

BEFORE THE APPELLATE TRIBUNAL, SINDH REVENUE BOARD, AT KARACHI

DB-1

APPEAL NO. AT-33/2022

M/s 3M Pakistan (Private) Limited.,  
Islamic Chamber of Commerce Building,  
ST-2/A, Block-09, KDA Scheme No.5,  
Clifton, Karachi .....Appellant

**Versus**

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

Date of filing of Appeal: 26.04.2022  
Date of hearing: 27.04.2022  
Date of Order: 16.06.2022

Mr. Saud-ul-Hasan, Advocate, Mr. Saleem Siddiqi, FCA and Mr. Shabbar  
Muraj, ACA for appellant.



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. 35/2022 dated 06.04.2022 passed by the Commissioner (Appeals) in Appeal No. 238/2019 filed by the appellant against the Order-in-Original (hereinafter referred to as the OIO) No. 14/2018 dated 19.06.2018 passed by Mr. Zafar Hussain Kalwar, Assistant Commissioner, (SWWF & SWPF), SRB, Karachi.

*M. azhar*

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02. The facts as stated in the OIO were that the appellant having its registered office at Islamic Chamber of Commerce Building. S-2/A, Block-09, KDA Scheme No.5, Clifton Karachi was engaged in manufacturing of consumer healthcare, industrial and electronic products. The financial statements of appellant for the year ended December 31<sup>st</sup> 2016 recorded profit before taxation at Rs.425,948,000/- and Rs.8,518,960/- was shown as the amount of Sindh Workers Welfare Fund (SWWF) in terms of Section 5(1) read with Section (2)(1) of Sindh Workers Welfare Fund Act, 2014 (hereinafter referred to as the SWWF Act, 2014).

03. The appellant being engaged in manufacturing in Sindh was an industrial establishment in terms of 2 (g) (1) of the SWWF Act, 2014. It was stated in section 5 (1) of the SWWF Act, 2014 that every industrial establishment located in the Province of Sindh having income not less than five hundred thousand rupees shall pay to the Fund a sum equal to two percent of its total income declared.

04. It was alleged that the record showed that the appellant had failed to deposit the due amount of contribution in compliance to section 5(3) read with section 5(1) of the SWWF Act, 2014 in the prescribed account of SWWF.

05. The appellant was served with Show-Cause Notice (SCN) dated 07.06.2018 to explain as to why principal amount of Rs.8,518,960/= on account of contribution due to the Fund should not be assessed and recovered under section 5(4) of the SWWF Act, 2014. The appellant was also called upon to explain as to why penalty for non-payment of contribution to the Fund be imposed under Serial No. 3 of the Table under Section 43 of Sindh Sales Tax on Services Act, 2011 (hereinafter referred to as the Act, 2011) read with Section 5(14) & section 16 of the SWWF Act, 2014. The appellant was also confronted with the charging of additional amount equal to fifteen percent per annum of the amount due from it under section 5(8) read with section 5(14) & section 14 of the SWWF Act, 2014.

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06. The first date of hearing as per the OIO was fixed on 11.06.2018. On this date no one appeared on behalf of appellant. However, two days after the date of hearing a letter was received from the representative of the appellant for adjournment for any date after 25.06.2018. Such request was rejected and the Assessing Officer (AO) proceeded with the case in absence of the appellant.. The SCN was issued on 07.06.2018 and the first hearing was fixed on 11.06.2018 only after five days of issuance of SCN, and the case was decided on 19.06.2018 within 17 days from the date of issuance of SCN (Such conduct of AO reflected unnecessary haste in deciding the case).

07. The Assessing Officer (AO) passed OIO dated 19.06.2018 and determined the principal amount of Rs.8,518,960/- under section 5(4) of the SWWF Act,2014 and imposed penalty of Rs.424,948/- under Serial No. 3 of Table under section 43 of the Act, 2011 read with section 5(14) and 16 of the SWWF Act, 2014 for not depositing the amount of SWWF for the year ended 31<sup>st</sup> December, 2016. Furthermore, an additional tax equal to 15% per annum of the principle amount due from the appellant as per Section 5(8) of SWWF Act, 2014 was imposed which was to be calculated at the time of payment of principle amount.

08. The appellant challenged the said OIO by way of filing appeal before Commissioner (Appeals-I), SRB who was appointed under section 34 of the Act, 2011 to hear appeals filed under section 57 of the Act, 2011. The Commissioner (Appeals) dismissed the appeal and maintained the OIO and waived the penalty and additional amount with the condition of payment of principal amount within twenty days from the date of receipt of the copy of OIA.

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, 2014 in absence of any specific provision in the SWWF Act, 2014. The learned advocate for the appellant very candidly submitted that the SWWF Act, 2014 did not contain any specific provision for filing of appeal before the Commissioner (Appeals), SRB or before this Tribunal. He

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however, submitted that the AO while passing the OIO had mentioned in para 2 of the order that "An appeal against the order lies with Commissioner (Appeals), SRB as provided in section 57 of the Act, 2011 read with section 5 (14) and 16 of WWF 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, 2011 the appeal against the order of Commissioner (Appeals) was maintainable under section 61 of the Act, 2011 before this Tribunal.

10. On merits the advocate for the appellant submitted that section 2(1)(i) of the SWWF Act, 2014 defined "Total Income". This clearly meant that where return of income was required to be filed under Income Tax Ordinance, 2001 or under SWWF Act, 2014 the profit as per accounts or the declared income as per the return of income was termed as total income. He further submitted that the provision did not use the phrase "whichever is higher"; therefore, the option was available to the appellant to pay SWWF on the basis of final income declared in the income tax returns and not on the basis of accounting profit booked in the accounts.

11. It was further submitted by the advocate for the appellant that the SWWF Act, 2014 was a new law, and despite its challenge before the superior courts the appellant instead of going into litigation started paying to the Fund the amount due as per the final income declared in the income tax return. The appellant had thus duly discharged the SWWF liability amounting to Rs.7,173,808/= worked out as per section 2 (1) (iii) of the SWWF Act, 2014.

12. It has been noticed from record that the AC, SRB had agreed before the Commissioner (Appeals), that the SWWF Act, 2014 does not provide the phrase "whichever is higher" as contained in the federal law and an amendment in law to this effect was proposed. However such submissions of AC were ignored by the Commissioner (Appeals), SRB.

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

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14. We have carefully perused the provisions of the SWWF Act, 2014 and find that no right of appeal was provided in the SWWF Act, 2014 either before Commissioner (Appeals), SRB or before this Tribunal. The AO while passing OIO under some misconception and misinterpretation of the SWWF Act, 2014 and the Act, 2011 had erroneously mentioned that appeal could be filed before Commissioner (Appeals), SRB under section 57 of the Act, 2011. Furthermore, the AO had also misconstrued and misinterpreted the provisions of section 5 (14) and 16 of the SWWF Act, 2014. It is pertinent to mention that the provisions of section 5 (14) of the SWWF Act, 2014 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 Sindh revenue Board and for any default penal provisions as provided in the Act, 2011 and rules made thereunder shall also apply mutatis mutandis.

15. The provision of section 16 of the SWWF Act, 2014 does not deal with filing of appeal but the same deals with additional tax, penalty and prosecution. However it has been provided that the provisions of the Act, 2011 shall mutatis mutandis apply in all cases of additional charge or amount, penalty and prosecution under the SWWF Act, 2014.

16. 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, 2011 and the Sindh Revenue Board 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, 2014. 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 Sindh Revenue Board and for any default penal provisions as provided in the Act, 2011 and rules made thereunder shall also mutatis mutandis apply in such cases.

17. 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, 2011.

18. 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:-

*"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".*

19. The above decision squarely applies on the SWWF Act, 2014. Despite applying certain provisions of the Act, 2011 the provisions relating to filing of appeals were left or ignored by the Legislatures.

20. The Commissioner (Appeals), SRB appointed under the Act, 2011 could not assume jurisdiction to hear appeals under SWWF Act, 2014 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".*

21. 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, 2014 and after detailed discussion it was held as under:-

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"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".

22. The above order was sent to the Commissioner (Appeals) for his perusal 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 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 and the Assistant Commissioners and they should follow the same in later and spirit.


23. The Commissioner (Appeals) appointed under the provisions of the Act, 2011 has thus no jurisdiction to hear appeal against the order passed under the SWWF Act, 2014 for want of specific provision of appeal in the SWWF Act, 2014. The AC has erroneously mentioned in the OIO that an appeal could be filed under section 57 of the Act, 2011. This practice should be discontinued so that the parties are not misguided.

24. In view of the above discussions it is held that this Tribunal constituted under section 60 of the Act, 2011 has no jurisdiction to hear appeals under SWWF Act, 2014. The appeal is accordingly returned to the appellant for filing the same before the court of competent jurisdiction. Since we have returned the appeal for presenting the same before the forum having jurisdiction we do not find it necessary to comment on the merits of the case which may prejudice the respective stands of the parties.

25. 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, 2014 and not to confuse the parties by their 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  
Certified to be True Copy

Karachi:

Dated: 16.06.2022

  
REGISTRAR  
APPELLATE TRIBUNAL  
SINDH REVENUE BOARD

Copy Supplied for compliance:

- 1) The Appellant through Authorized Representative.
- 2) The Chairman, Sindh Revenue Board.
- 3) The Assistant Commissioner, (SWWF), SRB, for compliance

Copy for information to:-

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

Order Issued on 20/06/2022

Registrar

Order Dispatched on 20/06/2022

Registrar