

(Guard file)

BEFORE THE APPELLATE TRIBUNAL, SINDH REVENUE BOARD

APPEAL NO. AT-137/2015

M/s Orient Energy System Appellant
Versus
The Commissioner-1, SRB, Karachi. Respondents
Mr. Naveed Alam For Respondent
Mr. Shoaib Rajkoti AC-SRB, Karachi. For the Respondent
Date of hearing 17.10.2018
Date of Order 19.10.2018

ORDER

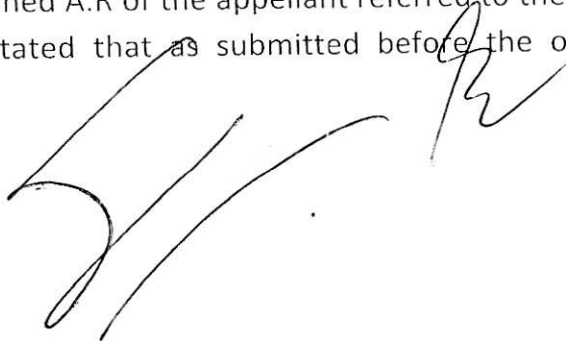
Agha Kafeel Bark: This appeal is filed aggrieved of Commissioner (Appeals) order dated 09.10.2014 whereby he upheld the order-in-original dated 08.09.2014. The facts of case are as under:

02. The analysis of annual financial statement as on 30.06.2012 of the appellant who was voluntarily registered on 24.04.2012, revealed that it is also engaged in services of rental of generators and others machinery, equipment, maintenance and installation & erection, beside the main business of indenting commission and sales & supply of generators and machinery. The officer concerned took total value of taxable services at Rs.1,325,258,191/- and after issuing a show cause notice on 18.05.2014 taxed the whole amount under section 23/47 of the Act and after giving credit to tax paid created tax demand of 94,334,102/-, beside imposing penalty of 4,716,705/- under section 43 (3).

03. The AC Unit-09 SRB assessed all the receipts under tariff heading 9809.0000 under the category of "contractual execution of work or furnishing supplies" which the appellant denies. The appellant took the plea before the Commissioner (Appeals) that the value of services taxed by the AC included maintenance & transportation which do not fall under the category of contractual execution of work and have specific classification under 1st and 2nd Schedule.

04. The Commissioner (Appeals) dismissed the appeal and confirmed the order-in-original in toto. Hence this appeal before us.

05. The learned A.R of the appellant referred to the breakup of revenue from various sources and stated that as submitted before the officers below the appellant had



revenue receipts from the following sources of services rendered in Sindh during the Federal Tax 2011-2012

1.	Erection and instatllation	-	313,889,406/-
2.	Maintenance	-	487,800,681/-
3.	Rental of equipment etc.		74,120,199/-
4.	Transportation		<u>10,061,296/-</u>
	Total		885,921,582

Note: as regard receipts from rental equipments, the AC SRB has not charged any tax on it as these were not taxable during the period under reference.

06. During the assessment proceedings the appellant has deposited sales tax on erection and installation amounting to 38,426,118/- whereas it also deposited the balance of 11,796,186/- with SRB under Amnesty Scheme on 21.06.2018.

07. On the issue of erection and installation services rendered in Sindh which have also been taxed under contractual execution of work, the learned AR submitted that these services were distinct from the services of "contractual execution of work or furnishing supplies". At this stage he referred to two decisions of this Tribunal in the case of APM Terminal AT-17/2013 decided on 29.09.2015 and Byco Terminal AT-14/2016 and argued that as interpreted in these judgments the services under 9809.0000 have to be a composite contract for work and furnishing of supplies, as against OR furnishing supplies. Thus under this interpretation the services of erection and installation which involve mere rendering of services and nothing in the nature of furnishing supplies, do not fall under the definition of contractual execution of work. Besides, he argued that this is a specific service which has been forcibly assessed under tariff heading 9809.0000 whereas it falls under tariff code 9839.0000 (erection, commissioning and installation services) which has been enlisted in 2nd Schedule w.e.f 2015 and thus was not taxable during the period under reference.

08. During the hearing before the Tribunal Mr. Naveed Alam the learned AR submitted a write up stating that erection & installation are covered under 9814.2000 (contractor of building) and same were brought to tax net first w.e.f 01.11.2011 and then 24.01.2012. So admittedly these services are taxable from 01.11.2012.

09. The learned AC SRB however, argued that as per documentary evidence specific contracts were awarded for erection & installation as such these were right by assessed under tariff code 9809.0000.

10. The learned AR submitted that while the appellant is contesting the action of the SRB in taxing erection & installation under the category of contractual execution of work ever since a show cause notice was issued on this point the fact was that the appellant had charged it from its clients @ 16% under tariff code 9814.0000 (contractor of buildings) and deposited Sindh Sales Tax at Rs.38,425,111/- during the litigation and balance Rs.11,796,186/- under amnesty scheme in June, 2018. However, the AC vehemently pressed that the agreements entered by the appellant with its clients prove that it was contractual execution of work and it hardly matters it was given a specific category by the appellant for the convenience sake.

11. About maintenance services the learned A.R referred to its definition under section 2 (56 A) entered in 2014 which covers all types of maintenance including specialized cleaning services etc. and submitted that these were not taxable during the period under reference and was inserted in 2nd Schedule under main tariff head 98.22 (Services provided or rendered for specific purposes) and sub-heading 9822.2000 by Finance Act, 2014.

12. Mr. Muhammad Shoaib Iqbal AC, Unit-03 who filed a statement on 07.09.2018 submitted in writing that:

“The findings and perusal of the contract agreements reveal that the services of maintenance and cleaning as provided by the company were not taxable during the impugned period”.

13. In view of above statement the assessment of maintenance service with the value at 487,800,681/- is hereby set aside.

14. An amount of Rs.10,061,296/- related to transportation services rendered in Sindh has also been taxed to sales tax under the general tariff heading 9809.0000 i.e. contractual execution of work etc. Although the learned A.R contested this point stating that transportation services were listed in 1st Schedule right from beginning, same were listed in 2nd Schedule under tariff heading 9836.0000 only w.e.f 07.07.2014. However, he admitted that these services were irregular and there are no agreements or contracts in support of his statement about nature of services. He further stated that the assessing officer had taxed these services under 9809.0000 as contractual execution of work which was not justified. He also argued that unless there is furnishing of supplies

with the execution of work a service does not fall in the category of contractual execution of work or furnishing of supplies under 9809.0000. He also cited two judgments of DB-I of his Tribunal in APM Terminal (AT-17/2013) and Byco Terminal (AT-14/2016) on the interpretation of the services enlisted in 2nd Schedule.

15. Although the AR has weight in his statement that transportation services were not enlisted in 2nd Schedule in the period under reference, in the absence of any supporting evidence about the nature of services, rendered such as an agreement, the assessing officer was justified to assess the same in general category of contractual execution of work under tariff heading 9809.0000 and we uphold his order on this point. The AR also submitted that ever since these services have become taxable under specific heading 9822.0000 returns are filed and tax being paid.

16. The penalties are not maintainable hence set aside in view of above findings particularly wrongly assessment of the whole amount of value of all receipts from all services without considering the period of chargeability and the admission of the concerned officer submitted in writing on 07.09.2018 before us that agreements etc were examined subsequent to assessment which led to the conclusion that certain services were not taxable.

17. The above discussion is summed up as under:

17.1 That the appellant has been engaged in rendering various services within and outside Sindh; details of these services rendered within Sindh are given in Para 05 above. These details were picked up by the AC,SRB from the annual financial statement of the company for the period 01.07.2011 to 30.06.2012 and the officer after issuing show cause notice subjected whole receipts of 885,921,582/- to sales tax @ 16%, amounting to Rs.38,426,116/-. While there was no dispute about rentals of equipment the appellant disputed imposition of tax on receipts from all other three services under the category of "contractual execution of work", arguing that these were different services as apparent from statement of account and also from contracts, agreements and invoices.

17.2 About erection & installation it was argued that it was specific service which became taxable w.e.f. 10.07.2015 under tariff heading 9839.0000 hence not taxable in the period from 01.07.2011 to 30.06.2012. However, admittedly the appellant charged tax from its clients, although under a different tariff heading i.e. 9814.2000 as "contractor of buildings" and also deposited tax amounting to Rs.38,426,168/- with SRB and balance of tax amounting to Rs.11,796,186/- was paid under amnesty scheme in

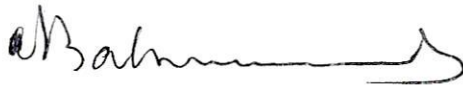
June, 2018. The learned AC, SRB also verified the same, hence the assessment of receipts of 430,802,647/- to tax amounting to Rs.313,889,406/- under this head is confirmed.

18. The taxation of maintenance services was also challenged because it was not taxable during the period under consideration and has come into tax net w.e.f. 07.07.2014 under tariff heading 9822.2000. As discussed above the AC SRB filed written statement that this service was not taxable during the period under consideration as evident from the agreements, contracts submitted later on, at the stage of appeal pending before Commissioner (Appeals); hence we do not hesitate to set aside assessment order on this point.

19. In respect of assessment of transport services although the learned AR submitted that these were also specific services being taxable only w.e.f 07.07.2014 thus not taxable in the year under reference, no documentary evidence such as agreements is submitted at any stage with the plea that these were irregular services and the taxability of the same has also been suspended by the SRB for some time.

20. In view of the vagueness of the nature of these services, titled as Transportation by the appellant himself and in the absence of any arguments we uphold the assessment of these services valued at Rs.10,061,296/- to Sindh Sales Tax under tariff heading 9809.0000 under contractual execution of contract.

21. The appeal is disposed of as above.



(Muhammdad Ashfaq Balouch)
JUDICIAL MEMBER



(Agha Kafeel Barik)
TECHNICAL MEMBER

Karachi.

Dated: 19.10.2018

Copies supplied for compliance:-

1. The appellant through authorized Representative.
2. The Assistant Commissioner (Unit-), SRB, Karachi.

Copy for information to:-

3. The Commissioner (Appeals), SRB, Karachi.
4. The Deputy Commissioner (Legal), SRB, Karachi.
5. Office Copy.
6. Guard File.