

IN THE APPELLATE TRIBUNAL, SINDH REVENUE BOARD AT KARACHI.  
(Before: Mrs. Alia Anwer, Member Judicial)

Appeal No.AT-123/2022

(Chemie Water Technologies),  
Office No.307, 3<sup>rd</sup> Floor,  
Gulshan Trade Centre, Block-5,  
Gulshan-e-Iqbal, Karachi. .... appellant

Versus

The Assistant Commissioner Unit-3A,  
Sindh Revenue Board,  
Karachi. .... respondent

Mr.Ubaid-ur-Rehman, advocate for appellant  
Mr.Muhammad Ali Siddiqui, AC Unit-3A, for  
respondent.

Date of hearing: 20.03.2023

Date of order: 28.03.2023

ORDER

The appellant has assailed the order dated 19.07.2019 passed by the Assistant Commissioner (Unit-03) vide Order-in-Original No.630 of 2019 (*hereinafter referred to as "the Original Order"*) whereby the appellant has been directed to pay as under;

- a. Sales Tax amounting to Rs.587,848/- along with default surcharge (to be calculated at the time of payment) under section 44 of the Sindh Sales Tax on Services Act, 2011 (*hereinafter referred to as "the Act"*),
- b. Penalty amounting Rs.360,000/- under serial No.2 of the Table in section 43 of the Act, and
- c. Penalty amounting Rs.29,392/- under serial No.3 of the Table in section 43 of the Act.



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2. Per the Original Order, appellant (M/s. Chemie Water Technologies) is registered vide tariff headings i.e. 9809.0000 (Contractual execution of work or furnishing supplies, and 9822.2000 (Maintenance and cleaning services) of the Second Schedule of the Act. Being registered person, the appellant was required to charge/ collect Sindh Sales Tax on services provided/ rendered in terms of section 8 of the Act and deposit the same as per the provision of section 17 of the Act under the Sindh Government's head of account "B-02384". The appellant is further required to e-file true and correct Sindh Sales Tax return as prescribed under section 30 of the Act read with rules 13 and 14 of the Sindh Sales Tax on Services Rules, 2011 (*hereinafter referred to as "the Rules"*).

3. During scrutiny of record available with SRB, it transpired that during the tax periods from October-2015 to November-2018, Appellant provided taxable services to the tune of Rs.13,631,449/- out of which SST amounting to Rs.9,045/- was deposited with SRB, resulting short payment of SST with SRB amounting to Rs.13,622,404/-.

4. In pursuance of above observations, show-cause notice was served upon the appellant to explain as to why the principal SST amounting to Rs.13,622,404/- under section 23 of the Act, along with default surcharge under section 44 of the Act should not be recovered, so also as to why the penalties attracted should not be imposed on him.



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5. In response to the above show-cause notice, appellant's representative submitted that appellant rendered services along supply of goods. He contended that since supply of goods is not covered under the subject law, appellant cannot be held liable to pay tax thereon. He submitted copy of CPRs showing deposit of sales tax with FBR instead of SRB. It is the case of appellant that during tax period October-2015 till November-2018 appellant was registered with FBR, therefore; inadvertently the SST was deposited with FBR instead of SRB.

6. Considering the record produced by the appellant, he was exonerated from the payment of tax on supply of goods and the appellant was found liable to pay SST amounting to Rs.587,848/- (i.e. Rs.596,893/- minus Rs.9,045/-). The AC (Unit-03) did not take into consideration the payment made to FBR as the valid payment made to SRB and held appellant liable to pay Sales Tax amounting to Rs.587,848/- along with default surcharge (to be calculated at the time of payment) under section 44 of the Act, penalty amounting Rs.360,000/- under serial No.2 of the Table in section 43 of the Act, and penalty amounting Rs.29,392/- under serial No.3 of the Table in section 43 of the Act.

7. Being aggrieved by and dissatisfied with the observations of Assistant Commissioner (Unit-03), appellant filed instant appeal before Commissioners (Appeals), which has been transferred to this Tribunal under section 59(7) of the Act.

8. Main contention of learned counsel for appellante is that FBR has signed Memorandum of



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Understanding with SRB for cross-adjustment of sales tax, mistakenly or inadvertently deposited with FBR. The Assistant Commissioner (Unit-03) showed his ignorance about any MoU signed between FBR and SRB. He, however; submitted the copy of judgment dated 28.02.2023 passed in Appeal No.AT-154/2022 by the SB-1 of this Tribunal. Relying upon above judgment the AC (Unit-03) submitted that no payment made in any "head or account" other than the prescribed by SRB, can be treated as valid payment made to the SRB. He argued that since SRB has not received the SST due towards appellant, he is liable to pay penalties imposed in terms of "the Original Order".

9. Before going into details of merits of instant matter, I feel appropriate to see the moot point of the judgment (cited above) dated 28.02.2023 passed in Appeal No.AT-154/2022 by the SB-1 of this Tribunal. In the said case the registered person had deposited SST with KPRA (Khyber Pakhtunkhwa Revenue Authority) instead of SRB. Since there exists no understanding pertaining to cross-adjustment of Sales Tax between KPRA and SRB, the relief of adjustment was not allowed to the appellant. The above judgment is of no help to the respondent as in the instant matter SST was deposited with FBR and not with KPRA.

10. During proceedings learned counsel for appellant provided all CPRs to the Assistant Commissioner (Unit-3A) who confirmed the amount of SST deposited with FBR as the same as per "the Original Order", hence; there is no issue of any shortfall in the amount deposited by the appellant.



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11. It is well settled principle that term "default" refers to the element of negligence or fault which is something more than mere non-compliance of statutory provisions. To establish default the Department must establish that non-compliance of statutory provision is based on malafide intentions. Deposit of SST in some other head of account instead of the prescribed one, does not itself establish malafide on the part of taxpayer. In this regard I am guided with the principle laid down in the case of COLLECTOR OF CUSTOMS, SALES TAX AND CENTRAL EXCISE APPEAL, KARACHI versus Messrs NIZAM IMPEX (PVT.) LTD. (2014 PTD 498), wherein it was held as under;

*"9. It is well settled law that provisions of Section 34 are attracted when there is a deliberate failure to pay the sales tax. In the present reference the perusal of the show-cause notices, order-in-original and order in appeal reveal that there was no allegation against the present respondent in respect of deliberate or willful default, or to defraud the Government. We are, in agreement with the learned counsel for respondent that ample law is available on the point that imposition of penalty was illegal where the evasion of duty was not willful as held by the Hon'ble Supreme Court of Pakistan in the case of D.G. Khan and others. Further reliance is placed upon the case of Messrs Lone China (Pvt.) Ltd. v. Additional Secretary, Government of Pakistan decided by the Hon'ble Lahore High Court, reported as PTCL 1995 CL 415 wherein it has been held that if the party did not act mala fide with intention to evade the tax, the imposition of penalty of additional tax and surcharge was not justified. In another case Additional Collector Sales Tax Collectorate of Sales Tax Multan v. Messrs Nestle Milk Pak Ltd., Kabirwala and another, 2005 PTD 1850, it has been held that in such circumstances the Tribunal has discretion to waive/remit additional tax and penalties.*

10. Thus in the light of case-law discussed above it is clear that imposition of penalty or additional tax under section 34 is not mandatory and the authorities have discretion to allow such concession. The important issue which needs to be examined is as to whether the evasion or nonpayment of tax by the respondent was willful or mala fide.

11. As mentioned earlier, no where it is case of department that the respondent had mala fide intention, or that default was willful and that too to defraud the government. In such circumstances when the imposition of sales tax has been made, the demand of additional tax appears to be harsh and unjustified.



*12. As a sequel of above discussion, we are of the considered view that the Tribunal has rightly held that the Department has failed to show that the default was willful or to defraud the Government, therefore, has justifiably remitted the payment of additional tax."*

12. It is admitted position that appellant was registered with FBR for the subject tax period and he deposited due tax with FBR at its due time. Meaning thereby that due SST was out of appellant's pocket, therefore; element of malafide intention is lacking and appellant cannot be treated as defaulter.


13. So far as deposit of SST in FBR and its reversal/ adjustment with SRB is concerned, it is the matter of record in its Order dated 27.05.2021 passed in Appeal No.AT-08/2021, DB-1 of this Tribunal referred to the statement made by the Deputy Commissioner, SRB in Appeal No.131/2015 (Re:M/s. Orient Electronics (Pvt.) Limited versus The Commissioner (Appeals), SRB that "the amount deposited with FBR can be recovered by SRB through adjustment under a Memorandum of Understanding signed between SRB and FBR". Apart from the above the MoU signed between FBR, SRB and PRA pertaining to cross-adjustment of SST (published in Daily Business Recorder in its issue dated March 14, 2014) was submitted before the SB-1 of this Tribunal during proceeding of Appeals No.AT-18/2016 & AT-23/2016 (decided vide consolidated Order dated 27.03.2017). In both the Orders dated 27.03.2017 and 27.05.2021 passed in Appeals No.AT-18/2016 & AT-23/2016 and AT-08/2021, respectively, penalties imposed on account of deposit of SST with FBR instead of SRB were set-aside due to non-existence




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of malafide intentions on the part of registered person. It is settled principle of interpretation of taxing statute that if there is any ambiguity the same has to be resolved in favour of subject as held in the case of COLLECTOR OF SALES TAX AND FEDERAL EXCISE versus Messrs ABBOTT LABORATORIES (PAKISTAN) LTD., KARACHI (2010 PTD 592).

14. In view of the above discussion, I am of considered view that imposition of penalty upon appellant as per "the Order-in-Original" is not justified, hence; liable to be set-aside. Resultantly, instant appeal stands allowed with direction to the appellant to co-operate with the respondent to get the SST amount (paid to FBR), adjusted/ transferred to SRB. Let the copy of this order be provided/ sent to the parties or their representatives, if any.

  
(ALIA ANWER)  
Member Judicial,  
Appellate Tribunal,  
Sindh Revenue Board.

Certified to be True Copy

  
REGISTRAR  
APPELLATE TRIBUNAL  
SINDH REVENUE BOARD

Karachi;  
Dated: 28.03.2023.

Copy supplied to:-

1. The appellant,
2. The Assistant Commissioner (Unit-3A), SRB, Karachi,
3. The Commissioner (Appeals), SRB, Sindh,
4. Office File, and
5. Record file.

Order issued on

28-03-2023

  
Registrar

Order Dispatched on

28-03-2023

  
Registrar