



IN THE TAX APPEAL TRIBUNAL
LAGOS ZONE
HOLDEN AT LAGOS
BEFORE
PANEL 1

OLANREWAJU M. LASSISE-PHILLIPS, ESQ.
M.A.C. DIKE
TITILOLA AKIBAYO
R. A. QUADRI
KANENG ADOLE, ESQ.

CHAIRMAN
MEMBER
MEMBER
MEMBER
MEMBER

APPEAL NO. TAT/LZ/VAT/006/2021

BETWEEN

CHI LIMITED

APPELLANT

AND

FEDERAL INLAND REVENUE SERVICE

RESPONDENT

JUDGMENT

Background

The Appellant is a company incorporated under the laws of the Federal Republic of Nigeria. It produces fruit juices, dairy and other products in the beverage and snack categories. The Respondent is an agency of the Federal Government of Nigeria. Under its constitutive law, it is responsible for the collection of taxes payable to the Federal Government including Value Added Tax (VAT), the tax in connection with which this Appeal was filed.

The Appellant, by a letter dated September 14, 2020 wrote to the Tax Policy and Advisory Department of the Respondent requesting for a ruling permitting the Appellant to recover Input VAT incurred on the purchase of gas, short term spares and consumables against the VAT it charged on its products. The request was to determine whether the Input VAT thereon qualified as their stock-in-trade for the purpose of section 17 of the Value Added Tax Act (VAT Act).

In response, the Respondent by its letter of September 23, 2020 refused the Appellant's request. In refusing, the Respondent stated as follows:

*CHI Limited produces fruit juices, dairy and other products. As such, natural gas and diesel, "short term" spares and other manufacturing consumables are not its stock-in-trade or raw materials in the production of its products. Those items form part of the company's **production overhead** as attested to in your letter under reference...*

In view of the foregoing, the Service hereby confirms that the input tax on natural gas and diesel, "short-term" spares and other manufacturing consumables are not allowed as deduction against the output tax arising from the sale of the company's products.

Dissatisfied with the ruling, the Appellant urged the Respondent to reconsider its position by another letter dated March 17, 2021. The Respondent however affirmed its initial decision on the same premise via a letter dated April 23, 2021 (but erroneously dated 23 April 2020). Thus, effectively denying the Appellant's request.

As a result of the Respondent's firm refusal to reconsider its decision, the Appellant challenged the Respondent's decision when it filed this Appeal before the Tribunal on the 28th day of May 2021 seeking the following reliefs:

- i. A Declaration that the Respondent's construction or interpretation of section 17 of the VAT Act is wrong in law.
- ii. A Declaration that the Respondent's decision that the Appellant cannot claim input VAT on natural gas, short term spares and other consumables used in the direct production of its products in contravention of section 17 of VATA is wrong in law.
- iii. A Declaration that natural gas, short term spares and other consumable used by the Appellant in the production of its products constitute the Appellant's stock-in-trade.
- iv. A Declaration that natural gas, short term spares and other consumables which form the Appellant's stock-in-trade are used in the direct production of its goods to the extent that they can be allocated to direct production.
- v. An Order directing the Respondent to henceforth grant the Appellant's claim of N173,433,562.14 input VAT incurred on natural gas used in direct production as

- well as input VAT incurred on short term spares and other consumables also used in the direct production of its products.*
- vi. An Order directing the Respondent to account for and refund all VAT that were wrongly collected by the Respondent.*
 - vii. An Order for the payment of interest on all VAT wrongly collected by the Respondent.*
 - viii. An Order restraining the Respondent from imposing or insisting that VAT be imposed on natural gas.*

The Respondent filed its Reply on the 16th of June 2021. The matter first came up for hearing on 8th July, 2021. On the 10th of August 2021 when the matter came up next, the Appellant informed the Honourable Tribunal that the issue in dispute was a question of law and could be determined on legal arguments only since it bothered on the construction of section 17 of the VAT Act. The Respondent vehemently opposed this position.

However, upon perusal of the processes filed by the parties, this Honourable Tribunal was satisfied that issue in dispute is a question of law requiring no elaborate hearing. It directed the parties to file their respective final addresses. Each of the parties was given 21 days to file its Final Written Address with the Appellant filing first. The Appellant was then given seven days to file its Reply on Point of Law if necessary.

On the 5th of November, 2021, the parties adopted their Final Written Addresses together with the Appellant's Reply on Point of Law. The Appeal was adjourned to the 10th day of February 2022 for Judgment.

Grounds of Appeal

Ground 1

The Respondent erred in law when, interpreting section 17(1) of the Value Added Tax Act (VAT), it held in paragraph 3 of its letter, that:

"The basic rule for input tax allowable is that only tax deductible from output tax of a product is limited to goods directly used in the production of the product" (underlining for emphasis)

Particulars

- (a) The Respondent's construction or interpretation of section 17 does not give a full picture of the true meaning of the section.
- (b) Section 17 (1) of the VAT Act provides the general rule for when input VAT can be allowable or deducted from Output VAT. Section 17 (1) provides
- i. *For purposes of section 13 (1) of the Act, the input tax allowed as a deduction from output tax shall be limited to the tax on goods purchased or imported directly for resale and goods which form the stock-in-trade used for direct production of any new product on which the output tax is charged. (Underlining for emphasis)*
- (c) Some of the instances under section 17 (1) in which input VAT will be allowable or deductible from Output VAT include instances when VAT is incurred on:
- i. Goods purchased or imported directly for sale and goods
 - ii. Goods which form the stock-in-trade used for direct production of any new production of any new product on which the output tax is charged
- (d) This appeal relates to the latter category in paragraph (c) ii above, that is, when input VAT is incurred on goods which form the stock in trade used for the direct production of any new product of which the tax is charged.
- (e) The correct construction or interpretation of section 17 (1), as it relates to the second category is that input VAT is allowable or deductible from output VAT when the input VAT is incurred on goods which form the stock-in-trade and used for the direct production of any new product which output is charged.
- (f) The goods referred to in section 17 (1) are goods simpliciter as stated by the Respondent. Rather they are goods *which form stock in trade used for direct production of any new product on which output tax is charged*.
- (g) The Appellant used natural gas, short term supplies and other consumables in the direct production.
- (h) Therefore, the appellant would be entitled to deduct its input VAT from the output VAT provided it incurred input VAT on goods which formed stock

in trade and used for the direct production of any new product on which it charged output tax/VAT.

Ground 2

The respondent erred in law when its ruling equated “stock-in-trade” with inventory when the VAT Act made no such contemplation.

Particulars

- (a) The appellant applied to the Respondent requesting that it be allowed, in line with law, to deduct input VAT incurred on purchase of natural gas, short term spares and other manufacturing consumables from VAT charged on sale of its product.
- (b) In denying the Appellants request the Respondent stated that:
 - a. CHI Limited produces fruit juices, dairy and other products. As such natural gas and diesel, “short term” spares and other manufacturing consumables are not its stock-in-trade or raw material in the production overhead as attested to in your letter under reference (underlining for emphasis)
- (c) In coming to its decision, the Respondent equated stock-in-trade with “inventory”.
- (d) Nowhere in the VAT Act is “stock in trade” defined let alone equated with the word “inventory”.
- (e) “inventory” is not synonymous with “stock-in-trade”. According to the black’s Law Dictionary, 9th Edition, ‘inventory’ is defined as:

Accounting

The portion of a financial statement reflecting the value of a business’s raw materials, works-in-progress, and finished products the company’s <reported inventory was suspiciously low>. 3. Raw materials or goods in stock <the dealership held a sale to clear out its October inventory>

- (f) The same dictionary defines “stock-in-trade” as:

The inventory carried by a retail business for sale in the ordinary course of business. 2. The tools and equipment owned and used by a person engaged in a trade. 3. The equipment and other items needed to run a business.

- (g) From both definitions, it is clear that "stock-in-trade" is a broader term including inventory.
- (h) Therefore, the Respondent was wrong to treat both words as synonyms of each other.
- (i) Had the Respondent directed itself to the difference between both words, it would have concluded that "natural gas, short term spares and manufacturing consumables" all fall under the definition of "stock in trade" because they are "equipment and other items needed to run a business."

Ground 3

The Respondent erred in law when it treated as "*production overheads*" the stock-in-trade ("natural gas and diesel", "short term spares" and other consumables) used by the Appellant in direct production of its products thereby denying the Appellant from claiming or deducting input VAT.

Particulars

- (a) In paragraph 3 of its letter, the Respondent stated that:

*CHI Limited produces fruit juices, dairy and other products. As such natural gas and diesel "short term" spares and other manufacturing consumables are not its stock-in-trade or raw material in the production of its product. Those items form part of the company's **production overhead** as attested to in your letter under reference.*

- (b) Unfortunately, the VAT Act does not define the term "stock-in-trade". However, it is trite that where an Act does not define a word used in the Act, the courts would resort to the ordinary dictionary meaning of the word.
- (c) The term stock-in-trade has been defined by no less than 10 dictionaries to mean "tools, merchandise, equipment, or materials necessary to or used to run trade or business".

(d) From the definitions, "stock-in-trade" includes inventory, overheads and capital assets. It is a generic term for tools, inventory, capital assets used for production (direct or indirect) of goods.

(e) Therefore, natural gas spares and other consumables constitute the Appellant's stock-in-trade and are used in the direct production of its product.

Ground 4

The Respondent erred in law when in interpreting section 17 (2) of the VAT Act, it stated in paragraph 4 of its letter, that:

Moreover, section 17 (2) of the VATA forbids the deduction of input tax on any overhead (including production overheads)

Particulars

(a) The Respondent's interpretation of section 17 (2) is wrong in law.

(b) Section 17 (2) of the VAT Act provides further clarification on the instances in which input VAT can be allowable or deductible against output VAT.

(c) Section 17 (2) provides as follows:

(2). Input tax-

(a) *on any overhead, service and general administrations of any business which otherwise can be expended through the income statement (profit and loss accounts); and*

(b) *on any capital item and asset which is to be capitalized along with cost of the capital item and asset, shall not be allowed as a deduction from output tax.*

(d) Section 17 (2) does not forbid the deduction of input tax on any overhead (as claimed by the Respondent). Rather section 17 (2) forbids the deduction of input VAT on any overhead, service and general administration **which otherwise** can be expended through the income statement.

(e) By the use of the phrase "which otherwise" can be expended through the income statement", section 17 (2) implies that there are overheads, services or general

administration which should not or may not be expended through the income statement because they are used in the direct production.

- (f) This position is consistent with section (17) (1) which provides that some category of stock in trade ("tools, merchandise, equipment or material necessary to or used to run a trade or business") can be used for direct production while others cannot.
- (g) More so, the definition of stock in trade includes overheads.
- (h) Therefore, by use of the phrase "which otherwise can be expended through income statement" in section 17 (2) stock-in-trade ("tools, merchandise, equipment, materials necessary to or used to run a trade or business") not used for direct production are to be expended via the income statement and not eligible for VAT reclaims.
- (i) A fortiori, input VAT incurred on stock-in-trade (including overheads) used in the direct production of goods should be allowable or deductible from output VAT charged on the products.

Ground 5

The Respondent erred in law when it refused to allow the Appellant deduct its input VAT against the output VAT.

Particulars

- (a) By refusing to allow the Appellant to deduct or reclaim its qualifying input VAT from output VAT, the Respondent has insisted that the Appellant pay all VAT over to the Respondent.
- (b) This has resulted in the Respondent holding over VAT that is otherwise due to the Appellant.
- (c) The VAT in question is, by law, due to the Appellant.

Ground 6

The Respondent erred in law when it failed to consider the Appellant's legal claims or points.

Particulars

- (a) In its letter of 17 March 2021, the Appellant raised a point on allocation/apportionment of the costs of the natural gas, spares and other consumables to those used in direct production.
- (b) It is trite that the Respondent is expected to respond to all positions, legal claims arguments and objections of a taxpayer.
- (c) By failing to respond to the Appellant's position, the Respondent did not disclose its position on the Appellant's point on allocation/apportionment.

Issues for Determination & Argument of Issues

The Appellant formulated one issue for determination in this Appeal, namely:

Whether, having regard to the provisions of Sections 16 and 17 of the VAT Act, the Appellant is not entitled to recover, from output VAT, the input VAT it incurred on natural gas, short term supplies and consumables which are used directly to produce goods (on which output VAT is charged)?

Arguing the Appellant's sole issue, Folajimi Akinla Esq., restated the reason advanced by the Respondent for rejecting the Appellant's request and submitted that the Respondent erred in law. He traced the legislative development of VAT and concluded that it was (and remains) the intention of the VAT Act that businesses must recover any Input VAT that was more than Output VAT charged. Similarly, he argued that the Respondent was entitled to the excess when a business incurs less Output VAT over Input VAT.

He argued that the reason for introducing section 17 was to deter businesses from reclaiming Input VAT when there was no direct or immediate link between the Input VAT incurred by businesses from the Output VAT charged by the business. He submitted that the objective of VAT as a whole was to ensure that the tax was borne by the final consumer and that businesses recover their Input VAT provided there was a direct nexus with Output VAT. He asserted that section 17 of the VAT Act must be read as a whole to determine its true intent. He cited **General Cotton**

Mill Limited Vs Travellers Palace Hotel.¹ He cited also *Nobis-Elendu Vs INEC*² as well as *Mobil Oil Plc Vs IAL 36 Inc. US*.³

According to the learned Counsel, section 17(1) of the VAT Act limited the Input VAT that a business could recover from Output VAT to Input VAT incurred on goods purchased or imported directly for resale and goods which form stock-in-trade used for the direct production of any new product on which Output VAT is charged. Thus, before a business could recover Input VAT on production of a new product:

- (a) the input VAT must be incurred on goods which form stock-in-trade,
- (b) the goods purchased must be used for the direct production of a new product
- (c) Output VAT must be charged on the new product.

On goods which form stock-in-trade, he referred the Tribunal to the definitions offered by eleven different dictionaries which defined the term to mean tools, merchandise, equipment, or materials necessary to or used to run a trade or business including any materials necessary to run a business, overheads inclusive. He urged the Honourable Tribunal to adopt the definitions of the phrase used in these dictionaries.

Counsel claimed that the Appellant used natural gas, short term spares and other manufacturing consumables (machine cleaning materials and lubricants used to clean and lubricate the production plants) which all fall under the category of tools, merchandise, equipment or materials necessary to or used to run a trade or business. He therefore urged the Honourable Tribunal to hold that natural gas, short term spares and other manufacturing consumables form part of the Appellant's stock-in-trade.

On used for direct production of new products, he argued this under two heads, to wit, the Principle/Presumption of Common Usage applies to the definition of "direct" and "directly" in section 17(1) and defining "direct production" in relation to direct and indirect costs of production.

He submitted that the words "direct production" used in section 17(1) of the VAT Act did not necessarily mean the direct production in the context of manufacturing a product otherwise the section would have contained the words "raw materials" as opposed to "stock-in-trade". Rather, "direct" was used to signify that a direct and immediate link existed between the "stock-in-trade" and the finished good (new

¹ (2018) LPELR-46311(SC).

² (2015) LPELR-25127 (SC).

³ (2000) 6 NWLR (Pt. 659) 146.

product) such that the Input VAT on the stock-in-trade could be recovered from the Output VAT charged on the new product derived from the stock-in-trade.

He argued that this was consistent with the Appellant's claim that it was entitled to recover only the Input VAT incurred on the natural gas, spares and consumables used only in or for the production process and submitted that as long as the stock-in-trade (natural gas, spares and consumables) had a direct (undeviating) link with the production of any new product, the Appellant was entitled to recover all Input VAT thereon. He urged the Tribunal to so hold. Counsel then referred the Tribunal to the position of the English courts on the existence of a direct and immediate link between the Input VAT and the taxpayer's business activity in three decided cases, to wit, *Cloud Electronics Holdings Ltd Vs HMRC*,⁴ *Heating Plumbing Supplies Ltd Vs HMRC*,⁵ and *BAA Ltd Vs Revenue and Customs Commissioners*.⁶

Relying on the authors, Frank Wood and Alan Sangster on Business Accounting 2^{10th} Edition, Appellant's Counsel submitted that natural gas, short term spares and manufacturing consumables all fall under direct expenses or cost of goods sold (COGS) as they were traceable to the products manufactured. He referred the Tribunal to the undisputed fact in paragraph 22 of the Appellant's Witness Statement on Oath where the Appellant allegedly demonstrated a split of the gas used directly in the production plant from the gas used for general administration of the Appellant's business. He argued that uncontroverted facts are deemed admitted. He cited *Magnusson Vs Koiki*,⁷ *UNIC Insurance Plc Vs Adisa Fadeyi & Ors*,⁸ and *Obumseli Vs Uwakwe*.⁹

Counsel urged the Tribunal to hold that the Input VAT incurred on natural gas consumed in the production process was eligible to be recovered from Output VAT charged on the Appellant's products.

Arguing further, he claimed that where the words of a statute were ambiguous, they must be interpreted in favour of the taxpayer. He suggested that the words "direct production" could refer both to the production process as defined by costs incurred by a business or an undeviating objective of production, therefore the ambiguity must be interpreted in favour of the Appellant on the authority of *Nigeria Breweries*

⁴ (2012) UKFTT 699.

⁵ (2016) UKFTT 753.

⁶ (2013) EWCA Civ 112.

⁷ (1993) 9 NWLR (Pt. 317) 287 SC.

⁸ (2018) LPELR-45571(CA).

⁹ (2019) LPELR-46937 (SC).

Plc Vs Abia State Board of Internal Revenue,¹⁰ *Badenhorst Vs CIR*,¹¹ and *AB CC Vs SARS*.¹²

Concerning on which Output VAT is charged, learned Counsel asserted that Appellant charged Output VAT when it sold its products and that the Input VAT incurred on gas, spares and consumables exceeded the Output VAT charged on the new products.

Counsel proceeded to consider the true objective of section 17(2)(a) of the VAT Act. He stated that the inclusion of the word "otherwise" completely changed his initial understanding of section 17(2)(a); especially when read along with section 17(1). He stated further that the word "otherwise" would not be necessary if all the lawmakers intended was to deny an Input VAT recovery if incurred on overhead, services and general administration. However, the inclusion of the word "otherwise" in section 17(2a) totally changed the complexion and meaning from the reconstructed section in his view.

He concluded that the word "otherwise" in section 17(2)(a) indicated that the tax treatment of Input VAT in scenarios other than those in section 17(1). He submitted that to grasp the intent of section 17(2)(a), the entire section 17 must be read as a whole. Against this backdrop, he submitted that section 17(2)(a), taking into consideration section 17(1), meant that Input VAT incurred on overheads which did not meet the requirements of section 17(1) would be expended through the income statement and therefore not be eligible to be recovered. That is to say, section 17(2a) meant that where Input VAT was incurred on overheads which were neither stock-in-trade nor used in the production process of new products on which Output VAT was charged, such would be expended via the income statement and thus not be eligible to be recovered.

It is counsel's argument that stock-in-trade included tools, merchandise, equipment, or materials necessary to or used to run a trade or business. Therefore, stock-in-trade was of broad application and included overheads used for direct production of goods.

Finally, he submitted that under the VAT Modification Order then in force, natural gas was listed as an exempt item and as such the Appellant should not have been subject to VAT on the gas it purchased. He urged the Tribunal to so hold.

¹⁰ Unreported. Delivered 20 June 2019.

¹¹ (1955 (2) SA 207 (N) 215.

¹² (2014) ZATC 4 (9 December 2014).

Similarly, the Respondent distilled a sole issue for determination in the Appeal, to wit:

Whether Appellant being a producer of fruit beverages and dairy is allowed to deduct from its output, input VAT suffered from purchase of natural gas, diesel and other short term spares.

Arguing the Respondent's position, Awashima Ukpi, Esq., submitted that none of the eleven dictionary meanings of stock-in-trade relied on by the Appellant was adaptable to the provision of section 17 of VAT Act since the meanings were skewed and out of semantic context. Relying on the case of *Cabel II Vs. Markham*,¹³ she submitted that ordinary meaning of legal terms could not be determined by the dictionary. She asserted that clear words required no interpretative tools.

Respondent's Counsel further submitted that the wordings of section 17 of the VAT Act were clear and unambiguous, therefore the Tribunal was bound to give effect to it. She contended that the legislative intent looking at section 17 was to limit claims of Input VAT to goods used directly for production, by stating that there must be a direct connection between the finished product and the goods from which Input VAT was sought to be claimed. In her view, allowable goods must form part of the raw materials used directly to produce a 'new product', to the extent that the good was a constituent/ingredient of the finished product, in case of juices, it would mean fruit concentrate and the likes. She maintained that the purport of section 17 was to allow a producer offset the VAT suffered from goods procured and used to manufacture a new product, thereby ensuring that the tax is suffered by the final consumer.

She disagreed with the Appellant's reliance on foreign authorities claiming there was no basis for comparing the Input and Output VAT of Nigeria with that of the UK and urged the Tribunal to disregard same. Counsel argued that a manufacturer could not cherry-pick to expense overheads to the income statement or deduct same from Output VAT since there was an intention to limit stock in trade to the particular line of business of each manufacturer as determined by its memorandum and articles of association.

On the meaning to ascribe to stock-in-trade, learned Counsel cited the case of *Nigerian Breweries Plc Vs FIRS*.¹⁴ She submitted that both section 17(2) of VAT Act

¹³ (148, F.2d 737(2d Cir.1945).

¹⁴ TAT/LZ/VAT/020/2016 (unreported).

and accounting standards demanded that overheads be expended from income statement.

It is her argument that the word "shall" used in section 17(2) of the VAT Act forbade the deduction of overheads from output. On the effect of the use of "shall" in a statute, she cited the case of *Rabiu Vs State*.¹⁵ Counsel wondered whether the fact that the Appellant could measure the quantity of gas supplied to its machines and boilers translated to mean that expenses on utilities were no longer overhead expenses, but stock in-trade which could not be dispensed in the income statement as required by accounting principles.

In response to the Appellant's assertion that natural gas is exempted under the VAT Modification Order as such the Appellant should not have been subject to VAT on the gas it purchased, Respondent's Counsel referred to the case of *Registered Trustees of Hotel Owners and Managers Association of Lagos Vs Attorney-General of the Federation & Anor*,¹⁶ to submit that the Minister of Finance could not amend a legislation, this was the preserve of the National Assembly. She urged the same on the Tribunal. Finally, she urged the Tribunal to dismiss the Appeal as the Appellant sought to define stock-in-trade to suit its objective.

Replying on Point of Law, to the Respondent's assertion that the Appellant did not apply a semantic context while defining the term stock-in-trade, Appellant's Counsel replied that the context is found in the universal principles of VAT as well as the VAT Act, particularly in section 16 since the intention of VAT was that the producers recover all their Input VAT, then section 17 and stock-in-trade should be construed in a way that is consistent with VAT principles. Counsel referred to paragraph 10 on page 4 of the Respondent's Brief where the Respondent stated that section 17(1) created a tax relief and submitted that the claim of Input VAT was not a relief but a standard VAT principle. He submitted further that beneficial provisions must be interpreted in favour of taxpayers citing a number of Indian Supreme Court authorities.

Counsel argued that the Respondent was wrong to have equated stock-in-trade with raw materials. He submitted that the provision of section 17 was elaborate as the legislature intended that the Input VAT to be recovered should be on more than raw materials. If the legislature intended raw materials, it would have said so simply. He contended that by defining stock-in-trade as raw materials, the Respondent imposed a restrictive interpretation on section 17 suggesting erroneously that raw

¹⁵ (1980) 8-11 SC 130.

¹⁶ FHC/L/CS/1082/19(unreported).

materials were the only goods that can be used in direct production. Counsel maintained that raw materials were a simplistic term which as the term suggested meant materials used in direct production of a good. Whereas "stock-in-trade" was a technical and generic term which definition must be read within the context of the law and universal VAT principles.

Counsel distinguished between stock-in-trade and raw materials and concluded that the former was much broader term than "raw materials" insisting that the legislature intended "stock-in-trade" and not raw materials hence the inclusion of stock-in-trade. He argued that the *inclusio unius* canon posited that the inclusion of one thing implied the exclusion of all others. The Respondent was wrong to superimpose raw materials on "stock-in-trade" when they had different and separate meanings as rightly reflected in the VAT Act.

Counsel asserted that the case of *Nigerian Breweries Plc Vs FIRS*¹⁷ was not applicable to this Appeal as the facts were different, the decision was not binding. He claimed that the earlier Tribunal was technically wrong for equating stock-in-trade with raw materials. Finally, he submitted that the UK cases were referenced to draw parallels when considering the universal VAT principles, to wit, the VAT recovery where there is a direct connection between input and output, consistent with sections 16 and 17 of the VAT Act as well as universal VAT principles.

He urged the Tribunal to uphold the Appellant's arguments and grant the Appellant all the reliefs sought per the Notice of Appeal.

Determination of Issue

The issues nominated by the two parties in the determination of this Appeal are similar in context taking into consideration that they relate to the construction of section 17 of the VAT Act, whether it allows taxpayers to recover from Output VAT any Input VAT incurred on stock-in-trade used to produce new products on which Output VAT is charged. Notwithstanding, the issue formulated for the Appellant appears more apt and has been adopted for the determination of the Appeal.

The crux of the matter is obvious. It is the construction to be placed on section 17 (i) of VAT Act (as amended) particularly. However, the whole of section 17 is reproduced below:

¹⁷ Supra note 14.

17. Allowable input tax, etc.

(1) For purposes of section 13 (1) *sic* of this Act, the input tax to be allowed as a deduction from output tax shall be limited to the tax on goods purchased or imported directly for resale and goods which form the stock-in-trade used for the direct production of any new product on which the output tax is charged. (1998 No. 18.)

(2) Input tax-

(a) on any overhead, service, and general administration of any business which otherwise can be expended through the income statement (profit and loss accounts); and [1998 No. 18.]

(b) on any capital item and asset which is to be capitalised along with cost of the capital item and asset, shall not be allowed as a deduction from output tax.

The Appeal is essentially to determine whether the VAT on expenses regarding gas, short term spares and other manufacturing consumables incurred by the Appellant are recoverable Input VAT.

It is not in contention that natural gas, short term spares and consumables are the Appellant's overheads used directly in its production process. In its letters of September 23, 2020 and April 23, 2021, even the Respondent admitted this much. Both parties also agreed that the VAT Act in section 17(2)(a) limits the Input VAT that can be recovered. The point of divergence is as to the limit of Input VAT recoverable. The Appellant had argued that the draftsman's use of the expression, 'stock-in-trade used in direct production' presupposes something broader than raw materials as the Respondent would want to portray. On the other divide, the Respondent insisted that only VAT on raw materials *qua* raw materials used directly to produce a new product is recoverable against Output VAT.

It would appear, to a certain degree, that parties are *ad idem* with regards to section 17(2)(a). We will revisit this point subsequently. At this point, it is safe to state that the assignment is thus narrowed down to interpretation of section 17(1) *viz-a-viz* the Appellant's claim as to whether VAT on expenses regarding gas and diesel, short term spares and other manufacturing consumables incurred by the Appellant are recoverable Input VAT.

At the risk of repetition, the provision of section 17(1) of VAT Act is reproduced below.

For purposes of section 13 (1) (sic) of this Act, the input tax to be allowed as a deduction from output tax shall be limited to the tax on goods purchased or imported directly for resale and goods which form the stock-in-trade used for the direct production of any new product on which the output tax is charged.

Dissecting the above, the following are vital with respect to the matter at stake:

...the input tax to be allowed... goods which form the stock-in-trade used for the direct production of any new product on which the output tax is charged.

The Tribunal is called upon to consider if gas and diesel, 'short term' spares and other manufacturing consumables incurred by the Appellant constitute part of goods which form the stock-in-trade used for the direct production of any new product on which the output tax is charged.

The definition of stock-in-trade is crucial to establish goods that may likely constitute same. Unfortunately, the phrase "stock-in-trade" is not defined in the VAT Act. The Tribunal is now saddled with the responsibility to discover the meaning of "stock-in-trade" the law makers had in mind when they passed the VAT Act. The Tribunal must then determine whether the Appellant's gas and diesel, 'short term' spares and other manufacturing consumables incurred by the Appellant constitute part of goods which form the stock-in-trade as intended by the law makers. To do this, we have to look beyond the VAT Act for the meaning of stock-in-trade.

The Tribunal disagrees with the Respondent's assertion which seems to deny or denigrate the significance of dictionaries, even non-legal dictionaries, in the construction of the provisions of statutes. Indeed, dictionaries are useful aids in interpretation generally. In the absence of superior interpretation aids, the dictionary provides a *sympathetic and imaginative discovery* of the legislative intentions. This Tribunal, in time past, has had and will continue to have recourse to dictionaries for guidance in cases that required such.

The Black's Law Dictionary provides guidance in this wise. According to the Dictionary, stock-in-trade is

1. *The inventory carried by a retail business for sale in the ordinary course of business.*
2. *The tools and equipment owned and used by a person engaged in a trade.*
3. *The equipment and other items needed to run a business.*

Thus, the phrase "stock-in-trade" may be viewed as resources or assets used to operate a business.

Now suppose one operates a restaurant. The stock-in-trade of a restaurateur will include the ingredients needed to prepare menu items as well as other consumable

materials, such as napkins and cleaning supplies. The stock-in-trade will almost certainly also include short term equipment and tools needed to prepare and serve the food, such as: pans, kitchen utensils, plates and glasses.

In his book, *Words & Phrases Legally Defined*, the learned author conceives stock-in-trade in the following terms

*Nothing shall be deemed stock-in-trade but the shop, goods and utensils in trade though I think the ready money in the till might come within that construction. Seymour Vs Rapier (1718) Bunb. 28 per Price, B, at 28.*¹⁸

The implication of the above is that stock-in-trade goes beyond raw materials. The Legislature appeared to be deliberate in its choice of words. We cannot suppose that the draftsman was merely fishing or that he haphazardly used the term, stock-in-trade. And by the tradition of lawyers, taxing legislations are construed strictly. See *Okupe Vs FBIR*.¹⁹ Where the words of a statute are clear and unambiguous, they must be given effect to, there is no need to embark on any journey of discovery.

The Respondent had argued frantically that the allowable goods (sic) must form part of the raw materials used directly to produce a 'new product', to the extent that this good is a constituent/ingredient of the finished product, in case of juices, it will mean fruit concentrate and the likes. The question is – can the words, raw material be used interchangeably with or as synonym for the phrase “stock-in-trade”?

The term raw material denotes materials in unprocessed or minimally processed states. They are materials that are in their natural state, before they are processed or used in manufacturing.²⁰ A raw material, also known as a feedstock, unprocessed material, or primary commodity, is a basic material that is used to produce goods, finished products, energy, or intermediate materials that are feedstock for future finished products. As feedstock, the term connotes these materials are bottleneck assets and are required to produce other products.

When the definition of raw material is placed side-by-side with that of stock-in-trade, it becomes apparent that the two are not synonyms. Indeed, the phrase, stock-in-trade is more encompassing and broader in scope than raw material. It has been said that for a manufacturing business, stock-in-trade must include tools, supplies

¹⁸ John B. Sanders, *Words and Phrases Legally Defined*, 2nd ed. vol. 5 (Butterworths England: 1970) at 117.

¹⁹ 1 ALL NTC 469 at 481.

²⁰ See Collins English Dictionary, “Raw Material”. Available online at <https://www.collinsdictionary.com/dictionary/english/raw-materials>. Last accessed January 16, 2022.

and production equipment as well as raw materials, work in progress and finished goods.²¹

The further question to determine is whether the stock-in-trade, in this case, gas, spares and consumables, has a direct link with the production of any new product. If it does, then taxpayer will be entitled to recover all Input VAT thereon. The uncontroverted fact before this Tribunal is that the Appellant uses natural gas, short term spares and other manufacturing consumables in its business activities that is, for the production of new products. We therefore hold the view that natural gas, short term spares and other manufacturing consumables form part of the Appellant's stock-in-trade. We hold further that as long as the stock-in-trade (natural gas, spares and consumables) has a direct link with the production of any new product, the Appellant is entitled to recover all Input VAT thereon.

We agree with the submission of the learned counsel to the Appellant that the words "direct production" used in section 17(1) of the VAT Act does not necessarily mean direct production in the context of manufacturing a product otherwise the section would have contained the words "raw materials" as opposed to "stock-in-trade", rather and very compelling the "direct" therein is used to signify that a direct and immediate link exists between the "stock-in-trade" and the finished good (new product) such that the Input VAT on the "stock-in-trade" can be recovered from the Output VAT charged on the new product derived from the "stock-in-trade".

It is our view that the Respondent fell into error when it equated raw materials with stock-in-trade. Raw materials are an aspect of stock-in-trade. The legislature was not mistaken when it used the phrase, stock-in-trade. It was intended to broaden the scope of goods on which Input VAT may be charged provided the goods are used in direct production of the finished products on which Output VAT had been incurred. To hold otherwise, in our considered opinion is to unduly restrict the provisions of section 17 of the VAT Act. It is trite that taxing statutes are construed strictly, 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 a tax. Nothing is to be read in, nothing is to be implied. One has to look fairly at the language used. See *Cape Brandy Vs IRC*.²²

Similarly, in *Aderawo Timber Company Limited Vs FBIR*²³ the point was aptly noted as follows:

²¹ See William Adkins, What Is the Meaning of Stock-in-Trade? (Reviewed by: Michelle Seidel, B.Sc., LL.B., MBA). Available online at <https://bizfluent.com/info-7901174-meaning-stockintrade.html>. Last accessed January 15, 2022.

²² (1921) 12 Tax Cases 358.

²³ (1996) NCLR 416 at 422.

It is the law that the language of a statute imposing a tax duty or charge must receive a strict construction in the sense that there is no room for any intendment and regard must be had to the clear meaning of the word.

Again, in *Nigerian National Petroleum Corporation Vs CNOOC Exploration and Production Nigeria Limited & 2 Ors*,²⁴ this Tribunal stated thusly:

By our cardinal of statutory interpretation, clear and unambiguous words contained in a statute are to be given their ordinary, natural and literal meaning. In such circumstances, the courts will give effect to the clear words used in the statute and will neither import any extraneous matter nor add words to those used in the statute.

The Respondent relied heavily on the authority of *Nigerian Breweries Plc Vs FIRS*²⁵ and it was within its right to so do. However, the facts of that case are clearly distinguishable from the instant Appeal. In this case, the issue is whether Input VAT on gas, short term spares and other consumables used directly in the production of the Appellant's products on which Output VAT have been incurred is recoverable.

From experience and based on the dictionary definitions (Appellant's Brief of Argument), the finished goods (new product) together with components that would be directly required for the purpose of producing the finished goods (i.e. raw materials and other consumables) constitute the stock-in-trade at any point in time. Consumables will include, for the purpose of the Appeal instituted by the Appellant, gas, short term spares and other manufacturing consumables. For the purpose of production, raw materials alone cannot be said to be the only 'goods' required to produce the Appellant's finished product. At least, not in the peculiarity of this case.

The challenge would be how to determine the quantity of gas utilised for production only since the Appellant uses gas and diesel to power its entire business. This challenge is not an issue before this Tribunal though the Appellant asserted that it has a metering system to check the gas used in direct production separate from gas used for indirect production such as gas used in the administrative quarters/offices.

We had earlier stated that parties appear to be *ad idem* with respect to section 17(2)(a) of the VAT Act. We now turn to this issue. Section 17 of the VAT Act is a harmonious section. This is because there is some interconnectivity between its subsections. But, is it possible to presume some contradiction between section 17(1)

²⁴ (2015) 20 TLRN at 17.

²⁵ Supra note 14.

and 17(2)(a) of the VAT Act since section 17 of the VAT Act cannot in one breath permit Input VAT on stock-in-trade to be recoverable and in another breath disallow overheads which can be expensed via income statement?

It is our considered opinion that there is no inherent contradiction in section 17 of the VAT Act as section 17 (2)(a) of the VAT Act only confirmed the position in section 17(1) of the VAT Act. By way of an illustration, in a typical manufacturing setup, the accounts are prepared as follows:

Manufacturing Account → Trading Account → Profit & Loss Account

Section 17 of VAT Act is reproduced below bears this out.

17. Allowable input tax, etc.

(1) For purposes of section 13 (1) of this Act, the input tax to be allowed as a deduction from output tax shall be limited to the tax on goods purchased or imported directly for resale and goods which form the stock-in-trade used for the direct production of any new product on which the output tax is charged. (1998 No. 18.)

(2) Input tax-

(a) on any overhead, service, and general administration of any business which otherwise can be expended through the income statement (profit and loss accounts); and [1998 No. 18.]

(b) on any capital item and asset which is to be capitalised along with cost of the capital item and asset, shall not be allowed as a deduction from output tax. (Emphasis supplied)

Section 17(1) of the VAT Act refers to manufacturing account while the mention of '(profit and loss accounts)' connotes 'on any overhead, service, and general administration of any business which otherwise can be expended' as in Profit & Loss Account.

Overheads are business costs that are related to the day-to-day running of the business which cannot be traced to a specific cost unit or business activity.²⁶ Instead, they support the overall revenue-generating activities of the business. In short, overhead is any expense incurred to support the business while not being directly related to a specific product or service but excludes the direct costs associated with creating a product or service. Overheads include utilities. Utilities are the basic services that a business requires to support its main functions. Examples of utilities include water, gas, electricity, internet, sewer, and phone service.²⁷

²⁶ See the Black's Law Dictionary 8th ed.

²⁷ Ibid.

Undoubtedly, there is an intersection between stock-in-trade on one side and overheads. As we have shown, some utilities like gas may double as stock-in-trade and overhead. It is not in doubt that the Appellant uses gas, short term spares and other consumables directly in the production of its final products.

Stock-in-trade, as argued by the Appellant's Counsel, includes overheads used for direct production of goods. Indeed, while stock-in-trade includes production overheads, not all overheads are stock-in-trade. Consequently, Input VAT on overheads must meet the requirements of section 17(1) of the VAT Act if it is not to be expensed via income statement that is to say, the overhead must constitute stock-in-trade used in the direct production process of new products and on which Output VAT is charged.

Section 17(2)(a) of VAT Act therefore comes into play when Input VAT is incurred on overhead which is neither stock-in-trade nor used in the production process of new products on which Output VAT is charged. In this regard, the overheads will be expended via the income statement and ineligible to be recovered as Input VAT.

Generally speaking, the underlying principle of VAT is for manufacturers to recover all Input VAT as much as possible and for the ultimate VAT burden to be borne by consumer. Against this backdrop, the Tribunal aligns with the Appellant's view that the provision of section 17 of the VAT Act is deliberately elaborate as the legislature intends that the Input VAT to be recovered should be on more than raw materials.

It is also our view that raw materials are not the only goods that can be used in direct production under section 17 of the VAT Act. It is our view that the gas and other manufacturing consumables used directly in the production of the Appellant's products have a direct link / connection with the Appellant's products.

We hold, in the particular instance of this case, that the natural gas, short term spares and other consumable used by the Appellant in the production of its products constituted the Appellant's stock-in-trade.

We hold also the view, in the particular facts of this case, that the natural gas, short term spares and other consumables which form the Appellant's stock-in-trade were used in the direct production of its finished goods.

The state of the law will not permit the construction of the phrase, "stock-in-trade" used in section 17(1) of the VAT Act to mean raw materials only. This will be unduly restrictive and exclusionary. It is trite law that the ambit of a statutory

provision cannot be widened or restricted in the course of interpretation. See *Ankar & Ors. Vs Lokoja & Ors.*²⁸ See also *M.F Kent (W.A.) Ltd. Vs Martchem Ind. Ltd.*²⁹ The taxpayer should be able to hold the draftsman to his choice of words.

It is our view therefore that the Appellant ought to be allowed to deduct its Input VAT against the Output VAT in the circumstances of this case.

In the final analysis, the Tribunal grants Reliefs (i) (ii), (iii), (iv), and (vi) sought by the Appellant. Relief (v) is granted but modified thus, an Order is made directing the Respondent to allow the Appellant claim the Input VAT incurred on natural gas, short term spares and other consumables used in the direct production of its products.

Reliefs (vii) and (viii) are refused. The two Reliefs are not referable to any issue or argument canvassed before the Tribunal. Moreover, relief (viii) is couched in very broad terms. In any event, the modified relief (v) has adequately taken care of the relief.

This is the Judgment of the Tribunal.

Dated this 10th day of February 2022.



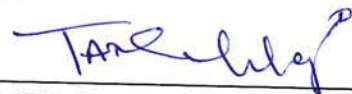
O.M. LASSISE-PHILLIPS, ESQ.

Chairman



M.A.C. DIKE

Hon. Commissioner



MRS. T. AKIBAYO

Hon. Commissioner



R.A. QUADRI

Hon. Commissioner



MRS. KANENG ADOLE, ESQ.

Hon. Commissioner

²⁸ (2001) 4 NWLR (Pt. 702) 178 at 194.

²⁹ (2000) (Pt. 669) 459 at 473.

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Nneka Ezeadili - Respondent

