

BEFORE THE APPELLATE TRIBUNAL SINDH REVENUE BOARD
AT-KARACHI

DOUBLE BENCH-I

APPEAL NO. AT-34/2019

M/s Arabian Sea Country Club (Pvt.) Ltd.
Karachi.....Appellant

Versus

The Commissioner (Appeals) I,
SRB, Karachi.....Respondent

Date of Filing of Appeal: 26.03.2019
Date of hearing: 11.03.2021
Date of Order 08.04.2021

Mr. Ali Rahim ITP for Appellant

Mr. Hunain Tariq, AC-SRB for Respondent



ORDER

Imtiaz Ahmed Barakzai: This appeal has been filed by the appellant challenging the Order-in-Appeal (hereinafter referred to as the OIA) No.14/2019 dated 16.01.2019 passed by the Commissioner (Appeals) in Appeal NO. 03/2013 filed by the Appellant against the Order-in-Original (hereinafter referred to as the OIO) No. 153/2013 dated 04.07.2013 passed by the Mr. Zaheer Hussain Assistant Commissioner, (Unit-01) SRB Karachi.

02. The brief facts of the case as stated in the OIO were that during the course of desk audit, it was observed that the appellant was registered with Sindh Revenue Board (SRB) and was engaged in providing or rendering the taxable service as "Club" falling under Tariff Heading

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9801.4000 of the Second Schedule to the Sindh Sales Tax on Services Act, 2011 (hereinafter referred to as the Act).

03. It was further stated that while comparing the figures declared in the sales tax returns (SST returns) filed by the appellant with those in the financial statement for the period from July-2011 to June-2012, it was found that the appellant had provided taxable services valued at Rs.112,195,014/-. Whereas in their SST returns it had only declared Rs.30,926,331/- for the said tax period. The total short-declared value thus amounted to Rs.81,268,683/- involving SST of Rs.13,002,989/-. The details of short-declared/ short payments were as under:-

Tax Periods July-2011 to June-2012				
S.No.	Description of services provided or rendered	Value of Services provided or rendered	Rate of Sindh Sales Tax	Amount of Sindh Sales Tax involved on the Services
1	Entrance Fee Income	3,075,500	16%	492,080
02	Subscriptions	26,048,073	16%	4,167,692
03	Income from Sales and Services (Net off Rent Income)	82,961,441	16%	13,273,831
04	Other Income (Member Ship Transfer Fee)	110,000	16%	17,600
	Total	112,195,014	16%	17,951,202
	Less: Declared in SST-03	(30,926,331)	16%	(4,948,213)
	Short declared	81,268,683	16%	13,002,989

The appellant was served with a Show-Cause Notice (SCN) dated 4th March, 2013 calling upon it to show cause, as to why SST amounting to Rs.13,002,989/- should not be assessed and determined in terms of the provisions of section 23 read with sub section (1A) and (2) of section 47 of the Act alongwith default surcharge under section 44 of the Act. The appellant was also called upon to explain as to why penal action under Serial Number 3, 6(d), 11, 12 and 13 of the Table under section 43 Act should not be taken against it.

05. The appellant submitted written reply dated 19.04.2013 and submitted that it was incorporated as a company to promote the game of golf and other sports. It was further stated that the sports activities were

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non taxable activities as no such Tariff Heading was available in the Second Schedule. Moreover the tax cannot be recovered merely on the presumptions but it is to be levied and recovered under the specific provisions.

06. The Assessing Officer (AO) passed OIO holding that activities relating to games and sports were chargeable to SST. He directed the appellant to pay SST of Rs.13,002,989/- for the tax periods July-2011 to June-2012, along with default surcharge (to be calculated at the time of payment) in terms of section 44 of Act. The AO also imposed penalty of Rs.650,149/- in terms of Serial Number 3 of Table under section 43 of the Act.

07. The appellant challenged the OIO before the Commissioner (Appeals) by way of filing of appeal. The Commissioner (Appeals) upheld the OIO to the extent of principal amount of SST and default surcharge and conditionally waived the penalty imposed by the AO, hence this appeal.

08. Mr. Ali Raheem the learned representative of the appellant submitted as under:-

The appellant has challenged the assessment of SST on entrance fee, monthly subscriptions charges and membership transfer fee on the ground that no element of service was available in these items and without element of service the SST could not be levied. He submitted that appellant was discharging other liabilities by paying sales tax on supply of goods.

ii) The SCN for the tax periods July-2011 to June-2012 was given to the appellant only leaving other clubs.

iii) The clubs including the appellant filed Constitution Petition in the High Court of Sindh challenging the levy of SST which was allowed in favour of the clubs and it was held that no SST could be charged on membership fees, monthly and yearly subscription charges and this appeal may be disposed of in terms of the said decision.



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09. Mr. Hunain Tariq, AC of the Respondent submitted as under:-

- a) The definition of clause (22) of Section 2 of the Act read with sub-rule (2) of rule 42 of the Sindh Sales Tax on Services Rules, 2011 (hereinafter referred to as the Rules) is very clear on this issue. It provides that the tax shall be charged on the gross amount including fee relating to award of new membership, monthly membership fee, donations and contributions received from members or applicants of membership, and all Federal and Provincial Levies.
- b) The SRB would file appeal before the Hon'ble Supreme Court of Pakistan and any order passed in this appeal is subject to the decision of the Supreme Court. He further submitted that the appellant is liable to pay SST on its other services except membership fees and subscription charges.

10. Mr. Ali Rahim in rebuttal submitted that the SST on other activities / services were being paid by the appellant to SRB and it will continue to pay the same.

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

12. Admittedly the appellant is a private club and is providing or rendering services to its members. The SRB charged SST on Entrance Fee, Subscriptions Charges, Membership Transfer Fees and income from Sales and Services (Net off Rent Income). The contention of the appellant was that since no element of service was available in these items thus SST could not be levied thereon.

13. The appellant referred to an unreported Judgment of High Court of Sindh in CP No. D-7042/2018 and the relevant portion of the judgment dated 10.03.2021 is reproduced as under:-

"...41. It is considered view of this Court that membership/ entrance fees and subscription charges, obtained by members' club from their members, do not constitute monies generated from economic activity and do not accrue out of rendering of any

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taxable service, per the interpretation of the relevant provisions of the Act; hence, fall outside the purview of the Act”.

The Honorable High Court had concluded as under:-

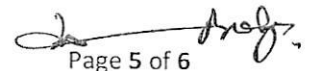
“In view of the reasoning and rationale herein contained, the present petitions are disposed of in terms delineated here-in below:-

- a. It is hereby declared that memberships/entrance fees and subscriptions charges (monthly and/or annual), obtained by member’s club from their members, do not fall within the purview of sales tax, per a reading of the Act synchronized with the *doctrine of mutuality*.
- b. The Sindh Revenue Board does not have the legal sanction to recover any amounts from member’s clubs, in respect of activities covered by the *doctrine of mutuality*, and any show-cause/demand notices, or constituents thereof, issued to member’s clubs in such regard are hereby setaside”.

14. The above findings and the conclusion drawn by the Honorable High Court is binding upon the SRB as well as this Tribunal in terms of Article 201 of the Constitution of Pakistan.

15. The appellant had shown his willingness before the Commissioner (Appeals) to pay SST on residency/room charges, food and beverages and the sports related revenue in easy installments.


16. In view of the conclusion drawn by the Honorable High Court of Sindh in the above petition this appeal is allowed to the extent that the appellant is not liable to pay SST on memberships/entrance fees and subscriptions charges (monthly and/or annual), obtained by member’s club on the activities which are covered by the *doctrine of mutuality*. However the appellant is liable to pay SST on its other activities as mentioned in para 15 above. This order is subject to the decision which may be passed by the Honorable Supreme Court in the appeal filed or to be filed by SRB.

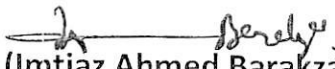


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17. The AC within one week of receipt of this order will serve a demand notice to the appellant for payment of SST alongwith default surcharge relating to taxable services as mentioned supra, and the appellant will pay the same within one month from the date of receipt of the demand notice. However the appellant is not required to pay any penalty if it deposits the amount as directed.

18. The appeal is disposed of in the above terms. The copy of this order may be provided to the learned representatives of the parties.


(Justice[®] Nadeem Azhar Siddiqi)
CHAIRMAN


(Intiaz Ahmed Barakzai)
MEMBER TECHNICAL

Karachi:

Dated: 08.04.2021

Copy Supplied for compliance:

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

Copy for information to:-

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

Certified to be True Copy


REGISTRAR
APPELLATE TRIBUNAL
SINDH REVENUE BOARD

Order Issued on 30/04/2021

Order Dispatched on 30/04/2021