

BEFORE THE APPELLATE TRIBUNAL, SINDH REVENUE BOARD AT  
KARACHI

DOUBLE BENCH-I

APPEAL NO. AT-25/2021

Assistant Commissioner SRB, (Unit-28) ..... Appellant  
02<sup>nd</sup> Floor, Shaheen Complex Building  
M.R. Kiyani Road Karachi

**Versus**

M/s Hewlett Packard Pakistan (Pvt.) Ltd. ..... Respondent  
(SNTN: 2800869-3)  
The forum, Suite no. 403-404,  
4<sup>th</sup> Floor Clifton Block-9, Karachi

Date of filing of Appeal 07.05.2021  
Date of hearing 07.02.2022  
Date of Order 13.05.2022

Ms. Umi Rabbab, AC-DR-SRB for the appellant

Mr. Zia-ur-Rehman, Associate for KPMG for respondent

ORDER

Muzia Ahmed Barakzai: This appeal has been filed by the Assistant Commissioner (Unit-04), SRB Karachi challenging the Order-in-Appeal (hereinafter referred to as the OIA) No.16/2021 dated 12.03.2021 passed by the Commissioner (Appeals) in Appeal No. 81/2018 filed by the Appellant against the Order-in-Original (hereinafter referred to as the OIO) No. 174/2018 dated 25.05.2018 passed by Ms. Nida Noor Assistant Commissioner, (Unit-28) SRB Karachi.

02. It was stated in the OIO that M/s Hewlett Packard Pakistan (Pvt.) Limited (hereinafter referred to as the Registered Person) got voluntarily registered with SRB under the principal activity of "Technical, scientific and engineering consultants", Tariff Heading 9815.5000 of the Second Schedule to the Sindh Sales Tax on Services Act, 2011 (hereinafter referred to as the Act). The said services are chargeable to sales tax under section 8 of the Act

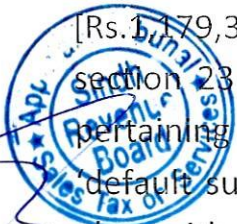
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read with aforesaid Tariff Heading of the Second Schedule to the Act with effect from July 1, 2014.

03. However, on perusal of the copy of the audited financial statement of the Registered Person for the year ended October 31, 2014 revealed that its principal activity was to provide the information technology related services. Furthermore, under Profit and Loss Account, the registered person had shown total revenue, amounting to Rs.1,179,323,315/-, under the head of service fee for the tax periods with effect from November, 2013 to October 31, 2014. It was stated that the services provided or rendered by Software or IT based system development consultant were chargeable to Sindh Sales Tax with effect from July 1, 2013. However, the record available with SRB revealed that the registered person had not declared the aforesaid Tariff Heading of 9815.5000 of the Second Schedule to the Act in its SRB-registration profile, hence, it was deemed that it had not deposited the due amount of Sindh Sales Tax on the value of taxable services provided or rendered in relation to aforesaid Tariff Heading. Furthermore, the registered person has not filed true and correct sales tax returns for the tax periods July, 2013 to June, 2014.

04. The Registered Person was served with Show Cause Notice (SCN) dated 25.09.2017 asking him as to why SST worth Rs.188,691,730/- [Rs.1,179,323,315 x 16%] should not be assessed / recovered from it under section 23 read with section 47 of the Act, for its 'non-tax-paid' services pertaining to the tax-periods 11/2013 to 10/2014. Further, as to why 'default surcharge' under section 44 of the Act may not be imposed on it alongwith penalties as prescribed at S. No.(1A), 2 and 3 of the Table under section 43 of the Act. In response the Authorized Representative mentioned that the Registered Person was providing services of 'Technical, scientific and engineering consultants' which were covered under Tariff Heading 9815.5000 (and the same was subjected to SST on 1<sup>st</sup> July, 2014). Moreover it was contended that the registered person was not required to charge / pay SSTs (with effect from 1<sup>st</sup> July, 2013) under Tariff Heading 9815.6000 'Software or IT based system development consultants' of the Second Schedule to the Act. However, the AC SRB, held that the Registered Person had failed to furnish any documentary evidence in support of such claim (such as License by PEC or by the SBCA Sindh). Registered Person also



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contended that out of the impugned sales revenue worth Rs.1,179,323,315/- only services worth Rs.506,792,550/- pertained to Sindh (as rendered by him during the impugned tax-periods). The Registration Person shared reconciliation of such invoices with the AC, SRB.

05. The Assessing Officer (AO) after affording numerous opportunities to the Registered Person as per law, and after detailed reconciliation partially admitted Registered Persons plea [regarding 'bifurcation' of the impugned services into 'Sindh-based' & 'non-Sindh-based' services]. Thereby, he adjudged a total amount of Rs.86,941,497/- to be recoverable from the Registered Person, under section 23 read with section 47(1A)(a) of the Act. She further imposed penalty of Rs.4,347,075/- on the Registered Person vide S.No.3 of the Table under section 43 of the Act, [being 5% of the adjudged principal amount, for contravention of sections 8, 9 & 17 of the Act], she also imposed a penalty of Rs.120,000/- vide S.No.2 of the Table under section 43 of the Act and a penalty of Rs.100,000/- for non-declaration of service category of Software or IT based System Development Consultant in SRB Registration Profile. The AC shortly after passing the OIO proceeded against the Registered Person, under section 66 of the Act, and recovered Rs.43.7 million by attaching its business Bank accounts, on 06.04.2018.



06. The Registered Person challenged the said OIO by way of filing appeal before the Commissioner (Appeals) under section 57 of the Act. The Commissioner (Appeals) in para 22 and 23 of OIA held as under:-

"...22....That the AC has made glaring arithmetical / legal mistakes while computing Appellant's tax-demand in the instant matter. When Appellant pointed out those mega errors to the AC, she admitted those errors and in fact, wrote a letter to the Commissioner (Appeals) dated 28.04.2018, purportedly issued under section 76 of the Act, 2011, whereby she requested for 'rectifying the errors in the impugned OIO'. Since the nature and quantum of the so-called 'errors' was too huge to be appropriately covered under section 76

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ibid, the then Commissioner (Appeals) correctly advised the then incumbent AC, SRB to pass 'a separate order' in the matter instead of 'rectifying' the impugned OIO. However, as it transpires from the available record, no 'separate Order' was ever passed nor was any 'rectification' done of the impugned OIO....."

"23. In view of the foregoing points of fact and law, especially in view of the fact that the tax liability worked-out in the instant matter suffers from glaring mistakes / arithmetical errors, as noted above, I am unable to sustain the impugned OIO which Order is therefore, quashed and set-aside in toto as being invalid in law, without any cost to the Appellant. Respondent department is further directed to work-out correctly as well as to verify the tax already paid by the Appellant under his registered tariff heading 9815.5000 (during the impugned tax-periods) and also see the tax that has been recovered by way of attachment of Appellant's Bank accounts under section 66 ibid, said to be Rs.43 million plus, for Appellant's purported 'short-payment' under tariff heading 9815.6000. Thereafter, the respondent department should take appropriate measures under law, to compensate the appellant, for his 'excess payment' of tax, if any, in line with the precepts of natural justice and fair play."

Resultantly the appeal was filed by the department before this Tribunal.

The learned representative of the Appellant / Department submitted as under:-

- i) That the entire case was based in the scrutiny of Annual Audited Account for the year ended October 31, 2014 wherein it was found out from Note 1 of the Audited accounts that the respondent provided information Technology related services. The respondent had shown total revenue amounting to Rs.1,179,323,315/- under the Head Service Fee for the tax periods from November, 2013 to October 31<sup>st</sup>, 2014. It was stated that the respondent had rendered or provided services under Tariff Heading 9815.6000 (Software or IT based system

development consultant) with effect from July 1, 2013. It had however not declared such Tariff Heading in SRB Registration profile hence it had not deposited due amount in SRB Registration profile.

- ii) That the respondent was e-signed up on 21.03.2013 as Withholding Agent and not as service provider. However it got voluntarily registration on 08.08.2014 under Tariff Heading 9815.5000 (Technical, Scientific and engineering consultant). This Tariff Heading was inserted vide Sindh Finance Act, 2014.
- iii) That after numerous opportunities OIO was passed levying SST amounting to Rs.86,941,497/- (excluding default surcharge) and penalty of Rs.4,081,922/-. The AO also recovered Rs.43,796,207/- vide CPR No.S-20170406-223-1040715 dated 06.04.2018 under Section 66 of the Act against such OIO.
- iv) Audited Financial Statement of the respondent for the year ended 31<sup>st</sup> October, 2014, reveals that the principal activity of the respondent was to provide IT related services.
- v) That the respondent provided 15 agreements with service recipient of the respondent during first appeal. These agreements were examined and it transpired that the respondent granted licenses to distribute, resale or sub-license the product wherein support includes hardware maintenance and repair, software updates and maintenance, training and other standard support services.
- vi) That the respondent got itself voluntarily registered with SRB on 21.03.2013 which can be verified from Registration profile of the respondent. The assessment in the instant case was related to audited account starting from November 2013. This shows that the Department has not demanded / charged any tax before the date of Registration of the respondent.

08. In reply the learned representative of the respondent submitted as under:-



- i) That the respondent obtained voluntary registration with SRB in view of the taxability of Tariff Heading 9815.5000 [Technical, scientific and engineering consultants] under Second Schedule to the Act w.e.f.01 July 2014.
- ii) That the learned Appellant issued show cause notice on 25 November, 2017 and established aggregate demand of Sindh Sales Tax (SST) for tax periods from November 2013 to October 2014 amounting to Rs.86 million (excluding the levy of default surcharge) on the plea that the Respondent was engaged in providing IT related services as such its services fell under Tariff Heading 9815.6000 (Software or IT based system development consultant) as made taxable under Sindh Sales Tax on Services Act, 2011 (Sindh Act) w.e.f. 01 July 2013.
- iii) That immediately after passing of OIO, the learned Appellant coercively recovered the amount of Rs.43.7 million out of Rs.86 million by attaching Respondent's bank account on 5 April, 2018 for recovery of this amount. However the Respondent has filed refund application with the Appellant in view of the order of Commissioner (Appeals) and the processing of refund application is pending to date. Copy of refund application is enclosed as Annexure A.
- iv) That the Commissioner (Appeals), SRB after examining the exact nature of service explained by the Respondent has quashed the whole of SST demand vide OIA dated 12 March 2021.
- v) Services of the Appellant are not related to development of software or IT system and hence not classified under Tariff Heading 9815.6000 but the Respondent is engaged in providing services as Technical, scientific and engineering consultants under Tariff Heading 9815.5000 of the Second Schedule to the Act. Moreover it is not engaged in any sort of activities which could be construed as falling within the development of software or IT system.



- vi) That the respondent remained unregistered during alleged tax periods for the very reason that its services did not fall under Tariff Heading 9815.6000 of the Second Schedule to the Act.
- vii) Levy of default surcharge and penalty under sections 43 and 44 of the Act, are not legally sustainable since there was no mal-intention of the respondent. Moreover the controversy relating to interpretation of law, rules out the question of penalty and default surcharge. Reliance was placed on order of Appellate Tribunal Sindh Revenue Board in Appeal No. AT-234/2015 dated 26 November 2019 (Annexure B).

09. We have heard the learned representatives the parties and perused the record made available before us.

10. There is dispute with regard to the date of registration of the respondent. The AC submitted that accordingly to registration profile of the respondent it was evident that it was registered on 21.03.2013 whereas according to the representative of the respondent it was stated that earlier it was e-signed up as withholding agent on 21.03.2013 and thereafter in July 2014 it applied for registration under Tariff Heading 9815.5000 (Services provided by Technical, Scientific and Engineering Consultant) which was brought to tax net effective from July 2014.

11. The department in the instant case has charged SST under Tariff Heading 9815.5000 (Software or IT based system development consultant) for the tax periods from November, 2013 to October, 2014. The respondent has placed on record tax payer online verification which shows that its date of registration was on 08.08.2014 and not 21.03.2013 as claimed by the AC. However the Tariff Heading 9815.5000 was not part of Second Schedule on that date as the same was inserted effective from July, 2014.

12. The AC has filed report alongwith photocopies of application for e-signed up, registration and modification. The AC has also filed reconciliation statement showing that the payments were made by the respondent during November 2013 to October 2014 (Tax periods involved were also



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from November 2013 to October 2014). After hearing the parties it is evident that respondent in its capacity as withholding agent had deposited SST amounting to Rs.741,361/-. Thereafter the respondent got voluntarily registered on 08.08.2014 under Tariff Heading 9815.5000 (Technical, Scientific and Engineering Consultant). This Tariff Heading was inserted vide Finance Act 2014. The respondent deposited SST during the tax period July 2014 to October 2014 amounting to Rs.46,836,100/-. The Commissioner (Appeals) has not considered this aspect of the case while passing OIA.

13. That the respondent being withholding agent was required to deduct and deposit SST on the taxable services received by it, and the respondent was required to pay SST from July, 2014 on the services provided or rendered by it. There is no verification in the OIA in this regard. The SST was therefore charged under the wrong Tariff Heading 9815.6000 (Software or IT based System Development Consultant) even before the respondent got registration. However the respondent got registration on 08.08.2014 under Tariff Heading 9815.5000 (Technical, Scientific and Engineering Consultant) which was brought to tax net from 1<sup>st</sup> July 2014. Thereafter it deposited SST of Rs.46,836,100/-.

After hearing the parties and perusing available record, the following questions requires consideration.

- i) Whether the respondent was actually providing / rendering services under Tariff Heading 9815.5000 (Technical, Scientific and Engineering Consultant) or under Tariff Heading 9815.6000 (Software or IT Based System Development Consultant)?
- ii) Whether the department could demand / charge SST from the respondent before its date of registration?

15. The first point is "Whether the respondent was actually providing / rendering services under Tariff Heading 9815.5000 (Technical, Scientific and Engineering Consultant) or under Tariff Heading 9815.6000 (Software or IT

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Based System Development Consultant)? The discussion on this point are as under:-

- a) That the respondent was e-signed up on 21.03.2013 as withholding agent and not as service provider. The respondent's taxable services on record do not bear any element of 'development' of Software or Information Technology based system. Whereas the respondent IT related work comprised of projects dealing with 'post development' stages of Software of Information Technology based system. It is thus related to maintenance / Technical support for the hardware software and other related endeavors which is contingent upon or auxiliary to such (support maintenance work).
- b) On examination of 15 agreements filed by appellant there is no evidence to support AC's contention that the respondent was providing services of development of Software or Information Technology based system during the impugned tax periods.
- c) That none of the services of respondent fell in the nature of Software of IT system thus its services could not be subjected to SST under the Tariff Heading 9815.6000 (Software of IT based System Development Consultants). The date of registration noted by the appellant was infact the date of enrolment of the respondent with SRB as a withholding agent on 21.03.2013 and it had been filing withholding statement instead of Sales Tax Return and had deposited SST amounting to Rs.741,361/- as withholding agent. Thereafter the respondent got voluntarily registered on 08.08.2014 under Tariff Heading 9815.5000 (Technical, Scientific and Engineering Consultant). This Tariff Heading was inserted vide Finance Act 2014. The respondent deposited SST amounting to Rs.46,863,100/- during the tax period July 2014 to October 2014.



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- d) In view of above discussions we hold that the respondent was not engaged in rendering or providing any taxable services falling under Tariff Heading 9815.6000 (Software or IT based System Development Consultant) but was actually providing / rendering services under Tariff Heading 9815.5000 (Technical, Scientific and Engineering Consultant).

16. The second point is "Whether the department could demand / charge SST from the respondent before its date of registration? The discussions are as under:-

- a) The respondent has been subjected to SST for the tax periods with effect from November 2013 to October 2014. Whereas the respondent had got itself voluntarily registered on 08.08.2014 under Tariff Heading 9815.5000 (Technical, scientific and engineering consultants) and was duly deposited SST after its date of registration. It is thus evident that SST was demanded / charged in the instant case from the respondent before its date of registration.

- b) The Commissioner (Appeals) in his various orders has held that no SST was payable by a taxpayer before the date of its registration. Few of such orders are mentioned as under:-

i) Appeal No.73/2018, OIA No.97/2020 M/s Sinopec International vs. Assistant Commissioner (Unit-03), SRB dated 03.11.2020.

ii) 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 (Unit-01), SRB.

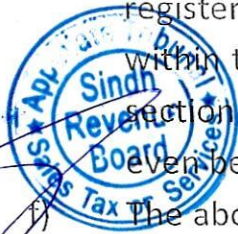
iii) Appeal No.303/2019, OIA No.95/2019, dated 28.10.2020, M/s Tracking Work vs. Assistant Commissioner (Unit-01), SRB.

iv) Appeal No. 389/2018, OIA No. 07/2021 dated 15.01.2021, WEB BNA versus AC, (Unit-11), SRB.



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- c) The Orders passed by Commissioner (Appeals) have been confirmed by us and till date the same have not been set aside by the Honorable High Court in referential jurisdiction. Few of such orders are mentioned below:-
- i) Appeal No.AT-50/2020, Assistant Commissioner (Unit-03), SRB versus M/s Sinopec International vs. dated 03.11.2020.
  - ii) Appeal No.AT-13/2021 dated 28.03.2022, and Appeal No.AT-14/2021 dated 28.03.2022, Assistant Commissioner (Unit-01), SRB versus M/s Fiber Link.
  - iii) Appeal No.01/2021 Assistant Commissioner (Unit-01), SRB versus M/s Tracking World dated 11.08.2021.
  - iv) Appeal No.18/2021 Assistant Commissioner (Unit-11), SRB versus WEB DNA dated 16.11.2021.
- d) The department levied SST for the tax periods from July-2013 to June-2015. Whereas the appellant got voluntarily registered on 16.02.2016 under Tariff Heading 9805.9200 (Business Support Service). The tax periods from July-2013 June-2015 during which SST was levied were thus prior to the date of registration of the appellant with SRB.
- e) The Contention of the AC was that the person liable to be registered was deemed to be a registered person and fell within the definition of registered person provided under sub-section (71) of section 2 of the Act and was liable to pay SST even before its formal registration with SRB.



The above 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 after considering 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*

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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 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 if 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".



In the above order we also held as under:

The responsibility of withholding agent was provided under Rule 3 of Withholding Rules, 2011. Sub-rule(3) of the rule 3 of the Rules, 2011 provided that "a withholding agent having Free Tax Number (FTN), or National Tax Number (NTN) and falling under clause (a), (b), (c), (d) or (e) of sub-rule (2) of rule 1, shall on receipt of taxable services from unregistered persons, deduct sales tax at the applicable rate of the value of taxable services provided or rendered to him from the payment

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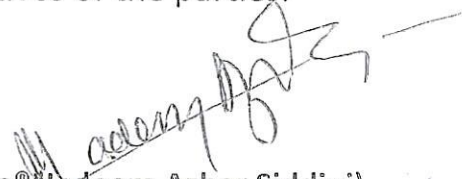
due to the service provider and, unless otherwise specified in the contract between the service recipient and the service provider, the amount of sales tax for the purpose of this rule shall be worked out on the basis of gross value of taxable services."

- g) In view of the above discussions and following our decision in the Appeal of WEB DNA and other decisions as quoted supra we hold that the respondent was not liable to pay / deposit SST before the date of its registration with SRB and the OIA is maintained in this regard.

17. In the light of above discussions since both the questions have been decided against the appellant / department thus the OIO is set aside and annulled and the OIA is maintained.

18. The appeal is disposed of in terms of para 17 supra. 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

Certified to be True Copy

Karachi:

Dated:13.05.2022

Copy Supplied for compliance:

- 1) The Appellant through Authorized Representative.
- 2) The Assistant Commissioner, (Unit-28), SRB, for compliance

Copy for information to:-


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

  
REGISTRAR  
APPELLATE TRIBUNAL  
SINDH REVENUE BOARD

Order issued on

13/05/2022

Order Dispatched on

13/05/2022  
  
Registrar