

BEFORE THE APPELLATE TRIBUNAL, SINDH REVENUE BOARD AT KARACHI

DOUBLE BENCH

APPEAL NO. AT-11/2021

M/s ITC Logistics (Pvt.) Ltd (SNTN: S3023479-4)  
Plot No. 423, I-9/3, Industrial Area,  
Islamabad.....Appellant

**Versus**


Assistant Commissioner (Unit-23),  
Sindh Revenue Board,  
6<sup>th</sup> Floor, Shaheen Complex,  
M. R. Kiyani Road, Karachi .....Respondent

Date of Filing of Appeal: 11.02.2021  
Date of hearing: 17.11.2021  
Date of Order: 15.02.2022

Mr. Shahid Hussain, Advocate for appellant.

Mr. Irfan Waheed, AC-Unit-23, SRB along with Ms. Uzma Ghory, AC-DR, 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. 105/2020 dated 18.11.2020 passed by the Commissioner (Appeals) in Appeal No. 250/2019 filed by the appellant against the Order-in-Original (hereinafter referred to as the OIO) No. 707/2019 dated 09.10.2019 passed by the Mr. Tashkeel Hussain, Assistant Commissioner, (Unit-23) SRB Karachi.

02. It was stated in the OIO that the appellant got voluntarily registration with the Sindh Revenue Board (hereinafter referred to as SRB) under the principal service category of "Inter-city transportation or carriage of goods by road or through pipeline or conduit" which was chargeable to the Sindh Sales

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Tax (hereinafter referred to as SST) under section 8 of the Sindh Sales Tax on Services Act, 2011 (hereinafter referred to as the Act) falling under Tariff Heading 9836.0000 of the Second Schedule to the Act read with the rule 42G of the Sindh Sales Tax on Services Rules, 2011 (hereinafter referred to as the Rules).

03. It was alleged in the OIO that during the scrutiny/inspection of Financial Statement for the year 2017 (July, 2016 to June, 2017), it was observed that the appellant had received the consideration of Rs.337,559,485/- against the aforesaid taxable services involving SST of Rs.27,004,759/- (at the rate of 8%). However, the appellant filed NULL returns with the SRB during the aforesaid tax period. It was required vide letter dated 17.08.2018 and 25-03-2019 to deposit the aforesaid short-paid SST and e-file correct SST returns. However, the appellant failed to deposit the same.

04. The appellant was served with Show-Cause Notice (SCN) dated 13.04.2019 to explain as to why SST of Rs.27,004,759/- should not be assessed under section 23 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. 2, 3, 6(d), 11, 12 and 15 of Table under section 43 of the Act should not be imposed.

05. The appellant submitted written reply dated 19.04.2019 and submitted that the total sales during the year were Rs.337,559,484/= out of which the share of Sindh was Rs.74,636,933/=. It was further stated that during the tax periods no SST was payable as the same was suspended in view of SRB Notifications dated 23.06.2016, 28.10.2016 and 06.04.2017 respectively. The appellant had also provided summary of services provided within the jurisdiction of Punjab Revenue Authority (PRA), SRB and Federal Board of Revenue (FBR) and also requested for the revision of the SST returns. In another reply the appellant while pleading exemption from payment of SST informed that the entire services in Sindh were provided to PSO which were verifiable from the income tax withholding certificate. During the assessment proceedings the appellant had also provided all sales tax invoices in original, bank statements (payment proof), copies of bilties, withholding certificate and sales tax returns of PRA. The appellant also submitted copies of invoices pertaining to services provided within the jurisdiction of FBR and outside Sindh.

06. The Assessing Officer (AO) passed OIO determining the SST of Rs.25,394,050/- calculated at the rate of 8% on the value of services of Rs.236,337,273/= under section 23 of the Act alongwith default surcharge

under Section 44 of the Act. The AO also imposed penalties of Rs.120,000/- at the rate of Rs.10,000/- per month for failure to e-file true and correct SST returns under Serial No. 2 of the Table under section 43 of the Act, Rs.1,269,703/- under Serial No. 3 of the Table under section 43 of the Act, Rs.25,394,050/- under Serial No. 6(d) of the Table under section 43 of the Act, Rs.1,269,703/- under Serial No. 11 of the Table under section 43 of the Act and Rs.1,269,703/- under Serial No. 12 of the Table under section 43 of the Act. The AO ordered the appellant to deposit total amount of Rs.54,717,209/= alongwith default surcharge.

07. The appellant challenged the said OIO before Commissioner (Appeals), SRB by way of filing of appeal under section 57 of the Act. On hearing the Commissioner (Appeals) passed OIA and reduced the SST at Rs.17,836,712/= to be paid alongwith default surcharge and reduced the penalties to Rs.1,011,836/=. Resultantly an appeal has been filed before this forum.

08. During pendency of appeal the appellant had filed Reconciliation Statement dated 25.10.2021 showing disputed amount of tax as under:-

PRA	Rs. 6,499,385/-
SRB	Rs. 1,115,301/-
FBR	<u>Rs.10,222,026/-</u>
<b>Total</b>	<b><u>Rs.17,836,712/-</u></b>

09. The AC filed Comments/Reconciliation Report dated 07.06.2021 and submitted comparison of SST levied in OIO and OIA and concluded that the SST of Rs.17,836,712/= determined in the OIA was correct. However AC submitted further Reconciliation Reports dated 25.10.2021 and 17.11.2021 reducing the value of service to Rs.170,790,323/= and SST to Rs.16,908,170/=.

10. The learned advocate for the appellant Mr. Shahid Hussain Submitted as under:



- i. The appellant got voluntarily registration with SRB on 09.11.2016 under Tariff Heading 9836.0000, inter-city transportation or carriage of goods by road or through pipeline or conduit. The tax periods involved were from July-2016 to June 2017 (twelve tax periods)
- ii. The SST during the tax periods involved in this appeal on service of transportation of petroleum products through road had remained in abeyance till 31<sup>st</sup> December, 2017.
- iii. The services of Rs.74,636,933/- were provided in Sindh out of which an amount of Rs.60,695,667/- was reconciled whereas an

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amount of Rs.13,941,266/- remained to be reconciled which pertained to the services provided to PSO.

- iv. The services valuing Rs. Rs.222,242,041/- were provided in Islamabad out of which an amount of Rs.94,466,717/- was reconciled leaving a balance of Rs.127,775,324/.
- v. The services valuing Rs. Rs.40,680,510/= were exclusively provided to Nestle in Punjab, which was in dispute since no SST was payable in Sindh.
- vi. The Reconciliation Reports submitted by AC were not proper as on the services provided to M/s Nestle the SST was charged without bifurcation of Sindh's share @ 16% instead of 8% which was the rate of SST prevailing in the relevant tax periods.
- vii. The SST was payable in Sindh for the services which originated in Sindh. However the services which were originated in Punjab the PST was payable in Punjab and the PST of Rs.6,487,068/- on total amount of Rs.40,526,545/- relating to Nestle was paid to PRA and the evidence of such payment was provided to the AC.
- viii. The SST charged on the services provided in Punjab was erroneously included in the Reconciliation Report despite providing all evidences.
- ix. The AC charged SST on the services provided in other jurisdictions for which he had no jurisdiction.



- x. It is evident from the Addendum (to Contract dated 29.04.2014) signed on 29.06.2016 that it was effective from 01.07.2016 and had expired on 30.06.2018. Moreover the journey commenced from Sheikhpura to Karachi and then from Karachi to Sheikhpura and in this way the service were originated from Punjab and also terminated in Punjab. Thus sales tax on services provided to Nestle was rightly deposited with PRA.
- xi. That there was no service in Islamabad during the tax periods from July-2016 to June- 2017.
- xii. The appellant had provided 542 invoices to the AC at appellate stage before Commissioner (Appeals) in support of its contention explaining that the services were provided in Islamabad.
- xiii. The penalties and default surcharge confirmed by Commissioner (Appeals) were harsh and without establishing mensrea and malafide on the part of the appellant.

11. The learned AC-SRB Mr. Irfan Waheed submitted as under:-

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- i. The appellant got voluntarily registration with SRB on 09.11.2016 under Tariff Heading 9836.0000, "Inter-city transportation or carriage of goods by road or through pipeline or conduit".
- ii. The tax periods involved were from July-2016 to June 2017 during which the SST was short paid and Null SST returns were filed.
- iii. That the Addendum to the Contract justifies that the services had commenced from Sindh in the shape of transportation of filled water bottles from Port Qasim Factory to Sheikhpura and then empty bottles were returned from Sheikhpura to Bin Qasim Factory. It is evident that the services commenced and terminated in Sindh and SST was payable in Sindh in terms of preamble of the Act and clause (b) of sub-section (1) of section 3 of the Act.
- iv. The SST in respect of services provided to PSO were reconciled and after adjustment the remaining liability was worked out to Rs.16,908,170/-.
- v. The invoices submitted by appellant were partially fake for the reason that letters for confirmation were sent to some of the recipients but the same were returned unserved.
- vi. The appellant during the tax periods had also provided taxable services to M/s Coca-Cola Beverages Pakistan Limited valuing Rs.3,444,722/-, KKC (Pvt.) Limited valuing Rs.1,184,815/=, Pepsi-Cola International (Pvt.) Ltd valuing Rs.19,692,639/- and M/s Schlumberger Seaco Inc. valuing Rs.141,806/-. However the record and details of such taxable services were not provided to the department just to avoid payment of SST.
- vii. The service of transportation of goods through road was kept in abeyance till 31.12.2015. However during tax periods under consideration no exemption was available.
- viii. The service of transportation of petroleum products during the tax period under consideration was in abeyance thus the benefit was provided to the appellant.
- ix. The default surcharge and penalties were rightly imposed as the mensrea and malafide on the part of the appellant was apparent, and was fully established.

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

13. The dispute with regard to providing services to PSO was resolved after hearing the parties, since in the final Reconciliation dated 17.11.2021 no SST

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was claimed in this regard. However the dispute remained relating to the services provided to Nestle (Punjab) and Islamabad.

14. The contention of the appellant was that the services provided to Nestle originated from Punjab and also terminated in Punjab. Thus the service tax was rightly deposited with PRA. The contention of the AC was that the services had not only commenced but was also terminated in Sindh and the SST was therefore payable in Sindh.

15. The appellant is based at Islamabad and provided services in Islamabad, Punjab and Sindh. The Addendum of Agreement dated 29.06.2016 which was effective from 01.07.2016 was perused and it emerged that the services had originated both from Sindh, as well as Punjab. The position as per Agreement is as under:-

- i) Transportation from Port Qasim Factory to Sheikhpura 40 feet platform Rs.94,792/- (Services commenced in Sindh and terminated at Punjab)
- ii) Sheikhpura to Port Qasim Factory 40 feet (empty cages) (Services commenced in Punjab and terminated at Sindh Punjab)
- iii) Karachi to Sheikhpura 20 feet (empty yogurt trays) Rs.51,358/- (Services commenced in Sindh and terminated at Punjab)

16. It is therefore evident from the addendum of agreement that there were two types of services i.e. one that commenced from Sindh and terminated in Punjab. The other which originated from Punjab and Terminated at Sindh. The AC in the final Reconciliation Report dated 17.11.2021 bifurcated the services provided in Sindh and Punjab, and such position was submitted as under: -

*"...02. In this regard, the bifurcation as directed by the Honorable Tribunal, SRB, for the sales (details enclosed as Annexure-A) related to M/s Nestle Pakistan Limited is tabulated below:*

Services provided to M/s Nestle Pakistan Limited (Year 2016-17)			
Description	Value of Services	Tax Amount	Total Amount
Originated from Sindh	24,406,014	3,904,962	28,310,976
Terminated at Sindh	16,120,531,	2,581,549	18,702,080
<b>Total</b>	<b>40,526,545</b>	<b>6,486,511</b>	<b>47,013,056</b>

17. There appears no justification on the part of the AC to demand SST on the value of services provided in Punjab and Islamabad even if the service tax was not paid in those jurisdictions on the presumption that since no service tax was paid in those jurisdictions thus the same pertained to Sindh. The law is

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very clear on this point that in taxing statute one has to look merely at what is clearly stated. There is no room for any intendment. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied, one can only look fairly at the language used in the statute. It is thus established principle of the interpretation of fiscal statutes that, a tax on any person is to be levied by clear and unambiguous words. Moreover the expressions used in the charging sections are not to be stretched by any process of interpretation so as to bring a person within the tax net who is not falling under the clear and plain language of the statute.

18. The contention of the appellant relating to the SST charged on the services provided to Nestle was that the services had commenced and terminated in Punjab thus the service tax was payable in Punjab. However the contention of the AC was that the services had commenced and terminated in Sindh and SST was payable in Sindh. Sub-section (1) of section 3 of the Act provided that a taxable service is a service listed in the Second Schedule to the Act which is provided by a registered person from its registered office or place of business in Sindh. It is clear from the bare reading of the provision that only those services could be taxed in Sindh which are listed in the Second Schedule to the Act and provided by the registered person from its registered office in Sindh in the course of an economic activity, including the commencement or termination of the activity. The word used was "or" which is a disjunctive word and used to show an alternative, generally corresponding to either. The SST could be charged either on the basis of commencement or termination and not on both and claim of both the parties are not correct and was misleading in this regard.

19. The AC has charged SST at the rate of 16% on the services provided to Nestle instead of 8% which was prevailing rate during the tax periods involved in this appeal. There appears no reason and justification in charging the SST at the standard rate when by a Notification the rate of SST on service of transportation of goods was reduced by SRB. The SST of Rs.1,952,481/= could be charged on the value of service of Rs.24,401,014/= provided by the appellant to Nestle in Sindh.

20. The SRB had kept in abeyance the charging and collection of SST under Tariff Heading 9836.0000 of the Second Schedule to the Act vide various notifications on inter-city transportation or carriage of petroleum oils by road through oil tankers up to 31.12.2017. There was no exemption available on inter-city transportation of goods (except petroleum oils) after 31.12.2015.

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The services provided by the appellant to Nestle fall within the ambit of transportation of goods and not of petroleum oils hence it was not exempted.

21. The SCN was issued on the basis of receipts reflected in the financials for the year July-2016 to June-2017 treating Rs.337,559,485/- as sales revenue involving SST of Rs.27,004,759/-calculating SST at the rate of 8%. However during these tax periods the appellant had filed Null SST returns reflecting no taxable activity in Sindh. The appellant produced summary of services provided in Sindh, Punjab and Islamabad. According to the summary the value of services provided in Sindh was Rs.74,636,933/- in Punjab Rs.40,680,510/- and in Islamabad (FBR) Rs.222,242,041/=.

22. The OIO was passed determining SST of Rs.25,394,050/= on the reduced value of service of Rs.276,863,818/=. Out of this amount SST of Rs.18,906,982/= was charged at the rate of 8% on 236,337,273/= and SST of Rs.6,487,068/= at the rate of 16% was charged on the value of service of Rs.40,526,545/=. However in the SCN the SST was calculated at the flat rate of 8% and In OIO the same could not be changed to the disadvantage of the appellant. It is now well established that no OIO could be passed beyond the grounds mentioned in SCN.

23. There is serious dispute between the parties relating to the SST of Rs.10,421,102/= on the value of service of Rs.130,263,778/= relating to the place at which such services were provided. The claim of the appellant was that such services were provided in Islamabad. Initially the SST was simply charged on the basis of receipts of Rs.337,559,485/= shown in the financials and the value of service provided to PSO at Rs.60,695,667/= were deducted. Moreover the AC deleted the services provided to M/s Ittehad Steel Industries, Islamabad valuing Rs.94,446,717/=. He however, found other invoices produced by the appellant to be fake for not furnishing NTN, CNIC, Cell No. address and copies of bilties, etc. The AC as well as Commissioner (Appeals) erred in rejecting the invoices for this technical reason.

24. We are not satisfied the manner in which the invoices produced by the appellant in respect of services provided at Islamabad were rejected. The AC as well as Commissioner (Appeals) should inquire into the matter and should apply their mind to reach a fair conclusion. The charging of the SST merely on the presumption that since service tax was not paid in other jurisdictions the same was payable in Sindh is incorrect approach therefore no tax could be charged on the basis of presumption as discussed supra.

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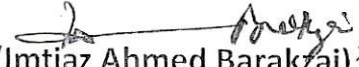


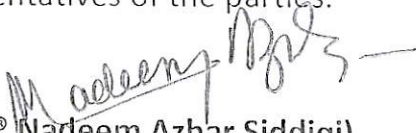
25. In view of the above discussions the appeal is partly allowed. The OIO and OIA is maintained to extent of payment of SST of Rs.1,952,481/= on the value of service of Rs.24,401,014/= provided by the appellant to Nestle in Sindh alongwith default surcharge and penalty of Rs.78,099/= (@5% on the tax amount of Rs.1,952,481/=) under serial No.3 of the Table under section 43 of the Act. However the matter relating to un-reconciled services valuing Rs.130,263,778/= which were provided at Islamabad is remanded back to the AC for fresh inquiry and decision after providing proper right of hearing to the appellant.

26. The Commissioner (Appeals) has rightly imposed penalty of Rs.120,000/= at the rate of Rs.10,000/= per month under serial No. 2 of the Table under section 43 of the Act for not e-filing true and correct SST returns as provided under the Rules.

27. The contention of the department that the appellant during the tax periods had also provided taxable services to M/s Coca-Cola Beverages Pakistan Limited valuing Rs.3,444,722/-, KKC (Pvt.) Limited valuing to Rs.1,184,815/=, Pepsi-Cola International (Pvt.) Ltd valuing Rs.19,692,639/- and M/s Schlumberger Seaco Inc. valuing Rs.141,806/- is not part of SCN. The appellant cannot be penalized on mere presumption that record / details were not provided on this after thought assumption. However if the Department is in possession of sufficient evidence in this regard it can issue fresh SCN to the appellant on this issue.

28. The appeal is disposed of in terms of 25, 26, and 27 above. The copy of this order may be provided to the learned representatives of the parties.

  
(Imtiaz Ahmed Barakzai)  
TECHNICAL MEMBER

  
(Justice<sup>®</sup> Nadeem Azhar Siddiqi)  
CHAIRMAN

Karachi:

Dated:15.02.2022

Copy Supplied for compliance:

- 1) The Appellant through Authorized Representative.
- 2) The Assistant Commissioner, (Unit-23), SRB, for compliance

Copy for information to:-

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

Certified to be True Copy

  
REGISTRAR  
APPELLATE TRIBUNAL  
SINDH REVENUE BOARD

Order issued on

16/02/2022

Order Dispatched on

16/2/2022