

BEFORE THE APPELLATE TRIBUNAL SINDH REVENUE BOARD, KARACHI

SB-1

APPEAL NO. AT-19/2018

M/s TICS (Pvt) Ltd.....Appellant

Versus

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

Date of Filing of Appeal: 19.04.2018

Date of hearing: 08.08.2018

Date of Order: 15.08.2018

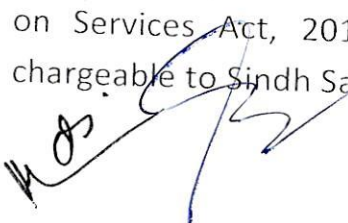
Mr. Muhammad Umer, ITO for Appellant.

Ms. Ambreen Fatima, AC, SRB for Respondent.

ORDER

Justice[®] Nadeem Azhar Siddiqi: This appeal has been filed by the appellant challenging the Order-in-Appeal No.51/2018 dated 31.03.2018 passed by the Commissioner (Appeals) in Appeal No. 289/2016 against Order in Original No. 788/2016 dated 20.09.2016 passed by the Assistant Commissioner (Ms. Nida Noor) SRB, Karachi.

01. The facts of the case as mentioned in the Order-in-Original are that the appellant was registered with SRB for providing or rendering services in respect of Technical, Scientific and Engineering Consultant falling under tariff heading 9815.5000 of the Second Schedule to the Sindh Sales Tax on Services Act, 2011 (hereinafter referred to as the Act) and is chargeable to Sindh Sales Tax.

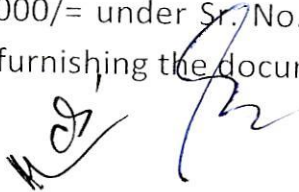


02. It has been alleged in the order-in-original that scrutiny of withholding statement filed by Unilever Pakistan Foods Limited, Engro Fertilizers Limited and Engro Powergen Qadirpur Limited reveals that they have received the taxable services from the appellant valuing to Rs.3,468,530/= involving sales tax of Rs.552,992/= for the tax periods January, 2014 to September, 2014 and July, 2015 respectively, which were collected/charged by the appellant. While, the appellant failed to pay Sindh sales tax of Rs.524,203/= (Rs.552,992/= - withheld Rs.28789/- = Rs.524,203/=), which were charged and collected by them during the aforesaid tax periods. Furthermore the appellant has not submitted true and correct sales tax returns for the tax periods July, 2014 to November, 2015.

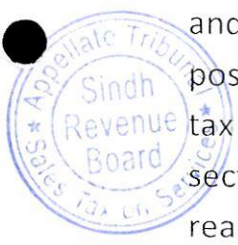
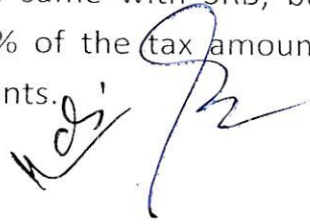
03. It was also alleged that the appellant vide letter dated 28.04.2016 was asked to deposit the unpaid tax together with default surcharge and was also required to file sales tax returns along with the copy of audited financial statement for the tax periods July, 2014 to November, 2015.

04. That a show-cause notice dated 12.05.2016 was issued to the appellant to explain as to why Sindh Sales Tax amounting to Rs.524,203/= may not be assessed and recovered along with default surcharge and penalties. The appellant neither appeared before the Assessing Officer nor filed any reply.

05. Finally the Assessing Officer passed assessment order in the sum of Rs.524,203/= along with default surcharge. The Assessing officer imposed penalty of Rs.2,966,330/= for non-filing of returns. The Assessing Officer also imposed penalty of Rs.333.333/= per day for each tax period from 21.09.2016 till submissions of returns under serial No.2 of the Table under section 43 of the Act and Rs.26,210/= under serial No.3 of the Table under section 43 of the Act. The Assessing Officer also imposed 100% penalty provided under Sr. No. 6 (d) of the Table under section 43 of the Act. The Assessing Officer also imposed penalty of Rs.100,000/= under Sr. No. 15 of the Table under section 43 of the Act for not furnishing the documents asked for.



06. The appellant challenged the order-in-original by way of filing of appeal before the Commissioner (Appeals) who upheld the assessment order to the extent of tax of Rs.179,657/= and default surcharge of Rs.113,977/= .
07. During the pendency of appeal the appellant has deposited the tax and default surcharge amounting to Rs.185,356/= availing the Amnesty Scheme. The learned representative of the appellant submitted that the tax and default surcharge has been deposited without prejudice to the hearing of appeal on merits.
08. On 14.05.2018 Ms. Nida Noor, AC for SRB appeared for respondent and submitted that the Technical Scientific and Engineering Consultant Service (9815.5000) was brought to Tax net effective from July 2014 and the appellant got voluntarily registration on 14.01.2016, but the appellant has failed to file e-returns from July, 2014 to November, 2015.
09. On 06.06.2018 Ms. Nida Noor submitted that in this case the appellant has allowed the recipient of service to withhold 20% of tax and remaining amount of 80% tax was not deposited by the appellant with SRB despite receiving the same from the service recipient. Ms. Nida Noor pointed out that she had already placed on record a reconciliation statement to show the tax due upon the appellant.
10. Mr. Umer disputed the said reconciliation prepared by Ms. Nida Noor and submitted that he will also file reconciliation to reflect the true position. Mr. Umer submitted that the appellant is not liable to pay sales tax before its registration with SRB and submitted that under sub-section (2) of Section 3 read with sub-section (2) of Section 9 of the Act read with sub-rule (4) of Rule 3 of Special Withholding Rules the service recipient is required to deduct the tax from the invoice of un-registered person and deposit the same with SRB.
11. Ms. Nida further submitted that in this case the tax was charged in the invoices and the recipients of service had withhold 20% of tax and deposited the same with SRB, but the appellant did not deposit the remaining 80% of the tax amount which was received by it from the service recipients.



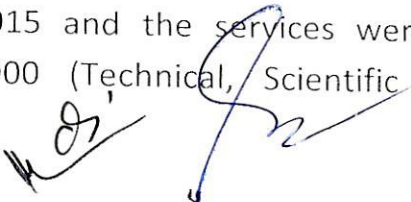
12. On 17.07.2018 Mr. Umer submitted that since the appellant is a non-resident and non-registered person the liability to pay/deposit of tax was on recipient of service i.e. Engro Power Generation, Qadirpur Ltd. and Engro Fertilizer Ltd.

13. On 08.08.2018 Mr. Muhammad Umer submitted that he had already filed written arguments and relied upon the same. He further submitted that he had already argued the case on last date i.e. 17.07.2018 and he adopts the same arguments. He also submitted that the tax was paid to Punjab Revenue Authority.

14. In reply Ms. Ambreen Fatima for SRB submitted that the appellant has got voluntarily registration on 14.01.2016 under tariff heading 9815.5000 (Technical Scientific and Engineering Consultant). She then submitted that the services have been provided in Sindh as Engro Powergen Qadirpur Limited is located in Sindh and invoices were issued for Team Charges for installation, supervision and commissioning for two persons who had supervised the job in Sindh and therefore the sale tax is payable at Sindh. She then submitted that the recipient M/s Engro Powergen Qadirpur has withheld Sales Tax of 16,400/- and deposited the same with SRB and remaining Rs.65,680/- was paid to service provider (appellant) for deposit with SRB. She then submitted that the amount was withheld by service recipient in terms of Sindh Sales Tax Special Procedure (Withholding) Rules, 2014.

15. Ms. Ambreen files reconciliation statement and submitted that credit note without debit note is not acceptable in terms of Rule 23 of Sindh Sales Tax on Services Rules, 2011. She further submitted that appellant got voluntarily registration and has charged the tax from service recipient but did not deposited the tax with SRB and from the withholding statement of recipients of service it has come on record that tax has not been deposited.

16. Mr. Umer in rebuttal submitted that the service of installation and commissioning tariff heading 9839.0000 was taxable effective from 1st July, 2015 and the services were wrongly tax under tariff heading 9815.5000 (Technical, Scientific and Engineering Consultant). The



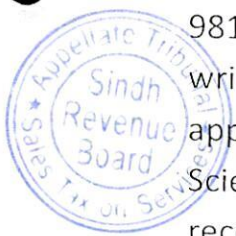
invoices pertains to Engro Powergen was for the periods March 2015 to June 2015 and was not taxable.

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

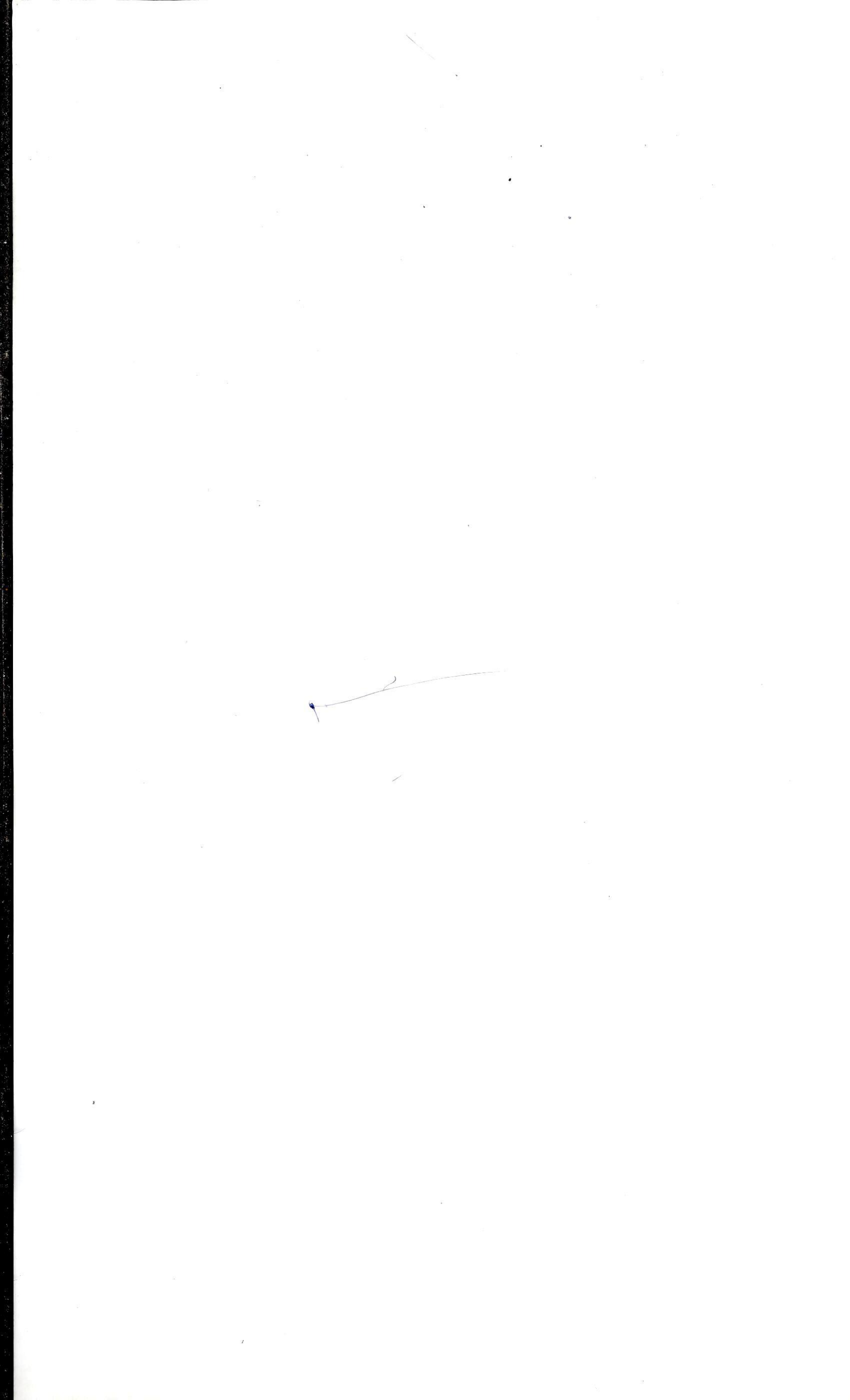
17. The main contention of the appellant is that it's a non-resident person and the services has not been provided from Lahore, Punjab and is not a withholding agent and is not liable to be assessed in Sindh.

18. The main contention of the respondent is that the appellant got voluntary registration with the respondent and despite providing services in Sindh and withholding Sindh sales had failed to deposit the same with SRB.

19. The contention of the respondent has force. Record shows that the appellant has got voluntary registration on 14.01.2016 under the Tariff Heading 9815.5000 (Services provided by Technical Scientific and Engineering Consultant) under which heading the tax was assessed. Before the Commissioner (Appeals) the appellant had submitted that the services were in the nature of testing and analysis and the same were provided in Punjab. Before me the appellant has taken the plea that the services provided were in the nature of installation and commissioning under Tariff Heading 9839.0000 brought to tax net effective from 1st July, 2015 and the services were wrongly tax under tariff heading 9815.5000 (Technical, Scientific and Engineering Consultant). In the written arguments the representative of the appellant submitted that appellant is a private limited company engaged in business of Technical, Scientific and Engineering Consultants. From the Invoices available on record it appears that services have been provided in Sindh. The nature of service mentioned in Annexure A attached to the Agreement entered into between the appellant and Engro Powergen Qadirpur Limited was Cathodic Protection System for Cooling Water Lines at EPQL Site. The Commissioner (Appeals) after perusing the documents and agreement available on record had held that services were provided in Sindh and the services provided were in the nature of Team Charges for Installation Supervision and Commissioning for 2 persons. The service provided by



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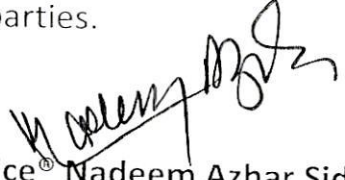
the appellant was in the nature of providing consultancy services and the same was rightly assessed under Tariff Heading 9815.5000. The appellant to avoid payment of tax is taking different pleas before different forum.

20. AS far the contention of Mr. that the appellant is not liable to pay sales tax before the registration and that under sub-section (2) of Section 3 read with sub-section (2) of Section 9 of the Act read with sub-rule (4) of Rule 3 of Special Withholding Rules the service recipient is required to deduct from the invoice of un-registered person and deposit the same with SRB. This contention of the appellant has no force. The appellant has charged Sindh Sales Tax on invoices and the recipients of service after deducting 20% tax forwarded remaining tax to the appellant and the appellant is liable to deposit the same with SRB which he failed to deposit.

21. As far as the contention of Mr. Umer that tax has been deposited with PRA is concerned the same cannot be treated as valid deposit of Tax. It is proved beyond doubt that the services were provided in Sindh and the appellant is liable to deposit the same with SRB. In case the appellant has earlier deposited the tax with PRA the appellant can claim refund or request for adjustment.

22. The appellant has failed to show any illegality and infirmity in the order in appeal. The Commissioner (Appeals) has rightly held that services were provided in Sind.

23. In view of above discussion the appeal is dismissed. Copy of order be supplied to the learned representatives of the parties.


(Justice[®] Nadeem Azhar Siddiqi)
CHAIRMAN

Karachi: Dated: 15.08.2018

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- 1) The Appellant through Authorized Representative.
- 2) The Assistant Commissioner, SRB, Karachi.



Copy for information to:-

- 3) The Commissioner (Appeals), SRB, Karachi.
- 4) Office copy
- ✓ 5) ~~Guard file.~~

M. O. S.