

BEFORE THE APPELLATE TRIBUNAL SINDH REVENUE BOARD AT KARACHI

DB-I

APPEAL NO. 25/2022  
(ARISING OUT OF APPEAL NO. 81/2020)

M/s CUBE XS Weatherly (Pvt.) Ltd.  
(SNTN# 2741379-9)  
1<sup>st</sup> Floor, & Basement 2, Federation House,  
Shahrah-e-Firdausi, Main Clifton,  
Block-05, Karachi.....Appellant

Versus

Assistant Commissioner (Unit-37)  
Sindh Revenue Board (SRB),  
2<sup>nd</sup> Floor Shaheen Complex,  
M.R. Kiyani Road, Karachi.....Respondent

Date of Transfer of Appeal 28.03.2022  
Date of hearing 31.05.2022  
Date of Order 13.09.2022

Mr. Arshad Ali Siddiqui, ITP for the appellant.

Ms. Madiha Mehmood, AC-SRB, for respondent.



ORDER

Justice<sup>®</sup> Nadeem Azhar Siddiqi: This appeal was transferred by Commissioner (Appeals), SRB to the Tribunal invoking sub-section (7) read with sub-section (8) of section 59 of the Sindh Sales Tax on Services Act, 2011 (hereinafter referred to as the Act).

02. The appeal was filed by the appellant on 24.08.2020 before Commissioner (Appeals), SRB appointed under the provisions of the Act

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arising out of an Order-in-Original (OIO) No. 53/2020 dated 10.03.2020 passed under the provisions of the Sindh Workers Welfare Fund Act, 2014, (hereinafter referred to as the SWWF Act) determining the tax liability of Rs.627,858/= including penalty and additional tax.

03. The facts as stated in the OIO were that the appellant was engaged in telecommunication services in the province of Sindh. The Financial Statements for the year ended 30<sup>th</sup> June, 2018, of the appellant showed profit before taxation of Rs.23,254,018/- and the amount of Sindh Workers Welfare Funds (SWWF) was calculated at Rs.465,080/- being 2% of profit before taxation in terms of Section (2) (1) of SWWF Act.

04. It was alleged in the OIO that the appellant as per record had not deposited due amount of contribution in compliance to section 5(3) read with section 5(1) of the SWWF Act in the prescribed head of account, despite the issuance of advisory letters.

05. The appellant was served a Show-Cause Notice (SCN) dated 23.05.2019 to explain as to why principle amount of contribution to the Fund amounting to Rs.465,080/- should not be assessed and recovered u/s 5(4) of the SWWF Act. The appellant was also called upon to explain as to why the penalty for non-payment of contribution to the Fund may not be imposed under Serial No.3 of the Table under Section 43 of the Act read with Section 5(14) and section 16 of SWWF Act, alongwith additional amount equal to fifteen percent per annum of the amount due may not be recovered as per section 5(8) read with section 5(14) and section 16 of the SWWF Act accordingly.

06. The appellant submitted written response to the SCN on 28.10.2019 alongwith the documents and stated that it was not an Industrial Organization, nor it was engaged in any type of manufacturing activity therefore, it was not required to pay any contribution to the Fund established under the SWWF Act.

07. The Assessing Officer (AO) held that appellant was an industrial establishment in terms of Section 2(g) (vi) of the SWWF Act and thus determined Rs.465,080/- being 2% of total income as WWF in terms of section 5(1) read with Section 2(1) of the SWWF Act. The AO also imposed penalty of Rs.23,254/- under Serial No. 3 of the Table under section 43 of the Act, read with section 5(14) and 16 of the SWWF Act. The AO also imposed an additional amount of Rs. 139,524/- equal to 15% per annum of



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the principle amount due from the appellant as per Section 5(8) of SWWF Act.

08. The appellant challenged the said OIO by filing appeal before Commissioner (Appeals-I), SRB who was appointed under section 34 of the Act to hear appeals filed under section 57 of the Act. The Commissioner (Appeals) instead of deciding the appeal transferred the same to the Tribunal invoking sub-section (7) read with sub-section (8) of section 59 of the Act.

09. At the very outset the learned advocate for the appellant was asked to satisfy the Tribunal regarding its jurisdiction to hear the appeals under SWWF Act in absence of any specific provision of appeal in the SWWF Act.

10. The learned advocate for the appellant very candidly submitted that the SWWF Act did not contain any specific provision for filing of appeal before the Commissioner (Appeals), SRB or before this Tribunal. He however, submitted that the AO while passing the OIO had mentioned in para 2, page 1 of the OIO that *"An appeal against the order lies with Commissioner (Appeals), SRB as provided in section 57 of the Act read with section 5 (14) and 16 of SWWF Act within thirty days from the date of receipt of decision or order"*. Moreover since the Commissioner (Appeals), SRB had assumed the jurisdiction under section 57 of the Act and transferred the appeal to the Tribunal this appeal could be decided on merits.



11. The learned representative of the appellant Mr. Arshad Siddiqui, ITP submitted as under:-

The OIO was passed in haste without providing proper right of hearing to the appellant.

ii. The appellant was not an industrial establishment in terms of Section 2(g) (vi) of the SWWF Act and was erroneously treated as such.

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- iii. The SCN was issued on 23.05.2019 and 180 days were completed on 19.11.2019, whereas the OIO was passed on 10.03.2020 after expiry of 180 Days.
- iv. The Commissioner (Appeals) also transferred the appeal to Tribunal after expiry of statutory period of 180 days for deciding the same.

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

- i. The appeal was filed under the SWWF Act against the OIO passed under section (4) of the SWWF Act and no time limit for passing OIO was provided under the SWWF Act.
- ii. The Commissioner (Appeals), SRB was competent to hear appeal against the OIO passed under the provisions of the SWWF Act and reference was given to sub-section (14) of Section 5 and Section 16 of the SWWF Act to show that the appeal before Commissioner (Appeals), was maintainable.
- iii. The Commissioner (Appeals), SRB had rightly transferred the appeal to the Tribunal in exercise of his powers under the Act.

13. We have heard the learned representative of the parties and perused the record made available before us.

14. We have carefully perused the provisions of the SWWF Act and find that no right of appeal was provided in the SWWF Act either before Commissioner (Appeals), SRB or before this Tribunal.

The AO while passing OIO under some misconception and misinterpretation of the SWWF Act and the Act had erroneously mentioned that appeal could be filed before Commissioner (Appeals), SRB under section 57 of the Act. Furthermore the AO had also misconstrued and misinterpreted the provisions of section 5 (14) and 16 of the SWWF Act. It is pertinent to mention that the provisions of section 5 (14) of the SWWF Act does not deal with filing of appeal but the same deals with the collection or recovery of charges, notice of demand or the notice for filing of statement. It has been mentioned in such provision that these shall be



issued by SRB and for any default penal provisions as provided in the Act and rules made thereunder shall also apply mutatis mutandis.

16. The provision of section 16 of the SWWF Act does not deal with filing of appeal but the same deals with additional charge or tax, penalty and prosecution. However it has been provided that the provisions of the Act shall mutatis mutandis apply in all cases of additional charge or amount, penalty and prosecution under the SWWF Act.

17. We have also examined sub-section (11) and (14) of section 5 of SWWF Act. Sub-section (11) provides that the provisions of the Act and the SRB Act, 2010 relating to the mode and time of recovery of the sales tax shall apply to the recovery of the amount due under the SWWF Act. Sub-section (14) of section 5 of the SWWF Act provides that in the matter of collection or recovery of the charges or amount for the Fund, notice of demand or the notice for filing of the statement shall be issued by the SRB and for any default penal provisions as provided in the Act and rules made thereunder shall also mutatis mutandis apply in such cases.

18. It is evident from the perusal of above provisions that none of these provisions had provided for filing of appeal before the Commissioner (Appeals), SRB and the Tribunal established under the provisions of the Act.

19. An appeal is a process by which a judgment/order of a subordinate court is challenged before its superior court. A party to a case does not have any inherent right to challenge the judgment/order of a court before its superior court unless provided by law. A person aggrieved by any judgment/order is not entitled as of a right to file appeal. The right of appeal must be conferred by statute and the same cannot be invoked unless specifically provided in the relevant statute. In the reported case of Chairman, Central Board Of Revenue versus M/s Pak Saudi Fertilizer Limited, 2001 SCMR 777 it was held as under:-



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*"The right of appeal is a creature of statute and there can be no right of appeal unless it is conferred by the statute. Perusal of section 129 of the Ordinance, 1979 would show that the Legislature has purposely not mentioned section 53 of the Ordinance, 1979 in respect of payment of advance income-tax so as not to make it appealable".*

20. The above decision squarely applies on the SWWF Act. Despite applying certain provisions of the Act the provisions relating to filing of appeals were left or ignored by the Legislature.

21. The Commissioner (Appeals), SRB appointed under the Act could not assume jurisdiction to hear appeals under the SWWF Act unless provided by relevant statute. The jurisdiction to hear appeal could not be conferred by consent of the parties. In the reported case of Muhammad Ramzan versus Member (Rev), CSS it was held as under:-

*"26.....It is indeed well settled that consent can neither vest nor taken away jurisdiction which otherwise did not vest in any authority or forum".*

22. In our earlier decision dated 23.09.2020 passed in Appeal No. AT-32/2020, M/s Zorlu Enerji Pakistan Limited versus Assistant Commissioner (Unit-37), SRB, Karachi, we had considered the various provisions of the SWWF Act and after detailed discussion it was held as under:-

*"10. The Commissioner (Appeals) appointed under the provisions of SST Act has thus no jurisdiction to hear appeal against the order passed under the WWF Act for want of specific provision of appeal in the WWF Act".*

23. The above order was sent to the Commissioner (Appeals) for his consideration and it is strange that the Commissioner (Appeals), SRB entertained the appeal in ignorance of the above order. The ignorance of the order of the higher forum by Commissioner (Appeals), SRB for creating liability is not a good practice and reflects malafide on his part. It was the duty of the Commissioner (Appeals), SRB to first confirm his jurisdiction before assuming jurisdiction to decide the instant appeal. Furthermore the finding recorded by the Tribunal is binding upon the Commissioner (Appeals), SRB



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and the Assistant Commissioners and they should follow the same in later and spirit.

24. The Commissioner (Appeals) appointed under the provisions of the Act has thus no jurisdiction to hear appeal against the order passed under the SWWF Act for want of specific provision of appeal in the SWWF Act and could not transfer the appeal to the Tribunal in exercise of its power under sub-section (7) read with sub-section (8) of section 59 of the Act. The AC-SRB has erroneously mentioned in the OIO that an appeal could be filed before Commissioner (Appeals) under section 57 of the Act. This practice should be discontinued so that the parties are not misguided by the act and omission of the official of SRB.

25. In view of the above discussions it is held that this Tribunal constituted under section 60 of the Act has no jurisdiction to hear appeals under SWWF Act and the appeal could not be transferred to the Tribunal under sub-section (7) read with sub-section (8) of section 59 of the Act. It is also held that the Commissioner (Appeals) appointed under the provisions of the Act has no jurisdiction to hear the appeal against the order passed under the provisions of the SWWF Act.

26. The appeal is accordingly returned to the Commissioner (Appeals), SRB for dealing with the same strictly in accordance with law. Since the Commissioner (Appeals) has no jurisdiction to hear the appeal against the order passed under the provisions of the SWWF Act the appellant is at liberty to avail the remedy available to it under law. Since we have returned the appeal we do not find it necessary to comment on the merits of the case which may prejudice the respective stands of the parties.


27. The copy of this order may be provided to the learned representative of the appellant, Commissioner (Appeals), SRB and concerned Assistant Commissioner for compliance. The copy of this order may also be sent to SRB Board through learned Chairman, SRB for placing the same before the Board which should instruct the Officers of the SRB to act strictly in accordance with the SWWF Act and do not confuse the parties by their



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misconstrued interpretation of law. We are sanguine that the Board would comply with our request and redress the same.

  
(Imtiaz Ahmed Barakzai)  
TECHNICAL MEMBER

  
(Justice® Nadeem Azhar Siddiqi)  
CHAIRMAN

Karachi:  
Dated:13.09.2022

**Certified to be True Copy**

Copy Supplied for compliance:

- 1) The Appellant through Authorized Representative.
- 2) The Chairman, SRB, Karachi.
- 3) The Assistant Commissioner, (Unit-37) WWF, SRB, for compliance

  
R REGISTRAR  
APPELLATE TRIBUNAL  
SINDH REVENUE BOARD

Copy for information to:-

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

**Order issued on** 14-09-2022

  
R REGISTRAR

**Order Dispatched on** 14-09-2022

  
R REGISTRAR