

**BEFORE THE APPELLATE TRIBUNAL SINDH REVENUE BOARD**  
**KARACHI**

**DB-I**

**APPEAL NO. AT-17/2020**

M/s Mckinsey & Company Pakistan (Pvt.) Ltd.  
Karachi.....Appellant

**Versus**

Assistant Commissioner (Unit-15),  
SRB, Karachi.....Respondent

Date of Filing of Appeal: 07.05.2020

Date of hearing: 20.10.2020

Date of Order: 22.10.2020

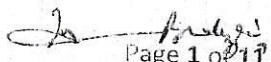
Mr. Saud-ul-Hasan (Advocate) & Mr. Fahad Faruqi, Advocate for appellant

Ms. Uzma Ghory AC-DR & Mr. Liaqat Ali Bajeer, AC for respondent

**ORDER**

Justice <sup>®</sup> **Nadeem Azhar Siddiqi**: This appeal has been filed by the appellant challenging the Order-in-Appeal (hereinafter referred to as the OIA) No. 43/2020 dated 13.03.2020 passed by the Commissioner (Appeals-I) in appeal NO. 311/2019 filed by the Appellant against the Order in Original (hereinafter referred to as the OIO) No. 458/2019 dated 03.06.2019 passed by the (Ms. Ambreen Fatima) Assistant Commissioner, (Unit-28) SRB, Karachi.

02. The brief fact of the case as per the OIO were that the appellant was registered with SRB under the service category of "Management Consultants"

  
Page 1 of 11

Tariff Heading 9815.4000 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) at the rate specified under Second schedule to the Act with effect from 01.07.2013.

03. The allegations against the appellant as per the OIO were that perusal of Sales Tax returns pertaining to the tax period February-2018 filed by the appellant transpired that the service revenue amounting to Rs.665,980,150/- involving the Sindh sales tax of Rs.86,577,420/- was cancelled by it vide credit note bearing No.LI01 dated 31.01.2018. It is pertinent to mention here that the provisions of Rule 23 of the Sindh Sales Tax on Services Rules, 2011 (hereinafter referred to as the Rules) provides that where a registered person has issued invoice for taxable service, and such service and part thereof is cancelled, the service provider and service recipient shall be entitled to make corresponding adjustments against output tax or input tax, respectively, in the manner provided under the aforesaid Rules. So, in case of cancellation of service, or any part thereof, the service recipient shall issue a debit note in respect of cancellation of such service or part thereof. Furthermore, Rule 23(4) of the said Rules requires the service provider to issue a corresponding credit note on receipt of the said debit note.

04. The appellant in view the above legal position was required vide notice dated 17<sup>th</sup> January, 2019 to provide (a) the copy of credit notes along with the copy of corresponding debit notes issued in line with the provisions of Rule 23 of the Rules; (b) the copy of original and cancelled sales tax invoices. However, the appellant failed to provide the aforementioned documents in support of cancellation of said services.

05. A Show-Cause Notice (SCN) dated 29.04.2019 was issued to the appellant under Section 23 read with Section 47(1) of the Act asking it to explain as to why the aforesaid Sindh Sales Tax amounting to Rs.577,420/- on services valuing Rs.665,980,150/- along with the amount of default surcharge under section 44 of the Act may not be assessed and recovered from it. The



appellant was further required to explain as to why penalties under serial No. 3, 6 and 12 of the Table under section 43 of the Act shall not be imposed on it.

06. The appellant filed Reply dated 04.02.2019 and contended that the figures pertaining to the consultancy service rendered outside Pakistan was inadvertently declared much higher as compared to the actual services rendered which resulted in excess payment. It was also contended that the appellant had inadvertently made excess payment of SST amounting to PKR.86,465,308/= in the sales tax return of January 2018 due to excessively declared services valuing PKR. 932,927,173/= instead of PKR 267,809,410/= which is also verifiable from the note 14.1 of the annual audited financial statement of accounts for the year 2017. It was further contended that on being aware<sup>of</sup> such excess payment of SST and the corresponding excess declaration, the appellant claimed a reversal entry in sales tax return of February, 2018 to the extent of the excess declared/paid amount of PKR. 665,117,750/= and sales tax of PKR. 86,456,308 to correct its declaration/record.

07. The Assessing Officer (AO) passed OIO directing the appellant to deposit SST of Rs.86,577,420/- along with the default surcharge with SRB. The AO also imposed penalty of Rs.4,328,871/= under serial No.3 of the Table under of section 43 of the Act . which is punishable under serial No. 6 of the Table in section 43 of the Act. The AO further imposed a penalty of Rs.86,577,420/- (being 100% of Rs.86,577,420/-), under serial No.6 (without specifying the relevant provision) of the Table under section 43 of the Act.

The said OIO was challenged by the appellant before the Commissioner (Appeals) by way of filing of appeal, who dismissed the appeal and maintained the OIO, hence this appeal.

09. Mr. Saudul Hassan, advocate for the appellant submitted that the tax was paid in excess during the tax period January-2018 and to adjust the excess payment of tax a credit entry was made in the monthly tax return of February, 2018 which was not accepted by the department. He submitted



that an application to revise monthly tax return for the month of January and February, 2018 was filed before Chairman, SRB on 31.05.2019 which is still pending.

10. The representative of the Department Mr. Liaqat Ali, AC submitted that the credit entry was made malafidely to evade tax. He then submitted that even if the tax was erroneously deposited the correct procedure was prescribed in section 30(6) of the Act read with Rule 17 (2) and Rule 23A of the Rules. Moreover the application for revision of tax return was time barred.

11. To resolve the pendency of application for revision of tax returns pending since 31.05.2019 the matter was referred to SRB, Board vide order dated 20.08.2020 to decide the pending application of the appellant for permission to revise returns along with application for condonation of delay within thirty days from the date of receipt of the order. On the subsequent date i.e. 24.09.2020 the learned AC requested for time which was allowed. The learned AC filed Report dated 20.10.2020 the relevant portion is reproduced for ready reference as under:-

*"8. Based on the above factual position, it is submitted that, registered person, vide their representative, submitted on line application as well as manual application for condonation and revision of return after the lapse of four hundred and sixty seven days, on Friday 31<sup>st</sup> May, 2019. Whereas the Order in Original was passed on Monday 3<sup>rd</sup> June, 2019. Apparently this shows that registered person's request was submitted two days before passing of order and their plea couldn't apparently reach to the adjudication officer and the matter was decided against registered person.*

*9. However, after pursuing the aforesaid case and following the directives of Honorable Appellate Tribunal, Board has taken up the matter for consideration and the same is to be decided on the merits in the next meeting of SRB's Board.*

*In view of the above stated position, it is most submitted that SRB is of the view that learned Tribunal may take into consideration the above stated facts remand back the case for consideration by the adjudicating officer in the light of SRB Board's decision".*



MOS

*[Handwritten Signature]*  
Page 4 of 11

12. Mr. Fahad Farooqi opposed the request for remanding of the case to adjudication officer and submitted that such request was itself a proof that both OIO & OIA were not sustainable in law. He also submitted that Reconciliation Statement dated 20.10.2020 submitted by him clearly reflected that annual payment of SST along with default surcharge and the tax liability for the tax period January, 2018 amounted Rs.96,672,268/- against which an amount of Rs.183,137,576/- was erroneously deposited. However the excess amount of Rs.86,465,308/= has rightly been adjusted during the tax period of February, 2018 by way of credit entry which was disallowed by the Department without any plausible reason. He also submitted that the OIA was passed after expiry of statutory period.

13. Mr. Liaqat Bajeer, AC submitted that the power to allow revision of returns was vested in the SRB Board and unless the Board condoned the delay in filing application for revision of returns the appellant at its own could not adjust the tax. He referred to Rule 17(2) and 23 of the Rules and submitted that under section 30(6) of the Act a return could be revised within 120 days from the date of filing of such return and delay if any, could only be condoned by the Board under section 81 of the Act.

14. Mr. Fahad Farooqi in reply placed reliance upon his written submission dated 10.08.2020 wherein it was stated that the SCN was issued and OIO was passed during the period when Commissioner (Appeals-I) was holding the charge of Commissioner-1, SRB and he should not hear the appeal of the appellant. He also submitted that the OIO and OIA was passed after lapse of the statutory period provided for passing the OIA, and he justified the credit entry made in the monthly tax return of February, 2018.

15. The appellant in its written submissions has stated that the payment of tax was made with the return of January, 2018 for the year ended 30<sup>th</sup> June,



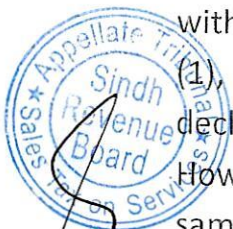
2017. The fact that the appellant only provided services of PKR.267,809,410/= during this period is further evident from note 14.1 of its annual audited financial statements for the year ended 30th June, 2017. Furthermore SST amounting to PKR.34,815,225/= was paid alongwith default surcharge of PKR. 1,942,794/= as reflected in the sales tax return of January, 2018 which was sought to be carried forwarded and adjusted against the tax liability of February, 2018..

16. . We have heard the learned representative of the parties, perused the written submissions filed by the parties and the record made available before us.

17. The controversy between the parties was a credit entry made by the appellant in the monthly tax return of February-2018. It was contended that during the tax period of January-2018 against SST of Rs.96,672,268/- an amount of Rs.183,137,576/- was erroneously deposited and the excess amount of Rs.86,465,308/= was rightly adjusted through a credit entry during the tax period of February, 2018. The respondent had disallowed such credit entry and ~~OIO~~ while passing OIO which was confirmed in OIA.

18. The claim of the appellant was that excess amount was deposited during the tax period of January-2018. The appellant to adjust the excess payment purportedly invoked sub-section (6) of section 30 of the Act. This sub-section provides that the registered person may file a revised return within one hundred and twenty days of filing of a return under sub-sections (1), (2) or (3) as the case may be to correct any omission or wrong declaration made therein and to deposit any amount of tax short paid. However, from the bare reading of the above provision it is evident that the same was not applicable in the instant case as neither the appellant had applied for revision within 120 days nor deposited any amount of tax short paid and on the contrary it had adjusted such huge amount of tax at its own.

19. The learned AC referred to sub-rule (2) of rule 17 of the Rules, which provides that any return not covered under sub-rule (1) shall be revised with



the permission of the Board or any Officer authorized by the Board subject to conditions or restrictions as the Board may impose. Apparently this applicable provision was invoked very late after making self-styled credit entry in the tax return of February-2018 after lapse of four hundred and sixty seven days just three days before passing of the OIO.

20. The learned AC has also referred to rule 23 of the Rules which provide procedure for issuance of debit and credit notes. This provision is applicable when after issuance of invoice for a taxable service, such service or part thereof is cancelled, or where, for any valid reason, the value of service needs to be revised, the service provider and service recipient shall be entitled to make corresponding adjustments against output tax or input tax, in the manner provided under this rule. Apparently this provision was inapplicable in the instant case as before issuance of credit note a debit note is required from the recipient of service which is lacking in this case.

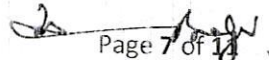
21. In our opinion the proper provision is Chapter V A of the Rules, which deals with the refund. Sub-rule (1) of rule 23A provides that subject to the provisions of rule 23B of the Rules the provision of this chapter shall apply to processing and sanction of claims of refund by a registered person in following cases:-

(a) the amount of sales tax is erroneously or inadvertently deposited in excess of the amount due; and

(b) the amount deposited by or recovered from the registered person is held not payable under the Act, as result of an order of a court or an appellate forum.

In the instant case the claim of the appellant was that excess amount was deposited during the tax period of January-2018. The appellant at a later stage after adjusting the alleged excess payment also applied for the refund of the amount under the above provision of the Rules.

23. The representative of the appellant in the grounds of appeal as well as in the written submission has stated that the OIA was passed after the



Page 7 of 10

expiry of the statutory period provided in sub-section (5) of section 59 of the Act. The learned AC submitted that the OIA was passed within time. The appeal was filed on 17.06.2019 and was decided on 03.12.2019. Total two hundred <sup>and</sup> sixty nine (269) days were consumed in deciding the appeal out of which ninety one (91) days were excluded on account of adjournments obtained by the appellant. Moreover the sixty (60) days-time was extended by Commissioner (Appeals) thus a total one hundred eighty (180) days were available with Commissioner (Appeals) for deciding the appeal. The OIA was passed on one hundred seventy eighth (178<sup>th</sup>) day and was thus within time allowed by law. The representative of the appellant in the written submissions mentioned that it had not availed adjournments of ninety one (91) days but failed to provide the details. The burden is upon the appellant to prove this fact and in absence of details of adjournment no positive finding in this regard could be recorded. Furthermore it has been provided in clause (e) of Article 129 of the Qanoon-E-Shahadat Order, that all judicial and official acts have <sup>to</sup> been regularly performed.

24. The AO in para 12.3 of the OIO had mentioned that *"Even if, it is considered that the registered person has inadvertently made the excess payment of sales tax due, he on his own assumption cannot adjust it by claiming false credit note in Annexure-C of the return. But, in such situation, the provisions of section 16 of the Act provides that if a registered person has charged or collected sales tax which is in excess of the tax or charge actually payable and the incidence of which has been passed on to the person to whom the service is provided, such person is required to pay the amount of tax or charge so collected to the Sindh Government exchequer"*.

25. There is no material available on record to substantiate the above findings in the OIO. The allegation against the appellant in the SCN was not that it had collected excess tax from the service recipient and was liable to deposit the same with SRB. Undisputedly the appellant had provided service to non-resident persons/affiliate entities and had deposited tax under sub-section (1) of section 3 read with sub-section (1) of section 9 of the Act.



*[Handwritten signature]*



Section 16 of the Act was not applicable and the above findings in the OIO were beyond the Scope of SCN and not tenable under law.

26. The AO in para 13 of the OIO had held as under:-

*"In of the all above discussions, it is established that the act of adjustment of output tax by claiming false credit note caused loss to the government exchequer to the extent of Rs.86,577,420/=. I also hold that by doing so the registered person has concealed his taxable economic activity declared during the tax period January, 2018 and also evaded the taxes by claiming a false credit note during February, 2018. It is also established that the registered person has failed to advance any concrete documentary evidence in defence of the claim that during the tax period January, 2018 sales tax amounting to Rs.86,577,420/= was excessively paid in Sindh exchequer and that the law do not provide any provision regarding adjustment of such excess payments".*

27. The SCN was issued on the strength of credit note and adjustment in the tax return of February 2018. The SCN was silent with regard to the above findings. The above findings are clearly beyond the scope of SCN and cannot be sustained.

28. The Commissioner (Appeals) in para 16 and 17 of the OIA had held as under:-

*"16. The legal course of action open for the Appellant in the above-noted scenario, he being a knowledgeable and law-abiding person (providing management consultant's services) was to bring the whole situation, in a crystalized form, before the respondent department, in an a honest and truthful manner, and further to apply for refund of that 'excess paid amount' (if so proved to the satisfaction of the respondent department, through a snap-check/ desk audit of Appellant's relevant record) as provided for under the provision of Chapter-V of the Rules 2011. It goes without saying that the Department would have properly guided and helped the Appellant within the four corners of law.*



*H. J.*

*[Signature]*  
Page 9 of 11

17. However, as the facts of the case stand, Appellant adopted a course of action based on 'self-legislated' law and rules, instead of the law and rules laid-down by the Sindh legislature. They 'invented' a credit-note, which in reality does not exist under the relevant provision of the law and rules, put a fake-number to it, and through it, self-granted a so called 'reversal' of the entry of Rs.86,465,307/- in their next monthly return for tax-period 02/2018. They kept quiet about this matter, in the hope that the issue would die down by itself, until the respondent department took it up with them after significant passage of time. As they failed to prove their bona fides in the matter, despite considerable lapse of time, the respondent AC has to issue them a show-cause notice dated 29.04.2019 that culminated into the impugned OIO. To respond to the SCN, the Appellant have come-up with all kinds of arguments that they could muster up, none of which has impressed me. The amount, purportedly paid by the appellant in excess of what was due (provided it is proved so first up, which accordingly to the available record, the Appellant has failed to prove to so far, either at the adjudication stage or during the Appeal proceedings) belong to the Government of Sindh under section 16 of the Act, 2011".

29. We have carefully examined the above findings. The Commissioner (Appeals) has rightly held that the appellant had adopted a course not available in the law or rules for "reversal" of the entry of Rs.86,465,307/- in their next monthly return for tax-period February-2018. But we do not agree that the amount adjusted in the tax return of February, 2018 belong to the Government of Sindh and under section 16 of the Act the appellant was liable to deposit the same with SRB.

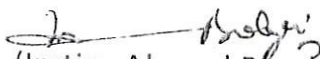
30. In view of the above discussions and the consent given by the Assistant Commissioner for remand of the case to the adjudicating officer the OIO and OIA are set aside and annulled, and the case is remanded back to the AO for recording fresh findings after providing proper right of hearing to the parties and without influencing from the above findings after the decision of the Board on the application of the appellant for condonation of delay and revision of tax returns. It is expected that the Board will decided

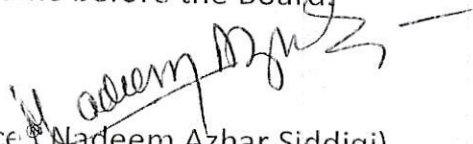


the applications with-in a period of thirty days from the date of receipt of this order and the AC will decide the matter within next sixty days from the date of receipt of the order of the Board

32. The application for refund of the appellant is also pending with the department and the appellant is required to choose one remedy i.e. either to press application for condonation of delay & revision of tax returns or the application for refund of amount. In case the appellant presses for its application for refund, it is expected that the same will be decided within thirty days from the date of receipt of this order.

33. The appeal is disposed of in the above terms. The copy of the order may be provided to the authorized representatives of the parties and the learned Chairman, SRB for placing the same before the Board

  
(Imtiaz Ahmed Barakzai)  
Technical Member

  
(Justice Nadeem Azhar Siddiqi)  
Chairman

Karachi, Dated 22.10.2020

Copies supplied for compliance:-

1. The appellant through authorized Representative.
2. The learned Chairman, SRB, Karachi
3. The Assistant Commissioner (Unit- ), SRB, Karachi.

Copy for information to:-

4. The Commissioner (Appeals), SRB, Karachi.
5. Office Copy.
6. Guard File.

**Certified to be True Copy**

  
**REGISTRAR  
APPELLATE TRIBUNAL  
SINDH REVENUE BOARD**

**Order Issued on** 04/11/2020

  
**Registrar**

**Order Dispatched on** 04/11/2020

  
**Registrar**