

BEFORE THE APPELLATE TRIBUNAL SINDH REVENUE BOARD AT KARACHI

SB-I

APPEAL NO. 85/2022

(ARISING OUT OF APPEAL NO. 323/2019)

M/s Jabees (Private) Limited
(SNTN: S2580185-6)
B-6/4, Jabees Chamber,
Abdullah Haroon Road, Saddar
Karachi.....Appellant

Versus

Assistant Commissioner (Unit-02)
Sindh Revenue Board, SRB,
2nd Floor Shaheen Complex,
M.R. Kayani Road, Karachi..... Respondent

Date of Transfer of Appeal 06.12.2022
Date of hearing 24.02.2023 & 09.05.2023
Date of Order 29.05.2023

Mr. Shoaib Noor, advocate for appellant.
Mr. Shareef Malik, DC-DR, SRB and Mr. Sanjay Kumar, AC-SRB for respondent.

ORDER

Justice[®] Nadeem Azhar Siddiqi: This appeal was filed by appellant before the Commissioner (Appeals), SRB under section 57(1) of Sindh Sales Tax on Services Act, 2011 (hereinafter referred to as the Act) challenging the Order-in-Original (hereinafter referred to as the OIO) No. 464/2019 dated 12.06.2019 passed by Ms. Nida Noor, Assistant Commissioner, (Unit-11), SRB Karachi, and has been transferred to the Tribunal under section 59(7) of the Act treating the same as an



(Signature)

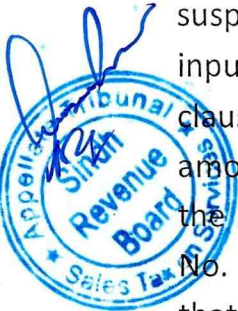
appeal against the order of Commissioner (Appeals) for disposal in accordance with law.

02. The appellant was registered with SRB under the principal activity of 'services provided/rendered by Hotels, motels, guest houses and farm houses', Tariff Heading 9801.1000 of the Second Schedule to the Sindh Sales Tax on Services Act, 2011, hereinafter referred to as the Act), chargeable to Sindh Sales Tax (SST) with effect from 01.07.2011 at the rate specified in the Second Schedule to the Act.

03. The appellant was subjected to audit under section 28(1) of the Act, for the tax periods July, 2016 to June, 2017. The notice were served upon the appellant under section 28(2) dated 17.04.2017 and 05.03.2018, requiring it to produce record for audit pertaining to the tax periods July, 2016 to June, 2017 (12 tax periods). The Audit observations were communicated to the appellant.

04. The contravention report, dated February, 23, 2019, as provided by the audit wing, SRB, transpired that the appellant has made inadmissible adjustments of input tax credit during the said tax periods. Besides, the appellant has violated provisions of the Act, read with the rules made thereunder.

05. It was alleged in the OIO that during the scrutiny of Sindh Sales Tax Returns (SST Returns) filed by the appellant for the above tax periods it was observed that the appellant has procured services, value amounting to Rs.2,187,150/- from suspended and blacklisted taxpayers in FBR e-portal and has claimed/adjusted the input tax of Rs.371,816/-. The input tax claimed/adjusted as inadmissible under clause (e) of sub-section (1) of section 15A of the Act. Therefore, the SST amounting to Rs.371,816/- was held recoverable under sections 3, 8, 9 and 17 of the Act along-with default surcharge under section 44 and penalty under Serial No. No.3 and 6(d) of the Table under section 43 of the Act. It was further alleged that the appellant claimed/adjusted input tax on various invoices of Rs.7,238,613/= in which SST involved was Rs.1,036,622/= at more than the standard rate of 13%. The adjustment of input tax of Rs.243,062/= is inadmissible



MOS

under clause (k) of sub-section (1) of section 15A of the Act and the said amount is recoverable from the appellant.

06. The appellant was served with Show-Cause Notice (SCN) dated 28.03.2019 under section 23 of the Act read with section 47 of the Act to explain as to why the short-paid SST amount of Rs.619,033/- may not be recovered from it together with default surcharge under section 44 penalties, as provided under Serial No. 3, 5, 6(d) and 12 of the Table under section 43 of the Act.

07. The appellant filed written reply dated 22.04.2019. It was stated that the input tax against KESC Bills were rightly adjusted at the rate of 13% and below. It was also stated that the suppliers have been black listed by FBR for their non-compliance subsequent to the periods in which input tax was claimed.

08. The Assessing Officer (AO) passed OIO determining the SST at Rs.539,159/- together with the due amount of default surcharge under section 44 of the Act to be recoverable from the appellant under section 23 of the Act read with section 47(1A) of the Act. The AO also imposed penalty of Rs.26,958.- (being calculated @ of 5% of Rs.539,159/-) under serial No. 3 of the Table under section 43 of the Act; penalty of Rs.100,000/- under serial No.5 of the Table under section 43 of the Act and Rs.20,000/- under serial No.12 of the Table under section 43 of the Act.

The summary of total recoverable amount is tabulated under:

Sr. No.	Description of Offence	Principal tax amount defaulted/recoverable	Default Surcharge (Rs.)	Penalty (Rs.)
1	Input tax Claimed against Blacklisted/ Suspended Supplier	371,816	TBC	18,591
2	Input Tax Adjusted on Overstated Purchases Value	163,188	TBC	8,159
3	Input tax could not be verified by R.P	4,155	TBC	208
4	Penalty under sr. No.12 of the Table in section 43 of the Act for not adopting the procedure laid down in Act and Rule for filing of returns:	N/A	N/A	20,000

5	Penalty under sr. No.5 of the Table in section 43 of the Act for non-production of record.	N/A	N/A	10,000
	Total	539,159	TBC	146,958

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

- i. The OIO was challenged to the extent of disallowing input tax adjustment amounting to Rs.371,816/- under clause (e) sub section (1) of section 15A of the Act. He further submitted that input tax claims in excess of standard rates amounting to Rs.163,188/- and unverified purchases invoices amounting to Rs.4,155/- is not disputed and said amount may be deducted from the SST of Rs.171,529/- already deposited by the appellant.
- ii. The appeal was filed before the Commissioner (Appeals), SRB who instead of deciding the same has transferred the same to the Appellate Tribunal, SRB under sub-section (7) of Section 59 of the Act depriving the appellant from right of hearing before him.
- iii. The appeal was transferred to the Tribunal when the time for passing of the OIA was expired on 20.08.2020 and no order could be passed and no recovery could be made after the lapse of statutory period provided under section (5) of section 59 of the Act.
- iv. The appellant before the Commissioner (Appeals) has already deposited Rs.171,529/- being the 25% of the total disputed SST amount.
- v. The department has wrongly disallowed the input tax claimed by the appellant for the period before the suspension/black listing of the suppliers by the FBR and not by SRB from whom the appellant has received the supplies.
- vi. Out of inadmissible input tax adjustment an amount of Rs.351,586/- was prior to the blacklisted/suspension of the supplier of the appellant and the same could not be disallowed in view of various judgments of the superior courts. However, an amount of Rs.90,230/- was in respect of input tax which was after blacklisting/suspension of the supplier of the appellant and the said amount was rightly disallowed.
- vii. He further submitted that after adjusting the said amount from the already deposited amount of Rs.171,529/- the remaining amount of Rs.16,044 may be refunded.



[Handwritten signature]

- viii. The learned advocate in his written submissions relied upon several case laws on the point that transaction made prior to suspension of registration of supplier could not be used to disallow input tax.
- ix. The default surcharge and penalties were erroneously imposed without establishing *mensrea*.

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

- i. The clause (e) of sub-section (1) of section (15A) of the Act does not provide any distinction between the suppliers blacklisted/suspended prior or after suspension and in any case if the supplies were obtained from a supplier who was blacklisted or suspended his invoices could not be considered and input tax was liable to be disallowed.
- ii. The OIO was rightly passed and the input tax claimed against the invoices issued by the black listed suppliers was rightly disallowed.
- iii. The Commissioner (Appeals), SRB rightly transferred the appeal to the Tribunal under sub-section (7) of section 59 of the Act.
- iv. The appeal was not required to be transferred within the statutory period.
- v. The default surcharge and penalty was rightly imposed as the appellant by claiming inadmissible input tax has caused loss to exchequer.

11. I have heard the learned representatives of the parties and perused the record made available before me.

12. The controversy in this appeal is claiming input tax adjustment on the basis of invoices allegedly issued by the suppliers who were subsequent to issuance of invoices suspended, blacklisted or de-registered.

13. It was not disputed that when the invoices were issued the suppliers were not suspended, blacklisted or de-registered. The burden was upon the department to prove and establish that the invoices were issued during the period when the suppliers were suspended, blacklisted or de-registered.

The orders of suspension, blacklisting or de-registration is in the nature of an adverse order and could not take effect retrospectively. The appellant at the time of receiving supplies could not apprehend that the suppliers were subsequently suspended, blacklisted or de-registered and could not be



penalized for fault of others. In the reported case of Commissioner (Legal) IR, Hyderabad versus Fateh Textile Mills Ltd. 2020 PTD 203 a learned DB of Sindh High Court held as under:-

"12.....No invoice issued by a registered person can be declared as invalid or fake retrospectively. It is the admitted position, when the invoice issued to the respondent by the registered seller, nothing adverse was showing against him and department has not mentioned him as blacklisted, de-registered or suspended, hence the invoices were validly issued as per law. If any derogatory action is done by the seller, the department will be justified to take action against the seller but it will be unfair to take action against those purchasers, who have purchased goods from that seller during the period when he was enjoying the status of "registered person".

15. The invoices issued by the suppliers who were subsequently black listed, suspended or de-registered could not be rejected at the whims of the tax authorities. In the reported case of Commissioner Inland Revenue versus Al Zamin Textile Mills, 2018 PTD 986 a learned DB of Lahore High Court held as under:-

"8. We also deem appropriate to mention here that in the recent past, a division bench of the Honble High Court, Lahore has dilated upon the same controversy in case of Commissioner Inland Revenue v. Rana Riasat Tufail and others reported as (2014 PTD 1530) by holding that furthermore, the blacklisting order is subsequent to the period for which refund is being claimed. At the time of transactions, the three entities were admittedly not blacklisted and there is no final order even today against the three blacklisted units. Therefore, no case for interference is made out. In the light of aforesaid, this ICA is dismissed.

9. In another case of M/s. Nimra Textile Mills (Pvt) Ltd v. Federation of Pakistan, etc., the Honble High Court, Lahore in W.P.No. 17237/2013 dated 09.07.2013 has held that the status of the buyer existing at the time of supply of goods by the petitioner shall be considered while deciding the show-cause notice and not the status attained by the buyer subsequently.

16. After hearing the learned representatives of the parties the reconciliation is as under:-'



Amount in OIO	Rs.539,159/-
Less on account of suspended/ Blacklisted suppliers	<u>Rs.351,586/-</u>
SST payable	Rs.187,573/-
Less already deposited	<u>Rs.171,529/-</u>
Balance (Payable)	Rs. 16,044/-

17. In view of the above the appeal is partly allowed. OIO is set aside to the extent of Rs.351,586/= and maintained to the extent of Rs.187,573/=. Keeping in view the facts and circumstance of the case the appellant is not liable to pay default surcharge and penalty. The copy of the order may be supplied to the learned representatives of the parties.

Karachi:-

Dated: 29.05.2023

(Justice® Nadeem Azhar Siddiqi)
CHAIRMAN

Copy Supplied for compliance:

- 1) The Appellant through Authorized Representative.
- 2) The Deputy Commissioner, (Unit-02), SRB, for compliance

Copy for information to:-

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

Certified to be True Copy


29-05-2023
REGISTRAR
APPELLATE TRIBUNAL
SINDH REVENUE BOARD