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**BEFORE THE APPELLATE TRIBUNAL SINDH REVENUE BOARD**  
**ATKARACHI**

**DOUBLE BENCH**

**APPEAL NO. AT-16/2020**

M/s Trust Securities & Brokerage Ltd.  
Suit# 401,402, 4<sup>th</sup> Floor,  
Business & Finance Center,  
I.I. Chandigarh Road, Karachi.....Appellant

**Versus**

Assistant Commissioner (Unit-12)  
Sindh Revenue Board,  
12<sup>th</sup> Floor Shaheen Complex,  
M. R. Kiyani Road, Karachi.....Respondent

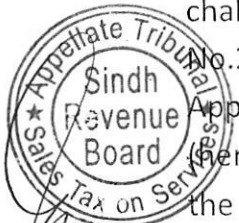
Date of Filing of Appeal: 21.04.2020  
Date of hearing: 22.02.2021  
Date of Order 16.03.2021

Mr. Abdul Raheem Lakhani, Mr. Sunil Memon, and Mr. Asif Khaliq Shar  
advocates for appellant.

Mr. Asad Raza, AC-SRB for respondent.

**ORDER**

**Imtiaz Ahmed Barakzai**: This appeal has been filed by the appellant  
challenging the Order-in-Appeal (hereinafter referred to as the OIA)  
No.27/2020 dated 20.02.2020 passed by the Commissioner (Appeals) in  
Appeal No. 23/2019 filed by the appellant against the Order-in-Original  
(hereinafter referred to as the OIO) No. 55/2019 dated 19.01.2019 passed by  
the Mr. Tarique Ali Assistant Commissioner, (Unit-12) SRB Karachi.



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02. The brief facts of the case as stated in the OIO were that appellant was registered with Sindh Revenue Board (SRB) under the service category of Stockbrokers, futures brokers and commodity brokers, Tariff Heading 9819.1000 of the Second Schedule to the Sindh Sales Tax on Services Act, 2011 (hereinafter referred to as the Act) for providing the taxable services chargeable to Sindh Sales Tax (SST) since inception of the Act.

03. It was further stated in the OIO that the annual audited accounts for the tax periods from July, 2016 to June, 2017 revealed that the appellant had provided taxable services of shares brokerages. This was covered under the Tariff Heading 9819.1000 of the second schedule to the Act and was taxable under section 8 read with section 3 of the Act with effect from 01.01.2011 and the appellant was required to discharge their sales tax liabilities and to e-file the sales tax return in Form SST-03 since July, 2011.

04. It was alleged in the OIO that the appellant had earned taxable revenue amounting to Rs.7,596,505/-, for the tax periods from July, 2016 to June, 2017 but had failed to declare the said revenue in their Sales Tax Returns (SST Returns), which resulted in short payment of SST of Rs.987,546/-.

05. The appellant was served with Show-Cause Notice (SCN) dated 24.10.2028 under section 23(2) of the Act to explain as to why SST amounting to Rs.987,546/- should not be assessed under section 23(1) of the Act alongwith default surcharge under section 44 of the Act. The appellant was also required to explain to why penal action under Serial No. 3 of the Table under section 43 of the Act should not be taken against it for contravention of section 3, 8, 9, 15, 17 and 30 of the Act read with Rule 14 of the Sindh Sales Tax on Services Rules, 2011 (hereinafter referred to as the Rules).

06. The appellant through letter dated 23.10.2018 submitted that during the tax periods confronted in the SCN the appellant had carried out its activities in the provinces of Punjab and had rendered no any such activity in the Province of Sindh.

07. The Assessing Officer (AO) passed OIO directing the appellant to pay SST of Rs.987,546/- along with penalty of Rs.49,377/- under Serial No. 3 of Table under section 43 of the Act along with default surcharge under section 44 of the Act (to be calculated at the time of payment)).

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08. The appellant had challenged the OIO before Commissioner (Appeals) who upheld the OIO and dismissed the appeal. Hence this appeal by the appellant.

09. Mr. Abdul Raheem Lakhani, Advocate for the appellant submitted as under:-

i) The appellant is a public quoted company registered with SECP, Lahore and having its registered office at Lahore. The appellant was also registered with Punjab Revenue Authority (PRA) since 08.10.2012 as Stockbroker and was paying tax on services to PRA.

ii) The SCN dated 24-10-2018 was issued for tax periods July-2016 to June-2017 for the services provided at Lahore in the Province of Punjab and tax was deposited with PRA.

iii) The appellant was registered with SRB on 28.06.2018 and the demand of payment of SST for the period prior to the date of registration was illegal. It was further submitted that Section 3 of the Act was not applicable in case of appellant as it had no registered office in Sindh during the tax periods July-2016 to June-2017. He relied upon the case of Habib Sweets V/s Commissioner Inland Revenue reported as 2020 PTD (Trib.) 2048.

iv) The facts of the case of Escort Securities was distinguishable, and the order passed by the Tribunal in that case was per incuriam for the reason that the earlier DB-Judgment in the case of Foundation Securities Ltd. (Appeal No.AT-19/2019) was not followed which was binding. He relied upon the definition of per incuriam available in Black's Law Dictionary, 9<sup>th</sup> Edition Page 1254. He relied upon the following case laws.

a) PTD 1993 110 Karachi Commissioner Income Tax V/s Iran Bukhara Corporates Para 13 (this is High Court to High Court).

b) 2007 PTD (Trib.) 803- (regarding earlier decision of Tribunal).

v) The tax cannot be charged unless the place of business of taxpayer is in Sindh as defined under sub-section (64) of section 2 of the Act.



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vi) That the amendment in sub-section (64) of section 2 of the Act was made subsequently and thus was not applicable to the tax periods involved in this appeal.

vii) The appellant had already paid SST on fixed consideration by using the facility of KATS/ KITS of Pakistan Stock Exchange as a subscriber. The appellant did not have a registered office in Sindh which is a condition precedent for charging SST.

viii) The impugned OIA was unsustainable in law and therefore was liable to be reversed. The learned Commissioner (Appeals) had wrongly attributed conceding statement towards the representative of the appellant and had failed to consider the reasons furnished by the appellant on extensive legal grounds while filing the appeal.

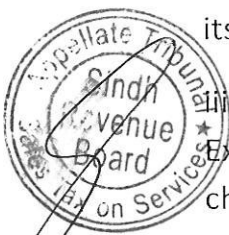
10. Mr. Asad Raza the learned AC-SRB submitted as under:-

i) The appellant had provided service of stockbroker within Sindh during the tax periods involved in this case and being a person liable to be registered the appellant was liable to charge and deposit SST even if it was not formally registered with SRB. Reference in this context was made to sub-section (71) of section 2 of the Act which provides that a registered person means a person who is registered or is liable to be registered under the Act.

ii) The service recipients of the appellant were the end consumers and not the withholding agents. The appellant being unregistered while providing the taxable services in Sindh could not be absolved of its lawful responsibility to deposit SST.

iii) The appellant was using the facility of KATS/KITS of Pakistan Stock Exchange installed at Karachi and was paying SST on subscription charges. Thus the appellant was liable to pay SST on the transactions routed through the said KATS/ KITS at Karachi.

iv) The reference was made to preamble of the Act and it was submitted that the tax could be charged on services provided, rendered initiated received, originated, executed or consumed in Sindh. The AC also referred to section 4 of the Act and stated that for buying and selling shares the appellant had used the facility of



KATS/KITS installed at Karachi, thus the economic activity was carried on in Karachi, Sindh and the SST was payable in Sindh.

v) That the earlier orders of the Tribunal in IGI Finex AT-No. 185/2015 dated 29.01.2016, M/s Gulf Construction (Pvt.) Ltd., AT-No. 20/2013 dated 11.09.2015 were referred and it was submitted that the issue was settled and the same could not be reviewed or changed at this stage.

vi) The reference was made to Para, 9 of OIO and it was submitted that the OIO was rightly passed on the basis of order in the case of IGI Finex.

vii) That both the OIO and OIA were supported and the AC referred to the conceding statement recorded in the OIA by the representative of the appellant.

11. The learned advocate for the appellant in rebuttal submitted that for providing or rendering service in Sindh the physical presence of the appellant was necessary which was lacking during the tax periods involved in this case. He further submitted that the order in the case of IGI Finex was over ruled by DB of the Tribunal in the case of Foundation Securities, Appeal No. AT-19/2019 dated 21.04.2020.

12. We have heard the learned representative of the parties, perused their written submissions and the record made available before us.

13. The issues involved in this case are summarized as under:-

i) Whether the appellant was liable to pay SST prior to its registration with SRB?

ii) Whether the appellant was providing or rendering service of stockbroker in Sindh by using the facility of KATS/KITS installed by Pakistan Stock Exchange at Karachi?

14. Now we take up the first issue raised in this case which is of prime importance that:-

Whether the appellant was liable to pay SST prior to its registration with SRB?



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- a) Admittedly the appellant was registered with SRB on 28.06.2018 and the tax periods involved were from July, 2016 to June, 2017 and the SCN was issued on 24-10-2018. The appellant on the strength of person liable to be registered was not liable to charge and deposit tax with SRB. This Tribunal in its recent decision in the case of TCS Logistics versus SRB, Appeal No. AT-30/2019 dated 05.03.2021 has held as under:-

*"14. The Commissioner (Appeals) in his various OIA have held that SST cannot be demanded from a service provider prior to its date of registration, few of such OIA's are mentioned for ready reference as under:-*

- i) Appeal No.73/2018, OIA No.97/2020 M/s Sinopec International vs. Assistant Commissioner (Unit-03), SRB dated 03.11.2020*
- ii) Appeal No.308/19, OIA No.109/2020, dated 02.12.2020 – M/s Fiber Link vs. Assistant Commissioner (Unit-01), SRB*
- iii) Appeal No.456/2018, OIA No.110/2020, dated 02.12.2020 – M/s Fiber Link vs. Assistant Commissioner (Unit-01), SRB.*

*The above view of Commissioner (Appeals) has been upheld in our various pronouncements. Few of such decisions are mentioned for ready reference as under:-*

- a) AT-47/2020 dated 15.02.2021 – AC (Unit-04) vs. M/s MYN Pvt. Ltd.*
- b) AT-234/2015 dated 26.11.2019 – Nasir Khan & Sons vs. Commissioner (Appeals) & DC (Unit-13), SRB."*



*The liability of person to pay tax has been dealt with under Sub-section (1) of section 9 of the Act which provided that the liability to pay the tax was upon the registered person providing the services. This sub-section was not applicable to the appellant prior to its registration with SRB. It is provided in sub-section (2) of section 9 of the Act that where service is taxable by virtue of sub-section (2) of section 3 of the Act the liability to pay the tax shall be on the person receiving the services. Moreover sub-section (3) of section 9 of the Act*

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provides for the power of the Government to notify the services or class of services in respect of which the liability to pay tax shall be on the person providing the taxable services, or the person receiving the taxable services or any other person. This provision also does not provide for payment of tax by unregistered person.

- c) The SRB with the approval of Government of Sindh (GS) in exercise of powers vested in it under section 72 of the Act read with sub-section (4) of section 3, sub-section (3) of section 9 and section 13 of the Act framed and issued Withholding Rules, 2014 for the purpose of deduction and deposit of SST.
- d) The person who can be withholding agent have been specified in sub-rule (2) of rule 1 of the Withholding Rules. Rule 3 of Withholding Rules deals with the responsibility of the withholding agent. Sub-rule (4) thereof provides that a withholding agent having Free Tax Number (FTN), or National Tax Number (NTN) and falling under clause (a), (b), (c), (d), or (e) of sub-rule (2) of rule 1 of the Withholding Rules, shall on receipt of taxable services from unregistered persons, deduct sales tax at the applicable rate of the value of taxable services provided and, unless otherwise specified in the contract between the service recipient and the service provider. The amount of sales tax for the purpose of this rule shall be worked out on the basis of gross value of taxable services.
- e) It is evident by comparison of sub-rule (3) and (4) of rule 3 of the Withholding Rules that sub-rule (3) of rule 3 of the Withholding Rules provides for the deduction of one-fifth of the total sales tax shown in the tax invoice issued by a registered person. Whereas sub-rule (4) of rule 3 of the Withholding Rules provides that a withholding agent on receipt of taxable services from unregistered persons has to deduct sales tax at the applicable rate of the value of the taxable services provided or rendered to him from the payment due to the service provider. This sub-rule clearly fixes the responsibility of deduction of sales tax upon the service recipient who deals with un-registered person. Moreover the unregistered person could neither charge tax in its invoice nor the withholding agent after withholding



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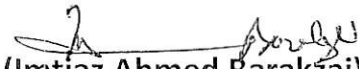
the amount of SST can pass on the same to unregistered service provider for depositing the same with SRB.

- f) The liabilities of payment of tax under sub-rule (4) of Rule 3 of the Withholding Rules have been fixed on the service recipient who had received service from unregistered person. It is therefore, apparent that no assessment order can be passed under section 23 of the Act against an unregistered person. The assessment order against the appellant for the tax periods before its registration was thus, illegal”.

15. It is therefore, concluded that the SST cannot be demanded from a service provider for the tax periods prior to its registration. Thus, the discussion on the other issue “Whether the appellant was providing or rendering service of stockbroker in Sindh by using the facility of KATS/KITS installed by Pakistan Stock Exchange at Karachi?” becomes unnecessary.

16. In view of the above discussions the OIO and OIA are annulled and set aside and consequently this appeal is allowed. The copy of this order may be provided to the learned authorized representatives of the parties.

  
(Justice® Nadeem Azhar Siddiqi)  
CHAIRMAN

  
(Imtiaz Ahmed Barakzai) >  
TECHNICAL MEMBER

Karachi:

Dated: 16.03.2021

Copy Supplied for compliance:

- 1) The Appellant through Authorized Representative,
- 2) The Assistant Commissioner (Unit-12), SRB, Karachi.

Copy for information to:-

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

Certified to be True Copy

  
REGISTRAR  
APPELLATE TRIBUNAL  
SINDH REVENUE BOARD

Order issued on

25/03/2021

  
Registrar

Order Dispatched on

25/03/2021

  
Registrar