IN THE SUPERIOR COURT OF JUDICATURE
IN THE COURT OF APPEAL
(CIVIL DIVISION)
ACCRA – A. D. 2025

SUIT No: H1/22/2025

ORICA GHANA LIMITED **APPELLANT/RESPONDENT**
No. 83 Osu Badu Street
Airport West
Accra

Vrs

THE COMMISSIONER-GENERAL **RESPONDENT/APPELLANT**
Ghana Revenue Authority
Ministries – Accra

AMENDED WRITTEN SUBMISSION FILED ON BEHALF OF THE APPELLANT / RESPONDENT PURSUANT TO LEAVE GRANTED BY THE COURT OF APPEAL DATED 28TH OCTOBER 2025

Introduction

1. Respectfully, my Lords, this is an appeal against the Judgment of Her Ladyship Jane Harriet Akweley Quaye J. sitting as an appellate court at the Commercial Court Division of the High Court, Accra (hereinafter called **"court below"**) dated the 19th day of July 2022.

2. My Lords, the **Judgment** can be found at pages 165 to 199 of Vol. 2 of the rectified Record of Appeal.

3. The Grounds of Appeal as contained in the Notice of Appeal can be found at pages 202 to 204 of Vol. 2 of the rectified Record of Appeal as follows:

a. The Judgment is against the weight of evidence.
b. The decision of the High Court to accept as authentic the disputed photocopied VAT Relief Purchase Orders (VRPOs) is against the weight of evidence.

c. The High Court erred in law by holding that the Respondent (*sic*) erred in apportioning of the Appellant's (*sic*) business income into manufacturing and management service.

Brief Facts of the Case

4. The Appellant/Respondent, Orica Ghana Limited (hereinafter called "Respondent"), is a limited liability company duly incorporated under the laws of Ghana and engaged in the business of manufacturing, assembling, and selling of bulk commercial explosives.

5. The Respondent/Appellant (hereinafter called "Appellant") is the head of the Ghana Revenue Authority (GRA), a statutory body responsible for tax administration and revenue collection in Ghana.

6. My Lords, sometime in 2017, the Appellant conducted a tax audit into the affairs of the Respondent company for the period 2010 to 2016 years of assessment and among others apportioned the income of the Respondent into income derived from manufacturing activities and income from non-manufacturing activities. By so doing, the Appellant proceeded to deny the Respondent the full location incentive to which the Respondent was entitled under the Income Tax Act, 2015 (Act 896).

7. Additionally, the Appellant rejected photocopies of VAT Relief Purchase Orders (VRPOs) which had earlier been obtained, verified, and initialed by its officer in the course of the same audit to the tune of US$6,620,789.87 on the ground that they were photocopies, and that the Commissioner-General was not under any obligation to accept photocopies of VRPOs.

8. The Respondent after objecting to the tax assessment, and receiving an objection decision, further appealed to the High Court on 15th November 2021 against the objection decision of the Appellant on the following grounds:

i. The Respondent erred in law by denying the Appellant its full entitlement of location incentive under paragraph 3(6) of the First Schedule to the Income Tax Act, 2015 (Act 896).

ii. The Respondent erred in law by apportioning the Appellant's business income into manufacturing and management service contrary to Article 296(c) of the 1992 Constitution of the Republic of Ghana.

iii. The Respondent erred in law by denying the Appellant the use of Value Added Tax (VAT) credits which had accrued prior to the 2013 year of assessment.

iv. The Respondent erred in law by denying the Appellant the use of its legitimate income tax credits.

v. The Respondent erred in law by rejecting photocopies of the VAT Relief Purchase Orders (VRPOs) contrary to section 91 of the Revenue Administration Act, 2016 (Act 915) and section 166 of the Evidence Act, 1975 (NRCD 323).

9. The Respondent further prayed the court below for the following reliefs:

i. A declaration that the Respondent erred in law by apportioning the Appellant's business income into manufacturing and management service contrary to paragraph 3(6) of the First Schedule to the Income Tax Act, 2015 (Act 896) and Article 296(c) of the 1992 Constitution of the Republic of Ghana.

ii. A declaration that the Respondent erred in law by depriving and/or denying the Appellant location incentive as a manufacturing business.

iii. A declaration that the Respondent erred in law by depriving the Appellant of Value Added Tax (VAT) credits of

US$653,412.69 which had accrued prior to the 2013 year of assessment.

iv. A declaration that the Respondent erred in law by depriving the Appellant of income tax credits of US$591,404.79 arising from overpayment of tax due to the Appellant in the 2010 year of assessment.

v. A declaration that the photocopies of the VAT Relief Purchase Orders (VRPOs) are admissible in accordance with section 91 of the Revenue Administrative Act, 2016 (Act 915) and section 166 of the Evidence Act, 1975 (NRCD 323).

vi. An order directing the Respondent to consider the VAT Relief Purchase orders (VRPOs) of an amount of US$6,620,789.87 in the computation of the appellant's tax liability.

vii. An order granting the direct tax credit of US$591,404.79 and indirect tax credit of US$653,412.69 due the Appellant for the tax audit period.

viii. An order for the Respondent to issue a revised tax assessment of the Appellant for the 2010 to 2016 years of assessment taking into consideration all the reliefs granted by this Honourable Court.

ix. An order directing the Respondent to refund any tax credits owing to the Appellant as a result of the revised audit within 90 days from the date of final judgment, failing which the Respondent shall pay interest on any ensuing tax credits.

x. Costs, including Lawyer's fees.

xi. Any other order(s) that the Court may deem fit.

10. On July 19, 2022, the court below delivered its judgment wherein the appeal succeeded in its entirety. Dissatisfied with the Judgment of the appellate High Court, the Appellant filed an appeal at the registrar of this Court on 29th

September 2022 and filed its Written Submission on 29th December 2023. Subsequently after compliance with rectification orders, the Appellant filed another Written Submission at the Registry of this Honourable Court on 8th November 2024, without leave.

11. On March 11 the Respondent filed its Written Submission pursuant to leave of Court dated 10th 20205. On 7th April 2025, the Honourable Court struck out the Appellant's Written Submission filed on 29th December 2023 as withdrawn and also struck out the Appellant's Written Submission filed out of time on 8th November 2024 without leave of Court.

12. Subsequently, on 16th July 2025, the Honourable Court granted leave to the Appellant to file its Written Submission out of time which Written Submission was filed on 21st July 2025 and served on the Respondent on 7th August 2025.

13. On 28th October, 2025, the Honourable Court granted leave to the Respondent to file its amended Written Submission

Evaluation of Grounds of Appeal

14. Respectfully, my Lords, in responding to the grounds of appeal, we shall first argue Ground B, followed by Ground C and conclude with Ground A.

Ground B

The decision of the High Court to accept as authentic the disputed photocopied VAT Relief Purchase Orders (VRPOs) is against the weight of evidence.

15. My Lords, may we respectfully state that there was no ground on the authenticity or otherwise of the photocopied VRPOs before the court below, neither was the court invited to make any determination on the authenticity of the photocopied VRPOs.

16. Indeed, the ground relating to VRPOs at the court below which can be found at page 2 of volume1 of the rectified Record of Appeal is ground "v" which is reproduced below thus:

Ground V
The Respondent erred in law by rejecting photocopies of the VAT Relief Purchase Orders (VRPOs) contrary to section 91 of the Revenue Administration Act, 2016 (Act 915) and section 116 of the Evidence Act, 1975 (NRCD 323)

17. At page 4 of the Appellant's Audit Report dated 21st December 2017 found at pages 14 to 58 of Vol. 1 of the rectified Record of Appeal, under the heading ***"Overstatement/Unsubstantiated VRPO's (2011-2016)"*** the Appellant disallowed the VRPOs because they were not original copies. The Appellant stated thus,

> *Your company could not provide **sufficient original copies** of VRPOs to fully validate VAT relieved on taxable supply.*

18. Similarly, at page 178 of Vol. 1 of the rectified Record of Appeal, the Appellant states in paragraph 2(c) titled "Overstatement/Unsubstantiated VRPOs" in a letter dated June 11, 2018, with reference number LTO\DC\TP\06\18 found at pages 175 to 179 of Vol. 1 of the rectified Record of Appeal as follows: ***"We are unable to amend our computation any further because your proof of relieved sales are photocopies of VRPOs. We stand by the stance of our officers' rejection of the photocopies for unsatisfactory evidence."*** This position has been reiterated by the Appellant before this Honourable Court.

19. My Lords, the position of the Appellant on their inability to accept the VRPOs because they are photocopies, was further reiterated in paragraph 13 of the Appellant's Reply filed in the Court below at page 31 of Vol. 2 of the rectified Record of Appeal as well as paragraph 106 of the Appellant's Written submission filed at the court below found at page 158 of Vol. 2 of the rectified Record of Appeal.

20. The basis for this position, as argued by the Appellant is that section 41(2) of the Value Added Tax Act, 2013 (Act 870) requires a taxpayer to retain a "copy" of the tax invoice, and according to the Appellant, the word "copy" as used in Act 870, refers to a duplicate copy.

21. The authenticity of the photocopied VRPOs were therefore never questioned either during the objection process or before the court below.

22. My Lords, a person making a taxable supply is required to charge VAT on the supplies made and issue a VAT invoice in that regard. Where the supplier fails to charge VAT, the supplier is liable for the tax not charged. In some instances, however, some taxpayers (recipients of supplies), particularly in the mining sector are relieved from being charged VAT.

23. Under such circumstances (where a recipient of a supply is relieved from VAT), upon receipt of the VAT invoice from the supplier (the issuer of the VAT invoice), the recipient must furnish the supplier, in this case, the Respondent, with a VAT Relief Purchase Order (VRPO) indicating that the recipient of the supply is relieved from VAT. Failure to obtain the VRPO from the recipient makes the supplier liable for the VAT.

24. It is trite that a tax statute is to be construed strictly and nothing is to be read in and nothing is to be implied. The Supreme Court, speaking through Georgina Wood (Mrs.) CJ (as she then was), in the case of **Multichoice Ghana Ltd. vrs. Internal Revenue Service [2010-11] SCGLR 783**, said:

> *"Our conclusion has been dictated by the strict constructionist approach to the interpretation of statute reserved for fiscal legislation. The general principle is that tax statute is to be construed strictly."*

25. Also, in the case of **Cape Brandy Syndicate vrs. IRC [1921] KB 64** at 71, Rowlatt J held as follows:

> *"In a taxing Act,* ***one has to look merely at what is clearly said****. There is no room for any intendment. There is no equity about a tax. There is no presumption as to tax.* ***Nothing is to be read in****, nothing is to be implied. One can only look fairly at the language used."*

26. The need to stick strictly to the letter of the law is further emphasized by the Court in the case of **Partington v. Attorney-General [1869] LR 4 HL 100 at 122** where it was emphasized that **if the Revenue cannot bring the**

taxpayer within the letter of the law, the taxpayer must be free no matter how compelling the spirit of the case might be.

27. Respectfully, my Lords, even before we address the definition of "copy" as provided under Act 870 and Act 915, we will address the interpretation of section 41(2) of Act 870 as referred to by the Appellant and whether or not it applies, from the perspective of VRPOs to the Respondent.

28. Section 41(2) of Act 870 provides that, *"A taxable person* ***on issuing a tax invoice*** *shall retain a copy of the invoice in a sequential identifying number order."* (Our emphasis). Under section 65 of Act 870, *"tax invoice" is defined as "an invoice* ***issued on a supply of taxable goods and services*** *in accordance with this Act and Regulations made under this Act."* (Our Emphasis)

29. My Lords, section 41(1) refers to a situation where a supplier of goods or services, in this case the Respondent, **issues a tax invoice** (VAT invoice) to a recipient, i.e., its customer. However, in the instant case, it is not the Respondent's tax invoice which had been photocopied but rather VRPOs **issued by the Respondent's customer** to the Respondent.

30. Regulation 21 of the Value Added Tax Regulations, 2016 (L.I. 2243) provides further clarity in its definition and the contents of a tax invoice. The said section provides that: *"a taxable person shall in accordance with subsection (1) of section 41 of the Act,* ***on a supply of taxable goods or service to a customer issue to the customer a tax invoice"*** (Our Emphasis). Regulation 21(2) of L.I. 2243 proceeds to provide the content of a tax invoice which clearly point to a VAT invoice and not a VRPO.

31. My Lords, apart from the VRPO not being a tax invoice as contemplated under section 41 of Act 870 and regulation 21 of L.I. 2243, assuming we were to adopt the erroneous interpretation given to section 41(2), the responsibility of retaining a copy also does not arise in the case of the Respondent **because the Respondent was a recipient of the VRPOs and not the issuer of the same.**

32. We humbly urge this Honourable Court to adopt the Respondent's interpretation which is to the effect that section 41(2) of Act 870 does not apply to the Respondent under the current circumstances.

33. It must be mentioned that for the sake of the integrity of the audit process and findings, the duplicate copies of the VRPOs could have been confirmed from the Respondent's client, and yet nowhere in either their submission before this court or the court below has the Appellant stated that upon investigation from the issuers of the VRPOs, the issuers could not provide evidence to support the Respondent's VRPOs.

34. In the unlikely event that this Honorable court is of the view that Section 41(2) of Act 870 is applicable in a situation where the supplier is a recipient of a VRPO, it is respectfully contended that section 91(1) of the Revenue Administration Act, 2016 (Act 915) on the admissibility of documents provides:

> *"The following are admissible in proceedings on appeal or in recovery of tax under a tax law without calling the person who prepared or signed it:*
>
> *(a) a document* ***that has been seized or obtained by a tax officer*** *acting in the performance of duties under a tax law, relating to the tax affairs of a person;*
>
> *(b) a statement relating to the tax affairs of a person that is made to a tax officer acting in the performance of duties under a tax law; and*
>
> *(c)* ***a copy of, translation of or extract from a document or statement referred to in paragraph (a)*** *or (b)."*

35. My Lords, the word "copy" has not been defined under Act 870 or Act 915, neither has the word "duplicate" been used anywhere in the respective Acts. Hence in finding the meaning of the word "copy" as used by Parliament, the general principle for construing tax laws must be adopted. Therefore, the question worth answering is whether the letter of the law under section 91(1)(c) of Act 915 contemplates photocopies as copies (bearing in mind that

section 41(2) does not apply to the circumstances of the matter in the first place).

36. My Lords, there is no gainsaying that the strict constructionist approach requires that the plain dictionary meaning of words must be applied unless it would lead to an absurdity. At pages 892 – 894 of his book, ***Modern Purposive Approach to Interpretation in Ghana***, as edited by Albert Adaare, Edzie indicates that within the strict constructionist approach to interpretation is the presumption of the mastery of language on the part of the Legislature, as well as the presumption that the Legislature does not make mistakes. Accordingly, the Legislature says what it means, and it means what it says.

37. At page 315 of the ***10th Revised edition of the Concise Oxford English Dictionary***, the word "copy" (as a noun), is defined as a "*thing made to be similar or identical to another*". At page 1076, a "photocopy" (as a noun), is defined as a "*photographic **copy** of something produced by a process involving the action of light on a specially prepared surface*", in this case, on an A4 sheet. Hence, a photocopy remains "a thing made to be similar or identical to another" except the action of light on a special surface is required in the process of generating the copy.

38. In any case, for purposes of the Evidence Act, 1975 (NRCD 323) which Act has the word "duplicate" therein, a copy of a writing is a duplicate under section 164 of the Act, where the writing ***is reproduced by a technique that ensures an accurate reproduction of an original, including a reproduction by means of photographic reproduction***. Hence, while photocopies constitute "copy" under a tax law, they also constitute "duplicates" under NRCD 323.

39. From the above definitions, once the invoice or VRPO is an accurate reproduction which is similar or identical to the original, it constitutes a copy of the original under the tax laws and a duplicate under the Evidence Act. The court below was therefore right by holding at page 198 of Vol. 2 of the rectified Record of Appeal thus:

> *"Importantly, the Respondent did not refer the Court to any part of Act 870 which defines the copy mentioned in section 41(2) as meaning a duplicate and excluding a photocopy."*

40. Furthermore, my Lords, in tax matters, while section 91(3) of Act 915 does not limit the rules on admissibility under any other law, the provisions of section 91 of Act 915 are paramount.

41. In the instant matter, it is the case of the Respondent that during an earlier tax audit of the same tax period now in contention, the original VRPOs in question were obtained and certified by officers of the Appellant who took over from the earlier audit team to continue the same audit. Photocopies of these same initialed copies of the VRPOs (found at pages 136 to 144 of Vol. 1 of the rectified Record of Appeal) which had been scanned by the Respondent were presented to the subsequent audit team of the Appellant and yet the Appellant refuses to recognize them.

42. My Lords, pursuant to section 91(1)(a) of Act 915, since the VRPOs had been obtained and certified by the Respondent's officers and same were scanned and presented to the Respondent in a subsequent audit, the court below was right in holding that the appellant must accept the copies of the VRPOs.

43. In addition to section 91(1)(a) of Act 915, section 26 of the Evidence Act, 1975 (NRCD 323) provides that except as provided by law or equity, when a party has by his act or omission intentionally and deliberately caused another person to believe a thing to be true, the truth of that belief shall be conclusively presumed against that party. Hence to the extent that the officers of the Appellant, obtained and initialed the VRPOs without any reservations, the truth and authenticity of the initialed document is conclusively presumed and as the facts have shown, the Appellant never raised any concerns regarding their authenticity.

44. Furthermore, section 166 of the Evidence Act, 1975 (NRCD 323) provides that a duplicate of a writing is admissible to the same extent as an original of that writing, unless a genuine question is raised as to the authenticity of the original or the duplicate, or in the circumstances it would be unfair to admit the duplicate in lieu of the original.

45. My Lords, as indicated from the rectified records of appeal, the Appellant has never raised an issue about the authenticity or otherwise of the photocopies of the VRPOs. Their only contention with the VRPOs had been the purported

misapplication of section 41(2) of Act 870 and the misconstrued interpretation of what constitutes "copy" under Acts 870 and 915. The Appellant has also failed to show how an admission of the VRPOs would be unfair to the Appellant.

46. On the contrary, a failure to admit the photocopies of the VRPOs (which are duplicates under NRCD 323), would be unfair to the Respondent who would be required to pay the face value of the VRPOs despite having complied with the law by dutifully charging VAT and accepting VRPOs in lieu of the payment of the taxes charged which original VRPOs were once obtained by officers of the Appellant who proceeded to verify and initial them without raising any issues whatsoever.

47. In the case of **Golden Grace Ltd v. Takoradi Flour Mills Ltd [2011] DLSC2650** an Appellant sought to make capital of the fact that documents returned to it by the Respondent were not the original but certified copies and failed to show how an admission of that duplicate would be unfair to the Appellant. The Supreme Court speaking through Aryeetey JSC in a unanimous decision held at page 6 thus:

> *"The appellant did not show in the least it would be unfair to admit the duplicate or certified true copy of what was surrendered to it by the respondent. The duplicate or certified true copy was rightly held to be treated as original by the Court of Appeal.*
>
> *That ground of appeal is also accordingly dismissed."*

48. The court below therefore rightly held at page 198 of Vol. 2 of the rectified Record of Appeal thus:

> *"Respondent does not deny that they had already inspected and initialed the original VRPOs in question and it was the same one that has been photocopied. Therefore, the evidence of the Applicant* (sic) *stands. Since the Respondent has already authenticated the original, if they have cause to be concerned about the photocopies then they could easily have cross checked or verified them with the serial numbers on the original as no two serial numbers are the same...*
>
> *The photocopied VRPOs having met the threshold requirements in the Evidence Act, and the Respondent having not disputed that they had earlier*

authenticated the originals by initialing same as provided by section 91(1)(a) and (c) of Act 915, nothing stands in the way of this Court in holding that the Respondent should accept the said VRPOs in its assessment of the Appellant's tax liability."

49. My Lords, the Appellant's assertion, that the refusal to accept photocopied VRPOs is to prevent recycling of invoices is also unfounded. This is because VRPOs have unique serial numbers and therefore taxpayers cannot present the same VRPO twice. Accordingly, the Appellant's assertion is disingenuous and the same must be disregarded. As was held by the court below as reproduced in paragraph 45 above, if the Appellant had cause to be concerned about the photocopies which they had already authenticated, they could easily have cross-checked or verified them with the serial numbers on the original as no two serial numbers are the same.

50. In the fourth paragraph of page 9 of its written submission filed before this Court on 21st July 2025, the Appellant, averred that an application for claim of input tax must be supported by an **original VAT invoice**, indicating the name and VAT registration number of suppliers, which should not be more than six months (Appellant's emphasis).

51. My Lords, in the first place, the Appellant's emphasis on "original VAT invoice" is misleading because section 48(1)(a)(ii) of Act 870 requires the possession of a tax invoice to claim an input tax and not an "original" tax invoice as the Appellant seeks to infer. The said section provides:

> *"Subject to section 49, at the end of the tax period provided for in this Act or prescribed by the Regulations, a taxable person may deduct the following from output tax due for the period:*
>
> > *(a) tax on goods and services purchased in the country and goods imported by that person and used wholly, exclusively and necessarily in the course of the taxable activity of that person subject to the condition that:...*
> >
> > *(ii) in respect of purchases made in Ghana, the taxable person is in possession* ***of a tax invoice*** *issued under this Act."*

52. Secondly, section 48 referred to by the Appellant relates to the claim of input tax. "Input tax" is defined under section 65 of Act 870 as "tax payable by a taxable person **in respect of an acquisition of a taxable supply of goods and services or import.**"

53. It is clear from the definition of input tax that it does not include VRPO because VRPOs are not acquired **as a result of an acquisition** of a taxable supply of goods and services. VRPOs are acquired **as a result of a supply of goods and services** to a person who is exempt from tax.

54. Accordingly, section 48(4)(b) of Act 870 as quoted by the Appellant in reference to the claim of input tax does not affect the Respondent's claim regarding the recognition of VRPOs.

55. From the above, we respectfully submit that the position of the court below be upheld on this ground.

Ground C

The High Court erred in law by holding that the Respondent (sic) erred in apportioning of the Appellant's (sic) business income into manufacturing and management service.

56. My Lords respectfully, the Appellant contends under this ground that the exercise of its discretion to apportion the business income of the Respondent and on the basis of the apportionment to deny the Respondent its full location incentive under paragraph 3(6) of the first schedule to Act 896 was lawful and proper.

57. Accordingly, it is contended by the Appellant that the holding of the court below, that the exercise of the discretion was contrary to law be overturned.

58. My Lords, it is the case of the Appellant that, despite the clear and express language of paragraph 3(6) of the first schedule to Act 896 regarding the income of a **manufacturing business**, it should be permitted, without recourse to any law to that effect, to segregate the income of the manufacturing business into individual activities and tax them separately.

59. The position of the Appellant is in spite of the fact that by "manufacturing business", the law refers to the nature of the business of the entity and not the individual activities conducted by the entity.

60. While manufacturing business is not defined by Act 896, section 133 of Act 896 provides that a business includes a trade and the courts have held that a trade must involve some commercial activity as well as have a counter party. ***(Kindly see Ransom (Inspector of Taxes) v. Higgs [1974] 1 WLR 1594; Ensign Tankers (Leasing) Ltd v. Stokes (Inspector of Taxes) [1992] 1 AC 655).***

61. In the conduct of trading in manufactured explosives, the Respondent provides some other services which are integral, ancillary, incidental to or connected to its business, such as transporting the explosives to its customers at a fee. In this regard, section 58(4) of Act 896, expressly states that **"all activities of a company are treated as conducted in the course of a single business of that company."**

62. My Lords, at page 16 of Vol.1 of the rectified Record of Appeal under ***Apportionment of Revenue,*** the Appellant stated in its Report dated 21st December 2017 that the Respondent's manufactured explosives formed 78% of revenue from sales and therefore apportioned the Respondent's revenue between manufacturing activities and non-manufacturing activities. In this regard, the Appellant indicated that 64.49% of the Respondent's total revenue would qualify for location incentive at the tax rate of 12.5% whilst 35.51% of its total income would be taxed at the general corporate income rate of 25%.

63. My Lords, in determining whether the court below erred in holding that the Appellant erred in apportioning the Respondent's business income into manufacturing and management service (non-manufacturing activities), this Honourable Court would have to make a determination on the interpretation of paragraph 3(6) of the First Schedule to the Income Tax Act, 2015 (Act 896).

64. Paragraph 3(6) of the First Schedule to the Income Tax Act, 2015 (Act 896) provides as follows:

> *"The chargeable income of a company for a year of assessment* ***from a manufacturing business*** *not included in subparagraphs (1) and (3), other*

than a manufacturing business located in Accra or Tema is taxed at the rates indicated below:" (Emphasis ours)

Location	Rate of Income Tax
a. **Manufacturing business** located in the regional capitals of the country	75 percent of the rate of income tax applicable to other income under subparagraph (1)
b. **Manufacturing business** located elsewhere in the country	50 percent of the rate of income tax applicable to other income under subparagraph (1)

65. My Lords, we humbly submit that the interpretation of the above provision hinges on the definition of the expression "manufacturing business" as used therein.

66. "Manufacturing business" simply refers to a business engaged in manufacturing. My Lords, it is common knowledge that a business, be it a trade, profession or vocation may employ an activity or a conglomerate of activities to achieve its objectives and thus it would be inaccurate to limit the expression "business" to a single activity where several activities are undertaken to achieve the objects of the business.

67. My Lords, for example, the conglomerate of activities a manufacturing business may perform include: procurement of raw materials, the manufacturing process itself, storage of the product prior to sale or in some instances temporarily after sale of the product to allow the customer to arrange pickup or a place for delivery, delivery of the product (transportation), after-sales service, among others. These activities come together to form the "business" of a particular entity, but the actions, steps or processes performed individually to achieve the total objective of the business are the activities performed in conducting the business such as the **manufacturing activity** which characterizes the nature of the business.

68. It would therefore be inaccurate or improper to limit a "manufacturing business" to the single activity of manufacturing which is simply the process of converting raw materials into a finished product when in fact such a business may need to employ other activities, depending on the product it manufactures, for the total realization of its objectives as a manufacturing business.

69. My Lords, it would seem that the Appellant confuses "chargeable income from a manufacturing business" with chargeable **income from a manufacturing activity or income from manufacturing**. This is clearly evidenced in the Appellant's submission before the court below and in its written submission before this Honourable Court.

70. It has been the position of the Appellant before the court below, and which position is repeated at page 15 of its Written Submission filed before this Court on 21st July 2025 that;

> *"...the provision of services such as transportation and delivery by the manufacturing entity does not constitute **manufacturing activity** and therefore does not fall within the definition of paragraph 3(6) of the First Schedule to Act 896 which relates to the chargeable income of a company from a manufacturing business..."* (Emphasis ours)

71. My Lords, at pages 19 and 20 of the written submission filed on 21st July 2025, the Appellant further states as follows:

> *"It is noteworthy to state that for tax purposes, all the **activities** can be separated"* – page 19
>
> *"Manufacturing by reference to the statute in issue means "to produce explosives through a physical or chemical process from a number of precursor substances and does not extend to the commercial transportation and management of the transported explosives. This pre-supposes that the moment the chemical transformation of materials is turned into new products, **the manufacturing process is completed. Any other activities subsequent to the said products constitutes a different set of activities**"* – page 20

*"...**the manufacturing process** is completed upon achieving the new product intended. **Other complementary activities cannot form part of the manufacturing process.**"* – page 20

72. My Lords, it is clear that the basis for dividing the Appellant's manufacturing business into manufacturing activity and non-manufacturing activity by the Appellant arose from wrongly construing **"manufacturing business"** as stated in paragraph 3(6) of the Income Tax Act, 2015 (Act 896) to mean "manufacturing activity", hence the apportioning of the income of the manufacturing business into manufacturing *per se* and non-manufacturing activity.

73. This interpretation of paragraph 3(6) of the First Schedule to Act 896 by the Appellant would lead to wide absurdity which would require any necessary ancillary services (in the case of the Respondent not merely ancillary but integral to the operations) provided by a business to facilitate its core operations to be treated as a separate activity from its core business and to be taxed at a different tax rate at the whims of the Appellant. The far-reaching consequence of such an interpretation would be that

    a. the chargeable income of a manufacturer, distributor, wholesaler or retailer of goods would exclude delivery of its products to its customers as that would be a separate service although ancillary to the business of the manufacturer, distributor, wholesaler or retailer.

    b. the transportation of a power generator by a manufacturer of power generators to its customers and installation of same would be excluded from its chargeable income as a manufacturer.

    c. transportation services provided by a school to its students might be deemed as a separate activity from running the school and therefore separate from the chargeable income of the school.

d. reference to the chargeable income of a company principally engaged in the hotel industry as provided in paragraph 3(2) of the First Schedule to Act 896 would exclude the ancillary service of picking up and dropping of its clientele from the airport or any other location.

74. To prevent such absurd interpretations, Parliament, in its wisdom, recognizing that a business is made up of a chain or series of activities, provided in section 58(4) of Act 896 that *"subject to this Act,* ***all activities of a company*** *are treated as conducted in the course of a single business of that company."*

75. Respectfully, my Lords, in instances where the legislature wanted to delineate the income of a business based on the individual activities to allow for apportionment, that was made clear in the relevant provision under Act 896. Examples of such instances under the Act are as follows:

i. Section 87: *"For purposes of this Act,* ***any other business activity of a person who engages in a banking business is a separate business activity from the banking business engaged in by that person*** *and the person shall keep the books of account of each business activity separate."*

ii. Section 89: *"For purposes of this Act,* ***any other business activity of a person who conducts a general insurance business is a separate business from the general insurance business and the income or loss of that person from each of the businesses for a year of assessment is to be computed separately.***"

iii. Section 90: *"For purposes of this Act,* ***any other business activity of a person who conducts a life insurance business is a separate business from the life insurance and the income or loss of that person from each of the businesses for a year of assessment is to be calculated separately.***"

76. My Lords, even within the same paragraph 3 of the First Schedule to Act 896, there are yet examples of the lawmaker being clear in delineating an income activity of a business for purposes of apportionment.

First Schedule to Act 896

i. Paragraph 3(3): *"The chargeable income of a company **from the export of non-traditional goods** for a year of assessment is taxed at the rate of eight percent."* This would allow the apportionment of the income of an export company between its traditional and non-traditional exports. Even in this case, the Respondent's interpretation would not apply to suggest that the transportation of goods should be a different service from the entire export operations.

ii. Paragraph 3(4): *"The chargeable income derived by a financial institution **from a loan granted to a farming enterprise for use by that enterprise in the production of income is taxed at the rate of twenty percent."*** In this instance, the chargeable income derived by a financial institution may be apportioned between loans granted to a farming enterprise and other loans, for the purpose of charging the tax rate of twenty percent in respect of loans related to farming enterprises. The provision is so specific in its delineation of the applicable income that how the farming enterprise uses the loan may be relied on as a condition precedent for the income from that loan to qualify for the tax rate of twenty percent.

iii. Paragraph 3(5): "*The chargeable income derived by a financial institution from **a loan granted to a leasing company for the use by that company for the funding or acquisition of assets for lease** is taxed at the rate of twenty percent."* Like the provisions of paragraph 3(4) above, the chargeable income for purposes of enjoying the tax rate of twenty percent is delineated between loans granted to a leasing company and other loans. This would require apportionment of the income of a financial institution between other loans and loans granted to a leasing company.

77. Unlike the provisions above, where there is a clear distinction between the income eligible for specific tax rates, paragraph 3(6) of the First Schedule to Act 896 as amended by Act 902 does not create such a distinction in the income of the manufacturing business.

78. My Lords, it is important to underscore the fact that the location incentive is granted to a **"manufacturing business"** ***and not the income of a manufacturing business from manufacturing activity only.*** The status of the Respondent as a manufacturing business has never been in dispute. In the Appellant's own Reply filed before the court below on 26th January 2022, found at pages 1 to 34 of Vol. 2 of the rectified Record of Appeal, the Appellant confirms in paragraph 3 at page 6 of Vol. 2 of the rectified Record of Appeal that it "*obtained a documentary confirmation of the*" Respondent "*as a manufacturing concern; which obviously qualified*" the Respondent "*for a tax rebate for location incentive.*" This assertion is repeated in paragraph 3 of the Written Submission filed at the court below, found at page 127 of Vol. 2 of the rectified Record of Appeal. In the Appellant's written submission filed at the registry of this Honourable Court on 21st July 2025, the Appellant states at pages 2 and 3 thus:

> *"It is the case that, the initial audit team, in the course of their auditing noticed some inconsistencies with the tax rebate being enjoyed by the Respondent. The team immediately raised some concerns* ***having no documentary evidence that confirmed their status as a manufacturing concern.*** *Consequently, and as a matter of principle,* ***the Audit team made an adjustment to the said tax rebate to ensure that Respondent could no longer be granted same until evidence to that effect was established….****Respondent was therefore requested to furnish Appellant with any documentary proof of being a manufacturing concern* ***in order to enjoy the tax rebate*** *…* ***Subsequently, Appellant received a documentary confirmation of the respondent as a manufacturing concern, which obviously qualified them for a tax rebate for location incentive.****"* (Emphasis added)

79. My Lords, this constitutes an admission on the part of the Appellant that indeed, the Respondent is a manufacturing business.

80. It is trite that once an adversary admits an assertion, one needs not provide any other evidence to prove the assertion. Hence, the character of the Respondent herein as a manufacturing business is not in dispute.

81. My Lords, Lord Simon in **Withers (Inspector of Taxes) v Nethersole [1948] 1 All E.R. 400** held that *"an equitable construction of income tax legislation is, in general, not permitted. If the meaning of a taxing provision is reasonably clear, the Courts have no jurisdiction to mitigate any apparent harshness."* In fact, where the language of a tax law is such that there is a doubt as to the liability or otherwise of the taxpayer, the Courts are admonished to construe the law to favour the taxpayer from liability.

82. In **United States v. Isham 84 U.S. 496 (1873); 17 Wall. 496**, the Court stated in its 4th principle relating to construing fiscal statutes that:

> *"If there is a doubt as to the liability of an instrument to taxation, the construction is in favor of the exemption, because, in the language of Pollock, C.B., in Girr v. Scudds* ***a tax cannot be imposed without clear and express words for that purpose.*** *"* (Emphasis ours).

83. My Lord, one is enjoined to merely look at what is clearly said and eschew all rooms for any intendment or presumptions. For nothing is to be read in or implied.

84. Respectfully, my Lords, the manufacturing of explosives is regulated by the Minerals and Mining Regulations, 2012 (L.I. 2177). Regulation 15 of L.I. 2177 regulates the issuance of certificates of competency, business licences and permits. Regulations 15(4)(a)(iii) and (b) of L.I. 2177 specifically authorizes a holder of a certificate of competency to operate an explosives manufacturing, store, transport and deal commercially with explosives.

85. It provides as follows:

> *"A certificate of competency which may be issued under sub regulation (2) is*
> *(a) an explosives certificate of competency, in the form of*
> *(iii) a certificate of competency* ***to handle explosives for storage and transportation****; and*

(b) ***an explosives manager's certificate of competency which authorises an explosives manager to***
(i) supervise the use of explosives in a mine, quarry or works;
(ii) operate an explosives manufacturing or mixing plant; and
(iii) store, transport and to deal commercially with explosives."
(Emphasis ours)

86. The Respondent, having obtained the certificates of competence, business licences and permits, is authorised under Regulations 15(4)(a)(iii) and (b) of L.I. 2177 to operate an explosives manufacturing, store, transport and deal commercially with explosives; a fact which at all material times has not been disputed by the Appellant.

87. There is no doubt that there is a rationale behind the requirement for a certificate of competency in dealing with the storage of explosives. The sensitivity and risk in handling explosives make an activity such as inventory management a very critical part of manufacturing and supplying explosives to the Respondent's customers.

88. Respectfully, my Lords, due to the explosion risk associated with explosives, the Respondent's relationship with its customers demand the Respondent to frequently deliver enough explosives for immediate use primarily to allow the customers to have a lean but enough stock for operations, in order to limit the risk associated with keeping a large inventory of explosives on site and allowing a seamless reordering process for business efficacy.

89. My Lords, it is therefore hard to imagine that in the light of the expression "manufacturing business", the Appellant would imply that the storage and transportation of explosives to customers by an explosives manufacturing business, as operated by the Respondent must be treated separately.

90. The court below in addressing the relevant provisions of L.I 2177, a **non-fiscal law**, indicated at page 181 of Vol.2 of the rectified Record of Appeal thus:

"Regulation 15 of L.I 2177 which regulates the issuance of certificates of competency, business licences and permits specifically, authorizes a holder of a certificate of competency to operate an explosives manufacturing, store, transport and deal

commercially with explosives ... The Minerals and Mining Commission knew as a component to manufacturing that the Appellant will also transport and deal commercially with explosives and granted licences for such ***thereby treating manufacturing and management services as activities conducted in a single business.*** *"*

91. Upon arriving at the above position on Regulation 15 of L.I. 2177, the court below then proceeded to juxtapose the position with the Income Tax Act, 2015 (Act 896) and held that *this explanation is in tandem with section 58(4) of the Income Tax Act, 2015 (Act 896) under taxation of companies which states that subject to this Act, all activities of a company are treated as conducted in the course of a single business of that company.*

92. Consequently, a strict construction of paragraph 3(6) of the First Schedule to the Income Tax Act, 2015 (Act 896) would mean that where a company is engaged in a manufacturing business and any activity of the company is not set out as separate by the Act as in sections 87, 89 and 90 or delineated as in the provisions of paragraphs 3(3), (4) and (5) of the First Schedule to Act 896 "all such activities" of the company, are treated as conducted in the course of a single business pursuant to section 58(4) of Act 896.

93. To the extent that all the activities are treated as conducted in the course of a single business of the company, it is imperative to point out that paragraph 3(6) of the First Schedule to Act 896 **does not require the exercise of any form of discretion by the Appellant to divide or re-characterize manufacturing business into manufacturing activity and non-manufacturing activity as done by the Appellant.**

94. The exercise of such discretion **to re-characterize** is only warranted by section 34 of the Income Tax Act, 2015 (Act 896) by which the Appellant could re-characterise or disregard an arrangement that is entered into or carried out as part of a tax avoidance scheme which is fictitious or does not have substantial economic effect; or whose form does not reflect its substance. In the case of the Respondent's manufacturing business, no charge of fictitious transaction was labelled against it by the Appellant. It is therefore a capricious use of discretion for the Appellant to recharacterize the Respondent's

manufacturing business into manufacturing and service management (non-manufacturing activity).

95. My Lords, we respectfully submit that even if the Appellant purportedly exercised its discretion under the general anti-avoidance rules in section 34 of Act 896, the Appellant did not comply with the requirements of section 34. Thus, there was no evidence of the Respondent's operation being fictitious, lacking substantial economic effect or the fact that the business form did not reflect its substance. It could therefore not be recharacterized in the manner done by the Appellant.

96. Notwithstanding the fact that section 34 of Act 896 is inapplicable, if Your Lordships were to hold in the most unlikely event that the Appellant was entitled in the circumstances to exercise a discretionary power, it is our submission that such discretion must be exercised in compliance with Article 296 of the 1992 Constitution which provides as follows:

> *"Where in this Constitution or in any other law discretionary power is vested in any person or authority*
>
> *(a) That discretionary power shall be deemed to imply a duty to be fair and candid.*
>
> *(b) The exercise of the discretionary power shall not be arbitrary, capricious or biased either by resentment, prejudice or personal dislike and shall be in accordance with due process of law; and*
>
> *(c) Where the person or authority is not a judge or other judicial officer, there shall be published by constitutional instrument or statutory instrument, regulations that are not inconsistent with the provisions of this Constitution or that other law to govern the exercise of the discretionary power."*

97. This provision imposes a constitutional duty on a person or an authority to be fair and candid in the exercise of the discretionary power. It further mandates a person or an authority not to be arbitrary, capricious, or biased in the exercise of the discretionary power. In the case of a person who is not a judge or a judicial officer, a discretionary power must be exercised subject to published regulations which are not inconsistent with the Constitution or the law which

gives that discretionary power. Thus, being a public body exercising discretionary power in the performance of its functions, the Appellant was enjoined under Article 296 of the Constitution to observe and strictly adhere to the requirement to be reasonable, fair and candid.

98. My Lords, we are mindful of the fact that in the case of **Ransford France (No 3) v. Electoral Commission & Anor [2012] 1 SCGLR 705,** His Lordship Date-Bah JSC, cautioned of the dangers in requiring public officials and agencies in general to publish regulations governing their discretions before they could exercise them. His Lordship stated that such a requirement was impractical and could lead to a nuclear melt down of government.

99. The above notwithstanding, His Lordship Date-Bah JSC, however, relying on **Captan v Minister for Home Affairs (Minister of Interior) (1970) Gyandoh & Griffiths, A Sourcebook of the Constitutional Law of Ghana Vol.II (Part 2) 457 at 460** categorically stated that the requirement to publish guidelines was imperative if the role being performed was judicial or quasi-judicial in nature.

100. The role of the Appellant before and after the filing of a tax objection was discussed by Archer JA in the famous case of **Republic v. Commissioner of Income Tax; Ex-parte Maatschappij De Fijnhouthandel N.V. (Fynhout) [1971] 1 GLR 213** (popularly called the **Fynhout case**) as follows:

> *"It follows that the commissioner has power to make an assessment, computed to the best of his judgment, with or without the presence of a return filed by the person liable to be assessed.* ***His role at this stage is purely of an administrative character because he may or may not have all the relevant materials before him and he is enjoined by paragraph 46 to do so to the best of his judgment thus allowing him sufficient latitude and amplitude to exercise his discretion as he thinks fit."*** (Emphasis ours)

101. Archer JA further held that:

> ***"His earlier role of an administrative agent computing assessment to the best of his judgment is transformed into an entirely different***

role as an adjudicator who must act judicially after objections have been raised and brought to his notice."
(Emphasis ours)

102. My Lords, the Appellant exercises a judicial role whilst determining a tax objection. This judicial role demands that the exercise of the Appellant's discretionary power must be governed by regulations, constitutional instruments, or statutory instruments in accordance with Article 296(c) of the 1992 Constitution. In the instant case, assuming that the Appellant had the right to exercise a discretion in the instant case, which discretion it did not have considering the facts of the case, it is respectfully submitted that the purported exercise of discretion would have been contrary to law.

It is therefore respectfully prayed that the holding of the court below on this ground is not disturbed.

Ground A

The judgment is against the weight of evidence.

103. My Lords, in **Republic v. Conduah, Ex Parte AABA (Substituted by Asmah) [2013-2014] 2 SCGLR 1032,** the Supreme Court held in Holding 2 that:

"the effect of an appeal on the ground that "the judgment is against the weight of evidence" was to give jurisdiction to the appellate court to examine the totality of the evidence before it and come to its own decision on the admitted and undisputed facts. In the instant case, ***the appellant, by that ground of appeal, was implying that there were pieces of evidence on record which, if applied properly or correctly, could have changed the decision in his favour; or that certain pieces of evidence had been wrongly applied against him. The onus in such an instance was on the appellant to clearly and properly demonstrate to the appellate court, the lapses in the judgment being appealed against."***

104. My Lords from the above, there is a duty on the Appellant to demonstrate that there were some pieces of evidence on record which if this Court considered, would come to the conclusion that there were some lapses in

the judgement of the court below which otherwise would have changed the decision in its favor.

105. However, instead of pointing this Honorable Court to the improperly applied evidence, the Appellant only asserted that:

i. it had always been professional in dealing with the Respondent
ii. the court below should not have defined the word "manufacturing" as found in L.I. 2177, **a non-fiscal law** purposively.

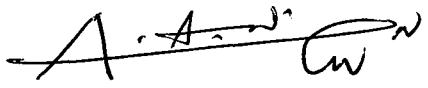
106. The Appellant failed to refer to any evidence on record which if had been properly applied by the court below, would have changed the decision in favour of the Appellant.

107. The only evidence supported by the records is that the Appellant wrongly assumed that manufacturing business as used in paragraph 3(6) of the first schedule to Act 896 was the same as a manufacturing activity, and pursuant to that wrong assumption, proceeded to wrongfully exercise a discretion to recharacterize the business income of the Respondent.

CONCLUSION

In view of all the above, the Respondent respectfully prays this Honourable Court to dismiss the instant appeal in its entirety and affirm the whole decision of the High Court dated July 19th 2022.

DATED IN ACCRA AT THE LAW OFFICES OF ALI-NAKYEA & ASSOCIATES PRUC, THIS 28TH DAY OF OCTOBER 2025.



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THE REGISTRAR
COURT OF APPEAL
(CIVIL DIVISION)
ACCRA

AND FOR SERVICE ON THE ABOVE-NAMED RESPONDENT/APPELLANT OR ITS LAWYER, CEPHAS ODARTEY LAMPTEY ESQ., LEGAL AFFAIRS AND TREATIES DEPARTMENT, GHANA REVENUE AUTHORITY, ROOM NO. 404, 4TH FLOOR, GRA HEAD OFFICE, MINISTRIES, ACCRA

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3. Income Tax Act, 2015 (Act 896)
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6. Minerals and Mining Regulations, 2012 (L.I. 2177)

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2. Captan v Minister for Home Affairs (Minister of Interior) (1970) Gyandoh & Griffiths, A Sourcebook of the Constitutional Law of Ghana Vol.II (Part 2) 457 at 460
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