IN THE SUPERIOR COURT OF JUDICATURE
IN THE COURT OF APPEAL
CIVIL DIVISION
ACCRA – A. D. 2023

SUIT NO:

IN THE MATTER OF ORDER 54 OF THE HIGH COURT (CIVIL PROCEDURE) RULES, 2004 (C.I. 47)

AND

IN THE MATTER OF AN APPEAL AGAINST TAX ASSESSMENT BY THE COMMISSIONER-GENERAL

ORICA GHANA LIMITED ... APPELLANT / RESPONDENT
NO. 83 OSU BADU STREET
AIRPORT WEST
ACCRA.

VRS

THE COMMISSIONER-GENERAL ... RESPONDENT / APPELLANT
GHANA REVENUE AUTHORITY
MINISTRIES - ACCRA.

WRITTEN SUBMISSION OF RESPONDENT/APPELLANT

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1. INTRODUCTION

Respectfully Your Lordships,

This is an appeal against the Judgment of the High Court, Commercial Division, Accra dated the 19th of July, 2022. The said Judgment is contained at pages 165 to 199 of the Record of Appeal and the Notice of Appeal is at pages 202 to 204 of the Record of Appeal.

2. BRIEF BACKGROUND FACTS

Your Lordships, the Appellant/Respondent (hereinafter called Respondent) is a company incorporated under the laws of Ghana to carry on the business of manufacturing, assembling, and selling of bulk commercial explosives. Additionally, Respondent is engaged in the provision of mining support and quarrying services.

The Respondent/Appellant (hereinafter called Appellant) is a statutory body responsible for the administration and collection of revenues for the State.

Respectfully, Appellant's core tasks include the auditing of business activities of Companies to ascertain their tax liabilities. Sometime in June, 2017, the Appellant commenced a comprehensive tax audit of Respondent's business spanning the period 2010 to 2016 years of assessment.

My Lords, mid-way through the audit, members of that audit team were transferred. A new audit team was constituted to continue and ensure the completion of the said tax audit.

It is trite knowledge that Appellant, under tax laws grant exemptions and/or incentives to certain types of businesses. Respondent has been in the mining, manufacturing and supply of mining equipment for a considerable number of years; and by their nature of work, Respondent is entitled to some reliefs; and accordingly, they do enjoy same over the years.

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.

Your Lordships, the second team, upon resumption of duty, was in absolute agreement with the position of the first team. 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 Respondent as a manufacturing concern; which obviously qualified them for tax rebate for location incentive. However, it was further detected that tax rebate could not be granted for the entire location incentive.

My Lords, reasons are that the Respondent herein was contracted by its client, Newmont Ghana Company Ltd to supply manufactured explosives for blasting of ore. Respondent was further contracted by the same client to transport the manufactured explosives to the site of their client and further fill the drilled holes with the said explosives at a service fee.

Respectfully, pursuant to the Audit Report, concerns were raised by the Respondent on different issues which led to series of meetings and correspondences to ensure settlement of the said issues. Upon submissions of relevant documents, the parties came to an amicable settlement on most of the issues but disputed others. Appellant contended inter alia that manufacturing of the explosives and the service of transporting and filling drilled holes were two separate activities.

Respondent further alleged that they have been denied some Value Added Tax (VAT) credits among others; and consequently, lodged an Appeal with the Appellant for a review of the Objection Decision.

Respondent herein, not being fully satisfied with the position of Appellant, instituted this action filed on the 15th of November, 2021 against the Appellant herein claiming 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 Administration Act, 2016 (Act v915) 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 judgement, 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.

Respondent's appeal was further premised 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 (VPROs) contrary to section 91 of the Revenue Administrative Act, 2016 Act 915) and Section 166 of the Evidence Act, 1975 (NRCD 323).

On the 19th of July, 2022, Her Ladyship, Jane Harriet Akweley Quaye sitting as the presiding judge delivered judgment against the Appellant herein thus upheld the tax appeal in its entirety against the Ghana Revenue Authority (GRA).

3. GROUNDS OF APPEAL

Your Lordships, the Appellant, in the bid to have this Honourable Court reverse the judgment of the trial court, filed these Grounds of Appeal which can be found at pages 203 to 204 of the Record of Appeal, Volume 2 thus:

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 erred in apportioning of the Appellant's business income into manufacturing and management service.

4. ARGUMENTS OF GROUNDS OF APPEAL

Viscount Simon LC in the Privy Council case of **Canadian Eagle Oil Company Limited v The King [1946] AC 119 @ 140** recounted the formulation of the rue regarding interpretation of tax laws by Rowlatt J in **Cape Brandy Syndicate v IRC [1921]1 KB 64 @ 71** and stipulated thus: -

> *"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."*

In Ghana, our courts have similarly resounded and upheld the above-mentioned time-tested principle as reiterated by Wood CJ in the case of **Multichoice Ghana Ltd v The Commissioner, Internal Revenue Service [2011] 35 GMJ 87**, firmly stating thus: -

> *"My conclusion has been dictated by the strict constructionist approach to the interpretation of statutes reserved for fiscal*

legislation. The general principle is that tax statutes are to be construed strictly."

Your Lordships, Appellant is therefore of the firm belief that unlike the Constitution and other legislations which may be subject to harmonious interpretation, tax laws must be "**construed strictly**" in accordance with the text as put up in the enactment.

My Lords, every business entity engaged in either a single or multiple activities is required to be registered under the laws of Ghana. The tax law mandates that income from business is liable to tax unless it is exempt. Respondent further grants certain businesses some form of relief from tax under the tax laws. This presupposes that all income generating activities of a taxpayer unless absolutely exempt from tax, must be taxed at the prescribed tax rate in spite of the number of activities a company might be involved in.

Essentially, the Tax Identification Number (TIN) is used to identify each taxpayer by its business; and the tax law prescribes which income or activity is liable to tax and at what rate; and which income or activity is tax exempt, or is entitled to tax relief/rebate or otherwise. It is noteworthy that tax rebates or reliefs are granted based on the achievement of certain benchmarks enunciated by the tax laws.

My Lords, we now proceed to argue the grounds of appeal beginning with Ground B on the Notice of Appeal.

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.

Your Lordships, it is without doubt that the High Court Judge erred in her analysis of Respondent's VAT Relief Purchase Orders (VRPOs) which VRPOs lacked the necessary legal weight and credibility.

My Lords, a review of the Value Added Tax (VAT) returns of Respondent revealed declarations in respect of relief supplies, which relief supplies, as the name suggests, represent supplies that have been relieved of VAT.

My Lords, relief supplies are sales that are generally relieved of VAT through a VRPO for taxpayers within the Mining and Petroleum industry. It is the duty of the Respondent to insist that their customers/clients attach VRPOs as a VAT waiver in order that they could be entitled to VAT waiver; failing which, as a matter of consequence, Respondent would be made to pay the relevant VAT on the issued invoice.

Respectfully, it is the case that in this instance some of the VPROs could not be validated to activate the waiver hence the rejection of Respondent.

My Lords, such supplies are generally classified as *Zero-rated*, *Exempt*, *Relief* or *Standard Rate supplies*. Consequently, it is the duty of auditors to be critical in their examinations; and insist on sufficient and relevant documentary evidence in order that the right classifications were made. In the event that the total of relief supplies declared on the VAT returns is not thoroughly confirmed, supply types could be wrongly characterized and this could negatively affect indirect tax payments.

It is our respectful view that this technique of auditing is very crucial to the Appellant since such actions and inactions are usually mechanisms taxpayers use to evade taxes.

Your Lordships, accordingly, Relief Supplies declared by Respondent on the VAT returns were critically vetted and it emerged that the amount of relief supplies **declared** was more than the amount **confirmed**. **Thus, the said excess relief supplies which undoubtedly constituted overstatement of VRPOs were treated as Standard Rate Supplies**. (Emphasis ours)

The VRPOs presented by the Respondent were exhibited as Exhibit 9 series at **pages 89 to 95** of the Record of Appeal. The VRPOs that could

not be validated were not accepted. The unvalidated VPROs can be found have been highlighted at ***pages 126 and 127*** *of the Record of Appeal.*

Respectfully, the second leg of the Ground B is premised on the authenticity or otherwise of the submitted photocopies of VPROs.

Section 41(1) of the Value Added Tax Act 2013, (Act 870) as amended provides that:

> *(1) "a taxable person shall, on making a taxable supply of goods or services, issue to the recipient, a tax invoice in the form and with the details that are prescribed by the Commissioner-General"*
>
> *(2) a taxable person on issuing a tax invoice shall retain a* ***copy*** *of the invoice in a sequential identifying number order".*

Respectfully, the above provision requires the taxable person to issue and approved invoice mandated by the Commissioner-General. The taxpayer herein is enjoined by law to keep a duplicate copy of the issued tax invoice and not a photocopy of the issued tax invoice.

My Lords, the need for the taxpayer to retain a copy of the invoice in a sequential identifying number order is reinforced in ***Section 41 (6) to (8) of the Value Added Tax Act 2013, (Act 870)*** as amended dealing with production of copies in the absence of the original.

My Lords, it is our contention that an application for claim of input, must be supported by **original VAT invoices**, indicating the name and VAT registration number of suppliers; which should not be more than six months old. Respectfully, ***Section 48(4)(b) of Act 870*** states: -

> (4) "*An input tax deduction shall not be made*
>
> (b) *after the expiration of a period of six months after the date the deduction accrued*".

My Lords, it is worthy to note that Respondent herein did not provide all the VRPOs required to fully authenticate the declarations of relief supplies on the VAT returns. Additionally, Respondent's application was way

beyond the stipulated period of six months. Appellant therefore had no other option than to reject the overstated VRPOs in its final Audit Report.

To further buttress our argument, we respectfully refer the Honourable Court to the case of **Owusu v The Republic [1972] 2 GLR 262**, where it was held in Holding 1 and 2 as follows: -

> "(1) *The legal principle underlying the admissibility of secondary evidence of the content of a document is that secondary evidence of a document is admissible when the original is lost or destroyed, but it must be shown that a proper search for it has been made for it. What is proper search depends on the nature and value of the document ....."*
>
> *"(2) In the absence of the original pay-in-slips and since there was no evidence establishing that a proper search was made for them, the oral evidence of the bank cashiers, though direct evidence of the amount received from the appellant, was hearsay and inadmissible as secondary evidence of the original pay-in-slips."*

Additionally, under **the High Court (Civil Procedure Rules), 2004 (C.I 47), Order 21, Rule 12** states categorically under 'Production of Business Records' that: -

> *"(1) Where the production for any business record for inspection is applied for under these Rules, the Court may, instead of ordering production of the original records for inspection, order a copy of any entries in it to be supplied and verified by an Affidavit of a person who has examined the copy with the original records.*
>
> *(2) The affidavit shall state whether or not there are in the original records any and if so what erasures, interlineations or alterations."*

Your Lordships, we further submit that the Commissioner-General is under no obligation to accept photocopies of original invoices or VRPOs. The word "***copy***" in Section 41 (2) of the Act 870 is in reference to a duplicate copy and not photocopy; and again, in the event that a taxable person does not have the prescribed tax invoice, Section 48 (11) (a), (b)

and (c) must be satisfied. The refusal of the Respondent to accept scanned copies of initialed VRPOs is therefore in line with **Section 48 (11) (a), (b) and (c) of the Value Added Tax Act 2013, (Act 870)**.

Your Lordships, the **Evidence Act, 1975 (NRCD 323)** stipulates more profoundly under the following sections: -

> *"Section 165. Evidence of Content of a Writing.*
>
> *Except as otherwise provided by this Act or any other enactment evidence other than the original writing is not admissible to prove the content of a writing*
>
> *Section 166. Duplicate treated as Original.*
>
> *A duplicate of a writing is admissible to the same extent as an original of the writing, unless (a) a genuine question is raised as to the authenticity of the original or the duplicate, or (b) in the circumstances it would be unfair to admit the duplicate in lieu of the original".*
>
> *Section 167. Original lost*
>
> Evidence other than the original writing is admissible to the same extent as an original to prove the content of a writing if the originals are lost or have been destroyed, unless the loss or destruction resulted from the fraudulent act of the proponent of the evidence".

My Lords, the general legal principle is that original documents are admissible. In that *evidence other than the original writing is not admissible to prove the content of a writing".*

Thus, secondary evidence of a document is admissible only when the original is lost or destroyed. It is quite evident here that Respondent failed to submit the original invoice but instead decided to produce a copy claiming to be photocopy of the original. Per Holding 1 supra, there was no evidence as to the actual invoice being lost or destroyed; and it is also fair to enquire about the whereabouts of the document itself that was photocopied.

Respectfully, nowhere in the stated laws was 'photocopies' mentioned. We again emphasis that the use of the word 'copy' is in reference to verified duplicate copies and not photocopies.

My Lords, it is also our conviction that Appellant's refusal to accept photocopied VRPOs is to prevent recycling of the invoices. Recycling of invoices simply means the re-submission of earlier invoices that have already been dealt with or worked on. Respectfully, this kind of re-cycling is possible because of the accumulation of various audit documents spanning over a number of years.

Respectfully, it is again worthy to note that VAT invoices are value books and therefore originals, duplicates and triplicates are of utmost importance during audit hence photocopies are completely unacceptable.

Your Lordships, for the reasons above stated, the Appellant humbly prays that this Honourable Court upholds this ground of appeal.

Ground C

THE HIGH COURT ERRED IN LAW BY HOLDING THAT THE RESPONDENT ERRED IN APPORTIONING OF THE APPELLANT'S BUSINESS INCOME INTO MANUFACTURING AND MANAGEMENT SERVICE.

Your Lordships, to give clarity to our response to this ground, we reproduce the Paragraph 3 (6) to the First Schedule to the Income Tax 896 which states as follows: -

> "*The chargeable income of a company 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*:"

LOCATION	RATE OF INCOME TAX

(a)Manufacturing business located in the regional capitals of the country	75% of the rate of income tax applicable to other income under subparagraph (1)
(b)Manufacturing business located elsewhere in the country.	50% of the rate of income tax applicable to other income under subparagraph (1)

Paragraph 3(1) of the First Schedule of Act 896 states: -
"*The chargeable income of a company other than a company principally engaged in the hotel industry and income from goods and services provided to the domestic market by free zone enterprise after its concessionary period for a year of assessment is taxed at the rate of 25%*".

Respectfully, the said rebate of 50% was specifically created as an incentive to motivate manufacturing businesses to be located outside of the regional capitals; which would in turn create jobs for the youth in the rural community and also help check rural-urban drift or migration.

Your Lordships, it is trite knowledge that tax matters are relatively technical in nature. Consequently, it is noteworthy to establish the genesis of this controversy as contained in the Reply of the Respondent from page 35 (especially 38) of the Record. Respondent had a contract with its client, Newmont Ghana Company Ltd. It is the case that Respondent was initially contracted by the said client to supply manufactured explosives for blasting of ore. Respondent was further contracted by the latter again to transport the manufactured explosives upon completion to the site of Newmont Ghana Company Ltd and accordingly fill the drilled holes with the said explosives at a service fee.

It must be emphasised that Respondent is engaged in providing mining support and quarrying services as an additional business activity.

Respectfully, reference is hereby made to the invoices exhibited as **Exhibit GRA "*3(a)* and *3(b)*" at pages 71 to 78 of the Record of Appeal.** Here a clear distinction between income from manufactured explosives and accessories for the 2015 and 2016 years of assessment, and income (fee) from the service activity.

Respondent's contention was that the entire revenue stream made up of income from manufactured explosives and income from management services are ***inseparable*** (emphasis ours) hence be made to enjoy the full rebate of 12.5%.

Effectively per Respondent's position, it's gets to pay **12.5%** instead of **25%** tax generally charged for companies under paragraph 3(1) of the First Schedule of Act 896. Practically therefore, Respondent is to be taxed at the rate of only **12.5%** in respect all its business activities because of the location incentive.

This is not tenable as Respondent contracted with its client to perform two distinct business activities which cannot be termed inseparable and for which reason Respondent would describe the provision of services as an integral part of the manufacturing business.

Respectfully, a review of Respondent's records and other accompanying documentations revealed that Respondent has two streams of income; income from sale of the manufactured explosives and income from management services (a non-manufacturing activity). A copy of the audit report was exhibited as Exhibit GRA "4" and "5" and found at ***pages 79 to 83 of the Record of Appeal***.

The service fee per the records was therefore deemed separate from the initial contract sum agreed on which was solely the manufacturing of the explosives.

Additionally, my Lords, the Respondent processed the invoices separately one for manufactured explosives and another for service activity. This

action by Respondent in separating the invoices defeats the arguments that the entire process is inseparable and considered one process.

My Lords, distinguishing the chargeable income of "manufactured explosives" and that of "management services" (non-manufacturing activity), does not lead to a redraft of the paragraph 3(6) of the First Schedule to Act 896 as argued by the Respondent.

The position of Appellant is 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 chargeable income of a company from a manufacturing business.

Respectfully, income derived from the provision of service cannot be treated as income derived from manufacturing.

My Lords, the decision of the trial court, if allowed to stand, ***will open the flood gates for other manufacturing companies to avoid payment of the prescribed rate of tax by subsuming other business activities under manufacturing***.

My Lords, it is worthy to note that the Appellant did not deny Respondent their entitlement to location incentive as a manufacturing business. ***Appellant only limited the location incentive to the portion of the chargeable income attributable to the manufacturing business***.
In sum therefore, my Lords, Appellant completely relied on Part 2, Section 1 (2) (6) of the Third Schedule of Act 592 now repealed, and Paragraph 3(6) of Act 896 as amended in assessing the Respondent.

It is our submission that Appellant did not err in apportioning the chargeable income of Respondent between manufactured explosives and management services (non-manufactured explosives). Appellant's action on the matter has been consistent with the provisions of the tax law at all material times.

It is respectfully submitted my Lords, that the Court below erred in holding at page 19 of the judgement (page 195 of the Record) that Appellant did not follow due process in exercising its discretion under Article 296 (a) of the Constitution 1992.

In the **Republic v Registrar of High Court; Ex parte Attorney General [1982-1983] GLR 407** SC the Supreme Court on a similar provision in the 1979 (head notes holding 3):

> *"[t]he exercise of discretionary powers could not be questioned by virtue of articles 4 and 214 of the Constitution, 1979, unless it was shown that the judicial officer violated the duty to be fair and candid, was arbitrary, capricious or biased either by resentment, prejudice and personal dislike and that he did not act in accordance with due process of law."*

Your Lordships, on the authority of Republic v Registrar of High Court; ex parte Attorney-General, supra, this Honourable Court is invited to overturn the holding of the court below.

Your Lordships, for the reasons above stated, the Appellant humbly prays that this Honourable Court overrules this ground of appeal.

Grounds A
THE JUDGMENT IS AGAINST THE WEIGHT OF EVIDENCE

Your Lordships, implicit in this ground of appeal is the principle that the Appellate Court will re-examine the evidence in the light of the pleadings and make an independent determination of the correctness of the decision by the trial court.

Additionally, in **Oppong Kofi & others v. Attibrukusu III [2011] 1 SCGLCR 176 @ 178** the Supreme Court held in holding 1 that:

> *"Essentially, the effect of that ground of appeal was to invite the Court of Appeal to review the whole of the evidence, documentary or oral, adduced at the trial and come out with a pronouncement on the weight of evidence in support of the judgment of the trial court or otherwise. Where findings were based on established facts, the Appellate Court was in the same position as the trial court and it could draw its own inferences from the established facts."*

Added to this principle is the dictum of Wood, JSC (as she then was) in **Agyeiwaa v. P & T Corporation [2007-2008] SCGLR 985 & 989** wherein she held that:

> *"The well-established rule of law is that an appeal is by way of rehearing and an Appellate Court is therefore entitled to look at the entire evidence and come to the proper conclusion on both the facts and the law."*

Respectfully my Lords, again in the Supreme Court case of **Oppong V Anerfi (2011) 1SCGLR 556 at holding 4**, the headnotes stated as follows:

> *"Even though it was ordinarily written the province of the trial court to evaluate the veracity or otherwise of a witness, it was incumbent upon an Appellate Court in such a case, to analyse the entire record of appeal, take into account the testimonies and all documental evidence adduced at the trial before arriving at its decision."*

Furthermore, in the case of **Tema Oil Refinery V African Automobile Ltd (2011) 2 SCGLR 709 in the headnote of 910**, it is advised as follows:

> *"What should be noted is that in cases like the instant one, where in addition to the viva voce evidence, a mass of documentary evidence was tendered during the trial, the second Appellate Court such as this Court is virtually in the same position as the trial court. This is because most of the findings of fact have been made through a perusal of the documents and we are put in the same position as the trial court to assess the totality of the evidence"*

Your Lordships, in all cases stated supra, it has been established that where a trial court fails to properly apply a relevant principle of law of evidence in assessing the evidence, then an Appellate Court may properly apply the principle and depart from the finding of fact by the trial court.

Your Lordships, the Appellant contends that there was enough evidence which the High Court should have considered in exercising its discretion.

Respectfully my Lords, we are of the humble view that the High Court judge did not address her mind to the overwhelming pieces of evidence proffered by Appellant which established that Appellant had at all material times been very professional in their dealings with Respondent.

Your Lordships, the Learned High Court Judge grossly erred when she used the purposive approach to define the word "*manufacturing*" which unfortunately did not find its way into the definition section of the tax laws.

Essentially, the **Minerals and Mining Regulations, 2012 (L.I. 2177), Regulation 15 (4)(a)(iii) and (b)** provide 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.*"

My Lords, my Lady's interpretation and analysis of the provision quoted supra; sought to infer that the definition of 'Manufacturing' here includes not only manufacturing of explosives but all other activities such as storage, transport and dealing commercially with same, upon acquisition of a certificate of competency. She further explained that the Minerals and Mining Commission had in mind that *a component of manufacturing was also to transport and deal commercially with the explosives* and therefore treating manufacturing and management services as activities conducted in a single business is in order.

Respectfully, my Lady got it wrong in assuming that once the licence encompasses this broad area of activities, it also presupposes that manufacturing and management services can be placed in a single

basket. My Lords, the acquisition of the mining licence incorporates the use, storage, transport of explosives. It is also true that Respondent here, with the said licence, can have a contract to *only transport explosives* from one point to the other and not to manufacture explosives. This activity is also captured by **Regulation 15 (4)(a)(iii)**.

The key note here is that my Lady relied solely on the certificate of competency in handling explosives; and failed to consider the definition of 'Manufacturing' which is central to the dispute.

Appellant defined 'Manufacturing' using the **International Standard Classification of all Economic Activities, 2020 (ISIC)** definition as: -

> "*The physical or chemical transformation of materials of components into new products, whether the work is performed by power-driven machines or by hand, whether it is done in a factory or in a worker's home, and whether the products are sold at wholesale or retail. Included are assembly of components parts of manufactured products and recycling of waste materials.*"

Furthermore, my Lords, in the same L.I. 2177, Regulation 207 defines "Manufacture" as;

> ***"to produce explosives through a physical or chemical process from a number of precursor substances."***

It further defines "Licence" as "*a formal authority to conduct mineral exploration or exploitation*".

My Lords, the definition of 'Licence' is a comprehensive approach to assess competency of an Applicant in the mining industry. It does not warrant interpretation of the various activities being one and same. It is noteworthy to state that for tax purposes, all the activities can be separated.

Respectfully, from the above definitions, '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.

It is therefore respectfully submitted that the trial judge gravely erred in extending the definition of manufacturing to include commercial transportation of manufactured explosives and the management of the transported explosives.

My Lords, the trial judge again erred in her interpretation of Section 58(4) of the Income Tax Act, 2015 (Act 896) which stipulates as follows: -

> "(4) *Subject to this Act, all activities of a company are treated as conducted in the course of a single business of that company*".

As afore stated, the manufacturing process is completed upon achieving the new product intended. Other complementary activities cannot form part of the manufacturing process. The above provision is basically to assist the Appellant in ensuring that taxpayers with multiple businesses are captured under one umbrella to pave way for uniformity and easy access to computation of taxes.

My Lords, Section 58 (4) quoted supra is emphasizing the need to aggregate all business activities of a taxpayer under one umbrella for tax purposes. Respectfully, the objective here is more of disclosing all the income streams of the taxpayer and not treating separate business activities as one.

The application of the above quoted section, does not mean that a company engaged in different business activities with different tax rates will enjoy a single tax rate for all its business activities.

The location incentive for manufacturing business located elsewhere in the country apart from the regional capitals granted by paragraph 3 of the First Schedule to the Income Tax Act, 2015, (Act 896) is an exception to the taxation of a chargeable income at the rate of 25%. The chargeable income of a company from the business activity of '***provision of mining support and quarrying services*** is distinct from the business of manufacturing and remain taxable at 25%.

It is again imperative to mention that under the **First Schedule of L.I. 2177**, the law specifically spelt out different fees for different activities. In view of that specific services (including Explosives Transport Operating Permit and Mining Services Operating Permit have been captured separately under fees/charges.

Your Lordships, from this analysis, we could glean from the assembled laws as discussed above; and submit accordingly that Appellant's assessment of Respondent's tax liabilities was not in error as trumpeted by Respondent in view of the fact that the '***business of manufacturing, assembling and selling of bulk commercial explosives***' is separate and distinct from the '***provision of mining support and quarrying services***'.

My Lords, these pieces of evidence and the supporting law should have outweighed any other evidence on record and swayed the trial judge into holding in favour of the Appellant.

My Lords, in **Nsiah v Osei [1975] 1 GLR 257** it was held (holding 2 of the head note)

> *"[i]t was not open to a court to substitute its own discretion for that of the court whose discretion was being questioned. What the law required was that it must be evident that in exercising its discretion, the court had failed or omitted to consider relevant material or had based its decision on extraneous material."*

It is the respectful submission of the Appellant that the learned judge failed to consider and appreciate the evidence adduced by Appellant on all the issues.

Your Lordships, for the reasons stated above, the Appellant humbly invite this Honourable Court overturn the judgment of Her Ladyship Justice Jane Harriet Akweley Quaye delivered on the 19th of July, 2022 as contained at **pages 165 to 199 of the Record of Appeal**.

CONCLUSION:

Your Lordships, on the totality of the evidence on record and the submission herein, Appellant has demonstrated that the conclusion reached by the High Court judge is not supported by law.

In **Attiase v. Abobbtey [1969] CC 149**, per holding (1) is as follows:

> *"An Appellate Court should not reverse findings of fact made by a trial court unless those findings are not supported by the evidence, and that it is not for the Appellate Court to substitute its opinion on facts for the opinion of the trial court…"*

Again, in **Gregory v. Tandoh iv & Hanson [2010} SCGLR 971 @ 986-987**, the Supreme Court held as follows:

> *"First where from the record of appeal, the findings of fact by the trial court are clearly not supported by evidence on record and the reasons in support of the findings are unsatisfactory; second, where the findings of fact by the trial court can be seen from the record of appeal to be either perverse or inconsistent with the totality of evidence led by the witnesses and the surrounding circumstances of the entire evidence on record; third, where the findings of fact made by the trial court are consistently in consistent with important documentary evidence on record; fourth, where the first appellate court had wrongly applied the principle of law (see Achoro v. Akanfela (supra) and other cases on the principle) the second appellate court must feel free to interfere with the said finding of fact in order to ensure that absolute justice is done in the case."*

My Lords, we humbly submit that the judgement of the High Court against the Appellant cannot be supported by evidence on record. The case herein is therefore one in which this Honourable Court ought to interfere and interrogate the findings of fact because the High Court failed to properly evaluate the evidence thereby making findings and conclusions which are not grounded both in law and the evidence.

Respectfully, conclusively, we would again state that in making all these demands, the burden of proof is on Respondent to show just cause. Section 92(1) of Act 915 provides thus: -

> "*Subject to subsection (2), in proceedings on appeal under section 41 to 45 or for the recovery of tax under a tax law, the* ***burden of proof is on the taxpayer*** *or person making an objection to show compliance with the provisions of the tax law.*"

From the arguments made so far, the Respondent did not adduce sufficient evidence to show where the Appellant erred in assessing the tax liability of the Respondent.

On the other hand, Appellant had at all material times demonstrated that it complied with the tax laws and continuously reviewed the tax liability of the Respondent where sufficient evidence was provided by the Respondent and just cause showed.

My Lords, Appellant further adequately demonstrated that, having the mandate to dispense a fair and just tax administration, it fully complied with the tax laws and all other appropriate laws.

In conclusion, we respectfully invite your Lordships to uphold this appeal and reverse the judgment entered by the High Court against the Appellant.

We humbly submit.

DATED AT THE LEGAL AFFAIRS & TREATIES DEPARTMENT OF THE GHANA REVENUE AUTHORITY, MINISTRIES – ACCRA, THIS ...7TH DAY OF NOVEMBER, 2024

LEGAL AFFAIRS AND TREATIES DEPARTMENT
GHANA REVENUE AUTHORITY
P. O. BOX 2202
OFF STARLET 91 ROAD, ACCRA

.....

JOYCE N. AMPAH ESQ.
LAWYER FOR RESPONDENT/APPELLANT
PRACTICING CERT. NO. Egar 06691/24

THE REGISTRAR
COURT OF APPEAL
CIVIL DIVISION
ACCRA.

AND FOR SERVICE ON;

THE ABOVE-NAMED APPELLANT / RESPONDENT OR HIS SOLICITOR, DR ABDALLAH ALI-NAKYEA, GEOMAN HOUSE ANNEX, HSE NO. 904/15 PIGFARM ROUNDABOUT, ACCRA.

LIST OF LEGAL AUTHORITIES AND MATERIALS CITED

1. **1992 Constitution**

2. **Statutes**
   i. Income Tax Act, 2015 (Act 896)
   ii. Value Added Tax Act 2013, (Act 870)
   iii. The Evidence Act, 1975 (NRCD 323)

3. **Subsidiary legislation**
   i. High Court (Civil Procedure Rules), 2004 (C.I 47)

4. **Ghana cases**
   i. Nsiah v Osei [1975] 1 GLR 257
   ii. Oppong Kofi & others v. Attibrukusu III [2011] 1 SCGLCR 176 @ 178
   iii. Agyeiwaa v. P & T Corporation [2007-2008] SCGLR 985 & 989
   iv. Oppong V Anerfi (2011) 1SCGLR 556 at holding 4
   v. Tema Oil Refinery V African Automobile Ltd (2011) 2 SCGLR 709 in the headnote of 910
   vi. Republic v Registrar of High Court; Ex parte Attorney General [1982-1983]
   vii. Multichoice Ghana Ltd v The Commissioner, Internal Revenue Service [2011] 35 GMJ 87
   viii. Owusu v The Republic [1972] 2 GLR 262,
   ix. Republic v Registrar of High Court; Ex parte Attorney General [1982-1983] GLR 407
   x. Attiase v. Abobbtey [1969] CC 149icle 22 (3) of the Constitution 1992.
   xi. Gregory v. Tandoh iv & Hanson [2010} SCGLR 971 @ 986-987

5. **Foreign cases**

   i. Canadian Eagle Oil Company Limited v The King [1946] AC 119 @ 140

ii. Cape Brandy Syndicate v IRC [1921]1 KB 64 @ 71

6. Publication

i. International Standard Classification of all Economic Activities, 2020 (ISIC)