

CASE DIGEST

INTERNATIONAL TRADE: FREE
TRADE ZONES; ARE ORGANISATIONS
OPERATING WITHIN THE FREE TRADE
ZONES REQUIRED TO MAKE
CONTRIBUTIONS TO INDUSTRIAL
TRAINING FUND?

DIRECTOR GENERAL INDUSTRIAL
TRAINING FUND v. NIGERDOCK NIGERIA
PLC FZE; NIGERIA EXPORT PROCESSING
ZONE AUTHORITY

INTERNATIONAL TRADE: FREE TRADE ZONES; ARE ORGANISATIONS OPERATING WITHIN THE FREE TRADE ZONES REQUIRED TO MAKE CONTRIBUTIONS TO INDUSTRIAL TRAINING FUND?

DIRECTOR GENERAL INDUSTRIAL TRAINING FUND v. NIGERDOCK NIGERIA PLC FZE;
NIGERIA EXPORT PROCESSING ZONE AUTHORITY

COURT OF APPEAL (NIGERIA)

(BADA; UMAR; SIRAJO, JJ.CA)

Background Facts

The Director General Industrial Training Fund (Appellant) case at the Federal High Court (trial court) is that it is a federal government parastatal establishment, charged with the responsibility of providing, promoting and encouraging the acquisition of skills in the industry and commerce sector as well providing training for skills in management for technical and entrepreneurial development and that any employer with five employees and above or with an annual turnover of ₦50 Million is mandated to register with it and pay 1% of the annual payroll as training contribution to it, and that where an employer fails to register and make payment as and when due, such an employer is liable to pay 5% penalty every month on the amount due and unpaid. The Appellant further stated that Nigerdock Nigeria Plc FZE (1st Respondent), as a limited liability company registered with the Appellant as a contributor paying its contribution to the Appellant from 1989 up to 2006. On January 4, 2010, the Appellant wrote the 1st Respondent requesting payment of its contribution for the 2007-2009 periods. Again, on 31 January 2012, the Appellant through its counsel wrote and explained the need for the 1st Respondent to pay its annual contribution.



The 1st Respondent via a reply letter acknowledged its liability to pay its statutory contribution to the Appellant from the year 2011. The Appellant further wrote the 1st Respondent to request a meeting with the 1st Respondent to resolve grey areas to which the 1st Respondent replied that the managers of the SIMCO free zones company had advised it that it is not liable to pay the contribution being demanded from it by the Appellant

The Appellant stated that it then took up the issue with the Nigeria Export Processing Zone Authority (2nd Respondent) requesting the 2nd Respondent to instruct the 1st Respondent to pay its contribution, but the 2nd Respondent stated that the companies operating in the free trade zones are not liable to make contribution to the Appellant. The 1st Respondent further stated that its operation does not require approval for expatriate quota and that as an enterprise that operates within the free zone, it enjoys exemption from Federal, State and Local Government taxes, levies and rates. It stated that contrary to the Appellant's claim it is not a registered contributor with the Appellant.

The Appellant thus commenced this suit by originating summons, seeking certain reliefs. The trial court heard the suits on the merits, and consequent upon its finding dismissed the Appellant's claim.

Aggrieved by the decision of the trial court, the Appellant appealed to the Court of Appeal. One of the issues for determination is: Whether the 1st Respondent as a Free Zone Enterprise, is obliged to pay training contribution pursuant to the Industrial Training Fund (Amendment Act) 2011, Nigeria Export Processing Zone Act, 2004 and Snake Island Integrated Free Zone 2012 Regulations.

Arguments

In arguing this issue, learned counsel for the 1st Respondent dwelled on the objective of the free zone and referred the court to the provisions of sections 8 and 18 (1) of the Nigeria Export Processing Zone Act 2004 (NEPZA Act) which exempt enterprises operating within Free Zone from all Federal, State and local Government taxes, levies and rates. Counsel submits that literal rule of interpretation ought to be applied to the afore-stated provisions and by so doing, the effect of the provisions is that all enterprises operating within the free trade zone shall not be obliged under any legislative enactment to pay taxes, levies or duties. Counsel further put forward that for any entity within the free trade zone to be obligated to pay taxes, levies, rates or duties, there must be a direct abolition of the provisions of sections 8 and 18(4) of the Nigeria Export Processing Zone Act, 2004, it was further submitted that for a company operating within the free trade zone to pay industrial training contribution pursuant to sections 6 (1) & (3) of the Industrial Training Fund (Amendment) Act, such a company must require approval for expatriate quota and since the 1st Respondent does not require expatriate quota, the 1st Respondent is not under any obligation to pay training contribution being demanded by the Appellant from the 1st Respondent.

The Appellant's Counsel in contention argued that the 1st Respondent engages in import and export in carrying out its activities and that the 1st Respondent cannot engage in import and export without utilising custom services. That while the 1st Respondent argues that it does not require expatriate quota, the 1st Respondent did not deny that it utilises custom services for export and import. Learned counsel further stated by the Industrial Training (Amendment) Act, 2011, organisations operating within free trade zones are liable provided either of the two conditions i.e., requiring approval for expatriate quota or utilizing custom services in matters of export and import, exists, and that by the 1st Respondent's admission that it engages in import and export in carrying out its activities, it is safe to say that the 1st Respondent utilises customs services in matters of import and export which is one of the two conditions that renders a company operating within the free trade zones liable to pay industrial training contribution, and thus counsel urged the appeal court to so hold.

Decision of the Court

In resolving this issue, the Court of Appeal held that:

Organisations operating within the free trade zones are liable to make contributions for industrial training funds provided it is shown that the organisation requires approval for expatriate quota or utilizes customs services in matters of import and export. Furthermore, Section 6 (3) of the Industrial Training Fund (Amendment Act) 2011 creates an exception to the general provisions of sections 8 and 18(4) of the Nigeria Export Processing Zone Act, 2004, thereby rendering organisations operating within the free trade zones liable to make contribution for industrial training fund provided any of the two alternative conditions exists.

Issue resolved in favour of the Appellant.

M. C. Okwara for the Appellant
Respondent – Unrepresented

This summary is fully reported at (2023) 4 CLRN.

www.clrndirect.com

info@clrndirect.com