

(Covered file)

BEFORE THE APPELLATE TRIBUNAL SINDH REVENUE BOARD KARACHI

DB-1

APPEAL NO. AT-62/2019

Assistant Commissioner, SRB, KarachiAppellant

Versus

M/s Attajir -us- Saleh.....Respondent

Date of Filing of Appeal : 20.06.2019

Date of hearing: : 20.11.2019 and 05.12.2019

Date of Order: : 24.12.2019

Ms. Uzma Ghory, DR-AC and Mr. Kaleemullah DR-AC for Appellant

Ms. Raeel Fatima, ITP for Respondent

ORDER



Justice ® Nadeem Azhar Siddiqi, Chairman: This appeal has been filed by the appellant/department challenging the order-in-appeal (hereinafter referred to as OIA) No. 90/2019 dated 24.04.2019 passed by the Commissioner (Appeals) in Appeal No. No.10/2019 filed by the respondent against the order-in-original (hereinafter referred to as OIO) No. 1055/2019 dated 09.01.2019 passed by the Assistant Commissioner (Mr. Zohaib Athar), SRB, Karachi.

02. The facts as stated in OIO were that the respondent was registered with SRB under the service category of "Commodity or Equipment Leasing" Tariff Heading 9813.3020 of the Second Schedule of Sindh Sales Tax on Services Act, 2011 (hereinafter referred to as the Act) chargeable to Sindh Sales Tax (SST) at standard rate as specified.

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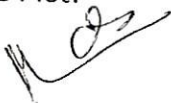
03. The allegations in the OIO were that from perusal of income tax returns of the respondent filed with Federal Board of Revenue (FBR) for the financial years 2017 and 2018 revealed that it had provided or rendered aforesaid services including taxable services under Tariff Heading 9809.0000, "person engaged in contractual execution of work or furnishing supplies".

04. It was further alleged in the OIO that the respondent had earned taxable income amounting to Rs.46,636,066/= and Rs.12,970,436/= respectively for the year ended 2017 and 2018 and had also earned income from rent of machinery and equipment amounting to Rs.12,381,725/= during the tax year 2018 but declared SST of Rs.1,609,625/= only. It had thus short declared SST amounting to Rs.6,062,689/= and Rs.1,686,156/= respectively.

05. A show-cause notice dated 12.12.2018 was served upon the respondent calling upon it to explain as to why the SST amounting to Rs.7,748,845/= pertaining to tax periods from July, 2017 to June, 2018 may not be assessed and recovered under section 23 (1) of the Act and recovered along with default surcharge and penalty prescribed under serial No. 3 and 6 of the Table of section 43 of the Act.

06. The respondent filed written reply on 21.12.2018 stating therein that the allegation of short declared tax was not correct and the amount mentioned in the SCN was not earned from Pakistan but received as remittance from Congo. The respondent also furnished credit advices contending that the services were not provided from its registered office in Sindh.

07. Finally the Assessing Officer passed the Assessment Order determining the tax liability of Rs. 46,636,066/= for the tax year 2017 and Rs.12,970,436/= for the tax year 2018 totalling to Rs. 7,748,845/= along with default surcharge. The Assessing Officer also imposed penalty amounting to Rs.387,442/= under serial No. 3 of Table of section 43 of the Act.



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08. The respondent challenged the said order of the Assessing Officer by way of filing appeal before the Commissioner (Appeals), who set aside the OIO and discharged the respondent from liability created by Assessing Officer. Hence this appeal by the department.

09. The learned AC on behalf of the department in her written as well as oral arguments submitted as under:-

(i) The respondent is registered with Sindh Revenue Board under the service category of commodity or equipment leasing. Besides being registered in the category of leasing, it has been found from the record submitted by the respondent that It had also provided the services of contractual execution of work which squarely fall within the Tariff Heading 98909.0000 of the Second Schedule to the Act.

(ii) The copy of Agreement produced by the respondent was not attested and stamped by the recipient of the service i.e. M/s NYUMBA YA AKIBA SA, hence the same is questionable and not admissible.

(iii) It was evident from the income tax returns of the respondent that it had declared local income from 'receipts on execution of a contract u/s 153 (1) (c) of the Income Tax Ordinance, 2001' and not the foreign income which required the separate entry into the income tax returns. Moreover income tax was also paid on such local income.

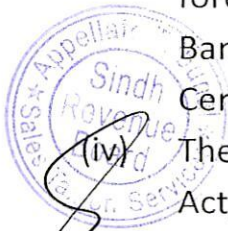
(iv) The respondent was registered with its registered office in Karachi and all the record submitted by the respondent justified that service of contractual execution had been rendered in the Province of Sindh and was taxable under the Tariff Heading 9809.0000 of the Second Schedule to the Act.

(v) The AC relied upon section 3 (1) (b) read with section 4 of the Act and submitted that since the invoices were generated from Sindh and the payment was also received through banking channel in Sindh thus the service was taxable in Sindh.



10. The learned representative of the respondent in her written as well as oral arguments submitted as under:-

- (i) The copy of agreement provided was already signed and sealed by the contracting party i.e. M/s NYUMBA YA AKIBA SA and attested by the Consulate.
- (ii) The head of contractual receipt was wrongly incorporated as local receipts instead of foreign receipts at the time of e-filing under code 64310071 of return of Income Tax of Mr. Osama Irfan Rathore for Tax years 2017 & 2018. Whereas online request for revision of return of income tax for the said periods were made and accepted.
- (iii) As the matter of fact the services have been provided at Congo and not in Sindh and such details have been duly provided which were self-explanatory. The amounts were received in the form of foreign remittances through banking channel and in this regard Bank Statements, Credit Advices and Proceed Realization Certificates were placed on record.
- (iv) The preamble of the Act and sub section (2) of section 1 of the Act, 2011 provides that "An Act to provide for the levy of a tax on services provided, rendered, initiated, received or consumed in the Province of Sindh". This clearly means that the object and scope of the Act was extended to tax the services provided in Sindh & not on the services provided in any other countries or outside Sindh.
- (v) Mere issuance of invoices and receiving payment does not mean that services were provided in Sindh. The activities of providing or rendering services should be performed with in Sindh to tax the services.
- (vi) The Tax profile of the respondent is self-explanatory and there was no short fall in payment of SRB. All copies of CPR's along with monthly returns were duly enclosed to prove that SST amounting to Rs. 1,609,625/- was paid to SRB for the tax year 2018.
- (vii) The revised returns of Income Tax for the Tax Year 2017 & 2018 were placed on record in which the error has been rectified i.e. Previously Foreign Contractual Receipts was mistakenly taken



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under the head of local receipts under Tariff Heading 64060265 instead of Foreign Contractual Receipts under Tariff Heading 64310071. The orders under section 122 (3) of the Income Tax Ordinance, 2001 were issued with decision "ACCEPTED /GRANTED" on revision of returns of income tax and the same were duly placed on record.

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

11. The controversy between the parties is whether the service provided by the respondent at Congo having its registered office at Sindh was liable to be taxed in Sindh or not. The claim of the appellant is that the respondent earned taxable income during the year ended 2017 and 2018 amounting to Rs.46,636,066/= and Rs.12,970,436/= respectively and had also earned income from rent of machinery and equipment amounting to Rs.12,381,725/= during the tax year 2018 but declared SST of Rs.1,609,625/= and thus short declared SST amounting to Rs.6,062,689/= and Rs.1,686,156/= respectively. The claim of the respondent was that it had earned income by providing services at Congo which was not liable to SST.

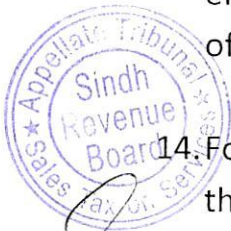
12. The respondent was voluntarily registered with SRB on 15.02.2018 as individual under Tariff Heading 9813.3020 (Commodity or Equipment Leasing). The tax periods involved were from July, 2016 to June, 2018. The tax periods from July, 2017 to January, 2018 were prior to its registration. The respondent had paid SST amounting to Rs.1,609,625/= on services provided by it on account of rental of machinery during tax periods July, 2017 to June, 2018 and placed CPRs on record.

13. The SST was levied in Sindh after the Eighteenth Amendment in the Constitution of Islamic Republic of Pakistan which gave right to the Provinces to tax services. The object of the Act was to provide for the levy of a tax on services provided, rendered, initiated, received or consumed in the Province of Sindh. The second para of the Preamble of the Act provided that "whereas it is expedient for the levy of a tax on services provided, rendered, initiated, received, originated, executed or consumed in the Province in Sindh and for all matters incidental and



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ancillary thereto or connected herewith. Section 3 of the Act provides that a taxable service is a service listed in the Second Schedule to the Act and is provided by a registered person from its registered office or place of business in Sindh. Sub-section 3 of section 3 of the Act provides that for the purposes of sub-section (2) of section 3 of the Act, where a person has a registered office or place of business in Sindh and other outside Sindh, the registered office or place of business in Sindh and that outside Sindh shall be treated as separate legal persons. The cumulative reading of the above provisions are that the tax was levied on the services provided in Sindh and if a registered person has two office, one in Sindh and other outside Sindh both shall be treated as separate legal entities. The services provided by the respondent at Congo at no stretch of imagination can be treated as services provided in Sindh.



14. For levying SST it is essential that an economic activity was carried on in the territory of Sindh that involved or intended to involve the provision of providing or rendering service by a person to another person. From the contents of the Contract it is evident that all services were provided in Congo and no part of Contract was performed in Sindh. The Department has failed to establish that the services or part thereof were provided or rendered within the territory of Sindh.

15. The learned AC in OIO to levy SST had concluded as under:-

"Bare perusal of the aforesaid section makes it evident that to make a service taxable it has to be listed in Second Schedule of the Act, 2011 and the same has to be provided in the course of economic activity whereby the service has to be provided by registered person regardless of whether it is provided to resident or non-resident person".

16. While drawing the above conclusion the learned AC purposely ignored the requirement of providing or rendering the service in the territory of Sindh and not outside Sindh for taxing a service. The learned Ac also observed as under:-

"In case of the M/s Attajir us Saleh, the service of contractual execution are listed in the Second Schedule under Tariff Heading 9809.0000 to the Act. Also evident from their contract that the service were provided

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from their registered office in Karachi to a non-resident person in Republic of Congo in the course of economic activity as defined in Section 4(1) and (2) of the Act, 2011 therefore is liable to be taxed under tariff heading 9809.0000 of second schedule to the Act, 2011".

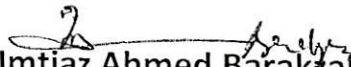
17. Again the learned AC has failed to explain the manner in which the respondent had provided or rendered service at Congo from its registered office in Sindh. Mere issuance of invoices and receipts of payments at Karachi was not sufficient to hold that the economic activity was carried on in Sindh.

18. The learned Commissioner (Appeals) in the concluding para of OIA has held as under:-

"It is correct that the services provided to any person (resident or non-resident) are taxable. But does that mean to include the services provided in other jurisdictions or other countries as well? The extent of the Act, 2011 is to the territorial boundaries of Sindh, therefore, the services provided in Sindh to any resident or a non-resident person are taxable and not the services provided at other jurisdictions. There is also no evidence with the respondent regarding any value addition taking place in Sindh. Therefore, to my humble view the OIO, when it imposes tax on the services provided at Congo is not legal".

19. The learned Commissioner (Appeals) had rightly held that "The Act, 2011 is extended to the territorial boundaries of Sindh, therefore, the services provided in Sindh to any resident or a non-resident person are taxable and not the services provided at other jurisdictions". The findings recorded by the learned Commissioner (Appeals) are in consonance with the provisions of the Act.

20. In view of the above discussions the appeal is dismissed. The copy of this order may be provided to the learned representative of the parties.


(Imtiaz Ahmed Barakzai)
TECHNICAL MEMBER


(Justice[®] Nadeem Azhar Siddiqi)
CHAIRMAN

Order Dispatched on 31/12/19

Order issued on 31/12/19

Registrar

REGISTRAR
APPELLATE TRIBUNAL
SINDH REVENUE BOARD

Registrar

Karachi

Dated: 24.12.2019



Copy for compliance:

1. The Assistant Commissioner (Unit-), SRB, Karachi.
2. The respondent through authorized Representative.

Copy for information to:-

3. The Commissioner (Appeals), SRB, Karachi
4. Office Copy.
- ✓ 5. Guard File.