

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

**APPEAL NO. AT-55/2021**

M/s Mass Logistics, (SNTN: 4200525-6)  
D1-1/7A Anarkali Place near Tiles Homes,  
PECHS Block-6, Karachi.....Appellant


**Versus**

Assistant Commissioner (Unit-23),  
Sindh Revenue Board,  
2<sup>nd</sup> Floor, Shaheen Complex,  
M.R. Kiyani Road, Karachi.....Respondent

Date of filing of Appeal: 16.12.2021  
Date of hearing: 29.03.2022  
Date of Order: 08.06.2022

Mr. Faisal Nini, FCA for the appellant.  
Mr. Zain Manzoor, AC-SRB (Unit-23), 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. 65/2021 dated 25.10.2021 passed by the Commissioner (Appeals), SRB in Appeal No. 115/2019 filed by the appellant against the Order-in-Original (hereinafter referred to as the OIO) No. 67/2019 dated 30.01.2019 passed by Mr. Muhammad Yousuf Bukhari, Assistant Commissioner, (Unit-23) SRB Karachi.

02. The brief facts of the case as stated in the OIO were that the appellant was engaged in providing the 'services of persons engaged in providing inter-City transportation or carriage of goods', Tariff Heading 9836.0000 of the Second Schedule to the Sindh Sales Tax on Services Act,





2011 (hereinafter referred to as the Act) from its place of business in Sindh. The appellant was voluntarily registered with Sindh Revenue Board (SRB) on 04.01.2017 under the aforesaid services category.

03. It was alleged in the OIO that it appeared from the appellant's Income Tax Return 2016-17 that the appellant had provided transportation services valuing Rs.463,683,940/- during the tax periods from July- 2016 up to June-2017. However, in its monthly Sindh Sales Tax Returns (SSTR) filed with SRB it had only declared sales of Rs.15,018,824/-. The appellant was required vide SRB's letter dated 30.08.2018 to explain the reason of short declarations and short payment of Sindh Sale Tax (SST). It was also required under section 52(1) of the Act, to provide summary of all invoices issued during the tax periods under reference alongwith copies of sales tax returns filed with other sales tax authorities in order to reconcile their SST dues. However, the appellant failed to submit the requisite records.

04. The appellant was served with a Show-Cause Notice (SCN) dated 18.09.2018 calling upon it explain as to why SST liability of Rs.58,326,465/- should not be assessed under section 23(1A) read with section 3,8,9, 17 of the Act and with rule 42G of the Sindh Sales Tax on Services Rules, 2011 (hereinafter referred to as the Rules), along with default surcharge as required under section 44 of the Act, on account of short declared services of Rs.448,664,116/- during the tax periods from July, 2016 up to June, 2017. The appellant was also called upon to explain as to why penalty under Serial No.3 and 15 of the Table under section 43 of the Act may not be imposed on it for violation of section 8 and 52(1) of the Act.

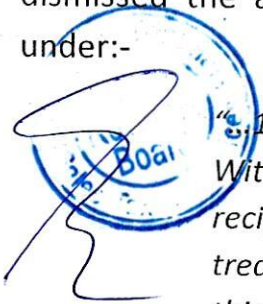
05. The appellant provided summary of list of all invoices with description, origin of goods with its loading and unloading. In response to the SCN the representative of the appellant submitted its response dated 15.01.2019 stating that the majority of services were provided within city and the same were not taxable since these were not declared with SRB. The appellant also submitted copy of Withholding Certificate (WHC) dated 07.01.2019 issued by M/s Lucky Cement Limited (LCL) showing deduction

and payment of SST of Rs.425,512/= on account of services provided by the appellant.

06. The Assessing Officer (AO) examined the invoices and WHC provided by the appellant and concluded that the appellant had provided intercity transportation services during the relevant tax periods from / within Sindh valuing Rs.87,189,346/=, but had charged SST on the value of service of Rs.16,365,840/= provided to LCL only which had withheld Rs.425,512/= . However the remaining amount was deposited by appellant during the tax periods April, 2017 and June, 2017. The AO further concluded that the appellant had failed to charge SST on intercity transport services valuing Rs.70,823,506/= and had wrongly contended that the services were provided within city and were not taxable. It was thus evident from the details submitted by the AO that the SST on short declared value of intercity services amounted to Rs.5,665,880/=.

07. The Assessing Officer (AO) passed OIO under section 23(1A) read with other provisions of the Act and determined the SST at Rs.5,665,880/= along with default surcharge under section 44 of Act (which was to be calculated at the time of payment). The AO also imposed penalties of Rs.283,294/= under Serial No. 3 of the Table under section 43 of the Act.

08. The respondent challenged the said OIO by way of filing of appeal under section 57 of the Act before Commissioner (Appeals), SRB who dismissed the appeal .The relevant portion of the OIA is reproduced as under:-



16. As regards Appellant's argument, in that, under the Withholding Rules, it was the responsibility of Appellant's service-recipient to withhold/ deduct and pay due tax into the Sindh treasury (meaning thereby, that Appellant has no responsibility in this regard) is an utterly wrong and misleading argument. As noted above, Appellant had misdeclared his 'inter-city' transportation services as his 'intra-city' transportation services' and accordingly, failed to charge due tax thereon to his service-recipients. If

Appellant himself was treating such invoices as 'non-taxable' (a factually wrong position) how does he expect his service-recipient to withhold/deduct and pay due tax thereon into the Sindh treasury? Appellant has also omitted to note that under the applicable provisions of the withholding Rules-2014, in this case, the liability of tax-payment is divided in the ratio of 20:80 between the service-recipient and the service-provider. Has the Appellant paid his 20% tax with respect to the services the tax-levy upon which he is agitating through this Appeal? The answer is no. what is Appellant's locus standi then?

17. As regards the point of tax-rate applicable in this matter, I see no strength in the objection raised by the Appellant. In case the respondent AC applied 13% tax rate in the SCN, as pointed out by the Appellant, it was justified on the basis of information available with the AC at the time. However, the AC, by applying correct tax-rate of 8% ad valorem on appellant's taxable 'intra-city' transportation services has in fact, met the ends of law justice properly. This is in fact the correct tax-rate applicable in the given instance. Appellant should be aware that since from 01.07.2015, onwards Appellant by default falls in the 'reduced tax regime' promulgated vide the Notification dated 01.07.2013. In case, after 01.07.2015, the Appellant wanted to switched-over to the standard tax regime of 13%, he was required to fill-in and submit the 'election option' form as per procedure, time and manner laid-down under that notification read with governing rule 42-G of the Rules, 2011. It is crystal clear that Appellant failed to do that. As such, he would remain in the reduced tax regime of 8% ad valorem, where input tax credit adjustment is not allowed. AC's action in this regard is thus correct and valid in law. In view of the foregoing position of facts and law, I see no reason to consider the quantum of penalty and default surcharge imposed upon the Appellant in terms of the impugned OIO. Accordingly, I upheld the same in toto".

Resultantly, the appeal was filed by the appellant before this Tribunal.

09. The learned representative of the appellant submitted as under:-
- i. The SCN was issued claiming SST @ 13% whereas, the OIO was passed @ 8% and this amounts to going beyond SCN.

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- ii. The service recipients, were responsible to withhold 100 percent of SST as per the Sindh Sales Tax Special Procedure (Withholding Rules), 2014 (hereinafter referred to as the Withholding Rules). Moreover they had to pay the same to SRB even for the periods when the appellant was not registered and was not issuing tax invoices.
- iii. That all service recipients of the appellant were residents of Sindh and were withholding agents, thus they were required to withhold and deposit the SST with SRB.
- iv. The SRB while charging SST @ 8% denied the appellant from claiming input tax adjustment on providing taxable services of intercity transportation.
- v. The services were mostly provided to LCL who was a resident person and qualified to act as Withholding Agent. It was required to withhold the entire SST and to pay the same to SRB.
- vi. The department had failed to prove that the service recipients after withholding 20% of SST had passed on the remaining SST to the appellant for payment to SRB.
- vii. The SCN must contain a complete and comprehensive charge sheet along with material evidence enabling the taxpayer to defend it. However in the instant case the SCN was issued mechanically and hypothetically and lacked essential particulars of the charges and specific provisions of the relevant law. Moreover it was issued without proper application of judicial mind and was thus illegal.
- viii. The authority calling documents should disclose the purpose for calling such documents. However it is illegal to procure documents without conveying valid reason.
- ix. The basic show cause notice being illegal and void, all the subsequent proceedings and superstructure build thereon were also illegal. Reliance was placed on PTCL 2017 CL 239 ATIR LAH.

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- x. The appellant was condemned unheard. The maxim audi alteram partem would thus apply. Reliance is placed in the case of Chief Commissioner, Karachi V/s Mrs. Dina Sohrab Katrak [(1959) PLD 45 (S.C)]. Wherein it was held that "No man shall be condemned unheard" is not only confined to Courts but this maxim extends to all proceedings, by whomsoever held which may affect the person or property or other right of the parties concerned in the dispute. Further reliance was placed on [(1964) 10 Tax 49 (S.C. Pak.)], [(1999) 79 Tax 605 (H.C. Kar.)] and 1994 SCMR 2232.
- xi. The Commissioner (Appeals), SRB erroneously upheld the penalty of Rs.283,294/- without establishing mens-rea, any intentional and deliberate default on the part of the appellant for not declaring its non-taxable service. Reliance was placed on PLD 1967 SC 1, PLD 1991 SC 963 (1980) 42 Tax 129 Karachi and 60 Tax 13 Lahore

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

- i. The AO rightly passed OIO @ 8% in view of the Notification dated 01.07.2013 read with Notification dated 28.06.2116 issued under sub-section (2) of section 8 of the Act.
- ii. The Charging of SST at the rate lessor than that claimed in the SCN does not amount to going beyond the grounds of SCN.
- iii. That if the services which were provided to the non-resident person or non-registered person the liability to pay SST was upon the appellant.
- iv. The appellant was not entitled to claim input tax adjustment in relation to services subject to reduced rate of SST in view of section 15A of the Act.
- v. The appellant committed tax fraud by declaring the intercity transportation service as intra city transportation service.

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- vi. The appellant had failed to charge SST in its invoices and thus it had violated its obligation as provided in law.
- vii. The appellant had not filed Form "I" for opting to pay SST at the statutory rate of 13%. Failure to file Form "I" disentitled the appellant from claiming the input tax adjustment.
- viii. The appellant was provided sufficient opportunities of hearing before passing the OIO. Moreover all its submissions and documents provided by it were properly considered.
- ix. The SST was rightly worked out on the basis of invoices and details provided by the appellant.
- x. The penalty was rightly charged as the appellant had malafidely and deliberately failed to discharge its statutory obligations and the mensrea was apparent from the face of record.
- xi. The case laws cited by the appellant were distinguishable and were not applicable to the instant case.

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

12. It is not disputed that the appellant was registered with SRB from 19.12.2013 for providing inter-city transportation or carriage of goods by road or through pipeline or conduit, Tariff Heading 9836.0000 of the Second Schedule to the Act. It was also not disputed that the appellant while filing its income tax returns for the financial year 2016-17 had declared the value of transportation service at Rs.463,683,940/=. However during the tax periods from July-2016 to June-2017 it had declared value of transportation service with SRB at Rs.15,018,824/=.

13. The main contention of the appellant was that being the service provider of transportation service the recipient of such service was required to withhold entire SST and to pay the same to SRB. The contention of the department was that the appellant while providing transportation

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service to non-resident person was required to pay SST to SRB. Thus the question in the instant appeal is "Whether the service provider or the recipient of transportation service were liable to pay SST?"

14. Sub-section (1) of section 9 of the Act provided that where a service is taxable by virtue of sub-section (1) of section 3 of the Act the liability to pay the SST shall be on the registered person providing the service. Sub-section (2) of section 9 of the Act provided that where a service is taxable by virtue of sub-section (2) of section 3 of the Act the liability to pay the SST shall be on the person receiving the service.

15. In the instant case the appellant is a service provider of taxable service and the initial liability was on it to pay the SST. However, section 13 of the Act provided for special procedures and tax withholding provisions. Sub-section (1) thereof has commenced with the words "notwithstanding anything contained in this Act" the Board may, by notification in the official gazette, prescribe special procedure for the payment of tax. Sub-section (2) thereof has again commenced with the words "notwithstanding anything contained in this Act" the Board may, by notification in the official gazette, require any person or class of persons, whether registered or not, to withhold full or part of the tax charged and to deposit the same with the government.

16. The SRB with the approval of the Government of Sindh in exercise of its powers under section 13 read with other provisions of the Act had framed Withholding Rules, 2014 for collection of SST. However as per clause (f) of sub-rule (2) of rule 1 of the Withholding Rules the recipient of intercity transportation of goods, Tariff Heading 9836.0000 if covered under the definition of withholding agent was as per sub-rule (5) of rule 3 of the Withholding Rules, 2014 required to deduct the amount of sales tax as mentioned in the invoice or the bill issued by the service provider, from the payment due to it. The provision further provided that in case the sales tax amount was not indicated on the invoice, the recipient should deduct

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the amount of sales tax at the applicable rate of tax under the tax fraction formula from the payment made or to be made to the service provider.

17. It is evident from the above provision that the liability to pay SST was shifted from the service provider to service recipient. It was the duty of the service provider of transportation of service to charge SST in the invoices or bills and the recipient of transportation service was required to withhold the SST whether the same was shown in the invoices or not. In view of the clear provisions of the above mentioned Withholding Rules assessment order could not be passed against a service provider of transportation service unless it was proved that the service recipient had passed on the SST to the service provider.

18. We would now discuss the circumstances under which the appellant was liable to pay the SST.

a) In case the service recipient after withholding the 20% of SST passed on the remaining 80% SST to the service provider the service provider is liable to pay the same to SRB and on its failure to pay the same it could be recovered under section 16 of the Act.

b) That if the appellant had provided services to a non-resident person the liability to pay SST would remain with the appellant by virtue of sub-section (1) of section 3 of the Act. Moreover a non-resident person could not act as withholding agent as provided in the proviso to sub-rule (2) of rule 1 of the Withholding Rules, 2014.

It is apparent from the withholding certificate issued by LCL that it had withheld and deposited 20% of the SST instead of 100% and remaining 80% SST was passed on to the appellant who had deposited the same with SRB in the tax period of April-2017.

19. The appellant had also provided transportation services to various customers as per the details provided under para 10 of the OIO. These



details shows that the services valuing to Rs.70,823,506/= were provided to various customers involving SST of Rs.5,665,880/= which was neither charged nor paid to SRB.

20. The appellant in its letter dated 24.10.2018 filed before the AO had claimed that during the tax periods 2016-17 it had provided intercity transportation service valuing Rs.20,420,344/= and the recipient had withheld SST of Rs.2,654,645/=.The appellant in the same letter claimed that it had provided intra-city transportation of goods valuing Rs.452,259,070/= and no SST was charged thereon.

21. It is apparent from the details provided in para 10 of the OIO that the services were inter city transportation which were provided from various cities of Sindh, but it was not clear whether the services were provided to resident persons or non-resident persons. However in case the intercity transportation services were provided to non-resident persons the appellant was liable to pay the SST, but services of intra-city transportation services were not taxable during the tax periods involved in this appeal.

The appellant has apparently misdeclared its 'inter-city' transportation services as its 'intra-city' transportation services' and had neither charged due SST thereon nor its services recipients had neither withheld the SST nor paid the same to SRB. However this aspect requires further enquiry

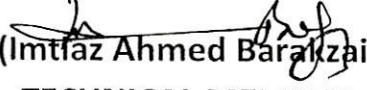
22. That from the material available on record it is difficult to ascertain whether the services were intercity or intra-city or the same were provided to non-resident persons. However, It is ascertainable that the transportation service were provided to resident persons irrespective of the fact whether the tax was charged or not since the same was the responsibility of the service recipient to withhold the SST from the amount shown in the invoices and to deposit the same with SRB. Similarly, in case the services were provided to non-resident person the responsibility of payment of tax was on the appellant.

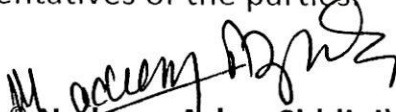
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23. In view of the above discussions the appeal is allowed and the OIO and OIA are set aside. The case is remanded to the AO to call for the required details from the appellant to ascertain whether the services provided by the appellant were intercity or intra-city transportation of goods and to charge SST on the intercity transportation of goods provided to non-resident person. The AO would also charge SST in case it was proved that the services recipient had passed on the SST to the appellant who had failed to deposit the same. However for the payment of SST the responsibility was on the service recipient, and the department is at liberty to proceed against those service recipients in accordance with law.

24. The appeal is disposed of in terms of para 23 above. 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:08.06.2011.

Copy Supplied for compliance:

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- 2) The Assistant Commissioner, (Unit-23), SRB, for compliance

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REGISTRAR  
APPELLATE TRIBUNAL  
SINDH REVENUE BOARD

Order Issued on

13/06/2022

Order Dispatched on

13/06/2022

Registrar

Registrar