

BEFORE THE APPELLATE TRIBUNAL, SINDH REVENUE BOARD AT KARACHI

DOUBLE BENCH-I

APPEAL NO. AT-38/2021

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,  
3<sup>rd</sup> 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  
Ishad, SSTO for the respondent

ORDER

Justice<sup>®</sup> Nadeem Azhar Siddiqi: This appeal has been filed by the appellant challenging the Order-in-Appeal (hereinafter referred to as the OIA) No. 43/2021 dated 15.06.2021 passed by the Commissioner (Appeals) in Appeal No. 58/2020 filed by the appellant against the Order-in-Original (hereinafter referred to as the OIO) No. 45/2020 dated 04.03.2020 passed by the Mr. Ghulam Mustafa Kathio, Assistant Commissioner, (Unit-24) SRB Karachi.

02. The facts as stated in the OIO were that under clause (f) of sub rule (2) of rule 1 of Sindh Sales Tax Special Procedure (Withholding) Rules, 2014

*NOS*

*[Signature]*

(hereinafter referred to as the Withholding Rules), the appellant having NTN 1423148-4 being a withholding agent, 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 provider.

03. It was further stated that various registered service providers 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, and who had withheld SST of Rs.4,331,514/- during the tax periods from May-2017 to February-2018.

04. It was alleged that the appellant had withheld the SST on procurement of advertisement services as per sub-rule (5) of rule 3 of Withholding Rules. However, on the scrutiny, it was revealed that the appellant had neither e-signed up as withholding agent nor deposited the SST which was withheld in terms of rule 3 of Withholding Rules read with section 16 of the Sindh Sales Tax on Services Act, 2011 (hereinafter referred to as the Act). Details of the same are given as under:-

Airways Media (Pvt.) Ltd	1	75,053
ARY Communication Limited	2	862,465
Brainchild Communications Pakistan (Pvt.) Limited	3	145,226
Glaxy Broadcasting Network (Private) Limited	3	161,096
Hum Network Limited	6	867,298
Independent Media Corporation (Private) Limited	10	1,798,767
Jaag Broadcasting System Pvt. Ltd	6	348,478
Project Implementation Managers (Private) Limited	1	37,007
Shamal Media Services (Pvt.) Limited	1	36,124
Grand Total	39	4,332,514

05. The appellant was served with a Show-Cause Notice (SCN) dated 17.01.2020 to explain as to why the SST of Rs.4,331,514/- should not be recovered from it under the provisions of section 47(1A) (a) and 47(1b) of the Act read with rule 3(1), (3), (4) and (5) of the withholding Rules. The appellant was also called upon to show-cause as to why default surcharge under section 44 should also not be imposed alongwith penalties under Serial No. 3 (for non-payment of SST) of Table under section 43 of the Act.

06. The appellant failed to comply with the SCN and hearing notices and no reply was filed. Thus the Assessing Officer (AO) passed OIO creating demand of

SST of Rs.4,331,514/- under section 47(1A)(a) and 47(1B) of 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 Serial No. 3 of section 43 of the Act.

07. The appellant challenged the said OIO before Commissioner (Appeals) by way of filing of appeal under section 57 of the Act. The instant appeal was filed before the Commissioner (Appeals) on 10.06.2020 against the OIO dated 04.03.2020. A letter dated 04.08.2020 was served upon the representative of the appellant as mentioned in the OIA intimating the rejection of condonation of late filing of appeal. The appeal was thus rejected and dismissed in *limine* being non-maintainable. Hence filing of the appeal before this Tribunal.

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

i. The AO determined SST of Rs.4,331,514/- out of which the appellant had deposited a sum of Rs.3,015,506/-. Moreover further sum of Rs.453,534/- was recovered by way of attachment of Bank Account resulting in total payment made by appellant to Rs.3,464,049/-.

ii. The remaining payment of Rs.867,465/- was made under Amnesty-2021 thus the entire demand created in OIO was paid. It was contended that claiming same amount again from the appellant amounted to double taxation.

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

i. The AO was passed after providing proper opportunity of hearing to the appellant who failed to avail such opportunity

ii. The appeal filed by the appellant was time barred by 68 days and was rightly dismissed by Commissioner (Appeals). Moreover the appellant despite withholding the SST amount failed to deposit the same with SRB.

iii. The default surcharge and penalty were rightly imposed.

10. The AC-SRB was directed to prepare Re-conciliation Report which was filed on 17.09.2021. The same is reproduced as under:-

*WOS*

*[Handwritten signature]*

"02. With reference to the directions of the Hon'ble Chairman Appellate Tribunal, SRB given during the last hearing, the under signed went through the record available with this office and observed that appellant had paid SST as under:-

Payment Date	CPR	Tax Period	SST Amount
05-Mar-21	S12021030504651156792	May-17	179,920
05-Mar-21	S12021030504651156696	May-17	687,378
05-Mar-21	S12021030504651156854	Feb-18	10,990
10-Jun-21	S12021061115691229761	Jun-17	37,007
10-Jun-21	S12021061115691229760	Jun-17	75,053
10-Jun-21	S12021061115691229758	Aug-17	1,345,224
10-Jun-21	S12021061115691229757	Jun-17	36,124
10-Jun-21	S12021061115691229756	Jul-17	109,671
10-Jun-21	S12021061115691229755	Jun-17	51,424
10-Jun-21	S12021061115691229754	Jun-17	220,714
10-Jun-21	S12021061115691229753	May-17	127,764
10-Jun-21	S12021061115691229752	Jul-17	4,236
01-Dec-20	S12020120100851020975	May-17	453,443
	SST Withheld by the Service Provider & Declared in the Returns of Sep-2017 & Mar-2018	Sep-2017 & Mar-2018	862,465
	<b>Total</b>		<b>4,331,513</b>

03. However, it is submitted before you kind honor that the appellant has not paid the default surcharge and the penalty as raised in the OIO".



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

12. In the OIO the SST was assessed at Rs.4,331,514/- and as per the record available with SRB and in view of above reconciliation report the appellant had deposited a sum of Rs.4,331,513/-. In this manner the appellant had discharged its liability towards payment of principal amount of SST.

13. The AC had further claimed default surcharge and penalty for non-payment of SST. However we have noticed that the department has failed to establish *mensrea* against the appellant which was a necessary ingredient for imposing penalty. Therefore the penalty imposed at Rs.216,576/- is deleted.

14. It is evident from the above Reconciliation Report that the appellant had discharged its obligation by depositing the entire amount of SST with SRB. However the AC is required to check and verify the position of payment claimed under Amnesty Scheme – 2020, and the default surcharge under

*MS*

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Section 44 of the Act, if any, may be charged accordingly on this portion of payment as per law.

15. In view of above discussions the appeal is allowed and both the OIO and OIA are set aside, and the appellant is discharged from paying SST and penalty. However the default surcharge if any, may be worked out as mentioned in para 13 supra.

16. It would be appropriate to deal with the concluding para of the Order of Commissioner (Appeals) before parting with this order in which it was held by him as under:-

"...12. Since the instant Appeal was never admitted for regular hearing in the first place, the time-limit for disposal of an Appeal, as filed under section 57(1) *ibid*, as prescribed under section 59 [subsection's (5) & (6)] of the Act, 2011 does not come into picture. This Appeal, stands disposed of accordingly".

17. The following legal position emerges from the above conclusion drawn in the OIA:-

i. The appeal was filed before Commissioner (Appeals) on 10.06.2020, and was heard by him on 15.06.2020 and the OIA was passed on 14.06.2021 after one year from the date of hearing. The proceeding before the Commissioner (Appeals) are time bound and to be decided as provided by sub-section (5) and (6) of section 59 of the Act and if the same is not done the recovery of tax dues could not be effected. However the passing of the order after one year of the date of hearing was against the specific provisions of sub-section (5) and (6) of section 59 of the Act and could not be sustained.

ii. While hearing of appeal the law does not specifically provide that the appeal should be admitted for regular hearing. The appeal before Commissioner (Appeals) is filed under sub-section (1) of the 57 of the Act. Furthermore sub-section (1) of section 58 of the Act deal with procedure in appeal and provides that the Commissioner (Appeals) SRB shall give notice of the day fixed for hearing of the appeal to the appellant and to the officer of the SRB against whose order the appeal has been made. It is apparent from this provision that while disposing of the appeal under sub-section (1) of section 59 of the Act the notice to the parties are necessary. Sub-section (1) of section 59 of the Act deals

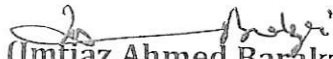


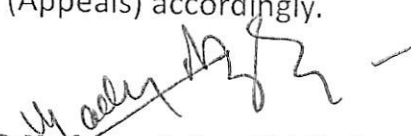
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with the decision in appeal and provides that while disposing of an appeal lodged under section 57, the Commissioner (Appeals), SRB may pass such order as he thinks fit, confirming, varying, altering, setting aside or annulling the decision or order appealed against. While examining all the above three provisions no impression appears that for disposing of the appeal the admission of appeal for regular hearing is required or necessary. The only requirement of law is the issuance of notice to the appellant and the officer whose order was appealed. Once the appeal is presented before Commissioner (Appeals) irrespective of whether the same was admitted or not the time provided under subsection (5) of section 59 of the Act will start running and the Commissioner (Appeals) is bound to pass order as provided under subsection (5) and (6) of section 59 of the Act.

iii. The view of Commissioner (Appeals) "that the time-limit for disposal of an Appeal, as filed under section 57(1) of the Act as prescribed under section 59 [subsection's (5) & (6)] of the Act does not come into picture" is not a correct view.

18. The appeal is disposed of accordingly. The copy of this order may be provided to the learned representative of the parties. Copy may also be provided to Chairman SRB for guiding Commissioner (Appeals) accordingly.

  
(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