

BEFORE THE APPELLATE TRIBUNAL, SINDH REVENUE BOARD AT KARACHI

DOUBLE BENCH-I

APPEAL NO. AT-50/2020

Assistant Commissioner, (Unit-03)  
Sindh Revenue Board,  
09<sup>th</sup> Floor, Shaheen Complex Building  
M.R. Kiyani Road Karachi.....Appellant

Versus

M/s Sinopec International Petroleum  
Services (SNTN:S3277977-1)  
House#11, Street #49, F-6/4,  
Islamabad. ....Respondent

Date of filing of Appeal: 31.12.2020  
Date of hearing: 10.11.2021  
Date of Order: 14.02.2022

Mr. Muhammad Ali Siddiqi, AC-(Unit-03), SRB along with Ms. Uzma Ghory, AC-DR,  
SRB for appellant

Mr. Khawaja Aizaz Ahsan, Advocate for respondent



ORDER

Mr. Khawaja Aizaz Ahsan: This appeal has been filed by the Assistant Commissioner (Unit-24), SRB Karachi challenging the Order-in-Appeal (hereinafter referred to as the OIA) No.97/2020 dated 03.11.2020 passed by the Commissioner (Appeals) in Appeal No. 73/2018 filed by the AC (Unit-03), SRB Karachi against the Order-in-

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Original (hereinafter referred to as the OIO) No.138/2018 dated 14.03.2018 passed by Mr. Allah Rakhio Jogi, Assistant Commissioner, (Unit-03) SRB Karachi.

02. The brief facts as stated in the OIO were that the M/s Sinopec International Petroleum Services Corporation bearing SNTN:S3277977-1 was registered with Sindh Revenue Board (SRB) under the service category of "Contractual execution of work or furnishing supplies" falling under Tariff Heading 9809.0000 of the Second Schedule to the Sindh Sales Tax on Services Act, 2011 (hereinafter referred to as the Act).

03. It was alleged in the OIO that the annual audited accounts of M/s Sinopec International Petroleum Services Corporation for the tax period from July, 2012 to June, 2014 revealed that it had provided taxable services of contractual execution and its allied services which were exclusively covered under the service category of 'services provided or rendered by persons engaged in contractual execution of work or furnishing supplies' as specified under Tariff Heading 9809.0000 of the Second Schedule to the Act and were taxable under section 8 read with section 3 of the Act with effect from 1<sup>st</sup> July, 2011. Accordingly, M/s Sinopec International Petroleum Services Corporation was required to discharge their sales tax liabilities and to e-file the sales tax return in Form SST-03 since July, 2011.

04. It was further alleged in the OIO that M/s Sinopec International Petroleum Services Corporation had earned taxable revenue under the aforesaid Tariff Heading during the tax periods from July, 2012 to June, 2014 at Rs.1,198,665,579/- and the SST worked out thereon amounted to Rs.191,786,492/-. Such calculation is worked out as under:-

| Sr. No.     | Taxable Services Head | FY 2014 (Rs.) | FY 2013 (Rs.) |
|-------------|-----------------------|---------------|---------------|
| 1           | Revenue Rendered      | 545,185,278   | 653,480,301   |
| 2           | SST Payable           | 87,229,644    | 104,556,848   |
| 3           | SST Paid with SRB     | -             | -             |
| 4           | SST Short Paid        | 87,229,644    | 104,556,848   |
| Grand Total |                       | 191,786,492   |               |

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05. The respondent was served with Show Cause Notice (SCN) dated 22.05.2017 calling upon it to explain as to why the tax liabilities of Rs.191,786,492/- during the periods from July, 2012 to June, 2014 should not be assessed under Section 23(1) of the Act alongwith default surcharge under Section 44 of the Act. The respondent was also required to explain as to why penal action under clause 2 and 3 of the table under Section 43 of the Act may not be imposed for contravention of Sections 3, 8, 9, 17 and 30 of the Act read with Rule 13 and 14 of the Rules 2011. In compliance to SCN the respondent submitted that their company was not registered with SRB during the tax periods confronted in SCN, moreover the core business of the company was Drilling and Mining Services which was not included as taxable service under the Act hence the company did not charge and pay SST to SRB and some copies of documents were submitted. The respondent was told to prepare final submission of amount of tax and amount of revenue rendered in province of Sindh. On due date i.e.07.03.2017 an e-mail was received wherein same contention was held as mentioned earlier in letter dated 21.02.2018.

06. The Assessing Officer (AO) observed in the OIO that the Sales tax liability as mentioned in the SCN was assessed at net tax amount of Rs.191,786,492/- on the value of services rendered during FY-2013 and FY-2014. The respondent had provided the break-up summary of revenue and tax amount alongwith Sales Tax pertaining to Sindh and Punjab during the FY-2013 and FY-2014. The AO after allegedly perusing the available / provided record worked out the tax liability as

under:  
Revenue  
Board  
Export Services

Working of Revenue Declared by M/s Sinopec International Petroleum Services Corporation on the basis of Financial Statement

| Particulars   | FY 2013 @ Tax rate<br>16% (July 2012 to<br>June 2013) | FY 2014 @ Tax rate<br>16% (July 2014 to June<br>2014) | Total         |
|---|---|---|---------------|
| Revenue Rendered as per Annual Account                                | 653,480,301   | 545,185,278   | 1,198,665,579 |
| Less: Revenue Rendered in Punjab                                      | (197,589,996)   | (65,139,955)  | (262,729,951) |
| Net Revenue Rendered in Sindh   | 455,890,305   | 480,045,323   | 935,935,628   |
| Sales Tax Payable Sindh at applicable tax rate                        | 72,942,449  | 76,807,252  | 149,749,700   |
| Less: Sales Tax Declared with SRB output in monthly sales tax returns | -   | -   | -             |
| SST Short Paid with SRB   | 72,942,449  | 76,807,252  | 149,749,700   |

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07. Thus the OIO was passed for the recovery of SST of Rs.149,749,700/- alongwith default surcharge (to be calculated at the time of payment) under Section 44 of the Act. The AO further imposed penalty of Rs.60,000/- under Serial No.2 of Table under Section 43 of the Act and 5 percent penalty of Rs.9,589,325/- under Serial No.3 of Table under Section 43 of the Act.

08. The taxpayer challenged the said OIO by way of filing appeal before the Commissioner (Appeals) under Section 57 of the Act. The Commissioner (Appeals) held in para 24 to 26 of the order as under:-

*".....24. In view of the foregoing deliberations, the issue of Appellant's correct tariff classification apart, I am unable to sustain the impugned OIO, as having no basis in the Act, 2011 or the Rules made thereunder nor the same is in conformity with the established principles of law enunciated by the Superior Judicial fora. Accordingly, I am left with no option but to set-aside the impugned OIO, in toto, without any cost to the appellant.*

*25. However, at the same time, I advise and direct the rival parties to sit together and to determine the appropriate lawful services category / tariff classification for the services being rendered / provided by the instant Appellant, duly considering the documentary evidences put up by him in this regard, so as to resolve this matter, once for all. This task, as lying unattended with the department since 2015, must now be completed, with the active cooperation of both the rival parties, preferably, within 30 days of the service of this Order.*

*26. Based on the final determination of instant Appellant's pertinent tariff headings, in the aforementioned terms, respondent department shall be at liberty to initiate fresh assessment / recovery proceedings against him, if so warranted by law and facts of the matter, strictly in accordance with the legal procedure advised by the Act, 2011 and the Rules made thereunder".*

Resultantly the appeal was filed by the Department.

09. The learned representative of appellant Mr. Zameer Khalid, Commissioner (Legal) and Mr. Junaid Haider, AC-SRB submitted as under:-

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- i) That the Commissioner (Appeals) without proper inquiry as to whether both components of Tariff Heading 9809.0000 were available or not erroneously decided that Tariff Heading 9809.0000 was not applicable.
- ii) The respondent had provided services as well as supplies to the service recipient and the Commissioner (Appeals) erroneously held that Tariff Heading 9809.0000 was not applicable. He referred to some clause of Agreement to show that the services and goods were supplied and the Tariff Heading 9809.0000 was rightly applied.
- iii) That the respondent was voluntarily registered on 18.06.2014 and thereafter it was paying tax and filing monthly returns. The photocopies of Registration profile along with sample returns filed for the month of January, 2020 were furnished.

10. The learned representative of the respondent Mr. Khawaja Aizaz Ahsan, Advocate submitted as under:-

- i) That the respondent was voluntarily registered with SRB on 18.06.2014 under Tariff Heading 9809.0000 (Contractual execution of work or furnishing supplies) and since its registration it was paying SST despite the fact that the service of drilling was inserted in the Second Schedule of the Act under Tariff Heading 9850.0000 effective from 1<sup>st</sup> July, 2019.
- ii) That the Honorable Tribunal in 2018 PTD 527 and 2020 PTD 444 has held that Tariff Heading 9809.0000 only applies when contract for provision of services constitutes both the provision of service and also supply of goods. The respondent provides services in relation to the drilling of oil wells in Pakistan. The services provided by the respondent do not have any element of supply of goods present. Therefore Tariff Heading 9809.0000 is not relevant to the Respondent's services.

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- iii) That the respondent was not liable to pay SST for the tax periods July-2012 to June-2014 since during the such period the respondent was not registered with SRB.

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

12. The main contention of the respondent was that it was not registered during the tax period involved in this appeal and therefore was not liable to charge, collect and pay SST. We vide ordersheet dated 14.09.2021 confronted this basic point to both the appellant and respondent who were put on notice to argue this point first.

13. Therefore the basic issue in the instant appeal is "Whether the respondent was liable to deposit SST prior to its date of registration?". The discussion on this point are as under:-

- i) The respondent was voluntarily registered on 18.06.2014 under Tariff Heading 9809.0000, Services provided or rendered by persons engaged in contractual execution of work or furnishing supplies. The tax periods involved were from July-2012 to June-2014 which were prior to date of registration of the appellant.



The contention of AC on this point was submitted vide his letter 13.10.2021 mentioning as under:

- a) "...2. In this regard and with reference to the levy of SST before the date of registration, the undersigned relied on the judgment of Honorable Lahore High Court in STR No.54/2016 dated 23.04.2019 (copy attached as Annex-A). For ease of understanding the concluding paragraph 17 of the said judgment is reproduced as hereunder:-

"17. In view of above, our answer, to the proposed questions is that the combined reading of the provisions

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of the Act, 1990 and the Rules framed thereunder manifestly disclose the intention of law maker that, where a person is liable to be registered, the applicant-department is first required to register that person compulsorily or otherwise in accordance with the law, and then charge sales tax from it under section 3 of the Act of 1990, and may proceed against that person regarding prior to registration contravention of the provisions of the Act of 1990, if any. In that eventuality, taxpayer shall be entitled to raise all factual and legal objections against the proceedings so initiated or to be initiated by the applicant-department which are not dealt with in this judgment.”

03. Since, the aforesaid judgment stands confirmed by the Honorable Supreme Court in its judgment dated 11.03.2021 (Copy attached as Annex-B), therefore, the ratio of the judgment may be understood in terms of Article 189 of the Constitution of Pakistan and also applicable in the instant case and similar nature of case.



b) The contention of the AC was examined by us in Para 19 of Appeal No. AT-18/2021, M/s WEB DNA versus AC (Unit-11) SRB vide our decision dated 16.11.2021. The detailed discussion has been undertaken on this issue and the relevant provision of law and the reported judgment in M/s S.K. Steel Casting, Gujranwala, 2019 PTD 1493 has concluded as under:-

*“iv. The relevant provisions dealing with the assessment and registration are sub-section (1) of section 23, and sub-section (1) of section 24 of the Act. Moreover sub-section (71) of Section 2 of the Act provides that registered person means a person who is registered or is liable to be registered under this Act. Sub-section (1) of section 23 of the Act deal with the assessment of tax and*

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contemplates that in case the registered person has not paid tax due on taxable services provided by him or has made short payment, the officer of SRB shall make an assessment order. Sub-section (1) of section 24 of the Act provided that registration will be required for all persons who are residents; and provide or render any of the services listed in the Second Schedule from their registered office or place of business in Sindh. If the above contention of the AC that the person liable to be registered was deemed to be registered person is accepted sub-section (1) of section 24 of the Act relating to registration and sub-section (1) of section 23 of the Act relating to assessment of registered person would become redundant which is legally not permissible. It is a cardinal principle of statutory interpretation that redundancy or superfluity must not be attributed to the Legislature, and that no part or word in a statute could be treated as superfluous.



- iii) The Commissioner (Appeals) on this issue has passed numerous orders holding that SST cannot be demanded from a service provider prior to its date of registration, few of such OIA's are mentioned for ready reference as under:-
- a) Appeal No.73/2018, OIA No.97/2020 M/s Sinopec International vs. Assistant Commissioner (Unit-03), SRB dated 03.11.2020.
  - b) Appeal No.308/19, OIA No.109/2020, dated 02.12.2020, and Appeal No.456/2018, OIA No.110/2020, dated 02.12.2020, M/s Fiber Link vs. Assistant Commissioner (Unit0-01), SRB.
  - c) Appeal No.303/2019, OIA No.95/2019, dated 28.10.2020, M/s Tracking World vs. Assistant Commissioner (Unit-01), SRB.

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The above view of Commissioner (Appeals) has been upheld in our various pronouncements. Few of such decisions are mentioned for ready reference as under:-

- a) Appeal No. AT-47/2020 dated 15.02.2021 – AC (Unit-04) vs. M/s MYN Pvt. Ltd.
  - b) Appeal No. AT-234/2015 dated 26.11.2019 – Nasir Khan & Sons vs. Commissioner (Appeals) & DC (Unit-13), SRB.
  - c) Appeal No. AT-30/2019 dated 05.03.2021, TCS Logistics vs. The Commissioner, SRB.
  - d) Appeal No. AT-18/2021 dated 16.11.2021 M/s WEB DNA Works vs. Assistant Commissioner, SRB.
- iv) The Orders of the Tribunal passed as mentioned above are final as provided under sub-section (8) of section 62 of the Act and are still holding the field and have not been set aside by the Honorable High Court in referential jurisdiction and are binding upon the Assessing Officers as well as on the Commissioner (Appeals). Any order/decision of the Assessing Officer and the Commissioner (Appeals) cannot be sustained if the same is against the order/decision of Tribunal.



In view of the above discussions we hold that the respondent being a service provider of taxable services was registered with SRB on 18.06.2014. Thus it was not liable to pay/deposit SST before the date of its Registration during the tax periods from July-2012 to June-2014. However the responsibility for payment of tax from July-2011 to July-2014 was on the recipient of service to deduct and pay under sub-rule (3) of rule 3 of the Withholding Rules, 2011.

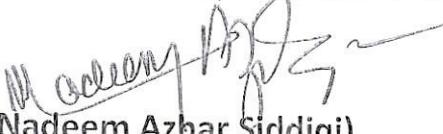
14. The appellant had raised other points i.e. the applicability of Tariff Heading 9809.0000 or otherwise etc. However such points need no further discussion considering the decision on instant legal issue.


15. In view of the above discussions the appeal is dismissed consequently the OIA is maintained.

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16. The appeal is disposed of accordingly. The copies of the order may be provided to the learned representative of the parties

  
(Justice® Nadeem Azhar Siddiqi)  
CHAIRMAN

  
(Imtiaz Ahmed Barakzai)  
TECHNICAL MEMBER

Certified to be True Copy

  
REGISTRAR  
APPELLATE TRIBUNAL  
SINDH REVENUE BOARD

Karachi:

Dated:14.02.2022

Copy Supplied for compliance:

- 1) The Appellant through Authorized Representative.
- 2) The Assistant Commissioner, (Unit-03), SRB, for compliance

Copy for information to:-

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

Order Issued on 14/02/2022

Order Dispatched on 14/02/2022

Registrar  
