

General Note.

BEFORE THE APPELLATE TRIBUNAL, SINDH REVENUE BOARD AT KARACHI

DOUBLE BENCH
APPEAL NO. AT-29/2020

M/s Mott MacDonald Limited
(SNTN-S2905728-7), 4th Floor,
Din Pavilion, 94-W, Jinnah Avenue,
Blue Area, Islamabad.Appellant

Versus

Assistant Commissioner (Unit-01),
Sindh Revenue Board,
09th Floor, Shaheen Complex Building,
M.R. Kiyani Road, Karachi.....Respondent

Date of filing of Appeal 21.08.2020
Date of hearing 26.10.2021
Date of Order 26.01.2022

Ms. Sadia Nazeer, FCA along with Mr. Rizwanullah, Company Secretary and
Mr. Yousuf Ansari, Manager Finance for appellant.

Mr. Liaqat Bajeer AC, (Unit-28) along with Ms. Uzma Ghory, AC-DR, 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. 50/2020
dated 18.06.2020 passed by the Commissioner (Appeals) in Appeal No. 86/2019
filed by the appellant against the Order-in-Original (hereinafter referred to as the
OIO) No. 269/2019 dated 08.04.2019 passed by Ms. Ambreen Fatima, Assistant
Commissioner, (Unit-28) SRB Karachi.

02. The brief facts of the case as stated in the OIO were that the appellant was
registered with Sindh Revenue Board (SRB) under the service category of

MAS

[Signature]

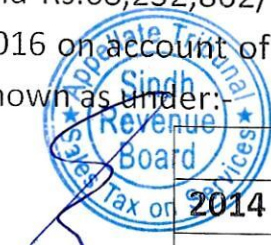
“Technical, scientific and engineering consultants” classified under Tariff Heading (TH) 9815.5000 of the second Schedule to the Sindh Sales Tax on Services Act, 2011 (hereinafter referred to as the Act) which was chargeable to Sindh Sales Tax (SST) under section 8 read with sub-section (96A) of section 2 and 3 of the Act with effect from 01.07.2014.

03. It was further stated in the OIO that the appellant being a registered person was required to pay the due amount of SST on the value of taxable services provided or rendered by it from a place of business located in Sindh and to file true and correct Sales Tax Returns (SST Returns) within 3 days from the due date of payment of sales tax.

04. It was alleged in the OIO that the appellant online profile, as available at i.srb.gos.pk revealed that it had not deposited the due SST amount for the tax periods with effect from July, 2014 to December, 2016. Furthermore, the appellant had submitted “Null” SST Returns for the tax periods July-2014 to June-2015, August, 2015 to May, 2016, July, 2016 to August, 2016, November, 2016 to May, 2017, July, 2017 to February, 2018 and had not submitted sales tax returns for the tax period July, 2015.

05. The appellant on 30.03.2018 submitted details of its revenue of Rs.134,921,883/- earned for the tax period from January-2014 to December-2014, Rs.55,629,747/- earned for the tax period from January-2015 to December-2015 and Rs.68,232,862/- earned for the tax period from January-2016 to December-2016 on account of services provided to a Sindh based project. Such details were shown as under:-

Details of Annual Turnover	
2014 (Jan-2014 to Dec-2014)	
WSIP	122,560,033
Guddu	12,361,850
2015 (Jan-2015 to Dec-2015)	
WSIP	47,251,734
Guddu	8,378,013
2016 (Jan-2016 to Dec-2016)	
WSIP	42,437,546
Guddu	25,795,316



Handwritten signature/initials

Handwritten signature

06. The appellant submitted copy of agreements signed with Sindh Irrigation & Drainage Authority, Left Bank Barrage Colony, Hyderabad, Sindh, and contended that the services provided or rendered by it under aforesaid contracts, were covered under Notification No.SRB-34/16/2016 dated August 29, 2016 (hereinafter referred to as the Exemption Notification). It was submitted that the services directly received or procured by Department of the Government of Sindh, were funded out of Annual Development Fund (ADP), allocated by Government of Sindh and was exempted subject to the condition and limitation as mentioned in aforesaid Exemption Notification.

07. The appellant was served with a Show-Cause Notice (SCN) dated 26.04.2018 under section 23 of the Act to explain as to why SST on the revenue earned amounting to Rs.258,784,492/- (Rs. 122,560,033 + 47,251,734 + 8,378,013 + 42,437,546 + 25,795,316) may not be assessed and recovered from it under section 23 read with section 47(1A) (a) of the Act alongwith default surcharge under section 44 of the Act. The appellant was also told to explain as to why penalty as provided under serial No.3, 6 and 15 of the Table under section 43 of the Act should not be imposed for violation of sections 8, 9, 17 and 52 of the Act read with rules made thereunder.

08. In response to the SCN the representative of the appellant appeared for hearing on 21.05.2018, and submitted Certificate issued by Sindh Irrigation & Drainage Authority (SIDA) along with Withholding Certificates issued by Sindh Barrages Improvement Project (SBIP) Irrigation Department, Government of Sindh. The representative of the appellant again appeared for hearing on 30.05.2018 and it was explained to them that the value of contract was inclusive of taxes, and the appellant had not issued sales tax invoices nor had declared the same in its monthly SST Returns with SRB, thus the exemption was not available to the appellant. However during hearing on 11.06.2018 the representative of the appellant submitted that the appellant has approached SIDA for the payment of taxes under clause 5.2 of the main agreement and that the appellant may avail the amnesty by 20.06.2018.

09. The appellant submitted its Written Reply to SCN on 20.04.2018. The contention of the appellant was that the appellant had undertaken two projects in Sindh viz., SBIP (Guddu Assignment B, funded by World Bank and contracted

with the Project Management Office, Irrigation Department Government of Sindh and Sindh Water Sector Improvement Project (WSIP) funded by World Bank and contracted with the Sindh Irrigation and Drainage Authority (SIDA) Department Government of Sindh.

10. The representative of the appellant submitted that the exemption certificates submitted by the respondent were not viable as these were not signed by the Secretary of the respective department nor the number of invoice against which the exemption was claimed was evident. Furthermore it was not clarified in the Certificate that the project was totally funded by ADP (Annual Development Programme). It was further submitted by the appellant that the copies of exemption certificates produced on 05.11.2018 were examined by the Assessing Officer (AO) and there were found to be deficient. It was finally concluded by AO that the appellant was not entitled to claim the benefit of the exemption against the services provided to the Sindh Irrigation and Drainage Authority.

11. The AO passed OIO under section 23 of the Act in respect of WSIP Project and determined SST at Rs.30,516,129/= (at the prevailing rate of 15% during FY 2014 and 14% during FY 2015 and 13% during FY 2016) on the value of services amounting to Rs.212,249,313/=. The SST was recoverable under section 47 (1A) of the Act alongwith default surcharge under section 44 of the Act. The AO also passed OIO under section 23 of the Act in respect of Guddu Project and determined the SST at Rs.6,338,760/= alongwith default surcharge under section 44 of the Act. The AO also imposed penalty of Rs.1,842,729/- (being 5% of the sales tax due) under Serial No. 3 of the Table under section 43 of the Act for non-payment of SST, penalty of Rs.36,854,589/- (being 100% of the sales tax due) under Serial No. 6(c) and (d) of the Table under section 43 of the Act for committing tax fraud.

12. The appellant challenged the said OIO before Commissioner (Appeals), SRB under section 57 of the Act. The Commissioner (Appeals) in para 23 of his order held as under:-

"...23.To sum it up, since the Appellant has already provided payment proofs of all the amounts adjudged as recoverable in the impugned OIO (availing the tax amnesty package notified by SRB in 2019), it tantamount to

HO

[Signature]

conceding the allegations framed in the impugned OIO. This, coupled with the points of fact and law elaborated hereinabove, to the effect that the Appellant does not qualify for tax exemption under Notification dated 29.08.2016, I upheld the impugned OIO No.269 dated 08.04.2019. The instant Appeal fails, with one caveat, that the Department should refund, under the applicable provisions of the Act 2011 and the rules made thereunder, any amounts that they may have recovered per force but where the impugned services were rendered during the tax-periods 01/2004 to 06/2014, that is, when these services were not taxable under the Act, 2011. This appeal stands disposed in these terms."

Hence filing of this appeal by the appellant.

13. The learned representative of the appellant Ms. Sadia Nazeer, FCA submitted as under:-

- i) All contracts were signed before promulgation of the Act of 2011 and were exempted from levy of SST retrospectively vide Exemption Notification dated 29.08.2016.
- ii) The Tariff Heading 9815.5000, "Technical Scientific and Engineering Consultants" was inserted in the Schedule effective from 1st July, 2014.
- iii) The issue regarding levy of SST from January-2014 to June-2014 was decided by the Commissioner (Appeals) and against the Department, no appeal has been preferred thereon.
- iv) The SST was paid and reconciled with the department in respect of Guddu Assignment-B and the Commissioner (Appeals) ordered for refund as the tax was also deposited under Amnesty of 2019.
- v) Three Certificates were signed by M.D Sindh Irrigation & Drainage Authority (SIDA) under delegation of power from the Secretary, Government of Sindh and the same were available on record at page 22 to 24 of OIO.
- vi) The Certificates were rejected with malafide intentions by the AO just to create SST demand against the appellant.
- vii) The appellant being a service provider was not personally responsible to pay SST from its own pocket since its responsibility was merely to charge, collect and deposit the SST.





viii) The SST is an indirect tax ultimately borne by the end user i.e. the Government of Sindh and to avoid such payment the Exemption Notification were issued.

ix) The AO had failed to consider the purpose behind the issuance of Exemption Notification and erroneously rejected the Exemption Certificates resulting in creation of SST demand with ulterior motives.

x) It was however pointed out that the Secretary, Government of Sindh signed and issued a consolidated certificate (covering all three previous certificates signed by M.D.) at the Appellate Tribunal stage.

xi) The entire tax liability was deposited under Amnesty-2019 to avoid further penalties and default surcharge.

14. The learned Assistant Commissioner, SRB submitted as under:-

i) The exemption under the Notification dated 29.08.2016 was only available to the projects funded out of Annual Development Program, Government of Sindh and not to the projects jointly funded by World Bank, Federal Government and Government of Sindh.

ii) The Exemption Notification is required to be construed strictly, in favor of department and against the tax payer.

iii) The first certificate dated 30.07.2020 was not acceptable as the same did not conform to the format provided in the Exemption Notification and was rightly rejected.

iv) The Certificate signed by Secretary, Irrigation Department, Government of Sindh was not on format provided in the Exemption Notification. Moreover the Certificate does not indicate anywhere that the projects were covered under the Exemption Notification. Nor any reference to ADP as prescribed in the Exemption Notification was given.

v) In para 2 of the certificate reference was made to ADP of Sindh and PSDP of Federal Government. Whereas under the Exemption Notification dated 29.08.2016 exemption was only available to the projects under ADP.

vi) The Certificate showed the value of exempt service at Rs.38,825,067/= whereas tabulated details depicts the quantum of exempt services at Rs.103,485,393/=.

vii) The AC in respect of clarification dated 31.01.2021 submitted that the certificate was signed by the Secretary, whereas the clarification was





sought from Section Officer, Irrigation Department. However the clarification was not acceptable since it was replied by G.M. SIDA.

15. In rebuttal the learned representative of the appellant submitted that in tax matters the substance of the matter should be considered instead of form. The final Exemption Certificate was signed by concerned Secretary the same should be considered. The OIO was passed in the sum of Rs.36,854,589/- and the Commissioner (Appeals) deleted Rs.24,442,747/-leaving the balance SST of Rs. 12,411,842/- which was duly deposited.

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

17. The appellant was registered with SRB on 31.08.2015 under Tariff Heading 9815.5000, Services provided by Technical Scientific and Engineering Consultants. These services were made taxable vide Sindh Finance Act, 2014 effective from 07.07.2014. The tax periods involved were from July-2014 to December-2016, however from the Chart appearing on page 2 of the OIO it appears that the turnover was taken from January-2014 and the tax periods from January-2014 to July-2014 was before the taxability and the tax periods from July-2014 to July-2015 were prior to registration of the appellant.

18. The appellant had undertaken two projects during July-2014 to December-2016 namely; Sindh Barrages Improvements Project (WSIP) and Guddu Assignment B. As per the AC both the projects were funded by the World Bank and contracted by M/s Mott Macdonald Limited with Sindh Irrigation and Drainage Authority and Irrigation Department, Government of Sindh.

19. The appellant had claimed exemption under Exemption Certificate dated 29.08.2016. The appellant submitted Certificate dated 12.06.2018 and two certificates dated 02.11.2018 in the sum of Rs.38,825,067/= and Rs.59,657,585/= respectively. The appellant also submitted certificate dated 03.11.2018 in the sum of Rs.5,002,742/= before the AO. The said certificates were rejected for the reason that the said certificates were signed by the Managing Director, SIDA instead of concerned Secretary. The Certificates were also not accepted for the reason that the appellant had not issued tax invoices to SIDA in accordance with Rule 29 (1) of the Sindh Sales Tax on Services Rules, 2011 (hereinafter referred to

as the Rules) and the appellant did not declare the details of exempt services in its sales tax returns during the tax periods from July-2014 to December-2016. Similarly the SIDA neither filed prescribed monthly sales tax returns nor declared all the exempt services received by them in Annexure "A".

20. The appellant during pendency of appeal before Commissioner (Appeals) produced another Certificate dated 27.08.2019 for Rs.24,738,607/= signed by Managing Director, SIDA. AO declined to allow exemption on the ground that the certificate was not signed by concerned Secretary.

21. The learned representative of the appellant during pendency of instant appeal placed on record the Exemption Certificate dated 25.01.2021 for the amount of GBP 164,924/= equivalent to Rs.24,738,607/-, copy was supplied to the AC for his response. The appellant produced another Certificate received by it under cover of letter dated 30.07.2020 signed by the Section Officer for Secretary to Government of Sindh. This Certificate was signed by Secretary, Irrigation Department Government of Sindh showing the value in GBP 244,188/= equivalent to Rs.38,825,067/=. In the same certificate another amount of GBP 679,585.89 equivalent to Rs.103,485,393/- was also mentioned with reference to Invoices number and date.

22. The case of the appellant revolved on the Exemption Notification Dated 29.08.2016. The said Exemption Notification exempted the SST levied on the services specified in the Table in the Notification as are directly received or procured by Department of Government of Sindh, which are funded out of Annual Development Program (ADP) allocated by the Government of Sindh. The conditions of the Notification are summarized as under:-

i) The benefits under the Notification are available in relation to the services specified in the table of the Notification only if:-

- (a) The service provider was registered with SRB;
- (b) The service provider issues the tax invoice quoting the notification number and date after using the words "exempt";
- (c) The service provider e-files tax returns showing the details of exempt services.



- (d) The service provider will comply with the provisions of Section 15-A and Annexure "A" of return shall be filled showing of withholding of SST whenever applicable; and
- (e) Department of Government of Sindh shall e-file the prescribed monthly return entering, in Annexure "A" all the services, whether exempt or otherwise procured by them whether from registered or non-registered person and the amount of the tax withheld.
- ii) While making payment to the service provider the Secretary of the respective department shall issue a certificate in the given form.

(2) This Notification will not entitle any person, whether a service provider or a service recipient, to refund or adjustment or tax deduction or tax credit or carry forward of the SST already paid or recovered by the Board or the Government.

(3) This notification shall take effect immediately and it shall also apply in relation to such of the services (specified in the Table) as were directly provided or rendered on or after the first day of July, 2011 subject to the fulfillment of the conditions prescribed in the notification by the service provider and the service recipient and that payment of the SST on such services by the Administrative Department from the relevant ADP fund is still outstanding and provided further that retrospective application shall be applicable only when no provision on account of SST payment was made in the relevant PCV-1/ADP grant.

23. The Notification dated 29.08.2016 invoked by the appellant as reproduced supra had certain conditions and limitations attached to it. The law is very clear on the point of claiming exemption. The burden is upon the appellant to prove that the exemption was available to it under the said Notification and its case strictly fell within ambit of said Notification and had complied with the conditions of the said notification. The provisions relating to grant of tax exemption are to be construed strictly against the person claiming exemption and in favour of taxing authority. The exemption is not a right but discretion vested in the authorities to be granted on sound consideration. The appellant could claim exemption under the said Notification on fulfillment of the conditions and limitations mentioned

WOS

[Signature]

therein and not otherwise. In the reported case of Army Sugar Mills versus Federation of Pakistan, 1992 SCMR page 1652 it was held as under:-

"42.However, it is true that the grant of exemption from payment of excise duty under section 12-A of the Act is a discretionary matter for the Government and that there are two basic principles of construing a provision of a statute involving exemption from payment of a tax, namely, the first rule is that the burden of proof is on the person who claims exemption. The second rule is that a provision relating to grant of tax exemption is to be construed strictly against the person asserting and in favour of taxing officer".

24. In another reported judgment of Oxford University press Versus Commissioner of Income Tax, 2019 PTD 523 it was held as under:-

"9. The principles relating to the proper interpretation and application of exemption clauses in fiscal legislation are well established and require only a brief recapitulation. As correctly submitted by learned counsel for the appellant, as presently relevant these are as follows. Firstly, the onus lies on the taxpayer to show that his case comes within the exemption. Secondly, if two reasonable interpretations are possible the one against the taxpayer will be adopted. But, thirdly, if the taxpayer's case comes fairly within the scope of the exemption then he cannot be denied the benefit of the same on the basis of any supposed intention to the contrary of the legislature or authority granting it. In the same judgment it was further held that "It is trite law and now needs no authority that a taxing statute must be read as it stands: no words may be added, no words subtracted".

25. The case of the appellant was examined on the touch stone of the above judgments and it appeared that exemption was rightly refused and certificates were also rightly not accepted for the reason that the appellant had not issued tax invoices to SIDA in accordance with rule 29 (1) of the Rules and the appellant did not declare the details of exempt services in its sales tax returns during the tax periods from July-2014 to December-2016. Similarly the SIDA neither filed prescribed monthly sales tax returns nor declared all the exempt services received by them in Annexure "A".

26. That the exemption was available for the services which were directly received or procured by the Department of Government of Sindh, which are funded out of Annual Development Program (ADP) allocated by the Government

M O

[Signature]

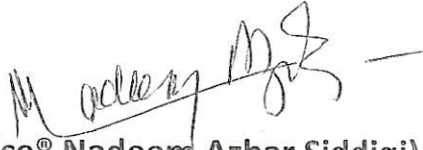
of Sindh. The Certificate signed by Mr. Rafique Ahmed Buriro the Secretary, Irrigation Department Government of Sindh showed that the project was funded under ADP of Sindh and PSDP of Federal Government. In another Certificate dated 25.01.2021 signed by Mr. Muhammad Saleem Raza, Secretary, Irrigation Department, there was no mention of PSDP of Federal Government. This fact has created a reasonable doubt regarding funding of the project. It is clear from the language of the Notification that the exemption was available to services directly received or procured by the Departments of Government of Sindh funded out of ADP.

27. While interpreting the taxing provisions the plain language is to be looked into and the words are to be interpreted as they stand and not to be substituted or changed, as there is no room for any intendment in the language used in the provision/instrument. In the case of clear language the strict literal approach is to be adopted and reading or imputing something in the provisions of law should be avoided.

28. In view of the above discussions we do not find any merit in this appeal and the same is dismissed.

29. 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

Certified to be True Copy


REGISTRAR
APPELLATE TRIBUNAL
SINDH REVENUE BOARD

Karachi:

Dated: 26.01.2022

Copy Supplied for compliance:

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

Copy for information to:-

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

Order Issued on

28/01/2022

Order Dispatched on

28/01/2022
Registrar
Registrar