

BEFORE THE APPELLATE TRIBUNAL SINDH REVENUE BOARD

KARACHI

DOUBLE BENCH-I

APPEAL NO. AT-05/2020

M/s HEI HRL Joint Venture,

DHA, LahoreAppellant

Versus

Assistant Commissioner, SRB,

Karachi.....Respondent

Fate of Filing of Appeal: 12.02.2020

Date of hearing: 20.10.2020

Date of Order: 10.11.2020

Mr. Muhammad Umar, ITP for appellant.

Mr. Awais Raza, AC, Ms. Umi Rabbab DR- AC, and Ms. Nida Noor AC, SRB
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.11/2020 dated 29.01.2020 passed by the Commissioner (Appeals-1) in Appeal No. 170/2019 filed by the Appellant against the Order-in-Original (hereinafter referred to as the OIO) No. 272/2019 dated 11.04.2019 passed by the Mr. Ghulam Mustafa Kathio Assistant Commissioner, (Unit-24) SRB Karachi.

02. It was stated in the OIO that the appellant under clause (f) of sub-rule (2) of rule 1 of Sindh Sales Tax Special Procedure (Withholding) Rules, 2014

(hereinafter referred to as the Withholding Rules) being a withholding agent, was liable to withhold and deposit the amount of Sindh Sales Tax (SST) at the applicable rates on receipts of taxable services provided or rendered to it by the registered service provider in Sindh.

03. It was alleged in the OIO that the appellant neither e-signed up as withholding agent nor submitted the prescribed withholding tax amount in Form SSTW-03. It was further alleged that during the tax periods October, 2016 to December, 2018, the appellant acquired taxable service of goods transportation/etc. Tariff Heading 9836.0000 (Services provided or rendered by person engaged in inter-city transportation of carriage of goods by road or through pipeline or conduit) of the Sindh Sales Tax on Services Act, 2011 (hereinafter referred to as the Act). This was subject to SST under the Act and the Sindh Sales Tax on Services Rules, 2011 (hereinafter referred to as the Rules) made thereunder from Crescent Carriers Pakistan who in Annex-C of its monthly SST returns filed with SRB had declared that it had provided taxable services to the appellant. The SST amounting Rs.39,612,824/- was withheld by the appellant on receipt of said taxable services during the aforesaid tax periods. However, on scrutiny, it was revealed that appellant had not deposited SST withheld by it in terms of rule 3 of Withholding Rules, which are detailed as under:

S.No	Name of services Provider	Count of Invoice No	Sum of SST Withheld	Sum of SST Paid	Sum of payable
1	Crescent Carriers Pakistan	269	39,612,824	-	29,612,824
	Grand Total	269	39,612,824	-	39,612,824

04. It was stated in the OIO that various letters were sent to the appellant for e-signing as withholding agent and payment of SST. However, in response to these letters, representatives of appellant had contended that the appellant was a non-resident having no place of business in Sindh. Thus, it does not serve as withholding agent under the Withholding Rules and that the appellant had withheld Punjab Sales Tax and not the SST.

05. The contention of the appellant that it was non-resident and was not having any place of business in Sindh was contradicted by the invoices provided by M/s Crescent Carriers Pakistan (hereinafter referred to as the Crescent Carriers) Scrutiny of such invoice further revealed that it was issued under section 26 of the Act and was delivered to appellant at its Karachi address and was inclusive of SST at 13 percent and not Punjab Sales Tax as claimed by the appellant.

06. A Show-Cause Notice (SCN) was served upon the appellant to explain as to why the SST withheld by it amounting to Rs.39,612,824/= should not be recovered from it under the provisions of section 47(1B) read with section 16 of the Act and sub-rule (5) of rule 3 of the Withholding Rules. The appellant was also called upon to show cause as to why default surcharge under section 44 of the Act and penalties under serial No.3 and 6(d) of Table under section 43 of the Act should not be imposed upon it.

07. A reply was received on 01st February, 2019 wherein the representative of the appellant maintained that the appellant was a non-resident having its registered office located in Lahore and his client was providing taxable services within the jurisdiction of Punjab. AR further maintained that the appellant had received taxable services in Punjab, had and rightly withheld and deposited tax involved with PRA in terms of Punjab Sales Tax on Services Act, 2012. The Representative also maintained that the appellant neither received nor provided any service in Sindh and that the Withholding Rules were not applicable to it. Moreover, the liability to pay sales tax rested with service provider i.e. Crescent Carriers in case the service was taxable by virtue of sub-section (1) of Section 3 of the Act.

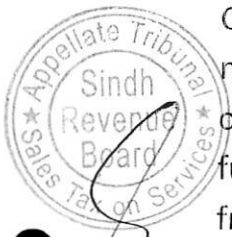
08. The Assessing Officer (AO) passed OIO at the sum of Rs.39,612,824/= u/s section 47(1B) read with section 16 of the Act and sub-rule (5) of rule 3 of the Withholding Rules and also imposed penalties of Rs.1,980,641/= and Rs.39,612,824/= under Serial No. 3 and 6(d) of the Table under section 43



of the Act alongwith default surcharge (to be calculated on the date of payment) under section 44 of the Act).

09. The said OIO was challenged by the appellant before the Commissioner (Appeals) by way of filing of appeal, who dismissed the appeal and fully maintained the OIO, hence this appeal.

10. The learned representative for the appellant Mr. Muhammad Umer, ITP submitted before us that no services were acquired in Sindh since the appellant had no office in Karachi and the address mentioned in the invoices issued by service provider were fake. Moreover, it was submitted that the appellant being a non-resident person could not act as withholding agent under law. He further submitted that services originated from Sindh were terminated in Punjab and since the services were received in Punjab the due tax was deposited with PRA. He also submitted that for the same amount claimed by SRB from the appellant an OIO was passed against Crescent Carriers having NTN: 2546620-8 whereby an amount of Rs.10.1 million was recovered from it and he placed on record photocopy of letter of advocate of Crescent Carriers and photocopy of two pay orders. He further submitted that the liability to deposit SST for the services generated from province of Sindh was upon the service provider who had provided service to a non-resident person and referred to sub section (1) of Section 9 and sub section (1) of section 3 of the Act.



11. Ms. Nida Noor submitted that the copies of invoices submitted to the department by service provider M/s Crescent Carriers, which clearly mentioned the Karachi address of the appellant and Sindh Sales Tax @ 13% was charged, which was withheld by the appellant. However, such SST was not deposited with SRB.

12. Mr. Owais Raza AC-SRB submitted on subsequent date that M/s Crescent Carriers got three registrations from SRB and the services provided to appellant from Sindh were provided by Crescent Carriers

having NTN No. 7184845 and the payment of SST recovered from Crescent Carriers was not covered by the SCN issued and OIO passed in this case. He further submitted that the services were acquired from Karachi Port and the service provider had charged SST @ 13% which was withheld by the appellant and the same was deposited with PRA. He referred to sub-section (64) & (72) of Section-2 of the Act and submitted that the appellant was a resident person and could act as withholding agent. He further submitted that the SST was withheld by the appellant which was evident from the monthly tax returns filed M/s Crescent Carriers. He also referred to clause (f) of sub-rule (2) of Rule-1 of Withholding Rules and submitted that appellant was a FBR registered person and could act as withholding agent and was responsible to withhold SST and to deposit the same with SRB under sub-rule (5) of Rule 3 of Withholding Rules. He also referred to sub-section (1) of Section-16 of the Act which deals with collection of excess sales tax and submitted that the registered service provider of Sindh had charged SST in its invoices and the said SST was withheld by the appellant and it was liable to deposit such tax with SRB.



13. The representative of the appellant in rebuttal referred to proviso to sub-rule (2) of rule 1 of Withholding Rules and submitted that to act as withholding agent one must be resident of Sindh or ^{to} have a place of business in Sindh. However, since the appellant was neither a resident of Sindh nor had any place of business in Sindh, thus the appellant had not withheld SST, but had instead withheld Punjab Sales Tax and deposited the same with PRA. He referred to the case reported as (2019) 119 Tax 253 and unreported Judgment of LHC in CP No.54/2016.

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

15. The dispute between the parties was whether the appellant can act as a withholding agent or not. It is not disputed that the appellant had acquired services of transportation of goods from Karachi Port to Punjab

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from registered service provider of SRB covered by Tariff Heading 9836.0000 (Services provided or rendered by person engaged in inter-city transportation of carriage of goods by road or through pipeline or conduit). It was also not disputed that the service provider M/s Crescent Carriers had mentioned the Karachi address of the appellant in the invoices and had charged SST @ 13% in all invoices which were withheld by the appellant but not deposited with SRB. It was an admitted position of the appellant that the service of transportation of goods had originated from Sindh (Karachi Port) and the service provider had correctly subjected these services to the SST under the Act.

16. The preamble of the Act provides that "Whereas it is expedient to provide for the levy of tax on services, provided rendered, initiated, received [originated executed] or consumed in the Province of Sindh and for all matters incidental and ancillary thereto or connected therewith". Furthermore, section 3 of the Act relates to taxable service. Sub-section (1) of section 3 of the Act provide that "a taxable service is a service listed in the Second Schedule to the Act, which is provided (a) by a registered person from its registered office or place of business in Sindh; (b) in the course of an economic activity, including the commencement or termination of the activity". It is thus clear from the bare reading of the preamble with section 3 of the Act that the SST can be levied on origination of service in Sindh.

17. The detailed scrutiny of Monthly Sales tax Return (SST-03) filed by service provider M/s Crescent Carriers with SRB and Monthly Sales Tax Returns filed by appellant with PRA have un-earthed such discrepancy. It is evident that the appellant had deliberately declared the lesser value of service to PRA than the actual value of service received and the amount withheld as per invoices. The appellant received services for the tax periods October, 2016 to December, 2018. Whereas the appellant had only declared few invoices from November, 2017 to July, 2018 with PRA and



declared the tax of Rs.609,125/= which clearly reflects the intention of the appellant to evade due SST.

18. It is a fact that the appellant had withheld the SST charged on the invoices by the registered person of SRB and the appellant was liable to deposit the same with SRB under section 16 of the Act, Irrespective of the fact whether the appellant could act as withholding agent under the Withholding Rules or not. Section 16 of the Act reads as under:-

"16. Collection of excess sales tax.—(1) Any person who has collected or collects any tax or charge, whether under misapprehension of any provision of this Act or otherwise, which was not payable as tax or charge or which is in excess of the tax or charge actually payable to whom the service is provided, shall pay the amount of tax or charge so collected to the Government.

(2) Any amount payable to the Government under sub-section (1) shall be deemed to be arrear of tax or charge payable under this Act and shall be recoverable accordingly.

(3) The burden of proof that the incidence of tax or charge referred to in sub-section (1) has been or has not been passed to the person to whom the service is provided shall be on the person collecting the tax or charge".


19. The word "person" used in sub-section (1) of section 16 of the Act is used in common parlance and not the words "withholding agent or service provider". The person has been defined in sub-section (63) of section 2 of the Act and means (a) an individual (b) a company, an agency or an association of persons incorporated, formed, organized or established in Pakistan or elsewhere. It is thus clear from bare reading of the above provision of the Act that any person (not necessarily a withholding agent or registered service provider) who has collected any tax or charge, whether under misapprehension of any provision of the Act or otherwise, which was not payable as tax or charge shall pay the amount of tax or charge so collected to the government. It is therefore, established that the appellant

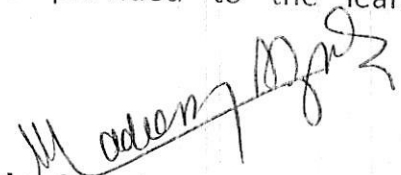


had collected SST charged by the registered service provider on the invoices and was liable to deposit the same with SRB.

20. We have carefully examined the contents of OIO and OIA and have not found any illegality and infirmity in the same. It has been proved beyond any shadow of doubt that the tax charged by the SRB registered person on the invoices were withheld by the appellant but the same were not deposited with SRB. The contention of the appellant that it had withheld Punjab Sales Tax on services has no force for the reason that at the relevant time the rate of Punjab Sales Tax on Services was 16% and that the service provider had sent 269 invoices to the appellant at its Karachi address charging SST of 13% the rate prevailing in Sindh amounting to Rs.39,612,824/=, whereas the appellant had only declared 26 invoices during the periods from November, 2017 to July, 2018 to PRA.

21. In view of the above discussions, we are of the opinion that the appellant has no case. The appeal is dismissed and the OIO and OIA are upheld. The copy of this order may be provided to the learned representatives of the parties.


(Imtiaz Ahmed Barakzai)
TECHNICAL MEMBER


(Justice® Nadeem Azhar Siddiqi)
CHAIRMAN

Karachi

Dated: 10.11.2020

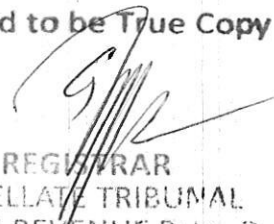
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- 1) The Appellant through Authorized Representative.
- 2) The Assistant Commissioner, SRB, for compliance

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REGISTRAR
APPELLATE TRIBUNAL
SINDH REVENUE BOARD

Order issued on

18/11/2020

Order Dispatched on

18/11/2020
Registrar

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