

BEFORE THE APPELLATE TRIBUNAL, SINDH REVENUE BOARD AT
KARACHI
DOUBLE BENCH-I

APPEAL NO. AT-44/2021

Assistant Commissioner SRB, (Unit-31)
09th Floor, Shaheen Complex Building
M.R. Kiyani Road
Karachi.....Appellant

Versus

M/s Princely Jets (Private) Limited
(SNTN: 2394552)Office # 10, 2nd Floor,
Services Club,Extension Building,
Merewether Road,Abdullah Haroon Road,
Saddar Karachi.....Respondent

Date of filing of Appeal: 10.09.2021
Date of Hearing: 24.05.2022
Date of Order: 05.09.2022

Mr. Muhammad Shoaib Rajkoti, DC-SRB for appellant.

Mr. Ali A. Raheem (ITP), and Mr. Taha Ansari, Manager Finance of the respondent.



ORDER

Justice Nadeem Azhar Siddiqi: This appeal has been filed by the Assistant Commissioner (Unit-31), SRB Karachi challenging the Order-in-Revision (hereinafter referred to as the OIR) dated 13.07.2021. The OIA passed by the Commissioner-IV, SRB under section 56 of the Sindh Sales Tax on Services Act, 2011 (hereinafter referred to as the Act) against the Order-in-Original (hereinafter referred to as the OIO) No. 98/2021 dated 05.04.2021 passed by Mr. Salman Khawaja, Assistant Commissioner, (Unit-18) SRB Karachi.

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02.The brief facts as stated in the OIO were that the respondent having NTN No.2394552 was voluntarily registered with Sindh Revenue Board (SRB) as an Airport Services provider on 13th June, 2013. The respondent being a registered person was required to charge, collect and pay (deposit) the Sindh Sales Tax (SST) on provision of all taxable services, as mentioned in the Second Schedule of the Act. The respondent was also required to withhold the SST being a recipient of the taxable service under section 3(2), 9(2) and 13 of the Act read with the Sindh Sales Tax Special Procedure (Withholding) Rules, 2014 (hereinafter referred to as the Withholding Rules, 2014). The respondent was also required to make compliance towards all the applicable rules laid down under the Sindh Sales Tax on Services Rules, 2011 (hereinafter may referred as the Rules).

03.It was alleged in the OIO that from the perusal of returns and records available with SRB for the period 01st June-2017 to 30th June-2018 number of non-compliances of the provisions of the Act relating to the appellant were indicated resulting in short payment of SST of Rs.129,874,886/-.

04.It was further alleged in the OIO that Note 15 of Financial Statement for the year ending 30th June, 2018 indicated that the respondent had earned revenue from multiple sources which were taxable under various Tariff Headings to Second Schedule of the Act. However these were not declared/short declared by the respondent, and such details are as



S. No.	Income Head	Tariff Heading	Amount	Paragraph
1	Income from Chartered Flights	9803.000	556,608,790	2.1.1
2	Lease Rent Income & Service	9806.3000	42,790,060	2.1.2
3	Aviation Service Income	9826.0000	27,767,109	2.1.3
4	Management Fee	9815.4000	6,052,500	2.1.4
Total			633,218,459	

05. The appellant was served with Show-Cause Notice (SCN) dated 15th June, 2020 to explain as to why the non-paid SST should not be assessed, under section 23 of the Act, along with default surcharge under

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section 44 of the Act and why the penalties should not be imposed as laid down under the section 43 of the Act for violation of above provisions of the Act and Rules.

06. The respondent filed detailed reply dated 31.08.2020 (reproduced in the OIO) with partial record and submitted that the respondent was paying SST as required by the Act and the Rules. It was further stated that Rs.633,218,459/- was gross income inclusive of sales tax and the same was reported to (SRB) as well as to other Tax Authorities including Punjab Revenue Authority (PRA), Khyber Pakhtunkhwa Revenue Authority (KPK) and Federal Board of Revenue (FBR) in the sales tax returns filed with respective authorities.

07. The Assessing Officer (AO) passed OIO determining the SST of Rs.49,784,073/- (against Rs.129,874,886/- as confronted in the SCN) under section 23 of the Act and directed payment of SST alongwith default surcharge under section 44 of the Act. The AO also imposed penalty of Rs.2,489,203/- (5% of Rs.49,784,073/-) under serial 3 of Table under section 43 of the Act.

08. The respondent challenged the OIO before Commissioner- IV, SRB by way of filing of application dated 09.04.2021 for rectification of OIO which was treated as Revision by the Commissioner-IV, SRB under section 55 of the Act and was disposed of as such vide OIR. The Commissioner IV, SRB held as under:-



"04. In the light of the above-given documentary evidences, following conclusions are drawn:

Expendable Services Expense	Tariff Heading	Value	Tax Rate	SST Shortfall
Custom Duty and Clearing charges	9805.4	2,684,532	13%	308,840
Legal & Professional Charges	9815.2	3,872,660	8%	286,864
Audit Fee	9815.3	450,000	8%	33,333
Repair & Maintenance	9822.2	1,217,073	10%	110,643
Vehicle Repair & Maintenance	98201	663,032	13%	76,278
	Total	8,887,297		815,958

"05. In the light of above the amount adjudicated of Rs.47,103,882/- is set-aside. The taxpayer is required to pay the remaining dues that are assessed under Order-in-Original No. 98 of 2021 and this revision

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Order-in-Revision amounting to Rs.3,496,149/- along with default surcharge under section 44 of the Act, 2011 and pay penalty of Rs.174,807/- (being 5% of Rs.3,496,149-) held payable”.

Resultantly the appeal was filed by the Department before this Tribunal.

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

- i. The OIR is bad in law and the same was passed without providing proper right of hearing to the appellant/department.
- ii. The OIR was passed in great haste without considering the nature of the application filed by the respondent which was actually an application for rectification and not revision under section 55 of the Act.
- iii. The Commissioner IV, SRB has no power to hear application for rectification of OIO, thus the same was wrongly treated as application for revision under section 55 of the Act.
- iv. The respondent got voluntarily registration on 13.06.2013 under Tariff Heading 9826.0000 (Airport Services) and itself-claimed exempt services which were actually not exempted from payment of SST.
- v. The respondent claimed input tax adjustment which was found inadmissible.

vi. The respondent failed to withhold SST on the services procured by it.

vii. No details and record was provided to Commissioner-IV, SRB and only sample record was provided. Thus the SST was charged on Air Block Hours which solely pertained to Sindh and was wrongly excluded by Commissioner (Appeals).

viii. The affidavit of the then AC Salman Khawaja could not be filed as he was dismissed from service vide Order dated 11.04.2022 on charge of unauthorized absence from duty since 16.11.2021.

10. Mr. Ali Raheem, the learned ITP for the respondent submitted as under:-

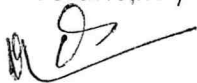
- i. The OIR was properly passed after considering the facts of the case and the documents produced before Commissioner-IV, SRB.



- ii. The OIR was passed after providing proper right of hearing to the AC and placed on record copy of Notice of hearing dated 03.05.2021 issued to the respondent with a copy of the same to AC, Unit-31.
- iii. The AC-Unit-31 Mr. Salman Khawaja was present before the Commissioner-IV, SRB and his attendance was mentioned in the OIR.
- iv. The respondent provided all details, information and record to the Commissioner-IV, SRB and the then AC and after proper reconciliation of the record the OIR was passed.
- v. The SCN and OIO were defective as only classification of service was mentioned therein without mentioning the proper Tariff Heading of the Second Schedule to the Act. Therefore the Commissioner-IV, SRB allowed the revision and rightly reduced the SST from Rs.49,784,073/- to Rs.3,496,149/-.
- vi. The Air Block Hours were not taxable in Sindh as no flight was operated in Sindh or from Sindh and thus the same were rightly excluded by Commissioner-IV, SRBs). Moreover Mr. Muhammad Ozair Siddiqi the then Commissioner-IV, SRB has filed his Report under the direction of the Tribunal and has confirmed the presence of then AC before him at the time of hearing.
- vii. Mr. Jaha Ansari, Manager Finance of the respondent has confirmed in the affidavit filed regarding the presence of the then AC Mr. Salman Khawaja before the Commissioner-IV, SRB who had passed the OIR.
- viii. The concerned Commissioner-IV, SRB could not produce the file of the Revision despite the direction of the Tribunal contained in order sheet dated 28.04.2022. Thus the application for rectification was rightly treated as revision on the basis of substance of the application.

11. We have heard the learned representatives of the parties and perused the record made available before us including the written submissions of the parties.

12. The allegation against the respondent in the SCN was that it was voluntarily registered with SRB under service category of Airport



Services Tariff Heading 9806.0000 of the Second Schedule to the Act and had short paid SST of Rs.129,874,886/=. However after adjudication the OIO was passed in the sum of Rs.49,784,073/=. The respondent instead of filing appeal under section 57 of the Act filed application of rectification of the OIO which was treated as Revision under section 55 of the Act by Commissioner-IV, SRB and the SST was reduced to Rs.3,496,149/-.

13. The first argument of the AC was that application for rectification was wrongly treated as revision under section 55 of the Act. It is now well settled principle of law that cases/matters are to be decided on the basis of substance and not on the basis of form. Moreover it has been held that quoting wrong provision of law is not fatal and the matters are to be decided on merits as per its substance. In the reported case of Habib Insurance Company versus Commissioner Income Tax, Karachi, PLD 1985 SC 109 it was held as under:-

"It is true as contended by the learned counsel for the appellant that in Revenue cases one must look at the substance of a thing and not at the manner in which the account is stated".

14. The appellant in the title of application mentioned Rectification instead of Revision which may be an error or mistake but it does not effect the merit of the application. In the reported case of Muhammad Ajmal versus Aftab Ahmed, 2009 CLC 647 it was held as under:-



"Suffice is to say that wrong mentioning of the correct provision of law does not disentitle the litigant for the proper relief available to him because it is the duty of the Court to apply the correct law and to grant proper relief. Reliance is placed on case of Muhammad Zahid Pervaiz Muhammad Shafqat Iqbal, PLD 2007 Lah. 377".

In view of the above discussion we hold that the application for rectification was rightly treated as revision.

15. The AC has rightly submitted that the power of rectification was available to the Officer, SRB who made the assessment or adjudication or passed such order or decision or by his successor in office. In this case

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since the Commissioner-IV has not passed any order or decision he could not rectify the OIO and has thus rightly passed order under section 55 of the Act.

16. The appellant got voluntarily registration under Tariff Heading 9826.000 (Airport Services) which was defined under sub-section (5) of section 2 of the Act as under:-

“(5) “airport ground service provider” and “airport service provider” mean and include any service provider, operator and airline providing (emphasis supplied) or rendering ground or ramp services, including passenger and cargo handling services, to other airlines or to aircraft operators of scheduled or non-scheduled flights, and also include the handling agents authorized by the Civil Aviation Authority or other airport operators;”

17. The appellant is an operator and provider of chartered flights and is fully covered under the above definition and was liable to charge, collect and pay the SST on the services provided in Sindh as provided under section 9 of the Act.

18. We have carefully examined the contents of application for rectification of OIO. It was addressed to Commissioner-IV, SRB and the discrepancies pointed out were that i) advance block hours were part of chartered flights and were utilized outside Sindh, ii) withholding tax was only applicable on payment and not expenses. Moreover the withholding was not applicable on payment made to vendors falling under Federal/Provincial Governments, Banks, Law Firms and international companies located outside Pakistan, iii) the documents were provided but the same were overlooked. Such discrepancies could be pointed out in the revision and irrespective of the merits in the discrepancies the same could be raised in the revision. However, we have noticed that the application was short of necessary details.

19. The Commissioner-SRB under section 55 of the Act is vested with the power of revision of the proceedings in the Act. The power is two-fold. The Commissioner may exercise such power on his own motion or on application in writing by the registered person. The purpose of revision provided in sub-section (2) of section 55 of the Act is for



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satisfying the legality or propriety of the order passed by the Officer-SRB. In this matter the respondent filed an application in writing and the Commissioner-IV, SRB had rightly entertained the same to satisfy himself about the legality and propriety of the OIO.

20. We have also very carefully examined the OIR. The OIR is short of necessary details. The Commissioner-IV, SRB has only advanced reason that:

"in absence of record available at the time, the adjudication office cannot ascertain the assertions made by the appellant (respondent) that the said amount of taxes are not taxable as i. the income earned under Advance Block Hours are earned in Parking of Aircraft on foreign soil ii. The majority of expenses relates to services of hiring of aircraft, aircraft repair and maintenance relates and advertisements were rendered in foreign territory".

In our respectful view the reasons assigned by the Commissioner-IV, were insufficient to set aside the OIO, although the presence of the AC was recorded in the opening part of the OIR, but his contention was not recorded. It was also not known whether any comments were called from AC or not. Moreover despite our specific directions the file of Revision was not placed before us.

21. The Commissioner-IV, SRB also failed to give proper reasons for setting aside the OIO. His main contention was that the OIO was passed on sample invoices provided by the respondent. Though the representative of the respondent in his submissions stated that all invoices were provided but it was clearly mentioned in sub para (d) of para 3 of the OIR that sample invoices were provided. The quasi-judicial order should be based on the material available on record. In the reported case of Hyderabad Development Authority versus Abdul Majeed, PLD 2002 SC 84, in para 5 it was held as under:-

".....It would be advantageous to note that judicial pronouncement (judgment) by a Judicial Officer should be based on the evidence/material available on record and reasons must be outcome of the evidence available on record and on the basis of such reasons conclusion should be drawn and if the order lacks of these ingredients it

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cannot be termed to be a judicial verdict (judgment) in stricto sensu and at the best such pronouncement can be termed to be an administrative order incapable to settle controversy judicially between the parties”.

22. The above test equally applies to the quasi-judicial pronouncements, orders and decision. After insertion of section 24-A in the General Clauses Act, 1897 it was incumbent on every authority to give reasons for making orders or decisions and any such order or decision without discussing necessary facts and material on record is not a judicial or quasi-judicial order. It is settled law that a quasi-judicial order must be a speaking order. In the reported case of Muhammad Ibrahim Khan Versus Secretary, Ministry of Labour and others, 1984 SCMR 1014 it was held as under:-

“This Court has repeatedly emphasized the need for recording a speaking Order. In the case of Adamjee Jute Mills Ltd. (1 P 1 D 1959 S C 272) while remitting the applications for reconsideration and for recording of a proper order it was observed that where there has been no prior adjudication of a matter and substantial questions of law are raised, it is the undoubted duty of the adjudicating authority to state what the precise controversy of fact and law has been raised and the grounds on which it was accepted or rejected. In another case of G. M. Sikdar (P L D 1970 S C 158) the following observations made in another decision were reproduced;-

This Court was at pains to point out that “A judicial order must be a speaking order manifesting by itself that the Court has applied its mind to the resolution of the issues involved for their proper adjudication because the litigants who bring their disputes to the law Courts with the incidental hardship and expenses involved do expect a patient and judicious treatment of their cases and their determination by proper orders”.

23. In another reported case of Collector of Customs, Sales Tax and Central Excise versus Mudassir Traders, 2006 PTD 146 a learned DB of High Court of Sindh held as under:-

“The perusal of above findings shows that it is bereft of any reason, which is a condition precedent for the maintainability of a judicial order. It is violative of the provisions contained in Section 24-A of the General Clauses Act, 1897.

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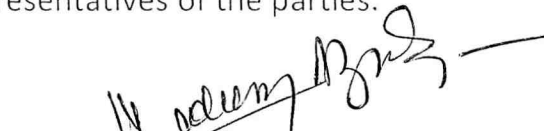
On the basis of slipshod finding without any reasons, it is not possible for this Court to give opinion on the point of law arising out of the order of Tribunal”.

24. Applying the above test on the case in hand we find that the OIR was short of details and reasons and the conclusion drawn was without any basis thus the same could not be maintained.

25. In view of the above, we allow this appeal and set aside the OIR and remand the case to concerned Commissioner, SRB for deciding the same afresh after providing proper opportunity of hearing to both the parties. The respondent is at liberty to file written submissions alongwith necessary documents in support of its contention. The concerned AC after going through the written submissions and documents should submit reconciliation report for the assistance of the Commissioner.

26. The appeal is disposed of accordingly. The 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:05.09.2022

Copy Supplied for compliance:

1. The Commissioner-IV, SRB, Karachi.
2. The Assistant Commissioner, (Unit-31), SRB.
3. The Authorized Representative of the respondent.

Copy for information to:-

4. Office Copy.
5. Guard File.

Certified to be True Copy


REGISTRAR
APPELLATE TRIBUNAL
SINDH REVENUE BOARD

Order issued on

08/09/2022

Registrar

Order Dispatched on

08/09/2022

Registrar