

BEFORE THE APPELLATE TRIBUNAL, SINDH REVENUE BOARD, ATKARACHI
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APPEAL NO. AT-35/2021

M/s Ingenious Tribe Global Solutions (Private) Limited,
(SNTN: S3913291-9)
Suite # 814, 8th Floor, Anum Estate,
Main Shahrah-e-Faisal, Karachi.....Appellant

Versus

1. The Commissioner (Appeals-II),
2. Assistant Commissioner (Unit-28), SRB
Sindh Revenue Board,
6th Floor, Shaheen Complex,
M. R. Kiyani Road, Karachi.....Respondent

Date of filing of Appeal: 30.06.2021
Date of hearing: 15.12.2021
Date of Order: 28.02.2022

Mr. Nadir Hussain Abro, Advocate for appellant

Mr. Tasleem Ahmed, AC-SRB and Ms. Uzma Ghory, AC-DR for SRB

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. 40/2021 dated 19.05.2021 passed by the Commissioner (Appeals-II) in Appeal No. 406/2019 filed by the appellant against the Order-in-Original (hereinafter referred to as the OIO) No. 790/2019 dated 29.11.2019 passed by the Mr. Hamad Ali, Assistant Commissioner, (Unit-16) SRB Karachi.

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02. The facts as stated in the OIO were that the appellant was engaged in provision or rendition of valuation services, including competency and eligibility testing services under Tariff Heading (TH) No.9841.0000 of the Second Schedule to the Sindh Sales Tax on Service Act, 2011 (hereinafter referred to as the Act). It was chargeable to Sindh Sales Tax (SST) under section 8 read with aforesaid Tariff Heading of the Second Schedule to the Act at the rate of 14% and 13% during the tax periods from July-2015 to June-2016 and July-2016 onwards respectively.

03. It was alleged that the Financial Statements revealed that the appellant had earned revenue of Rs.21,360,419/-, involving SST of Rs.2,990,459/-, Rs.4,167,021/- and Rs.9,100,000/- respectively. On the other hand the Sindh Sales Tax Returns (SST Returns) of the appellant showed that, it had deposited amounts of Rs.Nil, Rs.44,824/- and Rs.88,413/- for the same tax periods. A detailed position is shown in the table as under:-

Tax Period	2015-16 Amount in Rs.	2016-17	2017-18
Total Receipts	21,360,419	32,054,008	70,000,000
SST Payable	2,990,459	4,167,021	9,100,000
SST Received by SRB	0	44,824	88,413
Short Declaration	2,990,459	4,122,197	9,011,587
Total	Rs. 16,124,243		

04. The appellant was served with a Show Cause Notice (SCN) dated 28.12.2018 to explain as to why the SST should not be assessed under section 23 (1) and (1A) of the Act alongwith default surcharge under section 44 of the Act. The appellant was also called upon to explain as to why penalty under Serial No.2, 3 and 6(d) of the table under section 43 of the Act, 2011 should not be imposed.

05. The appellant filed written statement dated 05.01.2019 received on 08.01.2019 in which it was stated that the appellant was paying taxes to Federal and Provincial Authorities and filing returns and willing to pay the



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taxes assessed by the authorities after proper audit and assessment. It was further stated that the revenue declared by the appellant for the year 2017-2018 was without source. It was also stated that services provided to non-resident person could not be taxed. The appellant filed another reply dated 30.02.2019 received on 31.01.2019 in which it was stated that the appellant was providing services of Background Screening, Due Diligence and Document Verification and the majority of customers of appellant were non-residents living abroad and a very minor amount of revenue was earned for providing document verification services to the resident persons. The appellant received consideration in US Dollars in its bank account. The appellant filed another reply dated 15.02.2019 and submitted that it was registered under Tariff Heading 9841.0000 with the description Valuation services including competency and eligibility testing services and denied its registration under Tariff Heading 9809.0000, "Services provided or rendered by persons engaged in contractual execution of work or furnishing supplies". The appellant also filed written reply dated 11.04.2019 and provided details of eight bank accounts and explained the difference of sales declared in the audited accounts and credit entries in the bank statements. The appellant further filed written reply dated 13.11.2019 stating that it had provided enhanced due diligence services to its foreign principals and discharged its obligations under different revenue laws. It was also stated that under contractual obligation the scope of service was limited to the activity involving non-alerting inquiry services.

06. The Assessing Officer on the basis of Financial Statement for the year 2017-18 corrected the revenue figures and had reduced the same from Rs.70,000,000/- to Rs.45,096,542/- and consequently the SST claimed in the SCN was also reduced to Rs.12,886,793/-.

07. The Assessing Officer (AO) examined the six bank accounts of the appellant for the periods 2015-16, 2016-17, 2017-18 and calculated the credit entries at Rs.155,194,919/=.The appellant vide its response dated 11.04.2019 clarified that the difference in sales as per audited accounts and total of credit transactions in the bank statements were due to inter accounts funds transfer, etc. The appellant filed another reply dated

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13.11.2019 and submitted that it had provided enhanced due diligence services to its foreign principals while discharging its liabilities and had never provided valuation services including competency and eligibility testing services. It was stated that the Act does not provide the definition of TH 9841.0000 and thus its scope could not be extended.

08. The AO after deliberation and considering the view point of the appellant passed OIO determining the SST at Rs. 12,886,793/= payable alongwith default surcharge under section 44 of the Act. The AO also imposed penalty of Rs.644,340/= under Serial No.3 of the Table under section 43 of the Act.

09. The appellant 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 penalty imposed by the AO. Hence, filing of this appeal by the appellant.

10. The learned advocate for the appellant submitted before this Tribunal as under:-

- i. The impugned OIA was suffering from legal infirmities, since the Commissioner (Appeals-II) had passed the OIA beyond the statutory time period provided under sub-section 5 of Section 59 of the Act and submitted that such OIA was actually passed after 321 days therefore it was barred by time.
- ii. That both the OIO and OIA were merely based on the figures shown in Financial Statements without independently establishing the link between the figures in the Financial Statements and the provision of services which was in contravention to the decisions of Superior Courts reported as 2012 PTD-337, 2006 MLD-261 and 2019 PTCL-152.
- iii. The Commissioner (Appeals) itself could not exclude 90 days-time on account of Covid-19 Lockdown without support of any statutory provision.



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- iv. The Commissioner (Appeals) extended 60 days time without issuing any notice to the appellant and without recording explicit reasons for such extension.
 - v. The OIA was passed after inordinate and unexplained delay, thus the same was illegal and unlawful and liable to be set aside on this count alone. Reliance was placed on cases reported as 2017 PTD 1756, 2011 PTD 1877, 2018 118 TAX 316 and 2017 116 TAX 194 and it was contended that since the order was passed after the mandatory time period thus it was illegal and unlawful.
 - vi. The forum below had extended the scope of TH 9841.000 by attempting to charge SST on non-taxable service which was not part of Second Schedule to the Act and were not specifically defined in the Act.
 - vii. That both the forums charged SST on the basis of assumption and presumption considering the figures available in the Financial Statements and the credit entries in the Bank Statements. Reliance on this account was placed on the cases reported as 2010 PTD 1377 & 2019 PTD 334.
 - viii. The forums below failed to decide the actual nature of service provided by the appellant and erroneously assessed SST merely on the basis of voluntarily registration of the appellant which amounted to assumption and presumption.
- The personal bank accounts of the director of the appellant was erroneously considered for charging SST.

11. The learned AC-SRB submitted as under:-

- i. The Commissioner (Appeals) passed the OIA within time allowed by law and referred to the Report dated 03.09.20121 submitted by the Commissioner (Appeals).
- ii. The calculations provided by Commissioner (Appeals) regarding the time consumed in passing OIA were correct. It was further submitted that after excluding the adjournments of 340 days obtained by the appellant and 90 days on account



of lock down due to Covid-19 and moreover the Commissioner (Appeals) had extended 60 days time for passing OIA vide order dated 19.03.2021. Thus the OIA was passed within time allowed by law.

- iii. The TH 9841.0000 (Valuation Services including competency and eligibility testing services) was properly applied in view of voluntarily registration of the appellant.
- iv. The testing reports of appellant contained competency and eligibility thus the appointments, investigation and evaluation was part of eligibility criteria and was rightly taxed under TH.9841.0000.
- v. The appellant during the tax periods involved had voluntarily deposited SST to some extent. This fact itself clearly reflected that it had provided taxable services under the category in which it had got voluntarily registration and had charged and collected SST but failed to deposit the same with SRB.
- vi. The appellant on its own had declared to have received remittances from abroad on account of services under purpose code 9247 of SBP (Misc. other business services). Such description depicted the receipts on account of transaction between residents/non-residents covering items such as placement of personnel, security and investigative services, photographic services, building cleaning etc. (also included are payments for local supplies, utility payments, veterinary services etc. by non-residents enterprises engaged in construction services) and all other relevant services not classified in the above items.
- vii. The appellant concealed the bank accounts and failed to disclose the correct revenue in its returns.
- viii. The appellant had not deposited service tax with any other authority. Moreover the appellant during the proceedings before the AC failed to provide relevant documents despite demand by the AO which clearly reflected the malafide and guilty intent of the appellant.



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- ix. The service revenue for the year 2017-2018 was reduced from Rs.70,000,000/- to Rs.45,096,542/- on the basis of record produced by the appellant.
- x. The contention of the appellant that SST of Rs.12,886,793/= was charged on non-taxable activities of the appellant has no basis.
- xi. The amount of SST of Rs.37,506,972/- shown in the SCN was a typographical mistake and was duly corrected vide notice dated 04.02.2019 in exercise of power conferred under section 76 of the Act.
- xii. The services were provided in Sindh and the credit entries of Rs.225,194,919/- reflected in the Bank Statements were received within Sindh in local currency except an amount of US Dollars 7,600 which was also received in Sindh.

12. The learned advocate for the appellant in rebuttal submitted as under:-

- i. That it was not illegal if the registration was in one category but the service were provided in other category. Reliance was placed on the case reported as 2020 PTD (Tribunal) 836.
- ii. The appeal was filed on 16.12.2019 and the OIA was passed on 19.05.2021 and total days consumed were 519 days out of which 199 days were excluded on account of adjournments obtained by the appellant and the remaining days left were 320 days.
- iii. The purpose code 9247 of SBP related to miscellaneous receipts and investigation services, and the investigation services was not part of T.H. 9841.0000.

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

14. The SST was charged under TH 9841.0000, "Valuation services, including competency and eligibility testing services". The appellant got voluntarily registration under TH 9841.0000 and paid SST at Rs. Nil during



tax periods 2015-16, Rs.44,824/- during tax periods 2016-17 and Rs.88,413/- during tax periods 2017-18.

15. The appellant in its first reply dated 08.01.2019 had not disputed the nature of services provided by it and it was stated that the appellant was paying taxes to Federal and Provincial Authorities and filing returns and willing to pay the taxes assessed by the authorities after proper audit and assessment. However in its second reply received on 31.01.2019 it was stated that the appellant was providing "Services of Background Screening, Due Diligence and Document Verification" and the majority of customers of appellant were non-resident living abroad and a very minor amount of revenue were earned for providing document verification services to the resident person. This reply was apparently after-thought and was not admissible after submission of its first reply. However in the third reply dated 15.02.2019 the appellant stated that it was registered under TH 9841.0000 with the description "Valuation services including competency and eligibility testing services" and denied its registration under TH 9809.0000, "Services provided or rendered by persons engaged in contractual execution of work or furnishing supplies".

16. The dispute is whether the services provided by appellant were covered under TH 9841.0000. The phrase valuation services, including competency and eligibility testing services had not been defined in the Act. The dictionary meaning of valuation means "Process of putting price on a piece of property, business, stocks and thing". Competency means "Sufficiency of qualification, intelligence of one sufficient to understand the Act one is performing and mental ability to understand problems and make decisions". Eligibility means "Worthy of selection or choice or adoption, suitable, the quality of being eligible or fit to be chosen". The appellant stated that the nature of services provided by it was Background Screening, Due Diligence and Document Verification. However, despite demand from the AO the appellant had not provided Copies of Contract/Agreements with service recipient, copies of invoices issued by the appellant and explanation and evidence with regard to their contention that their services does not fall under the TH 9841.0000. However the appellant at its own provided the



Financial Statements for the tax periods 2015-16, 2016-17 and 2017-18 and three invoices. The AO required the appellant to provide the invoices of total receipt of Rs.21,360,419/-, 32,054,008/- and 70,000,000/= respectively for the above mentioned tax periods, which were not provided.


17. The documents required by the AO were very relevant, since by examining these documents the actual nature of services provided by the appellant could be ascertained. The appellant in support of its contention had failed to provide sufficient documentary evidence that it had provided service of Background Screening, Due Diligence and Document Verification. This has created doubt about the bonafide of the appellant. Article 129 (g) of the Qanun-e-Shahadat Order, 1984 (QSO-84) provided "that evidence which could be and is not produced would, if produced, be unfavorable to the person who withholds it". The appellant had not denied that the non-possession of the documents asked by the AO. However its non-production on the part of the appellant appeared to be with malafide intention and ulterior motives. Since the documents which were in possession of the appellant were not produced the presumption is that those documents if produced would be unfavorable to the appellant.

18. The appellant in its Registration Profile had declared only one bank account maintained at Faysal Bank, Clifton Branch, Karachi and concealed its other bank accounts which clearly reflected the malafide intention of the appellant. Moreover it had concealed the service revenue to avoid payment of due tax. However the appellant had itself declared that it had provided services to non-resident and thus was liable to pay SST in terms of sub-section (1) of section 3 of the Act read with sub-section (1) of section 9 of the Act.

19. The non-denial of the nature of service (confronted in the SCN) in the first reply and non-production of documents clearly reflected admission on the part of the appellant that it had provided the services confronted in the SCN and under which it was registered.



20. We have perused the Report submitted by Commissioner (Appeals) regarding the time consumed in passing the OIA. According to the Report total days consumed in finalizing the OIA were 519 days out of which the adjournments of 340 days sought by the appellant were excluded thus only 179 days were remaining. The appellant had disputed the working and submitted that it had only obtained adjournments of 199 days but it had failed to prove its contention by providing any convincing evidence. The Report submitted by Commissioner (Appeals) was in exercise of official acts and is supported by presumption that official acts have been regularly performed as provide under Article 129 (e) of the Qanun-e-Shahadat Order, 1984 and in absence of any convincing evidence the same could not be easily ignored. The OIA could be passed within 120 days and the Commissioner (Appeals) could extend 60 days for passing OIA which was done on 20.03.2021 in this way the OIA is held to be passed within time.

21. The SCN was issued to the appellant on the basis of service revenue shown in the Financial Statements for the financial periods 2015-16, 2016-17, and 2017-18. At the stage of OIO the appellant provided the details of eight bank accounts maintained at various Banks in the name of appellant and its Chief Executive Mr. Sadaqat Arif. The total credit entries in those bank accounts amounted to 255,194,919/=. The appellant explained that the difference in the Financial Statements and the credit transactions in the Bank Accounts were due to inter account funds transfer etc. However the appellant had failed to provide proper reconciliation and evidence in support of its claim. The Assessing Officer after considering the pleas raised by the appellant reduced the SST from Rs.37,506,972/= confronted in the SCN to Rs.12,886,793/=. 


22. The Commissioner (Appeals) after providing proper right of hearing to the appellant and after considering the pleas raised by the appellant has rightly upheld the assessment made by the AO in the OIO alongwith payment of default surcharge under section 44 of the Act and penalty under Serial No. 3 of the Table under section 43 of the Act.

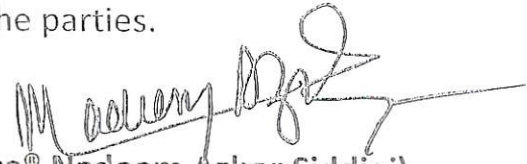


23. We have carefully examined the OIO and the OIA. The appellant miserably failed to establish that it had not provided services under TH 9841.0000. The appellant which had got voluntarily registration under a specific Tariff Heading could not easily retract from the same when SST was demanded from it. The deposit of SST by the appellant for certain time clearly established that the appellant had provided service under TH 9841.0000 under which it had got voluntarily registration. The appellant since inception tried its best to conceal the bank accounts and service revenue from SRB and despite earning service revenue had not truly and correctly declared the same in its monthly SST returns filed with SRB as provided under section 30 of the Act. The appellant despite being in possession of Contracts and Invoices failed to produce the same for proper reconciliation which clearly reflected mensrea on its part.

24. In view of the above discussions we do not find any merit in the appeal, which is accordingly dismissed.

25. The appeal is disposed of as supra. Copy of the order may be provided to the learned representatives of the parties.


(Imtiaz Ahmed Barakzai)
TECHNICAL MEMBER


(Justice[®] Nadeem Azhar Siddiqi)
CHAIRMAN

Karachi:

Dated:28.02.2022

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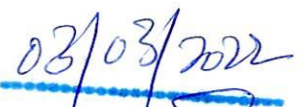
- 1) The Appellant through Authorized Representative.
- 2) The Assistant Commissioner, (Unit-28), SRB, Karachi.

Copy for information to:-

- 3) The Commissioner (Appeals), SRB, Karachi.
- 4) Office Copy.
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SINDH REVENUE BOARD

Order issued on


03/03/2022

Order Dispatched on


03/03/2022