

**BEFORE THE APPELLATE TRIBUNAL, SINDH REVENUE
BOARD AT KARACHI**

DB-1

APPEAL NO. AT-16/2019

Assistant Commissioner (Unit-30), SRB,
KarachiAppellant

Versus

M/s Indus Pharma (Pvt.) Ltd.
Karachi.....Respondent

Date of Filing of Appeal: 12.02.2019
Date of Hearing: 14.01.2021
Date of Order: 27.01.2021

Mr. Mukhtiar Ali Memon, AC-SRB and Ms.Uzma Ghory, AC-DR-SRB for
appellant.

Mr. Noman Qureshi, ITP for respondent.



ORDER

Justice® Nadeem Azhar Siddiqi: This appeal has been filed by the Department/appellant challenging the Order-in-Appeal (hereinafter referred to as the OIA) No.235/2018 dated 17.12.2018 passed by the Commissioner (Appeals) in Appeal NO. 68/2018 filed by the respondent against the Order-in-Original (hereinafter referred to as the OIO) No.

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86/2018 dated 01.03.2018 passed by Ms. Shumaila Yaar Muhammad Assistant Commissioner, (Unit-30) SRB Karachi.

02. The brief fact of the case as stated in the OIO were that the respondent was registered with SRB under Tariff Heading 9830.0000 (Services provided in the matter of manufacturing or processing for others on toll basis) of the Second Schedule to the Sindh Sales Tax on Services Act, 2011 (hereinafter referred to as the Act) liable to Sindh Sales Tax (SST) at the rate of 16% for the tax periods July-2013 to June-2014, 15% for the tax periods from July-2014 to June-2015 and 14% for the tax periods from July-2015 to June-2016. This fact was evident from its annual audited accounts for the years ended June-2014, June-2015 and June-2016 (Tax Periods from July-2013 to June-2016) wherein it was clearly mentioned that the respondent was engaged in toll manufacturing services and received revenue from the said services at the time of rendition of services.

03. It was alleged in the OIO that perusal of respondent's online sales tax profile maintained with SRB revealed that the respondent had declared output tax amounting to Rs.36,613,683/- for the tax periods July-2013 to June-2016. However, from the Annual Audited Accounts of the above tax periods it revealed that the respondent had received a revenue of Rs.310,319,227/- against the services provided under Tariff Heading 9830.0000 involving SST Of Rs.47,547,002/-. Such details are given as under:-

Tax periods	Toll Manufacturing income	Rate	SST involved	SST/output tax declared per SRB's online profile	Difference
Jul-13 to Jun-14	145,026,835	16%	23,204,294	15,752,909	7,451,385
Jul-14 to Jun-15	120,177,391	15%	18,026,609	15,394,567	2,632,042
Jul-15 to Jun-16	45,115,001	14%	6,316,100	5,466,207	849,893
TOTAL	310,319,227		47,547,002	36,613,683	10,933,319



04. The respondent was served with a Show-Cause Notice (SCN) dated 15.02.2018 calling upon it to explain as to why the SST at Rs.10,933,319/- should not be assessed and recovered under section 23(1) and 47 of the Act along with default surcharge under section 44

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of the Act and imposition of penalties under serial No.3 and 6 (d) of the Table under section 43 of the Act.

05. It is mentioned in the OIO that no one appeared for the respondent on date of hearing i.e. 28.02.2018 to defend the case nor any written response was received in response to the SCN. The Assessing Officer (AO) passed OIO ex parte determining the SST at Rs.10,933,319/- under section 23 read with section 47(1A) of the Act along-with default surcharge under section 44 of the Act. He further imposed penalty of Rs.333.33 for each day of default under serial 3 of section 43 of the Act and the penalty of Rs.10,933,319/= under serial No. 6 (d) of Table under section 43 of the Act.

06. The respondent challenged the OIO by way of filing appeal before the Commissioner (Appeals) who after hearing, partially allowed the appeal and reduced the SST. However the OIO was maintained to the extent of payment of SST of Rs.679,566/=, hence this appeal by the Department.

07. The learned AC for the department submitted that the Commissioner (Appeals) passed an erroneous OIA on the basis of a faulty Reconciliation Report prepared by than AC. However, while relying upon the Reconciliation Report dated 14.03.2019 for the tax periods from July-2013 to June-2015 it was submitted that the SST was payable at Rs.5,253,277/= and not Rs.679,566/= as held by Commissioner (Appeals) and deposited by the respondent. He further submitted that error in the audited accounts claimed by the respondent was not rectified by way of amendment in the Audited Accounts and mere submission of certificate from the Chartered Accountant was not sufficient. The learned AC relying upon the Reconciliation Report dated 14.03.2019 submitted that that OIO was passed for the years 2014, 2015 and 2016 (July, 2013 to June, 2016) on the basis of entries available in the audited accounts and as per the reconciliation report prepared for the tax periods July, 2013 to June, 2015 the SST amounted to Rs.5,253,277/= and the SST for the tax periods from July-2015 to June-2016 was reconciled. He submitted that the AC while preparing the Reconciliation Report submitted before the



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Commissioner (Appeals) ignored to take into consideration the amount of Rs.15,752,905/= not declared with FBR on the assertion that the same was exempted from payment of sales tax under Sales Tax Act, 1990 (STA-1990). It was further contended that the Commissioner (Appeals) erred by allowing reduction of SST of Rs.15,752,905/= on the basis of certificate issued by the Chartered Accountant without considering the fact that the respondent had failed to provide any record/documents in support of the certificate and the amount deleted from sales was not reflected anywhere in the Audited Accounts.

08. The learned representative for the respondent Mr. Noman Qureshi, ITP explained that sale of goods were made to M/s Sami Pharma and CKD Pharma which were exempted from the payment of sales tax under STA-1990 on the basis of delivery challans and issuance of proper invoices with printed number but this fact was ignored by the learned AC. He then contended that the value of goods sold to Sami Pharma and CKD Pharma was verified by third party and the Reconciliation submitted before the Commissioner (Appeals) was with consensus of the respondent and AC and same could not be disputed at this belated stage. He submitted that the learned Commissioner (Appeals) personally verified all invoices in presence of then AC Ms. Pirah Ashfaq. He further submitted that since the pharmaceutical goods were exempted from payment of sales tax under STA-1990 and even if some invoices were not declared with FBR the same could not be treated as invoices pertaining to providing of services on the basis of presumption and assumption. He further referred to the Reconciliation Report submitted by Mr. Ghulam Murtaza Shar, AC-Unit-30 and stated that the SST was worked out at Rs.2,600,715/= and the amount of Rs.15,752,905/- was shown in the audited accounts as toll manufacturing instead of sales/ supplies.



09. The learned representative for the respondent submitted that the sales declared with FBR for the year 2013-2014 were matched with the record of SRB. Reference to para 7 of the Report submitted by the AC

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before Commissioner (Appeals) was given in which it was stated by the than AC as under:-

“Furthermore, as per breakup provided by the appellant, actual ‘income from toll manufacturing’ for the year ended 2014 was Rs.98,789,446/=, however the amount declared with SRB was Rs.98,455,655/=. Furthermore, actual income from toll manufacturing’ for the year ended 2015 was Rs.102,809,431/=, however the amount declared by them in its SRB returns was Rs.102,630,393/=. The appellant (respondent) had agreed to pay differential amount of SST of Rs.333,791/= and 179,038/= for the years ending 2014 and 2015 respectively.

However, such difference was deposited with SRB.

10. We have heard the learned representative of the parties and perused the record made available before us including Reconciliation Reports and written arguments submitted by the learned representatives of the parties.

11. The instant appeal pertains to tax periods from July, 2013 to June, 2016. The OIO was passed at the sum of Rs.10,933,319/- along with default surcharge and penalty. The stand of the respondent was that in the amount shown against Toll Manufacturing the amount of SST was grossed up and was shown against sales of Pharmaceutical Goods. This fact was certified by the Auditor who had audited the accounts. However the stand of the Department was that the amount not declared with the FBR against sale of goods actually pertained to providing of services and was thus taxable.

12. The SST was worked out at Rs.5,253,777/= as per the First Reconciliation Report dated 14.05.2019 submitted by the learned AC for the tax periods July-2013 to June-2015. However In his Reconciliation Report the AC included an amount of Rs.2,100,222/= on account of sales of goods not declared with FBR. Similarly the AC included an amount of Rs.12,631,353/= (for tax periods July-2013 to June-2014) and Rs.1,973,400/= (for tax periods July-2014 to June-2015) on account of difference in the invoices. In the Second Reconciliation Report dated 16.06.2020 submitted by the AC he had deducted value



of goods of Rs.16,704,975/= from the net value of services which were shown at Rs.217,351,782/= upon which SST worked out was Rs.33,748,191/=. However the SST deposited amounted to Rs.31,147,476/= and balance amount was shown at Rs.2,600,715/=. Again the AC submitted Reconciliation Report dated 25.09.2020 and included the amount of 16,704,975/= which the appellant claimed to be sale of goods to M/s Sami Pharma and M/s CKD Pharma and also included an amount of Rs.15,752,905/= during the tax periods from July-2013 to June-2014 on account of grossed up sales on services. The AC rejected invoices on the pretext that there was difference in the invoice numbers and content of the invoices.

13. The respondent in its first Reconciliation Report submitted on 14.05.2019 had shown the SST payable for the periods July-2013 to June-2014 at Rs.333,791/= and for tax periods July-2014 to June-2015 at Rs.179,038/=. However, in the Reconciliation Report it was stated that out of an amount of Rs.14,731,575/= relating to tax periods 2013-14 an amount of Rs.1,873,400/= on account of sale of pharmaceutical goods was inadvertently clubbed in the toll manufacturing and no SST was payable thereon.

14. The learned AC submitted the Final Reconciliation dated 12.11.2020 which is reproduced as under:-

For year ended June 30, 2014: (Table-1) STT @ 16 %

Actual Figures		Revised Figures	
Toll Manufacturing (Net Sales)	145,026,835	Toll Manufacturing (Net Sales)	145,026,835
Less: Sales Tax	(15,752,905)	Less : Sales Tax	(15,752,909)
		Sale of goods (M/s Sami)	(11,879,424)
		Sale of goods (M/s CKD)	(2,852,151)
		Sale of goods (Bulk) (Exempted sale as per respondent)	(15,752,905)
Total	129,273,930	Total	98,789,446

Difference in value: RS. 30,484,484/- . SST RS. 4,877,517/=.

For year ended June 30, 2015: (Table-2) SST @ of 15 %

Actual Figures	Revised Figures
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Toll Manufacturing (Net Sales)	120,177,391	Toll Manufacturing (Net Sales)	145,026,835
Less : Sales Tax	(15,394,560)	Less : Sales Tax	(15,394,567)
		Sale of goods (M/s Sami)	(1,973,400)
Total	104,782,831	Total	102,809,424

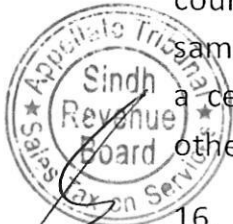
Difference: in Value Rs. 1,973,407/=. Tax Rs.296,011/-

Details of short paid SST due to revision of Annual Accounts:

S.No	Description	2013-2014 (@16%)	2014-2015 (@15%)	Total
3	Net Value of Services	129,273,930	104,782,831	234,056,761
4	Sales Tax Liability	20,683,829	15,717,425	36,401,253
5	Sales Tax Paid	-15,752,909	-15,394,567	-31,147,476
6	Short Paid SST	4,930,920	322,858	5,253,778

15. In view of above tables there appears to be vast difference between the contention of the parties for the reason that the AC was not agreeable to accept the contention of the respondent since the amount of exempted sale was grossed up in the head of toll manufacturing and despite efforts the same could not be reconciled. The department had claimed SST on the amounts which were neither declared with SRB nor FBR on the pretext that since the amount was not declared in FBR the same was against services. However, the department had failed to consider that the SST could not be levied on presumption or assumption and the amount not disclosed with FBR could not be treated as consideration of service without linking the same with providing or rendering services. The AC contended that only a certificate from Chartered Accountant was produced without any other supporting documents.

16. The Commissioner (Appeals) in the OIA has perused the record (ledgers against the goods pertaining to M/s Sami Pharma and M/s CKD, total returns filed with the FBR and the copies of the relevant pages of the Accounts) which were produced by the respondent to reconcile the difference between the contention of the appellant and the respondent. However the respondent has placed reliance upon the



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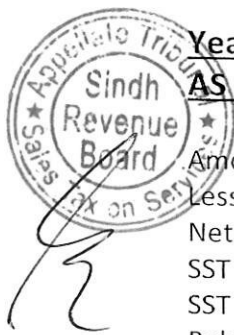
certificate of Chartered Accountant. The difference of tax was worked out by Commissioner (Appeals) as under:-

Year	Value	Tax
2014	Differential amount	604,431
2015	333,791	50,069
2016	179,038	25,066
	Total	679,566

17. The Commissioner (Appeals) relying upon the certificate of the Chartered Accountant deleted the amount of Rs.15,752,905/= from the head of toll manufacturing. It was mentioned at clause (d), para 3 of the certificate as under:-

"the amount was appearing in comparative figure in FS 15 whereas no such breakup was disclosed in the year 2014, while preparing FS for 2015, the management erroneously grossed up the value inclusive of sales tax with respect to toll manufacturing receipts treating it as net sales which resulted in misclassification of exempt sales amounting to Rs.15,752,905/= as toll manufacturing revenue".

18. We have examined the contention of the parties and also perused the various Reconciliation Reports prepared by the learned representatives of the parties. The position has emerged as under:-



Year 2013-2014 SST @ 16%
AS PER CONTENTION OF AC

Amount as per Audited Accounts	=	Rs.145,026,835/-
Less: SST (grossed up)	=	Rs.(15,752,905)
Net value of service	=	Rs.129,273,930/-
SST Payable 16%	=	Rs.20,683,828/-
SST Paid	=	Rs.(15,752,905)
Balance SST Payable	=	Rs.4,930,923/-
Paid After Order of Commissioner (Appeals)	=	Rs. (604,431)
Balance SST Payable	=	Rs. 4,326,492/-

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As per contention of Respondent:

Amount of Services	=	Rs.145,026,835/-
Less: SST (grossed up)	=	Rs. (15,752,909)
Less: goods sold to Sami	=	Rs. (11,879,424)
Less: goods sold to CKD	=	Rs. (2,852,151)
Less sale of exempted goods (Justified by certificate of CA)	=	Rs. (15,752,905)
Value of SST	=	Rs. 98,789,466/-
SST 16%	=	Rs. 15,806,311/-
SST Paid	=	Rs. 15,752,905/-
SST Payable	=	Rs. 53,406/-
SST Paid after OIA	=	Rs. 604,431/-
SST Paid in excess	=	Rs. 599,091/-

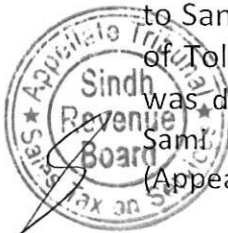
Year 2014-15 Rate of Tax 15%

As per contention of AC not disputed by respondent

Amount as per Accounts	=	Rs.120,177,392/-
Less: SST inclusive	=	Rs. (15,394,567)
Less: goods to Sami	=	Rs. (1,973,400)
Value of Service	=	Rs.102,809,425/-
SST Payable	=	Rs. 15,421,414/-
SST Paid	=	Rs. (15,394,560)
SST Payable	=	Rs. 26,854/-
SST Paid after OIA	=	Rs. 50,069/-
Excess SST Paid	=	Rs. 23,215/-

19. The SST grossed up in the value of service was rightly deleted from the value of service as per section 5 of the Act. The sale of goods made to Sami Pharma and CKD Pharma was also rightly deleted from the value of Toll Manufacturing services and the contention of the AC that there was difference in number and content of invoices provided by respondent, Sami Pharma and CKG Pharma was without force as the Commissioner (Appeals) with the assistance of the AC examined all invoices.

20. We are dissatisfied with the contention of the respondent relating to deletion of Rs.15,752,909/= for allegedly being exempt sales and the same were incorrectly grossed up with toll manufacturing revenue. The respondent in support of its contention could only produce a certificate from the Chartered Accountant. However it has failed to produce the relevant invoices in support of its contention that the amount deleted was in respect of exempted sale and not services. It is not clear from the



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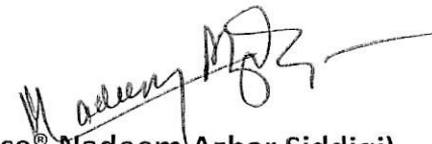
certificate as to where such amount was adjusted after deletion from the head of toll manufacturing account. The Commissioner (Appeals) accepted the assertion of the respondent without considering the impact of the same on audited accounts. Therefore, it is evident that the amount was although deleted from toll manufacturing service but was not added in any other head of accounts.

21. There appears no difference between the parties for the tax periods July-2014 to June-2015. The matter for the tax periods July-2015 to June-2016 stand reconciled in view of Reconciliation Report dated 10.12.2019 submitted by Mr. Saindad Joyo, AC-SRB and such earlier Report submitted by Ms. Pirah Ashfaque, AC-SRB, before Commissioner (Appeals).

22. In the light of the above discussions we are satisfied that an amount of Rs.15,752,909/= was erroneously deleted from the head of toll manufacturing services involving SST of Rs.2,520,465/=. Such amount is recoverable from the respondent after adjustment of excess payment of Rs.599,091/= and Rs.23,215/= respectively. Consequently the appeal is partly allowed and the OIA is modified to the extent of recovery of SST of Rs.1,898,159/= along with default surcharge.

23. The copy of the order may be provided to the learned representatives of the parties.


(Imtiaz Ahmed Barakzai)
TECHNICAL MEMBER


(Justice Nadeem Azhar Siddiqi)
CHAIRMAN

Karachi:Dated: 27.01.2021

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- 2) The Assistant Commissioner, SRB, for compliance

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