

Objecting to a Tax Decision

Lessons from Republic vs. High Court, Accra; Ex Parte Afia African Village Limited and The Commissioner-General of the Ghana Revenue Authority (2022)



Introduction

The Supreme Court of Ghana has issued a ruling with respect to the process for objecting to a tax decision. It was filed by the Afia African Village Limited (hereinafter referred to as “Taxpayer”) against the Commissioner-General (C-G) of the General Revenue Authority (GRA). This ruling provides a judicial interpretation of the need to follow due objection processes as provided for in the Revenue Administration Act, 2016 (Act 915). Most important was the pronouncement that before a taxpayer applies to the courts requiring a government official (the Ghana Revenue Authority officer in this instance), to properly fulfil their official duties or correct an abuse of discretionary powers, the taxpayer should ensure they have exhausted all procedures as laid down in the law. In this case, the full procedures in the tax law, specifically with the dispute resolution mechanism, had not been exhausted by the taxpayer before going to court.

Background

The land of the Taxpayer was compulsorily purchased by the Government of Ghana for a marine drive investment project for which compensation was to be made by the Government to the Taxpayer. However, after receipt of the final installment, the Taxpayer discovered an amount of GHS 2,116,679.78 had been withheld for tax purposes. The taxpayer was dissatisfied and brought it to the attention of the Ministry of Tourism, resulting in a demand letter to the GRA for a refund, which the C-G denied. Based on the refusal, the Taxpayer made an application for an order of mandamus to the High Court (HC) against the C-G for a refund of the amount withheld.

The C-G opposed the application on three grounds:



- That the amount was withheld on the payment because it was subject to capital gains tax;
- That the taxpayer was unable to show that the C-G was under an existing and unquestioned obligatory duty under statute or otherwise to refund the amount in dispute;
- That the existence of a refund account under section 69 of Act 915 does not imply that the taxpayer showed to either the C-G or the HC that they were entitled to a refund

The C-G argued that the HC lacked jurisdiction to hear an action for an order of mandamus given that a tax decision had been made by the C-G and specific processes are provided for under Act 915 to object to the decision.

The HC on the grounds that the Taxpayer did not follow due procedure in sections 42 and 44 of Act 915 and the order of C.I. 47 for an objection against a tax decision, dismissed the application for mandamus. The HC also established that there is needed to be an existence of an obligatory duty on the part of the C-G to refund the amount of tax withheld, which the Taxpayer was unable to demonstrate.

Dissatisfied with the judgement of the HC, the Taxpayer proceeded to file an order of certiorari with the Supreme Court (SC) to exercise its supervisory authority over the HC and to quash its decision.

Taxpayer's argument at the SC

Counsel for the applicant argued that the C-G has a statutory duty to refund amounts withheld as tax. The argument cited sections 69 (1) and (2) of Act 915 and stated that the use of "shall" in subsection (2) of the Act makes it obligatory and mandatory for the C-G to make payment of the tax refund. This, the applicant's counsel indicated, was because section 42 of the Interpretation Act, 2009 (Act 792) construes "shall" as mandatory.

C-G's argument at the SC

Among others, the Counsel also argued that the C-Gs action constituted a tax decision, for which the applicant should have followed the procedure set out in sections 42 and 44 of Act 915 and order of C.I. 47 for objection to a tax decision.

Holding & Reasoning

The SC agreed with the learned trial judge's findings, stating that it was evident that the applicant had neither started nor exhausted, the procedures provided under sections 41(1) and (2)(b), 42, and 44 of Act 915 before applying for an order of mandamus in the HC. The SC held that the trial HC judge was correct in dismissing the Taxpayer's case on procedural grounds.

The SC also concluded, the condition precedent to invocation of the HC's jurisdiction had not yet arisen in view of sections 41 and 44 of Act 951.

Commentary and Issues of Importance to Taxpayers

Section 41 of Act 915 establishes a tax decision as one made by the C-G under a tax law, including an assessment or omission, and goes on to define what a tax decision does not cover and how a tax decision is reached. Section 42 of Act 915 provides that a person who is dissatisfied with a tax decision that directly affects that person may lodge an objection to the decision with the C-G within thirty days of being notified of the tax decision. The objection is required to be in writing and must state the basis upon which the objection is made. A tax decision to which an objection is not made within thirty days is final.

Section 43 of Act 915 also provides that the C-G may vary the tax decision in whole or in part or disallow the objection after receiving the notice of objection. The C-G is required to notify the taxpayer of the objection decision in writing within sixty days in writing. If the taxpayer is not served within that period, the taxpayer may elect to treat the C-G as having decided to disallow the objection by notice in writing to the C-G.

Section 44 of Act 915 provides the procedures to be followed by a taxpayer who is dissatisfied with the C-G's objection decision. The taxpayer may appeal to the Independent Tax Appeal Board (ITAB) within 30 days of receipt of the C-G's decision. Act 1029 establishes ITAB as part of dispute resolution processes under Ghana's tax administration. It determines taxpayer appeals against decisions of the C-G. Where a taxpayer is further dissatisfied with a decision of ITAB, the taxpayer can then make an appeal against such decision to the Court within thirty days from the date the decision was served on the person.

In the current case, a tax decision was made when the C-G refused to refund the sum withheld as tax. However, the taxpayer did not object to the tax decision within the time limit prescribed by the tax legislation, but filed a case for an order of mandamus, to compel the C-G to refund the amount of tax withheld. Within the context of the requirements under Act 915, the taxpayer should have written to the C-G within 30 days after being served with notice, to object to the decision. On the face of facts provided, it appears the taxpayer did not make use of the dispute resolution mechanism procedures as required by law. It remains unknown what the decision of the SC would have been should the taxpayer have gone through the processes required to object to the C-G's tax decision given that ITAB is currently not operational.

Based on this ruling, it is imperative for taxpayers to follow due processes in objecting to tax decisions by the C-G before going to court. Where a taxpayer is unsure about the best course of action based on the tax legislation, the assistance of a consultant is recommended.

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