

BEFORE THE APPELLATE TRIBUNAL, SINDH REVENUE BOARD, AT KARACHI
SINGLE BENCH-I

APPEAL NO. AT-169/2022

M/s URS Inspection (Pvt.) Ltd,
(SNTN: S278230-6)
Plot No. 238-A, Block-2, P.E.C.H.S,
Karachi.....Appellant

Versus

The Assistant Commissioner (Unit-16),
Sindh Revenue Board (SRB),
2nd Floor, Shaheen Complex,
M.R. Kayani Road, Karachi.....Respondent

Date of filing of Appeal: 11.11.2022
Date of hearing: 23.11.2022
Date of Order: 19.01.2023

Mr. Munawar H. Manekia, Advocate for appellant.

Mr. Zafar Hussain, AC-(Unit-16), SRB, Karachi 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. 130/2022 dated 29.09.2022 passed by the Commissioner (Appeals) (CA-SRB) in Appeal No. 23/2018 filed by the appellant against the Order-in-Original (hereinafter referred to as the OIO) No. 04/2018 dated 02.01.2018 passed by Syed Arsalan Anwar Shah, Assistant Commissioner, (Unit-16) SRB Karachi.

02. The brief facts as stated in the OIO were that the appellant was registered with Sindh Revenue Board (SRB) under the service category of

“technical inspection and certification service” Tariff Heading 9840.0000 of the Second Schedule to the Sindh Sales Tax on Services Act, 2011 (Hereinafter referred to as the Act). Being a registered person the appellant was required to e-file true and correct Sindh Sales Tax Returns (SST Returns) in Form SST-03 as prescribed under section 30 of the Act read with Rule 13 and 14 of the Sindh Sales Tax on Services Rules, 2011 (hereinafter referred to as the Rules).

03. It was alleged in the OIO that during scrutiny of Annual Accounts of the appellant for the year ended 2016 it was observed that the appellant had earned a revenue of Rs.28,425,622/- during the year end 2016 which involved payment of Sindh Sales Tax (SST) of Rs.3,979,587/-. Whereas, record available with SRB showed that appellant had declared the SST of Rs.2,108,575/- during the tax periods from November, 2015 to June, 2016 and thus had made short declaration of SST of Rs.1,871,021/-.

04. The appellant was served with a Show-Cause Notice (SCN) dated 22.08.2017 to explain as to why the SST liability of Rs.1,871,021/- may not be assessed in terms of the provisions of section 23 of the Act alongwith default surcharge. The appellant was also called upon to explain as to why penalties under serial No. 2 and 3 of the table under section 43 of the Act should not be imposed for violation of Sections 8, 17 and 30 of the Act and rules 13 and 14 of the Rules.

05. The appellant submitted its written reply dated 21.09.2017 through its representative, wherein, it was submitted that “revenue receipt during the period July, 2015 to June, 2016 were rendered before promulgation of finance Act, 2015 and further the part of services were also rendered in the province of Punjab and the Federal Capital Authority”. The authorized representative vide letter dated 26.10.2017 submitted the certificate provided by Chartered Accountant firm M/s Sajid and Co. which is reproduced as under for ready reference:-

“We have audited the annual accounts by the M/s URS Inspection (Pvt.) Ltd for the year ended 30.06.2016.



We conducted our audited in accordance with auditing standards.

It is certify that the receipts at Rs.6,353,114/- out of total receipt Rs.28,425,622/- was based on invoices which were generated before July, 2015"

06. The Assessing Officer (AO) passed OIO and determined the SST at Rs.1,871,012/- under section 23 of the Act along with payment of default surcharge under section 44 of the Act (to be calculated at the time of payment). The AO also imposed penalties of RS. 120,000/- under serial No. 3 of the Table under section 43 of the Act and Rs.20,000/- under serial No. 2 of the Table under section 43 of the Act.

07. The appellant challenged the said OIO by way of filing of appeal under section 57 of the Act before Commissioner (Appeals), SRB (CA-SRB) who instead of deciding the same on merits dismissed the appeal for non-prosecution. The operative part is reproduced as under:-

9.....I believe that sufficient time was granted and ample opportunities were provided to the Appellant to enable him to plead his case but he remained failed to avail the same. These proceedings involve public money and therefore un-reasonable, un-limited and un-called for adjournments as well as non-appearance of Appellant will definitely fail the very purpose of the legislature. Due to this non-serious attitude, this Appeal is facing the stigma of non-prosecution, which should be taken care of, in the interest of public exchequer. From the above, it is apparent that the Appellant has nothing to say in his defense, and is abusing the due process of law.

10. *In view of the all above, this the appeal is hereby dismissed for non-prosecution. The Appellant is directed to pay the adjudged amounts as per the OIO forthwith without fail. Order accordingly.*

08. Mr. Munawar H. Manekia, learned Advocate for the appellant submitted as under:-

- i. The services valuing to Rs.6,353,114/-was provided during the Financial Year (FY) 2014-2015 when the service was not taxable.

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- ii. The Tariff Heading 9840.0000 (Technical inspection and certification services, including quality control certification services and ISO certifications) of the Second Schedule to the Act was inserted on 10.07.2015.
 - iii. The appellant against the services provided during the FY 2014-2015 received the payment during the FY 2015-2016 Involving SST of Rs.889,435/- @ 14% and mere receipt of payment during tax periods July-2015 to June-2016 was not sufficient to tax the appellant.
 - iv. The AO ignoring the evidence of providing services during FY 2014-2015 provided by the appellant has erroneously passed OIO making such OIO without jurisdiction.
 - v. The appellant had provided services in all over Pakistan and the evidence provided was not considered by the AO as well as the CA-SRB.
 - vi. The services valuing to Rs.4,504,963/- involving SST of Rs.630,695/- was provided during the tax periods 2015-2016 outside Sindh which was also erroneously taxed.
 - vii. The OIA was passed in absence of the representative of the appellant without proper service of notice of hearing and without providing proper right of hearing.
 - viii. The appellant provided sufficient material to the CA-SRB on 13.09.2019 on the basis of which the appeal could be decided on merits.
 - ix. The appellant before the Commissioner (Appeals) had deposited 25% of the SST amount to obtain stay order which amount is still lying with the department and placed on record two (2) CPR's of Rs.300,000/- each dated 31.01.2028.
 - x. The invoices were provided to the then AC/AO and pointed out para-8 of the OIO which clearly mentioned that invoices were provided.
09. The learned Assistant Commissioner-SRB submitted as under:-
- i. The appellant was voluntarily registered with SRB on 19.11.2015 under Tariff Heading 9840.0000.
 - ii. The amount was received during the tax periods from July-2015 to June-2016 and the SST was rightly charged.



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- iii. The SST in absence of payment of service tax to other jurisdictions was rightly charged.
- iv. The appellant failed to provide any proof of its branches in other jurisdictions and the existence of branches was also not mentioned in the registration profile of the appellant and in absence of branches in other provinces the SST was rightly charged as the services were provided from Sindh.
- v. The appellant issued all invoices from its office situated at Karachi, Sindh and also received the payment at Karachi and was liable to pay SST on total revenue earned during the tax periods involved in this appeal.
- vi. The Financial Statements were prepared on accrual basis of accounting as per International Financial Reporting Standards and not on cash/receipt basis.
- vii. The information received from one of the recipient M/s Feroze 1888 Mills Limited showed that the appellant had provided during the tax periods July-2014 to June-2015.

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

11. The SST was charged from the appellant during the tax periods July-2015 to June-2016 under Tariff Heading 9840.0000, "technical inspection and certification services, including quality control certification services and ISO certifications", which was inserted in the Second Schedule to the Act under Sindh Finance Act, No. XXXVI of 2015 and was chargeable to SST effective from 10.07.2015.

12. The plea taken by the appellant since inception was that the services were rendered during FY 2014-2015 before insertion of Tariff Heading in the Second Schedule to the Act and payment was received subsequently and that the services which were provided outside Sindh were not taxable in Sindh. The appellant provided the summary of confronted amount of Rs.6,353,114/- out of which the services amounting to Rs.5,033,614/= was provided in Sindh and services amounting to Rs.1,319,500/- was provided

19/01/2017
Sindh Revenue Board
Sales Tax & Customs

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outside Sindh before the insertion of Tariff Heading 9840.0000 in the Second Schedule to the Act. The advocate for appellant referred to Paras 6 and 8 of the OIO to show that all relevant record was produced before the AO. The advocate for the appellant also produced Certificate from the Chartered Accountant to the effect that the receipts of Rs.6,353,114/- out of total receipts of Rs.28,425,622/- was based on invoices which were generated before July-2015.

13. The advocate for appellant also challenged the OIA dismissing the appeal for non- prosecution on the ground that sufficient material was provided to CA-SRB for deciding the appeal on merits and placed on record the copy of letter dated 13.03.2019 under cover of which copies of invoices and bank statements were provided to CA-SRB. A report was called from CA-SRB who produced the letter dated 13.03.2019 alongwith the documents submitted by the appellant confirming the stand of the advocate for appellant.

14. The appeal was dismissed for non-prosecution on 29.09.2022. The OIA is silent regarding the service of notice of date of hearing on the appellant and its advocate. The notice of hearing is to be served in the manner provided under section 75 of the Act. The CA-SRB before dismissing the appeal for non-prosecution was under a legal obligation to satisfy itself regarding the service of notice of date of hearing upon the appellant and on its advocate/representative or it could be shown that they were in knowledge of such date of hearing but failed to appear. If the appellant and its representative despite notice or knowledge of date of hearing failed to appear the appeal can be dismissed for non-prosecution, but before the order for non-prosecution is passed the CA-SRB was required to record a definite finding that the hearing notice of appeal was served and the appellant and its representative was in the knowledge of date of hearing, which is lacking in this case. The AC could not satisfy me in this regard except saying that sufficient opportunities of hearing were provided to the appellant and its advocate but they failed to avail the same.

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15. The perusal of OIA further show that the OIA was not a simple order of non-prosecution but the CA-SRB in paras 3 to 6 has considered the facts of the case to some extent and also recorded its findings in para 7 of the OIA.

16. The perusal of the OIA further shows that the appeal was dismissed for non-prosecution after considering the previous adjournments sought by the appellant. The previous adjournments once granted are considered to be granted on showing sufficient cause and could not be considered for dismissing the appeal for non-prosecution. The facts and circumstances of the case which were apparent on the date of hearing after due notice had to be considered. In the reported case of Raheem Steel Rerolling versus Karim Aziz Industries, 1988 CLC 654 it was held as under:-

"The learned judge was to a great extent influenced by the previous lapses of defendants in the civil suit. It was further held that in deciding whether sufficient cause was made out for further adjournment, previous defaults, if any, were not to be taken note of.

17. The Act does not provide any specific provision under which the appeal could be dismissed for non-prosecution. However if a party is negligent and do not appear despite notice or knowledge of the date of hearing the CA-SRB can dismiss the appeal for non-prosecution. It is to be noted that if there is no specific provision permitting the disposal of appeal for non-prosecution there is also no provision prohibiting the disposal of appeal for non-prosecution. Any permissible procedure not prohibited by law could be adopted for dispensation of justice. The discretion available to the CA-SRB was to be exercised fairly, justly, reasonably, judicially and not arbitrarily. The purpose of giving discretion to the officials was to dispense justice and not to frustrate the right of the parties.

18. On the date when the appeal was dismissed for non-prosecution two options were available to the CA-SRB, either to dismiss the appeal for non-prosecution or to decide the same on merits on the basis of available record. In the reported case of Chaudary Manzoor Elahi versus FOP, PLD 1975 SC 66 it was held as under:-



"Where two kinds of procedure are applicable one which is normal, free from arbitrariness and consistent with reason and justice, and the other that is not so, the former should be preferred".

19. In another reported case of Mercantile Fire & general Insurance Company versus Imam & Imam Limited, 1989 CLC 2117 it was held as under:-

"Any procedure which satisfies the requirement of the case, and which is not otherwise prohibited, therefore, be taken recourse to in such proceedings but in so doing no one should be exposed to any unwarranted prejudice".

20. It is apparent from the arguments of the representatives of the parties that sufficient material was available with the CA-SRB to decide the case on merits. The principles of equity, justice and fair play require that as far as practicable the cases should be decided on merits. The superior Courts in various pronouncements have held that law favors adjudication on merits and dismissal for non-prosecution is an exception and not a rule. In the reported case of Muhammad Haleem & others versus H. H. Muhammad Naim & others: PLD 1969 SC 270, it was held as under:-

"The consensus of judicial opinion appears to be in favour of the view that if it is possible for a Court to base a decision on merits upon the materials already brought on the record;Every party who has instituted a cause or matter in a Court has a right to have his case decided on merits. A dismissal for non-prosecution should, therefore, be an exception and not a rule.

21. In another reported case of Inamur Rehman versus Jalal Din, 1992 SCMR, 1895 it was held as under:-

"Normally Courts should adjudicate the matters placed before them on merits and deviate from this course only if they find that the process of the Court is being abused. The dismissal of cases for non-prosecution should normally be the exception and not rule".

22. The CA-SRB for dismissing the appeal for non-prosecution relied upon an judgment of Indian Supreme Court reported as AIR 197 SC 429 (the year was incorrectly mentioned (due to which I could not be benefited)

ignoring the judgments of the Superior Courts of Pakistan. The judgments of other jurisdiction are not binding and be perused and considered if the judgments of our superior courts on the subject are not available. In the reported case of Shifa International Hospital versus Commissioner Income Tax & WT, Islamabad, PTD 1158 the Honorable Supreme Court of Pakistan has held as under:-

"5. As regards the Indian judgments relied upon by the learned counsel for the petitioner, these judgments are from a foreign jurisdiction and may be relevant in understanding and resolving the issues before us but they have no binding effect upon the Courts in Pakistan (Emphasis supplied) We are of the opinion that they are also distinguishable from the instant case as the provisions of law analysed therein are not pari materia to the law of our country being examined in this case, besides the facts of those cases are entirely different as they pertain to the question of whether a nursing home fell within the purview of plant and not a factory or workshop.

23. The AC/AO in the OIO concluded as under:

"6. I am deciding the case after going through the facts and records available with this office. The case was based on the fact that registered person has failed to declare Sindh sales tax amounting to Rs.1,871,012/- during the tax periods July, 2015 to June, 2016.

8. During the examination of record provided by the authorize representative i.e. sales tax invoices and summary of the confronted amount, it has been found that registered person has provided the services of technical inspection in Sindh, Punjab, Baluchistan and Islamabad from its registered office in Sindh province. Authorized representative submitted that services provided outside the Sindh territory are not the jurisdiction of Sindh Revenue Board on the grounds that registered person has the branch office at Islamabad territory. Whereas, sales tax invoices are issued from head office of the registered person (Karachi, Sindh). Registered person claims that the services provided/rendered outside Sindh are taxable and must be deposited into the concerned revenue authorities of the provinces. Whereas, registered person failed to provide the copies of sales tax return filed with Punjab revenue authority, Baluchistan revenue authority and Islamabad Capital Territory. However, above submission of authorized representative can be viewed from the context of section 3(1) of the Sindh Sales Tax on Services Act, 2011 which states that "a taxable service is a



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service listed in the second schedule to this Act, 2011 which is reproduced below for ready reference;

a) By a registered person from his registered office or place of business in Sindh;

b) In the course of an economic activity, including in the commencement or termination of the activity.

9. Above section rightly and fairly proves the nature and context of the business activity as the registered person himself is admitting that above mentioned services has been provided/rendered outside the province of Sindh. Further, it is elaborated in section 3(1) of the said Act, 2011 that a service is taxable which is provided by resident and has issued invoices from the place of business registered in Sindh. Therefore, the claim of registered person cannot be considered on the basis of studied grounds. Further, it can also be justified from section 9(1) which notifies that;

“Where a service is taxable by virtue of sub-section (1) of section 3, the liability to pay the tax shall be on the registered person providing the service”.

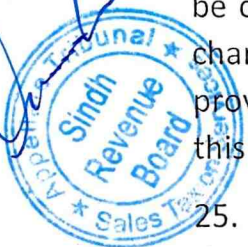
11. Submissions made by authorized representative claims that services provided outside Sindh territory are not liable to Sindh Sales Tax is not tenable on grounds that registered person has issued the sales tax invoice from the head office i.e. Karachi, Sindh and in light of Section 3(1) (2) and 9 of the Sindh sales tax services Act, 2011. Further, as submission made by authorized representative that services provided before 1st July, 2015 are not liable to Sindh Sales tax is also not tenable on the ground that examination of annual audited accounts year ended, 2016 clearly identify that aforesaid accounts are made on accrual basis rather than cash/receipts basis. Moreover, it has been also found that registered person has failed to submit the true and correct reconciliation of amount confronted in the Show Cause notice dated 22nd August, 2017.

14. In view of the all above, it is held that M/s URS Inspection (Pvt.) Ltd. have not deposited the due amount of Sindh Sales Tax during the tax periods January, 2016 to December, 2016 amounting to Rs.1,871,012/- under Sindh government's head of account B-02384. Therefore, the Sindh sales tax amounting to Rs.1,871,012/- is hereby assessed under section 23 of the Act, 2011 along with the amount of default surcharge under section

44 of the Act, 2011. Accordingly, I order M/s URS Inspection (Pvt.) Ltd. to deposit the principal amount of Sindh sales tax amounting to Rs.1,871,012/- along with default surcharge under section 44 of the Act, 2011 (to be calculated at the time of payment). As the registered person has failed to pay and deposit the actual amount of tax due during the tax periods from January, 2016 to December, 2016 in the time or manner laid down under the Act, 2011 and the rules made thereunder, hence violated sections 8 and 17 of the 2011-Act read with rule 14 of the Rules, 2011. Therefore, is punishable under serial 3 of section 43 of the 2011-Act which amounts to Rs.120,000/-. Moreover, registered person failed to file sales tax returns within due date during the tax periods September, 2016 and December, 2016, hence violated sections 30 of the 2011-Act read with rule 12 of the Rules, 2011. Therefore, is punishable under serial 2 of section 43 of the 2011-Act which amounts to Rs.20,000/-. Hence, I further order M/s URS Inspection (Pvt.) Limited to pay the penalty of Rs.140,000/- imposed under section 2 and 3 of Section 43 of the said Act, 2011.

24. The perusal of above paras clearly reflected that the AC/AO has based the OIO on surmises and conjectures and the invoices and summary of confronted amount provided by the appellant was ignored. The AC/AO while concluding that the services were provided in Sindh, Punjab, Baluchistan and Islamabad has taxed the entire value of services in Sindh for the reason that invoices were issued from the registered office of the appellant in Sindh. The AC/AO ignored that the invoices were issued prior to insertion of service in the Second Schedule to the Act. The Tax could not be charged merely on the basis of receipt of payment. For the purpose of charging the tax of any service the service is to be actually rendered and provided within the jurisdiction of Sindh which admittedly was lacking in this case.

25. The Ac/AO has also based the finding influencing with the fact that the appellant failed to provide the copies of sales tax return filed with other revenue authorities. The tax could not be charged on the basis that since the tax was not deposited with other tax authorities the same was payable in Sindh.

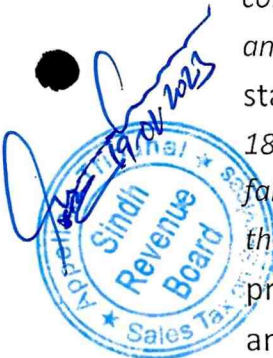


26. The AC/AO misread and misinterpreted the provision of sub-section (1) of section 3 of the Act in concluding that "it is elaborated in section 3(1) of the said Act, 2011 that a service is taxable which is provided by resident and has issued invoices from the place of business registered in Sindh" Emphasis supplied. The underline phrase is not part of the provision and could not be read as part of the provision for the purpose of charging tax. In the reported case of Hashwani Hotels vs. Government of Pakistan, 2004 PTD 901 it was held as under:-

"In a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equality about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be employed. One can only look fairly at the language used:"

27. The AC/AO charged the tax only on the basis of receipt shown in the annual audited accounts year ended, 2016, without considering that the same relates to the previous year when the service was not taxable. This is a wrong practice. The tax could only be charged if the services actually provided and rendered during the period when the service was taxable and not merely on the basis of issuance of invoices and receipt of payment.

28. The AO/AC in para 10 of the OIO stated that "During examination of the accounts and summary, a difference of PKR 504,932/= has been found. It is construed that the registered person is trying to evade the actual sales tax amount by providing insufficient record". In para 12 of the OIO it was further stated that "During the examination of sales tax invoices provided by M/s Feroze 1888 Mills Limited it has been observed that M/s URS Inspection (Pvt) Limited has failed to declare the aforesaid sales tax invoices, aforesaid position clearly shows that registered person intended to evade the Sindh Sales Tax". The Invoices provided by M/s Feroze 1888 were in respect of tax periods ended 2016 and ended 2017. The tax period ended 2017 was not involved. In para 13 of the OIO it was further stated that "Moreover, during correspondence of authorized representative, it has been admitted by the authorized representative that registered person has made short payment of Sindh Sales Tax against revenue earned amounting to Rs.2,003,460/- during the tax periods from January-



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2016 to December-2016 which involve the Sindh Sales Tax amounting to Rs.280,484/-.

29. Apparently these allegations were not part of the SCN and could not be agitated at this stage. However, the department may invoke sub-section (5) of section 23 of the Act to recover that amount which was either under-assessed or the same escaped assessment.


30. In view of the above discussions it is held that SST could not be charged on the services provided before the insertion of Tariff Heading 9840.0000 of the Second Schedule to the Act. The SST also could not be charged on the services provided outside Sindh.

31. The upshot of the above discussion is that the appeal is allowed and the OIO and OIA are setaside/annul.

32. The appeal is disposed of accordingly. Copy of order may be supplied to the learned representatives of the parties.

Karachi:

Dated: 19.01.2023


(Justice[®] Nadeem Azhar Siddiqi)
CHAIRMAN

Copy Supplied for compliance:

- 1) The Appellant through Authorized Representative.
- 2) The Assistant Commissioner, (Unit-16), SRB, for compliance

Copy for information to:-

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

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19-01-2023
REGISTRAR
APPELLATE TRIBUNAL
SINDH REVENUE BOARD

Order Dispatched on

19-01-2023

19-01-2023
Registrar

Order issued on

19-01-2023

19-01-2023
Registrar

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