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BEFORE THE APPELLATE TRIBUNAL, SINDH REVENUE BOARD

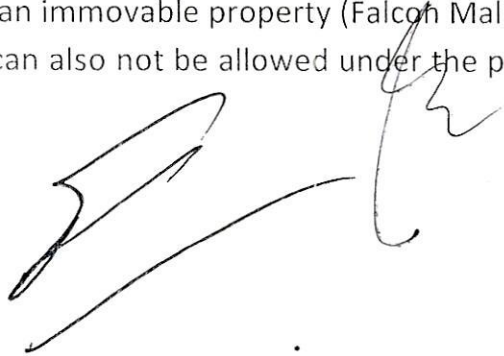
APPEAL NO. AT-41/2018

M/s Shaheen Foundation (PAF) ..... Appellant  
**Versus**  
Assistant Commissioner (Unit- ), SRB, Karachi. .... Respondents  
Mr. Imran Hussain Advocate ..... For Respondent  
Mr. Syed Waqas Zaidi AC-SRB, Karachi. .... For the Respondent  
Date of hearing 04.09.2018  
Date of Order 28.09.2018

ORDER

**Aagha Kafeel Bark:** This appeal has been filed against a Revision order of Commissioner-IV, SRB passed under section 55 of the Act, on 31.05.2018 on revision application filed by the registered person aggrieved of the confirmation of disallowance of input tax adjustment to the tune of Rs.10,734,538/-. Earlier AC-Unit 31 SRB vide her order-in-original dated 13.01.2018 disallowed Rs.17,460,762/- claimed as input adjustment. Thus the Commissioner-IV allowed relief of Rs.6,726,224/- out of total disallowance of 17,460,762/-. The facts of the case are as under.

02. The Foundation is registered under tariff code 9826.0000 under the category "Airport Services". As a result of the scrutiny of its tax profile the AC Unit-31 discovered that it had claimed input tax adjustment on various items which, in her opinion, were not admissible under Section 15-A, read with Rule 22 A. She confronted the said registered person vide a show cause notice dated 20.07.2017 of her intention to disallow the same. But while show cause notice was replied through an email on 11.09.2017, and the AC Unit-31 required further details making further queries, none appeared before her till 12.01.2018, thus prompting her to pass an exparte order on the basis of the points raised by her in her show cause notice and e-mail reply received on 11.09.2017. Finally she disallowed input claim on various items total amounting to Rs. 17,460,762/- "in terms of clause (a), (g), (i) of section 15 A of the Act 2011 read with Rule 22 A of the Rules 2011". She further pointed out that input claim on items used in construction of an immovable property (Falcon Mall as it was later revealed) intended to be rented out, can also not be allowed under the provisions of Section 15A (1) (i) of the Act.



03. The assessment proceedings started when the assessing officer AC Unit-31 SRB observed in the online tax profile of the registered person that it has claimed huge input adjustments to the tune of Rs.17,460,762/-," on such items which were strictly not admissible under section 15A read with Rule 22A. After such observation, as recorded in Para 2 & 3 of his order-in-original, the AC issued a show cause notice on 20.07.2017 confronting the registered person, as to why these claims might not be disallowed.

4. In their reply to the show cause notice of the AC Unit-31, the AR tried to justify the claim stating that all vehicles were used on airport and that cars were used for VIPs and other passengers pick and drop. No evidence was however, submitted. About input claimed on Cement, Steel, Paint and Designing / Consultancy fee paid in connection with construction of Falcon Mall, which is still under construction the A.R stated that after it is completed it will render renting services which will be subjected to tax. As such he admitted that the input was claimed against future expected output tax on renting services. The AC has pointed out that even then any input will not be allowed as renting any services are subjected to reduced sales tax (8%) against which no input is admissible. As the AC made further queries the A.R of the registered person abstained from hearing. Thus the AC passed an exparte order on the basis of her show cause notice dated 20.07.2017, creating Sindh Sales Tax demand of Rs.17,460,762/- under section 23, with penalty of 873,038/- under section 43 (3) and 17,460,762/- under section 43 (6d) and Rs.873,038/- under section 43 (11) of the Act and also default surcharge under section 44.

05. The Commissioner (IV) SRB who admitted the revision application and has passed order under section 55 has listed all the items on which claim of input tax has been disallowed under various clauses of Section 15A (1) totaling Rs.17,460,762/-. During hearing before commissioner an objection was raised by AC Unit-31 about time barred claim of Rs.259,024/- input tax on vehicles which was however not the subject matter of order-in-original.

06. The Commissioner (iv) in his order examined the whole case thread bare, however, he missed to examine the claim of input tax adjustment with specific reference to the check list provided in Section 15-A, read with Rule 22A. Instead the Commissioner (iv) indulged in audit of the invoices which would be a second stage if the claim was basically admissible. The Commissioner for example, picked up two invoices of small amounts (1170+610) and objected that claim was in the name of Pak Suzuki but invoices were in the name of Suzuki South. For another amount of Rs.238,086/- he found it claimed against Pak Suzuki Motors but on invoice it was Suzuki South. For another



invoice of 204,872/- he noted that it pertained to the month of August, 2015 but claimed in October, 2016 hence time barred under rule 22. The learned A.R pointed out that while the date of invoice was mistakenly read as August, 2015 it was in fact August, 2016 and it was within stipulated time being claimed in October, 2016. Besides, he pointed out that it was not the issue at the assessment stage. On the issue disallowance of 2,244,355/- for purchases of Corolla cars from Indus Motor company disallowed under section 15A (g) (i) the learned Commissioner, instead of examining the legality of the claim with reference to 15A (g) (i), has in detail examined all the invoice to reach at the conclusion that invoice for 259,024/- was time barred. For another amount of input claim of 1,320,188/- against transaction of 7,765,812/- the learned Commissioner found that neither thier were figures of value of purchases on the invoices presented before him nor amount of Sindh Sales Tax involved matched with the claim, hence he rejected it. The claim of input tax for 6,724,444/- has been disallowed by the assessing officer under section 15A (g) (i) , whereas the commissioner examined this claim with reference to Rule 22 and observing that there have been minor mistakes, allowed the same with the condition that the returns would be revised. The commissioner confirmed disallowance of input tax on purchases from Lucky Cement, Faizan Steel etc. as according to him these services / purchases were not directly used in airport services. Similarly the disallowance of input tax claim on services for UIC (Pvt.) Ltd. Sky Room, Arabian Sea & Ali Shamim Naqvi Principal Constructions disallowed under various clauses of Section 15A (1) has been confirmed by the Commissioner as not directly utilized in provision of taxable services.

07. Mr. Imran Hussain Advocate the learned AR of the appellant submitted his written as well as verbal arguments in support of grounds of appeal, whereas Mr. Waqas Zaidi AC SRB supported the orders of the officers below.

It was submitted that the cars (Cultus) were purchased Pak Suzuki Motor Company for the purpose of VIP movement with the airport area.

08. Rebutting Commissioner's objection on the time barred input of 204,872/- the learned AR submitted that it was due to a mistake as the invoice date was August, 2016 and not August, 2015. In respect of disallowance of 148,060/- under Rule 22 by the Commissioner as not matched the AR argued that Rule 22 is wrongly quoted as it would by rule 22A. Here we want to observe that mere mention of incorrect provision of law such as Rule 22 instead of Rule 22A does not vitiate any judicial proceedings. Similar arguments have been taken in respect of disallowance of Rs.1780 being mismatched figures. The learned AR has also pointed out that disallowance of claim of input of tax

has been made by the AC under section 15A (g) (i) and not under section 22 as the Commissioner (iv) has done in his revision order.

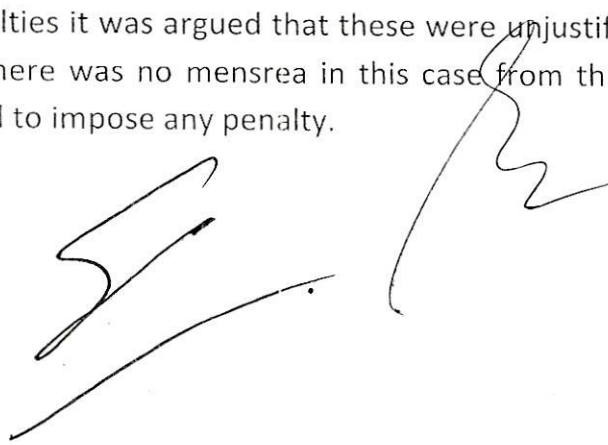
09. About purchase of vehicles from Indus Motor Company for 1,320,188/- the Commissioner has pointed out that it did not match with the invoice. About input claim of 453,261/- from Indus Motor Company the Commissioner observed that the invoice was unreadable hence disallowed.

10. These are the objections the Commissioner made in different direction against that of the AC SRB who disallowed all the input claim under various clauses of Section 15A (1). The learned AR submitted that the differences in invoices were minors and can be verified from original record, beside the invoices were not time barred as relevant tax period and due date return was not properly calculated. For unreadable about invoices for 211,586/- he submitted fresh copies of invoices. It is also argued that input tax on tyres & tubes disallowed by the AC has been confirmed by Commissioner (Appeals) without specific reasons. Tax on expenses on hotels, beverage etc. have been disallowed by the A.C as not relating to business under section 15A (1) (g) (iv). But the learned AR failed to justify the expenses on room rent etc. in the course of rendering airport services on which Sales Tax is levied and input has been claimed.

11. In respect of disallowance of input on services/ purchases of Rs.2,205,571/- under section 15A and also purchase of cement and that of steel the learned AR submitted that "the said services received in respect of construction of Falcon Mall which shall be used for provision of taxable services after its completion". From his arguments and the facts of the case it is apparent that input on these items, cement, steel, constructor etc. have been claimed in advance in respect of Falcon Mall which did not even exist during the given period. The law does not allow any input adjustment against future tax liabilities. Hence the action of the AC was just & legal on this issue.

12. Finally it was argued that while the security agency charged tax @ 13% and was claimed by the appellant as such, the automatic system of the SRB reduced it to 10% as was admissible under the law. It was argued that the AC has now disallowed input tax @ 13% against actual disallowance @10% which was unjustified.

13. About penalties it was argued that these were unjustified as there was no malafide intention and there was no mensrea in this case from the beginning, the department was not justified to impose any penalty.





14. After hearing both the sides and going through the record of case our findings are as under:

14.01 The assessing officer AC Unit-31 provided adequate opportunities to the appellant to explain his case in respect of certain discrepancies which were specifically pointed out in the show cause notice dated 20.07.2017. However, the appellant did not explain the points nor submitted evidence in defence and as mentioned in detail in Paras 10 to 12 of order-in-original dated 13.01.2018 several adjournments were obtained besides being absent. It resulted in the assessment under section 23 on the basis of information and data available on record.

14.02. The AC Unit-31 disallowed claim of input tax adjustment amounting to Rs.17,460,462/- under sub clauses (a) (g) (J) and (i) of Section 15 A read with Rule 22 A, exactly as the appellant was confronted vide show cause notice dated 20.07.2017.

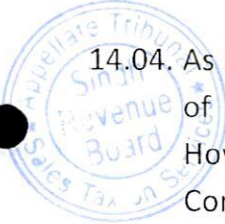
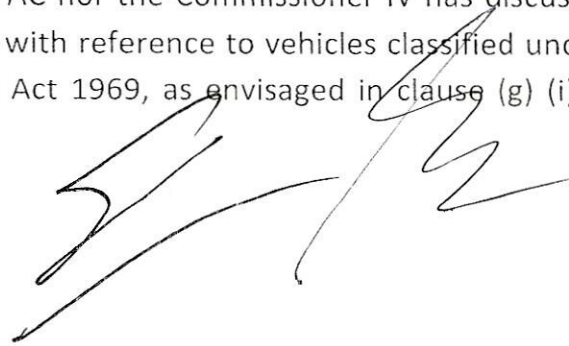
14.03. The disallowances have been made under 3 main categories:

- a) On vehicles & their parts purchased from Pak Suzuki, Indus Motor Company, Hino Pak Motors under section 15 A (1) (g) (i)
- b) On Cement, Paint, Steel from Lucky Cement, Nelson Paint, Faizan Steel, and Syed Ali Shamim Naguri and principal constructions for the construction of Falcom Mall which is still under Construction disallowed under section 15 A (1) (a) and (g) (IV).
- c) On beverages & Food items from UIC, Sky room, Arabian sea under section 15A (g) (IV).

14.04. As observed earlier the appellant did not come forward with evidence in support of these claims of adjustment before the AC SRB at the assessment stage. However, explanations were filed with copies of invoices before the Commissioner SRB and also before us, which were examined.

14.05. It is however noted that the Commissioner in his revision proceedings deviated from the main issue i.e. in-admissibility of input claim under various clauses of Section 15A and jumped on secondary issues of lesser importance such as, illegibility of certain invoices, mention of incorrect year etc.

14.06. In reply the appellant/ his AR also focused his arguments on the same lesser issues. However, it is noted that documentary evidence has not been provided at any stage in respect of vehicles used for the business of the appellant. Moreover, neither the AC nor the Commissioner IV has discussed the inadmissibility of this input claim with reference to vehicles classified under chapter 87 of 1<sup>st</sup> Schedule of Customs Act 1969, as envisaged in clause (g) (i) of section 15A (1). It is also



observed that the vehicles purchased include Corolla & Cultus cars, claimed to have been used for airport services. However, such cars can also possibly be given to the executives of the company for their personal domestic use. Necessary evidence is required in support of the claim that these are exclusively used in the airport services.

15. In view of the above findings the impugned order of the AC Unit-31 on the issue of input claim on vehicles and tyres, tubes and spares is remanded to him with the directions to examine the claim afresh in the light of the provisions of clause (g) (i) of section 15A. The appellant is directed to furnish documentary evidence in support of his claim that these vehicles are the one directly used in the economic activity of providing "airport services" by the appellant.
16. The appellant has claimed and the AC Unit-31 disallowed input tax paid on Cement, Steel, and Paint etc. This building material is disallowed under section 15A (g) (vi). Interestingly, these are claimed to have been used in the construction of Falcon Mall which is under Construction and yet to come in existence. It is stated that it will be used to generate economic activity and to provide services like renting etc. From these facts it is clear that no output tax has been levied yet as there are no services being rendered from this Mall. From the study of definition of output tax under Section 2 (62) "the tax levied under this Act" and provision of section 15 it is quite obvious that input tax adjustment is available in respect of sales tax paid on or in respect of any taxable services or class of taxable services provided by registered persons. In a situation where the asset, from which any economic activity would generate in future and taxable services arising which would be liable to Sindh Sales Tax, have not come into existence yet, the claim of input tax adjustment does not fall in the scheme of input tax allowance. Any input tax on the basis of any future liability for which not even a provision has been made, cannot be allowed. Hence the whole amount of input tax claimed on Cement, Steel, and Paint etc. on purchase & services in respect of construction of Falcon Mall is not admissible under the Act; hence rightly disallowed by the AC Unit-31 in her order-in-original.
17. The input tax claimed on beverages, hotel service is also rightly disallowed by the AC Unit031 as no direct relation is proved between the same and appellant' business activities.
18. It is also noted that the Commissioner had allowed relief on certain items conditionally that the appellant would revise his return. However, Mr. Waqas Zaidi, AC SRB has submitted a written statement before us on 04.09.2018 that the



appellant has not as yet e-filed any revised return in compliance with revision order No. 11/2018 of Commissioner IV dated 31.05.2018. The Commissioner had allowed some relief with some conditions. Since the appellant has failed to comply with the said order, the AC SRB is directed to re-examine the admissibility of input tax claimed on all vehicles & related expenses with reference to provisions of Section 15A (1) (g) (i) afresh.

19. Penalty order under section 43 (3) has been passed in just one line along with assessment order under section 23. No discussion is made nor any reason given which renders the impugned order untenable in law hence set aside. For penalty under section 43(6d) the AC has stretched the claim of input by the appellant to that of tax fraud. It is noted that it was merely a matter of opinion of the appellant and point of dispute with SRB which does not tantamount to fraud. Hence this penalty is also not tenable and is set aside. For penalty under section 43 (11), the AC has passed general remarks that the appellant did not comply with rules and notifications under the Act. She has failed to point out a single specific default in this respect. Hence this penalty is also set aside.

This appeal is disposed of as above.



(Muhammdad Ashfaq Balouch)  
JUDICIAL MEMBER



(Agha Kafeel Barik)  
TECHNICAL MEMBER

Karachi.

Dated: 28.09.2018

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.



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