

BEFORE THE APPELLATE TRIBUNAL, SINDH REVENUE BOARD AT KARACHI

DOUBLE BENCH-I

APPEAL NO. AT-37/2021

M/s Master Synthetics (Pvt.) Ltd.

(SNTN: 1423148-4)

82-C-1, Gulberg-III, Gulberg Town,

Lahore.....

Appellant

Versus

Assistant Commissioner (Unit-24)

Sindh Revenue Board,

3rd Floor, Shaheen Complex,

M.R. Kiyani Road Karachi.....

Respondent

Date of filing of Appeal: 13.07.2021

Date of hearing: 17.09.2021

Date of Order: 08.11.2021

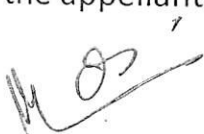
Mr. Rao Nisar Ahmed, FCA for appellant

Mr. Amiruddin Kolachi, AC-SRB, Ms. Uzma Ghory, AC-DR and Mr. Wahab Irshad,

SSTO for the respondent

ORDER

Justice © Nadeem Azhar Siddiqi: This appeal has been filed by the appellant challenging the Order communicated to the appellant by Commissioner (Appeals) vide Letter dated 08.06.2021 on an appeal filed by the appellant under section 57 of the Act challenging the Order communicated to the appellant by Assistant Commissioner-SRB-Unit No. 24 on an application under section 76 of the Act filed by the appellant.




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02. The brief facts of the case was that the department issued Show-Cause Notice (SCN) dated 17.01.2020 to the appellant on the allegation that being withholding agent it was liable to withhold and deposit the amount of Sindh Sales Tax (SST) at the applicable rates on receipts of taxable services provided or rendered to it by the service providers.

03. It was alleged in the SCN that various registered service provider in Annex-“C” of their monthly SST Returns filed with Sindh Revenue Board (SRB) have declared that they have provided taxable services to the appellant who had withheld SST of Rs.4,331,514/- during the tax periods from May-2017 to February-2018.

04. The appellant did not respond to the SCN and hearing notices issued by the Assessing Officer (AO) and no reply to the SCN was filed.

05. The Assessing Officer (AO) passed Order-in-Original (OIO) No. 45 of 2020 dated 04.03.2020 directing recovery of SST of Rs.4,331,514/- under section 47(1A)(a) and 47(1B) of the Sindh Sales Tax on Services Act, 2011 (hereinafter referred to as the Act) alongwith default surcharge under section 44 of the Act. The AO also imposed penalty of Rs.216,576/- @5% of the total tax payable under section 3 of section 43 of the Act.

06. The appellant challenged the said OIO before Commissioner (Appeals) by way of filing of appeal on 10.06.2020 under section 57 of the Act. The said appeal was dismissed vide Order-in-Appeal (OIA) No. 58 of 2020 dated 15.06.2021 as time barred.

07. The appellant vide letter dated 26.03.2021 addressed to the AO sought correction in the OIO under section 76 of the Act stating therein that a mistake is apparent on the record and rectifiable under section 76 of the Act. The mistake pointed out was that an amount of Rs.862,465/= was charged towards SST although such amount was deposited by ARY alongwith its monthly tax returns.

08. The AO declined to correct the mistake vide Letter Dated 08.04.2021 on the ground that the assessment order passed under section 23 or 47 of the Act can

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only be altered under section 55, 59 and 62 of the Act, which the appellant had failed to exhaust within the statutory period.

09. The said letter dated 08.04.2021 was challenged by the appellant by filing appeal dated 28.05.2021 before Commissioner (Appeals). The said appeal was rejected vide Letter dated 08.06.2021 signed by Assistant Commissioner (Appeals-I) and the same is reproduced as under:-

"2. Contents of your letter have been examined. It is noted with grave concern that the appeal against the Order-Original (OIO) No.45/2020 dated 04.03.2020 had already been filed by you on 10.06.2020. Your earlier appeal, being time barred, could not be admitted for hearing. Accordingly, your plea for condonation of late-filing of appeal had been rejected by Commissioner (Appeals) vide this office letter No. 11305 dated 04.08.2020.

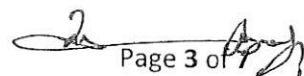
3. However, you, on the basis of the same OIO, have once again filed appeal, which is again non-maintainable being time barred. Your plea that you have filed appeal (again filed on 19.05.2021) against Order dated 08.04.2021 and is time barred by only 02 days, is utterly false and baseless. Respondent ACSR (Unit-24) has only replied to your letter No.6474/k dated 26.03.2020 on the basis of Respondent AC's (Unit-24) above letter/ reply dated 08.04.2021 is showing your intentional default and concealment of material facts related to the case, only in order to get your time barred appeal admitted with the Appellate Authority.

4. In view of the foregoing, your plea 'for condonation of late filing of appeal' is not tenable and is hereby rejected".

10. The learned representative of the appellant Mr. Rao Nisar Ahmed, FCA submitted as under:-

i. The learned AC rejected the application under section 76 of the Act by way of letter without affording opportunity of hearing to the appellant.

ii. The appeal filed by the appellant under section 57 of the Act was also rejected without affording right of hearing through letter of Assistant Commissioner (Appeals-I), who has no power to hear and decide appeal filed under section 57 of the Act.



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iii. The AC as well as the Commissioner (Appeals) have failed to discharge their quasi-judicial functions in accordance with law.

iv) The AC as well as the Commissioner (Appeals) had rejected the applications and appeal on the administrative grounds without issuing notice of hearing to the appellant or its representative.

v. The AC as well as the Commissioner (Appeals) Irrespective of the merit of the application and appeal were bound to hear the appellant and then to dispose of the matter judicially and not administratively.

11. The learned representative of the respondent Mr. Amiruddin, AC-SRB submitted as under:-

i. The application for rectification was filed after filing of appeal before the Commissioner (Appeals) thus the same was not maintainable and was rightly rejected by AC-SRB.

ii. The appellant had failed to point out any error or mistake apparent from record or on the face of the OIO.

iii. The appellant despite being provided with numerous opportunities neither filed reply to SCN nor appeared for hearing and the OIO was properly passed on the basis of material available with the AO.

iv. The Commissioner (Appeals) rightly rejected the appeal summarily as the second appeal was filed during the pendency of the first appeal, which was time barred.

12. In rebuttal the learned representative of the appellant submitted that irrespective of merit of the case the application under section 76 of the Act and appeal filed by him should had been decided after hearing the parties.

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

14. The procedure and manner in which the AO and Commissioner (Appeals) dismissed the appeal was not in accordance with law, and was against the principles of natural justice. Both the AO and Commissioner (Appeals) while



exercising quasi-judicial functions and powers under the Act were bound to act judicially and not arbitrarily.

15. The appellant filed application under section 76 of the Act for correction in the OIO. The application was filed on the ground that there was mistake in the OIO. The said application was rejected through Letter dated 08.04.2021 issued by the AO without hearing the appellant. Section 76 of the Act which deals with the correction of clerical errors provide as under:-

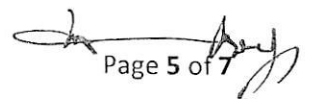
"76. Correction of clerical errors: (1) Clerical or arithmetical errors in any assessment, adjudication, order or decision may, at any time, be corrected by the officer of the SRB who made the assessment or adjudication or passed such order or decision or by his successor in office, through an order made under this section. (2) Before any correction is made under sub-section (1), a notice shall be given to the registered person affected by such correction.

16. The power of correction of clerical errors could be exercised at any time. Though the section does not specifically provide for filing of application by the tax payer but the tax payer can also apply for correction. Sub-section (2) of the Act provides for issuance of notice to the registered person if affected by such correction. The AC under the principle of natural justice was required to issue notice to the tax payer before arriving at any decision which was not done in the instant case. The law is now very clear that unless the law specifically excluded the issuance of notice of hearing the same must have been read in all statute. In the reported case of Jumman Khan vs. Sindh, PLD 81 K 311 a Honorable DB of Sindh High Court has held as under:-

"It is well settled that in every statute the provision of notice and opportunity of hearing before passing any order that adversely affect the rights of a citizen is considered to be a part of the statute unless, the statute itself expressly excludes such notice or opportunity of hearing.

17. The principle of natural justice is equally applicable to quasi-judicial proceedings. In the reported case of Mall Square Resident Association versus Mall Development (Pvt.) Ltd., PLD 97 K 1 the Honorable DB of Sindh High Court has held as under:-

"12.No doubt, the principles of natural justice requiring a hearing to be granted to a person before being condemned, applies not only to judicial but also quasi-judicial proceedings, provided that its application is not specifically excluded by the relevant statute.



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18. A duty is cast upon every public functionary to act fairly, justly and without arbitrariness. Article 4 of the Constitution of Islamic Republic of Pakistan provides that right of individuals who are to be dealt with in accordance with law, and to enjoy protection of law is the inalienable right of every citizen. After insertion of Article 10A in the Constitution a person shall be entitled to a fair trial and due process of law. Due process of law includes the right to be treated according to law and right of hearing is its integral part.

19. The principles of natural justice, fairness, procedural propriety and reasonableness should be kept in mind while exercising quasi-judicial functions and passing orders adversely affecting the person and property which were lacking in the instant case. In the reported case of Commissioner Inland Revenue versus Ali Hassan Metal Works, 2018 PTD 1399, it has been held as under:-

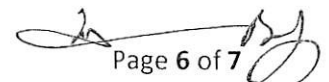
"10. The authorities, exercising quasi-judicial powers under a statute are bound to conduct a fair adjudication. To be dealt in accordance with law, due process and fair trial are inalienable fundamental rights guaranteed under Articles 4 and 10-A of the Constitution of the Islamic Republic of Pakistan 1973 ("Constitution").

August Supreme Court of Pakistan in the Province of East Pakistan v. MD. Mehdi Azhar Khan (PLD 1959 SC 387) held:-

"The determination of every right or liability claimed or asserted in a legal proceeding depends upon the ascertainment of facts and the application of the law to the facts so found. It is a normal feature of the judicial process first to discover the facts and then to determine what rights and liabilities follow from the application of the law to the facts found."

20. The above noted principle will apply to all orders passed by the officials of SRB affecting a person or his property unless the Act itself excludes such notice or opportunity of hearing. In the reported case of Abdul Haq Indhar versus Sindh, 2000 SCMR 907 it was held as under:-

"There is no cavil with the proposition that the principle of natural justice enshrined in maxim "audi alteram partem" is always deemed to be embedded in the statute and even if there is no such specific or express provisions, it would be deemed to be one of the parts of the State because no adverse action can be taken against a person without providing right of hearing to him"



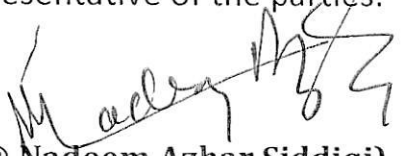
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21 The manner in which the application under section 76 of the Act and Appeal under section 57 of the Act were rejected without providing opportunity of hearing to the appellant by way of intimation letters are grossly illegal. Such action is neither warranted nor tenable under law and such orders cannot be said to be speaking orders.

22. However, considering the facts of the case and the order passed in connected Appeal No. AT-38/2021 in which the relief has already been provided to the appellant we are not inclined to remand the case for fresh decision as the same will not serve any purpose.

23. In view of the above discussions the appeal is disposed of accordingly. The copy of this order may be provided to the learned representative of the parties.


(Imtiaz Ahmed Barakzai)
TECHNICAL MEMBER


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

Karachi:

Dated: 08.11.2021

Copy Supplied for compliance:

- 1) The Appellant through Authorized Representative.
- 2) The Assistant Commissioner, (Unit-24), 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 09/11/2021

Order Dispatched on 09/11/2021

Registrar

Registrar