

**BEFORE THE APPELLATE TRIBUNAL, SINDH REVENUE BOARD AT KARACHI**  
**DOUBLE BENCH-I**  
**APPEAL NO. AT-01/2022**

Assistant Commissioner SRB, (Unit-24)  
Sindh Revenue Board,  
02<sup>nd</sup> Floor, Shaheen Complex Building,  
M.R. Kiyani Road Karachi.....Appellant

Versus

M/s Aisha Steel Mills Limited.(SNTN: 2486644-0)  
2<sup>nd</sup> Floor, Asif Habib Center,  
23 M.T. Khan Road, Karachi.....Respondent

Mr. Muhammad Saleem, ACSR for Appellant  
Mr. Shah Hilal, ITP and Mr. Muhammad Umair, ITP for Respondent

Date of filing of Appeal: 11.01.2022  
Date of hearing: 29.03.2022  
Date of Order: 01.06.2022

**ORDER**

**Justice @ Nadeem Azhar Siddiqi**: This appeal has been filed by the Assistant Commissioner (Unit-24), SRB Karachi challenging the Order-in-Appeal (hereinafter referred to as the OIA) No. 71/2021 dated 23.11.2021 passed by the Commissioner (Appeals) in Appeal No. 28/2021 filed by the respondent appellant against the Order-in-Original (hereinafter referred to as the OIO) No. 115/2021 dated 13.04.2021 passed by Ms. Nida Noor, Assistant Commissioner, (Unit-24) SRB Karachi.

02. It was stated in the OIO that the respondent having NTN: 2486644-0, was e-sign up as "Withholding Agent", in terms of sub rule (2) of rule 1 of the Sindh Sales Tax Special Procedure (Withholding) Rules, 2014 (hereinafter referred to as the Withholding Rules). Accordingly, upon receipt of taxable services the respondent was required to withhold/deduct

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the amount of Sindh Sales Tax (SST) in the prescribed manner, as provided under rule 3 of the Withholding Rules and to deposit the same with SRB.

03. It was alleged that from the information gathered from third party it was revealed that the respondent during the tax periods July, 2018 to June, 2020 had paid commission of total value of Rs.372,514,683/- to various unregistered Commission Agents. It was further alleged that upon receipt of taxable services from unregistered service providers the respondent was liable to deduct the amount of SST at the rate applicable to the taxable services provided or rendered to it, from the amount invoiced or billed by such un-registered service providers and unless otherwise specified in the contract between the respondent and such un-registered service provider, the amount of SST for this purpose shall be worked out on the basis of gross value of taxable services under tax fraction formula. However, SST returns filed by the respondent in Form SSTW-03, revealed that it had not deposited the due SST withholding amount against purchases of taxable services from unregistered services providers.

04. It was stated in the OIO that the respondent was served with a Show-Cause Notice (SCN) dated 08.01.2021 to explain as to why the SST amount of Rs.4,426,909/- (Rs.372,514,683 x 13/100) along with default under section 44 of the Sindh Sales Tax on Services Act, 2011 (hereinafter referred to as the Act), may not be recovered from it under section 47(1B) of the Act. The respondent was also called upon to explain as to why penalties under Serial No. 3 and 11A of the Table under section 43 of the Act may not be imposed. The respondent in response to SCN filed Reply dated 26.01.2021 and stated that the amount confronted in the SCN pertained to trade rebates, on sell/purchase of goods by vendors and the same did not relate to the receipt of commission agent services.

05. The respondent was informed that the commission paid to the vendors were subjected to deduction of advance income tax under section 233 of the Income Tax Ordinance, 2001 (ITO, 2001) and was asked to provide copy of invoices and evidence of payment made to vendors

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alongwith its treatment under ITO, 2001. On the subsequent date of hearing dated 17.02.2021 the representative of the respondent submitted that the amount confronted related to the discount offered to vendors on sale/purchase transactions. It was further submitted that the advance income tax was inadvertently deducted from such amount. On the subsequent date the representative of the respondent produced the dealership agreements with M/s Arshad Ali, M/s Digital Steel and M/s Majeed Iron Merchant alongwith copy of invoices and credit memos wherein commission @ 1.5% was paid to the vendors. On the next date, the representative of the respondent produced copy of agreement, invoices and sales contract signed with dealers namely, M/s Iqbal Corporation, M/s The Mart and M/s Patanwala & Sons.

06. The Assessing Officer (AO) passed OIO under section 47(1B) of the Act determining the SST of 48,426,909/- along with payment of default surcharge under section 44 of Act (to be calculated at the time of payment). The AO also imposed penalties of Rs.2,421,345/- (being 5% of Rs.48,426,909/-) and Rs.48,426,909/- (being 100% of the payable amount) under Serial No. 3 and 11A of the Table under section 43 of the Act. The AO further mentioned in the OIO that in case the respondent deposited the due SSTW amount of Rs.48,426,909/- together with amount of default surcharge and 25% of the total penalties amount within 15 days of the receipt of the OIO no adverse inference would be drawn for the remaining 75% of the penalty.

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 of the respondent relying on the reported judgment of the High Court of Sindh in the case of M/s Fatima Fertilizer and setaside the OIA. The relevant portion of the OIA is reproduced as under:-

*"15. Be that as it may, legal position in this matter, as it stands today, is that the judgment of the Hon'ble High Court, as quoted above, holds field. No estopping, or contrary or overriding order of the Hon'ble Apex Court has been conveyed to me by the respondent*

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department in this regard, till-to-date. Therefore, being a subordinate forum, I have no option but to follow the cited judgment of the Hon'ble High Court in this matter according which the levy of tax on the withholding agents (instant Appellant) starts from 01.07.2019 onwards, and that no tax demand etc. can be raised dictum, I allow the instant Appeal and set aside the impugned OIO in toto. However, the Appellant department shall be at liberty to re-invoke this matter as per law and procedure, provided that their pending CPLA before the Apex Court is decided in their favor. This Appeal stands disposed accordingly".

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

08. The learned AC-SRB for the appellant submitted as under:-

- i. The tax periods involved were from July-2018 to June-2020 and the Commissioner (Appeals) erroneously set aside the OIO relying upon the case of M/s Fatima Fertilizer without considering that the same was not applicable during the tax periods from July, 2019 to June, 2020.
- ii. The assessment order could be passed and recovery of SST could be possible under sub-section (1B) of Section 47 of the Act without referring to sub-section (3) of section 13 of the Act.
- iii. The respondent voluntarily e-signed up as withholding agent and despite receiving taxable service of commission agent has failed to discharge its statutory obligation.
- iv. The information regarding payment of SST was obtained from advance income tax deduction made by the respondent under section 233 of the Income Tax Ordinance, 2001 (ITO, 2001).
- v. The position of acquiring service of commission agents was established from the sample Agreements submitted by the respondent.
- vi. The assessment order was rightly passed under section 47 (1B) of the Act for the tax periods prior to July-2019.

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

- i. The respondent had not received services of commission agent instead it had allowed trade discount to the dealers.
- ii. The respondent had contested the case on legal premise that there was no provision in the Act to fix the liability of a

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withholding agent during the tax periods involved from July, 2018 to June, 2019.

- iii. The SST liability during the tax periods July-2019 to June-2020 comprised of two portions one pertaining to Sindh, and the other pertaining to other provinces.
- iv. The total SST determined by the AO in the OIO amounted to Rs.48,426,909/- out of which SST pertaining to tax periods 2018-19 was Rs.19,408,960/- and SST for tax periods 2019-20 was Rs.29,017,948/-. This amount also included the services received in other provinces. The share of the Sindh for tax periods 2019-20 was Rs.12,720,077/- and the share of other provinces was Rs.16,297,871/-.
- v. The liability to pay SST on service of commission agent was on the person providing such service. Reliance was placed on the reported judgment of Islamabad High Court in the case of M/s Saadullah Khan and Brothers versus Appellate Tribunal, Inland Revenue, 2019 PTD 776.
- vi. The services were acquired from identified resident persons who could be brought to the tax net and from non-residents person who did not fall within the jurisdiction of SRB, thus no SST could be recovered from them. Reliance was placed on the Order of this Tribunal in the case of M/s Ahsan Engineering, AT-30/2016.

10. The learned AC in rebuttal submitted that all services even if provided in other provinces were generated from Sindh thus the SST was payable in Sindh. He further submitted that under sub-rule (4) of rule 3 of the Withholding Rules a withholding agent on receipt of taxable services from unregistered persons was responsible to deduct the amount of SST at the applicable tax rate from the amount invoiced, billed or demanded or charged by such unregistered service provider.

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

12. The dispute between the parties was that the respondent while receiving taxable services of commission agent Tariff Heading 9819.1300 of

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the Second Schedule to the Act from the unregistered service provider had failed to deduct and deposit the SST with SRB.

13. The following facts have not been disputed by the parties.

- a) That the respondent was e-signed up as withholding agent on 19.09.2014 and was registered with FBR since 07.10.2008 and that the Withholding Rules were fully applicable to it.
- b) That the respondent had acquired taxable services of commission agent from its dealers and was paying commission @ 1.5% of the ex-factory price after deducting advance income tax under section 233 of the ITO, 2001.
- c) That the respondent had deducted SST and deposited the same with SRB on self-determination basis after getting itself e-signed up on 19.09.2014. However only when it was confronted with short payment of withholding of SST it had taken shelter under the reported case of Fatima Fertilizer.

14. The Commissioner (Appeals) had erred in setting aside the OIO relying upon the reported case of M/s Fatima Fertilizer without realizing that in the instant case the tax periods involved were from July-2018 to June-2019. The period from July-2018 to June-2019 were before the insertion of sub-section (3) of section 13 of the Act which was inserted with effect from 01.07.2019. However the period from July-2019 to June-2020 was after the insertion of sub-section (3) of section 13 of the Act.

15. The contentions of the department are that the assessment order could be passed under section 47 (1B) of the Act. Whereas the contention of the respondent was that before insertion of section 13 (3) of the Act which was inserted vide Sindh Finance Act, 2019 dated 05.07.2019 there was no provision in the Act to fix the liability of the respondent during the tax periods from July-2018 to June-2020 (24 tax periods).

16. There was no dispute that the respondent being the recipient of taxable services of commission agent within Sindh was a withholding agent as provided under clause (e) of sub-rule (2) of rule 1 of the Withholding

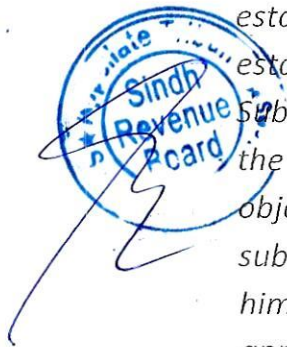
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Rules, 2014. Sub-rule (4) of rule 3 of the Withholding Rules, 2014 provided that a withholding agent shall on receipt of taxable services from unregistered persons, deduct the amount of SST at the rate applicable to the taxable services provided or rendered to it, from the amount invoiced or billed or demanded or charged by such unregistered service provider.

17. In our earlier decision in the case of Fatima Fertilizer, Appeal No. AT-52/2018 we while relying on sub-section (1) of section 47 of the Act had held as under:-

*"23. The object of section 47 of the Act is to recover tax not levied or short levied. Sub-section (1) of section 47 of the Act provides that where by reason of some inadvertence, error or miscalculation any tax or charge has not been levied or has been short levied, the person liable to pay any amount of tax or charge shall be served with a notice, within five years of the relevant date, requiring him to show cause for payment of the amount specified in the notice. In this provision the word "person" has been used and not withholding agent. The word "person" has been defined under clause (a) of sub-section (63) of section 2 of the Act as a "company, an agency or an association of persons incorporated, formed, organized or established in Pakistan or elsewhere". The appellant is a company established in Pakistan and fully covered by the definition of person. Sub-section (2) of section 47 of the Act provides that "the officer of the SRB empowered in this behalf shall, after considering the objections of the person served with a notice to show cause under sub-section (1), determine the amount of tax or charge payable by him and such person shall pay the amount so determined". The appellant being service recipient of advertising services is a withholding agent under clause (f) of sub-rule (2) of Rule 1 of Withholding Rules, 2011 and being company fall within the definition of a person and has short deposited the tax with SRB thus SCN was rightly issued and tax liability was rightly determined under sub-section (2) of section 47 of the Act".*



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18. The taxpayer M/s Fatima Fertilizer had challenged our decision before the Honorable High Court of Sindh. The Honorable High Court of Sindh in Fatima Fertilizer versus SRB, 2021 PTD 484 held as under:-

*"6. Section 9 of the Sindh Sales Tax on Services Act, ("Act") contains the statutory definition liable to tax. It is manifest from the provision that the liability is generally imposed upon the registered person providing the service or the person receiving the service. Section 13 (3) was inserted in the Act vide the Finance Act, 2019 to impose liability upon a withholding agent. The applicant's case quite simply is that prior to the coming into effect of the finance Act 2019, a withholding agent was not a person liable to tax within meaning of the Act.*

19. The case of Fatima Fertilizer was in respect of tax periods prior to July-2019 and in that context the Honorable High Court in para 8 of the judgment had held that *"there is no cavil to the proposition that the liability upon a withholding agent to pay tax was not imposed until the Finance Act, 2019 (by which sub-section (3) of section 13 was inserted), hence any apportionment thereof prior thereto appears to be devoid of statutory sanction."*

20. The same position exists in the instant case since during the tax periods from July-2018 to June-2019 as per the order of Honorable High Court of Sindh there was no provision in the Act to fix the liability of withholding agent. The Honorable High Court further held as under:-

*"8. The initial imposition of liability upon the applicant was per section 47 (1A) of the Act, however, the learned Tribunal has already disregarded the application of the said provision and instead maintained liability per section 47 (1) of the Act. The period for issuance of the show cause notice read five years at the relevant time; however, the verbiage of section 47 of the Act clearly states that the obligation is placed upon a person liable to pay any tax. There is no cavil to the proposition that the liability upon a withholding agent to pay tax was not imposed until the Finance Act, 2019; hence, any apportionment thereof prior thereto appears to be devoid of a statutory sanction".*



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21. It is evident from the above judgment in the case of Fatima Fertilizer that the liability to deposit/pay the withheld amount was interlinked with the insertion of sub-section (3) of section 13 of the Act which was inserted vide Sindh Finance Act, 2019 and it was held that before that date the withholding agent was not liable to account for the SST. The implication of sub-section (3) of section 13 was prospective and was not applicable to the tax periods from July-2018 to June-2019.

22. The judgment in the case of Fatima Fertilizer is binding on this Tribunal in view of Article 201 of the Constitution of Pakistan and no contrary view could be taken. However it is evident from the above portion of the Judgment that the case of Fatima Fertilizer was only applicable to the tax periods prior to July-2019 and the tax periods from July-2018 to June-2019 were covered under this case and no SST could be demanded from a withholding agent.

23. The tax periods from July-2019 to June-2020 were after the insertion of sub-section (3) of section 13 of the Act which was inserted to make liable the person or class of persons who were required to withhold or deduct full or part of SST and had either failed to withhold or deduct the SST or having withheld or deducted the SST, had failed to deposit the same in the government treasury. However sub-section (1B) of section 47 of the Act which was inserted vide Sindh Finance Act 2016 is a similar provision but it caters to a situation where the person required to withhold the SST fails to withhold or deposit the same then the officer of SRB shall determine the SST.

24. The tax periods from July-2019 to June-2020 were not hit by the judgment of Fatima Fertilizer and the findings of Commissioner (Appeals) in this regard were erroneous and thus are not sustainable in law. The liability to deposit/pay the withheld amount was interlinked with the insertion of sub-section (3) of section 13 of the Act which was inserted vide Sindh Finance Act, 2019 and it was held that before that date the withholding agent was not liable to account for the SST as stated supra. The implication

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of sub-section (3) of section 13 was prospective and was not applicable to the tax periods from July-2018 to June-2019. The SST for the periods after July-2019 could be determined and recovered from the withholding agent after insertion of sub-section (3) of section 13 of the Act.

25. The respondent being a recipient of taxable service of commission agent from unregistered service provider was bound to withheld/deduct SST as provided under sub-rule (4) of rule 3 of the Withholding Rules. Therefore the SST could be demanded and recovered from the respondent under sub-section (3) of section 13 of the Act read with sub-section (1B) of section 47 of the Act.

26. The respondent in its reconciliation statement bifurcated the amount of SST into two parts i.e. taxable services received in Sindh and outside Sindh. The share of Sindh for the tax periods from July-2019 to June-2020 was determined at Rs.12,720,077/-. The AC could not rebut the said bifurcation except that all services were generated from Sindh. The SST could not be recovered from the services acquired outside Sindh. However the respondent is liable to deposit the SST of Rs.12,720,077/- with SRB and the same admittedly relates to its share generated from Sindh.

The respondent has relied upon the earlier decision of this Tribunal in the case of M/s Ahsan Engineering Works versus SRB, Appeal No. AT-39/2016. In that case M/s Ahsan Engineering Works was a registered person and in that context it was held that it was the basic responsibility of the service provider to pay the SST. The facts of the relied case were distinguishable and are not applicable to the instant case. Similarly the respondent has also relied upon the decision of the Honorable Islamabad High Court in the case of M/s Saadullah Khan and Brothers versus Appellate Tribunal, Inland Revenue, 2019 PTD 776. This case relates to Sales Tax Act, 1990 and the Rules 2006 framed under the Sales Tax Act, 1990. However there was no provision *pari material* to sub-rule (4) of rule 3 of the Withholding Rules which provided that service recipient/ withholding agent on receipt of taxable services from unregistered persons, had to deduct the

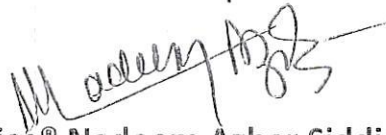


amount of SST at the applicable tax rate from the amount invoiced, billed or demanded or charged by such unregistered service provider. The facts of the case were also distinguishable and are not applicable to the instant case.

28. In view of the above discussions the instant appeal is partly allowed. The OIA is set aside to the extent of tax periods from July-2019 to June-2020 and consequently it is held that the respondent is liable to deposit the SST of Rs.12,720,077/- with SRB alongwith default surcharge. The amount should be deposited with SRB within sixty days from the date of receipt of this order failing which the respondent would also be liable to pay penalty under Serial No.3 of Table under section 43 of the Act.

29. The appeal is disposed of in terms of para 28 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:01.06.2022

Copy Supplied for compliance:

- 1) The Assistant Commissioner, (Unit-24), 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 02/06/2022

Order Dispatched on 02/06/2022

Registrar  
