

**BEFORE THE APPELLATE TRIBUNAL SINDH REVENUE BOARD**  
**AT KARACHI**

**DOUBLE-BENCH**

**APPEAL NO. AT-32/2021**

Assistant Commissioner, (Unt-34) SRB  
Bungalow No. 14-A/1, Defense Officer Housing  
Society Phase-1, Cantt, Hyderabad.....Appellant

**Versus**

M/s Noor Enterprises Hyderabad  
B. No 19, Prince, Town, Phase II,  
Ground Floor, Wadhu Wah Road  
Qasimabad, Hyderabad.....Respondent

Date of filing of Appeal: 28.05.2021  
Date of hearing: 09.06.2021  
Date of Order: 14.06.2021

Mr. Tashkeel Hussain, AC-SRB Hyderabad (Unit-34) , for appellant

**ORDER**

**Justice © Nadeem Azhar Siddiqi:** This appeal has been filed by the Assistant Commissioner (Unit-34), Sindh Revenue Board (SRB), Hyderabad challenging the Order-in-Appeal (hereinafter referred to as the OIA) No.24/2021 dated 30.03.2021 passed by the Commissioner (Appeals) in Appeal No. 141/2019 filed by the respondent against the Order-in-Original (hereinafter referred to as the OIO) No. 108/2019 dated 12.02.2019 passed by Ms. Narmeen Qureshi, Assistant Commissioner, SRB Hyderabad.

02. The facts as stated in the OIO were that the respondent was registered with SRB under Tariff Heading 9814.2000, "Contractor of

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Building (including water supply, gas supply and sanitary works), electrical and mechanical works (including air conditioning), multi-disciplinary works (including turn-key projects) and similar other works". And the registered persons were required to deposit due Sindh Sales Tax (SST) amount with SRB and was also required to e-file true and correct monthly SST returns.

03. It was alleged in the OIO that upon scrutiny of the tax profile of the respondent it was noted that it had e-filed "Null" returns for the tax period January, 2018 to November, 2018. Whereas, on perusal of bank statements of business bank accounts of the registered person, for the tax period May, 2015 to December, 2018 it transpired that it had shown receipts of Rs.24,690,983/-, involving SST amount of Rs.3,248,364/-. However, the respondent had not deposited any SST amount with SRB.

04. The respondent was served with a Show-Cause Notice dated 20.12.2018 to explain as to why SST amounting of Rs.3,248,364/-, should not be assessed in terms of sub section (1) of section 23 of Act and recovered under section 66 of the Act alongwith default surcharge. The respondent was also asked to explain as to why penalties should not be imposed under Serial No. 3 of Table under section 43 of the Act. However as per the OIO the respondent neither submitted any reply in writing nor appeared for hearing and also did not provide any record/data and details regarding its economic activities.

05. The Assessing Officer (AO) passed OIO on the basis of credit entries shown in the bank statements and assessed the SST at Rs.24,690,983/- under sub-section (1) of section 23 of the Act alongwith payment of default surcharge. The AO also imposed penalty of Rs.162,418/-, under Serial No.3 of Table under section 43 of the Act. The AO also imposed further penalty of Rs.100,000/- under Serial No. 15 of the Table under section 43 of Act for failure to provide the requisite record for making assessment.

06. The respondent challenged the OIO before Commissioner (Appeals) by way of filing of appeal. The Commissioner (Appeals) after

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*[Signature]*  
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hearing allowed the appeal and the relevant paragraph is reproduced for ready reference as under:-

..12. Both the impugned SCN dated 20.12.2018 and the impugned OIO dated 12.02.2019, based on such SCN, suffer from palpable legal lacuna that vitiate their maintainability under law. I am therefore left with no option but to reject and set aside both. Mis decision is based on the under mentioned position of facts:

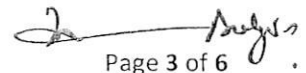
(i) AC has ignored the basic fact that the instant Appellant got registered in SRB on 30.01.2018. Since, before that date, Appellant was not registered in SRB, he was not liable to issue invoices under the Act, 2011 read with Rule-29 of Rules-2011 and thereby, he could not charge, levy, collect or pay SSTs on his services into the Sindh Government treasury. It has been ruled by the superior Courts, especially by the Hon'ble Appellate Tribunal SRB, and also by this forum, in umpteen cases so far, that the Act, 2011 does not allow an Officer of SRB to raise tax-demand from an SRB registered person for the tax-periods falling prior to his registration date in SRB. All the machinery provisions of the Act, 2011 e.g. sections 3, 5, 8, 9, 17, 26 & 30 of the Act, 2011 read with relevant provisions of Rules, 2011 speak of 'registered persons' only. An unregistered person does not fall in the ambit of the Act, 2011 and therefore cannot be asked to pay any tax under the Act, 2011".

Resultantly this appeal was filed by the Department.

07. Mr. Tashkeel Hussain the learned AC-SRB Hyderabad for appellant submitted as under:-

The respondent provided taxable services without getting registered with SRB although under sub-section (71) of section 2 of the Act it was liable to be registered and liable to discharge its obligation under the Act.

ii) The Commissioner (Appeals) passed OIO ignoring the legal position that a registered person includes a person liable to be registered and tax liability could be fixed upon such person.



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iii) That the OIO is bad in law, as it would allow the persons liable to be registered not to pay tax on the pretext that they were not registered.

iv) That the Commissioner (Appeals) ignored the Reconciliation Report which was submitted before him, and it was evident from such report that the respondent was liable to pay huge amount of SST.

08. We have heard the learned representative of the appellant and perused the record made available before us.

09. The dispute in this matter is whether the respondent was liable to pay SST prior to the date of its registration. The Contention of the AC is that the person liable to be registered falls within the definition of registered person and was liable to pay SST even before its registration.

10. The respondent was voluntarily registered with SRB on 30.01.2018. The tax periods involved were from May-2015 to December-2018 (26 tax periods). The basis of the assessment was the credit entries available in the bank statements. The AO had not linked the said credit entries with the provision of service on the pretext that the respondent neither filed reply nor provided necessary details. In our various orders relying upon the reported judgment of Sindh High Court in the case of Al-Hilal Motors versus Collector Sales Tax 2004 PTD 868, wherein it was held as under:



Assessee can be subject to tax under a provision of law which is unambiguous and clear. There is no room of any intendment and there is no presumption as to tax. The revenue is required to establish that a transaction fall within the parameters of taxable supplies or in furtherance of any taxable activity, failing which the sales tax imposed on the basis of some assumption or presumption not warranted in law, shall always be struck down."

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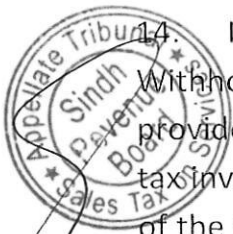
"We have held that the assessment order merely on the basis of credit entries shown in Bank Statement without linking the said entries with the provision of service is not sustainable in law".

11. It was an admitted position that the respondent was registered with SRB on 30.01.2018. The tax periods involved in this appeal were from May-2015 to December-2018 (26 tax periods) and during these periods the appellant was not registered with SRB.

12. The SRB with the approval of Government of Sindh (GS) in exercise of powers vested in it under section 72 of the Act read with sub-section (4) of section 3, sub-section (3) of section 9 and section 13 of the Act framed and issued Withholding Rules, 2014 for the purpose of deduction and deposit of SST.

13. The person who can be withholding agent have been specified in sub-rule (2) of rule 1 of the Withholding Rules. Rule 3 of Withholding Rules deals with the responsibility of the withholding agent. Sub-rule (4) thereof provides 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 of the Withholding Rules, shall on receipt of taxable services from unregistered persons, deduct sales tax at the applicable rate of the value of taxable services provided 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.

14. It is evident by comparison of sub-rule (3) and (4) of rule 3 of the Withholding Rules that sub-rule (3) of rule 3 of the Withholding Rules provides for the deduction of one-fifth of the total sales tax shown in the tax invoice issued by a registered person. Whereas sub-rule (4) of rule 3 of the Withholding Rules provides that a withholding agent on receipt of taxable services from unregistered persons has to deduct sales tax at the applicable rate of the value of the taxable services provided or rendered to him from the payment due to the service provider. This sub-rule clearly fixes the responsibility of deduction of sales tax upon the service recipient who deals with un-registered person. Moreover the



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unregistered person could neither charge tax in its invoice nor the withholding agent after withholding the amount of SST can pass on the same to unregistered service provider for depositing the same with SRB.

15. The AO thus wrongly taxed the services provided by the respondent for the tax periods prior to its registration for which he had no jurisdiction.

16. We have carefully considered the above findings recorded by learned Commissioner (Appeals) and found the same in confirmatory with the provisions of the Act, Withholding Rules, the earlier orders passed by Commissioner (Appeals) and the orders passed by this Tribunal. The Commissioner (Appeals) has not committed any illegality, infirmity or error in holding that AC-SRB could not demand tax from the respondent (unregistered person) for the tax-periods falling prior to date of registration of the respondent with SRB.

17. In view of the above discussions the appeal is dismissed in limine. 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

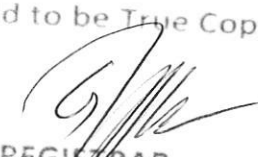
Karachi:  
Dated: 14.06.2021

Copy Supplied for compliance:

- 1) The Assistant Commissioner, SRB, ( Unit    ), Hyderabad.
- 2) The Respondent through Authorized Representative.

Copy for information to:-

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

Registered to be True Copy  
  
REGISTRAR  
APPELLATE TRIBUNAL  
SINDH REVENUE BOARD

Order issued on

18/06/2021

Registrar

Order Dispatched on

18/06/2021

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Registrar