

BEFORE THE APPELLATE TRIBUNAL, SINDH REVENUE BOARD AT
KARACHI

DOUBLE BENCH-I

APPEAL NO. AT-03/2021

M/s Pakistan Defense Officers Housing Authority.....Appellant
2-B, East Street, Phase-I, DHA, Karachi

Versus

Assistant Commissioner, (Unit-02),
Sindh Revenue Board,
2nd Floor, Shaheen Complex,
M.R. Kiyani Road, Karachi.....Respondent

Date of filing of Appeal: 11.01.2021

Date of hearing: 27.09.2021

Date of Order: 04.10.2021

Mr. Abdul Raheem Lakhani Advocate, Mr. Suneel Ali Memon Advocate and Asif
Khalique Shar Advocate for appellant.

Mr. Asad Raza, AC-SRB and Mr. Nasir Bachani, AC-DR 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. 01/2021 dated 07.01.2021 passed by the Commissioner (Appeals) in Appeal No. 96/2020 filed by the Appellant against the Order-in-Original (hereinafter referred to as the OIO) No. 204/2020 dated 09.10.2020 passed by Mr. Sarmad Ali Wassan, Assistant Commissioner, (Unit-02), SRB Karachi

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02. It was stated in the OIO that the appellant was registered with Sindh Revenue Board (SRB) under service category of "Services provided or rendered by clubs' falling under Tariff Heading 9801.4000 of the Second Schedule to the Sindh Sales Tax on Services Act, 2011 (hereinafter referred to as the Act) at standard rate of tax.

03. It was further stated in the OIO that the appellant was selected for audit under section 28 of the Act for the tax periods July-2016 to June-2017 vide SRB-audit letter dated April 17, 2018 and the appellant was required to provide the requisite records pertaining to aforementioned period under section 27 of the Act. However, the appellant provided partial record on 10.06.2017 and audit observations were made and communicated to the appellant vide SRB letter dated 18.09.2018. The appellant failed to provide satisfactory response within period of 21 days as mandated by sub-section (3) and (4) of Section 28 of the Act.

04. It was alleged that from the Audit Report dated 31.10.2018 it had transpired that the appellant was involved in willful under-declaration of the value of taxable services. Besides, the appellant had also failed to comply with the provisions of Sindh Sales Tax Special Procedure (Withholding) Rules, 2014 (hereinafter referred to as the Withholding Rules), and as per details mentioned in para 3 of the OIO the appellant short deposited Sindh Sales Tax (SST) of Rs.158,377,180/=. It was also alleged that from scrutiny of financial statements it was revealed that the appellant had not paid SST of Rs.197,161,531/= on taxable services of Rs.1,516,627,161/=.

05. The appellant was served with a Show-Cause Notice (SCN) dated 07.11.2018 to explain as to why principal amount of SST of Rs.355,538,711/= should not be assessed and recovered under section 23 of the Act read with section 47 of the Act alongwith default surcharge under section 44 of the Act. The appellant was also asked to explain as to why penalty under Serial No.3, 11A and 12 of Table under section 43 of the Act should not be imposed for violation of the provision of the Act.

06. The appellant did not file any written reply and made oral submissions and provided some record to the Assessing Officer (AO). The appellant provided the data of provision of club services. It was stated by the appellant before the AO that the High Court of Sindh in 2018 PTD 1487, ABAD vs. SRB, High Court of Sindh had



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quashed the services of construction, property developer and contractor of building and as such no withholding was applicable.

07. The AO passed OIO and determined the SST of Rs.180,399,567/- (158,377,180 +180,022,387) alongwith default surcharge under section 44 of the Act. The AO also imposed the penalty of Rs.9,019,978/- under serial No.3 of the Table under section 43 of the Act and also imposed penalty of Rs.10,000/- under serial No.12 of the Table under section 43 of the Act.

08. The appellant challenged the OIO before Commissioner (Appeals) by filing appeal. The Commissioner (Appeals) maintained the OIO and dismissed the appeal filed by the appellant, and held as under:-

"21. In view of the foregoing deliberations, I do not feel any need to interfere with the impugned OIO and accordingly, uphold the same in toto, without any modifications. Appellant is directed to pay into the Sindh Government treasury the total adjudged recoverable amount Rs.189,429,545/- [principal + Penalties] as per the impugned OIO, along with due default surcharge (under section 44 ibid) less the amount of Rs.18,039,957/- that he has already paid, as mentioned above. This Appeal stands disposal in these terms".



Resultantly an appeal was filed before this Tribunal.

09. Mr. Abdul Raheem Lakhani Advocate for the appellant submitted as under:-

i) The OIO was time barred and such fact was deliberately over looked by Commissioner (Appeals). The OIO during the period under consideration could be passed within 120 days and not 180 days as erroneously held by Commissioner (Appeals).

ii) After remand of the case by the Tribunal to Commissioner (Appeals) the OIA dated 07.01.2021 was passed without affording any right of hearing to the appellant.

iii) The hearing of appeal was held on 21.12.2020 via Skype when the Commissioner (Appeals) was at Lahore, and was not authorized to hear cases outside the jurisdiction of SRB.

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iv) The SST was levied on services which were not part of Second Schedule to the Act, and this fact was purposely ignored by AO and Commissioner (Appeals)

10. Mr. Asad Raza AC for the respondent submitted as under:-

i) The SCN was issued on 07.11.2018 and the OIO was passed on 09.10.2020 on 702nd day out of which 531 days were excluded on account of adjournments sought by the appellant. Thus the OIO was passed on 171st day which was within time limit of 180 days as provided under sub section (3) of Section 23 of the Act.

ii) The time for passing OIO was extended from 120 days to 180 days vide Sindh Finance Act, 2017 and the SCN was issued after extension of time of passing OIO through amendment.

iii) Proper right of hearing was provided to the advocate for the appellant as per OIA, after such case was remanded by the Tribunal.

iv) The Commissioner (Appeals) could hear appeals on Skype even if he was not in his office.

iv) The matter required reconciliation and determination of actual taxable services upon which the SST was to be levied as per Second Schedule to the Act. However the appellant had provided some details which were not sufficient and more details were required to finally determine the SST liability. It was submitted that the department had no objection if the OIO and OIA were setaside and the matter may be remanded to the AO for passing fresh OIO.

11. Mr. Abdul Raheem Lakhani, Advocate for appellant submitted that all materials and details were provided to the AC. However, if any further material was required the same would be provided to him. The authorized representative of the appellant stated that he had no objection if both the OIO and OIA are setaside and the case was remanded to AO for passing fresh OIO.

12. We have heard the learned representatives of the parties. The points raised by the learned advocate for the appellant and the learned AC require consideration. There appears serious contest between the parties on the question of services liable to SST and the same require to be dealt with thoroughly by the




AO before levying SST. These aspects of the case were previously ignored by the AO as well as by Commissioner (Appeals). However, since both the learned representatives of the parties have agreed and requested for the remand of the case for passing fresh OIO, thus we are not deliberating on the points raised by the parties.

13. We have noticed that the appellant had not filed any written statement in response to the SCN. The appellant is required to file the same within fifteen days from the date of receipt of this order. The AC is also required to intimate the appellant within this period the documents and details required for proper reconciliation of the matter.

14. In view of the above discussions and with the consent of the parties both OIO and OIA are set aside and the case is remanded back to the AO for passing fresh OIO after considering the material and details provided by the appellant and after providing proper right of hearing to the appellant. The fresh OIO should be passed within ninety (days) from the date of receipt of this order.

15. The copy of this order may be provided to the representatives of the parties.


(Imtiaz Ahmed Barakzai)
TECHNICAL MEMBER


(Justice® Nadeem Azhar Siddiqi)
CHAIRMAN

Karachi:
Dated: 04.10.2021

Certified to be True Copy


REGISTRAR
APPELLATE TRIBUNAL
SINDH REVENUE BOARD

Copy Supplied for compliance:

- 1) The Appellant through Authorized Representative.
- 2) The Assistant Commissioner (Unit-02), SRB, Karachi

Copy for information to:-

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

Order issued on 21/10/2021

Order Dispatched on 21/10/2021


Registrar