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Registrar
COMMERCIAL DIVISION OF THE
HIGH COURT, ACCRA

IN THE SUPERIOR COURT OF JUDICATURE
IN THE HIGH COURT OF JUSTICE
COMMERCIAL COURT
ACCRA AD 2017

SUIT NO. MISC/0159/2017

THE REPUBLIC

VRS

THE COMMISSIONER-GENERAL
GHANA REVENUE AUTHORITY
ACCRA.

RESPONDENT

EX - PARTE

GHANA TELECOMMUNICATIONS CO. LTD
ACCRA

APPLICANT

AFFIDAVIT IN OPPOSITION

I, Kwame Owusu of Ghana Revenue Authority, opposite Accra Sports Stadium, off Starlet '91 Street, Osu in the city of Accra, make oath and say as follows:

1. That I am the Deponent herein.
2. That I am the Head of the Transfer Pricing Unit of the Ghana Revenue Authority.
3. That I have the consent and authority of Respondent to depose to the facts contained in this Affidavit which, unless otherwise stated are facts which have come to my attention and knowledge as the Head of the Transfer Pricing Unit of the Ghana Revenue Authority.
4. That Respondent has been served with an Application for Certiorari and Mandamus by Applicant and that Respondent is opposed to this Application.
5. That Applicant is asking this Honourable Court to bring up and quash the decision of Respondent demanding payment of 30% of a disputed tax

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assessment pending determination of an objection against the assessment.

6. That Respondent has made no such decision for which an Order of Certiorari will lie.
7. That on the 17/08/2017, Applicant objected to an audit report with a tax assessment dated 08/08/2017, raised on it by Respondent.
8. That Applicant is required by Section 42(5)(b) of the Revenue Administration Act 2016, (Act 915) to pay 30% of the disputed tax before an Application for Objection can be entertained.
9. That upon receipt of the Application for Objection Respondent duly notified Applicant of the statutory requirement for the payment of the 30%.
10. That Applicant then applied to Respondent under Section 42(6) of the Revenue Administration Act 2016, (Act 915) to waive the payment of the 30%.
11. That Section 42(7) of the Revenue Administration Act 2016, (Act 915) sets out the issues to be considered by Respondent in determining an Application for a waiver.
12. That in the light of Section 42(7), Respondent wrote to Applicant that it was yet to consider whether to exercise the power under Section 42(6) of Act 915.
13. That under section 43(2) of Act 915, Respondent had Sixty (60) days upon receipt of an objection to a tax decision to make a determination of the objection.
14. That on 13/09/2017, Twenty – six days after filing its objection and nineteen (19) days after the request for a waiver of the 30%, Applicant filed this Application to quash a decision that had not yet been made and to compel the making of a decision for which the statutory period had not expired.
15. That this Application to invoke the supervisory jurisdiction of the Court by Applicant is premature having been filed on the 13th of September, 2017, only Twenty – six (26) days from the date of receipt of Applicant's objection to the tax assessment raised on it.
16. That the transfer pricing audit of the Applicant is still ongoing which necessitated the Respondent's request for information dated 21st August, 2017 (Applicant's Exhibit "TA3).
17. That the request for further information with respect to the Transfer Pricing Audit "*in order to facilitate the audit process*" is different from the Audit and tax assessment of One Hundred and Sixty –two Million, Four Hundred and

Sixty – eight Thousand, Three Hundred and Sixty –one Ghana Cedis and ninety pesewas (GHS 162,468,361.90) under the Technology Transfer Regulations 1992, (LI1547).

18. That the assessment based on the Technology Transfer Regulations, 1992 (L.I.1547) has been served on the Applicant by a Notice of Assessment dated 8th August, 2017.
19. That the Applicant's failure to comply with the Technology Transfer Regulations, 1992 (L.I.1547) has tax implications and it was based on this that the Respondent raised an initial assessment of One Hundred and Sixty –two Million, Four Hundred and Sixty – eight Thousand, Three Hundred and Sixty –one Ghana Cedis and ninety pesewas (GHS 162,468,361.90).
20. That this Application by Applicant is clearly an attempt to avoid satisfying the conditions imposed by law for a determination of its objection against a tax decision.
21. That Certiorari will not lie in the instant Application absent a decision on the basis on which an order for certiorari must be determined.
22. That Applicant's Application for Mandamus is ill – conceived and misplaced.
23. That it is Respondent's case that there has been no such decision by him to not exercise his power to consider Applicant's application per Exhibit "TA5" for a waiver.
24. That by Applicant's own showing per its own Exhibit "TA6", the office of the Commissioner – General had only stated that the Commissioner – General was "*yet to consider a decision to exercise the power to consider...*" and not that he had declined to consider a decision to exercise the power.
25. That the Authority is rightly demanding payment of Applicant's tax indebtedness pursuant to the Applicant's failure to comply with the Technology Transfer Regulations 1992 (L.I. 1547).
26. That between 2012 and 2016 the Applicant has remitted GHS 2.1 billion to its parent company outside the jurisdiction, which is about thirty per cent (30%) of its turnover and has not paid corporate income tax for six years.
27. That the demand for the payment of thirty per cent (30%) of the assessment is a mere fraction of tax assessed considering the amount of money remitted by the Applicant to its parent company.

28. That in the circumstances, I am of the belief that the current application is not only without any legal and factual basis, but same is completely erroneous, wholly misconceived and thus unmeritorious.

29. I therefore pray that same be dismissed with costs.

WHEREFORE I swear to this Affidavit in Opposition to the instant Application.


DEPONENT

SWORN TO THIS ^{10th} DAY OF OCTOBER 2017.

BEFORE ME


COMMISSIONER OF OATHS

JOHN AHETOH
COMMISSIONER FOR OATHS
P. O. BOX MP 1894
ACCRA

THE REGISTRAR
HIGH COURT
COMMERCIAL DIVISION
ACCRA

AND FOR SERVICE ON APPLICANT OR ITS LAWYER DAAD AKWESI (MRS), BENTSI-ENCHI, LETSA AND ANKOMAH, ACCRA.