

BEFORE THE APPELLATE TRIBUNAL, SINDH REVENUE BOARD,  
AT KARACHI

DB-I  
APPEAL NO. AT-20/2022

M/s Lemon Communication Pakistan, ..... Appellant  
(SNTN: S3599632-3)

Suite # 711, 7<sup>th</sup> Floor, Park Avenue,  
Block-6, PECHS, A.A. Rehman Street,  
Karachi

Versus

The Assistant Commissioner (Unit-28), SRB ..... Respondent  
Sindh Revenue Board, 02<sup>nd</sup> Floor Shaheen  
Complex, M.R. Kayani Road, Karachi.

Date of filing of Appeal 22.03.2022  
Date of hearing 26.04.2022  
Date of Order 28.04.2022

Ms. Sana Iqbal (ITP) along with Mr. Abdul Rauf, ACCA for appellant.  
Mr. Liaqat Bajeer, AC-(Unit-28), SRB for respondent.



ORDER

Intiaz Ahmed Barakzai: This appeal has been filed by the appellant challenging the Order-in-Appeal (hereinafter referred to as the OIA) No. 21/2022 dated 28.02.2022 passed by the Commissioner (Appeals) in Appeal No. 106/2022 filed by the Appellant against the Order-in-Original (hereinafter referred to as the OIO) No. 539/2021 dated 29<sup>th</sup> October, 2021 passed by Mr. Liaqat Ali Bajeer, Assistant Commissioner, (Unit-28) SRB Karachi.

02. The appellant hereinafter referred to as the "registered person" was registered with the Sindh Revenue Board, in the service category of "Software and IT System Development Consultant" classified under Tariff Heading 9815.6000 of the Second Schedule to the Sindh Sales Tax on

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*Liaqat Bajeer*

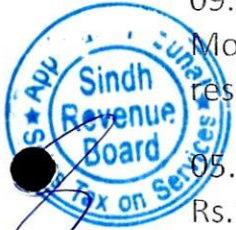
Services Act, 2011 (hereinafter referred to as the Act) chargeable to Sindh Sales Tax at the standard rate of tax.

03. SRB tax profile of the registered person indicated that it had declared Sindh sales tax payable amounting to Rs.476,705/- (581,059- 104,354) as depicted in 'Annexure C' of monthly sales tax return filed by registered person for the tax periods from February-2021 to May-2021. However, contrary to this, service recipients of the registered person had declared purchases against registered person in tax periods from August, 2014 to June, 2021, involving Sindh sales tax amounting to Rs.2,029,947/- (2,413,564 -383,717). Hence a short payment of Rs.1,553,142/- (2,029,847 – 476,705) was recoverable from the registered person along with default surcharge and penalties under section 43 of the Act, 2011. Accordingly, the registered person was served with Show-Cause Notice (SCN) dated 1<sup>st</sup> September, 2021, as to why the defaulted amount of tax at Rs.1,553,142/- may not be assessed and recovered from it along with the default surcharge under section 44 of the Act, 2011 and further as to why penalty for the offence of willful non-payment of due tax prescribed under S. No.3,4,5, 12 and 15 of section 43 of the Act, 2011 may not be imposed and recovered from it.

04. It was alleged in the OIO that the hearings in the instant case were on 09.09.2021, 23.09.2021 and 11.10.2021 but no one appeared on due dates. Moreover, the registered person failed to submit any written reply in respect of SCN nor provided any record under section 27(2) of the Act.

05. The Assessing Officer (AO) directed the registered person to deposit Rs.1,553,142/- into the Sindh Government treasury head of account # B-02384 without any delay. He stated that this amount shall be paid by the registered person along with due default surcharge under section 44 of the Act, covering all the defaulted tax-periods i.e. from August-2014 to June, 2021 and up to the date on which the said principal amount was paid by the registered person. The AO also imposed penalty of Rs.830,000/- under Serial No.3 of Table under Section 43 of the Act, penalty of Rs.100,000/- under Serial No.4 of Table under section 43 of the Act, penalty of Rs.100,000/- under Serial No.5 of Table under Section 43 of the Act, and penalty of Rs.77,657/- for contravention of Section 3, 8, 9, 17, 27 and 30 of the Act.

06. The appellant challenged the said OIO by way of filing appeal before the Commissioner (Appeals) under section 57 of the Act. During the



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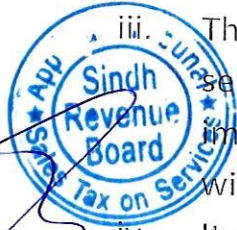
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proceeding in appeal the appellant filed letter dated 14.02.2022 for withdrawal of the instant appeal mentioning that it does not want to proceed with the instant matter any further. Therefore the Commissioner (Appeals) disposed of the appeal as infructuous and fully upheld the OIO.

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

07. The representative of the appellant submitted as under:-

- i. That the appeal filed before Commissioner (Appeals) was withdrawn by its representative without authorization from the appellant.
- ii. That out of the amount of SST liability of Rs.1,553,142/- an amount of Rs.694,516/- was recovered by SRB by way of Attachment of bank accounts and the said bank accounts were still under attachment which had deprived the appellant from collecting their dues from the market. Moreover the attachment of bank accounts were badly effecting the business of the appellant.



iii. The SST was charged illegally without considering the value of services provided by the appellant and heavy penalties were imposed without establishing mensrea, hence the OIO was without jurisdiction.

iv. It was requested that the department may be directed to de-attach the bank accounts of the appellant maintained at Bank Al-Habib and Faysal Bank Limited.

08. Mr. Liaqat Bajeer, AC-SRB submitted as under:-

- i. The order in original No.539/2021 dated 29.10.2021 is just and lawful. The OIO is passed after considering all aspects and facts of the case available on the record as well as after affording ample opportunities to the Appellant to defend the case.
- ii. Appellant was given ample opportunities vide hearings dated 09.09.2021, 23.09.2021 and 11.10.2021 and it was also informed to Appellant that in case of non-appearance or non-submission

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of response / record, case would be decided ex-parte, as per available record. Despite all such opportunities, Appellant failed to appear for hearing before adjudication officer and also failed to submit his response to the SCN. Therefore the case was decided on merits considering the available information.

- iii. In view of foregoing position, SST established along with penalties is legal and the recovery proceedings were also rightly initiated after one month after passing OIO, in terms of section 66 of the Act.
- iv. Appellant's contention are subject to reconciliation and verification of the tax demand and must be supported with evidences.

09. We have heard the learned representatives of the parties and perused the record made available before us.

10. The representatives of the parties were directed to file reconciliation statement since the representative of the appellant contended that it was ready to pay the due SST tax liability. Both the learned representatives have jointly filed reconciliation showing that the actual SST liability was Rs.1,374,547/- against the SST determined in the OIO at Rs.1,553,142/-. The appellant submitted that out of Rs.1,374,547/- an amount of Rs.694,516/- was recovered by the department by way of attachment of Bank Accounts leaving a balance of Rs.690,031/-. However the appellant had deposited Rs.300,000/- out of balance tax liability of Rs.690,031/- leaving a balance of Rs.380,031/- which would be deposited within 15 days. The representative of the appellant has thus duly discharged the SST liability with mutual agreement.

11. The penalties amounted to Rs.1,107,657/- imposed in the OIO were without establishing mens rea. Mens rea is an essential ingredient and in the instant case non-payment of SST was neither established to be willful nor malafide. Therefore in view of case reported as 2004 SCMR 456 and PLD 1967 SC1 the penalties are deleted. Moreover since the payment of

entire tax dues has been made thus default surcharge is also waived in view of case reported as 2006 SCMR 626, since the Assessing Officer has failed to mention any reasonable ground for default in payment of SST which could be considered to be willful and deliberate.

12. The appeal is disposed of accordingly. The copy of the order may be supplied to the learned representative of the parties.

  
(Imtiaz Ahmed Barakzai)  
TECHNICAL MEMBER

  
(Justice<sup>®</sup> Nadeem Azhar Siddiqi)  
CHAIRMAN

Certified to be True Copy

Karachi

Dated:28.04.2022

Copy Supplied for compliance:

- 1) The Appellant through Authorized Representative.
- 2) The Assistant Commissioner, (Unit-28), SRB, for compliance

Copy for information to:-

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

  
REGISTRAR  
APPELLATE TRIBUNAL  
SINDH REVENUE BOARD

Order issued on

29/04/2022

Order Dispatched on

29/04/2022

Registrar

Registrar