

BEFORE THE APPELLATE TRIBUNAL, SINDH REVENUE BOARD
AT-KARACHI

DOUBLE BENCH-I

APPEAL NO. AT-22/2020

Assistant Commissioner SRB, (Unit-19)
09th Floor, Shaheen Complex,
M.R. Kiyani Road Karachi..... Appellant

Versus

M/s Hum Network Limited
Plot No# 10/11, Hassan Ali Street,
Off. I.I. Chundrigar Road, Karachi.....Respondent

Date of Filing of Appeal: 15.07.2020
Date of hearing 17.02.2021
Date of Order 08.03.2021

Mr. Shoaib Iqbal Rajkoti, AC-(Unit-19), SRB for appellant

Mr. Muhammad Zahoor, ITP for respondent



ORDER

Justice[®] Nadeem Azhar Siddiqi: This appeal has been filed by the Assistant Commissioner (Unit-19), SRB Karachi challenging the Order-in-Appeal (hereinafter referred to as the OIA) No.48/2020 dated 21.05.2020 passed by the Commissioner (Appeals) in Appeal No. 260/2019 filed by the respondent against the Order in Original (hereinafter referred to as the OIO) No. 771/2019 dated 20.11.2019 passed by the Mr. Ameet Kumar Assistant Commissioner, (Unit-19) SRB Karachi.

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02. The facts as stated in the OIO were that the respondent was registered with Sindh Revenue Board (SRB) under the taxable services of "Advertisement on T.V" classified under Tariff Heading "9802.1000" of the Second Schedule to the Sindh Sales Tax on Services Act, 2011 (hereinafter referred to as the Act) chargeable to Sindh Sales Tax (SST) with effect from 1st July, 2011 in terms of section 8 of the Act.

03. It was alleged in the OIO that from the scrutiny of the SST returns filed by the respondent for the tax periods from July-2016 to June-2017 (12 tax periods) it was revealed that the respondent had adjusted input tax amounting to Rs.12,522,890/-, against its output tax, on account of purchase of such goods and services which were not directly used in the provision of taxable services provided by the respondent. Moreover the respondent had adjusted input tax amounting to Rs.695,459/- which was not deposited by the respective suppliers into Government's Treasury.

04. It was alleged that since, the said adjustment of input tax was in violation of section 15 read with section 15A of the Act and read with the rules 22, 22A and 28 of the Sindh Sales Tax on Services Rules, 2011 (hereinafter referred to as the Rules) the respondent was served with a Show-Cause Notice (SCN) dated 14.09.2018 under section 23(1) of the Act to explain as to why the principle amount of SST amounting to Rs.13,183,811/- should not be assessed and recovered along-with default surcharge under section 44 of the Act. The respondent was also called upon to explain as to why penalty prescribed under Serial No.3 and 6(d) of Table under section 43 of 2011 should not be imposed for adjustment of inadmissible input tax.

05. The respondent filed Reply to SCN vide letter dated 11.10.2018 stating therein that the respondent had legitimately claimed input tax adjustment against valid sales tax invoices and such procured services were used for providing taxable services of advertisement. The respondent claimed that it had submitted the record for the perusal of the Assessing Officer (AO).

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06. The AO passed OIO after providing reasonable opportunity of hearing to the respondent, assessing SST at Rs.13,183,811/- under section 23(1) of the Act which was recoverable under section 47(1A) of the Act alongwith default surcharge under section 44 of the Act. The AO also imposed penalty of Rs.13,183,811/- (being 100% of Principal amount) on account of claiming inadmissible input tax and further imposed penalty of Rs.659,191/-(being 5% of the principal amount) under serial No.3 of the Table under section 43 of the Act.

07. The respondent challenged the OIO by way of filing of appeal before the Commissioner (Appeals) who allowed the appeal and setaside the OIO treating the same as time barred. Hence, the instant appeal by the department.

08. Mr. Shoaib Iqbal the learned AC submitted that the Commissioner (Appeals) had erroneously held that the OIO as time barred. He submitted that SCN was issued on 14.09.2018 and the OIO was passed on 20.11.2019. In his statement filed on 08.09.2020 he submitted that out of total 432 days consumed in finalizing the adjudication proceedings (OIO) the respondent obtained adjournments of 252 days and the (OIO) was passed on 180th day within statutory time. He further submitted that the Commissioner (Appeals) was not justified in setting aside the OIO on the basis of procedural lapse of not recording reasons in writing without considering the fact that the provisions of section 23 (3) of the Act were machinery provisions which should be construed liberally. He further submitted that law favors adjudication on merits and the technicalities in dispensation of justice should be avoided.

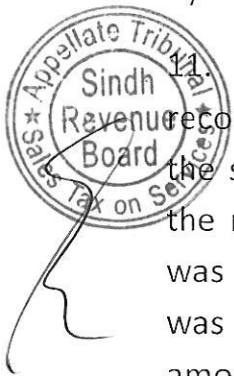
09. Mr. Muhammad Zahoor the learned representative of the respondent in his calculation filed on 19.01.2021 submitted that out of 432 days consumed in finalizing the OIO the adjournments sought by the respondent were 177 days and the OIO was passed on 255th day and as such the OIO was time barred and the Commissioner (Appeals) has rightly setaside it .



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10. Mr. Zahoor further submitted that hearing in this case was fixed on 22.08.2019, after 161 days since last date of hearing was fixed at 14.03.2019. No adjournment was requested by respondent on 22.08.2019 and the AC himself adjourned the case for 29.08.2019. This adjournment of seven days was erroneously attributed towards the respondent. He further submitted that the next notice was received for hearing on 17.09.2019, and on this date the AC required some more record and adjourned the case without giving further date. The AC in his statement has wrongly shown such 17 days adjournment on account of appellant. He further submitted that if the above 7 days and 17 days (totaling 24) days are excluded from the adjournments sought by the respondent and added to the time taken by the AC it will confirm that the OIO was passed on 204th day. He further referred to last date of hearing i.e. 08.11.2019 and submitted that despite providing all documents and information to the department the AC instead of passing of the order adjourned the case to 13.11.2019 and such time was also wrongly attributed towards the adjournment taken by the respondent.



Mr. Shoaib Iqbal, AC in rebuttal submitted that on 22.08.2019 record was called from the respondent who sought time and as such the same was rightly shown in the column of adjournments taken by the respondent. He further submitted that on 08.11.2019 the record was submitted but some more record was required and the matter was adjourned to 13.11.2019. He further submitted that the huge amount of Rs.13,183,811/= of public exchequer was involved in the appeal which may be considered favorably on merits.

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

13. The dispute is whether the OIO was passed within the time limit prescribed under sub-section (3) of section 23 of the Act or it was passed beyond the statutory time limit.

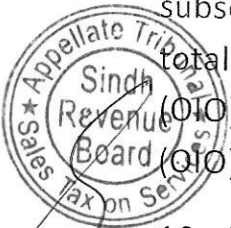
14. We have noted that the Commissioner (Appeals) in the OIA had held that "OIO was passed after lapse of 432 days. Even if

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adjournments availed by the respondent during the adjudication proceedings (totaling up to 204 days) were subtracted, number of days consumed come out to be 228 days, that is, 48 days over and above, the statutory time limit of 180 days, as prescribed under section 23(3) of the Act, 2011". The then AC had accepted before Commissioner (Appeals) that OIO was passed after issuance of verbal order of extension of time.

15. This appeal was in respect of tax periods from July-2016 to June-2017 and at the relevant time the time for passing of OIO provided under sub-section (3) of section 23 of the Act was 120 days and not 180 days. Sub-section (3) of section 23 was amended vide Sindh Finance Act-2017 effective from 14.07.2017 and time for passing of OIO was enlarged from 120 days to 180 days. The amendment has no retrospective effect. In the Report dated 08.09.2020 the AC stated that total days consumed in finalizing the OIO were 432 days out of which the respondent obtained adjournments of 252 days and after excluding the adjournments the order was passed on the 180th day. In subsequent Report of AC dated 17.02.2021 it was stated that out of total 432 days consumed in finalizing the adjudication proceedings (OIO) the respondent obtained adjournments of 253 days and the (OIO) was passed on 179th day i.e. within statutory time.

16. We have perused the Note Sheet dated 22.08.2019 and found that on that date no adjournment or extension of time was requested by respondent and the AC himself adjourned the case for 29.08.2019 and seven days were wrongly attributed toward the time taken by the respondent. If these seven days are added in 179 days (as per AC version) the time consumed by the AC comes to 186 days beyond the statutory period of 180 days. Thus even if the contention of the AC is taken to be correct the OIO is time barred. Furthermore, there was no order of extension of sixty days available on record. The time can be extended for sixty days for reasons to be recorded in writing. The oral or verbal order has no legal sanctity in judicial or quasi-judicial proceedings and time cannot be extended by oral or verbal order. In



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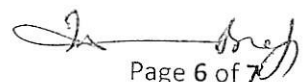
the reported case of Ahmed Nawaz versus State, PLD 98 Karachi 180 it was held as under:-

It is well-settled law that oral orders and oral enquiries are alien to the process of the law and the Courts as all orders enquiries of the judicial or quasi-judicial nature must be in writing. This is the law laid down by this Court in the case of Majidullah and 2 F others v. National Industrial Relations Commission, Karachi PLD 1976 Kar. 207. Since verbal orders, enquiry and telephone conversation have no sanctity in law I would, therefore hold that the learned respondent No.2 has exceeded lawful limits and has misused this power/authority if not abused the same, although the line of demarcation between misuse and abuse is very thin, and has definitely harassed the petitioner in an unlawful manner, which is beyond the call of his duty.

17. From the record made available before us it is evident that the matter was taken very casually. The SCN was issued on 14.09.2018 and first date of hearing was fixed on 25.09.2018 but the first Note Sheet was recorded on 29.11.2018. We have also noticed that for various dates of hearing the Note Sheets were not available. On 14.03 2019 the case was fixed but no Note Sheet was available and the case was re-fixed on 22.08.2018 after 161 days. No justification for such a long date was available on record in a time bound proceeding.

18. We have carefully considered the reasoning recorded by the learned Commissioner (Appeals) in para 14 of the OIA and our finding at para 16 and 17 supra and it is concluded that the OIO was time barred.

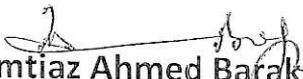
19. We deem it necessary to once again point out that the Commissioners-SRB are not following the instructions of the Board contained in Circular No. 01/2019 dated 3.06.2019. These officers without going into merits of the case and without applying their mind mechanically grant approval for filing of appeals and thus cause loss to public exchequer by their conduct. In this appeal the Commissioner (Appeals) while treating the OIO as time barred had allowed the department to issue fresh SCN and pass an appropriate order. It is strange that the concerned Commissioner-SRB instead of availing the illegal concession of issuance of fresh SCN preferred to file this appeal




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which had no merits. The respondent was satisfied with the OIA and had not filed any appeal. We hope that the Board will consider the matter and will intimate the outcome to us.

20. In view of the above discussions the appeal is dismissed and the OIA is maintained. The copy of this order may be provided to the learned representative of the parties. The copy of this order may also be sent to the learned Chairman-SRB for his perusal and appropriate action.


(Imtiaz Ahmed Barakzai)
TECHNICAL MEMBER


(Justice® Nadeem Azhar Siddiqi)
CHAIRMAN

Karachi:
Dated: 08.03.2021

Certified to be True Copy


REGISTRAR
APPELLATE TRIBUNAL
SINDH REVENUE BOARD

Copy Supplied for compliance:

- 1) The Appellant through Authorized Representative.
 - 2) The Assistant Commissioner (Unit-19), SRB, for compliance
- Copy for information to:-

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

Order issued on 19/03/2021

Order Dispatched on 19/3/2021


Registrar


Registrar