

(Cover file)

BEFORE THE APPELLATE TRIBUNAL, SINDH REVENUE BOARD
SIGLE BENCH-III
APPEAL NO. AT-20/2019

Assistant Commissioner SRB, Karachi. Appellant

Versus

M/s Royal Airport Services (Pvt.) Ltd Respondent

Mr. Waqas Zaidi AC-SRB For Appellant

Mr. Sufiyan Habib ACA For Respondent

Date of hearing 25.04.2019

Date of Order 30.04.2019

ORDER

Mr. Agha Kafeel Barik: This departmental appeal has been filed against order of Commissioner (Appeals) dated 05.01.2019 whereby he set aside the order-in-original dated 25.05.2018 in toto. The facts of the case are as under:

02. The respondent is registered with SRB under tariff code 9826.0000 (Airport Services). From Annexure A of the sales tax return filed by the respondent it was learnt by the AC Unit-36 SRB that it had claimed input tax adjustment on the services received from two security agencies, which according to the AC-SRB Unit-31, was not admissible under the terms of section 15 read with Section 15A and Rule 22A of the Rules 2011. It was so as the services received from two security agencies were subject to concessionary rate of 10% under SRB notification No.SRB 3-4/08/2013 dated 01/07.2013 and the rules did not allow adjustment of such input tax. The AC concerned therefore, issued a show cause notice on 26.03.2018 confronting the registered person as to why input tax adjustment claim of Rs.732,398/- paid on security services received from M/s Security and Management services (Pvt.) Ltd. and M/s Risk control Strategies (Pvt.) Ltd. may not be disallowed in terms of Section 15A read with Rule 22A of the Act. The AC



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SRB also quoted provision of clause (j) of sub-section (1) of 15A in Para 3 of her show cause notice. However, subsequently, she issued a corrigendum on 30.03.2018 whereby she omitted Para 3 of her show cause notice as "written due to clerical error." Thus leaving the show cause notice with a general reference of Section 15A read with Rule 22A. The said amended show cause notice was made basis of subsequent order-in-original on 26.05.2018. However, allegedly, the respondent failed to comply with the terms of show cause notice the AC concerned passed order-in-original under section 23 on 25.05.2018 charging Sindh Sales Tax at Rs.732,398/-. She also imposed penalty of 36,620/- under section 43 (3) and Rs.732,398/- under section 43 (6d) of the Act. The respondent, deposited total amount of sales tax with default surcharge availing amnesty scheme of SRB of 18th May 2018.

03. Meanwhile, an appeal was also filed before the Commissioner (Appeals). The Commissioner (Appeals) vide his order dated 05.01.2019 knocked off the assessment order relying on a decision of Appellant Tribunal Inland Revenue reported as 2015 PTD Tribunal 416 in the case of Asghar Surgical works v/s C.I.R Sialkot which is quoted him as under.

"It is not needless to maintain here that no penalty under any subsection of section 33 can be imposed and adjudged against a tax payer through on adjudication order until and unless each and every subsection is specifically confronted in the show cause notice and if any penalty is imposed without confronting the relevant provisions as contained in subsections of section 33, it would definitely fall beyond the scope of show cause notice which would render it illegal, unlawful and void ab initio."

It was stated that this decision was based on a decision Supreme Court of Pakistan reported as 2014 SCMR 1189. Other issues were not discussed or decided by him. Hence this appeal before us.

04. Mr. Waqas Zaidi the learned AC submitted that the assessing Officer had rightly disallowed the input claim under section 15A read with Rule 22A which

was duly confronted in the show cause notice as well as mentioned in the order-original.

05. Regarding omission of clause (j) of 15A quoted in Para 03 of show cause notice he stated that since clause (j) was not relevant it was omitted. He further argued that clause (jj) of section 15A (1) is quite relevant in this case and before its promulgation it was clause (viii a) of Rule 22A, prior to amendment, which is relevant in this case and was invoked, the point which was ignored and not at all discussed by Commissioner (Appeals) in his order. He further argued that the learned Commissioner (Appeals) has erred in so much as he knocked off the assessment order merely on the basis of technicalities, ignoring also the judgment of the superior courts. In this respect he cited the judgment of Supreme Court in C.P. No. 702- of 2003 in the case of collector Sales Tax v/s Zamindara Paper & Board Mills, reported as C.P. No. 702-L of 2003, as under.

"We have heard counsel for both the sides and have through the contents of the show cause notice carefully. In our considered opinion the substantial compliance has been made by making reference of the rules to identify the period of time during which tax has been allegedly evaded. Therefore, merely for the reason that sub-rules 2 & 3 of Rule 10 of the Central Excise Rules, 1944 have not been mentioned, it would have not been proper to declare the notice illegal. In this view of the matter, the judgment of the High Court is not sustainable. It is to be noted instead of taking into consideration technicalities, the Court looks into the matter with different angles namely as to whether substantial compliances has been made or if any of the sub-rule has been omitted what prejudice is likely to cause to the party to whom the show cause notice is given. But in the instant case, we are of the opinion that no prejudice shall be caused to the respondents because the substantial compliance of the relevant rules has been made.

Therefore, under the circumstances, the judgment which has been relied upon by the learned counsel is of no help to him."



06. Mr. Waqas Zaidi AC further submitted that while clause (j) was omitted vide corrigendum dated 30.03.2018 and clause (jj) of Section 15A of (1) or clause (VIII a) of Rule 22A (before amendment) was also by mistake not mentioned in show cause notice and order-in-original both, Rule 22A read with Section 15A was duly confronted and as per judgment of the Supreme Court mention of specific provision was not necessary particularly when the message was clearly communicated about disallowance of adjustment of input tax on reduced rate on security services. Hence he submitted that the impugned order of Commissioner (Appeals) may be set aside and Order-in-Original may be restored.

07. Mr. Sufiyan Habib Idrees ACA the learned A.R learned A.R of the respondent submitted that reference of general provision of law is not enough to take action against a taxpayer who should be confronted with specific provision of law as also discussed by Commissioner (Appeals) in para 4 & 5 of his order. The Commissioner (Appeals) has not discussed any other ground on merits as not required after he decided the case on legal issue.

08. The AR further submitted that clause (jj) was added on 14.07.2017 while the period to which this case pertains was November 15 to December 17, hence not fully covered by it. He further argued that while Clause (j) was omitted, clause (jj) or any other clause was not added either in the show cause notice or order in original, thus rendering both as invalid.

09. The learned AR also argued that, 15A (1) (jj) is against Articles 23 & 24 of the Constitution of Pakistan which protect the right of property of the Citizens of Pakistan.

10. The learned A.R. further argued that Section 8 & 9 are charging sections and are in contradiction to provisions of reduced rates and that in the notification dated 01.07.2013 the "given tax period" is not mentioned while Section 8(2) requires that "any given tax period" should be mentioned in the notification. He argued that since there is no mention of any given tax period in the relevant notification for reduced rates, it is invalid and of no legal effect.

11. After hearing both the sides my findings are as under.

11.1 The AC Unit-31 SRB has rightly invoked Section 15A read with Rule 22A in her show cause notice dated 26.03.2018 as well as order-in-original dated 25.05.2018. The only dispute which arose was after omission of clause (j) of Section 15A (1) vide corrigendum dated 30.03.2018 which was not substituted by her by clause (jj) of Section 15A (1) or clause (VIII a) of Rule 22A, before amendment on 28.06.2016 affective 01.07.2016. Both the provisions of law are synonymous except that in clause (VIII a) of Rule 22A only services are the subject matter of such restrictions whereas in clause (jj) which was inserted vide Sindh Finance Act 2017, effective from 14.07.2017 goods are also subjected to the restriction under Section 15A. It may be noted that it was Rule 22A which placed restriction on input tax adjustment prior to insertion of Section 15A with effect from 18.07.2016. However, Rule 22A, as amended on 01.07.2016 effective from 28.06.2016 remained in force in addition to provisions of Section 15A of the Act. Thus clause (VIII a) of Rule 22A remained affective from 07.09.2011 to 28.06.2016. In 2016 instead of rules these restrictions were placed under new Section 15A. However, it was not before 11.07.2017 that clause (jj) was inserted in Section 15A (1) which is similar to clause (VIII a) of Rule 22A, before amendment.

Thus there is a gap of time from 28.06.2016 to 13.07.2017 when there was no provision regarding disallowance of input tax on services liable to reduced rates.

As regards the omission of clause (j) which was not replaced by any other clause such as (jj) of Section 15A (1) the reference to Honorable Supreme Court of Pakistan in CP-702 of 2003 reported as 2008 as 2008 S.C.M.R in the case of Zamidara Paper & Board Mills cited by the appellant AC-SRB and quoted supra is on all fours of this case. It is also held by the higher court that the technicalities of communication of the matter should not vitiate the whole proceedings. In this case also the contents of the show cause notice clearly indicate that the respondent was confronted about disallowance of input adjustment which was claimed on security services obtained by the respondent and were liable to reduced rates. The officer concerned did mention Section 15A read Rule 22A in this respect.



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12. Mere omission of a clause of Section 15A or Rule 22A cannot vitiate the whole proceedings of assessment particularly when the officer concerned remained firm on her single point subject of the case. No other issue was to be considered nor the issue was to be seen for any other angle.

13. In view of the above findings the disallowance of input tax is confirmed.

14. With regard to penalties imposed under section 43 i find that the officer concerned has not discussed the reasons for the same nor established mens-rea in the matter. Imposition of penalties is a serious matter and a separate subject and should be dealt as such. It should not be handled casually as done in this case. Besides, the respondent has been contesting the issue on every available forum in his legal right and this does not invoke any penal action. Hence both the penalties are set aside.

15. The appeal is disposed of as above.

(AGHA KAFEEL BARIK)
TECHNICAL MEMBER

Certified to be True Copy

Karachi

Dated: 30.04.2019

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.

Guard File.

REGISTRAR
APPELLATE TRIBUNAL
SINDH REVENUE BOARD

Order issued on

03/05/19

Registrar

Order Dispatched on

03/05/19

Registrar