

SALES TAX LAW OF LAGOS STATE

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High Court of Lagos State dismisses the claim of Lagos State Board of Internal Revenue against Nigerian Bottling Company.

The imposition of sales tax by the Lagos State Board of Internal Revenue (LSBIR) suffered a setback recently following a decision of the High Court of Lagos State in Suit No. ID/45/2002-Lagos Board of Internal Revenue v. Nigerian Bottling Company Plc and Anor delivered by the Honourable Justice O.H Oshodi on 18 June 2009. NBC successfully defended a claim brought by LSBIR for the sum of N210,000,000 as sales tax arrears and penalty as well as interest on the said sum at the rate of 21% from June 2001 until judgment and thereafter at the rate of 6% per annum until liquidation.

The background of the matter is set out below:

By letter dated 1 December 2000, the Lagos State Government informed Nigerian Bottling Company Plc of the reintroduction of sales tax in Lagos State adding that "the tax rate shall be 5% flat on Goods/Services produced in or brought into the State"; and advised NBC to obtain sales tax forms for registration as a collector of sales tax. As a result of the alleged failure or refusal of NBC to obtain the tax forms, LSBIR purportedly under 6 of the Sales Tax Law, made an estimate of the sum due from NBC as sales tax for the period between and including December 2000 and January - May 2001 to be in the sum of N231,5000.00 plus a 5% penalty of N11,575,000 assessed on the estimated sum. LSBIR thereafter raised a notice of assessment dated 12 July 2001 in the sum of N243,075,000 being the estimated sales tax and interest and served it on NBC on 31 December 2001. On receipt of the said notice of assessment, NBC did not pay the stated sum but filed a notice of objection dated 30 July 2001 on the ground that the legality of the Sale Tax Law was the subject of litigation. On 12 September 2001, LSBIR purportedly served a demand notice dated 11 September 2001 on NBC for the said sum. Thereafter, LSBIR instituted an action at the Lagos High Court claiming the sum of N210,000,000 as sales tax arrears and penalty as well as interest on the said sum at the rate of 21% from June 2001 until judgment and thereafter at the rate of 6% per annum until liquidation.

At the trial, lawyers from ALEX, the law firm representing NBC raised the following defences:

(i) LSBIR was not entitled to impose sales tax on LSBIR in view of the provisions of the Value Added Tax Act. Reliance was placed on the judgment of the Court of Appeal in Attorney General of Lagos v. Eko Hotels Limited [2008] All FWLR (Pt. 398) 235 where the court held that both taxes are the same and that the imposition of both taxes amounted to double taxation.

(ii) The imposition of sales tax on goods brought into Lagos State and sold outside Lagos State is unconstitutional as it amounts to a tax on inter-state trade and commerce which is outside the jurisdiction of Lagos State.

(iii) The mode of assessment adopted by LSBIR was arbitrary and capricious and not in accordance with the Sales Tax Law

(iv) LSBIR had failed to comply with the provisions of the Sales Tax Law particularly with respect to the service of requisite notices

In its judgment, the Court agreed with NBCs arguments on points 1 and 4 above and dismissed LSBIRs action.