

IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT JUSTICE HELD AT TEMA IN THE GREATER ACCRA REGION ON MONDAY THE 9TH DAY OF JUNE 2025 BEFORE HIS LORDSHIP JUSTICE KWASI BOAKYE - COURT OF APPEAL JUDGE SITTING AS ADDITIONAL HIGH COURT JUDGE

SUIT NO. E12/009/2024

PIL GHANA LIMITED

APPELLANT

VS

THE COMMISSIONER-GENERAL]

GHANA REVENUE AUTHORITY]

RESPONDENT

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## J U D G M E N T

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I begin this delivery with a famous quote from Lord Denning which I find very useful in this write-up. It is as follows:

*"..... if we never do anything which has been done before, we shall never act anywhere. The law will stand still whilst the rest of the world goes on and that will be bad for both".*

Nations develop on the payment of taxes by citizens and non-residents who are subject to the payment of tax in the countries in which they either reside, derive, or spend the earnings.

In Ghana, the State institution in-charge of the assessment, collection, collating and assessment of taxes is the Ghana Revenue Authority [GRA]. GRA's functions include identifying all taxpayers, assessing tax

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and levies to be paid, collecting taxes and levies such as income tax, excise tax stamp, mineral royalties, value added tax [VAT], amongst others. The GRA is headed by the Commissioner-General. It has been mandated to issue tax assessment.

As one would expect, not all taxpayers are excited when they are served with tax assessment by the GRA. Thankfully, the law provides a means for dissatisfied tax payers to appeal against the assessment served on them. Of course, there are statutory conditions to be met before one can appeal against a tax assessment.

It is against this background that I proceed to take the instant appeal lodged by PIL Ghana Limited, who for purposes of the appeal, I shall call appellant. The Commissioner-General against whom the appeal is lodged is hereby referred to as respondent in this appeal.

From the record of appeal, appellant is a company limited by shares and registered under the laws of Ghana accordingly. It acts as the local agent of PTE Singapore. No doubt, respondent is the head of Ghana Revenue Authority [GRA], a statutory body responsible for tax administration and revenue collection in Ghana.

The appeal records shows that respondent conducted a tax audit into the affairs of appellant for the period 2018 to 2021 years of assessment and issued a Tax Audit Report dated 31<sup>st</sup> May 2023 with a direct tax liability of GH¢1,390, 411.85 and an indirect tax liability of GH¢5,430,470.40. A copy of the said Tax Audit Report is in evidence as Exh PIL 1.

Appellant, exercising its rights under the law, objected to the tax assessment in a letter dated 29<sup>th</sup> June 2023 subsequent to which

appellant paid 30% of the tax in dispute. There is evidence of the objection and tax payment marked as Exhs PIL 2 and PIL 3 in that order.

In a letter written on 7<sup>th</sup> June 2024, respondent replied appellant's objection wherein respondent re-assessed appellant's total tax liability at GH¢4,606,795.82 as evidenced in Exh PIL 4.

Respondent in the Tax Audit Report assessed appellant to additional income in the years 2018, 2019, 2020 and 2021 in the sums of GH¢253,442.03, GH¢115,557.78, GH¢44,096.44 and GH¢69,256.71 respectively. These sums were obtained from the output VAT and Levies Ledger which discloses gross amount of invoices for collecting demurrage from clients as against the actual receipts on demurrage upon which commission to appellant is based.

Again, respondent assessed additional employee earnings in the sum of GH¢93,538.15 and GH¢143,976.34 which sums represent staff costs for 2020 and 2021 respectively for lunch provided appellant's employees. Respondent assessed appellant to additional PAYE for staff canteen costs. Respondent calculated interest on the various tax assessed per the Audit Tax report to lapse of the time stated in the notice of assessment to pay the tax due.

Being aggrieved by and dissatisfied with respondent's objection decision, appellant hereby appeals against same dated 7<sup>th</sup> June 2024.

In pursuance thereof, appellant filed notice of appeal in the registry of the Court on 1<sup>st</sup> July 2024. The notice of appeal filed, has four [4] grounds of appeal namely:

*"A. The Respondent erred in law by disregarding the basis for recognizing the demurrage commission in the Agency*

*Agreement and failing to take into account what constitutes business income under section 5 of Act 896 to determine appellant's income.*

- B. The Respondent erred in law by assessing the Appellant to additional PAYE for staff cost which related to staff canteen expenses.*
- C. The Respondent erred in law and occasioned a miscarriage of justice by awarding interest in a manner that contradicts section 71 of the Revenue Administration Act 2016 [Act 915].*
- D. The Respondent erred in law when the Respondent failed to recognize that the Appellant receiving money on behalf of the Principals and transferring same to the Principals does not constitute financial services under the First Schedule of the VAT Act 2013, [Act 870]”.*

From the available appeal records, on 18<sup>th</sup> November 2024, with leave of Court, appellant filed additional grounds of appeal which reads:

*“A. The Respondent treating the procedural penalty paid by the Appellant as an excluded expense and a non-qualifying expenditure was contrary to sections 9 [1] and 130 [4] of the Income Tax Act”.*

As I have discussed earlier in this write-up, tax assessments are considered the handiwork of the Commissioner-General, even though he or she may not have a direct hand in the raising of the assessments in reality. For this reason, section 44 of the Revenue Administration Act, 2016 [Act 915] provides that a person who is dissatisfied with a decision of the Commissioner-General may appeal against the decision to the Court within thirty days of the decision.

This is complimented by **Order 54 rule 1 of the High Court [Civil Procedure] Rules, 2004 [CI 47** which provides:

*“Where in any enactment, provision is made for an appeal to be made to the High Court against the decision or order of the Commissioner-General the provisions of this Order shall apply to the appeal”.*

It is trite learning that appeals are creatures of statute and not as of right. This means that a person can only appeal against a decision if a statute provides for the right of appeal. Any such person seeking to exercise that right of appeal must comply with the statutory conditions associated with the exercise of that right of appeal.

Akuffo Addo, JSC, as he then was, held in **Frimpong vs Poku [1963] 2 GLR 1 at Page 6** of the report that:

*“A right of appeal is always conferred by statute and when the statute conferring the right lays down conditions precedent to the vesting of that right in a litigant, it is essential that those conditions must be strictly performed otherwise the right does*

*become vested”.*

Also, in **Nye vs Nye [1967] GLR 76 at pages 82-83**, the Learned Judge held:

*“No time in the history of legislation regulating appeals in this country has the legislature expressed a desire or an intention to grant to the courts even the highest courts in this country, an unlimited and unqualified power over appeals with, that is, no regard to limitations of time in which to bring appeals. The policy of the legislature has been rigidly consistent in controlling appeals by the imposition of a strict time limit”.*

In the light of the above concerns, I have taken pains to look at the appeal records and can conveniently conclude that appellant dutifully complied with the mandatory statutory requirements in lodging the appeal. Consequently, I proceed to assume jurisdiction in this appeal since the payment of the 30% of the tax in dispute by appellant as a condition precedent to lodging the instant appeal has been held to be constitutional in Kwasi Afrifa vs Ghana Revenue Authority and Another, SC judgment dated 30<sup>th</sup> November 2022, unreported, per Torkornoo JSC, as she then was and Richard Amo-Hene vs Ghana Revenue Authority and 2 Others, SC, Writ No. J1/08/2021, judgment dated 30<sup>th</sup> November 2022, per Amegatcher JSC, as he then was.

The law is settled that an appeal, be it civil or criminal is by way of re-hearing. This means that the appellate court is entitled to examine or review the entire record of proceedings including judgment, decision or the order appealed against. After the review, the appellate court has

power to make its own findings or come to a different conclusion from the trial court. See the decided cases of **Abbey vs Antwi [2010] SCGLR 17**, **Henry Kwaku Owusu vs The Republic [2016] 98 GMJ, SC**, **Quarcopone vs Sanyo Electric Trading Co and Anor. [2009] SCGLR 213**, **Akufo-Addo vs Catherine [1992] 1 GLR 377**, per Kpegah JSC at p. 391; **In re Bonney [Decd] Bonney vs Bonney [1993-94] 1 GLR 610** per Aikins JSC at p. 617; **Tuakwa vs Bosom [2001-2002] SCGLR 61** per Akuffo JSC [as she then was] at p. 65; and **Asamoah and Another vs Offei [2018-2019] 1 GLR 655**.

In *Tuakwa vs Bosom*, supra, the law was re-stated in the oft-quoted words of Sophia Akuffo JSC [as she then was], thus:

*“an appeal is by way of a re-hearing particularly where the appellant, that is the plaintiff in the trial in the instant case, alleges in his notice of appeal that, the decision of the trial court is against the weight of evidence. In such a case, although it is not the function of the appellate court to evaluate the veracity or otherwise of any witness, it is incumbent upon an appellate court, in a civil case, to analyse the entire record of appeal, take into account the testimonies and all the documentary evidence adduced at trial before it arrives at its decision, so as to satisfy itself that on a preponderance of the probabilities the conclusions of the trial judge are reasonable or amply supported by the evidence”.*

In the instant appeal, I understand appellant to be saying that respondent's decision dated 7<sup>th</sup> June 2024 in respect of appellant's objection to the Tax Audit Report is against the weight of available factual evidence and the law.

Now, the general position of the law is that where a party alleges that a judgment or decision is against the weight of evidence on record, the appellate court is required to correct all factual errors and to some extent some legal errors which were not properly evaluated and considered in accordance with the law.

More recently in *Asamoah and Another vs Offei*, supra, the defendant's omnibus ground of appeal that the judgment of the Court of Appeal was against the weight of evidence adduced at the trial, opened the way for the Supreme Court to exercise its power of re-hearing the case. Speaking for the Court, Appau, JSC, as he then was, stated the law at p.660 thus;

*“The authorities are legion that an appeal is by way of rehearing, particularly where the appellant alleges in his notice of appeal that the decision of the trial court was against the weight of evidence. In such a case, it is the duty of the appellate court to analyse the entire record of appeal, take into account the testimonies and all documentary evidence adduced at the trial before arriving at its decision, so as to satisfy itself that, on a preponderance of the probabilities, the conclusions of the trial judge are reasonably or amply supported by the evidence on*

*record. And it is immaterial whether the appeal is a second one from the Court of Appeal to the Supreme Court”.*

With this pace having been set by the apex court within the jurisdiction, I would seek to apply same in this judgment.

It is worthy of note that in compliance with the law, appellant filed the statement of facts in which it raised points of law in both notice of appeal and additional notice of appeal. It is equally important to note that with leave of court, respondent filed what it terms reply to the appeal on 6<sup>th</sup> February 2025. Finally, on 26<sup>th</sup> February 2025, appellant with leave of court filed what it also calls response to reply of respondent.

Ground one [1] of the notice of appeal says that respondent erred in law by disregarding the basis for recognizing the demurrage commission in the Agency Agreement and that failing to take into account what constitutes business income under section 5 of Act 896 to determine appellant's income.

Over here, appellant's argument is that in the audit report respondent considered the commission appellant received as service fee and that it ought to be included in ascertaining appellant's income for tax purposes. In its view, much as it agrees to commission received qualifying as service fee for which tax ought to be paid, its contention is that the amounts levied by respondent as additional income as service fee for the years under review do not qualify as 'gains and profits' of appellant for which same ought to be included in ascertaining appellant's income. According to appellant, the difference in the additional income per the audit report is resulting from the use of invoices as the basis for determining the commission payable to

appellant rather than the use of actual receipts of demurrage based on which commission will be paid it. Therefore the percentage on invoices will not constitute appellant's income.

The explanation offered over here is that appellant's business is such that invoices will be submitted to clients for purposes of payments on behalf of its principals. However, the sums that appellant may actually receive on its principal's behalf may be less than that invoiced. So it is what appellant receives as demurrage that it is paid commission on by its principals as per the Agency Agreement. Therefore, respondent's assessment of appellant to additional income will lead to over statement of appellant's income.

Another leg of appellant's contention is that if respondent exercised its rights under section 34 of Act 896 and treated the agreement between appellant and its principals as tax avoidance scheme, then respondent's decision to include additional income for the years under review based on the invoices issued to clients is therefore arbitrary and unfair.

On the contrary, respondent denies appellant's ground one [1] as contained in the notice of appeal. Whilst agreeing with appellant that demurrage commission is payable on monies collected but not invoices issued, respondent is of the opinion that the basis for such arrangement unfairly ignores the need for simultaneous reporting of the demurrage monies recovery costs incurred and the demurrage commission earned within the same period. According to respondent, administrative costs of generating invoices, communications costs, follow up costs to recover monies from clients, staff costs and other sundry costs may all be incurred and charged against profit for the current period by appellant but the corresponding demurrage commission revenue will only be recognized when appellant

successfully recovers the monies on the demurrage invoices issued to clients which may or may not happen in the current period.

For that reason, respondent posits that clearly this timing difference therefore creates a mismatch and inconsistency between the period which the recovery costs of demurrage monies are charged against profit and the period that demurrage commission is recognized as revenue. Therefore respondent contends that appellant's basis for recognizing demurrage commission and the accounting implication of it violate section 19 [1] and [3] and section 21 [1] and, [2] and [3] of the Income Tax Act 2015 [Act 896], as amended.

Accordingly, respondent is of the view that under the 'Accrual Accounting Principle', one generally accepted accounting concept is the 'matching principle' which requires that all expenses should be recognized with their corresponding related revenues in the same basis period. Recognising the demurrage commission revenue only when the monies are collected rather than when the invoices are issued contradicts the matching concept in that all the administrative expenses and follow up costs on the recovery of the monies on the demurrage invoices are recognized in a period other than the period in which the demurrage commission revenue will be accounted for.

Indeed, respondent says that in this respect appellant charges same expenses and deducts same in computing its income for tax purposes for the period under review but rejects the amount 'receivable' from being subjected to tax by statute as respondent undertook in this circumstance.

I have patiently read all the arguments advanced in respect of ground one [1] of the appeal and given them considerable thoughts. First of all, there is no doubt that under the Ghanaian tax regime, commissions

received qualify as service fee for which tax ought to be paid. In this appeal, both parties are 'ad idem' on that issue. However, the central issue that emerges following the facts as presented and the arguments thereon as far as ground one [1] of the appeal is concerned is whether or not the amounts levied by respondent as additional income as service fee for the year under consideration qualify as service fee as such for which appellant ought to pay tax.

Whereas appellant says that the additional income levied by respondent as service fee for the accounting period does not qualify as service fee as such, respondent on the other hand contends otherwise.

In advancing its argument, appellant conveniently referred to section 5 [1] and [2] [a] [i] of the Income Tax Act, 2015 [Act 896] and submits that the assessment to additional income using invoices will therefore lead to an over statement of appellant's income.

Section 5 [1] of Act 896 reads:

*"The income of a person from a business for a year of assessment is the gains and profits of that person from a business for a year or part of the year".*

Sub-section 2 thereof is as follows:

*"a person who is ascertaining the profits and gains of that person or of another person from a business for a year of assessment [a] include in the calculation an amount specified in respect of [i] service fees; .....".*

Appellant admits that respondent considered commission it received as service fee and therefore subject to tax. However, as earlier on indicated in this delivery, the central issue here is whether or not the amounts levied by respondent as additional income as service fee for the year under consideration qualify as service fee as such for which appellant ought to pay tax.

It is important to note that in its written submissions filed on 6<sup>th</sup> February 2025 in which respondent accused appellant of what respondent calls mismatch and inconsistency between the period which the recovery of costs of demurrage monies are charged against profit and the period that demurrage commission is recognized as revenue, according to respondent, in the year under review, appellant charges expenses and deducts same in computing its income for tax purposes for the period but rejects the amount 'receivable' from being subjected to tax by statute as respondent undertook in this circumstance.

I have observed with keen interest that appellant did not dispute this assertion. The ordinary implication in law is that appellant admits as a fact that it so charged expenses and deducted same in computing its income for tax purposes for the period in issue. Flowing from the above, the obvious question to ask is whether or not appellant is justified in so doing and turning around to reject the amount called 'receivable' from being subjected to tax as a requirement of statute.

My attention has been drawn to sections 19 and 21 of Act 896 which I find very useful in this discussion. I refer to the relevant provisions as follow:

*“19 [1] Subject to this Act, the timing of inclusions and deductions in calculating the income of a person during a basis period shall be made in accordance with generally accepted accounting principle.*

*[3] a person shall account for income tax purposes on an accrual basis.*

*21 [1] For the purposes of accrual basis accounting, a person*

*[a] derives an amount when the amount is ‘receivable’ by the person; and*

*[b] incurs an expense or other amount when the expense or other amount is ‘payable’ by the person.*

*[2] For the purposes of sub-section 1 [a], an amount is ‘receivable’ by a person when the person becomes entitled to receive it, even if the time for discharge of the entitlement is postponed or the entitlement is payable by installments.*

*[3] For the purposes of sub-section 1 [b], an amount is treated as payable by the person when the events that determine liability have occurred and the amount of the liability can be determined with reasonable accuracy but not before economic performance occurs with respect to that*

*amount”.*

Clearly, from the above provisions under the ‘Accrual Accounting Principle’, a generally accepted concept is the ‘matching principle’ which requires that all expenses should be recognized with their corresponding related revenues in the same basis period. Consequently, I hold that recognizing the demurrage commission revenue only when the monies are collected rather than when the invoices are issued contradicts the matching concept on the grounds that all the administrative expenses, etc on the recovery of the monies on the demurrage invoices are recognized in a period other than the period in which the demurrage commission revenue will be accounted for. In the instant situation, I find that in the period under consideration, appellant chose to charge expenses and deducted same in computing its income for tax purposes. Having decided to charge the expenses in the year under review, the reasonable presumption is that appellant is aware of the revenue receivable. Where the income is receivable under the law, I hold that same is subject to tax and therefore appellant cannot reject the amount ‘receivable’ from being subjected to tax. It appears that appellant would want to approbate and reprobate. The question is having included the service fees as expenses, when was it going to account for the projected income or revenue from the various invoices submitted out to clients? In this direction I agree with respondent that clearly the timing difference creates a mismatch and inconsistency and that in consonance with the ‘matching principle’, respondent was justified in adjusting the assessment of taxes to include invoices issued out and ‘receivable’ by appellant on demurrage.

It should not be lost on us that the key word in the law quoted above is ‘shall’ meaning mandatory. As a result, it is mandatory in determining

the timing of inclusions and deductions in calculating the income of a person during a basis period to be made in accordance with generally accepted accounting principle. Equally, it is mandatory for a company to account for income tax purposes on an accrual basis. These key words reflect the intention of the law-maker to make the exercise mandatory. In terms of the provisions in section 42 of the Interpretation Act, 2009 [Act 792], I give effect to its meaning in this write-up.

I have adverted my mind to the dictum of Dr. Date Bah JSC, as he then was, in **Republic vs High Court [Fast Track Division], Accra; Ex Parte National Lottery Authority [Ghana Lotto Operators Association and other Interested Parties] [2009] SCGLR 390 at 392, holding 1**, when he said;

*“.....No judge has the authority to grant immunity to a party from the consequences of breaching an Act of Parliament”.*

On this score, ground one [1] of the notice of appeal fails.

This leads me to ground two [2] of the notice of appeal which is that respondent erred in law by assessing appellant to additional PAYE for staff cost which related to staff canteen expenses.

Appellant's argument over here is that according to respondent the sum allocated by appellant as staff canteen costs ought to have been apportioned for employees as a benefit in kind for which appellant was required to withhold under section 114 of Act 896. The explanation offered by appellant is that this expense is necessary for appellant's business for the reason that due to its location at the Tema Port, the one hour break allowed its employees appears insufficient but expensive to get food. Customers therefore come and wait for

employees to return from break to be attended to. To curb this delay to customers and to enhance efficiency and productivity, appellant serves lunch to its employees who are always present at the office. Different meals are served day. The cost per meal will depend on the choice of the employee on a particular day.

For that reason, appellant submits that it will therefore be impracticable and unreasonable in the circumstance to allocate and account the cost of each meal for each day to each employee. Consequently, appellant is of the view that this is one of the instances that fall within the dictates of section 4 [2] [b] [vii] of Act 896.

Now, listen to respondent in its response thereto. According to its observation, it holds the view that despite the packaged meals served to appellant's employees being on a non-discriminatory basis, the packaged meals by their very nature, size, type and frequency of distribution are reasonable and administratively practicable for appellant to account for or allocate to an individual. Therefore respondent believes that each meal pack is priced and appellant's employees are entitled to at least one, which can easily be quantified administratively for costing, accounting and income tax purposes. In its view, to all intents and purposes, the packaged meals constitute gains and profits from employment of the beneficiary staff and thus are liable to PAYE tax as per section 4 [1] and [2] of Act 896. For that reason, respondent holds its original assessment and believes that staff beneficiaries are entitled to PAYE tax.

In resolving the issue as to whether or not the packaged meals constitute gains and profits from employment of the beneficiary staff and thus are liable to PAYE tax and that staff beneficiaries are entitled to PAYE tax, I find it expedient to resort to section 4 of Act 896 which

both Learned Counsel referred to in their respective written submissions.

Section 4 of Act 896 provides under subsection 1 as follows:

*“1 The income of an individual from an employment for a year of assessment is the gains and profits of that individual from the employment for the year or part of the year”.*

It is also provided under sub-section [2] [b] that:

*“[2] A person who is ascertaining the profits and gains of an individual from an employment for a year of assessment or for a part of that year shall,*

*[b] exclude from the calculation an amount specified in respect of*

*[vii] a payment made to employees on a non-discriminatory basis and which by reason of the size, type and frequency of the payments, are unreasonable or administratively impracticable for employer to account for or to allocate to an individual”.*

Also, I find it useful to refer to respondent’s own **Practice Note Number DT/2016/011 DATE OF ISSUE: 6<sup>TH</sup> OCTOBER, 2016** on the subject matter, that is gains or profits from employment under Act 896.

*“Payment made to Employee on a Non-Discriminatory Basis:*

*A payment made to employees on a non-discriminatory basis and which by reason of the size, type and frequency of the payments, are unreasonable or administratively impracticable for the employer to account for or to allocate to an individual is exempt from tax. Examples include the under-listed benefits;*

*[i] Free or subsidized meals provided by the employer, so long as the meals are available to staff generally and are not provided as part of a salary”.*

To my mind, it is the interpretation given to section 4 [1] and [2] of Act 896 by the parties herein that has brought about this issue. I have carefully looked at the law as quoted above. In my considered view, it is clear and unambiguous as it provides that free or subsidized meals provided by an employer so long as the meals are available to staff generally and are not provided on discriminatory grounds are exempt from tax. Section 4 of Act 896 together with respondent’s own Practice Note referred to does not provide that free or subsidized meals provided by the employer to staff are liable to tax. Therefore, with due respect, any reference to section 4 of Act 896 should be properly construed.

Gleaning from the law as it is it is reasonable to presume that the intention of the law-maker is that employees of enterprises or companies registered under Ghanaian laws may enjoy such a facility where available which should not be taxed. Consequently, I hold that appellant’s expenses made on provision of meals to its employees

which meals were provided on non-discriminatory basis are exempt from tax.

The general position of the law under purposive interpretation is that when interpreting a statute an account must be taken of the words of the Act according to their ordinary meaning as well as the context in which the words and consideration is given to the subject matter, the scope, the purpose and to some extent the background of the Act. There is no ambiguity as the meaning to be given to section 4 of Act 896. For the above reasons, ground two [2] of the appeal succeeds. Therefore, I declare that the provision of meals [lunch] to appellant's employees under the period is an excluded expense under section 4 [2] [b] [vii] of Act 896. To this end, I order the reversal of additional assessment for PAYE with respect to staff canteen costs for the period in focus.

The third ground of appeal as contained in the notice of appeal is that respondent erred in law and occasioned a miscarriage of justice by awarding interest in a manner that contradicts section 71 of the Revenue Administration Act 2016 [Act 915]. According to appellant, at the time respondent charged appellant to interest, the interest was not due since the notice of assessment was issued on 31<sup>st</sup> May 2023. Appellant was given thirty [30] days from the date of receipt to make payment. Therefore, according to appellant, after the lapse of the thirty [30] days that interest will begin to accrue against it where it fails to pay the tax per the notice of assessment.

On the other hand, respondent argues that appellant is registered and mandated to account for direct and indirect taxes under the self-assessment dispensation. Therefore, appellant self-assess CIT, WHT, VAT, NHIL, GETFL and COVID 19 and pays tax liabilities thereon on the

specified due dates outlined in the relevant provision of the respective laws. Consequently, where an adjusted assessment is made on both direct and indirect taxes under self-assessment, the reference points to calculating the interest on additional taxes and when the taxes were due under the self-assessment but not when the adjusted assessment is made as appellant alludes to.

I wish to say that I have had a good look at all the relevant provisions of the law both Learned Counsel referred to in their respective brilliant submissions and given them considerable thoughts. That is to say sections 37, 39, 40, 71 [1] and 77 of Act 915. Having considered the arguments advanced on ground three [3], I notice that the central issue for determination is whether or not at the time respondent charged appellant to interest, same was due.

Broadly speaking, section 71 [1] thereof requires a person who fails to pay tax by the date on which the tax is payable to pay interest for each month or part of a month which any part of the tax is outstanding.

In sub-section 2 thereof, interest is calculated as one hundred and twenty-five percent of the statutory rate, compounded monthly, applied to the amount outstanding at the start of the period.

As far as sub-section 3 thereof is concerned, for the purposes of calculating interest under sub-section 1 [a], tax is payable under the original assessment and in any other case, on the date specified in section 46.

Interestingly, in section 46 of the Act, which is on time for paying tax, tax is payable at the time specified in the tax law under which the tax is charged. Despite sub-section [1] tax is payable in the case of tax

payable on assessment under section 37 or 38, on the date specified in the notice of assessment served under section 40.

Meanwhile, in the case of tax payable on an adjusted assessment under section 39, thirty [30] days from the date on which the person assessed is served with notice of assessment under section 40. Finally, in the case of interest and penalties, on the date specified in the notice of assessment served under section 77.

Now, as a result of the foregoing, whereas appellant submits that at the time respondent charged it to interest same was not due because notice of assessment was issued on 31<sup>st</sup> May 2023 and it was given thirty [30] days from the date of receipt to make the payment. Therefore, to appellant, interest will begin to accrue after the lapse of the thirty [30] days notice if it should fail to pay.

Contrariwise, respondent submits that section 71 [3] [1a] of Act 915, as amended, provides clarity on the basis of computing interest on unpaid taxes specifically where an adjusted assessment is made. Therefore, where an adjusted assessment is made on both direct and indirect taxes under self-assessment, the reference points to calculating the interest on additional taxes when the taxes were due and not when the adjusted assessment is made.

Flowing from the above, I ask, is appellant registered and mandated to account for direct and indirect taxes under the self-assessment dispensation? Again, I ask, in the year under review, was adjusted assessment made as far appellant is concerned? If the answers to the above questions are in the positive, obviously, section 71 [3] [i] of Act 915 shall apply which would mean that for the purposes of calculating interest under sub-section 1 thereof, in the case of adjusted assessment, tax is payable under the original assessment and not when

the adjusted assessment is made. Such is the fate of appellant. Accordingly, ground three [3] as contained in the notice of appeal fails.

Ground 4 of notice of appeal is that respondent erred in law when it failed to recognize that appellant receiving money on behalf of its principals and transferring same to the principals does not constitute financial services under the First Schedule of the VAT Act 2013 [Act 870], as amended. From the records of appeal, there is no issue that appellant receives and transfers money on behalf of its principals. However, the ultimate question is whether or not such receipts and transfers are exempt from tax. In the considered opinion of appellant the receipt and transfers of same for and on behalf of the principals is not taxable. Respondent contends otherwise. In its view, the law as it is refers to Financial Institution registered to operate as such and not appellant company which has not been registered as a financial institution.

In a bid to resolve the issue, I find solace in the First Schedule to Act 870. For the purposes of this appeal, the key word therein is 'financial services'. It is defined in the law as:

*"...the provision of insurance; issue, transfer, receipt of, or dealing with money whether in domestic or foreign currency or any note or order of payment of money; provision of credit; or operation of a bank account or an account with a similar institution".*

As can be seen above, from the definition, the Act specifies four [4] instances where provision of service will amount to financial service. They are;

1. insurance,

2. issue, transfer, receipt of, or dealing with money whether in domestic or foreign currency or any note or order of payment of money,
3. provision of credit and
4. operation of a bank account or an account with a similar institution.

To this extent, I agree with Learned Counsel for appellant that the receipt of money and its transfer by appellant to the principals will not constitute financial services within the meaning of the law. According, by necessary application of the law, it is exempt from output VAT. The appeal on this ground therefore succeeds. Consequently, I rule that appellant, by receiving money on behalf of its principals and by transferring same thereunto, appellant performs financial service within the meaning of Act 870 and therefore such receipts and transfers are exempt from output VAT for receipts and transfers of demurrage to its principals. As a result, I order that the assessment of output VAT on demurrage is reversed.

Finally, upon a close scrutiny of the facts or evidence together with the relevant laws, the additional ground of appeal filed on 18<sup>th</sup> November 2024 hereby succeeds. I rule that respondent, by treating the procedural penalty appellant paid as an excluded expense and a non-qualifying expenditure was contrary to law.

Before winding down, I make the following consequential orders:

1. It is hereby ordered that respondent issues a revised tax assessment of appellant for the 2018 to 2021 years of assessment taking into

account the reliefs granted by this Court in this appeal and

2. Respondent is hereby ordered to refund any tax credits owing to appellant as a result of the revised audit within ninety [90] days from today 9th June 2025, failing which respondent shall pay interest on any ensuing tax credits.

Sgd.

**KWASI BOAKYE, JA**  
**[APPEAL COURT JUDGE SITTING**  
**AS ADDITIONAL HIGH COURT JUDGE].**

**JULIET LONGDON SOWAH WITH DELPHINA OKUTU FOR MR. D.K. AMELEY FOR APPELLANT**

**DAVID SOWAH KPOBI FOR RESPONDENT.**

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**LAND DIVISION**  
  
**REGISTRAR**  
**HIGH COURT, TEMA**  
**13-06-2025**

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