

BEFORE THE SINGLE BENCH-II APPELLATE TRIBUNAL SINDH
REVENUE BOARD

Appeal no:42/2016

M/s NRSP Microfinance Bank LTD.....Appellant

VERSUS

Assistant Commissioner SRB Karachi..... Respondents

Mr. Mohammad Khurshed A.C.M.A.....For Appellant

Mr. Zohaib Athar A.C. (SRB).....For Respondent

Date of hearing: 28-02-2018

Date of order: 18-05-2018

ORDER

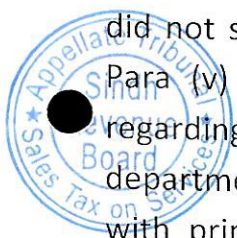
Mr. Muhammad Ashfaq Balouch:

Present appeal has been filed by the above named appellant, challenging order in appeal No: **157/2015** (hereinafter referred to as Order in Appeals) passed by Commissioner (Appeals) SRB, whereby Order In Original No: 338/2015 dated 15th June, 2015 (hereinafter referred to as OIO), passed by Ms. Lubna Najmi A.C SRB Karachi was partly allowed and partly set aside.

(2). Brief facts as disclosed in OIA, are that appellant is registered person of SRB, providing and rendering the banking services, falling under tariff heading 9813.4000 of the 2nd Schedule of the Sindh Sales Tax On The Services Act, 2011 (hereinafter referred to as "Act 2011"). During the scrutiny of tax profile of the appellant, respondent observed that appellant has claimed and adjusted in admissible input tax, amounting to Rs, 2439,340/- against the Sindh Sales Tax On Services Rules, 2011 (hereinafter referred to as "Rule 2011"). Accordingly show cause notice (hereinafter referred to as SCN) was issued. After hearing and considering the submissions of appellant amount of Rs, 730608/- was found in violation of proviso to Rule 22(1) of Rules 2011, amount of Rs, 248,313/- was also disallowed as it was found in violation of Sub rules 2 of Rules 22, as the same were not consumed in the province of Sindh, amount of Rs, 700,735/- was also

disallowed because the suppliers of these invoices did not deposit the tax amount, which was violation of Rule 22A(iv) of the Rules 2011, amount of Rs, 1,248,718/- was also disallowed as it was found against the sub Rule (iii) of Rule 22. Amount of Rs, 82,950/- were also disallowed because the services were not exclusively consumed against the provision of the taxable services as required by the sub rule 2 of rule 22 read with rule 22 A, clause (i),(ii) and 22A of the Rules 2011 and amount of Rs, 85,016/- was disallowed because appellant had claimed input tax credit against the services taxed at lower rate therefore, were inadmissible under the law. After reconciliation/verification respondent had drop the proceedings against an amount of Rs, 964,588/- and amount of Rs, 1474752/- was disallowed for the purpose of input tax adjustment and penalties under section 43(3) of amount Rs, 73,738/- under section 43(6d) Rs, 1474,752/- under section 43 (11) of Rs, 73738/- were imposed and default surcharge under section 44 was also alleged.

(3). Department in their parawise comments has denied that Order in Original is bad in law, in Para (ii) department has stated that adjustment of the input tax against the time barred invoices was in admissible in light of rule 2(i) 2nd Schedule of the Sindh Sales Tax On The Services Rules, 2011. (hereinafter referred to as "Rules 2011"), it was stated in Para (iii) that judgment of Custom And Excise Tax Tribunal, referred in the OIA was not applicable in the circumstances of present case, in Para (iv), it is contended that invoice No. 1685 dated 08/11/2012 did not specified as to where for these goods were purchased or consumed, in Para (v) department claimed that appellant failed to provide clear evidence regarding the payments made to the M/s Linkdotnet. In Para (vi), (vii) and (viii) departments stated that appellant provided only breakups which is not supported with primary/original evidence, such as General ledgers of the branches and invoices. The breakups provided by the appellant cannot be held substantive record/evidence. In Para (ix) department stated that appellant is providing both taxable/nontaxable and exempt services in Sindh, therefore, under the provision of rule 22 (3) of the rules 2011 the input tax claimed by the appellant is to be apportioned. In Para (x), (xi), (xii), (xiii), (xiv) and (xv) the department has stated that appellant is providing exempt services of cheque book issuance. Hajj and Umrah, Musharqa, Modarba and utility collection services. These services are



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exempted. Appellant also providing non taxable services of advance and loans. It shows appellant is engaged in the provision of funds based and non funds based services. Funds based services involved the use of funds against which consideration in form of interest/markup is received. Whereas non funds based services are the services which are rendered/provided involving the use of funds and consideration there against is received in the form of commission/fee/charge whereas, the cheque Book Issuance, Hajj and Umrah, Musharqa and Modarba and utility collection charges have been exempted vide under circular dated 1st July 2011. Whereas interest or markup has been held or nontaxable under rule 30(4) of the Rules 2011. The output tax of Rs, 50,637/- was allowed by the Learned Commissioner (Appeals) subject to proof of payment by the supplier. It is also contended that appellant with the malafide intention avoided to pay the tax therefore, was rightly penalized.

(4). I have heard Mr. Mohammad Khurshid A.C.M.A for the appellant, Mr. Rashid Ahmed AC SRB for the respondent/department and perused the record.

(5). Appellant though agitated several issues in memo of appeal but pressed only following issues.

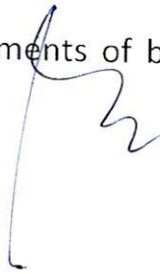
(6). My findings with the reasons are recorded here as under:-

(7). Issue No 1:- Claim of adjustment of input of Rs, 73608/- after expiry of four months.

(8). So far this issue is concerned the contention of Learned Counsel for the appellant was that adjustment of input tax credit of Rs, 73608/- could not be claimed because payment invoices were received late after expiry of four months.

(9). On the other hand stance of department is that under rule 22(1) of SST rules, the period for claiming adjustment of input tax is 4 months from the date of issuance of payment invoices.

(10). I have considered the arguments of both the sides and perused the record.



(11). It is admitted position that appellant has claimed input tax credit of Rs, 73608/- after expiry of 4 months period as stipulated in provision to sub rule (i) of rule 22 of Sindh Sales Tax on Services Rules 2011. For such delay no plausible explanation has been brought on record by the appellant. It is also worthwhile to mention here that appellant though claimed that under sec 81 of Act 2011 delay can be condoned but record shows that appellant has not filed application before the competent authority.

(12). Keeping in view the above facts and circumstances when appellant has not been able to show any reasonable ground for claiming late adjustment of input tax credit. Therefore, the order of Learned. Commissioner (Appeals) on the issue is proper and does not require any interference.

(13). Issue No 2:- Claim of adjustment of Input tax of Rs, 54897/-

(14). Learned Counsel for the appellant has claimed that UPS worth RS, 54897/- were purchased by head office Lahore for use in Branches working in Sindh. In support their claim appellant filed copies of sales tax returns for the relevant period.

(15). Mr. Rashid Ahmed A.C SRB has contended that appellant has failed to produce any document/invoices to show that there UPS were purchased for use in Sindh. It was also argued that invoices produced by appellant only shows that supplier and consumer both are resident of Punjab.

(16). I have considered the submission of both the parties and from the perusal of available record it appears that appellant has not been able to produce any authentic documents before Assessing Officer or Learned Commissioner (Appeals) that these UPS were purchased for use in Branches of appellant Bank in Sindh.

(17). Furthermore, as per sub rule, 2) of rule 22 of SST rules of 2011, the adjustment of input tax is not admissible on the services provided or rendered outside Sindh. Admittedly when appellant has not been able to produce any substantive proof/documents that there UPS were purchased and used in Sindh,

therefore, Learned Commissioner (Appeals) rightly rejected the claim of appellant on this issue.

(18). Issue No 3rd :- Claim of Rs, 50637/-

(19). Learned Counsel for the appellant has stated that all the documents viz invoices, cheque and bank statements reflecting that payment of amount of Rs, 50637/- was made to M/s Linkdotnet.

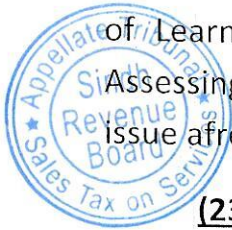
(20). The plea of department/respondent was that appellant has not been to produce any evidence that M/s Linkdotnet made payment to SRB, therefore, claim was correctly disallowed in light of rule 22 (5) of SST. Rules 2011.

(21). After considering contention of both the sides and perusal of orders and record when it is admitted by the Learned Commissioner (Appeals) that appellant has brought on record sufficient evidence that appellant had discharged his tax liability and paid the tax to M/s Linkdotnet but has not to produce evidence that M/s Linkdotnet deposited that tax with SRB or not and appellant failed to comply with rule 22 of the Rules 2011.

(22). In these circumstances it would be just and proper to set-aside order of Learned Commissioner (Appeals) and remands the case on this issue to Assessing Officer to verify the relevant record of M/s Linkdotnet and decide this issue afresh.

(23). Issue No 4:- Adjustment of input tax of Rs, 1248718/-

(24). Forth issue pressed by the appellant is about adjustment of entire input tax of Rs,1248718/- which was rejected by the Assessing Officer and Learned Commissioner (Appeals) for the reason that (i) adjustment of input tax claimed by the appellant, was pertaining to the services provided by the appellant outside the jurisdiction of Sindh viz Multan and Abbottabad and appellant failed to give any reason as why those two districts were included for the purpose of input tax claimed against the services provided outside the Sindh. (ii) As per Learned Commissioner (Appeals) the claim of department was that since the transaction involved tax able and non taxable and exempt services or the service at lower rate, therefore, appellant was required to apply apportionment formula



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further appellant failed to substantiate their claim of adjustment of input tax therefore, claim was rejected.

(25). In this respect the contention of appellant is that the bank is engaged only in rendering taxable services in province of Sindh and bank doesn't provide exempt services i.e. Modarba, Musharqa, Hajj, Umrah, the cheque Book Issuance. Further it was contended of behalf of appellant that markup is income of bank which doesn't fall in preview of service because it is not covered either in 1st schedule or 2nd schedule of the Act 2011. It was also contended that breakup of income was placed before the Learned Commissioner (Appeals). It was claimed that rule 30(4) of Sindh Sales Tax Rules, 2011 deals with value of taxable services not with apportionment.

(26). On the other hand plea of department is that appellant has claimed input tax credit without apportionment as required under sub rule (3) of Rule 22 of the Sindh Sales Tax On Services Rule, 2011. Further, lending of money against an interest, fee or markup is a service but it is exempt under rule 30(4) Sindh Sales Tax On Services Rule, 2011. As Honorable Supreme Court of Pakistan held in case of M/s J.S Bank that all the services being provided by the Bank are taxable. It was mandatory for the appellant to apportion the taxable services, non taxable services and exempt services.

(27). I have considered the arguments of both the parties and perused the record.

(28). From the perusal of Para 7 of Order in Appeal it appears that before Learned Commissioner (Appeals) appellant has only provided the breakup but has not provided the records and evidence i.e. the invoices to show that services were taxable or non-taxable. On the other hand the claim of appellant is that they have sufficient evidence to prove their claim.

(29). In these circumstances it would be just and proper to set aside the order of Learned Commissioner (Appeals) and Assessing Officer remanded back to the Assessing Officer to considered and decide this issue after going through the evidence which may be produced by the appellant. And appellant is required to

produce all the evidence before the Assessing Officer to determine the nature of service and jurisdiction where in these services in question were provided.



(Muhammad Ashfaq Balouch)
Judicial Member
Single bench -II

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1. The Appellant through Authorized Representative.
2. The Deputy Commissioner (Legal) SRB
3. The Assistant Commissioner, SRB for compliance Copy for information
4. The Commissioner Appeals, SRB
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