

BEFORE THE APPELLATE TRIBUNAL, SINDH REVENUE BOARD, AT KARACHI
DB-1

APPEAL NO. AT-04/2022

M/s Allport Cargo Services (Pvt.) Ltd.
Office No. 189-P, Block-2, P.E.C.H.S,
Karachi.....Appellant

Versus

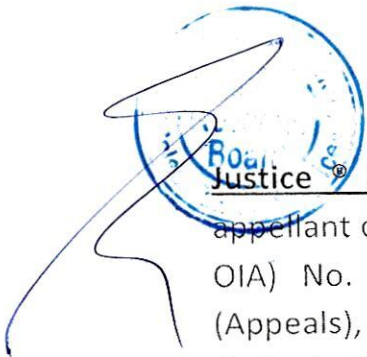
The Assistant Commissioner (Unit-05),
Sindh Revenue Board (SRB),
2nd Floor, Shaheen Complex,
M.R. Kiyani Road, Karachi.....Respondent

Date of filing of Appeal: 28.01.2022
Date of hearing: 05.04.2022
Date of Order: 14.06.2022

Mr. Abdul Raheem Lakhani and Mr. Asif Khaliq Shar, Advocates for
appellant.

Mr. Muhammad Danish Khan, AC-(Unit-05), SRB Karachi.

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. 08/2022 dated 26.01.2022 passed by the Commissioner
(Appeals), SRB in Appeal No. 60/2021 filed by the appellant against the
Order-in-Original (hereinafter referred to as the OIO) No. 249/2021
dated 14.06.2021 passed by Mr. Ghulam Murtaza Shar, Assistant
Commissioner, (Unit-05) SRB Karachi.

02. The facts as stated in the OIO were that the appellant having NTN:
3415457-4 was registered with Sindh Revenue Board under the service
category of "Freight forwarding agents", Tariff Heading 9805.3000 of the
Second Schedule to the Sindh Sales Tax on Services Act, 2011
(hereinafter referred to as the Act).

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03. It was alleged in the OIO that the perusal of the tax profile of the appellant with SRB revealed that the appellant had made short payment of the Sindh Sales Tax (SST) amounting to Rs.8,892,671/- for the tax periods from September, 2016 to October, 2022. The aforementioned discrepancy was duly communicated to the appellant vide notice dated 26.11.2020 followed by several follow up notices, whereby the appellant was advised to justify or deposit the said short paid amount of SST along with default surcharge under section 44 of the Act. However, the appellant instead of depositing the short paid SST applied for extension of time and failed to file proper response.

04. The appellant was served with a Show-Cause Notice (SCN) dated 25.01.2021 to explain as to why SST liability of Rs.8,892,671/- may not be assessed and recovered in terms of the provisions of section 23 and 47 of the Act alongwith default surcharge under section 44 of the Act. The appellant 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 violation of the provisions of the Act and the Rules, 2011 framed thereunder.

05. The appellant submitted written response dated 12.03.2021 wherein it was stated that initially the notice dated 01.03.2018 for short payment of Rs.3,873,570/= during the tax periods September, 2016 to November, 2017 was received and such amount was accordingly paid. Subsequently another notice dated 12.08.2020 for short payment of Rs.4,807,118/= relating to the tax periods June, 2018 to August, 2020 was received against which clarification was being filed that the SCN dated 25.01.2021 for tax periods September, 2016 to October, 2020 was received. It was further stated that all SST liabilities for the tax periods from September, 2016 to October, 2020 had been discharged.

06. The Assessing Officer (AO) informed the appellant that its submissions pertaining to tax periods from September, 2016 to November, 2017 were accepted, but the record pertaining to tax periods January, 2018 to October, 2020 could not be reconciled.

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07. The AO held in the OIO that out of the total SST of Rs.6,067,352/- pertaining to services rendered during the tax periods September, 2016 to November, 2017 Rs.2,193,782/- was withheld and deposited by the service recipient whereas the remaining amount of Rs.3,873,570/- was deposited by the appellant during the tax period April, 2018 and May, 2018. With regard to remaining SST amounting to Rs.5,019,101/= pertaining to tax periods January, 2018 to October, 2018 the appellant submitted that the same had been deposited by the recipient. The AO further held that from the returns it was revealed that the appellant declared services against Procter & Gamble Company (P & G Company) bearing NTN 2238866-4, which was a non-resident entity having address in a foreign country (Foreign Company) which had no registration with SRB. It was alleged that contrary to this the impugned services confronted in the SCN were provided to M/s Procter & Gamble Pakistan Private Limited [M/s P&G Pakistan (Pvt.) Limited] bearing NTN 0711734-5 and was registered with SRB as service provider. During the adjudication proceedings the appellant contended that the services were declared against M/s P&G Company bearing NTN 2238866-4 in relevant returns and the impugned SST had been deposited accordingly. However the AO had not considered this argument as valid holding that it was altogether a different company.

08. The AO finally concluded that the appellant had failed to deposit due SST amounting to Rs.5,019,101/- on services provided during the tax periods January, 2018 to October, 2020 and assessed the same under Section 23 of the Act and ordered its recovery alongwith payment of default surcharge under section 44 of the Act to be calculated at the time of payment. The AO further imposed default surcharge of Rs.306,272/- under section 44 of the Act for late payment of SST of Rs.3,873,570/- pertaining to the tax period September, 2016 to November, 2017. Moreover the penalty amounting to Rs.444,634/= was also imposed for non-payment of SST of Rs.8,892,671/= under serial No. 3 of the Table under section 43 of the Act.

09. The appellant challenged the said OIO by way of filing of appeal under section 57 of the Act before Commissioner (Appeals), SRB who

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dismissed the appeal .The relevant portion of the OIA is reproduced for ready reference as under:-

"20. In order to provide four corner justice to the appellant, it is to be seen whether they have made any effort to prove their claim or otherwise and what kind of documents they could have produced to prove the veracity of their claim. Accordingly, it shall be appropriate to mention that what they could do verify the veracity of their claim, like they could have provided the agreement between M/s P & G Pakistan (Pvt.) Limited and the appellant proving that they have only work agreement with M/s P & G Pakistan (Pvt.) Limited not with any other including P & G Company. The appellant could have produced the invoices which they issued in the name of M/s P & G Pakistan (Pvt.) Limited and entered mistakenly in the name of M/s P & G company in their tax returns. They could have matched the numbers of the invoices, date, value of the service and SST amounts exactly with what they declared in their monthly tax returns but in the name of wrong company i.e. M/s P & G company. They could have produced any communication with M/s P & G Pakistan (Pvt.) Limited verifying that the invoices shown in the name of M/s P & G company actually relate to M/s P & G Pakistan (Pvt.) Limited. They also could have produced and provided any evidence of making correspondence with M/s P & G company indicating that mistakenly they have entered the name of M/s P & G company in their tax returns whereas they have not provided any taxable services during the periods in question to M/s P & G company. They could have also produced the withholding certificates of M/s P & G Pakistan (Pvt.) Limited mentioning about the transactions which they have mistakenly showed against the services rendered to M/s P & G company. Meaning thereby they could have produced any of the documents or any of the correspondence which may authenticate and verify that they indeed have full efforts to justify their claim. However, on the contrary they could not produce any of the evidence (except a single letter addressed to M/s P & G Pakistan (Pvt.) Limited with no follow-up) which may prove that they have taken efforts to justify their claim. The answer to all above is in negation. Merely



claiming that they have made mistake does not justify the veracity of their claim. The appellant could not do anything during the period of 07 months before this forum to verify the authenticity of their claim except sheer verbal claim they have mistakenly entered the name of M/s P & G company instead of M/s P & G Pakistan (Pvt.) Limited”.

“21. In view of the above discussion, this forum is of the view that, the learned appellant could not produce any documentary evidence / evidentiary proof which may substantiate the legitimacy of their claim. In-fact, the appellant could not satisfy this office to produce any ground or justification to alter, amend, annul or set-aside the instant OIO. Accordingly, having found no other option, I do not find any reason to interfere with the said OIO which is hereby upheld in toto including principal amount, penalty and default surcharge. Thus, the instant appeal is hereby disposed of in above terms.”

Resultantly an appeal was filed by the appellant against the order of Commissioner (Appeals) before this Tribunal.

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

i. The appellant had provided transport services, Tariff Heading 9836.000 to M/s P&G Pakistan (Pvt.) Limited having NTN: 0711734-5 which was Pakistani Company and not to M/s P&G Company (USA), having NTN: 2238866-4 which was a Foreign Company and the recipient had withheld 100% of tax and deposited the same with SRB.

The appellant due to some error or mistake had mentioned the NTN of the Foreign Company in its SST returns. The mentioning of wrong NTN in the returns was a bonafide mistake and the appellant could not be penalized for such a bonafide mistake.

iii. That all the invoices issued to M/s P&G Pakistan (Pvt.) Limited which was a Pakistani Company, the SST was duly charged which was withheld and deposited by the recipient and could be verified from its Withholding Statement.

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Moreover all such invoices were provided to the AC and Commissioner (Appeals) who ignored the same.

- iv. That all documents comprising of copies of cheques, receipts, proof of payment, withholding certificates and tax challans were produced before AC and the same are being produced before the Tribunal for its kind perusal.
- v. The department had issued multiple SCNs which were not permissible. It is submitted that once a SCN was issued for certain tax periods and no adjudication proceedings were conducted no fresh SCN could be issued.
- vi. The default surcharge and penalties were imposed without establishing mensrea and malafide on the part of the appellant thus these may be deleted.

11. The learned AC-SRB for the respondent submitted as under:-

- i. The appellant was registered with SRB as a service provider of Freight Forwarding Agent under Tariff Heading 9805.3000 of the Second Schedule to the Act alongwith other service category of Inter City Transport Service, Tariff Heading 9836.0000 of the Second Schedule to the Act.
- ii. The OIO was rightly passed determining SST at Rs.5,019,101/= which was also confirmed in the OIA.
- iii. The services were provided to foreign company and the same were falsely attributed to the Pakistani Company to evade payment of SST.

The AC relying on his Report dated 05.04.2022 submitted that M/s P&G company (USA) which was a foreign company having NTN 2238866-4 in its response submitted that all confronted invoices pertained to M/s P&G Pakistan (Pvt.) Limited having NTN No.0711734-4 which was a Pakistani Company.

- v. The AC in his report further submitted that the service recipient had declared service value of Rs.106,144,559/- involving SST of Rs.8,491,565/-, whereas the appellant declared service value of Rs.82,074,314/- involving SST of

Rs.6,519,763/- and in this manner the appellant had short paid SST of Rs.1,971,802/-.

- vi. The AC in his report further submitted that even if the argument of the appellant that the services were provided to Pakistani Company is accepted, still there was a substantial difference of short declaration of Rs.24,070,245/=.
- vii. The default surcharge and penalties were rightly imposed as the appellant had failed to deposit SST as prescribed and the mensrea was apparent on the face of the record.

12. The advocate for the appellant in rebuttal submitted that the tax periods involved were from January-2018 to October-2020 whereas in the computation sheet submitted to the department by the Pakistani Company the invoices of November-2017 were also included.

13. In the instant appeal two independent entities were involved namely M/s P&G Pakistan (Pvt.) Ltd, having NTN: 0711734-5 which was a Pakistani Company and M/s P&G Company, (USA) having NTN: 2238866-4 which was a Foreign Company. The dispute was to whom the appellant had provided services, i.e. to the Pakistani Company or to the Foreign Company.

14. The AC under the direction of the Tribunal obtained information from both the entities and submitted his Report dated 05.04.2022. As per the Report, the Foreign Company clearly stated in its response that all the confronted invoices pertained to Pakistani Company. After provision of such information the stand taken by the appellant that the services were provided to the Pakistani Company has been confirmed.

15. The next question arises "Whether the SST on providing services to Pakistani Company was properly discharged or not?" In the same Report it was also stated that from the documents provided by the appellant it appeared that it had only provided services to Pakistani Company valuing Rs.83,849,256/= involving SST of Rs.6,707,940/= while monthly SST returns for the periods January, 2018 to October, 2020

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showed that the appellant had provided services valuing Rs. 8,074,314/= involving SST of Rs.6,519,763/=.

16. The SCN was issued for the tax periods September, 2016 to October, 2020 claiming short payment of SST of Rs,8,892,671/=. The SCN showed short payment of Rs,5,019,101/= for the tax periods January, 2018 to October, 2010. The dispute was thus confined to tax periods January, 2018 to October, 2020. However in the SCN neither the nature of services provided by the appellant nor the value of services were mentioned. The same position existed in the OIO wherein neither the nature of services provided by the appellant was mentioned nor the value of service upon which the SST of Rs.5,019,101/= were calculated was mentioned.

17. It is however mentioned in para 16 of the OIO that *"With regard to remaining SST of Rs.5,019,101/= pertaining to the tax period January-2018 to October-2020 the concerned person provided copy of SST returns filed for the impugned period and contended the same had been duly deposited by the company"*. However in the OIO, the AO had not explained for whom he had used the words "concerned person" and for whom he used the word "company". After proper perusal of para 16 of the OIO we understand that the words "concerned person" was used for appellant and the word "company" was used for M/s P&G Pakistan (Pvt.) Limited which was a Pakistani Company. It is thus clear from para 16 of OIO that the SST was already deposited by the service recipient.

18. The SST was determined in the OIO on the basis of presumption that the services were provided to a foreign Company. Tax cannot be charged on the basis of presumption. Moreover we hold that the SST on providing services to the Pakistani Company has been properly discharged.

19. In view of the above discussions since the SST has already been deposited by M/s P&G Pakistan (Pvt.) Limited a Pakistan company, both the OIO and OIA are setaside and consequently the appeal is allowed. However, if there was any deficiency in calculation of SST during the Tax periods from January, 2018 to October, 2020 the department is at

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liberty to proceed against the appellant or the recipient of service strictly in accordance with law for the recovery of the deficient amount of SST if any.

20. The appeal is disposed of in terms of para 19 supra. 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: 14.06.2022.

Copy Supplied for compliance:

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- 2) The Assistant Commissioner, (Unit-05), SRB, for compliance

Copy for information to:-

- 3) The Commissioner (Appeals), SRB, Karachi.
- 4) Office Copy.
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REGISTRAR
APPELLATE TRIBUNAL
SINDH REVENUE BOARD

Order Issued on 14/06/2022

Order Dispatched on 14/06/2022

Registrar

Registrar