

CASE BRIEF

ORICA GHANA LIMITED v. THE COMMISSIONER-GENERAL, GHANA REVENUE AUTHORITY

High Court of Justice, Commercial Division, Accra

Suit No. CM/TAX/0118/2022

Date: 19th July, 2022

FLYNOTE

Tax Law – Manufacturing Business – Location Incentive – Income Tax Computation – Apportionment of Business Income – Whether Commissioner-General can separate manufacturing activities from ancillary management services for location incentive purposes – Whether all activities of manufacturing company constitute single business – Whether discretionary power to re-characterize business must comply with Article 296(c) Constitution – Whether tax credits can be applied beyond statutory limitation periods – Paragraph 3(6) First Schedule Income Tax Act 2015 (Act 896) – Section 58(4) Act 896 – Section 34 Act 896 – Article 296(c) 1992 Constitution – Section 30 VAT Act 1998 (Act 546) – Section 92(1) Revenue Administration Act 2016 (Act 915)

Held: (1) Manufacturing business includes all activities integral to manufacturing process, including transportation and delivery of manufactured products. Section 58(4) Act 896 treats all activities of company as conducted in single business unless Act specifically delineates otherwise. Commissioner-General's apportionment of manufacturing income from management services constituted re-characterization requiring compliance with Section 34 Act 896 and Article 296(c) Constitution – both not complied with. (2) Statutory limitation periods under Section 30 Act 546 apply only to Commissioner-General's power to assess, not taxpayer's right to claim tax credits. Tax credits can be carried forward without time limitation. (3) Photocopies of VAT Relief Purchase Orders admissible where originals already authenticated by Commissioner-General's officers. Appeal allowed.

PARTIES

Appellant: Orica Ghana Limited (Manufacturing company - explosives)

Respondent: The Commissioner-General, Ghana Revenue Authority (GRA)

Facts

- **Background:** Orica Ghana Limited (Appellant) manufactures and transports bulk commercial explosives for the mining industry.
- **Audit & Assessment:** In 2017, the Ghana Revenue Authority (GRA) audited Orica for the 2010–2016 period. The GRA issued revised assessments resulting in a final credit of USD 755,411.32, but disputed several claims.
- **Disputes:**
 1. **Apportionment:** The GRA split Orica's income into "manufacturing" (eligible for location incentives) and "management services" (transport/delivery, taxed at a higher rate), arguing transportation is not manufacturing.
 2. **VAT Credits:** The GRA denied VAT credits from 2011–2012, citing the 3-year limitation on assessments under Section 30 of Act 546.
 3. **Income Tax Credits:** The GRA denied 2010 income tax credits based on the 6-year limitation in Section 37(5)(a) of Act 915.
 4. **VAT Relief Purchase Orders (VRPOs):** The GRA rejected photocopies of VRPOs worth over USD 6.6 million, despite having previously authenticated the originals.

Issues

1. Whether the GRA erred by apportioning Orica's income into manufacturing and management services, thereby denying full location incentives.
2. Whether the GRA erred by denying VAT and income tax credits accrued prior to statutory assessment limitation periods.
3. Whether photocopies of VRPOs are admissible evidence.

Held

Appeal Allowed. The Court ruled in favour of Orica on all grounds.

1. **Apportionment Illegal:** The GRA erred in separating manufacturing from ancillary services. Orica is entitled to location incentives on its **entire** business income.
2. **Credits Allowed:** The GRA must recognize and apply the VAT credits from 2011–2012 and the 2010 income tax credit of USD 591,404.79.
3. **VRPOs Admissible:** The GRA is ordered to accept the photocopied VRPOs in the tax computation.

Ratio Decidendi

- **Single Business Concept:** Under Section 58(4) of Act 896, all activities of a company are treated as a single business unless the Act specifically delineates them. Integral services like transportation and delivery of manufactured products constitute part of the "manufacturing business".
- **Discretionary Power & Due Process:** The GRA's re-characterization of business income was an exercise of discretionary power that failed to comply with Article 296(c) of the Constitution (lack of published regulations and due process) and Section 34 of Act 896.
- **Limitation Periods:** Statutory time limits (e.g., 3 years for VAT, 6 years for income tax) apply **only** to the Commissioner-General's power to raise assessments, not to a taxpayer's right to claim accrued credits. Credits can be carried forward indefinitely absent an express statutory bar.

- **Admissibility of Copies:** Under Section 91 of Act 915 and Section 166 of the Evidence Act, photocopies are admissible where the originals were previously authenticated by tax officers and contain unique serial numbers preventing duplication.

Significance

- **Clarification on Manufacturing:** Establishes that "manufacturing business" for tax incentives includes integral logistical activities.
- **Protection of Credits:** Confirms that assessment limitation periods do not extinguish a taxpayer's right to utilize accrued tax credits.
- **Administrative Check:** Reinforces that the GRA cannot arbitrarily re-characterize business activities without strict adherence to constitutional and statutory due process.

Counsel:

Benedict Asare with Ismail Ibn Ibrahim, Wisdom Ankah and Dr. Nana Gyamrah Afful for Dr. Abdallah Ali-Nakyee for Appellant

Emma Otoo for Mrs. Joyce Ampah for Respondent