

BEFORE THE APPELLATE TRIBUNAL, SINDH REVENUE BOARD AT
KARACHI

DOUBLE BENCH-I

APPEAL NO. AT-69/2019

M/s D.S Motors (Pvt.) Limited,
(NTN: 2143289-9),
Plot No. A-28, Opposite Customs Office,
Near FIA Office, S.I.T.E Area,
Hyderabad.....Appellant

Versus

Assistant Commissioner, SRB, Hyderabad
Bungalow No. 14-A/1, Defence Housing Society,
Phase-I, Cantt. Hyderabad.....Respondent

Date of filing of Appeal 02.09.2019
Date of hearing 16.09.2021
Date of Order 18.10.2021

Mr. A.S Jaffri, advocate along with Mr. Armughan Mehmood for appellant.

Mr. Javed Ali Hingorjo AC-SRB and Mr. Nasir Bachani, AC-DR, SRB Hyderabad 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. 126/2019 dated 29.06.2019 passed by the Commissioner (Appeals) in Appeal No. 330/2018 filed by the appellant against the Order-in-Original (hereinafter referred to as the OIO) No. 937/2018 dated 09.11.2018 passed by Mr. Nasir Bachani, Assistant Commissioner, SRB Hyderabad.

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02. The brief facts as stated in the OIO were that the appellant having SNTN No. S2143289-9 was specified as withholding agent under rule 1(2) (e) of the Sindh Sales Tax Special Procedure (Withholding) Rules, 2014 (hereinafter referred to as the Withholding Rules) for the purpose of deducting and depositing Sindh Sales Tax (SST).

03. It was alleged in the OIO that on scrutiny of the Audited Financial Statements for the period ended 30th June, 2015 and 30th June, 2016 it revealed that the appellant was engaged in receipt of various taxable services as provided under the Second Schedule to the Sindh Sales Tax on Services Act, 2011 (hereinafter referred to as the Act), however it had failed to deduct, withhold and deposit the due SST amount as prescribed. Such details are produced as under:-

Value of Services –M/s D.S Motors Pvt. Ltd									
No.	Activity	Tariff	2015	Rate	SST Payable	2016	Rate	SST Payable	Grand Total
Cost of Sales									
1	Repair and Maintenance	9809.0000	2,227,408	13	289,563	2,496,777	13	324,581	614,144
Administration Expense									
2	Security expenses	9818.1000	3,842,665	10	499,546	3,091,330	10	401,873	901,4019
3	Legal and professional Charges	9815.9000	3,024,000	8	393,120	22,445,000	8	2,917,850	3,310,970
Selling Expenses									
4	Advertisement	98.02	29,160,824	13	3790,907	22,680,690	13	2,948,490	6,739,397
5	Publicity Expense	98.02	42,626,904	13	5,541,498	47,821,024	13	6,216,733	11,758,231
6	Sales Promotion	98.02	3,550,440	13	461,557	11,676,720	13	1,517,974	1,979,531
7	After Sales Tuning & Service	9820.1000	24,326,000		3,162,380	21,000,350		2,730,046	5,892,426
8	Commission on Sales	9819.1300	48,681,000	13	6,328,530	61,334,784	13	7,973,522	14,302,052
9	Export Expense	9805.4000	830,792	13	108,003	889,300	13	115,609	223,612
Other Charges									
	Audit Fee	9815.3000	800,000	8	104,000	1,000,000	8	130,000	234,000
Grand Total		159,070,033			20,679,104	194,435,975		25,276,677	45,955,781

The perusal of online tax profile of the appellant showed that it had only deposited Rs.662,343/-, thereby it had contravened the provisions of the Act read with the Withholding Rules and defaulted on deduction, withholding and deposit of due SST amounting to Rs.45,955,781/- with SRB.

05. The appellant was served with a Show-Cause Notice (SCN) dated 10-01-2018 to explain as to why due SST amount of Rs. 45,955,781/= should not be assessed and recovered alongwith default surcharge under section 44 of the Act read with rule 3(9) of the Withholding Rules. The appellant also required to provide the relevant data/ record regarding economic activity/services received from various service providers in terms of rule 3(10) of the Withholding Rules.

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06. The Assessing Officer (AO) issued a Corrigendum dated 23-01-2018, referring to the said SCN stating in paragraph-5, line No.01, the words "called upon to show cause", may be read as "called upon to show cause in terms section 47 of Act, 2011".

07. Advocate of the appellant sent a reply dated 31-01-2018 submitting that their client did not withhold twenty percent of SST amount and paid such full amount to service providers against their invoices. The appellant requested seven days time to comply with the terms of the notice.

08. The AO passed OIO and directed the appellant to deposit the due amount of SST of Rs.45,955,781/- with default surcharge (to be calculated at the time of payment). The AO also imposed penalty of Rs.2,297,789/- (*being 5% of the tax payable*) for non-payment of the due amount of SST under serial 11 of the Table under section 43 of the Act. The AO also imposed penalty of Rs.10,000/- for not providing record under serial 12 of the Table under Section 43 of the Act.

09. The appellant challenged the OIO before the Commissioner (Appeals) by way of filing of appeal who disallowed charging of SST of Rs.36,110,650/- and confirmed SST at Rs.9,845,132/-.

Resultantly the filing of the appeal before this Tribunal.



The respondent submitted reply to appeal dated 18.03.2021 and submitted that the following heads were reconciled, and due tax was paid by the appellant.

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|-----------------------------|---|
| i) Audit Fee | Recovered vide earlier OIO No.114/2018. |
| ii) Export Expenses | No element of service. |
| iii) Repair and Maintenance | No element of service was involved. |
| iv) After sales service | No element of service was involved. |
| v) Tuning Expenses | More details required. |
| vi) Security services | Acquired from own employees. |
| vii) Sales Promotion | No element of services was involved. |

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11. It is evident from the above statement that except tuning expenses all other heads were reconciled. The appellant was directed vide order dated 22.04.2021 to provide all details and documents for the purpose of preparation of Reconciliation Report regarding tuning services.

12. The appellant in its letter dated 07.06.2021 addressed to the AC-SRB, Hyderabad stated that the tuning expenses pertained to the tuning of motor cycles. The appellant was not engaged in receiving such services from outside, and thus the Tariff Heading 9820.1000, (Auto workshops, including authorized services station) was not applicable.

13. The AC file Reconciliation Report dated 27.07.2021 which is reproduced as under:-

Description	July, 2014 to June 2015 (Amount Rs.)	July, 2015 to June, 2016 (Amount Rs.)	Total (Amount Rs.)
value of tuning expense as per audited Accounts	8,854,300	9,362,2000	18,216,500
Less: Value pertaining to out of Sindh	(6,538,500)	(6,453,600)	(12,992,100)
Net Value of Tuning expenses	2,315,800	2,908,600	5,224,400
SST Rate	15%	14%	
Dues SST amount	347,370	407,204	754,574

The appellant filed rebuttal to such Reconciliation Report on 1.09.2021 and submitted that the rate of SST was not mentioned in the SCN and OIO. It was also stated that there were disparities by charging SST on the head of tuning expenses as the officer stated that such heads pertained to taxable economic activity in terms of section 3 (Taxable services) of the Act. It is mentioned that there was no definition of tuning expenses and such head was not available in section 2 of the Act and the same was not listed in the Second Schedule to the Act. The appellant being a withholding agent was responsible to charge SST on services exclusively on the portion of service rendered/provided. It was also stated that the said expenditure was covered under the Sales Tax Act 1990 which was out of domain of SST.

15. The learned representative of the appellant Mr. A. S. Jaffri, advocate submitted as under:-

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service stations and was liable to pay SST on the amount paid on account of services received from Auto workshops/ dealers.

17. Heard the learned representatives of the parties and perused the record made available before us.

18. The AO had determined the SST at Rs. 45,955,781/= which was reduced to Rs.9,845,132/= by the Commissioner (Appeals). The AC in his Brief Submissions before us dated 18.03.2021 had excluded the heads which were deleted by the Commissioner (Appeals) except the head of 'after sales tuning and service'. The SST in the instant case was charged under Tariff Heading 9820.1000 (Auto-Workshops, including authorized service stations) for the tax periods from July-2014 to June-2015 and from July-2015 to June-2016 at the applicable rate of 15% and 14% respectively.

19. The dispute that arose was whether the appellant was liable or not liable to pay SST on the services of after sale tuning acquired by it. The AC in the brief submissions dated 18.03.2021 bifurcated this head into two sub-heads i.e. after sales (parts claim) and tuning expenses and excluded the parts claim from levy of SST on the ground that no element of service was involved in the same. The AC submitted that in the financial statements the value of services acquired were shown as Rs.8,854,300/= and Rs.9,362,200/= respectively out of which the services acquired in other provinces were excluded and the SST was charged for Sindh only.

It is not disputed that the appellant incurred expenses on acquiring the after sale tuning and service and such expenses were recorded in the financial statements. The learned advocate for the appellant submitted that the appellant had paid fixed amount to its agents/dealers on account of providing after sales tuning and service and the same was rightly charged under head of expenses.

21. The after sales tuning and service is fully covered under Tariff Heading 9820.1000. However the contention of the Advocate of appellant that definition of auto-workshop and authorized service station was not available in the Act is not correct. The appellant being manufacturer and assembler of motorcycles

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during the warranty period had acquired the after sales tuning and service through its dealers and agents for its customers who had purchased motorcycles manufactured by the appellant and thus had paid fixed amount to its agents and dealers. The definition of authorized service station is available in sub-section (14) of section 2 of the Act, which read as under:-

"...(14). authorized service station: means a service station or service centre, authorized by a motor vehicle manufacturer, whether local or foreign, to carry out any service or repair or reconditioning or restoration or decoration of motor vehicles, classified under chapter 87 (of the First Schedule) of the Customs Act (Act No. IV of 1969) manufactured by such manufacturer;

Explanation: The services by authorized service stations include- (1) the services provided during the warranty period as well as after the expiry of the warranty period as well as after the expiry of the warranty period; (2) the services provided even for the vehicles and machinery not manufactured by the manufacturer appointing or authorizing such service station; and (3) the services provided against charges billed by way of reimbursement, whether from the manufacturer or insurance companies or leasing companies or other such persons;

22. From the above definition it is clear that the services provided during the warranty period as well as after the expiry of the warranty period was fully covered in the above definition.

The learned advocate has raised a plea that the AC has not mentioned the rate of SST in the SCN and in the OIO. It was also stated that in the SCN and in the OIO the SST was calculated at the rate of 13% without mentioning the rate. Whereas in the Reconciliation Report dated 16.09.2021 the SST was calculated at the rate of 15% and 14%. We have considered the contention of the learned advocate and do not find any substance in it. The statutory rate of SST was known to all tax payers. The AO in the SCN and OIO had charged SST on pan Pakistan basis but in the reconciliation submitted before us the SST was only charged on the portion of services acquired in Sindh. The amount of SST in the OIO was Rs.5,892,426/= which was reduced to Rs.754,574/= only. In our view no prejudice

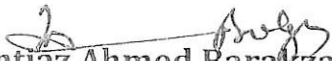


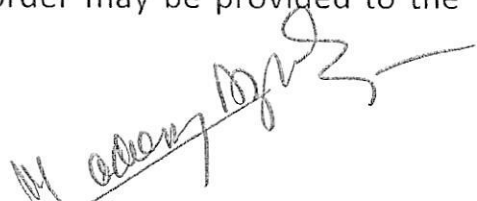
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was caused to the appellant due to non-mentioning of the rate of SST and by miscalculating the SST @ 13%. The Order of the Tribunal in the case of Gemnet supra has distinguishable facts and is not applicable to the fact of the instant case. In that case the AC has charged SST on the basis of main heading without mentioning the relevant sub-heading.

24. In view of the above discussions the appeal is partly allowed and the OIO and OIA are maintained to the extent of payment of Rs.754,574/= alongwith default surcharge (to be calculated at the time of payment by the appellant) under section 44 of the Act. However the penalties imposed in the OIO are waived keeping in view the conduct of concerned AC who had issued a frivolous SCN and passed OIO claiming shortfall of SST amounting to Rs.45,955,781/= which after due reconciliation has been finally reduced to Rs.754,574/= only.

25. The appeal is disposed of. The copy of this order may be provided to the learned representative of the parties.


(Imtiaz Ahmed Barakzai)
TECHNICAL MEMBER


(Justice® Nadeem Azhar Siddiqi)
CHAIRMAN

Certified to be True Copy


REGISTRAR
APPELLATE TRIBUNAL
SINDH REVENUE BOARD

Karachi:
Dated: 18.10.2021

Copy Supplied for compliance:

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

Copy for information to:-

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

Order issued on

28/10/2021

Order Dispatched on

28/10/2021

Registrar

Registrar