

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

**DOUBLE-BENCH-I**

**APPEAL NO. AT-38/2020**

M/s 4 ways Logistics  
Office No. 9/4, 9<sup>th</sup> Floor Arkey Square (Extension)  
Main Shahrah-e-Liaqat Karachi .....Appellant

**Versus**

Assistant Commissioner (Unit-23),  
Sindh Revenue Board,  
M. R Kiyani Road, Karachi.....Respondent

Date of filing of Appeal: 11.11.2020

Date of hearing: 15.06.2021

Date of Order: 18.06.2021

Mr. Malik Rashid Iqbal, Advocate for appellant.

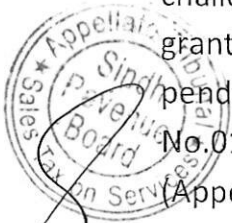
Mr. Irfan Waheed, AC along with Mr. Saddam Hussain SSTO for respondent.

**ORDER**

**Imtiaz Ahmed Barakzai**: This appeal was initially filed by the appellant challenging the Order dated 10.11.2020 whereby extension of stay order granted on 22.10.2020 in Appeal No. 130/2020 was verbally refused. During pendency of this appeal the Commissioner (Appeals) passed another Order No.01/REJ/2020 dated 01.12.2020 to the same effect. The Commissioner (Appeal) passed further Order-in-Appeal (hereinafter referred to as the OIA) No. 03/2020 dated 08.01.2021. filed by the Appellant against the Order-in-Original (hereinafter referred to as the OIO) No. 189/2020 dated 15.09.2020 passed by the Mr. Irfan Waheed, Assistant Commissioner, (Unit-23) SRB Karachi.







02. The brief facts as stated in the OIO were that the appellant had voluntarily obtained registration with Sindh Revenue Board (SRB) on 18.03.2016 under services category of inter-city transportation or carriage of goods by road or through pipeline or conduit, Tariff Heading 9836.0000 of the Second Schedule to the Sindh Sales Tax on Services Act, 2011 (hereinafter referred to the Act).

03. It was alleged in the OIO that the appellant had filed null sales tax returns for the tax periods from February, 2016 to June, 2018 and from August, 2018 to November, 2019. However, it had declared sales of Rs.3,656,040/- during tax period July-2018 with SRB. Whereas, it was evident from the records available with SRB that the appellant had generated sales revenue of Rs.68,525,350/- during tax periods July, 2016 to June, 2017 and sales revenue of Rs.65,074,751/- during tax periods July, 2017 to June, 2018 (total 24 tax periods), in respect of transportation services. The appellant was required vide SRB's letter dated 18.07.2019, followed by reminders dated 19.08.2019, 03.09.2019 and 12.09.2019 respectively, to explain the reasons of short payment of Sindh Sales Tax (SST).

04. The appellant was also required under section 52 of the Act to submit summary along with copies of all invoices (taxable as well as non-taxable) issued during 01<sup>st</sup> July, 2016 to 31<sup>st</sup> December, 2018. It was also told to submit copies of sales tax returns filed with Sales Tax Departments other than Sindh, if any, copies of Withholding Certificates in case the SST was withheld and copies of Audited/ Unaudited Financial Accounts of 2016-17 and 2017-18. However, it failed to make any compliance or to provide the required information, nor it could furnish the supporting records despite acquiring several extensions.

05. The appellant was served with Show-Cause Notice (SCN) dated 30.12.2019 and was asked to explain as to why SST of Rs.10,688,008/- @ 8% on short declared revenue of Rs.133,600,101/- for the tax periods from July-2016 to June-2018 should not be assessed under section 23 (1A) of the Act alongwith default surcharge under section 44 of the Act. The appellant was also required to explain as to why penalties under serial No. 3 and 15 of the Table under section 43 of the Act should not be imposed for violating section 8, 17 and 52 of the Act.

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06. The appellant filed written reply on 28.02.2020 which is summarized below:-

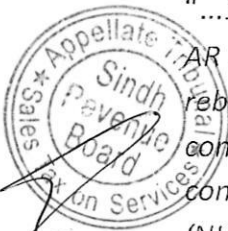
a. The charges leveled against the appellant were based on assumptions and were not backed by any concrete evidence. The amount confronted in the SCN was not liable to be paid. The SCN was issued in violation of the Constitution of Islamic Republic of Pakistan;

b. The amount of SST was erroneously deposited with SRB for the tax periods from July, 2016 to December, 2017 and the same was liable to be refunded. It was agitated that the levy and collection of SST on the services of inter-city transportation or carriage of petroleum oil by road through oil tankers was held in abeyance for the period upto December-2017 through SRB's Circular No. 07 of 2017 dated 1.11.2017.

07. The Assessing Officer (AO) passed OIO dated 15.09.2020 assessing SST under section 23 (1A) of the Act at Rs.10,688,008/- along with default surcharge under section 44 of the Act. The AO also imposed penalty of Rs.534,400/- under Serial No. 3 of Table under section 43 of the Act for non-payment of due amount of SST and penalty of Rs.100,000/- under Serial No. 15 of Table under section 43 of the Act for non-production of requisite record under section 52 of the Act.

08. The appellant had challenged the OIO before Commissioner (Appeals) by way of filing appeal under section 57 of the Act. The Commissioner (Appeals) while dismissing the appeal held as under:-

*"...18. It is conspicuously noted that in his grounds of Appeal, that Appellant AR has focused on a single point of law, that is, the one thrashed out and rebutted in detail paragraph 12 through 16 above. AR has not rebutted nor controverted the figures and facts as detailed at para-2 above that constitute his contraventions in unambiguous terms namely, Appellant filed 'NULL' returns for the tax-periods 02/2016 to 06/2018 (29 tax-periods) and then for the tax-periods 08/2018 to 11/2019 (16 Tax periods) purportedly showing 'zero business' in the noted tax-periods, whereas his Income tax declarations during the same tax-periods, showed his 'sales revenue' to be worth Rs.68,525,350/- during July, 2016 to June, 2017 and that Rs.65,074,751/- during July, 2017 to June, 2018. Appellant had declared his*



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sale only to be worth Rs.3,656,040/- with SRB, during July, 2018; hence short-declaration of sales worth Rs.133,600,101/- (during the tax-periods July, 2016 to June, 2018) came to surface”.

Resultantly in filing this appeal before the Tribunal.

09. During the pendency of appeal before us the appellant was directed to provide all invoices to the AC for preparation of Reconciliation Report. The AC submitted Report dated 15.06.2021 which reads as under:-

<b><u>Appellant's submissions as per records (invoices):</u></b>			
<b>Particulars</b>	<b>FY-2017</b>	<b>FY-2018</b>	<b>Total</b>
Value of Intra-city Transportation	57,594,550	61,986,312	119,580,862
Value of Inter-city Transportation	9,241,700	17,715,927	26,957,627
Total Value of Services as per invoices	66,836,250	79,702,239	146,538,489

**Appellant's submissions as per records (invoices):**

The total value of the invoices as submitted by the Appellant amounted to Rs.146,538,489/-. However, as per the SCN and OIO the assessed value was taken at Rs.133,600,101/-. Thus for the verification of the said record of Appellant, further reconciliation / scrutiny was required

10. The learned Advocate for appellant submitted as under:-

The appellant was voluntarily registered with SRB on 18.03.2016 under services category of “Inter-city transportation or carrier of goods by road or through pipelines and conduit”, Tariff Heading 9836.0000. However, the said service had remained suspended till 31.12.2017, and it relied upon various Circulars issued from time to time by SRB in this behalf.

ii) The OIO was passed only on the basis of entries of receipts shown in the income tax returns without any exercise to link such receipts with the provision of service.

*M.S.*

iii) During the tax periods involved in this appeal the appellant had also provided intra-city transportation service which was exempted from payment of SST, whereas, the SST was illegally levied on such exempted services as evident from the report submitted by the AC.

iv) In the Reconciliation Report Dated 15.06.2021 the AC has determined the value of inter-city transportation services at Rs.26,957,627/-. Thus the appellant was liable to pay SST on this amount only.

v) The total value of service shown in the Reconciliation Report was Rs.146,538,489/-, whereas the amount confronted in SCN was Rs.133,600,101/- and the appellant was directed to deposit the due SST within 10 days.

11. The learned AC submitted as under:-

i) The service of transportation of goods by road was under suspension till 31.12.2015 and thereafter, the suspension was only in respect of "petroleum oil if transported through oil tankers" till 31.12.2017.

ii) The appellant was engaged in inter-city and intra-city transportation of goods and was not engaged in transportation of petroleum through oil tankers.

iii) The tax periods involved in this appeal were from July, 2016 to June, 2018, and no exemption was available to service provider of inter-city transportation for this period.

iv) The appellant to avoid payment of legal taxes has taken the false plea that the services provided by it were exempted.

The assessment was finalized on the basis of sales shown in the income tax returns for the reason that the appellant had failed to provide the required invoices to determine the actual nature and value of services provided or rendered by it.

12. The learned advocate for the appellant further submitted that despite the fact that the assessment was finalized only on the basis of sales shown in the income tax returns which was not sustainable in law and the Commissioner (Appeals) had ignored such facts. However, the appellant agreed to deposit the



SST as per the Reconciliation Report after availing the Amnesty Scheme of 2021.

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

14. The grievance of the appellant were that the extension of stay was regretted verbally on 11.11.2020 while the learned Commissioner (Appeals) was staying at Lahore and had held hearing on SKYPE. Moreover the other grievance was that the assessment was finalized only on the basis of the sales shown in the income tax returns.

15. The Commissioner (Appeals) vide his Report dated 15.12.2020 has denied to have regretted the extension of stay verbally. However, the Commissioner (Appeals) did not deny that he had heard the appeal during his quarantine period at his home-town at Lahore under due intimation to the department. The AC has not disputed the fact that the assessment was finalized only on the basis of sales shown in the income tax returns, but he has stated that the assessment was finalized on such basis due to non-provision of the invoices by the appellant.

16. In the light of Transcript submitted by the learned Commissioner (Appeals) it was evident that the extension of stay was regretted verbally. The last four sentences of the Report reads as under:-

"This all about interpretation of statures of the circular covers whole PCT apparently. Since the matter requires detail hearing kindly extend or confirm stay under section 58 (4) of SRB Act 2011 till next hearing.

Prayer is made in the interest of justice.

*Stay regretted please.*

Kindly issue order of rejection or an appeal able order to proceed further.

OK".

17. It is thus clear from the above conversation that the extension of stay was regretted verbally. The transcript was the oral conversation which took place between the learned advocate for appellant and the learned Commissioner (Appeals) and same could not be equated with an order in



writing. The appellant as per the Report in response to his application dated 16.11.2020 was advised vide e-mail dated 17.11.2020 to deposit 25% of tax demand under section 66 (1) of the Act to avail stay, and in the same e-mail it was informed that the competent authority regretted stay against recovery. It was also evident from this e-mail that the stay was regretted verbally. The e-mail is just an information and not an alternate of a formal written order. However, as per the Report the formal written order regretting extension of stay was passed on 01.12.2012 after filing of this appeal before the Tribunal and after calling the report from Commissioner (Appeals) on the grounds that the case was weak and that the stay order beyond time provided under sub-section (4) of section 58 of the Act was regretted.

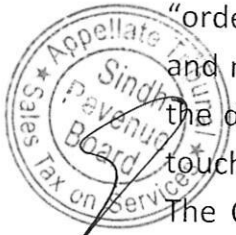
18. The learned Commissioner (Appeals) under sub-section (4) of section 58 of the Act is vested with the powers to grant stay for a period not exceeding one hundred twenty days. On 11.11.2020 when the extension of stay was verbally regretted one hundred twenty days had not expired and therefore this ground could not be taken for regretting extension of stay. Furthermore the Commissioner (Appeals) under the first proviso of sub-section (1) of section 66 of the Act could neither compel the tax payer to deposit 25% of the tax demanded nor the prior deposit of 25% of tax demanded could be used as a pre-condition for grant or extension of stay.

19. It is true that the sub-section (4) of section 58 does not provide a particular format for the disposal of applications or extension or refusal of stay. The Commissioner (Appeals) is vested with the powers to refuse or regret the extension of stay but this could not be done verbally. The provision mentions "order". The word order was not used in common parlance or used in normal and natural sense or in any limited technical sense, but it was used to denote the decision which a quasi-judicial forum has to take after hearing the parties touching the merit of the case and should be in writing supported with reason. The Commissioner (Appeals) after hearing the parties had two options i) to immediately write order on note sheet and announce the same and provide the copy to the appellant or ii) to reserve, and write the order and to provide the copy of same to the appellant.

20. The verbal order in a judicial or quasi-judicial proceeding has no value in law and the officer dealing with the judicial or quasi-judicial proceedings are

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*[Signature]*



not authorized or permitted to do so. In the reported judgment of The State versus M.A. Rasheed, PLD 1998 Karachi 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 & others v. National Industrial Relations Commission, Karachi PLD 1976 Karachi 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".*

21. in the reported judgment of Majidullah and 2 & others v. National Industrial Relations Commission, Karachi PLD 1976 Karachi 207 it was held as under:-

*"...7. The allegation of the petitioners is that there was no order in writing from the Commission directing the petitioners or their concern to construct a mosque. It is needles to state that all orders of judicial or quasi-judicial tribunals have to be in writing and an oral order does not carry with itself any sanctity of law. The respondents have not appeared before us nor has any order in writing been placed before us by the respondents or the petitioners and on the other hand the case of the petitioners is that an order in writing did not exist. No validity, therefore, attaches to such an order, which is an oral order made by the Chairman of the respondent Commission, at the spot, without any proceedings being drawn up or any proceedings being initiated concerning such a demand of the workers.*

*& We are, therefore, of the view that this oral order of the Chairman of the respondent Commission is not a valid order in law and is of no legal effect. In the result, the petitioner or their interrogation or the contemplated prosecution for disobedience of the order would be null and void and of no legal effect. The petition is allowed on such short ground and it is not necessary to advert to any other aspect of the case".*

22. In view of above decisions it is clear that the verbal order of refusal to extend the stay has no sanctity in law and was thus not enforceable in law.

*M.S.*

*[Signature]*



However since the written order was passed on 01.12.2020 this irregularity is ignored and it is expected that the officers of SRB will avoid such practice in future.

23. The assessment was finalized only on the basis of sales shown in the income tax returns as admitted by the AC for the reason that the invoices were not provided to him. In our various orders relying upon the reported case of Al-Hilal Motors versus Collector Sales Tax 2004 PTD 868, we have held that the assessment order merely on the basis of credit entries in the bank statement without linking the said entries with the provision of service is not sustainable in law. The relevant portion is reproduced for ready reference as under:-

*"...It is an established principle of the law of taxation that an assessee can be subjected to tax under a provision of law, which is unambiguous and clear. There is no room for any intendment and there is no presumption as to tax. In the absence of any deeming provision the Revenue is required to establish that a transaction fails within the parameters of taxable supplies or in furtherance of any taxable activity, failing which the sales tax imposed on the basis of some assumption or presumption not warranted in law, shall always be struck down. In the present cases it is apparent that except discovering certain cash-credits entries in the books of the appellant, the Revenue Officers have not been able to produce any material to show that the said amounts are in any way linked with the taxable supplies or with any taxable activities or present on amount on account of any business activity".*

24. In the above reported case the assessment was passed only on the basis of credit entries available in the bank statement. Whereas the instant case is identical since the assessment was only made on the basis of sales shown in the income tax returns and the AO had failed to examine any material to link the sales with the providing or rendering of services.

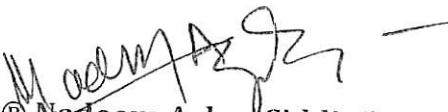
25. It is evident from the Reconciliation Report submitted by the AC-SRB as stated supra that the appellant had provided services of inter-city transport and intra-city transport valuing to Rs. 146,538,489/=. Whereas the value of services confronted in the SCN was Rs.133,600,101/=. The value of intra-city

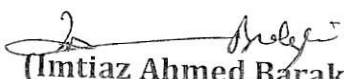
transport services as disclosed at Rs.119,580,862/= was exempted from payment of SST during the tax periods involved in this appeal. Therefore the value of inter-city transport services were only taxable to the extent of Rs.26,957,627/= @ 8% during the tax periods involved in this appeal. The SST is workout thereon to Rs.2,156,610/=.

26. The appellant has agreed to deposit the said amount of SST with SRB while availing the Amnesty Scheme, 2021.

27. In view of the above discussions the appeal is partly allowed and the OIO and OIA are maintained to the extent of payment of SST of Rs.2,156,610/= alongwith default surcharge under section 44 of the Act as provided in the Amnesty Scheme, 2021. However, if the appellant failed to deposit the SST during the continuance of Amnesty Scheme, 2021 he would be required to pay full amount of default surcharge as provided under section 44 of the Act.

28. The appeal is disposed of in terms of para 26 above. The copy of this order may be provided to the learned representatives of the parties. The copy of this Order may also be sent to the learned Chairman, SRB for information and consideration to direct the officers of SRB to avoid passing verbal orders

  
(Justice® Nadeem Azhar Siddiqi)  
CHAIRMAN

  
(Imtiaz Ahmed Barakzai)  
TECHNICAL MEMBER

Karachi:

Dated: 18.06.2021

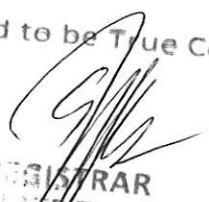
Copy Supplied for compliance:

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

Copy for information to:-

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

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REGISTRAR  
APPELLATE TRIBUNAL  
SINDH REVENUE BOARD

Order issued on

  
06/07/2021

Registrar

Order Dispatched on

  
06/07/2021

Registrar