

BEFORE THE APPELLATE TRIBUNAL, SINDH REVENUE BOARD AT  
KARACHI

DOUBLE BENCH

APPEAL NO. AT-43/2019

M/s Aamna Nawaz Khan,  
B-26, Safina Safer Town Houses,  
Block-16, Gulshane Iqbal, Karachi..... Appellant

**Versus**

Assistant Commissioner (Unit-22),  
Sindh Revenue Board,  
2<sup>nd</sup> Floor Shaheen Complex,  
M. R. Kiyani Road, Karachi.....Respondent

Date of filing of Appeal 24.04.2019  
Date of hearing 17.11.2021  
Date of Order 25.04.2022

Mr. Ghulam Shah Abbasi, advocate for appellant.

Mr. Abdul Majeed Sheikh AC-SRB Ms. Uzma Ghory, AC-DR and Ms. Umi Rabbab, AC-DR 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. 75/2019 dated 26.03.2019 passed by the Commissioner (Appeals) in Appeal No. 311/2018 filed by the appellant against the Order-in-Original (hereinafter referred to as the OIO) No. 763/2018 dated 07.09.2018 passed by the Mr. Sarmad Ali Wassan, Assistant Commissioner, (Unit-22) SRB Karachi.

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02. It was stated in the OIO that the services provided or rendered in respect of "Programme Producer and Production Houses" were chargeable to the Sindh Sales Tax (SST) under section 8 read with Tariff Heading 9832.0000 of the Second Schedule to the Sindh Sales Tax on Services Act, 2011 (hereinafter referred to as the Act). It was further stated that the appellant having SNTN: S3636151 was registered with SRB in respect of aforesaid taxable services.

03. It was alleged in the OIO that during the scrutiny/examination of records available with Sindh Revenue Board (SRB) it was revealed that the appellant had provided the aforesaid taxable services to M/s MD Productions (Pvt.) Ltd, in the sum of Rs.121,174,083/- during the tax period June-2016. It was further alleged that the appellant neither declared the same in its SST returns nor paid the SST thereof in violation of Section 17 & 30 of the Act. Thus the same was recoverable under section 47 of the Act along with penalties under section 43 and default surcharge under section 44 of the Act. The details are as under:-

Service provided to M/s MD Productions (Pvt.) Ltd.								
S. no	NTN	Name	Tax period	Invoice No	Purchase Value	SST Amount	Withheld Amount	SST Payable
1	3667983	MD PRODUCTIONS (PVT) LIMITED	June-16	1	121,174,083	7,270,445	1,454,089	5,816,356
Total				-	121,174,083	7,270,445	1,454,089	5,816,356



04. It was further alleged that the appellant had not filed the SST returns for the tax periods from July-2014 to October- 2017 which attracted penalties under section 43 of the Act.

05. The appellant was served with a Show-Cause Notice (SCN) dated 06.04.2018 under section 8, 9, 17, 30 and 47 of the Act to explain as to why SST of Rs.5,816,356/- may not be recovered along with default surcharge under section 44 of the Act. The appellant was also asked to explain as to why penalty under Serial No. 02, 03, and 6 (d) of the Table under section 43 of the Act may not be imposed.

06. The appellant filed written reply dated 13.04.2018 and 25.04.2018 and contended that it neither rendered the alleged value of services to M/s MD Productions (Pvt) Limited nor to M/s Hum Network limited and had already filed SST returns before issuance of SCN. The appellant filed

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another reply dated 08.05.2018 challenging the issuance of SCN on legal grounds.

07. The assessing Officer (AO) finally concluded that the appellant during the tax period of June-2016 had provided taxable services of Programme Producers and Productions Houses, Tariff Heading 9832.0000, to M/s MD Productions (Pvt.) Ltd, amounting to Rs.121,174,083/- involving payment of SST of Rs.7,270,445/- out of which an amount of Rs.1,454,089/- was withheld by the service recipient (M/s MD Production (Pvt.) Limited) and balance payable amount of Rs.5,816,356/= was to be paid along with default surcharge (to be calculated at the time of payment). The AO also imposed penalties of Rs.8,810,400/- under Serial No. 2 of the Table under section 43 of the Act, Penalty of Rs.5,816.356/- under Serial No.6 (d) of the Table under section 43 of the Act, and penalty of Rs.290,817/- under Serial No.3 of the Table under section 43 of the Act.

08. The appellant challenged the said OIO before Commissioner (Appeals) by way of filing appeal under section 57 of the Act. The Commissioner (Appeals) after hearing the appeal confirmed the OIO and rejected the appeal.

Resultantly an appeal was filed by the appellant before this forum.

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

i. The appellant was registered with SRB on 25.05.2016, under the service category of "Programme Producer and Production House" falling under Tariff Heading 9832.0000 of the Second Schedule to the Act.

ii. The tax periods involved were from March-2015 to June-2016, and such periods were prior to registration of appellant as service provider and the services recipient as per law, and it had withheld 100% SST and deposited the same with SRB. The service recipient had subsequently issued Withholding Certificate of Rs.1,454,089/-.

iii. That the appellant has not provided the services amounting to Rs.121,174,083/- to M.D. Production. Such details of invoices and an affidavit to this effect was filed by the appellant.

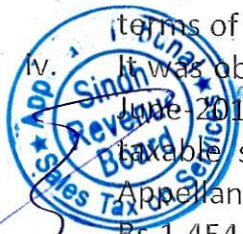
*ACS*

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- iv. The appellant had provided the service at Rs.21,202,780/- involving payment of SST of Rs.1,454,089/- which was totally withheld and deposited by the service recipient.
- v. The service recipient had erroneously mentioned the value of service in their returns and referred to last para of letter dated 19.10.2018 addressed by Ms. Moore & Stephens to SRB.
- vi. The service recipient MD Production had revised it's return with the permission of SRB and once the return was revised the respondent had no case against the appellant.

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

- i. The appellant was registered with SRB under the service category of "Programme Producer and Production House" falling under Tariff Heading 9832.0000 of the Second Schedule to the Act.
- ii. The appellant being person liable to be registered is covered under the definition of registered person, as envisaged in sub-section (71) of the section 2 of the Act and was thus liable to charge, collect and deposit the SST.
- iii. The appellant had provided taxable services of "Programme Producers and Production House" to M/s MD Production (Pvt.) Ltd and being service provider was liable to pay SST in terms of sub-section (1) of section 9 of the Act.
- iv. It was observed from the monthly SST return for tax period June-2016 of M/s MD Productions that it had acquired taxable services amounting to Rs.121,174,083/- from the Appellant, involving SST of Rs.7,270,445/- out of which Rs.1,454,089/- had been withheld by the service recipient and the remaining SST amounting to Rs.5,816,356 was to be deposited by the appellant. However it had failed to deposit the same with SRB.
- v. The SST return was revised by MD Productions for the tax period June-2016 and it was submitted that it had inadvertently reported Rs.1,454,089/- as 20% SST deducted and withheld but the factual position was that the said amount was 100% of SST deducted and withheld at applicable rate of tax. MD Production also confirmed that it had made payment of Rs.21,202,780/- to the appellant in respect of the services received.



11. The AC filed Report dated 17.11.2021 stating therein that due to revision of tax return by M/s M.D. Productions which was service recipient of the appellant the principal tax liability of appellant had become redundant. In response to the Report of AC dated 17.11.2021 the advocate for the appellant submitted that in view of the statement given by the AC the SCN, OIO and OIA are liable to be quashed to the extent of impugned tax demand relating to the appellant.

12. The AC pointed out that the penalties of Rs.8,810,400/= for late filing of SST returns for the tax periods from July-2014 to October-2017 (40 tax periods) were legally imposed which may be ordered to be recovered from the appellant.

13. The advocate for the appellant submitted that the penalties imposed for late filing of returns was not in accordance with law and the orders of this Tribunal. He submitted that the period of default in non-filing of returns was 18 months after registration i.e. from 25.05.2016 to October, 2017 and as per law the appellant was liable to pay penalty of Rs.10,000/- per tax period and if ordered the appellant was ready to deposit the same with SRB within 15 days. In view of the above discussions the order was reserved on 17.11.2021

14. The AC filed an application dated 06.12.2021 after the order was reserved requesting to fix the case for further hearing on the ground that power of revision of the return after sixty days was vested with the Board which was inadvertently exercised by the Commissioner IV, SRB. After receiving the application by this forum the AC was put on notice to explain how the application was maintainable.

15. The AC submitted that after the order dated 17.11.2021 it was revealed that permission to revise return was erroneously allowed by Commissioner- IV, SRB instead of Board. The AC referred the matter of revision of the return to Member Operation, SRB Board who returned the file with the instructions to conduct audit of M/s MD Production.

16. We have heard the learned representatives of the parties, perused the written submissions filed by the representatives of the parties and perused the record made available before us.

17. The allegation against the appellant was that it had provided services to MD Production valuing to Rs. 121,174,083/- and had not deposited due tax of Rs.5,816,356/-. The contention of the appellant was that the service recipient had wrongly declared the value of service



in its returns. It was further contended that the appellant had provided the service valuing Rs. Rs.21,202,780/- involving payment of SST of Rs.1,454,089/- and the service recipient as per law had withheld the entire amount of SST and deposited the same with SRB. The appellant has further submitted that it was registered with SRB on 25.05.2016 and the tax periods involved were from March-2015 to June-2016 and such periods were prior to registration of appellant as service provider. Moreover the services recipient as per law had withheld 100% SST and deposited the same with SRB.

18. The tax liability upon the appellant was established on the basis of the declaration filed by M/s MD Production, service recipient of the appellant who subsequently realized its mistake and applied for revision of SST return for the tax period June-2016 which was allowed. Once the revision of SST return was allowed the Department was left with no case against the appellant as the basis of determining SST liability against the appellant was extinguished.

19. The AC submitted that the Commissioner-IV, SRB was not vested with the power to allow revision. The matter of revision of return was between the appellant and M/s MD Production and the appellant was not involved in such affair. The mistake if any was committed by the Department and the appellant had no role to play in the same. We have already reserved the order on the basis that the appeal would be disposed of in terms of the Report dated 17.11.2021. The Tribunal could not change its stance in absence of any valid reason. The Tribunal has not committed any mistake or error in reserving the order on the basis of the Report dated 17.11.2021 and the mistake and error if any was on the part of the department. The department due to its own mistake and error could not blame others.

20. The AO imposed penalty of Rs.8,810,400/= for non-filing of SST returns for the periods from July-2014 to October-2017. After issuance of OIO the AO Issued Corrigendum dated 10.09.2018 enhancing the penalty to Rs.9,174,600/-. The AO while imposing penalty has committed two errors viz., that the penalty was imposed before the date of registration of the appellant and that the penalty was imposed in fraction (number of days of default) instead of tax period. The imposition of penalty is discussed as under:-

- a) The appellant was voluntarily registered on 25.05.2016 and it was required to pay penalty from July-2014 to October 2017

vide OIO. The appellant was not liable to e-file SST returns before the date of its registration. In our Order in the case of Logon Broadband Vs AC-SRB, Appeal No. At-32/19 we had held as under:-

*"26. The Assessing Officer also imposed penalty for non-filing of returns for the tax periods the appellant was not registered. Chapter VI of the Act deals with returns. Sub-section (1) of section 30 of the Act provides for furnishing of returns in the prescribed form by the registered person. Whereas Chapter III of the Rules deals with filing of returns whereby rule 11 provides that the provision of this chapter shall apply to all the registered persons to file return under section 30 of the Act. Rule 12 of the Rules provides that every registered person registered under the provision of the Act, shall file the return as specified in the Form SST-03. Rule 13 provide for electronic filing of returns by every registered person required to file return on obtaining a unique User-ID and pass word by e-Enrolling with SRB web portal and has to electronically file a return (available on the website) from the web portal.*

b) It is therefore apparent from the perusal of the Rules that e-returns could not be filed without unique User-ID and pass word and no penalty could be imposed for non-filing of returns before the date of registration.

The AO imposed penalty under Serial No.2 (non-filing of returns) of Table under Section 43 of the Act. The penalty was imposed for the tax periods from July-2014 to October 2017 (forty tax periods) without considering the fact that the appellant was registered on 25.05.2016 and only the registered person (not the person liable for registration) are required to file SST returns. The appellant could not be penalized for non-filing of returns for the period before registration viz., from July-2014 to May-2016.

d) The AO has incorrectly calculated penalty in fraction on the basis of days of default. In our earlier decision dated 21.09.2020 in Appeal No. AT-12/20020, relating to case of M/s M. Sharif Rajput Enterprises, Hyderabad Versus Assistant Commissioner, SRB, Hyderabad relying upon our earlier



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decisions in Appeal No.AT-92/2016 M/s Slingshot (Pvt.) Limited versus Assistant Commissioner, (Unit-21), SRB, Karachi decided on 05.01.2017, b) Appeal No. AT-47/2018, M/s Fumicon Services versus Assistant Commissioner, SRB, decided on 16.10.2018 c) Appeal No. AT-175/2018 AC-SRB versus Powertech Switchgear Services, decided on 22.02.2019, we have very categorically held as under:-

*"16. It is provided at Sr. No.2 of Table of section 43 of the Act that where any person fails to furnish a return within the due date such person shall be liable to a penalty of Rs.10,000/= per month or a fraction (emphasis supplied) thereof; provided that if a return is filed within ten days of the due date, a penalty of 300 rupees for each day of default shall be paid".*

*17. In the above provision of the Act per month means per tax return as the tax period defined in sub-section (95) of section 2 of the Act provides that "tax period means a period of one month or such other period as the Board may, by notification in the Official Gazette, specify." Furthermore the Assessing Officer has incorrectly calculated penalty in fraction. In the provision at Sr. No.2 of Table of section 43 of the Act the word "fraction" denotes that in case of defaults of more than ten days the penalty for full month was to be imposed. Therefore for non-filing of monthly return penalty can only be imposed at Rs.10,000/= per month".*

- e) In this case there were 18 tax periods from July-2016 to October-2017 during which the tax returns were not filed and the penalty @ Rs.10,000/= per month/per tax period could be imposed subject to establishing mensrea and malafide on the part of the appellant. The appellant has already deposited the penalty of Rs.180,000/-.
- f) In view of the above discussion we hold that the penalty imposed at Rs.8,810,400/- under Serial No.2 of Table under Section 43 of the Act was not proper and same is reduced to Rs.180,000/= on account of non-filing of SST returns. However since such penalty has already been deposited therefore no further action is required.

*MS*

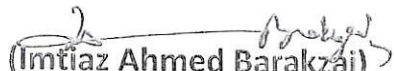
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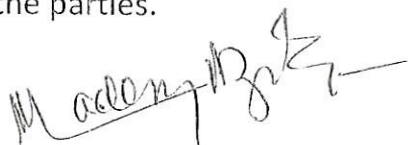


21. The AO had also imposed penalty of Rs.5,816,356/- under Serial No.6(d) of the Table under section 43 of the Act, and penalty of Rs.290,817/- under Serial No.3 of the Table under section 43 of the Act. Considering the fact that since no tax has been found due, thus both these penalties are not warranted in such circumstances.

22. In view of the above discussions the appeal is allowed and the OIO and OIA are set aside. The application filed by the respondent is dismissed being not maintainable.

23. The appeal is disposed of in above terms. The copy of the order may be provided to the representative of the parties.

  
(Imtiaz Ahmed Barakzai)  
TECHNICAL MEMBER

  
(Justice® Nadeem Azhar Siddiqi)  
CHAIRMAN

Karachi:

Dated:25.04.2022

Copy Supplied for compliance:

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- 2) The Assistant Commissioner, (Unit-22), SRB, for compliance

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- 3) The Commissioner (Appeals), SRB, Karachi.
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REGISTRAR  
APPELLATE TRIBUNAL  
SINDH REVENUE BOARD

Order issued on 25/04/2022

Order Dispatched on 25/04/2022

Registrar

Registrar