

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

**DOUBLE BENCH-I**

**APPEAL NO. AT-18/2020**

M/s Crescent Carriers (NTN: 2546620-8)  
Gulzar Chambers, 3 West Warf Road,  
Karachi.....Appellant

**Versus**

Assistant Commissioner-(Unit-23)  
Sindh Revenue Board,  
09<sup>th</sup> Floor, Shaheen Complex,  
M.R. Kiyani Road, Karachi.....Respondent

Date of Filing of Appeal: 19.05.2020  
Date of hearing: 05.11.2020  
Date of Order: 12.11.2010

Mr. Amanat Ali Advocate, for appellant  
Mr. Irfan Waheed AC-SRB, Karachi

**ORDER**

**Justice<sup>®</sup> Nadeem Azhar Siddiqi:** This appeal has been filed by the appellant challenging the Order-in-Appeal (hereinafter referred to as the OIA) No.13/2020 dated 31.01.2020 passed by the Commissioner (Appeals) in Appeal NO. 158/2017 filed by the Appellant against the Order in Original



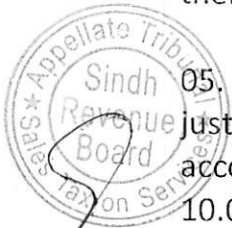
(hereinafter referred to as the OIO) No. 290/2017 dated 26.10.2017 passed by the Mr. Yousuf Bukhari Assistant Commissioner, (Unit-30) SRB Karachi.

02. Brief facts of the case as stated in the OIO were that the appellant was engaged in providing the services of "Inter-City Transportation or carriage of goods by roads under Tariff Heading 9836.0000 of the Second Schedule to the Sindh Sales Tax on Services Act, 2011 (hereinafter referred to as the Act) in Sindh or from Sindh, which was chargeable to Sindh Sales Tax (SST) under section 8 read with section 3 and clause (98B) of section 2 of the Act.

03. It was stated that the appellant was required to charge SST at 8% (or 13% by submitting Form-I) within the time period specified in rule 42G of the Sindh Sales Tax on Services Rules, 2011 (hereinafter referred to as the Rules) on all Inter-City transportation services originated in Sindh or from Sindh. Besides, the appellant was also required under section 30 of the Act to submit true and correct monthly SST returns within time period specified as per Rule 13 and 14 of the said Rules by declaring all their activities in the specified columns of the returns.

04. It was alleged in the OIO that the record available with SRB showed that a sum of Rs.782,657,642/- were credited in their three (3) business accounts viz.,{(a) Account No.0040-7947851-55, (b) 0040-001443585-03, (c) 0040-00236825-03} maintained at Habib Bank Limited, West Wharf Branch, Karachi during July, 2016 to January, 2017. However, the appellant neither declared any services with SRB nor deposited any SST thereon.

05. The appellant vide SRB's letter dated 28.03.2017 was requested to justify the reason of non-payment of SST of Rs.62,612,611/- with SRB on account of the aforesaid revenue. The appellant submitted reply dated 10.04.2017 stating therein that SRB has kept in abeyance the levy of SST on taxable services of Tariff Heading 9836.0000 vide Circular No. 03/2017 dated 06.04.2017 till 30.06.2017 and requested that the proceedings against it may also be held in abeyance in the light of the aforesaid Circular.



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Page 2 of 11

06. The appellant was informed vide SRB's letter dated 11.04.2017 that the above referred Circular was issued in relation to Inter-City transportation or carriage of petroleum and oils by road through oil tankers. The appellant was again requested to justify that the aforesaid revenue of Rs.782,657,642/= were received on account of Inter-City transportation of oil through Oil tankers. The appellant was also requested to provide summary of all invoices (showing the name and NTN of service recipients, description of goods, and place of loading and un-loading) issued during July, 2016 to January, 2017, in support of their contention. In response the appellant submitted details of invoices amounting to Rs.320,161,495/= which but allegedly these were not related to transportation of oil through oil tankers.

07. It was further alleged that the appellant did not provide any justification of non-declaration of revenue and non-payment of SST and also did not provide the details of remaining amounts.

08. The appellant was served with a Show-Cause Notice (SCN) dated 18-04-2017, under section 23(2) of the Act to explain as to why SST liability of Rs.62,612,611/- should not be assessed and determined against it in terms of section 23(1) of the Act for the tax periods July, 2016, to January, 2017 in addition to the liability of default surcharge under section 44 of the Act alongwith imposition of penalties under Serial Number 2, 3, 6(d) and 12 of the Table under section 43 of the Act.

09. The appellant submitted Reply dated 26.04.2017 wherein, it was stated that the appellant was based in Punjab and major services were rendered in the province of Punjab and the appellant was also engaged in providing service of rental of cranes.

10. Finally the Assessing Officer (AO) passed OIO and determined SST at Rs.59,029,008/- as payable by the appellant under section 23(1) of the Act for the tax periods from July, 2016 to January, 2017, along with default surcharge under section 44(1) of the Act on the value of services of Rs.717,862,602/-. The AO also imposed penalty of Rs.2,951,450/- under serial No. 3 of the table under section 43 of the Act.

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Page 3 of 11

11. The said OIO was challenged by the appellant before the Commissioner (Appeals) by way of filing of appeal, who partly allowed the appeal and upheld the OIO to the extent of Rs.4,431,761/= alongwith default surcharge and penalty of Rs.221,590/=. The Commissioner (Appeals) however, setaside the other amount, held payable in the OIO, holding that the Department would be at liberty to take further action in respect of those amount, as per fact and law. Hence this appeal.

12. The appellant filed an application for condonation of delay alongwith the appeal on the ground that the same could not be filed within time due to lock down imposed in the Province by the Federal and Provincial Governments to avoid spread of Corona Virus due to which all the offices were closed. Additionally the learned advocate for the appellant submitted that he was also not feeling well and had remained under treatment from 10.03.2020 to 18.05.2020. He contended that non-filing of appeal within time allowed by law was neither deliberate nor willful but such delay occurred due to reasons beyond the control of the appellant and its authorized representative.

13. The learned AC-SRB opposed the application for condonation of delay and submitted that copy of OIA dated 31.01.2020 was sent to the appellant as well as to its representative and the same was received by them on 01.02.2020 and 03.02.2020 respectively. He contended that the appellant had failed to justify the delay in filing of appeal as the office of the Tribunal was open to receive the appeals. It was therefore, contended that the appeal is liable to be dismissed as time barred.

14. The Order-in-Appeal (OIA) was passed on 31.01.2020 and its copies were supplied to the appellant and its authorized representative on 01.02.2020 and 03.02.2020 respectively. Thus the appeal before the Tribunal could be filed within sixty days from the date of receipt of the OIA as provided under sub-section (2) of section 61 of the Act and the last date



Page 4 of 41

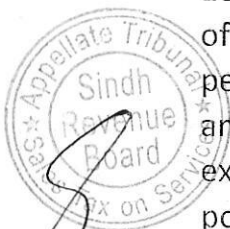
for filing of appeal was 02.04.2020 but the same was filed on 19.05.2020 after delay of forty seven days. The appellant has not disputed the date of receipt of OIA and the last date of filing of appeal before the Tribunal.

15. The Tribunal can admit an appeal upon receiving an application after the expiration of the period specified in clause (d) of sub-section (2) of section 61 of the Act if it is satisfied that the person appealing was prevented by sufficient cause from filing the appeal within that period. The requirement of section is that there should be sufficient cause for delay to the satisfaction of Tribunal. The burden was upon the appellant to show that he was prevented by sufficient cause from filing the appeal within time.

16. The plea raised by the appellant was that he was prevented from filing the appeal within time allowed by law due to lockdown imposed by Federal and Provincial Governments and that the advocate for the appellant was not feeling well and was under treatment till 18.05.2020.

17. It is true that the Government of Sindh vide Notification dated 23.03.2020 (extended from time to time) had imposed complete lockdown across the Province of Sindh. The Notification provided that there shall be a complete ban on movement of people including Intercity or Interprovincial travel or gatherings of any kind for social, religious, or any other purpose at any place, public or private, including all offices, public or private situated within the territorial limits of province of Sindh.

18. Pursuant to the Notification of Government of Sindh the High Court of Sindh had also issued Notification dated 28.03.2020 for relaxing the period of limitation of filing of all judicial proceedings before the High Court and all legal forums subordinate to it where statutory period of filing may expire during the lock down. The said Notification was issued in exercise of powers vested under Article 202 and 203 of the Constitution of Pakistan, read with rule 4, 6, 7, 43 and 58 of the Sindh Chief Court Rules (Appellate side), rule 13 of Sindh Civil Court Rules, section 9 and 10 of the General Clauses Act, 1897 and section 9 of the Sindh General Clauses Act, 1956. The operative clause of the Notification read as under:-



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Page 5 of 11

*"For the purpose of Section 4 of the Limitation Act, 1908 ("the Act"); as to computing the period of limitation stipulated in the 'Act' and its 'Schedules', or any other law for the being in force, this Court and its Offices which include the Institution Branches at the Principal Seat, its Bench at Sukkur and Circuit Court at Larkana and Hyderabad; and District Courts, Ex-Cadre Courts and all Legal Forums and their Offices; under the control and sub-ordination of this Court, shall be deemed to be closed from 22-03-2020 till 15-04-2020 (both days inclusive); for the litigants who are unable to approach on account of lockdown announced by the Federal/Provincial Governments".*

The above notification was extended from time to time until rescinded on 25.07.2020.

19. This Tribunal is under supervisory control of the Sindh High Court under Article 203 of the Constitution, thus the said Notification issued by the High Court through which the limitation of filing of judicial proceedings was relaxed is binding upon the Tribunal.

20. The last date for filing of the appeal before the Tribunal was 02.04.2020. The said period of sixty days for filing of appeal before the Tribunal had expired during the lockdown imposed by Government of Sindh and during the existence of the Notification dated 28.03.2020 issued by High Court of Sindh. The Tribunal is vested with the discretion to admit a time barred appeal if satisfied that the person appealing was prevented by sufficient cause from filing appeal within time specified by law. The discretion available to the Tribunal is not unqualified but the same could only be exercised on showing sufficient cause to the satisfaction of the Tribunal. Sufficient cause being a question of fact varies from case to case. Discretion available to the Tribunal cannot be exercised in an arbitrary manner but on settled judicial principles. The cause shown by the appellant considering the overall situation prevailing in the Province is sufficient to condone the delay and to admit the appeal after prescribed period of limitation.



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21. In view of the above discussions we are satisfied that the appellant was prevented from sufficient cause for filing the appeal within time prescribed by law. The delay is condoned and the appeal is admitted for hearing.

22. The appeal is now discussed by us on merits.

23. Mr. Amanat Ali, the learned advocate for the appellant submitted that there were three separate and independent entities working under the name of Crescent Carriers and all these three entities had three separate NTN and STN and the OIO was passed clubbing the revenue of these three separate legal entities. He submitted that the SCN was issued and OIO was passed against tax payer having NTN 2546620-8. However, the tax payers having NTN 1022012-7 and NTN 7184845-1 were separate entities and were maintaining separate bank accounts. He also contended that all three entities should be assessed separately after issuance of mandatory SCN and providing right of hearing. He further contended that the service of transportation of goods remained suspended till 31.12.2017 and the assessment for the tax periods from July, 2016, to January, 2017 was illegal and without jurisdiction.

24. Mr. Irfan Waheed the learned AC in reply submitted that at appeal stage only the revenue of Crescent Carriers having NTN: No. 2546620-8 (AOP) was taken and the revenue of other two entities were excluded and for that reason the SST at OIO stage which was Rs.59,029,008/= but the same was reduced to 4,431,761/= at the OIA stage. He further contended that the service of transportation of petroleum oil through oil tankers were under suspension till 31.12.2017 but the "carriage of goods by road" was taxable service.

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

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26. The SCN was issued to the appellant having NTN: 2546620-8 and OIO was passed clubbing the revenue of three separate and independent entities having separate NTN numbers on the basis of the credit entries available in the three bank statements belonging to three different independent entities.

27. At the OIA stage a written Report was filed by the AC and following position emerged:-

*M/s Crescent Carriers (the Appellant) are registered with SRB under SNTN: S2546620) under service category of "Inter-City transportation or carriage of goods by road or through pipelines or conduit" (Tariff Heading 9836.0000) of the Second Schedule to the Sindh Sales Tax on Services Act, 2011 (the Act, 2011). Show-Cause notice dated 18<sup>th</sup> April, 2017 was issued on the basis of credit entries of following bank accounts:*

S.No.	Title of account	Account No.	Amount
1	Crescent Carriers	0040-00143585	15,096,286/-
2	Crescent Carriers Pakistan	004-00236825-03	55,397,010/-
3	Crescent Carriers Pakistan	004-79478516-55	712,164,346/-
<b>Total Credit Amounts</b>			<b>Rs.782,657,642/-</b>

28. The details of bank accounts and the credit entries available were reported as under:-

S.No.	Title of account	NTN	Account No.	Service Value
1	Crescent Carriers (AOP)	2546620-8	004-00143585-03	2,585,054/-
2	Crescent Carriers Pakistan	1022012-7	004-00236825-03	Rs.55,397,010/- Separate entity-To be determined separately
3	Crescent Carriers Pakistan	7184845-1	004-79478516-55	Rs712,164,346/- Separate entity-To be determined separately

29. The AC in his report stated that the appellant deposited SST of Rs.206,804/= on account of SNTN: S2546620 with respect to sales revenue



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Page 8 of 11



of Rs.2,585,054/= alongwith default surcharge of Rs.51,672/= vide CPR dated 22.10.2018. The AC further submitted about the other two accounts stating that the bank account No. 004-79478516-55 was declared in SRB registration profile of SNTN: S7184845. Therefore, the sales revenue of Rs.712,164,346/= had been excluded from the liability of the appellant. However, the bank account No. 004-00236825-03 was not found in the registration particulars of SNTN: S1022012, therefore the contention of the appellant are not substantiated with facts with respect to revenue of Rs.5,397,010/= .

31. It is therefore, evident from the Report of the AC that all the three bank accounts belonged to three separate entities which had separate NTN's, SNTN's and were separately registered with SRB and their revenue could not be clubbed in one SCN and OIO for the purpose of assessment of tax.

32. The Commissioner (Appeals) fell in error by clubbing the revenue of two separate entities for the purpose of assessment. The Commissioner (Appeals) had ignored the Report of AC which provided that "for Rs.55,397,010/= Separate entity <sup>was</sup> to be determined separately". The Commissioner (Appeals) has determined SST at Rs.4,431,761/= on the revenue of Rs.5,397,010/= which undisputedly pertains to separate entity as acknowledged by the AC and does not relate to the appellant.

33. The Commissioner (Appeals) also over looked the assertion of the AC mentioned in par 4 of the Report which <sup>is</sup> reproduced as under:-

*"The appellant filed this appeal against the Order-in-Original and contended that 2 bank accounts out of the above three are established by separate entities having separate NTN's. The appellant deposited Sindh sales tax dues on account of Bank Statement maintained under his (NTN:2546620-8), and requested that sales revenue pertaining to other entities (SNTN:S1022012 &*

SNTN. S7184845) be excluded from the sales of the appellant. The appellant has voluntarily registered other entities/NTNs with SRB and further requested that SRB may take up the matter of Sindh sales tax liabilities of other NTNs separately”.

From the above assertion of the AC it is evident that three separate entities were joined together for the purpose of assessment of tax liability of one entity and the other two entities whose revenue was clubbed with the revenue of the appellant were neither given any notice nor any right of hearing was provided to them. In the reported case of Amina Z Beauty Parlor versus PRA 2016 PTD 654, had held as under:-

“8. ....The authority should have followed the minimum requirement of principles of natural justice i.e. issuance of notice to the petitioner. It is ell settled proposition of law that taxing authorities cannot demand amount without issuing show-cause notice and providing opportunity of hearing and fixing liability in terms of the relevant provision of law .....

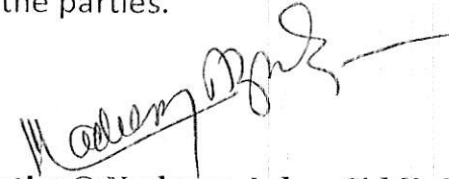
34. It has come on record that the appellant had deposited SST of Rs.206,804/= on account of SNTN: S2546620-8 with respect to sales revenue of Rs.2,585,054/=. Moreover, the default surcharge of Rs.51,672/= was also deposited vide CPR dated 22.10.2018. The appellant has therefore, discharged its liability in respect of this appeal.

35. In view of the above discussions the appeal is allowed and the tax of Rs.4,431,761/= with default surcharge and penalties are annulled and setaside. The department is at liberty to initiate separate proceedings against the other two entities bearing SNTN: S1022012 and SNTN: S7184845 for recovery of tax if found due

*nos*

36. The appeal is disposed of as above. 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: 12.11.2020

Certified to be True Copy

Copies supplied for compliance:-

  
REGISTRAR  
APPELLATE TRIBUNAL  
SINDH REVENUE BOARD

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

Copy for information to:-

3. The Commissioner (Appeals), SRB, Karachi.
4. Office Copy.
5. Assistant Commissioner SRB Karachi.

Order issued on-----

18/11/2020

Registrar

Order Dispatched on-----

18/11/2020

Registrar