

Guard file.

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

Appeal No.AT-13/2023

M/s. Apsara (Pvt.) Limited,
(Hotel City Gate),
Main National Highway,
Hyderabad. appellant

Versus

The Assistant Commissioner Unit-34,
Sindh Revenue Board,
Regional Office
14-A/1, Defence Housing Scheme,
Phase-1, Hyderabad. respondent

Mr. Arshad Hasan Memon, advocate for appellant.
Mr. Waleed Patoli, AC Unit-34, for respondent.

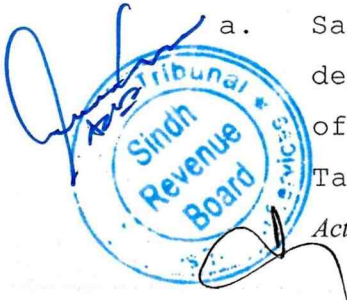
Date of hearing: 16.03.2023

Date of order: 16.03.2023

ORDER

The appellant has assailed the order dated 01.07.2019 passed by the Assistant Commissioner (Unit-34) vide Order-in-Original No.612 of 2019 (*hereinafter referred to as "the Original Order"*) whereby the appellant has been directed to pay as under;

- a. Sales Tax amounting to Rs.405,691/- along with default surcharge (to be calculated at the time of payment) under section 44 of the Sindh Sales Tax on Services Act, 2011 (*hereinafter referred to as "the Act"*),

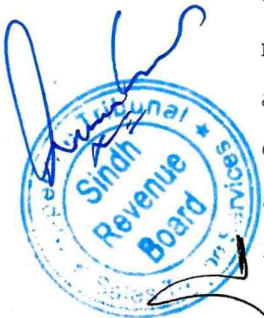


- b. Penalty amounting Rs.405,691/- under serial No.6 of the Table in section 43 of the Act, and
c. Penalty amounting to Rs.10,000/- under serial No.5 of the Table in section 43 of the Act.

2. Per Original Order, the appellant i.e. M/s. Hotel City Gate, registered vide tariff heading 9801.1000 (services provided or rendered by hotel, motels & guest house) of the Second Schedule of the Act. The registered person (appellant) under sections 24, 24A or 24B of the Act, is liable to e-file monthly sales tax returns under section 30 of the Act, read with rule 13 of the Rules (*i.e. the Sindh Sales Tax on Services Rules, 2011*). The registered person (appellant), under sections 3, 4, 5, 8, 9 and 17 of the Act, read with rule 42 of the Rules, is liable to deposit due Sindh Sales Tax on rendering or providing taxable services.

3. The registered person (appellant) was selected for audit under section 28(1) of the Act, vide letter No.SRB/COM-Audit/2018-2019/1632 dated 25.06.2018 for the tax period July-2014 to June-2015. On account of non-submission of relevant record/ documents, the appellant (registered person) was held liable to pay input tax amounting to Rs.405,691/- being inadmissible under section 15 of the Act read with rule 22(1) of the Rules.

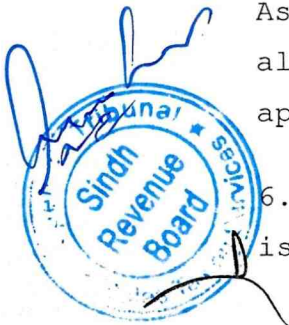
4. In pursuance of above observations, show-cause notice dated 08.06.2019 was served upon the appellant to explain as to why the total tax amount of Rs.405,691/- along with default surcharge under section 44 of the Act should not be assessed and recovered in terms of section 23 and 47 of the Act,




respectively, so also as to why the penalties attracted should not be imposed on him. On account of appellant's absence/ no-response, Assistant Commissioner (Unit-34) passed the Order-in-Original No.612 of 2019. Being aggrieved by and dissatisfied with the observations of Assistant Commissioner (Unit-34), appellant filed instant appeal before Commissioners (Appeals), which has been transferred to this Tribunal under section 59(7) of the Act.

5. Learned counsel for appellant submits that during pendency of instant appeal before the Commissioner (Appeals), appellant's matter was referred for the reconciliation. He contended that during pendency of such reconciliation proceedings, statutory period (provided under section 59(5) of the Act, for disposal of appeal) expired, therefore; instant appeal was transferred to this Tribunal. Learned counsel submits that reconciliation proceedings have been completed and the appellant has been found to have paid tax amount in excess, which is liable to be refunded. Mr. Waleed Patoli, Assistant Commissioner (Unit-34), confirmed conceded the arguments of learned counsel for appellant. He categorically stated that appellant has paid all dues outstanding towards him, rather he has paid an amount of Rs.7,52,256/- in excess, which is liable to be refunded to the appellant. Mr. Waleed Patoli, Assistant Commissioner (Unit-34) submitted statement along with details of payment of tax paid by the appellant, which is placed on record.

6. In view of the above position, instant appeal is hereby allowed with directions to the department



to refund an amount of Rs.7,52,256/- to the appellant, having been paid in excess. The copy of this order may be provided to the learned representatives of the parties.


16/3/23
(ALIA ANWER)
Member Judicial,
Appellate Tribunal,
Sindh Revenue Board.


Karachi;
Dated 16.03.2023.


Copy supplied to:-

1. The appellant through authorized representative,
2. The Assistant Commissioner (Unit-34), SRB, Karachi,
3. The Commissioner (Appeals), SRB, Sindh,
4. Office File, and
5. Record file.

Certified to be True Copy


REGISTRAR
APPELLATE TRIBUNAL
SINDH REVENUE BOARD

17-03-2023
Order issued on-----

Registrar

17-03-2023
Order Dispatched on-----

Registrar