

BEFORE THE APPELATE TRIBUNAL SINDH REVENUE BOARD AT KARACHI

SB-1

APPEAL NO. AT-04/2018

M/s M N International Private Ltd.....Appellant

Versus

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

Mr. Waleed Patoli, AC SRB for Respondent

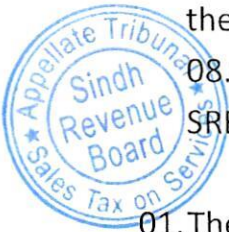
Date of hearing 10.05.2018

Date of Order 14.05.2018

ORDER

Justice[®] Nadeem Azhar Siddiqi: This appeal has been filed by the appellant challenging the Order-in-Appeal No.17/2018 dated 30.01.2018 passed by the Commissioner (Appeals) in Appeal NO. 74/2016 filed by the appellant against the order in original No. 227/2016 dated 08.02.2016 passed by the Assistant Commissioner (Mr.Nasir Bachani) SRB, Karachi.

01.The facts as stated in the order-in-original are that the appellant is registered with SRB and is engaged in providing and rendering taxable services in Sindh classified under tariff heading 9809.0000 (contractual Execution of Work or Furnishing Supplies) of the Second Schedule of Sindh Sales Tax on Services Act, 2011 (herein after referred to as the Act) subject to Sindh sales tax.



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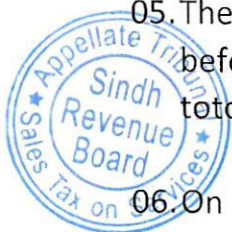
02. The allegation as stated in the order-in-original is that on scrutiny of monthly sales tax statement e-filed by M/s United Energy Pakistan Limited (UEPL) for the tax period July, 2015 it revealed that the appellant provided taxable services valuing to Rs.4,733,333/= to UEPL involving Sindh sales tax of Rs.710,000/= out of which UEPL had deposited a sum of Rs.142,000/= but the appellant has failed to deposit the balance amount of Rs.568,000/=.

03. A show-cause notice dated 20.08.2015 was served upon the appellant calling upon it to show-cause as to why tax liability of Rs.568,000/= may not be assessed and determined along with default surcharge and penalties. The appellant in the reply submitted that the appellant had filed the return for the tax period July, 2015 within the specified time and manner and is preparing for the revision of the sales tax return for the said tax period along with due payment of sales tax if any on the basis of the revised return.

04. Finally the Assessing Officer passed order assessing tax of Rs.482,000/= along with default surcharge (to be calculated at the time of actual payment) and imposing penalty of Rs.24,140/= under serial No.3 of Table under section 43 of the Act and default surcharge of Rs.3,833/= on partial payment of Rs.85,200/= made on 01.02.2016.

05. The Appellant challenged the Order-in-Original by way of filing appeal before the Commissioner (Appeals) who upheld the order in original in toto and dismissed the appeal. Hence the appellant filed this appeal.

06. On the date of hearing i.e. 10.05.2018 the learned representatives have failed to appear and sent an adjournment application on the ground that the Accountant who deals with the tax affairs of the appellant is on leave and certain detail and documents relating to the case are awaiting from the tax payer. The adjournment application moved on 10.05.2018 was rejected. The arguments of Respondent were heard and order was



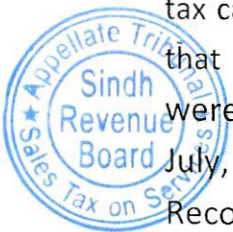
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reserved. The appeal is being decided on merits the basis of available record.

07. On the last date i.e. 02.05.2018 the adjournment application was sent which was granted with the observation that adjournment was granted as a last chance and in case the appellant fails to appear the appeal will be decided on the available record. The adjournment on 10.04.2018 was granted as last chance on the basis of adjournment application sent by the representative of the appellant. The position was same on 27.03.2018 as the case was adjourned on the application of the representative of the appellant. This clearly reflects that the representative of appellant unnecessarily wants to drag the proceedings.

08. The grievance of the appellant is that the respondent has not allowed input tax on account of purchase of lubricant oil and auto parts. The invoices are dated 18.07.2015 and 26.07.2015. The learned representative of the appellant submitted that earlier the appellant had filed Null returns and thereafter the return for July, 2015 was revised in the month of February 2016 and input tax adjustment of Rs.542,380/= was claimed and balance tax of Rs.85,200/= was deposited on 01.02.2016

09. Mr. Waleed Patoli the learned Ac for respondent supported the order in original and order in appeal. He submitted that according to Rule 22 the input tax can be adjusted within in four succeeding tax periods. He then submitted that input tax on the basis of invoices dated 18.07.2015 and 26.07.2015 were claimed in February, 2016 on the basis of revision of tax return for July, 2015 made in February, 2015. Mr. Waleed also referred Reconciliation Statement dated 27.03.2018 and submitted that against the taxable services of Rs.4,733,333/= a sum of Rs.3,190,471/= was claimed on account of purchase of diesel and auto parts and a sum of Rs.542,380/= was claimed as input tax which is not understandable. He then submitted that in the memo of appeal the appellant claimed that the appellant is engaged in providing construction services under Tariff



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Heading 9824.000 and using diesel and auto parts amounting to Rs.3,190,471/= against providing taxable construction services of Rs.4,733,333/= is not understandable.

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

10. As per the record the appellant is a registered with SRB for providing or rendering taxable service under Tariff heading 9809.0000 for providing of taxable services of contractual execution of work or furnishing supplies. Admittedly the appellant provided services to the tune of Rs.4,733,333/= in the tax period of July, 2015 but filed NULL return and also failed to pay the due tax of Rs.568,000/=. This fact came to the knowledge of the respondent by the statement filed by UEPL who deposited the withholding amount of Rs.142,000/=. Perusal of invoices shows that a sum of Rs.897,271/= was claimed on account of diesel with sales tax of Rs.152,336/= and Rs.2,293,200/= was claimed on account of purchase of auto parts with sales tax of Rs.389,844/=. There appears no justification for claiming huge amount of purchase of diesel and auto parts in the taxable supply of construction service. The claim of input tax appears vexatious and cannot be allowed.

11. As far as the disallowance of input tax on the ground that it is bared by Rule 22 of the Sindh Sales Tax on Services Rules 2011 is concerned the Commissioner (Appeals) has rightly disallowed the same in consonance with the Proviso of sub-rule (1) of Rule 2 of the Rules 2011, which provides that where the registered person did not deduct or adjust the input tax in the relevant period, he may claim such input tax deduction or adjustment in the tax returns for any of the four succeeding tax periods. In this case the input tax for the month of July, 2015 was claimed in the month of February, 2016 by way of revision of monthly tax returns.

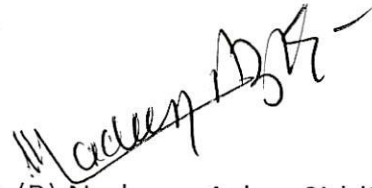
12. In view of the above discussion this appeal is dismissed. The appellant is directed to deposit the balance tax within thirty days from the date of



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receipt of copy of this order. If the appellant pays the balance tax within thirty days he is not required to pay the default surcharge and the penalty imposed by the department.

The appeal is disposed of. Copy of the order may be supplied to the learned representatives of the parties.



(Justice (R) Nadeem Azhar Siddiqi)
CHAIRMAN

Karachi

Dated: 14.05.2018

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.



**REGISTRAR
APPELLATE TRIBUNAL
SINDH REVENUE BOARD**