

(Original file)

IN THE APPELLATE TRIBUNAL, SINDH REVENUE BOARD AT KARACHI.
(Before: Mrs. Alia Anwer, Member Judicial)

Appeal No.AT-81/2022

M/s. Admore Gas(Pvt.) Ltd.,
9th Floor, Bahria Complex III,
M. T. Khan Road,
Karachi. appellant

Versus

The Assistant Commissioner Unit-21,
Sindh Revenue Board,
Karachi. respondent

Mr. Zeeshan Zafar, advocate for appellant
Mr. Zohaib Athar, AC Unit-21, for respondent.

Date of hearing: 03.04.2023

Date of order: 17.04.2023

ORDER

The appellant has assailed the order dated 24.03.2018 passed by the Assistant Commissioner (Unit-21) vide Order-in-Original No.179 of 2018 (*hereinafter referred to as "the Original Order"*) whereby the appellant has been directed to pay as under;

- a. Sales Tax amounting to Rs.2,237,623/-under section 47(1A)(a) of the Sindh Sales Tax on Services Act, 2011 (*hereinafter referred to as "the Act, 2011"*) along with default surcharge (to be calculated at the time of payment) under section 44 of the Act, 2011, and



b. Penalty amounting Rs.111,881/- under serial No.3 of the Table in section 43 of the Act, 2011.

2. Per the Original Order, appellant (M/s. Admore Gas (Pvt.) Ltd.,) is registered under tariff headings i.e. 9823.0000 (Franchise services) of the Second Schedule of the Act, 2011.

3. Being registered person, the appellant was required to charge/ collect Sindh Sales Tax on services provided/ rendered in terms of section 8 of the Act and deposit the same as per the provision of section 17 of the Act under the Sindh Government's head of account "B-02384". The appellant is further required to e-file true and correct Sindh Sales Tax return as prescribed under section 30 of the Act read with rules 13 and 14 of the Sindh Sales Tax on Services Rules, 2011 (*hereinafter referred to as "the Rules"*).

4. During scrutiny of record available with SRB, it transpired that during the tax period from July-2011 to June-2016 appellant received "Franchise Fee" amounting to Rs.49,378,000/- on account of providing taxable services. It also transpired that appellant received "Commission on CNG sales" amounting to Rs.22,483,000/- during the tax period from July-2015 to June-2016. Since appellant did not pay SST on the



A handwritten signature in blue ink.

above mentioned received amount, show-cause notice was served upon the appellant to explain as to why the principal SST amounting to Rs.4,937,800/- (on account of rendering franchise services), and SST amounting to Rs.3,147,620/- (on account of services of commission agent) may not be assessed under section 23(1) of the Act, 2011 and may not be recovered under section under section 47(1A)(a) along with default surcharge under section 44 of the Act, 2011 so also as to why the penalties attracted should not be imposed on him.

5. In response to the above show-cause notice, appellant's representative submitted that appellant derived "commission on CNG sales" as a profit share on the income earned from franchise petrol pumps (CNG Operators) and such services do not fall under tariff heading 9819.1300 of the Second Schedule to the Act, 2011. Appellant's representative clarified that term "Commission" appearing in Note 29 to the financial statements is merely used in accounting perspective and appellant had never acted as "Commission agent" as defined in clause(22A) of section 2 of the Act, 2011.

6. Being satisfied with the above submissions, the charges received under "Commission on CNG sales" amounting to Rs.22,483,000/- during the tax period from



July-2015 to June-2016, was excluded from being charged, as the same did not fall under the tariff heading 9819.1300 of the Second Schedule to the Act, 2011. Ultimately, imposition of SST amounting to Rs.3,147,620/- (i.e. Rs.22,483,000x14%) was withdrawn from being charged.

7. So far as SST on Franchise services during the tax period from July-2011 to June-2016 amounting to Rs.4,937,800/- is concerned, appellant's representative provided details of payment of SST out of which an amount of Rs.2,700,177/- was considered to have been paid, therefore; said amount was also excluded from being charged. Appellant's representative also submitted that services provided to other provinces cannot be charged by SRB. He also submitted that pursuant to LTU FBR's assessment order No.1/2016 dated 06.04.2016, appellant paid FED of Rs.1,000,000/- vide CPR No.ST-20161108-1027-1056469 dated 08.11.2016 for the tax period from July-2012 to June-2013 in the Federal Government's head of account i.e. "B-02341-Sales Tax" but such contention was not taken into consideration by the AC (Unit-21) and appellant was held liable to pay Sales Tax amounting to Rs.2,237,623/-, penalty of Rs.111,881/- along with "Default Surcharge" to be calculated at the time of final payment, hence; this appeal.



A handwritten signature in blue ink, consisting of stylized, overlapping loops and lines.

8. Being aggrieved by and dissatisfied with the observations of Assistant Commissioner (Unit-21), appellant filed instant appeal before Commissioner (Appeals), which has been transferred to this Tribunal under section 59(7) of the Act.

9. Main contention of learned counsel for appellant is that appellant had already deposited SST amounting to Rs.1,000,000/- at its due time with FBR as the Franchise Fee. He submitted copy of CPR No.ST-20161108-1027-1056469 showing deposit of sales tax amounting to Rs.1,000,000/- with FBR. Learned counsel submits that appellant had deposited the above mentioned amount as adjudged in the Assessment Order No.05/2-17 dated 31.05.2017. Learned counsel submitted appellant has not utilized the above CPR in any other payment of Government dues. He submitted an Affidavit to that effect. Learned counsel contended that FBR has signed Memorandum of Understanding with SRB for cross-adjustment of sales tax, mistakenly or inadvertently deposited with FBR.

10. He argued that Assistant Commissioner (Unit-21) has erred in law while not considering the above CPR. Learned counsel submitted statement showing details of payment of SST during the tax period from July 2011 to June 2015 (Rs.26,865/), from July 2015 to June 2016 (Rs.343,577/-) along



with an amount of Rs.910,917/- as the Punjab Sales Tax, so also an amount of Rs.1,000,000/- paid to FBR as well. He also claimed to have paid an amount of Rs.587,376/-, paid in order to get auto stay. Per learned counsel appellant has paid SST in excess to the tune of Rs.631,112/-. Learned counsel claimed the following statics as the actual and correct:-

Tax periods	Franchise fee	Sindh Sales Tax @ 10%
July 2011 to June 2012	6,713,000	671,300
July 2012 to June 2013	10,153,000	1,015,300
July 2013 to June 2014	9,812,000	981,200
July 2014 to June 2015	10,592,000	1,059,200
July 2015 to June 2016	12,108,000	1,210,800
Total	49,378,000	4,937,800
Less: Sindh Sales Tax paid by the appellant 'Annexure-G'		(2,700,177)
Less: Punjab Sales tax paid during the tax periods from July 2015 to June 2016		(910,917)
Less: Paid to FBR vide CPR No.ST-20161108-1027-1056469 dated 08 November 2016		(1,000,000)
Less: Sindh sales tax paid during the tax periods from July 2011 to June 2015		(26,865)
Less: Sindh sales tax paid during the tax periods from July 2015 to June 2016		(343,577)
Less: 25% of the tax demand paid in order to get auto stay vide CPR No.S1-20180416-1027-1147814		(587,376)
Excess sales tax paid		631,112



[Handwritten signature]

11. The Assistant Commissioner (Unit-21) submitted that besides one CPR pertaining to Rs.2,700,177/- no other details of payment was ever provided by the appellant. He showed his ignorance about any MoU signed between FBR and SRB. He submitted that no payment made in any "head or account" other than the prescribed by SRB, can be treated as valid payment made to the SRB. He argued that since SRB has not received the SST due towards appellant, he is liable to pay penalties imposed in terms of "the Original Order".

12. There is no denial to the legal proposition that Act-2011 is introduced to deal with the affairs pertaining to the province of Sind and the services provided to any other province cannot be put to task under the subject Act. Appellant claimed to have provided services to the province of Punjab during the tax period from July 2015 to June 2016, but there exists no findings in the Original Order to that effect. Appellant's counsel provided a number of CPRs showing payments made to SRB and he claims to have paid the SST in excess. So far as deposit of SST amounting to Rs.1,000,000/- vide CPR No.ST-20161103-1027-1056469 in FBR and its reversal/ adjustment with SRB is concerned, it is the matter of record that in its Order dated 27.05.2021 passed in Appeal No.AT-08/2021, DB-1 of this Tribunal referred to the statement made



A handwritten signature in blue ink, consisting of stylized cursive letters.

by the Deputy Commissioner, SRB in Appeal No.131/2015 (Re:M/s. Orient Electronics (Pvt.) Limited versus The Commissioner (Appeals), SRB that "the amount deposited with FBR can be recovered by SRB through adjustment under a Memorandum of Understanding signed between SRB and FBR". Apart from the above the MoU signed between FBR, SRB and PRA pertaining to cross-adjustment of SST (published in Daily Business Recorder in its issue dated March 14, 2014) was submitted before the SB-1 of this Tribunal during proceeding of Appeals No.AT-18/2016 & AT-23/2016 (decided vide consolidated Order dated 27.03.2017). In both the Orders dated 27.03.2017 and 27.05.2021 passed in Appeals No.AT-18/2016 & AT-23/2016 and AT-08/2021, respectively, penalties imposed on account of deposit of SST with FBR instead of SRB were set-aside due to non-existence of malafide intentions on the part of registered person. It is settled principle of interpretation of taxing statute that if there is any ambiguity the same has to be resolved in favour of subject as held in the case of COLLECTOR OF SALES TAX AND FEDERAL EXCISE versus Messrs ABBOTT LABORATORIES (PAKISTAN) LTD., KARACHI (2010 PTD 592).

13. In view of the above discussion, I am of considered view that appellant is entitled to get the amount paid to the SRB and FBR adjusted towards its liability. In such circumstances, I



A handwritten signature in blue ink, consisting of stylized, cursive letters, located to the right of the official stamp.

feel appropriate to remand the matter to the Assistant Commissioner (Unit-21) to adjust the amount paid to SRB and FBR and re-asses the liability towards appellant. Appellant is directed to co-operate with the respondent to get the SST amount (paid to FBR), adjusted/ transferred to SRB. Let the copy of this order be provided/ sent to the parties or their representatives, if any.


17/4/23

(ALIA ANWER)
Member Judicial,
Appellate Tribunal,
Sindh Revenue Board.

Certified to be True Copy

Karachi;
Dated: 17.04.2023.


12/05/2023
REGISTRAR
APPELLATE TRIBUNAL
SINDH REVENUE BOARD


Copy supplied to:-

1. The appellant,
2. The Assistant Commissioner (Unit-21), SRB, Karachi,
3. The Commissioner (Appeals), SRB, Sindh,
4. Office File, and
5. Record file.

Order Dispatched on 12/05/2023


REGISTRAR

Order issued on 12/05/2023


REGISTRAR