

Case Brief: Bumi Armada Ghana Ltd v. The Commissioner-General (GRA)

Citation: Suit No. CM/TAX/0225/2021

Court: High Court of Justice (Commercial Division), Accra

Date: 8th February 2022

Judge: His Lordship Justice Constant K. Hometowu

Flynote

Tax Law — *Petroleum Income Tax* — **Withholding Tax (WHT)** — **Cascading Ruling** — *Whether a sub-subcontractor under a Petroleum Agreement is exempt from withholding tax based on a "Cascading Ruling"* — **Statutory Interpretation** — *Section 27 of PNDCL 188* — **Administrative Law** — *Validity of retrospective revocation of a private tax ruling.*

Facts

The Appellant, **Bumi Armada Ghana Ltd**, operated as a subcontractor under a Petroleum Agreement between Eni Ghana Exploration and Production Limited and the Government of Ghana. In 2014, the Ghana Revenue Authority (GRA) issued a "Cascading Ruling" stating that under **Section 27 of the Petroleum Income Tax Law, 1987 (PNDCL 188)**, a subcontractor had no obligation to withhold tax from payments made to its affiliates or third-party sub-subcontractors for services connected to the Petroleum Agreement.

However, following a tax audit for the period 2015–2019, the GRA issued a tax liability of **\$3,750,011.19**. The GRA argued that the Cascading Ruling had been revoked by the introduction of the **Income Tax Act, 2015 (Act 896)** and **Income Tax Regulations, 2016 (L.I. 2244)**. The GRA contended that the Appellant was now required to withhold tax on payments to its non-resident sub-subcontractors and that the previous ruling did not apply to these specific service contracts.

Issues

1. **Scope of Petroleum Agreement:** Whether the GRA erred in interpreting the Eni Petroleum Agreement to exclude service contracts between a subcontractor (Appellant) and its sub-subcontractors.
 2. **Withholding Tax Liability:** Whether payments to sub-subcontractors for services (including manpower) were subject to Withholding Tax or PAYE.
 3. **Retrospective Revocation:** Whether the GRA could retrospectively revoke the "Cascading Ruling" to impose liabilities for past periods.
 4. **Preliminary Objection:** Whether the appeal was incompetent due to alleged non-compliance with Order 54 Rule 4 of C.I. 47 regarding the mandatory tax deposit.
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Held (Judgment)

The High Court **allowed the appeal** in part and ruled as follows:

- **Preliminary Objection Dismissed:** The Court found the Appellant had paid approximately **35.6%** of the assessed tax, exceeding the statutory requirement of one-quarter (25%) under Order 54 Rule 4.
 - **WHT Exemption Confirmed (Ground A & B):** The Court held that the GRA erred in law by excluding sub-subcontractors from the scope of the Petroleum Agreement. The "Cascading Ruling" applied, meaning the Appellant was not required to withhold tax on payments to its sub-subcontractors for services related to the Eni project.
 - **Reconciliation (Ground C):** The Court ordered the parties to appoint an independent auditor to reconcile discrepancies regarding withholding tax for services *not* connected to the Petroleum Agreement.
 - **No Retrospectivity:** The Court affirmed that tax rulings cannot be revoked with retrospective effect to the detriment of a taxpayer who relied on them.
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Relevant Legal Provisions Considered

- **Petroleum Income Tax Act, 1987 (PNDCL 188):**
 - **Section 27(1):** Requirements for withholding tax by persons liable to make payments to subcontractors.
 - **Section 27(2):** Exemption from further tax liability once an amount has been withheld under subsection (1).
- **Income Tax Act, 2015 (Act 896):**
 - **Section 71(4):** Provisions regarding withholding tax for contractors under petroleum agreements (in *pari materia* with PNDCL 188).
- **Revenue Administration Act, 2016 (Act 915):**
 - **Section 36:** Power of the Commissioner-General to conduct audits.
- **High Court (Civil Procedure) Rules, 2004 (C.I. 47):**
 - **Order 54 Rule 4:** Conditions for appealing a tax assessment, specifically the requirement to pay a portion of the tax in dispute.