

(General file)

BEFORE THE APPELLATE TRIBUNAL, SINDH REVENUE BOARD AT KARACHI
DOUBLE BENCH-I

APPEAL NO. AT-33/2019

M/s National Database and Registration Authority
(NADRA), State Bank of Pakistan Building,
Shahrah-e-Jamhuriat, G-5/2,
Islamabad.....Appellant

Versus

Assistant Commissioner, (Unit-28),
Sindh Revenue Board,
2nd Floor, Shaheen Complex Building
M.R. Kiyani Road Karachi

Date of filing of Appeal 25.03.2019
Date of hearing 01.04.2022
Date of Order 19.04.2022

Mr. Yawar Muhammad ACA, Mr. Mujahid Khan Deputy Director (Legal),
NADRA, and Mr. Shehzad Akhter Deputy Director, Accounts, NADRA for
appellant.

Mr. Liaqat Bajeeer, AC-SRB for the 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. 37/2019 dated 12.02.2019 passed by the Commissioner (Appeals) in Appeal No. 126/2018 filed by the appellant against the Order-in-Original (hereinafter referred to as the OIO) No. 470/2018 dated 12.05.2018 passed by the Ms. Nida Noor, Assistant Commissioner, (Unit-28) SRB Karachi.

02. The brief facts of the case as stated in the OIO were that the appellant having SNTN: 9012101-5 voluntarily registered with Sindh

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Revenue Board (SRB) under the principal activity of "Software or IT-Based System Development Consultant", Tariff Heading 9815.6000 of the Second Schedule to the Sindh Sales Tax on Services Act, 2011 (hereinafter referred to as the Act), The said service was chargeable to Sindh Sales Tax (SST) under section 8 of the Act.

03. It was further stated in the OIO that under note 18.1 of the audited financial statement, for the year ended June 30, 2016, it was mentioned that the appellant had earned total revenue, amounting to Rs.1,516,187,339/- for the tax periods July-2015 to June-2016 and Rs.825,032,482/- for the tax periods July-2014 to June-2015, from its local projects. The appellant vide SRB letters dated April 12, 2017, May 8, 2017, June 23, 2017 and August 28, 2017, was given opportunity to submit documentary evidence and bifurcation of services rendered or provided through place of business in Sindh.

04. The appellant vide its letters dated June 2, 2017, July 25, 2017 and August 18, 2017, submitted project-wise bifurcation along with copy of agreements and copies of invoices on sample basis. The aforesaid documents were perused and found incomplete.

05. The appellant was served with Show-Cause Notice (SCN) dated 20.09.2017 to explain as to why total SST amounting to Rs.219,368,130 [Rs.1,221,034,346 x 14%) + (Rs.322,822,143 x 15%)] may not be assessed under section 23 of the Act read with section 47 of the Act alongwith default surcharge under section 44 of the Act. The appellant was also required to explain as to why penalties mentioned at Serial No.3 & 15 of the Table under section 43 of the Act should not be imposed for contravention of abovementioned provisions of the Act.

06. The appellant in response to the SCN through its representative submitted written reply dated November 3, 2017 and contended that imposition of provincial taxes on registered person were unconstitutional and placed reliance on the judgment of the Hon'ble Supreme Court of Pakistan passed in case of Civil Aviation Authority reported as 2017 SCMR 1334. It was stated that the facts of the instant case are similar to the facts



of the case of Civil Aviation Authority. It was also contended that appellant was established by the Federal Government in pursuant to section 3 of NADRA Ordinance, 2000 thus the provincial sales tax would not be attracted on the services provided or rendered by NADRA. It was also submitted that that the headquarter of the appellant was located at Islamabad and the project activities, i.e. the revenue confronted through SCN, were executed and performed at Islamabad under the control of project directorate of NADRA, located at Islamabad.

07. The Assessing Officer (AO) observed that the details provided by the appellant showed that it had provided services under the projects namely: (i) United Nations High Commission for Refugees (UNHCR); (ii) National Highway Authority, Islamabad; (iii) Ministry of Interior, Government of Pakistan; (iv) Home Department, Government of Sindh; (v) Election Commission of Pakistan; (vi) Benazir Income Support Program; (vii) Federal Board of Revenue; (viii) Issuance of Child Birth Certificate, Government of Baltistan; (ix) Printing of electoral rolls, Government of AJK; (x) Printing of Computerized arms Licenses. Home Department Government of Punjab; (xi) Excise and Taxation Department, Government of Pakistan; (xii) Directorate General, Islamabad & Passports, Government of Pakistan, Islamabad; (xiii) Ministry of National Health Services Regulation and Coordination, Government of Pakistan; (xiv) Directorate General, immigration & Passports, Government of Pakistan, Islamabad; (xv) Pakistan Engineering Council; (xvi) Turkish Housing Project, Thatta, ((xvii) Frontier Corps Personnel; (xviii) Biometric verification services, Bank of Punjab; (xix) Bank of Punjab/ Kissan Relief Package; (xviii) Capital Development Authority; (xix) FATA Secretariat; (xx) Forensic Examination of thumb impression on counter foils of the ballot papers, Lahore Revenue; and (xxi) Punjab Bar Council, Islamabad. The agreements, as submitted by registered person were perused and it has found that the services provided or rendered to Home Department, Government of Sindh, Pakistan Engineering Council, Turkish Housing Project, Thatta and Benazir Income Support Program had an element of taxable services.



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08. The AO determined the SST at Rs.35,651,235 (Rs.8,542,2600 + Rs.14,171,745 + Rs.6,279,699 + Rs.384,180 + Rs.346,497 + 15,305 + Rs.50,497) and found the same were unpaid on account of receipt of taxable services provided or rendered in/through Sindh. He therefore ordered an imposition of an amount of SST of Rs.35,651,235/- under section 23 of the Act read with section 47 of the Act along with default surcharge (to be calculated at time of payment), under section 44 of the Act. The AO also imposed penalty of Rs.1,782,562/- (5% of Rs.35,651,235), under Serial No. 3 of the Table under section 43 of the Act for non-payment of SST.

09. The appellant challenged the said OIO by way of filing of appeal under section 57 of the Act before Commissioner (Appeals), SRB who dismissed the appeal for non-prosecution while relying on the reported case of Abdul Wahid versus Haji Abdul Wadood, 1997 SCMR, 1338 and by observing that the appellant had nothing to say in its defence since it had continuously absented itself on one pretext or another.

Resultantly the instant appeal was filed by the appellant before this Tribunal.

10. The learned representative of the appellant submitted before the Tribunal as under:-

The appeal was dismissed for non-prosecution without considering the fact that the appellant had placed sufficient material on record on the basis of which the appeal could be decided on merits.

- ii. The facts and law involved in the appeal were not considered therefore the appeal could was not decided on merits.
- iii. The superior courts always prefer to decide the cases on merits instead on technicalities.
- iv. The facts relating to the case law cited in the OIA were distinguishable and were wrongly applied.
- v. The NADRA is a department of Federal Government and was established under Entry No. 4, 6 and 59 of the Fourth Schedule to the Constitution and only Federal Government had the power of legislation.



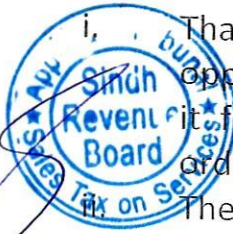
- vi. The NADRA being a department of the Federal Government thus it could not be subjected to provincial taxes in view of Article 165 and 165 A of the Constitution of Pakistan.
- vii. The head office of the appellant was situated at Islamabad and all its data was available at Islamabad and if any services were provided the same were provided from Islamabad.
- viii. The tax periods involved were from July-2014 to June-2016 (24 Tax periods). However during these periods under clause 19.1 of the Agreement only goods were provided and not services.
- ix. The appellant was e-signed up on 26.07.2012 as Withholding Agent and not as a registered person thus SST was not liable to charged, collected or paid by it.
- x. The Section-7 of the NADRA Act, Relating to verification of data was core duty of the appellant. All such data was based and available at Islamabad and not any other place.
- xi. The appellant being non-resident person provided services from Islamabad to Sindh and was not liable to pay SST and the burden was upon the recipient of service to pay the SST in terms of sub-section (2) of section 9 of the Act.
- xii. The appellant provided most of the services from Islamabad to the Government of Sindh thus was not liable to pay SST.

11. The learned representative of the respondent submitted as under:-

- i. That the OIA was properly passed after providing sufficient opportunity of hearing to the appellant who was negligent and failed to appear before the Commissioner (Appeals) and order for non-prosecution was rightly passed by him.

The appellant had sought number of adjournments which were granted to the appellant in good faith but the appellant had misused the same.

- iii. The material placed before Commissioner (Appeals) was not sufficient to decide the appeal on merits and verbal submissions were necessary.
- iv. The facts of the reported case as quoted supra were fully attracted and the Commissioner (Appeals) was fully vested with the power to dismiss the appeal for non-prosecution.
- v. The NADRA is not a department of Federal Government and is a body corporate and an autonomous body and could not seek



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protection under the Federal Legislation and the Constitution of Islamic Republic of Pakistan.

- vi. The NADRA being a body corporate was involved in commercial activities in the province of Sindh and no protection under Article 165 and 165 A of the Constitution of Islamic Republic of Pakistan was available to it.
- vii. The appellant was engaged in economic activity and had provided taxable services from its various offices in Sindh and was liable to pay SST.
- viii. The tax periods involved were from July-2014 to June-2016 (24 Tax periods) and during these periods the appellant had provided services and supplied goods and the SST was liable to be charged, collected and payable on the gross amount.
- ix. The appellant was enrolled as a registered person for providing service on 26.07.2012 and was liable to charge, collect and pay SST to SRB. The service of verification of data was provided in Sindh and the SST was payable in Sindh in terms of sub-section (1) of section 9 of the Act.
- x. That if commercial activities are performed by the government it is liable to taxation and the NADRA even if it was government department, was liable to pay SST.
- xi. That no SST was levied on NADRA. However since NADRA being service provider was required to charge and collect SST from the service recipient and thus it was liable to pay the same to SRB.
- xii. The appellant had voluntarily deposited SST of Rs.35,651,235/- alongwith 5% default surcharge totaling Rs.36,364,260/- on 23.05.2018 and had availed tax incentive scheme. This appeal had thus become infructuous and was liable to be dismissed.

12. We have heard the learned representative of the parties on point of dismissal of appeal for non-prosecution and perused the available record. However we have decided to first hear the parties on the point of non-prosecution and if required would subsequently hear the parties on the merits of the case.

13. The Commissioner (Appeals) has dismissed the appeal for non-prosecution by observing that the representative of the appellant appeared only once on 28.09.2018 and sought time to engage a suitable person to plead the case and did not appear thereafter. It was also stated

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that after filing of appeal, during the period of 259 days the appeal was fixed for hearing 10 times but to no avail.

14. The contention of the appellant that this was the case of first impression has same force. After decision of the Honorable High Court of Sindh and Honorable Supreme Court of Pakistan in case of Civil Aviation Authority (CAA), and since this was first appeal filed by the appellant in which the same protection as available to CAA in relation to Article 165 and 165 A of the Constitution of Pakistan was claimed thus the same should had been decided on merits. The discretion available to Commissioner (Appeals) was not exercised fairly, justly and for advancement and dispensation of justice.

15. The perusal of the OIA shows that the appeal was dismissed for non-prosecution after considering the previous adjournments sought by the appellant. The previous adjournments once granted are considered to be granted on showing sufficient cause and could not be considered for refusing further adjournments. The facts and circumstances of the case which were presented on the date of hearing had to be considered. In the reported case of Raheem Steel Rerolling versus Karim Aziz Industries, 1988 CLC 654 it was held as under:-



"The learned judge was to a great extent influenced by the previous lapses of defendants in the civil suit. It was further held that in deciding whether sufficient cause was made out for further adjournment, previous defaults, if any, were not to be taken note of.

16. The Commissioner (Appeals) had fallen in error by not considering the material available on record for deciding the appeal on merits. The OIA was silent with regard to service of notice on the date of hearing on which the appeal was dismissed for non-prosecution. The AC could not satisfy us in this regard. Moreover the appeal could not be dismissed unless the notice of date of hearing was served upon the appellant or its representative or it could be shown that they were in knowledge of such date. The Commissioner (Appeals) was vested with the discretion to pass

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appropriate order but being a quasi-judicial authority could not act arbitrary in exercise of such power.

17. The law does not provide any specific provision under which the appeal could be dismissed for non-prosecution. However if a party is negligent and does not appear despite notice of the hearing the Commissioner (Appeals) could dismiss the appeal for non-prosecution. It is to be noted that if there is no specific provision permitting the disposal of appeal for non-prosecution there is also no provision prohibiting the disposal of appeal for non-prosecution. It is now well established that any permissible procedure not prohibited by law could be adopted for dispensation of justice. The discretion available to the Commissioner (Appeals) was to be exercised fairly, justly, reasonably, judicially and not arbitrarily. The purpose of giving discretion to the officials was to dispense justice and not to frustrate the right of the parties.

18. The reliance of the Commissioner (Appeals) on the case reported as 1997 SCMR 1338 was misplaced. The application for adjournment sent to the Supreme Court through fax was not acceptable as notified by the Supreme Court in the cause list. No such notification was issued by Commissioner (Appeals).

19. It is apparent from the arguments of the representatives of the parties that sufficient material was available with the Commissioner (Appeals) to decide the case on merits. The principles of equity, justice and fair play require that as far as practicable the cases should be decided on merits. The superior Courts in various pronouncements have held that law favors adjudication on merits and dismissal for non-prosecution is an exception and not a rule. In the reported case of Muhammad Haleem & others versus H. H. Muhammad Naim & others: PLD 1969 SC 270, it was held as under:-

"The consensus of judicial opinion appears to be in favour of the view that if it is possible for a Court to base a decision on merits upon the materials already brought on the record; it should proceed under rule 3 of Order XVII and not under rule 2. This appears to us also to be sound on principle.

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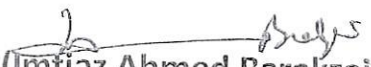
Every party who has instituted a cause or matter in a Court has a right to have his case decided on merits. A dismissal for non-prosecution should, therefore, be an exception and not a rule.

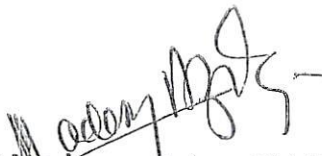
20. In another reported case of Inamur Rehman versus Jalal Din, 1992 SCMR, 1895 it was held as under:-

"Normally Courts should adjudicate the matters placed before them on merits and deviate from this course only if they find that the process of the Court is being abused. The dismissal of cases for non-prosecution should normally be the exception and not rule".

21. In view of the above discussions the OIA is set aside and it is held that the instant appeal is deemed to be pending before the Commissioner (Appeals). The case is remanded to the Commissioner (Appeals) for deciding the same on merits after hearing the parties, considering their submissions and the legal pleas raised in this appeal within the time allowed by sub-section (5) and (6) of section 59 of the Act.

22. The appeal is disposed of accordingly. Copy of order may be supplied to the learned representatives of the parties.


(Imtiaz Ahmed Barakzai)
TECHNICAL MEMBER


(Justice® Nadeem Azhar Siddiqi)
CHAIRMAN
Certified to be True Copy

Karachi:
Dated:19.04.2022


REGISTRAR
APPELLATE TRIBUNAL
SINDH REVENUE BOARD

Copy Supplied for compliance:

- 1) The Appellant through Authorized Representative.
- 2) The Assistant Commissioner, (Unit-28), SRB, for compliance

Copy for information to:-

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

Order issued on 19/04/2022

Order Dispatched on 19/04/2022