

IN THE TAX APPEAL TRIBUNAL

IN THE LAGOS ZONE

HOLDEN AT LAGOS

APPEAL NO: TAT/LZ/VAT/044/2024

BETWEEN:

PZ CUSSONS NIGERIA PLC APPELLANT

AND

FEDERAL INLAND REVENUE SERVICE RESPONDENT

JUDGEMENT

BACKGROUND

This is an appeal brought by the Appellant against the Respondent following the dissatisfaction of the Appellant with the assessment of its Value Added Tax obligation by the Respondent in the sum of USD 1,666,329.63 (One Million, Six Hundred and Sixty-Six Thousand, Three Hundred and Twenty-Nine Dollars, And Sixty-Three Cents). The Appeal is with respect to a reimbursable cost under a Shared Service (Information Technology) Agreement. The Appellant commenced this appeal vide a Notice of Appeal dated 13th December 2024 and filed on the same day.

The Respondent in opposition to this appeal filed its Respondent Reply dated 7th March 2025, and having been filed out of time, was subsequently regularized by the Order of this Honourable Tribunal same day, 7th March 2025.



The Appellant is a multinational fast-moving consumer goods company based in Nigeria. The Appellant manufactures, distributes and sells a wide range of consumer goods, products and home appliances through its depots. The Respondent is the agency of the Federal Government vested with the statutory responsibility of administering Tax and other associated revenue laws of the Federal Government.

The Appellant and PZ Cussons (International) Limited (PZCIL) are part of the PZ Cussons PLC Group ("PZ Group"). The Group operates a centralized global Information Technology Department based in the United Kingdom which serves as a hub for managing the Group's IT Infrastructure and requirements worldwide.

In 2019, the Appellant executed a Shared Services (Information Technology) Agreement with PZ Cussons (International) Limited (PZCIL), a company based in the United Kingdom. Under the Shared Services Agreement, PZCIL was obligated to procure the services of a third party to perform IT Services at the request and for the benefit of the Appellant. The agreement outsourced IT functions to third-party vendors and obligated PZCIL to make payments to the vendors centrally. Under this Agreement, PZCIL would recharge the Appellant for the costs of the IT services only without provision for markup, margin, or any profit element or any type of income going to PZCIL.

Following this arrangement, the Appellant sought the approval of the National Office for Technology Acquisition and Promotion (NOTAP) regarding the Shared Services Agreement. Approval was given in June 2023.

Sometime in 2023, the Respondent obtained information from NOTAP indicating that PZCIL provided services to the Appellant and the Appellant sought to settle its obligation arising from this arrangement and by a letter dated 18th September 2023, the Respondent informed the Appellant of an outstanding Value Added Tax and Withholding Tax liability of \$4,482,426.63 and \$2,866,086.91 respectively. These tax liabilities related to payments due under the SSA between the Appellant and PZCIL.



In response and by a letter dated 9th October 2023, the Appellant objected to the assessment on the grounds that the payments were reimbursable costs to PZCIL and not liable to VAT or WHT.

The Respondent subsequently called for a reconciliatory meeting which held on the 10th of June 2024 wherein the Respondent maintained its position that the transaction was liable to VAT in Nigeria but however revised its assessment on the withholding Tax liability of the Appellant after a review of documents provided by the Appellant.

The Respondent subsequently issued a notice of assessment dated 9th September 2024 to the Appellant stating its Valued Added Tax liability in the sum of USD 4,694,883.65 (Four Million, Six Hundred and Ninety-Four Thousand, Eight Hundred and Eighty-Three Dollars, and Sixty-Five Cents) inclusive of penalty and interest charges emanating from the SSA and subsequent transaction. The Appellant by a letter dated 9th October 2024 objected to the notice of assessment on grounds that the payments were reimbursable cost, the principal sum had not been paid and maintained its position as to the agreement and import of IT Services.

The Respondent however also maintained its stance regarding the liability of the Appellant and by a Notice of Refusal to Amend dated 14th November 2024 reiterated the Value Added Tax liability of the Appellant as USD 4,694,883.65 (Four Million, Six Hundred and Ninety-Four Thousand, Eight Hundred and Eighty-Three Dollars, and Sixty-Five Cents).

Following the dissatisfaction of the Appellant with the decision of the Respondent, the Appellant proceeded to file this action before this Honourable Tribunal vide a Notice of Appeal dated 13th December 2024.

GROUND OF APPEAL

GROUND ONE



The Respondent erred in its assessment of the Value Added Tax liability of the Appellant with respect to reimbursable costs due to PZ Cussons International Limited (PZCIL) under a Shared Service (Information Technology) Agreement.

PARTICULARS

- a) The Appellant entered into a Shared Services Agreement with PZCIL for the provision of IT services by a third-party vendor. Under this Agreement, PZCIL is obligated to pay for the services rendered by the third-party vendor.
- b) PZCIL recharged the Appellant for the costs of the IT services only without provision for markup, margin, or any profit element or any type of income going to PZCIL. No additional consideration or remuneration in money or money's worth was payable by the Appellant to PZCIL outside the recharged costs.
- c) The invoices related to reimbursable cost and will only be subject to Value Added Tax if they include a markup. In the absence of such a markup, VAT should not be applicable.

GROUND TWO

The Respondent acted in error by demanding the payment of VAT on IT recharges despite the principal sum not being paid yet to PZCIL.

PARTICULARS

- a) VAT is accounted for on a cash basis and not accrual basis. The Appellant has not made any payment for the IT recharges to PZCIL due to macroeconomic challenges and therefore VAT charges if payable should only be accounted for when such payments have been made.
- b) The demand by the Respondent to remit VAT before the payment of the underlying principle sum is contrary to statutory provisions requiring VAT to be accounted for on a cash basis.

GROUND THREE



The Respondent in exercising its discretionary duties erred in maintaining its position that the Appellant willfully neglected and/or refused to pay the IT recharge cost due to PZCIL under the Shared Services Agreements and subsequently avoid or delayed to pay VAT.

PARTICULARS

- a) The Appellant is a responsible corporate citizen that has consistently discharged its tax obligations to the Federal Government despite challenges within its sector.
- b) The Appellant through several correspondence and meetings informed the Respondent the reason for the delay in the payment of the IT recharge cost due to PZCIL citing a delay in obtaining the approval of the National Office for Technology Acquisition and Promotion.
- c) The Appellant is required to obtain the approval of NOTAP to access foreign Exchange from the official channel for the payments due to PZCIL.
- d) The Appellant communicated its challenges and provided relevant documentation to the Respondent. However, the Respondent has disregarded these facts and insisted that the Appellant willfully decided not to remit the alleged VAT liability.

GROUND FOUR

The Respondent was wrong to have imposed penalty and interest charges of USD 2,499,494.40 and USD 529,059.65 computed at the rates of 150% and 31.755% respectively on non-remittance of the alleged VAT liability.

PARTICULARS

- a) The Respondent imposed penalty and interest on a disputed and unliquidated VAT assessment which had not attained finality and was actively contested by the Appellant before this Honourable Tribunal.
- b) The computation of penalty at 150% and interest at 31.755% was arbitrary, excessive, and not in accordance with the express provisions of the Value Added Tax Act or any valid subsidiary regulation prescribing such punitive rates.
- c) The underlying VAT liability upon which the penalties and interest were predicated was itself disputed and had not crystallised as a final and conclusive tax debt under the Act.



d) The Respondent failed to properly ground the imposition of such penalty and interest within the statutory framework governing non-remittance under the VAT Act, thereby rendering the charges ultra vires and unlawful.

RELIEF SOUGHT FROM THE APPEAL TRIBUNAL

The Appellant seeks the following reliefs against the Respondent:

- a) A DECLARATION that cost recharges under a Shared Services Agreement are reimbursable costs, which are not subject to tax including Value Added Tax (VAT).
- b) A DECLARATION that should the cost recharges be deemed to be subject to VAT such VAT liability arises solely on a cash basis.
- c) A DECLARATION that the discretionary powers of the Respondent under Section 7(3) of the VAT Act (as amended) should be exercised fairly, reasonably, and judiciously, taking into account all relevant facts available to it.
- d) AN ORDER setting aside the VAT assessment raised against the Appellant, amounting to USD 1,666,329.63 on IT Cost recharges.
- e) AN ORDER setting aside the sums of USD 2,499,494.40 AND USD 529,059.65 which represent penalty and interest charges on assessments that have not become final and conclusive.
- f) A DECLARATION that a taxpayer required to self-charge VAT on payments for goods and services due to a non-resident should only be liable for penalties under Section 32 of the FIRS establishment Act and not Section 34 of the VAT Act (as amended).
- g) AND SUCH OTHER ORDER(S) that the Honourable Tribunal may deem fit to make in the circumstances of this case.

In reply to the Appellant's Notice of Appeal, the Respondent filed the Respondent's Reply dated 7th March 2025 acknowledging receipt of the Appellant's Notice of Appeal and other accompanying documents. The Respondent contests the appeal on the following grounds:

GROUND ONE



The Respondent's Notice of Assessment issued in respect of the Appellant's Information Technology Agreement for 2022/2023 period of assessment is in accordance with relevant laws and agreement.

PARTICULARS

- a) The Appellant, as a taxable person, received Information Technology services under a Shared Services (IT) Agreement executed within a multinational group structure, and the said services constitute taxable supplies within the meaning of Sections 2 and 4 of the Value Added Tax Act.
- b) The IT services procured through PZ Cussons International Limited included hosting, network management, application support, consultancy, and related digital infrastructure services, none of which are listed in the First Schedule to the Value Added Tax Act as exempt services.
- c) The Respondent's Notice of Assessment was issued following a proper examination of the Shared Services Agreement, invoices, and supporting documents, all of which demonstrate the existence of a taxable supply of services to the Appellant during the relevant period of 2022/2023.

GROUND TWO

The Respondent rightly charged interest and penalty on the Appellant under Section 34 of the Value Added Tax Act

PARTICULARS

- a) The penalty and interest become due once a tax which ought to be paid is not paid as at when due.
- b) Section 32 of the FIRS Act unconditionally empowers the Respondent to give effect to the provisions of Section 32 of FIRS Act by imposing penalty and interest on all delayed tax payments.
- c) The rationale for the existence of the window to object and appeal only provides the taxpayer and the tax authority with a forum to test the validity of a tax liability. Once the tax liability is established, it takes effect from the period the tax was due.



d) Appeals operate as a temporary stay of payment and does not extinguish the right of such payment especially if the appeal fails, the tax liability, the interest and penalty all become payable from the due date.

e) The Appellant is a taxable person referred to in Section 10(3) of the Value Added Tax Act and having failed to collect the tax element of the transaction in view and remit same to the Service as mandated under Section 34 of the Act should be made to bear the full weight of the law.

Consequently, the Respondent sought the following reliefs from the Honourable Tribunal

- a. **A DECLARATION** that the Notice of Assessment is final and conclusive
- b. **A DECLARATION** that the Appellant's tripartite business arrangement with its brother in business and third party vendor with the effect of denying the government of revenue is a fictitious arrangement as envisaged under the Value Added Tax Act.
- c. **A DECLARATION** that the penalties and interest imposed under section 34 of the Value Added Tax Act is proper in the circumstances of this case.
- d. **AN ORDER** for the payment of interest at the prevailing commercial rate on the judgement sum until liquidated
- e. **AND FOR SUCH FURTHER ORDER(S)** that this Honourable Tribunal may deem fit to make

TRIAL AND EVIDENCE

This matter commenced on the 7th day of March 2025 and both parties were represented by legal Counsel. Benedicta Onyeodi Esq & Itemoluwa Olajide appeared for the Appellant on the record while Nneka Onyenagubo & Edose Ihimekpen appeared for the Respondent on the record. The Appellant's Counsel informed the Honourable Tribunal that the Respondent served its Reply to the appeal out of time. Learned Counsel to the Respondent confirmed this position and made an application to regularize the Reply. The Learned Counsel to the Appellant also informed the Honourable Tribunal that settlement discussion was being considered and the matter was adjourned to 3rd April for report of settlement or definite hearing.



On the 3rd of April 2025, Miss Benedicta Onyeodi appeared for the Appellant as Counsel on the record while Mr Moses Ideho together with Nneka Onyenagubo appeared for the Respondent as Counsel on the record. The Appellant Counsel informed the Honourable Tribunal that settlement discussions were not fruitful and the Appellant wished to proceed with the appeal. The Respondent Counsel agreed with this position that the Respondent was ready to proceed to trial. The matter was adjourned to 7th May for definite hearing.

At the hearing of 7th May 2025, Gladys Ekwuribe together with Faith Agbator entered appearance for the Appellant. The Respondent was represented by Nneka Onyenagubu and Muhammad Aliyu as Counsel on the record. Counsel to the Appellant informed the Honourable Tribunal that the Appellant intended to file additional documents to further assist the Honourable Tribunal in the determination of the Appeal. The matter was adjourned to the 3rd of June 2025. The parties were directed to come with all their witnesses on the next adjourned date.

At the hearing of 3rd June 2025, the Appellant was represented by Miss Benedicta Onyeodi together with Miss Faith Aghator as Legal Counsel. The Respondent was represented by Nneka Onyenagubu and Edose Ihinakper as Counsel on the record. Learned Counsel to the Appellant informed the Honourable Tribunal of pending applications to substitute the Appellant's initial witness Miss Nkechi Ogbeide with Mr Augustine Umeh. The said application was not objected to by the Counsel to the Respondent and was thereafter moved by the Appellant's Counsel and subsequently granted by the Honourable Tribunal.

The Appellant's Counsel commenced trial by examining the Appellant's witness Mr Akinwale Alao, who adopted his Witness Statement on Oath dated 13th December 2024 as his testimony in the matter. The Appellant also tendered the following documents through this witness:

- a. Exhibit A1 -- FIRS letter dated 15th September 2023
- b. Exhibit A2 -- Appellant letter 9th October 2023
- c. Exhibit A3 -- Minutes of Reconciliation Meeting
- d. Exhibit A4 -- FIRS Notice of Assessment dated 9th September 2024
- e. Exhibit A5 -- KPMG's letter dated 9th October 2024



- f. Exhibit A6 -- FIRS Notice of Refusal to Amend dated 14th November 2024
- g. Exhibit A7 (1&2) -- Sample Agreement for Provision of IT Services
- h. Exhibit A8 -- Shared Services Agreement (SSA)
- i. Exhibit A9 (1-6) -- Copies of invoice issued by PZCIL
- j. Exhibit A10 -- NOTAP certificate dated 26th June 2023
- k. Exhibit A11 -- Audited Financial Statement for the 2023 Financial Year

The witness was thereafter cross-examined by Learned Counsel to the Respondent and the Counsel to the Appellant did their re-examination.

The Appellant's Counsel went further to conduct the examination in chief of the Appellant's Second witness Mr Austine Umeh, who adopted his Witness Statement on Oath dated 14th May 2025 as his testimony in the matter. The witness was thereafter cross-examined by Learned Counsel to the Respondent and the Counsel to the Appellant did their re-examination.

Learned Counsel to the Appellant also conducted the examination in chief of the Appellant's third witness Mr Evans Enabulele who adopted his Witness Statement on Oath dated 14th May 2025 as his testimony in the matter. The Appellant also tendered the following documents through this witness:

- a. Exhibit A12(1-24) -- Sample Invoices
- b. Exhibit A13 -- Copies of Documents submitted to NOTAP
- c. Exhibit A14 -- A Copy of the Full Year 2024 Audited Statement

The witness was thereafter cross-examined by Learned Counsel to the Respondent and no re-examination was carried out.

The matter was adjourned to the 8th day of July 2025 for further hearing.

At the hearing on the 8th of July 2025, The Respondent opened their defence and called their sole witness, Mr Chukwuemeka Jacob and led him on evidence during which the witness



adopted his Witness Statement on Oath dated 4th March 2024 as his testimony in the matter. The Respondent Counsel tendered the following documents through this witness:

- a. Exhibit R1 (1-5) -- Tax Invoice No P5 CD
- b. Exhibit R2 (1-3) -- FIRS Letter Ref ITD/NRDTD/O5170729-0001/01 O dated 18th September 2023
- c. Exhibit R3 -- FIRS Re-assessment Notice dated 10th September 2024
- d. Exhibit R4 -- FIRS Letter of Notice of Refusal to Amend dated 14th November 2024

The Learned Counsel to the Appellant took their turn to cross-examine the Respondent's witness and the Counsel to the Respondent did their re-examination.

Consequently, the Honourable Tribunal ordered the Respondent to file and serve their Final Written Address on or before 18th August 2025 and the Appellant to file and serve their Final Written Address on or before 29th September 2025 and the Respondent's Reply to be filed and served on or before 13th October 2025.

The matter was adjourned to 27th October 2025 for Adoption of Final Written Address.

On the 27th of October 2025, the matter was slated for the Adoption of Final Written Address. The Appellant was represented by Miss Ononigbo Churchill Esq as Counsel on the record while the Respondent was represented by Nneka Onyenagubu together with Edose Ihinakper as Counsel on the record.

The Learned Counsel to the Appellant informed the Honourable Tribunal that the Appellant had filed their Written Address. However, the Counsel to the Respondent had filed their Final Written Address out of time and prayed for an extension of time and deeming order. This was granted by the Honourable Tribunal. Counsel to the Respondent further informed the Honourable Tribunal that they wished to file a reply to the Final Written Address of the Appellant.

The matter was adjourned to 26th November 2025 for Adoption of Final Written Address.



On the 26th of November 2025, The Appellant was represented by Miss Ononigbo Churchill Esq as Counsel on the record while the Respondent was represented by Nneka Onyenagubu together with Edose Ihinakper as Counsel on the record.

Counsel to the Respondent had filed their Reply out of time and prayed for an extension of time and deeming order. This was granted by the Honourable Tribunal. Both parties humbly adopted their respective Final Written Addresses.

The Matter was consequently adjourned to 13th February 2026 for Judgement.

On 13th February 2026 when the matter came up for judgement, incidentally the judgement of this Honourable Tribunal was not ready and was further adjourned to a date to be communicated by a Hearing Notice to the parties.

This Appeal came before this Honourable Tribunal on 6th July, 2026 for Judgement, but in consideration of the fact that this Tribunal was out of time going by the date the parties had adopted their respective Final Written Addresses, the parties were directed to re-adopt same again which they did. Subsequently, the Appeal was adjourned to the 3rd of August 2026 for judgement.

1. ISSUES FOR DETERMINATION

Before the Honourable Tribunal, the Appellant distilled four (4) issues for determination, namely:

- a) Whether the IT cost recharges, being reimbursable expenses between PZCIL and the Appellant, constitute a taxable supply under the VAT Act (as amended).
- b) Whether the Respondent can demand VAT on a transaction for which no payment has been made due to legitimate reasons such as the lack of a mandatory regulatory approval or cash flow constraints.



- c) Whether the alleged penalties and interest imposed by the Respondent were validly computed particularly considering the reimbursable nature of the IT cost recharges, the fact that they are yet to be paid by the appellant, the timing of NOTAP's approval and the legislative provisions applied by the Respondent.
- d) Whether based on the evidence before this Honourable Tribunal and the peculiar circumstances of this appeal, the Respondent's Notice of Assessment is valid.

The Respondent on its part raised a sole issue for determination in reply to the Appellant's Notice of Appeal as contained in its written address and as follows:

- a) Whether based on the evidence before this Honourable Tribunal and the peculiar circumstances of this appeal, the Respondent's Notice of Assessment is valid.

The issues for determination raised by the parties to the appeal before this Honourable Tribunal are identical and having carefully considered the grounds of appeal, the facts presented, and the submissions of learned representatives of the parties, the Tribunal is of the view that the dispute in this appeal can be resolved upon the determination of the following issue(s):

- a) Whether, having regard to the nature of the Shared Services (Information Technology) Agreement between the Appellant and PZ Cussons International Limited, the IT cost recharges and its underlying service constitute a taxable supply of services within the meaning of the Value Added Tax Act.
- b) Whether the Respondent was right in demanding and assessing Value Added Tax on the said IT cost recharges notwithstanding that payment had not been made by the Appellant.
- c) Whether, in the circumstances of this case, the imposition of penalty and interest by the Respondent on the alleged VAT liability was valid and in accordance with the provisions of the Value Added Tax Act and other applicable laws.
- d) Whether, having regard to the totality of the evidence before the Tribunal, the Notice of Assessment issued by the Respondent against the Appellant is valid and ought to be upheld.



2. ARGUMENT & ANALYSIS OF ISSUES

ISSUE ONE

Whether, having regard to the nature of the Shared Services (Information Technology) Agreement between the Appellant and PZ Cussons International Limited, the IT cost recharges and its underlying service constitute a taxable supply of services within the meaning of the Value Added Tax Act.

Submission of Appellant Counsel

On this issue, learned Counsel to the Appellant submitted, with considerable emphasis, that the IT cost recharges arising under the Shared Services (Information Technology) Agreement do not constitute a taxable supply of services within the contemplation of the Value Added Tax Act, and are therefore not liable to Value Added Tax.

Learned Counsel stated that to properly determine this issue, due consideration had to be given to the true economic substance of the arrangement and not merely its form. Counsel further stated that the principle and jurisprudence behind Value Added Tax is that it intends to apply to supply of value and that where there is only reimbursement of cost with no economic gain, no taxable supply arises.

Counsel argued that a proper appreciation of the facts and the contractual framework governing the relationship between the Appellant and PZ Cussons International Limited reveals that the transaction is purely one of reimbursement of costs, devoid of any element of commercial supply. It was submitted that the Appellant, being a member of a multinational group, entered into the Shared Services Agreement to enable centralized procurement of IT services for efficiency and cost optimization. Under this arrangement, PZ Cussons International Limited was tasked with engaging third-party IT vendors on behalf of group entities, including the Appellant, and settling the invoices issued by such vendors.



Learned Counsel further submitted that, upon settlement of the third-party invoices, PZ Cussons International Limited merely recharged the Appellant the exact amount expended, without any addition whatsoever. The evidence before the Tribunal, particularly the invoices and the terms of the Agreement, demonstrate clearly that there was no markup, margin, fee, commission, or profit element embedded in the recharges.

Learned Counsel implored this Honourable Tribunal to align with its decision in *Brasoil Oil Services Co(Nig)Ltd v. FIRS* (TAT/LZ/VAT/008/2015) where the Tax Appeal Tribunal decided that the mere recharge of disbursements does not automatically constitute a taxable supply where there is no element of mark up or value addition.

It was contended that this absence of any value addition is crucial, as VAT, by its very nature, is a tax on value added. Counsel argued that where no value has been added by the party making the recharge, there can be no taxable supply attributable to that party.

The Appellant explained that this position was followed by the Tax Appeal Tribunal in *Mckinsey & Company Nig Global Ltd v. FIRS* (TAT/LZ/CIT/034/2018) where the Tribunal held that the decisive factor in determining VAT liability is whether costs were recharged at cost and whether an economic gain or advantage passed to the recipient.

The Appellant further argued that Exhibit A7 which is the IT management Agreement clearly shows that the Appellant was not a party to the agreement and cannot suffer liabilities under a contract to which it was not privy. Moreso, a consideration of the Shared Services Agreement marked as Exhibit A8 shows PZCIL as an administrative agent for the group to make centralized payment and recharge the cost only to the Appellant. Learned Counsel to the Appellant pointed out that this was the testimony of the Appellant's witness Mr. Austyne Umeh.

Learned Counsel submitted that at no material time or point did PZCIL stand in the shoes of a supplier of IT services to the Appellant as it neither generated profits nor rendered technical



services of its own. It was further argued that the invoices submitted to the Appellant contained no value addition but simply the Appellant's portion of the third party charges.

The Learned Counsel urged this Tribunal to adopt a substance over form approach in considering the transaction and hold that a cost allocation does not fall within the charge of VAT.

On the argument of the transaction being artificial and fictitious, Learned Counsel to the Appellant submitted that Section 7(3) of the VAT Act (as amended) postdated the period of the transaction and as such cannot act in a retrospective manner as the governing law must be the one in force at the time of the transaction. Counsel relied on a court of appeal decision in *Shaba & Ors v. Kpotun & Ors* (2021) LPELR-54766(CA).

Counsel further submitted that even if the section were applicable, the Respondent had failed to show that the transaction was not a commercial rationale but strictly for tax avoidance. It was also the submission of the Appellant that the Respondent had not discharged the evidential burden to suggest that the Shared Service Agreement was a sham and cannot be disregarded as artificial relying on the decision in *Federal Board of Inland Revenue v. Nasr* (no citation provided) decided by the Supreme Court. Learned Counsel for the Appellant stated that the arrangement was for operational efficiency and not tax avoidance and as such not inherently fictitious, urging the Honorable Tribunal to adopt a substance over form approach.

The Appellant went further to distinguish the instant matter from *Tourist Company of Nigeria v. FIRS* (TAT/LZ/WHT/032/2018). In the decided case, a foreign entity was hired for management and marketing services under a management agreement for consideration and the Tribunal found those payments liable for VAT because they were contractual services and not reimbursements. Learned Counsel went further to point that in the instant case, PZCIL was never appointed to manage the Appellant rather it made central payments on behalf of the group and the IT services were provided by a third party vendor and the IT costs recharged were without any profit or mark up.

The Appellant urged the Tribunal to find that the IT cost recharges between PZCIL and the Appellant are not taxable supply under the VAT Act (as amended).



Submission of Respondent Counsel

On this issue, learned Counsel to the Respondent submitted that the Information Technology (IT) services in question are not exempt from Value Added Tax and therefore constitute taxable supplies within the meaning of the Value Added Tax Act.

Counsel commenced by relying on Sections 2 and 3 of the Value Added Tax Act together with the First Schedule (Part II) thereof, which set out the exclusive list of exempted services. It was argued that a proper reading of these provisions make it clear that only services expressly listed in the First Schedule are exempt from VAT, and that any service not so listed is ipso facto taxable.

Relying on the canon of statutory interpretation expressed in the maxim *expressio unius est exclusio alterius*, Counsel submitted that the express inclusion of certain services in the exemption list necessarily implies the exclusion of all others. In support of this position, reliance was placed on *Iho v. Wombo* (2011) FWLR (PT/591)1514.

Counsel further submitted that this position has received judicial endorsement in both Tribunal and appellate decisions. In particular, reliance was placed on *Lekki Concession Company Limited v. FIRS*, where the Tribunal held that only items expressly listed in the First Schedule are exempt from VAT; and *Vodacom Business Nigeria Limited v. FIRS* (Appeal Court No CA/L/556/2018), where the Court affirmed that services not specifically exempted remain liable to VAT, regardless of how they are described.

Applying these principles, Counsel argued that the IT services forming the subject of this appeal such as hosting services, network services, application management, consultancy, and related services are not listed among the exempt services, and therefore fall squarely within the category of taxable services under the Act.

Counsel further relied on the statutory definition of "supply" under the Value Added Tax Act, submitting that any transaction involving the performance of a service for consideration



constitutes a taxable supply. It was contended that the evidence before the Tribunal clearly establishes that the Appellant received IT services for consideration, as reflected in the invoices and contractual documents tendered.

The Respondent argued that the Appellant's attempt to characterize the payments as "reimbursements" is immaterial, as such description does not alter the underlying economic reality, which is the provision of IT services. Counsel submitted that VAT liability is determined by the substance of the transaction, not by the nomenclature adopted by the parties.

It was further contended that the evidence of the Appellant's own witnesses confirms that the IT services were supplied to and consumed in Nigeria, and that by virtue of Section 123 of the Evidence Act, such admitted facts require no further proof.

Learned Counsel placed significant reliance on Section 10 of the Value Added Tax Act, which governs the VAT treatment of services supplied by non-resident persons. Counsel submitted that VAT is fundamentally a consumption tax borne by the final consumer, and that in cross-border transactions, the Act imposes a reverse charge obligation on the Nigerian recipient of the service. Accordingly, where a non-resident supplies services to a Nigerian entity, the recipient is mandated to withhold or self-account for VAT and remit same to the Respondent.

It was argued that the Appellant, having admittedly received and consumed the IT services in Nigeria, falls squarely within the ambit of Section 10(3) of the Value Added Tax Act, and is therefore liable to account for VAT irrespective of whether the supplier charged VAT or whether payment was routed through a related entity. In support of the proper approach to statutory interpretation, Counsel relied on *Nwosu v. Imo State Environmental Sanitation Authority* (1990) 2 NWLR (PT 135) 688, urging the Tribunal to give the provisions of the statute their ordinary and natural meaning.

Counsel also drew attention to Clause 11.8 of the Shared Services Agreement, which provides that payments are exclusive of VAT and that applicable taxes shall be borne by the customer. It



was submitted that this clause clearly contemplates the incidence of VAT and places the burden on the Appellant.

The Respondent further submitted that the failure of the non-resident supplier to include VAT in its invoice does not extinguish the tax liability. Reliance was placed on *Federal Inland Revenue Service v. Gazprom Oil & Gas Nigeria Limited* (2015) 19 TLRN 66, where it was held that the Nigerian recipient remains liable to remit VAT even where the non-resident supplier fails to charge same, and on *Vodacom Business Nigeria Limited v. FIRS* (supra), where the Court affirmed that VAT is borne by the consumer of the service and that the obligation to account for it may be transferred contractually. Counsel further relied on Section 14(4) of the Value Added Tax Act, submitting that where an invoice is issued without VAT, the recipient is required to self-account and remit the tax within the statutory period.

Counsel also invoked Section 7(3) of the Value Added Tax Act, contending that the Shared Services Agreement constitutes an artificial arrangement designed to reduce or avoid tax liability. It was argued that the Appellant had the capacity to contract directly with the third-party vendors, and that the interposition of PZ Cussons International Limited serves no purpose other than to re-characterize the transaction as a reimbursement, thereby reducing VAT liability and bringing the arrangement within the scope of Section 7.

In support of this position, Counsel relied on *Awolowo v. Shagari* (1979) ALL NLR 120, *UTC Nigeria Plc v. Pamotei & ORS* (1989) 2 NWLR (PT.103) 244 @ 303, and the decision of the Tribunal in *Tourist Company of Nigeria Plc v. FIRS* (supra), where a similar group service arrangement was held to be VATable notwithstanding claims of reimbursement. Counsel submitted that, in line with the reasoning in *Tourist Company of Nigeria Plc v. FIRS* (supra), payments made under such arrangements represent the discharge of contractual obligations for services rendered, and not mere reimbursements.

ANALYSIS

The Honorable Tribunal has painstakingly gone through the submissions and arguments of both parties on the issue and has made the following findings:



The resolution of this issue turns on a proper characterization of the IT cost recharges arising from the Shared Services (Information Technology) Agreement between the Appellant and PZ Cussons International Limited, and whether such recharges constitute a taxable supply of services within the meaning of the Value Added Tax Act.

The Appellant's case is that the impugned payments are mere reimbursements of costs incurred by its UK affiliate on its behalf, devoid of any element of profit, markup, or value addition, and therefore fall outside the scope of VAT. In support of this position, the Appellant urged the Tribunal to adopt a substance-over-form approach and to hold that VAT, being a tax on value added, cannot arise in the absence of any incremental economic value. Reliance was placed on authorities such as *Brasoil Oil Services Company Ltd v. FIRS* (supra) and *McKinsey & Company Nigeria Global Ltd v. FIRS* (TAT/LZ/CIT/034/2018).

On the other hand, the Respondent contends that the services in question namely hosting services, application management, network services, consultancy, and related IT services are not among the exempted services listed in the First Schedule to the Act, and therefore constitute taxable supplies. The Respondent further argues that the Appellant, having admittedly received and consumed these services in Nigeria, is liable to account for VAT pursuant to the reverse charge provisions of Section 10 of the Act. Reliance was placed on authorities including *Vodacom Business Nigeria Limited v. FIRS* (supra).

This Honorable Tribunal must resolve some pertinent questions in order to conclude its findings on the determination of this issue. These questions include:

- a) Whether the Recharges Constitute a Taxable Supply by PZ Cussons International Limited
- b) Whether VAT Liability Nonetheless Arises on the Underlying IT Services
- c) What is the effect of Failure to Charge VAT and Contractual Provisions
- d) Is the arrangement artificial or fictitious in nature.



Regarding the first question, whether the recharges themselves constitute a taxable supply, this Tribunal must examine the true nature of the relationship between the Appellant and PZ Cussons International Limited.

It is evident from the testimony of the Appellant's first witness, Mr. Akinwale Alao particularly paragraph 13 of his Witness Statement on Oath that the Appellant and PZ Cussons International Limited are related entities and part of the PZ Cussons Group. This relationship between both entities led to the entering of a Shared Services Agreement between the Appellant and PZCIL.

From the evidence before the Tribunal, Exhibit A8 which is the Shared Services Agreement between the Appellant and PZCIL, it appears that PZ Cussons International Limited acted as a coordinating entity responsible for procuring IT services from third-party vendors on behalf of group entities, including the Appellant. After procurement of these IT services from third party vendors, PZCIL would settle the cost of such services and recharge such cost to the Appellant.

A close perusal of the evidence before this Honourable Tribunal particularly Exhibit A12 which are sample invoices of the recharge IT cost from PZCIL to the Appellant suggests that the amounts recharged to the Appellant correspond substantially to the costs incurred by the UK entity, without any discernible markup or profit element.

On the face of the transaction, it is evident before this Tribunal that the invoices were merely recharges for the IT cost without mark up or any form of profit. This suggests that the invoices are for mere reimbursements.

A reimbursement is merely a refund of an expense that the employee or agent has already paid on the business's behalf; it does not represent a new supply from the employee to the employer. Consequently, the reimbursement itself attracts no VAT.

The law is settled that reimbursements without any value addition, may not in itself constitute a taxable supply by the party making the recharge. This Honourable Tribunal is guided by the decision and reasoning in *Brasoil Oil Services Company Ltd v. FIRS* (supra).



Accordingly, the Tribunal finds that PZ Cussons International Limited cannot, on the facts presented on face value, be properly characterized as having made an independent taxable supply of services to the Appellant in respect of the recharges simpliciter.

However, the above finding does not conclude the matter.

This Tribunal shall proceed to resolve the second arm upon which the determination of Issue One rests. The critical question remains whether, notwithstanding the characterization of the recharges as reimbursements, VAT liability arises in respect of the underlying IT services received and consumed by the Appellant in Nigeria.

Both the Appellant and the Respondent have, in their submissions, invited this Tribunal to adopt a substance over form approach in the evaluation of the transaction. This Tribunal agrees that such an approach is not only appropriate but necessary in tax adjudication, as it enables the Tribunal to look beyond the contractual or invoicing structure of a transaction to its true commercial and economic reality. The substance-over-form doctrine is a well-established canon of tax law. This principle has been widely adopted in contemporary Nigerian tax jurisprudence and serves as a critical tool for tax tribunals to disregard the mere interposition of entities or artificial legal structures when they do not reflect economic reality.

In applying this principle, the Tribunal is duty-bound to examine and determine the real nature of the transaction, which is that an IT service was procured, consumed, and enjoyed by the Appellant in Nigeria, and the cost thereof was ultimately borne by the Appellant. The Tribunal is not bound by the mere interposition of the UK sister company in the payment flow, nor by the description of the transaction as a "recharge" or "reimbursement."

It is evident from the totality of evidence before this Honourable Tribunal including the testimony of Mr. Austyne Umeh who under cross examination stated that an IT service was provided by a third party, consumed by the Appellant and consumed within the shores of Nigeria.



The records of the Tribunal is hereby reproduced:

Cross examination of Mr. Austyne Umeh (Appellant Second Witness)

Nneka Onyenagubu Esq -- As an IT personnel, you would agree that the owner of the IT services is the 3rd Party vendor and they would be the supplier of this service.

Mr. Austyne Umeh - Yes Please.

Nneka Onyenagubu Esq - So they are the ones supplying all the listed services.

Mr. Austyne Umeh - Yes.

Nneka Onyenagubu Esq - So PZCIL is just a courier?

Mr. Austyne Umeh - No, they are not a courier or agent.

Nneka Onyenagubu Esq - Who consumes the services provided?

Mr. Austyne Umeh - Globally? Everyone does.

Nneka Onyenagubu Esq - The one of the Appellant, where is the service consumed?

Mr. Austyne Umeh - Nigeria.

From the testimony of the witness, it is not in dispute that the IT services in question were actually rendered to and utilized by the Appellant in Nigeria. This finding is crucial. The Tribunal emphasizes that the characterization of PZCIL's role as that of an agent is a legal conclusion drawn from the primary facts, and is not dependent on the witness's characterization of the relationship. The primary facts — no markup, exclusive benefit to the Appellant, consumption in Nigeria, pass-through pricing — compel this conclusion. This finding is further consistent with



the reasoning in *Shell Nigeria Exploration and Production Company v. FIRS* (TAT/LZ/CIT/009/2018), where the Tribunal distinguished between cost-sharing allocations (non-taxable) and services rendered for consideration (taxable).

Before examining the statutory provisions, this Tribunal must determine the true legal relationship between PZCIL and the Appellant with respect to the procurement of the IT services. Applying the substance-over-form doctrine already invoked, the Tribunal finds as a fact that PZCIL acted as the agent or conduit of the Appellant in contracting with the third-party non-resident vendor.

The indicia of this agency relationship are compelling and emerge from the evidence:

- a) The IT services were procured for the sole benefit and use of the Appellant in Nigeria, not for PZCIL's own business.
- b) The Appellant consumed those services, as admitted by its own witness under cross-examination.
- c) PZCIL made no profit, no markup, and added no value. It simply passed on the exact cost of the third-party vendor's invoices. This absence of any commercial benefit to PZCIL is a hallmark of a principal-agent relationship.

This Tribunal is of the opinion that the witness's denial that PZCIL was an agent is a legal conclusion, not a factual one. This Honourable Tribunal is entitled to draw its own legal conclusions from the primary facts. The primary facts which entail services for the Appellant's benefit, consumption in Nigeria, no markup, no profit compel the conclusion that an agency relationship existed in substance, regardless of the label the witness attached to it.

Accordingly, the Tribunal must make a shift from the legal form of a direct contract between PZCIL and the third-party vendor and examine the transaction wholly and holistically. For the purposes of the Value Added Tax Act, the supply by the third-party non-resident vendor is treated as having been made directly to the Appellant, with PZCIL acting merely as a payment and



administrative conduit. Consequently, the Appellant is the "person to whom the taxable supply is made in Nigeria" within the meaning of Section 10(3) of the VAT Act.

This agency finding is not a departure from the earlier conclusion of this Tribunal that PZCIL made no independent taxable supply by its IT recharge cost; rather, it is the logical bridge that connects the consumption of services in Nigeria to the statutory liability imposed by Section 10.

By virtue of Section 10 of the Value Added Tax Act (as amended), where a non-resident person makes a taxable supply of services to a person in Nigeria, the recipient of such services is required to account for and remit VAT to the Respondent. Specifically, Section 10(2) imposes two distinct obligations: a non-resident company "carrying on business in Nigeria" must register for VAT purposes and include VAT on its invoices, and the Nigerian customer must remit the VAT to the FIRS.

Section 10(3) further requires a non-resident company to include VAT on its invoice for the supply of taxable services, and Section 10(4) provides that the person to whom the services are supplied in Nigeria must withhold and remit the tax directly to the FIRS in the currency of the payment.

The Court of Appeal in *Vodacom Business Nigeria Limited v. FIRS* (No. CA/L/1113/2017, delivered 24 June 2019) affirmed that VAT is fundamentally a consumption tax, and that the obligation to account for VAT may fall on the recipient of the service, particularly in cross-border transactions involving non-resident suppliers. In that case, the Court held that the duty of Vodacom to collect and remit VAT was independent of the responsibility of the non-resident company to issue a VAT invoice. The Court further stressed that the service was rendered in Nigeria since it was received through Vodacom's transponders in Nigeria, even though the suppliers were not physically present in Nigeria.

More recently, this Tribunal in *MTN Nigeria Communications Plc v. FIRS* (2022) 4 NTTLR 342 at 353 maintained its position that VAT will apply if services are consumed in Nigeria, irrespective of where the provider is located. Section 14(2) of the VAT Act further provides that



where a taxable supply is made and no tax is charged on the invoice, the recipient shall account for the tax as if he were the supplier. This provision squarely places the self-accounting obligation on the Appellant in the present circumstances.

Pursuant to Section 14(4) of the Value Added Tax Act (as amended), the failure of a supplier to include VAT in an invoice does not absolve the recipient of the obligation to self-account. The plain text of the provision imposes a mandatory obligation on the recipient of a taxable supply in Nigeria, where the invoice issued bears no VAT charge, to self-account for the VAT payable on the transaction.

This position finds direct support in *FIRS v. Gazprom Oil & Gas Nigeria Limited* (2015) 19 TLRN 66, the Federal High Court set aside the earlier Tax Appeal Tribunal ruling and held that a Nigerian recipient of services from a non-resident supplier remains liable to self-account for VAT, notwithstanding the absence of a VAT invoice from the supplier. The Court clarified that the words "carrying on business in Nigeria" are not limited to physical presence, and that the duty to deduct and remit VAT on imported services is independent of the foreign supplier's invoicing practices.

In the Tribunal's considered view, the statutory scheme is clear: VAT liability is triggered by the consumption of a taxable service in Nigeria, and not by the existence of profit or markup in the hands of an intermediary. As held in *Vodacom* (supra), the duty of a supplier to issue a VAT invoice is not a condition precedent to the duty of a Nigerian recipient of a VATable service to remit VAT.

Accordingly, it is the finding and opinion of this Honourable Tribunal that the fact that the payments were structured as reimbursements, or routed through a related entity, does not extinguish the VAT consequences arising from the supply and consumption of the underlying services. To hold otherwise as the Appellant has implored this Tribunal to, would be to elevate form over substance and would permit the avoidance of VAT obligations.



Accordingly, the Tribunal finds that the underlying Information Technology services supplied for the benefit of and consumed by the Appellant in Nigeria constitute taxable services under the Value Added Tax Act. The recharge arrangement between the Appellant and PZ Cussons International Limited does not alter the statutory incidence of Value Added Tax. Issue One is therefore resolved in favour of the Respondent.

Having concluded that the underlying Information Technology services constituted taxable imported services to which Section 10 applies, the remaining question is whether the timing of reimbursement between the Appellant and PZ Cussons International Limited affects the incidence of the resulting VAT liability. It is to that issue that the Tribunal now turns.

ISSUE TWO

Whether the Respondent was right in demanding and assessing Value Added Tax on the said IT cost recharges notwithstanding that payment had not been made by the Appellant.

Submission of the Appellant

On Issue Two, the Appellant submitted that the Respondent is not entitled to demand Value Added Tax (VAT) on a transaction in respect of which no payment has been made. It was the Appellant's case that VAT under the Value Added Tax Act operates on a cash basis, such that liability to account for VAT arises only upon the actual payment of consideration. In advancing this position, the Appellant relied on the combined provisions of Sections 12, 14, 15, and 16 of the Act, which make reference to "tax paid" and "tax collected," and was said to establish a clear nexus between VAT liability and the actual flow of funds. The Appellant argued that input tax is, by statutory definition, tax that has been paid, while output tax is tax that has been collected, and that the obligation to remit VAT arises only where output tax collected exceeds input tax paid. It was therefore contended that, in the absence of any payment, no output tax could be said to have been collected and no VAT liability could crystallize.



The Appellant further submitted that the mere issuance of invoices or the existence of a recharge arrangement does not, without more, give rise to VAT liability, as VAT, being a consumption tax, is triggered by the actual exchange of value. It was maintained that, in the present case, no payment had been made to the non-resident entity and, accordingly, there was no basis upon which VAT could be imposed. In response to the Respondent's reliance on Section 10 of the Act relating to imported services, the Appellant argued that the provision does not create an accrual-based system of taxation but must be read together with other relevant provisions of the Act. It was contended that Section 10 merely ensures that VAT is accounted for where payment is made to a non-resident supplier and does not impose an obligation to remit VAT in advance of such payment. The Appellant submitted that any contrary interpretation would amount to reading into the statute an obligation that does not exist, contrary to established principles of statutory interpretation as affirmed in *Vodacom Business Nigeria Ltd v. FIRS* (supra).

In addressing the Respondent's contention that the delay in settling the invoices rendered the arrangement artificial, the Appellant submitted that VAT liability is governed strictly by statute and not by private contractual timelines. It was argued that the existence of an unpaid invoice does not create or accelerate a tax liability under the Act. The Appellant further explained that the delay in payment arose from legitimate regulatory and economic constraints, including the requirement to obtain approval from the National Office for Technology Acquisition and Promotion (NOTAP) before payment could be processed, as well as significant foreign exchange restrictions and broader macroeconomic challenges affecting access to foreign currency. These circumstances, it was submitted, were beyond the Appellant's control and were duly communicated to the Respondent.

The Appellant further maintained, in the alternative and without conceding that the transaction is taxable, that even if the arrangement were to be regarded as a supply of services, VAT would still not be due in the absence of payment. This, it argued, constituted a permissible alternative argument and not evidence of inconsistency or bad faith. The Appellant therefore urged the Tribunal to hold that VAT liability arises only upon actual payment, and that the Respondent's assessment, being predicated on an accrual-based interpretation of the Act, is premature and unsustainable in law.



Submission of the Respondent

On Issue Two, the Respondent submitted that Value Added Tax (VAT) becomes due at the point of supply of taxable goods or services and not upon payment, and therefore the Appellant's contention that VAT is only payable upon payment is erroneous. Relying on Section 14 of the Value Added Tax Act, the Respondent argued that a taxable person is required to collect VAT at the time of making the supply, which, in its view, establishes that the tax liability arises immediately upon the occurrence of the taxable transaction. It was further contended that the Appellant's position is not only legally incorrect but also indicative of an artificial and fictitious arrangement between it and its UK affiliate designed to avoid VAT liability in Nigeria.

The Respondent pointed to the documentary evidence before the Tribunal, particularly the invoices (Exhibit R1) and the service agreement (Exhibit A13), which stipulate that the Appellant was to settle all invoices within thirty days of issuance. It was submitted that the services in question were supplied and consumed between April 2022 and May 2023, yet several years later, the Appellant had allegedly failed, neglected, and refused to remit the VAT component of the transactions on the ground that payment had not been made. The Respondent argued that such conduct is commercially unrealistic and would not have occurred between unrelated parties, as no independent supplier would continue to provide services without payment over such an extended period. On this basis, it urged the Tribunal to infer that the arrangement was contrived to delay or avoid VAT obligations.

The Respondent further urged the Tribunal to invoke the provisions of Section 7 of the Act to disregard what it described as an artificial arrangement between related parties aimed at evading tax. It submitted that the Appellant's arguments were contradictory and amounted to approbating and re-probating, in that the Appellant simultaneously claimed that the transactions were mere reimbursements and therefore not taxable, while also asserting that VAT was not due because payment had not been made due to foreign exchange constraints. According to the Respondent, this inconsistency demonstrates an unwillingness on the part of the Appellant to fulfil its statutory obligations, and the Tribunal was accordingly urged to enforce compliance.

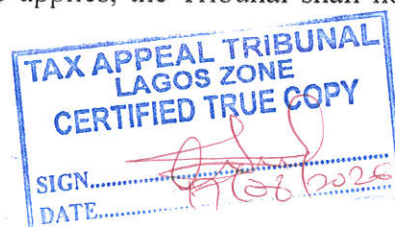


In the alternative, and without conceding the Appellant's position, the Respondent submitted that even if VAT were to be regarded as payable only upon payment, the facts of the case show that payment had in fact been made. It argued that by virtue of the principal-agent relationship between the Appellant and its UK affiliate, all payments made by the affiliate to third-party vendors for the IT services must be deemed to have been made by the Appellant itself. The Respondent relied on the Appellant's own admission that its affiliate settled the invoices on its behalf, and contended that the subsequent delay in reimbursing the affiliate does not negate the fact that payment for the services had already occurred. It was therefore submitted that VAT liability had crystallized in any event.

The Respondent maintained that the issue in dispute was not the existence of the IT services, but rather the artificial payment arrangement adopted by the Appellant. It argued that the Appellant's reliance on cash flow constraints and foreign exchange challenges was merely an attempt to frustrate the Respondent's efforts to recover VAT and to create a situation where tax collection could be indefinitely delayed. In further support of its position, the Respondent relied on the decision in *Kandelite Engineering Company Ltd v. FIRS* (2023) LPELR-606812(CA) 29 - 32, where the Court of Appeal was said to have affirmed that VAT is generally chargeable based on invoices issued, irrespective of whether payment has been received, subject only to subsequent reliefs such as bad debt adjustments. The Respondent therefore urged the Tribunal to hold that VAT is due on the transactions in question and to compel the Appellant to remit the outstanding tax.

ANALYSIS

Issue Two concerns whether the Respondent was entitled to assess Value Added Tax ("VAT") notwithstanding that the Appellant had not reimbursed PZ Cussons International Limited ("PZCIL") for the cost of the Information Technology services. Having already determined under Issue One that the underlying Information Technology services supplied for the benefit of and consumed by the Appellant in Nigeria constitute taxable services under the Value Added Tax Act and that the reverse charge mechanism under Section 10 applies, the Tribunal shall not revisit



those findings. The issue for determination is confined to whether liability to VAT arises upon the supply of those services or only upon payment or reimbursement.

The Appellant contends that VAT becomes due only upon the actual payment of consideration and that, since no reimbursement has yet been made to PZCIL owing to regulatory constraints and foreign exchange challenges, no VAT liability has arisen. The Respondent, on the other hand, maintains that liability to VAT is triggered by the supply of the services and is not postponed by the Appellant's internal reimbursement arrangements.

Having carefully considered the submissions of learned Counsel, the evidence before the Tribunal and the relevant provisions of the Value Added Tax Act, the Tribunal considers that the proper resolution of this issue depends upon a clear distinction between the statutory event that gives rise to VAT liability and the statutory provisions governing the accounting for, collection and remittance of that liability. While those provisions operate within the same legislative framework, they perform different legal functions and should not be conflated.

Upon a proper construction of the Act, Sections 12, 15 and 16 regulate the accounting for and remittance of VAT, whereas the existence of the liability itself is anchored in the charging provisions of the Act. Those provisions do not postpone the incidence of VAT until payment is made. In the context of imported services, Section 10 reinforces this position by imposing an obligation on the Nigerian recipient to account for VAT where taxable services are supplied by a non-resident person. The statutory trigger is therefore the supply of the services to a person in Nigeria and not the subsequent transfer of funds between the parties.

The evidence before the Tribunal establishes that the Information Technology services were supplied for the benefit of and consumed by the Appellant in Nigeria during the relevant period. The fact that reimbursement to PZCIL had not occurred does not alter the legal character of the underlying transaction or suspend the operation of the charging provisions of the Act.

The Tribunal is therefore unable to accept the Appellant's submission that payment of consideration is a condition precedent to the existence of VAT liability in respect of imported



services. Once the statutory conditions giving rise to liability have been satisfied, the liability arises by operation of law notwithstanding that payment or reimbursement may occur subsequently. The timing of payment may regulate when a taxable person accounts for or remits VAT under the statutory scheme, but it does not determine whether liability exists in the first place. To accept the Appellant's construction would require the Tribunal to imply into Section 10 a condition which the legislature did not enact. The Tribunal declines to adopt such an interpretation.

The Appellant further relied on the requirement for approval by the National Office for Technology Acquisition and Promotion (NOTAP) and the attendant foreign exchange constraints as the reason for the delay in reimbursement. The Tribunal accepts that those regulatory constraints may have affected the Appellant's ability to make payment. In the circumstances of this appeal, the requirement for NOTAP approval does not suspend the operation of the charging provisions of the VAT Act. In the absence of any statutory provision making such circumstances an exception to the obligation to account for VAT on imported services, the Tribunal is unable to hold that the Appellant's VAT liability was deferred.

Accordingly, the Tribunal holds that liability to Value Added Tax in respect of the imported Information Technology services arose upon the supply of those services to the Appellant in Nigeria and was not deferred until reimbursement was made to PZ Cussons International Limited. The Respondent was therefore entitled to assess the Appellant to VAT in respect of those services notwithstanding that reimbursement had not yet occurred.

Issue Two is accordingly resolved in favour of the Respondent.

ISSUE THREE

Whether, in the circumstances of this case, the imposition of penalty and interest by the Respondent on the alleged VAT liability was valid and in accordance with the provisions of the Value Added Tax Act and other applicable laws.



Submission of the Appellant

On Issue Three, the Appellant submitted that the penalties and interest imposed by the Respondent were, even on a without prejudice basis, both legally and factually unsustainable. The Appellant contended that the Respondent fundamentally misapplied Section 34 of the VAT Act in imposing the 150% penalty and enhanced interest. It argued that Section 34 was designed to apply only to a taxable person acting as a supplier who failed to collect VAT from a customer. The Appellant maintained that it did not fall within that category, as no VAT was charged or collected by it, no invoice was issued in a supplier capacity, and the transaction merely involved reimbursement of IT costs incurred by a foreign related entity, which was further subject to regulatory approval. Accordingly, the factual basis required to trigger Section 34 was absent, and its application was therefore misconceived.

The Appellant further submitted that, even if the Respondent's characterization of the transaction as falling within a reverse charge or self-accounting framework under Sections 10(3) and 14(4) of the VAT Act was accepted, the appropriate consequence would not have been the application of Section 34. Rather, the proper statutory provision would have been Section 19 of the VAT Act, which governed the failure to remit VAT. Under Section 19, the applicable penalty was 10% of the tax not remitted together with interest at the prevailing Central Bank rate. The Appellant therefore argued that the Respondent's imposition of a 150% penalty represented an impermissible importation of a supplier-based penalty regime into a recipient-based obligation, thereby collapsing two distinct statutory frameworks, collection and remittance.

The Appellant also submitted that this approach was inconsistent with the structure of the VAT Act, which clearly distinguished between the duty to collect VAT under Section 14 and the duty to remit under Sections 15 and 16, read together with Section 19. It argued that Section 34 could not properly be transposed into the self-accounting regime without distorting the legislative scheme. The Appellant further maintained that proper statutory interpretation required the Act to be read as a whole, and that each provision must operate within its intended context. To apply Section 34 in circumstances of self-accounting would, in its view, amount to judicial rewriting of the statute.



In addition, the Appellant submitted that there was no judicial authority supporting the application of Section 34 to reverse charge or self-accounting transactions. On the contrary, it relied on authorities such as *Vodacom Business Nigeria Limited v. FIRS* (supra), which it said confirmed that in cross-border service arrangements, the obligation on the Nigerian recipient was limited to self-accounting and remittance, not collection. The Appellant further contended that the authorities relied upon by the Respondent dealt only with the timing of tax accrual and not with the propriety of the penalty regime applied.

The Appellant also argued that the Respondent's interpretation produced an absurd result, as it effectively suggested that the Appellant ought to have collected VAT from itself, issued invoices to itself, and penalized itself for failure to do so. It submitted that such a construction was inconsistent with both logic and law, as the concept of collection necessarily presupposed a distinct counter-party from whom payment was received.

Finally, the Appellant relied on the principle of strict construction of tax statutes as affirmed in *A.-G. Lagos State v Eko Hotels Ltd* (2018) LPELR-43713(SC), submitting that penalties in tax law could only be imposed where clearly provided by statute and could not be extended by implication or administrative interpretation. It therefore contended that since Section 19 already provided the applicable penalty regime for non-remittance, the invocation of Section 34 was unlawful. The Appellant accordingly urged the Tribunal to hold that the penalties and interest imposed under Section 34 were invalid and that only the penalty regime under Section 19, if any liability existed at all, could properly apply.

Submission of the Respondent

On Issue Three, the Respondent submitted that the penalties and interest imposed were properly computed and validly applied under the VAT Act. It argued that interest and penalty became applicable once a taxable person failed to remit tax within the statutory time prescribed under Section 15 of the VAT Act, which required remittance on or before the 21st day of the month following the transaction. The Respondent relied on Section 19 of the Act, contending that where



VAT was not remitted as and when due, the law mandatorily imposed a penalty of 10% of the unpaid tax together with interest at the Central Bank of Nigeria minimum re-discount rate. It further maintained that these consequences were automatic upon default and were not dependent on the issuance or finality of any assessment or demand notice, as liability crystallized from the date the tax became due.

The Respondent further submitted that Section 34 of the VAT Act was also properly invoked in the instant case. It argued that Section 34 imposed a distinct and additional penalty regime where a taxable person failed to collect VAT, attracting liability of 150% of the amount not collected plus interest at 5% above the CBN re-discount rate. According to the Respondent, when read together with Sections 10(3) and 14(4), the Appellant was statutorily placed in the position of a taxable person responsible for withholding, collecting, or self-accounting for VAT in respect of imported services. It contended that in such reverse charge situations, the responsibility to collect or withhold VAT shifted to the Nigerian recipient, and failure to discharge that obligation properly triggered the penalty under Section 34.

The Respondent also submitted that penalty and interest were not contingent upon the conclusion of objections or appeals, but rather ran from the date the tax became due. It relied on judicial authorities, including *Gazprom Oil & Gas Ltd v. FIRS* (supra) and *MTN Nigeria Communications Plc v. FIRS* (supra), to argue that once a tax liability was established, it related back to the original due date, and penalties and interest accrued from that point. It further cited the decision in *FIRS v. MTN* (2025) 88 TLN 36, 68 to support the position that a taxpayer could not avoid penalty and interest simply because an assessment was under dispute, as doing so would deprive the government of revenue lawfully due.

The Respondent further submitted that the Tribunal and courts had consistently held that interest and penalties were compensatory and automatic consequences of tax default, designed to ensure compliance and prevent revenue loss to the government. It argued that once the Appellant failed to remit VAT within the prescribed timeline, the statutory penalties necessarily followed, regardless of whether the assessment was later challenged or appealed.



The Respondent also contended that reliance on provisions of the Federal Inland Revenue Service (Establishment) Act or its Fifth Schedule was misconceived, as VAT liability and enforcement were governed exclusively by the VAT Act, which was the specific taxing statute. It submitted that where there was any inconsistency, the VAT Act prevailed as the *lex specialis* regulating VAT matters, including penalties and enforcement mechanisms.

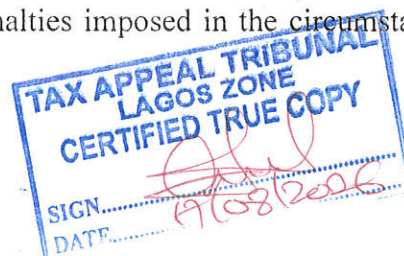
Finally, the Respondent submitted that Section 10 of the VAT Act clearly extended VAT obligations to imported services by placing the duty of collection and remittance on the Nigerian recipient. It argued that this statutory framework brought the Appellant within the definition of a taxable person for the relevant transaction, thereby justifying the application of Section 34. The Respondent concluded that the combined effect of Sections 10, 14(4), 15, 19, and 34 of the VAT Act supported the imposition of both penalties and interest, and therefore urged the Tribunal to uphold the assessment in its entirety.

ANALYSIS

This Honourable Tribunal has considered Issue Three, namely whether the penalties and interest imposed by the Respondent were validly computed, having regard to the nature of the transaction, the relevant provisions of the Value Added Tax Act, and the competing statutory interpretations advanced by both parties.

It is not in dispute that the VAT Act provides for the imposition of both penalties and interest where a taxable person fails to remit tax within the time prescribed under Section 15 of the Act. The law is equally settled that such penalties and interest generally accrue from the statutory due date once a tax liability is properly established, notwithstanding the pendency of any objection or appeal process. In this regard, this Tribunal accepts the Respondent's submission that tax liabilities, once crystallized, are not suspended by administrative or appellate proceedings, and that interest and penalty ordinarily relate back to the date the obligation became due.

However, the crux of the present issue is not the existence of a power to impose penalties and interest, but rather the correct statutory basis for the penalties imposed in the circumstances of



this case. The Respondent relied on Section 34 of the VAT Act to justify the imposition of a 150% penalty on the alleged failure to collect VAT. That provision, on its clear wording and proper construction, applies to a taxable person acting in the capacity of a supplier who fails to collect VAT from a customer in the course of a taxable supply.

This Tribunal explicitly must reject the Respondent's argument that the reverse charge mechanism transforms the Appellant into a "collector" of VAT. The reverse charge imposes a self-accounting obligation, not a collection obligation. The distinction is not merely semantic; it is grounded in the plain language of Sections 10, 14, and 34 of the VAT Act. A recipient who self-accounts for VAT does not "collect" tax from a customer; there is no customer in the chain. Accordingly, the factual predicate for the application of Section 34 is entirely absent.

This Honourable Tribunal finds that the factual matrix of this case does not support classification under Section 34. The Appellant was not shown to have acted as a supplier issuing invoices or collecting VAT from a customer. Rather, the transaction, as presented, concerned imported services and reimbursement arrangements, which fall within the self-accounting or reverse charge framework contemplated under Sections 10(3) and 14(4) of the VAT Act. In such circumstances, the statutory obligation imposed on the Appellant, if any, was one of self-accounting and remittance, not collection.

It follows that the applicable penalty regime cannot be Section 34, which is specifically tailored to failures in collection. The VAT Act provides a distinct enforcement mechanism under Section 19 for failure to remit tax when due, prescribing a penalty of 10% of the tax not remitted, together with interest at the prevailing Central Bank rate. The Respondent's attempt to collapse the distinction between 'collection' and 'remittance' is inconsistent with the structure of the VAT Act. The terms are used in distinct contexts throughout the Act, and Parliament intended them to have different meanings. This approach is fortified by the Supreme Court's reasoning in *A-G of Oyo State v. Fairlakes Hotel Ltd* (1988) 5 NWLR (Pt 92) 1, which mandates that penal provisions in tax statutes must be construed strictly and cannot be extended by implication.



For the avoidance of doubt, the Appellant's failure to self-account for and remit VAT within the timeline prescribed by Section 15 of the VAT Act (on or before the 21st day of the month following the transaction) would, if established, attract the penalty under Section 19. However, that determination is for the Respondent to make upon reassessment, applying the correct statutory provision.

This Tribunal is of the view that the Respondent's approach impermissibly conflated two distinct statutory regimes; collection and remittance and in doing so, applied a supplier-based penalty provision to a recipient-based obligation. Such an interpretation is not supported by the structure of the VAT Act, which must be read holistically and in a manner that preserves the internal coherence of its enforcement provisions.

It is a settled principle of statutory interpretation that penal provisions in tax statutes must be construed strictly and cannot be extended by implication or administrative convenience. As the Court of Appeal held in *A.G. Lagos State v. Eko Hotels Ltd* (2006) (*supra*) penal provisions in tax statutes "must be construed strictly and cannot be extended by implication." This Tribunal is bound by that principle. The Respondent cannot extend Section 34 to a self-accounting scenario by administrative fiat.

Accordingly, while this Tribunal affirms that penalties and interest are generally recoverable where VAT is not remitted within the statutory timeline, it finds that the 150% penalty imposed under Section 34 was wrongly applied to the Appellant in the circumstances of this case. The appropriate statutory basis, if liability were ultimately established, would have been Section 19 of the VAT Act.

Issue Three is therefore resolved in favour of the Appellant to the extent that the Respondent's reliance on Section 34 of the VAT Act was misconceived and the penalty imposed thereunder is hereby set aside. Any applicable penalty, if at all, must be assessed strictly in accordance with Section 19 of the VAT Act.

ISSUE FOUR



Whether based on the evidence before this Honourable Tribunal and the peculiar circumstances of this appeal, the Respondent's Notice of Assessment is valid.

Submission of the Appellant

In respect of Issue Four, the Appellant submitted that the Respondent's Notice of Assessment was invalid and void ab initio as it was founded on fundamental errors of fact and law. The Appellant contended that for any VAT assessment to be valid, there must be a taxable transaction, a crystallized liability in accordance with the VAT Act, and a correct computation of the principal tax together with any applicable penalties and interest. It was the Appellant's position that the Respondent's assessment failed on all three grounds and was therefore unsustainable.

The Appellant further submitted that there was no taxable supply upon which the assessment could properly be anchored, relying on the reimbursement argument already advanced in Issue One. It further submitted that no VAT liability had crystallized under the VAT Act, relying on the cash-basis argument already advanced in Issue Two. On penalties and interest, the Appellant submitted that the Respondent had applied the wrong statutory framework, relying on the Section 34 vs. Section 19 argument already advanced in Issue Three. Finally, the Appellant submitted that the Notice of Assessment was internally defective and incapable of being sustained.

Submission of the Respondent

In respect of Issue Four, the Respondent submitted that the Notice of Assessment was valid, lawful, and properly raised in accordance with the provisions of the Value Added Tax Act. It argued that the assessment was grounded on a proper appreciation of the facts and a correct application of the law. The Respondent maintained that the Appellant, as the Nigerian recipient of imported IT services, was statutorily obligated to account for VAT under the reverse charge mechanism, and that the transaction clearly fell within the scope of taxable supplies under the Act.



The Respondent further submitted that the characterization of the IT cost recharge as a mere reimbursement was misleading and did not reflect the true nature of the transaction. It argued that, in substance, the arrangement constituted payment for services rendered by a non-resident supplier, with PZCIL acting as an intermediary within the group structure. The Respondent also submitted that VAT liability had properly crystallized and that penalties and interest were correctly computed and lawfully imposed. Finally, the Respondent submitted that the VAT Act, being the specific taxing statute, prevailed over any reliance on the Federal Inland Revenue Service (Establishment) Act.

ANALYSIS

This Honourable Tribunal has carefully considered the submissions of learned Counsel to both parties on Issue Four, together with the totality of the evidence on record and the applicable provisions of the Value Added Tax Act (Cap. V1, LFN 2004, as amended). The resolution of this issue turns on the validity in law of the Notice of Assessment (The Notice of Assessment is dated 9th September 2024 in the Appellant's bundle (Exhibit A4) and 10th September 2024 in the Respondent's bundle (Exhibit R3). This Tribunal relies on the date stated in the original document, which is 9th September 2024, as both parties agree it is the same assessment) and the subsequent Notice of Refusal to Amend dated 14th November 2024 (Exhibit A6/R4), particularly in light of the findings already reached on Issues One, Two, and Three.

There is no dispute that the Respondent is vested with statutory authority to assess and collect Value Added Tax. Section 25(1) of the Federal Inland Revenue Service (Establishment) Act, 2007 empowers the Respondent to assess, collect, and account for taxes due to the Federal Government, and the Value Added Tax Act falls squarely within its mandate. The jurisdictional competence of the Respondent to issue the Notice of Assessment is therefore not in issue.

However, jurisdiction alone is insufficient to validate an assessment. The substantive validity depends on the findings already made:



- i. Issue One established that the underlying IT services constitute a taxable supply under Sections 2, 10(3), and 14(4) of the VAT Act.
- ii. Issue Two established that VAT liability crystallizes at the point of supply, not upon payment.
- iii. Issue Three established that the penalty regime under Section 34 was wrongly applied, and the correct regime is Section 19.

The Appellant's arguments in Issue Four are therefore subsumed by the findings in Issues One, Two, and Three. The Tribunal will not re-litigate those substantive matters here.

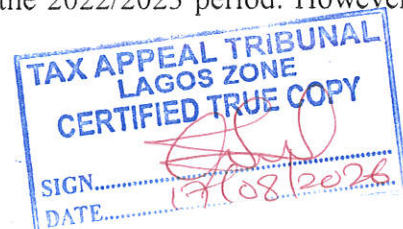
The only remaining questions are:

1. Procedural Validity: Was the assessment process procedurally regular?
2. Severance: Can the valid principal tax be severed from the invalid penalty component?
3. Evidentiary Sufficiency: Does the evidence support the quantum of the assessment?

On procedural validity, the Tribunal finds that due process was duly complied with. The Appellant was issued a Notice of Assessment, filed a valid objection, received a Notice of Refusal to Amend, and properly exercised its right of appeal before this Tribunal. The assessment process was therefore procedurally regular.

On severance, the Tribunal finds that an assessment may be valid in part and invalid in part. The Tribunal is empowered under Paragraph 15(8) of the Fifth Schedule to the FIRS (Establishment) Act to confirm, vary, or annul an assessment, either in whole or in part. The Tribunal is not bound to annul the entire assessment merely because a component of it is defective. In this case, the principal VAT liability is valid and is hereby affirmed, while the penalty and interest imposed under Section 34 of the VAT Act are set aside. The Respondent is directed to reassess those components under Section 19 of the VAT Act.

On evidentiary sufficiency, the Tribunal notes that the Appellant tendered sample invoices (Exhibits A9 and A12) rather than a comprehensive set for the 2022/2023 period. However, the



Appellant did not dispute the quantum (USD 1,666,329.63) stated in the Notice of Assessment; its objection was strictly limited to the characterization of the transaction (i.e., reimbursement vs. taxable supply). Consequently, the evidentiary deficiency regarding the completeness of the invoices does not vitiate the assessment, as the quantum is effectively admitted by the Appellant's pleadings and witness testimony.

Accordingly, having regard to the totality of the evidence and the findings on Issues One, Two, and Three, the Tribunal holds that the Notice of Assessment is valid in respect of the principal VAT liability of USD 1,666,329.63, as the underlying IT services constitute taxable supplies under Sections 2, 10(3), and 14(4) of the VAT Act. The imposition of penalty and interest under Section 34 is hereby set aside for having been wrongly applied, while the Respondent is directed to re-assess the Appellant under Section 19 of the VAT Act. Save for the severed components, the Notice of Assessment is upheld as valid and procedurally regular.

Issue Four is resolved in favour of the Respondent in respect of the principal VAT liability, and in favour of the Appellant in respect of the penalty component under Section 34.

3. CONCLUSION

Having carefully considered the pleadings of the parties, the documentary evidence placed before this Tribunal, and the relevant provisions of the Value Added Tax Act, this Tribunal is satisfied that the central issue for determination is not the nomenclature attached to the payment--whether described as reimbursement or otherwise but the true nature of the underlying transaction and its VAT characterization.

The undisputed facts show that the Appellant benefited from information technology services rendered by a non-resident company, and that the Appellant's UK sister company merely settled the invoice in the first instance and subsequently sought reimbursement from the Appellant. The Tribunal is not persuaded that the interposition of a related party or the absence of a mark-up alters the essential character of the transaction. What is material is that there exists a taxable supply of services ultimately consumed by the Appellant in Nigeria.



By virtue of the VAT Act, taxable services include services supplied within the scope of the Act, and imported services being services rendered by a non-resident person to a person within Nigeria and fall within the charge to tax. The Act does not condition VAT liability on whether payment is structured as a direct remittance or a reimbursement to an intermediary. Nor does it exempt transactions merely because they are cost-recovery in nature between related parties.

Accordingly, this Tribunal finds that the Notice of Assessment issued by the Respondent was properly raised, as the underlying transaction constitutes a taxable imported service within the meaning of the Act. The Appellant's argument that the reimbursement arrangement shields the transaction from VAT is therefore untenable in law.

4. SUMMARY OF FINDINGS

In concluding, and for the avoidance of doubt:

- a. Issue One - The fact that the payments were structured as reimbursements, or routed through a related entity does not extinguish the VAT consequences arising from the supply and consumption of underlying services. (Resolved in favour of the Respondent)
- b. Issue Two - This Tribunal holds that the VAT liability arises at the point of supply, not upon payment. (Resolved in favour of the Respondent)
- c. Issue Three - The Tribunal affirms that penalties and interest are generally recoverable where VAT is not remitted within the statutory timeline. However, the 150% penalty imposed under Section 34 was wrongly applied to the Appellant. The Respondent ought to have based its calculations on Section 19 of the VAT Act. (Resolved in favour of the Appellant to the extent that the Section 34 penalty is set aside)
- d. Issue Four - The Tribunal finds that, with respect to the principal VAT liability, the sum of USD 1,666,329.63 is valid in law and procedurally regular. The Tribunal hereby upholds the Notice of Assessment No. ITD/NRC/VAT/24/18 dated 9th September 2024 in respect of the principal tax, but sets aside the penalty and interest imposed under Section 34. (Resolved partially in favour of both parties)



5. ORDER OF THE TRIBUNAL

1. The Tribunal affirms the principal VAT liability of USD 1,666,329.63 (One Million, Six Hundred and Sixty-Six Thousand, Three Hundred and Twenty-Nine Dollars and Sixty-Three Cents) as valid in law.
2. The Tribunal sets aside the sum of USD 2,499,499.40 (Two Million, Four Hundred and Ninety-Nine Thousand, Four Hundred and Ninety-Nine Dollars and Forty Cents) representing penalty, and USD 529,059.65 (Five Hundred and Twenty-Nine Thousand, Fifty-Nine Dollars and Sixty-Five Cents) representing interest, imposed under Section 34 of the VAT Act.
3. The Respondent is directed to re-assess the Appellant's penalty and interest liability in strict compliance with Section 19 of the VAT Act, which provides for:
 - a) A penalty of 10% of the unpaid tax;
 - b) Interest at the Central Bank of Nigeria minimum re-discount rate (MRR) applicable at the date the tax first became due for each transaction. The Respondent shall calculate the interest from the 21st day of the month following each relevant transaction (as stipulated under Section 15 of the VAT Act) up to the date of this re-assessment.
4. The Respondent shall serve the re-assessment on the Appellant within one (1) month of this judgment.
5. The Appellant shall liquidate the outstanding liabilities, as re-assessed, within six (6) months of being served with the re-assessment.
6. The Appellant shall provide quarterly reports to the Respondent on the progress of payment.
7. Each party shall bear its own costs in the circumstances.
8. Reliefs:
 - i. The Appellant's reliefs 'a', 'b', 'c', 'd', and 'f' are hereby REFUSED.
 - ii. The Appellant's relief 'e' is hereby GRANTED IN PART to the extent stated above.
 - iii. The Respondent's reliefs 'a' and 'd' are hereby GRANTED.
 - iv. The Respondent's reliefs 'b' and 'c' are hereby REFUSED.



This is the judgement of this Tribunal


HON. ADERIBIGBE ADEDEJI SAN.
CHAIRMAN



HON. AKINOLA A. OLUGBUYIRO
COMMISSIONER



HON. OHAGWA C. INNOCENT
COMMISSIONER



HON. AKWIWU C. ANNE
COMMISSIONER

