

BEFORE THE APPELLATE TRIBUNAL, SINDH REVENUE BOARD, ATKARACHI

DB-1

APPEAL NO. AT-56/2023

M/s Pakistan Mobile Communication Ltd.

SNTN: S57255686-3)

G-4, Al Rahim Tower,

I.I. Chundrigar Road, Karachi..... Appellant

Versus

The Assistant Commissioner (Unit-01),

Sindh Revenue Board (SRB),

Shaheen Complex,

M.R. Kiyani Road, Karachi..... Respondent

Date of filing of appeal: 19.04.2023

Date of hearing: 16.08.2023

Date of Order: 16.08.2023

Mr. Arslan Siddiqi, ACMA for the appellant.

Mr. Imran Ali AC-SRB along with Ms. Minhaz, SSTO for the respondent.

ORDER

Justice[®] Nadeem Azhar Siddiqi. This appeal has been filed by the appellant challenging Order dated 18.04.2023 passed by the Commissioner (Appeals) in Appeal No. 55/2023 under section 58 (4) of the Sindh Sales Tax on Services Act, 2011 (hereinafter referred to as the Act) granting conditional stay on deposit of 25% of the principal amount of tax determined vide OIO dated 18.04.2023..

02. The facts as stated in the OIO are that the appellant having SNTN: S0802694-7 is registered with SRB under service category of "Cellular Telephone" covered under Tariff Heading 9812.1210 of the Second Schedule to the Act and subject to levy of Sindh Sales Tax (SST) with effect from 01.07.2011.

Ms.

03. It was alleged vide SCN dated 24.01.2022 that examination of annual accounts of the appellant for the year 2015, 2016 and 2017 as well as their Sindh Sales Tax (SST) returns it transpired that the appellant had claimed and adjusted 100% amount of input tax amounting to Rs.138,542,768/- (Rs.48,702,963/- during CY: 2015) + (Rs.35,222,186/- during CY: 2016) + (Rs.54,617,619/- during CY: 2017)} incurred against acquisition of insurance services. However, the proportion of input tax as is attributable to taxable or non-exempt services provided in the province of Sindh were 10% during CY: 2015, 7% during CY: 2016 and 12% during CY: 2017. Thus, the appellant claimed and adjusted excess input tax in violation of section 15A (2) of the Act read with rule 22(3) of the Sindh Sales Tax on Services Rules, 2011 (hereinafter referred to as the Rules, 2011).

04. The appellant was served with a Show-Cause Notice (SCN) dated 24.01.2022 to explain as to why inadmissible input tax credit adjusted/claimed by them amounting to Rs.124,652,804/- should not be disallowed in terms of sub-section (2) of Section 15A of the Act read with Rule 22(3) of the Rules, 2011 and as to why the commensurate amount of SST, manifestly short paid by them, should not be assessed and recovered under Section 23(1) of the Act along-with default surcharge under section 44 of the Act and the penalties prescribed under Serial No.3 and 6(d) of the Table under section 43 of the Act.

05. The appellant through authorized representative submitted reply on 17.11.2022 and apart from other pleas submitted therein that the service providers (i.e. insurance companies) have charged SST on their invoices and deposited the same with SRB and the appellant claimed the same through the monthly sales tax returns filed with SRB under section 15 of the Act.

06. The Assessing Officer (AO) passed OIO and determined the inadmissible input tax amounting to Rs.124,652,804/- during the tax periods from January, 2015 to December, 2017 and order for recovery of tax under section 23(1) of the Act along-with default surcharge under Section 44 of the Act. The AO also imposed penalties prescribed under Serial No.3 and 6(d) of the Table under section 43 of the Act.

07. The appellant challenged the said OIO before Commissioner (Appeals), SRB under sub-section (1) of section 57 of the Act. The appellant alongwith the appeal



also filed an application for stay of recovery of tax. The appeal alongwith stay application was taken up on 18.04.2023 and the following order was passed:-

"Pakistan Mobile Communication Limited Order

Representative of Appellant : Mr. Arsalan Siddiqui, EY (AR).
Respondent : Mr. Imran Ali, AC-01, SRB.

Hearing proceedings on 18th April, 2023

Respondent Officer:

He briefed that the issue involves only input tax claimed against insurance services received by the appellant and adjusted without bifurcation as per law as the appellant is operating all over country.

He informed that through impugned order the bifurcation is calculated on the basis of figures on net basis in the Financial Statements.

As for imposition of penalties he submitted that due to non-payment and continuous claiming of input tax the penalties were imposed.

The AR argued that the ratios for bifurcation worked out are incorrect as the respondent has taken (i) value inclusive of tax and (ii) incorrectly accounted discounts.

He further referred to Provision of Services Rules recently issued by the authority and was of the view that these rules support their arguments.

Directions:

The respondent is directed to re-examine the ratios and submit his report by 05.05.2023, endorsing copy to the appellant.

The appellant may file rebuttal, if any, on the report of respondent by 10.05.2023, endorsing copy to the respondent.

As regard stay, the stay is granted subject to deposit of 25% of principle amount of tax.

The case is adjourned for 16/05/2023 @ 3:30 P.M".

08. The learned advocate for the appellant submitted as under:-



- i. The Commissioner (Appeals) instead of passing the interim injunction order on merits of the case erroneously passed conditional stay order subject to deposit of 25% of the principle amount of (SST), which amounts to depriving the appellant from the beneficial statutory provision provided in the Act.
- ii. The appellant has claimed and adjusted input tax on receipt of insurance services and the service providers deposited the entire output tax charged from the appellant with SRB and as such the input tax was rightly claimed in Sindh.
- iii. The Commissioner (Appeals) vide order dated 18.04.2023 directed the AC-SRB to re-examine the ratios applied by the AC-SRB and to submit report on 05.05.2023 which was not submitted till date.
- iv. It is apparent from the order of Commissioner (Appeals) that he was not satisfied with the ratios applied by the AC-SRB and directed to re-examine the same and the Commissioner (Appeals) should passed order on merits instead of invoking section 66 of the Act.
- v. The provision of section 58 (4) and section 66 of the Act are two independent provisions and were inserted to cater two different situations and could not be clubbed with each other to deprive the tax payer from the benefit of section 58 (4) of the Act.

The appeal is pending for want of submission of report by the AC-SRB, which despite direction dated 18.04.2023 was not filed and the appellant was not instrumental in delaying the disposal of the appeal.

vii. The coercive recovery of tax dues during pendency of the appeal before the Commissioner (Appeals) and without determination of the dispute by an independent forum is not warranted in law and the same has always been deprecated by Superior Courts.

09. The learned AC-SRB in reply submitted as under:-

- i. The appellant has claimed inadmissible input tax adjustment in violation of sub-rule (3) of rule 22 of the Rules, 2022 which was rightly disallowed.
- ii. The appellant is providing taxable telecommunications services in entire Pakistan but claimed the input tax on insurance services in Sindh only causing loss to public exchequer.



iii. The huge public money is involved and the Commissioner (Appeals) has rightly granted conditional stay to safe guard the interest of both the parties.

iv. The protection under proviso to sub-section (1) of section 66 of the Act is available to the appellant and on deposit of 25% of tax dues the appellant will get stay order against coercive recovery of tax dues.

v. The report was submitted with the Commissioner (Appeals) and the copy will be provided to the appellant.

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

11. This appeal has been filed by the appellant against the order dated 18.04.2023 passed by the Commissioner (Appeals) granting conditional stay subject to deposit of 25% of the principal amount of tax.

12. This case appears to be a case of hardship. The appeal is still pending before Commissioner (Appeals) for want of submission of report by the AC-SRB and during the pendency of appeal the appellant apprehends coercive recovery on the part of SRB. The Commissioner (Appeals), SRB on the first date of hearing instead of passing the stay order after considering the merits of the appeal invoked first proviso to sub-section (1) of section 66 of the Act and passed conditional stay order subject to deposit of 25% of the principal amount of tax.

13. The appeal is still pending and fixed for hearing on 20.09.2023 and prima-facie the AC-SRB despite lapse of considerable time has failed to submit the report called by the Commissioner (Appeals) due to which appeal could not be heard.

14. The passing of the conditional stay order on the first hearing without considering the merits of the appeal is apparently a harsh order. The legislature has not provided any condition under sub-section (4) of section 58 of the Act. However, in appropriate case the first proviso to sub-section (1) of section 66 of the Act could be invoked. The Commissioner (Appeals) when ordered for re-



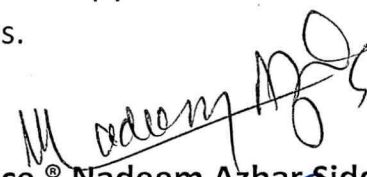
examination of the ratios applied by the AC-SRB should have granted stay without any condition and acted accordingly.

15. This appeal is only against the conditional stay order and no purpose will be served in keeping the same pending for long time. We therefore, to foster cause of justice reduce the deposit of tax from 25% to 10% of the principal tax amount and the appellant is directed to deposit 10% of the principal amount of Rs.124,652,804/- within two weeks from the date hereof. The stay is granted till the disposal of appeal by Commissioner (Appeals). However, in case 10% of the principal amount of tax is not deposited within two weeks the stay will stand vacated without any further order.

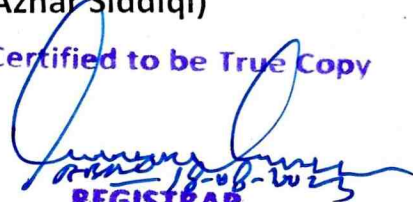
16. We, therefore direct the Commissioner (Appeals) to expeditiously proceed with the appeal and to decide the same within next forty five days from the date of this order without allowing unnecessary adjournments to the parties. The AC-SRB is directed to submit the requisite report as ordered by Commissioner (Appeals) on 18.04.2023 within one week from the date hereof with advance copy to the appellant.

17. The appeal is disposed of as above. The copy of the order may be provided to the learned representatives of the parties.


(Syed Tahir Raza Zaidi)
Member Technical


(Justice[®] Nadeem Azhar Siddiqi)
Chairman

Certified to be True Copy


18-08-2023
REGISTRAR
APPELLATE TRIBUNAL
SINDH REVENUE BOARD

Karachi

Dated: 16.08.2023

Copies supplied for compliance:-

1. The Appellant through authorized Representative.
2. The Assistant Commissioner (Unit-01), SRB, Karachi.

Copy for information to:-

- 3) All Commissioner (Appeals-III), SRB, Karachi.
- 4) Office copy
- 5) Guard file.

Order issued on 18-08-2023

Order Dispatched on 18-08-2023