

Guard File

BEFORE THE APPELLATE TRIBUNAL, SINDH REVENUE BOARD, AT KARACHI

DB-I

APPEAL NO. AT-90/2023

M/s Megatech Tracker (Pvt.) Limited

(SNTN: S2902575-3)

43-H/A, Block-6, PECHS, Karachi.....

Appellant

Versus

The Assistant Commissioner (Unit-01),

Sindh Revenue Board, (SRB),

2nd Floor, Shaheen Complex, M.R. Kayani Road

Karachi.....

Respondent

Date of filing of appeal: 26.06.2023

Date of hearing: 24.08.2023

Date of Order: 25.08.2023

Mr. Wasif Iqbal, ITP along-with Mr. Muhammad Arif, (ITP) for the appellant.

Mr. Imran Ali, AC-SRB, Karachi for the respondent.

ORDER

Justice® Nadeem Azhar Siddiqi. This appeal has been filed by the appellant challenging the Order dated 23.06.2023 passed by the Commissioner (Appeals) in Appeal No. 38/2023 under section 58 (4) of the Sindh Sales Tax on Services Act, 2011 (hereinafter referred to as the Act) granting conditional stay subject to deposit of 25% of the tax amount.

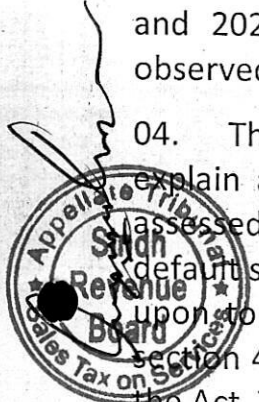
02. The facts as stated in the SCN/OIO are that appellant having SNTN: 2902575-3), is registered with the Sindh Revenue Board ("SRB") as a service provider of Telecommunications services under the taxable service category of "Vehicle Tracking and other Tracking Services" falling under Tariff Heading "9812.8100" of the Second Schedule to the Act, which are taxable services under section 3 of the Act and chargeable to the Sindh Sales Tax (SST) at the rate of 19.5% from 1st July, 2017 and onwards under section 8 of the Act and rules made thereunder.

03. It was alleged in the SCN that during the examination/scrutiny of annual accounts and Sales Tax Returns (STR) filed by the appellant with SRB for the tax year 2019 and 2020 it was observed that the appellant have not discharged due SST liability during the tax periods from July, 2018 to June, 2020. The Perusal of Note 18 and 23 of the annual audited accounts revealed that the appellant had earned total service revenue amounting to Rs.390,834,560/- (FY-2020 Rs.179,745,688/-) + (FY-2019 Rs.211,088,772/-). However, while comparing the service revenue reported in the annual audited accounts with those reported in Annexure-C of the STR filed with SRB it has been noticed that appellant declared service revenue of Rs.162,641,011/- and Rs.83,828,460/- for the tax years 2019 and 2020 respectively in PRA. Thus, short payment of Rs.28,159,848/- was observed.

04. The appellant was served with Show-Cause Notice dated 17.01.2023 to explain as to why short-paid amount of SST of Rs.28,159,848/- should not be assessed under section 23(1) read with section 47 (1A) of the Act, 2011 alongwith default surcharge under section 44 of the Act, 2011. The appellant was also called upon to explain why penalties under serial No. 3 and 6(d) of the Table under section 43 of the Act, 2011 should not be imposed for violating the provisions of the Act. The appellant submitted its Reconciliation.

05. The Assessing Officer (AO) determined the SST at Rs. 18,311,914/-under section 23(1) read with Section 47(1) of the Act along-with the default surcharge under section 44 of the Act. The AO also imposed penalty of (a) Rs.915,595/- under serial No.3 of the Table under section 43 of the Act and Rs.18,311,914/- under serial No. 6(d) of the Table under section 43 of the Act.

06. 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



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application was taken up on 23.06.2023 and the Commissioner (Appeals) granted the stay subject to deposit 25% of the principal amount of tax, hence this appeal.

07. The learned ITP for the appellant submitted as under:-

i. The grant of stay subject to deposit of 25% of the tax amount without considering the merits of the appeal is a harsh order and amounts to depriving the appellant from the protection provided to it under section 57 (4) of the Act.

ii. The SST was erroneously levied on sales and renting of tracking devices which was taxable under Tariff Heading 9806.6000 (renting of machinery, equipment, appliances and other tangible goods) of the Second Schedule to the Act and was made taxable from July, 2019.

iii. The main appeal is pending before the Commissioner (Appeals), SRB since 23-06-2023 and the next date in the matter is fixed for 16-10-2023. Coercive recovery during the pendency of appeal and without determination by an independent forum has been deprecated by the superior courts.

The appellant apprehends coercive action for recovery of tax on the part of respondent and submitted that in case stay is not granted the Department will attach bank account which will cause monetary loss as well as loss of reputation, and requested for grant of stay against coercive recovery.

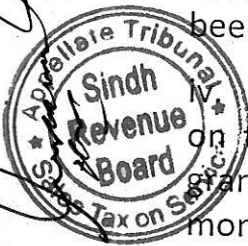
08. The learned AC-SRB submitted as under:-

i. The huge amount of tax is involved and grant of stay amounts to jeopardizing public exchequer.

ii. The order for grant of stay subject to deposit on 25% tax amount was rightly passed to safeguard the interest of both the parties.

iii. The Commissioner (Appeals) in appropriate cases could grant stay with condition.

iv. The SST was rightly and legally levied on sales and renting of tracking devices which were part of services and taxable under the head of "telecommunications services".



v. The Tariff Heading 9806.6000 (renting of machinery, equipment, appliances and other tangible goods) of the Second Schedule to the Act is not applicable on sales and renting of tracking device.

09. We have heard the learned representatives of the parties and perused the record.

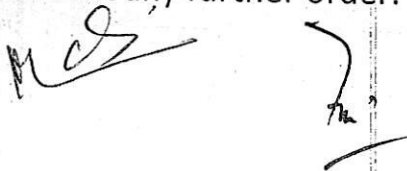
10. This appeal has been filed by the appellant against the conditional stay order dated 23.06.2023 passed by the Commissioner (Appeals), SRB subject to deposit of 25% of the principal amount of tax.

11. This case appears to be a case of hardship. The main appeal is still pending before Commissioner (Appeals) for want of hearing. The appellant has not deposited 25% of the amount of tax involved and filed this appeal. The appellant rightly apprehends coercive recovery on the part of SRB during the pendency of appeal if 25% of the principal amount of tax is not deposited.

12. We have noticed that the Commissioners (Appeals), SRB on the first date of hearing instead of passing stay order after considering the merits of the appeal invoked first proviso to sub-section (1) of section 66 of the Act, which is not a proper practice. The provision of sub-section (4) of section 57 of the Act, 2011 was inserted in the Act for the protection of the tax payers from coercive recovery during pendency of appeal.

13. From the submissions of the rival parties it appears that factual and legal controversies are involved and require serious consideration. The Commissioner (Appeals) is required to resolve the issues of levying SST on the sale and renting of tracking devices.

14. 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.18,311,914/- within two weeks from today. 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 would stand vacated without any further order.



15. 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 parties are directed to cooperate with the Commissioner (Appeals). If consider appropriate the Commissioner (Appeals) may any date the hearing.

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


(Syed Tahid Raza Zaidi)
Member Technical

Karachi

Dated: 25.08.2023

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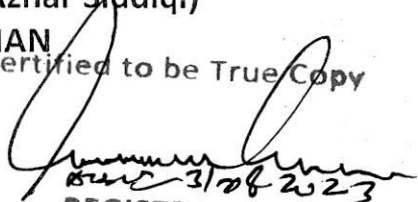
1. The Appellant through authorized Representative.
2. The Assistant Commissioner (Unit-01), SRB, Karachi.
3. The Commissioner (Appeals-III), SRB, Karachi.

Copy for information to:-

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


(Justice® Nadeem Azhar Siddiqi)
CHAIRMAN

Certified to be True Copy


REGISTRAR
APPELLATE TRIBUNAL
SINDH REVENUE BOARD

Order issued on

31-08-2023


Registrar

Order Dispatched on

3-08-2023


Registrar