

BEFORE THE APPELLATE TRIBUNAL SINDH REVENUE BOARD AT KARACHI

DB-I

APPEAL NO. AT- 60 /2019

M/s Pakistan International Bulk

Terminal Limited (Pvt.) Ltd. Karachi.....Appellant

Versus

Assistant Commissioner, SRB,

Karachi.....Respondent

Date of Filing of Appeal: 20.06.2019.

Date of hearing: 03.02.2020 and 11.02.2020.

Date of Order 24.02.2020.

Mr. Mohammad Yousuf, Advocate and Mr. Nisar ul Haq, Chartered Accountant for Appellant.

Ms. Uzma Ghory. AC-DR and Mr. Imran Ali, AC-SRB for Respondent

ORDER



Justice ® Nadeem Azhar Siddiqi: This appeal has been filed by the appellant/tax payer challenging the Order-in-Appeal (hereinafter referred to as OIA) No.88/2019 dated 23.04.2019 passed by the Commissioner (Appeals) in Appeal No. 142/2018 filed by the Appellant against the Order-in-Original (hereinafter referred to as OIO) No. 459/2018 dated 08.05.2018 passed by the Assistant Commissioner (Mr. Awais Raza) SRB, Karachi.

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01. The facts of the case as mentioned in the OIO are that the appellant is registered with SRB as service provider in the category of Terminal Operator, Tariff Heading 9819.9090 of the Second Schedule to the Sindh Sales tax on Services Act, 2011 (herein after referred as the Act) chargeable to Sindh sales tax at normal rate. It was further stated that according to the provision of clause (k) of sub-section (1) of Section 15A of the Act a registered person shall not be entitled to claim, reclaim, adjust or deduct input tax in relation to the amount of sales tax paid on other taxable goods or services in excess of 13% percent ad valorem.
02. It was alleged in the OIO that during the scrutiny of the sales tax returns filed by the appellant pertaining to the tax periods March, 2017 and April, 2017 it was revealed that the appellant had claimed input tax on goods imported in excess of 13% **percent ad valorem**. The total excess input tax availed by the appellant amounted to Rs. 10,394,392/- which was inadmissible in terms of clause (k) of sub-section (1) of Section 15A of the Act.
03. A Show-Cause Notice (SCN) dated 24.03.2018 was served upon the appellant calling upon it to explain why inadmissible input tax credit adjustment amounting to Rs.10,394,392/- pertaining to the tax periods March, 2017 and April, 2017 should not be disallowed in terms of clause (k) of sub-section (1) of Section 15A of the Act and why the said amount should not be assessed and recovered from it under section 23(1) and clause (a) of sub-section (1A) of section 47 of the Act along with default surcharge under Section 44 of the Act and the penalties prescribed under sub-section 3,6(d), 11 and 13 of Section 43 of the Act.
04. In response to SCN Mr. Nisar appeared on 28.04.2018 and submitted that input tax for the periods of SCN pertained to the purchase of fixed assets, which fall under section 15A (1)(f) and 15B of the Act. He further confirmed that the evidence for the same will be provided by the appellant on 30.04.2018. The appellant vide its letter dated 03.05.2018 provided the copies of Good Declarations (GDs) and submitted that all the goods were capital in nature.



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05. Finally the Assessing Officer passed OIO disallowing the input tax adjustment amounting to Rs.10,394,392/= and imposed penalties of Rs.519,720/= under Serial Number 3 of Table of section 43 of the Act and Rs.10,394,392/= under Serial Number 6(d) of Table of section 43 of the Act

06. The appellant had challenged the OIO before Commissioner (Appeals) who vide ^{OIA} his dated 23.04.2019 OIA dismissed the appeal and conditionally remitted the penalty under Serial Number 6(d) of Table of section 43 of the Act. Hence, the appellant has challenged the said OIA before this forum.

07. Mr. Mohammad Yusuf, Advocate for appellant submitted as under.

(i) Irrespective of restriction imposed by Clause (k) of sub section (1) of Section 15A of the Act, 2011 on adjustment of input tax beyond 13%, the appellant was entitled to adjust the entire amount of Sales Tax paid under Sales Tax Act, 1990 on capital goods & fixed assets. He also contended that Clause (k) referred above does not place any restriction on adjustment of input tax paid on capital goods and fixed assets beyond 13% and referred to the definition of input tax provided in sub section (52) of Section 2 of the Act.



(ii)

The amount of sales tax paid under Sales Tax Act, 1990 was not disputed by SBR. He referred to Section 15 of the Act and submitted that this section does not provide any restriction upon the right of the appellant to adjust input tax beyond 13%. He then submitted that Section 15A of the Act is a negative covenant restricting the right of the appellant to adjust input tax adjustment and the same has to be construed strictly and any ambiguity should be resolved in favor of the tax payer.

(iii) Clause (k) of sub-section (1) of section 15A of the Act does not speak about the capital goods and fixed assets and only refers to "other taxable goods" meaning thereby that only movable goods are included in this clause and capital goods and fixed assets are excluded therefrom.

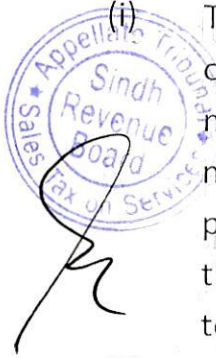
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- (iv) The occasion of adjustment of input tax was subject to economic activity i.e. providing or rendering of a taxable services. However under section 15A of the Act the rate of tax paid was not mentioned but the actual amount of sales tax paid to FBR could be adjusted.
- (v) Clause (f) of sub section (1) of Section 15A of the Act deals with the fixed assets and capital goods and reflecting the intention of the legislature that these items were not included under clause (k) of sub section (1) of Section 15A of the Act.
- (vi) The word "goods" used in clause (k) of sub section (1) of Section 15A of the Act has to be interpreted in the light of the definition provided in sub-section (48) of Section 2 of the Act. This definition is very wide/broad and includes all type of goods whether fixed assets or capital goods.

08. Mr. Imran Ali, AC for the respondent submitted as under:

- (i) The definition of goods provided in sub-section (48) of Section 2 of the Act covers all goods whether capital goods, fixed assets and movable goods. Moreover at the time of import all goods are movable goods and input tax adjustment beyond 13% was not permissible under clause (k) of sub section (1) of Section 15A of the Act. The appellant had malafidely claimed and adjusted the total amount of sales tax paid under Sales Tax Act 1990.
- (ii) The Board under section 15 of the Act is vested with the powers to prescribe conditions and restrictions for claiming adjustment. Similarly section 15A of the Act also prescribes restriction on adjustment of input tax beyond 13%.
- (iii) He referred to sub-section (48) of section 2 of the Act and submitted that the word "goods" used in clause (k) of sub-section (1) and section 15A of the Act includes all kinds of goods, He further referred to clause (f) of sub-section (1) section 15A of the Act and submitted that the words "capital goods and fixed assets" were specifically used instead of the word "goods".
- (iv) The appellant has filed Suit No. 2262/2017 against the FBR challenging levy of Sales Tax, 1990 on the goods imported and has applied for refund of the sales tax paid. However it has also



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claimed input tax adjustment on same goods which shows the bad intention of the appellant since it wants to avail double benefits.

- (v) The meaning of "goods", "capital asset" and "capital goods" were referred in Black's Law Dictionary, 4th Edition and it was reiterated that the goods meant all type of goods without any distinction.

09. Mr. Mohammad Yousuf, Advocate in rebuttal submitted that capital goods or fixed assets included all those goods & assets which after installation and erection would become operational and result in providing & rendering any taxable services under the Act. He stated that the word "movable" included all types of goods used in providing or rendering taxable services under the Act. He stated that the appellant had claimed input tax adjustment on the basis of tax already paid to FBR and they did not avail any double benefit.

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

10. The only question involved is whether the appellant has rightly adjusted input tax beyond 13% as provided in clause (k) of sub-section (1) of section 15A of the Act. It is evident that the appellant adjusted input tax during the tax periods from March, 2017 to April 2017 on account of payment of sales tax to FBR on import of capital goods for the installation and operation of the Bulk Terminal at PQA.

11. Section 15A of the Act was inserted in the Act vide Sindh Finance Act, 2016 and provides the "input tax credit not allowed". The provision is applicable for the tax periods March, 2017 and April, 2017. This section commence from the words "notwithstanding" meaning thereby that the provision has an overriding effect upon the other provisions of the Act and was inserted to restrict the adjustment of input tax. Clause (k) of sub-section (1) of section 15A of the Act provides that the amount of sales tax paid on other taxable goods or services in excess of 13 per cent ad valorem is not allowable. This restriction or condition has not been imposed by the SRB Board under section 15 of the Act, but this



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restriction or condition was imposed by the Act itself. The legislature in its wisdom has imposed this restriction or condition to avoid adjustment of input tax beyond the statutory rate of tax under the Act which at the relevant tax periods was 13%.

12. The contention of Mr. Mohammad Yousuf, Advocate was that the word "goods" used in clause (k) of sub-section (1) of section 15A of the Act does not include "capital goods and fixed assets". He submitted that in sub-section (48) of section 2 of the Act the word "goods" was defined to include "every kind of movable property" and not capital goods and fixed assets. The legislature by using the term "include" instead of word "means" had enlarged the meaning of word "goods". The machinery and equipment imported by the appellant to be used in providing or rendering taxable services may be termed as capital goods or fixed assets but is movable property which is covered by the definition of goods ("which includes every kind of movable property") meaning thereby that all type of goods i.e. capital goods and fixed assets are also included in the definition of goods. It appears that in clause (k) of sub-section (1) of section 15A of the Act, the legislature deliberately used the word "goods" to include all type of movable property including the capital goods and fixed assets. Unlike this the legislature in clause (f) of sub-section (1) of section 15A of the Act has specifically used the expression "capital goods and fixed assets" to show that the provision will only apply to capital goods and fixed assets and not on all goods.

13. It is the rule of interpretation that when a word is defined in the Act it must be given the same meaning throughout the Act. If the word is not defined in the Act and there is no appropriate definition appearing in the judicial dictionaries only than help can be sought from ordinary dictionaries. In the reported case of Commissioner Income Tax, Legal Division versus Khurshid Ahmad, PLD 2016 SC page 545 it has been held as under:-

"Where the legislature defines, in the same statute, the meaning of a word used therein, such definition most authoritatively express its intent which definition and construction is binding on the courts. When a word has been



defined to mean such and such, the definition is prima facie restrictive and exhaustive". In the same judgment it was further held as under:-
It is well settled that a strict and literal approach is to be adopted while interpreting fiscal or taxing statutes, and that court cannot read into or impute something when the provision of a taxing statute are clear".

The content of clause (k) of sub-section (1) of section 15A of the Act is clear as discussed supra and it includes all type of goods. Thus the contention of Mr. Yousuf, advocate does not merit any consideration.

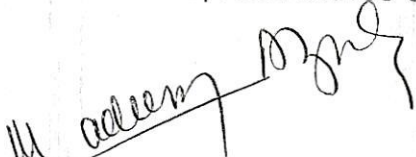
14. The word "movable property" was not defined in the Act. The Google defined "movable property" as that property which one owns and can take with him, it does not include houses, apartments, or land. The Google has defined "capital goods" as those goods which are used in producing other goods, rather than being bought by consumers. Whereas the "fixed assets" has been defined as "assets which are purchased for long-term use and are not likely to be converted quickly into cash, such as land, buildings, and equipment". In clause (f) the expression "fixed assets" was not used in relation to land or building but in relation to movable goods purchased for long term use.

15. In view of our opinion expressed above, the input tax adjustment claimed by the appellant beyond 13% was rightly disallowed by the Department.

16. The Commissioner (Appeals) had waived the penalty under Serial No. 6(d) of the Table of section 43 of the Act. Moreover the appellant has already deposited the amount of tax and the penalty under Serial No. 3 of the Table of Section 43 of the Act.

17. In the light of the above discussions the appeal having no merit is dismissed. 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

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Order Dispatched on 04/03/2020

Order issued on 04/03/2020

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REGISTRAR
APPELLATE TRIBUNAL
SINDH REVENUE BOARD

Karachi

Dated: 24.02.2020

Copy 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.