

(Quoted file)

BEFORE THE APPELLATE TRIBUNAL SINDH REVENUE BOARD AT KARACHI

DB-I

APPEAL NO. AT-70/2018

M/s M & P Express Logistics (Pvt) Limited.....Appellant

Versus

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

Mr. Saud Ul Hasan Advocate and Mr. Arsalan Siddiqui, CIMA for appellant.

Mr. Irfan Waheed, A.C. SRB for Respondent

Date of hearing: 20.01.2019.

Date of Order: 28.03.2019.

ORDER

Justice ® Nadeem Azhar Siddiqi: This appeal has been filed by the appellant challenging the Order-in-Appeal No.172/2018 dated 24.09.2017 passed by the Commissioner (Appeals) in Appeal NO. 308/2016 filed by the Appellant against the Order in Original No. 854/2016 dated 18.11.2016 passed by the Assistant Commissioner (Mr. Muhammad Yousuf Bukhari) SRB, Karachi.



[Handwritten signature]

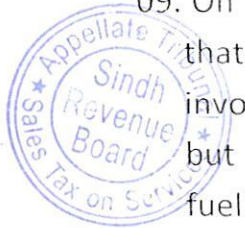
(ii)	Use of jet fuel by Vision Air (Para 19 of OIO)	Rs.2,686,742/=
(iii)	Input tax claimed by appellant Exceeding 17% sales tax on fuel (Para 21 of OIO)	<u>Rs.3,324,191/=</u>
	Total input disallowed	<u>Rs.9,693,568/=</u>

06. The said order of the Assessing Officer was challenged by appellant by way of filing appeal before the Commissioner (Appeals), who has upheld the order in original to the extent of the inadmissibility of the input tax against jet fuel and setaside to the extent of the input tax adjustment of diesel fuel for the reason that the same was not confronted in the show-cause notice, hence this appeal.

07. On 20.09.2018 Mr. Arsalan for appellant submitted that the case relates to disallowance of input tax adjustment claimed by the appellant on jet fuel for providing and rendering taxable service of courier. He then submitted that the fuel was used in carrying parcels through air transport from one city to other city and the appellant is entitled to claim input tax adjustment.

08. Mr. Irfan Waheed the learned AC for respondent submitted that the chartered flight service was not taxable at the relevant time and the fuel was used and consumed in non-taxable chartered flight services and therefore, no input tax adjustment is admissible.

09. On 20.01.2019 Mr. Saud-UI-Hassan advocate for appellant submitted that an airplane was chartered without fuel and all the invoices/evidence of purchase of fuel was provided to the department, but the same was erroneously disallowed. He then submitted that the fuel was used in providing and rendering taxable courier services and the appellant is entitled to adjust input tax from its output tax. On a question from Tribunal Mr. Saud-UI-Hassan submitted that all the invoices for purchase of fuel were in the old name of appellant i.e. OCS



Handwritten signature and initials

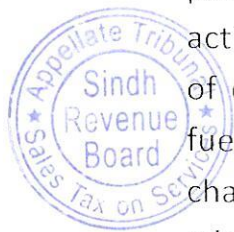
(Pvt.) Ltd. and the invoices are in conformity with sub rule (i) of rule 22 of Sindh Sales Tax on Services Rules, 2011.

10. Mr. Irfan Waheed AC submitted that input tax adjustment on purchase of fuel was rightly disallowed as the jet was not in the use of appellant and the fuel was used by a 3rd party namely vision Airlines and the fuel was not used in providing or rendering taxable services of courier. He then referred to sub rule (i) of rule 22 and submitted that unless the fuel is used by the appellant itself it is not entitled to claim input tax adjustment.

11. In rebuttal Mr. Saud-Ul-Hasan Advocate submitted that the core business of Appellant is the rendition of courier services, which is a taxable service under the Act, 2011 and for rendering such services appellant used the transportation by means of land and air; some of which are owned by the Appellant and some of which are acquired on rental or chartered basis. For transport of courier logistics goods on urgent basis the Appellant entered in to an agreement with the Vision Air International (VAI) whereby the Appellate chartered a plane without fuel and other related expenses. Such plane is purely used for the purpose of providing taxable courier services of the appellant and jet fuel purchased is being used in chartered planes exclusively for transporting the logistics and courier items related to Appellant's business.

12. Mr. Saud Ul Hasan also submitted that the sales tax charged on purchase of fuel is therefore directly related to the taxable business activity of the appellant and without the adjustment of input tax the cost of doing business will become high. He further submitted that the jet fuel purchased by the Appellant from Pakistan State Oil has been charged to sales tax under the Sales Tax Act, 1990 at the rate of 17% which is specifically allowed under Section 2(52) of Act of 2011.

13. Mr. Irfan Waheed, AC further submitted that the input tax claimed on the purchases of jet fuel is inadmissible for the reason that in the instant case the fuel has not been used or consumed by the Appellant (M/s OCS itself) for providing or rendering taxable courier service, but by the other



[Handwritten signatures]

persons dealing in services of carriage of goods by Air (i.e. M/s Vision Air). Thus, in order to claim the input tax the purchases made must be used and consumed by the registered person itself in providing or rendering the taxable services, therefore, the sales tax paid in respect of services not provided by the SRB registered person himself is not allowable. He further submitted that the services of carriage of goods by air are subject to FED (under Federal Excise Act, 2005) and not Sales Tax, therefore the same is inadmissible in terms of section 15A of the Act, 2011 read with Rule 22 and Rule 22A of the Sindh Sales Tax on Services Rules, 2011 and clause (96) of section 2 of the Act. He further stated that any tax other than sales tax, for instance income tax, excise duty, excise tax, etc. are not allowed under the provisions of section 15 of the Act 2011 and rules made thereunder. He also submitted that para 1.2 of the contract provided above which renders the input tax of Jet Fuel as inadmissible. He further submitted that the contract agreement (Para 1.2) provided by the taxpayer revealed that the said services are of chartered flight (9803.0000), which are taxable from July 2016 through Finance Bill, 2016. However, the instant case is for the tax periods from August, 2011 to April, 2016, therefore the input tax claimed on the same is correctly disallowed.

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

14. The controversy between the parties is whether jet fuel, on which input tax has been claimed by the appellant was used by the appellant for providing taxable service, or the same was used by a third party M/s Vision Air.

15. At the appellate stage the Assessing Officer has prepared a Reconciliation of Invoices provided by the appellant and the input tax claimed on value of fuel has been shown to be reconciled. However in para 6 of the Reconciliation the learned Assessing Officer has stated that *"M/s OCS Private Limited provided copies of fuel invoices in respect of remaining input tax claims which require to be reconciled with the invoice values, but due to time limitation this process will take handsome amount of time and effort, hence sales tax amount and the invoice numbers declared in*



M/s

the monthly Sindh Sales Tax Returns with SRB should need to be further reconciled for determining the true and correct value of input tax and sales tax payable". From this it appears that the learned Assessing Officer due to short of time could not properly reconcile the matter.

16. The Commissioner (Appeals) has rejected the Reconciliation prepared by the AC and in para 6 of the order in appeal held that "respondent has not conducted detailed enquiry as was required to be conducted in the circumstance of the case and therefore he is not certain to the reconciliation reached. Whereas in the table of para 5 of report reproduced above an amount of Rs.3,682,635/= has been declared as reconciled. These two statements even do not reconcile to each other. Further, these two statements also do not reconcile with the issue of jet fuel explained at sub para b. of para 1 of this order supra". From the above finding of the Commissioner (Appeals) that despite having all invoices the Assessing Officer could not reconcile the matter due to time constrain as provided by the Honorable High Court. Apparently the appellant is not at fault if the learned Assessing officer could not reconcile the matter due to time constrains. The Commissioner (Appeals) instead of rejecting the Reconciliation should have directed the learned Assessing Officer to properly reconcile the matter and should not penalize the tax payer for no fault on its part.

17. Both the forums below have not allowed input tax on purchase of jet fuel on the pretext that the same was used by a third party. There is an agreement between the appellant and third party the relevant portion of the agreement read as under:

"1.2 The parties hereby agree that VIA shall operate each round trip full charter flight between Karachi-Lahore-Karachi for PKR equivalent to USD 10,500 (USD Ten thousand five hundred only) (the full charter price) which shall be inclusive of all operational coasts, however excluding fuel and ground handling for the flight as per Annexure A. The price of USD 10,500 per round trip flight is without GST. Therefore, the GST on the total invoice shall also be charged by VIA to OCS as per government laws.

1.5 The parties hereby further agree that the Full charter price is inclusive of all other charges but exclusive of fuel and handing charges for the flights as per the schedule given in Annexure A. fuel & ground handling services shall be



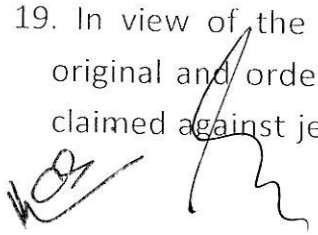
Handwritten signature and initials, possibly "MOS", written over the text of paragraph 1.5.

arranged and provided by OCS at its own cost. Any other cost related to conduct operation under this Agreement, other than fuel and ground handling, shall be sole responsibility of VAI and VAI and VAI hereby agrees not to charge any additional amounts from OCS other than the Full Charter Price for the same.

1.6 OCS shall be responsible to pay the fuel provider and handling agency directly”.


18. From perusal of the above clauses it appears that the appellant is responsible for the payment of fuel charges of the chartered flights. All invoices of jet fuels are in the name of the appellant bearing its NTN, which is one of the requirement of sub-rule (1) of rule 22 and the other requirement is that goods purchased and services are used or consumed in providing or rendering taxable services. The appellant is not claiming the input tax on the basis of tax paid on chartering a flight but had claimed the tax paid on jet fuel as input tax. The Commissioner (Appeals) in para 5 of the order discussed the reasons for not allowing the input tax and it appears that he was impressed by the fact that chartered flight or carriage of goods by air was subject to FED. The Commissioner Appeal in same para has held that “As a matter of fact the appellant is meant for providing courier services who does not use any jet fuel for any of its crafts”. This conclusion appears to be factually not correct and not based on any material available on the record. The appellant has produced invoices in its name having their NTN, which is sufficient proof that jet fuel was purchased by the appellant. There appears no enquiry being conducted on the part of the forums below whether the jet fuel was used or not used for providing taxable courier service. In case the appellant charters a flight for providing courier service and paid sales tax on purchase of jet fuel and the invoices are in its name having its NTN it is entitled to claim input tax as provided in sub-rule 1 of Rule 22 of the Rules subject to proof that the same was used in providing and rendering taxable courier service..

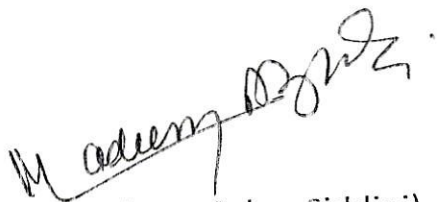
19. In view of the above the appeal is allowed and both the order in original and order in appeal to the extent of disallowance of input tax claimed against jet fuel are set aside. The Assessing Officer is directed to



properly reconcile the fuel invoices with the invoice values (which he could not do due to time constraints) after providing proper right of hearing to the parties and to determine whether the jet fuel was used in providing the taxable courier service or not.

20. The copy of the Order may be provided to the learned representative of the parties.


(Agha Kafeel Barik)
TECHNICAL MEMBER
Karachi
Dated: 28.03.2019


(Justice[®] Nadeem Azhar Siddiqi)
CHAIRMAN

Certified to be True Copy

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) Office copy
- 5) Guard file


REGISTRAR
APPELLATE TRIBUNAL
SINDH REVENUE BOARD

Order issued on.....

29/3/2019

Registrar


Order Dispatched on.....

29/3/2019

Registrar
