

(Guard file)

BEFORE THE APPELATE TRIBUNAL SINDH REVENUE BOARD AT KARACHI

DB-1

APPEAL NO. AT-51/2018

The Assistant Commissioner, Unit-17, SRBAppellant

Versus

M/s A.J. World Wide Services (Pvt) Limited.....Respondent

Date of Filing of Appeal: 06.08.2018.

Date of Hearing: 11.12.2018

Date of Order: 17.12.2018

Mr. Masood Sabir, Commissioner-I and Mr. Irfan Waheed, AC-SRB for appellant.

Mr. Muhammad Khurram, Head of Accounts Department of Respondent.

ORDER

Justice (R) Nadeem Azhar Siddiqi. This appeal has been filed by the appellant challenging the Order-in-appeal No. 98/2018 dated 08.06.2018 passed by the Commissioner (Appeals) in Appeal No. No. 248/2016 against the Order-in-Original No. 516/2016 dated 10.06.2016 passed by the Assistant Commissioner-14 (Mr. Muhammad Yousuf Bukhari), SRB, Karachi.

In short, the facts of the case as stated in Order-in-Original are that the respondent is a registered person and engaged in providing



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taxable services of "Courier" under tariff heading 9808.0000 of the Second Schedule of the Sindh Sales Tax on Services Act, 2011 (hereinafter referred to as the Act).

2. The allegations against the respondent are that it had claimed input tax adjustment of Rs.32,753,246/= in respect of services of Rs.208,136,281/= acquired from Gerry's International Private Limited (hereinafter referred to as Gerry). Whereas Gerry had declared a services of 138,018,255/= and had paid Sindh sales tax of Rs.21,442,090/=.
3. It was further alleged that excess Sindh sales tax of Rs.11,311,156/= on account of services of Rs.70,118,025/= was claimed, which services were received and consumed outside Sindh and the same were not required to be adjusted in SRB as per rule 22 (2) of the Sindh Sales Tax on Services Rules, 2011 (hereinafter referred to as the rules).
4. It was also alleged that the respondent was informed that input tax claim against such sales tax amount which was not deposited by the service provider or where evidence of such payment is not produced is inadmissible as per rule 22A (v) of the rules. The respondent was advised vide letter dated 05.04.2016 to deposit the aforesaid tax amount, but the amount was not deposited.
5. A show cause notice dated 05.05.2016 was served upon the respondent to show cause as to why Sindh sales tax amounting to Rs.11,311,156/= may not be assessed and recovered along with default surcharge and penalties under serial No.3 and 12 of the Table of section 43 of the Sindh Sales Tax on Services Act, 2011. It was also alleged that the respondent has failed to file monthly tax return for the month of April, 2016 and was required to explain as to why penalty



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under serial No.2 of the Table of section 43 of the Sindh Sales Tax on Services Act, 2011 may not be imposed.

6. The respondent neither submitted any reply nor appears for hearing before the Assessing Officer. Finally ex-parte order in original was passed by the Assessing Officer disallowing the input tax adjustment of Rs.11,311,156/= and ordered to be recovered along with default surcharge and penalty of Rs.565,557/= under serial No.3 of Table of section 43 of the Act and penalty of Rs.11,000/= under serial No.2 of Table of section 43 of the Act.
7. The respondent challenged the order in original before Commissioner (Appeals) who upheld the order in original to the extent of apportioned amount of input tax, hence this appeal by the Department.
8. Mr. Irfan Waheed the learned AC submitted that the appeal was filed on the issue that the Commissioner (Appeals) has wrongly invoked sub-rule (3) of Rule 22 of the Rule, 2011 which is confirmed from the Reconciliation Reports submitted before the Tribunal and submitted that sub rule (3) of rule 22 can only be invoked in case the input tax is used in providing or rendering taxable services and also non-taxable or exempt services and the services provided or rendered outside Sindh, the input tax shall be apportioned according to the formula provided under sub rule (3) of rule 22. He then submitted that the appellant has neither provided non-taxable or exempt services nor provided or rendered services outside Sindh and declared total services in Sindh, hence apportionment formula is not applicable.
9. Mr. Muhammad Khurram the learned representative of the respondent submitted that the appellant is only registered with SRB and total services has been provided and declared in Sindh and total tax has been deposited with SRB and for that reason total input tax has been claimed in Sindh which was wrongly disallowed by the



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Assessing Officer. He agreed with the learned AC and submitted that the learned AC has correctly interpreted the rules. He then submitted that neither the respondent has deposited tax with any other tax authority nor claimed any input tax in other jurisdictions. He submitted that the respondent is entitled to claim input tax of Rs.21,533,882/= on the value of services of Rs.139,903.205/= provided and declared in Sindh.

10. During the pendency of Appeal Mr. Masood Sabir the learned Commissioner-I, SRB was called to explain the position of invoking sub-rule (3) of rule 22 of the rules by the Commissioner (Appeals), who was also of the view that sub-rule (3) of rule 22 is not applicable, and the Commissioner (Appeals) has wrongly invoked the same. He also placed on record Reconciliation Report dated 27.11.2018 according to which the services provided by Gerry's to respondent in Sindh was Rs.138,018,255/=. The reconciliation is silent about the tax deposited by Gerry in Sindh. However from the order in original it appears that the Gerry has deposited an amount of Rs.21,442,090/=.
11. The parties were also directed on 27.11.2018 to prepare Reconciliation Report on the basis of value of services provided/declared in Sindh and the input tax claim claimed in Sindh on the basis of amount of tax deposited with SRB and the respondent was directed to approach the learned Commissioner-I, SRB for the purpose of preparation of reconciliation.
12. On the direction of the Tribunal a Reconciliation Report dated 11.12.2018 was filed under the signatures of both the parties for the Tax Periods from August 2011 to December 2015. According to this Reconciliation the total value of services declared by Gerry in Sindh was Rs.138, 015,169/= and an amount of Rs.21,442,090/= was deposited by Gerry with SRB on account of Sindh sales tax. Both the learned representatives have also filed Final Reconciliation Report under their signature, which is reproduced as under:



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FINAL RECONCILIATION

Value of Service Declared from August 2011
to December 2015 by M/s Gerry in Sindh Rs.138,015,169/-

Tax Deposited in Sindh by Gerry Rs. 21,533,882/-

Value of Service declared by A.J. in Sindh Rs.139,903,205/-

Tax - Output of A.J. Rs. 21,807,905/-

Calculation of Tax

Output of A.J.	-	Input of A.J. / Output of Gerry	
21,807,905	-	21,533,882	
(deposited by A.J.)			

Rs.274,905/-

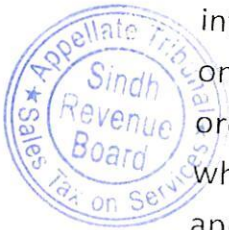
Sd/=
(Muhammad Khurram)
Respondent

Sd/=
(Irfan Waheed)
Assistant Commissioner, SRB

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

14. From the reconciliations filed by the parties it appears that there is no dispute regarding the value of service declared in Sindh and the tax deposited with SRB. In the Reconciliation dated 27.11.2018 filed by Mr. Masood Sabir, Commissioner-SRB, it has been shown that the services rendered by the appellant including sales tax was Rs. 139,903,205/= and sales tax paid was Rs.21, 807,905/= and payable tax was Rs.274, 025/= which was paid by the appellant after the order of Commissioner (Appeals). The question involved in this appeal is interpretation of Sub-Rule (2) and (3) of Rule 22 of the Sindh Sales Tax on Services Rules, 2011. The Commissioner (Appeals) has upheld the order in original to the extent of apportioned amount of Input tax, which the Assessing Officer has to calculate and communicate to the appellant within 30 days of the order.

15. We find force in the submission of the learned AC that sub rule (3) of rule 22 can only be invoked in case the input tax is used in providing or rendering taxable services and also non-taxable or exempt services and the services provided or rendered outside Sindh. In this matter



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the respondent has not claimed input tax if any deposited with any other revenue authority. The respondent only claims input tax of Rs.21,533,882/= declared as output tax by Gerry in Sindh. Since respondent has not claimed input tax used in providing or rendering non-taxable or exempt services and the services provided or rendered outside Sindh, sub rule (3) of rule 22 cannot be revoked.

16. As per the show cause notice the respondent has claimed input tax of Rs.32,753,246/= on the value of service of Rs.208,136,281/=. The respondent can only claim the input tax of Rs.21,442,090/= which Gerry has deposited in Sindh on the value of service of Rs.138,018,225/= and the Assessing Officer can disallow the excess amount of input tax claimed by the respondent.
17. In view of the above discussion the order in appeal is set aside to the extent of invoking sub rule (3) of rule 22 of the Rules, 2011 and apportioned amount of Input tax. The order in original is upheld only to the extent of deposit of tax of Rs.274, 023/= which amount, if not already deposited by the respondent, shall be deposited within fifteen days from the date of receipt of this order. In view of the contest between the parties the respondent is also not liable to pay any penalty and default surcharge as the department has failed to establish mensrea on the part of the respondent.
18. The appeal is disposed of in terms of para 16 above. The copy of this order may be provided to the learned Representatives of the Parties.

(Agha Kafeel Barik)
TECHNICAL MEMBER

(Justice[®] Nadeem Azhar Siddiqi)
CHAIRMAN

Karachi
Dated: 17.12.2018

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Copies supplied for compliance:-

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

Copy for information to:-

- 3) The Commissioner (Appeals), SRB, Karachi
- 4) Office copy
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