

BEFORE THE APPELLATE TRIBUNAL, SINDH REVENUE BOARD AT
KARACHI

DOUBLE BENCH-I

APPEAL NO. AT-49/2021

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

Versus

M/s Al-Prince Enterprises Industries,
(SNTN: 0672615-1),
Office No. M-8 & 9, Falaknaz Tower,
Opp. Jinnah Terminal,
Main Shahrah-e-Faisal Karachi,.....Respondent

Date of filing of Appeal: 15.10.2021
Date of hearing: 13.01.2022
Date of Order: 11.05.2022



Mr. Sunjay Kumar AC, (Unit-03)-SRB, for appellant.

Mr. Zia Ahmed Khan, (ITP) for respondent.

ORDER

Justice © Nadeem Azhar Siddiqi: This appeal has been filed by the Assistant Commissioner (Unit-03), SRB Karachi challenging the Order-in-Appeal (hereinafter referred to as the OIA) No. 54/2021 dated 16.08.2021 passed by the Commissioner (Appeals) in Appeal No. 350/2018 filed by the respondent against the Order-in-Original

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(hereinafter referred to as the OIO) No. 1010/2018 dated 13.10.2018 passed by Mr. Rashid Ali Assistant Commissioner, (Unit-03) SRB Karachi.

02. The facts as stated in the OIO were that the respondent was registered with Sindh Revenue Board (SRB) under the service category of 'services provided or rendered by persons engaged in contractual execution of work or furnishing supplies, Tariff Heading 9809.0000' of the Second Schedule to the Sindh Sales Tax on Services Act, 2011 (hereinafter referred to as the Act). It was also stated that all the persons providing or rendering taxable service were required to charge, collect and pay Sindh Sales Tax on Services (SST) at prescribed rates, *ad valorem*, and deposit the same with SRB every month in the time and manner prescribed under the Act and also to e-file their true and correct monthly SST returns, as required under section 30 of the Act read with rules, 11,12, 13 & 14 of Sindh Sales Tax on Services Rules, 2011 (hereinafter referred to as the Rules).

03. It was alleged in the OIO that on scrutiny of bank statements of the respondent for the tax periods from July, 2011 to November, 2017, it was revealed that Rs.1,722,748,609/- was credited into its bank accounts No. 2011747383 and No. 10360101008557 maintained with M/s Soneri Bank, Drigh Colony No. 3, Karachi, and M/s Muslim Commercial Bank Limited respectively. The credit entries depicted that the respondent received this amount for providing or rendering taxable services involving SST of Rs.217,591,547/-. The respondent only deposited Rs.72,313,569/- with SRB resulting in short payment of SST of Rs.145,278,005/- (i.e., Rs.217,591,574 - Rs.72,313,569 = Rs.145,278,005).

04. The respondent was served with Show-Cause Notice (SCN) dated 02.01.2018 under section 23 read with section 47 of the Act to explain as to why the SST of Rs. 145,278,005/- should not be assessed and recovered alongwith default surcharge under section 44 of the Act. The respondent was also called upon to explain as to why penalties under Serial No. 3, 6(d), 11, 12 and 13 of the Table under section 43 of the Act should not be imposed for violating various provisions of the Act.

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05. The respondent during the adjudication proceedings submitted that the amounts were received in different heads and all amounts do not pertain to providing or rendering services. It was stated that the transactions included sale / supply of goods for which the sales tax was paid to FBR. Moreover the transactions reflected as credit entries in the said bank account also included amount relating to letter of guarantee, cheque returns and reversal of different entries etc.

06. The respondent in response to the direction of the Assessing Officer (AO) had furnished Income tax returns for the year 2012, 2013, 2014, 2015, 2016 and 2017 and it had also submitted year wise working from July, 2011 to November, 2017 in relation to the transactions carried out by them through M/s Soneri Bank Ltd and M/s Muslim Commercial Bank. However, such working was not supported by any convincing documentary evidence; nonetheless it had submitted a few invoices issued to M/s Pakistan State Oil Company Limited (PSO) and M/s Overseas Oil Trading Company (Pvt.) Ltd (OOTL). Similarly it had submitted work orders signed with M/s Pakistan Petroleum Limited (PPL), M/s National Refinery Limited (NRL), PSO and M/s Attock Petroleum Limited (APL).

07. The perusal of the documents and records submitted by the respondent revealed that total value of services provided or rendered by it during the above stated tax periods was Rs.977,851,508/- instead of Rs.1,722,748,609/- as confronted in SCN). However, the remaining amount Rs.744,897,101/- credited into their aforesaid bank accounts pertained to revenue earned from selling of goods and also on account of issuance of Letter of Guarantee, Cheque returns and reversal of different entries etc. The detailed position is given in the below mentioned table:-



S. No	Description	Revenue earned from services	Revenue earned from Goods and entry reversal etc.	Total
1	Total Value of transaction	977,851,508	744,897,101	1,722,748,609
2	Sindh Sales Tax Payable	142,149,967	N/A	142,149,967
3	SST Declared with SRB	83,528,565	N/A	83,528,565
4	Balance SST Payable (2-3)	58,621,402	N/A	58,621,402

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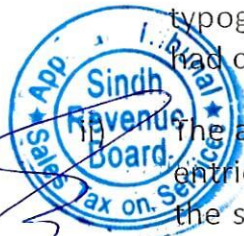
08. The Assessing Officer (AO) concluded that the respondent were engaged in providing or rendering taxable services covered under Tariff Heading 9809.0000 of the Second Schedule to the Act and the charges contained in the SCN were established against it. The AO assessed the SST at Rs.58,621,402/- under section 23 of the Act and held that the same was recoverable under section 47 (1A) of the Act alongwith default surcharge under section 44 of the Act. The AO also imposed penalties of Rs.2,931,070/- under Serial No. 3 of Table under section 43 of the Act.

09. The respondent challenged the said OIO by way of filing of appeal under section 57 of the Act before Commissioner (Appeals), SRB who allowed the appeal relying upon the decision of this Tribunal bearing No.AT-46/2018 dated 17.05.2021. He thus set aside, quashed and dismissed the OIO with no cost to the taxpayer. As regard taxpayer claim of Rs.3 million already recovered by the Department the same was to be looked by the Department in the light of applicable provisions of the Act and Rules as per precepts of natural justice.

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

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

- i) The OIO was setaside merely on the basis of some typographical error in the figures in the SCN and OIO which had caused no prejudice to the respondent.
- ii) The assessment was finalized not only on the basis of credit entries available in bank account, but also on the basis of the service income disclosed in the income tax returns and the documents and record furnished by the respondent.
- iii) The matter was properly reconciled in the light of the record and documents submitted by the respondent and tax liability was reduced from 145,278,005/- to Rs.58,621,402/-. Such fact was ignored by the Commissioner (Appeals).
- iv) The Commissioner (Appeals) ignored the fact that the service revenue declared by the respondent in its Income



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Tax Returns was not disclosed in the SST Returns filed with SRB.

- v) The Commissioner (Appeals) unjustly and without plausible ground allowed refund of Rs.3.00 million to the respondent.
- vi) The penalty and default surcharge was also remitted without any reason or justification.

11. The learned representative of the respondent submitted as under:-

- i) The Commissioner (Appeals) rightly allowed appeal of the respondent on the ground that the defects in the SCN were not curable.
- ii) The SST was charged on the basis of assumption of the AO that all the credit entries in the SCN were related to providing or rendering taxable services.
- iii) The SCN was issued only on the basis of credit entries in the bank statements and no adjudication could be finalized on the ground not taken in the SCN. Reliance was placed upon the Judgment of Honorable Supreme Court in case of Collector Central Excise versus Rahim Din, 1987 SCMR 1840.
- iv) The OIO was illegal as the same was passed only on consideration of the credit entries reflected in the Bank Statement. Reliance was placed upon the Judgment of High Court of Sindh in the case of Al-Hilal Motors Stores versus Collector Sales Tax, 2004 PTD 868.
- v) The OIO was time barred as the same was passed beyond the time limit provided in law. Reliance was placed upon the Judgment of the Honorable Supreme Court in the case of Collector of Sales Tax, Gujranwala versus M/s Super Asia Mohammad Din and Sons, 2017 SCMR 1427.
- vi) The AO extended time for passing OIO without recording reasons hence the extension of time was invalid. Reliance was placed upon the judgment of the Honorable Supreme Court in the case of Abbasi Enterprises, Unilever Distributor



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versus Collector of Sales Tax and Federal Excise, Peshawar, 2020 PTD 147.

- vii) The AO in haste to charge more SST had failed to reconcile the matter despite the plea of the respondent that it had provided services in other provinces and was liable to pay SST only on the value of services provided in Sindh.
- viii) The penalty and default surcharge could not be imposed in absence of tax liability.

12. The learned AC-SRB in rebuttal submitted that the respondent has not challenged the OIA and thus it could not raise pleas and arguments in its favour and had to confine its pleas and arguments to the extent of replying to the pleas raised by the department. The Reconciliation could not be finalized as the respondent had failed to provide authentic documents and records.

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

14. The learned Commissioner (Appeals) had set aside the OIO on the basis of discrepancies and typographical errors in the figures mentioned in the SCN. Moreover the assessment was finalized only on the basis of credit entries reflected in the bank statements.

15. We have examined the SCN and found that the discrepancies in figures mentioned in para 3 of the SCN pointed out by Commissioner (Appeals) in para 13 (iii) of the OIA were present in the SCN. It is also true that the AO at no stage of proceedings had tried to correct the same by issuing corrigendum. The question is whether the defects pointed out by the Commissioner (Appeals) were of such nature that prejudiced the entire proceeding before the AO or the same were technical in nature causing no prejudice to the defence taken by the respondent and could be ignored.

16. The respondent has not placed the reply filed by it in response to the SCN in which the discrepancies were pointed out to it. Apparently the respondent had pointed out discrepancies for the first time while

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submission of Additional Comments dated 06.08.02021. The impression appears that by not pointing out the discrepancies at the first available opportunity the respondent either had waived the same or no prejudice was caused to him. The discrepancies in figures mentioned in para 3 of the SCN appears to be clerical and typographical error or mistake due to any accidental slip or omission not affecting the merit of the SCN.

17. In case the Commissioner had found any discrepancies in the SCN he could call such particulars in exercise of power under sub-section (5) of section 58 of the Act respecting the matters arising in the appeal or cause further enquiry to be made by the officer of the SRB. Moreover the Commissioner (Appeals) in exercise of power under sub-section (2) of section 59 of the Act could conduct further enquiry as may be necessary with respect to the discrepancies found the SCN.

18. The AO in exercise of power under sub-section (1) of section 76 of the Act could correct clerical or arithmetical error in any assessment, adjudication, order or decision at any time through an order after notice to the respondent. It has been held in numerous decisions of superior courts that mere error in typing the figures in the SCN would not necessarily vitiate the entire process initiated thereunder. Few of such decisions are quoted as under:-

Sh. 2020-PTD 18 (FB – SC) M/s Al Khair Gadoon Ltd. versus The Appellate Tribunal & others

1. Keeping in view the judicial consensus on the issue at hand, it would not necessarily vitiate the entire process initiated thereunder. What is crucial to note is that, in deciding the legal validity of the show cause notice, it is important to first see whether the recipient / assessee of the said notice has been put to any prejudice in preparing and putting up its defence to the allegations made therein. And whether the issuer of the notice had the authority to issue the same, provided the notice had all the necessary facts leading to the alleged acts or omission of the recipient constituting the stated

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contravention of provisions of law, and thus, to be meaningfully responded by the assessee”.

- b) In Collector of Sales Tax and CE, Lahore v. Zamindara Paper and Board Mills and others 2008 SCMR 615, it was held as under:-

“4...Merely for the reason that sub-rules 2 and 3 of Rule 10 of the Central Excise Rules, 1944 had not been mentioned, it would have not been proper to declare the notice illegal. In this view of the matter, the judgment of the High Court is not sustainable. It is to be noted that instead of taking into consideration technicalities, the court looks into the matter with different angles namely as to whether substantial compliance has been made or if any of the sub rule has been omitted then what prejudice is likely to cause to party to whom the show cause notice is given”.

19. It is thus evident that while deciding the legal validity of the SCN, it is important to first see whether the recipient of the said notice has been put to any prejudice in preparing its defence to the allegations made therein. The SCN should contain all the necessary facts leading to the alleged acts or omission of the respondent. However merely for the reason that there was some mistake in typing the figures in the SCN would not render the SCN as illegal. Therefore it would be appropriate that instead of taking into consideration technicalities, the Commissioner (Appeals) should consider the SCN on merits.

20. It is true that the SCN was issued in consideration of credit entries reflected in the two bank accounts of the respondent. However during the adjudication proceedings the respondent provided income tax returns for the year 2012 to 2017 and year-wise working from July-2011 to November-2017 in relation to the transactions carried out by it through two bank accounts maintained at Soneri Bank Limited (SBL) and Muslim Commercial Bank Limited (MCBL).



21. The AO on the basis of the documents and details furnished by the respondent had reconciled the matter as mentioned in paragraph 07 above and deleted the amount related to revenue earned from sale of goods, issuance of letter of guarantees, cheques returned and reversal of different entries etc. After this exercise by the AO it would be inappropriate to contend that the assessment was totally based on the credit entries reflected in the bank accounts of the respondent.

22. The respondent during course of proceedings had submitted that a portion of taxable services were provided outside Sindh. The Commissioner (Appeals) had examined this point and concluded that the respondent had not shared the complete record in this regard. The same position also exists before us as no relevant record was shared with us and in absence of such relevant record no positive finding could be recorded.

23. The plea of the respondent that the OIO was time barred and was passed beyond the time limited provided in law was also considered. The AC submitted Report dated 13.01.2022, and it was evident from such report the SCN was issued on 02.01.2018 and was decided on 13.12.2018. Thus total 345 days were consumed out of which 137 days were excluded on account of adjournments obtained by the respondent. Out of remaining 208 days the AO extended 60 days-time vide Note Sheet dated 10.09.2018 and in this way the OIO was passed on 148th day and therefore the same was within time.

24. The AC-SRB rightly submitted that the respondent had not challenged the OIA and could not raise pleas and arguments in its favour and had to confine its pleas and arguments to the extent of replying the pleas raised by the department. If the respondent is aggrieved by the OIA it should had filed its own appeal challenging the portion of OIA by which it was aggrieved. The respondent in absence of filing appeal could only support the OIA but could not challenge it. In absence of filing of appeal by the respondent we could not provide any relief to it on the reasoning that if the party does not go in appeal, the OIA passed against




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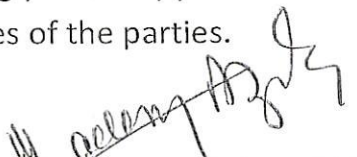
it becomes final and could not be challenged in the appeal filed by other side.

25. In view of the above discussions we are of the view that the matter required further probe since certain portion of taxable services provided by the respondent outside Sindh were not properly thrashed out. This matter was not properly adjudicated for want of production of relevant record either before the forums below nor before us.

26. The appeal is allowed and the OIA is set aside. The SST determined in the OIO is maintained for the time being. However the matter is remanded to the learned AO to decide it afresh after providing proper opportunity of hearing to the respondent and after considering the material and evidence place by the respondent before it in relation to the taxable services provided outside Sindh. In case the respondent is able to prove that a portion of taxable services were provided outside Sindh the same shall be adjusted from the existing SST liability. The AO would decide the matter within time frame provided under sub-section (3) and (4) of section 23 of the Act. The refund allowed by Commissioner (Appeals) is subject to the outcome of the fresh assessment order to be passed by the AO.

27. 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:11.05.2022

Copy Supplied for compliance:

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

Copy for information to:-

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

Certified to be True Copy


REGISTRAR
APPELLATE TRIBUNAL
SINDH REVENUE BOARD

Order issued on 12/05/2022

Order Dispatched on 12/05/2022