

(Guard file)

BEFORE THE APPELLATE TRIBUNAL, SINDH REVENUE BOARD AT KARACHI

DOUBLE-BENCH-I

APPEAL NO. AT-43/2021

M/s Muhakam Din Engineering Works
(Pvt.) Ltd. (SNTN: 3102963-9)
H. No. B-60, Phase-II SUEHS, Jamshoro.....Appellant

Versus

Assistant Commissioner (Unit-34),
Sindh Revenue Board,
Bangalow, No. 14-A/1, Defence Housing Society,
Phase-I, Cantt. HyderabadRespondent

Date of filing of Appeal: 02.09.2021

Date of hearing: 15.11.2021

Date of Order: 22.12.2021

Mr. Jahanzeb, Tax Manager of Mr. Nasir Hussain Sheikh, Advocate for
appellant

Ms. Narmeen Qureshi, AC (Unit-34), SRB 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. 53/2021 dated 15.07.2021 passed by the Commissioner (Appeals) in Appeal No. 334/2018 filed by the appellant against the Order-in-Original (hereinafter referred to as the OIO) No. 930/2018 dated 07.11.2018 passed by Mr. Waleed Patoli, Assistant Commissioner, (Unit-34) SRB Hyderabad.

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02. It was stated in the OIO that the appellant was voluntarily registered with SRB under the principal activity of "Construction Services", Tariff Heading 9824.0000 of the Second Schedule to the Sindh Sales Tax on Services Act, 2011 (hereinafter referred to as the Act) and had provided/rendered aforesaid taxable services chargeable to Sindh Sales Tax (SST) at the rate specified under Second Schedule to the Act with effect from July 1st 2011.

03. It was alleged in the OIO that the scrutiny of withholding statement filed by M/s Orient Petroleum (Pvt.) Ltd. (OPL) revealed that it had received the taxable services from the appellant valuing Rs.5,495,861/- involving SST of Rs.632,245/- which were charged and collected by the appellant for the tax periods December-2017, January-2018, March-2018, May-2018 and July-2018. M/s OPL has only withheld and deposited SST amounting to Rs.12,449/-, and the remaining SST of Rs.505,796/- was deposited by the appellant in contravention to section 17 of the Act read with rule 13 & 14 of the Sindh Sales Tax on Services Rules, 2011 (hereinafter referred to as the Rules).

04. It was further stated in the OIO that under the provision of section 30 of the Act, it was mandatory on the appellant to submit true and correct Sales Tax Return (SST Returns). However, on perusal of the record it was evident that the appellant had failed to submit true and correct SST returns under section 30 of the Act for the tax periods November-2016 to July-2018.

05. It was further alleged that non-filing of SST returns for four consecutive months or more comes falls under the ambit of tax fraud as provided under section 2(94) of the Act and was serious violation of section 30 of the Act. However, the appellant neither deposited the un-paid amount of SST nor filed monthly SST returns for the tax periods November-2016 to July-2018 hence it committed violation of section 3, 8, 16, 17 and 30 of the Act.

06. The appellant was served with a Show-Cause Notice (SCN) dated 04.09.2018 to explain as to why SST amounting to Rs.505,796/= should not be assessed and recovered under section 23 read with section 47 (1A) (a) of the Act alongwith default surcharge under section 44 of the Act. The appellant was also required to explain as to why penalties under Serial No. 2, 3 and 6 of the Table under section 43 of the Act should not be imposed.

M.S.

[Signature]

07. It was stated in the OIO that in response to the SCN the representative of the appellant appeared and accepted the liability and deposited SST of Rs.385,784/= vide various CPR's.

08. The Assessing Officer (AO) passed OIO determining the SST at Rs.120,012/= alongwith default surcharge. The AO also imposed penalty of Rs.25,290/= under Serial No.3 of the Table under section 43 of the Act, penalty of Rs.210,000/= under Serial No.2 of the Table under section 43 of the Act, and penalty of Rs. Rs.505,796/- under Serial No.6 of the Table under section 43 of the Act.

09. The appellant challenged the OIO before Commissioner (Appeals), SRB by filing appeal under section 57 of the Act. The Commissioner (Appeals) while dismissing the appeal held as under:-

"...12. In view of above, this matter is disposed of with the directions to the respondent AC-SRB to work out the full & final amount of due default surcharge in this matter (under section 44 ibid, for and upto the dated 06.12.2018, on which date the Appellant fully discharged the adjudged principal amount in this matter) and further, to take appropriate action for recovery of the amounts in question that is, the balance penalty amount and the balance default surcharge amount (after adjusting the amounts already paid by the Appellant in this regard). However, the benefit of waiver of penalty & default surcharge as envisaged under the said SRB Tax Amnesty Notification shall not be available to the Appellant, for the reasons stated supra."

10. The appellant being aggrieved with the order of Commissioner (Appeals) has filed instant appeal before this Tribunal.

11. The learned representative of the appellant submitted that the entire tax liability was deposited under Amnesty-2020 which was not accepted by Commissioner (Appeals) and the OIA was passed only in respect of default surcharge of Rs.21,667/- and penalties of Rs.741,086/-. He submitted that penalty under Serial No.6 of Table under section 43 of the Act was not applicable since the applicable clause was not invoked. Moreover the other penalties were harsh and should not be imposed since the appellant had already deposited the principal amount of tax.

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12. The learned AC for the respondent submitted that the amnesty was rejected for the reason that appellant had not deposited the default surcharge on the balance principal amount established in the OIO and the Commissioner (Appeals) has rightly confirmed the penalties imposed in the OIO.

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

14. It is not disputed that the appellant had discharged its liability towards the principle amount of tax. The dispute is with regard to payment of default surcharge.

15. The penalties were imposed under Serial No. 2, 3 and 6 of the Table under section 43 of the Act. As far as the payment of default surcharge is concerned the same was rightly calculated and imposed as the appellant had failed to discharge its liability as provided in law.

16. The imposition of penalty of Rs.210,000/= under Serial No. 2 of the Table under section 43 of the Act appears to be harsh. We therefore, reduce it to Rs.60,000/=. The imposition of penalty of Rs.25,290/= under Serial No. 3 of the Table under section 43 of the Act was rightly imposed as the appellant had not deposited SST as provided under law. The penalty under Serial No. 6 of the Table under section 43 of the Act was not applicable firstly for the reason that Serial No. 6 of the Table under section 43 of the Act has four clauses {(a) to (d)} which cater with different situations and in the SCN as well as in the OIO the AO has not mentioned the applicable clause under which the penalty was imposed. Secondly for invoking penalty under Serial No. 6 of the Table under section 43 of the Act the AO had to establish and prove that the act and omission on this account were knowingly and fraudulently committed which is lacking in the instant case. Thus we delete such penalty of Rs.505,796/=.

17. In view of above discussion the appellant is liable to pay the following default surcharge and penalties:-

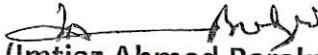
i.	Default surcharge	Rs.21,667/-
ii.	Penalty under section 43 (2) of the Act	Rs.60,000/-
iii.	Penalty under section 43(3) of the Act	<u>Rs. 25,290/-</u>
	Total	Rs.106,957/-

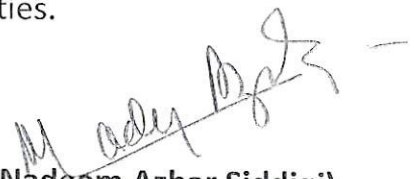
M. J.

[Signature]

18. In view of the above discussion the appeal is partly allowed and the OIO and OIA are set aside except the amount mentioned at para 17 supra. The appellant is required to deposit such amount with SRB within fifteen days from the date of receipt of this order, and it is also required to file all SST returns if not already filed.

19. 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

Certified to be True Copy


REGISTRAR
APPELLATE TRIBUNAL
SINDH REVENUE BOARD

Karachi:

Dated: 22.12.2021

Copy Supplied for compliance:

- 1) The Appellant through Authorized Representative.
- 2) The Assistant Commissioner, (Unit-34), SRB, Hyderabad for compliance

Order issued on 22/12/2021

Copy for information to:-

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

Order Dispatched on 22/12/2021

Registrar

Registrar