

BEFORE THE APPELLATE TRIBUNAL, SINDH REVENUE BOARD AT KARACHI

DB-1

APPEAL NO. AT-11/2019

M/s Escort Capital Limited.....Appellant

Versus

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

Date of Filing of Appeal: 28.01.2019

Date of hearing of Appeal: 05.03.2020

Date of Order: 22.04.2020

Mr. Muhammad Waqas, ACA and Mr. Muhammad Saqib, ITP for Appellant.

Ms. Uzma Ghory, AC-DR and Mr. Ameet Kumar, AC for respondent.

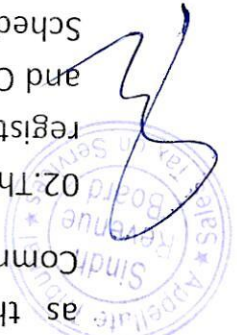
ORDER

Justice® Nadeem Azhar Siddiqi:

This appeal has been filed by the appellant challenging the Order-in-Appeal (hereinafter referred to as the OIA) No.227/2018 dated 04.12.2018 passed by the Commissioner (Appeals), SRB in Appeal No. 124/2018 confirming the Order in Original (hereinafter referred to as the OIO) No. 461/2018 dated 09.05.2018 passed by the Assistant Commissioner-Unit XII, (Ms. Umi Rabbab) SRB, Karachi.

02: The facts of the case as mentioned in the OIO are that the Appellant was registered with SRB under the service category "Stockbrokers, Future Brokers and Commodity Brokers" falling under Tariff Heading 9819.1000 of the Second Schedule to the Sindh Sales Tax on Services Act, 2011 (hereinafter referred to as the Act) chargeable to Sindh Sales Tax (SST).

03: The allegation against the appellant was that perusal of record available with SRB for the tax periods from July, 2011 to June, 2016 revealed that the appellant had earned taxable revenue under the aforesaid Tariff Heading



amounting to Rs.128,879,645/= involving SST of Rs.27,596,899/= . The appellant only declared SST of Rs.2,442,405/= thus declaring short tax amounting to Rs.25,154,494/=

04. A Show-Cause Notice (SCN) dated 28.11.2017 was served upon the appellant under section 23 (2) of the Act calling it to explain as to why SST of Rs.25,154,494/= may not be assessed under section 23 (1) of the Act alongwith default surcharge under section 44 of the Act and imposition of penalties under Serial No. 2 & 3 of the Table under section 43 of the Act. The appellant filed reply dated 08.12.2017 and stated that the appellant is a Public Limited Company having its registered office at Lahore and was engaged in brokerage business and its operations were controlled from its head office and was generating income from Punjab and Sindh. It was also stated that as per section 3 of the Act only those services are taxable under the Act which are provided by the registered person from its registered office or place of business in Sindh and also provided in Sindh. Another reply was filed on 22.12.2017 in which it was stated that during the tax periods from 2011 to 2013 no commission was earned from Sindh. The appellant got online registration with SRB on 09.06.2014 and was duly fulfilling its responsibilities as a service provider and submitting its sales tax returns/liability on timely basis.

05. The Assessing Officer after hearing passed OIO directing the appellant to deposit tax of Rs.25,151,290/= against stock brokerage service, The AC imposed penalty of Rs.8,585,255/= under Serial No. 3 of Table under section 43 of the Act and also imposed default surcharge under section 44 of the Act.

06. The said OIO of the Assessing Officer was unsuccessfully challenged by the appellant by way of filing appeal before the Commissioner (Appeals), who dismissed the appeal and upheld the OIO

07. The learned representative of the appellant submitted as under:-

(i) The registered office of the appellant was situated at Lahore and all clients pertained to Punjab/Lahore to whom services were provided and rendered from Lahore Office and tax was duly deposited with PRA.

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whether in whole or part including e-services where the context reception, consumption, termination or execution of services, "including the rendering, supply initiation, origination, Act, 2011 whereby providing of services is explained as appellant, the attention is invited towards section 2(68) of the Regarding the taxability of brokerage service rendered by the KSE sever.

(iii)

access ESCAP software from where the same was routed to case any of its clients intended to place an order he had to clients were connected to ESCAP server located in Lahore. In province of the Punjab. The appellant explained that their majority of their services were initiated and terminated in the The appellant informed that they had five offices in Punjab and 9819.1000 of Second Schedule to the Act.

(ii)

providing taxable services of Stock Broker under Tariff Heading short payment of SST amounting to Rs. 25,151,290/- for 28.11.2017 for the tax periods July, 2011 to June, 2016 for The appellant was served with show-cause notice (SCN) dated

(i)

08. The learned AC for the respondent submitted as under:-

- (i) The appellant is a card holder of PS and has also an office in the Stock Exchange building and the tax on services provided from Karachi office was deposited in Sindh.
- (iii) The services can only be taxed if the same fall within the definition of Stock Broker and are provided in Sindh by a registered person from its office located in Sindh.
- (iv) The service of appellant originate when a client approached the office for the purpose of sale and purchase of shares and representative of the appellant placed order online and the services also terminated at Lahore office of appellant where the information regarding sale and purchase of shares was received.
- (v) The learned Commissioner has erroneously held that the service originated when the trading order landed at Karachi.



so requires". Thus the appellant fell within the ambit of the

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sub-section.

(iv)

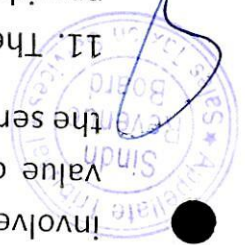
The appellant is holder of Trading Right Entitlement Certificate (TRFC) of Karachi Stock Exchange with its branches located in Punjab. The appellant through its branches buys/sells shares listed in KSE. The service was initiated by placing an order to purchase or sell shares which executed and terminates at KSE. However, since the orders are placed on KSE servers located in KSE premises i.e. Karachi, which makes the physical presence of the appellant irrelevant. When the client places the order to the broker the same is actually placed on KSE server resulting in initiation and termination of services at KSE within the jurisdiction of Sindh. The same is affirmed by this Tribunal's Order in Appeal No. AT-185/2015 dated 27.01.2015 (IGI Finex Securities Limited versus SRB) and in Appeal No. AT-115/2015 (M/s Summit Capital (Pvt.) Limited versus SRB) dated 06.05.2016.

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

10. The appellant was registered with SRB on 09.06.2014. The tax periods involved were from July, 2011 to June 2016. The SST was charged on the entire value of services provided or rendered by the appellant without considering the services provided by the appellant in other jurisdiction/province.

11. The dispute is in respect of payment of SST on stock brokerage service provided by the appellant from its head office located at Lahore. As per the appellant it had discharged its tax liability by depositing due tax with the authorities in whose jurisdiction the services were provided or rendered.

12. The learned AC filed partial Reconciliation Statement dated 20.02.2020 stating therein that the appellant had earned commission of Rs.94,031,004/= involving tax of Rs.14,873,034/=. The appellant deposited Rs.1,891,849/= with SRB, Rs.12,458,282/= with PRA and Rs.522,903/= with FBR.



13. As per the appellant it had its head offices at Lahore from where it had provided services and was liable to pay tax to other jurisdiction i.e. PRA and FBR. The issue relating to the SST on brokerage commission was decided by this Tribunal. A learned Single Bench of this Tribunal in its earlier decision dated 27.01.2016 in the case of M/s IGI Finex Securities Limited versus SRB, Appeal No. AT-185/2015 had decided the issue relating to brokerage income as under:-

"8. In the case the registered person is a stock broker, holding corporate membership of the Karachi Stock Exchange. The members of the Karachi Stock Exchange, utilize in line mechanism for trading of shares, and process the stock of buy/sell request through the Karachi Automated Trading System (KATS). As a result, all the transactions i.e. buying and selling irrespective of its origination are executed or processed through KATS. That the definition section 2 (68) of "provision of services" includes e-servicers where the context so requires.

9. Evidently all the share/stock trading transactions pertaining to Karachi Stock Exchange are executed/terminated at the Karachi Stock Exchange, which is in the province of Sindh. Thus, the brokerage service of appellant originated from offices other than Karachi, they ultimately are executed and/or terminated at the Karachi Stock Exchange. In view of the said explanation the argument forwarded by the appellant does not hold ground".

14. The learned Single Bench of this Tribunal in the case of Summit Capital (Private Limited) versus SRB, Appeal No. AT-115/2015 dated 06.05.2016 also confirmed its earlier decision holding as under:-

"15. As far as the service of stock brokers is concerned even if the appellant has a separate office at Lahore, Punjab from where it is providing and rendering on line service of sale and purchase of shares listed at Karachi Stock Exchange to its clients based at Punjab it is actually providing services from Sindh, Karachi, as the transaction of sale and purchase of share is not complete without the involvement of Karachi Stock Exchange located at Karachi, Sindh. The Stock Brokers mediate between the Stock Exchange and sellers/buyers of the shares. The buyers/sellers of shares interact with Stock Exchange through Stock Brokers and not directly. The appellant is also a Trading Right Entitlement Certificate (TREC) holder of KSE without which the appellant

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In para 20.1.2 of the order-in-original the AC-SRB has laid down the names of places from where services were rendered raising the question as to whether same were chargeable to SST or not; arriving at the conclusion that services rendered from head office, Karachi, KSE Branch and F.S. Live (only those customers who belong to Sindh as well as international customers) were liable to SST, meaning thereby that SST was not chargeable to services

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different laws due to confusion. 12 that tax was being paid at different levels under after 18th Amendment. It was the earlier period i.e. 2011- with FBR is concerned that has itself become redundant of payable Sales Tax with SRB. As far as payment of FED under reference the appellant is depositing total amount the orders of the officers of SRB that after the period The appellant has argued and it is also recorded in both

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deposited with SRB. any taxable services enumerated in 2nd Schedule should be Province of Sindh lies with the SRB and any tax payable on Legally the jurisdiction of all services generating from the

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of both sides our observations are as under:- "12. After going through the orders of the officers below and arguments

reproduced for ready reference as under:-

15. After the above two decisions of the Single Bench the DB of this Tribunal (Appeals), Appeal No. AT- 66/2014 dated 05.05.2017. The relevant portion is pronounced decision in Foundation Security Limited versus Commissioner

is not able to provide the service of Stock Broker to its clients and no sale and purchase of shares is possible without the involvement of Karachi Stock Exchange. The members of Stock Exchange utilized on line KATS system of KSE in providing or rendering service of Stock Broker as a result the transaction of purchase and sales of shares irrespective of its origination processed, executed and terminated at Karachi Stock Exchange, located in Karachi, Sindh. The transaction is not complete unless shares are transferred by using the mechanism provided by Karachi Stock Exchange. Since the service of Stock Broker is essentially provided from the system of Karachi Stock Exchange located at Karachi, Sindh the appellant is liable to pay Sindh sales tax on the entire amount and the tax has been rightly levied".

originating from Lahore & Lahore Defence Branch and

Islamabad.

However the above decision was not in line with the two decisions of Single Bench in Appeals No. AT-185/2015 dated 27.01.2016 and AT-115/2015 dated 06.05.2016 reproduced supra.

16. The subsequent decision of the DB of this Tribunal in case of Elixir Securities (Pvt) Limited versus Commissioner (Appeals), SRB, Appeal No. AT-206/2015 dated 12.05.2017 followed the earlier two decisions of Single Bench in Appeal No. AT-185/2015 dated 27.01.2016 and AT-115/2015 dated 06.05.2016 and the same was not in line with the decision of Foundation Security Limited versus Commissioner (Appeals), Appeal No. AT-66/2014 dated 05.05.2017. The relevant portion of the decision is reproduced below:-

"11. On the issue of securities transactions rendered outside Sindh the AC-III, SRB did not accept the argument of the AR regarding jurisdiction and held that all shares traded were registered with KSE, Karachi, and all trading was done through KATS (Karachi Automated Trading System) which is KSE software. Here trading all over Pakistan is routed through KATS at Karachi / Sindh and the services were practically provided or rendered at Karachi; hence taxable under SST 2011. This has been agreed by the AT in principle in some cases including in the case of IGI FINEX Securities Limited (Appeal No. At-185/2015) confirmed in Appeal No. AT-66/14 (Foundation Securities versus SRB), the relevant portion is reproduced as under:

"The appellant failed to appreciate that when the broker visits KATS which is an automated online system of 'KSE' the shares are either received / sold to and from in the name of the services recipient by the services provider / Appellant through KATS.

The entire process of execution of the service from buying and selling cannot be completed without execution and termination at KSE. The principal activity in the whole process of brokerage services takes place at KSE, through the appellant's software which in term is connected to the terminal located at their registered office in Karachi. Thus whole of the business activity commences and terminates at KSE.

The appellant being a stockbroker has undertaken transaction on behalf of others at the stock exchange which is in the instant case is Karachi Stock Exchange, thereby undertaking brokerage services at Karachi Stock Exchange which is located in the province of Sindh and

consequently attracted Sindh Sales Tax on Services under the provision of SSToS, 2011."

From above discussion it is apparent the Stock Brokerage income earned from branches outside Sindh is chargeable to tax under tariff heading 9819.1000 of Second Schedule of SSToS Act, 2011."

12. On this issue the sales tax was correctly levied";

17. In view of the above discussion and following the latest decision of the DB of this Tribunal in the case of Elixir Securities where in it was held that the brokerage services rendered or provided by the appellant were liable to SST payable to SRB in Sindh for the reason that the entire process of execution of the service for buying and selling cannot be completed without execution and termination at KSE. The principal activity in the whole process of brokerage services took place at KSE, through the appellant's software which in term was connected to the terminal located at their registered office in Karachi. Thus its whole business activity has commenced and terminated at KSE, Karachi.

18. The appeal is dismissed and the tax as determined by the Commissioner (Appeals) is upheld. The copy of the order may be provided to the learned representatives of the parties.

(Imtiaz Ahmed Barakzai)
Member Technical

Justice® Nadeem Azhar Siddiqi
Chairman

Karachi
Dated: 22.04.2020

Copy for compliance:

- 01. The appellant through authorized Representative.
- 02. The Assistant Commissioner (Unit-), SRB, Karachi.

Copy for information to:-

- 03. The Commissioner (Appeals), SRB, Karachi!
- 04. Office Copy.
- 05. Guard File.

Certified to be True Copy

REGISTRAR
APPELLATE TRIBUNAL
STOCK EXCHANGE BOARD

Order issued on 13/05/2020

Registrar

Order Dispatched on 13/05/2020