

BEFORE THE APPELLATE TRIBUNAL, SINDH REVENUE BOARD AT KARACHI

SB-I

APPEAL NO. AT-30/2014

M/s. Avicon Aviation.....Appellant

Versus

Assistant Commissioner, SRB, Karachi.....Respondent

Date of hearing 08.08.2018

Date of Order 13.08.2018

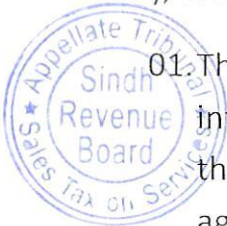
Mr. Muhammad Shafi Siddiqui, Advocate for Appellant

Mr. Syed Waqas Zaidi, AC-SRB for Respondent.

ORDER

Justice[®] Nadeem Azhar Siddiqi: This appeal has been filed by the appellant challenging the Order-in-Appeal No.63/2013 dated 20.12.2013 passed by the Commissioner (Appeals) confirming the Order in Original No. 174/2013 dated 05.08.2013 passed by the Assistant Commissioner, (Ms. Anum Shaikh), SRB, Karachi.

01 The facts of the case as mentioned in the Order-in-Original are that information obtained from Civil Aviation Authority (CAA) has shown that appellant is holding license from CAA as an authorized handling agent for non-schedule flight permission at airport and providing airport services, specified below 9824.0000 (Airport Services) of the Second Schedule of the Sindh Sales Tax on Services Act, 2011 (hereinafter referred to as the Act) which are taxable services.



M. S. Siddiqi

196

02. It was alleged in the order in original that the appellant was served with letters dated 17.04.2013 and 24.05.2013 to get itself registered with SRB in terms of section 24 of the Act and pay sales tax on the above taxable service. The appellant vide its reply dated 24.04.2013 denied to have providing such services.
03. A show-cause notice dated 04.07.2013 was issued to the appellant to explain as to why it should not be compulsorily registered and why penalty for non-registration may not be imposed. The appellant filed reply dated 13.06.2013. Again the appellant denied to have provided Airport Services. Again a reply dated 10.07.2013 was filed and the appellant has provided a letter from CAA to the effect that the appellant is not providing Airport Services.
04. The Department vide order dated 05.08.2013 compulsory registered the appellant and imposed penalty of Rs.10,000/=.
05. The said order of compulsory registration was challenged by the appellant by way of filing appeal before the Commissioner (Appeals), who dismissed the appeal, hence this appeal before this forum.
06. Mr. Muhammad Shafi Siddiqui the learned ITP for the appellant on 30.07.2015 submitted that appellant has not provided taxable airport service. He then submitted that CAA has granted license to the appellant as non-scheduled flight permission agent and that the appellant name is not appearing on the list of ground handling agents maintained by CAA. He then submitted that the appellant only introduced the non-scheduled flights to the concerned ground handling agents who received their charges through appellant and the service provider is recovering service charges and sales tax and in turn deposited the same with SRB. Mr. Shafi Siddiqui on 17.08.2015 submitted that appellant has not provided any taxable airport services specified below tariff heading 9824.000 and 9819.9090 (services provided or rendered by port operators, airport operators, airport ground service providers and terminal operators). He then



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submitted that appellant works on commission basis to facilitate its clients and the services acquired by client through registered ground handling agents and Sindh sales tax on services was paid by service providers i.e. Shaheen Airport Services and Jerry Dnata. On 08.08.2018 Mr. Shafi Siddiqui reiterated his earlier arguments and submitted that the appellant received services for its foreign based clients from service provider of airport handling services and it is not providing any services nor it can provide any services without valid license from CAA. He then submitted that the department has wrongly compulsory registered the appellant without considering that the appellant is not providing any services for which it was registered.

07. Earlier on 30.07.2015 Ms. Anum and Ms. Umi Rubab Assistant Commissioners for Respondent appeared and submitted that the appellant is earning commission from principal for getting work done from authorized ground handling services provider and is liable to pay Sales tax on services and referred to Rule 40B of the Act. She also referred to services specified below Tariff Heading 9824.0000 and states that Entry No.2 relates to Airport Services and the service provided by appellant to their principles is covered by the said tariff heading.

08. On 17.08.2015 Ms. Umi Rubab and Mr. Abdul Muhimin the departmental representatives appeared and submitted that the website of Appellant contains that they are providing ground handling services to their clients. The departmental representative further submitted that neither the contract between the appellant and its clients are placed on record nor any invoice sent by appellant to its client is placed on record to ascertain the nature of service provided by the appellant to its clients.

09. On 08.08.2018 Mr. Syed Waqas Zaidi AC-SRB appeared and submitted that the appellant is providing taxable services of Airport Services and was rightly compulsorily registered under Tariff Heading



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9826.0000. He then submitted that as per Section 24 all residents are required to get registration from SRB and on failure of the service provider to get registration the department has the authority under Section 24B to compulsory registered the service provider. He then submitted that since the appellant has failed to get voluntary registration penalty was rightly imposed.

10. During pendency of appeal the appellant informed on 04.12.2015 that it has invoked Section 65 of the Act for resolving the dispute through ADR. Since then the appeal was pending. A report was called from the Department on 3.07.2015 regarding the fate of Application under section 65 of the Act. On 08.08.2018 Mr. Waqas Zaidi informed that the application is not traceable, hence this appeal is decided on merits.

I have heard the learned representative of the parties and perused the record made available before us.

11. The allegation against the appellant that despite providing airport services the appellant failed to get registration. The contention of the appellant is that it is not providing airport services as it has no such license from CAA. From the documents produced by the appellant it is clear that the appellant is not a service provider of airport services. The respondent has not produced any document in support of its claim that the appellant is a service provider of airport service.

12. As per the appellant it works on commission basis to facilitate its foreign clients and the services acquired by appellant for its client through registered ground handling agents and Sindh sales tax on services was paid by service providers i.e. Shaheen Airport Services and Jerry Dnata. The Commissioner (Appeals) in para 7 of his order has held as under:

"I have gone through the founds of appeal and written arguments, minutely besides the arguments took place in course of hearing and other material provided in support thereof. The Sales Tax Invoice GEN-KHI-0028/13 (No.SI-0062/13) dated 30.04.2012 issued by Gerrys



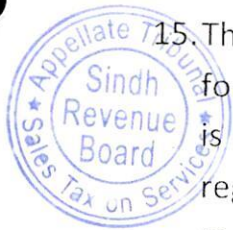
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Dnata (Pvt) Ltd to the appellant shows that they have billed to the appellant an amount of Rs.1,368,737/= including Sales Tax of Rs.88,791/- in lieu of Technical Handling Services they provided. Similarly, another invoice No. nil dated 13.06.2012 issued by M/s Shaheen Airport Services, Karachi reflects that they have billed the appellant amount of Rs.2,054,192/= in lieu of Ground Handling Services they provided, this amount also includes Sindh Sales Tax to the tune of Rs.283,337/=".

13. From the above quotation it is clear that the appellant is not the service provider of airport service but actually it is a service recipient for its foreign based client. Since the appellant is not a service provider of airport service it cannot be compulsory registered under Tariff Heading "Airport Services".

14. The Commissioner (Appeals) in para 10 of his order held as under:
"From the above quoted e mail it is also evident that although the appellant is not licensee of ground handling services or technical handling services from CAA but is still unauthorizedly involved in providing such services. Hence M/s Avicon Aviation is liable to be registered with SRB under Tariff Heading 9824.0000 and Contractual Execution of Work under Tariff heading 9809.0000".

15. The above finding of the Learned Commissioner (Appeals) is without force. The appellant is not providing any service. Even if the appellant is recipient of service for its foreign based client it cannot be registered under Tariff Heading 9809.0000 (services provided or rendered by persons engaged in contractual execution of work or furnishing supplies). For registering the appellant under this tariff it is necessary that at the same time the appellant is providing service under contract and also furnishing supplies. The Tariff heading 9809.0000 is a general heading to cover contractual execution of work or furnishing supplies not falling in any other tariff heading. The benefit under Tariff heading 9809.0000 can only be taken if the service provided or rendered is not listed in the Second Schedule to



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the Act and provided under contractual execution of work or furnishing supplies. Tariff heading 9809.0000 has two components i.e. providing or rendering (1) contractual execution of work or (2) furnishing supplies. To attract 9809.0000 it is necessary that both the components are available in the contract or agreement. Only the composite agreement of execution of work and furnishing supplies can be taxed under this tariff heading. (The detail discussion on this point is available in the orders of Tribunal in the case of Appeal No. 17/2013 M/s APM Terminals Pakistan (Pvt) Ltd. versus The Assistant Commissioner-SRB-VI and Appeal No. AT-14/2016 Deputy Commissioner, SRB, Karachi versus M/s. Byco Terminal Pakistan Limited).

16. In view of the above discussion the appeal is allowed. The copy of the order may be provided to the parties.


(Justice (R) Nadeem Azhar Siddiqi)
Chairman

Karachi.

Dated.13.08.2018

Certified to be True Copy

Copies Supplied to:

- 1) The Appellant through Authorized Representative.
- 2) The Assistant Commissioner, SRB, Karachi.
Copy for Information.
- 3) The Commissioner Appeals, SRB.
- ✓4) Guard File.
- 5) Office File.


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