

BEFORE THE APPELLATE TRIBUNAL, SINDH REVENUE BOARD AT KARACHI

DOUBLE BENCH-I

APPEAL NO. AT-31/2020

M/s Ansarie's Engineering & Contractors,
(NTN: 4215573-8),
D-66 Block-D, Unit# 6 Latifabad,
Hyderabad.appellant

Versus

Assistant Commissioner,
Sindh Revenue Board,
Bungalow No. 14-A/1, Defence Housing Society,
Phase-I, Cantt. Hyderabad.....Respondent

Date of filing of Appeal 04.09.2020

Date of hearing 16.09.2021

Date of Order 02.11.2021

Mr. Nadeem Qureshi, advocate along with Mr. Armughan Mehmood for appellant

Mr. Nadeem Qureshi, AC-SRB and Mr. Nasir Bachani, AC-DR, SRB Hyderabad 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. 63/2020 dated 15.07.2020 passed by the Commissioner (Appeals) in Appeal No. 122/2020 filed by the Appellant against the Order-in-Original (hereinafter referred to as the OIO) No. 831/2019 dated 23.12.2019 passed by the Mr. Nasir Bachani, Assistant Commissioner, SRB Hyderabad.

02. The facts as stated in the OIO were that the appellant was registered with Sindh Revenue Board (SRB) holding SNTN: S4215573-8 in the service category of "Construction Service Tariff Heading 9824.0000" of the Second Schedule to the

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Sindh Sales Tax on Service Act, 2011 (hereinafter referred to as the Act), which was subject to levy of Sindh Sales Tax (SST).

03. It was further stated in the OIO that the appellant was required to charge and collect SST on all of its taxable service in terms of section 8 and 9 of the Act and e-deposit the amount of SST with SRB. The appellant was also required to e-file their monthly sales tax return (SST-03) in the manner prescribed under section 30 of the Act read with the rules in chapter-III of the Sindh Sales Tax on service Rules, 2011 (hereinafter referred to as the Rules).

04. It was alleged in the OIA that on examination of work orders NO.PD/GSC/HESCO/HYD/8416-19 dated 15-08-2017 and No. PD/GSC/HESCO/HYD/4627-30 dated 26-8-2016, awarded to the appellant by M/S Hyderabad Electric Supply Company Ltd (HESCO), it was revealed that the appellant had provided or rendered the services/works and was liable to SST at the reduced rate of 8% of the gross amount received from the service recipient. The details of services provided were as under:-

S.N O.	Description of work	Work order	Value of service	SST	SST payable
1	Construction of tower foundation of ZM types towers for rehabilitation work at 132KV Jhampir-Thatta Line (between location No. 136 to 200) Tender No. GSC-28/2017	PD/GSC/HESCQ/HYD/8416-19 Dated 15-08-2017	12,990,400	1,039,232	1,039,232
2	Construction of tower foundation of ZM-60 type tower at 15° angle of repose for in and out at 132KV Grid Station Khair Muhammad Bhurgari at Kot Ghulam Muhammad	PD/GSC/HESCO/HYD/4627-30 Dated 26-08-2016	1,075,000	86,000	86,000
	Total		14,065,400	1,125,232	1,125,232

05. The appellant was served with a Show-Cause Notice (SCN) dated 23.09.2019 to explain as to why due SST amount of Rs.1,125,232/= should not be assessed and recovered alongwith default surcharge under section 44 of the Act. The appellant was also called upon to explain as to why the penalties under Serial No. 3 & 6(d) of Table under section 43 of the Act should not be imposed.

06. The appellant filed a written reply dated 01-10-2019, submitting that the works awarded by HESCO to their firm as mentioned in the SCN did not mention provision of Sindh Sales Tax.



07. The Assessing Officer (AO) determined the SST and directed the appellant to deposit the SST amount of Rs.1,125,232/- with default surcharge (to be calculated at the time of payment) under section 44 of the Act, 2011. The AO also imposed penalty of Rs.56,262/- (being 5% of the total tax payable) under serial 3(a) of the Table under section 43 of the Act.

08. The appellant challenged the said OIO dated 22.06.2020 before Commissioner (Appeals) by way of filing appeal under section 57 of the Act on 22.06.2020. The Commissioner (Appeals) as per the OIA served Objection Memo dated 02.07.2020 upon Mr. A. I. Jafri & Company intimating that the appeal was time barred by 156 days and required the appellant to explain the delay and to pay the amount on account of condonation of delay. The appeal was thus dismissed as time barred. Hence the appeal before this Tribunal.

09. The learned advocate for the appellant submitted as under:-

- i. The appeal was decided without serving notice of hearing and providing right of hearing to the appellant or his authorized representative.



The copy of Objection Memo dated 02.07.2020 mentioned in para-9 of the OIA was neither served upon the authorized representative of the appellant nor upon the appellant.

The Commissioner (Appeals) erroneously passed the OIA without considering the merits of the appeal.

- iv. The appellant after receiving the certified copy of OIO on 28.05.2020 filed appeal before Commissioner (Appeals) with in time allowed by law since the original copy of OIO was not properly served upon the appellant.
- v. That the amount of SST was not included in the cost of the work and the appellant despite charging the SST in its invoices had not received such amount from HESCO which was service recipient.
- vi. The tax levied and default surcharge and penalty imposed were harsh and against law, thus the appellant was not bound to pay the same.

10. The learned AC-SRB submitted as under:-

- i. The appeal filed by the appellant was dismissed by Commissioner (Appeals) after providing proper right of hearing to the representative of the appellant.
- ii. The Objection Memo dated 02.07.2020 was properly served upon the appellant through Courier under consignment No. 31411335267 dated 02.07.2020 which was received by Mr. Kabir on 03.12.2019. The appellant was required to explain the delay by 09.07.2020 and to justify the reasons for the delay in filing appeal and pay the amount failing which the appeal would be dismissed as being non-maintainable. Copy of such objection Memo was also endorsed to the learned advocate for the appellant.
- iii. The appellant despite receiving the Objection Memo neither filed reply nor deposited the amount for condonation of delay.
- iv. The copy OIO was served upon the appellant at its office address through Courier under consignment No. 2160118717 dated 23.12.2019 which was received by Mr. Jabbar on 24.12.2019.
- v. The appellant in the memo of appeal filed before the Commissioner (Appeals) has failed to explain the delay in filing of the appeal. However in its letter dated 15.07.2020 it had submitted that the copy of OIO was not served upon the appellant and it had subsequently received the certified copy of OIO from AC, Hyderabad on 28.05.2020.
- vi. The appellant being a service provider was responsible to charge, collect and deposit the due SST on taxable services with SRB under the law.
- vii. The amount mentioned in the work order was inclusive of all taxes as stated in para 2 & 5 of the terms and conditions of work order.

11. The learned advocate for the appellant in rebuttal submitted that the Objection Memo dated 02.07.2020 was not an alternate of hearing before passing of the OIA and no opportunity was given to the appellant to explain the delay in filing of the appeal if any. Moreover he stated that the appellant was not liable to pay/deposit tax from its own pocket unless the same was received from the service recipient.



12. The Reports were called from Commissioner (Appeals) during the pendency of the appeal. It was submitted in such reports dated 16.09.2020 and 26.02.2021 that the Courier had confirmed vide its Tracking Report that the letter dated 02.07.2020 was delivered to the appellant and his advocate. It was further stated in the Reports that the appellant was given an opportunity to apply for the condonation of delay in filing of the appeal together with the mitigating circumstance in the matter, if any, as per law and procedure vide Objection Memo dated 02.07.2020. However the appellant never applied for condonation of delay and in fact disregarded the letter dated 02.07.2020 therefore the appeal was disposed of accordingly vide OIA.

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

14. The core dispute between the parties was service of OIO and Objection Memo dated 02.07.2020. After hearing of the parties, the following points require consideration and resolution.

- i) Whether the copy of OIO was properly served upon the appellant at its office address and whether appeal filed by the appellant before Commissioner (Appeals) was time barred?
- ii) Whether the Objection Memo issued by Commissioner (Appeals) dated 02.07.2020 was served upon the appellant and its advocate and the appeal was dismissed without hearing the advocate of the appellant?
- iii) Whether the appellant being registered service provider was not liable to pay SST?

15. The Point No. i) "Whether the copy of OIO was properly served upon the appellant and whether the appeal filed by the appellant before the Commissioner (Appeals) was time barred?". The discussions on this point are as under:-

- i. The AC submitted that the copy of OIO was served upon the appellant on its available office address i.e. D-66, Block-D, Unit No.06, Latifabad, Hyderabad through Courier under consignment No. 2160118717 dated 23.12.2019 which was received by Mr. Jabbar on 24.12.2019. The same address was mentioned on the letter head of the appellant as well as on the Work Order. The appellant has failed



to rebut that the OIO was delivered on its office address and it has also not denied that the address mentioned in the OIO was not of appellant and the person who had received the copy of OIO (Mr. Jabbar) had no concern with the appellant. The appellant has not filed the affidavit of some responsible person of its organization to rebut the said allegations. In absence of the rebuttal and denial of the above facts the mere contention of the appellant vide its letter dated 15.07.2020 that the OIO was not served upon the appellant could not be accepted.

ii. The source of knowledge and date of knowledge play very important role in deciding the bonafide of the appellant. The appellant neither explained the source of knowledge nor the date of knowledge of OIO in the memo of appeal or in the letter dated 15.07.2020. The reason due to which the appellant had obtained the certified copy of OIO on 28.05.2020 was not available on record. It is thus apparent that it was a deliberate attempt on the part of the appellant to suppress the source and date of knowledge of OIO. In absence of any explanation it is clear that appeal was not filed within time allowed by law. However the appellant after receipt of copy of OIO and to avoid the consequence of delay in filing of appeal obtained another copy of OIO from the AC on 28.05.2020 for filing such appeal. The suppression of source and date of knowledge by the appellant has created doubt about the bonafide of the appellant.

iii. The OIO was passed on 23.12.2019, copy of OIO was delivered to appellant on its address on 24.12.2019 and the appeal was filed before the Commissioner (Appeals) on 22.06.2020. It was the duty of the appellant to explain the inordinate delay in filing of the appeal which is lacking. Moreover the memo of appeal was also silent in this regard.

iv. In view of the above discussions we hold that the copy of OIO was properly served upon the appellant on its address on 24.12.2019 and the appeal filed by the appellant on 22.06.2020 was time barred.

16. The Point No. ii) "Whether the Objection Memo issued by Commissioner (Appeals) dated 02.07.2020 was served upon the appellant and its advocate and

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whether the appeal was dismissed without hearing the advocate for the appellant?" The discussions on this points are as under:-

- i. The AC has contended that the Objection Memo dated 02.07.2020 was served upon the appellant through Courier under consignment No. 31411335267 dated 02.07.2020 which was received by Mr. Kabir on 03.12.2019 and the copy of the same was also endorsed to the learned advocate for the appellant. This fact was neither denied by the appellant nor its advocate. The said letter required the appellant to justify the reasons for delay in filing of appeal and pay the amount for condonation of delay in filing of appeal imposed by the Board under section 6 of the Sindh Revenue Board Act, 2010 vide Notification No.SRB-3-4/5/2013 dated 17.06.2013 failing which the appeal would be dismissed as being non-maintainable. No response to the said Objection Memo was submitted by the appellant and its advocate.
- ii. The Commissioner (Appeals) in absence of any explanation with regard to delayed filing of appeal in the Memo of Appeal had rightly issued Objection Memo and the appellant had negligently not responding to the said Objection Memo. The Commissioner (Appeals) derives power under section 3 read with section 29 of the Limitation Act, 1908 to look into the matter of limitation and the same should not leave it to the parties.
- iii. The Commissioner (Appeals) had dismissed the appeal not only on the ground of limitation but also after considering its merits. The findings of Commissioner (Appeals) is reproduced as under:-

"10.....the grounds of appeal advanced by the appellant have been looked into nonetheless. These grounds carry no material or substantial arguments for consideration for this forum except for routine/clichéd submissions that bear no force of law.Appellant's viewpoint, inter alia, is that his impugned agreement with HESCO did not have any provision for levy, collection and payment of SSTs on the services rendered by the appellant as no tax was therefore, paid by HESCO to him, nor was any amount of tax withheld by them on this account".

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- iv. It is evident from the two Reports of the Commissioner (Appeals) that no hearing notice was issued to the appellant and the AC after the Objection Memo dated 02.07.2020. The contention of the appellant that the Objection Memo could not be a substitute or alternate of hearing notice is found to be correct. The right of hearing is the statutory right and the Commissioner (Appeals) had to issue hearing notice to the appellant and the AC under sub-section (1) of section 58 of the Act. However since the appellant has no case on merits thus non-issuance of hearing notice after serving of objection memo has no significance. Moreover the conduct of the appellant is very relevant in the instant case. The appellant has remained negligent and its plea is not only false but after thought. The appeal filed by the appellant was time barred and the Objection Memo dated 02.07.2020 were duly served upon the appellant and its advocate but the same were not responded.

17. The point No. iii) "Whether the appellant being registered service provider was liable to pay SST?" The discussions on this point are as under:-

- i. It was not disputed by the appellant that it was a registered service provider and provided construction services under Tariff Heading 982430000 to HESCO. Sub-section (1) of section 9 of the Act fixed the liability to pay SST on the registered person providing the services, which in this case is the appellant. The appellant could not escape from its liability by stating that it had not received the SST from the service recipient.
- ii. The HESCO being the service recipient and withholding agent was required under sub-rule (3) of rule 3 of the Sindh Sales Tax Special Procedure (Withholding Rules), 2014 (hereinafter referred to as the Withholding Rules) to deduct an amount of one-fifth (20%) of the invoice amount and to pass on the remaining 80% to the service provider for depositing the same with SRB.
- iii. The appellant submitted that it had charged the SST on its invoices. The HESCO had denied to have received the SST charged invoices from the appellant. In case the appellant had not charged the SST on the invoices than proviso to sub-rule (3) of rule 3 of the Withholding

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Rules was applicable. This sub-rule provided that where the invoices issued by the registered person does not indicate the amount of sales tax, the withholding agent shall deduct and withhold the amount of sales tax, at the rate applicable to the services provided or rendered to him, from the amount invoiced or billed or charged by such registered person.

- iv. In view of above discussions it is evident that the appellant being a registered service provider was under law liable to deposit the SST with the SRB. However in case it had not charged the SST in its invoices the service recipient was required to deduct and withhold the amount of SST, at the rate applicable to the services provided or rendered to, from the amount invoiced or billed or charged by such registered person.

18. In reply to the SCN the appellant had not denied the services provided or rendered to HESCO and the value of service provided or rendered. The contention of the appellant was that the works awarded to the appellant did not mention the provision of Sindh Sales Tax. This contention is not correct. Since on perusal of Work Order dated 15.08.2017 it is revealed in Clause 7 of the same that "all federal and provincial taxes will be applied as per prevailing laws". The agreement/contract between the parties could not by pass the statutory provisions. The appellant and its service recipient were fully aware about the provisions and their statutory obligations could not escape their liability under the excuse of ignorance. The appellant by not charging the SST in its invoices had violated the provisions of the Act and the Withholding Rules and could not blame others for its own negligence. Despite non-mentioning of the payment of SST in the Work Order the fact remained that the appellant was liable to charge, collect and deposit the SST with SRB, but it had totally failed to do so.

19. We have carefully examined the findings of Commissioner (Appeals), and the grounds of appeal filed before him and found no substantial ground, except that the SST amount was not included in the work order. We have provided full opportunity to the appellant to explain its case on merits and to explain the cause of delay in filing of the appeal in which the appellant has miserably failed.

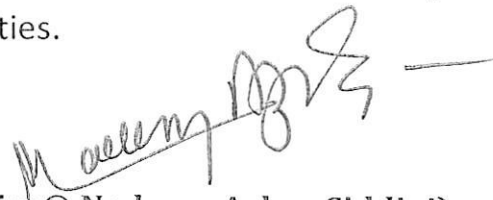


20. We have also examined the OIO but, could not find any illegality or shortcoming in the OIO which was properly passed after providing opportunity of hearing to the appellant. The appeal filed by the appellant before the Commissioner (Appeals) was time barred and despite providing full opportunity by this Tribunal the appellant has failed to show sufficient cause for delay in filing the appeal. It is our considerate view that the appellant has no case on merits and setting aside the OIA and remanding the case for fresh decision to Commissioner (Appeals) will not serve any purpose and would have no bearing on the merits of the case. If the OIA is set aside on the ground that right of hearing was not provided, it must be shown that such OIA had caused some injustice to the appellant, and no such cause has been shown in the instant case.

21. In view of the above discussions the appeal is dismissed and the OIO and OIA are maintained.

22. The appeal is disposed of accordingly. The copy of the order may be provided to the learned representative 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: 02.11.2021

Copy Supplied for compliance:

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

Copy for information to:-

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

Order issued on

04/11/2021

Order Dispatched on

04/11/2021

Registrar

Registrar