

BEFORE THE APPELATE TRIBUNAL SINDH REVENUE BOARD AT KARACHI

DB-1

APPEAL NO. AT-68/2017

M/s New Ghulam Mustafa & BrothersAppellant

Versus

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

Mr. Ghulam Shah Abbasi, Advocate For Appellant

Mr. Nasir Bachani, AC SRB for Respondent

Date of hearing 08.02.2018

Date of Order 08.02.2018

ORDER

Justice ® Nadeem Azhar Siddiqi: This appeal has been initially filed by the Appellant challenging the order-in-original No.369/2016 dated 17.05.2016 passed by the Deputy Commissioner (Mr. Abdul Rauf), SRB, Karachi before Commissioner (Appeals), SRB who has transferred the same to the Tribunal under section 59 (7) of the Sindh Sales Tax on Services Act, 2011 for deciding the same in accordance with law.

01. The facts as stated in the order-in-original are that the appellant is registered with SRB in the category of services provided or rendered by persons engaged in contractual execution of work and furnishing supplies and construction services falling under tariff heading 9809.0000



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and 9824.0000 of the Second Schedule of Sindh Sales Tax on Services Act, 2011 (herein after referred to as the Act) subject to tax @ 14%.

02. It was alleged in the order-in-original that on scrutiny of record it was observed that M/s SEPCO III during the tax periods from November, 2015 to February, 2016 paid tax of Rs.38,277,469/= to the appellant, but the appellant declared tax of Rs.24,166,387/= and short declared tax of Rs.14,111,082/=. The other allegation was that appellant has claimed inadmissible input tax of Rs.25,369,679/=.
03. A show cause notice dated 29.03.2016 was issued to the appellant for recovery of tax amounting to Rs.39,481,661/= along with default surcharge and penalty. The appellant submitted written reply dated 07.04.2016 stating therein that the appellant is issuing invoices and is liable to charge the sales tax. It was further stated that the appellant is regularly filing the sales tax returns.
04. Finally the Assessing Officer passed assessment order determining the sales tax of Rs.14,111,082/= on account of short declared/short paid sales along with default surcharge and penalty of Rs.705,554/= and Rs.25,369,679/= on account of inadmissible input tax along with default surcharge and penalty of Rs.1,268,484/=.
05. The Appellant challenged the Order-in-Original by way of filing appeal before the Commissioner (Appeals) who instead of deciding the same has transferred the appeal before this Tribunal taking benefit of section 59 (7) of the Sindh Sales Tax on Services Act, 2011.
06. During pendency of appeal before this form the learned AC, SRB under the direction of the Tribunal filed Reconciliation Report dated 10.01.208. In the Report regarding the short declared tax the learned AC submitted that due to erroneous duplication of 21 invoices by SEPCO III the liability of Sindh Sales Tax was raised. Regarding the inadmissible input tax the learned AC submitted that the appellant has deposited a sum of Rs.15,138,790/= and is required to deposit balance amount of Rs.10,230,889/=.



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07. Mr. Ghulam Shah, Advocate files reconciliation statement regarding claim of input tax. He submitted that in the order in original an amount of Rs.25,369,679/- was disallowed on account of inadmissible input tax out of which the appellant has already deposited Rs.15,138,790/-. He then submitted that further amount of Rs.2,500,000/- was deposited on 31.01.2018 and a further amount of Rs.2,500,000/- was deposited on 08.02.2018 and the balance of Rs.5,230,889/- will be deposited in reasonable time as allowed by the Tribunal.

08. Mr. Nasir Bachani the learned AC filed another Reconciliation Report today stating there in that the appellant is liable to deposit the difference amount of tax amounting to Rs.2,976,908/= on account of short paid tax. In respect of inadmissible input tax the AC claimed a sum of Rs.35,056,915/=. The learned AC was directed to recheck the amount. On rechecking the amount the learned AC submitted that in the statement filed today an amount of Rs.2,976,908/- on account of short paid tax was shown payable due to some error/mistake as the withholding amount deposited by SEPCO III was not adjusted and that as per earlier report dated 10.01.2018 the liability after deduction of duplicate amount claimed by SEPCO III becomes zero. Regarding the inadmissible input tax the learned AC claimed a sum of Rs.35,056,915/= against the determined amount of Rs.25,369,679/= and submitted that the amount has been calculated from July, 2015 to February, 16. The learned AC acknowledged that in the show cause notice and in the order in original the amount determined was Rs. 25,369,679/= for the periods from November, 2015 to February, 2016 and after deducting the payment made by the appellant in this regard the balance payment remains Rs.5,230,889/-. Mr. Nasir Bachani submitted that the appellant may be directed to deposit the same with SRB, Hyderabad Region.



09. Mr. Abbasi is satisfied with the Reconciliation Report and submitted that the appellant is only liable to deposit a sum of Rs.5,230,889/= on account of inadmissible input tax, which will be deposited as per time allowed by the Tribunal. He also submitted that since mensrea is lacking the imposition of default surcharge and penalty are not justified. He further submitted that he will advise his client to deposit the balance amount with SRB Hyderabad Region through cheque against proper receipt.

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10. The dispute on both the issues i.e. short declared sales tax and claiming inadmissible input tax has been settled. The short declared tax was due to duplication of 21 invoices by SEPCO III and the appellant was not found at fault. The appellant has agreed to deposit the inadmissible input tax claimed by it and had already deposited considerable amount with SRB. The department at this stage cannot claim any amount in excess of amount confronted in the show-cause notice.

11. As far as penalty and default surcharge is concerned the appellant is not liable to pay the same as the department has failed to establish mensrea and malafides on the part of the appellant.

12. In view of above the appeal is allowed in respect of short declared/short paid sales tax and is dismissed in respect of claiming admissible input tax. The appellant is directed to deposit the balance amount of Rs.5,230,889/- on or before 08.03.2018 positively. Failing to deposit the amount by 08.03.2018 by the appellant with the SRB, Hyderabad Region the appellant is also liable to pay default surcharge and penalty from the date of order in original (17.05.2016) to the actual date of payment.

The appeal is disposed of. The copy of the order be provided to the authorized representatives of the parties.

(Agha Kafeel Barik)
TECHNICAL MEMBER

(Justice Nadeem Azhar Siddiqi)
CHAIRMAN

Karachi: Dated: 08.02.2018

Certified to be True Copy

Copies supplied for compliance:-

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

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APPELLATE TRIBUNAL
SINDH REVENUE BOARD

Copy for information to:-

3. The Commissioner (Appeals), SRB, Karachi
4. Office Copy, Guard File.