

BEFORE THE APPELLATE TRIBUNAL SINDH REVENUE BOARD KARACHI

DB-1

Review Application No. 02/2020

In APPEAL NO. AT-01/2016

Assistant Commissioner, SRB, LarkanaAppellant

Versus

M/s Central Power generation

Company Limited.....Respondent

Date of Filing of Appeal : 21.04.2020

Date of hearing: 11.11.2020

Date of Order: 30.11.2020

Mr. Zulfiqar Metlo, AC, SRB for Applicant

Mr. M. Iqbal Hashim, advocate and Mr. Qadeer Ahmad, ITP for Respondent.

ORDER

Justice[®] Nadeem Azhar Siddiqi: This application has been filed by the applicant/department, which is in the nature of review of the order dated 27.02.2020 passed by the Tribunal in Appeal No. AT-01/2016 and AT-02/2016 after considering the merits of the cases with the prayer to revise the said order and declare the SST at Rs.7,838,251/= payable by the respondent.

02. The facts relating to the disposal of this application are that pursuant to show-cause notice (SCN) dated 12.05.2015 issued by the applicant for assessment of tax to the respondent an Order in Original (OIO) NO. 12/2015 dated 08.06.2015 amounting to Rs.200,414,581/= was passed

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for the tax periods from July, 2013 to June, 2014. Furthermore default surcharge and penalties were also levied under clause 6 (without specifying the relevant sub-clause) of the Table under section 43 of the Sindh Sales Tax on Services Act, 2011 (hereinafter referred to as the Act).

03.The respondent had challenged the said OIO before Commissioner (Appeals-I) by way of filing Appeal No. 131/2015 who vide Order in Appeal (OIA) No. 186/2015 dated 16.11.2015 had maintained the OIO to the extent of payment of tax of Rs. 1,254,120/= alongwith default surcharge and penalty equal to the principal amount under clause 6 (d) of the Table under section 43 of the Act.

04.The applicant has challenged the OIA by filing of Appeal NO. AT-02/2016 before this Tribunal on account of reducing the tax and waiving of penalty. The Tribunal after hearing the learned Assistant Commissioner, SRB and learned representative of the respondent vide Order dated 27.02.2020 partly allowed Appeal No. AT-01/2026 to the extent of waiving penalty under Serial No. 6 (d) of Table under section 43 of the Act. However the appeal No. AT-02/2016 filed by the applicant for annulment of the OIA was dismissed by the Tribunal.

05.The applicant/department has now filed this application which is in the nature of review of order dated 27.02.2019 with the prayer that the said order may be revised and it may be declared that the SST at Rs.7,838,251/= was payable be the respondent.

06.The Tribunal before proceeding with this application vide order dated 23.06.2020 had put the learned AC on notice. He was directed to satisfy the Tribunal regarding the maintainability of this application in absence of any specific provisions of law in relation to review or recalling the order of the Tribunal passed on merits.

07.We have decided to first discuss and decide the merits of the application in view of our order dated 23.06.2020.



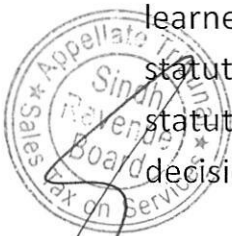
08. Mr. Zulfiqar Metlo, the learned AC for the department submitted that the Commissioner (Appeals) committed an error by declaring the value of tax as value of service and same error was committed by the Tribunal in accepting the finding of the Commissioner (Appeals). He further contended that the Tribunal is vested under its inherent powers to make such orders as may be necessary for meeting the ends of justice or to prevent abuse of the process of law.

09. Mr. M. Iqbal Hashmi, the learned Advocate for the respondent submitted that there is no provision in the Act which gives power to the Tribunal to review its own order. He referred to sub-section (8) of section 60 of the Act and submitted that the order passed by the Tribunal is final and cannot be reviewed, altered or modified by the Tribunal. He relied upon the case of Commissioner of Income Tax/Wealth Tax versus M/s Move (Pvt.) Limited, reported as 2013 PTD, 2040.

10. We have heard the learned representative of the department and perused the record as well as the order of the Tribunal dated 27.02.2020. It is clear from the perusal of this order that it was passed on merits after hearing the learned representatives of both the parties.

11. The Act has no provision which gives power to the Tribunal to review or set aside or recall its own order passed on merits after hearing the learned representative of the parties. The review is a substantive statutory right like appeal and revision and unless provided in the statute the power of review cannot be exercised in view of the following decisions of superior courts:-

(a) In the case of Desmond Vaz versus Karachi Building Control Authority, reported as PLD 2005 Karachi, page 164 relevant page 174 © It has been held that ".....While examining the issue the Honorable Supreme Court observed that, 'The right to claim review of any decision of a court of law, like the right to appeal, is a substantive right and not a mere matter of procedure'. The Honorable Supreme



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Court clarified that the right of appeal from any decision of any Tribunal must be given by express enactment and the principle is equally true in case of review, because both appeal and review, though differ in scope, are substantive rights'. The Honorable Supreme Court further observed that 'As such neither of them is available unless it has been conferred by law.....'".

(b) In another case of Muhammad Ashraf versus Sultan Humayun, reported as 2003 SCMR 1221 relevant page 1228 © para c 11 it has been held that "..... Needless to say that the right of a party to claim a review of final judgment or order of the Court, judicial or quasi-judicial tribunal, (emphasis supplied) in a substantive matter is not available in the absence of a provision in the relevant statute.....

From perusal of above reported judgments it is clear that in absence of any statutory provision the power to review or recall of any order passed earlier cannot be exercised.

12. In the reported case of Commissioner Income/Wealth Tax versus M/s Move (Pvt) Limited, 2013 PTD 2040 at pager 2042 it was held as under:-

"7. It is well settled by now that right of review is a substantive right and is a creation of the relevant Statute on the subject. Reference in this behalf may be made to law laid down by the august Supreme Court of Pakistan in Hussain Bakhsh v. Settlement Commissioner, Rawalpindi and others (PLD 1970 SC 1), where it is held as under:-

"The right to claim review of any decision of a Court of law, like the right to appeal, is a substantive right and not a mere matter of procedure. An appeal, as observed by Branwell, L. J., in the case of Sandback Charity Trustees v. North Staffordshire Railway Co. (1)- "does not exist in the nature of things; a right to appeal from any decision of any Tribunal must be given by express enactment."

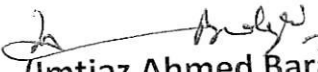
This is equally true in case of review, because both appeal and review, though they differ in scope, are substantive rights. As such, neither of them is available unless it has been conferred by law".



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13. In view of the above arguments the order or decision of the Tribunal is final subject to section 63 of the Act or as provided under sub-section (8) of section 62 of the Act. It is therefore, held that this Tribunal is not vested with the power to review or recall its own order or decision passed after hearing the parties and after discussing the merits of the case, hence the application is dismissed. The copy of this order may be provided to the parties.


(Imtiaz Ahmed Barakzai)
TECHNICAL MEMBER


(Justice Nadeem Azhar Siddiqi)
CHAIRMAN

Karachi. Dated: 30.11.2020

Copies supplied for compliance:-

1. The Assistant Commissioner (Unit-), SRB, Karachi.
2. The Taxpayer through authorized Representative.

Copy for information to:-

- 3) The Commissioner (Appeals), SRB, Karachi.
- 4) Office copy
- 5) Guard file.



15/12/2020


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