

BEFORE THE APPELLATE TRIBUNAL, SINDH REVENUE BOARD AT KARACHI

DB-I

APPEAL NO. AT-46/2020

M/s HT Global (Pvt.) Ltd (SNTN: 3759312-9)  
Plot # 20 F-3/6 Block P.E.C.H.S,  
Karachi.....Appellant

**Versus**

Assistant Commissioner (Unit-04),  
Sindh Revenue Board,  
2nd Floor Shaheen Complex,  
M.R. Kiyani Road, Karachi.....Respondent

Date of filing of Appeal 18.12.2020  
Date of hearing 14.12.2021  
Date of Order 13.04.2022

Mr. Omair Ahmed, ITP and Mr. Muhammad Rameez, ITP for appellant.

Mr. Mehrab Khan, AC, (Unit-04), 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. 92/2020 dated 23.10.2020 passed by the Commissioner (Appeals) in Appeal No. 23/2020 filed by the appellant against the Order-in-Original (hereinafter referred to as the OIO) No. 857/2020 dated 09.01.2020 passed by Mr. Irfan Ahmed Sohu, Assistant Commissioner, (Unit-04) SRB Karachi.

*Nadeem Azhar Siddiqi*

*[Signature]*

02. The brief facts as stated in the OIO were that the services provided or rendered in respect of Business Support Services are chargeable to the Sindh Sales Tax (SST) under section 8 read with Tariff Heading 9805.9200 of the Second Schedule to the Sindh Sales Tax on Services Act, 2011 (hereinafter referred to as the Act) at the rate of 16% w.e.f. July- 2014, 15%, w.e.f. July- 2015 and 14%, w.e.f. July- 2016 and 13% till to date.

03. It was alleged in the OIO that the appellant was registered with Sindh Revenue Board (SRB) from 16.09.2013 and during the scrutiny of Proceeds Realization Certificates (PRC) provided by the appellant it was observed that appellant had earned total revenue of Rs.116,010,122/- during the tax periods from July-2015 to June-2017 (24 tax periods) involving SST of Rs.16,116,254/-. The Tax Profile of the appellant revealed that the appellant had neither deposited due tax nor declared the same in its monthly sales tax returns (SST Returns).

04. The aforementioned short payment of SST was duly communicated to the appellant vide notice dated 25.04.2019. The consultant of the appellant submitted reply dated 07.05.2019 which contained copy of invoices signed by Mr. Zaheer Abbas and agreement signed with M/s Faraz Andishan Hasab. It was stated that the appellant had also provided services in the Islamic Republic of Iran.

05. The appellant was served with a Show-Cause Notice (SCN) dated 09.05.2019 under section 23 of the Act to explain as to why SST of Rs.16,116,254/- may 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 penalties under Serial 03, 11 & 12 of the Table under section 43 of the Act may not be imposed.

06. The representative of the appellant appeared before the Assessing Officer (AO) and submitted as under:-

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- i. The services were not provided in or from Sindh and produced the copies of visa documents mentioning that the services were rendered from Lahore and Islamabad.
- ii. The services were provided in Iran outside jurisdiction of Sindh and no SST was charged from non-resident person.
- iii. The appellant produced the copies of invoices and copy of agreement signed with the service recipient.
- iv. The mere issuance of invoices and receiving payment in Sindh was not sufficient to charged SST in Sindh.
- v. The Commissioner (Appeals) had recorded contradictory findings.

07. The AO passed OIO determining the SST of Rs.16,116,254/- with default surcharge under section 44 of the Act. The AO also imposed penalty of Rs.805,813/- under Serial No.3 of the Table under section 43 of the Act for failure to deposit due tax, penalty of Rs.805,813/- under Serial No. 11 of the Table under section 43 of the Act for failure to fulfill the conditions and penalty of Rs.805,813/- under Serial No. 12 of the Table under section 43 of the Act for contravening the provisions of the Act.

08. The appellant had challenged the said OIO by way of filing of appeal under section 57 of the Act before Commissioner (Appeals), SRB who upheld the OIO to the extent of payment of principal tax amount, default surcharge under section 44 of the Act and penalty of Rs.805,813/- under Serial, No. 3 of the Table under section 43 of the Act. However the other two penalties of Rs.805,813/- each respectively were deleted. The relevant para 21 of OIA is reproduced for ready reference as under:-

*"21. In view of the foregoing, I am inclined to uphold the impugned OIO to the extent of the principal tax demand being Rs.16,116,254/- together with due default surcharge, which amounts should be recovered from the Appellant under the Act, 2011. As regard the three (03) imposed penalties, Appellant's 'mens rea' is clear to the extent of his 'non-deposit of due tax'. Accordingly, I uphold penalty worth Rs.805,813/- [under S. No. (3) of section 43 ibid]. However, I remit the other two penalties one, that of*

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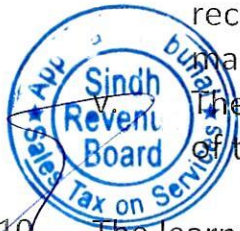
*Ja. Arif*

*Rs.805,813/- [under Sr. No. (12) ibid] both being harsh/ excessive and unjustified in the given circumstances of the case. The single penalty maintained hereinabove may be recovered from the Appellant, together with the amounts held recoverable in the above terms.*

Resultantly the filing of this appeal before this Tribunal by the appellant.

09. The learned representative of the appellant submitted as under:-

- i. No service was provided in Sindh.
- ii. The services of Installation, Commissioning and maintenance of telecommunication equipment were provided in Iran.
- iii. The SST was erroneously charged under Tariff Heading 9805.9200 (Business Support Services) without first determining the correct Tariff Heading and whether the services were provided in Sindh or not.
- iv. The appellant had provided the service of labour and man power supply, Tariff Heading 9829.000 and the amount received though PRCs was inclusive of salaries of the labour & manpower supplied to Iran.



The SST could not be levied on the reimbursement of salaries of the workers/labour.

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

- i. The appellant got voluntarily registration under Business Support Services, and during the tax periods 2015-16 and 2016-17 the appellant had provided the service of human resource.
- ii. The appellant produced PRC to establish that it had received foreign remittance on account of miscellaneous and other business income, and not on account of business as mentioned in its financial statements.
- iii. The proposed Code No.9247 given by State Bank related to the miscellaneous and other business.
- iv. The appellant had received consideration of US \$ 1,111,219/- (Pak Rs.116,010,122/-) and SST was payable on the gross amount received by the appellant.

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11. The AC during the pendency of appeal filed Comprehensive / Reconciliation Report dated 25.11.2021 reducing the SST from Rs.16,116,254/- to Rs.9,413,211/=-. The appellant in its response dated 14.12.2021 has accepted the SST liability of Rs.9,413,211/-.

12. We have heard the learned representatives of the parties, perused their written submissions and the record made available before us.

13. The appellant got voluntarily registration on 16.09.2013 under Tariff Heading 9805.9200 (Business Support Services) of the Second Schedule to the Act. However it was not disputed that appellant received a sum of Rs.116,010,122/- from foreign recipient of service through PRCs.

14. The initial contention of the appellant was that no service was provided by it in or from Sindh. However the appellant took subsequent plea that the service of labour and man power supply, Tariff Heading 9829.0000 of the Second Schedule to the Act was provided by it and the amount received though PRCs was inclusive of salaries of the labour & manpower supplied to Iran and that no SST could be levied on the reimbursement of salaries of workers/labour.

15. The Agreement between the appellant and its service recipient was perused, and it appears that the purpose of the Agreement was to provide professional or skilled labour for installation of telecommunication equipment, network surveys, integration and commissioning of 2G and 3G network. The appellant was required to provide teams of labour and each team comprised of a Supervisor and Technicians. As per the Agreement the service recipient was required to pay USD 11,400/- to the appellant per team per month net of all applicable taxes in Iran. The Agreement further provided that the appellant would compensate the teams of persons provided to the service recipient and shall bear expenses in connection with the services like salaries, wages allowances etc. It is evident from the Agreement that the appellant had provided services of supply of man power to its recipient and the payment received by it was inclusive of salaries and wages of workers.



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16. The appellant has its registered office in Sindh from where the services were provided. The appellant has not claimed that it had any other office in any other part of Pakistan. Despite the fact that the labour was recruited from different part of Pakistan but the process of employment was completed in Sindh, the invoices were generated from Sindh and all the payment through State Bank of Pakistan was received in Sindh.

17. The appellant is a service provider to a non-resident person and as per clause (a) and (b) of sub-section (1) of section 3 of the Act read with sub-section (1) of section 9 of the Act was liable to pay SST.

18. The SST could only be charged on the basis of actual services provided or rendered and not on the basis of registration alone on the value of service provided or rendered excluding the salaries and wages. The SST could not be levied on the component of reimbursement of salaries or wages of the workers. In the reported case of Sami Pharma & others versus SRB, 2021 PTD 731 the Honorable Sindh High Court of Sindh has held as under:-

"It is only the quantum of service rendered or supplied which can be taxed by Province. By no stretch of imagination either by rules or otherwise, it can be extended to any other goods or amount which is not falling within services. Any other definition or attempt to levy such tax would then be in violation of the mandate provided as an exception in entry 49 of the Fourth Schedule to the Constitution".

In the same judgment as quoted supra it was further held as under:-

"...10....It may also be observed that in absence of anything to the contrary, ordinarily, the quantum of service charge is a matter between the service provider and the recipient. For the present purposes no other value and taxable service in question has either been notified or otherwise fixed or determined by SRB. It is not the case of SRB that the service provider is hiding or concealing, or for that matter, is issuing an invoice of his service charges which is lesser than what the service recipient is paying to the service provider. The dispute which has now arisen is after the omission of the proviso from Rule 42(E) of the 2011 Rules as now SRB is demanding the service provider to charge sales tax on the entire gross amount of service, invoiced or billed to the service recipient. Such invoice includes the amount of expenses reimbursed by the service recipient in

*M. A. J.*

*[Signature]*

respect of salary and allowances of the labor and manpower supplied and the charges of services so rendered by the service provider. In fact, in our considered view, though the proviso had earlier provided certain clarification as to the levy of tax on services in question; however, to us it seems superfluous as whether the proviso remains there or not. We are fully in agreement with the contention of one of the Petitioners Counsel that even the omission of the proviso cannot have any implication so as to require the Petitioners to pay sales tax on the entire gross amount in question as it is only the quantum of service rendered and the amount thereof which could be taxed under the Act. Such contention appears to be correct and in line with the spirit and the various provisions of the Act as discussed hereinabove. It is settled law that by a rule making power no tax could be imposed or levied as it is only the charging provision of the Act which can do so. If we are to read sub-rule 3 of Rule 42(E) after omission of the proviso, even then, it appears that what SRB is explaining through the rule is that the value of taxable service for the purpose of levy of sales tax shall be the gross amount charged for the services provided or rendered and in any case, it cannot, through the rule making power, require the service provider to charge sales tax on the amount which are being reimbursed in lieu of salary and wages....".



19. The department also imposed penalty of Rs.2,47,439/- which was reduced to Rs.805,813/- by Commissioner (Appeals). The AO imposed penalties without establishing mensrea and malafides on the part of the appellants. The Commissioner (Appeals) has tried to cover up the lacuna while discussing the penalty under Serial No. 3 of the Table under section 43 of the Act by saying that "appellant's mensrea is clear to the extent of his 'non-deposit of due tax' but could not establish the same". Mere mentioning that the mensrea was clear, was not sufficient to impose penalty. In the reported case of Malt 79, 995 PTD 345 it was held as under:-

"9. On the plain language of this provision it is apparent that liability to pay sales tax is not a necessary consequence or corollary of non-payment of sales tax within the stipulated period.

20. In another reported case of Commissioner Inland Revenue versus M/s Adeel Brothers, 2017 PTD 1579 it was held as under:-

"...7... In the case of Messrs Bhola Weaving Factory supra, this Court has already ruled that levy of penalty should be refused where

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offence is of technical or venial in nature. Mens rea is an essential ingredient while enforcing penalty provisions against assessee and levy of penalty is a matter of discretion which must be exercised by the authorities judiciously”.

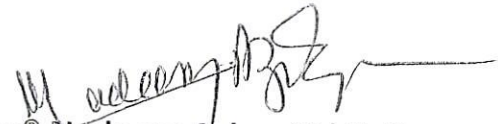
In the same judgment as quoted supra it was further held as under:-

“11. Penalty could be reduced/remitted/waived by the authority in the exercise of jurisdiction conferred upon it by the statute, keeping in view the peculiar facts and circumstances of the case, for various reasons including that there was no mens rea/mala fide or no loss was caused to the Revenue by a taxpayer”.

21. In view of above discussions, the appeal is partly allowed. The SST charged by the Department is reduced from Rs.16,116,254/- to Rs.9,413,211/- which was also accepted by the appellant vide its response dated 14.12.2021 as mentioned at para 11 supra. The reduced liability of SST is thus payable by the appellant with default surcharge. However the penalty of Rs.805,813/- levied under Serial No.3 of Table under Section 43 of the Act is waived.

22. The appeal is disposed of as per para 21 supra. The copy of the order may be provided to the learned representatives of the parties.

  
(Imtiaz Ahmed Barakzai)  
TECHNICAL MEMBER

  
(Justice® Nadeem Azhar Siddiqi)  
CHAIRMAN

Karachi:

Dated:13.04.2022

Copy Supplied for compliance:

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- 2) The Assistant Commissioner, (Unit-04), SRB, for compliance

Copy for information to:-

- 3) The Commissioner (Appeals), SRB, Karachi.
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REGISTRAR  
APPELLATE TRIBUNAL  
Sindh Revenue Board

Order issued on 14/04/2022

Order Dispatched on 14/04/2022