

BEFORE THE APPELLATE TRIBUNAL SINDH REVENUE BOARD AT KARACHI

DB-I

APPEAL NO. AT- 40 /2019

Deputy Commissioner, SRB, Hyderabad.....Appellant

Versus

M/s AL-Khalid Agencies for Waste ManagementRespondent

Date of filing of Appeal: 12.04.2019.

Date of hearing: 13.11.2019.

Date of Order: 04.12.2019

Mr. Syed Rizwan Ali, DC- SRB and Mr. Kaleemullah AC-DR for appellant.

Mr. Aga Faquir Mohammad, Advocate for respondent.

ORDER



Justice @ Nadeem Azhar Siddiqi: This appeal has been filed by the appellant/department challenging the Order-in-Appeal (hereinafter referred to as the OIA) No.44/2019 dated 26.02.2019 passed by the Commissioner (Appeals-II) in Appeal No. 266/2018 filed by the respondent against the Order-in-Original (hereinafter referred to as the OIO) No. 611/2018 dated 13.06.2018 passed by the Deputy Commissioner (Mr. Syed Rizwan Ali), SRB, Hyderabad.

02. The facts of the case as mentioned in the OIO are that the respondent is registered with SRB for Sindh Sales Tax (SST). It was also stated that the information from Hyderabad Municipal Corporation (hereinafter

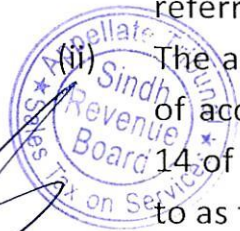
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referred to as HMC) shows that the appellant had provided and rendered services to HMC for garbage lifting and dumping and waste management in Latifabad Zone, Hyderabad for the tax periods February, 2015 to February, 2017 and such services were taxable in terms of section 3 and 4 of the Sindh Sales Tax on Services Act, 2011 (hereinafter referred to as the Act) falling under Tariff Heading 9809,000, "Contractual Execution of Work" of the Second Schedule to the Act chargeable to SST on Services @ 13%.

03. It was contended in the OIO as under:-

- (i) The respondent had provided taxable service valued to Rs.136,08,000/= involving SST amounting to Rs.19,224,000/=. The on line record of SRB showed that HMC did not deduct and withhold any amount of Sindh Sales Tax (SST) at the time of payment to the service provider in violation of Sindh Sales Tax on Services Special Procedure (Withholding) Rules, 2014 (hereinafter referred to as the Withholding Rules).
- (ii) The appellant failed to deposit SST amount in Government's head of account in violation of section 3,4,5,8,9 and 17 read with rule 14 of Sindh Sales Tax on services Rules, 2011 (hereinafter referred to as the Rules).
- (iii) The respondent filed Null returns for the tax periods May, 2015 to March, 2017 despite providing and rendering taxable services in Sindh, thus failed to file correct and true tax returns and made false statement in violation of section 30 of the Act read with rule 13 of the Rules).
- (iv) The respondent failed to issue serially numbered invoices to the service recipients in violation of section 26 (1) of the Act read with rule 29 of the Rules.
- (v) That a show-cause notice (SCN) dated 07.11.2017 was served upon the respondent to explain as to why SST amounting to Rs.19,224,000/= should not be assessed under section 23 (1) and section 23 (1A) of the Act and recovered under section 47 (1) of the Act and why default surcharge under section 44 of the Act and penalties under serial No. 3, 6, 8 and 12 of the Table of Section 43



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of the Act, should not be imposed. The respondent was also required to provide SST invoices issued to HMC for the tax periods from February, 2015 to February, 2017. Moreover the appellant was required to furnish up to date Contracts signed with HMC and proof of payment of SST amount in Sindh Government's head of account.

(vi) The respondent filed its reply dated 21.11.2017 requesting therein to recall the SCN on the point of jurisdiction as the registered office of the appellant was situated at Karachi. Another Reply dated 05.12.2017 was received stating therein that the respondent did not fall under Tariff Heading 9809.0000, and that the respondent was engaged in the business of providing services of "lifting and transportation of garbage from Latifabad Zone, to the dumping site via Garbage Transfer Centre (GTS). It was contended vide letter dated 06.12.2017 that the service of lifting of garbage and transportation was not taxable in terms of the Act and Tariff Heading 9809.0000 and also referred to order of this Tribunal in Appeal No. At-17/2018 reported as 2018 PTD 527. The respondent vide letter dated 26.12.2017 objecting to the deduction, withholding and depositing of SST equivalent to one fifth of the total SST payable by HMC.

(vii) The respondent also approached the learned Ombudsman, Sindh against the issuance of SCN by SRB. After receipt of the directions of the learned Ombudsman, Sindh three reminders were issued to the respondent to appear in person or through authorized representative to answer all material questions and submit a reply but the respondent failed ^{to} appear for hearing and did not submit any supported by requisite record and documents. Meanwhile a letter received from HMC informing SRB that SST was deducted, withheld and deposited at Rs.3,844,800/= from the payments to the respondent, and such cheque dated 30.06.2017 was submitted.

(viii) The Assessing Officer passed OIO determining the SST amounting to Rs.15,379,200/= along with default surcharge and penalty of Rs.768,960/= under Table No.3 of Section 43 of the Act.



Furthermore penalties were imposed amounting to Rs.50,000/= under Table No. 6(c) of Section 43 of the Act, penalty of Rs.50,000/= under Table No. 8 of Section 43 of the Act and penalty of Rs.768,960/= under Table No.12 of Section 43 of the Act.

04. The respondent challenged the said order of the Assessing Officer by way of filing appeal before the Commissioner (Appeals), who while relying on the earlier decision dated 21.01.2019 of this Tribunal in case of Al-Khalid Agencies for Waste Management, Appeal No. AT- 75/2018 dismissed the appeal resulting in filing of this appeal by the department.

05. In his written synopsis the learned Deputy Commissioner, SRB submitted as under:-



(i) That the respondent bearing SNTN: 2141300-2 was registered with SRB for "Maintenance and Cleaning Services" Tariff Heading 9822.2000. The registered person was providing services to various service recipients including HMC who signed the professional service agreement for waste management and allied activities, in civil jurisdiction of Latifabad Zone, Hyderabad, during the tax period February 2017. The total value of services for the said tax periods was Rs. 136,080,000/-, involving SST of Rs. 19,224,000/-, out of which Rs. 3,844,800/- was withheld and remaining outstanding amount of Rs. 15,379,200/- is payable at the rate of tax which was applicable at the time of rendering services to M/s HMC.

(ii) The clauses of 'Scope of Services' clearly showed that the contractor was required to carry out waste management services consisting of garbage lifting from specific sites, door to door management including managing and maintenance of the sweeper machines and maintenance thereof, dumping the collected garbage and managing the dumping site, managing the Garbage Transfer Station (GTS), Operating the vehicles, establishment of service station in the workshop, servicing of all

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HMC vehicles, coordination with shopkeepers of the markets for waste disposal and supply of Tractor Trolley etc.

(iii) The Commissioner (Appeals)-II, did not hear the case properly and disposed it off in only one hearing which was given on 15.02.2019. The learned Commissioner (Appeals-II) passed OIA No. 44/2019 dated 26.02.2019 and set aside the OIO

06. The learned advocate for the respondent in his written arguments submitted as under:-

- (i) The services provided by the Respondent were not taxable under Tariff Heading 9809.0000-contractual execution of work or furnishing supplies since such Tariff Heading is applicable only where both the services and supply of goods are involved and not where only services are being rendered/provided. The Appellate Tribunal, SRB, Karachi in the order dated Appeal No. AT-17/2013, M/s APM Terminals Pakistan versus Assistant Commissioner-VI, SRB on the issue of Tariff Heading 9809.0000, contractual execution of work or furnishing of supplies held in para 10 which is reproduced for ready reference as under:-



“The confusion appears due to word “or” between the words “contractual execution or work” or “furnishing supplies” in Tariff Heading 9809.0000. It is true that word “or” is a disjunctive particle that marks for alternative generally corresponding to “either”. Normally “or” is disjunctive, but sometimes it is read as conjunctive to give effect to the manifest intention of the legislature as disclosed from the context. Here since the furnishing supplies alone cannot be taxed for invoking 9809.0000 it is necessary that “composite services” i.e. those including the elements of both “providing or rendering execution of work and furnishing supplies should be present”.

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

07. To proceed further it is advantageous to examine the job description provided in Exhibit “A” attached to the Agreement between respondent

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and HMC. The main job in the Agreement is lifting and transportation of garbage from the Latifabad Zone to the dumping site via GTS (Garbage Transfer Station) or otherwise and lifting of garbage manually from the area covering the entire UCs of Latifabad Zone and concreted and development of dustbin sites and door to door collection of garbage.

08. From the scope of contract it appears that the job of the appellant comprises of lifting, transportation, and disposal of all types of garbage/solid waste from the areas of Latifabad Zone. The lifting of garbage from door to door and its transportation to dumping site does not involve any element of furnishing supplies and Tariff Heading 9809.0000 is thus not applicable.

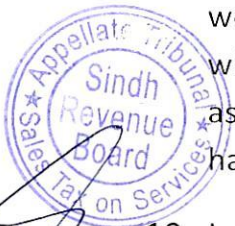
09. In the earlier decision dated 21.10.2017 of this Tribunal in Appeal No. AT-14/16, Deputy Commissioner Versus Byco Terminal relating to applicability of Tariff Heading 9809.000 it was held and the relevant paragraphs are reproduced for ready reference as under:-



"The core issue involved in this appeal is the proper classification of the services provided or rendered by the respondent to HMC. Unless the proper nature, scope and classification of services provided or rendered by the appellant is determined the question of levy of tax cannot be decided. It is an admitted position that the services of lifting of garbage and its transportation to the dumping site is not listed in the First and Second Schedule to the Act and for that reason the department has taken shelter under a General Tariff heading 9809.0000 (contractual execution of work or furnishing supplies).

The Tariff Heading 9809.0000 is a General Tariff Heading to cover contractual execution of work or furnishing supplies. not falling in any other tariff heading. The benefit under Tariff heading 9809.0000 can only be taken if the service provided or rendered is not listed in the First or Second Schedule to the Act and provided under contractual execution of work or furnishing supplies. Tariff heading 9809.0000 has two components i.e. providing or rendering (1) contractual execution of work or (2) furnishing supplies. To attract 9809.0000 it is necessary that both the components are available in the contract or agreement. This argument finds support from the Exemption Notification No. SRB-3-4/7/2013 dated 18th June, 2013 which provides that "in relation to the

work or supplies the total value of which does not exceed rupees 50 Million in a financial year subject to the condition that the value component of services in such contractual execution of work or furnishing supplies also does not exceed 10 million rupees". The exemption can only be claimed if in a contract both elements are present. Admittedly while providing services of storage, rental and equipment handling the respondent has not executed any work and has also not furnished supplies. It appears that the tax was charged under the first phrase of T.H. 9809.000 (contractual execution of work). For invoking first phrase it is necessary that the respondent has performed or executed some type of work involving physical and mental exertion to attain an end as defined in the Black's Law Dictionary, Tenth Edition, which is lacking in the Contracts of storage, rental and equipment handling. The works contract is an agreement which is a mixture of service of labour and transfer of goods. Under a works contract the contractor agrees to do certain job in execution whereof, certain goods are transferred to the contractee, again this aspect is missing in the contract of storage, rental and equipment handling".



10. In the agreement between the respondent and HMC the element of furnishing supplies was missing and for that reason the Assessing Officer has only mentioned "contractual execution of work", thus Tariff Heading 9809.0000 cannot be invoked in absence of element of furnishing supplies.

11. The facts of case of APM Terminal cited by the respondent decided by this Tribunal in Appeal No. AT-17/2013 are relevant since the appellant in that case had claimed that it was engaged in providing and rendering services of containers and gen-sets handling/repair/maintenance and other allied services and that the services provided or rendered by the appellant were not specifically listed in the Second Schedule to the Act and were therefore not taxable. Thus it is evident that the facts of both these cases are similar. The Commissioner (Appeals) has rightly relied upon the earlier decision of this Tribunal in the case of APM Terminal.


12. It is pertinent to mention that different officers of SRB invoked different Tariff Heading to tax lifting of garbage and transportation which shows lack of consistency. The orders are referred as under:-

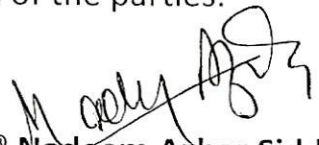
(a) In the case of Sanco Technologies, Appeal No. AT- 03/2019 the department invoked Tariff Heading No. 9824.0000 (construction services) and the Tribunal had set aside the OIO and OIA.

(b) The Department in the case of Al Khalid Agencies for Waste Management, Appeal No. AT- 75/2018 invoked Tariff Heading No. 9822.3000 (Janitorial services), the Commissioner (Appeals) in appeal filed by the tax payer changed the Tariff Heading from 9822.3000 to 9822.2000 (Maintenance and cleaning services). The Tribunal had held that both the Tariff Headings were not applicable.

13. The Act was amended recently and Tariff Heading 9852.0000 (waste collection, transportation, processing and management services) was inserted in the Second Schedule to the Act vide Sindh Finance Act, 2019 to cover the lifting and transportation of garbage. The amendment in the relevant law strengthens the view of this Tribunal that the Tariff Headings invoked by the Department were not applicable.

14. In view of the above discussions it is held that the lifting of garbage and transportation was not a listed service during the relevant tax period and consequently the appeal is dismissed and the order in appeal is maintained. The copy of the order may be provided to the learned representatives of the parties.


(Imtiaz Ahmed Barakzai)
Technical Member


(Justice[®] Nadeem Azhar Siddiqi)
Chairman

Karachi: Dated: 04.12.2019

Certified to be True Copy

Order Dispatched on

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2. The Assistant Commissioner (Unit-), SRB, Karachi.

Copy for information to:-

- 3) The Commissioner (Appeals-II), SRB, Karachi.
- 4) Office copy
- 5) Guard file

