

IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT 'B' – HELD  
IN TEMA IN THE GREATER ACCRA REGION OF THE REPUBLIC OF GHANA –  
BEFORE HER LADYSHIP JUSTICE PATRICIA QUANSAH (JUSTICE OF THE HIGH  
COURT) ON FRIDAY THE 22<sup>ND</sup> OF DECEMBER 2023.

SUIT NO.: E12/072/2023

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*MERIDIAN PORTS SERVICES*

*ADNAN HEIGHTS*

*HARBOUR ROUND ABOUT*

*TEMA*



*APPELLANT*

*VRS*

*THE COMMISSIONER*

*GHANA REVENUE AUTHORITY*

*OFF STARLETS '91 ROAD*

*MINISTRIES, ACCRA*



*RESPONDENT*

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*PARTIES ABSENT*

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**JUDGMENT**

**[1] INTRODUCTION**

- [a] On or about the 10<sup>th</sup> of October 2022, the Appellant's Counsel filed a motion before this Court for extension of time within which to appeal against the tax

decision of the Respondent, Ghana Revenue Authority, on the grounds, inter alia that the Appellant was dissatisfied with the Respondent's tax assessment by reason of the Parliamentary resolution exempting the Appellant from withholding taxes from its sub-contractors. The Respondent, therefore, assessing the Appellant/Applicant's withholding tax payable to the tune of about US\$4,392,317.47 was, inter alia illegal, void and contrary to law.

[b] As is usually the case, the Respondent vehemently opposed the application, contending that it rightly conducted a tax audit on the activities and operations of the Applicant for the 2015/2016 tax years and assessed the payable withholding tax to the tune of US\$5,907,430 in compliance with the Respondent's mandate and obligations under *section 36 of the Revenue Administration Act, 2016, Act 915*. The amount was subsequently reviewed to US\$4,392,317.47 and the Respondent went through the proper legal means to demand and recover the taxes assessed and payable; and so the present application for extension of time within which to appeal was an abuse of the Court process and ought not to be granted; especially where the Applicant did not comply with the formal process(es) of filing objections under *section 42 of Act 915*.

[c] At *paragraphs 13 to 18* of the affidavit in opposition, the Respondent averred thus:

*13. That the Applicant again was required under the provision of the law stated supra to pay 30% of the tax in dispute as part of the Objection processes The Applicant again failed to comply with this statutory provision.*

14. *That section 44 of the Revenue Administration Act, 2016 (Act 915) mandates a dissatisfied taxpayer like the Applicant to appeal against the 'Objection Decision' of the Respondent in court within thirty days of the notice of the 'Objection decision'. This again the Applicant failed woefully to comply with because of its reluctance to follow through the laid down procedures.*
15. *That it is trite law that where statute has prescribed a procedure for something to be done, it is that procedure alone that must be followed but rather on the contrary the Applicant blatantly continues to defy these procedures.*
16. *That it is instructive to note that the Applicant has failed to fully comply with all the internal statutory procedures for resolving all tax disputes and that the instant Application is premature and ought to be dismissed by this Honourable Court in its entirety.*
17. *That the Honorable Court's jurisdiction in this matter has not been properly invoked in so far as the Applicant has not fully exhausted the statutory procedures prescribed for in (Act 915) for the resolution of the instant tax dispute.*
18. *That, further, to the extent that the Applicant at all time material to this instant matter blatantly refused and/ or failed to comply with laid down procedure which has occasioned the delay in the filing of its Appeal, this Honourable Court need not entertain this instant application.*



[f] The Appellant contended it is a company registered under the laws of Ghana and which entered into a contract with the Ghana Ports and Harbours Authority (GPHA), such that the Appellant now operates and manages Terminal 3 of the Ports of Tema.

In or about the year 2016, the Appellant obtained a concession and entered into a concession agreement with the Government of Ghana through GPHA to build a contemporary container terminal and provide state-of-the-art equipment to manage the Tema ports so as to bring it to the level of international port operators. The Appellant thus stated it invested huge sums of money to build and equip the said ports in an area now designated as Terminal 3, and further constructed the access roads to the said Terminal.

[g] Under the above concession agreement, the Appellant stated it was granted various tax exemptions by the Government of Ghana to facilitate the port expansion operations, and the tax exemptions granted included a waiver on withholding taxes with respect to payments to the Appellant's contractors working on the Tema Port Expansion Project. The Appellant thus attached a copy of the said tax exemption as *Exhibit "A"*.

Consequently, and on account of this waiver, the Appellant stated that it did not deduct withholding and other taxes that it was bound to take from persons and institutions engaged to work in the construction of Terminal 3, in accordance with law.

[h] The Appellant was however audited and assessed by the Respondent herein and ordered to pay certain taxes which the Respondent stated ought to be paid, including withholding taxes, when withholding taxes, per the Appellant were

exempted under the waiver granted to the Appellant by the Government of Ghana through her Parliamentary exemption. According to the Appellant, the Parliament of Ghana passed the resolution granting the said exemptions to the Appellant on the 7<sup>th</sup> day of June 2016 as per *Exhibit A*, and this was followed by a letter dated the 22<sup>nd</sup> day of June 2016, from the Ministry of Finance, addressed to the Commissioner General of the Ghana Revenue Authority (the Respondent) and to the attention of the other Divisions of the GRA. The Appellant attached the said letter as *Exhibit "B"*.

- [i] This letter from the Ministry of Finance, dated the 22<sup>nd</sup> of June 2016 adequately notified the Respondent of the Parliamentary Resolution and detailed the various tax exemptions the Appellant was entitled to by reason of the port expansion project; and according to the Appellant, even though the Respondent appears to recognize the validity of the tax exemption, the Respondent has refused to accept that the effective date of the exemption is the 7<sup>th</sup> of June 2016. The Respondent instead maintains that the effective date is the time that the Respondent was formally informed.
  
- [j] The Appellant thus wrote numerous correspondence to the Respondent to review its decision but to no avail, and the Respondent insists on and has assessed the tax payable by the Appellant in the region of over US\$4,000,000.00, in blatant disregard for the Parliamentary resolution, the Appellant stated.

The Respondent also, on the 4<sup>th</sup> of July 2022 and exercising its powers under the *Revenue Administration Act, 2016, (Act 915)* garnisheed the Appellant's account with Access Bank Ghana Ltd, thereby stultifying the operations of the Appellant.

- [k] The Appellant therefore contended that since the Resolution passed by Parliament was valid and effective on the very day it was passed, the

assessment made by the Respondent without taking into effect the effective date of the Resolution was wrongful, illegal and void. The Appellant thus particularised the illegality said to have been undertaken by the Respondent as follows:

3. **PARTICULARS OF ILLEGALITY**

- a. *That the Parliament of Ghana had on the 7<sup>th</sup> day of June 2016 by a Resolution dated the 7<sup>th</sup> of June 2016 approved a tax concession in respect of certain types of taxes in respect of the Tema Port Expansion Project.*
- b. *That the Ministry of Finance on the 22<sup>nd</sup> day of June 2016 wrote to the Commissioner General notifying the Respondent of the exemptions granted the Appellant by Parliament of Ghana.*
- c. *That the Respondent, in disregard of the Resolution of Parliament proceeded to charge the Appellant for failing to withhold tax from contractors for the Tema Port Expansion Project, which withholding tax fell within the tax concession granted the Appellant per the Parliamentary Resolution.*

[1] The Appellant was therefore not liable at all to pay the said taxes assessed by the Respondent and prayed the Court for the following reliefs:

4. **RELIEFS SOUGHT BY THE APPELLANT**

- i. A declaration that the Resolution of Parliament on the 7<sup>th</sup> day of June 2016 became valid and effective on the day it was passed.*
- ii. A declaration that the assessment in the sum of four million, three hundred and ninety-two thousand, three hundred and seventeen US Dollars and forty-seven cents (US\$4,392,317.47) is contrary to law void and of no effect.*
- iii. A declaration that the exercise of the Respondent's powers under the Revenue Administration Act, 2016 (Act 915) is unjustified.*
- iv. An order setting aside the objection decision of the Commissioner General dated the 26th of May, 2022 be set aside.*
- v. An order setting aside the garnishee on the Appellant's bank account with Access Bank Ghana Ltd.*
- vi. An order that all payments made to the Respondent pursuant to this appeal should be paid back to the Appellant.*

5. **RESPONDENT'S REPLY TO THE APPELLANT'S NOTICE OF APPEAL**

[m] The Respondent herein admitted that it had audited and assessed the taxes payable by the Appellant herein based on the 2015 – 2016 financial years; and the Appellant herein had indeed objected to the assessed tax.

The Respondent further confirmed that after several meetings, discussions and exchange of correspondence with the Appellant, the Respondent notified the Appellant that it had still come to the conclusion that the outstanding tax liability of the Appellant stood at US\$4,392,317.47 as submitted by the

Appellant before this Court. The Respondent gave a brief account of the circumstances leading to the decision of the Commissioner General to assess the outstanding liability of the Appellant as above, and cut straight to the chase when it rightly summarised the contention between the parties as follows: That

*The bone of contention between the Appellant and Respondent has to do with the withholding tax assessment per Respondent's tax audit conducted on the Appellant for the 2015 and 2016 years of assessment.*

6. **THE LAW ON TAXES, EXEMPTIONS AND WAIVERS**

[n] Both Counsel relied on the following laws and which I affirm as apt in the circumstances.

1. *Article 174 of the 1992 Constitution of Ghana* provides as follows:

**"174. TAXATION**

1. *No taxation shall be imposed otherwise than by or under the authority of an Act of Parliament 2. Where in Act, enacted in accordance with clause (1) of this article, confers power on any person or authority to waive or vary a tax imposed by that Act, the exercise of the power of waiver or variation, in favour of any person or authority, shall be subject to the prior approval of Parliament by resolution*
2. *Parliament may by resolution, supported by the votes of not less than two-thirds of all members of Parliament, exempt this exercise of any power from the provisions of clause (2) of this article."*

See also *section 7* of the *Income Tax Act, 2015, Act 896*; and the Appellant's Counsel rightly submitted that under this provision, the power of the Minister to waive or vary a tax imposed is subject to Article 174(2) of the 1992 Constitution,

*Section 117(1)* of *Act 896* also provides:

*"A withholding agent shall pay to the Commissioner-General within fifteen days after the end of each calendar month a tax that has been withheld in accordance with this Division during the month"*

*Section 117(3)* *Act 896* also provides that

*"A withholding agent who fails to withhold tax in accordance with this Division shall pay the tax that should have been withheld in the same manner and at the same time as tax that is withheld"*

*Section 117(5)* of *Act 896* further provides that

*"A withholding agent who fails to withhold tax under this Division but pays the tax that should have been withheld to the Commissioner-General in accordance with subsection (1) is entitled to recover an equal amount from the withheld"*.

*Section 117(6)* of *Act 896* provides that

*"Subject to this Act and except where an agreement is ratified by Parliament a provision in an agreement which prohibits the deduction or withholding of a tax required to be deducted or withheld under this Act or any other enactment administered by the Commissioner-General is void".*

7. **EVALUATION OF THE EVIDENCE ADDUCED AND THE LAW**

[o] The case of the Appellant is quite straight forward. The Appellant contends that once it has received the waiver and the exemption from parliament, in accordance with the law, as per *Exhibits A and B*, the Respondent, GRA, has therefore gravely erred in assessing withholding taxes for the Appellant to pay for the 2015 – 2016 financial years.

[p] The Respondent submits otherwise, contending at *paragraphs 13 and 14* of its Reply to the Appellant's Notice of Appeal thus:

13. *During the Tax Audit of the Appellant by the Respondent Audit Team, it was established that for the periods 2015 and 2016 the Appellant failed to withhold taxes due on payment Appellant made to its resident and non-resident suppliers for goods and services at the time of payment contrary to the provisions of the existing tax law (please see Schedules VIII and VIIIA of our Exhibit GRA1 which gives the details of the withholdings).*

14. *Respectfully my Lord, it is Respondent's submission that at the time the Appellant was making payments to the resident and non-resident suppliers for goods and services supplied when the taxes where due, there was no Parliamentary ratification that warrant the Respondent from not to withhold taxes as required by law. (sic)*

[q] The issue to be determined, I find, is whether or not the exemption and waiver granted covers the period for which the Respondent has conducted its assessment and ordered the Appellant to pay for.

In so determining, I proceed to deal with the first and second grounds of appeal as follows:

8. GROUND ONE (1) & TWO (2)

- i. *That the Respondent erred in law and occasioned a miscarriage of justice by assessing the Appellant to tax in the sum of four million, three hundred and ninety-two thousand three hundred and seventeen US Dollars and forty-seven cents (US\$4,392,317.47) notwithstanding a tax exemption granted the Appellant by Parliament.*
- ii. *That The Respondent erred in law and occasioned a miscarriage of justice by failing to recognize the date on which the Parliamentary resolution was passed exempting the Appellant to tax.*

[r] From the totality of the evidence adduced, I find that the exemption/waiver letters are dated the 7<sup>th</sup> of June 2016 from Parliament and the 22<sup>nd</sup> of June 2016 from the Ministry of Finance.

The Appellant did not exhibit any letter for the Request for Tax Concessions, but it is obvious that the Ministry of Finance of the Republic of Ghana wrote that correspondence for the tax concession; and this fact was made apparent at *paragraph 4* of the Appellant's *Exhibit A*. As a result, there is no evidence as to

the exact date the request for tax concession was made and the commencement date.

[s] What is clear is that the approval was granted on the 7<sup>th</sup> of June 2016, and both *Exhibits A* and *B* make reference to the date of approval, being the 7<sup>th</sup> of June 2016. None of the correspondence made reference to the approval having or taking retrospective effect and so I hold that the effective date of the approval was the 7<sup>th</sup> of June 2016.

[t] I would also rely on the *expressio est exclusio alterius maxim and* hold that once the approval date was stated as the 7<sup>th</sup> of June 2016, the exemptions/waiver and the tax concessions as a matter of law commenced from the 7<sup>th</sup> of June 2016 and not prior.

The Appellant therefore submitted that the payments to contractors, for which taxes were not withheld were after the approval date of the 7<sup>th</sup> June 2016; and if that is indeed the case, then that would be correct.

[u] The Respondent however relied on a number of transactions which the Respondent contended took place in the 2015 and 2016 financial years; before the grant of the tax concession but for which the Respondent stated that taxes were not withheld, even though the Appellant had not yet had the approval for the tax concession. These transactions were listed in the Respondent's *Exhibit GRA 1*, particularly pages 13 and 14 of the said *Exhibit GRA 1* and sub headed *SCH. VIII* and *SCH. VIIIA*.

Unfortunately, I find that the Respondent's list of the various transactions for all the organisations and companies with which the Appellant was said to have

contracted and against whom no taxes were withheld, have no dates for the transactions.

The Respondent merely made a list of organisations and companies, the amount or supposed cost of the contract/transaction, the tax rate and the quantum of the tax without indicating the dates for the various transactions. This is the trend that the Respondent used for the 2015 year in *SCH. VIII* and the 2016 year in *SCH. VIIIA*. Indeed, the approval letter of exemption, as stated, was granted on the 7<sup>th</sup> June 2016. Therefore, having found that the transactions in *SCH. VIII* are for the 2015 fiscal year, the Appellant would be liable to pay for all withholding taxes not duly withheld in the 2015 fiscal year and clearly before the tax concession grant and approval in 2016.

For the above reasons, I hold that the Appellant herein is mandated and liable to pay for all withholding taxes in 2015 and as calculated by the Respondent herein in *Exhibit GRA 1, SCH. VIII*, since I find that no evidence whatsoever was adduced by the Appellant to establish before this Court that the Appellant did not undertake those transactions and/or that those transactions did not take place in 2015.

[u] With respect to the 2016 fiscal year, the exemption, as stated earlier ought to be from the 7<sup>th</sup> of June 2016, and not before. As a result, in the *APPELLANT'S RESPONSE TO RESPONDENTS'S REPLY TO NOTICE OF APPEAL* filed on the 16<sup>th</sup> of May 2023, at *paragraphs 5 and 6*, it was submitted:

*“Chronology of events per exhibits attached*

*5. The audit report of the GRA was brought to the notice of the Appellant by a letter dated the 13<sup>th</sup> day of December, 2017 (Exhibit*

*GRA1 attached to the Respondent's Reply). Per schedule SCH VIII and VIIIA, for the years 2015 and 2016 respectively, the Appellant was required to have withheld and paid to the GRA the sums of US\$ 555,334,78 and US\$ 5,343,988. 13 for the years 2015 and 2016 respectively.*

6. Upon receipt of this notice, the Appellant, through its tax consultants by a letter dated the 11th day of June, 2018 (attached as Exhibit GRA 2), wrote to the Respondent challenging the amount of withholding tax assessed by the Respondent for the period June to December 2016 in the sum of US\$3,389,600.76. ..." (Emphasis is mine)

[v] From the above, it is obvious that the Appellant herein is only challenging the withholding taxes assessed from June to December 2016; and so I find as a matter of fact that the Appellant is liable to pay for the withholding taxes for the 2016 financial year and on transactions undertaken before the 7<sup>th</sup> of June 2016; since there is again no evidence to establish that the period prior to the 7<sup>th</sup> June 2016 is covered by the tax concession.

I therefore hold that withholding taxes for all transactions that took place before the 7<sup>th</sup> of June 2016 also ought to be paid for by the Appellant for the above reasons.

[w] This Court now has to consider transactions that were said to have been undertaken by the Appellant after the 7<sup>th</sup> of June 2016. It is obvious to me that all transactions that took place after the approval was granted on the 7<sup>th</sup> June 2016 are affected by the tax concession/waiver.

Consequently, having perused *paragraph 21* of the Appellant's reply, I reproduce same as below thus:

*21. However, the records of the Appellant shows that for the said company, the total payments made by the Appellant in the year 2016 were as follows:*

<i>INVOICE NO</i>	<i>DATE ON PAYMENT VOUCHER</i>	<i>AMOUNT PAID</i>	<i>AMOUNT WITHHELD US\$</i>	<i>EXHIBIT AS ATTACHED</i>
<i>58000428</i>	<i>17/02/16</i>	<i>599,534.00</i>	<i>90,042.35</i>	<i>EXHIBIT "G"</i>
<i>58000429</i>	<i>17/02/16</i>	<i>477,418.95</i>	<i>71,702.47</i>	<i>EXHIBIT "H"</i>
<i>58000443</i>	<i>10/03/16</i>	<i>287,057.20</i>	<i>19,808.43</i>	<i>EXHIBIT "J"</i>
<i>58000453</i>	<i>11/04/16</i>	<i>396,558.98</i>	<i>27,364.62</i>	<i>EXHIBIT "K"</i>
<i>58000479</i>	<i>13/07/16</i>	<i>303,309.47</i>	<i>-</i>	<i>EXHIBIT "L"</i>
<i>58000483</i>	<i>08/08/16</i>	<i>1,873,537.50</i>	<i>-</i>	<i>EXHIBIT "M"</i>
<i>58000484</i>	<i>08/08/16</i>	<i>414,979.78</i>	<i>-</i>	<i>EXHIBIT "N"</i>
<i>58000495</i>	<i>10/08/16</i>	<i>1,126,752.00</i>	<i>-</i>	<i>EXHIBIT "P"</i>
<i>58000506</i>	<i>29/09/16</i>	<i>837,287.00</i>	<i>-</i>	<i>EXHIBIT "S"</i>
<i>58000529</i>	<i>10/11/16</i>	<i>812,433.00</i>	<i>-</i>	<i>EXHIBIT "T"</i>
<i>INTERIM CERT 3</i>	<i>08/12/16</i>	<i>47,665.40</i>	<i>-</i>	<i>EXHIBIT "U"</i>
<i>58000536</i>	<i>29/12/16</i>	<i>907,216.33</i>	<i>-</i>	
		<i>8,083,749.61</i>	<i>208,917.87</i>	

From the above table, it is obvious that the transactions up to the one dated **11/04/16** have to have withholding taxes paid on them, if that has not yet been paid by the Appellant.

Furthermore, after critically perusing the above table as well as '*Exhibits G*' to '*U*' series among others, I find that the Respondent is only entitled to surcharge the Appellant on the taxes not withheld only before the 7<sup>th</sup> of June 2016 and not for the entirety of the 2016 fiscal year because that will not be fair and equitable to the Appellant, especially when there is glaring proof that a tax concession in favour of the Appellant was granted and approved on the 7<sup>th</sup> of June 2016.

For the above reasons, I hold that the tax exemption granted to the Appellant takes effect from the 7<sup>th</sup> June 2016; and so all withholding taxes assessed and debited to the Appellant prior to the 7<sup>th</sup> June 2016 are in compliance with the law and no miscarriage of justice was occasioned by that assessment.

I proceed to deal with the last ground of appeal as follows:

9. **THIRD (3<sup>RD</sup>) GROUND OF APPEAL**

*iii. That the assessment of the Respondent is null and void, and contrary to law.*

[x] Contrary to the above ground of appeal, I find that assessing the withholding taxes payable by the Appellant prior to the 7<sup>th</sup> of June 2016 is certainly not null and void and not contrary to law. Nonetheless, the Respondent, purporting to

assess and surcharge the Appellant after the 7<sup>th</sup> of June 2016 will indeed be unlawful; and the Respondent ought not be allowed to perpetrate that act.

Further, the Respondent is a state institution which ought to be assisted, at all material times, to pursue institutions and companies that seek to breach our laws and evade tax; but in the instant case, I find that there being proof that the Appellant's *Exhibits L, M, N, P, S, T and U* are referable to transactions dated the 13<sup>th</sup> July 2016 till the 29<sup>th</sup> December 2016, the Respondent ought not to surcharge the Appellant on those transactions, since the Respondent did not adduce any evidence to the contrary.

**10. CONCLUSION**

[y] For the above reasons, the appeal succeeds in part and the Appellant is entitled to the following reliefs sought:

- i. A declaration that the Resolution of Parliament on the 7<sup>th</sup> day of June 2016 became valid and effective on the day it was passed, that is the 7<sup>th</sup> of June 2016.*

With regard to the second relief:

- ii. A declaration that the assessment in the sum of four million, three hundred and ninety-two thousand three hundred and seventeen US Dollars and forty-seven cents (US\$4,392,317 47) is contrary to law void and of no effect;*

this Court can however not come to the conclusion that the assessment of US\$4,392,317.47 is contrary to law, void and of no effect because there is proof that the Appellant is entitled to pay withholding taxes for taxes not withheld

in the 2015 financial year and before the 7<sup>th</sup> of June 2016. The amount payable by the Appellant may not be as stated above; but the Appellant is surely liable to pay some assessable withholding taxes for 2015 and before the approval date on the 7<sup>th</sup> of June 2016.

Flowing from the above, *reliefs (iii), (iv) and (v)* as follows:

- iii. A declaration that the exercise of the Respondents powers under the Revenue Administration Act, 2016 (Act 915) is unjustified.*
- iv. An order setting aside the objection decision of the Commissioner General dated the 26th of May 2022.*
- v. An order setting aside the garnishee on the Appellant's bank account with Access Bank Ghana Ltd.*

shall all be dismissed.

[z] With regard to the final relief:

- vi. An order that all payments made to the Respondent pursuant to this appeal should be paid back to the Appellant;*

it shall be granted in part.

*The Respondent shall assess all withholding taxes not withheld for 2015 and before the 7<sup>th</sup> of June 2016 and same deducted from the monies so far paid by*

*the Appellant to the Respondent; and the balance refunded to the Appellant;*  
since the Respondent is only entitled to retrieve withholding taxes for the 2015 fiscal year and for the period before the 7<sup>th</sup> of June 2016, and not after the tax exemption approval of the 7<sup>th</sup> June 2016.

The Registrar of this Court shall ensure the above is undertaken.

Considering the entire circumstances of this case, I shall make no order as to costs.

*SGD.*

*JUSTICE PATRICIA QUANSAH*

*HIGH COURT 'B'*

*TEMA*

*GREATER ACCRA REGION.*

*22<sup>ND</sup> DECEMBER 2023.*

*COUNSEL:*

*JULIET LONGDON SOWAH BEING LED BY D. K. AMELEY ESQ. FOR THE APPELLANT PRESENT*

*FREEMAN SABAHA ESQ. COUNSEL FOR THE RESPONDENT PRESENT*