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BEFORE THE APPELLATE TRIBUNAL, SINDH REVENUE BOARD AT-
KARACHI

DOUBLE BENCH-I

APPEAL NO. AT-27/2021

M/s Burraq Business Corporation.....Appellant
(SNTN: 3038506-7) Hyderabad,

Versus

Assistant Commissioner (Unit-34),
Sindh Revenue Board (SRB)
Bungalow, No. 14-A/1, Defence Housing
Society, Phase-I, Cantt. Hyderabad..... Respondent

Date of filing of Appeal 21.05.2021
Date of hearing 19.05.2022
Date of Order 15.08.2022

Mr. Arshad Hasan Memon, Advocate, for appellant.
Ms. Zindagi Kalal, AC, SRB Hyderabad 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. 19/2021 dated 26.03.2021 passed by the Commissioner (Appeals) in Appeal No. 166/2021 filed by the appellant against the Order-in-Original (hereinafter referred to as the OIO) No. 196/2019 dated 13.03.2019 passed by Syed Rizwan Ali, Deputy Commissioner, SRB Hyderabad.

02. The brief facts as state in the OIO were that the appellant was registered for Sindh Sales Tax (SST) on services under Tariff Heading "9809.0000", as prescribed in Second Schedule to Sindh Sales Tax Act on Services Act, 2011 (hereinafter referred to as the Act) read with Sindh Sales Tax on Services Rules, 2011 (hereinafter referred to as the Rules), for providing or rendering taxable

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service in Sindh province. It was further stated that the persons registered for SST under section 24, 24A or 24B were required to e-file true and correct monthly Sales Tax Returns (SST Returns) u/s 30 of the Act read with rule 13 of the Rules for the tax period by the 18th day of the following tax period which it belonged to. Moreover, the person was also required to deposit due SST amount payable on rendering or providing taxable service in Sindh province in terms of section 3, 4, 5, 8, 9 and 17 of the Act read with rule 14 of the Rules

03. It was alleged in the OIO that upon scrutiny of the online tax profile of the appellant it appeared that it had e-filed monthly sales tax returns as "Null" for the tax period November-2013 to October-2018. However, the revenues reflected in bank statement of business bank account of the appellant showed total revenue of Rs.278,160,654/- during the tax period from December-2013 to October-2018. The appellant had received this consideration for providing or rendering taxable services during the said tax periods as it was reflected in the business bank account which it had declared with registration profile of SRB. However, it had failed to deposit due SST amount with SRB in the time and manner prescribed under the Act. Details are given as under:-

Tax period	Value of Services	SST Involved	SST Deposited	SST Payable	Amount (Rs)
December 2013 to June 2014	13,891,908	2,222,705	-	2,222,705	
July-2014 to June-2015	23,071,878	3,460,782	-	3,460,782	
July-2015 to June-2016	30,000,000	4,200,000	-	4,200,000	
July-2016 to June-2017	22,243,260	2,891,624	-	2,891,624	
July-2017 to June-2018	188,953,608	24,563,969	-	24,563,969	
Grand Total	278,160,654	37,339,080	-	37,339,080	

04. The appellant was served with a Show-Cause Notice (SCN) dated 01.04.2018 for explaining as to why SST liability of Rs.37,339,080/- may not be assessed and recovered under section 23 read with section 66 of the Act alongwith default surcharge under section 44 of the Act. The appellant was also required to explain as to why penalty under serial No. 3 of the Table under section 43 of the Act, should not be imposed upon it for contravention of the provision of the Act.

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Analysis

05. The appellant was required to produce the documents viz., i) Invoices issued to service recipients ii) Contract/Agreement/work Orders alongwith Bill of quantity (BOQ) and iii) income tax returns for the year 2012, 2013, 2014 2015, 2016 and 2017. However on failure to provide the documents it was required to pay penalty under serial No.15 of the Table under section 43 of the Act.

06. The appellant despite obtaining several adjournments failed to file the written reply and did not appear for hearing in person and also failed to produce record as mentioned in the SCN and failed to clarify the revenues reflected in its business bank account.

07. The Assessing Officer (AO) on the basis of the available information and documents determined SST at Rs.37,339,080/- under sub section (1) of section 23 of the Act recoverable under section 66 of the Act alongwith default surcharge. The AO also imposed penalty of Rs.1,866,954/= under serial No. 3 of the Table under section 43 of the Act and further penalty of Rs.100,000/= under serial No.15 of the Table under section 43 of the Act.

08. The appellant challenged the said OIO by way of filing of appeal under section 57 (1) of the Act before Commissioner (Appeals), SRB who disposed of the appeal holding as under:-



24. In view of the foregoing, I am inclined to uphold the impugned OIO to the extent of Rs.13,767,989/- which amount shall be recovered from the Appellant together with the due default surcharge under section 44 ibid. As Appellant's malafide intentions to conceal material facts and thereby, to deprive Sindh treasury of its legitimate revenue, are crystalized from the above-narrated position of facts, his mens rea is clear. I therefore, uphold the penalty imposed on him, under S.No. 3 of section 43 ibid. however, since adjudged amount has been reduced, I reduce the penalty amount by the same measure, that is, from Rs.1,866,954/- to Rs.688,500/-only [@5% of the adjudged principal amount]. Appellant shall pay Rs.688,500/- together with the above-said principal amount and due default surcharge. As regards the other penalty of Rs.100,000/- (imposed under S.No. 15 of the section 43 ibid) I remit the same in toto, because Appellant has provided at

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least some of the requisite record/ documents during the Appellate proceedings. The appeal stands disposed of accordingly”.

Resultantly the appeal was filed before this Tribunal.

09. The learned advocate for the appellant submitted as under:-

- i. The OIO and OIA are erroneous and passed without considering the relevant facts.
- ii. The appeal was decided against the appellant only on the basis of reconciliation report dated 10.12.2020 submitted by the AC.
- iii. The SST was erroneously charged on documentaries (films) prepared for Culture, Tourism Department, Government of Sindh which for the relevant tax periods was not a taxable services.
- iv. No service of supply chain management was provided instead veterinary medicines were supplied/sold while participating in the tender and no element of service was involved.
- v. The SCN and OIO were silent regarding supply of medicine.
- vi. The SST was charged only on the basis of credit entries available in the bank statement without any exercise to connect the same with the provision of service and relied upon the reported case of M/s Al-Hilal Motors, 2004PTD-865.
- vii. The amount of Rs.24,490,000/- was erroneously clubbed with Event Management Services whereas the said amount was in respect of film making which was not a taxable service in the relevant tax periods.
- viii. The SST was charged on the services/activities which were not confronted in the SCN and could not be adjudicated.
- ix. The SST withheld by Culture and Tourism Department, Government of Sindh (CTD) was not adjusted despite providing the CPRs.
- x. The Department recovered an amount of Rs.1,507,900/= from the appellant which was not adjusted.

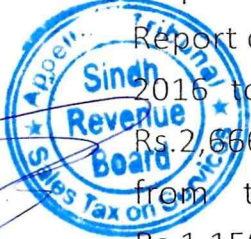
10. The learned AC, SRB submitted as under:-

- i. The appellant was voluntarily registered with SRB on 06.12.2013 under service category of Contractual Execution of Work or Furnishing Supplies & provided Management Services to Culture and Tourism Department, Government of Sindh (CTD). Moreover the

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appellant had failed to deposit its share of SST amounting to Rs.9,204,094/-.

- ii. The tax periods involved were from November-2013 to October-2018. Moreover at the appellate stage the SST was charged for the tax periods June-2016 to October-2018.
- iii. The appellant also provided medicines and animal foods to different government department of Sindh and failed to deposit SST of Rs.4,563,894/- on account of providing supply chain management services.
- iv. The appellant despite providing taxable services filed "NULL" (showing no economic activity) SST returns.
- v. The appellant failed to file any reply to the SCN and had also failed to provide any record/documents at the original stage.
- vi. The documents subsequently provided at the appellate stage mentioned the nature of services provided by the appellant, thus the SST was reduced from Rs.37,339,080/- to Rs.13,767,989/-.
- vii. As per the documents provided by the appellant final Reconciliation Report dated 28.03.2022 was prepared for the tax periods from June-2016 to October-2018 and the payable SST was worked out to Rs.2,666,991/=. Moreover after adjusting Rs.1,507,900/= recovered from the appellant the balance SST payable amounted to Rs.1,159,091/=. 
- viii. The appellant failed to substantiate its claim that an amount of Rs.1,146,104/= was withheld by the CTD as the CPRs produced by the appellant were not in its name, but instead of CPRs related to several tax payers without quantifying the amount related to appellant.
- ix. The Department through its various letters requested the CTD to provide the clarification regarding the SST withheld on account of appellant but no such evidence could be produced.

11. We have heard the learned representative of the parties and perused the record made available before us.

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12. The appellant was voluntarily registered with SRB on 06.12.2013 under Tariff Heading 9809.000 (contractual execution of work or furnishing supplies) of the Second Schedule to the Act. It was not disputed that during the tax periods taxable services were provided to CTD who withheld the SST and passed on the remaining amount to the appellant for payment to SRB.

13. The burden to prove that an amount of Rs.1,146,104/= was withheld by CTD on its account was on the appellant who failed to exercise such burden and failed to submit CPRs bearing its name. It could also not produce the withholding certificates from CTD as provided under sub-rule (1) of rule 3 of the Sindh Sales Tax Special Procedure (Withholding) Rules, 2014 (hereinafter referred to as the Withholding Rules). Sufficient opportunities were provided to the appellant to substantiate its claim of withholding of SST by CTD but appellant has failed to avail the same.

14. The law is very clear with regard to the responsibility of the services provider to pay the SST which is evident from sub-section (1) of section 9 of the Act.

15. The ground that the OIO was passed only on the basis of credit entries available in the Bank Statement was not correct. The amount confronted in the SCN was Rs.37,339,080/= and the OIO was passed for the same amount as the appellant had failed to produce the documents asked for by the AO. However at the appellate stage before the Commissioner (Appeals) the appellant submitted documents and on the basis of such documents the reconciliation was prepared and SST was reduced to Rs.13,7567,989/=. However the matter was again reconciled by the AC before us on the basis of further documents provided by the appellant and the payable SST was worked out to Rs.2,666,991/=.

16. The AC also adjusted an amount of Rs.1,507,900/= recovered on 19.03.2019 and the remaining SST was worked out at Rs.1,159,091/=. However the appellant has failed to prove that the same was withheld by CTD.

17. In view of the above discussions this appeal is partly allowed and the OIO and OIA are set aside to the extent of Rs.1,507,900/=. The appellant is required to

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pay 1,159,091/=alongwith default surcharge under section 44 of the Act. Keeping in view the circumstances of the case that the OIO was passed for a huge amount of Rs.37,339,080/= which could not be substantiated by the department and in appeal before Commissioner (Appeals) the payable SST was reduced to Rs.13,767,989/= which was further reduced before us to Rs.2,666,991/= . However the penalty imposed by AO and confirmed by Commissioner (Appeals) is waived.

18. The appeal is disposed of accordingly. The copy of this order may be provided to the learned representatives of the parties.


(Imtiaz Ahmed Barakzai)
TECHNICAL MEMBER


(Justice Nadeem Azhar Siddiqi)
CHAIRMAN

Karachi:

Dated: 15.08.2022

Copy Supplied for compliance:

- 1) The Appellant through Authorized Representative.
- 2) The Assistant Commissioner, (Unit-34), SRB, Hyderabad 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 17/08/2022

Registrar

Order Dispatched on 17/08/2022

Registrar