

BEFORE THE APPELLATE TRIBUNAL, SINDH REVENUE BOARD, AT KARACHI

Double Bench

APPEAL NO. AT-47/2021

M/s CNPC Chaunqing Drilling Engineering
Company Ltd, House No. 56-Street No. 1,
F-6/3, Islamabad.....Appellant

Versus

The Assistant Commissioner (Unit-03),
Sindh Revenue Board,
6th Floor, Shaheen Complex,
M. R Kiyani Road, Karachi.....Respondent

APPEAL NO. AT-48/2021

The Assistant Commissioner (Unit-03),
Sindh Revenue Board,
6th Floor, Shaheen Complex,
M. R Kiyani Road, Karachi.....Appellant

Versus

M/s CNPC Chaunqing Drilling Engineering
Company Ltd, House No. 56-Street No. 1,
F-6/3, Islamabad.Respondent

Date of filing of Appeal 23.09.2021
Date of hearing 16.12.2021
Date of Order 11.02.2022

Date of filing of Appeal 15.10.2021
Date of hearing 16.12.2021
Date of Order 11.02.2022

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Mr. Taimoor Ahmed Qureshi, Advocate for appellant.
Mr. Sanjay Kumar, AC-SRB for respondent.

ORDER

Justice® Nadeem Azhar Siddiqi: The appeal No. AT-47/2021 has been filed by the tax payer (appellant) challenging the Order-in-Appeal (hereinafter referred to as the OIA) No. 2A/2021 dated 17.08.2021 passed by the Commissioner (Appeals) in Appeal No. 16/2017 filed by the Appellant against the Order-in-Original (hereinafter referred to as the OIO) No. 309/2017 dated 16.11.2017 passed by Mr. Muhammad Shoaib Iqbal Rajkoti, Assistant Commissioner, (Unit-13) SRB Karachi.

02. The appeal No. AT-48/2021 has been filed by the department (respondent) challenging the same OIA No. 2A/2021 dated 17.08.2021 passed by the Commissioner (Appeals) in Appeal No. 16/2017 filed by the appellant against the Order-in-Original (hereinafter referred to as the OIO) No. 309/2017 dated 16.11.2017 passed by Mr. Muhammad Shoaib Iqbal Rajkoti, Assistant Commissioner, (Unit-13) SRB Karachi.

03. The facts and issues involved in both the appeals are common therefore both the appeals are decided by this common order.

04. The facts as stated in the OIO were that the appellant bearing SNTN 1548566-8 are registered with Sindh Revenue Board in the category of Contractual Execution of Work falling under Tariff Heading 9809.000 of the Second Schedule to the Sindh Sales Tax on Services Act, 2011 (hereinafter referred to as the Act) and was subject to 16% Sindh Sales Tax (SST) w.e.f. 1st July, 2011 (13% w.e.f. 1st July, 2016). It was further stated that the appellant was required to charge, collect and pay SST on services rendered or provided by it.

05. It was alleged in the OIO that the appellant had provided taxable services under Tariff Heading 9809.0000 of the Second Schedule to the Act and was required to make compliance of the legal provision of the Act and the rules and notification issued thereunder since July, 2011. It was further alleged that perusal of the record available with SRB for the tax periods from January, 2013 to December, 2013 revealed that the appellant had earned taxable revenue under



the aforesaid Tariff Heading amounting to Rs.5,817,964,100/- involving SST of Rs.930,874,256/-. The detailed calculation of the sales tax payable is mentioned as under:

Sr. No.	Taxable Services Head	Tax Period 2013
1	Revenue Head	Rs.5,817,964,100
2	SST Payable	Rs.930,874,256
3	SST Paid	-
4	SST Short Paid	Rs.930,874,256

06. The appellant was served with Show-Cause Notice (SCN) dated 22.05.2017 under section 23(2) of the Act to explain as to why the SST amounting to Rs.930,874,256/- may not be assessed under section 23(1) of the Act alongwith default surcharge under section 44 of the Act. The appellant was also required to explain as to why penal action under Serial No. 2 and 3 of the Table of section 43 of the Act should not be taken against it for contravention of the provisions of the Act. In response to the SCN the appellant submitted that it was operating all over Pakistan and the amount of Rs.5,817,964,100/- as confronted in the SCN represented the gross revenue from operation in entire Pakistan. However no written reply was filed by the appellant.

07. The Assessing Officer (AO) held in the OIO that the appellant was provided reasonable time to defend its case and provide necessary documents to ascertain evidence in this regard which reflects that the whole liability pertained to Sindh and it had nothing to offer in this regard. The AO determined the SST of Rs.930,874,256/- alongwith default surcharge. The AO also imposed penalty of Rs.46,543,713/- under serial No.3 of the Table under section 43 of the Act.

08. The appellant challenged the said OIO before Commissioner (Appeals) by way of filing of appeal under section 57 of the Act. On hearing of appeal the Commissioner (Appeals) reduced the SST to Rs.398,424,479/= and remitted the penalty imposed by the AO.

09. The learned Advocate for the appellant submitted as under:-

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- i. The Appellant was not a registered person during the impugned tax periods i.e. January, 2013 to December, 2013 accordingly, the tax liability was shifted towards the service recipient (who is also a withholding agent in terms of sub-rule 2 of rule 1 of the Withholding Rules, 2014) read with section 3(2) and 9(2) of the Act and sub rule (5A) of rule 3 of Sindh Sales Tax Special Procedure (Withholding) Rules, 2014 (hereinafter referred to as the Withholding rules) which shall have retrospective effect on pending cases being curative and beneficial in nature.
- ii. The OIA was passed in ignorance of various orders of Commissioner (Appeals) and in disregard of the various orders of The Tribunal on the subject that no SST was payable before the registration,.
- iii. The Commissioner (Appeals), SRB Mr. Masood Sabir in his various orders had held that no SST was payable before the date of registration. However to avoid order in favour of the appellant the jurisdiction of Commissioner (Appeals) was malafidely assigned to Mr. Zameer, Khalid Commissioner (Legal) to procure an order in favour of the department. Such order was passed in favour of the department ignoring all previous orders on the subject passed by Mr. Masood Sabir, Commissioner (Appeals), SRB and the Appellate Tribunal, SRB.
- iv. The Tariff Heading 9809.0000 (Contractual execution of works or furnishing of supplies) could not be attracted unless twin conditions of 'contractual execution of works' and 'furnishing of supplies' are established simultaneously. The Appellant is not furnishing supplies, hence, does not fall under the ambit of this Tariff Heading.
- v. The Appellant was engaged in drilling of oil and gas which was not a taxable service during the impugned tax periods.
- vi. The Commissioner (Appeals) on his own has erroneously setaside the correction made by the AC in the OIO reducing the SST to Rs.103,876,624/=. Such SST was paid by the appellant alongwith default surcharge which may be refunded to the appellant.



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- vii. Section 76 of the Act does not provide that any correction could not be made during pendency of appeal. However it is provided that clerical and arithmetical errors in any assessment, adjudication and order or decision could be made at any time.
- viii. The Commissioner (Appeals) could only entertain the appeals filed by tax payers and not by the department. The SRB Board under section 56(2) of the Act was vested with such revisional powers.
10. The learned AC-SRB Mr. Sanjay Kumar submitted as under:-
- i. The appellant got voluntarily registration on 06.06.2014 under Tariff Heading 9809.0000, which clearly reflects its economic activity.
 - ii. The appellant before registration was providing taxable services and being a person liable to be registered as provided under sub-section (71) of section 2 of the Act was required to pay SST.
 - iii. The appellant had not provided complete set of agreements to ascertain the actual nature and scope of services provided by it.
 - iv. The principal activity of the appellant was covered under Tariff Heading 9809.0000 as the appellant had provided services as well as supplies.
 - v. The services provided under a contract could not be bifurcated and SST was rightly charged on gross amount.
 - vi. The Commissioner (Appeals) had rightly set aside the modification order dated 24.05.2018 passed by AC-SRB during the pendency of appeal before him since the same was factually incorrect.
 - vii. The jurisdiction to hear this appeal was assigned to Mr. Zameer Khalid, Commissioner (Legal) due to some administrative reason and not due to any malafide on the part of the department.
 - viii. The previous orders of Commissioner (Appeals) were not binding on the subsequent Commissioner (Appeals) and a different view could be taken.
 - ix. The previous orders of Appellate Tribunal, SRB were not final orders since Reference Applications were filed against such order before the High Court of Sindh and till such time the references are pending the decision of the Tribunal is not binding.
 - x. The AC relied upon the reported case of Commissioner Inland Revenue, Gujranwala versus S.K. Steel Casting, Gujranwala, and 2019



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PTD 1493. This case was also confirmed by the Honorable Supreme Court of Pakistan and Saadullah Khan and Brothers Versus Appellate Tribunal, Inland Revenue, 2019 PTD 7786.

11. The learned Advocate for the appellant in rebuttal submitted that the main issue involved in the instant appeal was "whether the appellant was liable to pay SST before the date of its registration". He further submitted that this was a decided issue and referred to previous orders of Commissioner (Appeals) and our various decisions of the Tribunal particularly that of M/s WEB DNA Works versus Assistant Commissioner, SRB, Appeal No. AT-18/2021 dated 16.11.2021.

12. We have heard the learned representative of the parties and perused the record made available before us and the written submissions by the parties.

13. The main contention of the appellant was that it was not registered during the tax periods involved in this appeal and therefore was not liable to charge, collect and pay the SST. Thus the issue in the instant appeal is "Whether the respondent was liable to deposit SST prior to its date of registration?" The discussions on this point are as under:-



i) The appellant was voluntarily registered on 06.06.2014 under Tariff Heading 9809.0000, Services provided or rendered by persons engaged in contractual execution of work or furnishing supplies. The tax periods involved were from January-2013 to December-2013 which were prior to date of registration of the appellant.

ii) The Contention of the AC was that the person liable to be registered falls within the definition of registered person provided under sub-section (71) of section 2 of the Act and was liable to pay SST even before its formal registration with SRB. The above contention of the AC was examined by us in Para 19 of Appeal No. AT-18/2021, M/s WEB DNA versus AC (Unit-11) SRB vide our decision dated 16.11.2021. The detailed discussion has been undertaken on this issue and after considering the relevant provision of law and the reported judgment in M/s S.K. Steel Casting, Gujranwala, 2019 PTD 1493 and we had held that SST could not be levied prior to date of registration.

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iii) The Commissioner (Appeals) on this issue passed OIA in ignorance of the previous orders of the then Commissioner (Appeals) whereby it was held that SST cannot be demanded from a service provider prior to its date of registration, few of such OIA's are mentioned for ready reference 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.

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) Appeal No. AT-47/2020 dated 15.02.2021 – AC (Unit-04) vs. M/s MYN Pvt. Ltd.
- b) Appeal No.AT-234/2015 dated 26.11.2019 – Nasir Khan & Sons vs. Commissioner (Appeals) & DC (Unit-13), SRB.
- c) Appeal No.AT-30/2019 dated 05.03.2021, TCS Logistics vs. The Commissioner, SRB.
- d) Appeal No. AT-18/2021 dated 16.11.2021
M/s WEB DNA Works vs. Assistant Commissioner, SRB.

iv) The Commissioner (Appeals) in utter disregard of the earlier orders of his predecessor passed contradictory order in the instant appeal. Although the rule of propriety demanded that the orders of the department should be consistent unless shown to be suffered from illegality and infirmity. The OIA is clear that the Commissioner (Appeals) had neither considered nor distinguished the earlier orders

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of the Commissioner (Appeals) and the orders passed by this Tribunal.

v) The Orders of the Tribunal passed as mentioned above are final as provided under sub-section (8) of section 62 of the Act and are still holding the field and have not been set aside by the Honorable High Court in referential jurisdiction and are binding upon the Assessing Officers as well as on the Commissioner (Appeals). Any order/decision of the Assessing Officer and the Commissioner (Appeals) cannot be sustained if the same is against the order/decision of Tribunal.

vi) In view of the above discussions we hold that the respondent being a service provider of taxable services under Tariff Heading 9809.0000 was registered with SRB on 06.06.2014. Thus it was not liable to pay/deposit SST before the date of Registration during the tax periods from January-2013 to December-2013. However the responsibility for payment of tax from July-2011 to July-2014 was on the recipient of service to deduct and pay under sub-rule (3) of rule 3 of the Withholding Rules, 2011.

14. The appellant had raised other points i.e. the Tariff Heading 9809.0000 was not applicable in the instant case and that the Commissioner (Appeals) had no jurisdiction to set aside the order. However such points need no further discussion considering the instant legal issue.

15. The respondent has filed Appeal No. AT-48/2021 through which it has challenged the portion of the OIA by which the Commissioner (Appeals) has set aside the SST of Rs.207,469,792/- on the ground that services were delivered outside Sindh and the waiving of penalty of Rs.46,543,713/-. We have considered the submissions of the AC in this regard. Since we have held that the appellant was not liable to pay/deposit SST before the date of Registration during the tax periods from January-2013 to December-2013, therefore, we do not find any merits in the submission of the AC.

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16. In view of the above discussions the appeal NO. AT-47/2021 is allowed and appeal No. AT-48/2021 is dismissed consequently the OIO and OIA are set aside.

17. The appeals are disposed of accordingly. The copies of the order may be provided to the learned representative of the parties.


(Imtiaz Ahmed Barakzai)
TECHNICAL MEMBER


(Justice® Nadeem Azhar Siddiqi)
CHAIRMAN

Karachi:
Dated: 11.02.2022

Copy Supplied for compliance:

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

Copy for information to:-

- 3) The Commissioner (Appeals), SRB, Karachi.
- 4) Office Copy.
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Certified to be True Copy


REGISTRAR
APPELLATE TRIBUNAL
SINDH REVENUE BOARD

Order issued on 11/02/2022

Order Dispatched on 11/02/2022

Registrar

Registrar