

BEFORE THE APPELLATE TRIBUNAL, SINDH REVENUE BOARD, ATKARACHI
DB-I

APPEAL NO. AT-51/2021

M/s Hellmann Worldwide Logistics
(Private) Limited, (SNTN: 2815749-4)
Suite # 402, 4th Floor, The Plaza,
Block-9, Clifton, Karachi..... Appellant

Versus

01. The Assistant Commissioner (Unit-05)
02. The Commissioner (Appeals-II),
Sindh Revenue Board,
2nd Floor, Shaheen complex,
M. R. Kiyani Road, Karachi..... Respondent

Date of filing of Appeal: 13.12.2021

Date of hearing: 28.02.2022

Date of Order 21.04.2022

None present for the appellant despite knowledge of date of hearing.

Mr. Ghulam Murtaza Shar, AC-SRB (Unit-05) and Ms. Umi Rabbab, AC-DR, 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. 60/2021 dated 18.10.2021 passed by the Commissioner (Appeals) in Appeal No. 155/2020 filed by the appellant against the Order-in-Original (hereinafter referred to as the OIO) No. 227/2020 dated 22.10.2020 passed by the Mr. Ghulam Murtaza Shar, Assistant Commissioner, (Unit-05) SRB Karachi.

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02. The facts as stated in the OIO were that the appellant having SNTN-2815749-4 was registered with Sindh Revenue Board Karachi under the services category of Freight Forwarding Agent, Tariff Heading 9805.3000 of the Second Schedule to Sindh Sales Tax on Services Act, 2011 (hereinafter referred to as the Act) chargeable to Sindh Sales Tax (SST) @ 10%.

03. It was alleged in the OIO that perusal of audited financial statements for the year ended December, 2011 to December, 2014 as submitted by the appellant revealed that it had declared amount of Rs.730,570/- under the head of Royalty expenses, however the appellant failed to deposit due SST amount on procuring said services. Such details are given as under:

Year	Revenue	SST Rate	SST
2011	1,894,152	10%	189,415
2012	1,800,154	10%	180,015
2013	1,660,771	10%	166,077
2014	1,950,634	10%	195,063
Total	7,305,711		730,570

04. The appellant vide SRB letter dated 26.04.2019 was given opportunity to comply with the provisions of law and deposit the SST amount of Rs.730,570/- along with default surcharge immediately. However after granting numerous extensions whereby the appellant was told to deposit SST, and it also informed vide SRB letter dated 13.06.2019 its responsibilities under Section 26 read with section 27 of the Act.

05. The appellant was served with a Show-Cause Notice (SCN) dated 27.06.2019 under section 47(1)(a) of the Act to explain as to why short paid SSTs amount of Rs.730,570/- may not be recovered together with the amount of default surcharge under section 44 of the Act. The appellant was also called upon to explain as to why penalties, as provided under Serial No.3, 6(d), 11 and 21 of the Table under section 43 of the Act may not be imposed and recovered from it for contraventions of the provisions of the Act.

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06. The representative of the appellant appeared for hearing and submitted that the confronted amount had been inadvertently deposited with the Federal Board of Revenue (FBR) and the matter may be taken up at the departmental level and SCN may be vacated.

07. The Assessing Officer (AO) determined and assessed the SST at Rs.730,570/- and ordered the recovery together with default surcharge under section 44 of the Act (to be calculated at the time of payment). The AO relied upon the earlier Order of the SRB Appellate Tribunal in Appeal No. 52/2018, and advised the appellant to transfer the amount of SST from FBR to SRB within two months failing which the amount shall be recovered in accordance with law. The AO also imposed penalty of Rs.36,528/- (5% of the payable amount of Rs.730,570/-) for failing to deposit the due tax amount 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 appeal under section 57 of the Act. The Commissioner (Appeals), SRB directed the appellant to get the disputed amount transferred to Sindh Treasury within ninety days of the issuance of OIA with the condition that in case the tax amount in-question was not reverted back into the Sindh Treasury, within the above-noted time-lines the default-surcharge & penalty amounts shall stand recoverable by the respondent department as per law/ procedure.

Resultantly filing of the appeal before this forum.

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

i. The Commissioner (Appeals) has not created any demand of tax in the OIA but the appellant was directed to get the amount transferred and on failure the default surcharge and penalty was payable.

ii. The time allowed by Commissioner (Appeals) for transfer of amount from FBR was not sufficient. However, the appellant in

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compliance had applied for transfer of amount vide its letter dated 20.12.2021.

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

i. The appeal is not maintainable as no tax demand was created by Commissioner (Appeals) and the order for payment of default surcharge and penalties were conditional. However on failure of the appellant to get the amount transferred from FBR to SRB within 90 days, the appellant was liable to deposit the SST along with default surcharge and penalty. The time of 90 days have already passed.

ii. There is no MOU between the FBR & SRB for transfer of amount. However the MOU issued with FBR was in respect of adjustment of input tax.

11. We have heard the learned representative of the parties and perused the record made available before us.

12. The appellant has not disputed the factual controversy and its responsibility to pay SST and has admitted that the SST amount was inadvertently deposited with FBR. The AO relying on our earlier order in Appeal No. AT-52/2018 has rightly directed the appellant to get the amount transferred from FBR to SRB and ordered that the penalty would be payable on failure of the appellant to get the amount transferred to SRB within two months.


13. The Commissioner (Appeals) in the appeal filed by the appellant has rightly directed it to get the disputed amount transferred to Sindh Treasury within ninety (90) days of the issuance of OIA. He had however imposed the condition that in case the tax amount in-question was not transferred in the Sindh Treasury, within the above-noted time the default-surcharge & penalty amounts shall stand recoverable by the respondent department as per law and procedure.

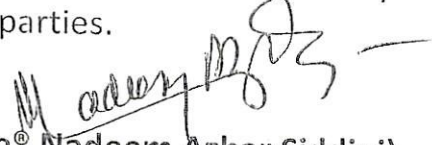


14. We have carefully examined the findings recorded by the forums below. We do not find any irregularity and illegality in the same. The responsibility under sub-section (1) of section 9 of the Act to pay SST was on the appellant, and such responsibility has not been denied. The appellant was responsible either to pay the amount or get it transferred from FBR to SRB.

15. In view of the above discussions we do not find any merit in this appeal. Consequently the same is dismissed. However, the appellant is allowed three months from the date of passing this order to get the amount transferred from FBR to SRB, failing which the department is at liberty to recover the principal tax amount of Rs.730,570/- alongwith default surcharge (to be calculated at the time of payment) under section 44 of the Act and penalty of Rs.36,528/- under Serial No. 3 of the Table under section 43 of the Act.

16. 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

Certified to be True Copy


REGISTRAR
APPELLATE TRIBUNAL
SINDH REVENUE BOARD

Karachi:

Dated: 21.04.2022

Copy Supplied for compliance:

- 1) The Appellant through Authorized Representative.
- 2) The Assistant Commissioner, (Unit-05), SRB, for compliance

Copy for information to:-

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

Order issued on 22/04/2022

Order Dispatched on 22/04/2022