

BEFORE THE APPELLATE TRIBUNAL, SINDH REVENUE BOARD AT KARACHI
DOUBLE BENCH

APPEAL NO. AT-23/2021

M/s Shabbir Tiles & Ceramics Limited
15th Mile Stone, National Highway,
Landhi, Near Manzil Pump Karachi.....Appellant

Versus

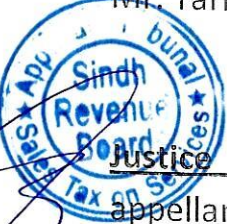
Assistant Commissioner (Unit-24),
Sindh Revenue Board,
2nd Floor, Shaheen Complex,
M. R. Kiyani Road, KarachiRespondent

Date of filing of Appeal 27.04.2021
Date of hearing 16.12.2021
Date of Order 08.04.2022

Mr. Zia Ahmed Khan, (ITP) for appellant.

Mr. Tarique Ali Sheikh, AC, (Unit-24)-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. 25/2021 dated 31.03.2021 passed by the Commissioner (Appeals) in Appeal No. 98/2020 filed by the Appellant against the Order-in-Original (hereinafter referred to as the OIO) No. 220/2020 dated 19.10.2020 passed by the Mr. Muhammad Yasir, Assistant Commissioner, (Unit-24) SRB Karachi.

02. The brief facts of the case as stated in the OIO were that the appellant bearing NTN: 0712052-4, was e-signed up with Sindh Revenue

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Board (SRB) since 19.03.2013 as 'Withholding Agent' as per Rule 3 of the Sindh Sales Tax Special Procedure (Withholding Rules, 2014 (hereinafter as the Rules, 2014). The appellant was liable to withhold the amount of Sindh Sales Tax (SST) at applicable rate on receipts of taxable services, and deposit the same with SRB.

03. It was alleged in the OIO that from scrutiny of the record it was revealed that the appellant during the tax periods from July-2016 to June-2019 had received taxable services of Goods Transportation falling under Tariff Heading 9836.0000 of the Second Schedule to the Sindh Sales Tax on Services Act, 2011 (hereinafter referred to as the Act) from Mr. Aaqil Hussain and withheld SST of Rs.2,902,506/-. Such amount was neither declared in the monthly withholding statement nor the same was deposited with SRB.

04. The appellant was served with a Show-Cause Notice (SCN) dated 04.03.2020 to explain as to why the SST Of Rs. Rs.2,902,506/- alongwith with the amount of default surcharge under section 44 of the Act may not be recovered from it under section 47(1B) of the Act read with sub-rule (1), (3), (4), (5), (7), (8), (9) and (10) of Rule 3 of the Rules, 2014. The appellant was also called upon to explain as to why the penalties, as provided under Sl. No.3, 6(d) and 11A of the Table under section 43 of the Act may not be imposed upon it for the contravention of above mentioned provisions of the Rules, 2014.

05. In response to the SCN Mr. Syed Khurram Ayaz appellant's Deputy Manager appeared and submitted that the service provider had not charged sales tax on invoices covered in the SCN. The representative of the appellant vide email dated 12.09.2020 informed that the appellant had decided to make payment of SST against the procurement of goods transportation service from Aaqil Hussain and requested for some time to make such payment on the ground that signing authorities were out of city.

06. The Assessing Officer (AO) passed OIO determining the SST of Rs.2,698,093/= alongwith default surcharge and ordered its recovery from

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the appellant. The AO also imposed penalty of Rs.134,905/- under Serial No. 3 of the Table under section 43 of the Act and Rs.2,698,093/- (being equal to the amount of tax involved) under Serial No. 11A of the Table under section 43 of the Act for contravention of sub-rule (5) of rule 3 of the Rules, 2014. However, no adverse inference was hereby drawn apropos of penalty under serial No. 6(d) of the Table under section *ibid*.

07. 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, default surcharge and the penalties except the penalty of Rs.2,698,093/- under Serial 11A of Section 43 of the Act which was deleted. The relevant para 17 of the OIA is reproduced for ready reference as under:-

“17. In view of the foregoing points of law and facts, instant Appeal fails, same being untenable and without merits. Accordingly, I uphold the impugned OIO as being correct in law and facts. Appellant, shall pay into the Sindh Government treasury an amount equal to Rs.2,698,093/- along with default surcharge (u/s 44 *ibid*). Moreover, since Appellant’s willful non-payment of due SSTs amount has been proved, indicating his malafide and *mens rea* in this matter, adjudged penalty of Rs.134,905/- [@ 55% of the defaulted sales tax] vide S. No. 3 of section 43 *ibid*, is upheld as recoverable. However, I remit the other adjudged penalty amount of Rs.2,698,093/- [@100% of the defaulted tax amount, under S. No. 11A of section 43 *ibid*] same being harsh and excessive.

Resultantly filing of the appeal before this Tribunal.

08. Mr. Zia Ahmed Khan, ITP the learned representative of the appellant submitted as under:-

- i. The SRB Notification dated 01.07.2013 (page-459) relevant page 469 relating to the Transport Services under Tariff Heading 9836.0000 was applicable at reduced rate of SST @ 8% but both the forums below ignored this notification and charged SST @ 13% for the tax periods from July-2016 to June-2019.
- ii. The appellant was not liable to withhold entire SST, but the same was to be withheld on the basis of fraction formula.

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iii. In view of recent judgment of the High Court of Sindh in the case of Fatima Fertilizer the appellant being a withholding agent was not personally liable to pay SST.

iv. The services were acquired from M/s Al-Hyder Trailer Services during the tax periods July-2016 to June-2019. However the said service provider was not registered and was not liable to charge SST.

v. The services which were originated from Sindh and terminated in other provinces were also demanding tax.

vi. The transportation service were acquired in Sindh for entire Pakistan and the appellant was only liable to deduct tax if the services were originated and terminated within Sindh and since all the invoices referred in the SCN pertain to services terminated out of Sindh, hence no SST was deducted.

09. The learned AC-SRB, submitted as under:-

i. The reduced rate of tax of 8% was applicable subject to submission of Form-I by the service provider. However the required form was not submitted.

ii. The appellant had collected tax and issued withholding certificates to the service provider.

iii. The invoices/bills in which SST was not shown separately but such amount was inclusive of SST and the appellant was required to withhold the entire amount of SST.

iv. The SST @ 13% was rightly charged as the service provider had not filed Form "I" for paying tax at the statutory rate of 13%. Copy of e-mail from the Incharge of Unit dealing with transport services was produced who confirmed that no such form was submitted by the service provider.

v. The service provider in its monthly tax returns vide annexure 'C' had declared that amount of tax was withheld by the appellant.

vi. The appellant being service recipient of transportation services was liable to withhold entire SST despite non-charging of SST in its invoices by the service provider and to deposit the same with SRB under sub-rule (5) of Rule 3 of Withholding Rules.



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vii. The assessment order could be passed against the withholding agent under sub-section (1B) of Section 47 of the Act which was inserted w.e.f. July 2016.

viii. The appellant through its email had admitted its disputed liability and agreed to pay the due SST.

10. In rebuttal Mr. Zia Ahmed Khan submitted that in case the Tribunal reaches to the conclusion that the appellant was liable to pay SST, than such working is to be applied at the reduced rate of 8% and not 13% as erroneously charged by the AO and confirmed by Commissioner (Appeals).

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

12. It was not disputed that during the tax periods July-2016 to June-2019 the appellant was resident person and was recipient of taxable transportation services and had also e-signed up on 19.03.2013 as withholding agent. It was also not disputed that the appellant had acquired taxable transportation services from Aaqil Hussain of AL-Hyder Trailer Services (ATS).

The Service provider of the appellant ATS in its monthly sales tax returns had declared that during the tax periods involved in this appeal it had provided taxable transportation service to the appellant and SST of Rs.2,902,506/= was withheld by the appellant.

14. The representative of the appellant Syed Khurram Ayaz vide email dated 12.09.2020 agreed to make payment of SST against the procured goods services.

15. The SRB had framed Withholding Rules, 2014 for collection of SST and as per clause (f) of sub-rule (2) of rule 1 of the Withholding Rules the recipient of intercity transportation of goods, Tariff Heading 9836.0000 is covered under the definition of withholding agent. However as per rule 3 of the Withholding Rules a withholding agent, other than a person or a



recipient of the taxable service which was covered by clause (f) of sub-rule (2) of rule 1, shall deduct an amount equal to one-fifth (1/5) of the total amount of sales tax shown in the sales tax invoice issued by a registered person and shall make payment of the balance amount to the service provider.

16. The proviso of sub-rule (3) of rule 3 of the Withholding Rules provide that where the invoice issued by the registered person does not indicate the amount of sales tax, the withholding agent shall deduct and withhold the amount of sales tax, at the rate applicable to the services provided or rendered to him, from the amount invoiced or billed or charged by such registered person and, unless otherwise specified in the contract between the service recipient and service provider. It is evident from this rule that the service recipient of transportation service was bound to deduct SST at the applicable rate even if it was not charged.

17. Sub-Rule (4) of rule 3 of the Withholding Rules provided that a withholding agent falling under sub-rule (2) of rule 1 of the Withholding Rules shall, on receipt of taxable services from unregistered persons, deduct the amount of sales tax, at the tax rate applicable to the taxable services provided or rendered to it, from the amount invoiced or billed or demanded or charged by such un-registered service provider. It was thus clarified by this rule that in case the appellant had received taxable services from unregistered person it was liable to withhold entire SST and to deposit the same with SRB.

18. The appellant before the AO through its email had accepted its liability before the AO, and agreed to pay the due SST. Therefore making such admission the appellant could not challenge the OIO and OIA on technical grounds, and was bound to pay the SST.


19. The AO charged SST at the rate of 13% instead of reduced rate of 8%. The AC submitted that the SST was deducted at the rate of 13% and the service provider had not submitted Form 'I' for payment of SST at reduced rate. However as per Notification No. SRB-3-4/8/2013 dated 01.07.2013 the

statutory rate of 13% was applicable to those taxpayers who elected or opted to pay the statutory rate of tax under the Special procedure prescribed by the Board. Therefore for charging the SST at reduced rate the filing of Form 'I' was not required.

20. The AC filed Reconciliation Report dated 30.08.2021 calculating the SST at the rate of 8%. According to this report the SST @ 8% works out to Rs.1,786,757/-. Moreover it is evident from the Invoices of the service provider that no SST was charged therein by it and the AO and Commissioner (Appeals) had erred in charging the SST @ 13%.

21. In view of the above discussions the appeal is partly allowed and the SST liability is reduced to Rs.1,786,757/-, and the same is to be paid alongwith default surcharge. In view of the circumstances of the case the penalty imposed under Serial No.3 of the Table under section 43 of the Act is set aside.

22. The appeal is disposed of in terms of para 21 above. The copy of the order may be provided to the representatives of the parties.


Imtiaz Ahmed Barakzai
TECHNICAL MEMBER


(Justice[®] Nadeem Azhar Siddiqi)
CHAIRMAN
Certified to be True Copy

REGISTRAR
APPELLATE TRIBUNAL
SINDH REVENUE BOARD

Karachi:
Dated:08.04.2022

Copy Supplied for compliance:

- 1) The Appellant through Authorized Representative.
- 2) The Assistant Commissioner, (Unit-24), SRB, for compliance 11/04/2022
Order issued on

Copy for information to:-

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

Order Dispatched on 11/04/2022
Registrar

Registrar