



A REVIEW OF THE JUDGMENT IN CHI LIMITED V. FIRS

Background

The Appellant (CHI Limited) is a company incorporated under the laws of the Federal Republic of Nigeria. The Respondent (FIRS) is an agency of the Federal Government of Nigeria. Under its constitutive law, it is responsible for the collection of taxes payable to the Federal Government including Value Added Tax (VAT), the tax in connection with which this appeal was filed.

The Appellant by a letter dated September 14, 2020 wrote to the Tax Policy and Advisory Department of the Respondent requesting for a decision permitting the Appellant to recover Input VAT incurred on the purchase of gas, short term spares and consumables against the VAT it charged on its products. The request was to determine whether the input VAT thereon qualified as their stock-in-trade for the purpose of **Section 17 of the Value Added Tax Act (VAT Act)**.

The Respondent by a letter dated September 23, 2020 refused the Appellant's request stating that the natural gas and diesel, short term spares and other manufacturing consumables are not the company's 'stock-in-trade' or raw materials used in the production of its products; rather they form part of the company's **production overhead**.

The Appellant commenced an appeal before the Tax Appeal Tribunal following the Respondent's refusal to grant the recovery of the Appellant's input VAT claims incurred on the production of its products.

Determination of issues raised

The Appellant and Respondent raised similar issues which bothered on the interpretation of **Section 17 of the VAT Act**. This conflict of interpretation was based on the determination of when Input VAT is claimable vis-à-vis determining what stock-in-trade is, as its definition is not provided for in the VAT Act. The said section of the VAT Act provides thus;

17. Allowable input tax, etc.

(1) For purposes of Section 13(1) of this Act, the input tax to be allowed as a deduction from output tax shall be limited to the tax on goods purchased or imported directly for resale and goods which form the stock-in-trade used for the direct production of any new product on which the output tax is charged.

(2) Input tax-

(a) on any overhead, service, and general administration of any business which otherwise can be expended through the income statement (profit and loss accounts); and

*(b) on any capital item and asset which is to be capitalized along with cost of the capital item and asset,
Shall not be allowed as a deduction from output tax.*

The Tribunal in its interpretation of Section 17 of the VAT Act, defined some of the terms contained therein relying on the provisions of the Black's Law Dictionary. It defined "stock-in-trade" as resources or assets used to operate a business as its definition was not provided for in the VAT Act.

The Tribunal also defined overheads as business costs that are related to the day-to-day running of the business which cannot be traced to a specific business activity. They are expenses incurred to support the business, which are made up of utilities. It stated that stock-in-trade and overheads are synonymous, as utilities such as gas can be viewed as stock-in-trade, and as such some utilities can double as stock-in-trade and overhead in which Input VAT claims can be made. Furthermore, it ruled that Input VAT on overheads that have been involved in the direct production of finished products and on which Output VAT is charged, can be claimed as provided for in Section 17(1) of the VAT Act.

The Tribunal ruled that raw materials alone cannot be said to be the only goods required to produce the finished products of the Appellant. That the gas, short term spares and other consumables used by the Appellant form their stock-in-trade, and were used to manufacture the finished products of the Appellant and not merely in the general administration of business of the Appellant as claimed by the Respondent. It held that the state of the law will not permit the interpretation of the term "stock-in-trade" used in Section 17(1) of the VAT Act to mean raw materials only as it will be unduly restrictive and exclusionary.

Consequently, the Tribunal dismissed the Respondent's claim and held that the Appellant be allowed to recover its Input VAT paid for the manufacturing of its finished goods/products using natural gas, short term spares and other manufacturing consumables.

Commentary

The judgment of the Tribunal in this case is a paradigm shift from the traditional presumption exercised by the tax authorities that all input VAT expended on overheads, and stock-in-trade other than raw materials are not recoverable from output VAT as input VAT claims.

This decision also clarifies the legislative interpretation of Section 17 of the VAT Act. It gives an expansive interpretation to the concept of stock-in-trade to include overheads (utilities) that are directly involved in the final production of a company's products i.e. finished products, as raw materials alone cannot be said to be the only materials required to produce the finished products of a company.

Companies in the manufacturing and related industries are positively affected by this decision. Consequently, manufacturers of VATable goods should take advantage of this

judgment and claim unclaimed input VAT from the FIRS relying on Section 17 of the VAT Act.

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