

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

APPEAL NO. AT-45/2021

Assistant Commissioner SRB, (Unit-03),  
Sindh revenue Board,  
02<sup>nd</sup> Floor, Shaheen Complex Building  
M.R. Kiyani Road, Karachi.....Appellant

Versus

M/s Harbin Power Engineering  
Company (SNTN: 0816416-4)  
(New Harbin Electric International,  
Company) House No. 135-Phase, 03,  
XX Block, DHA, Lahore..... Respondent

Date of filing of Appeal: 21.09.2021  
Date of hearing: 07.03.2022  
Date of Order: 16.03.2022



Mr. Naeemullah Bhutto, AC-SRB and Mr. Junaid Haider, (Unit-03)AC-SRB  
for appellant.

None present for the respondent, despite of service of notice upon the  
representative of the respondent through courier.

ORDER

Justice ® Nadeem Azhar Siddiqi: This appeal has been filed by the  
Assistant Commissioner (Unit-03) (appellant), SRB Karachi challenging the  
Order-in-Appeal (hereinafter referred to as the OIA) No.1A/2021 dated  
23.07.2021 passed by the Commissioner (Appeals) in Appeal NO. 01/2018  
filed by the respondent against the Order-in-Original (hereinafter referred

to as the OIO) No. 363/2017 dated 25.05.2018 passed by Mr. Bakht Ali Dahio, Assistant Commissioner, (Unit-03) SRB Karachi.

02. It was stated in the OIO that the respondent was registered with Sindh revenue Board (SRB) under the service category of Construction falling under Tariff Heading 9824.000 of the Second Schedule to Sindh Sales Tax on Services Act, 2011 (hereinafter referred to as the Act) subject to Sindh Sales Tax (SST) and the respondent was required to charge/collect and pay SST to SRB.

03. It was alleged in the OIO that the scrutiny of income tax returns filed by respondent revealed that it had rendered the taxable services of contractual execution/construction services of Rs.2,058,369,462/- for the tax periods July-2012 to June-2013 and Rs.2,646,083,081/- for the tax periods July-2011 to June-2012. The total value of taxable services provided/ rendered amounted to Rs.4,646,083,081/- involving Sindh Sales Tax of Rs.752,712,406/- @ 16% which was to be deposited with SRB in the prescribed manner. However, the respondent failed to deposit the SST.



04. The respondent was served with Show-Cause Notice (SCN) dated 20.01.2017 to explain as to why it should not be compulsorily registered and why SST liability of Rs.752,712,416/- may not be assessed and recovered from it under section 23 of the Act alongwith default surcharge under section 44 of the Act. The respondent was also required to explain why penal action under Serial No. 2, 3, 5, 6(d), 11, 12 and 13 of the Table under section 43 of the Act should not be imposed for contravention of several provisions of the Act.

05. The respondent's representative filed reply on 02.03.2017 and submitted that the SCN was without jurisdiction as the services of Construction were provided in Sukkur Division and such jurisdiction lies with Unit-35 and not Unit-14. The respondent filed another reply dated 27.03.2017 and submitted that sales tax was payable only on services whereas the contract signed between the respondent and GUDDU comprised of goods also. It was submitted that the respondent had

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rendered services of contractual execution of works and furnishing supplies (Tariff heading 9809.0000) and Construction services (Tariff heading 9824.0000) and the value of contract was less than Rs.50 million thus the same was exempted from payment of SST under SRB Notification SRB-3-4/7/2-13 dated 18.06.2013. Another reply was filed on 18.09.2107 wherein it was submitted that the invoices were issued before June-2011. The detail of invoices submitted by the respondent are as under:-

S. No.	Date	Invoice No.	Amount PKR.	Description
1	12-Nov-09	GUDDU-ADV-001	453,624,155	For Design, supply Installation, Testing and Commissioning of 747MW
2	Oct-13, 2010	GUDDU-INT-L-002	226,812,077	For Design, supply Installation, Testing and Commissioning of 747MW
3	April-02-2011	HPE-05-PKGD-0402CIL-01	53,458,979	For supply of Local Goods, Local Transportation, Civil Work, and other Works
4	April-14-2011	HPE-05-PKGD-0402CIL-02	9,504,628	For supply of Local Goods, Local Transportation, Civil Work, and other Works
5	May-17-2011	HPE-05-PKGD-0402CIL-03	5,490,714	For supply of Local Goods, Local Transportation, Civil Work, and other Works
6	June-16-2011	HPE-05-PKGD-0402CIL-04	34,960,200	For supply of Local Goods, Local Transportation, Civil Work, and other Works
Grant Total				783,850,753



06. The Assessing Officer passed OIO and ordered the respondent to deposit the SST of Rs.585,552,692/- (Rs.752,712,406/- less Rs.167,159,714/- already recovered) along with default surcharge under section 44 of the Act. The AO also imposed the penalty of Rs. 240,000/- under Serial No.2 of Table under section 43 of the Act for failing to furnish

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true monthly SST returns within due date, penalty of Rs.7,635,620/- under Serial No.3 of Table under section 43 of the Act for failing to deposit the due SST, penalty of Rs.752,712,406/- under Serial No. 6(d) of the Table under section 43 of the Act for tax fraud by producing irrelevant invoices in order to avoid due tax liability, penalty of Rs.37,635,620/- under Serial No 11 of the Table under section 43 of the Act for non-compliance of provisions of the Act and the Sindh Sales Tax on Services Rules, 2011 (hereinafter referred to as the Rules) and penalty of Rs.1,656,447,293/- under Serial No. 13 of the Table under section 43 of the Act for repeating offences for which a penalty is provided under the Act.

07. The appellant challenged the said OIO by way of filing of appeal under section 57 of the Act before Commissioner (Appeals), SRB who reduced the SST. Relevant para-14 of the OIA is reproduced for ready reference as under:-

*"..,14 In view of the finding recorded in the paras supra the Appellant is liable to pay a total tax of Rs.542,446,492/-. Out of which an amount of Rs.238,609,052/- already stands paid in the exchequer as is mentioned in para-5 above. An amount of tax of Rs.286,373,181/- has been held to be defensible against the services provided to the Appellant by M/s Habib Rafiq (Pvt.) Ltd. And thus an amount of Rs.17,464,259/- (542,446,492-238,609,052-186,373,181) remains unpaid. Which the Appellant is directed to pay along-with the default surcharge calculable as per the payment made".*

The Commissioner (Appeals) has however deleted all the penalties. Resultantly an appeal was filed by the Department before this Tribunal.

08. The learned AC-SRB Mr. Naeemullah Bhutto submitted as under:-

i. The Commissioner (Appeals) has erroneously allowed adjustment of time barred input tax adjustment claimed by the respondent on the basis of purchase made from M/s Habib Rafiq (Pvt.) Ltdan unregistered person.





ii. The Commissioner (appeals) allowed adjustment of input tax ignoring provisions of sub-rule (v) of rule 22A of the Rules for the reason that M/s Habib Rafiq was not registered with SRB till 26.08.2014 and it had neither deposited due SST nor filed monthly SST returns.

iii. The Commissioner (Appeals) ignored the contradiction between the declaration of the respondent and its supplier. Since the respondent had declared exempt services and its supplier had declared taxable services.

iv. The Commissioner (Appeals) was not justified in waiving the penalty under Serial No.3 and 6(d) of the Table under section 43 of the Act.

09. The representative of the respondent was present on 12.10.2021, but he has failed to appear on subsequent dates despite being aware that the case was fixed on such dates. Due to non-appearance of the representative of the respondent, Notice dated 15.02.2022 for hearing on 24.02.2022 was sent to respondent as well as its representative. This notice was served upon the representative of the respondent but the notice sent to the respondent had returned un-delivered with the remarks that "No such Consignee at given address". The representative of the respondent Mr. Abdul Qadeer Ahmed (ITP) informed the officer of the Tribunal on telephone that the respondent had left Pakistan and had pleaded no instructions on behalf of the respondent. Considering this position we are left with no alternative but to hear the arguments of the appellant (AC-SRB) and to decide the appeal on merits in absence of the respondent and its representative.

10. We have heard the submissions of learned AC-SRB and perused the record made available before us.

11. The appellant had challenged the input tax of Rs.286,373,181/= allowed by the Commissioner (Appeals) to the respondent on the ground



that the same was inadmissible and the waiver of the penalties imposed by the AO in the OIA.

12. The allegation against the respondent was that it had rendered service of contractual execution of work during the tax periods from July-2011 to June 2013 valuing Rs.4,646,083,081/= involving payment of SST of Rs.752,712,406/=. In the OIO the SST was determined at Rs.585,552,692/= alongwith default surcharge and penalty of Rs.2,484,670.944/- invoking various provisions of section 43 of the Act. The Commissioner (Appeals) determined the SST at Rs.542,446,492/= holding that the amount of Rs.238,609,052/- was already paid and he further allowed an amount of Rs.286,373,181/- towards adjustment of input tax. In this way total amount recovered from respondent was Rs.524,982,233/- and the balance amount of SST to be paid was Rs.17,464,259/-.

13. The respondent got registration with SRB on 20.11.2015, and during the tax period involved from July 2011 to June 2012 the respondent was not registered with SRB as is apparent from the Registration Profile of the respondent. However, the SCN dated 20.01.2017 was issued for compulsory registration (without mentioning the relevant provision of law) of the respondent as well as assessment (without mentioning the relevant sub-section of section 23 of the Act).

14. The contention of the AC-SRB was that the input tax adjustment of Rs.286,373,181/= could not be allowed to respondent on purchases from un-registered person i.e. M/s Habib Rafiq (Pvt) Ltd (HRPL).

15. The above amount of Rs.286,373,181/= was deposited by HRPL with SRB pursuant to OIO No. 461/2005 dated 21.09.2015 confirmed vide OIA No. 12/2016 dated 12.02.2016 passed in Appeal No. 206/2015 by Commissioner (Appeals), and in Appeal No. AT-37/2016 filed by HRPL before the Appellate Tribunal vide order dated 16.10.2017. It appears that at the relevant time MHPL was also not registered but was discharging its statutory obligation by depositing the SST.





16. It may be pointed out that during the tax periods from July-2012 to June-2013 both the respondent and HRPL were not registered. The respondent got registration on 20.11.2015 and HRPL got registration on 26.08.2014 and deposited huge amount of SST with SRB despite the fact that for the tax periods they were not registered and were not liable to pay SST. The SRB while receiving SST from unregistered person without objection should also not object in allowing the input tax adjustment.

17. The Commissioner (Appeals) Mr. Masood Sabir in his various decisions had held that no SST could be recovered from unregistered persons. Few such decisions are as under:-

- a) Appeal No.73/2018, OIA No.97/2020 M/s Sinopec International vs. Assistant Commissioner (Unit-03), SRB dated 03.11.2020.
- b) Appeal No.308/19, OIA No.109/2020, dated 02.12.2020, and Appeal No.456/2018, OIA No.110/2020, dated 02.12.2020, M/s Fiber Link vs. Assistant Commissioner (Unit-01), SRB.
- c) Appeal No.303/2019, OIA No.95/2019, dated 28.10.2020, M/s Tracking World vs. Assistant Commissioner (Unit-01), SRB.

18. The above view of Commissioner (Appeals) has been upheld in our various pronouncements. Few of such decisions are mentioned for ready reference as under:-

- a) AT-47/2020 dated 15.02.2021 – AC (Unit-04) vs. M/s MYN Pvt. Ltd.
- b) AT-234/2015 dated 26.11.2019 – Nasir Khan & Sons vs. Commissioner (Appeals) & DC (Unit-13), SRB.
- c) AT-30/2019 dated 05.03.2021, TCS Logistics vs. The Commissioner, SRB.
- d) At-21/2021 dated 30.09.2021, Cyber Tech Communication versus Assistant Commissioner, Unit-04.

19. The appeal of the respondent was pending before Mr. Masood Sabir Commissioner (Appeals), SRB and vide Notification dated 29.04.2021 was transferred to Mr. Zameer Khalid, Commissioner (Legal). The fact that the



case was transferred was mentioned in Para 6 of the OIA but reason for transfer was not mentioned. The case was transferred to Mr. Zamir Khalid apparently to avoid an adverse order on the point of recovery of SST from unregistered person, who passed OIA in ignorance of earlier decisions of the Commissioner (Appeals) and the Appellate Tribunal. This practice is considered by us as a bad practice which is against the transparency and fairness.

19. The Commissioner (appeals) in OIA had relied upon the reported case of Shield Corporation & Others Versus Government of Sindh and another, 2021 PTD 1187=PTCL 2021 CL 689, the relevant para is reproduced as under:-

*"12. From the perusal of the above law it may be noted that the law does not bar obtaining of the taxable services from an unregistered persons, however the only impediment which finds place in the law is with regard to the person who otherwise is liable to be registered but not registered would be considered as an unregistered person and a penalty has been provided under Section 43 of the Act, 2011 for the act of non-registration. in the instant matter, it may be noted that the learned counsel appearing for the respondents have not pointed out even a single provision of law whereby it has been provided that no input tax adjustment would be available on the taxable services obtained by a withholding agent or a registered person from an unregistered person though it has been pleaded by the learned counsel for the petitioners that e-return does not accept the same but from the law explained before us by the learned counsel for the respondents it may be noted that no provision of law is cited through which input adjustment could be denied to a withholding agent obtaining taxable services from an unregistered person;(emphasis supplied) rather the proviso to Section 3(4) of the Sindh Sales Tax Special Procedure (Withholding) Rules, 2014, mentioned above, clearly stipulates that withholding agent, who receives taxable services from an unregistered person, is responsible to obtain and keep in record a copy of the CNIC of the unregistered service provider, if he is an individual and a copy of the*



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NTN certificate of the said unregistered person if he is an AOP or a company”.

20. It is evident from the above portion of the judgment of High Court of Sindh that there is no bar in claiming input tax adjustment on receiving services from unregistered person. The Commissioner (Appeals) also quoted a passage from the judgment in the Shield Corporation as under:-

*“It has further been noted that if a person is unregistered, penal provisions are provided under the law for those unregistered persons but in our view a person, who is a registered person cannot be denied the input tax adjustment simply on the ground that the other said person is unregistered”.*

21. The Commissioner (Appeals) after discussing the issue of adjustment of input tax on the supplies made to the respondent by HRPL and relying upon the judgments of the Honorable Supreme Court of Pakistan in the case of Pfizer Laboratories Limited versus Federation of Pakistan and others, 1988 PLD SC 64 relevant page 88 and Industrial Development Corporation of Pakistan versus Federation of Pakistan, 1992 PTD 576 relevant page 593 held in para 10.10 as under:-

*“10.10...So therefore, I hereby hold that the input tax adjustment against the services provided by M/s Habib Rafiq (Pvt) Ltd., are admissible and failing to allow as such shall amount to double taxation. As far as the judgment of High Court of Sindh is concerned it also recognizes the right of a registered person in an ideal position. But in the given circumstance, the very input tax stands paid by the provider of services and thus allowance of input tax adjustment to the appellant remains mere a formality. Therefore, when read with the situation prevailing in this case the judgment of the Honorable Court is distinguishable, read with the facts and circumstances of the case decided by the Honorable Court”.*

22. We have considered the above reasons assigned by Commissioner (Appeals) for allowing input tax adjustment to the respondent and found



the same in consonance with the judgment of the Honorable High Court of Sindh in case of Shield Corporation supra and hold that the Commissioner (Appeals) has not committed any error or mistake. The AC-SRB has failed to point out any infirmity and illegality committed by Commissioner (Appeals) and apparently this appeal was filed for the sake of filing of appeal.

23. We may also point out that the date of institution in the OIO was mentioned as 20.01.2016 whereas the SCN annexed was dated 20.01.2017. However in the column of date of judgment the date was mentioned as 24.10.2017 whereas on the top of the OIO the date was mentioned as 21.12.2017. The SCN was issued by AC-Unit-14 whereas the OIO was passed by AC-Unit-03 and the appeal before us was also filed by AC-Unit-03. The mentioning of two dates in the OIO clearly reflected that the AC tried to bring the OIO within time provided under sub-section (3) of section 23 of the Act otherwise there appears no occasion to put two different dates on the OIO.



The above instances clearly reflect the causal manner in which the department had dealt with a matter allegedly involving SST of Rs. 752,712,706/-. This also reflects the negligence of concerned Commissioner who has failed to properly supervise his subordinate staff.

25. The Commissioners SRB are not following the instructions contained in Standing Order No. 01/2019 dated 3<sup>rd</sup> June, 2019 and granting approval of filing appeal mechanically without application of mind and considering the merit of the appeal. In this matter huge amount of SST was recovered from an unregistered person who was not liable to pay the SST for the period it was not registered. The department even after recovery of huge amount of SST filed this appeal in lust of recovery of more SST without realizing the consequences. However in view of this order if the respondent claims refund of SST deposited by it

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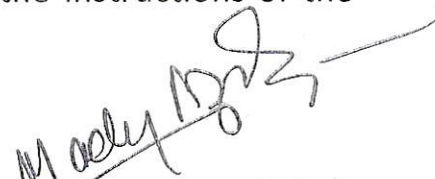
the exchequer would suffer colossal loss for which responsibility needs to be fixed.

26. The Board should consider this aspect of the case as pointed out supra and should also consider our various orders in which we had observed and pointed out that the concerned Commissioners were not following the instructions of the Board contained in Standing Order No. 01/2019 in its later and spirit, and no follow up action on our such observations has yet been received. Moreover we are of the view that propriety demand that the Board should take action against the delinquent officers who are not following the instructions of the Board and causing loss to public exchequer.

27. In view of the above discussions the appeal is dismissed having no merits. The copy of the order may be provided to the learned representatives of the parties as well as the learned Chairman, SRB for placing the same before the Board of SRB. Action may be initiated against the delinquent officers for not following the instructions of the Board under intimation to the Tribunal.

  
(Imtiaz Ahmed Barakzai)

TECHNICAL MEMBER

  
(Justice<sup>®</sup> Nadeem Azhar Siddiqi)

CHAIRMAN

Certified to be True Copy

Karachi:

Dated: 16.03.2022

Copy Supplied for compliance:

  
REGISTRAR  
APPELLATE TRIBUNAL  
SINDH REVENUE BOARD

- 1) The learned Chairman, SRB, Karachi
- 2) The Appellant through Authorized Representative.
- 3) The Assistant Commissioner, (Unit-03), SRB, for compliance

Order issued on 16-08-2022

*R. Anwar*  
For Registrar

Copy for information to:-

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

Order Dispatched on 16-08-2022

*R. Anwar*  
For Registrar