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

**DOUBLE BENCH-I**

**APPEAL NO. AT-30/2019**

M/s TCS Logistics (Pvt.) Ltd.  
Karachi.....Appellant

**Versus**

The Commissioner, SRB,  
Karachi.....Respondent

Date of Filing of Appeal: 21.03.2019  
Date of hearing: 01.02.2021  
Date of Order: 05.03.2021

Mr. Fahad Farooqi, Advocate for appellant  
Mr. Hamad Ali AC- SRB for respondent

**ORDER**



**Justice Nadeem Azhar Siddiqi**: This appeal has been filed by the appellant challenging the Order-in-Appeal (hereinafter referred to as the OIA) No.69/2019 dated 18.03.2019 passed by the Commissioner (Appeals) in Appeal NO. 44/2015 filed by the Appellant against the Order in Original (hereinafter referred to as the OIO) No. 41/2015 dated 21.01.2015 passed by the Ms. Umi Rabbab, Assistant Commissioner, (Unit-18), SRB Karachi.

02. The brief facts of the case as stated in the OIO were that the appellant was engaged in providing transportation services, warehousing

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services for goods and cargo, inventory management, repacking services etc., to M/s Telecom, M/s FMGC, Pharma, I.T. and other sectors which fell under the service category of "Business Support Services" classified under Tariff Heading 9805.9200 of the Second Schedule to the Sindh Sales Tax on Services Act, 2011 (hereinafter referred to as the Act) which was subjected to levy of Sindh Sales tax (SST) at 16% w.e.f. 01-07.2013.

03. It was stated in the OIO that the appellant was required to get itself registered with Sindh Revenue Board (SRB) under section 24 of the Act since it had charged and deposited SST and e-filed monthly SST returns under w.e.f. 01.07.2013, but it had failed to get registered despite the fact that it had provided aforesaid taxable services amounting Rs.1,660,790,944/- during the tax periods from July, 2013 to April, 2014 as per information provided by the appellant vide letter dated 03<sup>rd</sup> July, 2014.

04. The appellant was served with a Show-Cause Notice (SCN) dated 17.07.2014 calling upon it to explain as to why it should not be compulsory registered under section 24B of the Act. The appellant was also required to explain as to why SST of Rs.265,726,551/- against the services of Rs.1,660,790,944/- should not be assessed under section 23 of the Act along with default surcharge under section 44 of the Act. The appellant was also required to explain as to why penalties under Serial No. 2, 3 and 11 of the Table under Section 43 of the Act should not be imposed.

05. In response to the SCN representative of the appellant appeared and contended as under:

- a) That the appellant had got registered voluntarily with SRB in the service category of "inter-city transportation or carriage of goods by road". Furthermore, the appellant was also engaged in providing warehousing services which were not fully equipped and

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the services provided by the appellant does not fall under the service category of "Business Support Services".

b) That the representative of appellant also explained its position regarding transportation services, distribution services, ware housing services and workshop services.

06. The Assessing Officer (AO) rejected the contentions of the appellant and passed OIO in respect of following services treating the same as "Business Support Service", under Tariff Heading 9805.9200 as defined under sub-section (19) of section 2 of the Act and levied SST as under:-

S.No.	Service Category	Value of Service	SST
1	Transportation Services	Rs.860,995,088/-	Rs.137,759,214/-
2	Distribution Services	Rs.40,939,282/-	Rs.7,990,285/-
3	Ware Housing Services	Rs.102,175,358/-	Rs.16,348,057/-
4	Repacking Services and Distribution Services	NIL	NIL
5	Workshop Service	Rs.1,974,826/-	Rs.315,972/-
<b>TOTAL</b>		Rs.1,004,304,554/-	Rs.162,413,528/-

The AO also imposed penalties of Rs.6,887,960/- + Rs.399,514/- + Rs.817,403/- + Rs.15,798/- for non-payment of SST under serial No.3 of Table under section 43 of the Act and penalty of Rs. 5,000/- per month for non-filing of monthly e-returns under serial No.2 of Table under section 43 of the Act.

07. The appellant challenged the said OIO by filing appeal before Commissioner (Appeals) who dismissed the appeal for non-prosecution mentioning that the appeal was fixed for hearing 53 times from the date of filing and appellant did not appear before him to present the case during the last 9 hearings. Resultantly all the additions made in the OIO including the penalties imposed by AO were upheld, hence this appeal by the appellant.

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

- a) That It was registered on 05.08.2014 under Tariff Heading 9836.0000, "Services provided or rendered by persons engaged in inter-city transportation or carriage of goods by road or through pipeline or conduit" and had paid SST before the date of registration thus it was not liable to charge and deposit SST. The department has wrongly treated various services provided by the appellant as Business Support Services and wrongly levied SST from July, 2013.
- b) Sufficient material was available with the Commissioner (Appeals) to decide the appeal on merits, but he dismissed the same for non-prosecution through a time barred OIA. He further submitted that even on the last date of hearing the appellant's representative was present before the Commissioner (Appeals) and the written arguments were submitted but the Commissioner (Appeals) had taken an easy path and dismissed the appeal for non-prosecution.
- c) That the activities of the appellant did not fall under Business Support Services as it was providing various services out of which some services were not taxable and had paid SST on some services and when those were brought to tax net. Moreover, the SST was levied on the income/earning appearing in the financial statements for entire Pakistan without bifurcating the share of Sindh.



09. Mr. Hamad Ali, the learned AC-SRB submitted as under:-

- i) That the appellant was required to get itself registered before providing or rendering taxable services and since the appellant was providing taxable services before registration it was liable to be registered. Moreover the appellant was covered under the definition of registered person as provided under sub-section (71) of section 2 of the Act, and thus the appellant could not take benefit of its own negligence and could not cause financial losses to the exchequer from its wrong doing.

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ii) That services provided by the appellant under one agreement could not be bifurcated since the chain of services provided were covered under Business Support Services and referred to sub-section (19) of section 2 of the Act and Tariff Heading 9805.9200. He further submitted that since the appellant provided all services under one agreement and received the charges in lump sum the value of services could not be bifurcated and SST was payable on the gross amount. He referred to Agreement dated 05.08.2011 entered between the appellant and GSK Pakistan Limited and submitted that it was apparent from such agreement that all services provided were composite in nature and could not be bifurcated.

10. In reply Mr. Fahad Farooqi, Advocate for appellant submitted that services provided could not be termed as chain of service and in the audited accounts the heads i.e. transportation, warehousing, and repacking were separately reflected and all services provided were separate and independent and the same could not be taxed under Tariff Heading 9805.9200. The advocate of appellant referred to his written arguments and submitted that all the services taxed were not taxable during the tax periods July-2013 to April-2014 and could not be taxed under Tariff Heading 9805.2000 (Business Support Services) on the principal that a thing which cannot be done directly cannot be done indirectly. He further submitted that Transportation Service was kept in abeyance till 31<sup>st</sup> December, 2015 and there was no specific Tariff Heading to tax ware housing service and distribution service and only service of workshop which was falling under Tariff Heading 9820.0000 was taxable from July, 2013 onwards.

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

12. The dispute is whether the appellant was liable to pay/deposit SST before the date of its registration with SRB. The other dispute is whether



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the activities performed by the appellant were covered under the definition of "Business Support Service".

13. In the instant case the SCN was issued on 17.07.2014 demanding SST for the tax periods from July-2013 to April-2014 invoking Tariff Heading 9805.9200 (Business Support Service). After receipt of the SCN the appellant got voluntarily registered from SRB on 05.08.2014 under Tariff Heading 9836.0000 (services provided or rendered by persons engaged in inter-city transportation or carriage of goods by road or through pipeline).

14. The Commissioner (Appeals) in his various OIA have held that SST cannot be demanded from a service provider prior to its date of registration, few of such OIA's are mentioned for ready reference as under:-

i) Appeal No.73/2018, OIA No.97/2020 M/s Sinopec International vs. Assistant Commissioner (Unit-03), SRB dated 03.11.2020

ii) Appeal No.308/19, OIA No.109/2020, dated 02.12.2020 – M/s Fiber Link vs. Assistant Commissioner (Unit-01), SRB

iii) Appeal No.456/2018, OIA No.110/2020, dated 02.12.2020 – M/s Fiber Link vs. Assistant Commissioner (Unit-01), SRB

The above view of Commissioner (Appeals) has been upheld in our various pronouncements. Few of such decisions are mentioned for ready reference as under:-

a) AT-47/2020 dated 15.02.2021 – AC (Unit-04) vs. M/s MYN Pvt. Ltd.

b) AT-234/2015 dated 26.11.2019 – Nasir Khan & Sons vs. Commissioner (Appeals) & DC (Unit-13), SRB

15. It was an admitted position that the appellant was registered with SRB on 05.08.2014. The tax periods involved in this appeal were from July-2013 to April-2014 and during these periods the appellant was not registered with SRB. The AO had thus taxed the services for the tax periods

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before registration of appellant without determining the person who was liable to deposit tax for the tax periods before registration. The provisions of the Act, The Sindh Sales Tax on Services Rules, 2011 (hereinafter referred to as the Rules) and The Sindh Sales Tax Special Procedure (Withholding) Rules, 2014 (hereinafter referred to as Withholding Rules) were applicable during the relevant tax periods.

16. This Tribunal would now deal with the point as to "who was liable to pay or deposit tax before registration of the appellant with SRB i.e. service provider or service recipient". Section 3 of the Act deals with taxable service. Sub-section (1) of section 3 of the Act provides that a taxable service is a service listed in the Second Schedule to the Act, which is provided by a registered person from its registered office or place of business in Sindh. This section applies to the registered person and is not applicable to the appellant before its registration. Sub-section (2) of section 3 of the Act deals with the providing of service by non-registered person to (a) a resident person (b) by a non- resident person in the course of economic activity, including in the commencement or termination of the activity.

The liability of person to pay tax has been dealt with under the Sub-section (1) of section 9 of the Act which provided that the liability to pay the tax was upon the registered person providing the services. This sub-section was not applicable to the appellant prior to its registration with SRB. It is provided in sub-section (2) of section 9 of the Act that where service is taxable by virtue of sub-section (2) of section 3 of the Act the liability to pay the tax shall be on the person receiving the services and sub-section (3) of section 9 of the Act provides for the power of the Government to notify the services or class of services in respect of which the liability to pay tax shall be on the person providing the taxable services, or the person receiving the taxable services or any other person. This provision also does not provide for payment of tax by unregistered person.



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18. The SRB with the approval of Government of Sindh (GS) in exercise of powers vested in it under section 72 of the Act read with sub-section (4) of section 3, sub-section (3) of section 9 and section 13 of the Act framed and issued Withholding Rules, 2014 for the purpose of deduction and deposit of SST.

19. The person who can be withholding agent have been specified in sub-rule (2) of rule 1 of the Withholding Rules. Rule 3 of Withholding Rules deals with the responsibility of the withholding agent. Sub-rule (4) thereof provides that a withholding agent having Free Tax Number (FTN), or National Tax Number (NTN) and falling under clause (a), (b), (c), (d), or (e) of sub-rule (2) of rule 1 of the Withholding Rules, shall on receipt of taxable services from unregistered persons, deduct sales tax at the applicable rate of the value of taxable services provided and, unless otherwise specified in the contract between the service recipient and the service provider. The amount of sales tax for the purpose of this rule shall be worked out on the basis of gross value of taxable services.

It is evident by comparison of sub-rule (3) and (4) of rule 3 of the Withholding Rules that sub-rule (3) of rule 3 of the Withholding Rules provides for the deduction of one-fifth of the total sales tax shown in the tax invoice issued by a registered person. Whereas sub-rule (4) of rule 3 of the Withholding Rules provides that a withholding agent on receipt of taxable services from unregistered persons has to deduct sales tax at the applicable rate of the value of the taxable services provided or rendered to him from the payment due to the service provider. This sub-rule clearly fixes the responsibility of deduction of sales tax upon the service recipient who deals with un-registered person. Moreover the unregistered person could neither charge tax in its invoice nor the withholding agent after withholding the amount of SST can pass on the same to unregistered service provider for depositing the same with SRB.

21. In the instant case SCN was issued invoking section 23 of the Act. An assessment order cannot be passed against a non-registered person.

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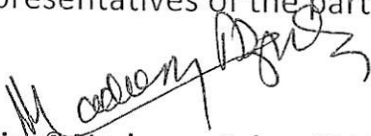
Section 23 of the Act as existed for the relevant tax periods is very clear in this regard and provides that "if the officer of SRB is of the opinion that a registered person has not paid the tax due on taxable services provided by him or has made short payment, the officer shall make an assessment of sales tax actually payable by that person".

22. The liabilities of payment of tax under sub-rule (4) of Rule 3 of the Withholding Rules have been fixed on the service recipient who has received service from unregistered person. It is therefore, apparent that no assessment order can be passed under section 23 of the Act against an unregistered person. The assessment order against the appellant for the tax periods before its registration were therefore, illegal.

23. In view of the above discussions it is concluded by us that the SST cannot be demanded from a service provider for the periods prior to its registration. Therefore the discussion on the other point "whether the activities of the appellant were covered under business support service" become unnecessary.

24. The appeal as allowed and the OIA and OIO are annulled. The copy of this order may be provided to the learned representatives of the parties.

  
(Imtiaz Ahmed Barakzai)  
TECHNICAL MEMBER

  
(Justice® Nadeem Azhar Siddiqi)  
CHAIRMAN

Karachi:

Dated: --.03.2021

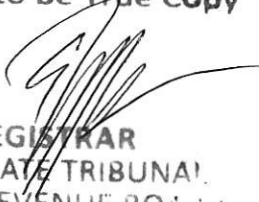
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REGISTRAR  
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SINDH REVENUE BOARD

Order issued on 12/03/2021

Order Dispatched on 12/03/2021

Registrar

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