

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

**APPEAL NO. 12/2023**

**SB-I**

**(ARISING OUT OF APPEAL NO. 57/2019)**

M/s Aircraft Aviation Services,  
(SNTN: 3393711)  
Suit # A-4, D.R.R. Building, Cargo Complex,  
Karachi..... Appellant

**Versus**

Assistant Commissioner, (Unit-31), SRB Karachi  
2<sup>nd</sup> Floor Shaheen Complex, M.R.  
Kayani Road, Karachi..... Respondent

Date of Transfer of Appeal 26.01.2023  
Date of hearing 09.08.2023  
Date of Order 15.09.2023

Mr. Muhammad Yousuf advocate for the appellant.  
Mr. Saindad Joyo AC-SRB for the respondent.

**ORDER**

**Justice<sup>®</sup> Nadeem Azhar Siddiqi:** This appeal was filed by appellant challenging the Order-in-Original (hereinafter referred to as the OIO) No. 260/2019 dated 05<sup>th</sup> April, 2019 in Appeal No. 57/2019 passed by Mr. Yousuf Ali Magsi, Assistant Commissioner, (Unit-31), SRB Karachi, before Commissioner (Appeals), SRB on 08.04.2019 and has been transferred to this Tribunal on 26.01.2023 under section 59(7) of the Sindh Sales Tax on Services Act, 2011 (hereinafter referred to as the Act) for disposal treating the appeal as if it has been filed against the order of Commissioner (Appeals), SRB.

02. The facts as stated in the OIO were that the appellant is an Airport Service provider classified under Tariff Heading 9826.0000 of the Second Schedule to the

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Act chargeable to Sindh Sales Tax (SST) under section 3, 8, 9 and 17, read with Rule 40B of the Sindh Sales Tax on Services Rules, 2011 (hereinafter referred to as the Rules), with effect from 1<sup>st</sup> November, 2011.

03. The appellant was required to produce the record/information vide SRB letter dated 31<sup>st</sup> November, 2018, 3<sup>rd</sup> January, 2019, and 07<sup>th</sup> January, 2019, but the appellant failed to produce the requisite record/information and failed to submit any written reply against aforementioned letters. It was alleged that such act of violation is against provisions of law and the same is punishable under section Serial No. 15 of the Table under section 43 of the Act.

04. The appellant was served with a Show-Cause Notice (SCN) dated 22<sup>nd</sup> January, 2019, to produce required information under section 52 of the Act. It was alleged that the appellant despite obtaining various adjournments neither file reply nor appeared for hearing. However, the appellant has submitted the License alongwith few license bills issued by the Civil Aviation Authority. The appellant also produced documentary evidence for different services provided/rendered by it.

05. The Officer-SRB passed OIO and held that the appellant had failed to comply with statutory provisions of section 52 of the Act and failed to provide the record as required vide show-cause-notice dated 22<sup>nd</sup> January, 2019, hence the appellant had contravened the provisions of section 52 of the Act and imposed penalty of Rs.100,000/- under Serial No. 15 of the Table under section 43 of the Act.

06. The appellant challenged the said OIO by way of filing appeal under section 57 (1) of the Act before Commissioner (Appeals), SRB who instead of hearing and deciding the appeal himself within the time provided in law transferred the same to the Tribunal under section 59 (7) of the Act after considerable delay for decision treating the same as the appeal filed against the order of Commissioner (Appeals).

07. The Commissioner (Appeals) in his report dated 25.01.2023 stated that 19 hearings were fixed and the Appeal period stood expired on 04.05.2021 when 120



days lapsed. In the Report it was further stated that in all 1382 days were lapsed out of which the appellant obtained adjournments of 736 days and a total of 745 (1382-736) statutory days had lapsed and the appeal time had expired on 04.05.2021 when 120 days had lapsed as provided under section 59 (5) of the Act.

08. The learned advocate for the appellant submitted as under:-

- i. The SCN was issued for calling documents/information without assigning any reason, purpose and justification.
- ii. The SCN was issued without describing the documents and purpose for calling such documents.
- iii. The SCN was time barred having issued after five years as provided under sub-section (5) of section 26 of the Act.
- iv. The OIO was passed without providing proper right of hearing and fair trial to the appellant as provided under Article 10 A of the Constitution of Pakistan.

The reply submitted by the appellant on 12.02.2019 was not consider and ignored.

09. The learned AC-SRB submitted as under:-

- i. The SCN was rightly issued for calling documents which were required for assessment purposes and the documents were described in the correspondence exchanged between the SRB and appellant.
- ii. The SCN was issued within time as section 27 of the Act provides a period of ten years for retaining the record.
- iii. Sufficient opportunity of hearing was provided to the appellant to file reply and to make submissions, but the appellant always requested for adjournments and extension of time.
- iv. The appellant to avoid of passing of assessment order against it deliberately failed to provide the required documents.

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- v. The reply to SCN was without any substance and its consideration was not necessary.

I have heard the learned representatives of the parties and perused the record made available before me.

10. The case of respondent is that despite service of letters and SCN the appellant failed to provide the documents/information and the penalty under Serial No.15 of Table of section 43 of the Act for non-compliance of provisions of section 52 was rightly imposed. The case of appellant is that the SCN was served upon it without assigning reason and without describing the documents called for hence the same is not tenable under law.

11. The respondent served Notice under section 52 of the Act without specifying the relevant sub-section upon the appellant. Each sub-section is for distinct purpose. Perusal of SCN it is apparent that the documents/information was not mentioned in the SCN. Similarly the SCN was silent about the reason and purpose for calling documents/information from the appellant. The Commissioner (Appeals) in para 2 of his Report dated 25.01.2023 also has observed that no specific document was mentioned in the SCN.

The respondent while passing the order-in-original had suppressed the reply of the appellant filed on 12.02.2019 and without considering the reply had passed OIO and imposed penalty of Rs.100,000/=. The copy of reply dated 12.02.2019 containing the round seal of the respondent with initial and date is available on record and there is no denial to the receipt of the reply.

13. The language of clause (a) of sub-section (1) of Section 52 of the Act revealed that the documents and records can be called (in relation to any matter in the Act) or relevant to the audit, inquiry or investigation under the Act and therefore, no notice under sub-section (1) of section 52 of the Act could be issued without strict compliance of the section under which such notice was issued.

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14. The issuance of notice under sub-section (1) of section 52 of the Act was considered by the learned DB of High Court of Sindh in the judgment passed in CP-D-No. 5687/2014 alongwith other petitions titled Pakistan Telecommunication Company Limited (PTCL) Versus SRB and held as under:-

"8) In view of hereinabove facts and circumstances of the case, we are of the opinion that the **impugned notices issued under Section 52(1) of the Sindh Sales Tax on Service Act, 2011, in the absence of any audit, inquiry, investigation or assessment proceeding pending against the petitioners are illegal and without lawful authority**" (emphasis supplied).

15. The above judgment is very clear that for issuance of notice under sub-section (1) of section 52 the pendency of any audit, inquiry, investigation or assessment proceeding are necessary which are lacking in this case.

16. In view of the above I am satisfied that the order-in-original suffers from legal infirmities and not tenable under law. Consequently the appeal is allowed and the order-in-original is set aside.

19. The appeal is disposed of in the above terms. Copy of the Order may be supplied to the learned representatives of the parties.

Karachi:

Dated: 15.09.2023

(Justice® Nadeem Azhar Siddiqi)  
CHAIRMAN

Copy Supplied for compliance:

- 1) The Appellant through Authorized Representative.
- 2) The Assistant Commissioner, (Unit-31), SRB, for compliance

Copy for information to:-

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

*M. Nadeem Azhar Siddiqi*

Certified to be True Copy

*[Signature]*  
17-08-2023  
REGISTRAR  
APPELLATE TRIBUNAL  
SINDH REVENUE BOARD

Order Issued on 17-08-2023

Order Dispatched on 17-08-2023  
Registrar