the Respondent to which no valid objection was sustained.

While section 18 empowers the Service to raise Best of Judgment Assessment, Sections 12, 14 and 15 of the VAT Act mandate the Tax payer to collect and render returns and remittance as and when due. The relevant period as specified in section 15 of the Act is "on or before the 30th day of the month following that in which the purchase or supply was made". The Court of Appeal further shed light on the meaning of this expression when it held in **Federal Board of Inland Revenue vs. Integrated Data Services Ltd (2009) 8NWLR (Pt. 1114) 615;CA/B/150/2002**, that it means one calendar month commencing from the beginning of the month to the end of the month. Thus the tax collected during a tax period must be paid to The Service on or before the 30th day of the month following that in which the purchase or supply was made. It has also been held in both **Rimi v. INEC (2005) 6 NWLR (pt. 920) pg. 56 at 84** and **Fend Ikuomola v. Alhaji Ganiyu Alani Ige & Ors. (1998-1999) 1 NRLR pg. 83** that any payment made outside the said 30 days cannot be said to have been paid 'as and when due'. In **Federal Board of Inland Revenue vs. Integrated Data Service Ltd (supra)** the court went further to state thus:

CERTIFIED TRUE COPY
TAX APPEAL TRIBUNAL
SOUTH EAST ZONE
Sign ..... Date 28/4/18
Name
Designation; Secretary

We are bound by that interpretation. Since tax is deemed to be a debt recoverable by action, I do not agree that interest and penalty imposed on such a debt constitute an inhuman interpretation of the law. The law imposes punishment for non-remittance of Value Added tax as and when due. That is the nature of tax legislation.

In **Shell Petroleum v. FB.I.R (1996) 9-10 SCNJ 231; (1996)8 NWLR (pt. 466) 256**, the Supreme Court stated that,

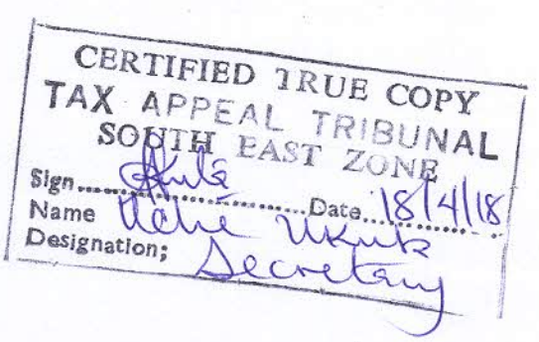
In accordance with S.12 (1) of the VAT Act of 1993, the return and remittance of tax as and when due, was interpreted in S.42 of the interpretation section to mean one calendar month commencing from the beginning of the month to the end of the month.

Thus the tax collected during a tax period must be paid to the board on or before the 30th day of the month following that in which the purchase or supply was made - Court of Appeal in **Federal Board of Inland Revenue vs. Integrated Data Services Ltd. (Supra)**. Section 15(1) of the Value Added Tax Act of 1993 (as amended) also substantiate this.

Section 12 (1) VAT Act provides; A taxable person shall pay to the supplier the tax on taxable goods and services purchased by or supplied to the person.

Section 42 provides; anything required to be done by the Board under this Act may be signified under the hand of the Chairman or any other senior officer assigned to do so by him.

A close look at the witness statement on oath especially from paragraphs 5 – 23, shows how the VAT liabilities arose. They are hereby reproduced for clarity.



5. The Respondent is a company registered under the Companies and Allied Matters Act with its registered office at plot 51, Morrion Crescent Ikeja, Lagos, and operational branch office at 154, Okigwe Road, Aba, Abia State.
6. At all times material the Respondent carried on inter alia the business of manufacturing and sale of paints which are VAT able goods and services.
7. By virtue of the nature of its business the Respondent has become a VAT collector liable to render to the Applicant true and accurate monthly returns of all VAT able goods and services supplied by it.
8. Since the Respondent registered for VAT in 1994, it did not file any return or remit any VAT until 11/02/97 when it remitted VAT for January, 1994, to December, 1996, for the sum of One Hundred and Eighty-One Thousand, Seven Hundred and Fifty-One Naira, Two Kobo. He was issued with a receipt for this purpose.
9. The Respondent's VAT compliance is bedeviled by late filing of returns and remittances of VAT, an action contrary to VAT Laws and liable to attract penalty.
10. Owing to the insistence of the Respondent on late filing of returns and late remittance the Appellant severally raised penalty of ₦5, 000.00 per month against the Respondent for all the months of default comprising of April, 1997, to July 2005. Penalty forms dated 10/10/03 and 02/08/05 were respectively served on the Respondent in this regard.
11. As at July 2005 the Respondent's penalty for non –rendition of VAT returns for the period (April 1997-July 2005) is Eleven Million, Nine Hundred and Sixty Thousand Naira (₦11,960,000.00).
12. The Appellant wrote several letters to the Respondent demanding that the Respondent resume VAT rendition at the Appellant's Tax office in Aba.

CERTIFIED TRUE COPY
TAX APPEAL TRIBUNAL
SOUTH EAST ZONE
Sign ..... Date 18/4/18
Name Secretary
Designation; Uche Ukuta

13. The Appellant on investigation discovered that the Respondent was planning to centralize VAT payment in Lagos where it has its Head office, an action that is illegal and not allowed by the VAT law. When confronted with this findings vide a letter dated 10/10/03 the Respondent did not deny same.

Various effort made by the Appellant to settle the matter vide reconciliation were rebuffed by the Respondent who refused to attend reconciliation meetings despite the various letters of invitation sent to them in this regards.

14. Sequel to the Respondent's refusal to remit VAT from January 1999 to July 2005 and her failure to attend reconciliation meetings, the Appellant raised a Best of Judgment Assessment of Five Million, Five Hundred Naira against the Respondent for the period of January 1999 to July 2005, vide Re-assessment Notices dated 10/01/03 for the sums of ₦850,000.00, ₦950,000.00, ₦1,000,000.00, ₦1,200,000.00 and finally ₦1,500,000.00 vide Re-assessment Notice dated 02/08/05. These assessments were duly communicated to the Respondent as evidenced by letters dated 17th Sept. 2003 and 2nd August, 2005.

15. The Respondent failed and/or refused to pay or object to assessment until the lapse of statutory period for objection. The assessment has therefore become final and conclusive.

16. The only VAT remitted by the Respondent since January 1999-July 2005 was the sum of N100, 000 being alleged VAT for April to November 2002 which was remitted on 23/03/05.

17. The Respondent's case was referred to the Federal Board of Inland Revenue from the Appellant's Aba office vide a letter dated 01/05/04.

CERTIFIED TRUE COPY
TAX APPEAL TRIBUNAL
SOUTH EAST ZONE
Sign..... Date 18/4/18
Name Uche Nkuta
Designation; Secretary

18. The Chairman of the Federal Inland Revenue Service referred the matter to the legal Department of the Appellant who then wrote to the Respondent vide a letter dated 14th July, 2004 giving her 14 days to comply with the VAT law by remitting the VAT and paying the penalty. The said period elapsed without any remittance from the Respondent.

19. Other correspondence made by the Applicant to the Respondent in a bid to get it to make the returns/payment includes letters dated 27/09/2002, 01/11/02, 28/08/05, 10/12/03, 23/06/03, 25/08/03, 17/09/03, 25/01/05 and 26/07/04.

20. The Respondent's VAT liability to the Federal Government of Nigeria as at July 2005 is Seventeen Million Naira, Three Hundred and Sixty Thousand Naira (₦17,360,000.00) as well as One Hundred and Thirty-One Million, One Hundred and Eighty-Seven Thousand Naira (₦131,187,000.00) already admitted as due by the Respondent.

21. The facts depose herein are true and correct to the best of my knowledge.

22. It is in the interest of justice that judgment be entered in favour of the Appellant in the sum of (₦17, 360,000.00) as well as One Hundred and Thirty-One Million, One Hundred and Eighty-Seven Thousand Naira (₦131, 187,000.00) already admitted a due by the Respondent being the tax due from Respondent for January April, 1997, to July, 2005, inclusive of penalties.

In the face of unchallenged evidence of the Appellant in this regard, the evidence of the Appellant stands.

The case of **Yusuf vs. State (2012) All FWLR (pt.641) 1478 at 1505** expressed the legality in a court's decision to go ahead to act on uncontroverted evidence where the Court of Appeal stated thus:

The law gives a court the license to act and rely on unchallenged evidence to arrive at a decision; see also *Tanko vs. State (2009) All FWLR (Pt.456) 197*, which was relied on.

In the same light the Supreme Court held that the Court has the duty to accord credibility to uncontroverted evidence of parties in **Akinboye vs. Adeko (2012) All FWLR (Pt.636) 522 at 540** thus:

It is trite that when evidence given by one party is not contradicted or controverted by the other party who has the opportunity to do so and such evidence is not inherently incredible and does not offend any rational conclusion or state of physical things, the court should accord credibility to such evidence.

From the totality of the argument adduced and the authorities cited above, it is clear that the sum of ₦17, 360,000.00 raised as penalties, interest and Best of Judgment Assessment on Respondent for April 1997-July 2005 has become due and payable and as such the Respondent is ordered to pay same.

Issue B

Whether liability admitted by the Respondent is due and payable?

In respect of the second leg of the argument being issue B, the Appellant further submitted that the sum of One Hundred and Thirty-One Million, one Hundred and Eighty-Seven Thousand Naira (₦131, 187,000.00) had become due and payable having been admitted by the Respondent, in paragraph 5(e) of her amended statement of defence at the VAT Tribunal, to have been collected but not remitted.

In the case of **Cappa and D'alberto Ltd vs. Akintilo (2003) FWLR (pt.160) 1565 at 1579 paras C-F** the Supreme Court defined admission thus:-

CERTIFIED TRUE COPY
TAX APPEAL TRIBUNAL
SOUTH EAST ZONE
Sign..... Date 18/4/18
Name
Designation; Secretary

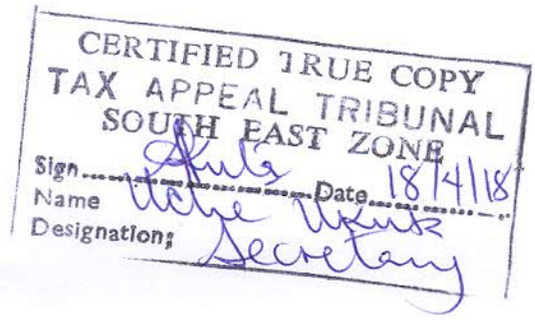
An admission is a statement, oral or written (expressed or implied) made by a party or his agent to a civil proceedings and which statement is adverse to his case. It is admissible against the maker as the truth of the fact asserted in the statement. In a civil case, admission by a party are evidence of the facts asserted against but not in favour of such party.

In paragraph 5(e) of the Respondent's amended statement of defence filed on 3rd July 2006, before the Value Added Tax Tribunal which was tendered, admitted and uncontroverted before this Tribunal, the Respondent in admitting the above liability stated as follows:

Sometime in December 2003 the Respondent got to know that certain officers of the Respondent at its Aba Depot namely, Mr. Bode Ogunpola and another Mrs. Chinyere had misappropriated the sum of ₦131,187,000.00 (meant for VAT remittances for the period April 2002 and March 2005) which was not remitted.

This is an admission that the company collected as VAT the sum of ₦131,187,000 meant for VAT remittances for the period April 2002 and March 2005 which was not remitted even though it was under a legal obligation to collect and remit VAT. The fact that agents of the company orchestrated a failure to carry out such obligation does not free the company from liability. It is also trite that the above statement amounts to an admission as defined by the Supreme Court in **Cappa and D'alberto Ltd vs. Akintilo (supra)**.

There is an impressive array of decisions which go to show that, it is the law that facts admitted need not be proved. See **Etuwew vs. Etuwew (1993) 2NWLR (pt. 274) 184; Alabe vs. Abimbola (1978) 2 S.C.39.** By the mere admission having been made of the said sum, the appellant had been exonerated from any further burden of proof, contrary to the contention alluded by the Respondent. See also



P.H.R.C. Ltd. vs. Okoro (2012) All FWLR (Pt.606) 466 at 480, on needlessness to prove admitted facts:

...no fact need be proved in any civil proceedings which the parties thereto or their agents agree to admit at the hearing, or which by the rules of pleading in force at the time they are deemed to have admitted by their pleadings...it needs no further proof: *Maduabuchukwu vs. Umunakwe (1990) 2 NWLR (Pt.134) 598* referred to. This class of evidence, as was held in *Igwe vs. A.C.B. PLC (1999) 6 NWLR (Pt.605) 1 at pg.11*, is the strongest proof.

It is our considered view that documents filed and tendered in a previous proceeding in respect of the same liability and transmitted to the Tribunal are public documents and can be relied upon in proof of facts therein contained.

An admission in such a situation would relieve the Appellant of the need to prove such facts.

The general rule is that facts which have been admitted need not be proved.

See also the case of **Anike vs. S.P.D.C. (Nig.) Ltd. (2012) All FWLR (Pt.638) 975 at 984** where the Court of Appeal stated that:

By virtue of section 75 of the Evidence Act facts which are admitted need no further proof.

In **Ekpo vs. Toyo (2012) All FWLR (637) 742 at 752-753**, the Court of Appeal also held that:

That which is admitted by the parties in their respective pleadings need no further proof since no one sets out to prove what has not been denied...

CERTIFIED TRUE COPY
TAX APPEAL TRIBUNAL
SOUTH EAST ZONE
Sign..... Date 18/4/18
Name
Designation; Secretary

Permit us to state in passing that the defence of the Respondent that some of its agents misappropriated the sum of ₦131, 187,000.00 meant for VAT goes to no issue in considering the liability of the Respondent. It will be held responsible for the misdeed of such agents carried out in the course of their business.

The allegation of crime in law is a serious one and the required proof is one beyond reasonable doubt. More so, it is the burden of he who asserts to prove the existence of such facts. It is not enough for the respondent to allege commission of a crime by its agents without taking any serious steps to prove their guilt.

See the case of **Oraekwe vs. Chukwuka (2012) All FWLR (Pt.612) 1677 at 1721** where the Court of Appeal stated thus:

The law relating to burden of proof is simple and straight forward. He who asserts must prove: Section 135 (1) of the Evidence Act. The burden lies on the party who would fail if no evidence at all were given on either side: Section 136 of the same Evidence Act...

In the words of the Evidence Act 2011, the above referred provisions were captured in the following sections;

Section 131 (1):

Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts shall prove that those facts exist.

Section 132:

The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

The above provisions are further buttressed by the provisions of section 136 (1) of the Evidence Act, 2011 which provides:

CERTIFIED TRUE COPY
TAX APPEAL TRIBUNAL
SOUTH EAST ZONE
Sign ..... Date 18/4/18
Name
Designation; Secretary

The burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence unless it is provided by any law that the proof of that fact shall lie on any particular person, but the burden may in the course a case be shifted from one side to the other.

The Supreme Court also buttressed this principle in the case of **Purification Technique (Nig.) Ltd. vs. Jubril (2012) All FWLR (Pt.642) 1657 at 1687** thus:

...the principle of law that he who asserts must prove is very much alive in this case, (see section 135 of the Evidence Act, Cap. 112, Laws of the Federation of Nigeria, 1990)...

Note the provision of section 135 of the Evidence Act above referred to is now embedded in Section 131 of the Evidence Act, 2011.

On the standard of proof required in allegations of crime, See the case of **Osetola vs. State (2012) All FWLR (Pt.649) 1020 at 1044** where RHODES-VIVOUR JSC stated thus:

Section 138(1) of the Evidence Act makes it mandatory that the standard of proof required in criminal trials by the prosecution is proof beyond reasonable doubt...

See also; **Action Congress of Nigeria vs. Lamido (2012) All FWLR (Pt.630) 1316**.

The Respondent has neither prosecuted nor proved the guilt of the agents named as Mr. Bode Ogunpola or Mrs. Chinyere. In the absence of that, this Tribunal has no choice but to go after the direct culprits being those responsible for the payment of VAT in this instance and conclude that the Respondents were the ones that failed to remit. It would amount to a wild goose chase to go after persons that are presumed to be innocent by the Law.

In the case before us, the person responsible for this payment is the Respondent and no other. In a matter that started in 2004, it is surprising that the Respondent chose to abandon or ignore the proceeding in totality.

On the strength of the testimony of the Appellant's witness, the exhibits tendered, the exhibit already in the transmitted case file which the Tribunal was called upon to take judicial notice of, the authorities and force of argument adduced in the court the Appellant submitted that the sum of ₦17, 360,000.00 as well as ₦131, 187,000.00 collected as VAT but unpaid by the Respondent have become due and should be paid.

In the case at hand, this Tribunal is satisfied that the sum of ₦17,360,000.00 charged by the Appellant as penalties, interests and as Best of Judgment charges were done in accordance with Section 12 of the Value Added Tax Act.

That failure of the Respondent to remit the money as and when due is a violation of section 13 of the Value Added Tax Act. The Appellant is entitled to the said amount.

It is also our considered view that the second leg of the relief sought in respect of ₦131, 187,000.00 succeeds in the face of the Respondent's admission of the Appellant's claim.

We are also guided by the Court of Appeal's warning in **Phonenix Motors Ltd. vs. National Provident Fund Management Board (1993) 1 NWLR (pt. 272) pg. 718 at 73.** That:

No court of law should lend its hands to a person or body bent on beating the efforts of Government at collecting revenue by relying on technicalities of the law with a frugal aim to cheat Government of its legitimate income.

CERTIFIED TRUE COPY
TAX APPEAL TRIBUNAL
SOUTH EAST ZONE
Sign ..... Date 18/4/18
Name Ifeoma Nkuta
Designation: Secretary

In the ultimate analysis, the two issues subsumed in the sole ground of appeal succeed and it is hereby ordered as follows;

1. That the Respondent being a VAT collector is obliged to file returns and remit VAT for the period under consideration starting from 1997 to 2005.
2. That the sum of Seventeen Million, Three Hundred And Sixty Thousand Naira (₦17,360,000.00) has crystallized as a debt arising from penalties, interest and Best of Judgment Assessment for failure to file returns and remit same and should be paid by the Respondent.
3. The sum of One Hundred and Thirty-One Million, One Hundred and Eighty-Seven Thousand Naira (₦131,187,000.00) admitted as having been deducted by the Respondent for the period from January 1997 to July 2005, is binding on the Respondent and should be paid to the Appellant.
4. Judgment is hereby entered for the immediate payment of the total sum of One Hundred And Forty-Eight Million Five Hundred And Forty-Seven Naira only (₦148,547,000.00) in favour of the Appellant by the Respondent.
5. There shall be no order as to cost.

Parties are entitled to appeal against this judgment.

.....

Prof. C.J. Amasike, Ph.D.
Chairman

COUNSEL

Mr. Emmanuel Eze (with Mr. James Binang, Mr. Haruna Musa And Mrs. Ngufan Nwogu-Ikojo) For The Appellant.

Mr. Babatunde Kehinde For The Respondent.

CERTIFIED TRUE COPY
TAX APPEAL TRIBUNAL
SOUTH EAST ZONE
Sign ..... Date 18/4/18
Name Uche Ukutz
Designation; Secretary