BEFORE THE APPELLATE TRIBUNAL SINDH REVENUE BOARD ATKARACHI

DB-I

APPEAL NO. AT-39/2020

M/s Escort Investment Bank Ltd.
First Floor Alfalah Building,
Sector B, Behria Town, Lahore.....Appellant

Versus

Assistant Commissioner,
Sindh Revenue Board,
M. R. Kiyani Road, Karachi.....Respondent

Date of filing of Appeal	13.11.2020
Date of hearing	06.04.2021
Date of Order	05.05.2021

Mr. Muhib-ur-Rasool, ITP for appellant.

Abdul Majeed Koondhar, AC-SRB & Ms. Uzma Ghory AC-DR SRB for respondent

ORDER

Imtiaz Ahmed Barakzai: This appeal has been filed by the appellant challenging the Order-in-Appeal (hereinafter referred to as the OIA) No.89/2020 dated 22.10.2020 passed by the Commissioner (Appeals) in Appeal NO. 58/2020 filed by the Appellant against the Order-in-Original (hereinafter referred to as the OIO) No. 108/2020 dated 16.05.2020 passed by Mr. Tarique Ali, Assistant Commissioner, (Unit-11) SRB Karachi.

02. The facts as stated in the OIO were that the appellant having SNTN: 0803369-2, is registered with Sindh Revenue Board and was engaged in providing or rendering the taxable services covered under the Tariff Heading 9813.8100 (Others, including the services provided or rendered by non-banking finance companies, modaraba and musharika companies and

other financial institutions) of the Second Schedule to the Sindh Sales Tax on Services Act, 2011 (hereinafter referred to as the Act). The services provided or rendered were chargeable to the Sindh Sales Tax (SST) at statutory rate under section 8 of the Act read with rule 30 of the Sindh Sales Tax on Services Rules, 2011 (hereinafter referred to as the Rules).

03. It was alleged in the OIO that from the examination/scrutiny of Annexure-A of the monthly SST returns filed by the appellant for the months of June, 2019 and August, 2019, it was revealed that the appellant had claimed input tax adjustments of Rs.293,947/- on purchases from M/s Central Depository Company (CDC) of Pakistan, having (SNTN: 0710001-9). Such details are given as under:-

S. No.	Tax Period	Input Tax Claimed
1	June-2019	59,427
2	August-2019	234,520
Total		**293,947**

04. The appellant was required vide letter dated 10.10.2019 to substantiate the confronted amount with relevant documentary evidence in the light of provision of section 15 & 15A of the Act. The appellant was also confronted that the claimed input tax adjustment had exceeded the limit of 20% against the output tax, therefore, it was required vide rules 16 of the Rules to file scanned attachment/copies of relevant record, as evidence for claiming input tax. However, the appellant had failed to provide the same.

05. The appellant was served with a Show-Cause Notice (SCN) dated 07.11.2019 to explain as to why the SST amounting to Rs.293,947/- claimed against input tax adjustment for the tax periods June, 2019 and August, 2019 should not be disallowed and recovered under section 23 read with section 47(1A) of the Act along with default surcharge under section-44 of the Act. The appellant was also required to explain as to why penalties

under Serial. No. 3 and 6(d) of the Table under section 43 of the Act should not be imposed upon it for contravention of sections 15 & 15A of the Act read with rules 16, 21, 22, and 22A of the Rules.

06. The appellant through its representative filed reply dated 09.11.2019 and submitted as under:-

"In this respect we, on behalf of our client, submit that input tax credit of Rs.293,947/- is claimed in respect of services procured from Central Depository Company of Pakistan Limited [CDC] as is evident from the Annexure-A of the sales tax returns of the respective months. The invoices issued by CDC in respect of which input tax credit of Rs.293,947/- was claimed is enclosed as Annexure "B" for your references, However, it is regretful to state that subject notice was issued even without looking at the Annexure-A of the submitted sales tax returns of respective months wherein the word "services" is mentioned against the field invoices type. Further, we would like to draw your attention, to rules 16 of Rules, which states that where input tax claimed on goods used or consumed for providing services exceeds 20% of output tax, the registered person is required to file scanned attachment as evidence. The relevant portion of the same is reproduced below for case of reference:

Rule 16-Requirement to file scanned attachment
Whereas, the input tax claimed on goods used, Consumed, or utilized for providing services Exceeds 20% of the output tax, the registered person shall be required to file scanned attachment, as evidence.

A bare reading of the above clearly shows that rule 16 of the Rules is applicable only when input tax claimed in respect of 'goods' (on in respect of 'services') is above 20% of the output tax. Further, it is pertinent to mention here that your good office is not legally competent to disallow input tax to a registered person under rule 16 of the Rules due to absence of any express powers mentioned therein.

Moreover, we would like to draw your attention to section 15A of the Sindh Sales Tax on Services Act, 2011 [Act] which disentitles a registered person to claim input tax credit under various circumstances mentioned therein. However, it is to be noted that said section is also silent regarding the disallowance of input tax credit to a registered person where he fails to comply with rule 16 of the Rules.

Keeping the above in view, it is evident that subject show cause issued is ultra vires without having any legal capacity and powers and hence, the same be withdrawn"

07. The Assessing Officer (AO) passed OIO under section 23 read with section 47(1A) of the Act and held that the appellant had claimed inadmissible input tax of Rs.293,947/- pertaining to the tax periods for June-2019 and August-2019 and ordered for the recovery of SST of Rs.293,947/- along-with the default surcharge under Section 44 of the Act (to be worked out at the time of payment of principal tax). The AO also imposed penalty 0f Rs.20,000/- under Serial No.3 of the Table under section 43 of the Act and Rs.50,000/= under Serial No.6 of the Table under section 43 of the Act.

08. The appellant challenged the OIO by way of filing of appeal before the Commissioner (Appeals) who while dismissing the appeal held as under:--

"Contentious issue involved in this matter is that the Appellant has admittedly, provided/ rendered almost 99% of his taxable services in Punjab (in PRA's jurisdiction) while, he has provided/ rendered barely 1% services in Sindh ('House Finance). How can the Appellant/taxpayer be allowed to claim 100% input tax adjustment against the output-tax paid in Sindh? Evidently, input tax adjustment must be allowed in proportion to the services rendered in Sindh. Appellant's plea that 'he is claiming such input tax from SRB because PRA would not allow him that adjustment' (SRB's tax-rate being @13% ad valorem and PRA tax-rate being @16% ad valorem), is misconstrued and hollow. His reliance on Article 24 of the Constitution of Pakistan 1973 ***['Protection of property rights']*** *in this*

regard, is also frivolous as Artice-24 has no nexus whatsoever with the facts of the instant matter and none has been highlighted by the Appellant so far. On the contrary, the relevant provision of the Applicable Rule in the matter, as narrated above, is crystal clear. It says that where the taxable services have been provided or rendered outside Sindh, bifurcation/apportionment of input tax would be done as per given formula] and input-tax adjustment would be allowed, accordingly. Admittedly, Appellant failed to do that bifurcation while claiming the input tax adjustment as impugned in this matter. Appellant's stance in this regard is not in accordance with law. His Appeal, therefore, fails on this count.

09. The Commissioner (Appeals) remitted the penalty of Rs.50,000/= imposed by the AO under serial No. 6 of the Table under section 43 of the Act and reduced the penalty from Rs.20,000/= to Rs.10,000/- under serial No. 3 of the Table under section 43 of the Act. The Commissioner (Appeals) also disagreed with the AO regarding violation of rule 16 of the Rules on the pretext that since, no supply of goods was involved therefore such Rule could not be invoked. Hence this appeal.

10. Mr. Mohib-ur-Rasool, the learned ITP for the appellant submitted as under:-

i) The input tax adjustment was made in the monthly tax returns for the tax periods June-2019 and August-2019 amounting to Rs.59,427/- and 234,520/- respectively, but the amount was not adjusted. Moreover for these tax periods no output tax was declared and no loss was caused to the exchequer and demanding tax on account of mere disallowance of input tax was not legal and justified.

ii) The appellant had lawfully claimed input tax adjustment which was unlawfully declined by the respondent.

iii) The appellant was entitled to claim input tax adjustment even if output tax was not declared, and the balance if any could be carried forward for adjustment in subsequent tax periods.

iv) The entire SST was charged from the appellant by CDC and the same was deposited with SRB. Thus the PRA could not allow adjustment on input tax which was not deposited with it.

v) The denial of adjustment of input tax is against the basic structure of the Act as the same was levied in VAT mode.

vi) The input tax could be claimed and adjusted in the next six succeeding tax periods if the same was not deducted or adjusted in the relevant tax periods.

11. Mr. Abdul Majeed, AC-SRB for the respondent submitted as under:-

i) The appellant was voluntarily registered with SRB on 21.03.2016 under service category of "others" Tariff Heading 9813.8100.

ii) The value of services as well as SST was Nil in the month of June 2019 whereas the appellant had declared input tax of Rs.59,427/-. Moreover in the month of August-2019 the appellant had declared the value of service amounting to Rs.8,885/-, output tax at Rs.1,850/= and input tax of Rs.234,520/-.

iii) The appellant was entitled to adjust input tax from output tax. However if no output tax was declared during any tax period or the amount of output tax declared was less than the input tax thus no adjustment was admissible.

iv) The services provided by the appellant in Sindh was only 3% of the total services provided by the appellant. Therefore it was only entitled to claim input adjustment of Rs.327.2.

v) The appellant was required to revise the returns for claiming input tax adjustment on the basis of apportioned formula as provided under sub-rule (3) of Rule 22 of the Sindh Sales Tax on Services Rules, 2011.

vi) The appellant was not entitled to carry forward the input tax for adjustment in the subsequent tax periods.

vii) The penalties were rightly imposed by the AO but the same was unjustifiably remitted and reduced by learned Commissioner (Appeals).

12. In reply Mr. Muhib Rasool, representative of the appellant further submitted that there was no prohibition in the Act and the Rules for carry forward of the input tax for adjustment in the following tax periods. Moreover the rules provided that the input tax could be claimed and adjusted in the next six tax periods. He further submitted that since no adjustment was actually made from the output tax and thus the order for recovery was unjustified and illegal. He further submitted that the appellant would adopt due process of law for revision of tax returns.

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

14. The dispute between the parties related to the input tax claimed by the appellant during the tax periods of June and August, 2019. The reason of disallowance of input tax was that the major portion of services provided by the appellant was within the jurisdiction of Punjab Revenue Authority (PRA). However the appellant claimed total input tax in Sindh instead of claiming it on apportionate basis.

15. The input tax adjustment could be claimed under Sub-rule (3) of rule 22 of the Rules which is reproduced for ready reference as under:-

"(3)In case an input is used in providing or rendering taxable services and also non-taxable or exempt services 3[or the services liable to [reduce rate of tax or specific rate of tax] and the services provided or rendered outside Sindh, the input tax shall be apportioned according to the following formula for availing of input tax adjustment/deduction".

16. Thus above rule clearly provided for the claiming and adjustment of input tax on apportionate basis if the taxable services were provided in Sindh as well as out-side Sindh. The AC-SRB had also prepared Re-conciliation Statement and calculated the input tax adjustment of

Rs.327.2@ 3% on the pretext that the ratio of service provided in Sindh was 3%. The AC had not correctly calculated the input tax on the basis of ratio of service provided in Sindh. The appellant was not entitled to claim total input tax in Sindh, and such claim had to be worked out on the basis of formula provided in sub-rule (3) of rule 22 of the Rules.

17. The AO and Commissioner (Appeals) had ordered for recovery of Rs.293,947/- without considering the fact that during the tax period of June-2019 the value of service and output tax were zero and in the tax period of August-2019 the value of service was Rs. 8,850/= and output tax was Rs.1,150/=. Moreover by showing input tax adjustment of Rs.59,427/= and 234,520/= respectively in the tax periods of June-2019 and August-2019 no loss had been caused to the exchequer as there was no involvement of any output tax. Therefore the SRB was not legally justified to recover the amount of Rs.293,947/= from the appellant.

18. In view of the above discussions the appeal is partly allowed and the OIO and OIA are setaside to the extent of recovery of Rs.293,947/= from the appellant. The AC will calculate the input tax on the basis of formula provided in sub-rule (3) of rule 22 of the Rules and will intimate the same to the appellant within fifteen days from the date of receipt of this order and the appellant will accordingly revise the return within next fifteen days from the date of receipt of the information from the AC.

19. The appeal is disposed of in the above terms. The copy of this order may be provided to the learned representatives of the parties.

(Justice® Nadeem Azhar Siddiqi)
CHAIRMAN

(Imtiaz Ahmed Barakzai)
TECHNICAL MEMBER

Karachi:
Dated:05.05.2021

Certified to be True Copy

REGISTRAR
APPELLATE TRIBUNAL
SINDH REVENUE BOARD

Order Dispatched on 20/05/2021

Registrar

Order issued on 20/05/2021

Registrar

Copy Supplied for compliance:

1) The Appellant through Authorized Representative.
2) The Assistant Commissioner, Unit- SRB, for compliance

Copy for information to:-

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