

BEFORE THE APPELLATE TRIBUNAL SINDH REVENUE BOARD, KARACHI

DB-I

APPEAL NO. AT-149/2015

M/S Warid Telecom Private Limited.....Appellant

Versus

The Commissioner (Appeals), SRB,
Karachi and another.....Respondents

Date of Filing of Appeal: 06.04.2015

Date of hearing of Appeal: 16.09.2020

Date of Order: 12.10.2020

Mr. Ayaz Shaukat, Advocate, Mr. Syed Obaidullah, ACA, Mr. Kamran Niaz, ITP and Mr. Arshad Mehmood FCA for Appellant.

Mr. Zain Manzoor, AC, Mr. Muhammad Faraz, AC, Mr. Muhammad Ali, AC and Ms. Uzma Ghory, AC-DR for Respondent.

ORDER

Justice (R) Nadeem Azhar Siddiqi. This appeal has been filed by the appellant challenging the Order-in-appeal (hereinafter referred to as the OIA) No. 77/2015 dated 16.03.2015 passed by the Commissioner (Appeals) in Appeal No. No. 110/2014 filed by the Appellant against the Order in Original (hereinafter referred to as the OIO) No. 448/2014 dated 10.09.2014 passed by the AC (Ms. Nida Noor) SRB, Karachi.



02. The facts of the case as briefly stated in OIO are that the appellant is a registered person and engaged in providing taxable Telecommunication Services under Tariff Heading 98.12 of the Second Schedule to the Sindh

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Sales Tax on Services Act, 2011 (hereinafter referred to as the Act) chargeable to Sindh Sales Tax (SST) @ 19.5% under section 8 of the Act read with rule 32 of the Sindh Sales Tax on Services Rule, 2011 (hereinafter referred to as the Rules), for the tax periods from January-2013 to December-2013.

03. It was alleged in the OIO that from perusal of "Annexure A" of the sales tax returns filed by the appellant it was evident that ~~claimed~~ the adjustment or deduction of input tax was not claimed lawfully, as provided under Chapter V of the Rules. The details of the inadmissible adjustment/deduction as noted from the sales tax return filed by the appellant were as follow:

a) It had claimed a total input tax adjustment/deduction amounting to Rs.60,180,230/- with respect to advertisement services against the output of Sindh Sales Tax on Telecommunication Services, for the tax periods from January, 2013 to December, 2013.

b) The input tax claimed and adjusted for Rs.6,612,516/= against invoices that were barred by time provided under rule 22 (1) of the Rules.

c) The inadmissible input tax adjustment claimed and adjusted in respect of goods or services that were not exclusively used in providing or rendering the telecom services amounted to Rs.343,754,066/-. Moreover it had also claimed inadmissible input tax adjustment of the tax relating to other jurisdiction not admissible under rule 22(A) (i) of the Rules.

d) It had claimed and adjusted inadmissible input tax amounting to Rs.11,990,614/- on services that were not deposited by the supplier or the services provider under rule 22(A) (v) of the Rules.

e) It had failed to file scanned attachment, as evidence where the input tax claimed on goods used, consumed, or utilized for



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providing services had exceeded 20% of the output tax in violation of rule 16 of the Rule.

04. The appellant was served with a Show-Cause Notice (SCN) dated 28.03.2014 calling upon it to show cause as to why SST amounting to Rs.412,005,886/- (11,990,614 +343,754,066+6,612,516+49,648,690) should not be assessed and recovered under section 23 and 47 (1A) (a) of the Act and why default surcharge under section 44 of the Act and penalties under Sr. 2, 3 and 6(d) of the Table under section 43 of the Act should not be imposed. The appellant vide letter dated 15.04.2014 submitted the written reply to the aforesaid SCN.
05. The Assessing Officer (AO) after hearing passed OIO and disallowed the input tax adjustment of Rs.270,492,535/= against Rs.412,005,886/= as confronted in the SCN. Moreover default surcharge was imposed under section 44 of the Act alongwith penalty of Rs.13,884,627= under serial No. 2, 3 and 6 (d) of the Table under section 43 of the Act.
06. The appellant challenged the said OIO by filing appeal before Commissioner (Appeals) who after hearing had upheld the principal amount of SST, imposition of default surcharge and penalties under Serial No. 2, 3 and 6 (d) of Table under section 43 of the Act, hence this appeal by the appellant.
07. The learned representative of the appellant has taken various grounds in the memo of appeal, filed written submissions and also made oral submissions. The crux of the arguments of the appellant was that the respondent has totally misunderstood the concept of claiming input tax mechanism in the monthly sales tax returns and disallowed the lawfully claimed input tax adjustment on the basis of wrong perception and misunderstanding of law. It was further stated that the claim of input tax adjustment was substantiated with the valid sales tax invoices issued by the suppliers/service providers and evidence of payment of such invoices through banking channel was duly provided. It was contended that the appellant's legitimate right of claiming input tax adjustment under law could not be denied on the whims of the AO. The appellant also challenged the imposition of penalties and default surcharge on the



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ground that there was a serious contest between the parties regarding adjustment of input tax. It was also stated that default surcharge and penalties were imposed without first establishing mensrea on the part of the appellant which was necessary in terms of various judgments of superior courts of Pakistan.

08. The learned representative of the respondent in his written as well as oral contentions submitted that the input tax adjustment claimed by the appellant during the tax periods from January-2013 to December-2013 was not reconciled with the amount of input tax declared against row 12 of the respective sales tax returns. The appellant had adjusted the input tax against invoices that were barred by time as provided under rule 22 (1) of the Rules and also failed to provide scanned copies of invoices as per rule 16 of the Rules. It was further contended by the learned representative of the respondent that the appellant also adjusted input tax on the invoices of other jurisdiction and the invoices which were not exclusively used in providing telecommunication services and the invoices of exempted services. Moreover the appellant had adjusted huge amount of input tax on electricity without producing the copies of bills and also adjusted input tax on purchase of diesel without justifying its use in presence of electricity.
09. The appellant during the pendency of the appeal filed additional grounds on 15.06.2020 which are reproduced as under:-

- a) That as per provisions of section 72 (1) of the SST Act, 2011 the SRB, with approval of the Government make rules for carrying out the purpose of the SST Act, 2011. The SRB issued amended notification No. SRB-3-4/4/2011 dated 07 September, 2011 to Rules 22 and 22A of the Rules, 2011 without approval of the Government. Said notification does not hold legal backing and sanctity, hence reliance on amended Rule 22 and 22A of the Rules, 2011 is illegal and without lawful authority. The Respondents failed to present the said approval of the Government.
- b) That without prejudice to the above, the SRB issued the notification No. SRB-3-4/4/2011 dated 07 September, 2011 without invoking the powers under the then section 15 of the SST Act, 2011, hence, such notification was unlawful and without jurisdiction.



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c) *The rule 22 of the Rules, 2011 clearly states that a registered person who holds tax invoice (for the purchase of goods or services used consumed in providing or rendering of taxable services) in his name, bearing his sales tax registration/NTN, shall be entitled to deduct /adjust input tax paid during the relevant period..... Therefore, the registered person holding valid sales tax invoice in its name has legal and legitimate right to claim its input tax adjustment.*

10. The appellant while filing of additional grounds submitted that these are legal grounds and could be raised at any stage of proceedings since the law does not prohibit raising of additional grounds. He also submitted that for hearing of additional grounds no factual enquiry was required and matter can be resolved on the basis of the Notifications issued by SRB. He further submitted that technicalities should not come in the way of dispensation of justice and every procedure not prohibited by law can be adopted. He further submitted that the things required to be done in accordance with the procedure provided in the law and the words "with the approval of the government" appearing in section 15 made it mandatory to issue notification with the approval of Government of Sindh. Such notification could not be produced by SRB despite several opportunities and directions of the Tribunal. The learned representative of the appellant relied upon the following case laws.

(a) *Imtiaz Ahmad versus Ghulam Ali, PLD 1963 SC 382*

(b) *Caltex Oil (Pakistan) Limited versus Collector, Central Excise and Sales Tax, 2005 PTD 480.*

(c) *PLD 2014 Sindh 224 (DB) Muhammad Mustafa V Syed Azfar Ali, PLD 2014 Sindh (229 C).*

(d) *Pakistan Mobile Communications Limited Vs. versus SRB, Appeal No. AT-25/2016 (an Order of this Tribunal).*

11. The learned AC however raised objection on filing of additional grounds and submitted that such grounds could not be raised and heard at this bleated stage. He submitted that section 15 of the Act empowered the Board to place restrictions on claiming input tax adjustment. He also submitted that the words "with the approval of the Government" appearing in section 15 were omitted vide Sindh Finance Act, 2014. He



further submitted that in section 15 of the Act the words "by notification in the official gazette" were added vide Sindh Finance Act, 2014 and since both these amendments were procedural in nature the same were applicable to the tax periods involved in this case i.e. from January-2013 to December-2013.

12. The appellant was allowed to raise additional grounds by us for the following reasons:-

(a) It is true that the additional grounds were not raised earlier before the AO and Commissioner (Appeals) and were raised first time before us. The additional grounds are legal grounds for which no extensive enquiry or investigation is required. The grounds raised were related to the jurisdiction of SRB to issue Notification and whenever a point of jurisdiction is raised it first requires determination. The issuance of notification by Board is conditional subject to approval of Government and was a mandatory condition without which no restrictions or conditions in respect of claiming input tax adjustment could be placed upon the registered persons. In the reported case of Khyber Tractors versus Pakistan, PLD 2005 SC 842 it has been held as under:-

"The question of jurisdiction of a forum is always considered to be very important and any order passed by a Court or forum, having no jurisdiction, even if it is found to be correct on merits, is not sustainable"

The grounds raised are not a mere technicality since it goes to the root of the case as by issuing Notification without the approval the SRB has deprived the appellant from claiming input tax adjustment which was allowed under section 15 of the Act. The honorable Supreme Court of Pakistan in the reported case of Irtiaz Ahmad versus Ghulam Ali, PLD 1963 SC 382 regarding technicalities and has held as under:-

".....the proper place of procedure in any system of administration of justice is to help and not to thwart the grant to the people of their rights. All technicalities have to be avoided

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unless it be essential to comply with them on ground of public policy.....Any system which by giving effect to the form and not the substance defeats substantive rights (and) is defective to that extent".

(c) The Notification was issued under delegated power under section 15 of the Act and such powers cannot be independently exercised without the approval of the Government. Obtaining approval from Government appears to be mandatory, thus its non-compliance render the proceedings defective.

(d) The basic principle in applying the procedure is that every procedure is permissible till it is shown to be prohibited by law. Procedure not specifically provided and prohibited could be followed to meet the ends of justice. The Act does not prohibit filing of additional legal grounds during the pendency of the appeal. Sub-section (3) of section 58 of the Act provide for filing of new grounds of appeal subject to satisfaction of Commissioner (Appeals). In the reported case of Khan Bhadur & others vs. Mst. Salima & others PLD 1986 SC 150, the honorable Supreme Court of Pakistan relying upon the reported case of Malik Hadayat Ullah Vs. Murad Ali Khan, PLD 1972 SC 69, has held as under:-

"The ratio in the case of Malik Hadayat Ullah is so clear, namely, that no procedural impediment should be considered as insurmountable unless it is laid down by law as an impediment. If, on the other hand, the discretion is not controlled by any prescribed procedure, nothing should be imported so as to stifle discretionary relief".



The filing of additional grounds subsequent to filing of appeal is a matter of procedure and can be allowed to meet the ends of justice. The Honorable Supreme Court of Pakistan in the reported case of Caltex Oil (Pakistan) Limited versus Collector, Central Excise and Sales Tax, 2005 PTD 480, and the relevant portion is reproduced for ready reference as under:-

"6. This is a principal of law that a question of law arising out of the facts of the case relating to the fundamental issues involved

therein, even if was not raised before the lower forum can be allowed to be taken before the higher forum and this court for doing complete justice may, if the facts and circumstances of a case demand, allow to raise a question of law which was not as such taken before the High Court. This is the duty of the Court seized of the matter, to apply the correct law to meet the ends of justice and this Court in *Gatron Industries versus Government of Pakistan* (1999 SCMR 1072) held that "even when leave was not granted on a point, the same can be allowed to be canvassed in appeal if it is necessary for doing complete justice in a case or matter pending before the Court as contemplated by sub-article (1) of Article 187 of the Constitution.

(f) The legal grounds were taken before us for the first time and were allowed to be raised at this stage since the same could be raised at any stage of proceedings.

13. In view of the above discussion the appellant was allowed to raise additional grounds. We will first take up the initial additional ground raised by the appellant.

14. The learned representative of the appellant submitted as under:-

(i) Rule 22A was added in the Rules effective from 7th September, 2011 without the approval from the Government of Sindh as provided in section 15 read with section 72 of the Act.

(ii) The Notification by which Rule 22A was added in the Rules was not published in Official Gazette which is a condition precedent for its implementation as provided in Section 19 A of the General Clauses Act 1956 (Sindh Amendment).

15. The learned AC for SRB submitted as under:-

The Minutes of the Sindh Cabinet Meeting dated 27.02.2019 are placed on record wherein Agenda No.13 (Ex-post facto approval by the cabinet in relation to the Rules issued under section 72 of the Sindh Sales Tax on Services Act, 2011 and its decision appearing at item No.14.3 provides that "the Cabinet accorded ex-post facto approval to the 21 notifications issued under section 72 (1) of the Sindh Sales Tax on Services Act, 2011 during the period from 30.06.2011 to 01.07.2014". He further



submitted that any defect in issuance of notifications has been cured by the Cabinet's decision and the same cannot be agitated before this forum at this stage.

(ii) The notification dated 07.09.2011 was protected under sub-section (60A) of section 2 of the Act inserted vide Sindh Finance Act, 2016 effective from 18.07.2016 with retrospective effect which provided that the notification under the Act shall be effective from the day specified therein notwithstanding the fact that the issue of the official Gazette in which such notification appeared was published at any time after that day.

(iii) The Notification was validated under sub-section (2) of Section 84 of the Act and the learned AC placed reliance upon the last three lines of the section starting from "*shall be deemed*" and ending on "*as the case may be*". He submitted that defect if any in issuance of Notification dated 07.09.2011 was cured and the appellant was not entitled to claim input tax in violation of provision of rule 22A of the Rules. He further submitted that the sub-section (2) of section 84 of the Act was inserted in the Sindh finance Act, 2019 (XII of 2019) to revalidate the notifications and order issued in exercise of the powers under the Act. The newly inserted section clearly provided that if the Board had issued any notification for which the approval of Government was required under this Act without approval of the Government the same shall be deemed to have been issued with approval of Government.

(iv) The words "with the approval of the Government" appearing in section 15 and sub-section (1) of 72 of the Act were omitted vide Sindh Finance Act, 2014 (XVII of 2014) effective from 07.07.2014 and since the said amendment in the Act was procedural in nature the same shall apply retrospectively.

(v) The learned AC relied upon the reported judgment in the case of Molasses Trading and Export (Pvt.) Limited versus Federation of Pakistan and others cited as 1993 SCMR 1905 where in it was held that:



"when a legislature intends to validate a tax declared by a Court to be illegally collected under an invalid law, the cause for ineffectiveness or invalidity must be removed before the validation can be said to take place effectively. It will not be sufficient merely to pronounce in the statute by means of a non obstante clause that the decisions of the Court shall not bind the authorities, because that amount to reversing a judicial decision rendered in exercise of the judicial power which is not within the domain of the legislature. It is therefore necessary that the conditions on which the decision of the Court intended to be avoided is based, must be altered circumstances. One of the accepted modes of achieving this object by the legislature is to re-enact retrospectively a valid and legal taxing provision, and adopting the fiction to make the tax already collected to stand under the re-enacted law."

(vi) The ex-post facto approval was given to the impugned notification in order to remove the defect and further the impugned notification was also validated under sub section (2) of the section 84 of the Act. Thus the action taken by the respondent was within four corners of law. The AC relied upon the reported judgment in the case of Ch. Nazir Ahmed versus Government of Punjab and other cited as PLD 2013 Lahore 621 wherein it was held that:



"To explain the legal effect of afore noted S.16 that is described a validation legislation, learned counsel for the respondents has relied on the judgment of the Hon'ble Supreme Court in Syed Wajid Ali and 4 others v. Globe Automobile Ltd. and another (1993 SCMR 819) which follows the rule laid down in Commissioner of Sales Tax (West), Karachi v. Messrs Kruddsons Ltd. (PLD 1974 SC 180). In the case of Syed Wajid Ali (supra), Shafiur-Rehman J. Speaking for the Court has not at all taken into consideration the Validation Act i.e., Ordinance No. XIII of 1964 (Displaced Persons Laws Amendment Ordinance 1964). Such validation statutes are curative and remedial. They operate in retrospect. They correct omissions and mistakes. They have to

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be given effect to in pending proceedings. A decision cannot be rendered oblivious to them".

16. The learned representative of the appellant in rebuttal submitted as under:-

(i) It was evident from the Ex-Post Facto approval of the Rules framed under section 72 of the Act by the Sindh Cabinet on 25.02.2019 that no such approval was obtained from the Chief Minister Sindh on 20.08.2011, as alleged by the Department before issuing Notification dated 07.09.2011 inserting rule 22A in the Rules. Moreover the Officers of SRB had deliberately made false statements before this Tribunal under the instructions of Senior Officers and action in accordance with law may be taken against them.

(ii) The Ex-Post facto approval would be applicable from the date when the same was approved by the Cabinet and not from any prior date before this date as the executive orders cannot be applied retrospectively. He relied upon a) Mian Raziuddin V/s Chief Settlement & Rehabilitation Commissioner and other, PLD 1971 SC 252, b) Fazal Ahmed V/s Ziaullah Khan, PLD 1964 SC 293 c) PLD 1963 SC 633, d) 1988 SCMR 810 and e) PLD 1997 SC 315.

(iii) The validation under sub-section (2) of section 84 of the Act pertained to the notifications and orders issued and notified in exercise of the powers conferred upon Government or with the approval of the Government under the Act, before the commencement of the Sindh Finance Act, 2019. These were deemed to have been validly issued and notified in exercise of those powers and with the approval of Government, as the case may be. However the same did not apply to the notifications issued by SRB without approval of the Government of Sindh.

(iv) At the time of issuance of impugned Notification dated 07.09.2011, section 15 and sub-section (1) of section 72 of the Act expressly required approval of the Sindh Government (not Chief Minister) before issuance of Notification. It is pertinent to



mention here that this requirement was only removed in 2014 through Sindh Finance Act, 2014 (Act XVII of 2014) effective from 7.07.2014 and was not removed expressly with retrospective effect.

(v) The legislature did not validate the impugned notification dated 07.09.2011, which was issued without approval of the Government. However the legislature only re-validated already issued and notified notifications and orders which were issued with approval of the Government. If there was any intent of the legislature to validate the impugned notification dated 07.09.2011 then the legislature must have used the words in first part of the said section 'required to be issued with approval of the Government' or the words can be used in first part 'without approval of the Government'. (Emphasis supplied)

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

18. The contention of the appellant was that before issuance of Notification no approval of the Government was obtained and all the restrictions placed on the tax payers regarding adjustment of input tax were illegal. The contention of the AC was that the words "with the approval of government" are no more the part of statute and no approval is required and that the Sindh Cabinet had granted post facto approval to the Notification and said Notification was validated under sub-section (2) of section 84 of the Act.

The AO had disallowed input tax adjustment amounting to Rs. 270,492,535/- which was confirmed by Commissioner (Appeals) on the strength of Rules 22 and 22A of the Sindh Sales Tax on Services Rules, 2011 (the Rules) added by Notification No. SRB-3-4/4/2011 dated 07.09.2011 (The Notification). Rule 22A of the Rules deals with "input tax credit not allowed". Rule 22A of the Rules was purportedly inserted in the Rules in exercise of delegated powers available to the Board under section 15 of the Act. It is clear from bare reading of this provision that approval of the government was a condition precedent for exercise of



jurisdiction. The said condition was ignored and Notification was issued without approval from the Government. Initially the Officers appearing on behalf of SRB stated that approval was obtained but could not produce evidence of the same and ended on producing ex-post facto approval obtained on 25.02.2019. It is now well settled that if a thing has not been done in the manner, as required by the law and procedure, the same cannot be given legal sanctity particularly when the same are resulting in penal consequences. The thing provided in law should be done as provided or prescribed by law or not at all. In the reported case of Assistant Collector Customs and others versus Khyber Electric Lamps and 3 others, 2001 SCMR Page 842 it has been held as under:-

"It is well-settled proposition of law that a thing required by law to be done in a certain manner must be done in the same manner as prescribed by law or not at all. Since prerequisite of show-cause notices as required by law have not been served on the respondents, therefore, no straightforward demand notice for payment of alleged short levy could be issued".

20. From the submissions of the learned representatives of the parties following points have emerged.

- i) Whether rule 22A of the Rules was added in the Rules vide Notification dated 07.09.2011, issued by SRB without the approval from the Government of Sindh and the said Notification was also not published in the official Gazette, which is a condition precedent for implementation of the same as provided in the Section 19A of the General Clauses Act 1956 (Sindh Amendment).
- ii) Whether the amendment made in section 15 and 72 (1) of the Act was retrospective and the Notification dated 07.09.2011 was covered by the validation clause inserted in sub-section (2) of Section 84 of the Act vide Finance Act, 2019 (XII) 2019.

21. The facts and laws relating to Point No. (i) above are elaborated as under:-

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- (a) At the time of issuance of impugned Notification dated 07.09.2011, section 15 and 72 of the Act expressly required approval of the Sindh Government before issuance of Notification. Despite providing several opportunities to the department it had failed to produce the approval as well as Official Gazette in which such Notification was published.
- (b) The issuance of Notification without approval of Government of Sindh has no legal value and sanctity and cannot be acted upon. The SRB claimed that it had got Ex-Post Facto approval from the cabinet on 25.02.2019. The said approval was through an executive order and thus cannot be applied retrospectively particularly in view of the fact that through said Notification the appellant was deprived from claiming input tax adjustment as provided under section 15 of the Act.
- (c) The said post facto approval will be applicable from the date when the same was approved and not from any previous date. In the reported case of Government of Pakistan versus Village Development Organization, 2005 SCMR 492 it was held as under:-



"Executive order which confer rights are beneficial would be given retrospective effect and those which adversely affect or invade upon vested right cannot be applied with retrospective affect".

In the instant case by virtue of section 15 of the Act the appellant was given right to adjust input tax from the output tax. At the relevant tax periods i.e. January, 2013 to December, 2013 section 15 read as under:-

"15. Adjustment—The Board may, subject to such conditions and restrictions as it may prescribed and with the approval of the Government, allow registered persons to claim adjustments or deductions, including refund arising as a result thereof, in respect of the sale tax paid on or in respect of any taxable services or class of taxable services provided by them".

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- (e) It is therefore evident from the above discussion that during the tax periods involves in this appeal the powers were given to SRB to place conditions and restriction in respect of adjustment of sales tax paid with the approval of the Government. The SRB in placing the conditions and restrictions had to act under delegation of powers and could only exercise those powers which were specifically conferred on it. The Notification dated 07.09.2011 was issued without the approval of the Government of Sindh and such fact was confirmed from the Minutes of Cabinet Meeting dated 25.02.2019 through which the Notification dated 07.09.2011 was given ex-post facto approval.
- (f) The exercise of power by the Board under section 15 of the Act was subject to approval of the Government. The original Notification available on internet does not provide that the same was issued with the approval of the government. The approval of the Government was mandatory for issuance of Notification without which the power cannot be exercised. In the reported case of Muhammad Mustafa V Syed Azfar Ali, PLD 2014 Sindh 224, a DB judgment it was held as under:-

"229 C. Thing have not been done in the manner, as required by the law and procedure; the same cannot be given legal sanctity particularly when the same are resulting in penal consequences".

- (g) The Notification was not published in the official gazette as no such copy could be produced despite numerous directions. Section 19A of the General Clauses Act, 1956 applicable to province of Sindh provides that Rules and Orders, etc. to be published. In the original section 15 of the Act there was no condition of publication in the official gazette, therefore the provision of Section 19-A General Clause Act was applicable. It was held in the reported judgment in the case of Ummatullah Versus Province of Sind. PLD 2010 Karachi, 236 as under:-



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"17. General Clauses Act 1897 and Sindh General Clauses Act 1956 were enacted with object to shorten the language used in Federal and Provincial Statutes respectively passed by the respective legislature. Provisions of General Clauses Act, unless a different intention appears in any statute are to be read as integral part of any statute (see section 31 of the General Clauses Act 1897 and section 28 of the General Clauses Act 1956).

In the same judgment it was further held as under:-

"21.....Merely issuing a notification without publication in official Gazette and keeping it in the closet shrouded in the secrecy is opposed to public policy and law, otherwise, it would add another tool of oppression in the arsenal of the public functionaries, who may arbitrarily or selectively confer or impinge any privilege, benefit or right of a person at their whims and fancies for extraneous considerations".

In the reported case of Chief Administrator Auqaf versus Mst. Amna Bibi, 2008 SCMR 1717 it has been held as under:-

"8....."It has been laid down by the superior Courts that a notification which curtails or extends rights of citizens will take effect from date of its publication in Gazette and not from any prior date.

- (h) In the instant case the Notification 07.09.2011 has curtailed the right of the appellant to claim input tax adjustment and the same cannot be implemented unless published in the official Gazette. Moreover it is a settled principle of law that things are required to be done strictly according to law, or it should not be done at all. In the instant case section 15 of the Act provides that the SRB may place conditions and restrictions on the registered person to claim adjustments, deductions and refunds with the approval from the Government. Admittedly no such approval was obtained. Probe may be undertaken in this matter by the



Chairman/Board relating to misstatement given by the officials of SRB who had given false statements regarding issuance of notification with the approval of Sindh Government. In the reported case of Assistant Collector Customs versus M/s Khyber Electric Lamps, 2001 SCMR 838 it has been held as under:-

"4.....It is well settled proposition of law that a thing required by law to be done in a certain manner must be done in the same manner as prescribed by law or not at all".

22. In view of the above facts the Point No. (i) is answered in positive. The Notification dated 07.09.2011 was issued without approval of the Government of Sindh and without its being published in official Gazette thus such action was without legal force.

23. Point No. (ii) Whether the amendment made in section 15 and 72 (1) of the Act were retrospective and the Notification dated 07.09.2011 was covered by the validation clause inserted in sub-section (2) of Section 84 of the Act.

The facts and laws relating to Point No. (ii) are elaborated as under:-

(a) The words "with the approval of the government" were omitted from section 15 and sub-section (1) of section 72 of the Act vide Sindh Finance Act, 2014 assented on 7th July, 2014. The amendment does not provide that it had any retrospective application. The law on this point is very clear that all laws are prospective unless retrospective effect is specifically given by legislative intendment. At the time when Notification dated 07.09.2011 was issued the condition was that such notification could only be issued with the approval of the Government of Sindh. No such approval was obtained by SRB from Government before issuance of Notification. The omission of words "with the approval of government"



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will take effect from 07.07.2014 and not from any back date.

- (b) Sub-section (2) to section 84 of the Act was added vide Sindh Finance Act, 2019 assented on 05.07.2019 which provides as under:-

“(2) All notifications and orders issued and notified in exercise of the powers conferred upon Government or with the approval of the Government under the Act, before the commencement of the Sindh Finance Act, 2019, shall be deemed to have been validly issued and notified in exercise of those powers and with the approval of Government, as the case may be.

From bare reading the above provision it is clear that the legislature did not validate the impugned notification dated 07.09.2011, which was issued without approval of the Government of Sindh. It is pertinent to mention here that the legislature only re-validate already issued notifications and orders which were issued in exercise of the powers conferred upon the Government or with the approval of the Government. If there was any intent of the legislature to validate the impugned Notification dated 07.09.2011 which was issued without approval



of the Government then the legislature must have used the words in first part of the said section required to be issued with approval of the Government or the words can be used without approval of the Government. (Emphasis supplied)

(c)

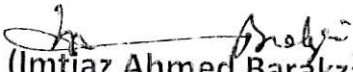
In our opinion, the interpretation of the concerned learned AC could be accepted only if the defect in issuance of Notification dated 07.09.2011 had been cured by the legislature by express deeming provision to the effect that “notification which was required to be issued with approval of the Government was issued without such approval of the Government shall

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be deemed to have been issued with approval of the Government. In the case of Molasses Trading and Export (Pvt.) Limited versus Federation of Pakistan and others, 1993 SCMR 1905 relied upon by the learned AC is distinguishable. Since in the Instant case the cause for ineffectiveness or invalidity of the notification had not been removed before the validation clause can be said to take place effectively.

24. In view of the above facts Point No. (ii) is answered in positive as the amendment made in section 15 And 72 (1) of the Act cannot be retrospective and the Notification dated 07.09.2011 cannot be covered by validation clause under sub-section (2) of section 84 of the Act.

25. In the light of the above discussions since both the points as mentioned at para (20) supra are answered in positive. The appeal is allowed and both the OIO and OIA are set aside and annulled. The copy of the order may be provided to the learned representatives of the parties.


(Imtiaz Ahmed Barakzai)
Member Technical


(Justice Nadeem Azhar Siddiqi)
Chairman

Karachi

Dated: 12.10.2020

Copy for compliance:

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

Copy for information to:-

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

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APPELLATE TRIBUNAL
SINDH REVENUE BOARD

Order issued on

21/10/2020


Registrar

Order Dispatched on

21/10/2020


Registrar