

Guard file.

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

DB-I

APPEAL NO. AT- 32/2020

M/s Zorlu Enerji Pakistan Limited,
Karachi.....Appellant

Versus

Assistant Commissioner (Unit-37), SRB,
Karachi.....Respondent

Date of Filing: 22.09.2020
Date of hearing: 23.09.2020
Date of Order 23.09.2010

Mr. Mansoor Ali Ghangro, advocate, Mr. Khalique Rehman, FCA, Mr. Qazi Zeeshan Akbar, ACA and Mr. Jehanzaib Ahmad, Assistant for appellant.

None 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. 78/2020 dated 11.09.2010 passed by the Commissioner (Appeals-I), SRB in Appeal No. 82/2020 confirming the Order in Original (hereinafter referred to as the OIO) No. 139/2019 dated 25.06.2020 passed by the Assistant



[Signature]
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Commissioner-Unit-37, (Mr. Zafar Kalwar) SRB, Karachi, under the provisions of Sindh Workers Welfare Fund Act, 2014 (WWF Act).

02. The brief facts of the case as mentioned in the OIO are that the Appellant was served with a Show-Cause Notice (SCN) dated 02.02.2018 alleging therein that the appellant being an industrial establishment was required to pay 2% of its total income declared to the Workers Welfare Fund, Sindh (WWF). The appellant filed written reply dated 21.03.2018 stating therein that the WWF Act was not applicable to it as it was not an industrial establishment.

03. The Assessing Officer (AO) passed OIO under sub-section (4) of section 5 of the WWF Act in the sum of Rs.18,319,747/= alongwith penalty of Rs.915,987/= under sub-section (5) (14) and section 16 of WWF Act read with serial No.3 of Table under section 43 of the Sindh Sales Tax on Services Act, 2011 (hereinafter referred to as the SST Act).

04. The appellant challenged the OIO by way of filing appeal before Commissioner (Appeals-I), SRB appointed under section 34 of the Sindh Sales Tax on Services Act, 2011 (hereinafter referred to as the SST Act) to hear appeals filed under section 57 of the SST Act. An application for condonation of delay dated 21.08.20209 was also filed alongwith the appeal. The Commissioner (Appeals) dismissed the appeal on the point of limitation treating the same as barred by time. The said OIA has now been challenged before this Tribunal constituted under section 60 of the SST Act.

05. At the very outset the learned advocate for the appellant was asked to satisfy the Tribunal regarding its jurisdiction to hear the appeals under WWF Act. The learned advocate very candidly submitted that the WWF Act did not contain any specific provision of filing of appeal before this Tribunal. He however, submitted that the AO while passing the OIO in para 2 had mentioned that *"An appeal against the order lies with Commissioner (Appeals) SRB as provided in section 57 of the SST Act read with section 5 (14) and 16 of WWF Act within thirty days from the date of receipt of decision or order"* and since the Commissioner (Appeals), SRB had assumed jurisdiction under section 57 of the SST Act the appeal against the order of Commissioner (Appeals) is maintainable under section 61 of the SST Act before this Tribunal.

06. It was further submitted that in the application for condonation of delay the jurisdiction of Commissioner (Appeals-I), SRB to hear appeals under WWF Act was challenged to which the AO filed reply and took the plea that section 16 of the WWF Act provides the fund payer/industrial establishment right of appeal by invoking section 57 of the SST Act. He further submitted that he was



conscious of the fact that the Commissioner (Appeals-I), SRB had no jurisdiction to hear the appeals under WWF Act for want of specific provision of appeal in the WWF Act thus the appellant had also filed Constitution Petition No. CP-D- 3460/2010 before the Honorable High Court of Sindh and a learned DB disposed of the petition in terms of order dated 16.09.2010. He therefore, took the plea that since no other remedy was available to the appellant thus this appeal was filed before the Tribunal as the concession of a period of seven days after the order of Commissioner (Appeals) allowed by the Honorable High Court is expiring today.

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

09. We have carefully perused the provisions of the WWF Act and find that no right of appeal lies before Commissioner (Appeals-I) ^{nor} or before this Tribunal as no such provision is provided in the WWF Act. The AO while passing ^{OIO} under some misconception and has erroneously mentioned that appeal could be filed before Commissioner (Appeals) under section 57 of the SST Act without considering the provisions of WWF Act. Furthermore, the AO had also misconstrued the provision of section 16 of the WWF Act which provides charge of additional charge or tax, penalty and prosecution and does not contemplate the filing of appeal. We have also examined sub-section (11) and (14) of section 5 of WWF Act. Sub-section (11) provides that the provisions of the SST Act and the Sindh Revenue Board Act, 2010 relating to the mode and time of recovery of the sales tax shall be to the recovery of the amount due under the WWF Act. Sub-section (14) of section 5 of the WWF Act provides that in the matter of collection or recovery of the charges or amount for the fund, notice of demand or the notice for filing of the statement shall be issued by the Sindh Revenue Board and for any default penal provisions as provided in Sales Tax on Services law and rules made thereunder shall also mutatis mutandis apply in such cases. From the perusal of the above provisions it is clear that none these provisions had provided for filing of appeal.

09. An appeal is a process by which a judgment/order of a subordinate court is challenged before its superior court. A party to a case does not have any inherent right to challenge the judgment/order of a Court before its superior court. A person aggrieved by any judgment/order is not entitled as of a right to file appeal. The right of appeal must be conferred by statute and cannot be invoked unless specifically provided in the relevant statute. In the reported case of Chairman, Central Board Of Revenue versus M/s Pak Saudi Fertilizer Limited, 2001 SCMR 777 it was held as under:-



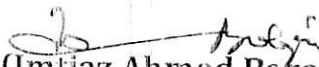
"The right of appeal is a creature of statute and there can be no right of appeal unless it is confirmed by the statute. Perusal of section 129 of the Ordinance, 1979 would show that the Legislature has purposely not mentioned section 53 of the Ordinance, 1979 in respect of payment of advance income-tax so as not to make it appealable".

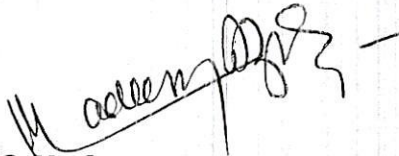
This decision squarely applies on the WWF Act. Despite applying certain provisions of the SST Act the provisions relating to filing of appeals were left or ignored by the Legislature.

10. The Commissioner (Appeals) appointed under the provisions of SST Act has thus no jurisdiction to hear appeal against the order passed under the WWF Act for want of specific provision of appeal in the WWF Act.

11. In view of the above discussions it is held that this Tribunal constituted under section 60 of the SST Act has no jurisdiction to hear appeals under WWF Act. The appeal is accordingly returned to the appellant for filing the same before the court of competent jurisdiction.

12. The copy of the order may be provided to the learned representative of the appellant. The copy of this order may also be sent to SRB Board through learned Chairman, SRB for placing the same before the Board to consider the same and to instruct the Officers of the SRB to act strictly in accordance with the WWF Act and not to confuse the parties by their misconstrued interpretation of law.


(Imtiaz Ahmed Barakzai)
TECHNICAL MEMBER


(Justice® Nadeem Azhar Siddiqi)
CHAIRMAN

Karachi:

Dated: 23.09.2010

Copy Supplied for compliance:

- 1) The Chairman, SRB, Karachi.
- 2) The Appellant through Authorized Representative.
- 3) The Assistant Commissioner, SRB, Unit-37.

Copy for information to:-

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

Certified to be True Copy


REGISTRAR
APPELLATE TRIBUNAL
SINDH REVENUE BOARD

Order issued on

24/09/2020


Registrar

Order Dispatched on

24/09/2020


Registrar